

# General Terms of Trade

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## Section I:

### General regulations

#### 1. Sphere of application

The following General Terms of Trade (GTT) are a component of all contracts with

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member of DDV Deutscher Dialogmarketing Verband e.V.

– referred to below as the contractor –

- 1.1. Verbal, auxiliary accords and deviating accords require express agreement. As a supplement, the QuLS DMS apply and the QuLS target group marketing to services in accordance with Section II (see Item 2.).
- 1.2. The partner's general business conditions which contradict or deviate from the following provisions do not apply. The following Terms of Trade also apply exclusively, even if the contractor executes the delivery and services without reservation in the knowledge of the partner's conditions which contradict or deviate from the following Terms of Trade, or if the client declares that it wants to conclude the contract solely under its conditions.
- 1.3. The Terms of Sale below only apply to merchants in the sense of § 14 BGB.

#### 2. Determination of terms

- 2.1. *Address owner* = the address owner with the entitlement of disposal, who grants the rights of use to addresses and/or other data
- 2.2. *Data inventory* = certain data provided by the address owner for use, as a rule personal data, such as the postal address, the

year of birth and other group characteristics, such as the date of purchase or product group

- 2.3. *Address group* = lists of addresses = addresses and/or other data selected by group characteristics
- 2.4. *Advertiser* = the buyer or user of the rights of use to the data within the framework of its own commercial communication
- 2.5. *Control address* = data invented for control purposes (e.g. addresses, e-Mail, personal features) inserted into the inventory of data to be used
- 2.6. *Affected party* = identified or identifiable natural person in the data inventory to whom information is assigned; affected parties in the sense of the GDPR
- 2.7. *Customer* = client of a service
- 2.8. *Contractor* = the service provider acting as the customer's contractual partner (in this case, Trebbau direct media GmbH)
- 2.9. *Dialogue marketing services* = services associated with the processing of personal data. These typically include personalised printing by a printing works, the compilation of personalised mails by a lettershop, order acceptance, warehousing, picking and packing by fulfilment service providers or the rent or sale of personal data
- 2.10. *DDV* = Deutscher Dialogmarketing Verband e. V., Hahnstraße 70, 60528 Frankfurt, www.ddv.de.
- 2.11. *QuLS target group marketing* = the quality and performance standards of DDV for the Competence Centre target group marketing in the DDV (referred to below as the Competence Centre target group marketing") contain declarations of self-commitment for the handling of data in the marketing of target groups.
- 2.12. *QuLS DMS* = the quality and performance standards of the Competence Centre direct mail services in the DDV contain self-commitments from the declaring parties on the handling of data and on fair competition and test procedures
- 2.13. *DDV Declaration of Commitment* = "DDV rules on order processing" are determined in conjunction with the single order for order processing conform to data protection regulations in accordance with Art. 28 GDPR
- 2.14. *Single order / address order* = contractual agreement between the address owner and the contractor to transfer the rights of use for the entire data inventory or parts thereof for actual use by an advertiser.

## Section II:

### Conditions to exploit data, particularly addresses and the associated services

#### 1. Address owner order, granting rights of use

- 1.1. The address owner grants the right of exploitation possibly detailed in the order to the contractor for the agreed duration, thereby safeguarding the data sovereignty remaining by the address owner under data protection law and the associated authority to issue instructions under data protection law for the rights of use to the data inventory transferred to third parties, directly or indirectly through the sale to third parties (e.g. other list brokers, advertising agencies) for their commercial purposes, as a rule for one-off use in the course of promotions and other commercial communications. The address owner guarantees that it is authorised to transfer these rights to the data and to allow the use of the data inventory by transmitting the data and/or otherwise making them available to third parties. The address owner's reservations and restrictions on the actual processing remain unaffected by this.
- 1.2. The address owner is obliged to inform the contractor about the data inventory, particularly about its quality (origins/means of acquiring the data, topicality date, address of buyers/interested parties, compiled addresses, rate of delivery etc.). The address owner allows the contractor to use the details provided to it in this context in the relevant advertising. The address owner shall likewise make estimations to the best of its knowledge and label these as such.
- 1.3. In principle, the contractor has a free hand in its economic decision-making. However, the address owner remains entitled, within the framework of the deliberations necessary under data protection law, to reject a measure planned by an advertiser after its presentation, without the obligation to disclose the deliberation criteria, or to attach conditions to its approval, which it deems to be necessary in the interests of the affected party.
- 1.4. Determinations, declarations and releases also apply to the use of parts of the data inventory. Releases issued by the address owner for partial volumes also apply to the sale of the remainder of the data inventory to the identical buyer for the identical advertising vehicle and the identical processor, although solely to a date for delivery to the post to be agreed. The foregoing applies unless major changes occur in the circumstances (for

example, changes in the legal admissibility of the advertising, changes regarding the authority to dispose over the data) in the period after the release and use by the advertiser.

- 1.5. If the contractor cannot fulfil or completely fulfil a single order for its customers and this is caused by an infringement of contract and/or a decision and/or an act of the address owners not performed or performed too late, the client is released from its duty of paying the usage fee to the address owner. This does not apply if the contractor is responsible for the lack of fulfilment; (referred to below as a whole as a case of lack of fulfilment).
- 1.6. The same applies in the foregoing case of lack of fulfilment to the mutual obligation of performance in the relationship of the contractor to its customer to enable the granted use and the customer's duty of paying the remuneration.
- 1.7. Further-going claims remain unaffected, particularly in case of lack of fulfilment after a single order has been released.
- 1.8. The address owner shall release the contractor from all third-party claims to payment that are pursued against the contractor in case of lack of fulfilment which is not its responsibility, particularly that of the advertiser and/or other acquirers of the rights of use and, by means of release, refund the costs incurred by the contractor for legal advice and defence.
- 1.9. The contractual relationship between the address owner and the contractor can cover further services on the part of the contractor, particularly advice on a selection of the data to suit the marketing, the selection criteria to be used or the provision of technical services. In this case, too, the contractor is entitled to issue sub-orders. The regulations of data protection law remain unaffected in case of sub-contracting.
- 1.10. Restrictions on the scope of use, e.g. in the form of reservations and restrictions and certain requirements of agreement (in particular, further-going releases to be issued by the address owner), shall be determined in the single order.

## 2. Order data relationship, controls

- 2.1. All the foregoing and following authorities are granted on the condition that the data sovereignty under data protection law accruing to the address owner is not affected. The contractor's right to issue instructions and that of the advertiser towards third parties derived from this remains restricted with regard to the data to the provisions of these regulations to the use of data and to any possible further requirements and decisions, which appear necessary to the address owner under data protection law.
- 2.2. If the list broker is given direct access to the data inventory (such as in the form of a trustee data inventory; also applies in the case of access to encrypted data without the opportunity of direct access), whether it be for processing, whether it be for forwarding to a service provider, it shall comply with all the duties required under data protection law. In particular, it is obliged to the address owner to comply with the requirements of the current DDV declaration of commitment that it has submitted, to enable direct access to the data inventory only to persons who have likewise signed this declaration and are obliged to the responsible office to comply with this and are listed with their identity in the single order or in another written accord with the address owner.
- 2.3. The contractor shall resell the rights of use only to list brokers, other third parties or advertisers who are likewise obliged in accordance with the foregoing regulation. If the buyer of the rights of use is not given access to the data inventory, it suffices if it is obliged to only exercise the rights of use or to entrust processing of data inventory only to third parties, which for their part are obliged to the address owner in accordance with Item 3.3 below. The contractor shall transmit the information on the identity of the client and to substantiate the affected data inventory either itself to data processing service providers and other order processors and/or accordingly oblige acquirers of the rights of use for forwarding with reference to the DDV declaration of commitment "Rules of order processing" to be submitted.
- 2.4. The address owner is hereby obliged to the legal entities and natural persons named in the single order, which in turn are obliged to it within the framework of the fulfilment of the single orders under the DDV declaration of commitment, to comply with the obligations to which it is subject under data protection law and the requirements assigned to it in the current DDV declaration of commitment for order processing at the date that a single order is concluded.
- 2.5. In addition, the parties also declare themselves ready to conclude a separate contract at the request of a party (order processing contract) as a further basis for order processing or to draw on and document another legal instrument under the law of the Union or the law of the Member States, which binds the

contractor in relation to the address owner, which determines the object and duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of affected parties and the duties and rights of the address owner and which regulates all other contents to be agreed by law.

- 2.6. Any approvals from the address owner required in accordance with Art. 28 Para. 2 GDPR to deploy further order processors are regarded as issued upon confirmation of a single order, insofar as these list (i) the advertiser, (ii) the order processors and any intermediate dealers, insofar as they are order processors, with their identity and (iii) information on the submission of a current DDV declaration of commitment (iv) the quantity of data and an identifying description of the affected data inventory (clear, meaningful designations of list and selection; categories of affected parties or recipients) and (v) the purpose of use, the date of use or the duration and the communication measure (type of processing) that the data are to be used for.
- 2.7. Except for express agreements, services provided by the contractor, as the order processor, are not contained in the remuneration for the usage fee but are subject to separate remuneration.
- 2.8. If the contractor or the advertiser receives information in the context of the data to be used and their further processing, the knowledge of which is necessary for the address owner to comply with legal requirements, it shall notify the address owner of this without delay and shall support the address owner, particularly in the fulfilment of supervisory obligations and duties of providing information under law, with appropriate contractual regulations and technical care when involving third parties. This particularly applies with regard to the address owner's legal obligation of taking the technical and organisational action required to fulfil the data protection regulations of BDSG and GDPR and to comply with duties of notification. The address owner, contractor and advertiser shall support each other in the fulfilment of the requirements of data protection law, particularly in the fulfilment of legal duties of providing information, and otherwise by disclosing the appropriate details without delay.

## 3. Contractual relationship with the customer

- 3.1. The customer acquires the rights of use limited to the use released by the address owner in a single case.
- 3.2. In case of lack of fulfilment (see Item 1.5), the contractor is released from its duties of performance towards the customer. In this case, the customer is released from its duty of paying the remuneration. Item 1.7 applies accordingly. In particular, the address owner is entitled, within the framework of the deliberations required under data protection law, to reject a planned measure within a reasonable time for review after its presentation, without the obligation of disclosing the deliberation criteria, or to attach conditions to its approval, which it deems to be necessary in the interests of the affected party. If an address owner generally rejects a planned usage, the rejection is regarded as an admissible withdrawal by the contractor from the single contract with the affected party upon receipt by the advertiser. For the rest, the advertiser is entitled vis-à-vis the contractor to withdraw from the single contract, if it does not accept conditions imposed by the address owner in this context, which go beyond the conditions and restrictions known upon conclusion of contract. Rescission must be declared within a deadline of one week after the receipt of the confirmation of the conditions.
- 3.3. If the buyer of the rights of use is given access to the data inventory, it is obliged to the address owner to comply with the provisions in accordance with the current DDV declaration of commitment "Rules of order processing" valid at the date that the agreement of use is concluded, and to allow direct access to the data inventory only to persons that have likewise signed this declaration and are obliged to the responsible office to comply with these and are listed with their identity in the single order or in another written accord with the address owner.
- 3.4. If the buyer of the rights of use is not given access to the data inventory, it is obliged to sell the rights of use only to list brokers, other third parties or advertisers who are likewise obliged in accordance with the foregoing regulation and who only exercise the rights of use or entrust third parties to process the data inventory who for their part are obliged to the address owner in accordance with the foregoing Item 3.3.
- 3.5. The offers submitted by the contractor are free of obligation, as long as they are not the object of a binding agreement. A contract enters force upon the contractor's (Trebbau) confirmation of order.

- 3.6. If the contractor or the address owner still does not have the information required for a review under data protection law (advertising vehicles, processors etc.) at the date that an order is confirmed, the contractor can set conditions precedent for the effectiveness of the confirmation of order.
- 3.7. Neither the address owner nor the contractor accepts any liability for the legal admissibility (particularly under competition laws) of the planned use of the data upon release. The advertiser alone is responsible for this and it thus releases the address owner and the contractor from third-party claims. The release also covers any court costs and legal defence expenses incurred.
- 3.8. The foregoing regulation does not affect the contractor's liability under special duties resulting from the QuLS target group marketing or from specific assurances given.

#### 4. Prices, terms of payment

- 4.1. In the contractual relationship between the address owner and the contractor, the prices agreed in the single order or other framework agreements (e.g. list management contract) apply to the rights of use (usage fee) and other services. In the contractual relationship with the customer, the prices in the contractor's confirmation of order apply to the contract. If the services have been agreed without a separate price agreement, the contractor's prices in its current price list apply (the usage fees stated in the data cards apply to data usage), unless the contractual partner demonstrates that the services are to be provided without separate invoicing.
- 4.2. Unless something different is stated, the prices are net, plus value-added tax at the prevailing rate, whereby each address group is invoiced separately. The number of addresses or the volume of data stated in offers and price lists (data cards) are only rough approximations due to regular changes in stocks following additions and disposals. Therefore, as is normal in the trade, the existing quantity with a deviation of up to a maximum 5% applies to all orders, whereby the price payable changes in accordance with the higher or lower delivery, unless the deviations in a particular case are unreasonable for the advertiser.
- 4.3. Further costs (such as for selection, packaging, data transmission, postage, transport insurance or agreed consultancy services) shall be invoiced separately.
- 4.4. The address owner invoices the transferred right of use and the data handed over to the contractor. The contractor invoices the relevant services to the advertiser or to an intermediate third party. The recipient of the invoice must pay within two weeks of receiving the invoice. The contractor's further services shall be invoiced within the framework of the respective order relationship and are payable within two weeks of receipt of invoice.
- 4.5. The contractor pays the address owner on the proviso of payment by the advertiser. Unless agreed otherwise, the payment is due at the latest after the contractor has received the corresponding payment. The contractor is entitled to withdraw from the order and demand a refund of payments made to the address owner if it fails to receive payment from the advertiser, unless the contractor is responsible for the failure of payment.

#### 5. Acquisition of rights and duties of the advertiser

- 5.1. The contractor transfers restricted rights of use to the data to the advertiser within the realm of its authority. Unless agreed otherwise, the usage agreement concluded between the contractor and the advertiser obliges the advertiser to pay the remuneration, whilst the address owner's release required under data protection law only applies to the actually determined, one-off use of the data provided by the address owner within the period of use (e.g. date of delivery to the post) or within an agreed period, unless the data have been transferred to the advertiser's authority of co-disposal in accordance with the regulations below (see Section II Item 5.8).
- 5.2. Unless other regulations have been agreed, the advertiser is only entitled to commission the following services regarding the data from further processors (e.g. computer centre/lettershop, call-centre) ordered by it and approved beforehand by the address owner:
  - Converting, analysing, supplementing and qualifying data;
  - Checking and correcting postal addresses;
  - Robinson or Nixie comparisons, relocation comparisons
  - Data cleansing (such as Infoscure, Protector and comparable screening programs);

- Seeking out duplicates;
- Splitting into part quantities and reduction;
- Postage optimisation;
- Laser printing;
- Lettershop work.

- 5.3. Services above and beyond these (for example, optimisation analyses, history files, saving for recording orders or storing temporary files for a period of six months beyond the last use of data agreed, forwarding to other service providers or other data processing relevant to order data protection laws) require written release from the address owner.
- 5.4. The advertiser shall not store, change or transmit the contractual data beyond the authority of use and instructions agreed in the contract, particularly transmitting data or making them available to third parties for any unauthorised use. The advertiser shall furthermore observe special instructions and individually agreed restrictions (e.g. regarding the released advertising vehicle).
- 5.5. The data carriers and/or the data may only be stored and further processed in computer centres approved beforehand or by authorised order processors. These enterprises must comply with the provisions of data protection laws, particularly the GDPR, be suitable for processing personal data and be accordingly selected.
- 5.6. The regulations in Section II, Item 2 apply in addition.
- 5.7. The contractor and the advertiser hereby agree that the address owner or the contractor shall only insert a maximum of 50 control addresses per address group in each delivery of addresses, regardless of the quantity of addresses. The purpose is to monitor compliance with laws and separate contractual agreements.
- 5.8. The data of persons who have ordered on the advertiser's delivery or who have otherwise reacted correspondingly to the purpose of the delivery may be used by the advertiser in future upon receipt of the order or the reaction without further restriction within the realms allowed by law (authority of co-disposal).
- 5.9. The advertiser will not make the data available to third parties in the course of further processing without notifying them of the existence of control addresses and compliance with the foregoing restrictions of use.
- 5.10. The advertiser is liable to the contractor and to the address owner for all culpability on the part of the third parties that it commissions.
- 5.11. It is not allowed to use the personal data provided to transmit criminal action, offers that are liable to corrupt young people, other illegal offers or deliver such to direct competitors of the address owner.

#### 6. Data protection regulations, Robinson file

- 6.1. In all cases, data may only be processed in accordance with the provisions of the GDPR or other data protection laws in a proper manner, in good faith, and in a way comprehensible for the affected party and with the original purposes of recording in the way stipulated.
- 6.2. Contractual partners are additionally advised that the data may only be processed in a way that guarantees adequate security for personal data, including protection from unauthorised or illegal processing and from unintentional loss, destruction or damage by means of suitable technical and organisational measures ("Integrity and Confidentiality).
- 6.3. The advertiser shall notify the affected parties of their right of revocation under Art. 21 GDPR upon first request.
- 6.4. The advertiser shall furthermore ensure that the affected parties receive the necessary minimum information (Art. 13 Para. 1 GDPR) and additional information that may be required for fair and transparent processing (Art. 13 Para. 2 & 3 GDPR) by the dates foreseen by law. This does not apply if and insofar as the affected party already has the information (Art. 13 Para. 4 GDPR).
- 6.5. It is pointed out to the advertiser that the affected party can object to the use and/or transmission of its data and that these data must therefore be blocked for these purposes after an objection is received. This also applies if the data are not stored by the advertiser itself. In this context, the advertiser is entitled to keep lists of data to be blocked.
- 6.6. In case of a violation of the protection of personal data, there are furthermore reporting duties and obligations of providing information to supervisory authorities and to any affected parties that must be observed (see Art. 33 and 34 GDPR). The advertiser must undertake the organisational requirements

- needed to protect the rights of the affected parties and to create reporting duties in its sphere of business.
- 6.7. If the affected party objects to the use of its data in full or in part, or if the protection of personal data is violated with regard to the data inventory, the advertiser must notify the address owner or the contractor of this without delay in text form. This applies regardless of whether a reporting duty to the supervisory authorities is triggered by the violation of protection.
  - 6.8. In principle, a comparison with the Robinson list is recommended before data is deployed in advertising in the consumer sphere. This list is kept by the DDV (see [www.ichhabediewahl.de](http://www.ichhabediewahl.de)).
  - 6.9. Objections to and/or violations of the protection of personal data, in case the list broker is notified, shall be addressed to the contact data notified at the start.

## 7. Warranty, assignment, liability

- 7.1. The buyer of the rights of use accrues claims or rights due to defects in the data or in case of other violations of duty for which the address owner is responsible only against the address owner.
- 7.2. In compensation, the contractor assigns all claims and rights in case of defects in the contract with the address owner concerning the data and any additional guarantee claims and rights arising from other infringements of duty against the address owner or other third parties to the advertiser. If the advertiser has its own claims against the address owner or a third-party, the advertiser is obliged to pursue its own claims with priority.
- 7.3. Insofar as claims and rights are assigned to the advertiser, it is obliged to pursue these claims in own name on the condition that, given a withdrawal from contract or reduction of the price (diminution), any payments made by the address owner or third parties shall be paid directly to the contractor. Further-going claims that are not covered by the foregoing assignment of claims by the contractor against the address owner can be pursued by the advertiser against the contractor.
- 7.4. The claim to fulfilment of the contract with the address owner and claims to refund the losses incurred by the contractor and claims to restitution, particularly claims arising from or in connection with payments made by the contractor, shall not be assigned by the advertiser.
- 7.5. The recipient of the assignment alone bears the risk that the pursuit of the rights and claims assigned to it fails due to the insolvency of the address owner.
- 7.6. The address owner is obliged to pass on the obligations of warranty it assumes to the advertiser and to keep the contractor informed of progress if claims are pursued.
- 7.7. The buyer of the rights of use only accrues claims to reduce the remuneration or withdraw from the contract if rework or a substitute delivery fail within a reasonable period of grace in a way appropriate for the buyer or advertiser or if subsequent fulfilment otherwise fails.
- 7.8. Unless regulations have been made above or below, the warranty is subject to legal regulations, under the proviso that the warranty is restricted to faults which arise within one year from the date that the period of limitation starts (liability period). The deadline to exercise such rights (limitation period) remains unaffected. Duties of complaint must be observed (see Item 7.11 below).
- 7.9. As a rule, the contractor has no access to the data inventory. Even if it does have access, it is not allowed under data protection laws – without separate permission from the address owner – to make its own analyses and tests. Unless stated otherwise or can be seen from the circumstances, details of the data inventory are taken over from the address owner without checking. A warranty is therefore not given that an addressee really exists or the features (age, gender, purchasing features etc.) really correspond to those assigned to the affected party, insofar as the feature depends upon the existence and/or upon the details and/or upon the unchanged behaviour of the addressee or otherwise unchanged circumstances of its person. As the data material is additionally subject to constant changes and even the data sources can contain erroneous details, a warranty can lastly not be given for the exact assignment to a target group and/or complete coverage of the market of the data offered at the date of usage. Due to various fluctuations in the individual groups of addresses, dispatches that cannot be delivered are unavoidable.
- 7.10. The contractor accepts no liability for the legal admissibility of the advertiser's planned use of the addresses. The duties of notification resulting from QuLS target group marketing remain unaffected by this.

- 7.11. Objections regarding the quantity delivered or other defects in the delivered data recognisable upon a reasonable investigation without delay must be notified to the contractor by the advertiser immediately in text form after handover conform to contract and - in every case - before the data are used further. In cases in which the advertiser does not itself receive the data, an on-time complaint (in text form) from a further-processing enterprise listed in the single order is also regarded as adequate. By using the data without complaint, claims are excluded that are based on under-deliveries or over-deliveries of the contractual quantity or on other defects in the data recognisable by an appropriate inspection. The duties of complaint under § 377 HGB apply to merchants as a supplement.
- 7.12. The contractor is only liable - regardless of the legal reason - for claims to damages (particularly resulting from illicit acts, organisational culpability, culpability upon conclusion of contract or any other claims due to culpability arising from violations of duty) insofar as the claims are based on the culpability benchmark of malice aforethought or gross negligence or the damages are a result of a violation of cardinal contractual duties, whose fulfilment make proper performance of the contract possible in the first place and compliance with which the contractual partner may regularly trust, or claims under §§ 1, 4 of the Product Liability Act.
- 7.13. All exclusions of liability or restrictions under limitation of time in this context contained in these regulations do not apply to damages arising from fatalities, physical injuries or harm to health, if a guarantee of quality has been given or in case a defect has been maliciously concealed in the sense of § 444 BGB. In such cases, the address owner is also liable for simple negligence and/or the limitation periods prescribed by law apply. Insofar as liability is regulated above, the same also applies to the contractor's workers, employees, representatives and vicarious agents. Moreover, any guarantees given by the address owner or the contractor also remain unaffected by a shortening of warranty.
- 7.14. Unless a malicious infringement of duty applies, liability is limited to the losses typical for the contract, which were foreseeable as a possible consequence of an infringement given the known or recognisable circumstances.
- 7.15. The advertiser is recommended to make test dispatches before deploying large quantities of advertising vehicles.

## 8. Contractual fine pledges in favour of the address owner

- 8.1. For every culpable violation of the restrictions on the scope of use (Section II Items 5.1 - 5.6), the advertiser is obliged to the address owner to pay a contractual fine amounting to 10-times the charge for the costs of the right of use pursuant to the address owner's price list, referred to the gross quantity of the groups of data delivered, which were provided for use and which also contained the data used in violation of contract. The advertiser is also liable for culpability on the part of its staff (§ 278 BGB) and other third parties it commissions. The pursuit of further-going claims to damages remains reserved.
- 8.2. Even evidence of a contact by the advertiser and/or a third-party it commissions for business purposes with a single control address inserted into the data material used suffices as proof of a violation, unless the advertiser is able to prove that it received this control address in some other way without violating the contract.

## 9. Right to refuse performance and termination with immediate effect

- 9.1. The contractor and the address owner are entitled to refuse performance for as long as the legal prerequisites for proper data processing and use are not fulfilled or demonstrated. After fruitlessly setting a period of grace, both are entitled to withdraw from the contract in question. If the address owner justifiably withdraws from the contract for reasons attributable to the advertiser, the contractor is entitled to declare its withdrawal to the advertiser without further prerequisites.
- 9.2. Further-going claims to damages remain unaffected.

### Section III Other services

#### 1. Conclusion of contract

The contract with the client first enters force upon receipt of the confirmation of order or when the order is executed. The client is bound by its order for seven days at most.

#### 2. Prices, modalities of payment

2.1. The prices stated in the offer, or if prices are not stated, those in the current price list or in the confirmation of order apply. If costs of dispatch and postage are settled through the contractor, these will be charged separately and are payable immediately, by means of payment in advance, purely net, at the latest three days before the envisaged dispatch date, without deductions.

2.2. Unless stated otherwise, value-added tax at the prevailing rate will be added to the prices stated and to other fees. Customs and other contributions directly connected with the service ordered shall be charged on to the client.

#### 3. Delivery, default, third-party services

3.1. Delivery dates or deadlines must be agreed in text form. The client has the right to demonstrate an expressly verbal accord.

3.2. A prerequisite for compliance with delivery dates or deadlines or with execution dates or deadlines (e.g. in the distribution of advertising vehicles) is proper fulfilment of the client's obligations. This includes the clarification of all technical questions. The client shall furthermore handover to the contractor all the documents required to execute the order and material to be provided by the client on-time, or at the agreed delivery date, in accordance with the technical specifications (determined by the contractor) and/or further specifications (e.g. bundled, mapped etc. insofar as determined accordingly in these TOS or in the contract). The same applies to the on-time advance payment of delivery in accordance with Section III Item 2.1. The objection of a non-fulfilled contract is reserved.

3.3. If the client is in default of acceptance or if it culpably infringes other duties of cooperation, the client is obliged to refund any losses that the contractor incurs, including any added expenditure. Further-going claims remain reserved.

3.4. If the prerequisites regulated in the foregoing Item 3.3 of Section III apply, the risk of accidental destruction or deterioration of the service ordered is transferred to the client at the date at which the client is in default of acceptance or is culpable of debtor's default.

3.5. The agreed delivery date or deadline is met if the period has not expired on the date of handover to the transport carrier or to the shipping company.

3.6. The contractor is entitled to avail itself of third-party services when providing the service ordered, unless specific approval is required in a particular case due to legal regulations.

#### 4. Deliveries and quality of materials

4.1. In view of the quantities arriving each day, the contractor cannot control the quality or quantity of materials to be provided by the client. In particular, the contractor does not have a duty of inspection with regard to whether the materials to be provided by the client fulfil the contractor's desired prerequisites and are delivered in the appropriate amount. If the contractor recognises false, defective output products or faults in these products in the agreed quality or in the quality otherwise required, it shall inform the client of such without delay.

4.2. The client shall bear the costs incurred due to false or late delivery of materials (for example, by reprints or by setting a new date). The client is responsible for a delay in the campaign, in placing an advertisement or some other execution of the service ordered caused by a false or late delivery of materials by the client. This only applies insofar as the costs or the delays are not the responsibility of the contractor in accordance with the regulations in Section III Item 8.

4.3. Materials, documents or other objects provided by the client must be delivered free-to-house.

If materials delivered to the contractor or products to be transported are insured against fire, theft, loss or other damage, the client shall conclude this insurance at its own expense.

#### 5. Lettershop and dispatch work

5.1. Advertising batches are picked, packed and delivered in the manner usual in the trade.

5.2. If extra postage must be paid after delivery of a dispatch due to excess weight because of paper weight tolerances not able to be recognised in advance for which the contractor is not responsible, these costs shall be borne by the client. The client alone is responsible for complying with the conditions of the commissioned dispatch or postage service provider which this imposes on the form and content for the envisaged dispatch (e.g. requirements of Infopost), unless a consultancy order has been issued in this context. The supplementary invoicing of the contractor's additional work in accordance with the contractor's current price list required by such circumstances remains reserved.

5.3. The client shall be informed of any residual materials, unless these quantities are minimal in view of the order. Residual material shall only be returned at the client's express wish for a charge. The contractor is otherwise entitled to destroy the residual material 14-days after the conclusion of the order after making a prior announcement to the last known address of the customer.

#### 6. Printing and production services

6.1. Consultancy services are provided and advertising vehicles are produced as part of a separate order relationship subject to remuneration.

6.2. If the production of advertising vehicles is ordered or some other print order is issued, the client shall accept the higher or lower print-runs normal in the printing trade of up to 10%. Deviations in the colour of the printed item of up to 10% from the created file are within the accepted range of tolerance.

6.3. The delivery time is interrupted for the duration of inspecting the print-runs, production samples etc. by the client. This duration runs from the date of dispatch to the client until the date that the client's verdict is received.

6.4. Artwork masters are only returned at the special request of the client. The obligation of retention and return expires at the latest 2 months after the date of delivery.

6.5. If artwork masters are produced, these are invoiced to the client separately. Proof corrections are subject to remuneration from the third proof correction.

6.6. The contractor accrues a right of retention to the artwork masters and stamps, manuscripts, raw materials and other objects delivered by the client in accordance with § 369 HGB until complete fulfilment of all claims due from the business relationship.

#### 7. Media services, contractual fine

7.1. Media services are provided as part of a separate order relationship subject to remuneration. Agency commission accrues solely to the contractor. For the rest, the regulations stated therein apply to the services as a supplement.

7.2. Placing advertisements in print media: For reasons of magazine design and technical production, the publishing house commissioned to place the advertisement generally reserves the right to adapt the placement, even if the desired placement has been booked in advance. In such cases, the client does not have a claim to receive the placement it desires.

7.3. Exterior advertising: Unless agreed otherwise, offers for the production of a poster motif apply. If the posters are produced through the contractor using an artwork master that the client has, the client must provide this to the commissioned printing house without delay at the request of the contractor. The contractor accepts no liability for the on-time receipt and the usability of the master.

If the posters are produced through the client, the client must deliver the quantity of posters required for properly posting the advertising vehicles contained in the order, including a replacement quantity and any other material to be applied, free-to-house to the dispatch addresses it nominates. The delivery must take place by the date stated in the offer.

Unless agreed otherwise, posters for large areas and billboards must be delivered folded and mapped (bundled into complete sets of posters, held together with waterproof tape or the like), in the required quality, with adhesion instructions bindingly issued by the client and corresponding numbering of the poster parts. Posters for City-Light posters and City-Light boards shall not be delivered folded and mapped. The respective confirmations of order may contain deviating

delivery deadlines for City-Light posters or City-Light boards. If it is not possible to work the poster and paper material in the wet bonding process (e.g. due to fluorescent additives, material adhesive aggressive to paper or plastic covers), this must be notified upon the issue of order. The contractor's liability or that of its vicarious agents and commissioned third parties for the suitability of the materials delivered for working in the wet bonding process is excluded.

7.4. Commissioning lead generation: It is permitted to use the addresses multiple times within the agreed period of use. It is not permitted to hand these over or to sell these to third parties. Leads delivered are proved by a time stamp and IP address, saved upon registration and/or confirmation of consent to advertising by backlinking and by announcement of the origins by the contractor. The scope of the data in individual leads results from the contract concluded between the parties.

The contractor is entitled to demand a contractual fine if the client reuses the data provided after the agreed period of use has expired or beyond the granted right of use. In all cases, the contractual fine amounts to ten times the amount of the fee for the delivery of the culpable infringement. The contractual fine is also incurred in the full amount if only single data records from the delivery are used beyond the granted use. Express reference is made to the existence of control data. The demand of a contractual fine does not exclude the pursuit of further-going damages.

When generating leads, various generation partners use different texts for the consumer's consent to advertising (so-called permission texts). We point out that you yourself are responsible for the use of the data.

The contractor has the right to enrich ordered data with control data to the extent of up to 5% of the volume of data. These data serve to monitor the scope of usage. At this point, we expressly refer to the fact that the customer may only deploy the data records provided in accordance with the prevailing law for advertising or campaign purposes corresponding to the consent issued. The client alone is responsible for ensuring reliable storage, for the secure handling and for the proper use of data records, and possibly for proper deletion of the same once these are handed over to the client.

#### 7.5. Household advertising (including Hello! flyers)

In principle, wide-area coverage of the private households able to be reached in the distribution area defined in the contract is obtained by inserting the distribution object into existing mailboxes.

Private households able to be reached are those with a nameplate and a mailbox within enclosed localities. In tower blocks that do not allow mailboxes to be used, the quantity is deposited at the foreseen place amounting to half the number of recognisable residential units (all residential units are thus regarded as having been delivered). If a house with an indoor mailbox is locked and it is not opened even after ringing several times, deliveries are not made to this house and it is regarded as unable to be reached.

Business premises, offices, shops, homes for children or the elderly, quarters for foreigners, barracks, hospitals, houses on works premises, micro-modules and individual, outer-lying houses, farmsteads, hamlets and houses situated in enclosed localities but outside a connected residential area (e.g. a residence in an industrial park) are excluded from delivery. These do not count as private households able to be reached.

Depending on the local circumstances, the contractor aims to deliver to 90% of the private households able to be reached. This figure is regarded as proper execution of the order.

Account is taken of recognisable bans on delivering advertising during distribution. The client alone is responsible for complying with the conditions of the commissioned dispatch or postage service provider imposed by these on the form and content for the envisaged dispatch (e.g. requirements of Infopost), insofar as a consultancy order has not been issued in this context. If the requirements are not observed, the dispatch or postage service provider can reject the distribution.

If a complaint is justified and after fruitless subsequent fulfilment, the quantity of the single postal district affected by the complaint is credited and the difference shall be refunded to the client. Further-going claims (in particular, extrapolating defects occurring in one postal district onto the postal districts of another deliverer or onto the total distribution) are specifically excluded.

## 8. Guarantees, liability, release

8.1. The contractor does not give a guarantee for a certain quality or any other properties of the services provided. Warranty claims (see Section III Item 9) remain unaffected.

8.2. The contractor is liable – regardless of the legal reason – particularly for illicit acts, organisational culpability, culpability on the conclusion of contract or for any other claims arising from culpable

infringements of duty for all damages caused by the malicious behaviour or gross negligence of one of its legal representatives or vicarious agents, for the lack of a specifically guaranteed quality or for the malicious concealment of a defect in the sense of § 444 BGB.

8.3. The contractor is liable for slight negligence in case of fatalities, physical injuries or harm to health. It is also liable if it has given a guarantee of quality, if it maliciously conceals a defect in the sense of § 444 BGB, in case of claims under the Product Liability Act and if it violates cardinal contractual duties, whose fulfilment make proper performance of the contract possible in the first place and compliance with which the contractual partner may regularly trust. If a malicious infringement of duty does not apply, liability is limited to the losses typical for the contract, which were known or foreseeable as a possible consequence of violation under the circumstances.

8.4. The client shall ensure that the advertising material and/or content provided is compiled without infringement of personality rights, copyrights, brands or other protected rights, or it shall obtain the permission and approvals required from third parties. The contractor does not accept any liability for the legal admissibility (particularly under competition laws) of the advertising or newsletters ordered by the client or of other content provided in the course of the order. This particularly applies in case of the violation of criminal laws or third-party private or commercial protected rights by the advertising material provided. The limitation of liability also applies to the use of the data planned by the client. This particularly applies in the case of a violation of criminal laws or third-party private or commercial protected rights by the advertising material provided. The client alone is responsible for this and it releases the contractor from third-party claims to damages, insofar as the contractor is not responsible for the violation. The client is obliged to refund the contractor for its expenses incurred for legal defence.

## 9. Disturbance in services

9.1. If warranty claims under law arise in the context of providing the services, these expire by limitation of time one year after risk has been transferred. In the context of subsequent fulfilment, the contractor reserves the right to choose between rework and a replacement delivery. Other warranty claims and claims to damages due to a positive violation of contract or the refund of consequential damages and foregone profit apart from the service are excluded, unless such has been agreed in a separate assurance of characteristics.

The duty of complaint under § 377 HGB also applies to work services.

9.2. For the rest, the pursuit of claims in the context of disturbances to services depends on deliveries and services being inspected or tested without delay and complaining of infringements of duty without delay after such are discovered in text form. The obligation of inspection and testing particularly applies to the customer before further processing or some other use. The direct delivery of the goods or provision of the service to one of the customer's contractual partners does not release the customer from its duty of inspection. In this case, a complaint lodged on-time in text form by a further-processing enterprise nominated by the contractor beforehand is also regarded as adequate.

9.3. If a contract is executed over several deliveries, each single delivery must be inspected and, if necessary, complained of within the aforesaid deadline.

9.4. If the contractor fails to fulfil the services agreed by contract on-time, the client must set a reasonable period of grace for fulfilment. It can only withdraw from the contract after this period of grace has expired fruitlessly.

9.5. The service time and/or the delivery time is extended appropriately if the service and/or delivery is hindered by strikes and lock-outs or by other circumstances for which the contractor is not responsible, particularly in cases of delays in services due to an Act of God. The contractor shall notify the client of the start and end of such hindrances without delay. The deadlines to fulfil the contract are put back for the duration of the hindrance, plus a reasonable start-up time. The foregoing regulation also applies in case of legal demands, official decrees or court orders, bans or conditions (particularly concerning the content and presentation of the advertising vehicles and other objects provided by the client for which the contractor is not responsible), insofar as these make the provision of the agreed services considerably more difficult or impossible, regardless of whether the circumstances arise for the contractor or for a subcontractor. If the client is responsible for the delay in or the impossibility of executing the contract, the client does not accrue a claim to damages or a refund for services provided that have already been paid for.

9.6. The contractor's liability for defects in the material provided to it by the client or for subsequential damages resulting from this is excluded.

## 10. Data processing

10.1. The regulations and notices in Section I Item 6 apply. The contractor has subjected itself to the DDV declaration of commitment.

10.2. The client assures the address owner responsible under data protection law that the contractor has been appointed as the processor and that it has accepted the contractor's DDV declaration of commitment. In addition, the QuLS DMS apply, to which the contractor has likewise submitted itself. The client agrees to the validity of the QuLS DMS. The current deposits of the aforesaid declarations of commitment with the DDV shall be confirmed at the client's request and a copy provided to the client.

10.2. Data is processed by the contractor in an order relationship, whereby personal data are processed only in compliance with legal regulations, particularly Art. 28 GDPR.

10.3 The client assures that it is authorised to commission the contractor with the processing of the data inventory that has been ordered and that the nature and purpose of the processing does not infringe the rights of the affected parties. The contractor points out that transmissions of personal data should be secured (e.g. by appropriate encryption; e-Mail attachments solely secured by password are not secure). Liability for violations of data protection in this context (e.g. infringing data secrecy or use of the data by unauthorised third parties) is borne by the party which performs the transmission without adequate security itself or through a third-party.

10.4. If the client has solely acquired a restricted right of use to personal data which depends on the instructions of a third-party for the data to be processed, it shall inform the contractor of this and solely commission the contractor with the processing, which corresponds to the third-party instructions regarding this data to be made identifiable for the contractor. At the contractor's request, the client shall present the documented release and/or instructions of the address owner to the contractor. This also applies in case changes to the agreement lead to processing of the data.

10.5. If one of the parties receives information in the context of the data to be used and their further processing, the knowledge of which is necessary for those involved to comply with legal duties, it shall inform the other party of this without delay. The contractor is obliged to support the client to a reasonable extent in the fulfilment of legal monitoring obligations, reporting duties and duties of providing information and in legal claims pursued by affected parties, insofar as this concerns its sphere of responsibilities foreseen by contract and by law. It shall give priority to technical and organisational measures to protect the data, which are necessary to uphold the legal requirements and any further-going requirements of declarations of self-commitment or specific requirements of the address owner, which are notified to it by the client before an order is issued. These services shall be paid for separately.

10.6. In principle, it is recommended to make a comparison with the Robinson list before using data in the consumer sphere in the context of dialogue marketing services. This list is kept by DDV (see [www.ichhabediewahl.de](http://www.ichhabediewahl.de)).

10.7. If the contractor provides further services, such as selection, data coding, data conversions, checking and correcting postal addresses, data cleansing (e.g. Infoscore, Protector), seeking out duplicates, splitting into part quantities and reduction, optimising postage, laser printing, tracing reactions, printing and production services, media services, dispatch services or general advice on direct marketing, these shall be remunerated separately.

## 11. Reservation of title

11.1. The goods delivered remain the property of the contractor until the purchase price has been paid in full.

11.2. The objects of delivery are always processed or reshaped by the customer on behalf of the contractor.

11.3. If the delivery items are processed with other objects not belonging to the contractor, the contractor accrues co-ownership to the new item in the ratio of the value of the objects of delivery (end invoice sum, including VAT) to the other objects processed at the date of processing. For the rest, the same applies to the items created by processing as to the objects delivered under reservation of title.

11.4. If the contractor's ownership is inseparably mixed with other objects not belonging to it, the contractor acquires co-ownership to the new item in the ratio of the value of the purchase item (end invoice sum, including VAT) to the other mixed objects at the date of mixture. If mixing is done in such a way that the customer's item is regarded as the main item, it is agreed that the customer transfers proportionate co-ownership to the contractor. The customer shall safeguard the sole ownership or co-ownership thus created for the contractor.

11.5. At the customer's request, the contractor is obliged to release securities accruing to it if the realisable value of the contractor's securities exceeds the claims to be secured by more than 10%. The contractor can select the securities to be released.

## 12. Transfer of risk, dispatch

12.1. Unless regulated otherwise by the confirmation of order, delivery "ex-works" is agreed.

12.2. Dispatches are always made at the expense of and at the risk of the customer. The same applies even if the contractor deploys its own means of transport.

12.3. If a dispatch is delayed for reasons which the customer is responsible, risk is transferred to the customer upon notification of readiness to dispatch.

## Section IV: Concluding provisions

### 1. Concluding provisions

1.1. The place of fulfilment is the contractor's headquarters.

1.2. German law shall prevail exclusively. The application of UN Commercial Law is excluded, even if it enters into inner state law.

1.3. The place of jurisdiction is the contractor's headquarters, if it is a merchant and the client has the status of a merchant, a legal entity of public law or a public law special trust. An overriding place of jurisdiction under law remains unaffected.

### 2. Salvatory clause

Should one or more clauses in these TOS be or become unworkable or if the contract contains a loophole, this shall not affect the workability of the remaining provisions. Unworkable or missing provisions shall be replaced by the respective legal regulations.

Trebbau direct media GmbH, 25<sup>th</sup> May 2018