



## General Terms and Conditions of the Tele 5 TM-TV GmbH

Stand: 29.09.2009

### 1. Scope of these Terms and Conditions

The following Terms and Conditions shall apply to any marketing of commercial air-time by the TV station Tele 5 TM-TV GmbH (hereinafter referred to as TM-TV), especially as regards all sorts of spot advertizing, program sponsorship and special advertizing. TM-TV operates the special interest TV program "Tele 5"; contracts, however, shall be concluded between TM-TV and the relevant client.

### 2. Definitions

**"Spot advertizing"** means a film of a duration between five (5) seconds and 89 seconds (maximum) which serves to advertize a product or service in a commercial break within the TV program.

**"Program sponsorship"** means a film of a duration of at least five (5) seconds which is broadcast with immediate reference to editorial content or a related program announcement.

**"Special advertizing"** means any other form of product or brand presentation on TV which is neither spot advertizing nor program sponsorship.

**"Cooperative advertizing"** means spot advertizing for products, brands or services of various companies.

### 3. Terms of Contract

3.1 Unless otherwise agreed or specified, offers submitted by TM-TV are non-binding and always subject to the availability of the air-time offered.

3.2 Broadcasting orders can only be accepted in writing. A contract shall only be deemed concluded upon written confirmation of the broadcasting order by TM-TV or upon broadcasting the material, if the confirmation is issued after the material has already been broadcast. A confirmation in writing cannot be replaced by verbal confirmations or confirmations by phone.

A contract shall be deemed concluded according to the scope stipulated upon its written confirmation even if the placement of the spot has not yet been determined.

3.3 All broadcasting orders are subject to these General Terms and Conditions only. We hereby expressly exclude the validity of any client's terms and conditions, irrespectively as to whether these General Terms and Conditions may in general or in particular collide with the client's provisions. Exceptions from these General Terms and Conditions as well as verbal agreements shall only be valid upon written confirmation by TM-TV. Amendments to this formal requirement must be done in writing.

3.4 Orders placed by advertizing agencies shall only be accepted if the advertizer's name has been specified. TM-TV is permitted to request the advertizing agency to provide proof of

being duly authorized by the advertiser. The order will be invoiced on account of the agency. TM-TV reserves the right to pass on order confirmations to the advertiser.

Upon placement of an order, the advertising agency shall assign to TM-TV all receivables arising from the advertising contract concluded with its customer as security. TM-TV hereby accepts this assignment. TM-TV is entitled to collect the receivables assigned unless the agency settles the invoiced amount within 30 days after its due date. TM-TV will inform the agency prior to disclosure of the assignment. The advertising agency is not permitted to transfer broadcasting dates booked for a specific advertiser to another advertiser or another advertising agency.

#### **4. Rejection of Broadcasting Orders**

4.1 Prior to the conclusion of a contract according to item 3 of the present provisions, TM-TV shall be entitled to reject broadcasting orders without stating reasons.

4.2 TM-TV is not obligated to review or check the advertising material prior to accepting an order. Thus TM-TV reserves – even after the conclusion of a contract – the right to reject a commercial spot for legal, technical or ethical reasons or on the basis of objectively justified guidelines of TM-TV especially if the content of the spot does not comply with the interests of TM-TV. TM-TV shall inform the contractor of the rejection immediately.

4.3 Cooperative advertising requires express written confirmation by TM-TV. The names of the advertisers have to be specified.

4.4 If the broadcasting is rejected or interrupted for reasons for which the client is responsible, the client must immediately provide new and/or altered content which cannot be objected. If the replacement material is not available in good time so that the agreed broadcasting dates cannot be observed, TM-TV shall nevertheless retain a claim to payment as though the content had been broadcast as stipulated.

If the broadcasting is rejected or interrupted for reasons for which the client is not responsible, the client may withdraw from the contract as far as the objected advertising is concerned and reclaim payments already effected unless they have not been used up by prior broadcasting services rendered. Any further claims on the part of the client shall be excluded.

#### **5. Broadcasting Modalities**

5.1 The placement of the spots shall be done by TM-TV in cooperation with the client or otherwise at TM-TV's equitable discretion with maximum consideration of the client's interests. The client does not have the right of having the spot placed in a specific advertising block and/or having it placed at a specific position within an advertising block. The agreed broadcasting times shall be observed whenever possible.

Unless otherwise agreed upon in writing, broadcasting times can, however, be shifted within a specific rate category according to the price list.

5.2 Spot advertising is done in advertising blocks with spots generally being placed in commercial breaks, i.e. in so-called "shoulder breaks" – commercial breaks between two (editorial) programs – or in "interruption breaks" which interrupt editorial content. The spot will principally be placed in the commercial break booked. Commercial breaks have been combined to form special rate categories. In the case of slight temporal shifts of commercial breaks, e.g. due to programming issues or technical reasons, the price of the commercial break in the relevant rate category shall remain the same. TM-TV cannot guarantee that spots will be broadcast in a specific sequence.

5.3 Client and TM-TV can rebook the placement of confirmed spots up to a period of six weeks prior to the broadcasting date. TM-TV shall consider rebooking requests of the client if such requests will be communicated in writing at least ten working days prior to the scheduled broadcasting date, the agreed booking volume (order value according to the relevant price list) will not change, the broadcast will not be delayed substantially, and TM-TV has sufficient capacities available.

5.4 If the broadcasting of a spot is cancelled due to programming issues or technical reasons, force majeure, strike, legal provisions etc., the spot (commercial break) shall be broadcast at a prior or later time whenever possible. In the case of slight temporal shifts, the client will be informed beforehand if there is a reasonable time frame left. A shift shall be deemed slight if the spot is broadcast within the agreed editorial environment and no more than 15 minutes before or after the originally scheduled time. Especially in the case of short-term program changes due to current events, sporting events, or other events of a similar nature, TV-TM is entitled to shift the spot to a prior or later date, as described above.

If the client does not object in writing to the shift of the spot and/or its embedding within a different editorial environment, the client shall be deemed in agreement with the relevant modification.

5.5 TM-TV shall not guarantee a non-competition clause. Moreover, it cannot be guaranteed that – apart from the commercial breaks included in the program schedule – no additional commercial breaks will be offered.

5.6 Irrespective of the broadcasting times included in the contract, TM-TV is entitled to shift spots not suitable for children and adolescents to a point in time when these spots can be broadcast legally.

5.7 At the end of each month, the client can request TM-TV to issue a confirmation document specifying the actual broadcasting times and the relevant commercial breaks.

## **6. Compensation**

6.1 The airtime provided will be charged according to a base rate plus extra fees for additional and special services, if any. The base rate only covers the cost of broadcasting the spot. It does not include production cost or other cost which, if any, will be calculated separately and on principle be charged to the client.

6.2 The rates have been compiled in a special price list referring to spots of an ordinary length of 30 seconds. Spots exceeding this ordinary length shall be charged according to their effective length. These rates exclude VAT which will be invoiced in addition and separately.

6.3 In the case of cooperative advertising, TM-TV is entitled to charge an appropriate cooperative advertisement surcharge.

6.4 Discounts specified in the current price list refer to the total invoiced amount. The calculation is based on the total order value for spots broadcast over the period of one calendar year; discounts shown on receipts produced by mechanical devices as part of order processing shall thus be considered preliminary information only. Corporate discounts require separate confirmation in writing to be effective. The decision on granting corporate discounts is based on the client's corporate status as of January 1 of the respective calendar year.

6.5 For all orders placed, advertising agencies shall receive an agency reimbursement in the amount of 15 percent of the net invoiced amount, i.e. the billing sum not including VAT, after subtraction of other discounts but before cash discount. The agency reimbursement shall be subtracted from the invoiced amount. The prerequisite for receiving an agency discount is a written verification of agency function and billing to the agency. If the discount changes due to the booking of additional services or cancellation, the agency reimbursement shall be recalculated. The remainder shall be balanced by payment or reimbursement.

Claims can only be accepted upon written verification of agency function and billing to the agency. TM-TV reserves the right to reject agency reimbursement to micro enterprises or dummy agencies.

6.6 If the contracting party is an agency, it may be obligated to disclose and, as the case may be, pass on all discounts and cash discounts received to the represented advertiser.

6.7 Rates shown in the general price list are subject to change at any time. Price changes regarding orders which have already been agreed and confirmed, however, shall only take effect if TM-TV notifies the client at least one month prior to the broadcasting date. In the event of a price increase, the client has the right to terminate the contract. The right of termination must be exercised within five working days following the receipt of such notification.

## **7. Terms of Payment**

7.1 Invoices for spots actually broadcast shall on principle be issued at the end of the month in which the broadcast took place. The invoiced amount shall be due for payment immediately. TM-TV reserves the right to demand advance payments for first-time contracting parties.

7.2 A cash discount of 2 percent of the invoiced amount will be allowed for settling the invoice within ten (10) days following the date of the invoice, provided that all previous invoices have been paid.

7.3 All payments shall be effected to Tele 5 TM-TV GmbH, Stadtparkasse München, BLZ (routing no.) 701 500 00, Kto. (account no.) 316 125. Banking fees will be charged to the client. Checks and drafts will only be accepted on account of performance. Client payments are considered effected as soon as TM-TV has access to the funds.

7.4 Unless otherwise agreed, the client shall be considered in arrear with payments if the invoiced amount will not be credited to the TM-TV account within two weeks following the receipt of the invoice. A separate reminder is not required. In the case of default, TM-TV shall be entitled to discontinue broadcasting the spot whereas the client cannot derive any claims for damages. The client shall be liable to TM-TV for any default damages.

7.5 The client shall only be entitled to setoff if the counterclaims are undisputed or have been legally recognized. The client shall be entitled to execute retention rights only if the claims arise from the same legal relationship.

## **8. Legal Responsibility and Transfer of Rights of Use**

8.1 The client shall be solely accountable for the content of the spots and guarantee that the content will neither infringe legal regulations nor the common advertising guidelines of the Landesmedienanstalten (State Media Authorities). He has to ensure that neither the content of the spot itself nor the broadcasting time, provided that the client defined the broadcasting time himself, will infringe any regulations regarding advertising and competition or any third party rights.

8.2 The client guarantees that he has acquired all copyrights, ancillary rights and other rights required for television use of the spots and the transmission material provided. He shall transfer to TM-TV the right to use the spot for TV broadcasting in terms of time, place and content to the extent necessary for the execution of the contract and for all types of transmission systems currently in use at TM-TV, including cable transmission rights and resulting claims for compensation as well as the rights and claims for compensation of authors and owners of ancillary rights. TM-TV accepts this transfer.

8.3 The client shall indemnify TM-TV from all possible claims made by third parties with reference to the advertisement or the product. This includes the provision of reasonable legal funds in the case of lawsuits.

## **9. Broadcasting Documents and Broadcasting Material**

9.1 The client guarantees to provide broadcasting documents and broadcasting material (motif schedules and spots) for the relevant broadcasts in a timely manner, i.e. at least 10 days prior to the broadcasting date. If the material is sent late or subsequently altered, TM-TV cannot guarantee proper broadcasting.

The broadcasting documents and materials are to be sent to:

**Tele 5 TM-TV GmbH**  
Motivdisposition  
Bavariafilmplatz 7  
82031 München  
Germany

If a spot cannot or only incorrectly be broadcast since documents, texts or copies have not been delivered on time, in perfect condition or with proper markings, the client shall be charged for the airtime agreed. In this case, the client is not entitled to claim any damages.

9.2 The formats currently suitable for broadcasting are Digital Betacam as well as Betacam SP. Color bar 100%, audio level -9 and program bar 0 dB (maximum +2).

9.3 Broadcasting material will be accepted in 16:9 format only.

9.4 At the same time, the client is obligated to provide phonorecord information, in particular producer, composer, title and length of the music used, regarding royalty payments to the German performing rights society (GEMA).

9.5 In the case of repeated broadcasts, TM-TV may demand a second broadcasting copy. If the broadcasting copy includes more than one motif and/or one advertisement, the client shall be charged for the separation effort.

9.6 The broadcasting documents and broadcasting material provided will be stored at TM-TV and returned upon request only. If a motif for a spot has not been used for more than one year, TM-TV shall be entitled to destroy or reuse (e.g. re-record) the broadcasting material. The client shall not be entitled to derive any claims from this.

9.7 The client shall be responsible for the correct transfer of broadcasting documents and broadcasting material.

## **10. Warranty**

10.1 The client is obligated to view the spot when it is broadcast or immediately thereafter and to inform the contractor of any obvious shortcomings immediately and of other shortcomings within two weeks following the broadcast. If TM-TV does not receive a notice in this regard within the period specified, the order shall be deemed approved.

10.2 If TM-TV is responsible for the shortcomings, the warranty shall initially be limited to a claim for supplementary performance, i.e. the spot will be broadcast within a comparable editorial environment of the same rate category. TM-TV will inform the client of the new broadcasting date in due time. If supplementary performance fails again, the client shall be entitled to demand a reduction in price or – if the shortcomings are significant – cancellation of the contract.

10.3 TM-TV shall be relieved from its obligation to perform if the company cannot fulfill its contractual duties properly and/or on time due to force majeure. "Force majeure" exclusively refers to conditions beyond the control of TM-TV.

10.4 All claims specified in items 10.2 and 10.3 above shall be subject to a limitation period of 12 months starting from the moment when the contracting partner has become aware of the non-performance or non-conforming performance.

## **11. Withdrawal**

11.1 Both TM-TV and the client are entitled to withdraw from broadcasting orders up to six weeks prior to the first broadcasting date if a legitimate business reason exists. At a later date, TM-TV may withdraw from legally binding orders already confirmed if the station is not able to fulfill its contractual obligations due to force majeure or other unforeseeable impediments which cannot be overcome by reasonable expenditure and for which TM-TV is not responsible such as modifications of the programming schedule especially due to interference on the part of regulatory organizations or other state-run agencies. In such cases, claims on the part of the client shall be excluded.

11.2 Notwithstanding the legal right to withdraw from the contract due to neglect of duty, the client shall not be entitled to withdraw from an order to broadcast a spot of a duration of more than 89 seconds.

11.3 If TM-TV, in an exceptional case, accepts a request for withdrawal received after expiration of the six weeks period, TM-TV shall be entitled to charge a cancellation fee, the amount of which is to be determined in equitable discretion of TM-TV. Even upon payment of a cancellation fee, a right of the client to cancel the contract shall be excluded.

## **12. Liability**

12.1 TM-TV shall be liable for possible damages resulting from culpable neglect of its cardinal obligations; apart from that, TM-TV's liability shall be restricted to the following cases: TM-TV, its legal representatives or auxiliary persons can be accused of deliberateness or gross negligence or the damages are a result of injuries to life, body or health of the contracting partner. "Cardinal obligations" are vital contractual obligations the breach of which can put the overall objective of the contract at risk and on the adherence of which the client may rely as a matter of course.

12.2 TM-TV shall be liable for the full amount of damage attributable to its deliberate actions or gross negligence and/or in the case of injuries to life, body or health. In all other cases, claims for damages shall be limited to typical, foreseeable damage. Thus liability for indirect damages, consequential damages or damages for loss of profit shall be excluded.

### **13. Final Provisions**

13.1 Changes or amendments to this contract, including additional stipulations and including the modification of this written form clause, must be done in writing.

13.2 Should any provisions be or become void or ineffective, the remaining provisions shall remain unaffected. Void or ineffective provisions shall be replaced by provisions which are as closely in accordance with the economic purpose of these T&C as possible.

13.3 The exclusive place of jurisdiction is Munich. An action, however, can be brought against the client before any competent court of law.

13.4 The laws of the Federal Republic of Germany shall apply.

[Zusatz / Hinweis auf AGB]

In addition, the “General Terms and Conditions of Tele 5 TM-TV GmbH” as revised on the date of the conclusion of the contract shall apply for the sale of commercial air time. Get a copy of our GTC by mail or find them on our website [www.tele5.de](http://www.tele5.de) under “Media/Terms of Use”.