

Terms and conditions for advertising clients of adbility media GmbH

1. Advertising contract

- 1.1** The content of this advertising contract between adbility media GmbH (hereinafter “adbility”) and advertising clients for the placement of promotional materials on websites marketed by adbility (hereinafter “Campaign”) arises from the booking confirmation issued by adbility and these general terms and conditions for advertising clients of adbility media GmbH (hereinafter “GTC”), which will apply additionally.
- 1.2** Should an advertising client be either an advertising agency or an advertising broker, adbility may at any time request proof of appointment of this advertising client through a specifically named advertiser. adbility is authorized to place or deliver promotional materials dependent on advanced payment or payment of an outstanding invoice.
- 1.3** These general terms and conditions apply to advertising clients to all of our business relations with advertising clients. The general terms and conditions will only apply, when an advertising client is an entrepreneur (§14 German Civil Code), a legal person under public law or a public separate estate.
- 1.4** Provided that nothing further has been agreed upon, the GTC will apply in the form current, or latest form presented to them in writing, at the time the advertising client places an order as a framework agreement for future contracts as well; adbility will not be required to refer to these GTC in each individual instance.
- 1.5** Our GTC apply exclusively to differing, contradicting or supplementing general terms and conditions of the advertising client, and will only become part of this contract after adbility has expressly agreed to their validity. This approval requirement will apply in any case, also, for example, should adbility, with knowledge of the general terms and conditions of the advertising client, perform services.
- 1.6** Individual agreements reached in an individual case with the advertising client (including collateral agreements, supplements and amendments) will in all cases have precedence over these GTC. For the contents of such agreements, subject to proof to the contrary, a written contract or written confirmation will be decisive.
- 1.7** Legally relevant declarations and notifications, which are to be submitted to us by the advertising client after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction), require the written form in order to be valid.
- 1.8** References to the validity of statutory regulations will only have clarifying significance. Therefore, the statutory regulations will also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these GTC.

2. Requirements of promotional materials made available by advertising clients

- 2.1** Promotional materials may consist of an image, text, audio file, moving pictures or of a so-called “sensitive” surface, which when clicked establishes a connection to additional information and data via a web address provided by the advertising client, which can be in the form of links, banners, etc. The technical specifications of the promotional materials result from the booking confirmation.
- 2.2** The advertising client is required to ensure that the intent, content and trade dress of promotional materials and the landing pages, to which the respective promotional material directs, in no way infringes upon the rights of third parties and that all applicable legal stipulations, including copyright, trademark, competition and criminal laws, as well as the specific regulations for certain professions (attorneys, doctors, pharmacists, etc.) and product groups (medicinal products, therapeutic products, etc.) are sufficient and do not breach government regulations. The advertising client is especially (without any claim to completeness) made aware of: the ban on unfair or misleading advertising (§§1, 3 UWG), §1 paragraph 1 of the German Price Indication Ordinance (PAngV), §5 Telemedia Act (TMG), Telecommunications Act (TKG), Interstate Broadcasting Agreement, Youth Media Protection State Agreement (JMStV), Directive to provide customers with information on fuel consumption and CO₂ emissions in new passenger cars (Pkw-EnVKV). Promotional materials may only contain sexually explicit content or service telephone numbers (value-added services), through the dialing of which by callers incur telephone charges (especially numbers with the prefix 0190 or 0900), with the express written consent of adbility. Erroneous information and modifications or other questionable promotional materials under provision 2.2 must be communicated immediately to adbility as soon as they become aware of the issue; all necessary measures must also be taken to correct the issue in question.
- 2.3** adbility reserves the right, prior to placement or delivery of promotional materials, to reject or suspend activities should evidence exist that these promotional materials or landing pages, to which the respective promotional materials refer, could be in breach of provision 2.2 or the placement or delivery is not in the interest of the operator of website marketed by adbility (marketing partners) or in those of adbility. This also applies if the promotional material in question has already been placed. adbility will immediately inform the advertising client that the respective promotional material will not be placed, stating the reasons. In the event of a final refusal to place the respective promotional material, the claim to remuneration of adbility will be reduced by the saved expenditures.

3. Service obligations for adbility

- 3.1** adbility will publish promotional materials in accordance with the campaign agreement reached in the booking confirmation, which stipulates the amount and type of promotional materials and which websites marketed by adbility or on which channels (thematic website groups) or networks within a website the materials will be placed. Furthermore, adbility will ensure the delivery of the promotional materials for the agreed upon period of time and scope. Insofar as the booking confirmation does not expressly state otherwise, the advertising client is not entitled to a specific placement of the promotional materials on specific marketed websites. adbility will make decisions hereupon with consideration of the interests of the advertising client.
- 3.2** The advertising client, adbility and the marketing partner will use an ad server for the making available, placement and delivery of the promotional materials. The technical specifications of the ad server used by service providers commissioned by adbility will be made available at any time upon request.
- 3.3** adbility makes no guarantees regarding a specific number of unique users, visits (visits to a domain), page impressions (visual contact per website), ad impressions (visual contact per promotional material on a website), ad views (opening of a website, to which a given promotional material refers), ad clicks (clicking of a placed promotional material) or a specific ad click rate (ratio of ad views to ad clicks). Information to this end, e.g. in the booking confirmation, merely serve informative purposes or, if expressly stated, the calculation of remuneration in accordance with provision 5.
- 3.4** No exclusion of competition is owed, and this will also apply with respect to the relevant Web sites on which the advertising material has been placed.
- 3.5** adbility guarantees that the advertising material is available on an annual average of 95.2%, meaning that it is requested by the relevant marketed websites in accordance with the relevant state of technology for the purpose of delivery to the advertising client. Not included in the calculation of availability are the required and reasonable time periods for servicing and offline backups.
- 3.6** In cases of force majeure, adbility is released from its performance obligations. Force majeure will include all unforeseeable events and such events which cannot be averted by adbility. This will include, but is not limited to, measures taken by government authorities, malfunctions and breakdowns of communication networks and gateways of third parties, including the operators of the web pages marketed by adbility, malfunctions concerning line providers, defective caching on the proxy servers of third parties or the use of software or hardware on the web pages of the advertising client or third parties which is unsuitable for depicting the advertising material, other technical problems, even if they are caused by subcontractors, subsuppliers or their subcontractors or by the operators of sub node processors authorized by the provider, disaster measures (e.g. within the scope of virus control) and lawful action within labor disputes, even in third-party businesses.

- 3.7** The advertising client is obliged to inspect the placed advertising material on the marketed websites stated in the booking confirmation upon initial placement and to give notice of any errors without undue delay, but by no later than within 5 business days of initial placement. Upon the expiry of this period, the services provided will be deemed to have been accepted as being in compliance with the terms of contract.
- 3.8** adbility is entitled to commission third parties (performing agents) to fulfill the contract, for example with regard to the ad server used by adbility, and to provide such third parties with the required data in the necessary scope. adbility agrees to carefully select such performing agents. adbility will use any information it receives from or pertaining to the advertising client or the advertiser within the scope of the cooperation solely for the purposes of the advertising contract. adbility will ensure the confidentiality of such information, provided that nothing to the contrary results from the nature or the purposes of the advertising contract, that the information was not already in the public domain or became known without any action in breach of contract, that it must be disclosed in accordance with a legal or regulatory obligation, or that the information was developed by the information recipient independently of the disclosure. adbility will oblige its performing agents accordingly.

4. Obligations of the advertising client

- 4.1** The advertising client will provide adbility with all data and information required for the placement of advertising material in a timely manner and in full, no later than five business days prior to the negotiated date of placement and in the formats stipulated by adbility (gif/jpg/...).
- 4.2** The advertising client will ensure that the Ad Server used by them or by third parties they have appointed is compatible without restriction with the Ad Server used by adbility.
- 4.3** The advertising client must ensure the adequate technical availability of the target pages and data they have defined, to which the advertising material directs.
- 4.4** In the event of the failure to provide the data and information defined in provision 4.1 in compliance with the terms of contract, particularly in the event of delayed provision of such data and information or in the event of failure to create the required technical requirements under provisions 4.2 or 4.3, adbility will not be obligated to deliver the advertising materials until five business days after the proper provision of the data and information or the creation or reinstatement of the technical requirements. In such an event, adbility will retain the right, but not be obligated, to maintain the provision beyond the original final date up through the originally negotiated duration of the delivery.
- 4.5** The advertising client will hold adbility completely harmless from the claims of third parties and the reasonable costs of legal defense associated herewith (e.g. court costs and legal fees) resulting from a breach of provisions 2.2, 2.3 or 4.1 – 4.3 for which the advertising client or their performing or vicarious agents bear fault.

5. Calculation of fee

- 5.1** The fee is calculated based on ad impressions, provided that no fee has been agreed upon in writing based on ad clicks. Ad impressions and ad clicks are jointly referred to as “fee units.” A fee unit is deemed to have been already generated if the relevant website has been accessed, and not merely after the delivery of the relevant advertising material to the website has been completed.
- 5.2** The generated fee units are determined exclusively through campaign reports created through the ad server used by adbility.
- 5.3** As there may be counting differences due to the required interaction of several technical systems, deviating findings and counts by the advertising client may not be directly applied for corrections to the campaign reports. In the event of reasonable doubt concerning the accuracy of the campaign report, the advertising client may request an audit via the support team of the relevant ad server service provider of adbility. The costs for this audit will be borne by the advertising client if their doubts have not been confirmed or within the currently accepted market tolerance (10%).

6. Terms of payment

- 6.1** The price list for advertising clients applicable on the date of the grant of contract/booking by the advertising client will apply. All prices stated by adbility are without additional value-added tax in the applicable amount under law.
- 6.2** adbility will invoice the generated fee units per calendar month in the following month; in the event of a campaign duration of less than one month, at the end of the campaign. Invoices are immediately due for payment without deduction. If the advertising client is in default of payment, adbility is entitled to charge default interest of the current applicable legal default interest rate. adbility retains the right to further claims caused by default.
- 6.3** Objections and pleas must be raised in writing within one month of the receipt of the invoice; late objections and pleas are excluded.

7. Right to advertising materials

7.1 The advertising client ensures that they have at their disposal all the rights required to place the advertising material. Provision 4.5 applies accordingly for the culpable breach of the proprietary rights of third parties.

7.2 Through the transmission of the data under provision 3.1, the advertising client grants adbility the following non-exclusive, non-transferable, permanent and territorially unrestricted rights (including the right to grant sub-licenses):

- archiving and database right, meaning the right to archive the content in any form and to also digitally collect it, place it into databases and store it on all known storage media and on any data carrier whatsoever and to combine it with other works or parts of works;
- reproduction and dissemination right, meaning the right to store and reproduce at will and provide full or partial access or disseminate in full or in part in electronic or other media (e.g. Internet, newspapers, magazines).
- processing right, meaning the right to process content at will, particularly to alter, shorten, supplement and combine with other content.
- adbility is particularly permitted to have the previously mentioned action taken by third parties, as well.

8. Liability of adbility

8.1 Unless otherwise provided in these GTC including the below provisions, in case of any breach of contractual and extra-contractual provisions the liability of adbility will be subject to the relevant statutory provisions.

8.2 adbility is liable for damages – irrespective of their legal grounds – within the framework of fault-based liability in the event of intent and culpable negligence. In the event of simple negligence, adbility will be liable conditionally for a more lenient standard of liability in accordance with legal regulations (e.g. diligence concerning their own affairs) only:

- for damages arising from injury to life, body or health,
- for damages arising from a non-insignificant breach of an essential contractual obligation (obligations, the fulfillment of which enables proper implementation of the contract in the first place and the observance of which the contracting party regularly trusts and is entitled to expect). In such an event, the liability of adbility is limited to the reimbursement of foreseeable, typically occurring damages.

- 8.3** The liability restrictions resulting from section 8.2 also apply to breaches of obligations by or for the benefit of persons, whose fault for which adbility is legally liable. It will not apply in the event that adbility fraudulently concealed a defect or has assumed a guarantee for the service provided or for claims of the advertising client under the Product Liability Act.
- 8.4** In the case of a violation of an obligation that does not consist of a defect, the advertising client will only be entitled to withdraw from the contract if adbility is responsible for such violation. A free right of termination of the advertising client is excluded. Otherwise, the legal stipulations and consequences will apply.
- 8.5** In addition, liability is also excluded for the damage incurred by the advertising client or third parties, including loss of profit. This especially applies to the following damage:
- loss of data if the advertising client has not ensured through the creation of backup copies of their data portfolio or in another manner that the advertising material can be restored with reasonable effort. Otherwise, the liability of adbility is limited to the typical expense of restoration.
 - for defective data provided by advertising agencies or advertising brokers or third parties acting on behalf of the advertising client or the advertiser.
 - for the quality of the reproduction of image files, especially not for deviations in color.
 - for damages from an abridged or adulterated appearance or from the improper use of data by third parties.
 - for ensuring that the placed advertising material is in compliance with the legal requirements of the country in which it be viewed/retrieved or in which the advertising client or the advertising has their registered office.
 - adbility will not assume any warranty or liability for the enforceability, under the local law of the country in question, of the contracts under negotiation or entered into based on the placed advertising material. The same applies for the creation of other legal or commercial disadvantages for the parties to the contract.
- 8.6** Provided that the liability of adbility is excluded or limited, this will also apply for the personal liability of salaried personnel, employees, associates, representatives and performing agents of adbility.

9. Term of contract, termination

- 9.1** The duration of the advertising contract is set down in the booking confirmation. A termination for convenience is excluded beginning from delivery. Cancellation can be made at any time prior to start of delivery with a notice period of up to five business days. It must take place in writing. The client incurs no costs in the event of cancellation at least 3 weeks before placement begins. Later cancellations up until the time the placement begins will be charged at a lump sum amount of compensation of 30% of the net order value. Once placement begins, that lump sum rises to 100% of the net order value.
- 9.2** The right to extraordinary termination for cause will remain unaffected.
- 9.3** Irrespective of the ability to terminate the advertising contract, adbility will remove the advertising material from the marketed websites within five business days, and in case of risk of further delay, upon the express written request of the advertising client.

10. Final provisions

- 10.1** Place of performance for legal purposes is Hamburg. Any other place at which advertising material can be viewed will remain irrelevant for the contractual, liability and statutory claims linked to the place of performance.
- 10.2** Any repayment claims by the advertising client will be generally paid during an ongoing business relationship in the form of a credit for future contracts.
- 10.3** The advertising contract is subject to the laws of the Federal Republic of Germany exclusive of its conflict of laws provisions.
- 10.4** Exclusive venue for all disputes under or in connection with the advertising contract is Hamburg to the extent permitted under law. adbility is entitled, at its option, to sue the advertising client at the location of its registered office.
- 10.5** Should one or several provisions of this contract be invalid or void, this will not affect the validity of the remaining provisions. The invalid or void provision will be replaced by an effective provision whose content in terms of its financial purpose would have been proposed in the event of awareness of any defects at the time of conclusion of the contract.

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