

General Terms and Conditions of Business of Visoon Video Impact GmbH & Co. KG (VISOON) for booking advertising on digital media

Version of January 2016

1. Scope and use of terms

- 1.1 The following General Terms and Conditions of Business ("GTC") shall govern, in addition to the respective placed order/contract, the contractual relationship between VISOON ("contractor") and its advertising clients ("client") relating to the placement of advertising on digital media marketed by VISOON. The client's GTC are hereby expressly waived and excluded, also in the event that a client in its GTC should object to any competing GTC.
- 1.2 "Advertising contract" shall mean the contract for the placement of one or several advertisements on digital media. This shall include orders placed within the framework of countertrade-transactions. If combined orders for online- and broadcast advertising are placed, in relation to digital media these GTC shall apply, for the remainder the general terms and conditions of business for the placement of advertising or sponsorship advertising and special forms of media on channels MTV, Comedy Central, Viva, Nickelodeon, Nicknight, N24 (see www.visoon.de) shall apply.
- 1.3 "Digital media" means all telemedia, telecommunications services and similar offers that the contractor markets in its own name but for the account of the respective operator. This shall include in particular:
- the websites at www.mtv.de, www.viva.tv, www.nick.de, www.comedycentral.tv, www.nicknight.de, www.funnyclips.cc, www.southpark.de, www.spongebob.de, www.mtv.com, www.vh1.com, www.southpark.com, www.comedycentral.com, www.gametrailers.com, www.addictinggames.com, www.shockwave.com, www.nick.com and their subpages;
 - offers for mobile use, online or offline (MEWs, Apps etc.);
 - as well as email newsletters, SMS-push services and similar offers.
- 1.4 "Advertising material" for the purpose of these GTC shall mean all forms of advertising offered by the contractor under (www.visoon.de), which may consist of, for example, one or more of the listed elements:

- an image and/or text, sound sequences and/or moving images (including video ads);
- presentation formats such as banners, wallpapers, skyscrapers, flash layers or similar presentation formats, in each case in form of a file displayed on the internet or also made available for downloading;
- a sensitive area that, when clicked, initiates a connection to further data in the remit of the client (e.g. link), by means of an online address supplied by the client.

2. Conclusion of contract

2.1 Advertising orders may be placed in writing or by email. The respective advertising order shall only become binding upon the contractor if and when it has been confirmed by the contractor in writing or by email, or if the respective advertising material has been placed on online media serviced by the contractor.

2.2 Where advertising orders are placed by advertising agencies, in case of doubt, the contract shall come into existence with the advertising agency. If the advertiser shall be the ordering party, it needs to be clearly identified by name by the advertising agency. The contractual partner shall be entitled to request valid proof of a mandate from the advertising agency. Advertising agencies shall not be entitled to have any advertising space that has been booked on behalf of one client transferred to another client, or to another agency.

2.3 All offers made by the contractor are subject to change. **The contractor shall reserve the right to accept or to reject an order. In case of an acceptance of an order, the contractor shall also reserve the right to reject the placement of advertising material – also individual requests within the scope of the contract – or to block access to advertising material or to pause the campaign, in particular in the event that**

- its content infringes laws (including provisions set out in the Interstate Broadcasting Treaty, the Interstate Treaty on the Protection of Minors) or any official regulations (including the applicable common provisions enforced by the State Media Authorities) and / or the internal (advertising-)provisions of the contractor,
- its content infringes the rights of third parties or offends common decency,

- its content was objected by the German Advertising Standards Authority within the scope of complaint proceedings,
- by reasons of its origin, its contents or technical form it may be unacceptable to the contractor,
- its publication would infringe upon any legitimate interests of the contractor in any other way.

The contractor shall inform the client of a rejection / blocking without undue delay. In this case, the client shall be entitled to submit a modified or a different version. In the event that delivery of such version is not made in time for compliance with the agreed placement date, or not delivered at all, the contractor shall retain its entitlements to remuneration.

2.4 **The contractor shall be entitled to withdraw already published advertising material if the client itself makes any subsequent changes to the content of the advertising material or if the data to which a link points is subsequently changed, and if, by doing so, the provisions set out under Nr. 2.3 become applicable.**

2.5 If the client wants to make a booking for joint advertising, i.e. any advertising that in addition to the client promotes brands, products or services by third parties, this shall require the prior written consent of the contractor. In the event that the contractor has consented in writing to such booking of joint advertising, a surcharge in the amount of **12 %** shall be levied on the relevant price according to the applicable tariff group. Where above and beyond a (1) third party integration additional companies are to be integrated in the advertisement placed by the client, the price surcharge shall increase according to the number of integrated third party companies. (Example of calculation: if in addition to the client two more companies are integrated, the surcharge is $2 \times 12 \% = 24 \%$).

3. **Placement of the advertising material**

3.1 Advertising material shall be placed in advertising space that has been determined either by agreement, or been chosen at the reasonable discretion of the contractor. **Unless this has been stipulated in a separate, individual agreement, the client shall have no entitlements to a placement of the online advertising in a specific position on the respective website, or to maintain any specified access time to the respective website. Exclusivity**

or any other forms of exclusion of any advertising activity by competitors shall not be guaranteed by the contractor. In particular, the exclusion of competition from a website cannot be guaranteed, i.e. it cannot be ruled out that competitors of the client might place advertising on the same website during the same period of time.

- 3.2 The contractor will place and/or publish the advertising material – except for special contractual agreements – at the booked placement times and/or up until the agreed number of ad impressions and/or ad clicks has been reached. An ad impression is considered to be each response received by the AdServer as a reaction to a request by the browser of a user, filtered from robotic activity such as e.g. impressions generated by a search engine scan. The key factor for measuring ad impressions and/or ad clicks is the data collected by the Ad-Server that is used by the contractor. In case of a discrepancy between the counting results reported by the contractor and the client, the following shall apply: a counting discrepancy of up to 10 % shall be considered to conform with the usual market standards and shall not be taken into account. In the event of a counting discrepancy of more than 10 %, the contractor and the client shall exchange their reportings relating to all relevant formats and placements on a daily basis, compare the results and together find a suitable solution for any appearing problems.

4. **Termination**

- 4.1 The advertising contract comes into effect upon acceptance of the order (Nr. 2.1) and expires after the placement period has been completed, without a further notification of termination required. Following confirmation of the placement order, a termination by the client shall be possible free of charge only up to four (4) weeks prior to start of placement. In the event of termination four (4) weeks up to one (1) week prior to start of placement, a cancellation fee of 50 per cent of the booking volume shall be applicable, terminations received within the week prior to start shall be subject to a 100 per cent cancellation fee.
- 4.2 **Both the contractor and the client shall be entitled to terminate the contractual relationship at any time for an important reason. An important reason shall particularly exist if**
- one of the contracting parties has violated guarantee obligations or fails to meet essential contractual obligations, and such failure to perform

has not been remedied within a deadline of thirty (30) days as specified by the other party;

- court insolvency proceedings have been opened concerning the assets of one of the contractual parties, or if insolvency proceedings have been rejected due to a lack of insolvency assets;
- any of the provisions set out under clause 2.3 have been violated.

4.3 The termination of advertising orders shall only be valid if it is made in writing.

4.4 The party receiving notice shall be liable for all damages that are incurred by the party giving notice as a result of the termination of the contractual relationship.

5. **Provision of data for use in the advertising material / Legality of the advertising material/ Contractual penalty / Exemption**

5.1 The client shall be obligated to provide the data for use in the advertising material in such a way that placement can be executed. In particular, the data for use in the advertising material must be delivered by email, allowing for the necessary pre-amortisation period (at least 3 working days prior to placement of advertising formats from the Universal Ad Package (UAP) and 5 working days prior to placement of all other advertising material), and must comply with the technical specifications of the contractor (www.visoon.de). Advertising material must be delivered free of viruses or any other harmful components. The client shall bear the costs for the delivery. **The contractor shall not be obligated to place advertisements that do not meet the technical specifications or that have been delivered late.** Furthermore, in this the case, the contractor shall not be obligated to provide subsequent advertising placement over the course of the contract period.

5.2 It is the responsibility of the client to ensure that the named target pages and data to which the advertising material points are fully functional and correct.

5.3 In the event that for the purpose of delivery of the advertising material the contractor has permitted the client integration of a so called external AdServer, the client shall be obligated to transfer the redirect tags (link-URL, call up advertising material) in the agreed format and within the time period agreed in the advertising contract, no later, however, than 3 working days prior to placement of the advertising formats from the UAP, or 5 working days prior to placement with regard to all other advertising material. If an external AdServer is being

used, the client shall guarantee that it is fully and properly functioning, and also that the redirect tags are fully functional, in order to guarantee the proper execution of the advertising contracts.

- 5.4 **Unless expressly agreed to otherwise, the following shall apply: the client shall ensure that no targeting and/or capping will be used by it. Targeting settings will be controlled exclusively by the contractor via the AdServer. The client may integrate cookies only without targeting-, capping- or user information. Furthermore, the client is not permitted to place cookies other than those that are exclusively used as part of the technically required delivery mechanism of the used AdServer, in order to ensure delivery of advertising material through the AdServer.**
- 5.5 **Insofar as the contractor expressly agrees to the use of tracking technology by the client in individual cases and/or the client receives or collects personal data from the placement of advertising material on the digital media of the contractor, the client shall ensure that the data shall be collected, processed and used only in accordance with the applicable data protection laws, in particular the German Telemedia Act (*TMG*), the State Broadcasting Treaty (*TSfV*) and the Federal Data Protection Act (*BDSG*). Unless expressly agreed to otherwise, the client shall under no circumstances be permitted to use the data after expiry of the order, nor to pass it on to any third parties.**
- 5.6 In the event that the client uses systems of a third party for the placement of advertising material on the digital media of the contractor, the client shall ensure that such system operator also observes all of the aforementioned provisions.
- 5.7 **For each individual event of negligent or intentional violation of the obligations set out under clause 5.4 to 5.6, the client shall pay a contractual penalty to the contractor equal to the amount of the value of the order in the context of which the unallowed collection of data took place. Any further claims of the contractor for damages shall remain unaffected.**
- 5.8 The client is solely responsible for the legal permissibility of the advertising material provided, as well as for the content of linked pages. In particular, the client shall guarantee compliance with the provisions of media-, competition and press laws, as well as regulations for the protection of minors and data

protection regulations, and shall guarantee that the provided advertising material does not violate copyrights, personal rights or other protective rights, of whatever kind, and that their content is not offensive or obscene. **In the case of a breach of clause 1, the client shall indemnify and hold harmless the contractor against all costs arising in connection with such infringement. This shall also include the costs for an appropriate legal defense. The contractor is under no obligation to review the advertising material prior to placement.**

In addition to this, the client shall be responsible for ensuring that the necessary arrangements have been made with the collecting societies (e.g. GEMA, GVL) and the copyright owners. To the extent required, the client shall therefore **in particular** grant the contractor and the operator of the respective digital medium the rights of usage relating to music used in the advertising material (the right to use for advertising purposes). The client shall bear any costs incurred in connection with this.

Furthermore, the client shall be obligated to provide the contractor with all required data (i.e. advertiser, product name, spot title (motive), composer, title of work (music title, where applicable several titles) music broadcasts (for each piece of music), spot duration, booking schedules and, if applicable, advertising texts) for notification of the collecting societies (e.g. GEMA, GVL), at the time of booking the advertising spot at the latest.

The client shall transfer to the contractor and the operator of the respective digital medium all such rights of use under copyright-, ancillary copyright- and other laws as are necessary for the use of the advertising in all kinds of online media, including the internet, and in particular the right to reproduce, circulate, transmit, broadcast, extract and retrieve from a database, to the extent necessary for the execution of the order in terms of time and content. Aforementioned rights shall be granted unrestricted in all cases as to the location, and shall create the entitlement to placement using all known technical means as well as all known forms of online media. In addition to this, the client shall extend to the contractor and the operator of the respective digital medium all required rights of use in terms of time, place and content in all media submitted upon conclusion of the contract, namely to the extent necessary for the use of the

transferred content for presentation purposes, particularly for presentation as an example of advertising, and in particular relating to print, online, digital, mobile and broadcast. At the same time, it shall hold the contractor harmless against all claims of third parties in connection with this. This shall include the costs for an appropriate legal defense.

5.9 Any advertising provided by the client must be clearly identified as such, otherwise it may be made recognisable as such by the contractor, especially by using the word "advertisement" or "commercial", or the letter "-a-" for mobile services, or marked with a similar, clear identification and/or by displaying it apart from the editorial content. For advertisements that are placed on websites of the contractor that are targeted at children (in particular on www.nick.de, www.nicknight.de, www.spongebob.de), identification by using the word "advertisement" is mandatory. In addition, the technical specifications of the contractor (www.visoon.de) must be observed.

5.10 In the event of a delay in the provision of or deficient marking of the data used in the advertising material, or if it should be subsequently changed, the contractor shall not assume liability for execution of the order. If the contractual partner should deliver the data used in the advertising material late, incomplete or if it is of insufficient quality, the contractor shall be entitled to charge the booked placement time, provided that the client does not prove that by using the placement time for other purposes, the contractor has not incurred any damages. The client shall bear the risks of forwarding the advertising material.

5.11 **The obligation to store the advertising material shall cease after the contractually agreed upon final publication. The contractor shall then be entitled to delete the data used in the advertising material.**

6. **Remuneration / Terms of payment / Adjustment of prices / Disclosure- and distribution requirements for agencies**

6.1 The fee for the placement of advertising material is based on the price lists under www.visoon.de, in their version that was applicable at the time of the advertising order. The advertising prices do not include any costs for the production of or changes to advertising material (e.g. images or text) as well as any costs that may, where applicable, arise under the law on copyrights or per-

formance protection rights and may be payable to collection agencies such as GEMA on account of the placement of the advertising material. All prices and bills will be invoiced plus the applicable statutory value added tax.

Advertising agencies and other advertising intermediaries shall be granted an agency fee (AF) - subject to the condition that they consult their clients or provide written proof of a mandate - in the amount of 15 % of the net order value (i.e. based on the invoice sum after deduction of all discounts and excluding VAT), unless otherwise agreed upon. They shall be obligated to abide by the contractor's price lists in their offers, contracts and in settling accounts with their clients. **Advertising agencies shall disclose and, where applicable, pass on all discounts, fees and prompt payment discounts received to the clients they serve. Furthermore, they shall not disclose any of the services received from the contractor to third parties. This shall continue to apply when the contractual relationship with the contractor has ended.** Group discounts for subsidiaries shall be subject to documentary proof of share ownership of at least 50%.

6.2 Unless otherwise agreed, placement of the advertising material shall be invoiced by the contractor to the client monthly in advance. The remuneration invoiced shall be due without any deduction immediately upon receipt of the invoice. Bank charges shall be borne by the client. Cheques shall in all cases only be accepted subject to clearing. During monthly invoicing, for reasons inherent in the system a partial invoice may show a discrepancy between the booked and the invoiced amount; any discrepancies will be settled with the last partial invoice at the latest.

6.3 In the event of a default in payment, the contractor shall be entitled to suspend further performance of the advertising contract, without this giving rise to any claim in compensation on the part of the client. The client shall be liable for any damages in case of default suffered by the contractor. The contractor shall be entitled to charge interest on arrears at eight (8) percent above the relevant base interest rate. The client's right to furnish evidence of a lesser degree of loss due to default shall remain unaffected by this. Prices may be changed at any time. For advertising orders that have already been accepted by the contractor, changes shall only be applicable if the contractor has announced these at least one (1) month prior to the publication of the advertising material. In the

event of an increase in prices, the client shall be entitled to rescind the contract. The right of rescission must be exercised within 14 days after the notification of the price increase has been received. If the right of rescission has not been exercised by the client within the prescribed time limit, the change in prices shall be deemed to have been accepted by the client.

7. **Client's obligation to provide information**

Unless agreed otherwise, it is the client's responsibility to within ten (10) working days after completion of the order make available to the contractor the following information, as far as this is possible technically and in terms of the advertising material used:

- the number of visits / recipients of the advertising material together with an indication of the reference period;
- any downtime of the AdServer, where such downtime exceeds an hour.

8. **Contractor's guarantee**

8.1 The contractor shall guarantee best possible rendition of the advertising materials in line with the generally accepted technical standards. Such guarantee shall not apply to any immaterial defects in the presentation of the advertising material. Furthermore, the guarantee shall not apply to any defect that has been brought about by the following causes for which the contractor is not responsible

- technical malfunctions, in particular an interruption of the communication network and/or computer failure caused by system breakdown or
- the use of inappropriate display software and/or hardware (e.g. browser) or
- a malfunction of the communication networks of other operators or
- incomplete and/or not updated services on so-called proxies (caches) or
- a failure of the AdServer lasting no longer than 24 hours (continuous or added up) within 30 days after start of the contractually agreed placement

In the event of a failure of the AdServer over a significant period of time (more than 10 percent of the booked time) in connection with a fixed, time-based booking, the client's payment obligation shall be suspended for the duration of the failure. Any further claims by the client shall be excluded.

- 8.2 Should any possible defects in the data used in the advertising material not be obvious, the client shall not be entitled to claims in respect to insufficient publishing, insofar as such insufficient publishing is based thereon. The same shall apply in case of any defects in repeated advertising placements, unless the client points out the defect in good time before the next placement of the advertising material. The client shall be obliged to review the booked advertising material promptly upon first placement, and to immediately notify the contractor in writing of any defect, no later than, however, two weeks after placement. If no such notification of defect has been submitted by the client within the prescribed period of time, execution of the order shall be deemed accepted.
- 8.3 In the event that the client has not notified the contractor in good time of any inadequate performance of advertising placement due to reasons that the contractor is responsible for, liability for rectification and replacement publication shall be limited. If the remedy of defect should fail, the client shall have the choice to demand a reduction of the remuneration (reduction) with regard to the relevant advertising material and the respective placement or to rescind the advertising contract.

9. **Default**

Where the performance of an order cannot be effected due to reasons beyond the control of the contractor, in particular due to computer failure, force majeure, strike, a change in statutory provisions, disruptions originating from the sphere of responsibility of third parties (e.g. other providers), network providers or service providers, the order shall, if possible, be performed subsequently. If such subsequent performance is made within adequate and for the client reasonable time after the malfunction has been rectified, the contractor's claims for payment shall remain unaffected. If and to the extent that a subsequent placement is not possible, the client shall be entitled to repayment of the corresponding part of any remuneration it has already paid. Any further claims by the client shall be excluded.

10. Liability

10.1 Contractor

The contractor shall on principle be liable only for deliberate acts and gross negligence. The same shall apply to any breaches of duty by the legal representatives, performing agents and vicarious agents of the contractor. In the case of a violation of an obligation whose compliance is of particular importance for achieving the objective of the contract (cardinal obligations), and in the case of damage to life, body or health, the contractor shall also be liable for claims relating to slight negligence. In commercial business transactions, liability shall, however, in this case be limited to foreseeable damage. The same shall apply to any breaches of duty by the contractor's legal representatives, performing agents and vicarious agents.

10.2 Contractor / Indemnification

The client shall indemnify and hold harmless the contractor against all third party claims arising from the unlawfulness of the content of the advertising material provided by the client or the linked target pages. This indemnification shall also include an appropriate level of legal defense costs (e.g. court and lawyers' fees). The client shall be obligated to support the contractor in all good faith with information and documentation for the purpose of legal defense in relation to third parties.

11. Final provisions

11.1 The contractor shall be entitled to transfer the rights and obligations under the advertising order, as a whole (transfer of contract) or individually, to any company associated with the contractor within the meaning of § 15 ff. Stock Corporation Act (*AktG*). The client shall hereby in advance agree to a corresponding declaration by a company affiliated with the contractor.

11.2 The client shall be notified of any changes to these General Terms and Conditions of Business under www.visoon.de. At the time advertising contracts are concluded, the currently valid version of the GTC shall apply. Advertising orders that have already been accepted shall remain unaffected by any changes to these GTC or to the price lists. For any changes to prices, the provisions set out under clause 6.3. shall, in deviation to this, apply.

- 11.3 Should individual provisions of these GTC or the contract with the client be or become invalid, this shall not affect the validity of the remaining provisions. The wholly or partially ineffective provision shall be replaced with a valid provision which best reflects the economic purpose of the ineffective provision and the arrangement originally intended by the parties.
- 11.4 The contractual relationship, including these GTC, shall be subject to the law of the Federal Republic of Germany to the exclusion of the provisions of the UN Convention of Contracts for the International Sale of Goods (CISG).
- 11.5 The exclusive place of jurisdiction for all disputes arising out of or in connection with this contractual relationship, including the GTC and the fulfillment thereof, shall be Berlin.

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