

EL CARTEL MEDIA

General terms and conditions for the broadcast of TV advertisement

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1. Definitions

- 1.1 "Commercial Spot": a film having a duration of at least five seconds, in which a product or a service is being advertised within a commercial slot during TV programmes.
- 1.2 "Product Placement": mentioning or displaying of goods, services, names, trade marks, operations (hereinafter referred to as "Product" or "Products") of a producer or provider of Products in a production against payment or other consideration with the intent to promote sales. The provision of Products free of charge is Product Placement if the particular Products are of significant value. A Product is of significant value if its value amounts to one per cent of the production costs or more or, as the case may be, to at least EUR 1,000.00. The determination of a significant value applies to each good or service separately. However, if several goods and/or services are provided by one company, their values shall be summed up.
- 1.3 "Special Advertisement Forms": any other form of product or trademark presentation during TV programmes, which is neither a Commercial Spot nor a Product Placement.
- 1.4 Commercial Spots, Product Placement and Special Advertisement Forms together are referred to as "Advertisements".
- 1.5 "Order": the Agreement concluded by and between the TV channel that is to screen the Advertisement (hereinafter referred to as "Channel"), represented by EL CARTEL MEDIA GmbH & Co. KG (hereinafter referred to as "EL CARTEL MEDIA"), and the contractual partner (hereinafter referred to as "Customer") on the screening of Advertisements.
- 1.6 Corner position: the first and second as well as the last and penultimate positions in a commercial slot. Desired positions may be purchased against payment of an additional charge of 20%.

2. Subject matter

- 2.1 EL CARTEL MEDIA shall market the Channel's advertising times and productions of the Channel for Product Placement and shall act as the Channel's representative.
- 2.2 Exclusively the General Terms and Conditions (GTC) below shall apply to any and all Orders. Any confirmations of the Customer's in which the latter makes reference to its own terms and conditions are hereby expressly rejected. Any deviations from these GTC shall be effective only if they have been confirmed in writing by EL CARTEL MEDIA.
- 2.3 Any amendments of these GTC shall be announced to the Customer in writing. They shall be deemed approved, unless the Customer expressly objects thereto within one month of receipt.

3. Conclusion of agreement

- 3.1 Any offers submitted by EL CARTEL MEDIA shall be non-binding subject to any agreement or notice to the contrary and are always dependent on the availability of the advertising times offered or, as the case may be, the production and screening of the programme in which a Product shall be placed.

- 3.2 If the Customer submits an offer, the Order shall be granted by way of EL CARTEL MEDIA's written or electronic acceptance or, if such acceptance does not take place before screening, by such screening.
- 3.3 Orders from agencies shall be accepted only if granted on behalf of exactly identified advertisers. EL CARTEL MEDIA shall be entitled to ask the agency to provide a list of its clients. Any invoices shall be addressed to the agency. In case of bookings by agencies, EL CARTEL MEDIA reserves the right to forward any booking confirmations to the advertiser. Upon granting the order, the agency assigns to the Channel its payment claims against its client under the advertising agreement underlying such claims (assignment for security purposes). The Channel accepts such assignment.
- 3.4 Agencies may not have the screening times that are booked for an advertiser transferred to another advertiser or another agency.
- 3.5 Any bundling of several advertisers into a single advertising spot, i.e. so-called co-op advertising, shall require the express written consent of EL CARTEL MEDIA. The advertisers shall be identified by name. EL CARTEL MEDIA shall be entitled to claim a co-op surcharge.

4. Screenings

4.1 Screening of Commercial Spots and Special Advertising Forms:

- 4.1.1 Indications of certain broadcasting times, dates or commercial slots shall be deemed to be merely non-binding planning proposals, unless they were stipulated in writing. In such event, EL CARTEL MEDIA shall use its best efforts in order to enable the screening of the Commercial Spot during a commercial slot desired by the Customer, without assuming any warranty in this respect. EL CARTEL MEDIA shall be entitled, however, to postpone screening provided that the Spot is screened in the booked price category and the Customer is informed accordingly.
- 4.1.2 EL CARTEL MEDIA shall be entitled to offer additional commercial slots besides those shown in the programme schemes. An exclusion of competitors in the same commercial slot or in the programme environment principally is not guaranteed.
- 4.1.3 EL CARTEL MEDIA shall be entitled to postpone Advertisements that are not appropriate for children and young viewers, irrespective of any times specified in the order, to times in which screening the Advertisements is admissible.
- 4.1.4 In case of Advertisements for which screening times, dates or commercial slots were agreed in writing with binding effect, such postponement shall principally require the Customer's consent. If the Customer does not consent to the postponement, the parties shall agree on a new screening date. If the parties do not reach an agreement on such a new date, the screening obligation shall cease to exist. Any payments already made shall be reimbursed without undue delay.
- 4.1.5 The consent under clause 4.1.4 may be dispensed with only in case of a minor postponement in time that is acceptable to the Customer. Postponement of an Advertisement is minor if it takes place within the same programme contents environment and does not lead to a material deviation of the screening from the time originally scheduled.
- 4.1.6 Furthermore, the consent under clause 4.1.4 may be dispensed with if the Channel modifies the planned order of programmes due to current events, for serious technical reasons, due to force majeure, strike or any statutory provisions. EL CARTEL MEDIA shall inform the Customer about such a postponement, unless it is a minor postponement.
- 4.1.7 The Channel shall be entitled to broadcast the Advertisements within the Channel's entire transmission area; however, the Customer shall have a claim to screening only with a view to the German transmission area.
- 4.1.8 At the end of the broadcasting month, EL CARTEL MEDIA shall provide the Customer with screening confirmations, indicating the actual screening time and the relevant commercial slots.
- ##### **4.2 Screening of programmes in which Products are placed:**
- 4.2.1 Specifications concerning the screening of the programme, in particular the screening time, screening time slot and frequency of screening are subject to the decision of the editor and therefore non-binding. EL CARTEL MEDIA does not warrant, when, for how long or in which context the Product is visible or mentioned. These decisions are also subject to the absolute discretion of the editor of the programme.
- 4.2.2 If the screening time of a programme changes there will be no reimbursement, in particular, no (proportional) reimbursement of any payments made. This applies both to Product Placements against payment and to Product Placements free of charge.

- 4.2.3 In case of Product Placements against payment and only if the screening of the production or parts thereof are cancelled before their first screening, EL CARTEL MEDIA shall pay a reasonable compensation to be determined by EL CARTEL MEDIA.
- 4.2.4 EL CARTEL MEDIA is in principle entitled to accept other Product Placements for the offered programme. The exclusion of competitors in one programme is not stipulated.
- 4.2.5 Clause 4.1.7 applies accordingly to programmes in which Products are placed.

5. Rejection

- 5.1 EL CARTEL MEDIA shall not be obliged to view and examine the Customer's Advertisement before screening it.
- 5.2 Also with a view to orders accepted with binding effect, EL CARTEL MEDIA reserves the right to refuse screening in whole or in part, or to refrain from further screening, if the advertisement provided or the screening time is in contravention of any statutory or official requirements, in particular of the joint advertising guidelines of the Federal States' media institutes as amended from time to time, if they do not comply with the technical requirements (cf. clause 6) or are contrary to the interests of EL CARTEL MEDIA or those of the Channel. EL CARTEL MEDIA is to inform the Customer without undue delay of any rejection or cancellation of Commercial Spot screening.
- 5.3 If such rejection or cancellation is due to reasons for which the Customer is responsible, the Customer shall be obliged to promptly provide new or modified Advertisements for screening, to which the reasons for rejection or cancellation do not apply. Should such substitute Advertisements be provided too late for the stipulated screening time, so that screening becomes impossible, EL CARTEL MEDIA nevertheless shall be due the claim for remuneration, as if screening had taken place at the stipulated point in time.
- 5.4 If rejection or cancellation is due to reasons for which the Customer is not responsible, the latter may rescind the order with a view to the rejected Advertisements and demand that any payments already made be repaid, unless these have been used up by screenings. Any further claims of the Customer's shall be ruled out.

6. Broadcasting material / Products

6.1 Broadcasting material for Commercial Spots and Special Advertising Forms:

- 6.1.1 The Customer shall be obliged to provide EL CARTEL MEDIA, during business hours (Mon-Fri 9.00 until 18.00), with the material required for screening (motif plan and screening copies) in a technically impeccable condition at the latest 7 working days before the stipulated screening date at no cost. The Customer shall be responsible for the timely provision of the material.
- 6.1.2 "The master copies shall be made available to EL CARTEL MEDIA as videotapes in the standard Digital Betacam PAL. Alternatively a digital delivery of the Advertisement may occur. Advertisements in a High Definition Format must be delivered digitally.

Physical delivery of the Advertisement:

Digital Betacam PAL: Video: Pal-D1 signals in 16x9 anamorphic and the standards ITU-R BT.601/656 correspondingly. Audio: digital pursuant to AES/EBU with a full level = +6 dBu. Time Code (VITC and LTC identical) must be ascending and without interruption.

Digital Delivery of the Advertisement – via Webinterface:

Format:

SD: MXF-Container according to OP1a at 50 Mbit/s Video-datarate in IMX-Format (D10) pursuant to SMPTE

386M with 50 fields (interlaced) per second, max. 5 minutes length

HD: MXF-Container according to OP1a using the encoding algorithm XDCAM-HD 422 (1080i/25), max. 5 minutes length

The Technical Guidelines of RTL II in the presently valid form and the specifications for digital delivery, available under www.elcartelmedia.de/AGB shall be observed.

In regard to broadcasting materials it is applicable for both video tapes and digital deliveries: On the recognition of unsuitable or damaged broadcasting material EL CARTEL MEDIA will demand substitution without undue delay. The Customer bears all risks of loss of or damage to the materials while they are in transit.

As the RTL II Master Control Room works with the HD format specified as 1080i/25, all Advertisements in SD format will - during transmission - be initially converted to HD (upconversion).

For broadcasting in SD (for example DVB-T, Satellite-SD), the HD signal will be converted from HD to SD (downconversion)."

- 6.1.3 The Customer shall be obliged to communicate to EL CARTEL MEDIA, simultaneously with sending the screening copies, the details required for the settlement with GEMA or other performing rights societies, in particular producer, editor, composer, title and duration of the music used, in duplicate in written and in electronic form (via e-mail to: gema@elcartelmedia.de, on CD-ROM or diskette).
 - 6.1.4 The screening copies are to be sent to: EL CARTEL MEDIA GmbH & Co. KG, Motivdisposition, Lil-Dagover-Ring 1, 82031 Grünwald.
 - 6.1.5 The provided documents and screening copies (material) shall not be stored by EL CARTEL MEDIA, but archived as a file in order to make a new broadcast possible even if the original screening date was a longer time ago. EL CARTEL MEDIA does not archive the actual screening video. EL CARTEL MEDIA is entitled to destroy the provided material, if the Customer has not expressly requested on delivery a return of the material. In this case the material is returned at the customer's cost within 20 days of the last screening date. EL CARTEL MEDIA shall not be held liable for any damages to or loss of the material, unless EL CARTEL MEDIA has acted wilfully or negligently. EL CARTEL MEDIA shall be entitled to retain the material until the order has been fully paid.
 - 6.1.6 If screening the Advertisements at the stipulated time becomes impossible because the documents or screening copies provided to EL CARTEL MEDIA are defective under technical or other aspects, or if they are not provided in time, and if the Customer is, at least mostly, responsible therefore, EL CARTEL MEDIA may invoice to the Customer the remuneration owed for the stipulated screening time, even if the Advertisement has not been screened.
- 6.2 Delivery of Products for Product Placement:
- 6.2.1 The Customer delivers the Product to be placed in the production free of defects at the agreed time and at the agreed place at his own expense. To the extent the parties have not agreed the place and/or time of delivery, the Customer shall deliver the Product to the place of business of the Channel at the start of the production. To the extent the Product is not a good or a service which shall be consumed during the production, the Customer shall collect the Product at the agreed place after completion of the production in which the Product shall be placed.
 - 6.2.2 The Customer shall bear the shipping costs (delivery and collection).
 - 6.2.3 The Customer shall be fully liable for the Product and for any damages caused by its Placement and use or by its delayed or faulty delivery and indemnifies EL CARTEL MEDIA, the Channel as well as the production company from any third party claims in connection with the Product Placement in the programme.
 - 6.2.4 The Customer shall provide an adequate insurance for the Product.

7. Defects

- 7.1 The Customer undertakes to review the Advertisement immediately during or after screening and to notify any obvious defects immediately and any other defects at the latest 2 weeks after screening; otherwise, the execution of the order shall be deemed accepted. In case of a defect for which the Channel or EL CARTEL MEDIA is responsible, liability shall first be limited to subsequent performance, i.e. the Advertisement shall be screened in a comparable programme environment within the same price category. EL CARTEL MEDIA shall inform the Customer in time of the screening date. Should such subsequent performance fail on various occasions, the Customer may demand that the remuneration be reduced or, in case of more than slight defects, that the order be cancelled. Any further claims of the Customer's shall be ruled out. EL CARTEL MEDIA's liability for damage caused intentionally or through gross negligence and the injury to life, body and health remains unaffected.
- 7.2 No defect of the Advertisement shall be present in the event of interference to transmission affecting less than 10 % of the technical range unless this transmission interference is based on at least grossly negligent behaviour of the broadcaster. The determination base for interference to transmission is the failure record of Kabel Deutschland GmbH, Network Monitoring Center.
- 7.3 The provisions of clauses 7.1 and 7.2 set forth above shall not apply to Product Placement.

8. Re-booking, termination

- 8.1 Both the Channel and the Customer shall be entitled to cancel orders on the screening of Advertisements in whole or in part without indicating any reasons up to six weeks before the first screening date. The Customer shall be entitled to re-book orders on the screening of Advertisements in whole or in part up to ten working days before the first screening date.
- 8.2 If the Customer revokes its order without adhering to the above-mentioned notice period, the Channel shall endeavour to stop screening the Advertisement as promptly as possible while maintaining the proper course of the programme, but does not assume any liability insofar. In case of revocation, the Customer shall remain liable to make full payment, unless it can prove that the Channel has suffered a lesser damage.
- 8.3 The cancellation of an order regarding the screening of Commercial Spots with a duration of more than 90 seconds or of Special Advertisement Forms shall be ruled out.
- 8.4 The possibility of a termination for cause shall remain unaffected. Such cause shall be for EL CARTEL MEDIA or the Channel, as the case may be, in particular if there are concrete indications for a considerable deterioration of the Customer's economic situation, or if unforeseen changes in the Channel's programmes occur.
- 8.5 The provisions of clauses 8.1 to 8.4 set forth above shall not apply to Orders regarding the inclusion of Product Placements.

9. Pricing, price changes

- 9.1 The price list valid upon conclusion of the Order shall be applicable. Pricing shall be based on the actual duration of the Commercial Spot. Prices for Special Advertisement Forms and Product Placements shall be agreed on separately. All prices are exclusive VAT. Any charges under copyright or production rights to be paid to performing rights societies for the Advertisements screened shall be borne by the Customer.
- 9.2 EL CARTEL MEDIA shall be entitled to change the prices at any time. Unless anything to the contrary is expressly agreed, new prices shall become effective immediately, also with a view to current orders. In case of a price increase, the Customer shall be entitled to re-book the order or to rescind the order in writing within 3 days as of EL CARTEL MEDIA's corresponding notification; this does not apply to Product Placements.
- 9.3 Unless otherwise expressly agreed in writing, the price calculation for a Product Placement against payment refers only to the first screening of the programme.

10. Discounts

- 10.1 Pursuant to the price list of EL CARTEL MEDIA (as amended from time to time), discounts can be given on the list prices for the overall invoice amount for a Customer's Advertisements screened by a Channel within any one calendar year. Special Advertisement Forms shall be taken into account in the calculation of the discount scale; however, no discount is given on the Special Advertisement Forms as such. Product Placements shall not be considered in the calculation of the discount scale, nor shall discounts be granted for Product Placements. Any discounts are given only preliminarily at the calculation date. The final calculation takes place at the end of the calendar year with retroactive effect, in accordance with the advertisement screening time actually purchased.
- 10.2 Except in case of an Order of a Product Placement, agencies shall receive a remuneration amounting to 15% of the invoice net, i.e. of the invoice amount excl. VAT and deduction made of any other discounts, but before cash discount, for the orders awarded by them. Such Agency Remuneration (AR) shall be deducted from the invoice amount. This claim shall exist only upon proof of the agency's activity and invoicing to the agency. EL CARTEL MEDIA reserves the right to refuse Agency Remuneration vis-à-vis very small and fictitious agencies.
- 10.3 Upon demand, EL CARTEL MEDIA may consent in writing to giving a group discount for several Customers (parent company and subsidiaries) if the capital participation between the parent company and the subsidiary amounts to more than 50% on 1 January of the calendar year in question. Such demand and evidence of the group membership are to be submitted to EL CARTEL MEDIA at the latest by 30 June of the calendar year in question. Group discounts shall be given only for the duration of group membership; if a company leaves the group during a calendar year, which is to be notified to EL CARTEL MEDIA without undue delay, the discount shall be given on a *pro rata* basis at the most.

11. Payment conditions

- 11.1 The remuneration for the Channel screening Advertisements shall principally be invoiced each month in advance on the basis of the volume ordered to date.
- 11.2 If payment is received within ten days as of the invoice date, a cash discount of 2% shall be given, but only if the payment amount is received by the Channel at the latest three working days

before the first screening of the month in question and any and all previous invoices have been settled.

- 11.3 If order details are subsequently changed during an invoice period, EL CARTEL MEDIA shall issue a supplemental invoice, which either shows the difference amount outstanding or a credit. If the difference amount is received by the Channel within fourteen days as of the invoice date, a cash discount of 2% shall be given, but only if the Customer was entitled to such cash discount already for the original invoice for that month.
- 11.4 Upon the Customer's demand, the latter may be offered direct debit payment.
- 11.5 The Customer shall be in arrears if the invoice amount has not been received on the Channel's account indicated on the invoice within three weeks as of the invoice date.
- 11.6 Cheques shall be accepted always on account of performance only.
- 11.7 Any banking expenses (e.g. due to want of funds, cheque return charges, fees for transfer abroad or cancellation, etc.) shall be borne by the Customer.
- 11.8 Should the Channel have not received the invoice amount at the latest three working days before screening, or in case of default in payment, the Channel shall be entitled to refrain from (further) screening until the Customer has made full payment. This shall apply also in case it becomes evident after conclusion of the order that the Channel's claim to payment is endangered due to a lack of the Customer's financial performance.
- 11.9 If the Channel undertakes to produce Advertisements on the basis of separate agreements, the corresponding remuneration agreed shall be invoiced separately. Such remuneration shall be due for payment to its full amount without any deductions upon invoicing.

12. Rights of use, warranty of rights

- 12.1 The Customer transfers to the Channel all rights of use required for screening the Commercial Spot, the Special Advertisement Form or the Product placed in a programme, as the case may be. This includes all technical types of use such as satellite, terrestrial and cable including cable retransmission and the necessary sub-licenses for the cable companies which retransmit the programme / Advertisements. Excluded are the broadcasting rights which are acquired in aggregate by the Channel from GEMA. The transfer of rights shall be limited to the extent necessary regarding time, territory and contents for executing the Order. This shall also apply, in particular, to the right to transfer the rights of use to third parties commissioned to broadcast, and to screen the Advertisements by way of all technical means known.
- 12.2 The Customer guarantees that he is the owner resp. holder of these rights and that these rights have not been transferred to any third party (in particular to another collection society).
- 12.3 In its relation to the Channel, the Customer shall have the sole responsibility under broadcasting law, competition law and in other respects for the Advertisement provided and for the Product. In case third parties assert claims due to the screening of the Advertisement or the Products, the Customer shall indemnify the Channel and hold it harmless against any third-party claims in this connection. This shall include reasonable legal fees.
- 12.4 The Customer warrants that neither the Advertisement nor the point in time when the Advertisement is screened, if determined by the Customer, violate any legal provisions, in particular under competition law, contained in the State Broadcasting Treaty or advertising guidelines.

13. Liability

In case of slight negligence, the Channel shall be liable only for the violation of principal duties and only to the amount of the damage typically foreseeable for that kind of contract. This shall also apply to violations of duty by legal representatives or vicarious agents. This liability restriction shall not apply to death, bodily injury or damages to health. With regard to Product Placement, the provisions of clause 13 shall also apply with regard to damages that occur to the Product after its delivery.

14. Privacy Policy

The Customer declares its consent that personal data of the Customer that it makes available to EL CARTEL MEDIA or the Channel, as the case may be, as well as data that result from awarding and executing orders, especially for the purpose of market research, may be used and electronically processed by EL CARTEL MEDIA, the Channel and third parties.

15. Final provisions

- 15.1 The Customer is entitled to set-off only for such claims that are undisputed or have been established with legally binding effect. It shall be due a retention right only on the basis of claims arising out of the same contractual relation.

- 15.2 The agreement between the Channel and the Customer shall be subject to the law of the Federal Republic of Germany exclusively. The legal venue shall be Munich if the contracting parties are merchants, public-law corporations or public-law funds.
- 15.3 Should individual or several provisions of this General Terms and Conditions be or become invalid, this shall not affect the validity of any other provisions or agreements in case of doubt. Instead of the invalid or void provision that provision shall apply that the parties would have agreed on had they known of the invalidity or voidness, in order to obtain the same economic result.
- 15.4 Any collateral agreements, modifications of or supplements to this Agreement require the written confirmation of EL CARTEL MEDIA. A modification of this requirement of the written form shall be effective only if it has been confirmed in writing.

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