

# General Terms and Conditions of Business for Advertisements and third-party inserts in newspapers and magazines



BRAND MEDIA

1. "Advertisement order" under the General Terms and Conditions of Business defined below relates to the contract between marketer and purchaser in respect of the publication of one or more advertisements or other promotional material (hereinafter referred to under the term "Advertisements") of an advertiser or other advertising space buyer (hereinafter referred to under the term "Advertiser") in a newspaper or magazine for purposes of dissemination.

2. A "rate holder" is a contract relating to publication of several advertisements taking into account the discount to be granted to the advertiser in accordance with the price list, whereby the relevant publications can be called off on demand by the purchaser. Discounts are not granted for companies where the purpose of the business includes placing advertisement orders for different advertisers in order to claim a joint discount. If the right to call off individual advertisements on demand is granted under a rate holder agreement, the order must be processed within the period of one year following the appearance of the first advertisement, if the first advertisement is called off and published within one year of the conclusion of the contract.

3. If one or more call-offs of a rate holder are not fulfilled for reasons for which the marketer is not responsible, the purchaser shall reimburse to the marketer the difference between the reduction granted and the reduction corresponding to the actual purchase, without prejudice to any other legal obligations. Unless other conditions have been agreed, the purchaser shall have a retrospective claim to the reduction corresponding to their actual purchase of advertisements within a period of one year.

4. Re full-position advertisements. Not applicable.

5. Orders for advertisements which are only to be published in specific issue numbers, must be received punctually at the marketer so that the purchaser can still be informed before the closing date for advertisements if the order cannot be carried out in this manner. Classified advertisements are printed under the relevant category without express agreement being required on this matter.

6. Section 1 re full-position advertisements. Not applicable. Advertisements which are not identifiable as advertisements due to their editorial design, shall be clearly identified as such by the marketer with the word "Advertisement".

7. The marketer reserves the right without recognizing any audit obligation to reject advertisements – also individual call-offs under a rate holder agreement – in particular if

- their content infringes laws or official statutory regulations or
- their content was objected to by the German Advertising Standards Council in a complaints procedure or
- their publication would be unreasonable on the part of the marketer due to the content, origin or technical form or
- advertisements, which include promotional material of third parties or for third parties.

Orders for other promotional material are only binding for the marketer after a sample has been submitted and approved.

If the marketer does not make use of the marketer's right of rejection in relation to advertisements, which include the promotional material of third parties (tie-in advertising), these also require the prior written declaration of acceptance from the marketer in each individual case. This entitles the marketer to levy a tie-in surcharge.

The purchaser shall be immediately informed of the rejection of an advertisement or other promotional material.

8. The purchaser shall be solely responsible for the punctual delivery and the perfect quality of suitable artwork or other promotional materials. Unless otherwise agreed with the marketer, the artwork shall be supplied through the DUON-Portal ([www.duon-portal.de](http://www.duon-portal.de)). The purchaser shall provide digital artwork for advertisements punctually as proper master templates corresponding in particular to the format and technical specifications of the marketer for advertisements before the start of placement. The costs incurred by the marketer for any changes to the advertising proofs requested by the purchaser or which are the responsibility of the purchaser shall be borne by the purchaser.

The standard quality of artwork for advertisements or other promotional materials is agreed in accordance with the binding technical specifications defined in the DUON Portal for the designated titles in accordance with the details specified in the price list and in the order confirmation. This is based on the purchaser complying with the regulations of the marketer for preparing and transmitting the artwork through the DUON Portal.

9. Original artwork will only be returned to the purchaser on special request. The obligation to archive originals ends three months after the first publication of the advertisement or other promotional material.

10. If the publication of the advertisement does not conform to the contractually agreed quality or performance, the purchaser shall be entitled to reduction in payment or a perfect substitute advertisement or substitute publication of the other promotional material but only to the extent that the purpose of the advertisement or other promotional material was compromised. The marketer has the right to refuse a substitute advertisement or substitute publication, if

- this requires resources which are significantly disproportionate to the interest in performance of the marketer taking into account the nature of the obligation and the duty of good faith, or
- this were only possible with unreasonable costs to the marketer.

If the marketer allows a reasonable deadline set for publication of the substitute advertisement or the publication of other promotional material to lapse or if the substitute advertisement/substitute publication is again not perfect, the purchaser shall be entitled

to a reduction in payment or rescindment of the order. If there are insignificant defects in the advertisement or the publication of the other promotional material, rescindment of the order is excluded. Complaints in the case of defects that are not obvious must be asserted within one year of the start of the statutory statute of limitations. The marketer shall be liable for all losses, irrespective of whether they are as a result of a breach of contractual duty or unlawful act in accordance with the following conditions: In the case of gross negligence the liability in commercial business shall be restricted to compensation for typically foreseeable losses; this restriction shall not be applicable if the losses were caused by legal representatives or executive employees of the marketer.

In the case of simple negligence, the marketer shall only be liable if a material contractual obligation was breached. In such cases, the liability shall be restricted to the typical foreseeable losses. If there are claims under the Product Liability Act, and if injury to life, body or health occurs, the marketer shall be liable in accordance with the statutory regulations. Any complaints must be asserted within four weeks of publication – except in the case of defects which are not obvious. All claims directed against the marketer arising from contractual breach of obligations shall lapse within the period of one year from the statutory commencement of the statute of limitations, if they are not due to wilful conduct.

11. Proofs are only supplied on express request. The purchaser shall bear responsibility for the accuracy of the returned proofs. The marketer will take into account all corrections to mistakes that are communicated to the marketer by the advertising deadline or within the deadline set when the proofs are transferred.

12. If no special specifications relating to size are given, the standard actual advertisement height for the type of advertisement will form the basis of the calculation.

13. The invoice shall be paid within the deadline defined in the price list, unless another payment deadline or advance payment has been agreed in writing in individual cases. Any reductions for advance payment are granted on the basis of the price list.

14. If there is a delay in payment or deferment, standard bank interest rates and collection costs are calculated. If there is a delay in payment, the marketer is entitled to put further execution of the current order on hold until payment is received and is further entitled to require advance payment for the outstanding advertisements.

If there are reasonable grounds for doubt about the ability of the purchaser to make payment, the marketer shall also be entitled to make publication of further advertisements dependent on advance payment of the amount due at the advertisement closing date and on settlement of outstanding invoice amounts without regard to any period allowed for payment originally agreed and during the term of a rate holder agreement.

**15.** On request, the marketer shall supply an advertiser's copy. Depending on the type and scope of the advertisements, advertisement cuttings, tear sheets or complete reference copies will be delivered. If an agency copy can no longer be obtained, this shall be replaced by a legally binding certificate from the marketer verifying the publication and distribution of the advertisement.

**16a.** A claim for a reduction in price may arise from a reduction in print-run – subject to the regulation defined in subsection 16b – under sentence 2 when a rate holding agreement has been concluded for several advertisements, if there is a shortfall in the guaranteed circulation in terms of the overall average of the placement year commenced with the first advertisement. A reduction in circulation shall only be a defect justifying a reduction in price, if and to the extent that it is

at least 20 percent for a guaranteed circulation of up to 50,000 copies,

at least 15 percent for a guaranteed circulation of up to 100,000 copies,

at least 10 percent for a guaranteed circulation of up to 500,000 copies,

at least 5 percent for a guaranteed circulation of more than 500,000 copies.

A reduction in circulation for reasons defined in section 23 will not be taken into account. The guaranteed circulation is deemed to be the average circulation defined in the price list or in some other manner or, if a circulation is not specified, the average number of copies sold (in the case of specialist magazines the actual average number of copies distributed) in the previous calendar year.

Furthermore, claims for price reductions are excluded in the case of rate holders, if the marketer has provided the purchaser with timely notification of the reduction in circulation such that the latter was in a position to withdraw from the contract before the advertisement was published.

**16b.** (special provision for reductions in circulation in relation to titles which publish circulation data based on each issue)

Notwithstanding subsection 16a, a reduction in circulation for titles which publish issue-related circulation data only provides justification for a reduction in price, if and to the extent that the reduction in circulation exceeds 10 percent for a circulation (guaranteed circulation) up to 500,000 copies and 5 percent for a circulation of more than 500,000 copies. A reduction in circulation for reasons defined in section 23 will be ignored.

The guaranteed underlying circulation is the total number of copies sold pursuant to the definition provided by the Audit Bureau of Circulation (*Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern e.V., IVW*). It is calculated for the placement year from the average circulation of the four quarters prior to the placement year, provided that an absolute circulation figure was not defined by the marketer as a guarantee in the relevant price list. A precondition for a claim to a price reduction is

a discountable rate holder agreement based on the quantity discount rate and for at least three issues.

The order for each company shall form the basis for calculating the price reduction, provided that a calculation based on brands to be defined on order placement was not agreed when the order was placed.

The possible circulation reduction is calculated in net terms as the balance of the shortfalls and surpluses in circulation for the verified issues within the placement year. A claim to reimbursement must be asserted within six months of the end of the placement year. The reimbursement is made on the basis of the net cost to the customer, taking into account agency remuneration already paid, as a credit in kind or if this is no longer possible as a payment. A claim to reimbursement is only deemed to exist, if the reimbursement sum is at least 2,500 euros.

**17.** Re box number advertisements. Not applicable.

**18.** The place of fulfilment shall be the registered office of the marketer.

In transactions with businesspeople, legal persons under public law, or in the case of special investment funds under public law, the place of jurisdiction shall be the registered office of the marketer. If the claims of the marketer are not asserted in the default procedure, the court of jurisdiction is determined by the place of residence in the case of non-businesspeople (as defined under German law).

If the place of residence or usual domicile of the purchaser, also in the case of non-businesspeople, is unknown at the date on which a suit is filed or if the purchaser has relocated his place of residence or usual domicile out of the jurisdiction of the law after the contract has been concluded, the place of jurisdiction of the marketer shall be agreed.

**19.** Advertising brokers and advertising agents shall keep to the price list of the marketer in their offers, contracts and accounts with advertisers.

**20.** Changes in price and discount for advertisement orders that have been placed shall be effective in respect of companies, if they are announced by the marketer at least one month before publication of the advertisement or other promotional material. In this case, the purchaser shall have a right to terminate the contract. The right of termination must be exercised in text form within a period of 14 days after receipt of the notification of the price increase.

**21.** If a joint discount is claimed for companies affiliated within a group, written verification of the group status of the advertiser is required. Companies affiliated within a group under this provision are companies involving a capital shareholding of at least 50 percent.

In the case of joint-stock companies, group status should be verified by means of confirmation provided by an auditor or by sub-

mission of the most recent annual report, in the case of partnership group status should be verified by submission of an extract from the register of companies. The verification must be provided within the first half of the rate holder period. Subsequent verification cannot be recognized in retrospect. Group discounts always require express, written confirmation by the marketer. Group discounts are only granted for the period that the company is a member of the group. Notification should be provided immediately the company ceases to be a member of the group; the group discount also ceases when the company is no longer a member of the group.

**22.** The purchaser guarantees that he has all the necessary rights for placing the advertisement. The purchaser bears sole responsibility for the content and the legal permissions relating to the copy and image documents made available for placement of an advertisement, and for the promotional material supplied. The purchaser indemnifies the marketer pursuant to the advertisement order from all claims by third parties which may arise as a result of infringement of statutory regulations or on account of regulations defined under the legislation governing the press. Furthermore, the marketer will also be indemnified against the expense of any costs incurred for defence in legal proceedings. The purchaser shall support the marketer in good faith by providing information and documents in the event of defence in legal proceedings against third parties.

The purchaser shall transfer to the marketer all necessary rights relating to copyright, licensing, production and related rights for use of the advertisement in print and online media of all types, including Internet, in particular the right of reproduction, dissemination, transmission, broadcasting, making available in public, removal from a database and call-off, in the scope required in relation to time and content for purposes of implementing the order. In all cases, the aforementioned rights shall be transferred without limitation of place.

**23.** If operations are interrupted, or in cases of force majeure, illegal industrial disputes, unlawful seizure, traffic delays, general shortages of raw materials or energy, and similar circumstances – in the business operations of the marketer and in third-party companies which the publisher uses for fulfilling its obligations – the marketer shall have a claim to full payment for the published advertisements, if the publication in question was distributed with 80% of the average circulation sold over the past four quarters or guaranteed in some other way. If the volume delivered is less, the invoice amount shall be reduced in the same ratio as the proportion of the assured circulation to the actual circulation distributed.

Reductions in circulation for reasons defined in sentence 1 will not be taken into account pursuant to section 16 of the General Terms and Conditions of Business.