

## **Online advertising: general terms and conditions (GT&C)**

of

Heise Medien GmbH & Co. KG

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### **Clause 1: Scope of application of GT&C**

1. These general terms and conditions (“referred to hereinafter as “the GT&C”) apply exclusively to all agreements concluded with Heise Medien GmbH & Co. KG (referred to hereinafter as “Heise“) concerning the publication of one or more advertisements on the heise.de website.

2. If the placement of online advertising should furthermore involve agreements on the range supplied by Heise Business Service, as listed at <https://business-services.Heise.de>, the general terms and conditions of Heise Business Services posted at [http://www.heise.de/mediadaten/pdfs/ho/agb\\_hbs.pdf](http://www.heise.de/mediadaten/pdfs/ho/agb_hbs.pdf) shall likewise apply.

3. Failure on the part of Heise to reject other GT&C shall not in any way imply their acceptance by Heise. Heise concludes agreements with the customer, subject to all and any further express written accords that might apply, on the sole basis of Heise’s own GT&C.

4. Heise shall be entitled to amend these GT&C at any time. Heise shall inform its customers in a timely manner (i.e. with at least one month’s advance notice) of such amendments. This will normally be done by adding an appropriate note to order confirmations. The current version of the GT&C can be accessed at <http://www.heise.de/mediadaten/pdfs/ho/agb.pdf>.

### **Clause 2: Placement of advertising**

1. The placement of advertising is defined, for the purpose of these general terms and conditions (referred to hereinafter as “the GT&C”), as the agreement establishing the posting of one or more advertisements, via information and communications services and with particular reference to online media, for the purposes of dissemination and distribution. The agreement is concluded between the Heise periodical publishing house (referred to hereinafter as “Heise”) and a customer or agency (both referred to hereinafter as “the customer”).

2. The advertising placement shall be subject exclusively to Heise’s GT&C covering online advertising, along with Heise’s price list, both of which form an integral part of the agreement entered into between Heise and the customer. The validity of all and any other GT&C that the customer and/or other advertisers might attempt to apply is hereby expressly excluded. Failure on the part of Heise to reject such alternative GT&C shall in particular and not in any way imply their acceptance by Heise. Heise concludes agreements with the customer, subject to all and any further express written accords that might apply, on the sole basis of Heise’s own GT&C.

3. If advertising placements involve both online publication and other media, such placements shall be subject accordingly, unless otherwise agreed in each individual case, to both the GT&C set out here and the GT&C applying to print advertising.

4. Heise shall be entitled to amend these GT&C at any time. Heise shall inform its customers in a timely manner (i.e. with at least one month’s advance notice) of such amendments. This will normally be done by adding an appropriate note to order confirmations. The current version of the GT&C can be accessed via <http://www.heise.de/mediadaten/online/download>.

### **Clause 3: Advertising material**

1. Advertising material, as defined by these GT&C, may consist of one or more of the following elements: an image and/or text, audio sequences and/or animations (including banners) or a click-sensitive item (such as an embedded hyperlink) designed to connect the viewer to further information posted at another online address nominated by the customer.

2. Heise shall expressly tag as paid publicity all and any advertising whose design and content does not immediately make it identifiable as such.

3. The placement of advertising material shall normally be exclusively subject to the formats shown in the currently valid price list. The placement of advertising in special formats and configurations shall at all times require consultation with, and the agreement of, Heise.

#### **Clause 4: Conclusion of the agreement**

1. The agreement between Heise and the customer shall come into force as soon as the corresponding order is confirmed, in writing or by e-mail, by Heise. Confirmations issued verbally or by telephone shall likewise be subject to the GT&C. An agreement regarding advertising material may cover individual materials or a fixed number of such materials. Placements may also be agreed on the basis of fixed scheduling or a corresponding running period for the advertising material concerned.

2. If and insofar as advertising agencies place orders, the agreement with the advertising agency shall apply in the event of any doubt, subject to other written agreements. If an advertiser itself becomes a customer, it must be specifically nominated by the advertising agency before any agreement is entered into. Heise shall be entitled to demand proof of customer status from advertising agencies.

3. Billing shall be based exclusively on the data readings obtained from Heise's ad server.

4. Final consumers, as defined in article 13 of the German Civil Code (BGB), are excluded from entering into agreements in this respect.

#### **Clause 5: Time limit**

Unless the contracting parties have otherwise agreed to a time limit, advertising materials intended for publication shall be posted within one year of the agreement being entered into. If the terms of an agreement are such that the customer's right to order publication of individual advertising materials is restricted, the agreement is to be fulfilled within one year of being entered into, unless otherwise agreed by the parties to it.

#### **Clause 6: Rescheduling, cancellation**

1. The cost-free rescheduling of an agreed advertising publication deadline is only possible up to no later than ten working days before the deadline originally agreed, and shall be subject to available capacity and agreement on Heise's part. The full amount of the order shall then be due as a result of rescheduling. The customer shall be free to provide proof that the other party has suffered no, or a lesser amount of, loss or damage.

2. Cost-free cancellation of an order is normally possible only up to no later than ten working days before the agreed publication date of the advertising material concerned. Notice of cancellation must be issued in writing. Notice of cancellation cannot be issued verbally or by telephone. The full amount of the order shall remain due in the event of cancellation after expiry of the time limit. The customer shall be free to provide proof that the other party has suffered no, or a lesser amount of, loss or damage.

#### **Clause 7: Refund of discounts**

1. If an order cannot be fulfilled for reasons outside Heise's control, the customer shall – without prejudice to any further legal obligations – compensate Heise for an amount corresponding to the difference between the quantity established and that actually resulting after application of the corresponding discount.

2. The customer shall be entitled, unless otherwise agreed, to a discount corresponding to the actual number of advertisements placed within one year, provided the customer entered into an agreement, at the beginning of the period concerned, establishing a discount from the outset with respect to the price list. This discount entitlement shall expire if the customer fails to make a corresponding claim within three months of the expiry of the one-year period concerned.

#### **Clause 8: Preparation of advertising material**

1. The customer guarantees that all advertising materials submitted shall be complete, punctually delivered, error-free and in a suitable format. Delivery is considered timely if it takes place no later than three working days before the initial placement in the case of animated GIF files and redirects and, in the case of all other formats, up to no later than five working days before initial placement.

2. The customer shall meet all and any costs that might be incurred by Heise as a result of amendments made or requested by the customer, after delivery of the data concerned, to the contents or scheduling of advertising material.

3. Heise's obligation to hold the advertising material on file shall expire three months after it is distributed for the last time.

4. Heise shall have no obligation to distribute advertising material that is delivered in an incorrect, incomplete, defective and/or unsuitable state and/or if the delivery of such material is delayed. Heise shall request the substitution of clearly unsuitable or damaged material, even if it has been delivered in a timely manner.

5. Heise shall be entitled, but not obliged, to edit the material supplied by the customer, insofar as this is necessary or advisable for the placement of the advertisement on the media concerned.

#### **Clause 9: Placement details**

1. If the customer has not expressed any desires regarding the placement of the advertising material, the details in the corresponding written order confirmation shall apply. The placement of the advertising material shall be subject to mutual agreement between the customer and Heise.

2. If this is not possible, Heise shall exercise its reasonable discretion, subject to maximum consideration of the customer's interests.

#### **Clause 10: Right of refusal**

1. Heise reserves the right to reject or block advertising placements, including individual advertisements forming part of a series, if their contents violate legislation or official regulations, if their contents have been rejected by the German Advertising Standards Council (*Deutsche Werberat*) in the course of a complaints procedure and/or if distribution is unacceptable on the part of Heise for reasons of content, origin or technical format. The same shall apply if any URL accessed via a hyperlink in the advertisement concerned constitutes an infringement on one or more of the above-mentioned grounds.

2. Heise shall notify the customer in writing of any such rejection. The customer shall be entitled in such cases to supply Heise with a modified version of the advertising material concerned and/or of the URL accessed via the link in question. Heise may invoice the customer, upon presentation of the corresponding evidence, for all and any additional costs that might arise. If the replacement material

and/or new URL cannot be supplied within the previously-agreed copy deadline, Heise reserves the right to claim its agreed remuneration even if the placement of the advertising material concerned is no longer possible.

3. Heise shall be entitled to suspend temporarily the placement of the advertising material if there is reasonable suspicion that a website, to which a hyperlink in the advertisement provides access, is offering illegal content. Heise shall notify the customer of such blocking procedures. The customer shall then immediately remove the allegedly unlawful content, or explain or prove, as might be required, its legal nature. Heise may offer the customer the opportunity to replace the advertising material concerned with alternative material and/or provide an alternative website hyperlink. Heise may invoice the customer, upon presentation of the corresponding evidence, for all and any additional costs that might arise. The blockage shall be lifted as soon as there are no longer grounds for such suspicion.

4. Heise shall be entitled to withdraw in its entirety advertising material that has already been placed if the customer makes unilateral amendments to the content of the advertising material, changes a hyperlink or significantly amends the content of the site to which a hyperlink offers access. The customer shall have no entitlement to charge-free substitution in such cases, and Heise shall retain the right to claim its agreed remuneration.

5. Heise expressly reserves the right to reject such advertising placements if they are associated with the use of premium-rate telephone numbers, with particular reference but not limited to German “dialler” numbers with an 0190 or 0900 prefix.

#### **Clause 11: Guarantee of rights**

1. The customer guarantees and assures that it holds all the rights required to place the advertising material concerned. The customer shall be liable for, and release Heise from, all and any third-party claims which might arise from infringement of legislative provisions in this respect. The customer shall likewise be liable, on behalf of Heise, for all and any costs arising from or in connection with the required legal defence. The customer undertakes to support Heise in good faith with information and written notifications regarding legal defence with respect to third parties.

2. The customer shall transfer to Heise all copyright, usage and performance rights, along with all and any other rights that might be required to fulfil the agreement.

3. The customer guarantees that the design of the advertising material shall conform to all applicable statutory provisions and restrictions.

#### **Clause 12: Heise’s guarantee**

1. Heise guarantees, subject to applicable requirements, that the advertising material shall be placed in a way that conforms to the usual technical standards and ensures its best-possible reproduction. The customer is nevertheless aware that it is not possible, given the technology currently available, to create completely error-free software.

2. This guarantee does not therefore apply to minor errors or defects. A defect or error is in particular considered minor if the incorrect display of the advertising material is caused by the use of unsuitable or incompatible hardware or software (e.g. web browsers), or by defects in the communications networks of other users, or IT-equipment outages of third parties (e.g. other service providers or online services), or due to incomplete and/or incorrectly updated proxy services of commercial and non-commercial service providers, or due to outages affecting ad servers or servers of the corresponding content-management system, provided the duration of such outages does not exceed 24 hours (continuous or accumulative) within 30 days of the start of the contractually agreed placement.

3. The customer is aware that an outage may occur, in the normal course of commercial operations, in servers or the ad server used by Heise. If the ad server should fail for a considerable time, and the

outage coincides with a placement booked for a fixed period, the customer's payment obligation shall be suspended for the duration of the outage concerned. All other claims are hereby excluded.

4. The customer shall be entitled, in the event of the reproduction quality of the advertising material being insufficient, to request the placement of an error-free additional advertisement, but only insofar as the material concerned has failed to fulfil its purpose. If Heise fails to meet a reasonable deadline in this respect, or if it is impossible to publish a substitute advertisement, the customer shall be entitled to demand a reduction in payment or the cancellation of the placement.

5. Warranty claims by commercial customers are not transferable and shall lapse, notwithstanding the corresponding statutory provisions, after one year.

6. Heise offers no further warranties or guarantees in this respect.

### **Clause 13: Claims for defects**

1. The customer undertakes, in the case of reciprocal commercial transactions, to verify the advertising material immediately after its initial placement and to report, likewise without delay, any defect that might be detected. The claim period for commercial transactions of this type begins, in the case of obvious defects, with the placement of the advertising material concerned and, in the case of hidden defects, at the moment in which such defects are discovered.

2. If the customer fails to make a claim within the corresponding deadline, the placement shall be considered approved. The customer shall then bear the costs of all and any subsequent changes that the customer might then specify.

### **Clause 14: Cancellation or delay affecting the placement of the advertisement**

1. If the placement of an advertisement is stopped for editorial or technical reasons, or due to *force majeure*, labour dispute, legal intervention or other action, the placement of the advertisement concerned may be brought forward or put back as circumstances allow. The customer shall be notified accordingly of any not inconsiderable delay in this respect. The information shall be supplied before the event concerned, provided it is reasonably possible to do so within the time available. The customer shall likewise be notified, subject to the same conditions, if the advertisement is to be placed in a setting other than that originally envisaged. If the customer fails to express an objection, in writing and within five working days of being notified accordingly, to the delayed placement of the advertisement and/or its placement in a setting other than that originally envisaged, it shall be assumed that the customer has issued the corresponding consent to the same.

2. If placement of the advertisement concerned can neither be brought forward nor put back, or if the customer objects to such a proposal to bring forward or put back the placement, or to place the advertisement in an alternative setting, the customer shall be entitled to claim the refund of all payments, made up to that date, which have not yet been consumed. All and any other claims on the part of the customer are hereby excluded.

### **Clause 15: Liability**

1. Claims against Heise for loss or damage are hereby excluded, regardless of the breach of duty concerned (including malpractice), if and insofar as they do not arise from wilful misrepresentation or gross negligence. Claims for foregone profits, saved expenses arising from third-party claims and/or other subsequent or indirect loss or damage are likewise excluded.

2. Heise shall be liable, in the event of major contractual infringement, for each instance of negligence up to the amount of the envisaged loss or damage, but never for more than the maximum price of the advertising material concerned.

3. Liability to commercial customers for gross and minor negligence involving employees who are not legally appointed representatives or members of management is in any case limited, including in the event of misrepresentation, to the loss and damage normally and typically envisaged in such cases lying beyond the customer's control.

#### **Clause 16: Price list**

1. The Heise price list in force (and as published on the website) at the moment of confirmation of the order shall apply. The right is reserved to amend individual rates. Price amendments affecting orders confirmed by Heise shall only apply if Heise has issued the corresponding notification no less than one month before the advertising material concerned is published.

2. The customer shall be entitled to cancel in the event of a price increase. The right to cancel must be exercised within fourteen days of receipt of notification of the price increase concerned.

3. Discounts shall be based on the price list currently in force. Advertising agencies and similar intermediaries undertake to observe Heise's price list in their offers, contracts and billing with respect to advertising clients.

4. Written evidence of a minimum holding of 50% shall be required for the application of group discounts to subsidiaries. The mediation fee guaranteed by Heise shall not be passed on, in whole or in part, by the customer.

#### **Clause 17: Delays in payment**

1. Interest and collection costs shall be charged in the event of delayed or deferred payment. Heise may, in the event of delayed payment, suspend the completion of the current order until outstanding payments have been settled, and demand advance payment for further placements.

2. Reasonable and objective doubts regarding the customer's solvency shall entitle Heise, even during the life of a current agreement, to demand advance payment for all further advertising placements, regardless of any payment deadline originally agreed, and make the continuation of the contractual arrangement dependent on the settlement of all outstanding debts.

#### **Clause 18: Cancellation**

1. Advertising placements must be cancelled in writing or by e-mail.

2. Both contracting parties reserve the right to cancel on extraordinary grounds. Heise shall in particular be entitled to cancel on extraordinary grounds if the customer remains in arrears with payments even after two reminders have been issued; if the customer has on one previous occasion made unilateral amendments to the advertising material and/or the target URL; if the customer continues to infringe major provisions of these GT&C despite being asked to desist from doing so; or if the customer commits infringement with respect to a third party by offering Heise's services in such a way that breaks the law or negatively affects the third party concerned.

3. Heise may remove, with immediate effect, the placement or advertising material concerned in the event of cancellation on extraordinary grounds. In the event of cancellation by Heise on extraordinary grounds and regardless of any further legal obligations that might apply, the customer shall refund to Heise the difference between the discount granted and the discount applicable, once cancellation has occurred, to the placement or advertising material actually used.

#### **Clause 19: Heise's obligation to supply information**

Unless otherwise agreed, Heise undertakes to provide the customer, on demand and within ten working days of carrying out the order, with details of the number of users accessing the advertising material concerned.

#### **Clause 20: Data protection**

The advertisement order shall be processed in accordance with the applicable data-protection legislation and regulations. The customer guarantees conformity with Heise's privacy policy, which can be viewed on the Heise website.

#### **Clause 21: Legal jurisdiction and law to be applied**

1. The place of performance is Heise's registered place of business.
2. All claims and disputes arising from business transactions with commercial customers, private legal entities or legal entities under public law shall be heard before the courts and tribunals of Heise's registered place of business. If and insofar as Heise's claims against a non-commercial customer cannot be dealt with by judicial demand, legal jurisdiction shall correspond to the place of residence of the customer concerned. All legal matters arising from this agreement are subject to the laws of the Federal Republic of Germany, to the exclusion of UN commercial law.
3. If the customer's address or normal place of residence is unknown at the moment in which the claim is brought, or if the customer has relocated, after entering into the agreement, to an address or place of residence outside the jurisdiction of the corresponding law, it is agreed that jurisdiction shall correspond to Heise's registered place of business.

#### **Clause 22: Final provisions**

1. All information, consents, notifications or enquiries concerning these GT&C, including all amendments and additions to the same, must be issued in writing. Communication by e-mail shall be regarded as notification in writing. In the case of notification by fax or e-mail, reception shall be confirmed by the date of receipt on the other party's premises.
2. All alterations or additions to these GT&C, including those affecting this provision requiring written form, must be made in writing before they can become effective.
3. In the event of any conflict, the provisions of these GT&C shall take precedence over those governing tables of prices, scales of discounts, targeting criteria and cash discounts.
4. The possible invalidity of any part of this agreement shall have no effect on the validity of any other contractual provision. Invalid provisions shall be reworded in such a manner that fulfils, as far as possible, the intended purpose of the original. The same shall apply to any eventuality found not to be covered by the agreement.

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