

General Terms and Conditions of Business for Media Bookings with airberlin's Ambient Media (revised: 11.09.2012)

1. Applicability of the General Terms and Conditions of Business

- 1.1 These General Terms and Conditions of Business (hereinafter: Media GTCB) of Air Berlin PLC & Co. Luftverkehrs KG, Saatwinkler Damm 42-43, D-13627 Berlin (hereinafter: airberlin) only apply in relation to businesses within the meaning of article 14 BGB (German Civil Code) (hereinafter: customer).
- 1.2 The customer agrees to these Media GTCB being exclusively effective for all present and future contracts concluded with airberlin with regard to the insertion and placement of advertisements, even if the Media GTCB are not again expressly agreed. Unless otherwise agreed in writing, any terms and conditions stipulated by the customer that deviate from, conflict with or supplement the Media GTCB will not become an element of the contract. airberlin's Media GTCB also apply if airberlin carries out the performance without reservation despite being aware of the customer's divergent terms and conditions.

2. Conclusion of contract

- 2.1 Unless expressly marked as binding, offers made by airberlin are subject to change without notice. The contract between airberlin and the customer is formed when the customer places an order (order placement) with airberlin that corresponds to the offer and when airberlin accepts this order (order confirmation).
- 2.2 The transmission of information and documents, as well as the associated co-ordination and correspondence between the parties to the contract, serves solely to clarify preliminary queries (contract development) and is therefore not legally binding.

3. Submission / Safekeeping / Return of advertising materials

- 3.1 The customer's information, documents, data carriers and other materials required for the placement of any advertisement (hereinafter: advertising materials) are submitted to airberlin's marketing or press department and/or airberlin's service provider at the customer's sole responsibility, cost and risk.
- 3.2 airberlin is not required to undertake the permanent safekeeping or archiving of the advertising materials submitted by the customer. The customer is not entitled to invoke any regular practice by airberlin to this effect.
- 3.3 If the customer would like advertising materials that he submitted at the start of the contract or advertising media that have been left over at the end of the agreed advertising period to be returned to him, he must inform airberlin of this in writing (letter, fax, e-mail) at the time when the contract is concluded. Otherwise airberlin is entitled to dispose of or arrange the disposal of the advertising

materials and advertising media. Advertising materials and advertising media are returned at the customer's risk and expense.

4. Delivery dates for advertising materials

- 4.1 The customer is required to make the advertising materials available to airberlin without any cost to airberlin at the latest by the delivery date agreed in the individual contract (closing date). If the parties have not made any agreement in accordance with an individual contract to this effect, the customer is required to make the advertising materials available to airberlin at the latest by the date shown in the column headed *Closing date* for the relevant category of *Ambient Media* Presentation.
- 4.2 If the customer becomes aware that there will be delays in submitting the advertising materials, he is required to notify airberlin of this without delay and at the latest one (1) week prior to the agreed delivery date (closing date) in writing (letter, fax, e-mail) and to come to an arrangement with airberlin about whether the advertising materials can be delivered later, making it still possible for the agreed advertising date to be complied with. The final decision in this regard rests with airberlin.

5. Technical requirements relating to advertising materials

The customer is required to provide airberlin with the agreed advertising materials in perfect compliance with the technical requirements and specifications as agreed in the individual contract. Unless the parties have reached a different agreement on the basis of an individual contract, the customer is required to provide airberlin with the advertising materials in accordance with the technical requirements and specifications set out in the column headed *Format / Size* of the relevant section of *Ambient Media* Presentation. The advertising materials must also correspond to the current technical standards of the advertising industry at all times.

6. Identification as advertising

In the event that advertising materials, on account of their layout or design, are not immediately recognisable as advertising, airberlin is entitled, but not obliged, to identify these clearly, as it deems fit, by adding the word "Advertising" or "Advertisement".

7. No obligatory inspection for airberlin

airberlin is not required to carry out any obligatory inspection of the advertising materials provided by the customer. airberlin does not examine the advertising materials to check their technical suitability, their lawfulness or compliance with any other criteria. Even if the advertising materials contain evident defects, airberlin is not required to point these out to the customer. In the event that airberlin nevertheless points out evident or other defects to the customer, whether on a single occasion or on several occasions, such an action shall not give rise to any right on the part of the

customer to have such or other defects also pointed out in the future. Instead, the delivery of advertising materials that are in accordance with the contract, and that are in particular free from defects and legally permissible, is the sole responsibility of the customer at all times.

8. Loss / Damage to advertising materials

The customer is required to keep copies, back-ups or similar of all advertising materials available so that, in the event of the loss of or damage to the advertising materials sent to airberlin, a replacement can be delivered without delay. In the event that airberlin is responsible for the loss of or damage to the advertising materials on account of ordinary negligence, airberlin's liability is limited to reimbursement of the costs for delivery of the copy; in all other respects clause 25 (Liability) applies.

9. Release / Inspection copy

airberlin sends the customer an inspection copy of the advertisement for checking and release (approval) in good time prior to placement / publication of the advertisement. The inspection copy is generally sent out in digital format. In exceptional cases a hardcopy proof is also sent out if this has been separately agreed by the parties; this service is subject to a charge. The customer is required to check the inspection copy on receipt and to notify airberlin immediately of its release or of any corrections that might be required. If the customer fails to respond within three (3) working days of receiving the inspection copy, the release shall be deemed to have been issued. Once the customer has issued the release, no corrections and requests for changes brought by the customer will be accepted.

10. Delays / Impediments to placement of the advertisement

- 10.1 Delays or impediments to the agreed placement of the advertisements due to the customer's advertising materials not being delivered in good time, not complying with the technical requirements or having to be amended for any other reason that is largely or entirely due to the customer, shall be charged solely to the customer. In this case airberlin is entitled, but not obliged, to offer the customer, at its discretion, one or more substitute dates for catching up with the placement of the advertisement at the next most suitable time. If the customer rejects these substitute dates, airberlin is released from any further obligation to provide performance, irrespective of the reasons for the customer's rejection. This does not affect the customer's obligation to render payment. In the event that the delay or impediment affecting the agreed placement of an advertisement is due to the customer failing to meet his other subcontractual obligations in terms of consideration, diligence and fidelity, the above provision shall apply *mutatis mutandis*.

10.2 If the agreed placement of the advertisement cannot be effected on the agreed date on account of technical, organisational, operational or other circumstances for which airberlin is entirely or predominantly responsible, it will be brought forward or postponed in consultation with the customer. To this end, airberlin is required to offer the customer at least one (1) and a maximum of three (3) substitute dates for placement of the advertisement. The customer is entitled to reject the substitute dates for serious practical reasons. If airberlin, to the best of its judgement, considers that there are no serious practical reasons for such a rejection, airberlin shall be entitled to refuse to bring forward or postpone placement of the advertisement and is released from any further obligation of performance. In this case the customer does not have an obligation to render payment. Any payments already rendered to airberlin will be credited to the customer's account or refunded to the customer. To this extent the customer's assertion of any further claims, especially, but not limited to claims for compensation, is excluded; clause 25 (Liability) also applies.

11. Placement / Insertion of advertisement

11.1 Unless expressly agreed, the customer is not entitled to the specified placement or insertion of the advertisement, whether this is in a particular advertising space, in a particular block of advertisements, a particular group of advertising spots or a particular number, issue or similar.

11.2 Even in the event of an express agreement concerning the particular placement / insertion of an advertisement, airberlin reserves the right, for serious practical reasons, to relocate and reposition the advertisement at short notice and at its own reasonable discretion. airberlin undertakes to inform the customer of this as soon as possible. Any claims asserted by the customer in this respect are excluded.

12. Reservation of refusal by airberlin

12.1 In every individual case airberlin is entitled to refuse or cancel the customer's advertising in whole or in part if such advertising infringes any laws, administrative regulations or third-party rights. This includes especially, but not limited to, any advertising that infringes one or more guarantees provided by the customer in accordance with clause 21 below.

12.2 In the above-mentioned cases airberlin has the right to withdraw from the relevant contract or to terminate it without notice and for cause. The declaration must be effected in writing (letter, fax, e-mail). This does not affect the customer's obligation to render payment. In so far as the advertisement has already been implemented, airberlin is entitled to cancel it immediately and to remove it from airberlin's media at the customer's expense and as far as possible and reasonable. In so far as physical advertising materials are in circulation, airberlin is entitled, but not obliged, to collect, recall and destroy these at the customer's expense in so far

as possible and reasonable. In this respect airberlin is released from any further obligations of performance towards the customer. On no account does the customer have any particular right to the substitute placement of a different advertisement, whether on the same or on another date.

12.3 The above-mentioned provisions apply mutatis mutandis in the event that the advertisement, at airberlin's own discretion, is not in keeping with the image of the brand or corporate identity of airberlin, is an offence against common decency or could harm airberlin's reputation in some other way, though with the proviso that in such cases the customer's obligation with regard to payment of the fee and costs will not apply.

13. Copyright associations

In the event that the customer's advertisement contains music, images, texts or other legally protected elements that are subject to the rights of a copyright association, the customer bears sole responsibility for obtaining all rights of use and permits, and for any related fees, applications and settlements. The customer indemnifies airberlin from any claims brought by the relevant copyright association or the holders of rights represented by the copyright company at the first request to do so and to the full amount involved, including any required legal defence costs.

14. Advertisement cancellation

Media bookings (online, print and board TV) that have been agreed upon may be cancelled, but any such cancellation is subject to the provisions laid down below:

- No costs will be incurred if cancellation is made more than three (3) weeks before the delivery date (closing date) of the printing data agreed upon
- 50% of the gross order value will be due if cancellation is made within three (3) weeks of the delivery date (closing date) of the printing data agreed upon
- The total order value agreed upon will be due if cancellation is made on the day of the delivery date (closing date) of the printing data agreed upon

Separate cancellation policy applies to Samplings:

- No costs will be incurred if cancellation is made more than eight (8) weeks before the delivery date (closing date) of the booking period
- 50% of the gross order value will be due if cancellation is made within eight (8) weeks of the delivery date (closing date) of the booking period
- The total order value agreed upon will be due if cancellation is made on the day of the delivery date (closing date) of the booking period

If the parties have not agreed on a specific contractual delivery date (closing date) of the printing data, then the closing date specified in the corresponding column in the Ambient Media presentation automatically becomes the legally binding, valid delivery date (closing date) of the printing data. Whenever a cancellation occurs, the customer is required to reimburse airberlin for the costs that the airline can prove to have been incurred prior to receipt of cancellation. The saving in expenditure and alternative utilisation of the booked service will be taken into account with regard to any of the above-mentioned claims. Furthermore, the customer is free to prove that airberlin's claims amounted to less. All cancellations must be made in writing.

15. Prices / Fee

15.1 All prices are based on the offer submitted by airberlin. If the parties have not made any agreement in accordance with an individual contract to this effect, the customer is required to pay airberlin the fee as shown in the column headed "Price" for the relevant category of *Ambient Media* Presentation.

15.2 Unless otherwise expressly agreed, all prices are subject to the applicable statutory turnover tax.

16. Cash discounts / Discounts

No cash discounts are granted. Discounts are only granted on the basis of a separate agreement between the parties. In such a case the appropriate discount is taken into account when the invoice is issued. In the event that the customer cancels the order in whole or in part or that the contract is not carried out in whole or in part for reasons for which airberlin is not responsible, the discount is reduced by the appropriate amount. The final calculation of the discount for a calendar year is carried out at the start of the following calendar year in the form of an aggregate account in accordance with the contracts actually carried out and the related order values. airberlin is required to credit the customer with any credit balance arising from the aggregate account. The customer is required to transfer any additional payments to airberlin.

17. Payment arrangements

17.1 In the event of a customer's first advertising order (new customer), the full amount of the fee is due for immediate payment on submission of a regular invoice when the contract is concluded (payment in advance). If payment is not received at least (10) days prior to placement of the advertisement, airberlin shall be entitled to refuse performance for the time being. The customer is not entitled to counter this with any assertion of compensation or other claims.

17.2 For subsequent orders (ongoing business relationship) the agreed fee is either due within fourteen (14) days or on submission of a regular invoice. airberlin generally issues invoices once the advertisement has been placed.

17.3 If there are factual reasons for doubting the customer's ability to pay, airberlin will be entitled, even during the term of a contract, to make the placement of further advertisements conditional on the advance payment of the amount concerned and from the settlement of other unsettled claims, regardless of any originally agreed period allowed for payment.

17.4 Objections to invoices must be raised in writing (letter, fax, e-mail) within two (2) weeks of the receipt of such invoices. If the customer does not raise any objections within the above-mentioned period, the invoice issued by airberlin will be deemed to have been accepted by the customer. The decisive date for observance of the deadline is the date on which airberlin receives the objection.

17.5 Cheques and bills of exchange are not accepted as means of payment. If airberlin does accept such means of payment by way of an exception, it will only be considered as a conditional payment.

18. Delay of payment

18.1 If the customer is in default, airberlin is entitled to discontinue further placement of the relevant advertisement and to refuse any of the customer's claims for supplementary performance on account of the placement of other advertisements for the time being until the unsettled claim plus interest and costs have been paid. The customer is not entitled to counter this with any assertion of compensation or other claims. airberlin may, at its own discretion, demand advance payment for the subsequent placement of advertisements.

18.2 In each case of delay of payment, the customer is required to pay interest on arrears of eight (8) percentage points above the relevant base lending rate of the European Central Bank (ECB). Furthermore, in case of default, the customer is required to pay a flat collection fee of EUR 10.00 from the second (2nd) reminder onwards. This does not affect the assertion of further damage caused by default.

18.3 If the customer is in default for more than one (1) month, airberlin will be entitled to withdraw from the relevant contract or to terminate it without notice and for cause. This does not affect the assertion of any further claims.

19. Price adjustments

airberlin is entitled to adjust the applicable prices to current market conditions within reasonable intervals. airberlin will inform the customer of the price adjustment and the date of the price adjustment coming into force at least one (1) month in advance and

in writing (letter, fax, e-mail). If the customer does not oppose application of the amended prices in writing (letter, fax, e-mail) within ten (10) working days of receiving the notification from airberlin, the amended prices will be deemed to have been accepted. In the notification containing the amended prices, airberlin will draw the customer's attention specifically to the significance of the above-mentioned time limit and that silence denotes agreement. If the customers opposes the price adjustment within the time limit, airberlin is entitled to terminate the contract at the time when the amended prices are to take effect.

20. Special provisions for advertising agencies, intermediaries and similar

If a media agency, an intermediary, marketer or similar (hereinafter: "agency") is appointed as mediator between airberlin and the advertising company, the contract shall be concluded exclusively between airberlin and the agency. However, the contract will be subject to the agency providing airberlin with the name of the advertising company in writing. As customers of airberlin, agencies – depending on the agreement made – will receive a discount (agency discount) of a maximum ten to fifteen per cent (10 – 15 %) of the net order value (excluding turnover tax) after deduction of all other discounts.

21. Guarantees provided by the customers

The customer guarantees

- (1) that all advertising materials and data carriers provided in digital format are free from viruses, worms, trojans, crawlers, bots, spiders or similar harmful data and programs;
- (2) that he is the owner or holder of copyright uses, ancillary copyrights and image copyrights, that he has obtained all personal-rights agreements and has paid all required fees to the holders of the relevant rights;
- (3) that the advertisement and the advertising materials provided for this purpose are free from third-party rights and do not infringe any third-party rights, especially, but not limited to third-party trademark rights, copyrights, design patents, general personal rights or image copyrights;
- (4) that the advertisement and the advertising materials provided for this purpose do not infringe the applicable advertising law and competition law, especially, but not limited to the law against unfair competition (UWG), the pharmaceuticals advertising law (HWG) and the price regulation (PangVO);
- (5) that the advertisement and the advertising materials provided for this purpose do not have any indecent or illegal content, especially, but not limited to anything that is discriminatory, racist, that

glorifies violence, that is seditious, sexist, pornographic, anti-constitutional or similar in content;

(6) that the advertisement and the advertising materials provided for this purpose do not infringe statutory provisions or official regulations in some other way either;

(7) that the advertisement and the advertising materials provided for this purpose are not in breach of the code of conduct of the German Advertising Council (ZAW – Central Association of the German Advertising Industry).

22. Release from liability

The customer is required to indemnify airberlin from all claims brought by third parties against airberlin on account of the customer's breach of the above-mentioned provisions with regard to guarantees on first demand and for the full amount, including legal defence costs (solicitors' fees and court costs, if applicable, at the statutory level).

23. Legal defence against third parties

23.1 In the event that a legal claim is brought against airberlin by third parties (e.g. in the form of a dunning notice or a preliminary injunction), the customer undertakes to provide airberlin with active and free support in mounting the legal defence against such third parties, in particular by providing comprehensive information without delay and by making all required and useful information and documents available of his own accord.

23.2 If a legal claim is brought by third parties against the customer on account of his advertisement with airberlin – in particular a warning notice – or if he has already issued a declaration of forbearance / letter of undertaking with regard to an advertisement, he will be required to notify airberlin of this fully and without delay, at the same time submitting all documents relating to the matter. Such notification must be made in writing (letter, fax, e-mail) after advance notification by telephone. If the customer is in breach of this obligation, he will be liable to airberlin for any further damages and costs arising from this.

24. Warranty (liability for defects), requirements to give notice of defects

24.1 When the advertisement is placed (inserted), airberlin will send the customer written notification of this (letter, fax, e-mail) and/or a copy of the advertisement for checking. If the advertisement is published on physical advertising media (e.g. on or in print products, packaging, samples, mugs, etc.), the customer will be sent the relevant product for checking and as the customer's copy. When advertising in digital media, the customer will either be sent an e-mail and a link to the advertisement (in the case of online

advertising) or a digital data carrier with a recording or screenshot (e.g. for Quick Check-in Kiosk, Board TV).

- 24.2 On receipt of the copy, the customer will have a duty to examine the copy and to give notice of defects in accordance with article 377 HGB (German Commercial Code). If the copy matches the inspection copy released by the customer, the customer will not be able to cite defects. Otherwise the following applies: The customer is required to notify airberlin of apparent defects at the latest within three (3) working days of receiving the copy. If the defect only appears in the later course of the advertisement's placement, the customer is required to notify airberlin of the defect at the latest within three (3) working days of discovering the defect. The assertion of defects is excluded after expiry of the applicable period for notification of defects. Irrespective of the above periods for the notification of defects, any assertion of warranty claims is excluded after three (3) months following expiry of the advertising period at the latest. Any notification of defect brought by the customer must be issued in writing (letter, fax, e-mail), must accurately identify the relevant defect and describe it in such detail that airberlin is able to carry out a regular check.

- 24.3 airberlin does not accept any guarantee for the reproduction of artwork and samples provided by the customer being true to the original. The customer must accept reasonable differences with regard to materials and colours. All details relating to the size of run or number of copies of advertising media are merely guidelines. The customer must accept reasonable differences between the planned and agreed run or number of copies and the run or number of copies actually produced. Differences of up to 10 per cent (10 %) are considered, by mutual agreement, to be reasonable. To this extent, the customer's right to a reduction in price is excluded. Differences in excess of ten per cent (>10 %) entitle the customer to a reduction in price in line with the actual percentage difference.

25. Liability

airberlin is liable for injury to life, limb or health in accordance with the statutory requirements. The same applies to damage caused by criminal intent or gross negligence. In the event of ordinary negligence concerning a major contractual obligation (cardinal obligation), airberlin's liability is limited to compensation for the foreseeable, typical damage incurred. The above provisions do not affect liability in accordance with the product liability law. Any further liability of airberlin, in particular liability for loss of expected profit, is excluded. In so far as airberlin's liability is excluded or limited, this also applies to employees, associates, representatives and subcontractors of airberlin.

26. Force majeure

- 26.1 Any liability on the part of airberlin is excluded in the event of force majeure (e.g. natural disasters, cancellation of flights on

account of snow/ice/storms, terrorist attacks, terrorist threats or terrorist warnings, strike, lock-outs, government regulations / administrative orders, airport closures, electrical or other power cuts, more than trivial technical faults, air traffic disruption). In such a case airberlin is entitled, at its own discretion, to suspend, postpone and make up for the performance affected by such circumstances, in whole or in part, on a substitute date. airberlin will inform the customer of the relevant event and of the suspension or postponement of performance as well as its recommencement or subsequent performance in writing (letter, fax, e-mail). In the event of partial performance, airberlin is entitled to bill this by issuing a part or interim invoice.

- 26.2 If the impediment to performance lasts longer than three (3) months beyond the agreed performance dates, either party shall be entitled to withdraw from the section of the contract concerned or to terminate the section of the contract concerned without notice and for cause. The customer is required to remunerate airberlin for the performance provided up to the time of termination.

27. Confidentiality / Secrecy

The parties undertake to treat as strictly confidential and not to disclose the internal operations of the other party in each case that come to their knowledge in the course of their co-operation, including their respective clients and associated companies, especially, but not limited to all related business secrets as well as internal information and documents provided by one party for the other. This requirement of confidentiality and secrecy also continues after termination of the contract.

28. Transfer of rights and obligations to third parties

The customer is not entitled to transfer rights and obligations to third parties. In particular, the customer is not permitted to pass on the placement of advertisements booked with airberlin to third parties.

29. Right of retention / Offsetting

The customer may only exercise a right of retention with regard to claims arising from the contractual relationship concerned in each case. The customer may only offset airberlin's claims with claims established as final and absolute or recognised by airberlin in writing.

30. Amendments to Media GTCB

airberlin is entitled to amend these Media GTCB at any time. Amendments that significantly modify the duties of the parties that are material to the contract or that significantly modify the relationship between performance and counter-performance are excepted. The amended provisions are to be sent to the customer in writing (letter, fax, e-mail) two (2) weeks prior to their coming into

effect. If the customer does not oppose application of the amended Media GTCB in writing (letter, fax, e-mail) within two (2) weeks of receiving notification, the amended provisions will be deemed to have been accepted. In the notification containing the amended provisions, airberlin will draw the customer's attention specifically to the significance of the two-week time limit and that silence denotes agreement. If the customer opposes the price adjustment within the time limit, airberlin is entitled to terminate the contract at the time when the amended terms and conditions are to take effect.

31. Final provisions

- 31.1 In the event of one or more provisions of these GTCB being ineffective, the validity of the remaining provisions shall be unaffected.
- 31.2 No subsidiary agreements have been made. Any amendments or supplements to the contract must be made in writing (letter, fax, e-mail) to be effective. The same applies to the elimination of this written form clause.
- 31.3 The contract is subject to the law of the Federal Republic of Germany, with the regulations of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) being excluded.
- 31.4 The place of performance and legal venue is Berlin.