

## **GENERAL TERMS AND CONDITIONS FOR RADIO MAX ADVERTISING ORDERS**

These general terms and conditions (hereinafter referred to as GTC) apply to all orders and contracts concerning the broadcast of advertisements during RADIO MAX GmbH radio programmes. RADIO MAX and the radio programmes it broadcasts are referred to in the following as "RADIO MAX"; the advertisements on which the order contract is based are referred to as "advertisements". Order contracts are governed exclusively by these GTC.

RADIO MAX is currently broadcast on the following stations: "RADIO MAX / Billa" (in the Austrian branches of the supermarket chain Billa), "RADIO MAX / Bipa" (in the Austrian BIPA stores), "RADIO MAX / Merkur" (in the Austrian branches of Merkur), "RADIO MAX / PENNY" (in the Austrian branches of PENNY), "RADIO MAX / Adeg" (in the Austrian ADEG stores), "RADIO MAX / Billa CEE" (in Billa branches outside Austria; the content of "RADIO MAX / Billa CEE" varies from country to country), "RADIO MAX / PENNY Italy" (in the Italian branches of PENNY), "RADIO MAX / PENNY Germany" (in the German branches of PENNY), "RADIO MAX / PENNY Romania" (in the Romanian branches of PENNY), RADIO MAX / REWE Germany (in the German REWE stores). This list reflects the current situation; however, additional national stations may also be launched in the future. Furthermore, it is possible that regional adaptations will be offered for one or several stations (in this case, the broadcasts of the relevant RADIO MAX station will, for example, be adapted for all branches and retail outlets in the particular federal province where RADIO MAX is broadcast). Unless explicitly agreed to the contrary, the orders only relate to broadcasts on the respective national RADIO MAX station to which the order relates. If broadcasts on individual stations are subject to regional adaptation in the future and the order relates to a regional station, the client must state this explicitly.

### **I. GENERAL**

1. RADIO MAX must, in particular, observe the provisions of the Privatfernsehgesetz (Austrian Private Television Act) as amended when broadcasting advertisements. According to the Act, advertisements may not be misleading and/or harm consumers' interests (section 34(1) Austrian Private Television Act). Surreptitious advertising and similar practices, as well as subliminal advertising (in radio, this would mean "transmitting" advertising messages at a frequency that cannot be consciously perceived), are prohibited (section 34(2) Austrian Private Television Act). No people may appear in the advertisement who regularly present news or current political affairs programmes (section 35(1) Austrian Private Television Act). Neither the client nor the advertiser may exert any editorial influence over the content of the programme (section 35(2) Austrian Private Television Act). Advertising must not violate human dignity, discriminate on the basis of race, sex, disability or nationality, violate religious or political beliefs, encourage behaviour that prejudices health or safety, or encourage illegal practices (section 37 Austrian Private Television Act). Advertising must be clearly recognisable as such. It must be clearly separated from other parts of the programme by

optical and/or acoustic means (section 38 Austrian Private Television Act). Furthermore, sections 39-42 Austrian Private Television Act prohibit advertising for certain products (prescription medicines and medical products, spirits [within the meaning of Regulation (EEC) No. 1576/89], tobacco and tobacco products). Advertising for all prescription medicines, medical products and therapeutic treatments must be clearly recognisable as such and also be honest, truthful and verifiable. Such advertising must not harm human beings (section 40(2) Austrian Private Television Act). This does not affect the advertising-related provisions of the Austrian Medicines Act or the Austrian Medical Devices Act; nor does it affect the restrictions on advertising in the legal provisions governing the exercise of health care professions (section 40(3) Austrian Private Television Act). Advertising for alcoholic beverages must observe the provisions of section 42 Austrian Private Television Act. Furthermore, in order to protect minors, advertising must not cause either physical or emotional harm to minors; therefore, advertising must not directly exhort minors to make purchases and exploit their inexperience or credulity (section 43(1)(1) Austrian Private Television Act). Advertising must not directly encourage minors to persuade their parents or third parties to purchase the products or services advertised (section 43(1)(2) Austrian Private Television Act). Advertising must not exploit the special trust minors place in parents, teachers or other persons (section 43(1)(3) Austrian Private Television Act). Additionally, advertising may not unreasonably show minors in dangerous situations (section 43(1)(4) Austrian Private Television Act). Sponsored programmes are only permitted within the scope of section 46 Austrian Private Television Act.

RADIO MAX is legally obliged to record all programmes and store these recordings for at least ten weeks and provide them to the regulatory authority upon request (section 47(1) Austrian Private Television Act). Furthermore, RADIO MAX must allow anyone to inspect the recordings who is able to demonstrate that they have a legal interest in doing so (section 47(1) Austrian Private Television Act).

2. The client undertakes to observe all legal provisions relating to advertising and/or broadcasting advertisements, including, but not limited to, those provisions of the Austrian Private Television Act specified in the previous paragraph, as well as the provisions of the Mediengesetz (Austrian Media Act), the Unlauterer-Wettbewerbs-Gesetz (Austrian Unfair Competition Act), the Strafgesetzbuch (Austrian Criminal Code), etc., each as amended.

## **II. ORDER PLACEMENT**

1. RADIO MAX's offers to broadcast advertising are non-binding; therefore, prices, the scope of services, etc. may be subject to change in the period until a contract is concluded according to the following provisions.
2. The transmission order must be placed in writing before the advertisement can be broadcast. The order must be received at least two weeks prior to the planned start of transmission. Short-term bookings are only possible by special agreement. The order remains binding until the broadcast date/time specified therein.

3. Orders from advertising agencies or advertising intermediaries will only be accepted if the advertiser is precisely specified. The brand of the product or service being advertised must always be stated in the order.
4. The contract is concluded upon written confirmation of the order by RADIO MAX or when the advertisement is broadcast. Verbal confirmations do not replace written confirmations. Ancillary agreements and amendments to the contract must be made in writing.
5. Orders that are incompatible with legal provisions or are unreasonable for RADIO MAX will not be accepted.
6. RADIO MAX is under no obligation to examine advertisements before accepting the transmission order.
7. Advertisements that include voices or other personal characteristics which evoke associations with certain widely-known people and characters must be accompanied by a written declaration by the client that the speaker and the known person (or character) are one and the same. If the speaker is not the person being imitated, written proof must be provided that the person being imitated agrees to their voice being used for advertising purposes (see sections 16 and 43 Allgemeines Bürgerliches Gesetzbuch [Austrian Civil Code]).

### **III. REJECTION/WITHDRAWAL**

1. Even if orders have been confirmed, RADIO MAX may refuse to broadcast advertisements if doing so would breach legal provisions, particularly those of the Austrian Private Television Act as amended, or would be unreasonable for RADIO MAX.
2. RADIO MAX reserves the right to reject orders to broadcast advertisements or refuse to broadcast advertisements because of their origin, content, form or technical quality, based on objectively justified principles.
3. The client will be informed as soon as possible if RADIO MAX rejects an order to broadcast or refuses to broadcast an advertisement. Fees which the client has already paid will be reimbursed, if the client requests reimbursement by RADIO MAX within a week of rejection. Otherwise, fees which have already been paid will be treated as non-interest-bearing credits. Credits must be used within six months of rejection, otherwise they will expire. The client is precluded from enforcing any further claims. This applies by analogy to the mere partial broadcast of separable parts of a transmission order. If, at the request of the client, an advertisement is broadcast in abridged form, the full-length version of the advertisement will still be used as the basis for invoicing.
4. The client may only withdraw from the contract with RADIO MAX's consent. The request to withdraw must be submitted to RADIO MAX in writing and must be received by RADIO MAX at least five working days before the planned first broadcast. If consent to withdrawal is granted, the client will be charged an amount equal to 20% of the value of the order as compensation for costs.

#### **IV. BROADCAST**

1. RADIO MAX endeavours to keep to the agreed broadcasting times, but cannot guarantee that transmission will take place at a certain time and/or in a certain sequence. If the broadcast may only take place during certain hours and/or in a certain sequence, this must be explicitly stated in the order. In such cases, the contract is only concluded when RADIO MAX provides written confirmation of the broadcasting times and/or sequence. Any exclusions of competitors requested by the client will be taken into account as far as possible, without there being a legal obligation to do so.
2. If a broadcast is cancelled because of technical problems, force majeure or other circumstances for which RADIO MAX is not to blame, the broadcast of the advertisement will either be brought forward or postponed, where possible. The client will be informed of this, unless it is only a postponement within the booked broadcasting slot. Further claims are excluded. If it is not possible to bring forward or postpone the broadcast, fees which have already been paid will either be treated as credits or reimbursed, as the client wishes. The contractual parties must come to an agreement on this within a week of the aforementioned notification; otherwise, the fees will be treated as non-interest-bearing credits. If the client does not use the credits within six months, RADIO MAX is entitled to reimburse the fees to the client.  
The above provision also applies by analogy if a broadcast is cancelled for programming reasons (e.g. due to current events).
3. RADIO MAX guarantees that the advertisement will be broadcast in accordance with the same technical conditions as RADIO MAX's general programme.
4. RADIO MAX does not assume any liability whatsoever for the quality of reception.
5. RADIO MAX may refuse to broadcast advertisements for legal, technical, quality-related or any other justified reasons.

#### **V. ADVERTISEMENTS PROVIDED BY THE CLIENT**

1. The client must deliver all material required to broadcast the advertisement (broadcasting material, broadcasting documents, description, etc.) to RADIO MAX free of charge and in a timely manner, but at least five days before the broadcast. The material must be provided to RADIO MAX in mpeg2 stereo 48 kHz 256 kbps format.
2. The client is responsible for ensuring the technical suitability of the material. RADIO MAX is not obliged to check whether the material is suitable to ensure a technically flawless broadcast.
3. If the material is delivered late, or if the client makes subsequent requests for amendments, RADIO MAX does not guarantee that the broadcast will be carried out properly.
4. The client must ensure that back-up copies are made of the material provided to RADIO MAX for broadcasting purposes. RADIO MAX is not liable for the loss of the material. RADIO MAX may destroy the material after broadcasting the advertisement or after undertaking the necessary preliminary work (transfers).

5. The client bears the risks of sending the material, regardless of the form in which this is done. If the material required for broadcast is sent to RADIO MAX electronically, RADIO MAX assumes no liability for any errors which occur during data transmission. The condition of the material sent by the client at the time it is received by RADIO MAX is decisive in determining whether RADIO MAX has performed services in accordance with the order.
6. If advertisements are not broadcast or are broadcast with errors because documents, texts or copies sent were inadequately or wrongly labelled, or were sent late, this does not affect the client's payment obligations. The client is not entitled to claim compensation or a reduction in price.
7. The client declares that it holds all rights required for producing, processing and broadcasting the advertisement (in particular copyrights, trademarks, design and patent rights) and that it has obtained the consent of the originator in question to use works subject to copyright protection for advertising purposes. This also applies to the technical processes required for broadcasting the advertisement (in particular reproducing and saving), as well as the fulfilment of legal obligations to provide information and store data (section 47 Austrian Private Television Act). Reference is made to clause I.2. of these GTCs. RADIO MAX has no obligation to check the content of the advertisement sent or to clarify the legality of the processing. If claims are made against RADIO MAX by third parties in connection with the client's advertisement, RADIO MAX may disclose the name of the client responsible for the advertisement.
8. The client will indemnify and hold harmless RADIO MAX for all detriment which RADIO MAX incurs as a result of broadcasting the advertisement, particularly with respect to claims for breaches of copyrights, trademark, design and patent rights, the Austrian Unfair Competition Act, the Austrian Private Television Act or the Austrian Media Act. Any counterstatements, revocations, judgements or similar that must be published in relation to the client's advertisements, in particular political advertisements, must be remunerated by the client according to the applicable advertising tariff. The obligation to indemnify and hold harmless also covers the obligation to pay compensation for all lawyers' and court fees that RADIO MAX incurs in connection with broadcasting the client's advertisement and defending itself against the claims arising therefrom.

## **VI. SPECIFIC PROVISIONS REGARDING PRODUCTION OF ADVERTISEMENTS BY RADIO MAX**

1. The client may only use the advertising ideas and advertising products developed by RADIO MAX at the client's request, as well as their implementation using IT (hereinafter referred to as advertising production), pursuant to the following provisions. This applies irrespective of whether the advertising ideas or advertising products developed are subject to specific legal protection (in particular under the Austrian Copyright Act). If RADIO MAX presents advertising ideas, advertising products or similar which are then not ordered by the intended client, the client must refrain from using those ideas, or any

parts of them. The second sentence applies by analogy. In such cases, RADIO MAX may use the ideas and concepts it developed in other ways as it wishes.

2. By paying for advertising production by RADIO MAX, the client acquires all RADIO MAX's rights to the advertising production which are required for broadcasting on RADIO MAX for a period of 12 months. Broadcasting on RADIO MAX will be remunerated separately according to the provisions of these GTC. If there is no agreement to the contrary within the meaning of clause VI.3, the client may not use the advertising production for any other purpose than broadcasting on RADIO MAX. The aforementioned 12-month period begins when the advertising production is broadcast for the first time.
3. If the client orders broadcasts for periods after that specified in clause VI.2., a new 12-month period of use begins upon the first broadcast to follow the period specified in clause VI.2 ("second licence year"). RADIO MAX is entitled to receive licence fees (according to the current price list) for the use of the advertising production during this period; this is without prejudice to the remuneration for broadcasts. Otherwise clause VI.2. applies by analogy. The above provision also applies by analogy to further use in subsequent licence years.
4. If it so wishes, the client will be granted a user's licence, in return for payment of an appropriate fee, enabling it to use the advertising production for advertising measures in other media.
5. Unless otherwise explicitly agreed, the client must ensure that it obtains the approvals required for the broadcast (granting of rights) and which go beyond the permission for use given by RADIO MAX. Clause V.7., second to fifth sentences, and clause V.8. apply in such cases.

## **VII. TERMS OF PAYMENT**

1. The price for broadcasting the advertisement is taken from the price list valid at the time the order was confirmed in writing, taking clause VII.2. into account. All prices are net, and do not include taxes, duties (e.g. advertising tax) and fees. Production and other costs will be charged separately and borne by the client.
2. RADIO MAX may amend the price list at any time. If the broadcast of one or several advertisements multiple times is contractually agreed, the new advertising price will apply for future broadcasts as of the time when it enters into force. In such cases, the client may withdraw from the contract with regard to future broadcasts.
3. Unless otherwise explicitly agreed, no discounts will be granted, even if several transmission orders are placed (even if they follow each other chronologically).
4. Invoices may also be submitted before an advertisement is broadcast. The invoice for services rendered falls due upon submission and is payable in full within 14 days. The client must bear any bank and transfer fees.
5. In the event of delayed payment, it is agreed that interest will accrue on the outstanding amount at the rate stipulated by law for business transactions. The client must also pay compensation for all costs of reminders, debt collection, handling costs, obtaining information and legal representation in such cases. The resulting payments will first be used to pay costs, then interest and fees, and finally offset against the amount payable.

6. If the case of a delay in payment, RADIO MAX may refuse to broadcast other advertisements or continue broadcasting advertisements, suspend work in progress and make future broadcasts or work conditional on the payment of outstanding amounts as well as fees for future broadcasts. If there are reasonable doubts about the client's ability to pay, RADIO MAX may make the fulfilment of transmission orders conditional on advance payment.

### **VIII. CONCLUDING PROVISIONS**

1. RADIO MAX is only liable to the client for the intentional or grossly negligent conduct of its legal representatives. This liability is limited to the value of the respective order.
2. The place of fulfilment and jurisdiction is Vienna. Austrian law applies, excluding the provisions of the Internationales Privatrechtsgesetz (Austrian Private International Law Act).
3. If a provision of these GTC is ineffective, the remaining provisions will continue to apply. Ineffective or unenforceable provisions will be replaced by new provisions which achieve the purpose of the ineffective or unenforceable provisions in a manner permitted by law. The same applies to loopholes. RADIO MAX and the client will endeavour to close the loophole in a manner which approximates most closely to the provision they would have agreed, in accordance with the essence and purpose of the order, if the point in question had been considered.
4. These GTC apply until they are revoked by RADIO MAX. RADIO MAX reserves the right to amend the GTC at any time. The respective GTC applicable at the time of a particular broadcast will govern orders that have been placed but not (fully) executed at the time of amendment.