

**General Terms and Conditions governing contracts for the publication of online advertising in return for payment and for the provision of ad server technology by adverserve GmbH, Rochusplatz 1, 1030 Vienna (hereinafter referred to as "adverserve")**

**This English translation is provided for your convenience only. In the event of discrepancies, the German original text shall prevail over the English translation.**

**1. Scope of application**

- 1.1. These General Terms and Conditions (GTC) apply to all contracts for the creation, placement, publication and distribution of online advertising by adverserve, as well as for the provision of ad server technology, other technology and/or the (partial) management of advertising campaigns, which are concluded between adverserve and a contractual partner (hereinafter also referred to as: the client). Furthermore, these GTC apply to workshops and consulting services offered by adverserve.
- 1.2. The contractual partners' General Terms and Conditions are hereby expressly rejected. Other General Terms and Conditions shall not apply even if documents or declarations of the respective contractual partner refer to them. Individual contractual provisions shall take precedence over these General Terms and Conditions. A contract shall not be concluded on terms other than those set out in these GTC and any deviations from these GTC agreed individually between the parties.
- 1.3. adverserve GmbH provides the services in accordance with these GTC only for entrepreneurs within the meaning of the Austrian Federal Act on Special Civil Law Provisions for Companies. (Unternehmensgesetzbuch; BGBl I120/2005 idgF).
- 1.4. These GTC shall be deemed to have been accepted in full in any case if a contract is concluded with adverserve (see point 3 of these terms and conditions) and nothing to the contrary is expressly agreed in this contract. By accepting an offer, the business partner expressly waives the application of its own terms and conditions.

**2. Definitions**

**(online advertising, advertising material, advertising medium, campaigns, ad server technology, other technology, training courses and workshops)**

- 2.1. Online advertising is the placement of one or more advertising materials in information or communication services – in particular on the Internet – for the purpose of distributing the advertising material.

- 2.2. Advertising material may consist of one or more of the following elements, for example:
  - image and/or text, sound sequences and/or moving images
  - a sensitive area which, when clicked, establishes a connection via an online address specified by the client to further data located within the client's domain (so-called links).
- 2.3. An advertising medium is the channel in which the advertising material is placed, such as a website, media portals or other information or communication services.
- 2.4. An order placed with adverserve may consist of a single publication of an online advertisement or multiple publications within an agreed period (campaign). Depending on the specific assignment, managing an advertising campaign involves planning, designing content and implementing (distributing/ publishing/ placing) online advertising.
- 2.5. An order placed with adverserve may also consist of entrusting adverserve with the marketing of advertising space.
- 2.6. adverserve provides third-party ad server technology – specified on a case-by-case basis – for a fee and manages it for the client in accordance with the client's specifications.
- 2.7. Ad server technology is the software that enables the placement of online advertising and the purchase and sale of advertising media.
- 2.8. Other technology refers to software used to evaluate and collect data from advertising campaigns, advertising media and the corresponding user behaviour of the target group.
- 2.9. Workshops are training courses offered by adverserve, which may cover the possible applications of digital marketing, the relevant technology, the specific benefits for the respective customer and future trends in this area.
- 2.10. Consulting: Consulting services provided by adverserve in the field of online marketing.

**3. Offer and conclusion of contract**

- 3.1. A contract is concluded by written agreement or by written or verbal acceptance of an offer from adverserve.
- 3.2. Verbal acceptance of the contract is only possible with regard to the entire content of the written offer from adverserve. Verbal side agreements are excluded and shall be deemed not to have been agreed.

- 3.3. In the event of verbal acceptance of the contract, adverserve will send a confirmation email to the contracting party.
  - 3.4. adverserve reserves the right to reject orders or partial orders (in particular publications) for objectively justified reasons if they clearly violate applicable law or if their publication is unreasonable for adverserve (for example, if there are doubts about rights of use, or if the content of the advertisement violates public decency or the terms of use of the owner of the desired advertising medium). The client will be notified of the rejection of an advertising order.
  - 3.5. Consulting services are only included if this has been expressly agreed in the offer.
- 4. Communication**
- adverserve and its contractual partners agree to communicate by e-mail throughout the entire contractual relationship. If a specific contact person or e-mail address is specified in individual cases, communication from the contractual partner must be addressed exclusively to this person or address.
- 5. Fees**
- 5.1. The individually agreed fee for the creation/placement of online advertising or the provision of technology shall be deemed to have been agreed. If price lists for placements are provided to the contractual partner, these shall apply. adverserve reserves the right to change price lists - also unilaterally - on a monthly basis.
  - 5.2. With regard to workshops offered by adverserve, the agreed fee shall be payable by the client even if the workshop does not take place for reasons for which the client is responsible.
  - 5.3. The respective prices do not include value added tax or any additional costs incurred (such as cash expenses for translations or express fees), which will be invoiced separately by adverserve.
  - 5.4. In the case of a campaign involving multiple publications, the justified rejection of a partial order (or the placement of individual advertising materials) does not reduce adverserve's claim to remuneration for the entire campaign (see Section 3.4 of these General Terms and Conditions).
- 6. Terms of payment**
- 6.1. The services commissioned are generally invoiced on a monthly basis.
  - 6.2. All invoices are due for payment within 21 days of the invoice date without any discount deduction.
  - 6.3. Incoming payments are first credited to expenses, then to interest and finally to the pure invoice amounts.
  - 6.4. The contractual partner shall only be entitled to offset claims against adverserve, to withhold payment or to reduce the purchase price if such claims have been undisputed by adverserve or have been legally established.
  - 6.5. If a contractual partner is in default of payment despite a corresponding reminder from adverserve, or if there are objectively justified doubts about their solvency, adverserve is entitled to demand immediate settlement of all deferred payments by this contractual partner, or of those payments for which installment payments have been agreed. If the client wishes adverserve to continue working in this case, an advance payment for the projected expenditure must be made in addition to the services due. Furthermore, in the event of a qualified default of payment, adverserve shall be entitled to suspend work on all ongoing orders and to terminate these and all other contracts with the respective client with immediate effect, without the need for a further reminder or setting of a deadline.
  - 6.6. In the event of late payment by a contractual partner of adverserve, interest on arrears of 8% per annum shall be deemed to have been agreed.
- 7. Production materials, documents and archiving**
- 7.1. Unless otherwise agreed in individual agreements, the material sent by the client to adverserve (data, data carriers, images and other documents) will not be returned to the client.
  - 7.2. Published online advertising will, after its publication, be archived only where possible and solely upon the contractual partners' express request - and subject to an additional fee.
  - 7.3. Digitally accessible campaign evaluations can only be provided as long as adverserve manages an account for the customer with a technology provider.
- 8. Placement of online advertising**
- 8.1. The placement of advertising material shall be in accordance with the client's specifications.
  - 8.2. In the event that the client wishes to place advertising material on third-party advertising media (such as a website that is operated neither by the client nor by adverserve), the client must reach an agreement with the owner of the advertising medium regarding the placement and obtain the relevant rights.

- 8.3. If the placement is carried out by the client itself using ad server technology provided by adverserve, the client must ensure that the online advertising medium or advertising space is suitable for the use of this technology.
- 8.4. If an advertisement does not occur in the desired position (or in the desired online advertising medium), the client must notify adverserve immediately.
- 9. Availability of online advertising media and advertising space**
- 9.1. If an online advertising medium on which advertising material is to be placed is discontinued during the term of the contract for any reason whatsoever, adverserve shall be released from its obligation to perform the order without adverserve being liable to provide a replacement.
- 9.2. This does not release the client from paying for online advertising that has already been published, as well as for services that have already been provided by adverserve for the intended placement on the specified online advertising medium.
- 9.3. Unless expressly agreed otherwise in individual cases, adverserve is not responsible for ensuring that advertising space is available for the placement of online advertising. Rather, it is the responsibility of the client to conclude appropriate agreements with the operators of the online advertising media.
- 10. Obligations of the client / content requirements for advertising material and liability of the client towards adverserve and media owners for the content of online advertising**
- 10.1. The client warrants and represents that it possesses all rights necessary for the placement of the advertising material (in particular rights of use and exploitation under copyright law). In addition, the client warrants and represents that it is familiar with and complies with all applicable laws, regulations, guidelines and industry standards. The client shall indemnify and hold harmless adverserve and/or the owners of those media in which online advertising is published, as well as service providers entrusted with placing the advertising material, in the event that the advertising material provided violates legal provisions and/or the rights of third parties.
- 10.2. The client warrants and represents that the advertising material provided by it does not contain any content that is contrary to the public interest, in particular pornographic, National Socialist, racist or other discriminatory content. The client further warrants and represents that where the advertising targets minors and other particularly vulnerable target groups, the materials are appropriate for such audiences and comply with all relevant legal provisions. If adverserve or any media owner on whose media the online advertising is published is subjected to claims by courts, authorities, or third parties due to a violation as described in Sections 10.1 or 10.2, the client shall reimburse adverserve and/or the relevant media owner for such claims within 14 days.
- 10.3. The client grants adverserve all copyrights, ancillary copyrights and other rights necessary for placing advertisements in online media of all kinds, in particular the right to reproduce, distribute, transmit, broadcast, edit, extract from a database and retrieve, in terms of time, location and content to the extent necessary for the execution of the order. The aforementioned rights are in all cases unlimited in terms of location and entitle the client to place/publish the advertisement using all known technical processes and all known forms of online media.
- 10.4. adverserve only accepts online advertising on the assumption that the content of the advertisement does not violate applicable Austrian law or the law of any other country in which the online advertising is accessible, and that it does not infringe on the rights of third parties. The client guarantees that the content of the online advertisement or advertising material does not violate the applicable law of any country in which it is accessible and does not infringe the rights of third parties. Content that is pornographic, extremist or contrary to public decency is expressly prohibited, and adverserve is entitled to immediately block or delete such content.
- 10.5. adverserve reserves the right to refuse the publication of online advertising if its content violates the provisions of these General Terms and Conditions, without this reducing adverserve's claim to remuneration.
- 10.6. The client's responsibility extends not only to the actual advertising content, but also to the content linked to its online advertising (links).
- 10.7. If the online advertisement is rejected for the reasons mentioned in point 10 or if it is (subsequently) blocked and/or deleted, the client shall be liable for the full costs.
- 10.8. If the owner of the online advertising medium or adverserve is held liable by a third party for infringement of rights of any kind due to the content and/or nature of the online advertising, and judicial or extrajudicial costs arise in this context the client is obliged to bear these costs and to fully indemnify and hold harmless the online advertising medium and adverserve.

- 11. Obligations of the client in connection with the use of technology made available**
- 11.1. The client warrants and represents that it will use the technology provided by adverserve strictly in accordance with the specifications issued by adverserve or the respective technology provider and solely in compliance with all legal requirements – in particular those relating to data protection, consumer protection and relevant competition law – as well as industry-specific standards and requirements.
- 11.2. The client specifically guarantees and warrants that it will not collect or otherwise process any personal data using the technology provided, unless explicit consent of the data subjects or another valid legal basis for such processing is in place.
- 11.3. The client further warrants and represents that it will only process personal data of third parties using the technology provided if such processing is permitted under the specifications and requirements of the technology provider and if such processing is also legally permissible.
- 11.4. The client shall indemnify and hold harmless adverserve if adverserve is held liable or otherwise pursued by the technology provider or any other third party as a result of the client's breach of this provision
- 11.5. When using ad server technology, the client has the ability to make configurations within its customer account (e.g. campaign booking, changes to the number of impressions, changes to the campaign budget, etc.). The client shall be solely responsible for configurations made by the client or by any third party attributable to the client. If adverserve suffers any damage as a result of such configurations, the client undertakes to indemnify and hold harmless adverserve.
- 12. Product description and warranty by adverserve**
- 12.1. adverserve guarantees, within the scope of foreseeable requirements, the best possible placement/playback/publication of the advertising material/use of the technology in accordance with the usual technical standards.
- 12.2. The client is aware that, given the current state of technology, it is not possible to create a product that is completely free of errors (deviations of the advertising material from the template) and to place/reproduce/publish it.
- 12.3. In particular, there is no error/defect in the presentation of the advertising material and therefore no entitlement to assert warranty claims if the deviation is caused by
- the use of unsuitable display software and/or hardware (e.g. browser) or
  - disruption in the communication networks of other operators or
  - computer failure or other disruptions at third parties (e.g. other providers, etc.) or
  - incomplete and/or non-updated offers on so-called proxies (cache) or
  - a failure of the ad server that lasts no longer than 24 hours (whether continuous or cumulative) within 30 days from the start of the contractually agreed placement. In the event of an ad server outage over a significant period of time during a time-bound fixed booking, the client's obligation to pay shall be waived for the period of the outage. Any further claims are excluded.
- 12.4. If a defect is attributable to adverserve, the client shall be entitled, in the event of insufficient reproduction quality of the advertising material, to a reduction in payment or a replacement advertisement free of defects but only to the extent that the purpose of the advertising material has been impaired. If any defects in the advertising placements are not obvious, the client shall have no claims upon their publication.
- 12.5. Complaints regarding incorrect publication or non-publication must be submitted to adverserve within ten days of the actual or planned publication of the online advertisement. Complaints submitted after this period will not be considered. If an online advertisement cannot be published for technical or administrative reasons, the placement costs will be waived or refunded.
- 12.6. With regard to the workshops offered by adverserve, it is expressly stated that adverserve accepts no guarantee and/or liability for forecasts, business cases and other statements or case studies presented and/or developed in the course of the workshops.
- 12.7. The contracting parties mutually agree that the obligation to update pursuant to § 7 VGG idF BGBl. I. 2021/175 (see also Art. 8 Par. 2 and 3 RL [EU] 2019/770, Art. 7 Par. 3 and 4 RL [EU] 2019/771) shall be excluded.
- 13. Responsibility and liability of adverserve**
- 13.1. adverserve accepts online advertising on condition that the content complies with the requirements set out in section 10 of these GTC
- 13.2. The client is solely responsible for the content of online advertising. adverserve is not responsible to either the client or the owners of the booked online advertising media for the content of online advertising. adverserve has no duty to warn the client and/or the owners of media on which online advertising is placed.

- 13.3. The client's responsibility extends not only to the actual advertising content, but also to the content linked to their online advertising (links).
- 13.4. Furthermore, the client acknowledges that publication is entirely at their own risk. Should publication give rise to claims for compensation from third parties (such as the owners of the media in which the online advertising is published), the client shall be solely responsible towards such third parties. Should adverserve nevertheless be held liable by third parties, the client shall indemnify and hold adverserve harmless from any such claims.
- 13.5. Claims for damages by the client against adverserve for financial losses and/or lost profits are excluded. Likewise, adverserve shall not be liable if the damage is attributable to slight negligence.
- 14. Disclaimer and possibility of contract termination in the event of force majeure**
- 14.1. adverserve shall not be liable for the non-fulfilment of its contractual obligations, even if it uses vicarious agents, and penalties and performance deadlines shall not apply if the non-fulfilment is due to an impediment beyond its control and it could not be expected or reasonably required to foresee the impediment at the time of conclusion of the contract or to avoid or overcome the impediment or its consequences; the impediment shall be deemed to have occurred if the impediment directly, in particular through business closure (nationwide or regional), quarantine measures, etc., or indirectly, in particular, prevents or renders impossible the performance of the contract by one of the contracting parties.  
The following, in particular, shall be deemed impediments that release adverserve from liability: labour disputes/strikes, unrest/riots, wars, terrorist attacks, boycott measures, natural disasters, including those caused by global warming (such as storms, floods, earthquakes, etc.), pandemics, epidemics, official measures, confiscation of property, shortages of resources, materials or supplies, and other unforeseeable, unavoidable and serious impediments that release adverserve from its (main and/or ancillary) performance obligations for the duration of the disruption and to the extent of its effect.
- 14.2. adverserve shall, within reasonable limits, immediately notify the client in writing (e-mail being sufficient) of the occurrence of the impediment.
- 14.3. In the event of an impediment, either contracting party may terminate the contract for cause (in the case of a continuing obligation) or declare withdrawal from the contract (in the case of a fixed-term obligation), if, in particular
- the continuation of the contract is unreasonable for one of the contracting parties due to an impediment (as described above), meaning that the impediment causes the loss of essential business principles, or
  - no mutual agreement on the continuation of the contract can be reached between the contracting parties within a reasonable period, but no later than within 21 days, or
  - the duration of the impediment is unforeseeable for one of the contracting parties.
- 14.4. The contract shall be terminated or dissolved 'ex nunc' upon receipt of the unilateral declaration (withdrawal or extraordinary termination)
- 15. Intellectual property rights in online advertising**
- The client acknowledges the intellectual property rights, in particular the copyright, of adverserve in all advertising created by adverserve that possess an individual character. Provided the client fulfils its contractual obligations towards adverserve, the client shall be granted the right to use and exploit such intellectual property for an unlimited duration and solely within the scope of the original intended purpose.
- 16. Misuse of online advertising by third parties**
- Any use or exploitation of the online advertising by third parties, in whatever form, is prohibited. The client agrees that adverserve may take action against such third party use after consultation with the owner of the online advertising medium.
- 17. Data protection information**
- 17.1. adverserve points out that when displaying online advertising, personal data of users (e.g. website visitors) may be processed under certain circumstances.
- 17.2. The client is always responsible for the processing of personal data associated with an order placed with adverserve or in the course of contract fulfilment by adverserve (as the controller within the meaning of Art. 4(7) GDPR). It is therefore necessary for adverserve and the client to conclude a data processing agreement within the meaning of Art. 28 GDPR.
- 17.3. The processing of personal data is only permitted if there is a legal basis for doing so. This could be the consent of the data subject, for example. The client must therefore ensure that they can rely on a valid legal basis for doing so.

17.4. In any case, it is necessary that data subjects are informed about the processing of their data and their rights in this regard. This is usually done by means of a privacy policy published on the website. The client is solely responsible for ensuring that data subjects are informed in accordance with the law.

17.5. adverserve points out that so-called cookies or similar technologies are used when online advertising is displayed. Users must be informed about the use of cookies and must consent to their use. The client is responsible for obtaining this consent or ensuring that consent has been given.

**18. Place of jurisdiction, place of performance, choice of law by adverserve.**

For all contractual relationships of adverserve, in particular those in connection with the

placement of advertising material and/or the provision of ad server technology and any disputes arising in connection therewith, including any pre-contractual and post contractual matters, the exclusive jurisdiction of the Vienna Commercial Court shall apply insofar as legally permissible.

**19. Other provisions**

If any provision of a contract concluded on the basis of these General Terms and Conditions is invalid or incomplete, the validity of the remaining provisions shall remain unaffected. The invalid or missing contractual provision shall be replaced or supplemented by a contractual provision that comes closest in economic terms to what the parties would have agreed if they had considered the invalidity or incompleteness.