

ÖBB-WERBUNG GMBH

GENERAL TERMS AND CONDITIONS for promotional announcements on advertising spaces

1.1. General

- 1.1 These General Terms and Conditions (hereinafter referred to as "GTC") apply to relationships between ÖBB-Werbung GmbH (hereinafter referred to as "ÖBB-Werbung") and its customer (hereinafter referred to as "Client") which relate to making promotional announcements on either classic or digital advertising spaces provided by ÖBB-Werbung where ÖBB-Werbung holds the marketing rights.
- 1.2 These GTC do not apply to distribution campaigns or promotional activities which are not carried out by ÖBB-Werbung, or to marketing advertising space in online media (online advertising).

2.1. Placing an order, cancellation

- 2.1 An order is deemed to have been placed when ÖBB-Werbung receives its own written offer (order) back from the Client (e.g. per email / fax), countersigned by the Client. Any oral or additional agreements are only valid if they have been confirmed in writing by ÖBB-Werbung.
- 2.2 Additional services must be agreed in writing and will be invoiced separately.
- 2.3 Orders may be cancelled free of charge if done at least four weeks before the contract becomes effective. If the Client withdraws from the contract within four weeks, a cancellation fee will be charged which is equal to 50% of the advertising fee stated in the order.
- 2.4 The Client must bear any costs (e.g. production and installation costs) and fees which are incurred despite cancellation and indemnify and defend ÖBB-Werbung in this regard.

3.3. Term of contract, termination

- 3.1 In the absence of any written agreement to the contrary, the contract is concluded for an indefinite term and may be terminated by either party by means of a letter sent by registered post, subject to a three-month notice period running to the end of the respective invoicing period.
- 3.2 ÖBB-Werbung is entitled to terminate the contract with immediate effect for a significant reason. Significant reasons in this sense include: a delay by the Client in discharging its payment obligations under the contract, despite being issued with a warning by ÖBB-Werbung; each serious breach of contractual obligations, particularly those set out in Clause 6 (Illegal advertising content) and 14.1. (Passing on/sub-letting); failure to obtain the necessary approvals from state authorities which fall within the Client's area of competence, the rejection of a request to open insolvency proceedings due to insufficient assets to cover costs or the cessation of insolvency proceedings over the Client's assets for the same reason. Furthermore, ÖBB-Werbung is entitled to terminate the contract with immediate effect if material parts of the place where the advertising space is located must be converted or reconstructed or renovated, or if the owner of a classic advertising space needs the location for its own purposes (own needs) or if the Client's control structure changes to such an extent that more than 50% of the shares are directly or indirectly owned by other people than held them at the time when the contract was concluded.
- 3.3 If the contract was terminated for good cause which the Client was responsible, it has been agreed that any sums which are outstanding for the remainder of the respective invoicing period (in the case of contracts with an indefinite term) or for the remainder of the contractual term (in the case of contracts with a limited term) will be considered lump-sum damages (penalty) for the economic detriment suffered by ÖBB-Werbung because of the premature termination and will fall due for payment immediately upon the termination of the respective contract.

4. Consequences of the termination of the contract

- 4.1 In the absence of a written agreement to the contrary, the advertising materials on classic advertising spaces transfer into the ownership of ÖBB-Werbung after the contract terminates (irrespective of the reason for such termination), will be removed by ÖBB-Werbung, and may also be disposed of by ÖBB-Werbung.
- 4.2 If there is a written agreement that the Client must remove the advertising materials from classic advertising spaces itself, it must remove them completely, in a professional manner and at its own expense within 5 working days. The Client must restore the space to which the advertisements were fixed to the condition it was in when the contract commenced, taking the usual wear and tear into account.
- 4.3 ÖBB-Werbung must only store data transmitted to it for the term of the relevant contract. ÖBB-Werbung is under no obligation to return either data or the data carrier to the Client.

5. Responsibility for the content of adverts

- 5.1 The Client has sole responsibility for the content and legality of the advertising and for observing the rules of state authorities. The Client guarantees that the content of the advertising does not breach applicable law, its own contractual obligations, or Clause 6 of these GTC (Illegal advertising content).
- 5.2 The Client declares that it holds all necessary rights (e.g. copyrights, trademark rights) and any necessary permits (e.g. personality rights) relating to use, in particular with regard to reproduction and distribution.
- 5.3 The Client will indemnify and defend ÖBB-Werbung and the owner of the advertising space(s) or the location with regard to any breaches of Clause 5.1. or 5.2. and will bear the costs of any necessary legal representation of ÖBB-Werbung or the owner of the advertising surfaces/ the location.
- 5.4 ÖBB-Werbung is entitled, but not obliged, to promptly remove any of the Client's advertising content from circulation if it breaches applicable law, contractual obligations or Clause 6 of these GTC (illegal advertising content). ÖBB-Werbung will inform the Client without delay in such cases. If ÖBB-Werbung exercises this right, it is still entitled to the fee agreed for those adverts.
- 5.5 ÖBB-Werbung is not entitled to any fees for advertising materials which it wrongly removed from circulation. The Client does not have any claims to damages in such cases.
- 5.6 The Client will regularly check the content of its advertising for compliance with Clause 5.1. The Client will inform ÖBB-Werbung promptly in writing if it finds that the contents of advertising do not comply with Clause 5.1.

6. Illegal advertising content

- 6.1 The advertising spaces provided by ÖBB-Werbung may not be used to display advertising

materials with advertising content that contravenes public policy (e.g. advertising of a pornographic or sexist nature), breaches the National Socialism Prohibition Act, or constitutes discriminatory advertising because it treats people unequally based on certain characteristics (particularly sex, sexual orientation, ethnic origin, race, religious beliefs or world view).

- 6.2 It is not permitted to use the advertising spaces for advertising by direct competitors of the ÖBB company which owns the advertising space(s)/location, unless provisions of law prohibit this in the individual case. Advertising which could damage the reputation of the owner of the advertising space(s) or the location is also prohibited. If the provisions of this Clause 6 are breached, ÖBB-Werbung is entitled to reject an order or withdraw from an order which it has already accepted, after conducting an examination of the subject matter.

7. Refusal of permission by the owner or a state authority to put up the adverts

- 7.1 If the owner of the advertising space(s) or a competent state authority for any reason refuses permission to put up the advertising materials, demands their removal or verifiably terminates an existing cooperation with ÖBB-Werbung, the contractual parties will inform each other of this without delay. In this case, the relevant contractual relationship will terminate with immediate effect; the advertising materials must be removed without delay or it will be prohibited to put them up.
- 7.2 The Client has no claims to compensation in this regard; in particular, it has no claims to damages.

8. Placement of advertising materials, permits from state authorities

- 8.1 ÖBB-Werbung will endeavour to place the advertising materials in the agreed location. If advertising materials cannot be put up in the agreed location for business or technical reasons for which the owner of the advertising space(s) is responsible, the Client will be offered an alternative in writing (e.g. by email); ÖBB-Werbung is entitled to put up such advertising materials at the Client's expense in another location which is suitable for advertising purposes and which has been approved, provided that the Client does not raise any written objections to the alternative offer within fourteen days. If no objections are raised within this deadline, the contract is deemed concluded for the subject matter, as amended. If the Client objects to the alternative proposal, the contractual relationship will terminate with immediate effect. The Client waives the right to enforce claims for damages in the cases mentioned.
- 8.2 If mounting advertising materials on classic advertising space(s) requires a permit under railway law, ÖBB-Werbung will make the necessary submissions on behalf of all competent ÖBB companies; the Client must provide all the necessary documents without delay upon request if ÖBB-Werbung has been commissioned to mount the advertising materials. If ÖBB-Werbung has not been commissioned to mount the advertising materials, the Client must obtain the railway law permits itself. If other permits from state authorities are required for advertising on classic advertising space(s), ÖBB-Werbung may (but need not) provide assistance in obtaining them; however, the Client must make the relevant submission.

9. Production, mounting and removing advertising materials from classic advertising spaces

- 9.1 In the absence of a written agreement to the contrary, the advertising materials mounted on classic advertising spaces will always be produced, mounted and (after the contract has terminated) removed by ÖBB-Werbung at the Client's expense; a specific written request will be issued for removal. As far as this is possible, ÖBB-Werbung will take account of the Client's preferred timing for mounting the advertising materials. ÖBB-Werbung will coordinate the respective appointment for mounting the advertising in the month before the contract commences and notify the Client of such appointment without delay. Notification that mounting is complete will only be made upon the Client's request.
- 9.2 In principle, production and mounting costs will be disclosed when the order is placed and fall due for payment immediately upon an invoice being issued to the Client. The Client will be notified of the costs of removal in a separate written request; these costs will be invoiced after removal is complete and fall due for payment immediately.
- 9.3 If ÖBB-Werbung produces the advertising materials, colour fidelity can only be guaranteed if ÖBB-Werbung performs colour coordination using a colour consistency proof provided by the Client.
- 9.4 If the Client undertakes to deliver the advertising materials but is late with delivery, ÖBB-Werbung cannot guarantee that it will fulfil the order completely and in a timely manner. Regardless of this, the full fee will be charged for the agreed contractual term. If ÖBB-Werbung is late in mounting the advertising materials and this is due to a delay in delivery, this does not extend the contractual term under any circumstances.
- 9.5 If the Client mounts and/or removes the advertising materials pursuant to a written agreement, the Client must ensure that it obtains the necessary rights to access the respective advertising space as well as any permits which are required from state authorities or under railway law.

10. Importing advertising materials onto digital advertising spaces

- 10.1 Importing advertising materials onto digital advertising spaces is done exclusively by ÖBB-Werbung at the Client's expense. As far as this is possible, ÖBB-Werbung will take the Client's desired timing into account. Notification on that the import process is complete will only be made upon the Client's request.
- 10.2 ÖBB-Werbung does not provide any guarantee that the data provided by the Client will be sufficient to fulfil the actual order. ÖBB-Werbung is entitled, but not obliged, to check the data provided by the Client for its suitability for fulfilling the respective order (or arrange to have this check performed by a third party). ÖBB-Werbung will inform the Client whether the data provided is sufficient to fulfil the order within three working days of any such check.
- 10.3 ÖBB-Werbung is entitled, but not obliged, to process the data the Client provides, if ÖBB-Werbung is of the opinion that this is necessary to make optimal use of the advertising materials. ÖBB-Werbung will transmit the data it processes to the Client for the purposes of controlling and approval. If the Client does not grant its approval within a reasonable period, ÖBB-Werbung may import the advertising materials and is not liable under any circumstances if the final product is of poor quality. ÖBB-Werbung is entitled to charge a reasonable fee for proces-

- sing data, if such processing is necessary to make optimal use of the advertising materials.
- 10.4.** The Client will send the advertising materials in a timely manner and in a form which fulfils the respective requirements (format, etc.). If they are sent late, ÖBB-Werbung cannot guarantee that it will fulfil the order completely and in a timely manner. Regardless of this, the full fee will be charged for the agreed contractual term. If ÖBB-Werbung delays in importing the advertising materials and this is because they were sent late, this does not under any circumstances extend the contractual term or change the number of times they are displayed.
- 11. Payment conditions, price-indexation clause**
- 11.1.** Payments only discharge the relevant debt if they are made to the account of ÖBB-Werbung which is stated in the invoice. In the absence of a written agreement to the contrary, invoices will be issued without delay after the respective invoicing period commences. In the absence of a written agreement to the contrary, the invoiced amount falls due for payment immediately upon the invoice being issued. No discounts are granted.
- 11.2.** In the event of a delay in payment, the Client must pay compensation for all expenses and costs which result from such delay; these may also be charged in the form of a lump-sum fee for issuing a warning. Furthermore, ÖBB-Werbung is entitled to charge the Client default interest at the statutory rate.
- 11.3.** The respective fee (including ancillary claims) is price-indexed. The CPI 2015 published monthly by Statistics Austria, or an index which replaces it, is the base index for calculating adjustments to the fees, whereby the base index value will be the one published for the month during which the contract commences. Fluctuations in the index value of less than 5% in either direction are deemed irrelevant. The first index value to exceed this fluctuation range will be considered the reference index value for adjusting fees and as the base for calculating the new fluctuation range. The components of the fee will be adjusted with effect as of the first of the month in which the index exceeded the 5%-threshold. This escalation clause takes effect automatically when the index value changes; no specific declaration by ÖBB-Werbung to this effect is required. Even if ÖBB-Werbung accepts or confirms receipt of the fee without taking the indexation mechanism into account, this does not constitute a waiver by ÖBB-Werbung of the indexation amounts which have resulted in past fee periods because of the escalation clause.
- 12. Fees, costs**
- 12.1.** The Client will bear any statutory fees which accrue on the respective contract. ÖBB-Werbung will calculate the fees according to the applicable provisions of law and ensure that the amount required by law is paid. ÖBB-Werbung is entitled to charge these fees separately or in the next invoice. The fee charged falls due for payment without deductions immediately upon the respective invoice being issued.
- 12.2.** If the amount charged by the tax office does not correspond to the amount transferred by the Client, the amount owed will be charged retrospectively or the excess amount paid will be reimbursed, even if ÖBB-Werbung calculated the fee differently beforehand.
- 13. Guarantee, damages**
- 13.1.** ÖBB-Werbung does not provide any guarantee that the adverts will be permanently visible during the respective contractual term. ÖBB-Werbung excludes liability for any damage which results from temporary limitations or disruptions to the adverts for whatever reason, unless ÖBB-Werbung or a company belonging to the ÖBB group or its employees have caused such damage by their own intentional or grossly negligent conduct; the Client bears the burden of proof in this regard. The Client waives any claims to compensation for the event that the advertising materials have to be removed from circulation for business or technical reasons relating to the owner of the advertising space or location.
- 13.2.** Furthermore, and in the case of adverts on digital advertising space(s), the Client has no claim to a specific slot in the programme or a certain editorial environment. ÖBB-Werbung guarantees that the adverts will be displayed at least 90% of the number of times stated for the respective period.
- 13.3.** Furthermore, ÖBB-Werbung excludes any liability for damage (including consequential damage) to the advertising materials or other objects owned by the Client, or for a breach of the Client's rights in the advertising materials, unless ÖBB-Werbung or a company belonging to the ÖBB group or their employees have caused such damage by their own intentional or grossly negligent conduct; the Client bears the burden of proof in this regard (including in those cases where the Client has given ÖBB-Werbung data/documents for processing).
- 13.4.** Marginal damage to the advertising materials mounted or the breach of rights in advertising materials which have been imported do not have any effect on the fee agreed. If the advertising materials mounted on classic advertising spaces are damaged in a way which is not merely marginal, ÖBB-Werbung may either (i) arrange to have the advertising materials reproduced or remounted at its own expense and charge the regular amount of fees, or (ii) arrange for the advertising materials to be removed but not reproduced; in this case, the fee will be reduced by an appropriate amount. In the first case, the Client will assign any claims to damages which it may have against third parties in connection with the damage caused to the advertising materials to ÖBB-Werbung.
- 13.5.** No compensation will be paid for changes in advertising materials mounted on classic advertising spaces which were caused by the weather or the passage of time. Advertising materials which have become unsightly after a long period of display may be renewed at the request (and expense) of the Client. ÖBB-Werbung is under no obligation to store any advertising materials which have been removed, nor does it have any liability for any damage arising from this. Furthermore, there is no liability for changes in the colour of advertising materials because certain print colours were used.
- 13.6.** There is no liability for achieving a certain result from the advertising, or for damage due to force majeure events (e.g. natural disasters, extraordinary weather effects, such as gales, periods of cold weather or heavy rainfall, etc.) or for any form of loss or vandalism.
- 13.7.** ÖBB-Werbung is not liable to the Client for the advertising materials it orders or provides being free and clear of third party rights (in particular rights or permits to use a work). Under no circumstances is ÖBB-Werbung under an obligation to have advertising content checked by a third party at its own expense. ÖBB-Werbung does not have any liability for losing any data itself, or for loss of data by any sub-contractors.
- 13.8.** In the absence of a written agreement to the contrary, the Client must assert any defects or enforce any claims to compensation in writing within 7 days of mounting or importing the advertising materials; failure to do this results in such claims lapsing. With regard to defects which are justified and have been notified in a timely manner, ÖBB-Werbung may remedy such defects or offer a substitute. Under no circumstances is ÖBB-Werbung under an obligation to provide a substitute.
- 13.9.** If liability for damage or consequential damage has not already been excluded by the previous provisions, it is limited to the amount of the total advertising, but to a maximum of € 5,000. The Client waives any claims beyond this. Under no circumstances is ÖBB-Werbung liable for slight negligence or lost profits.
- 13.10.** The Client is liable for all damage caused by the data it has provided (e.g. computer viruses), regardless of fault, and fully indemnifies and holds ÖBB-Werbung harmless in this regard.
- 14. Passing on, sub-letting**
- 14.1.** Sub-letting or otherwise passing on booked advertising space, either wholly or in part, to third parties is permitted only with ÖBB-Werbung's prior written consent.
- 14.2.** The Client must notify ÖBB-Werbung of any changes to its legal or economic control structure in writing without delay. ÖBB-Werbung may demand that the contract is concluded anew in such cases.
- 14.3.** ÖBB-Werbung reserves the right to demand a separate fee in return for its consent to the advertising space booked being sub-let or otherwise passed on, either wholly in part, or if the contract is concluded anew because of changes pursuant to Clause 14.2.
- 15. Confidentiality, data protection**
- 15.1.** The Client will treat all business secrets of which it gains knowledge in the course of the respective contract as strictly confidential, even after the respective contract terminates. The Client will also ensure that its employees are bound by this obligation and will furnish proof of this to ÖBB-Werbung upon the request of ÖBB-Werbung.
- 15.2.** The Client consents to all data in connection with the respective contract, such as its content, file number, name/company, title, address and other data, being automatically stored at ÖBB-Werbung.
- 16. Measures to combat corruption and restraints on competition**
- 16.1.** The Client will take all reasonable measures to prevent corruption (including all necessary precautions relating to either its organisation or personnel), to ensure that, in the course of its business dealings with ÖBB-Werbung, it (and all persons acting on its behalf) (i) strictly comply with all provisions of criminal law combating corruption, including sections 168b, 153a, 304 to 307b, 308 and 146 to 148a Austrian Criminal Code as well as sections 10 to 12 of the Austrian Act Against Restraints on Competition; (ii) does not offer, promise or grant any payments or other benefits to persons acting on ÖBB-Werbung's behalf, and does not demand, or allow to have promised to it, or accept such payments or benefits from such persons and does not attempt to influence those persons in any other way; (iii) does not arrange for third parties to perform the actions described in (i) and (ii) or otherwise contribute to their realisation.
- 16.2.** Furthermore, the Client will not breach any provisions of antitrust law or other rules aimed at protecting unfettered competition.
- 16.3.** Finally, the Client will ensure that any third parties it engages are bound by the obligations set out in 2.1. and 2.2. and to withdraw from or terminate the contract with the third party with immediate effect if it has been proven or there is a reasonable suspicion that third party has committed one of the actions described.
- 17. Concluding provisions**
- 17.1.** ÖBB-Werbung may pass orders on to sub-contractors; in such cases, ÖBB-Werbung is only liable for own fault in selecting the sub-contractor.
- 17.2.** ÖBB-Werbung and ÖBB-Holding AG, as the 100% parent company of ÖBB-Werbung, are entitled to photograph the advertising materials mounted on the advertising spaces and use the photographic materials for their own advertising purposes and references - regardless of in which medium - even after the contractual term has expired.
- 17.3.** The Client may not withhold payments after they have fallen due or set-off its own claims against those of ÖBB-Werbung, unless the Client's claim is directly related to its obligation to make payment and has been determined by a court or has been explicitly recognised in writing by ÖBB-Werbung.
- 17.4.** All deliveries made to the last notified address of the Client are deemed to have been delivered to the Client until a new address is notified in writing.
- 17.5.** There are no oral side agreements besides the contractual agreements. Amendments or supplements are only valid if they are in writing. This also applies to any agreement to diverge from the written form requirement.
- 17.6.** If a provision of these GTC is ineffective or unable to be executed, this does not affect the effectiveness of the remaining provisions. Provisions which are ineffective or unable to be executed must be replaced by provisions which come as close as possible to the intended economic purpose.
- 17.7.** This contract is governed by Austrian law, excluding its provisions on the conflict of laws. It is agreed that the court in the first district of Vienna with subject matter competence is the exclusive legal venue.
- 17.8.** The respective current version of these GTC is available on ÖBB-Werbung's website.