

## **Sky Media GmbH**

### **General Terms and Conditions**

(Translation of the German version. In question of interpretation the German version shall apply.)

Sky Media GmbH's General Terms and Conditions (hereafter "GTC") stipulate the contractual conditions between Sky Media GmbH and its Clients with respect for the performance of Advertising TV Spots (see under B.) and/or digital advertising (see under C.).

#### **A. General conditions applicable to all services**

The following General conditions apply to all services provided by Sky Media GmbH:

#### **§ 1 General**

Sky Media GmbH (in the following "SM") is the exclusive marketing agency for programmes made by Sky Deutschland Fernsehen GmbH & Co. KG (in the following "Sky") in Germany and Austria and also the marketing agency for additional partner channels (also in the following "Network Channels") that are also broadcast on the Sky television platform as well as the marketing agency for programmes of any independent platform. SM markets in its own name the advertising time of Sky, the Network Channels and of any independent platform.

Contracts for the marketing of advertising time with contractual partners carrying out advertising (in the following "Clients") are concluded between SM and the Client. The purchaser of advertising time and types of advertising marketed by SM may be either an agency or an advertiser.

SM includes the following General Terms and Conditions (in the following "GTC") in all contractual relationships for the marketing of advertising time concluded between SM and the Client. Only the contractual conditions agreed in these GTC will apply. Should the GTC stipulate that SM is required to provide services or to submit declarations or is entitled to demand or to receive services or declarations from the Client, SM will act in its own name, unless the circumstances or the text of the relevant provision stipulate something different.

Modifications to these GTC shall be communicated to the Client in writing, via e-mail or per fax. Such modifications shall be considered approved if the Client does not object expressly to them within one month after they have been communicated by SM. SM is obliged to point out such fiction of approval by omitted objection at the beginning of the one-month-term when communicating the modified GTC..

The application of the Client's General terms and conditions is hereby expressly excluded. Order-confirmation of the Client that are subject to General terms and conditions of the Client are hereby expressly contradicted.

As far as these GTC refer to program structures/schemes, price groups and price lists of advertising space, these are integral parts to these GTC.

The Client confirms to have been given such documents before the closing of any contract or has in some other way been made aware of them with legal validity.

## **§ 2 Conclusion of contract**

a) The order within the meaning of the following GTC is the contract between SM and a Client

- concerning the broadcasting of advertising spots and all other forms of advertising on the TV advertising spaces marketed by SM (TV service) and/or
- concerning the transmission of digital advertising time in the online media marketed by SM for the purpose of distribution (digital service).

b) Offers prepared by SM are without obligation if not otherwise communicated or agreed and are subject to availability of the advertising times offered. Orders become valid by written acceptance of Client's binding offer through SM. If the Client accepts a written or electronically communicated offer of SM only with modifications such acceptance shall be considered a new offer by the Client which can only be validly accepted by SM in writing or electronically.

c) Does the Client submit a written offer, the order shall only be valid if SM accepts the offer in writing or electronically including these GTC.

d) If not otherwise agreed orders on the broadcasting of advertising spots via several channels/broadcast station or on the transmission of digital advertising time are to be considered single and independent contracts for each channel/broadcast station on the transmission of advertising spots on each channel/broadcast station. This applies also if such orders are made or confirmed contemporaneously.

e) SM will only provide the services referred to in the contract. Extensions must be confirmed in writing. The Client is however entitled to access advertising materials in addition to the quantity referred to in the advertising order within the agreed period of time, in return however for a separate payment and subject to available capacity.

f) Orders must be executed within the same calendar year in which the order is placed. If an order explicitly calls for the transmission of advertising in the following calendar year, the order must be executed in such calendar year.

g) The aggregation of several Clients in one commercial transmission, so-called cooperative advertising, must be consented by SM in writing. The Clients must be named with their exact company name and address. SM is entitled to claim a surcharge for cooperative advertising. SM is entitled to deny the whole transmission or broadcasting even if only one of the Client cannot undisputedly be classified as entitled to cooperative advertising.

## **§ 3 Rights of use, legal guarantees and exemption from liability**

a) The Client transfers to SM all copyrights, ancillary copyrights and other rights required in order to use the advertising media provided, in particular the right to duplicate, to distribute, to broadcast (particularly Pay-TV, Free-TV, pay-per-view), to edit and to extract and retrieve from a data bank. The above rights will, in all cases, be transferred without any limitation on the location and entitle SM to broadcast or to place or to create perception by means of any known technical process as well as all known forms of television or of the Internet. The rights are transferred to the extent, both as regards time and contents, required in order to carry out the order, particularly the right to transfer the above rights to third parties appointed to carry out the contract or to handle transmission and placement.

This also includes the right of simultaneous unamended use of the advertising spots or special forms of advertising in online media of all kind, including internet, i.e. the right to distribute a advertising spot to a multitude of users via analog, digital or any other storage or data transmission technology via electromagnetic waves through distribution networks of any kind or by radio, so that the commercial spot can be – parallel to all other forms of television – received and distributed via online media (i.e. Internet), no matter which receiver is used (Simulcast).

b) The Client guarantees that it is in possession of all the copyrights, ancillary copyrights and other rights necessary for the use of the advertising space – with the exception of rights that are granted by GEMA und and other copyright collecting societies to the broadcast stations – and is entitled to transfer these rights to SM and the broadcast station concerned. The Client guarantees in particular that it is in possession of all the exploitation rights to the advertising films and data material required for the purpose of the contract and that it has concluded appropriate agreements to use the material with GEMA, TWF (Treuhandgesellschaft Werbefilm) or other relevant copyright collection societies.

c) The Client also guarantees that the advertising time comply with legal or official regulations, particularly laws of the press, media and competition, or special laws on advertising, guidelines or principles.

d) SM is not responsible for the legality of the advertising sold. SM is not obliged to look at or to check the Client's advertising materials. This also applies to the advertising content of information on a sponsor as well as to any information on other website addresses and their contents, telephone numbers etc. provided within the advertising material.

e) The Client is required to compensate SM and the relevant providers, e.g. the Network Channels and providers of any independent platforms for any damages incurred as a result of the infringement of the appropriate laws or regulations. The Client will fully indemnify SM and the relevant providers, such as, for example, the Network Channels and providers of any independent platforms, and upon first written notice from all claims that are asserted against SM and/or the relevant providers, e.g. the Network Channels and providers of any independent platform. Such indemnification includes reasonable costs of legal defence. The Client is liable to SM and the relevant providers, e.g. the network channels and providers of any independent platform, for all damages arising from the assertion of claims.

f) Should the Client cancel a transmission or advertising order without respecting agreed notice periods because of an injunction filed against him by a third party or for other reasons, the Client will still be liable for payment of the whole fee. The Client reserves the right to prove that the damage incurred by SM and the relevant providers, e.g. the Network Channels and providers of any independent platform, was lower.

g) The Client gives an assurance that it is entitled to set the hyper-links related to the digital advertising. It guarantees that neither the advertising nor (in the case of digital advertising) any data/websites to which reference is made by means of the hyper-link in the digital advertising (as far as the third further reference level) nor the time at which the advertising is distributed, provided that this has been stipulated by the Client, are contrary to provisions of the law, particularly those relating to the law on competition and youth media protection and/or the provisions of state radio contracts and advertising guidelines and/or regulations issued by public authorities.

#### **§ 4 Prices, price changes**

a) The price lists valid at the time the order was concluded will apply.

The price calculation for advertising spots in television are calculated according the length of time that the spot runs. The basis for the calculation of the length of an advertising spot is the first and the last perceptible sound or picture signal. In case of transgression of a time unit as named in the price list the switch-on price of the nearest higher time is charged. There may be minimum length rates that are pointed out in the price list. Where applicable copyright or ancillary copyright fees that must be paid to right collecting societies such as for example GEMA for the transmission are not contained in the prices of the price list.

The price calculation in the case of advertising time transmitted in SM's digital environments is governed by the gross thousand contract price for the type of advertising concerned.

The current valid price lists may be referred to under <http://www.skymedia.de/>.

None of the prices include turnover tax (VAT); it will be charged on top of all prices if applicable.

b) The basic price referred to in a) does not include any production or other arising costs. These shall be invoiced separately as soon and as far they arise and shall be charged to the Client.

c) SM is entitled to price changes in a reasonable framework at any time. If not otherwise agreed new tariffs are binding immediately also for current orders; this will not apply to consumers in the case of orders processed within four months of the conclusion of the contract, unless the relationship concerns a contract for a continuing obligation.

d) Notwithstanding c), SM will still be entitled to introduce at short notice special prices as a consequence of current changes to programmes and offers. The Client will be informed immediately should the time of transmission and placement agreed with the Client be affected by the introduction of such a special tariff. Does the introduction of such a special tariff affect advertising time for which a particular placement had been agreed in the order, the Client will be required to confirm immediately whether it consents to the broadcast or placement at this time and is willing to pay a special tariff. Otherwise, SM will broadcast the advertising medium affected at the next possible time within the same area/environment for which the advertising medium was originally booked. SM's rights derived from B. § 4 lit. a) will not be affected.

## **§ 5 Discounts**

a) In accordance with SM's current price lists, discounts on list prices may be granted on the total invoice amount for a Client's advertising time distributed within a calendar year. Special forms of advertising will be considered in the calculation of the discount scale, but a discount will not be granted on special forms of advertising as such. Product placement will neither be considered in calculating the discount scale nor will discounts be granted on product placements. Discounts will only be granted provisionally at the time of invoicing. The final calculation will be made retroactively at the end of the calendar year in accordance with the amount of advertising broadcasting time actually taken up.

b) Several Clients shall be treated as one Client for the purpose of granting discounts, if an affiliates group concerned. This is the case if there is a capital participation of more than 50% share of the parent company in the affiliate. A written evidence of the affiliate status of the Client is necessary for the granting of affiliate discounts. In the case of capital companies the affiliate must be proved by certificate of an accountant or by presentation of the latest annual report, in case of business partnerships by presentation of a certificate of registration. In every case, group discounts require SM's express written confirmation at the time the contract is concluded. Group discounts shall only be granted for the duration of the affiliate status. The affiliate status shall be governed by the situation on January 1st of the calendar year. The termination of the affiliate status must be communicated immediately. The affiliate discount cease at the end of the affiliate status.

c) Natural discounts can principally be used to accompany campaigns and, to the extent that spare capacity is available on the relevant station or the relevant channel, must be booked within a maximum period of 14 days and a minimum period of four days prior to the broadcast in the form of classical advertising spots. SM however has the right to shift the spot. SM will renounce this right should the Client pay a premium of 75% on the list price plus turnover tax (VAT) for the natural discount granted to it.

d) New discounts will come into effect for DRTV (direct response TV) bookings from the time from which a channel start reporting via AGF/GfK television research.

## **§ 6 Payment conditions**

a) SM will submit its invoices for TV and digital services in the month following the month in which the service is provided. The invoice amount is the total calculated by SM of the prices of all individual advertising spots and advertising space over the invoice period in conjunction with the prices per second calculated from the relevant price list in each case.

b) SM's payment claims are payable at receipt of the invoice. Invoices have to be paid without any deductions within thirty calendar days of receipt. Payment may only be made to the account referred to in the invoice. Any discounts for pre-payments will be granted according to the price list. Cash discounts will only be granted subject to an express written agreement and then only provided that all previous invoices have been paid. Bank charges will be paid by the Client. Cheques will only be accepted on account of performance.

c) In cases of default, SM is entitled to charge from the Client the amount of interest provided by law. The right to claim compensation for any additional damages incurred is expressly reserved.

d) In cases of default, SM is entitled to refuse to perform any further services until the Client has settled the claim or has provided security.

e) SM is also entitled to refuse to provide its services should it become evident after the contract has been concluded that the right to payment is endangered by the Client's inability to pay. The right to refuse to provide SM's services will end when the claim is settled or security is provided. SM may set a reasonable period of time within which the Client must, at its option, successively either settle the claim or provide security on the one hand and the service is provided on the other. SM may rescind the contract should this period of time end without the desired result.

f) Should SM agree to produce advertising material on the basis of a separate contractual agreement, the agreed fee will be invoiced separately. The fee for this service is payable in full without deductions at the receipt of the invoice.

g) Advertising space will only be sold to customers with a positive credit rating or in return for prepayment on appropriate recommendation as part of a credit check. New customers are customers who have not advertised through SM during the last two years.

## **§ 7 Liability**

In the event of slight negligence, SM, its legal representatives or vicarious agents will only be liable for cardinal obligations and for the amount of foreseeable damage typical for this type of contract. Cardinal obligations within the meaning of this § 7 are such contractual obligations the fulfilment of which makes the proper implementation of the contract possible at all and on compliance with which the Client may normally rely.

This limitation of liability does not apply to injury to life, limb or health or in the event of claims under the German Product Liability Law.

## **§ 8 Warranty**

a) SM and the Client determine the characteristics of the service to be provided. Service descriptions are no guarantee for the presence or absence of certain characteristics. As far as guarantees are expressly given these are only binding if they are given by a person with a power of attorney. Confirmations of other persons are not binding for SM.

b) The prescription period for vice in material and law is one year. Rescission and price reduction have no legal effect if the claim to the performance or remedy of vice is prescribed and SM appeals hereto. This limitation of liability is not effective with regard to claims resulting from damages to life, health and body and the German Product Liability Law. This limitation of liability does also not apply if damages are caused by a conscious or grossly negligent breach of obligation of auxiliary persons and/or representatives of SM.

### **§ 9 Obligation to report defects**

The Client is required to check the advertising material broadcast or placed immediately after its first appearance and to report any defects within the first week of the broadcast or placement. Any defect will be considered to have been approved after this period has expired. Should the Client demand that the advertising material be changed, it will be required to bear the costs caused as a result of the change.

### **§ 10 Media Agencies, Advertising agents**

a) For orders made by Media Agencies an AE of 15% of the invoice net amount, i.e. exclusive VAT, after reduction of all other discounts but before cash discounts (MN1). Condition for such a commission is a written proof of the agency activity and invoicing to the agency. SM reserves denial of the agency commission for special ads and little or fake agencies. In case of changes in the discount by additional or cancelled bookings the agency commission is calculated anew. A supplementary charge or a payback shall take place. The agency commission is subject to an effectively made payment of the Client.

b) Media Agencies and ad agents undertake to include these GTC in their contract with the Client and in particular to ensure that SM is fully indemnified by the Client in relation to provenience, contents and the form of the advertising contents, unless the Media Agencies or ad agents are directly and completely liable to SM for the contents of the advertising content.

### **§ 11 Miscellaneous**

a) The Client may only offset claims that are undisputed or have been finally certified by a last instance court. A retention right only subsists for counter claims out of one identical contract.

b) The contract between SM and the Client is exclusively governed by the law of the Federal Republic of Germany. The place of jurisdiction is Munich should the contractual parties be merchants and/or juristic persons.

c) Should individual or several provisions of these GTC be or become invalid, the remainder of all other provisions or agreements remain valid. Instead of the invalid or voided provision it is to be considered agreed what the parties would have agreed in order to achieve the same commercial result had they been aware of the invalidity or nullity.

d) Other agreements, modifications or amendments to the contract must be confirmed in writing by SM. A modification to this written form will only be valid when confirmed in writing.

### **B. Special conditions applicable to TV services (including Sky On-Demand via push VoD technology)**

In addition to the general conditions in part A of these GTC, these special conditions applicable to TV services will govern the contracts between SM and its Clients for the broadcast of advertising spots on TV and on Sky on-demand services via push-VOD technology<sup>1</sup>.

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<sup>1</sup> Sky-on-demand (push-VOD) is a video-on-demand service in which the contents are transmitted via the customer's cable or satellite link to the Sky set-top box. With video-on-demand contents it is possible to show advertising spots prior to the programme.

## § 1 Contents of the order

- a) Clients can book advertising spots starting from a length of five seconds.
- b) Clients may also acquire so-called “product placement”. This is the mention or presentation of a manufacturer’s products, services, names, brands, activities or those of a provider of products in return for a fee or some other consideration with the aim of promoting sales. The provision of products at no charge is product placement, provided that the products in question have a significant value. Each product’s significant value is determined separately. If several products are provided by the same company, however, the value of the products will be added together.
- c) “Special forms of advertising” is any form of product or brand presentation that is neither an advertising spot nor a product placement.
- d) DRTV campaigns can only be booked for the current month and the following month. As a matter of principle, reservations are not possible. There is no right to placement in a certain environment or in certain advertising blocks. The lead time for DRTV bookings here is six working days and the lead time for a change in motif four working days.
- e) The advertising spot will be broadcast in the individually agreed transmission area. Unless anything different is agreed – irrespective of the method of technical transmission - the transmission area will correspond at least with the territory of the Federal Republic of Germany. It should be noted that advertising spots may also be broadcast in Austria, South Tyrol, Liechtenstein and Luxembourg, without this requiring any prior notice or information.
- f) The order form shall specify further information on the booking volume, the length of the spot, the editorial environment, and the time for the delivery of materials.
- g) If SM does not expressly confirm in writing certain transmission times and/or positions in a certain commercial block and/or a certain position within a commercial block, such a position is not part of the contract. In this case information on transmission schedules, deadlines, commercial blocks or positions within a commercial block are considered non-binding planning data. SM shall use reasonable effort to render the transmission of a spot in a commercial block preferred by the Client possible without assuming warranty or responsibility therefore. Furthermore other commercial blocks than listed in the program can be offered and transmitted. Desired positions may be purchased subject to a premium of 20% on the list price. No exclusion of competitors is granted within a commercial block does not warrant such exclusion in writing.
- h) The transmission of an advertising spot takes place under the same technical conditions as the regular program. The orderly execution of each order is warranted within this framework.

## § 2 Transmission material

- a) The Client is obliged to provide SM the material necessary for the transmission (motivation plans, transmission files and other transmission material) as well as new advertising spots and motives at the latest seven workdays before the agreed transmission date free of costs and in the agreed format. The transmission material must be provided to SM in accordance with the technical guidelines and specifications retrievable under [http://www.skymedia.de/advert/cms/static/pdf/TecSpecs\\_Sonderwerbformen\\_SkyMedia\\_AGBs.pdf](http://www.skymedia.de/advert/cms/static/pdf/TecSpecs_Sonderwerbformen_SkyMedia_AGBs.pdf). The Client is responsible for the timely delivery of transmission material in faultless quality. The Client bears the risk for the transfer of transmission material. The spot is uploaded digitally via Operator or via ASPERA Connect. SM shall promptly pass on the respective motives to such third parties as mandated by the stations with the handling of transmission.
- b) The Client bears is solely responsible for the technical and substantial quality of transmission file, both technically and as regards its contents. The transmission files must be provided to SM in the transmission norms XDCAM HD 422. The transmission files have to correspond to the EBU norm and must be handed in the respectively valid format, currently 16:9.

c) The Client in relation to SM and the broadcast station is liable that the transmission complies with applicable legal and official provisions and especially does not violate third party rights (e.g. competition and copyrights), complies with all applicable provisions of the protection of minors and consumers protection and is free from any discrimination.

d) The Client is obliged to communicate to SM at the same time of the delivery of transmission such data is necessary for the clearance with competent right collecting societies, such as GEMA or GVL, especially the producer, editor, composer, title and length of the music used. The Client undertakes to acquire the exploitation rights to the commercial spots directly from TWF (Treuhandgesellschaft Werbefilm) or other licensors as applicable and fully indemnifies SM and the broadcast station concerned upon first written notice from any claims, which TWF may assert against SM and/or the broadcast station concerned.

e) Documents and transmission files must only be kept by SM until last transmission of the commercial spot.

f) Is the transmission of a commercial spot impossible at the scheduled date because the transmission files provided are technically deficient, in the wrong format, deficiently labelled or else deficient or a transmission is illicit for legal reasons and is the Client predominantly responsible for such deficiency or inadmissibility and not SM or the broadcast station SM is entitled to invoice the Client for the remuneration due for the agreed transmission time, also if the commercial spot is not transmitted. The Client cannot claim restitution. The same will apply if the transmission of the commercial spot have not been timely delivered and the Client and not SM or the broadcast station is predominantly responsible for this.

g) SM will provide the Client with the transmission confirmations, stating the actual broadcast times, at the beginning of the following month.

The Client is required to check the transmission confirmation and to report any defects immediately, i.e. two weeks at the latest after having received it from SM, otherwise the execution of the order will be deemed to have been approved.

### **§ 3 Refusal of transmission orders**

a) SM reserves the right to refuse commercial spots that have been delivered by the Client for transmission pursuant to the following provisions also if the respective order has been confirmed by SM as binding. A refusal by SM is also possible in case of an enduring contractual relationship.

b) SM may refuse a commercial spot if the material does not correspond to the provisions of § 2 a), b), c) and / or d). A refusal shall take place if the commercial spot as delivered does not comply with legal and official provisions especially the respective advertising directives of the official competent authorities (Landesmedienanstalt).

c) Furthermore, SM is entitled to refuse commercial spots and/or advertising contents for a sponsorship because of their provenience their content, their form or technical quality or because of program related, legal or ethical/moral reasons, especially also if their content violates interests of SM or the broadcast station.

d) SM reserves the right to refuse repeated bookings and commercial spots relating to each other within one or more commercial blocks.

e) In case of a refusal pursuant to b) to d) the Client is obliged to immediately deliver a new or modified commercial spot for transmission that is not subject to refusal under these GTC. Is such a substitute commercial spot delivered too late for the transmission date as agreed and transmission becomes impossible SM is entitled to invoice the Client for the remuneration as agreed for the respective transmission time as if transmission had taken place as agreed. Is a commercial spot transmitted in spite of an earlier refusal the claim for remuneration remains unchanged.

f) Does a refusal take place for a reason for which the Client is not responsible the Client can recede from the order on the refused commercial spot and ask for retribution of already made payments as far as their value has not been consumed for transmissions. Further claims of the Client because of the refusal of the advertisement are excluded.

g) Each refusal of a commercial spot is to be communicated to the Client by SM immediately. The Client is entitled to be informed on the reasons for the refusal.

#### **§ 4 Transmission date, shift, regress**

a) Advertisements for which no exact placement was agreed in the order shall be placed in an environment as agreed between the Parties. In such case information on transmission schedules, deadlines, commercial blocks or positions within commercial blocks are considered nonbinding planning information only. The placement is without obligation and grants SM the possibility to transmit a spot earlier than agreed or shift the transmission for cause as long as the transmission is up to the agreed criteria. The price groups for the single channels result from the order confirmation.

b) DRTV bookings will be made according to availability and are subject to SM's right to shift transmissions. Cancellations and booking changes by SM at short notice are possible at any time.

c) Earlier transmission of a spot than agreed or a shift of transmission for which an exact placement was agreed must be approved by the Client. As far as the Client does not object in writing to a transmission in a different program environment within 24 hours from a respective notice from SM this is considered a consent by the Client. Such consent is dispensable only in case of minor timely shifts that are reasonable to the Client. A shift of a commercial spot is minor if it takes place within the same editorial context and leads to no substantial divergence of the transmission from the originally scheduled point of time. Such consent is also dispensable if the transmission schedule cannot be observed because of reasons of program (e.g. current events), technical disruptions, force majeure or other reasons for which SM is not responsible. In such cases the transmission of advertisement is shifted to a different and if possible equally valuable place of transmission.

d) Is a shift pursuant to lit. a) or lit. c) impossible SM is free from the transmission obligation in the case of an enduring contract relationship.

e) The same applies especially because of measures of a legally supervising authority is a shift pursuant to lit. a) or c) is not possible and unpredictable changes to the program, for which SM is not responsible, are necessary (especially because of current events) or because the transmission is impossible or unreasonable because of force majeure, a strike, legal injunctions (particularly due to measures implemented by the regulatory authority) or substantial technical disruptions (especially transmission blackout).

f) Furthermore SM may recede from bindingly accepted orders if changes to the program are made unpredictably or without responsibility of SM, including because of measures of legally supervising authorities, in case of non-compliance with legal provisions or in case of violations of third parties rights.

g) Is there no obligation of transmission of SM because of a lack of availability purs. to lit. d) or e) or because of recession purs. to lit. f) SM is obliged to inform the Client immediately on the lack of availability. Any further claims of the Client are excluded.

h) SM as well as the Client are entitled in the case of enduring contractual relationships to recede from spot transmission orders until six weeks before the first transmission date. Such right of recession lapses with the beginning of the sixth week before the transmission date. If SM accepts a recession request made within such six-weeks-period SM is entitled to invoice the Client for a cancellation fee that is to be determined by SM with equitable discretion. Even in case of the payment of such a cancellation fee there is no right of the Client to cancellation.

i) There is no right to cancel an order relating to advertising of 90 seconds or more in length or consisting of programme sponsoring. In such cases, the Client must apply to SM in writing. Cancellation will only be valid when confirmed in writing by SM.

### **C. Special conditions applicable to digital services (online, mobile, connected set-top boxes)**

In addition to the general conditions in part A of these GTC, these special conditions applicable to digital services will govern contracts between SM and its Clients for the booking of advertising material in the field of online, mobile and connected set-top boxes.

#### **§ 1 Contents of the order**

a) An advertisement in the field of online, mobile and connected set-top boxes may consist for example of a single or several elements: of a picture and/or text, tone sequences and/or moving pictures (including banners) of a sensitive surface that when clicked establishes the link to additional data relating to the Client by means of an online address provided by the Client (e.g. link).

b) The Client guarantees that the advertising medium does not provide access to any data or any other websites that infringe provisions of the law or the rights of third parties and that include for example morally objectionable contents (particularly racist, pornographic, slanderous, obscene contents or contents that glorify violence). SM may reject the order should this nevertheless be the case.

c) Booked advertising time will be placed in advertising slots that have either been mutually agreed or are allocated in accordance with equitable discretion and always at the contractually agreed transmission times. SM will endeavour to enable the advertising time to be shown on a website or in an area of the Internet requested by the Client without however assuming a guarantee in this regard. Should it appear necessary to SM with regard to the design of the advertising material or the advertising environment, SM may clearly identify any advertising material as advertising without this requiring the Client's consent. As a matter of principle however the Client is required to add such identification at the time the advertising material is created should this be required by law and recognisable by SM.

d) SM is basically free in the design of the contents of the environment unless anything different has been agreed in writing. SM assumes no guarantee that no other Internet pages or parts of the Internet will be offered for advertising in addition to the Internet pages or parts of the Internet referred to in the media data. The Client is not entitled to compliance with access to the website at a particular time. Nor is any guarantee given that competition will be excluded within a website unless SM confirms to the Client in writing that competition will be excluded.

e) The Client and SM are entitled to change bookings for the placement of advertising time up to one week prior to transmission provided that the change in booking is tolerable for the other contractual partner. The Client is entitled to change the booking of reserved advertising time (change in the website booked, area placement and period of time when it is shown) provided that SM is notified of the desired change of booking in writing (also by e-mail) at the latest three working days prior to the agreed period when it is to be shown, that the agreed booking volume (total fee in accordance with the relevant price list) is maintained, that the showing of the re-booked volume is not materially postponed versus the volume originally booked and provided that SM has adequate free capacity on the new display dates requested.

f) Should any defects in the advertising documentation be not sufficiently evident to SM, the Client will not have any claims should publication be insufficient and should this be due to these defects in the documentation. The same will apply in the event of errors in repeated showings of advertising should the Client fail to point out these errors in time prior to the publication of the subsequent advertising display.

g) Subject to the current technical standards, SM guarantees the best possible playback of the advertising material. The Client is however aware that, given the state of technology, it is not possible to create an environment totally free of errors. In particular, errors may arise as a result of technical malfunctions, especially a communications line and/or computer breakdown due to a system failure or the use of unsuitable presentation software and/or hardware (e.g. browser) or due to a malfunction in other operators' communications networks or incomplete and/or outdated offers on so-called proxies (intermediate memories) or a breakdown of the ad-server. Claims for compensation by the Client are therefore excluded.

## **§ 2 Data material**

a) The Client is required to provide correct advertising material, particularly as regards the format and SM's technical specifications, at no expense and that is also complete. The data material must be supplied to SM in accordance with the technical guidelines and specifications that may be found under <http://www.skymedia.de/>.

The Client is required to ensure that the advertising material is not subject to any risks, particularly as regards viruses or other technical problems. The Client is responsible for the punctual delivery of the advertising media and of flawless quality. The Client bears the risk of transmitting the data material. SM gives no guarantee that material not delivered on time will be correctly shown.

b) The Client will be notified as soon as possible and given reasons should the advertising data and materials be unusable or otherwise fail to comply with the terms of the contract.

c) The obligation to store advertising material will end after the last occasion on which it is distributed.

d) SM will provide the Client with a report at the end of the campaign stating the ad impressions actually supplied.

The Client is required to check the report and to report defects to SM immediately, at the latest however within two weeks of receiving the report, otherwise the implementation of the order will be deemed to have been approved.

## **§ 3 Advertising transmission**

a) Should it not be possible to show the advertising material on time, due to its contents, on account of force majeure (including technical malfunctions) or for other reasons for which SM is not responsible, SM will relocate transmission of the advertising material, wherever possible to an equivalent transmission location. The Client will be informed immediately should the changes in location be considerable. A considerable change in location refers to a change in the period of time of transmission different from that which was agreed.

b) Advertising will be shown in SM's standard playback quality and will depend on the technical standard of the Internet user's technical equipment.

c) SM may charge the Client the fee agreed for the transmission should it not be possible to show the advertising material due to circumstances for which the Client is responsible, particularly because it was not provided on time, was defective or incorrectly labelled or because transmission was not permitted for legal reasons.

d) Should there be a permanent contractual relationship between SM and the Client, both will be entitled to cancel orders to transmit advertising material up to a maximum of six weeks prior to the first transmission date. The contractual right to cancel orders will be forfeited from the beginning of the sixth week prior to the transmission date. The Client will not be entitled to cancel should special forms of advertising be involved, such as for example online sponsoring, unless the order is cancelled on account of an infringement of obligations on SM's part.

e) The Client is entitled to a weekly campaign report. This report is made up of: the number of ad impressions delivered<sup>2</sup>, the number of ad clicks<sup>3</sup>, the click-through rate<sup>4</sup>, the view-through rate<sup>5</sup> (only reportable in the case of video ads). The possibility of carrying out an analysis at the level of the individual terminal<sup>6</sup> or on a daily basis is also available on request. The parties will agree on an increase in the agreed net fee should components be added.

f) The maximum number of advertising material motifs that may be shown in a campaign is four per month. With effect from the fifth advertising medium motif, the Client will be required to pay SM a fee as stipulated in the fee scale in the digital media price list that may be found under <http://www.skymedia.de/>.

g) Should SM consent on an exceptional basis to a cancellation request within the six-week period, this will only be granted in return for a cancellation fee to be determined by SM in accordance with its equitable discretion. Even on payment of a cancellation fee, the Client has no automatic right to cancel an order.

h) Should the Client cancel the order less than four weeks prior to the start of a campaign, it will be required to pay SM the fee in accordance with the following scale:

- up to the four weeks prior to the start of a campaign, no fee will be payable;
- up to the two weeks prior to the start of a campaign, 50% of the fee;
- up to the one week prior to the start of a campaign, 75% of the fee;
- up to the three working days prior to the start of a campaign, 80% of the fee;
- up to the day on which the campaign starts, 100% of the fee.

#### § 4 Ad-Server

The quantification of ad impressions and ad clicks will be determined by the data recorded by SM on its ad-server<sup>7</sup>. An ad impression is deemed to be every reply via SM's ad server as a reaction to an enquiry on a user's browser/connected set-top box, adjusted for the impressions generated by way of automated processes, such as for example search engine scans. Should the contractually agreed ad impressions or ad clicks already be achieved before the end of the agreed term, the parties will agree an increased fee or a premature ending of the term.

As a general rule, it is possible to supply third party trackings, whereby SM carries out the installation of such trackings on a voluntary basis and cannot be required to carry out the installation. In this context, attention must be paid to rules that form part of the the technical specifications (under <http://www.skymedia.de/>).

The same applies to the delivery of so-called redirects<sup>8</sup>. SM is entitled to cease further delivery should it be required to implement advertising material and trackings that do not comply with the guidelines referred to or at least have the appearance of being of doubtful origin. Delivery will only be re-started after the materials have been verified beyond any doubt and the Client has confirmed in writing that use of the advertising materials submitted are above reproach. The Client will always be responsible for any delay in delivery that may occur as a result. SM is also entitled to deliver subsequently the days resulting from the delay without any further consultation with the Client.

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<sup>2</sup> Ad impression = number of advertising media called off from SM's ad server

<sup>3</sup> Ad clicks = individual click on the advertising medium displayed

<sup>4</sup> Click-through rate = number of clicks on an advertising medium in relation to the ad impressions supplied

<sup>5</sup> View-through rate = Number of calls on the advertising medium in relation to time spent

<sup>6</sup> Terminals = Possibility of having the reporting displayed between different operating systems and types of equipment; e.g. iPhone, android tablets etc.

<sup>7</sup> Ad server = A system to guarantee automatic broadcasting of the advertising medium to be transmitted

<sup>8</sup> Redirect = URL that indicates an advertising material that was hosted on the client's ad server.

There is no right to a uniform and daily delivery of advertising materials for any digital advertising media should the ad server be involved.

Should a fixed number of ad impressions not be achieved, SM reserves the right to continue delivery up to three working days following the end of the agreed term, unless both parties agree special conditions regarding continued delivery prior to the start of the campaign.

## **§ 5 Data protection**

### **a) Client data**

The Client consents to SM using its personal data that it provides to SM as well as data derived from the grant and implementation of orders to SM for internal purposes, particularly for purposes of market research. SM is entitled to delegate the processing of such data to third parties provided that these third parties have undertaken in writing to comply with the provisions of the law on data protection.

### **b) Evaluation of access data**

The use of special techniques (e.g. the use of cookies), to obtain or to collect personal or platform-specific data from the transmission of digital advertising is deemed to be prohibited. In particular, the Client may not store, evaluate, otherwise use and/or forward to third parties, users' data derived from digital advertising for its own purposes. This prohibition also includes the creation of profiles based on users' behaviour on the digital offer and their further use. Should the Client use a third party's system in order to transmit digital advertising, it will ensure that the system operator also complies with this agreement.

Last amended in December 2017