



#general terms & conditions

VIVALU GmbH

#effective 01.09.2017

## 1. Validity

- (1) For the entire business relationship (quotations, deliveries and services) for future transactions between VIVALU GmbH (hereinafter: VIVALU) and the Customer, the following general terms and conditions are submitted in force at the time of conclusion of the contract as amended. Differing, conflicting or additional terms of the customer are not part of the contract, unless VIVALU had agreed to their validity in writing. This applies even if VIVALU unconditionally renders performance in knowledge of contradictory or deviating conditions of the contractual partner.

## 2. Contract and Subject

- (1) VIVALU is a programmatic Trading Desk and the provided services contain agency services in the field of digital marketing. This includes particularly the complete range of display advertising and programmatic media trading, Social Media Advertising and SEA.
- (2) Unless otherwise agreed, VIVALU's offers are non-obligatory. A contract only comes into existence with the written order confirmation (also via e-mail or fax) or by delivery through VIVALU.
- (3) Subject of the contract, are the described services in the respective offer of VIVALU. If the offer contains individual contractual agreements, especially regarding the performance content, prices and payment, these take precedence over the general terms and conditions.

## 3. Service changes

- (1) If the customer wishes to make changes to services, scope of services or the duration of the contract, he must submit a written request (also by email or fax) to VIVALU.
- (2) VIVALU will examine what impact the desired change will have, regarding scope, dates, duration of the contract or compensation and, if necessary, explain to the customer the impact in a changing offer.
- (3) For the conclusion of a modification agreement, Section 2.2 shall apply accordingly. Changes, unless agreed otherwise, take effect for the future only upon receipt of the confirmation by VIVALU.

## 4. Customer Obligations

- (1) The customer will design and provide its online services in compliance with legal requirements, particularly in terms of consumer and data protection. Further the online service may also not contain any depictions of violence, sexually explicit or pornographic content, discriminatory statements, representations with respect to race, sex, religion, nationality, disability, sexual orientation or age, or link to such offers.

- (2) The Customer commits to create its website so that intellectual property rights or the intellectual property of third party are not violated.
- (3) The customer does not have other competing or with the performance of VIVALU comparable online marketing activities carry out or have carried out by a third party, provided that such measures VIVALU were not known prior to commencement of the contract or VIVALU has expressly consented subsequently these measures in writing (including by email or fax).

## 5. Customer Responsibilities

- (1) For proper performance of services by VIVALU a cooperative collaboration with the customer is necessary. The customer is therefore obliged to provide all the necessary information, documents and any required accesses concerning VIVALU's smooth performance of services on time.
- (2) The customer is further obliged to draw attention voluntarily and without delay to circumstances, which may be relevant for the provision of services by VIVALU and from which the customer can recognize that they are unknown to VIVALU. This especially applies, if it should turn out that individual promotional activities of VIVALU or authorized third parties, due to legal requirements or because of the infringement, shall be prohibited or must be changed.
- (3) The customer will make by VIVALU suggested alterations on its website or services, insofar as necessary for a proper performance of the services by VIVALU and there are no legitimate contrary interests of the customer.

## 6. Third Party Services

- (1) VIVALU will, according to the individual contractual agreement with the customer, utilize Third party services (such as Facebook) or provide such services to the customer.
- (2) For the purposes of the respective collaboration VIVALU will transport data and customer information to Third parties, insofar as this is necessary for achievement of the purpose. To this the customer hence declares his consent.
- (3) In cooperation with Third parties, if necessary its regulations and the respectively concluded individual contract agreements apply. Unless arising from changes in the conditions, the scope of services or due to early termination of the service of the Third party does have an impact on the scope of services by VIVALU, VIVALU will notify the customer of this as soon as possible. The parties will then arrange an adaptation of the range together that approximates the originally intended commercial aim of both parties.
- (4) VIVALU does not warrant that the services of external service providers, specific network services, will always be uninterrupted, error-free and securely available.
- (5) Unless not explicitly agreed in individual contracts, VIVALU has no obligation to monitor the foreign service. Specifically, VIVALU is not obliged to check and to

monitor publishers' websites for illegal content. Insofar VIVALU is not responsible for right abuses by Third parties.

## 7. Copyright, Trademark and other Intellectual Property Rights

- (1) VIVALU is entitled, to the extent of no other individual contract agreement, to use (company) name, registered brand- and trademarks, or the customer's logo in the provision of the service.
- (2) VIVALU is also entitled to name the customer in promotional materials and on the website of VIVALU as a reference and, if necessary, to use a logo of the customer for this purpose.

## 8. Remuneration

- (1) The by the customer payable remuneration depends on the prices agreed according to the individual contract.
- (2) The resulting compensation is payable plus the applicable VAT.
- (3) Unless there is a different payment period recorded in the individual agreement or the invoice states a longer period, invoices of VIVALU are due immediately.
- (4) VIVALU is not obliged to incur costs for services of others in advance.

## 9. Liability

### 9.1 Liability VIVALU

- (1) VIVALU is fully liable for intent and gross negligence, for slight negligence only if the damage is due to a breach of contractual obligations. Contractual essential are the contractual obligations, whose fulfillment the proper execution of contract generally enables and on whose compliance the signatory can trust regularly. Provided that VIVALU is liable for negligent violation of a contractual obligation, the liability is limited to the foreseeable contractual damages, meaning damage which VIVALU foresaw as a possible consequence of contract breach, when concluding the contract or with whose occurrence VIVALU in consideration of circumstances was ought to know at contract conclusion and had to be expected. The before mentioned liability limitations do not apply to any liability of VIVALU due to personal damage or according to the Product Liability Act. If the liability for VIVALU is excluded or limited, this also applies to the liability of the organs, legal representatives, employees and other agents of VIVALU.

### 9.2 Liability Customer

- (2) The customer indemnifies VIVALU from any claims asserted by third parties against VIVALU due to the infringement of their rights or for violations due to offers or content provided by the customer. The customer incurs any expenses for legal defense of VIVALU including all court and lawyer costs.

## 10. Contract term and Termination

- (1) The contract terms in the individual agreed contracts apply. Ordinary termination is excluded during this period.
- (2) If a contract term is not determined and a continuing obligation persists, the contract may mutually be terminated with a period of one month to the end of the month.
- (3) The right to extraordinary termination for cause remains unaffected. An important reason exists particularly, if a party culpably violates its obligations under this contract obligations and despite warning does not eliminate the violation with reasonable notice within the prescribed period, – insolvency proceedings over the assets of a party is opened or a bankruptcy proceeding is terminated for lack of assets.
- (4) The notice must be in writing. Terminations via e-mail or fax are considered in writing.

## 11. Data Privacy

- (1) Unless the Parties get in contact with personal data while carrying out the contract, the relevant regulations must be followed for data protection. The customer is expressly advised of the provisions of § 11 BDSG. The Parties process or use personal data only within the framework of the contractual agreement and are not particularly entitled to use personal data or pass beyond to third parties.

## 12. Assignment and Compensation

- (1) A partial or complete transfer of the customer's rights under the contract with VIVALU to third parties is excluded.
- (2) For compensation against VIVALU the customer is only entitled with indisputable or legally valid counterclaims.

## 13. Change of General Terms and Conditions

- (1) VIVALU reserves the right to change these terms and conditions at any time without giving reasons. About changes to these terms and conditions the customer will be notified in writing by fax or email by VIVALU. If the customer does not object to such changes within two weeks after receipt of the notification, the amendments are considered as agreed. On the right of objection and the legal consequences of silence the customer is cautioned separately.

## 14. Final clauses

- (1) The law of the Federal Republic of Germany is to be acknowledged as effective and valid, excluding the CISG.

- (2) Fulfillment and jurisdiction for all disputes is Dusseldorf, if the customer is a prudent
- (3) businessman. Mandatory statutory provisions on exclusive jurisdiction shall remain unaffected.
- (4) Should any of these provisions be or become wholly or partly ineffective, then the validity of the remaining provisions shall not be affected.

Effective: 01.09.2017