



General Terms and Conditions

of **Out There Media** GmbH, Schottenfeldgasse 20/2, 1070 Vienna
Valid from July 1st 2008

1. General

1.1. Definitions

For the purposes of these General Terms and Conditions "Customer" shall mean any person who places an order with Out There Media.

"Mobile Advertising" shall mean any form of promotional communication of the Customer via media that is relevant to mobile phones, such as, for example, mobile portals, in particular placing of banner ads on mobile portals.

"Mobile Marketing" shall mean use of channels relevant to mobile phone, such as, for example, mobile portals, short message service and multimedia message service for promotion of goods and services.

"Subcontractors" shall mean companies which Out There Media commissions for fulfilment of its performance obligation.

1.2. These General Terms and Conditions (GTC) shall exclusively apply to all business between the Customer and **Out There Media** GmbH (hereinafter **Out There Media**).

1.3. Conflicting terms and conditions of the Customer shall require express written approval from **Out There Media** in order to be effective. Agreements deviating from or amending these GTC shall be made in writing.

1.4. **Out There Media** shall be entitled to modify the technical platforms underlying the services or to use Subcontractors, provided that the services to be rendered for the Customer do not deteriorate and no additional costs are incurred by the Customer beyond a reasonable amount.

1.5. Modifications of or amendments to this contract shall be made in writing; this shall also apply to a waiver of this formal requirement.

1.6. **Out There Media** shall be entitled to amend these GTC. The Customer shall be notified of the fact that an amendment will be made that is not exclusively beneficial in an appropriate way one month prior to such amendment. Amendments to these GTC that are not exclusively beneficial shall entitle the Customer to terminate the contract free of charge (as of notification of the amendment that is not exclusively beneficial) until the amended GTC enter into force.

2. Conclusion of Contract

2.1. The offers of **Out There Media** are subject to change. The Customer shall be bound by his order placed with **Out There Media** for two weeks after receipt by **Out There Media**. As a matter of principle, orders must be placed in writing and the Customer shall bear the risk of fax transmission errors. To the extent that orders placed by phone or text changes made via phone are accepted, complaints based on listening errors or typographical errors will not be accepted. Orders of the Customer shall be deemed accepted only if acknowledged by **Out There Media** in writing unless **Out There Media** indicates, for example by taking action on the basis of the order, that it accepts the order.

2.2. Out There Media may reject orders without stating reasons. Even with respect to orders accepted in a legally binding manner Out There Media reserves the right to reject advertising due to its source, content or technological form. In such cases the Customer shall be informed of the reasons for such a rejection. In that case the Customer shall have no claims vis-à-vis Out There Media.

2.3. Advertising orders may be cancelled free of charge until 14 calendar days after acknowledgement of the order or until 14 working days before the advertisement is placed. If the order is cancelled later than that, 60 per cent of the order volume shall be payable. If an ongoing campaign is cancelled costs in the amount of 30 per cent shall be charged.

3. Service and Fees

3.1. **Out There Media** shall provide the agreed services (in particular drafting and implementation of concepts for Mobile Advertising and/or Mobile Marketing) either itself or shall negotiate third-party services for the Customer. Vis-à-vis the media orders shall be executed for the Customers' account.

3.2. The basis for calculation of Mobile Advertising shall be the applicable prices of the respective medium. The Customer shall be responsible for informing himself of the applicable prices before he places an order. Price changes on the part of the media shall become immediately applicable to current orders.

3.3. **Out There Media's** entitlement to fees shall arise for every single (part of a) service as soon as the (part of a) service has been rendered by **Out There Media** itself or a third party. **Out There Media** shall be entitled to ask for advance payments in an amount of up to 50 per cent of the agreed order value to cover its expenses.

3.4. **Out There Media** shall be paid the consideration agreed with the Customer in each case for the services provided by **Out There Media** itself and as consideration for the agreed rights to use services included therein.

3.5. For services of third parties which are negotiated by **Out There Media** and notified to the Customer as being third-party services (e.g., cost of placing advertisements in media and mobile portals) and as consideration for the agreed rights to use such services **Out There Media** shall be paid a fee in the amount of 15 per cent of the value of the order executed by the third party via **Out There Media** in addition to reimbursement of the expenses/consideration to be paid to the third party.

3.6. All services of **Out There Media** which are not expressly covered by the agreed fee shall be paid for separately. This shall apply, in particular, to all ancillary services and cash expenses (e.g. for courier services, extraordinary shipping costs, travel expenses, costs of overnight stays, etc.).

3.7. As a matter of principle, cost estimates of **Out There Media** are non-binding. If it can be expected that the actual costs will exceed **Out There Media's** written cost estimate by more than 20 per cent, **Out There Media** shall advise the Customer of such higher costs. The increase in costs shall be deemed accepted by the Customer if the Customer does not object to such increase in writing within three days of the advice and does not state cheaper alternatives at the same time.

3.8. For all services to be rendered by **Out There Media** in connection with orders that are not (completely) performed for whatsoever reason, **Out There Media** shall be entitled to a reasonable compensation and reimbursement of the expenses incurred by it. With respect to third-party services negotiated by **Out There Media** the fee defined in clause 3.4 above shall be deemed reasonable. By payment of that consideration the Customer shall acquire no rights to such works; concepts, drafts and the like which were not implemented shall rather be returned to **Out There Media** without delay.

4. Presentations

4.1. For preparation of and participation in presentations **Out There Media** shall be entitled to a reasonable fee that at least covers the total expenditure on staff and materials incurred by **Out There Media** for the presentation and the costs of all third-party services. If no order is placed with **Out There Media** after the presentation, all services of **Out There Media**, including but not limited to the presentation documents and the content of the same, shall remain the property of **Out There Media**. The Customer shall not be entitled to continue to use the same in whatsoever form. The documents of **Out There Media** shall rather be returned to **Out There Media** without delay.

- 4.2. If the presentation leads to an order, the fee for the presentation shall be credited to the Customer.
- 4.3. **Out There Media** shall be entitled also to use the ideas and concepts presented in the course of a presentation otherwise.
- 4.4. Passing on of presentation documents to third parties and publication, reproduction, dissemination or other use and exploitation of the same shall require the express consent of **Out There Media**.

5. Secrecy Obligation

- 5.1. **Out There Media** and the Customer undertake to maintain secrecy about all information and data which they or their Subcontractors receive in connection with execution of the order and not to disclose them to third parties. This secrecy obligation shall survive termination of the contract. Any release from such secrecy obligation shall be made in writing.

6. Content and Implementation

- 6.1. The Customer shall be solely responsible for the content and legitimacy of the advertising delivered and declares to indemnify and hold Out There Media harmless from and against any claims that may be asserted vis-à-vis Out There Media and/or its customers in connection with the advertising; this shall include, in particular, acquisition of all licences under copyright law and intellectual property law regarding production and transmission, including all ancillary rights necessary for the latter (including but not limited to reproduction and distribution). Out There Media shall be under no obligation to verify the legitimacy of the content of the advertising delivered.
- 6.2. The Customer shall be obliged to issue, upon first demand, a letter of guarantee vis-à-vis Out There Media or, at Out There Media's request, vis-à-vis a contracting party of Out There Media advised to him to the effect that the advertising delivered by him does not infringe, prejudice or limit any copyrights or other proprietary rights.
- 6.3. The Customer warrants that the advertising is in compliance with all statutory and contractual provisions, that the contents do not infringe third-party rights, such as, e.g. rights to use the work or rights of personality and that all necessary taxes and charges have been paid; otherwise the Customer shall indemnify and hold Out There Media harmless.
- 6.4. The Customer shall bear all production costs and other costs and fees, including consideration for all copyrights and proprietary rights (including but not limited to consideration to performing rights societies).

7. Right of Ownership and Copyright

- 7.1. All services of **Out There Media** and Subcontractors, including services in connection with presentations (e.g., concepts, suggestions, ideas, sketches, preliminary designs, scribbles, final drawings, negatives, slides), including parts thereof, shall remain the property of **Out There Media** and **Out There Media** may demand at any time, in particular in the case of termination of the business relationship, that they be returned to it.
- 7.2. By payment of the fee the Customer only acquires the right to use the services for the purpose agreed and to the extent agreed. As regards geographical limitation of use, use shall be limited to the country to which the respective offer is based on. Time limits on use are stated in the agreement(s) concluded in each case.
- 7.3. Modifications of services of **Out There Media** and of **Subcontractors** by the Customer shall only be permitted with the express consent of **Out There Media** and, to the extent that services are protected by copyright, of the author.
- 7.4. Use of services of **Out There Media** and of **Subcontractors** beyond the originally agreed purpose and scope of use as regards territory, time and content shall be subject to the consent of **Out There Media** irrespective of whether such services are protected by copyright or not. In that case **Out There Media** and the author shall be entitled to a separate reasonable fee to be agreed on a case-by-case basis. As a matter of principle, the fee stated in the original order shall be deemed reasonable.

8. Identification Marks

Out There Media shall be entitled to make reference to Out There Media and the author, if applicable, on all advertising media, information material and in any measures, without the Customer being entitled to payment in this respect.

9. Acceptance

All services of **Out There Media** and **Subcontractors** shall be examined by the Customer and defects, if any, shall be notified in writing within three days. In the case defects are not notified in time the services shall be deemed accepted by the Customer.

10. Dates

10.1. **Out There Media** shall endeavour to meet the dates agreed. Delivery dates can only be met if the Customer makes available the complete documents and information necessary and fulfils its duties to co-operate.

10.2. In the case of a failure to meet the dates for which **Out There Media** is responsible, the Customer shall be entitled to assert his statutory rights only after **Out There Media** was granted a grace period of at least 14 days. Such period shall commence to run upon receipt of a reminder letter by **Out There Media**. An obligation to pay damages for default shall exist only in the case of wilful intent or gross negligence on the part of **Out There Media**.

10.3. Unavoidable or unforeseeable events, including but not limited to delays of Subcontractors of **Out There Media**, shall release **Out There Media** from observance of the agreed delivery date in any case.

11. Payment

11.1. The Customer shall bear all costs, charges and taxes necessary for performance of the agreed services, including but not limited to levies on copyrights and proprietary rights.

11.2. All prices are stated in euros (€) and are net prices, i.e. they are exclusive of the value-added tax applicable from time to time and advertising taxes, if any.

11.3. Unless otherwise agreed invoices of **Out There Media** shall be promptly due for payment without any deduction as from the date of the invoice. In the case of late payment **Out There Media** shall be entitled to charge default interest at a rate of 7.5 per cent above the base interest rate of the Austrian Central Bank [OeNB] applicable from time to time.

11.4. The Customer shall not be entitled to set off his own accounts receivable against accounts payable to **Out There Media** or to withhold payments in whole or in part on the ground of incomplete or late delivery or performance or on the ground of guarantee claims or warranty claims.

11.5. Claims or accounts receivable of the Customer may only be assigned with **Out There Media**'s written approval.

11.6. Irrespective of other purposes indicated, payments effected shall always be used to settle the oldest account receivable from time to time. **Out There Media** will accept a new order only if arrears, if any, have been completely settled.

12. Warranty

12.1. **Out There Media** warrants that orders placed with it will be executed properly and with the care and diligence of a prudent businessman. As a service provider **Out There Media** shall be responsible for using the efforts laid down in the contract but not for a certain result.

12.2. The Customer shall raise complaints, if any, in writing within three days of performance and/or start of the

communication measure by **Out There Media** and state the reasons. In the case of justified and timely complaints the Customer shall be entitled to subsequent improvement of the service by **Out There Media**. In the case of warranty claims subsequent improvement shall in any case take priority over price reduction or cancellation of the contract. In the case of a justified notice of defects the defects shall be repaired within a reasonable period of time. We shall assume no warranty for defects that were not notified in time.

12.3. Reversal of the burden of proof as defined by Section 924 of the Austrian General Civil Code [ABGB] shall be excluded; the Customer shall prove that the defect existed at the time of delivery.

12.4. In no case shall the warranty obligation include the costs of substitute performance.

12.5. In the case that the Customer single-handedly or through a third party interferes with the services provided or with the performance without **Out There Media's** written consent, there shall be no claim under warranty or for damages.

13. Liability

13.1. Out There Media shall be liable for damage within the scope of statutory provisions if it can be proven that such damage was caused by it wilfully or with gross negligence. However, the Customer shall bear the burden of proof. Liability for ordinary negligence shall be excluded. Compensation for consequential damage, pecuniary loss, lost profit, savings not achieved or loss resulting from claims of third parties shall be excluded in any case.

13.2. The Customer himself shall be responsible for compliance with statutory regulations, in particular as regards competition, identification marks or telecommunication, in the course of implementation of the services proposed and/or provided by Out There Media or its Subcontractors. In particular, the Customer represents that the advertising media made available do not infringe Austrian or international law.

The following shall, in particular, be excluded:

- (a) Libellous or slanderous, obscene or defamatory material or material which violates public order, safety or morals or constitutes a violation of statutory regulations, in particular provisions of the Austrian Unfair Competition Act [*Gesetz über unlauteren Wettbewerb*], criminal law or provisions on the protection of young persons or rights of third parties. These include but are not limited to copyrights and proprietary rights, patent rights, trademark rights and other identification rights, business secrets or non-disclosure agreements and other rights of personality;
- (b) subliminal advertising;
- (c) advertising that violates human dignity or contains inhuman contents, such as, for example, zoophilia, necrophilia, defaecation and materials concerning child pornography, paedophilia, incest including presentation of adults acting as children;
- (d) advertising containing discriminating content due to race, sex, age, handicap, religion or nationality, in particular, racist, nazi or inciting statements or disparagement of religions, religious communities and ideological groups;
- (e) advertising promoting a behaviour that constitutes a hazard to health or safety;
- (f) advertising promoting a behaviour that constitutes a hazard to environmental protection;
- (g) marriage advertisements and advertisements for private money lending;
- (h) advertising that promotes illegal practices;
- (i) misleading advertising and advertising that is detrimental to consumer interests.

13.3. The Customer shall consent to a measure proposed by Out There Media only if he has satisfied himself that the measure does not violate any law or if he is willing to bear the risk involved in implementation of the measure. Out There Media shall have a legal review carried out only at the Customer's written request; the related costs shall be borne by the Customer. Any liability of **Out There Media** for claims asserted vis-à-vis the Customer on the ground of the measure shall be expressly excluded; in particular, **Out There Media** shall not be liable for costs of legal proceedings, attorney's fees of the Customer or for costs of publications of judgments or claims for damages, if any, or similar claims of third parties.

The Customer shall indemnify and hold Out There Media harmless against all third-party claims on grounds of

contents or services of the Customer, including but not limited to claims due to incorrect, deficient, delayed or unlawful services or due to other violations of obligations under this contract by the Customer.

No liability can be assumed for printing material provided by the Customer.

13.4. Complaints must be made within 10 days of the date of publication.

13.5. No compensation shall be paid for errors that do not materially impair the purpose of the advertisement or for minor errors regarding positioning. Any liability of Out There Media for errors beyond Out There Media's control, in particular errors of the media, shall be excluded.

13.6. The compensation to be paid for every event causing loss or damage shall be limited to EUR 3,500 vis-à-vis a single party harmed and to EUR 35,000 vis-à-vis all parties harmed together. In case the total loss exceeds the maximum amount, the claims for compensation of any party harmed shall be reduced pro rata.

13.7. Events of force majeure, acts of God, official measures not caused by **Out There Media**, strikes, danger to limb and life, etc. shall release **Out There Media** from any obligation vis-à-vis the Customer.

14. Statutory Limitation

14.1. Any and all claims of the Customer based on whatsoever legal ground shall become time-barred after twelve (12) months, unless a shorter period is provided for in these General Terms and Conditions. As to wilful behaviour the statutory periods shall apply.

15. Applicable Law, Place of Performance and Place of Jurisdiction

15.1. The contract shall be subject to Austrian law and UN Sales law shall be excluded.

15.2. The place of performance shall be Vienna and the place of jurisdiction shall be Vienna's First District [Innere Stadt]. If individual provisions of these Terms and Conditions are or become ineffective or invalid, the effectiveness and validity of the remaining provisions shall not be affected.

15.3. Side agreements and amendments to these Terms and Conditions shall be made in writing in order to be valid.

15.4. Delivery of documents to the Customer may in any case be made to the postal address or e-mail address most recently advised by him.

Acceptance

Already at the time he places an order the Customer acknowledges the present General Terms and Conditions as a binding guideline and as the basis of the common business.