

## General Terms and Conditions of Business for Advertising Clients

The following General Terms and Conditions of Business (**Terms and Conditions** hereafter) apply for online advertising booked in the exclusive portfolio of Business Advertising GmbH (**businessAD** hereafter). NB: When buying media that are not part of the businessAD portfolio other / additional terms may apply:

### 1. Advertising Order

- (1) An **“advertising order”**, for the purpose of the Terms and Conditions, is a contract for the placement of one or a number of advertisements within information and communications services, in particular the internet, for the purpose of disseminating the advertisement.
- (2) The advertising order is subject exclusively to these Terms and Conditions, the pricelist and the overview of advertisements and technical details, which form a significant and integral part of the contract and can be found at [www.businessad.de](http://www.businessad.de). The validity of any general terms and conditions of business of the customer is expressly excluded unless these conditions match these Terms and Conditions entirely. In particular, even if no objection is raised, or if businessAD does not actively reject any other terms and conditions, this does not lead to these conditions being considered as agreed. The customer agrees to these Terms and Conditions by placing the advertising order.
- (3) businessAD is entitled to modify these Terms and Conditions at any time. businessAD will inform its customers in time, i.e. at least **one month in advance**, of any change. The amended Terms and Conditions are considered as approved when the customer does not object in written form (by mail, email or fax) within **4 weeks**.

### 2. Advertisements

- (1) An advertisement can consist of one or a combination of the elements below:
  - an image and/ or text, sound sequences and/ or moving images
  - a sensitivity area which when clicked on creates a link to additional data in the area of the customer or a third party, by means of an online address stated by the customer.
- (2) businessAD reserves the right to mark advertisements clearly as advertisements (**“Anzeige”**) when they are not identifiable as such due to their design.
- (3) For the insertion of advertisements the applicable formats are basically those indicated in the relevant pricelist. Special formats and forms of advertisements are possible after consulting and checking by businessAD.
- (4) It is the advertiser's responsibility to have all the necessary rights for publishing photos or graphics

### 3. Conclusion of Contract

- (1) businessAD markets online advertisements and newsletter on the websites market by businessAD on its own behalf and own account.
- (2) Subject to individual agreements a contract is only concluded by written confirmation (by mail, fax or email) of the offer.
- (3) businessAD accepts orders assuming that the advertising content does not breach applicable law and/or the right of a third party. Otherwise, the customer indemnifies businessAD from all third party claims.
- (4) Subject to other written agreements advertising agencies conclude a contract with businessAD itself by placing an order, meaning that the advertising agency itself is the contractual partner of businessAD. Orders from advertising agencies or brokers are only accepted on behalf of advertisers identified by name. businessAD is entitled to request the original of the proof of mandate from the advertising agency.
- (5) All bookings are subject to the approval of the particular website operator.

### 4. Acceptance

- (1) After businessAD has placed the advertisement the customer receives a screenshot. After receiving the screenshot the customer is obliged to control the screenshot or the website, on which the advertisement is inserted and to point out any mistake within 3 days. After the expiration of this term the advertisement is deemed to be accepted according to **§ 640 BGB** (German Civil Code). For Channel bookings businessAD will not screen every individual website. **The maximum number of screenshots is limited to 4.**
- (2) When booking a newsletter the customer receives an ex ante exemplar showing the advertising material built in the newsletter which he can revoke until midday of the working day prior to newsletter dispatch. If the

customer does not use this opportunity, the approval is deemed to be accepted according to § 640 BGB.(German Civil Code)

- (3) businessAD provides **campaign reportings** for all campaigns. A campaign reporting can be a reporting from the businessAD adserver, the adserver of the website operator, newsletter despatch reports from the mail provider and Google Analytics (or similar) for native advertising.

## 5. Right of Refusal

- (1) businessAD reserves the right to refuse and reject advertisements submitted by the customer for insertion if
  - the advertisement's content breaches laws and/or official regulations
  - the advertisement's content was objected in an appellant process by the German Advertisement Board (Deutsche Werberat)
  - it would be unreasonable to expect businessAD to proceed the insertion due to the advertisement's content, origins, form or technical quality.
- (2) businessAD is in particular entitled to withdraw an advertisement which has already appeared, in its entirety, if the customer proceed to modify the contents of the advertisement subsequently, without discussion, or if the linking URL changes, and through this the requirements of clause 5.(1) are fulfilled.
- (3) The customer will be notified immediately of the rejection. In such cases the customer is entitled to pass on to businessAD a modified version of the advertisement to be inserted, and/or the target URL linked with the advertisement. The additional costs arising as a result may be invoiced to the customer by businessAD.
- (4) If a replacement according to clause 5.(3) is not possible businessAD retains its claim to the agreed payment.
- (5) businessAD reserves the right to refuse advertising collectives. The right exists also in the case businessAD notices about the collective after giving the order confirmation. Corporate rebates for a subsidiary company are only granted where there is a capital participation of at least 50%. businessAD is entitled to have written evidence of this capital participation provided.

## 6. Fulfilment Period

Where a contract is concluded for a number of advertisements, these must be called forward for publication within one year of conclusion of contract.

## 7. Delivery of the Advertisement Material / Data

- (1) The customer is obliged to deliver appropriate advertisements in perfect condition (banners, target URL, alternative text and creative schedule, where relevant) according to businessAD's technical specifications. The customer is also obliged to keep the target URL recallable during the insertion period. If the customer discovers any failures with the linking of the advertisement within the target URL he will inform businessAD immediately.  
The advertiser is responsible to provide the creatives / redirects with suitable variables for the GDPR macro transfer. businessAD reserves the right to suspend campaigns when GDPR is not complied with.
- (2) The advertisements must be delivered in their final digital form no later than **3 working days** before the first insertion date to the following address: [banner@businessad.de](mailto:banner@businessad.de). For special advertisement forms and newsletters, the set period is **5 working days** to the email address indicated above.
- (3) For the advertisements supplied and for any other materials, businessAD accepts no responsibility and is not obliged to return these to the customer. The customer bears all risks for the transmission of the advertisement material specified for publication, in particular for the loss in transit of any data.
- (4) businessAD will demand a replacement for clearly unsuitable or damaged copies. In the event of improper, and in particular late, delivery or subsequent modification, no guarantee is provided for the agreed dissemination of the advertisement, in particular not for achievement of the booked Page Impressions.
- (5) If the order cannot be executed because faultless and suitable advertisement media are not delivered properly or, in particular, because such media are delivered late or not at all, the customer shall be obliged to pay compensation in the amount of the agreed commission.
- (6) It is the customer's duty to guarantee that he has all the necessary rights to the material particularly with regards to editorial integrations and microsites. Should additional editorial or technical costs incur – particularly with microsites and other integrations, businessAD will advise the customer in due time and include such costs in its offer. businessAD rates include one correction in the newsletter and native advertising approval process.

## 8. Extraordinary Cancellation

businessAD is entitled to enforce extraordinary cancellation in writing (by mail, fax or email), in particular if

- in spite of having two reminders, the customer fails to fulfil his obligation to make payment,
- an insolvency proceedings is opened on the customer's assets,

- despite warning, the customer continues to act in breach of significant conditions of these Term of Business. In the event of extraordinary cancellation, businessAD may discontinue the insertion of the advertisement/s with immediate effect.

## 9. Cancellation

Cost-free cancellation is only possible up to **5 working days before the agreed appearance** of the insertion, at latest. Cancellation must be applied in writing (by mail, fax or email). businessAD reserves the right to invoice **80%** of the net contract price if cancellation takes place less than five working days before the agreed appearance of the insertion. When the cancellation takes place during the insertion businessAD will invoice the full price for the effectively inserted advertisement and 80% of the net contract price for the cancelled insertion. The reduced volume will also be the basis for calculating any volume discount.

## 10. Insertion Period/ Details of Placing

- (1) The insertion period is determined individually in accordance with the booked contacts, or the booked period (permanent placing), or the booked period and the booked contacts.
- (2) To reach the booked page impressions businessAD is entitled to deliver an advertisement on other than the booked websites without constituting a claim for the customer
- (3) An order is considered to be binding even though a specific wish of the customer regarding the placement of the advertisement/s on the website/s he has booked cannot be satisfied. Specifications of placements will be subject to the rate of the price list.
- (4) If several advertisements are delivered for one booking, businessAD shall have these rotated as standard, unless the customer has indicated to businessAD by means of a creative schedule when each advertisement is to be inserted.

## 11. Warranty & Indemnification

- (1) The customer guarantees that he possesses all of the rights required for insertion of the advertisement. The customer indemnifies businessAD and its partners from all third-party claims which might arise out of breach of law and/or *bonos mores* (in particular breach of competition law, industrial property rights, criminal law, copyright law, personal rights and any other statutory regulations) concerning the advertisement order. This indemnification also extends to the necessary costs of legal defence against third-party claims. The customer is obliged to support businessAD in good faith and to the best of his knowledge with the information and documents required for businessAD's legal defence against third parties. businessAD will inform the customer of any corresponding third-party claims being applied.
- (2) The customer confers to businessAD all rights of use under copyright, ancillary copyright and other rights as required for the use of the advertisement in online media of all types, in particular the right to reproduce, disseminate, transfer, broadcast, process, save in and call up out of a database, to the required extent to permit fulfilment of the order in terms of time, location and content. The above mentioned rights only provide entitlement to insertion by means of all currently known technical processes and all known forms of online media.

## 12. Guarantee

- (1) Within the context of the foreseeable requirements, businessAD guarantees the best possible reproduction of the advertisement corresponding to the normal technical standard in each case. This guarantee does not apply for minor faults. However, the customer is aware that in accordance with the state of the art it is not possible to ensure completely faultless reproduction of an advertisement at all times.
- (2) No fault in the presentation of the advertisement is deemed to be present, if it arises out of:
  - the use of any unsuitable presentation software and/or hardware (e.g. browser) of the user or of the internet service provider or
  - malfunction in the communication network on the part of businessad or another operator or
  - computer failure due to system failure or line failure or
  - incomplete and/or not updated offers held in intermediate storage on what are termed proxy servers (intermediate storage facilities) or in local cache or
  - due to failure of the Adserver used by businessAD lasting no longer than **48 hours** (continuously or on aggregate) within **30 days** from commencement of the contractually agreed insertion
- (3) In the event of failure of the Adserver over a considerable period of time (more than 10% of the time booked) for a confirmed booking for a set time, businessAD will attempt to deliver the missing media performance (PI's) at a later date or extend the insertion time where this does not run contrary to the interests of the customer. In the event of any subsequent delivery failing within the originally booked insertion period or after

extension of the insertion period, then the customer's obligation to make payment for the media services not provided within the set period or for the media services which were not provided on average shall be cancelled. All further claims are excluded.

- (4) Except from the guarantee are malfunctions arising out of faults in or interruptions to the customer's computer and the communications routes from the customer to businessAD's servers or the servers of the companies whose advertising areas are marketing by businessAD.
- (5) In the event of unsatisfactory quality of reproduction of the advertisement, the customer has a right to reduction of the payment due or a claim to insertion of a replacement advertisement in the respect of the proportion the purpose of the advertisement was affected. In the event of failures or if the insertion of a replacement advertisement should be unreasonable, the customer has a right to reduction of the payment.
- (6) In the case of an inadequate publication of the advertisement the customer has no rights if the advertisement has a failure which is not obvious. The same applies in the case of repeated advertisement circuits when the customer does not inform businessAD of the failure before the proximate advertisement.
- (7) Unless otherwise agreed businessAD is obliged to deliver the number of Advviews within 10 working days after the last day of the insertion period.

### 13. Default

If businessAD cannot fulfil the order because of reasons which businessAD is not responsible for (e.g. technical and/or program failures), especially because of computer failure, acts of God, strikes, lockouts, legal provisions, failures due to third persons (e.g. other providers), network operators or similar reasons, the customer is not entitled to withdraw from the contract and is obliged to pay the entire price of the order. The customer has no right of compensatory damages.

### 14. Liability

- (1) businessAD shall pay compensatory damages only in the case of deliberate intent and gross negligence from businessAD, its legal representatives or vicarious agents. This does not apply in the case of warranted characteristics and the breach of cardinal contractual obligations. In the latter case liability of businessAD is limited to the extent the damage could be reasonably expected on conclusion of the contract. In the case of slight negligence breach out of delay or because provision of the services was impossible businessAD is only obligated to pay compensatory damages for those damages which could be reasonably expected on conclusion of the contract.
- (2) In any case, in respect of commercial trader, the liability for gross and slight negligence for ordinary vicarious agents is also limited for deliberate intent to those damages which can be normally and typically anticipated in such cases. This does not apply in the case of slight negligently breach of cardinal contractual obligations.
- (3) Liability for personal damages and in accordance with the Product Liability Act remains unaffected by the above.
- (4) To the extent that businessAD is obliged to provide compensatory payments, businessAD must then place the customer in such a position as if the contract had not been concluded (so called negative interest); damages for non-performance being excluded.

### 15. Price List

- (1) Payment for businessAD's service is principally based on the currently valid rate card and discounts which are published on the internet at [www.businessad.de](http://www.businessad.de) and can be sent out free of charge on request.
- (2) businessAD reserves the right to any modification of prices and rebates. Changes of the rate card apply to current orders. Price deductions apply immediately. Price increases apply **one month later**.
- (3) In the case of a price increase the customer is entitled to withdraw. The right of withdrawal must be exercised within **5 working days** from receipt of notification of the price increase.
- (4) All prices indicated are net prices and are subject to the addition of value added tax.
- (5) The costs of creation of visuals and advertising copies are not embodied in the advertising rates.

### 16. Accounting/ Under & Over Delivery

- (1) businessAD accounts basically according to the order. In the case of under delivery businessAD is entitled to deliver in addition the outstanding page impressions after the booked insertion period. If this is not in the interest of the customer or the additional delivery is impossible businessAD accounts according to the actually delivered Page Impressions. If businessAD delivers more page impressions than booked it is for free for the customer.
- (2) The accounting is based only on the figures determined by the Adserver used by businessAD. The customer accepts these figures unless he can prove its falseness.

## 17. Payment/ Arrears of Payment

- (1) If there is no other written agreement, payment is due **14 days** after accounting without deduction. businessAD is entitled to invoice the advertisement order from the first day the advertisement appears. Discounts are allowed according to the rate card.
- (2) If payments are in arrears or some respite has been granted businessAD is entitled to invoice interest and collection charges. In the event of arrears of payment, businessAD may postpone implementation of the current order until payment is made and may demand payment in advance for outstanding insertions.
- (3) Objectively justified doubts as to the customer's ability to order payments entitle businessAD, even during the term of the contract, to make the appearance of further advertisements depend on payment in advance of the sum due and settlement of outstanding invoiced amounts, irrespective of any date originally set for payment.
- (4) businessAD is entitled to ask new customers for advance payment or in the case of ordering a newsletter-emailing.
- (5) Customers do not have the right of retention or right of summation with own claims unless the claim is beyond dispute or has become legally binding.

## 18. Data Protection

Any advertisement order will be handled in consideration of the effective terms of the data protection law, in particular it is referred to **§ 33 Federal Data Protection Law and the DSGVO/GDPR requirements.**

## 19. Place of Jurisdiction / Applicable Law

- (1) The place of fulfilment is businessAD's headquarter in Düsseldorf. All legal relationships arising out of this contract are governed by the law of the Federal Republic of Germany.
- (2) In business dealings with commercial traders, legal entities under public law or special trusts under public law, in the events of actions being raised, the place of jurisdiction is businessAD's headquarter, i.e. Düsseldorf, Germany.
- (3) If, when the claim is raised, the place of domicile or normal residence of the customer is located outside the area of application of the law, the place of jurisdiction is agreed as headquarter of businessAD.

## 20. Final Conditions

- (1) To be legally effective, any modifications and additions to these Terms of Business including changes of this clause itself, must be applied in writing.
- (2) The assignment or the resale of a claim of any order of the customer is prohibited.
- (3) If any condition of this contract should be invalid, this does not affect the validity of the remaining terms of this agreement. Invalid conditions must be replaced by those conditions most closely approximating to the intended meaning of the invalid condition. The same applies if any omissions are identified, and require to be made good.
- (4) In case of any translation conflicts / misinterpretations from these General Terms of Business the German Terms of Business shall prevail over the English.

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