

# Advertising Terms and Conditions of SMG Swiss Marketplace Group Ltd

Version: Zurich, November 2022

## 1 Applicability

Unless otherwise agreed in writing, these Advertising Terms and Conditions shall apply to all advertising contracts concluded between SMG Swiss Marketplace Group Ltd (hereinafter "SMG") and the advertising client.

The following applies to all advertising contracts:

1. that are concluded by business customers directly by means of a written order
2. that are concluded through an agency or an online network (programmatic deals via a Deal ID).

These Advertising Terms and Conditions shall apply exclusively. Any confirmations to the contrary by the advertising client (hereinafter "the Client") that make reference to its own advertising or business terms and conditions are hereby expressly rejected.

Deviations from these Advertising Terms and Conditions, or terms and conditions of the Client, shall only apply if and to the extent confirmed by SMG in writing.

## 2 Conclusion of advertising contract

An advertising contract is validly concluded when SMG confirms a request from the Client in writing (including via email) and the Client does not make a written objection to the order confirmation within 48 hours. SMG shall be entitled to request a written reconfirmation of the advertising order from the Client.

Objections or deviations from the order confirmation communicated by the Client after the 48-hour period has expired shall in no way affect the valid conclusion of the contract pursuant to the order confirmation of SMG. The special right of withdrawal pursuant to Section 3.2 below remains reserved.

## 3 Withdrawal from advertising contract

### 3.1 By SMG

SMG may withdraw from advertising contracts if there are changes to the offerings of the advertising vehicles that are unforeseeable and/or beyond SMG's control (websites/marketplaces in SMG's inventory via which the advertising message is

communicated) or if they are discontinued, including in particular as a result of measures by supervisory authorities or the courts.

SMG may also withdraw up to 6 working days before the start of publication if a competitive situation arises between the Client and another contractual partner with exclusive rights to the specific advertising vehicle. In all of the foregoing cases, claims by the Client are excluded, but in such cases SMG shall endeavour to identify and agree with the Client on an equivalent broadcast of the planned advertising content.

### 3.2 By the Client

The Client may withdraw from the advertising contract by written notice (e-mail is sufficient) under the following conditions:

- Notice of withdrawal is received by SMG up to 7 working days before the start of the campaign: no charge. Working days are defined here as Monday to Friday, excluding public holidays.
- Notice of withdrawal is received by SMG less than 6 working days before the start of the campaign: Withdrawal is only possible upon payment of a percentage compensation (contractual penalty) based on the net2 value (gross amount - discounts - consultancy commission) under the advertising contract in question. The amounts are exclusive of VAT.
  - *Between 6 and 3 working days:* 50%
  - *Less than 3 working days:* 100%
  - *after the start date:* 100%

Any productions of advertising media commissioned from SMG or to be borne by SMG shall be charged in any case, irrespective of the date of withdrawal from the advertising contract by the Client.

## 4 Advertising media

### 4.1 Delivery / Provision

The Client is obligated to provide SMG with the material necessary for the publication of the advertisement, including the advertising media, in the format requested by SMG, at the following times before to the publication date confirmed in the order. This also applies within an ongoing campaign:

- Conventional advertising media (GIF, JPEG, redirects, tags): 3 working days
- Rich media / special advertising media (HTML, Flash): 5 working days
- Video advertising media: 5 working days
- Editorial content (advertorials/native ads): 5 working days

The right to make deviations may be reserved under the individual contract and deviations may also be made due to special requirements of individual advertising vehicles. In this case, SMG shall inform the Client as soon as possible.

Redirects delivered for the SMG network must comply with the secure standard (https).

The advertising media must be delivered to: [advertising@swissmarketplace.group](mailto:advertising@swissmarketplace.group).

### 4.2 Production of advertising media

The Client may commission SMG to produce the advertising media either as part of the advertising contract or separately as a separate order.

For the production of advertising media, all raw material must be delivered by the Client at once, with a lead time of at least 15 working days prior to the start of publication. The costs for creation of advertising media shall be specified in the specific order.

If advertising media are ordered with lead time of less than 15 working days, an express surcharge will be applied. The express surcharge will be communicated to the Client in writing and confirmed in writing by the Client.

### 4.3 Late delivery / defective advertising media

The consequences of late delivery or defective advertising media shall be borne in full by the Client.

In the event of improper delivery, in particular late delivery, or in the event of subsequent changes, no guarantee shall be assumed for compliance with the agreed publication date or the fulfilment of the agreed service.

SMG's full claim to remuneration shall remain valid even if the publication of the advertising medium is delayed or cannot take place.

#### 4.4 Redirect tags

Insofar as SMG has permitted the Client to integrate an external AdServer for delivering the advertising media, the Client shall be obligated to transmit the redirect tags (link URL, advertising medium query) in the agreed form within the delivery period specified in Section 4.1 above or the period agreed upon in the advertising contract.

In cases where an external AdServer is used, the Client warrants its full and proper functionality, as well as the functionality of the redirect tags, so as to ensure the proper execution of the advertising contracts.

#### 4.5 Responsibility for Quality and Liability

The Client and/or the agency shall be solely responsible for the technical quality and content-related design of the advertising media delivered. The content design must comply with the relevant regulations and the Client is responsible for and warrants to SMG that the advertising forms and content neither directly nor indirectly (i.e. in particular via a link to further content or platforms) infringe the rights of third parties, in particular copyrights, rights to names, personality rights or trademark rights, nor do they infringe any other intellectual property rights or rights under competition law (UCA, PDO [PBV]) or other provisions (such as the law governing lotteries, casinos, criminal law, the law governing therapeutic products, alcohol, food law etc.) or principles (such as the principles of the Competition Commission) of Switzerland. The Client shall be responsible for obtaining all intellectual property rights for legal distribution of the advertising media such that the advertising media do not infringe any third-party rights. The Client shall bear the risk and costs for the transmission of the advertising media to SMG.

If SMG or an employee of SMG is held liable under criminal, civil or administrative law due to the illegality of information provided by the advertiser or the agency or due to a lack of third party consent, the Client shall indemnify SMG and other affected persons against all claims and hold them fully harmless and free of any claims or actions.

#### 4.6 Rejection

SMG is not obligated to inspect the advertising media delivered by the Client.

SMG and the advertising vehicles used reserve the right, even with respect to legally binding advertising contracts, to reject advertising media delivered by the Client on legal, moral or similar grounds (see also Section 4.5 above in this regard).

SMG shall be entitled, in particular, to reject advertising media on the basis of their origin, content, form or technical quality.

SMG shall immediately inform the Client of any such rejection. In this case, the Client shall be obligated to provide a new or amended advertising medium without delay. Should such replacement advertising media be provided too late to meet the agreed publication date, SMG's right to full compensation shall remain intact as if the publication had occurred on the agreed date.

## 5 Publication

### 5.1 Principle

The advertising vehicle agreed in the advertising contract shall publish the advertisement as agreed. In principle, the parties shall be deemed to have agreed the time and place of publication (placement on site / price group and date), the latter subject to the following provisions of these Advertising Terms and Conditions.

### 5.2 Placement, use of targetings / user segments

Booked forms of advertising shall be placed by SMG according to the specific criteria agreed upon in the individual case (in terms of the rate group and/or performance group and/or time and/or location). The advertising spaces booked by the Client are not transferable to third parties.

Except as otherwise agreed in the individual case, the Client shall not be entitled to have the online advertising placed in a particular location on the respective website or to particular access times for the respective website being met.

SMG may, without consulting the Client, modify/adjust targeting and user segments during the campaign and carry out technical optimisation measures in order to ensure that the performance values agreed with the Client are achieved.

### 5.3 Rebooking by the Client

If the Client is entitled to rebook bindingly accepted advertising orders within the advertising vehicle:

- If the request for rebooking is notified to SMG in writing or electronically at least 3 working days before the agreed publication date.
- The agreed monetary booking volume is maintained.
- The distribution of the rebooked volume is not significantly delayed.
- SMG has sufficient spare capacity with regard to the desired new publication dates and locations.

### 5.4 Non-competition and expansion of offerings

Unless otherwise agreed in writing, a non-compete clause is not agreed or warranted by SMG for any particular advertising vehicle or for individual campaigns or publications.

SMG neither rules out nor warrants that, apart from the offers and offering structures published from time to time by SMG, no other advertising spaces and/or times will be offered or filled.

### 5.5 Publication period / time of delivery

If the timely publication of the advertisement cannot be complied with for reasons relating to the design of the website (or mobile site), due to *force majeure* (including technical malfunctions) or for circumstances beyond SMG's control, then SMG shall relocate the publication of the

advertisement to another space, where possible of equivalent quality, within the designated advertising vehicle.

In the event of an *insignificant* deferral/relocation of publication (within the advertising vehicle), for example for reasons relating to the design of the website (e.g. mobile site, game or another advertising vehicle) or for technical reasons, the agreed rate/price shall remain in effect.

In the event of *significant* deferral/repositioning, the Client shall be notified by SMG immediately.

Such significant deferral/repositioning would include publication outside the agreed date or time period or publication in another advertising vehicle.

If the Client does not object immediately and in writing to the deferral of the advertisement or its integration into another environment (in particular another site or portion thereof), the Client shall be deemed to have given its approval thereto. In the event that the advertising can neither be moved to an earlier or to a later date or if the Client objects to the proposed earlier date, later date or to integration into another environment, the Client shall be entitled to a refund of the base price (i.e. price of publication, excluding production costs and other costs).

## 6 Further Provisions

### 6.1 Discounts

SMG may grant discounts to the Client. These shall be determined on a per contract basis. Discounts may not be adjusted retroactively during the term of the contract or after completion thereof.

### 6.2 Calculation basis for billing

The analysis of SMG's AdManagement tool (Primary AdServer, Secondary AdServer, Supply Side Platform SSP) shall serve as the relevant calculation basis for the correct execution of campaigns and generating invoicing therefor.

### 6.3 Invoicing

The actual invoice amount shall be based on the publication volumes quantified by SMG in accordance with Section 6.2 above (Primary AdServer, Secondary AdServer, SSP), which shall be disclosed upon request by the Client.

### 6.4 Payment

Unless otherwise agreed, all invoices shall be payable without deductions no later than 30 calendar days after invoicing.

If an advance payment has been agreed, publication will be launched on the agreed date upon receipt of payment.

## 6.5 Data usage and data protection

The Client agrees that through the use of cookies in the advertising media anonymised end-user data regarding user behaviour (including tracking data) may be stored by SMG.

SMG may also use the data collected via such cookies to deliver usage-based advertising, advise its clients, carry out self-promotion and conduct market research for its own purposes.

The Client may not in any way collect personal data in the inventory and is not allowed to place any identifiers (including cookies) on the advertising media for purposes of collecting personal data unless otherwise explicitly agreed with SMG.

The Client acknowledges that SMG uses automation to compile, store and process the data provided by the Client (name, address, e-mail, credit card data, bank transfer data) for purposes of contract performance and support for the Client, as well as for sending advertisements on other services of SMG.

Further information can be found in the privacy policy at <https://swissmarketplace.group/privacy/>.

The Client agrees to be sent electronic mail for the information purposes set out above and in the Privacy Policy. The Client may revoke this consent at any time by sending an e-mail to [advertising@swissmarketplace.group](mailto:advertising@swissmarketplace.group).

## 6.6 Confidentiality

The parties undertake to keep confidential the information received from the other party as well as other information requiring confidentiality vis-à-vis third parties. This shall also include discounts and similar price reductions granted to the Client as well as other terms and conditions and media volumes ("Confidential Information").

The Confidential Information, as well as other business and trade secrets of which a party becomes aware in the course of the collaboration, shall continue to be treated as confidential by both parties even after the termination of the contractual relationship. Each of the parties shall use Confidential Information of the other party for the sole purpose of performing the advertising contracts.

The disclosure of Confidential Information to advertisers is permitted, provided that the advertisers give SMG a prior written undertaking:

1. To disclose the Confidential Information (including but not limited to terms and media volumes) to third parties (including but not limited to consultants and media auditors) only under the condition that the Confidential Information is not entered into databases and not stored and/or used in any other way by the third parties for their own purposes or for other or third-party purposes.
2. To refrain from otherwise forwarding the confidential information to third parties.
3. Further, Confidential Information may only be disclosed to third parties (in particular consultants and media auditors) if they, in turn, commit in advance and in writing not to disclose the Confidential Information (in particular terms and conditions and media volumes), not to enter this Confidential Information in databases or store and/or use it for their own, other or third-party purposes.

In exceptional cases, Confidential Information may be passed on to a Media Auditor or other third parties for the purpose of creating so-called Benchmark T&Cs:

- If the Media Auditor or other third parties have entered into the voluntary undertaking which may be downloaded at <https://swa-asa.ch> to create methodically correct and transparent data pool-based Benchmark T&Cs.
- has undertaken directly to SMG or the Association of Swiss Advertisers to comply with this voluntary undertaking.

Upon SMG's request, the Client shall present the signed undertakings. If the Client is unable to present an undertaking or if the undertaking is clearly not complied with by the third party, SMG shall be entitled to claim all damages incurred in this regard.

## **6.7 Engagement of third parties; Assignment to third parties**

SMG shall have the right to engage third parties to perform its contractual obligations. In addition, SMG has the right to assign the contractual relationship in its entirety to another majority-owned subsidiary of SMG Swiss Marketplace Group. This shall not require the Client's express consent. The Client shall be informed of any such assignment in good time.

## **6.8 Amendment of the Advertising Terms and Conditions**

SMG reserves the right to amend these Advertising Terms and Conditions at any time. Notice of such amendments shall be given to the Client in an appropriate manner.

While a contractual relationship or campaign is ongoing, the Client may give written notice of early termination of the affected contractual relationship within two (2) weeks following the date of notification of the amendment.

All services provided up to the date of termination of the contractual relationship must be paid for in full.

Ongoing campaigns will be stopped as of the date the contractual relationship ends. If the Client does not provide written notice of termination or continues to use the contractual services, the Client shall be deemed to have fully accepted the amendments to the Advertising Terms and Conditions.