

# **Clear Channel Switzerland**

## General terms and conditions

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# General Terms and Conditions

Valid from 1 July 2020

These General terms and conditions (GTC) govern the contractual relationship between the party commissioning the advertising (Customer) and Clear Channel Switzerland Ltd. (CC) for

- analogue external advertising displayed for a period or periods of one or two weeks (including but not limited to corresponding advertising spaces on building walls and scaffolding)
- annual placements or other long-term displays/broadcasting (including but not limited to corresponding advertising spaces on building walls and scaffolding)
- digital advertising spaces on electronic advertising materials provided by CC
- digital advertising spaces in Swiss Lounges
- advertising spaces at Swiss airports
- megaposters

They constitute an integral part of the contract between CC and the Customer and CC shall provide its services exclusively in accordance with the GTCs applicable at the relevant time. Any provisions with contrary effect shall only be binding if confirmed in writing by CC. The German version of the GTC shall prevail.

## **1. Contracting parties**

The Customer is entitled and obliged under the contract, even if it is represented by an agency. The invoice shall be issued to the Customer (and, if the Customer is represented by an agency, shall be sent to the agency for forwarding). This shall not apply if the agency has undertaken towards CC to bear the del credere risk; In such a case, the invoice shall be issued to the agency. If the agency concludes the contract in its own name and on its own account, it shall also be liable for the performance agreed to under Contract. CC may delegate performance to third parties.

## **2. Contractual object**

The contract between the Customer and CC concerns the provision of advertising spaces and, as the case may be, the creation of content, the printing of advertising posters or the allocation of the printing order. The contract contains the booking-specific details and is supplemented by the GTC.

## **3. Form and conclusion of the contract**

The contract (including ancillary clauses) shall be deemed to have been validly concluded and the GTC shall be deemed to have been fully accepted by the Customer if the Customer/Agency signs the contract or if CC confirms the booking, whichever occurs earlier. Offers of CC shall under all circumstances be non-binding. Paragraph 2 shall apply with regard to online bookings.

Advertising spaces can be booked online via the CC website. In order to make a booking on the website, the instructions must be followed until the booking is confirmed. Upon confirmation of the booking by CC, the contract (including ancillary clauses) shall be deemed to have been validly concluded and the GTC shall be deemed to have been fully accepted by the Customer.

Illustrations, measurements or other technical data shall only be binding where expressly agreed to in writing.

## **4. Advertising material**

### **4.1 Format and quality**

The advertising materials must comply with the technical and substantive requirements, standards, specifications and conditions (requirements) provided by CC and published on CC's website. CC may update the requirements at any time. In the event of any update, CC shall inform the Customer concerning the updated requirements on each occasion.

CC declines any liability for any impairment of display/broadcasting due to insufficient quality of the advertising material and/or poor production quality.

### **4.2 Content and design of advertising materials**

The Customer warrants that it has all rights to publish the advertising material.

The Customer shall be responsible for the lawful content and design of the advertising materials as well as their compliance with copyright and competition law and compliance with all relevant legislation and regulations (in particular with regard to copyright, trademark, design, patent or personality rights, special advertising regulations such as for tobacco, alcohol, therapeutic products, food advertising, etc.). CC does not carry out any checks into the content of advertising materials. CC is however entitled to refuse any display/broadcast without stating reasons, to demand the rectification of any content that is – in CC's opinion – substantively incorrect and/or unlawful and/or to present any advertising materials – in particular in relation to content that in CC's opinion is unreasonable, such as e.g. politically, ideologically or religiously extreme, discriminatory, contrary to common decency or morality – to the competent authorities for approval and/or to obtain the approval of the lessor/owner of the advertising spaces and to suspend display/broadcasting until the defects concerned have been rectified or approval/consent has been obtained. If CC does not postpone the start of the display/broadcasting period, the display/broadcasting period shall be reduced accordingly. The Customer shall ensure by appropriate means that the advertising materials do not contain viruses, Trojans or the like, failing which the Customer shall be liable for any damages.

The Customer shall under all circumstances be liable to pay the full price and any additional costs, even in the event of an official prohibition or the withholding of consent by the lessor/owner. If an official prohibition is imposed and/or the lessor/owner withholds consent or if the defect is not rectified, CC shall be entitled to terminate the contract on extraordinary grounds in accordance with clause 10.3. The Customer shall indemnify CC in full in the event that any claims are brought against CC due to the content or design of the advertising material.

### **4.3 Production and delivery/transfer of advertising materials**

The production and delivery/transfer (delivery) of advertising materials shall occur at the cost and risk of the Customer. It is obliged to comply with the relevant applicable requirements. The Customer shall be responsible for insuring the advertising materials.

Advertising materials (including any replacement quantities – in which case the Customer must, at CC's request, supply the desired number in addition if the replacement quantity is insufficient) shall be delivered in time (posters no later than 14 working days, digital advertising materials for Swiss Lounges no later than 7 working days, all other digital advertising materials no later than 1 working day or if in CC's estimation broadcasting requires authorisation no later than 5 working days in advance) prior to the start of display/broadcasting carriage paid to the delivery address specified in the contract or in the order confirmation.

If the Customer fails to comply with the requirements or otherwise fails to deliver the advertising materials in accordance with the contract and/or on time, CC may at its sole discretion propose alternatives to the Customer, correct the advertising materials itself or request the Customer to do so and display/broadcast the advertising materials delivered late for the remaining period of time or terminate the contract in accordance with clause 10.3. CC shall not be obliged to display/broadcast any advertising material that does not comply with the requirements and/or that is otherwise not compliant with the contract.

The Customer shall in any event be liable for the full price and all additional costs. The Customer shall also be obliged to hold CC fully harmless in respect of any consequences of the failure to comply with requirements and/or if the delivery of the advertising materials is not compliant with the contract or late. The Customer shall not have any entitlement to claim compensation or damages. The above rules shall also apply if the display/broadcasting can only be implemented in part or cannot be implemented as a result of the late delivery of the advertising materials.

#### **4.4 Change of subject for digital advertising materials (spot change)**

Spot changes shall be carried out in consultation with the Customer. Spot changes shall be carried out in Swiss Lounges subject to the reimbursement of costs.

#### **4.5 Change of subject for analogue advertising materials**

A change of subject for posters on the fixed exchange dates is included in the display price. During the agreed display times, additional changes of subjects shall be carried out where possible and subject to the reimbursement of costs. No change of subject is envisaged for megaposters. If a megaposter is booked over more than one period and a change is requested by the Customer, this will be charged for in addition.

#### **4.6 Owner/Lessor Terms and Conditions for Special Advertising Spaces**

If the creation of special advertising spaces entails any construction/technical measures, the special terms and conditions of the respective owner/lessor of the advertising spaces shall apply additionally.

#### **4.7 Liability for advertising materials delivered**

CC declines any liability whatsoever for the advertising materials delivered and stored with it or its agents. After display/broadcasting has ended, any advertising materials the return of which is not requested before the end of display/broadcasting may be disposed of or deleted by CC.

### **5. *CC right of use***

In order to enable CC to perform the contract, the Customer grants CC a non-exclusive and unremunerated right to use the advertising materials. The right of use includes, in particular, the rights to play, broadcast, transmit, reproduce, distribute, supplement, update and similar rights.

### **6. *Display/broadcasting period***

The display/broadcasting period shall be consistent with the deadline stipulated in the contract. The affixing days for posters is – depending on the agreed locations or regions – Monday, Tuesday or Wednesday.

CC reserves the right (i) to bring forward or postpone the date on which display/broadcasting starts if necessary or reasonable for technical reasons and/or if an official permit is required and more than 4 working days are required in order to obtain it, or (ii) to leave the advertising materials on display or

continue to broadcast them after the end of display/broadcasting, unless the Customer expressly objects.

If the display/broadcasting of any advertising material, in particular due to damage, for operational or construction reasons, as a result of force majeure, withdrawal of advertising spaces and/or due to changes in statutory or official requirements or an administrative measure, is interrupted, no longer possible or only possible with disproportionate effort, or has been discontinued, or if the advertising material or a substantial part thereof is not visible, a suitable replacement shall be provided without prior consultation with the Customer. In addition, the Customer shall be informed of this by CC immediately after the latter becomes aware of it. If replacement is not possible or is unreasonable, the Customer shall receive a corresponding credit. CC shall also be entitled to terminate the contract by extraordinary notice in accordance with clause 10.3. Clauses 4.2 and 4.3 remain reserved.

The Customer shall in any event be liable for the full price and additional costs. Any interruption or impairment of the display/broadcasting and any action or measures referred to in this clause 6 shall not entitle the Customer to suspend, withdraw from or terminate the contract extraordinarily, or to claim compensation or damages.

## **7. Prices**

### **7.1 Display/broadcasting prices**

The price is based on the current price lists and sales documentation of CC. All prices are stated in Swiss francs, excluding value added tax (VAT).

7.1.1 In particular, the following costs and additional services (plus VAT) shall be charged in addition (additional costs): stamp duties; external charges; shipping and transport costs; production costs; assembly and dismantling costs, storage costs; customs duties and clearance costs; customer-specific / booking-specific programming costs; costs for covering/pasting over and exchanging advertising materials, advertising spaces or advertising spots after expiry of the display/broadcasting period, if ordered; costs of additional work such as the composition of multiple-component advertising materials, additional changes of subjects in accordance with clause 4.5 (prices shall be determined in accordance with the production document for the respective advertising platform), the affixing of add-ons, the covering and exchanging of advertising spaces, for the display of megaposters and changes of visuals, as well as similar work; etc.; additional costs due to the delayed delivery of advertising materials or due to non-compliance with the requirements; additional costs resulting from substitute performance in accordance with clause 6 para. 3, assembly and dismantling of special advertising spaces; reinstatement costs; surcharges for weekly bookings etc. The additional costs are not taken into account when calculating any net income that may be relevant in the context of a contractual relationship with CC.

7.1.2. All additional services of CC shall be charged for by the hour; CC's usual hourly rate for such work shall apply.

7.1.3 The prices on the factsheet shall apply in relation to spot changes in Swiss Lounges. For all other screens marketed by CC, spot changes are included in the price.

Prices are liable to change at any time. Price adjustments in relation to contracts for which tacit renewal is possible shall occur in accordance with the contract. Any public charges or duties levied in relation to advertising materials during the term of the contract shall be borne by the Customer.

## **7.2 Payment terms**

Invoicing shall occur at the start of the display/broadcasting period, unless otherwise agreed. Invoices must be paid within 30 days of the invoice date without any deductions/discounts in the currency invoiced. CC reserves the right to render performance conditional on an advance payment, even if a booking has already been confirmed or a contract has already been signed.

Online bookings can be paid for as follows: 1) Credit card: the amount shall be debited upon confirmation of the booking by the Customer. 2) Bank transfer (advance payment): payment shall be made into CC's bank account in the currency indicated at the time of booking no later than one working day after the date of booking.

In the event of late payment, CC shall be released from its obligation to perform. The Customer shall nonetheless owe the agreed price, including additional costs, default interest of 5% p.a. from the due date of the invoice along with any dunning expenses, and the cancellation terms specified in clause 10 shall apply. CC also reserves the right to withdraw from the contract if payment is not made within the deadline specified. Clause 9 para. 2 shall apply analogously.

## **7.3 Online transactions**

All online payments are executed in secure mode with SSL encryption – and not via the CC website.

## **7.4 Discount and commissions**

CC grants the discounts listed in the relevant applicable price lists. The Customer acknowledges and agrees that all parties with which it is involved in the outdoor advertising market are aware of the regulations governing commission and charges applicable to this market. The Customer acknowledges and agrees that, in the event that the contract is brokered by a person or agency entitled to charge a commission (intermediary), CC shall, where applicable, invoice the Customer for a correspondingly documented consultancy commission (CCom) for the booking and pay the intermediary. The CCom currently amounts to 5% of the net price. No CCom shall be paid on additional costs. CC may enter into further contracts with intermediaries, irrespective of the specific individual Customer order.

## **8. Advertising statistics**

At the end of an advertising campaign, CC shall provide the information necessary for compiling the usual advertising statistics in the sector to one or more specialised institutions. The Customer has the option of obtaining these statistics from these institutions.

## **9. Withdrawal from the contract**

CC reserves the right to withdraw from the contract without stating reasons, even if a booking has already been confirmed or a contract has already been signed. CC may, in particular, withdraw from contracts in whole or in part if implementation is not possible either in full or in part, or is only possible at disproportionate effort, due to (construction) technical considerations, or due to legal, administrative or permit-related requirements, if the lessor or owner of the advertising spaces does not consent, if the Customer fails to comply with its contractual obligations (e.g. does not deliver the advertising material on time) or if, in CC's view, the advertising material contains content or legal defects..

In this case, the Customer shall not be entitled to any claims against CC and shall owe the costs incurred by CC until the time of withdrawal under the contract (including any additional costs) in addition to any further damages.

## **10. Cancellation and termination**

### **10.1 General**

Cancellations and partial cancellations shall be subject to the deadlines and/or the amounts specified in clause 10.2, and notice of cancellation by the Customer must be received by CC in writing or by email no later than the last working day prior to the start of the relevant period. Postponements until subsequent periods are deemed to be equivalent to cancellations. The cancellation terms shall also apply in the event of a change in circumstances, such as e.g. due to sovereign acts or force majeure (e.g. natural disasters of a certain severity, epidemics, wars, acts of terrorism, operating disruptions, power interruptions, etc.) as well as any changes to the Customer's interests or needs resulting directly or indirectly and other circumstances/events, even if the Customer is not at fault for them, and irrespective of whether or not they were foreseeable.

The additional costs incurred until the date of cancellation shall be reimbursed in full to CC.

### **10.2 Cancellation terms**

#### **Digital advertising materials:**

For all digital advertising materials except "full brandings" (booking of all slots on a network):

- 10 to 6 weeks before the start of broadcasting: 50% of the invoice amount.
- less than 5 weeks before the start of broadcasting: 100% of the invoice amount.

100% of the price must be paid in any case in relation to "full brandings".

#### **Poster advertising (incl. building walls and scaffolding) (1-2 weeks):**

For poster advertising to be displayed for one or two weeks:

- 10 to 9 weeks before the start of display: 20% of the invoice amount.
- 8 to 7 weeks before the start of display: 50% of the invoice amount.
- 6 to 5 weeks before the start of display: 70% of the invoice amount.
- less than 4 weeks prior to the start of display: 100% of the invoice amount.

Contracts for annual placements (including building walls and scaffolding) must be terminated in writing 3 months before expiry, failing which they shall be extended tacitly for a further year.

#### **Megaposters:**

For megaposters:

- up to 16 weeks before the start of the display, 25% of the agreed media service.
- 15 to 12 weeks before the start of display: 50% of the agreed media service.
- 11 to 8 weeks before the start of display: 75% of the agreed media service.
- less than 7 weeks prior to the start of display: 100% of the agreed media service.

### **10.3 Extraordinary termination**

Each party has the right to terminate the contract with immediate effect at any time if the requirement of good cause is met. Good cause includes any circumstance that makes it unreasonable for the terminating party to maintain the contract in good faith until the next contractual termination date, including specifically:

for both parties: any breach of contract by the other party that is material or repeated notwithstanding a reminder; declaration of bankruptcy or debt restructuring proceedings against the other party; for CC: the concession contracts are amended or terminated or expire, and under the circumstances referred to in clauses 4.2, 4.3 and 6.

In the event of extraordinary termination by the Customer, the Customer shall nonetheless be liable for the agreed price, including the additional costs incurred until the date of termination. In the event of



extraordinary termination by CC, the Customer shall not have any claims against CC and shall be obliged to pay the entire price as well as in full any additional costs incurred prior to termination. In addition, it shall fully indemnify CC for any consequences.

## **11. Warranty / liability**

Any complaints concerning the failure to display/broadcast as required under contract must be notified to CC in writing within three working days. No warranty claims can be asserted any longer after the display/broadcasting of the advertising materials has ended.

CC shall perform its contractual services with due care.

CC warrants the availability of digital advertising materials for no less than 95% of the agreed broadcasting time throughout the term of the contract. In the event of a repeated shortfall for which CC is at fault, the Customer shall, at the decision of CC, either receive a pro rata credit calculated on the lost time, or the broadcast time shall be extended accordingly. The Customer shall nonetheless be obliged to pay the full price and the additional costs. CC does not otherwise provide any warranties.

Any defects and disruptions for which CC is not at fault, such as force majeure (as defined in clause 10.1), weather and adverse environmental conditions or third party damage/interference are excluded from the warranty.

CC shall only be liable for damages caused through gross negligence or wilful intent. Any further liability arising under the contract or with any other basis in law for CC or its auxiliary agents, including in particular any liability for indirect and/or incidental damage (such as loss of income, additional work, loss of profit, unrealised savings, loss of data, additional expenses, etc.) is also expressly excluded, insofar as permitted by law.

## **12. Prohibition on assignment**

The Customer may only assign the contract or the rights and obligations under the contract to a third party with the prior written approval of CC.

## **13. Data protection**

The GDPR policy of Clear Channel, available at

<https://www.clearchannel.ch/uploads/files/Unternehmen/PDF/datenschutz-und-cookies.pdf>, shall be applicable.

The Customer acknowledges and agrees that the data resulting from the respective business relationship may be processed by Clear Channel companies in the USA in order to ensure efficient data processing within the Clear Channel Group. The USA does not have any data protection law affording the Customer data protection rights comparable to those prevailing in Switzerland. Adequate data protection is ensured by means of an internal data protection agreement.

## **14. Confidentiality**

The parties undertake to treat as confidential and to refrain from making available to third parties all information that is not generally accessible or publicly available throughout the term of and following termination of the contract, unless disclosure is required pursuant to an official order by authorities.

### **15. Compliance with legal requirements / anti-corruption clause**

The parties undertake to comply with all applicable legal requirements. This includes provisions to prevent corruption. The Parties undertake to ensure, *inter alia*, that all necessary and appropriate measures are taken to prevent corruption and that no inappropriate gifts or other benefits in any form whatsoever are offered, promised or granted to or accepted either directly or indirectly by any third party, employee and/or member of the Executive Board of the other party, including their relatives and the companies affiliated with the other party.

Any breach of this provision shall be construed as a material breach of contract.

### **16. Applicable law and jurisdiction**

All legal relations between the Customer and CC shall be governed by substantive Swiss law. The place of jurisdiction is Hünenberg. CC shall, however, be entitled to take legal action against the Customer before the courts with competence over it or before any other competent court.

### **17. Final provisions**

These GTC shall supersede all previous versions. CC reserves the right to amend these GTC at any time.