

# **General Terms and Conditions of Alfons W. Gentner Verlag GmbH und Co. KG for Advertising in Online Media**

## **1. Scope of Application: Advertising Order**

- (1) The following General Terms and Conditions in their version valid at the time of commissioning shall apply exclusively to the business relations between Alfons W. Gentner Verlag GmbH & Co. KG (hereinafter called "Gentner") and the Customer (hereinafter called "AG"). Gentner shall not accept any different Terms and Conditions of AG, unless Gentner has expressly approved their validity in writing.
- (2) An "advertising order" within the meaning of the following General Terms and Conditions shall be regarded as a contract for the publication of one or more advertisements in digital information and communication services (except e-papers), especially the Internet, for the purpose of dissemination.

These General Terms and Conditions, the latest price list for the respective medium and the technical advertising specifications shall apply exclusively to orders for advertising placements in online media and other media.

The General Terms and Conditions of Alfons W. Gentner Verlag GmbH & Co. KG for advertisements and third-party inserts shall apply to the publication of advertisements in a print journal of Gentner for the purpose of dissemination (print media).

## **2. Advertisements: Identification**

- (1) An advertisement within the meaning of these General Terms and Conditions may comprise, in particular, one or more of the specified elements:
  - An image and/or text, tone sequences and/or moving images (e.g. banners),
  - A sensitive area which, when clicked, generates a link by means of an online address stipulated by AG to other data in the area of AG or a third party.
- (2) Advertisements which are not visibly recognisable as advertisements on account of their arrangement and/or design (e.g. so-called text field advertisements) shall be clearly identified as such by Gentner with the word "advertisement" or "advertising".
- (3) In principle, the formats shown in the respective price list shall apply to the publication of advertisements. Although special formats shall normally be possible after consultation with and verification by Gentner, they shall be subject to a corresponding written agreement.

## **3 Commissioning: Offer: Conclusion of Contract**

- (1) Advertising orders shall be accepted by phone, post, fax or e-mail. The order shall represent an offer to Gentner to conclude an advertising contract. The contract shall come about through acceptance by Gentner. In addition to express acceptance in the form of an order confirmation, the contract may also come about by issuing an invoice. The contract shall also come about through publication of the advertisement.

- (2) If the homepage of Gentner shows and describes the contents of advertising for online media, this shall not represent an offer to sell services in a legal sense. Only the order by AG shall be regarded as an offer to enter into an online media advertising contract within the meaning of § 145 of the German Civil Code (BGB).
- (3) An online advertising contract may be concluded for each individual advertisement or for a specific number of advertisements. Fixed dates for individual publications may be agreed. It shall also be possible to process individual orders over a period of time on demand, see § 4.
- (4) If advertising agencies issue orders, the contract shall come about in case of doubt with the advertising agency subject to other written agreements. If an advertiser becomes the AG, he shall be named by the advertising agency. Gentner shall be entitled to request the advertising agencies to provide proof of a mandate.
- (5) Advertising of goods or services by more than one advertiser or other advertising space buyers within one advertising image (e.g. banner advertising, pop-up advertising) shall require an additional written agreement or an agreement concluded in text form.
- (6) Billing shall take place based on the price list or the publishing company's calculation. The decisive factor for billing the provision of advertising space shall be the ad impression (AIs) according to Gentner's ad server. An AI is defined as a server call of an advertisement from Gentner's ad server.

#### **4. Processing Period**

If AG is granted the right to call off individual advertisements under the terms of the contract, the order shall be processed within one year after conclusion of the contract.

#### **5. Postponement**

The start of an agreed advertising campaign may only be postponed by AG by means of a written communication - at least in text form - and only five working days before the next agreed publication date.

#### **6. Extension of Order**

In the case of contract bookings, AG shall also be entitled to call off other advertisements, subject to available capacity, over and beyond the quantity stipulated in the order within the agreed period or the period shown in § 4. In this case billing shall take place monthly (retrospectively).

#### **7. Cancellation**

Free cancellation shall normally be possible at the latest up to three weeks before the agreed publication date. Cancellation shall be effected at least in writing. Cancellation by telephone or verbally shall be excluded.

#### **8. Publication Period, Placement and Rotation**

The publication period shall be based on the booked ad impression or the booked period.

A right to placement of an advertisement in a certain position in the respective digital medium shall only exist if this is stated in the order and was expressly confirmed in writing by Gentner. An advertisement shall normally be placed by mutual agreement between AG and Gentner. If AG has not requested a specific placement position, Gentner shall be responsible for deciding where the advertisement is to be placed.

If several advertisements are supplied for a booking, Gentner shall rotate them as per standard, unless AG has provided a schedule.

## **9. Data Delivery**

- (1) AG shall be obliged to deliver correct advertisements in the final digital form corresponding to Gentner's technical specifications in good time, i.e. at least five working days before the start of placements. If AG delivers incorrect, especially incomplete, erroneous or unsuitable advertisements, or if they are not delivered on time, Gentner shall not be obliged to distribute the advertisement. If the sender of the corresponding advertisement is obvious, Gentner shall immediately inform AG that the advertisement will not be distributed or that the advertisement was not transmitted in the form corresponding to Gentner's technical specifications. Gentner shall not be obliged, without a corresponding order from AG, to make the advertisement fit for publication.

If the files are stored on the server of AG or a third party, AG shall stipulate the URL of the advertisement to be placed after taking account of the above-mentioned conditions.

AG shall use suitable virus protection programs based on the latest state of the art to ensure that the advertisements he transmits are free of any malicious codes, e.g. viruses and/or Trojans

If AG sets a cookie on the placed advertisement without the prior written approval of Gentner, this shall be regarded as improper behaviour by AG that shall entitle Gentner to terminate the contract immediately without notice. In this case Gentner shall expressly reserve the right to enforce a claim for compensation.

If AG wants to replace or change advertisements, or deviate from an existing schedule, Gentner shall check whether this change in the originally agreed publication date can still be made. If this is not possible, the original agreement shall be retained. AG shall have no right to have advertisements replaced or changed, or to a deviation from an existing schedule.

If the order cannot be carried out due to incorrect, delayed or missing delivery of correct and suitable advertisements, and no replacement booking is made by a third party, AG shall be obliged to pay compensation amounting to the agreed remuneration.

- (2) If Gentner retains the advertisement without being expressly obliged to do so, this shall take place for a maximum period of three months.
- (3) AG shall pay the costs incurred by Gentner for any changes in the advertisement which are requested by AG or for which AG is responsible.

## **10. Forwarding of E-Mails**

Incoming e-mails shall only be forwarded by Gentner up to a data volume of 10 MB per e-mail.

## **11. Right of Refusal**

- (1) Gentner shall reserve the right to reject or block advertising orders - including individual call-offs as part of an order - if
  - their contents infringe laws or official regulations, or
  - their contents formed the subject of a complaint by the German Advertising Standards Council during a complaint process
  - their publication is unreasonable for Gentner on account of their contents, origin, technical form or other reasons.
- (2) In particular, Gentner may withdraw an already published advertisement if AG personally makes changes to the contents of the advertisement afterwards or the data to which reference is made by a link are changed afterwards, thus fulfilling the conditions of § 11 (1)

## **12. Assurance by AG/Granting of Rights**

- (1) AG shall give an assurance that he possesses all rights required to place the advertisement and has also concluded, if necessary, corresponding agreements with performance rights organisations (e.g. GEMA). Under the terms of the advertising order, AG shall release Gentner from all third-party claims which may arise due to the infringement of legal regulations. AG shall also release Gentner in this respect from all costs which are necessary to defend rights.
- (2) AG shall be obliged to support Gentner in the best way possible by supplying information and documents which are necessary to defend rights against third parties.
- (3) AG shall transfer to Gentner all copyright utilisation rights, intellectual property rights and other rights which are required to use the advertising in any kind of online media, including the Internet, but especially the right of reproduction, distribution, transmission, broadcasting, removal from a database and call-off, i.e. temporally and textually to the extent that is necessary to implement the order.
- (4) The above-mentioned rights shall be transferred in all cases without any local restrictions and shall provide entitlement to placement by means of all known technical methods and all known forms of online media.

## **13. Liability for Defects**

- (1) Gentner shall normally be liable for defects according to the related valid legal regulations. Assignment of these claims by AG shall be excluded.
- (2) Defect claims shall become statute-barred within one year from the commencement of the statutory period of limitation. If AG is a consumer, defect claims shall become statute-barred after two years from the commencement of the statutory period of limitation. Obvious defects shall be notified to Gentner within four weeks from the date of receipt of the invoice. All other defects shall be notified within the valid limitation period.
- (3) Gentner shall warrant, within the limits of foreseeable demands, that the advertisement will be reproduced in the best possible way, where necessary, according to each normal technical standard.
- (4) Gentner shall not be liable for minor defects. A minor defect in the presentation of the advertisement shall exist, in particular, if it is highlighted
  - by the use of unsuitable presentation software and/or hardware (e.g. browser) or
  - through a fault in the communication networks of other operators or
  - by a computer breakdown due to a system failure or a line failure
  - through incomplete and/or non-updated offers on so-called proxies (caches))

- (5) Since server failures cannot be excluded during normal business operations, the payment obligation of AG shall then only cease and only as long as the ad server is out of action for more than 24 hours (continuously or cumulatively) during a fixed time-bound booking. Any further claims in this respect shall be excluded.
- (6) If the reproduction quality of the advertisement is inadequate and does not represent a minor defect, AG shall be entitled to a reduction in the purchase price or a perfect replacement advertisement, but only to the extent to which the purpose of the advertisement was impaired. If the replacement advertisement fails or is unreasonable, AG shall have the right to reduce the purchase price or withdraw from the contract.

Gentner shall not bear the risk of the loss of data on the transmission route outside its area of control. No warranty and/or liability shall be accepted for data security. Risk shall pass when the advertisement is received by a server of Gentner.

- (7) If any defects in the advertising documents are not obvious, AG shall not be entitled to assert claims for and resulting unsatisfactory publication. This provision shall also apply to faults in repeat placements of advertisements if AG does not refer to the fault before publication of the next advertisement.
- (8) If an order cannot be implemented due to reasons for which Gentner is not responsible (e.g. due to software or other technical reasons), especially due to a computer failure, force majeure, strikes, legal regulations, problems for which third parties are responsible (e.g. other providers), network operators or service providers or comparable reasons, the order shall be implemented at a later date if possible.
- (9) If the order is implemented later within an appropriate period that is reasonable for AG after rectification of the problem, Gentner's claim for remuneration shall still exist to the full amount.

#### **14. Liability**

- (1) In the case of slight negligence, Gentner's shall only be liable for the infringement of material contractual obligations, i.e. those obligations which are essential for the proper performance of the contract and on compliance with which the contracting party may regularly rely (so-called cardinal obligations), and for foreseeable, contractually typical and direct average damage according to the nature of the service. Gentner shall have unlimited liability in the event of death, physical injury and damage to health.
- (2) Gentner's pre-contractual, contractual or non-contractual liability shall be limited to intent and gross negligence.

#### **15. Prices**

- (1) All prices shall be based on the latest price list shown on the homepage or in the media folders' of Gentner at the time of conclusion of the contract.
- (2) Unless otherwise expressly stated, all prices shall be shown without statutory VAT.

#### **16. Reimbursement of Price Reduction**

- (1) If an order is not fulfilled due to circumstances for which Gentner is not responsible (see § 13 (2)), AG shall be obliged - irrespective of any other legal obligations - to reimburse Gentner the price difference between the granted price reduction and the price reduction corresponding to what was actually accepted.

- (2) Unless otherwise agreed in writing, AG shall have a retroactive claim to the price reduction corresponding to his actual acceptance of advertisements within one year if, at the start of the period, he concluded a contract which contains express entitlement to a price reduction from the outset based on the price list.
- (3) The claim to a price reduction shall expire if it is not enforced in writing within three months after the end of the period of one year.

## **17. Due Date and Payment: Default**

- (1) Unless any special payment dates are agreed, the due date for payment shall be the payment date shown on the invoice. If the invoice does not show a due date, payments shall be paid as soon as the invoice has been received. Payments shall be made each time without deductions and quoting the invoice number to Gentner's account shown on the invoice.
- (2) If AG fails to pay on time, Gentner shall be entitled to demand default interest within the legal limits according to § 288 of the German Civil Code (BGB). If Gentner proves that it incurred higher losses due to default by AG, the former shall be entitled to enforce a claim in this respect.
- (3) If AG fails to pay on time, Gentner may stop further execution of the current order until payment has been received and may also demand payment in advance for the placement of further advertisements.
- (4) If there are justified doubts over the customer's ability to pay, Gentner shall also be entitled to make the publication of other advertisements dependent on advance payment of the amount and settlement of outstanding invoice amounts during the term of an advertising order without consideration of any originally agreed payment date.

## **18. Offsetting and Right of Retention**

AG shall only have a right of offsetting if his counterclaims are final and absolute or are not disputed by Gentner. In addition, AG shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

## **19. Termination without Notice**

Gentner shall be entitled to extraordinary termination of the contract, especially if AG fails to comply with his obligation to pay according to § 17 despite a warning and granting of a reasonable period of grace to do so.

In the event of extraordinary termination of the contract, Gentner may cancel the advertisement(s) immediately. AG shall reimburse Gentner the difference between the granted discount and the discount shown on the price list.

- (1) The contract shall be terminated in writing in order to become legally valid.

## **20. Placement Confirmations**

Placement confirmations shall only apply under reservation and may be changed due to technical reasons. In these cases Gentner shall not be made liable.

## **21. Data Protection**

The advertising order shall be processed in accordance with valid data protection regulations.

In order to determine how offers for AG can be improved, general, personal and especially statistical data on the use of online and mobile services of Gentner shall be collected and stored. Data and information from server protocol files shall be combined on a uniform basis and shall be used for statistics and analyses.

Further information on the processing, storage, transmission and deletion of these data can be found in Gentner's Data Protection Declaration.

## **22. Miscellaneous**

- (1) Incidental agreements and amendments and additions to this General Terms and Conditions shall be effected in writing (at least in text form) in order to become valid. Cancellation of the written form requirement shall also be effected in writing (at least in text form) in order to become valid.
- (2) German law shall apply solely to the contract between Gentner and AG to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- (3) If AG is a merchant within the meaning of the German Commercial Code (HGB), Stuttgart shall be the place of jurisdiction for all disputes arising from or in connection with contracts between Gentner and AG.
- (4) If individual clauses of these General Terms and Conditions are invalid or they became invalid due to circumstances arising at a later date, the validity of the remaining clauses shall not be affected.

Valid from December 1<sup>st</sup>, 2016.