

General Terms and Conditions (GTC)

§1

1. The following General Terms and Conditions of Berliner Fenster GmbH (subsequently referred to as "BF" for short) apply exclusively to all of the forms of advertising offered by the BF for the areas of application involving the sale of advertising times in the BERLINER FENSTER.
2. The sole and unrestricted validity of these stipulations is a prerequisite for the validity of all contracts. Their refusal will result in overall invalidity.
3. Binding purchase orders are subject to the placing of an order by the contracting company and the acceptance of the order by BF. The broadcasting purchase order will be binding for BF only if it has been confirmed by BF in writing or if the advertising copy has been broadcast without previous written confirmation on the part of BF.
4. Purchase orders issued by advertising agencies in their own name will be accepted only for and with the name of the designated party being advertised. BF is at all times entitled to require that the party being advertised provide written verification of the purchase order placed by the advertising agency.
5. The present GTC of the BF applies exclusively for all purchase orders. The Terms and Conditions of the contracting company will not become part of the contract even in the event of acknowledgements on the part of the contracting company that contain stipulations differing from those contained in the GTC of the BF. No explicit refusal of these on the part of BF is required. Price lists and price groups are a constituent part of the GTC insofar as reference is made to them in these GTC. The contracting company confirms that it has been issued these documents prior to the conclusion of the contract.
6. Advertising copy can be booked only in the contractually stipulated length. The prices for the broadcasting are calculated in seconds.
7. Offers made by the BF are in all cases subject to confirmation. BF reserves the right to accept or reject any purchase order. BF also reserves the right, including in cases of accepted legally binding purchase orders, to refuse advertising spots, e.g. because of the origin, the content, the form or the technical quality of the broadcasting material provided by the contracting company, particularly for program-related, technical or judicial reasons. BF will not broadcast the respective advertising copy in such cases. BF will inform the contracting company of this without delay.
8. The contracting company is entitled to no claim other than to the reimbursement of the price in the event that the advertising copy has been refused. The right to assert claims for further damages is explicitly excluded. Insofar as only single contributions are broadcast under the purchase order, the Client will reimburse payment for them in accordance with the remunerations listed in the respectively valid BF price list.

§ 2 Broadcasting/promotional material

1. The artwork to be broadcast shall be delivered no later than 10 working days prior to the first broadcasting time that has been contractually agreed to. The Client is responsible for timely receipt of the materials to be broadcast. If receipt does not take place or if receipt is not timely, then BF is exempted from its performance obligations pursuant to §2 Clause 4. Pecuniary claims remain unaffected thereby.
2. It is the sole responsibility of the Client to ensure that the quality of the material to be broadcast is in a form that is beyond reproach in terms of technical aspects and content. The material is to be supplied in the format specified by BF. The Client is responsible for any risk of transmission errors in the event that instructions are given either by telephone or by facsimile.
3. The copies for broadcasting are to be sent at the risk of the Client to BF or to a different address explicitly named in the acknowledgement of order.

4. In the event of delivery of damaged or unusable artwork, BF undertakes to inform the Client without delay thereof. The Client undertakes to make replacement materials available no later than 24 hours prior to the intended broadcasting time. If this deadline is not met, then BF is not under obligation to broadcast the broadcasting content and will make up for this at a later date insofar as this is feasible with respect to technical requirements. Reimbursement claims remain unaffected thereby. Claims compensation for losses suffered and other claims on the part of the Client are excluded pursuant to §4.

5. In the event that the advertising broadcast can not be made up for at a later date, the Client is entitled to a claim for repayment of the price. Claim for compensation for losses suffered or other claims of the Client are excluded pursuant to §4 of these Terms and Conditions.

6. Advertisements receive placement in accordance with BF planning requirements. No requests for special placement can be considered. As a basic rule, placement shall not be made except in the cars of the Berlin Underground in circulation that are equipped for this purpose at the time of the beginning of the contract, unless other arrangements are specified in individual contracts.

7. The obligation of the BF with respect to the preservation of documents and copies for broadcasting ends at the time of the last broadcasting of the advertising copy specified in the purchase order. BF will forward the documents and copies for broadcasting back to the Client at his cost and risk if he requests this of BF in writing within 10 days following the last broadcast; BF is otherwise entitled to destroy the material. BF is entitled to retain the documents and copies for broadcasting until full payment has been received for the purchase order.

§ 3 Broadcasting times

1. The broadcasting times agreed upon will be complied with wherever possible. Changes in broadcasting times within a particular price group listed in the price schedule is however permissible at any time, insofar as this has not been otherwise agreed upon in writing. The advertising copy will as a fundamental principle be placed in the advertising block that has booked. The Client does not however have the right of placement of the advertising copy in a particular advertising block. The advertising blocks are listed according to price groups. The prices of the original price group remain in effect in the event that, for example due to program-related or technical reasons, individual blocks are subjected to negligible rescheduling shifts of, as a rule, up to 2 hours. No guarantee is made that the advertising copy will be broadcast in a particular sequence. In addition, no guarantee is made that no other advertising blocks will be offered other than those identified in the programming schedule. This applies for all forms of advertising. No exclusion of competitors within a single advertising block can be granted under any circumstances.

2. No guarantee for the availability of a particular advertising block will be undertaken.

3. If advertising copy fails to be broadcast due program-related or technical reasons or due to force majeure (including technical malfunctions), then it will if possible either be shown earlier or made up for later. The Client will be informed thereof, except in cases involving negligible scheduling changes. Any liability on the part of BF will be determined pursuant to §4.

§ 4 Liability of the BF

BF is liable for possible damages, on whatever legal basis, only in the event that BF culpably violates an obligation significant to the contract (cardinal obligation) in a manner that endangers the purpose of the contract or in the event that the damage results from gross negligence or premeditation on the part of BF. In cases where a violation of obligations occurs that is significant to the contract (cardinal obligations), but is not the result of gross negligence or premeditation, the liability of BF is limited to the foreseeable damages. Clauses 1 and 2 do not apply in cases of injury to life, body or health.

§ 5 Hold-harmless agreement on the part of the Client

The Client is liable for the content of his advertising copy and holds BF harmless from all third-party claims whatsoever, in particular comprehensively from any claims arising from laws governing business competition, personal rights and copyright which may be asserted against BF by third parties as a result of the broadcasting of

the advertising copy. The Client will compensate BF for all damages that arise therefrom. BF does not undertake to view or examine advertising copy prior to the acceptance of the purchase order.

§ 6 Rights of copyright and broadcasting rights

The Client guarantees in placing the order that he is in possession of all of the rights required for the utilisation of the copy. The Client confers in particular the right of broadcasting utilisation to BF with respect to time, place and content to the extent required for the performance of the contract. This includes any editing and transmission rights on the part of BF required for broadcasting; these rights are taken on at the time that the contract is accepted. The rights of utilisation in terms of content are transferred without limitation and are entitlements for transmission in specific technical processes. The Client holds BF harmless with regard to all third-party claims whatsoever, in particular those asserted by performing rights societies (GEMA, etc.).

§ 7 Notice of termination

BF is entitled to summary termination of bindingly accepted purchase orders, insofar as changes in broadcasting frequencies in individual criteria become necessary that were not foreseeable to BF at the time the purchase order was accepted or which are not feasible for BF. This applies to all types of programming changes. In addition, BF is entitled to termination insofar as the Client enters into financial difficulties or becomes insolvent or in the event that bankruptcy or composition proceedings are opened against the assets of the Client. The entitlement of BF to payment of reimbursement for advertising spots that have already been broadcast remains in effect in the event of this kind of termination.

§ 8 Price changes

The prices in effect at the time this contract is signed are based on BF planning data. For that reason, BF reserves the right to adjust these prices later, even for purchase orders that have already been accepted, in the event that there is a change in these data. The price changes will take effect after a period of one month following respective notification. In the event of a price increase, the contracting partner has the right of termination at the time that the price increase goes into effect. The right of termination must be exercised in the form of a written statement to BF within eight working days following receipt of the information concerning the price increase.

§ 9 Terms of payment

1. Invoices are issued respectively at the beginning of the month following the one in which the advertising segments were broadcast. The base price used for determining reimbursement for the broadcasting of the advertising copy is computed in accordance with the total broadcasting time during the invoicing period for the advertising copy as calculated by BF in conjunction with the price per second determined from the respectively valid price list. The prices listed there, insofar as no other express specification is given, are quoted respectively in EURO exclusive of VAT. Production and other costs are invoiced separately. In justified cases, particularly in cases of first-time customers, BF is entitled to demand that payment be made in advance for its services for the respective following month.
2. The invoice amounts are due for payment without deduction within 10 days of the date of invoice on the calendar date specified on the invoice. Payment can be discharged only to the account designated on the invoice. Bank service charges shall be borne by the Client. The credit entry for the account specified on the invoice is required for recognition of timely payment.
3. Tie-in promotions (co-operative advertising) is not permitted except in the cases of explicit written authorisation from BF. BF is entitled to charge a co-operative advertising surcharge of up to 15% of the applicable price for each product advertised for the broadcasting of multiple advertising copies. "Co-operative advertising" is to be understood here as any advertising copy that advertises more than one product.
4. Advertising agencies or advertising agents receive, insofar as they advise their Clients or can prove that a corresponding service has been performed, an agency reimbursement in the amount of 15% of the value of the purchase order (after deductions and exclusive of VAT). This applies only insofar as the payment was received by the account specified on the invoice within the period before the payment becomes overdue.

5. BF is entitled to omit further broadcasting in the event of delay of payment. If the Client also fails to pay after BF has set a deadline, then his claim to further broadcasting will lapse permanently. BF is entitled in such cases to assert a pecuniary claim for the omitted broadcasting in the form of flat-rate compensation for losses suffered. The Client has the opportunity of demonstrating that BF suffered either no damage or only a significantly lesser one. BF is entitled to demand interest on arrears in the amount of eight percentage points above the prime lending rate of the European Central Bank.

§ 10 Cancellation

1. The customer can withdraw from the contract at any time prior to the beginning of broadcasting placement. The time of the receipt at BF of the written notification of withdrawal is authoritative for the time of the withdrawal.

2. In the event of a withdrawal (cancellation) BF is entitled to fair compensation from the customer, taking into account a computation of the expenditures that would normally be saved.

3. BF can assert the following flat-rate cancellation compensation in the place of a concrete calculation of compensation for withdrawal from the contract: Withdrawal up to eight weeks prior to the beginning of placement: 5% of the agreed placement price; withdrawal up to four weeks prior to the beginning of placement: 10% of the agreed placement price; later withdrawal: 25% of the agreed placement price. The Client has the opportunity of demonstrating that BF suffered either no damage or only a significantly lesser one.

§ 11 Final clauses

1. Changes and amendments to this contract, including supplementary agreements and including changes to this clause, must be made in writing.

2. Only the laws of the Federal Republic of Germany apply to the contractual relationship.

3. The exclusive place of jurisdiction for all conflicts arising from and in connection with the purchase order relationship and its execution is Berlin, insofar as this is allowable under statute.

4. The legal validity of the other provisions will not be affected in the event that individual provisions of this contract are or become effectless. A provision will be introduced in the place of an effectless regulation that corresponds as closely as possible in its economic purpose to that intended by the provision that is or has become effectless.

Dieser Text ist eine Übersetzung der deutschen Allgemeinen Geschäftsbedingungen der Berliner Fenster GmbH. Sollte die englischsprachige Übersetzung vom deutschsprachigen Text abweichen, so gelten die Bestimmungen der deutschen Version.

These General Terms and Conditions exist in two versions, the original German and an English translation. The German-language version shall be considered valid in the event of any deviations between the two versions.