

Terms and Conditions of freeXmedia GmbH for the marketing of advertising space

1. Scope

- 1.1 The following terms and conditions apply to the provision of advertising services to or by freeXmedia GmbH, Deelbögenkamp 4c, 22297 Hamburg - AG Hamburg HRB 106070 - (hereinafter "freeXmedia"), companies connected with it and cooperation partners in accordance with §§ 15 ff of the German Companies Act and published on-line media (hereinafter referred to as "advertising media").
- 1.2 Different terms and conditions of the client will not form part of the contract, even if they have been submitted to freeXmedia and are known to it.
- 1.3 These terms and conditions will also be applicable to future business relationships with the client, without their reinclusion being required.

2. Definitions

- 2.1 "Clients" as entrepreneurs within the meaning of the terms and conditions are natural or legal persons or legal partnerships with which the company enters into commercial relations, in the exercise of a commercial or independent professional activity, thus also advertising agencies.
- 2.2 "Advertising order" within the meaning of these terms and conditions means the contract for the placing and publication of an advertisement or several advertisements in the media, information and communication services marketed by freeXmedia, in particular, on-site and mobile online services, for purposes of dissemination.
- 2.3 "Advertisements" within the meaning of these terms and conditions include:
 - Images and/or text
 - Moving images and/or sounds (e.g. banners)
 - Sensitive areas which through a mouse click establish the connection to the online offerings of the client (eg Link)

3. Conclusion of a contract

- 3.1 The contract for the implementation of the advertising order issued by the client or an intermediary agency is concluded by freeXmedia on its own behalf and on its own account.
- 3.2 FreeXmedia offers are subject to change. The contract is concluded exclusively by written confirmation of the advertising order by freeXmedia, through publication of the advertisement or the provision of any other advertising services. The client accepts the absence of notification of acceptance of the order by freeXmedia.
- 3.3 Only the prices indicated in the price list forming part of the contract at the time of the commission and the provisions on discharging orders of the respective advertising provider are applicable. All prices of the price list are to be understood as net prices plus VAT.
- 3.4 freeXmedia has the right also to conclude contracts with competitors of the client for the placement of advertising.

4. Orders from advertising agencies and advertisers

- 4.1 Orders from advertising agencies will be accepted only for named advertisers. The advertising for the products or services of another person than the specified client requires in each case the prior consent of freeXmedia.
- 4.2 On request, the agency is to give evidence of its instruction to freeXmedia.

- 4.3 The agency undertakes to make the client also subject to the observance of the rules and obligations relating to it with regard to freeXmedia. This applies in particular to 6.6 to 6.8 of these terms and conditions.

5. Rejection and exemption

- 5.1 freeXmedia is not required to inspect or examine advertisements before the acceptance of the order or after provision. freeXmedia reserves the right of rejecting advertisements provided by the client after the conclusion of the contract in accordance with the following provisions. freeXmedia will notify the rejection to the client immediately.
- 5.2 freeXmedia can reject advertisements and advertising orders for legal, moral or similar reasons, especially if the advertisement does not meet the requirements of these terms and conditions or other agreed conditions and/or publication is unreasonable for freeXmedia. A rejection of the advertising orders or advertisements may take place if they advertise companies and/or products which are in competition with freeXmedia affiliated companies and/or partners of it in accordance with §§ 15 ff of the German Companies Act and/or may not be published due to the lack of a technical specification.
- 5.3 In the event of rejection, the client is obliged immediately to provide a new or modified advertisement to which the grounds for refusal do not apply. If this replacement advertisement is not provided in good time for compliance with the initial release period or not at all, freeXmedia will try to sell the slot released elsewhere. Should this not succeed or if freeXmedia does not receive the same remuneration for the sale of the slot, the client remains liable for the payment of the remuneration or the missing part of the remuneration, unless the client proves that it is not responsible for the grounds leading to rejection.
- 5.4 In the event that the client is demonstrably not responsible for the grounds leading to rejection, it may, in relation to the rejected advertisement, withdraw from the order and demand the repayment of amounts already paid, to the extent that they have not already been incurred through publications already made. Further claims of the client are excluded.

6. Provision and content of advertisements

- 6.1 The client shall ensure that all necessary information, data, files and other material are delivered promptly, completely, accurately and in accordance with the contractual arrangements and are suitable for the agreed purposes, in particular the screen display in the appropriate environment and of the agreed the nature and size. Advertisements must comply with the current specifications for the respective format indicated at freeXmedia.de. The respective target addresses of links (URL) must also be indicated.
- 6.2 The material must be available to freeXmedia at least two working days prior to the placement. Rich Media Ads must be available to freeXmedia no later than 5 working days before the placement. The delivery can be sent by e-mail attachment to the address banner@freeXmedia.de, released on an HTML page or sent by mail to freeXmedia.de GmbH, Deelbögenkamp 4c, 22297 Hamburg.
- 6.3 The client must deliver digital documents free of harmful code (viruses, worms, trojans, etc.) or other sources of damage. In the event that sources of damage are present in a file transmitted, freeXmedia will not make any use of this file and, so far as is necessary to avoid or restrict the damage, delete it, without the client, in this context, being entitled to claim for damages. freeXmedia reserves the right to charge the client for damages if through such sources at the responsibility of the client it has suffered damage.
- 6.4 If the advertisements are not clearly identifiable as advertisements, freeXmedia can identify them as such, especially with the word "advertisement" and/or separate them spatially from editorial content to illustrate their advertising character.

- 6.5 The client bears sole responsibility for the legality of the advertisements supplied by him and for the offers linked to them and/or advertised. It gives an assurance with the order that the promotional and advertising resources provided by it and the offers promoted by such advertisements are not against the law of the Federal Republic of Germany (especially criminal law, laws and other provisions for the protection of youth (e.g. Youth Protection Act, Youth Media Protection Treaty), statutory provisions on consumer protection (eg, Telecommunications Act, Telemedia Act) and other statutory provisions (e.g. Copyright Act, Act against Unfair Competition (UWG), etc.) as well as contrary to morality. In addition, advertising for extreme political, religious or ideological groups or for drugs and other illegal stimulants as well as advertising infringing the personal rights or other rights of third parties is prohibited.
- 6.6 In particular, the client is required, in its online offering to which the advertising provided by freeXmedia in the context of the marketing order relates, not to use any software, which without the consent of the user establishes a new dial-up network connection over a phone number from the 0900 list or other phone number list and/or makes permanent changes in the remote data transfer systems of the user (so-called auto-dialers).
- 6.7 If the client advertises services to end users from the number range 0900, 0137, 0180, 012, or information services through freeXmedia, it must in the online offering, to which the advertising provided by freeXmedia under the advertising order relates, provide the necessary information in accordance with § 66a of the Telecommunications Act and comply with the provisions of § 66b ff of the Telecommunications Act. In particular, in the advertisement the time-dependent price per minute or irrespective of time for each use of the service including VAT and other price components must be specified. In the indication of the price, the price must be easily legible, clearly visible and presented in close connection with the telephone number. If prices from different mobile networks are different, the fixed price must be indicated with reference to the possibility of different rates for calls from mobile networks. The conclusion of any long-term debt commitment must be made clear. If it uses a dialler within the meaning of § 66f of the Telecommunications Act under its online offering to which the advertising provided by freeXmedia in the context of the marketing agreement relates it must meet with the requirements of § 66f of the Telecommunications Act and those of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (BNetzA) and in particular the dialler must be registered with the BNetzA and meet the minimum requirements of the BNetzA. Charged diallers, on which, in addition to the telecommunications services, content is also billed, may only be offered on numbers from the range 0900-9.
- 6.8 If the client infringes the above provisions on the use of auto-diallers in accordance with paragraph 6.7 and/or the advertising of value added services in accordance with paragraph 6.7, it is required to pay freeXmedia for each case (excluding the objection of continuing connection) a penalty of 5,100 EURO.

7. Use Rights

- 7.1 The client grants to freeXmedia all rights of use, performance and other rights necessary for the use of advertising in online and offline media of all kinds, in particular the right to reproduce, distribute, transfer, transmit, store in and retrieve from a database, to the extent necessary for the implementation of the order in terms of timing and content. freeXmedia also receives the processing right; however, it is limited to technically and editorially necessary adjustments. The above rights will in all cases be assigned without limitation of place and relate to the use of all known technical methods and all known forms of online and offline media. This includes the advertising right and the right to free use of the advertising through print, dispatch and/or other reproduction of short elements for the purpose of self-promotion, for example in the context of a reference archive, or for presentations.
- 7.2 The client gives an undertaking with the issue of the order that it has all rights to the content that are necessary to grant freeXmedia all rights which will be granted under this contract.

7.3 The client indemnifies freeXmedia under the advertising order from any third party claims which could arise, by reason of the violation of statutory provisions or provisions of this contract, in particular with regard to the published advertising. In addition, the client indemnifies freeXmedia against all reasonable legal defence costs. . The client is required to support freeXmedia in good faith with the information and documents necessary for the legal defence against a third party. The assertion of other claims is reserved.

8. Rights and obligations of freeXmedia

8.1 freeXmedia will publish legitimate advertisements which meet its standards in the relevant advertising medium as contractually agreed. freeXmedia is entitled to edit the advertising media, if necessary.

8.2 freeXmedia has a right even after publication of deletion or blocking of incorrect and, in particular, of illegal content. The client is required, within its reasonable and necessary technical capabilities, to block access to such content as freeXmedia rejects as defective or unlawful. This is especially the case when such blocking is not possible for freeXmedia itself. If the client demonstrably delivers lawful content free of defects as a replacement or if it proves that no further defective or unlawful content is linked, freeXmedia will publish the replacement content in the advertising media or revoke the block.

8.3 freeXmedia will maintain the advertisement during the reserved period and/or until the achievement of the reserved media performance in the advertising space. In the event of insufficient delivery, freeXmedia - where possible and appropriate - will make a subsequent delivery. If a limit has been agreed ("maximum PIs"), on reaching the limit freeXmedia will terminate the further delivery of the advertisement, regardless of whether the ceiling has been reached before the expiry of an agreed maturity of a campaign. An excess of the agreed PIs by freeXmedia, even if this is significant and takes place over a relatively long period, does not require freeXmedia, even in the course of a campaign, to increase the number of PIs to be delivered as against those contractually agreed.

8.4 Advertisements will be placed in the agreed position. If it is not determined, the placement will be carried out by freeXmedia at its sole discretion under the greatest possible consideration of the presumed interests of the client. The client will not have for later orders, issued after some interruption, a right to be given the same position.

8.5 freeXmedia is entitled to partial performance.

8.6 freeXmedia is not responsible for the creation of graphics and/or advertising copy. If freeXmedia performs these services on the basis of an individual agreement, the costs will be compensated separately on the basis of the applicable rates of freeXmedia.

9. Rights and obligations when using an external AdServer

9.1 freeXmedia allows the client, for the delivery of advertisements on online media marketed by freeXmedia or an external party, to use a so-called Third Party AdServer. The use of an external AdServer always requires the prior approval of freeXmedia. The approval may also be implied by the inclusion of advertising in the online service. In this case, the present rules on the use of an external AdServer will be applicable.

9.2 The client is required to transmit Redirect tags (URL link, advertisement call) no later than 5 working days before the insertion electronically to freeXmedia. The client guarantees the functionality of the redirects, as well as the advertisement supplied through its AdServer from the date of submission to freeXmedia.

9.3 Moreover, the client guarantees the full and proper functionality of its AdServer, so that a proper execution of campaigns is ensured. freeXmedia has the right to automatically stop the involvement of the external AdServer if the advertisement supplied does not match the technical specifications and/or the delivery is not carried out immediately.

- 9.4 In the case of incorrect or late delivery of advertisements the assertion of claims for failure of successful placement by the client is excluded.
- 9.5 The client gives an undertaking not to apply any restrictive targeting, i.e. that each request (advertisement call), which is sent by the freeXmedia-AdServer to the AdServer of the client, must be answered with an advertisement of the corresponding campaign. The targeting settings will be controlled exclusively through the AdServer of freeXmedia.
- 9.6 The Client warrants that the submitted designs and text comply with the applicable statutory provisions of the Federal Republic of Germany and in particular are consistent with and not contrary to criminal laws to protect minors and the terms and conditions of freeXmedia.
- 9.7 In addition, the client will only use advertisements/technologies which comply with the standards set out in the general conditions and the media data of freeXmedia. In particular, the Client undertakes not to use advertising media prompting the user to download any missing browser extensions (plug-ins).
- 9.8 RichMedia formats can be used only if the client guarantees the possibility of click-counting. It is to give freeXmedia the possibility to do this, through which freeXmedia can transmit a publisher-click on the URL AdServer of the client. The client must ensure the use of an URL with a length of up to 600 characters. It must give freeXmedia no later than two weeks before the first integration of its used AdServer for the purpose of the export of RichMedia formats the right to check the proper functioning of the click-counting.
- 9.9 The client is required, immediately after the start of the campaign and during an ongoing campaign, to check whether the PIs or clicks counted by the client tally with the figures determined by freeXmedia. If a discrepancy occurs, it must, within three business days, complain about it to freeXmedia. The complaint must be made exclusively by e-mail to the designated e-mail address werbung@freeXmedia.de stating the booking number, the period and extent of the deviation. In the event that there is no objection and a discrepancy between the media performance measured by the client and by freeXmedia the figures determined by freeXmedia will be authoritative. This applies even if the client uses technologies that require more than one request up to the full display of the advertisement.
- 9.10 The variations must be reported in writing, by an original adserver protocol, and submitted to freeXmedia or a third party selected by freeXmedia for verification purposes.

10. Charges

- 10.1 Unless agreed otherwise between the parties, the client will pay for online advertising the number of actual visits to the pages of the advertisement ("ad impressions", "page impressions", "PIs") multiplied by the agreed unit price. The number will be determined through server statistics and analysis programs. If a limit has been agreed (maximum PIs) the charge is limited to the contractually agreed maximum limit.
- 10.2 freeXmedia produces monthly statistics with the analysis of ad impressions. These statistics are used as the basis for monthly billings and binding for the fees payable, unless the client demonstrates the inaccuracy of the values of the statistics. The client may, at its own cost within 14 days after invoicing, have a review of the original server extracts of each concluded period carried out by a chartered accountant or sworn accountants. If an over payment is found, freeXmedia is required to reimburse the excess fees paid to the extent that they have remained with freeXmedia.
- 10.3 Discounts are based on the current price list. Advertising agencies and other intermediaries are required to comply in their offers, contracts and accounts with their customers with the price lists of freeXmedia. All discounts not granted in the price lists require written confirmation from the board of freeXmedia.
- 10.4 Invoices are issued on a monthly basis after evaluation. The fees are due eight days from the invoice date without deduction. The charging of the invoice amounts is done by freeXmedia or free-

eXmedia's affiliates. Discounts will not be granted automatically but require the written permission of the board of freeXmedia.

- 10.5 In cases of force majeure freeXmedia reserves the right to the full fee if the advertisement to be published is published in a reasonable time after the removal of the interruption.
- 10.6 freeXmedia is entitled to adjust the agreed monthly charges on 01 of each following month. freeXmedia shall notify the client 14 days before the change date. The client is in this case entitled to object to the increase until a week before the increase date in writing. If the client does not exercise its right of objection, the new charges will apply from the increase date. If the client objects to the increase, freeXmedia is entitled to cancel the contractual relationship with effect from the date of the change event.
- 10.7 Notwithstanding the above scheme, new customers are required to make payment if the minimum order volume amounts to at least € 5,000. Invoices are issued in this case on the total remuneration payable in advance; a discount is not granted automatically, but requires the written permission of the board of freeXmedia. The advertisement will only be published if freeXmedia has received the entire amount.

11. Late payment

- 11.1 In the event arrears interest on arrears is owed by the client to freeXmedia at a rate of 8% above the base rate of the European Central Bank.
- 11.2 In the event of a default on payment freeXmedia will be entitled to suspend the further implementation of the current contract until payment occurs.
- 11.3 freeXmedia may refuse to perform its services if, after the conclusion of the contract, it is apparent that its claims to the remuneration are threatened due to lack of capacity of the client, unless it provides a return of performance or security is offered.
- 11.4 The client may only offset against claims which are recognized by freeXmedia or which are legally valid.

12. Warranty

- 12.1 freeXmedia guarantees the reproduction of the advertisement in the media in normal playback quality.
- 12.2 With insufficient reproduction quality of the advertisement, the Client is entitled to rectification or the insertion a flawless replacement advertisement but only to the extent to which the purpose of the advertisement was impaired. In case of failure or unreasonableness of the replacement advertisement, the Client is entitled to a reduction of the remuneration (reduction), compensation of the direct damage or withdrawal. In the event of minor defects, withdrawal is not possible.
- 12.3 If any defect in the quality of playback or defects attributable to freeXmedia in the quality of an advertisement are not evident to freeXmedia, the client will have no claims from any correspondingly defective publication. The same applies to errors in repeated advertising if the client does not draw attention to the error of the advertisement before the next display. Obvious deficiencies must be reported by the client within a period of 3 working days after the first publication, and thereafter the assertion of warranty claims is excluded. In the event of late claims freeXmedia is in particular not liable for the delay incurred or increased damage. The Client bears the burden of proof for all claims, especially for the defect itself, the date of establishment of the defect and the timeliness of the objection.
- 12.4 If the implementation of an advertising order is impossible for editorial or technical reasons, due to force majeure, strike, statutory provisions or other reasons, the implementation of the advertising order will, if possible, be either brought forward or deferred. If this is not a merely insignificant shift, the client must be informed. The information will be provided before the change takes place, if this is reasonably possible in time.

- 12.5 Under the same conditions, the client will be informed if an advertisement is placed in some other than the agreed position.
- 12.6 If the client does not object to the postponement of the implementation of the advertising order, or its integration in another environment in writing within a period of five working days, the client will be deemed to have granted consent. If the advertising broadcast cannot be either brought forward or deferred, or in the event that the client objects to the proposed advance, deferral or inclusion in another environment, the client shall be entitled to repayment of fees paid beyond the services already provided. Further claims of the client are excluded.

13. Liability

- 13.1 freeXmedia will be liable for any damages of the user, whether from breach of contract or tort, only in accordance with the following paragraphs.
- 13.2 freeXmedia will be liable for intentional or grossly negligently caused damage, claims under the Product Liability Act and injury to life, limb or health, in accordance with the statutory provisions.
- 13.3 For grossly negligent damage, the liability of freeXmedia will be for the compensation of the typically foreseeable damage if the damage is not caused by freeXmedia, its officers or legal representatives.
- 13.4 For damage resulting from simple negligence by freeXmedia or its agents freeXmedia will be liable only if a fundamental contractual obligation (cardinal obligation) has been violated. In these cases the liability is limited to the typical contractual foreseeable damage.
- 13.5 If freeXmedia provides telecommunications services, the liability for property damages will be restricted to a maximum of € 12,500.00 per user, up to a maximum total amount of € 10,000,000.00 for all victims per incident. If the claims of all victims from a damage event exceed the limit, the claims of the individual victims will be reduced in the ratio of the total damage to the ceiling. These restrictions do not apply if the breach is based on intent.
- 13.6 In all other respects, the liability of freeXmedia is excluded.
- 13.7 As far as the liability of freeXmedia is excluded or limited, this also applies to the liability of legal representatives or agents of freeXmedia.

14. Privacy Policy

- 14.1 Both parties are themselves responsible for compliance with the data protection regulations.
- 14.2 The Client undertakes to use all personal data which it receives under this contract from freeXmedia or users solely for the purposes of this agreement and immediately after the termination of the contract in compliance with the statutory provisions to delete it on request and to provide proof of this to freeXmedia.
- 14.3 Personal data which the client receives in connection with the execution of this contract, without its being divulged by the user, belong exclusively to freeXmedia. The data may not be further used or exploited by the client, and especially not sold. The same is true with respect to personal data which has been obtained without the statutory notice and information requirements being met.

15. Duration and Cancellation

- 15.1 The contract ends with the end of the reserved advertising campaign without any notice being required.
- 15.2 The right to extraordinary termination for good reason, after prior warning, remains unaffected. The termination must be in writing.
- 15.3 A cancellation of orders is possible. It must be in writing. With a cancellation at least 2 weeks before the start of the placement there will be no cost to the client. Later cancellations will be charged up to the start of the placement with a lump sum compensation of 30% of the net contract value. From the start of the placement the rate will increase to 100% of the net order value, unless

freeXmedia can place the slot elsewhere at short notice. In that case the compensation rate will be based on the difference between the agreed and actual compensation earned, but at least 30% of the net order value. The client reserves the right to demonstrate lower than the claimed damage. In addition, the contract value settled up to the time of cancellation date with the adjusted discount rate will be charged.

16. Final Provisions

- 16.1 freeXmedia is entitled to mention the client using its name and its logo as a reference client and campaigns conducted for the client as reference campaigns, unless the client explicitly rejects this.
- 16.2 In addition to paragraph 16.1 the parties also undertake to keep all information received in the context of the cooperation and of a technical, financial or otherwise commercial nature confidential and not to pass it on to third parties. Furthermore, the parties are prohibited from providing information for other than those purposes set out in this contract. This obligation continues even after the termination of the contract.
- 16.3 **Press releases or other publications regarding the existence or the nature of the cooperation under this contract must be agreed before publication with freeXmedia and require the express written consent of freeXmedia.**
- 16.4 Amendments to these terms will be sent the client in writing or on <http://www.freeXmedia.de/abwicklung/agb/index.html>. They shall be deemed approved by the client, if not rejected within one month from publication or notification in writing.
- 16.5 A transfer of rights or obligations under this contract to a third party is only permitted after prior express consent of freeXmedia. The consent must not be unreasonably withheld. freeXmedia may assign its rights and obligations under this contract at any time to one of the freeXmedia GmbH affiliated companies under §§ 15 ff of the German Companies Act.
- 16.6 Should any provision of these Terms and Conditions of the contract with the client be invalid, the validity of the remaining provisions will not thereby be affected. The wholly or partially invalid provision will be replaced by one that is as close as possible to the economic purpose of the invalid provision and the intentions of the parties.
- 16.7 Additions to the contract, including ancillary agreements and amendments to these clauses, must be in writing.
- 16.8 The place of performance is Hamburg.
- 16.9 The legal venue, provided that the client is an entrepreneur, legal person of public law or special fund under public law, or has no general legal venue in Germany, will be Hamburg.
- 16.10 German law will be applicable. The application of the uniform international sales law (CISG agreement) is excluded.

As at: 04.08.2009

This document is only provided as an aid to translation. Only the German version of the terms is deemed to have been agreed. In the event of any discrepancies between the English and the German version, only the German version is valid. We reserve the right of mistakes or translation errors.
