

General Terms and Conditions of Business of iq media marketing gmbh

1. Scope

1.1 The following General Terms and Conditions of Business for Advertisements and Other Insertions in Newspapers (hereinafter referred to as "Terms and Conditions") of the publisher apply in dealings with businesspeople, "merchants" as defined by German law ("Kaufleute"), public-law entities or funds under public law exclusively and for all advertising orders and insertion agreements.

1.2 General terms and conditions of business of the client are not recognised unless the publisher explicitly consents to their validity.

1.3 The General Terms and Conditions of the publisher also apply even if the publisher executes the advertising order or insertion agreement without reservation in awareness of conflicting conditions or conditions of the client that deviate from these Terms and Conditions.

2. Advertising order and insertion agreement

2.1 An "advertising order" according to the following General Terms and Conditions is a contract between publisher and client on the publication on a specific date of one or more advertisements or other insertion materials such as loose inserts (referred to hereinafter overall as "advertisements") of an advertiser or other insertion client (referred to hereinafter overall as "advertisers") in a print medium for the purpose of dissemination.

2.2 An "insertion agreement" according to the following Terms and Conditions is a contract between publisher and client for the publication of more than one advertisement which takes into account the discounts to be granted to the client based on the rate card and where publication of the advertisements is executed on the basis of a drawdown notification by the client in each individual case.

3. Advertisement drawdown

In the case of doubt, advertisements are to be drawn down for publication within one year of the signing of the agreement. If a client is entitled to draw down individual advertisements within the context of an insertion agreement, the agreement must be executed within one year following publication of the first advertisement, provided that the first advertisement is drawn down and published within the period specified in 1.

4. Granting of discounts

If one or more drawdowns from an insertion agreement are not executed for reasons for which the publisher cannot be held responsible, the client must, without prejudice to further legal obligations, refund to the publisher the difference between the granted discount and the discount based on the actual published volume.

5. Calculation of order volumes/Billing based on size

5.1 When calculating order volumes, text millimetre lines are converted into ad millimetres as appropriate.

5.2 If no special size provisions are stipulated, billing will be based on the standard actual print height for the type of ad in question.

6. Delivery to the publisher

6.1 Advertisements which, based on the advertising order or drawdown, are to be published in specific issues, specific editions or specific positions of the print medium must be received by the publisher sufficiently early to permit notification of the publisher prior to the advertising deadline as to when publication is to be effected in this manner. Classified advertisements will be printed under the respective heading without the need for any explicit agreement.

6.2 Specific positioning and date specifications are only binding if they have been confirmed by the publisher. The exclusion of competitor advertising can only be agreed for two opposite pages.

6.3 If the client makes the validity of the order explicitly contingent on the inclusion of the advertisement in specific issues, specific editions or specific positions of the print medium, the guarantee claims of the client vis-à-vis the publisher are limited to rescission of the contract, reduced payment or a substitute advertisement. This provision applies analogously to loose insert orders.

6.4 The publisher reserves the right to determine special prices if four pages or more are booked in a particular issue, for special orders from 100,000 mm and for advertisements in special supplements or collective pages.

7. Next-to-matter advertisements, advertisements with coupons and advertorials

7.1 Flyers are insertions that border on text on at least three sides and are not positioned directly next to other advertisements. Advertisements that are not recognisable as advertisements due to their layout will be clearly designated as such by the publisher by the addition of the word "Anzeige" ("advertisement").

7.2 In exceptional cases, the publisher reserves the right to also position advertisements with coupon back to back if the publisher cannot be reasonably expected to execute another form of publication.

7.3 Advertorials are externally produced elements that differ clearly in form and layout from the editorial sections of the newspaper/magazine (in terms of typographic elements as well as colour and column layout). They contain text and advertising of third parties. They must always include a separate "imprint". The publisher may identify the advertorial using the word "Anzeige" ("advertisement") without consulting the client. The publisher reserves the right to make publication dependent on the submission of a binding sample as well as the right to stipulate special rates for special publications. The advertorial must be submitted to the publisher for review and approval at least five days prior to the copy/artwork deadline.

8. Right to refuse publication

8.1 Without recognising any obligation to review the material, the publisher reserves the right to refuse drawdown or the publication of advertisements, in particular if their content violates laws or official regulations, their content has been objected to in a complaint procedure filed with the German Advertising Council, the publisher cannot be reasonably expected to publish them based on his uniform and objectively justified principles due to,

among other things, their content, layout, origin or technical format, the advertisement contains advertising for third parties or of third parties or the images, text or layout of the advertisement resemble that of the print medium. This also applies to orders placed with business offices, accepting offices or representatives. Loose insert orders are only binding on the publisher following submission and approval of a sample of the insert.

8.2 The client will be notified without delay in the event that the publisher decides to refuse to publish an advertisement or execute drawdown.

9. Tie-in advertising

Advertisements that contain advertising of or for third parties (tie-in advertising) must be approved in advance by the publisher in writing in each individual case. This entitles the publisher to levy the tie-in surcharge.

10. Copy/Artwork and proofs

10.1 The client is solely responsible for punctual delivery and the perfect properties of suitable – possibly digital – copy/artwork or other insertion material. These must meet the format requirements and/or technical specifications of the publisher.

10.2 Proofs will be supplied by the publisher only when this is explicitly requested in writing by the client. The client is responsible for the correctness of delivered proofs. The publisher will take account of all corrections of which he is notified by the advertising deadline or before the deadline specified upon dispatch of the proof to the client.

10.3 The client must bear any costs incurred by the publisher for copy/artwork created by the publisher at the client's request or for any changes to the copy/artwork delivered by the client and desired by the client or for which the client is responsible.

10.4 Copy/Artwork will only be returned to the client if this is explicitly requested in writing when the copy/artwork is delivered to the publisher. The obligation of the publisher to retain the copy/artwork expires six weeks after first-time publication of the advertisement.

11. Rights in the event of defects

11.1 The client must check the advertisement for defects without delay after it has been published and, if an obvious defect is apparent, he must notify the publisher in writing within a period of one week following publication. In the case of non-obvious defects, the client must inform the publisher within a period of one year following publication. If the client fails to meet these deadlines, the advertisement is deemed to have been approved, with the result that the client foregoes his rights in the event of defects according to 11.2 and 11.4.

11.2 If the publication of the advertisement does not fulfil the contractually agreed properties, the client is entitled to claim a reduction in the agreed price or a perfect substitute advertisement, but only to the extent to which the purpose of the advertisement has been impaired.

11.3 The publisher is entitled to refuse to publish a substitute advertisement if this requires an effort that, in view of the substance of the owed service and the principle of good faith, is greatly disproportionate to the interest of the client in performance of the service or if this would only be possible for the publisher at a disproportionate cost.

11.4 If the publisher fails to meet this obligation to publish a substitute advertisement within a reasonable specified period, or if the substitute advertisement is once again imperfect, the client is entitled to a reduction in price or to terminate the agreement and demand compensation for his fruitless efforts or damages in place of performance of the service. In the case of negligible defects, the client is not entitled to terminate the agreement or demand damages in place of performance of the service.

11.5 The claims of the client due to defects expire one year after publication of the advertisement.

12. Liability

12.1 The liability of the publisher is unlimited in the case of intent and gross negligence.

12.2 With the exception of injury to life, limb or health, the publisher is only liable for simple negligence in the event of violation of obligations whose performance goes to the root of the contract and which the client is entitled to rely on. In such cases, the liability of the publisher is limited to the foreseeable damage that is typical for this type of contract.

12.3 The liability of the publisher based on 12.2 is limited to a sum equivalent to the total volume of the advertising order.

12.4 Liability for indirect and unforeseeable damage, loss of profit, non-achieved savings and financial losses due to claims of third parties is excluded in the event of simple negligence – unless the prerequisites for liability exist based on 12.2.

12.5 The liability limitations and exclusions in 12.2 and 12.4 do not apply in the case of legally stipulated no-fault liability or in the case of liability based on a no-fault guarantee.

12.6 The liability limitations and exclusions in 12.2 and 12.4 also apply to the personal liability of employees, representatives, organs and agents acting on behalf of the publisher.

13. Prices and conditions of payment

13.1 Prices, surcharges and discounts are the same for all clients as listed in the rate card of the publisher valid at the time of the advertising order or advertisement drawdown.

13.2 If the period between the date of the advertising order or the date of the drawdown and the publication of the advertisement exceeds four months, and if the publisher's cost factors for the publication of the advertisement increase during this time (due, in particular, to wage agreements, salary increases or material price increases), and if, as a result, the publisher is forced to adjust his rate card accordingly, the publisher is entitled to claim the resulting higher prices from the client.

13.3 The publisher dispatches the invoices on the day of publication of the advertisements. The invoices of the publisher are payable within the period specified in the rate card which begins upon receipt of the invoice, unless a different payment deadline or advance payment has been agreed in individual cases.

13.4 The publisher grants the discounts listed in the rate card for all advertisements of an advertiser published within a particular year. Discounts are not granted to companies whose business purposes include the booking of advertising orders or the signing of insertion agreements for different advertisers in order to claim a joint discount.

13.5 In the event of default on the part of the client, the publisher may postpone further execution of the ongoing advertising order or insertion agreement until outstanding payments have been made in full and may demand advance payment for the remaining advertisements. This does not affect the legal rights of the publisher arising from default on the part of the client.

13.6 Reasonable doubts as to the solvency of the client entitle the publisher to make continued execution of an ongoing advertising order or insertion agreement contingent on part or whole advance payment of all sums due to the publisher based on the advertising order.

13.7 At the start of a new business relationship, the publisher reserves the right to demand advance payment from the client by the advertising deadline.

13.8 The offsetting of counterclaims of the client or the withholding of payment on account of such claims is only admissible where these counterclaims are undisputed or have been legally established.

14. Courtesy copy

On the explicit written request of the client, the publisher will supply a copy of the advertisement when it is published. Depending on the type and size of the advertising order, advertisement clippings, full pages or complete issues of the print medium will be supplied. If it is no longer possible to obtain a copy, the publisher will submit a legally binding confirmation regarding publication and dissemination of the advertisement.

15. Advertising intermediaries and advertising agencies

In their offers, agreements and invoices vis-à-vis the clients, advertising intermediaries and advertising agencies are bound by the publisher's rate card. The intermediary or agency commission granted by the publisher may not be passed on either in whole or in part to the client.

16. Group discounts

16.1 If a joint discount is claimed for companies belonging to a group, the publisher requires written proof of the consolidated status of the advertiser. Under the terms of this provision, associated companies are companies between which a capital holding of at least 50 percent exists. In the case of corporations, group status must be confirmed by an auditor or proved by way of submission of the most recent annual report; in the case of a partnership by way of submission of an excerpt from the commercial register. This proof must be furnished during the first half of the period of the insertion agreement, and otherwise at the latest by the end of the insertion year. Proof furnished at a later date cannot be recognised retroactively.

16.2 In all cases, group discounts require the explicit, written confirmation of the publisher. Group discounts are only granted for the duration of membership of the group of companies. The publisher must be informed of termination of such membership without delay; termination of the group membership of a company also results in termination of the group discount.

17. Keyed advertisements

In the case of keyed advertisements, the publisher employs the due diligence of a prudent businessman in the custody and punctual forwarding of offers. Beyond this, the publisher does not assume any liability. Registered and express letters received in response to keyed advertisements will be forwarded by standard mail only. Replies to keyed advertisements will be kept for four weeks. Correspondence not collected within this period will be destroyed. The publisher will return valuable documents without there being any obligation on the publisher to do so. A specific agreement can be drawn up to authorise the publisher, acting as the client's representative, to open the replies received in place of and in the declared interest of the client. Letters which exceed the admissible A4 format (weight: 1,000 g), merchandise, books, catalogues and small packages are excluded from forwarding and will not be accepted. An agreement covering acceptance and forwarding of same can, however, be drawn up in exceptional cases provided that the client bears all the charges/costs incurred.

18. Guarantee of rights and granting of rights

18.1 The client guarantees that he possesses all the necessary rights to allow publication of the advertisement. The client bears sole responsibility for the content and the legal admissibility of the text and pictures as well as the advertising materials supplied for insertion. Within the context of the advertising order or insertion agreement, he indemnifies the publisher against all claims of third parties asserted against the publisher in connection with the publication of the advertisements. Moreover, the publisher will be indemnified in relation to the cost of any necessary legal defence. Finally, the client undertakes to support the publisher with information and documents in good faith in any legal defence against claims of third parties and to inform the publisher without delay and in writing of any declarations of discontinuance or injunctions with regard to the rights of third parties.

18.2 The client assigns to the publisher all necessary copyright-based utilisation, neighbouring and other rights required for use of the advertisements in print and online media of all kinds, including the Internet, in particular the right of duplication, dissemination, transmission, broadcasting, public disclosure, extraction from a data bank and retrieval, editing and redesign. All these rights must be assigned in the scope and for the duration necessary for the execution of the order. In all cases, the said rights must be assigned with unlimited effect in terms of location.

19. Force majeure

19.1 Cases of force majeure entitle the publisher to postpone publication of the advertisements for as long as the event in question lasts. If the publisher is unable to publish the advertisements due to force majeure, but at least for a period of six months, the publisher is released from the obligation to publish the advertisements. The concept of force majeure comprises all circumstances for which the publisher is not responsible and which make it impossible or unreasonably difficult for the publisher to publish the advertisements, such as strikes, legally justified lockouts, (civil) war, acts of terror, tumults, natural disasters, import and export bans, scarcity of energy and raw materials, and late availability of supplies and raw materials for which the publisher is not responsible. If the publisher is released from the obligation to publish the advertisements, the client is entitled to cancel the advertising order or the insertion agreement.

19.2 If cases of force majeure merely affect the circulation volume of the publication in question, the publisher is entitled to full payment for the published advertisements,

providing that the published title was dispatched in a quantity equivalent to 80% of the average sold circulation of the preceding four quarters or 80% of the assured circulation as otherwise specified by the publisher. If the number of copies dispatched was below this level, the invoice amount will be reduced by the ratio of the guaranteed sold circulation or assured circulation to the de facto dispatched circulation.

20. Advertisements from abroad

Billing for advertisements (loose inserts) from outside Germany will be without value added tax, provided that the required exemption from this tax exists and is recognised. The publisher reserves the right to bill the client for the applicable value added tax at a later date in the event that the financial authorities find that the advertisement (insert) is liable for value added tax.

21. Place of performance and legal venue

21.1 The advertising order and insertion agreement as well as these Terms and Conditions are governed by the law of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

21.2 The sole place of performance for all obligations of the client is the place where the publisher has his registered office.

21.3 In business transactions with "merchants" ("Kaufleute") as defined by German law, legal entities under public law or public-law special funds, the place where the publisher has his registered office is agreed as the sole legal venue. If the claims of the publisher are not enforced in summary proceedings, the legal venue will be, in the case of "non-merchants" as defined by German law ("Nicht-Kaufleute"), the place of residence of these "non-merchants".

21.4 If the place of residence or usual place of abode of the client – including "non-merchants" – is unknown at the time when an action is filed, or if the client has moved his place of residence or his usual place of abode outside the jurisdiction of the law since the signing of the contract, the place where the publisher has his registered office will be the agreed and sole legal venue.

21.5 Amendments and supplements to the Terms and Conditions as well as side agreements must be in writing. This also applies to any waiver of the provision that the above be in writing.

21.6 If one of the above provisions is or should become invalid, this will not affect the validity of the remaining provisions. To replace the invalid provision, the parties will agree on a valid provision which comes as close as possible to the overall spirit of the Terms and Conditions and the contractual agreements in terms of factual, legal and economic content. The same procedure should be followed if there is an omission in the Terms and Conditions.