

## General Terms and Conditions for Print and Online Advertising

Publisher: fett und kursiv – die agentur gmbh · Hockegasse19, 1180 Vienna

### PRINT

#### Placing of order

1. These General Terms and Conditions of Business, the respectively valid advertising price list and the order confirmation shall be authoritative for the order. Other terms and conditions are not accepted, and are also contradicted to the extent that they do not contradict these General Terms and Conditions. The following applies to consumers within the meaning of § 1 KSchG: If individual provisions in these General Terms and Conditions contradict mandatory statutory provisions applicable to consumers, these provisions shall be replaced by the statutory provisions; the validity of the remaining provisions shall remain unaffected.
2. Orders must be placed in writing. Verbal agreements that are not confirmed in writing shall not bind the publisher.
3. Ancillary agreements as part of the order must be in writing.

#### Order processing

4. Advertising orders shall be processed within one year.
5. The discounts specified in the advertisement price list shall only be granted for advertisements appearing within a calendar year. Should one or more issues not appear within the calendar year, the period shall be extended by the amount of time the issue is not published.
6. Placement requests and publication dates do not bind the publisher.
7. The exclusion of competitors is not guaranteed by the publisher. Exclusion can only be agreed in writing for two opposing pages.
8. Text advertisements and those which are not immediately recognisable as advertisements due to their design shall be marked by the publisher in accordance with § 26 MedienG.
9. In the case of advertisements placed by telephone or in the case of changes initiated by telephone, the publisher shall assume no liability for the correctness of the reproduction. The publisher reserves the right to demand written orders for advertisements. This also applies to advertisements transmitted electronically on data carriers or via data lines.
10. The publisher reserves the right to accept print documents in digital form only.
11. The client is responsible for ordering suitable printing material in good time. The publisher only guarantees the flawless reproduction of the advertisement in terms of printing technology if flawless printing documents are provided, for which the client is exclusively responsible. The publisher shall not be obliged to issue a warning in this context.
12. Printing errors which do not significantly impair the meaning of an advertisement shall not constitute grounds for claims for compensation against the publisher. Incorrectly printed control information shall not give rise to any claim on the part of the Client. The publisher declines any liability for possible damages caused by the non-appearance of an order on a certain day or by printing errors etc.. The publisher is only liable for gross negligence and intent. In any case, the liability is limited to the amount of the payment for the order in question. In the event of a warranty claim, the

- publisher shall have the right to exempt himself from the reduction or repayment of the fee by making up the advertisement or supplement without defects at a later publication date to be agreed with the client.
13. The Client shall be solely liable for typesetting errors and other defects in documents provided by the Client.
  14. If any defects in the print documents are not immediately recognisable, but only become apparent during the printing process, the client shall likewise have no claims in the event of an insufficient print.
  15. Proofs shall only be supplied upon express request. The client shall be responsible for the correctness of the returned proofs. If the client does not return the proof sent to him in good time by the advertising deadline or by another date specified by the publisher, approval for printing shall be deemed to have been granted. The Client shall bear the costs for significant changes to originally agreed designs and for the delivery of copies, films or graphic works to be produced by the Publisher.
  16. The obligation to retain print documents shall end three months after publication of the last advertisement.
  17. Complaints of any kind must be made in writing within eight days of publication of the advertisement, otherwise the guarantee is excluded.
  18. The client guarantees that the advertisement does not violate any legal provisions and does not infringe the rights of third parties. The client undertakes to indemnify and hold harmless the publisher and its employees with regard to all claims based on the advertisement published (including, for example, if they are asserted by competitors of the publisher as well as the insertion costs of court-ordered counter-statements) and to pay full compensation for any disadvantages incurred by them. The publisher and his employees are not obliged to examine the advertisement or a publication request made against it, but are entitled to make legally necessary adaptations to an insertion without prior consultation with the client.
  19. The publisher shall only be liable for damages caused by gross negligence or intent on the part of the publisher or one of its vicarious agents. There shall be no liability for consequential damages and lost profits, in particular due to a positive breach of contract. The publisher is not liable for damaged or lost data or files.
  20. Cases of force majeure (traffic and operational disruptions etc.) are not the responsibility of the publisher. The publisher retains the right to full payment if the advertisement to be published is published within a reasonable time after the disruption has been remedied.

#### Calculation and payment

21. The invoice is due immediately upon receipt without deduction. Discounts for early payments shall be granted according to the price list.
22. Complaints about invoices must be made in writing within two weeks of issue.
23. In important circumstances, the publisher is also entitled to make the publication of further advertisements dependent on the advance payment of the amount and on the settlement of outstanding invoice

amounts, even during the term of an advertisement contract, without this giving rise to any claims against the publisher on the part of the client.

24. In the event of default or deferral of payment, statutory default interest shall be charged. The publisher reserves the right to subsequently charge advertising fees that have not been collected, if the tax authorities demand such a fee. Costs arising from extrajudicial or judicial collection shall be borne by the debtor. The publisher has the right to postpone the execution of the order until payment has been made.
25. In the event of a change in advertising rates, the new conditions shall come into force immediately, even for current orders, unless expressly agreed otherwise.
26. Costs for lithographs or for the transmission of digital data via ISDN shall be paid by the client.
27. The possible waiver of the basic colour black in the layout of advertisements shall have no influence on the calculations. If artwork for multi-colour advertisements consists of more than three colour parts, the additional production costs for each additional colour image shall be charged separately.
28. Costs for the production of final artwork or other artwork for printing shall be paid by the client.
29. In the event of late delivery of the printing material (three weeks before the publication date), the additional costs incurred as a result shall be charged to the client.
30. Production costs incurred (lithos, photos, typesetting, etc.) shall be invoiced at cost price.

## **Cancellations**

31. Cancellations must always be made by registered letter, which must reach the publisher ten working days before the respective advertising deadline, in which case there is no payment obligation on the part of the client (cancellation fee). In the case of cancellations received after the aforementioned date, the full payment obligation shall apply to the extent of the order placed.

## **General**

32. Place of performance and place of jurisdiction shall be Vienna.
33. In the event of operational disruptions or interventions due to force majeure, the publisher shall be entitled to full payment for the published advertisements if the orders have been fulfilled with 75 % of the print run. Lesser services shall be paid for at the price per thousand in accordance with the calculation.
34. Declaration of consent to advertising information: The Client expressly consents to the storage and processing of the data disclosed by him as well as to the transmission of advertising material, also in the form of mass mailings (via e-mail, telephone, fax, SMS/MMS) by the Publisher and its subsidiaries about their products and promotions. This consent may be revoked at any time.
35. The contractual relationship and any legal disputes arising therefrom shall be governed exclusively by Austrian law, excluding the reference norms of the IPR and the UN Convention on Contracts for the International Sale of Goods.

## ONLINE

### I. Contract matter and conclusion of the contract

- (a) The following contractual terms and conditions and the current price list (Media Data) shall apply to all contracts concluded with ocean7, fett und kursiv - die agentur gmbh, Hockegasse 19/23, A-1180 Vienna (hereinafter referred to as ocean7) in business dealings for the provision of services.
- (b) The validity of the Principal's General Terms and Conditions is expressly excluded.
- (c) The services offered by ocean7 include in particular the publication and distribution of one or more advertising media of an advertiser or other advertisers in information and communication services, in particular on the Internet.
- (d) Advertising media within the meaning of these GTC are in particular: Images, three-dimensional animations, text, sound sequences and moving images (including banners), a sensitive area which, when clicked on by means of an online address specified by the Advertiser, establishes the connection to further data which are within the domain of the Advertiser (e.g. link).
- (e) Subject to individual agreements to the contrary, the contract shall be concluded by confirmation or acceptance of an offer in text form, by sending an order or by the online dissemination of the advertising. Verbal or telephone confirmations are not legally binding for ocean7. If advertising agencies or other intermediaries place advertising orders, the contract is concluded with the advertising agency, subject to other agreements in text form.
- (f) The advertising of goods or services by more than one advertiser or other intermediary on the basis of an advertising order is prohibited, subject to an express additional agreement in text form.

### II. Duties of ocean7

- (a) ocean7 shall reproduce the Advertising Media to the agreed extent in accordance with the respective customary technical standard. Advertising media that are not recognisable as such due to their design will be clearly identified as advertising/advertisements.
- (b) The Client is aware that it is not possible according to the state of the art to create a (software) programme that is completely free of errors. The functioning of the communication infrastructure is also partly beyond the responsibility of ocean7. A defect in the presentation of the advertising material is therefore not present in particular if - unsuitable software and/or hardware is used for the presentation (e.g. communication networks of other operators are disturbed, - there is a computer failure at internet providers or online services, - the contents on so-called proxy servers (intermediate storage) or name servers of commercial and non-commercial providers and online services are incomplete or - the ad server fails and the disturbance does not last longer than 24 hours (continuous or added) within 30 days after the start of the contractually agreed placement.
- (c) ocean7 is obliged to keep a copy of the advertising material for three months after the last placement.

### III. Cooperation obligations of the client

- (a) The Client shall provide ocean7 with all advertising media, information and data materials relevant to the order immediately after conclusion of the contract in complete, flawless and immediately usable form, unless expressly agreed otherwise. This shall be done at the latest three working days before the agreed start of placement. In the absence of timely delivery, ocean7 may refuse the placement.

- (b) For advertising placements with a response element, where user requests are to be forwarded to the client or a third party by e-mail, the client shall ensure that the client or the third party can actually receive the e-mails from ocean7, in particular that the delivery of e-mails is not impeded by spam filters.
- (c) If ocean7 undertakes to create advertising material for the Client or third parties, the granting of rights of use to the Client shall be limited to the use as advertising material on www.ocean7.at. The granting of further rights to the advertising material shall be limited to the use of the advertising material on www.ocean7.at. The granting of further rights to the client requires an express agreement in text form.
- (d) The client assures ocean7 that he has all the necessary rights to use, store, reproduce, modify, make publicly accessible, transmit and transfer the advertising material including its individual components. The client grants ocean7 the rights required for publication.
- (e) ocean7 is not responsible for the content provided by the client or a third party. In particular, ocean7 is not obliged to check the content or the linked pages for possible legal violations.
- (f) If the client becomes aware of a legal violation or misuse or if claims are asserted against him by third parties that are related to the advertising material, the client must notify ocean7 immediately and take appropriate countermeasures without delay.
- (g) Should third parties assert claims against ocean7 due to possible legal infringements resulting from the advertising material provided or the contents of the linked pages, the Client undertakes to indemnify ocean7 against any liability and to reimburse ocean7 for the costs it incurs due to the possible legal infringement, in particular the costs for the necessary legal defence. The Customer shall be obliged to support ocean7 to the best of its ability with information and documents in the legal defence against third parties. Further claims of ocean7 shall remain unaffected.

### IV. Order processing

- (a) If the Client fails to comply with its obligation to cooperate pursuant to section 3.1 within a reasonable period of time, ocean7 shall be entitled to set the Client a grace period of at least one week to comply with these obligations. After unsuccessful expiry of the grace period set, ocean7 shall be entitled to withdraw from the contract. In this case, the Client shall remain obliged to pay thirty (30) per cent of the total agreed remuneration.
- (b) The expenses incurred by ocean7 due to changes in the delivered advertising material or other data material requested by the Customer or required due to circumstances for which the Customer is responsible shall be remunerated separately.
- (c) ocean7 reserves the right to reject advertising material - including individual placements within the scope of an advertising order - on the grounds of content, origin or technical form in accordance with uniform, objectively justified principles if its content violates laws or official regulations or if its publication is unreasonable for ocean7, e.g. due to technical specifications or a violation of section 1 paragraph 6. In particular, ocean7 may discontinue the publication of an Advertising Medium if the Client subsequently changes the contents of the Advertising Medium itself or if the data referred to by a link is subsequently changed.
- (d) Subject to other contractual agreements, advertising media must be retrieved for publication within one year of the conclusion of the contract. If, within the framework of a contract, e.g. in the case of

advertising quotas, the right to call off several advertising media has been granted, the order must be processed within one year of the publication of the first advertising medium.

- (e) If a contract is not fulfilled due to circumstances for which ocean7 is not responsible, the client shall, without prejudice to other contractual obligations, in any case reimburse the difference between the discount granted and the lower discount appropriate to the actual acceptance.

#### **V. Warranty for defects**

- (a) In the event of insufficient reproduction quantity of the advertising material, the client shall initially be entitled to replacement advertising, but only to the extent that the purpose pursued with the use of the advertising material was actually impaired. If ocean7 fails to meet a reasonable deadline set by the client for this purpose or if the replacement advertising is impossible, the client shall be entitled to a reasonable reduction in price or to withdraw from the contract.
- (b) The client shall monitor the performance of the contracts and notify any defects without delay. If the client fails to give notice of defects, the advertising placement shall be deemed to have been approved, unless the defect was not recognisable during the monitoring of the initial placement of the advertising order.

#### **VI. Liability**

- (a) ocean7 shall be liable without limitation for claims for damages insofar as these are based on intent or gross negligence, including intent and gross negligence on the part of its representatives or vicarious agents.
- (b) ocean7 shall also be liable for slight negligence if an obligation is breached which is of particular importance for achieving the purpose of the contract (cardinal obligation). The liability for damages is limited to foreseeable damages, the occurrence of which must typically be expected. In total, liability is limited to the amount of the agreed remuneration. ocean7 shall not be liable for indirect damages, consequential damages and loss of profit.
- (c) This limitation of liability does not apply in case of fraudulent concealment of defects, in cases of culpable injury to life, body or health and for liability under the Product Liability Act.
- (d) ocean7 shall not be liable for the loss of data and/or programmes insofar as the damage is due to the fact that the customer has failed to carry out data backups on an external data carrier at least daily in accordance with the current state of the art and thereby to ensure that lost data can be restored with reasonable effort..

#### **VII. Price list, agency discount**

- (a) We reserve the right to change the tariffs. For contracts already concluded, however, price changes are only effective if they are announced by ocean7 at least one month before publication of the advertising material. In the event of a price increase the client has the a right of termination. The right of termination must be exercised within five working days after receipt of the notification of the price increase.
- (b) Discounts shall be determined in accordance with the respective valid price list.
- (c) Advertising agencies and other advertising intermediaries who prove (e.g. by submitting an extract from the register or a business registration) that one of their main activities is the mediation of advertising customers will receive an agency discount if the advertising order has come about exclusively due to the activity of the intermediary. Agency discounts granted by ocean7 may not be passed on to the clients, either in whole or in part, openly or covertly.
- (d) Advertising agencies and other advertising intermediaries are obliged not to deviate from the prices communicated by ocean7 in offers,

contracts and settlements with the Client without a special reason to be communicated in detail.

- (e) Discounts will not be granted unless otherwise agreed in writing between the parties.

#### **VIII. Invoice and default of payment**

- (a) If the client does not make an advance payment or if something different has been agreed in writing, the invoice shall be issued immediately after conclusion of the contract, but at the latest after publication of the placed advertisement.
- (b) The invoice shall be paid immediately upon receipt without deduction, unless a different payment deadline or advance payment has been agreed in individual cases.
- (c) In the event of late or deferred payment, interest and collection costs will be charged. In the event of late payment, ocean7 may defer further execution of the current order until payment has been made and demand advance payment for the remaining placement.
- (d) If fees are incurred for foreign payments, cheque payments or other payment methods, these are to be borne by the client.
- (e) If direct debit or credit card payment is agreed, the client shall bear the additional costs in the event of a chargeback, unless ocean7 is responsible for the chargeback.
- (f) In the event of justified doubts about the Client's ability to pay, ocean7 shall be entitled, even during the term of the contract, to make the publication of further advertising material dependent on the advance payment of the amount and on the settlement of outstanding invoice amounts, irrespective of any originally agreed payment deadline.

#### **IX. Duration**

- (a) The contract comes into force with its signature. In the case of online orders, upon acceptance of the General Terms and Conditions for Online Advertising. The contract is concluded for 12 months (period of use). It shall be extended by 1 year at a time if it is not terminated in writing by registered letter at least 3 months (postmark) before the expiry of the initially planned or tacitly extended contract period. The form of registered letter is binding for the effectiveness of the termination.

#### **X. Changes to the General Terms and Conditions**

- (a) ocean7 is entitled to amend or supplement these GTC at any time with a reasonable notice period. If the customer does not object to the amended provisions within 4 weeks after receipt of the electronic notification of amendments and supplements, they shall become effective in accordance with the announcement. In the event of an objection within the time limit, the contract shall be continued under the previously applicable terms and conditions.

#### **XI. Final clauses**

- (a) Disputes between the contracting parties shall be governed exclusively by Austrian law, to the extent permitted by law, to the exclusion of private international law and the U.N. Convention on Contracts for the International Sale of Goods.
- (b) Amendments and supplements to contracts shall only be made by agreement concluded in text form.
- (c) The place of jurisdiction for disputes arising from or in connection with this contract shall be for both contracting parties at the registered office of ocean7, provided that the client is a merchant.
- (d) Should individual provisions of the contract be or become invalid, this shall not affect the validity of the contract as a whole.