

GENERAL TERMS & CONDITIONS FOR ADVERTISING ORDERS TO GROUP COMPANIES OF GOLDBACH GROUP AG

1. BASIC PRINCIPLES

1.1. Scope

These General Terms & Conditions ('GTCs') for advertising orders to Group companies of Goldbach Group AG apply to all advertising orders and associated services of the Goldbach Group AG and its Group companies; namely, Goldbach Media (Switzerland) AG, Goldbach Audience (Switzerland) AG, Swiss Radioworld AG and any future Group companies in the advertising and agency field based in Switzerland (collectively 'Goldbach'). Unless otherwise agreed in writing, these GTCs apply exclusively, along with the advertising conditions of the individual Goldbach Group companies.

Any other guidelines, restrictions or special conditions (such as guidelines or GTCs of the advertising medium) and other deviations from these GTCs apply only if they are expressly agreed in writing.

Counter-confirmations from the advertiser with reference to other terms and conditions are hereby expressly disclaimed.

1.2. Autonomy

Each Goldbach Group company is economically and legally independent. Unless otherwise expressly agreed in writing, the Goldbach Group company named in the advertising order is the sole contractual party and thus responsible and liable for fulfilment of the advertising order. Goldbach expressly rejects any liability on the part of the Goldbach Group AG, such as corporate liability or liability as a single company.

1.3. Definitions

Advertising media:	electronic media by which an advertisement may be transmitted, such as a TV broadcaster, radio broadcaster (including in-store or online radio), websites and website networks, digital out-of-home networks, smart TV, mobile sites, online/console games, Teletext, mobile apps and other forms.
Advertisement:	traditional advertisement, special advertising (e.g. sponsorship) and other forms of commercial communication.
Distribution:	dissemination, broadcast or activation of advertisements.
Advertising order:	agreement related to the distribution of advertisements in an advertising medium.
Agency:	advertising or media agency.
Advertising bodies:	companies, bodies or persons that conduct advertising for products or services.
Advertiser:	contractual party of the Goldbach Group company. This may be an advertising body or an agency.

1.4. Agency provisions

Goldbach accepts advertising orders from agencies only for specifically named advertisers. Goldbach is entitled to demand proof of mandate from agencies. An advertiser represented by an agency may be freed from a payment obligation to Goldbach only through valid payment to Goldbach.

1.5. Legal position of Goldbach

Goldbach – unless otherwise agreed in the contract – essentially concludes the advertising order on behalf and on the account of the advertising medium it represents. The rights and obligations assigned to Goldbach by these GTCs are exercised on behalf and on the account of the represented advertising medium, unless otherwise agreed in the advertising order.

1.6. Participation of third parties

Goldbach is entitled to involve third parties in the fulfilment of its contractual obligations at any time.

1.7. Transfer of data for advertising intensity statistics

The advertiser agrees that Goldbach may use the following data to create and/or validate advertising intensity data: advertiser, campaign, duration, net price. This data may also be transferred to third parties that generate advertising intensity statistics.

2. CONCLUSION OF ADVERTISING ORDERS

2.1. Determination

In order for the advertising order to take effect, the advertising conditions of the Group company generally apply.

If not otherwise provided for in the advertising conditions of the Group company, tenders and quotes from Goldbach are always non-binding and are subject to the availability of the advertising times and/or slots offered.

The advertising order takes effect with distribution of the advertisement reserved with Goldbach or approved by the advertiser.

2.2. Online booking

Where advertising may be booked via an online booking tool, conclusion of the contract is subject to the advertising conditions of the Group company and the individual online advertising conditions of the Group company.

3. PRICES

3.1. Basic price

All prices quoted by Goldbach are basic prices. The basic price is the compensation for the distribution of the advertisement. It does not contain production or any other costs. Where applicable, these are invoiced separately and are payable by the advertiser in each instance. Basic prices are always quoted ex value-added tax or any other applicable tax at the respective statutory rate. Similarly, any applicable compensation concerning copyright law and neighbouring rights that are payable for distribution of the advertisement to collecting societies such as SUISA or GEMA is not included in the basic price and must be borne by the advertiser unless otherwise agreed (see Clause 8.2).

3.2. Changes to prices or tariffs

Changes to the notified price may be made at any time. For legally binding advertising orders that have come into effect, price changes are effective only if Goldbach gives notice of at least 10 calendar days before the start of distribution. In the event of a price rise, the advertiser has the right to withdraw. The right to withdraw must be exercised in writing within five working days of receipt of the notification. In the absence of notification to the contrary from the advertiser, Goldbach is entitled to carry out the agreed distribution at the new tariff.

4. DISCOUNTS AND COMMISSION

4.1. Cash discounts

Where provided for in the applicable published prices and tariff documentation accessible online or in the advertising conditions of the Group companies and where the sum exceeds that of the applicable discount structure for the annual advertising-related budget of the advertiser, Goldbach grants a price reduction in the form of a cash discount of the published price, with specific reference to Clause 4.4. The discount is calculated on the basis of the annual budget posted at the time of calculation (booking volume in order year (calendar year)) and is factored into the invoice. The final calculation is made retroactively at the latest at the end of the order year and relative to the actual advertising service.

4.2. Fixed and corporate discounts

Fixed annual financial statement discounts and corporate discounts require express agreement signed by both parties in each instance. Where companies within a corporation (based on corporate status as at 1 January of the calendar year in question) claim joint discounting, written confirmation of group holding of at least 50% is required.

4.3. Consultancy commission/advertising agency commission, other agency compensation

Where an agency can prove a consultancy role or corresponding services for its client, it receives a consultancy commission (advertising agency commission) in line with the advertising conditions of the Group company, with the exception of arrears in payments due to Goldbach.

The advertiser acknowledges that Goldbach can additionally and directly compensate the agency for special additional services that result in a reduction in Goldbach's expenses or risk.

Goldbach may also compensate an agency and other intermediaries of advertisers for electronic booking or rebooking of advertisements via online booking and processing systems of the relevant Group company. Any advertising/media agencies or other intermediaries interested in 'online compensation' must conclude an annual agreement with Goldbach. This agreement defines the conditions for any claim for 'online booking compensation'.

4.4. Agency guarantees

An agency guarantees Goldbach that it applies the discounts assigned to it lawfully. In particular, an agency guarantees Goldbach that the granting and payment of discounts will not result in legal or contractual infringement by the agency. The agency further guarantees Goldbach that the advertiser has been completely and transparently informed of discounts, and that it passes on in full the discount to the advertiser, unless the advertiser explicitly renounces this entitlement.

5. PAYMENT CONDITIONS

5.1. Billing

Goldbach invoices for its services following distribution. Unless otherwise provided for in the advertising conditions of the relevant Group company or in the individual agreement, this will occur at the end of the advertising campaign at the latest.

5.2. Payment default

In the event of payment default, Goldbach is entitled to demand interest in the amount of 5% and an additional CHF 20.00 in reminder fees for each reminder. The assertion of further damages is not excluded. At its sole discretion, Goldbach may make prepayment or a security deposit a precondition of distribution, and may cancel the distribution entirely if this is not forthcoming. This does not affect the claim for payment, even for cancelled distribution.

6. GUARANTEE

6.1. Goldbach

Goldbach guarantees that it will diligently carry out the contractual services (hereinafter 'guarantee'). Where a solely quantitative service is agreed in the advertising order, any guarantee from Goldbach for qualitative services is excluded. If the distribution cannot be carried out due to circumstances within the advertiser's control, and where there is no agreement to the contrary, Goldbach is entitled to invoice the advertiser for compensation for the advertising service defined in the advertising order. The advertiser has no claim to compensation.

6.2. Advertiser

The advertiser is responsible for and guarantees that the advertisement and its content do not infringe the rights of third parties, particularly copyright, naming rights, personality rights or trademarks either directly or indirectly (i.e. in particular through links to other content and platforms), nor breach other intellectual property (IP) rights or competition law (UWG, PBV), broadcasting law (RTVG) or other provisions (lotteries, gambling, criminal acts, medical products, alcohol, foodstuffs, etc.) or principles (such as the principles of the Fairness Commission) of Switzerland and the advertiser's country of origin. The advertiser is responsible for securing all IP rights for the legal distribution of the advertising form and without infringement of third-party rights. The advertiser bears the risk and costs for the transfer of advertising materials to Goldbach.

6.3. Review obligation

The advertiser must review the distribution of the advertisement without delay and report any defects in writing within two weeks of distribution, otherwise execution of the order is considered approved.

6.4. Measurement of the service

Measurement of the service undertaken by Goldbach is valid only with methods applied by Goldbach (tools, software, programs) unless otherwise expressly agreed in writing.

6.5. Removal of defects by Goldbach

If the agreed distribution that Goldbach is expected to undertake is carried out incorrectly or not at all, Goldbach can at its discretion repeat the contractually agreed execution of the advertisement without delay through a replacement distribution to the same value (rectification). Further claims, in particular claims for conversion, minimisation or damages, are expressly disclaimed to the extent permissible by law. Should the rectification fail due to reasons within the control of the advertising medium or Goldbach, the advertiser may withdraw from the order. The liability provisions of Clause 7 apply.

7. LIABILITY

7.1. Goldbach

Goldbach and the advertiser are liable for damages arising in connection with the advertising order, for whatever legal reason, only in the event of intentional wrongdoing or gross negligence. Liability for auxiliary persons is restricted to intentional wrongdoing. Further liability, in particular liability for light or moderate negligence, is excluded. Goldbach assumes no responsibility for indirect damages, including lost earnings or profits or other consequential damages. In instances of rejection, postponement, reallocation, premature termination or non-distribution of legally binding advertising orders, any claim of the advertiser to reimbursement is restricted to the basic price stipulated in Clause 3.1, subject to Clause 6.5. Any other claims are expressly excluded.

7.2. Advertiser

The advertiser is liable for damages arising from its culpable defects, delays or non-fulfilment of its obligations related to the delivery and distribution of advertising materials or other contractual obligations, including through infringement of guarantee obligations as per Clause 6.2.

8. USAGE RIGHTS, INDEMNITY

8.1. Production rights

The advertiser is obliged to secure all necessary rights for the production of advertisements on its own behalf and on its own account.

8.2. Distribution rights

The advertiser is responsible for and guarantees that it has all necessary copyrights, ancillary copyrights and other rights required for the distribution of the advertisement in the relevant advertising medium (with the exception of broadcast rights and other distribution rights for GEMA or SUISA repertoire), and grants Goldbach the usage and processing rights necessary for fulfilment of the advertising order. The advertiser subsequently grants Goldbach the right to add the designation 'Advertisement' or similar to advertising media if required by the separation rule of advertising and press law.

8.3. Indemnity

If Goldbach and/or an advertising medium is subject to claims in relation to copyright, competition or other laws as a result of the distribution of an advertisement, in particular in relation to its content, the advertiser shall indemnify Goldbach and/or the advertising medium of all such claims at the first request. In such a case, the advertiser shall compensate Goldbach and/or the advertising medium for all costs arising from the proceedings (including damages and legal fees) incurred by Goldbach and the advertising medium. Goldbach must obtain the prior consent of the advertiser or agency before concluding an out-of-court settlement.

8.4. Copyright and ancillary copyright in the production of advertising materials by Goldbach

If the advertiser commissions Goldbach to produce advertising materials, all copyright and ancillary copyright in the work remain with Goldbach. The advertiser is granted a non-transferable usage right to the advertising material unrestricted by area or time for the purposes of advertising, which is included in the price of the advertising materials.

9. WITHDRAWAL

9.1. Withdrawal by Goldbach

Goldbach may rescind a legally binding advertising order if the advertiser cancels or changes its order and over which Goldbach has no influence and could not have foreseen; for instance, due to measures taken by supervisory authorities or courts. In this case, Goldbach may withdraw up to 10 days before start of distribution if a competitive situation exists

between the advertiser and an advertiser with exclusive rights to the specific advertising medium. In such cases, any claims of the advertiser are excluded.

9.2. Exclusion/modification of the right of withdrawal

The advertising conditions of the Group companies may exclude, replace or modify the right of withdrawal.

10. FINAL PROVISIONS

10.1. Applicable law

The sole applicable law for these GTCs and any advertising orders or other business concluded with Goldbach is Swiss law, excluding provisions of international private law.

10.2. Jurisdiction

The jurisdiction for any dispute arising from these GTCs, including the underlying advertising order or other transactions, is Zurich.

10.3. Written form requirement

Changes or additions to these GTCs or advertising conditions of the Group companies and collateral agreements require the written form.

10.4. Severability clause

Should one or more provisions of these GTCs be or become invalid, in case of doubt this does not affect the validity of any other provision or agreements. Goldbach may replace the invalid provision with one that in legally permissible form comes closest to the economic aim and purpose of the invalid provision.

10.5. Changes to the GTCs

Goldbach reserves the right to change these GTCs at any time. Any such changes shall be made known to the advertiser in appropriate form. During a current contractual relationship or campaign, the customer may cancel the relevant contractual relationship in writing within two weeks of notification of the amendment. Any services rendered in this context up to the point of dissolution of the agreement are to be paid in full. Ongoing campaigns are ceased at the point of dissolution of the contract. If the advertiser fails to make a written cancellation or if it makes further use of the contractual services, it accepts the amendments to the GTCs in full.

Küsnacht, April 2017

In the event of discrepancies between the English and German version of these General Terms & Conditions the German version shall prevail.