

# General Terms and Conditions ("GTC") for the Placement of Advertising Space

for smartclip AG Kleiner Burstah 12  
20457 Hamburg, Germany

## 1. Applicability of the GTC

1. Smartclip AG (herein: "**Smartclip**") handles the marketing of advertisements on Internet sites and brokers the placement of advertising space in video content which can be retrieved online from these Internet sites. This is performed based on agreements which Smartclip concludes with advertisers and/or agencies (herein: **the "Advertiser"**; advertiser and Smartclip are also referred together as the "**Parties**").
2. The following terms and conditions shall apply exclusively to all offers, goods and services from Smartclip. Upon the first agreement entered between Smartclip and the Advertiser, the Parties agree that these General Terms and Conditions shall also apply to all follow-on transactions – including those concluded verbally, and especially by phone – including those delivered in the course of a continuing obligation.
3. Other general terms and conditions, particularly contradictory AGB of the Advertiser, shall not become part of this agreement, even if Smartclip does not expressly object to them or renders the agreed services without reservation in knowledge of the Advertiser's contradictory AGB.
4. Special agreements and ancillary agreements shall only become effective if Smartclip confirms them in writing.

## 2. Object of agreement and execution

1. Smartclip solely offers placement of advertising space in video content which can be retrieved online on the Internet sites agreed by the Parties. All information regarding the potential placement and/or sequence of advertisements, as well as the specific time of advertisements, is always provided without obligation, without fixed character, and is always subject to technical feasibility. The same applies to cases in which the Advertiser requests additional services beyond the actual placement of advertisements (such as analyses of user behaviour according to specific reporting standards).
2. Smartclip shall be authorised to reject advertising content and placements, as well as remove them after the fact, at its own discretion. In particular, this shall apply in cases where the advertising content contains information and images which can be considered pornographic as defined in Section 184 of the German Penal Code (StGB) or can be classified as content subject to the Interstate Treaty on the Protection of Minors; which represent incitement to race crimes as defined in Sections 86, 131 StGB, which glorify or trivialise violence, which glorify war, which encourage criminal offences, which contain libellous or defamatory comments, or represent other illegal content. If an advertising placement is rejected or removed, the Advertiser shall be notified accordingly. The Advertiser shall not be eligible to claim for damages in such cases.

3. Once the agreement is concluded, should the Advertiser request any changes with regard to the marketing and placement of advertising space based on these GTC, of any type, then Smartclip shall only be required to accept such changes if they are compensated separately. Should such changes (post-calculation) result in delays in the agreed appointments, Smartclip shall notify the Advertiser accordingly.
4. Smartclip shall be authorised to engage third parties to fulfil its contractual obligations as it sees fit.

### 3. Duties of the advertiser

1. The Advertiser is responsible for ensuring that Smartclip receives the information, data, files and other materials associated with the requested advertising placement (herein: the **"Advertising Materials"**) promptly, completely, free of errors (in particular: free of harmful code such as computer viruses, Trojans or other malware) and in accordance with the agreement, and suitably for the agreed purposes – particularly the booked type and size for the respective presentation and environment. In particular:
  - Graphics must be provided in GIF or JPEG format, unless agreed otherwise
  - If Flash ads are to be used, the Flash version, a fallback GIF and information about any scripts used must be provided Flash ads must be programmed in accordance with Smartclip specifications.

Any such deviations from this requirement must be coordinated with Smartclip immediately after concluding the agreement, in writing or by e-mail.

2. Smartclip must possess all Advertising Materials at least five working days before the planned insertion in the video content retrievable over the websites, unless Smartclip notifies the Advertiser that the Advertising Materials are required at an earlier point in time in individual cases. Advertising Materials can also be sent as an e-mail attachment to the address [campaigns@smartclip.de](mailto:campaigns@smartclip.de). When sending the Advertising Materials, the Advertiser must specify the customer and campaign name (to the extent defined), booking period, the involved Internet sites where the video content can be retrieved, the type and scope of placement in the video content, the advertising format and a contact person for any necessary inquiries.
3. If proper transmission does not take place – in particular, not promptly, incomplete and/or not in accordance with the technical specifications – or if the accompanying information is insufficient, Smartclip shall assume no responsibility for the agreed advertising placement. In such cases, Smartclip shall be authorised to fill the intended placements otherwise until full, proper delivery is received. Execution of the Advertiser's order shall then be made up at Smartclip's discretion, taking the Advertiser's requests into account. Should the above reasons make it impossible to carry out the advertising placements as agreed, as scheduled, or at all, the Advertiser shall still be obliged to make the full agreed payment.

The Advertiser shall not be authorised to make any claims for damages in such cases.
4. Smartclip assumes no responsibility for the Advertising Materials provided by the Advertiser – in particular, Smartclip shall not be obliged to store it or return it to the

Advertiser, unless the Parties have agreed otherwise in writing.

5. The Advertiser shall ensure that all data he provides is available in machine-readable form and can be reconstructed with a reasonable effort.
6. The Advertiser warrants that he is the owner of all rights of usage (particularly rights of authorship, copyright and rights to the use of images and names) for the Advertising Materials he provides for use and ensures that the usage of the Advertising Materials he provides does not violate any valid laws or the rights of third parties.
7. The Advertiser hereby grants Smartclip all rights required for placement of the advertising on the Internet to an unrestricted extent with regard to content and place and time of usage, for the agreement concluded based on these GTC.

#### **4. Editing**

1. Smartclip and its third-party agents involved in execution of the agreement are authorised, but not obligated, to edit the provided Advertising Materials and make changes and corrections to same (particularly to its technical specifications, programming and dimensions), to the extent required or appropriate for suitable placement of the advertising in the video content retrievable over the websites and/or processing in ad server systems. Changes to the Advertising Materials that affect its content and/or graphic layout shall require approval by the Advertiser, as defined in Section 184 BGB.
2. To the extent which the advertising is not obvious and clearly identifiable as such, Smartclip or the operator of the corresponding Internet site may label it accordingly, particularly with the word "Anzeige" (ad) or "Werbung" (advertising), and/or set it spatially apart from editorial content, to stress the advertising character.

#### **5. Remuneration**

1. Unless agreed otherwise, Smartclip's remuneration shall be based on the Smartclip price list which was valid on the day the agreement was concluded. All prices are subject to statutory value-added tax at the valid rate on the day of invoicing. Smartclip shall be authorised to introduce appropriate price adjustments in accordance with Section 6.
2. To the extent which Smartclip offers discounts, such discounts shall apply only to media placement. Design costs for Advertising Materials are exempt from any discount scales provided to the Advertiser or described in the price lists. If agency activities are documented and the agency is billed directly, Smartclip shall provide a 15 percent agency commission.
3. Additional expenses by Smartclip – including, but not limited to materials, final artwork, translations, audio and audio-visual advertising media, courier fees, author corrections, travel expenses, meal per diems, organisational and procurement costs and transfer of authorship rights; technical costs such as typesetting, interim copies, photos, prints and tools; and special companies engaged for the production of advertising materials and services – shall be billed separately at actual cost, to the extent which they were actually incurred and were not specifically named in the order confirmation.

## **6. Price changes**

Smartclip is authorised to alter the agreed fees. Smartclip shall notify the Advertiser of such changes in writing one month before the effective date of the change (an e-mail shall be sufficient in such cases). In this case, the Advertiser shall be authorised to object to the increase up to two weeks before the planned increase date. Smartclip shall point out this right explicitly in any announcements of price increases. Should the Advertiser elect not to exercise his right of objection, then the new prices shall become effective as of the increase date. Should the advertiser object to the increase, then Smartclip shall be authorised to terminate the contractual relationship without notice as of the increase date.

## **7. Due date, advance and surety, payment, arrears**

1. Advertiser payment of the fees for placement of the requested advertising shall be made electronically, with all costs and fees waived, to the Smartclip bank accounts specified on the invoice. Bills of exchange and cheques shall only be accepted as conditional payment.
2. Unless agreed otherwise, invoices shall be payable net immediately. Unless agreed otherwise, Smartclip shall provide a full bill by the 15th day of the month following the month of invoicing by the respective advertising partners.
3. Notwithstanding the above, Smartclip shall be authorised to demand advance payment in the amount of the projected remuneration or an appropriate surety for remuneration whose amount is not yet known. To this extent, Smartclip enjoys a right of retention, particularly with regard to the release of the advertising campaign.
4. The Advertiser shall only be authorised to offset claims from Smartclip if such claims are uncontested or ordered by a court of law. The Advertiser may only base a right to refuse performance or right of retention where Smartclip's claim to payment and the Advertiser's counter-claim arise from the same contractual agreement.
5. The Advertiser is obliged to check all received invoices for correctness. Any objections to an invoice must be made to Smartclip in writing within 14 days of receipt of the respective invoice. Upon expiry of this period, the respective invoice is assumed to be approved by the Advertiser. Receipt of a written objection by Smartclip is the material date in determining the objection deadline.
6. If the Advertiser is more than 30 days in arrears for a payment or partial payment, issues a bill of exchange or cheque which is protested or if a petition to open insolvency proceedings against Advertiser's assets, Smartclip shall be authorised, without prejudice to other rights, to demand immediate payment of any and all claims against the client and to hold back any outstanding goods and services. Otherwise, the consequences of late payment shall be in accordance with legal regulations.

## **8. Termination**

1. Either party may terminate this agreement with a notice period of 30 days, for any reason. The termination notice must be submitted in written form.
2. Advertising orders must be cancelled in writing. Any cancellation announced up to the start of the placement shall be subject with a blanket processing fee of 50 percent of the net order value. If cancellation is announced after the start of the placement, Smartclip shall be authorised to collect 100 percent of the net order value, unless the Advertiser demonstrates that damage in this amount was not incurred, or was merely incurred in a much lower amount.
3. This is without prejudice to the right of either Party to terminate the agreement concluded on the basis of these GTC for just cause with immediate effect.

## **9. Transfer of risk and warranty**

1. For all advertising activities, Smartclip solely bears responsibility for the proper forwarding of Advertising Materials to the respective website operators. The Advertiser bears the risk during transmission of the Advertising Materials to Smartclip.
2. Should the Advertising Materials not be forwarded as initially planned, either properly at all, then Smartclip shall only be authorised and obliged to make up for this within a reasonable time. To this end, Smartclip shall notify the Advertiser of any changes to the Advertising Materials requested by the website operators.
3. Should Smartclip refuse (subsequent) fulfilment, two attempts at subsequent fulfilment have failed or subsequent fulfilment is unacceptable to the Advertiser, the Advertiser shall be authorised to rescind the agreement or demand reduction of remuneration. Rescission on grounds of insignificant defects shall not be possible.
4. All further rights, particularly claims for damage, are excluded as described in Section 10.
5. Defects in the placed advertisements which indicate improper forwarding of the Advertising Materials must be claimed in writing. A prerequisite for any warranty claims by the Advertiser is the proper fulfilment of all statutory duties to examine and give notice of defects as described in Section 377 HGB. The effective date for the fulfilment of these duties is the first placement or provision on a test page.
6. Should the Advertiser make warranty claims of Smartclip which later prove to be unjustified, then the Advertiser shall compensate Smartclip for all costs arising from the verification of the rendered service and protection against such unjustified claims, to the extent that he is responsible for making the claim against Smartclip.

## **10. Liability, limitation of liability**

1. Should Smartclip, its representatives or its agents be determined guilty of intentional or gross negligence, Smartclip shall assume liability according to the valid laws; the same shall apply in the event of culpable violation of major contractual obligations (duties). Unless the contractual violation is proven intentional, Smartclip's liability for damages shall

be limited to the foreseeable typically occurring damage. Liability for culpable injury to life, limb or health remains unaffected, as does liability pursuant to the Product Liability Act (Produkthaftungsgesetz). Unless expressly stipulated otherwise, the liability of Smartclip is excluded. Where Smartclip's liability for damages is excluded, the same shall apply to personal liability for damages of Smartclip's employees, workers, personnel, legal representatives and vicarious agents.

2. Where Smartclip merely refers the services of third parties (photographers, illustrators, service providers, database developers etc.) to the Advertiser or to the website operators in the name of the Advertiser, Smartclip shall only be liable for the proper selection of these third parties. The Advertiser becomes the contractual partner with said third parties.
3. Where Smartclip is obliged to pay compensation for damages, unrealised profits shall not be compensated.

## **11. Expressed guarantees by the advertiser**

1. The advertiser shall be solely responsible for the contents of the advertising materials and advertising insertions.
2. The Advertiser guarantees that the placement of the Advertising Materials provided by the Advertiser does not violate the rights of any third parties. The Advertiser further guarantees that the contents of the provided Advertising Materials do not violate any valid laws, statutory or official bans or accepted social standards.
3. The Advertiser shall be required to compensate Smartclip for any and all damages which Smartclip incurs as the result of violations of the guarantees in this Section 11, defects in the delivered Advertising Materials or placement of advertisements provided by the Advertiser. In particular, the Advertiser shall indemnify Smartclip of any claims, upon initial request, which are made against Smartclip by third parties. This shall apply in particular, but not exclusively, in the case of anti-competitive behaviour, infringement of industrial property rights or technical deficits in the delivered advertisements (such as computer viruses).

## **12. Period of limitation**

All warranty claims and claims for damages shall expire by limitation within one year of the start of the statutory limitation period. This shall not apply to claims arising from intentional behaviour of Smartclip.

## **13. Confidentiality, data protection**

1. The Parties shall consider all information and data confidential which they receive from the counterparty in the context of the execution of agreements based on this GTC, and shall not make such information or data available to third parties. This confidentiality requirement shall continue to apply after termination of the agreement.

2. The Advertiser is hereby notified that Smartclip shall save its data in machine-readable form, process it and use it for the purpose of fulfilment of the agreement. Smartclip shall be authorised to forward this data to third parties to the extent necessary for fulfilment of the agreement.

#### **14. Place of performance, jurisdiction**

1. The place of performance for all claims to the agreement concluded between the Advertiser and Smartclip is the registered seat of Smartclip.
2. If the advertiser is a businessperson as defined in the German Commercial Code, Hamburg shall be defined as the sole jurisdiction.

#### **15. Miscellaneous**

1. The laws of the Federal Republic of Germany shall exclusively govern this agreement, excluding the principles on conflicts of law and excluding the UN Convention on Contracts for the International Sale of Goods.
2. All verbal agreements, additions and amendments to the agreement concluded on the basis of these GTC shall be made in written form, especially including any waiver of this requirement. There are no parol collateral agreements.
3. If any provisions of these GTC are held to be invalid, this shall not affect any other provisions of this agreement. The ineffective provisions shall be replaced, to the extent possible by law, with provisions which achieve, as nearly as possible, the business purpose of the ineffective regulation.

Hamburg, March 2013