

VSW General Terms and Conditions

General Terms and Conditions governing the contractual relationships between Advertisers and members of the Swiss Association of Advertising Companies ('VSW')

A. SCOPE OF APPLICATION

1. Business relationships with Advertisers

1.1. These General Terms and Conditions govern the contractual relationship between Advertising Company and an Advertiser (Advertising Contract). Advertising, media or PR agencies deal with Advertising Companies on behalf of and for the account of Advertisers.

1.2. The Advertising Contract covers the publication (single or multiple-issue placements and volume contracts) of advertisements, inserts and supplements (hereinafter referred to as 'advertisements') by an Advertising Company, including or excluding consultancy services, the creation of advertisements using desktop publishing (DTP) means, the preparation of media plans or administrative services. In their dealings with Publishers, the Advertising Companies take full responsibility for the publication of the advertisements.

2. General Terms and Conditions of Advertisers

2.1. Upon conclusion of the Advertising Contract, the General Terms and Conditions become an integral part of said Contract. The Advertiser at the same time waives the application of his/her own General Terms and Conditions.

B. EXECUTION OF THE CONTRACT

3. Prices

3.1. In respect of publication, the currently prevailing advertising rates and discounts of the Publishers, plus VAT, shall apply.

3.2. In respect of consultancy, creation, planning or administrative services provided by the Advertising Companies, the latter's currently prevailing service prices, plus VAT, shall apply and are available on their websites.

3.3. Any changes to advertising rates, discounts, service prices and VAT also take immediate effect for publications that are already running. However, Advertisers are entitled to cancel their contracts within 2 weeks of notification of the new rates. In such cases, Advertisers are only entitled to such discount as per the discount schedule as corresponds to the actual amount of advertising purchased by the time of cancellation.

4. Additional costs

4.1. Additional work and expenditure by the Publishers or the Advertising Companies which is not included in their advertising rates or service prices may also be invoiced, plus VAT. This shall include, for the Publishers for example, complex processing of complete printing material.

5. Size of advertisements

5.1. The amount invoiced will be based on the size of the advertisement, measured in the relevant newspaper from dividing line to dividing line. Depending on the tariffs of a specific title 2 mm may be added to the print size for boxed advertisements and for those submitted in complete, print-quality format.

5.2. Advertisements that are due to be published several times using the same design or text are all invoiced according to the size of the first advertisement that was published.

6. Volume contracts, volume discounts

6.1. Advertising rates may provide for volume discounts if a certain volume of advertising space, measured in mm or Swiss francs (hereinafter referred to as "volume"), is purchased for a particular period (volume contract).

6.2. If the agreed volume is exceeded during this period, bringing the discount to a higher level, the increased discount is credited retrospectively at the end of the contract.

6.3. If the agreed volume is not reached during the period, a short-rate charge will be made for any excess discount granted. Advertisers are given a 3% tolerance level on the agreed volume. Any unused volume cannot be carried over to the following year's contract.

7. Repeat orders, frequency discounts

7.1. Frequency discounts are granted on the rates charged for advertisements that appear in an unchanged format on a number of dates stipulated in advance (repeat orders).

7.2. The advertisements must appear in an unchanged format; normally subjects can only be changed in cases where the advertisement is submitted in complete, print quality format.

7.3. A higher discount is granted retrospectively if the repeat order is enlarged on the same terms prior to insertion of the last advertisement and as a result reaches a higher level.

8. Modalities for volume contracts and repeat orders

8.1. A separate volume contract or repeat order must be agreed for each advertising medium.

8.2. Generally, the benefits of volume contracts and repeat orders can only be claimed by a legally independent Advertiser. However, under certain circumstances, the Treuhandgesellschaft BDO Zürich may grant groups and holding companies the permission to agree upon group contracts.

8.3. Volume contracts and repeat orders are valid for 12 months. If they begin between the 1st and 15th of a month inclusively, they shall end at the end of the preceding month of the following year. If they begin between the 16th and end of a month, they shall run until the end of that month of the following year.

8.4. The same rate of discount shall generally apply for the entire duration of the contract.

9. Publishers' rights

9.1. Publishers reserve the right to request changes to the content of advertisements or refuse them without being obliged to state any reasons.

9.2. For technical reasons and without notifying the Advertiser in advance, Publishers may bring forward or postpone by one issue the publication of advertisements with specified insertion dates, provided that the content does not absolutely require the advertisement to be published on the date specified.

9.3. Publishers may insert the word 'advertisement' above or below any copy to distinguish advertisements from editorial content.

9.4. The positioning of advertisements is generally at the discretion of the Publisher. Publishers will accept customers' positioning requests but are not bound by them. If specific positioning instructions are adhered to, this results in a preferred position charge.

9.5. Orders for advertising inserts and supplements are only binding for Publishers after a sample has been approved.

10. Box number advertisements

10.1. The Advertising Company undertakes to keep box numbers secret, except in the following particular instances: Where there is good reason to do so, the Advertising Company may disclose the identity of the box number advertiser to

* legal or administrative authorities or
* persons who have given their personal details to a box number advertiser and later wish to exercise their right to disclosure of the advertiser's identity because their documents have not been returned.

10.2. In particular, the Advertising Company is not obliged to pass on to box number advertisers advertising material, anonymous or agency offers. To this end, it may open and inspect these offers.

10.3. A fee is charged every time a box number advertisement is placed. Additional work and expenditure is also invoiced.

10.4. The responsibility to return documents lies with the box number advertiser.

11. Proofs

11.1. Proofs for commercial advertisements may be supplied on request, provided the material for print has been received at least three calendar days before the final deadline.

11.2. No proofs are provided in cases where the advertisement has been submitted in complete, print-quality format.

12. Printed material

12.1. In the absence of any express agreement, the Publisher or Advertising Company is under no obligation to retain or return print material and data submitted in conventional or digital form (artwork, films, photos etc.).

13. Terms of payment

13.1. Occasional advertisements must be paid for in cash or within 10 calendar days.

13.2. For all other advertisements, the payment period is 30 calendar days with no discount.

13.3. If the advertiser doesn't pay in due time (cf. 13.1 or 13.2) he immediately falls into default. Default interest rates are 10%. In addition the Advertising Company may request advance payment for all future orders until all booked advertisements have been paid.

13.4. If the advertiser falls into default pursuant to 13.3 he'll be charged additionally CHF 50.00 for the second and last sent reminder.

13.5. If monies owed become subject to debt collection, stay of payment or bankruptcy proceedings, all discounts, consulting and agency commissions shall cease to apply.

14. Premature termination of the Contract

14.1. If an advertising medium ceases publication during the contract period, the Advertising Company may cancel the Contract without being required to provide a replacement.

14.2. This does not release the Advertiser from his/her obligation to pay for advertisements that have already been published.

14.3. No short-rate charges will be incurred back, but discounts may be credited if a higher discount level had been reached at the time the Contract was cancelled.

C. ADVERTISING COMPANY'S LIABILITY

15. Publication errors, non-publication

15.1. Claims based on publication faults, errors, omissions or on non-publication of advertisements should be sent to the Advertising Company within 10 calendar days of publication.

15.2. If the meaning or overall effect of an advertisement is significantly impaired or if an advertisement was not published on the date stipulated, the cost of publishing the advertisement will be refunded in whole or in part or alternatively compensation will be provided in the form of advertising space in the publication in question. The above compensation does not apply in the following instances: advertisements placed by telephone, defective transmission when advertisements are sent to the Advertising Company or Publisher by digital means, errors resulting from the translation of foreign language documents, the deferred publication of an advertisement (see Para. 9.2), failure to comply with positioning requirements, unsuitable material, slight differences in the positioning and register of colours or deviations from typographical specifications or the omission of key numbers.

15.3. Any claims other than those mentioned in Para. 15.2 relating to publication errors, nonpublication or any other reasons are excluded.

D. ADVERTISER'S LIABILITY

16. Liability in respect of the content of advertisements

16.1. The Advertiser is responsible for the content of any advertisements submitted. The former declares that he/she shall comply with the relevant legal requirements and industry regulations and may be held responsible for them by the Advertising Company and Publisher. He/she shall indemnify the Advertising Company and the Publisher as well as its officers and agents in respect of any third-party claims. The Advertiser is in any case under obligation to assume all court costs and out-of-court costs arising from third-party claims or other proceedings.

17. Right to publication of a counter-statement

17.1. If any demand is made to have a counter-statement published (Art. 28 ff SCC), the Publisher or Advertising Company shall inform the Advertiser accordingly, discuss with the latter whether to reject or accept the request and advise him/her on the procedure and related modalities of publication.

E. FURTHER USE OF ADVERTISEMENTS

18. Use of advertisements for electronic databases

18.1. The Advertiser hereby gives his/her consent for the Advertising Company to store the advertisements in its own or external electronic databases and process them for that purpose. The Advertiser may withdraw his/her consent at any time. He/she is aware that personal data may also be accessed in countries that have no data protection provisions comparable with those in Switzerland, as a result of which the confidentiality, integrity, authenticity or availability of his/her personal data is not guaranteed.

18.2. The unauthorised use of advertisements, either printed or stored in electronic databases, and the processing of same by third parties without a significant input of their own is not permitted and is prohibited by the Advertiser. The latter specifically authorises the Advertising Company to take appropriate measures against such parties after consultation with the Publisher.

19. Intellectual ownership of advertisements

19.1. The Advertiser recognizes that the Advertising Company has intellectual ownership, particularly the copyright, of all advertisements of an individual character that it has created, e.g. desktop publishing work. Provided the Advertiser meets his/her contractual obligations towards the Advertising Company, he/she is entitled to use the intellectual property for an unlimited period within the confines of the originally specified purpose.

F. APPLICABLE LAW AND PLACE OF JURISDICTION

20. The Advertising Contract shall be governed exclusively by Swiss law. Application of the Vienna Sales Convention (CISG) is expressly excluded.

21. The exclusive place of jurisdiction is at the place of the competent court where the registered office of the Advertising Company has entered into an Advertising Contract with the Advertiser, as long as there is no statutory mandatory place of jurisdiction.

The German language version of the General Terms and Conditions rule and trump other language versions in case of doubts or contradictions. These General Terms and Conditions come into force on 1st April 2014 and replace all previous versions. These General Terms and Conditions can be amended anytime. The current version of the General Terms and Conditions is found on the website <http://www.vsw-asso.ch>.