

# General Terms and Conditions



for the use of advertising space provided by

**VGN Digital GmbH**

**1020 Vienna, Taborstraße 1–3**

**(hereinafter: “VGN Digital”)**

**Last update: April 2019**

## **1. Scope, Definitions**

1.1 These General Terms and Conditions apply to contracts for the creation, placement, publication and dissemination of advertising content (advertising space) of advertisers under all portals of VGN Digital: news.at, woman.at, gusto.at, lustaufleben.at, trend.at, profil.at, tv-media.at, e-media.at, autorevue.at, golfrevue.at and yachtrevue.

1.2 The GTC of the advertisers are hereby explicitly excluded. Other GTC shall not even apply if documents or declarations of the respective party refer to them. Deviations from these GTC shall not be binding unless explicitly agreed in writing. A contract shall not be formed under conditions other than those referred to in these GTC and under deviations accepted by VGN Digital in writing.

1.3 „Advertisers“ means natural or legal persons intending to disseminate advertising content (advertisements) concerning the products marketed by them over the Internet by using the respective services of VGN Digital.

1.4 „Advertising space“ for the purposes of these GTC means any graphic or written representation of advertising content by advertisers, whether in the form of a picture, a combination of picture and text, irrespective of its design, e.g. as banner advertisement, button or link (connection to data on the web within or outside VGN Digital).

## **2. Offer and Conclusion of Contract**

2.1. Advertising space shall be placed in VGN Digital exclusively on the basis of the current price lists of VGN Digital. For a contract to be concluded, orders must be confirmed in writing by VGN Digital. Upon placing an order, the advertiser is obliged to indicate its exact and complete designation or name, its company register number, its legal form and its full address and/or the points of contact for VGN Digital, including their authority to represent the advertiser.

2.2. The free cancellation of an advertising order is possible and free of charge up to 10 working days prior to insertion date. If cancelled later, 50% of the total campaign budget will be charged. This also applies to already launched campaigns. In this specific case, 50% of the non-delivered ad impressions as well as the full amount of the already delivered ad impressions will be charged.

## **3. Obligations of Advertisers**

3.1 The advertiser shall provide all means required for performance of the contract, in particular the required graphics file in the standard formats specified by VGN Digital and the material required for publication of the advertising space in a timely manner before the agreed publication of the advertising space, not later however than three working days in advance. After three working days before the agreed placement of advertising space, alterations, in particular regarding size, format, features and placement of the advertisement, shall be only admissible in consultation with VGN Digital. The same shall apply if advertising space already placed is changed for campaign optimisation purposes.

3.2 The advertiser shall bear the risk of transmission of the material to be published, in particular the risk of loss of data, data media, photos and other documents. Documents will be returned only upon the advertiser's request and at its cost and risk. VGN Digital shall be entitled, but not obliged, to process the transmitted material in so far as this is necessary for the agreed publication of advertising space in VGN Digital.

## **4. Content Requirements for Advertisements**

4.1 The advertiser shall ensure that content of its advertising space does not violate legal provisions under press law, competition law, criminal law or other legislation, in particular that it does not contain information and forms of a politically radical nature which violate the Verbotsgesetz (Prohibition Act) and public decency and policy as well as the moral rights of third parties.

4.2 The advertiser shall furthermore ensure that it is the rightful holder of copyrights, trademarks, rights related to copyright and other right of use required for the advertisement, in particular of the documents (e.g. texts, photos, graphics, files, data media and video tapes etc.) made available by the advertiser to VGN Digital or used by VGN Digital.

4.3 VGN Digital shall be entitled, but not obliged, to examine the content of advertising space and to immediately remove content violating the guarantees referred to above from VGN Digital. In addition, VGN Digital shall be entitled to examine links; the advertiser shall not replace links without consulting with VGN Digital. In that case, the advertiser shall not be entitled to claim compensation from VGN Digital, but obliged to make the payments agreed under the original contract. In that case, it shall be entitled to have removed advertising space replaced by other advertising space that complies with the guarantees referred to above and to hand over the corresponding material to VGN Digital pursuant to point 3 of the GTC.

4.4 The advertiser shall ensure that the guarantees provided by it pursuant to points 4.1 and 4.2 apply at the time of conclusion of the contract and for its entire term. The advertiser shall indemnify and hold VGN Digital harmless from all claims raised by third parties against VGN Digital as a result of a violation of these guarantees by the advertiser and incurred by VGN Digital in connection with the performance of a contract, in particular in terms of all necessary and reasonable costs incurred by VGN Digital in defence against such claims.

## **5. Placement of Advertising Space**

5.1 The placement of advertising space shall be mutually agreed by the Parties. If no agreement is reached or if the advertiser fails to make a special placement request, VGN Digital shall be entitled to place the advertising space in VGN Digital taking account of the advertiser's interests. Only advertising space listed in the current price list will be placed.

5.2 Tie-in or collective advertising contracts, i.e. the grouping of advertisements of several advertisers, requires the explicit consent of VGN Digital.

## **6. Warranty and Liability of VGN Digital**

6.1 If VGN Digital is not able to provide a contractually agreed service volume to an advertiser within the agreed period, VGN Digital shall be entitled and obliged to perform the services not yet performed directly after the respective contract has been concluded or after a new contract, already validly booked by the advertiser, has been concluded within a reasonable period to be determined by VGN Digital.

6.2 VGN Digital guarantees the correct and full representation of the advertising space in VGN Digital on the basis of the applicable technology standard. Where the representation of advertising space is incorrect or incomplete and where this not attributable to defects of materials provided by the advertiser to VGN Digital, VGN Digital shall be entitled at its expense and choice to remedy such defect by correction, delivery of parts missing or replacement. If correction within a reasonable period fails, the advertiser may claim a reduction in price or rescind the contract under the conditions stipulated by law only after having granted a reasonable grace period, or request the publication of a replacement advertisement equivalent to the advertisement complained about. In that case, VGN Digital shall be entitled to provide for replacement advertising space within a reasonable period to be determined by VGN Digital directly after the respective contract or after a new contract has been validly booked by the advertiser. Additional claims of the advertiser shall be excluded.

6.3. The advertiser shall immediately examine the advertising space and immediately notify any defects within a period of three days; otherwise, all rights of the advertiser shall be forfeited.

6.4. VGN Digital shall be liable to the advertiser for damages suffered as a result of improper performance of contracts for the use of advertising space in VGN Digital only in the case of intent or gross negligence. Liability of VGN Digital shall be limited to the remuneration payable by the advertiser for the respective advertising space. VGN Digital shall not be liable for consequential damage or loss of profit.

6.5 VGN Digital shall not be liable for impossibility of performance or for full or partial failure of a placement due to force majeure and technical reasons.

6.6 In the case of interactive advertising, the exposure frequency is proven exclusively on the basis of the evaluation of the access data of the ad server used by VGN Digital. This evaluation is made available to the advertiser together with the invoice at the cost of VGN Digital.

6.7 VGN Digital shall not be liable for a successful placement of advertising space.

## **7. Prices and Terms of Payment**

7.1 The prices and supplements shown in the price lists and fee scales of VGN Digital applicable at the time of order acceptance, which can be unilaterally changed by VGN Digital, apply.

7.2 The stated prices do not include any ancillary costs (such as cash expenses), the statutory value-added tax and advertising taxes.

7.3 Amounts due shall become payable immediately after invoicing. VGN Digital shall be entitled to refuse performance if and for as long as the agreed remuneration has not been paid. VGN Digital reserves the right to demand an advance in the case of contracts for the first placement of advertising space concluded with an advertiser.

7.4 The advertiser shall only be entitled to set off its claims against VGN Digital against claims of VGN Digital, to withhold payment or to claim a price reduction if these claims have been acknowledged by VGN Digital or established by a court.

7.5 If an advertiser is in default of payment of the agreed remuneration despite a reminder from VGN Digital, VGN Digital shall be entitled to claim from this advertiser the immediate settlement of all payments deferred or the immediate payment of amounts for which payment in instalments was agreed. In addition, VGN Digital shall be entitled to suspend its services with respect to all current contracts and to terminate this contract and all other contracts concluded with the advertiser with immediate effect without another reminder or the granting of a grace period being required. The same shall apply if the advertiser has suspended payment or if other circumstances become known which challenge its creditworthiness and could therefore jeopardise the claims of VGN Digital.

7.6 The costs for any reminders and the necessary collection costs with prospect of success (e.g. collection by a lawyer or a collection agency) shall be borne by the advertiser even if they are pre-trial costs.

## **8. Premature Termination of Contract**

8.1 The contract may be terminated by either Party with immediate effect at any time before expiry of an agreed term.

8.2 Termination of contracts by the advertiser shall not affect claims for payment of VGN Digital arising from services already ordered. Services already performed by VGN Digital shall be remunerated in full, while only 50% of the agreed remuneration shall be paid for services not yet performed. Claims for damages and other claims of VGN Digital of whatsoever nature shall remain unaffected.

## **9. Confidentiality**

The Parties undertake to hold all data and information which become known to them in connection with the performance of a contract or which they receive from VGN Digital in strict trust and confidence. They shall keep them confidential and ensure that they are not disclosed to third parties. This obligation shall survive the termination of the contracts.

## **10. Place of Performance, Jurisdiction, Governing Law**

10.1 The Vienna Commercial Court shall have exclusive jurisdiction to the extent permitted by law over all disputes arising in connection with contracts for the placement of advertising space, including their pre- and post-contractual effects.

10.2 The Parties agree that their contractual relationships shall be governed by Austrian law.

## **11. Miscellaneous**

11.1 If a contractual provision is invalid or if there is a gap in a contract, the validity of the remaining provisions shall remain unaffected thereby. The invalid or missing provision shall be replaced or supplemented by a provision that comes economically as close as possible to what the Parties would have agreed if they had considered the invalidity or gap.

11.2 All material contractual declarations (acceptance, notice of termination etc.) as well as deviations from these terms and conditions and changes of this written form requirement must be in writing.

11.3 The parties waive their right to challenge a contract made between them for adjustment or cancellation purposes and to assert that it has not been validly concluded or that it is void.