

Standard Terms and Conditions for Advertising Customers of Ströer Interactive GmbH

1. Advertising contract

1.1 The content of the advertising contract between Ströer Interactive GmbH (hereinafter referred to as „Ströer Interactive“) and the Advertising Customer concerning the placement of advertising material on a Web site marketed by Ströer Interactive (hereinafter referred to as a “Campaign“) is set down in the booking confirmation created by Ströer Interactive (or, in the absence of a booking confirmation, from the letter of offer accepted by the Advertising Customer, which is deemed, in the following, to be a booking confirmation) and these Standard Terms and Conditions for Advertising Customers of Ströer Interactive GmbH (hereinafter referred to as the “Standard Terms and Conditions”), which shall apply in supplement.

1.2 If the Advertising Customer is an advertising agency or advertising broker, Ströer Interactive may demand the provision of a verification of the appointment of this Advertising Customer by a specifically named advertiser. Ströer Interactive is entitled to make the implementation or delivery of advertising material dependent on a down payment and, where applicable, on the settlement of outstanding invoices.

1.3 Conflicting terms, including the standard terms and conditions of contract of the Advertising Customer, shall only apply if they have been expressly agreed in writing. This also applies to any written form requirement. No verbal side agreements exist.

2. Requirements placed on the advertising material provided to the advertising customer

2.1 Advertising material may be comprised of an image or copy, sound sequence/melody and moving images or of so-called “sensitive“ interfaces that create a link to other information and data of the Advertising Customer via a Web address defined by the Advertising Customer when clicked on, and that may have the form of banners, links, etc. The technical specifications of the advertising material are stated in the booking confirmation.

2.2 The Advertising Customer is obliged to ensure that the purpose, content and design of the advertising material and the target pages to which the relevant advertising material direct do not infringe the rights of third parties in any way and satisfy all applicable provisions under law, including copyright, trademark, competition and criminal law provisions, as well as the special provisions for certain professions (lawyers, physicians, pharmacists, etc.) and product groups (drugs, medications, etc.)

and are not in violation of governmental orders. The Advertising Customer is particularly advised (upon no claim to completeness) of: the prohibition of unfair and misleading advertising (Sections 1, 3 UWG – German Unfair Competition Act), Section 1 (1) of the Price Information Regulations (PAngV), Section 5 Telemedia Act (TMG), Telecommunications Act (TKG), Interstate Broadcast Services Agreement (Rundfunkstaatsvertrag), Interstate Agreement for the Protection of Juveniles Using Media (JMStV), The Regulations on Consumer Information concerning Fuel Consumption and CO2 Emissions for Automobiles (Pkw-EnVKV). Advertising material may not contain sexual content or service telephone number (value-added services) through which, when dialled, the caller incurs increased telephone charges (including, but not limited to, 0190 and 0900 numbers), unless this has been expressly agreed in writing with Ströer Interactive. The Advertising Customer must report erroneous information and changes or other questionable advertising material under the terms of this clause 2.2 to Ströer Interactive without undue delay upon discovery, and must provide that everything necessary for a correction is undertaken.

2.3 Notwithstanding the provisions under clause 2.2, the Advertising Customer has the additional obligation when placing advertising on the Websites www.disney.de, www.disneychannel.de and www.disneyxd.de (including all sub-pages) of The Walt Disney (Germany) GmbH (hereinafter referred to as „Disney“), which are marketed by Ströer Interactive, to comply with the Disney advertising guidelines. These guidelines are available as a PDF download at <http://stroeer-interactive.de/unternehmen/agb>. [Click here](#) for starting download the Disney advertising guidelines.

2.4 Ströer Interactive reserves the right to refuse or discontinue the placement or delivery of advertising material at any time if there are indications that this advertising material or the target pages to which the relevant advertising material directs could be in breach of clause 2.2 or 2.3, or the placement or delivery of advertising material is not in keeping with the interests of the Web sites marketed by Ströer Interactive (marketing partners) or by Ströer Interactive itself. This shall also apply even if the advertising material in question has already been placed. Ströer Interactive shall inform the Advertising Customer without undue delay of the non-placement of the advertising material and of the reasons for this decision. In the event of a final refusal to place advertising material, the payment claim by Ströer Interactive shall be reduced by the expenses it has saved through such decision.

3. Performance duties of Ströer Interactive

3.1 Ströer Interactive shall place the number and type of advertising material for the Advertising Customer stated in the booking confirmation concerning the agreement entered into for the Campaign on the designated Web sites marketed by Ströer Interactive or within the designated Web site channels (topical Web site groups) or networks (e.g. Ströer Interactive and/or Orangedirect), and shall provide for the

delivery of the advertising material within the negotiated period and volume. Provided that nothing to the contrary has been expressly defined in the booking confirmation, the Advertising Customer shall not have any claim to a certain placement of the advertising material on certain marketed Web sites. Ströer Interactive shall decide on this, taking into account the interests of the advertising customer.

- 3.2** The Advertising Customer, Ströer Interactive and the marketing partners shall each use Ad Servers for the provision, placement and delivery of the advertising material. The technical specifications of the Ad Servers used by Ströer Interactive or the service providers appointed by Ströer Interactive, as the case may be, shall be provided at all times upon request.
- 3.3** Ströer Interactive does not guarantee a certain number of unique users, visits, page impressions, AdImpressions, AdViews, AdClicks or a certain AdClick rate. Any data in this regard, such as in the booking confirmation, serve solely for informational purposes or, upon equivalent express advice, for the calculation of the fee under clause 5.
- 3.4** No exclusion of competition is owed, and this shall also apply with respect to the relevant Web sites on which the advertising material has been placed.
- 3.5** Ströer Interactive warrants that the advertising material is available on an annual average of 95.2 %, that is, that it is requested by the relevant marketed Web sites in accordance with the relevant state of the art for the purpose of shipment at the advertising customer. Not included in the calculation of availability are the required and reasonable time periods for servicing and offline backups.
- 3.6** In cases of force majeure, Ströer Interactive is released from its duty to make performance. Force majeure shall include all unforeseeable events and such events which cannot be averted by Ströer Interactive. This shall include, but is not limited to, measures taken by government authorities, malfunctions and breakdowns of communication networks and gateways of third parties, including the operators of the Web pages marketed by Ströer Interactive, malfunctions concerning line providers, defective caching on the proxy servers of third parties or the use of software or hardware on the Web pages of the Advertising Customer or third parties which is unsuitable for depicting the advertising material, other technical problems, even if they occur at subcontractors, subsuppliers or their subcontractors or at the operators of subnode processors authorized by the provider, disaster measures (e.g. within the scope of virus control) and lawful action within labour disputes, even in third-party businesses.
- 3.7** The Advertising Customer is obliged to inspect the placed advertising material on the marketed Web sites stated in the booking confirmation or under <http://www.stroeer->

interactive.de/advertiser upon the first placement and to give notice of any errors without undue delay, but by no later than within 5 business days of the first placement. Upon the expiry of this period, the performance by Ströer Interactive shall be deemed to have been accepted as being in compliance with the terms of contract.

- 3.8** Ströer Interactive is entitled to avail itself of third parties (servants and agents-*Erfüllungsgehilfen*) to make performance under contract, such as with respect to the AdServer used by Ströer Interactive, and to provide such third parties with required data to the necessary extent. Ströer Interactive agrees to carefully select such servants and agents. Ströer Interactive shall use any information it receives from and concerning the Advertising Customer and the advertiser within the scope of the cooperation exclusively for the purposes of the advertising contract and shall maintain the confidentiality of such information, provided nothing to the contrary results from the nature or the purposes of the advertising contract, the information was not already in the public domain or became known without any action in breach of contract, it must be disclosed under a duty imposed under statute or by the order of a public authority, or the information was developed by the recipient of the information independently of the disclosure. Ströer Interactive shall impose equivalent duties on its servants and agents (*Erfüllungsgehilfen*).

4. Duties of the Advertising Customer

- 4.1** The Advertising Customer shall provide Ströer Interactive with any and all data and information required for the placement of advertising material in good time and in full, but by no later than five business days prior to the negotiated date for the placement and in the formats stipulated by Ströer Interactive (gif/jpg/...).
- 4.2** The Advertising Customer shall ensure that the Ad Server used by him or by the third party he has appointed is compatible without restriction with the Ad Server used by Ströer Interactive.
- 4.3** The Advertising Customer must ensure the adequate technical availability of the target pages and data he has designated and to which the advertising material directs.
- 4.4** In the event of the failure to provide the data and information defined in clause 4.1 in compliance with the terms of contract, particularly in the event of delayed provision of such data and information or in the event of failure to create the required technical requirements under clauses 4.2 or 4.3, the duty of Ströer Interactive to deliver the advertising material shall not begin until five business days after the proper provision of the data and information or the creation or reinstatement of the technical requirements. In this event, Ströer Interactive shall have the right, but not the duty, to

maintain the delivery beyond the original final date up to a maximum period of the originally negotiated duration of the delivery.

- 4.5** The Advertising Customer shall hold Ströer Interactive completely harmless from the claims of third parties and the reasonable costs of legal defence associated with this (e.g. court costs and legal fees) resulting from a breach of clauses 2.2, 2.3 or 4.1 – 4.3 for which the Advertising Customer or his servant and agents and vicarious agents (*Erfüllungs- und Verrichtungsgehilfen*) bear fault.

5. Calculation of fee

- 5.1** The fee is generally calculated on the basis of AdImpressions if no fee on the basis of AdClicks has been expressly agreed in writing. AdImpressions and AdClicks are jointly referred to as “Fee Units“. A Fee Unit is deemed to have been already generated if the relevant Web site has been accessed, and not merely after the delivery of the relevant advertising material to the Web site has been completed.
- 5.2** The generated Fee Units are determined exclusively through campaign reports created through the Ad Server used by Ströer Interactive.
- 5.3** Because there may be counting differences due to the required interaction of several technical systems, deviating findings and counts by the Advertising Customer may not be directly applied for corrections to the campaign reports. In the event of reasonable doubt concerning the accuracy of the campaign report, the Advertising Customer may demand an audit upon the involvement of the support team of the relevant AdServer service provider of Ströer Interactive. The costs for this audit shall be borne by the Advertising Customer if his doubts have not been confirmed.

6. Terms of payment

- 6.1** The price list for advertising customers applicable on the date of the grant of contract/booking by the Advertising Customer and posted online under <http://stroeer-interactive.de/werbekunde/preise-und-rabatte> shall apply. All prices stated by Ströer Interactive are exclusive of additional value-added tax in the applicable amount under law.
- 6.2** Ströer Interactive shall invoice the generated Fee Units per calendar month in the following month; in the event of a campaign duration of less than one month, at the end of the campaign. Invoices are immediately due for payment without deduction. If the Advertising Customer is in default of payment, Ströer Interactive is entitled to charge default interest in the amount of 5% above the relevant base interest rate

within the meaning of Section 247 German Civil Code. Both parties are entitled to document higher or lower default damages.

6.3 Defences and pleas must be raised in writing within one month of the receipt of the invoice; late defences and pleas are excluded.

6.4 The aforesaid rules apply equally to advertising agencies and advertising brokers with the stipulation that they have a claim to an agency fee of 15% of the total net fee (without value-added tax) after the deduction of any reimbursements/credits from the fee actually paid by the advertiser.

7. Right to advertising material

7.1 The Advertising Customer warrants that he has at his disposal all of the rights required to place the advertising material. Clause 4.5 applies accordingly for the culpable breach of the proprietary rights of third parties.

7.2 Through the transmission of the data under clause 3.1, the Advertising Customer grants Ströer Interactive and its related companies within the meaning of Section 15 German Joint Stock Corporation Act the following non-exclusive, permanent and territorially unrestricted rights (including the right to grant sub-licenses):

- Archiving and database right, that is, the right to archive the content in any form and to also digitally collect it, put it into databases and store it on all known storage media and on any data carrier whatsoever and to combine it with other works or parts of works;
- Reproduction and dissemination right, that is, the right to store and reproduce at will and provide full or partial access or disseminate in full or in part in electronic or other media (e.g. Internet, newspapers, magazines).
- Processing right, that is, the right to process content at will, particularly to alter, shorten, supplement and combine with other content.

Ströer Interactive is particularly allowed to also have the aforesaid action taken by third parties.

8. Liability of Ströer Interactive

8.1 Ströer Interactive shall be liable under the statutory provisions without limitation for the amount of damage for damage caused by wilful misconduct, gross negligence or by a serious breach of organizational duties, as well as for all personal injury, all

damage under the German Product Liability Act and to the extent Ströer Interactive has taken over a guarantee.

8.2 For damage not falling under clause 8.1, Ströer Interactive shall only be liable if this was caused by the culpable breach of a contractual duty in a manner which threatens the achievement of the purpose of contract.

8.3 In addition, liability is also excluded for the damage incurred by the Advertising Customer or third parties, including loss of profit. This shall also apply, but is not limited to, the following damage:

- Loss of data if the Advertising Customer has not ensured through the creation of backup copies of his data portfolio or in another manner that the advertising material can be restored with reasonable effort. Otherwise, the liability of Ströer Interactive is limited to the typical expense of restoration.
- For defective data provided by advertising agencies or advertising brokers or third parties acting on behalf of the Advertising Customer or the advertiser.
- For the quality of the reproduction of image files, particularly not for deviations in colour.
- For damage from an abridged or adulterated appearance or from the improper use of data by third parties.
- For the fact that the placed advertising material is in compliance with the legal requirements of the country in which it is can be viewed/retrieved or in which the Advertising Customer or the advertising has his registered office.
- Ströer Interactive shall not assume any warranty or liability for the enforceability, under the local law of a concerned country, of the contracts under negotiation or entered into on the basis of the placed advertising material. The same applies for the creation of other legal or commercial disadvantages for the parties to the contract.

8.4 Where the liability of Ströer Interactive is excluded or limited, this shall also apply for the personal liability of employees, workers, representatives and agents and servants of (*Erfüllungsgehilfen*) of Ströer Interactive.

9. Term of contract, termination

9.1 The term of the advertising contract is set down in the booking confirmation. A regular termination is excluded as of the start of delivery. A termination as of a date prior to

the start of delivery is possible at any time with a notice period of 5 business days, whereby a cancellation fee pursuant to the price list for advertising customers applicable on the date of the grant of contract/booking by the Advertising Customer and posted under <http://stroeer-interactive.de/werbekunde/preise-und-rabatte> must be paid in the case of a termination as of a date which is less than 4 weeks prior to the start of delivery.

- 9.2** The right to a special termination for good cause shall remain unaffected.
- 9.3** Irrespective of the ability to terminate the advertising contract, Ströer Interactive shall remove the advertising material from the marketed Web sites within 5 business days, and in the case of an emergency, without undue delay, upon the express written request of the advertising customer.

10. Final provisions

- 10.1** Place of performance and payment for legal purposes is Hamburg. Any other place at which advertising material can be viewed shall remain irrelevant for the contractual, liability and statutory claims linked to the place of performance.
- 10.2** Any repayment claims by the Advertising Customer shall be generally paid during an ongoing business relationship in the form of a credit for future contracts.
- 10.3** The advertising contract is governed by the laws of the Federal Republic of Germany upon exclusion of the Law of Conflicts.
- 10.4** Exclusive venue for all disputes under or in connection with the advertising contract is Hamburg to the extent permitted under law. Ströer Interactive is entitled, at its option, to sue the Advertising Customer at the location of his registered office
- 10.5** Should one or several provisions of this contract be invalid or void, this shall not affect the validity of the remaining provisions. Such valid provision which the parties to this contract would have agreed to achieve the same commercial objective if they had been aware of the defect on the date of the execution of contract shall replace the invalid or void provisions.

Date: March 2010