

1. Scope of the Terms and Conditions

The following Terms and Conditions shall apply to any marketing of commercial air-time by Tele 5 TM-TV GmbH (hereinafter referred to as TM-TV) in connection with the television channel "Tele 5" run by TM-TV, especially as regards TV commercials of all kinds, programme sponsoring and special advertising formats. Services in the context of online, teletext and direct marketing are not covered by these Terms and Conditions and may be subject to separate terms and conditions. Contracts shall be concluded between TM-TV and the respective principal.

2. Definitions

- 2.1 "TV commercial" or "commercial" is a film with a minimum length of five (5) seconds up to a maximum length of 89 seconds advertising a product or service during a commercial break in a television programme.
- 2.2 "Programme sponsoring" is a film with a minimum length of five (5) seconds that is broadcast in direct connection with an (editorial) programme or the programme announcement for this programme.
- 2.3 "Special advertising format" is any other kind of product or brand presentation in a television programme, which is not a TV commercial or programme sponsoring.
- 2.4 "Cooperative advertising" is defined as commercials that advertise products, brands or services of various companies.
- 2.5 The contract partner or principal of TM-TV can be an agency or an advertiser directly ("direct customer"). In case of provisions that are valid only for the agency or the direct customer, these terms shall be used instead of the term contract partner.

3. Terms of Contract

- 3.1 Unless otherwise agreed or notified, offers submitted by TM-TV are non-binding and always subject to the availability of the air-time offered.
- 3.2 Broadcasting orders shall only be accepted in the written form. A contract only comes into force upon written confirmation of the broadcasting order by TM-TV or upon broadcasting the ordered commercial, if the confirmation is issued after the commercial has been broadcast. Verbal or telephone confirmations shall be no valid replacement for a written confirmation.

Upon written confirmation the contract shall come into force according to the scope that has been ordered, even if the placement of the commercial has not yet been determined.

- 3.3 All broadcasting orders shall be subject to these General Terms and Conditions exclusively. The validity of the principal's general terms and conditions is hereby expressly excluded, irrespective of whether these General Terms and Conditions in general or in specific cases collide with the principal's terms and conditions. The aforesaid also applies if the principal's terms and conditions have not been expressly rejected and/or TM-TV renders its services without objections.
- 3.4 Any deviations from these General Terms and Conditions as well as verbal agreements shall only be valid if confirmed in writing by TM-TV. Any amendments to this formal requirement must also be done in writing.

- 3.5 References to price lists, advertising formats or other documents included in these General Terms and Conditions, which have either been provided to the contract partner or are available for viewing/downloading on the internet, shall become an integral part of these General Terms and Conditions. If such references are made available online, the most recent version shall be valid.
- 3.6 Amendments to these General Terms and Conditions shall be communicated to the contract partner via email or telefax, together with a reference to the right of objection. Amendments to the General Terms and Conditions shall be deemed accepted unless the contract partner objects in writing to TM-TV within six weeks from the announcement of the respective amendments.
- 3.7 Orders from agencies shall only be accepted if the advertiser's name has been specified. TM-TV is entitled to request the agency to provide proof of being duly authorised by the advertiser. The order shall be invoiced to the agency exclusively. TM-TV reserves the right to pass on order confirmations to the advertiser.
- 3.8 Upon conclusion of the contract with TM-TV, the advertising agency by way of security assigns to TM-TV the payment claims it has against its customers under the underlying advertising contract. TM-TV hereby accepts this assignment. TM-TV shall be entitled to collect the claim from the agency's customer, in case the secured claim has not been settled by the agency within 30 days after becoming due. TM-TV shall notify the agency prior to disclosing the assignment. The advertising agency is not permitted to transfer the broadcasting dates booked for a specific client to another client or another agency.
- 3.9 If various advertisers are included in one commercial (referred to as cooperative advertising), this must be communicated to TM-TV before placement of the order and the names of the individual advertisers must be specified. Cooperative advertising is subject to the express written consent of TM-TV.
- 3.10 If the contract partner is an agency, it warrants that, in the case of a respective contractual or statutory obligation, it shall inform its customers that further service relationships may exist between TM-TV and the agency apart from the selling of commercial air-times, and that TM-TV may pay remunerations and/or grant rebates and discounts to the agency in connection with this service relationship. Insofar as the agency has a contractual or statutory obligation, it shall disclose any remunerations, rebates and discounts received to its customers and pass them on where appropriate.

4. Rejection of Broadcasting Orders

- 4.1 Prior to the conclusion of the contract according to section 3 of these Terms and Conditions, TM-TV has the right to reject broadcasting orders without stating any reasons.
- 4.2 TM-TV has no obligation to review and check the commercial prior to accepting the order. Thus, TM-TV reserves the right to reject the commercial for objectively justified reasons even after conclusion of the contract. An objectively justified reason is present if the commercial violates applicable law, including the valid advertising guidelines of the State Media Authorities and the principles of morality. TM-TV shall inform the principal of the rejection immediately, stating the relevant reasons.
- 4.3 A justified reason according to section 4.2 is also present if the commercial violates objectively justified interests of TM-TV (e.g. due to insufficient content, form or technical quality that is not consistent with the image of the TV station).
- 4.4 If the broadcasting is rejected or discontinued for reasons the principal is responsible for, the principal is obliged to immediately provide new or altered content for broadcasting, which does

not give rise to any cause for rejection or interruption. In case the replacement material is provided too late, and as a result the agreed broadcasting date cannot be met and broadcasting is no longer feasible, TM-TV shall nevertheless remain entitled to payment as if the content had been broadcast at the agreed point of time.

- 4.5 If the broadcasting is rejected or discontinued for reasons TM-TV – and not the principal – is responsible for, the principal shall be entitled to withdraw from the contract in connection with the rejected commercial and claim a reimbursement of the payments already made, insofar as these payments have not yet been used up by the broadcasting services already rendered. Any further claims on part of the principal shall be excluded.
- 4.6 In the event the commercial is broadcast despite a previously declared rejection, TM-TV's right to payment shall remain unchanged.

5. Broadcasting Modalities

- 5.1 The commercial is placed in agreement with the principal, or otherwise at TM-TV's reasonably exercised discretion and taking the principal's interests into account to the greatest possible extent. The principal does not have any entitlement to any particular placement of the commercial within a specific advertising block and/or any particular positioning of the commercial within an advertising block. The agreed broadcasting times shall be observed whenever possible. However, broadcasting times can be shifted within a particular price category according to the price list, unless otherwise agreed in writing.
- 5.2 Commercials are broadcast within advertising blocks and are typically placed within two types of commercial breaks: within "shoulder breaks", i.e. commercial breaks between two (editorial) programmes or within "interruption breaks", i.e. commercial breaks that interrupt an (editorial) programme. The commercial is principally placed within the booked commercial break. The commercial breaks are grouped into price categories. In case of a slight temporal shift of individual commercial breaks, e.g. for programming or technical reasons, the price category valid for the respective commercial break remains unchanged. We do not assume any guarantee for broadcasting the commercials in a particular order.
- 5.3 The principal and TM-TV can rebook the placement of confirmed commercials within a period of up to six weeks prior to broadcasting. TM-TV shall consider rebooking requests of the principal provided that the rebooking request is communicated to TM-TV no later than ten business days prior to the agreed broadcasting date, the agreed order volume (total compensation according to the respective price list) remains unchanged, broadcasting will not be delayed substantially, and TM-TV has sufficient capacities available.
- 5.4 If the broadcasting of a commercial is cancelled due to programming or technical reasons, due to force majeure, strike or legal provisions, etc., the commercial (commercial break) will be broadcast at an earlier or later time whenever possible. In case of a substantial temporal shift, the principal will be informed, provided this is reasonably feasible within an existing time frame. The shift is considered insubstantial, if the commercial is broadcast within the agreed editorial environment and no more than 15 minutes before or after the originally scheduled broadcasting time. Especially in the event of short-term changes of the scheduled programme due to current events, sporting events or similar significant events, TM-TV shall be entitled to broadcast a commercial at an earlier or later time as described in this section. If, in case of a substantial shift, the principal does not object in writing to the commercial being shifting or included into another editorial environment within a reasonable period of time after being notified of the shift, the principal shall be deemed to have accepted the respective change.
- 5.5 The exclusion of competition cannot be granted. Furthermore, no guarantee can be given that no further commercial breaks are offered besides the commercial breaks designated in the programme schedule.

- 5.6 Irrespective of the broadcasting times included in the contract, TM-TV shall be entitled to shift commercials that are not suitable for children and adolescents to a point in time when the commercial can be broadcast in a permissible manner.
- 5.7 After the end of the broadcasting month, the principal can request TM-TV to provide broadcasting confirmations stating the actual broadcasting time and the respective commercial breaks.

6. Compensation

- 6.1 Unless TM-TV has submitted an individual offer to the principal, the list prices valid at the time of conclusion of the contract, which are available on the Tele 5 homepage, shall apply. The price consists of a base rate for the commercial air-time plus additional fees for potential additional and special services. The base rate is the fee for broadcasting the commercial. It does not include any production costs or any other costs, which, if incurred, will be calculated separately and charged to the principal.
- 6.2 The list prices have been compiled based on commercials with a standard length of 30 seconds. Prices for commercials that fall below or exceed this standard length will be calculated based on their actual length. These prices do not include value added tax, which will be charged in addition and stated separately on the invoice.
- 6.3 With regard to cooperative advertising, TM-TV shall be entitled to charge a surcharge to the list prices amounting to 20% in case of two advertisers and 30% in case of three or more advertisers.
- 6.4 Unless otherwise agreed by the parties, a lump-sum agency discount of 15% of the net invoice amount, i.e. the invoice amount excluding value added tax, after deduction of other discounts, but before cash discounts, will be deducted for all orders placed by agencies. The invoice amount will be reduced by the agency remuneration. As a precondition, the agency must provide written proof of its operations as an agency and the invoice must be issued to the agency. In case of changes of any discount amounts due to the booking of additional services or cancellation, the agency remuneration shall be recalculated; the balance will be settled either by payment or by reimbursement. TM-TV reserves the right to reject payment of an agency remuneration in case of micro enterprises or dummy agencies.
- 6.5 For broadcasting the mandatory advice in case of commercials for pharmaceutical products (OTC) in the sense of sect. 4 HWG (German Drug Advertisement Act), a 50% discount will be granted, provided the mandatory advice complies with the standard recommended by the German Organisation of Brand Advertisers (OWM) or the German Medicines Manufacturers' Association (BAH) (grey background, white text, duration of 4 seconds). In case of deviations from this standard, no discount will be granted.
- 6.6 The general list prices may change at any time. In case of a price increase, the principal shall have the right to withdraw from the contract. The right of withdrawal must be exercised within seven business days from receipt of the notification.
- 6.7 If the contract partner is an agency, and insofar as the agency has a respective contractual or statutory obligation, it shall disclose all remunerations, discounts and rebates received to its customers and pass them on where appropriate. Furthermore, the contract partner agrees to maintain strict confidentiality as regards the contract terms as well as any information provided by TM-TV. This obligation shall continue also after the termination of the contract with TM-TV.

7. Terms of Payment

- 7.1 The compensation for broadcasting commercials on the TV station is principally charged monthly in advance, based on the volume of the orders placed so far.
- 7.2 In case payment is received within ten days from the date of the invoice, a cash discount of 2% will be granted, provided all previous invoices have been settled.
- 7.3 In the event of subsequent changes to the order within the invoicing period, TM-TV will draw up a supplementary invoice that serves either to charge the outstanding balance or to issue a credit note. If TM-TV receives payment of a balance sum within fourteen days from the date of the invoice, a cash discount of 2% will be granted, provided the customer was eligible for a discount also in connection with the original invoice issued for this month.
- 7.4 All payments are to be made to the account of TM-TV set down in the invoice. Bank fees shall be borne by the principal. Cheques and bills of exchange shall be accepted on account of performance only. Payments by the principal shall only be deemed to have been made when TM-TV can dispose of the amount.
- 7.5 Unless specifically agreed otherwise, the principal is in default if the invoice amount has not been paid into the account of TM-TV within a period of two weeks from receipt of the invoice. A separate reminder shall not be required. In case of default, TM-TV shall be entitled to discontinue further broadcasting, without any claim for compensation arising to the principal. The principal shall be liable for any damages TM-TV suffers due to the default.
- 7.6 The principal may only offset such counterclaims that are undisputed and legally confirmed. The principal shall only be entitled to exercise rights of retention in respect of claims arising from the same legal relationship.

8. Legal Responsibility and Transfer of Rights of Use

- 8.1 The principal is solely responsible for the contents of the commercial, in particular as regards media, press and competition law, and undertakes to thoroughly review the contents in order to ensure they do not violate any statutory provisions or the relevant joint advertising guidelines published by the State Media Authorities. The principal must ensure that neither the commercial itself nor the broadcasting time – to the extent it has been set by the principal – violates any other advertising regulations and competition laws or infringes any third party rights.
- 8.2 The principal warrants that it has obtained all copyrights, ancillary rights and other rights which are required for use, in particular television use of the commercials and broadcasting materials according to the order specifications. Rights that have been granted to the TV station by the German collecting society GEMA in a general form and are effectively held by GEMA shall be excluded. The principal transfers all copyrights, ancillary rights and other rights TM-TV requires for rendering the services under the contract, including television rights for broadcasting the commercial on TM-TV, to the extent necessary for the execution of the contract in terms of time, place and content and for all transmission channels currently used by TM-TV (in particular terrestrial, satellite and cable transmission, including online transmission), including cable retransmission rights. The rights granted shall also include the entitlement to assign these rights to third parties, especially third parties instructed with go-live and broadcasting operations. The principal warrants that it has obtained these rights and has not transferred them otherwise, and in particular not to any collecting society. Moreover, the principal assures that no such other transfer has been made by the producer of the commercial.
- 8.3 Upon request, the principal shall, by way of providing a confirmation issued by the producer, prove to TM-TV that it has obtained from the producer of the commercial the rights according to section 8.2 above, in particular the television rights for transmission and cable retransmission.

The same shall apply to providing proof that the producer has not otherwise disposed of the rights according to section 8.2 above, in particular by transferring them to a collecting society.

- 8.4 In case any third party asserts a claim against broadcasting the commercial or against the products on grounds of a violation of the principal's obligations according to section 8 of these Terms and Conditions, the principal shall hold TM-TV harmless against all such third party claims, regardless of the legal basis and on first demand. This includes appropriate costs of legal defence.
- 8.5 All copyrights, ancillary rights and other rights to works and/or services created or rendered by TM-TV or other commissioned third parties belong exclusively to TM-TV. Any use by the contract partner is subject to prior consent to use and agreement of a licence fee.

9. Broadcasting Documents and Broadcasting Materials

- 9.1 The principal undertakes to submit broadcasting documents and broadcasting materials (motif schedules and commercials) to TM-TV in due time for the respective broadcasts, i.e. no later than 10 days prior to being broadcast. In case of delayed delivery or subsequent modifications, proper broadcast cannot be granted. Broadcasting documents and materials shall be sent as file via AMD/Adsream/Adtoox to: SES-PS Material Services Tele 5, Betastr. 1-10, 85774 Unterföhring, Germany. If commercials are not or incorrectly broadcast due to documents, texts or broadcasting copies having been delivered too late or labelled insufficiently or incorrectly, the agreed broadcasting time will be invoiced. The principal shall not be entitled to any claims for compensation.
- 9.2 Currently, broadcasting materials must be delivered in the format Digital Betacam (colour bar 100%, audio level -9 and programme bar 0 dB) or as files within an MXF container (IMX30 D-10 or XDCAM HD 422 / refer to TELE5 Technical Specifications). Furthermore, the respective latest version of the Technical Specifications available on the Tele 5 homepage shall apply.
- 9.3 Broadcasting materials shall exclusively be accepted in a format of 16:9 and in accordance with EBU R128.
- 9.4 At the same time, the principal must provide all information on audio recordings required for settling royalty fees with the German collecting society GEMA, in particular information on producer, composer, title and length of the music used.
- 9.5 Broadcasting documents and broadcasting materials provided to TM-TV will be retained by TM-TV and will only be returned to the principal upon request. In case a motif is not used for a commercial for a period exceeding one year, TM-TV is entitled to destroy or reuse (e.g. re-record) the broadcasting documents and broadcasting materials provided in this respect. No fee becomes payable to the principal in this case.
- 9.6 The principal shall bear the risk for transmission of the broadcasting documents and broadcasting materials.

10. Warranty

- 10.1 The principal undertakes to check the commercial immediately upon or after broadcasting and to report any obvious shortcomings immediately and any other shortcomings no later than two weeks after broadcasting. If no such notice is submitted within said period, the order shall be deemed approved.
- 10.2 In case of a shortcoming for which TM-TV is responsible, its liability shall initially be restricted to a claim for renewed performance, i.e. the commercial will be broadcast within a comparable editorial environment of the same price category at reasonable discretion of TM-TV. TM-TV shall

notify the principal of the broadcasting date in due time. If the renewed performance fails, the principal is entitled to demand a reduction in price or – in case of substantial shortcomings – withdraw from the contract.

- 10.3 No obligation to perform shall exist to the extent that TM-TV is prevented from fulfilling its contractual obligations in due time and/or manner due to force majeure. "Force majeure" shall exclusively be interpreted as circumstances beyond the control of TM-TV.
- 10.4 The claims regulated in sections 10.2 and 10.3 above shall lapse after a period of twelve months from the point of time when the contract partner has become aware of the non-conforming performance or non-performance.

11. Withdrawal

- 11.1 Both TM-TV and the principal are entitled to withdraw from orders for broadcasting commercials up to six weeks before the first broadcasting date, if reasonable cause for such withdrawal is present. Thus, TM-TV is entitled to withdraw from legally binding accepted orders, if the TV station is unable to render the outstanding services due to force majeure or unforeseeable hindrances which cannot be overcome by reasonable expenses and for which TM-TV is not responsible, e.g. programme changes in particular as a result of measures implemented by the regulating authority or other state authorities. In such cases the principal shall have no claims whatsoever.
- 11.2 Without prejudice to the right of withdrawal on grounds of breach of duty, the principal shall not be allowed to withdraw from an order relating to the broadcasting of a commercial with a length of more than 89 seconds.
- 11.3 If, by way of exception, TM-TV accepts withdrawal requests submitted after expiry of the period of six weeks, TM-TV will charge a cancellation fee at its reasonable discretion. Even upon payment of a cancellation fee, a right of the principal to cancel the contract shall be excluded.

12. Liability

- 12.1 TM-TV is liable for potential damages arising from culpable violation of material contractual obligations; apart from that, only if TM-TV, its legal representatives or agents are guilty of wilful intent or gross negligence, or if the damage results from a loss of life, bodily injury or damage to the health of the contract partner. Material contractual obligations are essential contractual obligations the violation of which endangers the purpose of the contract and compliance with which the contract partner is usually entitled to expect.
- 12.2 TM-TV shall be liable for the full amount of damages that were caused wilfully or by gross negligence or in case of loss of life, bodily injury or damage to the health. Moreover, the claim to damages shall be limited to typically foreseeable damages. Thus, liability for indirect damages, consequential damages caused by a defect or damages arising from loss of profit shall be excluded.

13. Final Provisions

- 13.1 Any amendments or additions to the contract, including supplementary agreements, and including amendments to this clause, shall only be valid if made in writing.
- 13.2 Should one or more provisions be or become void or ineffective, the remaining provisions shall remain unaffected. Void or ineffective provisions shall be replaced by provisions which most closely reflect the economic purpose originally intended.
- 13.3 The exclusive place of jurisdiction is Munich, Germany. An action, however, can be brought against the principal before any other competent court of law.

- 13.4 The laws of the Federal Republic of Germany shall apply with the exception of UN Law on International Sales.