

General Terms and Conditions of Otto GmbH & Co KG for the provision of media services

Version of October 7, 2019

1. Subject matter and scope

1.1 The following General Terms and Conditions (“GTCs”) apply to all business relations between Otto GmbH & Co KG (“OTTO”) and advertisers or agencies (hereinafter uniformly referred to as “Advertisers”) regarding the awarding and implementation of insertion orders for websites and other online media marketed by Otto.

1.2 OTTO reserves the right to modify these GTCs to take effect in the future. In this case, OTTO shall notify the Advertiser of the changes before conclusion of a new insertion order. For insertion orders already concluded, the present GTCs shall continue to apply in the version in effect when the insertion order was concluded.

2. Definition of terms

2.1 “Ad impression” refers to the calling up of a website or other online medium that contains advertising material covered by the insertion order. To be considered an ad impression it is not necessary for the user to click on the advertising material.

2.2 “**CPC**” (cost per click) is the sum of money agreed under an insertion order which the Advertiser has to pay for the click by a user on advertising material covered by the insertion order.

2.3 “**Insertion order**” refers to a contract between the Advertiser and OTTO regarding the implementation of advertising campaigns and the provision of other media services on specific online media.

2.4 “**Media services**“ refers to the services to be rendered by OTTO under an insertion order, i.e. especially the delivery of advertising material.

2.5 “**Online media**” refers to all websites, platforms, apps and other online media which are made the subject of an insertion order in accordance with the agreement made between the parties.

2.6 “**CPT**” (cost per thousand contacts) is the sum of money agreed under an insertion order which the Advertiser has to pay for a media service that reaches 1,000 users per ad impression.

2.7 “**Advertising material**” refers to the advertising material agreed under an insertion order, such as banners, which OTTO has to deliver on the online-media agreed to in the insertion order.

3. Conclusion of insertion orders

3.1 Media services shall be performed based on insertion orders.

3.2 All offers by OTTO to conclude insertion orders are non-binding unless the respective offer is expressly identified as a binding offer.

3.3 The conclusion of an insertion order requires the text form.

3.4 The insertion order has to specify the media services to be provided by OTTO and the fee to be paid by the Advertiser. The present GTCs shall apply additionally. These GTCs shall be part of each insertion order, even if these GTCs are not expressly referenced again. Terms and conditions of the advertiser that are different from these GTCs shall be valid only insofar as OTTO accepts them in writing. This also applies if no express objection to the Advertiser's terms and conditions has been raised.

3.5 OTTO and the Advertiser are the contracting parties to the insertion order. If the Advertiser is an agency, the agency shall act on its own behalf and on its own account, in other words, it does not act on behalf of its clients. However, the agency is obligated to disclose in advance the name of the advertising client for whom the agency wants to obtain media services from OTTO and immediately provide appropriate proof of the order upon OTTO's request. During an ongoing insertion order, the agency is not permitted to change the advertising client for whom the campaign was booked or to replace it with advertising for another advertising client who was not mentioned by name in the insertion order.

3.6 The Advertiser is not entitled to transfer the insertion order to third parties and/or to grant third parties rights under the insertion order.

4. Fulfilling insertion orders

4.1 OTTO undertakes to provide the media services agreed under the insertion order. OTTO shall make every commercially reasonable effort to provide the advertising service in a timely manner at the locations stated in the insertion order via the ad server.

4.2 The media services shall be provided within the time period agreed in the respective insertion order and/or until the volume specified in the insertion order has been reached.

4.3 A certain number of ad impressions or clicks and/or another successful performance is owed only if this has been expressly agreed in the respective insertion order.

4.4 Likewise, delivery of the advertising material on a specific online medium is owed only if this has been expressly agreed in the respective insertion order. Otherwise, the Advertiser is not entitled to placement of the advertising material in a specific online medium, at a specific position of the respective online medium and/or adherence to a specific time period for accessing the respective advertising material. The Advertiser is, in particular, not entitled to delivery in the immediately visible area of an online medium (first screen).

4.5 Insofar as delivery of the advertising material in a specific environment was agreed, OTTO is entitled to relocation only if this relocation does not have a significant influence on the advertising effect of the advertising material.

4.6 Delivery of the advertising material on a fixed date is owed only if this was agreed in the respective insertion order expressly excluding a right to postpone/move delivery. Apart from that, OTTO reserves the right to reschedule the delivery date provided for in the respective insertion order plus/minus three days. OTTO is also entitled to move or cancel an agreed delivery date insofar as an online medium, where the relevant advertising material is to be placed, is not available on the agreed delivery date or if delivery on this date is not possible due to technical circumstances which are outside of OTTO's sphere of responsibility.

4.7 OTTO has the right to use the services of third parties to fulfill the contractual obligations.

4.8 Insofar as the insertion order provides for the placement of advertising banners, the following special conditions apply.

- Delivery of the advertising banner shall be controlled by the ad server according to the insertion order. Fluctuations in usage behavior can lead to premature or delayed delivery which has to be reasonably tolerated.
- Unless the parties expressly agree otherwise in writing, OTTO shall be free in placing the advertising banners. In the event of existing placement agreements, OTTO shall retain the right to reasonable relocations insofar as this does not impair the advertising effect more than only insignificantly.
- OTTO has the right to store and retain the advertising banners received from the customer after expiration of the last agreed ad placement. Once placed, motifs may be reproduced later for documentation purposes or as a sample.

5. Advertising material

5.1 The Advertiser is obligated to make available to OTTO the advertising material and necessary data to be delivered such as, for instance, landing page URLs or ad tags in the specified format in a timely manner, unless expressly agreed otherwise in the respective insertion order. These must be made available at least 14 days prior to placement of the advertising material.

5.2 The advertising material has to be made available on the agreed dates in accordance with the technical specifications set forth by OTTO. OTTO shall make the technical specifications in their latest version available to the Advertiser upon request.

5.3 If the Advertiser, for reasons for which the Advertiser is responsible, is not able to deliver the advertising material according to specifications in a timely manner on the agreed delivery date, OTTO nevertheless has the right to charge the full price for this order. OTTO shall attempt to provide the booked volume (number of ad impressions) also in the shortened time period, but cannot guarantee this depending on availability.

5.4 If less than the agreed volume is delivered through OTTO's fault, the invoice amount shall be reduced by the percentage of underdelivery. Any damage due to underdelivery shall not be compensated by OTTO.

5.5 The Advertiser transfers to OTTO a non-exclusive, world-wide right of use to the contents of the advertising material made available and this right is unlimited in terms of call quantities, limited in time to the term of the contract and restricted in content to the purpose of the contract. The granting of rights encompasses the required use, ancillary use, trademark and other rights under copyright law, including, without limitation, the right to reproduce, distribute, transmit, broadcast, make publicly available, extract from a database and retrieve as well as edit the advertising material insofar as this is necessary for fulfilling the insertion order. Insofar as the subject matter of the contract is advertising banners, the right of use shall also cover the contents of the banner and the marks and product design elements contained therein. In addition, the Advertiser shall grant OTTO the right to use the advertising material provided for the purpose of self-promotion and for internal purposes (e.g. use cases, etc.) world-wide for an unlimited period of time. The aforementioned rights shall be freely transferable to third parties. For reasons of clarification, it is noted that OTTO has the right to use the backchannel information transmitted to OTTO by the DSP used (e.g. URL of the website on which the advertising material was delivered) for its own purposes and/or the purposes of third parties insofar as the DSP grants OTTO a corresponding right of use to this information.

5.6 The Advertiser warrants that the advertising material provided by the Advertiser and the websites linked through it

- are free of third-party rights and that the Advertiser has all required use, ancillary use, trademark and other rights under copyright law to allow OTTO and the suppliers of online media use of the advertising material free of third-party rights;

- clearly and unambiguously show the advertising character;
- do not contain contents which glorifies violence or war, are pornographic, harmful to young people, racist, incite hatred or show contempt for humanity;
- do not contain any means of propaganda or symbols of unconstitutional organizations;
- do not call for committing a criminal offence, incite racial hatred or promote a terrorist group;
- do not contain any other illegal contents or contents which are generally apt to adversely affect OTTO's reputation or that of a company affiliated with OTTO,
- do not contain any malware or transmit such malware;
- do not, without a prior written declaration of consent by OTTO, equip advertising banners with mechanisms or functionalities which are used to capture the users of the respective website or to collect data about these users (for instance, through cookies, markers or similar);
- do not use technologies or functionalities on the landing page URL which deactivates the "Back" function in the users' web browser.

5.7 In the event of a breach of the above warranty, the Advertiser shall indemnify OTTO on first demand from all claims of third parties which these assert against OTTO and shall bear the costs and expenses (including reasonable attorney's fees) incurred by OTTO as a result of such third-party claims. If the Advertiser has been warned because of the advertising banners or similar ones or if the Advertiser has already made a declaration to cease and desist regarding certain advertising banners or advertising contents, the Advertiser is obligated to inform OTTO thereof without delay in written form without having to be asked to do so. If the Advertiser fails to do so, OTTO shall, for this reason alone, not be liable for any damage the Advertiser incurred because of a repeated publication of the contested advertising banner or its contents.

5.8 OTTO is not obligated to examine the advertising material provided by the Advertiser prior to delivery.

5.9 If the advertising material does not comply with the applicable technical specifications or violates any of the above assurances, OTTO has the right to reject it or to stop a campaign already under way.

5.10 OTTO has the right to identify the advertising material as advertisement, e.g. with the addition "advertisement" or similar additions, and to place it apart from any additional editorial contents if the advertising material provided by the Advertiser is not sufficiently clearly recognizable as an advertisement.

5.11 If necessary for the delivery of the advertising material, OTTO has the right to edit the advertising material with regard to size, format or technical specifications. If the content of the advertising material has to be edited, OTTO shall obtain the Advertiser's consent prior to such editing.

5.12 For the duration of each campaign, the Advertiser is obligated to keep the websites to which the respective advertising material links retrievable or to ensure that they remain retrievable.

5.13 OTTO is not obligated to create advertising material for the Advertiser. Insofar as the parties expressly agreed on the creation of advertising material in an insertion order, this must be paid in accordance with the agreement made in the insertion order or, if no such agreement was made, separately at cost based on the OTTO price list in effect at the time. Even if the advertising material is created by OTTO, the Advertiser shall bear the sole legal responsibility for its content and its legality according to the above provisions.

5.14. Advertising material of the Advertiser may be shown next to other products on the respective website. Due to the limit of one banner ad per page/ impressions, this competition shall, however, be limited to shop articles, promotional articles or similar. OTTO shall endeavor, in its own interest, to avoid overlapping with direct competitors, but cannot completely exclude it.

5.15 The Advertiser may use information obtained or obtainable from the contractual performance (linking data) only for examining the provision of service by OTTO and may not use it for other purposes without the prior written declaration of consent by OTTO. This applies in particular to information to the effect that a certain end user or a group of end users reached the landing website of the customer from a website, where the Advertiser's advertising material is placed through the contractual performance, and a certain end user looked at the website on which the advertising material is placed. Notwithstanding the aforementioned, the Advertiser is not permitted, without the prior written declaration of consent by OTTO, to share linking data with third parties in such a way that this makes it possible to identify end users with regard to use of the websites on which the advertising material was placed. Nor is the Advertiser permitted to use linking data for database collection of end users as a user website on which the advertising material was placed or make it possible to address these end users as a target group or allow such use by a third party. Regardless of this exclusion, the Advertiser, without creating the aforementioned reference to its own clients and its affiliated companies, is also free to use data about end users obtained through the performance of services in aggregated, non-personal, statistical form for other purposes as long as an individual or group identification as end users of the website on which the advertising material was placed, is impossible.

6. Cancellations

6.1 The Advertiser may cancel an insertion order up to and including the 30th day before start of delivery at no charge. The start of delivery shall be the day when the service agreed in the insertion order is performed for the first time as agreed.

6.2 In the event of cancellation starting from 29 days up to and including the third day prior to start of delivery, the cancellation fee shall be 30% of the net order value. After that, cancellation or termination of the insertion order shall be possible only against payment of the entire net order value.

6.3 In case of banner ads, the following provision shall apply exclusively to the cancellation of an order: Insofar as the customer cancels an ad placement order vis-à-vis OTTO for ad placements not yet performed, OTTO shall be entitled to a claim amounting to 50% of the net order value of the ad placements not yet performed unless the inventory can be sold to other customers during the same period at comparable net prices.

6.4 Any cancellation must be in writing.

7. Payment, terms of payment and invoicing

7.1 The payment to be made to OTTO by the Advertiser is based on the price list of the respective insertion order.

7.2 Unless the parties have agreed otherwise in the respective insertion order, payment will be based on the OTTO price list in effect at the time of conclusion of the insertion order.

7.3 Prices are subject to change. However, price changes to insertion orders that have been concluded already are effective only if they are announced by OTTO at least one month prior to the planned publication of the advertising material. In the event of a price increase, the Advertiser has a right of termination with respect to the unfulfilled part of the insertion order. The right of termination must be exercised within 14 days following receipt of the price increase announcement.

7.4 Invoicing shall be based exclusively on the reports created by OTTO regarding the number of impressions, clicks or other agreed parameters. The service shall be documented by standardized reporting (from the ad server). Other supporting documents shall not become part of the contract.

7.5 Unless the parties have agreed otherwise in the respective insertion order, the Advertiser is obligated to make advance payment as follows:

- For CPT campaigns, the Advertiser is obligated to make full payment in advance. The payment has to be received by OTTO no later than three days prior to the agreed start of the campaign.
- For CPC campaigns, the Advertiser is obligated to make full advance payment of the respective daily limits. The payment for each delivery day has to be received by OTTO no later than three days prior to the agreed delivery.

7.6 Insofar as the Advertiser does not make advance payment in a timely manner, OTTO has the right to postpone the respective campaign until appropriate payment has been received and to deliver with corresponding delay.

7.7 The Advertiser shall be invoiced by mail or in electronic form.

7.8 Invoice amounts are due upon receipt of invoice and payable within 14 days without deduction.

7.9 The prices do not include value added tax at the legally applicable rate.

7.10 The Advertiser is not entitled to offset rights unless claims of the Advertiser have been confirmed by a final judgment, are undisputed or are accepted by OTTO.

7.11 The invoices must be paid by the customer to the account specified by OTTO within 14 days of receipt strictly net cash. OTTO's invoice number and the issue date must be indicated. In case of late payment, OTTO has the right to charge reminder costs in the amount of EUR 2.00 per reminder and default interest in the amount of 8% above the base interest rate of the European Central Bank.

8. Term, termination

8.1 The term of each insertion order is specified in the respective insertion order. Early ordinary termination is excluded.

8.2 This does not affect the right of extraordinary termination.

8.3 Either Party has the right to cancel the ad placement contract for good cause effective immediately. Good cause for OTTO includes, without limitation, situations where a warning has been issued and/or a preliminary injunction was obtained against OTTO due to the ad placement ordered by the Advertiser and/or the Advertiser violated obligations under Item 6. Services already rendered are invoiced at the time of cancellation based on the actual cost incurred.

8.4 Notice must be given in writing.

9. Liability

9.1 Liability because of delayed delivery of the advertising campaign is excluded insofar as it is the result of force majeure or unforeseeable events for which OTTO is not responsible such as disruptions of operations, regulatory orders, court orders or a delay in supply. In the aforementioned instances, the agreed execution periods shall be reasonably extended also within a delay.

9.2 OTTO and its agents in performance bear unlimited liability for intent and gross negligence.

Liability for ordinary negligence is limited, on the merits, to the breach of an essential contractual obligation and, in terms of amount, to the typically foreseeable damage upon conclusion of the insertion order based on general life experience. Material contractual obligations are obligations the fulfilment of which is essential for the proper implementation of the contract and on the fulfilment of which the contracting party regularly relies and may rely.

9.3 The sum total of payments the Advertiser made to OTTO based on the respective insertion order is deemed to be the typically foreseeable damage.

9.4 The aforementioned disclaimers of liability and limitations do not apply in case of acceptance of express warranties by OTTO, in case of claims under the German Product Liability Act, in case of fraudulent concealment of defects, in case of damages resulting from injury to life, body or health, and in case of other mandatory statutory regulations.

9.5 Irrespective of OTTO's right of examination and refusal according to Item 3, the Advertiser shall be responsible for any damage incurred by OTTO due to a defective or unlawful advertising banner for which the Advertiser is responsible, including, without limitation, third-party claims under competition or trademark law. The Advertiser shall, already at this time, hold OTTO harmless from any potential third-party claims because of this reason.

10. Data protection

10.1 The Advertiser is obligated to comply with the applicable data protection regulations.

10.2 The Advertiser is only permitted to use tracking pixels or similar technologies upon delivery of the advertising material if this has been expressly agreed in the insertion order. The same applies to flash cookies or comparable technologies.

10.3 If the Advertiser uses systems of a third party for the delivery of advertising material on the online media, the Advertiser shall ensure that the system operator also complies with this agreement.

10.4 The Advertiser warrants that the websites linked via the advertising material display a data privacy statement which contains information about the use of third-party technologies and information about the use of cookies and/or the use of web beacons. The data privacy statement must also contain information about the user's options regarding the management of cookies. This information and the design of the use of cookies/web beacons must comply with statutory provisions and the specifications established by the website operators' contracting parties. Compliance with the specifications of the website operators' contracting parties is only required if this is necessary in order to comply with statutory provisions.

11. Confidentiality

11.1 The contracting parties undertake to maintain confidentiality with respect to these Terms and Conditions, the contracts entered into based on these Terms and Conditions and all findings and results obtained in the fulfillment of the contracts and to refrain from making these available to third parties. This applies in particular to information about business transactions, business processes, price structures, financial statements, financial or contractual agreements and the content of this contract. In case of doubt it is to be assumed that information about the mode of operation of one contracting party which the other contracting party receives as part of the collaboration has to be kept confidential and is to be used exclusively for the fulfillment of the insertion order. The obligation of confidentiality does not apply to the sharing of information with the parties in accordance with Sections 15ff. German Stock Corporation Act [AktG].

11.2 The obligation of confidentiality does not apply to information which is or becomes public knowledge other than as a result of a breach of contract by either party, which was verifiably known to the receiving Party at the time of its announcement or which has to be disclosed based on a mandatory statutory or regulatory obligation or an obligation based on a final court decision.

11.3 When a booking is made through an agency, OTTO has the right to send a booking confirmation also to the agency's respective advertising client.

11.4 Within the context of self-promotion, OTTO has the right to refer to the collaboration with the Advertiser, including a display of the Advertiser's trademarks or logos.

11.5 During the term of the contract, the customer undertakes to communicate its data protection provisions in accordance with the latest applicable standards with sufficient clarity and accuracy to end users in connection with the landing page URL with regard to the handling of personal data and to comply with these provisions.

12. Final provisions

12.1 Cancellations, changes and amendments to these General Terms and Conditions must be in writing. This also applies to this written form requirement. The place of fulfillment is Hamburg. The place of jurisdiction is OTTO's registered office. The legal relationships are assessed exclusively according to German law.