

# General terms and conditions for digital advertising.

## 1. Applicability and contracting parties.

The General Terms and Conditions (GTC) for digital advertising regulate the contractual relations between the advertisers and SBB AG, Passenger Division, Digital Business, Digital Advertising (hereinafter referred to as “SBB Digital Advertising”) for advertising orders on SBB AG’s digital platforms or on any SBB AG digital platforms represented by SBB Digital Advertising. An advertising order is defined as a request by the advertiser to place one or more advertisements. The regulations concerning the advertising orders for the individual advertising formats available, such as tariff, runtime or specifications (including any information on design guidelines) regarding the ordered advertising material, constitute an integral contractual component of these advertising orders. These GTC apply unless otherwise agreed in writing.

## 2. Definitions

An *advertiser* is defined as an individual person or company that advertises itself, its products and/or services or the products and/or services it markets.

An *advertising order* is defined as any contract between SBB Digital Advertising and the contracting party about the integration of any form of commercial communication (“advertising material”) from the advertiser into one of the advertising media in SBB AG’s range of digital media. The contracting party is either the advertiser itself (whether represented by an advertising or media agency or not) or an advertising or media agency (“agency”), provided that this latter trades in its own name and for its own account.

*Advertising media* include all the digital media relevant to advertising that are managed and marketed by SBB Digital Advertising.

*Advertising material* can comprise one or more of the following elements:

- a moving or still image and/or text;
- a sensitive area that, when clicked on, directs to further data via an online address specified by the contracting party and that is managed by the advertiser or by a third party.

As a matter of principle, advertising material will be considered if it is in the formats listed in the current price list – available at [www.sbb.ch/en/digitaladvertising](http://www.sbb.ch/en/digitaladvertising). Special formats and forms of advertising may be permitted after consultation with SBB Digital Advertising and after they have been checked.

## 3. Agency

Advertising orders from agencies in the name and for the account of the advertiser (“agency client”), as well as those in the name and for the account of the agency, will only be accepted by SBB Digital Advertising for specifically named clients. SBB Digital Advertising is entitled to request proof of the mandate from the agency. A client represented by an agency can only be released from its payment obligation to SBB Digital Advertising by paying the sums it owes to SBB Digital Advertising.

The agency is responsible for ensuring that its clients are informed about their obligations and rights which arise from all elements of the contract.

Insofar as advertising agencies place an advertising order, the contract shall be made with the advertising agency if in doubt.

The agency undertakes to abide by the settlement obligations vis-à-vis its clients in accordance with articles 400 and 401 of the Swiss Code of Obligations.

#### **4. Placing, amending and suspending advertising orders.**

Advertising orders must be placed, amended and suspended in writing; under the terms of these GTC, a counter-confirmed e-mail to SBB Digital Advertising satisfies this requirement for the written form. Unless otherwise stated in individual agreements, the contract comes into force when a written offer is made by SBB Digital Advertising and is subsequently accepted by the advertiser by written consent. As a matter of principle, changes to the content and form of the advertising material can still be made during the order processing stage, but SBB Digital Advertising is entitled to charge for any costs incurred in addition to the payments associated with the original order.

Only these GTC and the documents listed below, which form an essential and integral part of the contract, apply to the advertising order.

- Order confirmation
- Any existing client agreements
- Any existing agency agreements
- Advertising material specifications (available at [www.sbb.ch/en/digitaladvertising](http://www.sbb.ch/en/digitaladvertising))

In principle, advertising orders may only be suspended, postponed or cancelled by the advertiser up to three weeks before the advertisement was due to be published without incurring any costs; the full cost of the original order must be paid if any amendments are required after this time. Advertisements may be postponed subject to available capacity. SBB Digital Advertising's terms and prices which are valid at the relevant time apply for any new advertisements placed. SBB Digital Advertising accepts no liability for errors in the transmission of advertising orders, amendments or suspensions.

#### **5. Placement requests.**

Requests regarding placement are accepted with no obligation. SBB Digital Advertising reserves the right to postpone advertising orders without consulting the advertiser.

- 4.1. A supplement is charged for any placement specifications not covered by the tariff. These specifications only become binding once they have been agreed and confirmed in advance.
- 4.2. If, for technical reasons, it is not possible to actually implement a confirmed placement, then the advertiser shall be notified in advance wherever possible.
- 4.3. If an advertisement is not published, is placed in a different location or on a different date, or is delivered late due to technical problems, the advertiser has no right to claim any kind of compensation.
- 4.4. Exclusive rights cannot be granted.

#### **6. Publishing advertisements.**

The advertiser permits SBB Digital Advertising to supply advertisements to their own or third-party online services, or to publish them in other ways or process them for that purpose, until the instruction is revoked. SBB Digital Advertising reserves the right to request changes to be made to the advertisement at any time or to refuse or suspend advertising material or advertising orders without giving a reason (possible reasons include content, source or technical design, breaches of legislation or official regulations or if the publication is unacceptable for SBB Digital Advertising).

In addition, adverts with the following content shall not be permitted:

- Sex and eroticism
- Gaming and betting from unlicensed providers
- Advertising that is in direct competition with SBB AG's services, whereby the decision on whether any competition exists is made at the discretion of SBB Digital Advertising.

The parties shall treat as confidential all information and data relating to the contractual relationship that is not already common knowledge or in the public domain, even if it is not specifically designated as confidential. In case of doubt, this confidentiality clause shall apply to all information and data. Legal disclosure obligations remain reserved. The parties are obliged to observe this confidentiality clause before the contract is signed and after contractual relations end. SBB Digital Advertising is authorised to deliver the information regarding digital advertising (advertising format, runtime, language, tariff, etc.) required to prepare the standard industry advertising statistics to one or more specialist institutions.

## **7. Political advertising.**

Political advertising that is intended to shape or influence opinion in the run-up to elections or referendums must be published sufficiently far in advance of the polling day that the opposition also has the opportunity to place advertisements before the date of the election or referendum. In other respects, SBB Digital Advertising's guidelines apply. If anything is unclear, please send a layout to SBB Digital Advertising during the design phase for clarification.

## **8. Editorial material.**

The publication of editorial material cannot be made a condition for placing an advertisement.

## **9. Responsibility for the advertising material.**

The advertiser is responsible for any use of the service via his or her account, including any use by third parties where applicable. The advertiser is responsible for the content of the advertising material. He or she is obliged to comply with the relevant legal conditions, guidelines and association rules for the industry and not to infringe the rights of any third parties. If publication of an advertising theme is completely or partially prohibited by order of the authorities, or if publication cannot be carried out due to other official decisions affecting the interests of the advertising material, SBB Digital Advertising is entitled to refuse or suspend the execution of the order.

The advertiser shall, as far as is legally possible, indemnify SBB Digital Advertising and its auxiliaries against any claims by third parties. If SBB Digital Advertising is taken to court, the advertiser is obliged to appear in court once third-party notice has been given. The advertiser is in any case obliged to bear the costs of all court or out-of-court expenses which may be incurred in connection with claims by third parties or official procedures.

## **10. Right of reply.**

Requests for the right of reply in relation to advertisements will, as far as possible, be dealt with by SBB Digital Advertising in consultation with the advertiser. If SBB Digital Advertising is taken to court, the advertiser is obliged to appear in court once third-party notice has been given. The advertiser is in any case obliged to bear the costs of all court or out-of-court expenses which may be incurred in connection with the right of reply.

## **11. Design specifications.**

Design specifications can be taken into account as far as is technically feasible. Advertising material must be clearly identifiable as such for readers and distinguishable from editorial material in its design and script. SBB Digital Advertising reserves the right to add further identification in the form of a heading stating "Advertisement", "Advert", "Publicity", "Infomercial", "Promotion", "Competition", "Ad", "Sponsored Content", etc. The logo or name of SBB Digital Advertising and, by association, SBB AG as well as products and websites belonging to SBB AG may only be used in advertisements with written permission from SBB Digital Advertising.

## **12. Delivery.**

Advertising material must be delivered by the deadline stated in the tariff at the latest, otherwise it cannot be placed online on time. SBB Digital Advertising accepts no liability for errors in the transmission of advertising formats.

## **13. Faults, errors, defects/warranty/liability.**

SBB Digital Advertising shall strive to reproduce the advertising material to the highest possible customary technical standard and shall endeavour to correct faults, errors or defects as quickly as possible. The advertiser is aware that, due to the current state of technology, the systems may not be available at all times and material may not always be reproduced without errors. SBB Digital Advertising cannot guarantee system availability or the absence of errors, defects or faults. If an order cannot be carried out due to reasons for which SBB Digital Advertising is not responsible, the customer has no right to compensation. SBB Digital Advertising does not accept any liability except in cases of gross negligence or intent. Where liability is accepted, it is limited to direct damages and at most to refunding the sum paid by the advertiser for the advertising order in question, or to granting a corresponding sum of credit for placing advertising material.

In particular, no liability is accepted if defects are insignificant, i.e. do not significantly affect either the meaning or the advertising impact of the material; are caused by faults in the communication network (e.g. line failure or power outage); are

caused by the use of inappropriate software/hardware by the reader (e.g. browser); or are the result of a computer or software fault due to a system failure or a power outage at the premises of a third party or SBB Digital Advertising. If a failure is caused by the advertising server and continues for a significant period of time (more than 10% of the ordered time) in the case of a firm time-limited order, SBB Digital Advertising shall endeavour to provide the outstanding media service at a later date, or to extend the advertising period if this is in the interests of the advertiser. If the failure of the advertising server has no effect on the number of advertising impressions, i.e. the target is still reached, then no additional service or extension will be provided. If it is not possible to provide the outstanding media service within the time that was originally booked for advertising or to extend the advertising period then the advertiser is no longer obliged to pay for the media service which was not provided during the specified period or the average value of the service which was not provided. In this case, no further claims may be made by the advertiser.

In particular, no liability can be accepted for advertising material which is not presented perfectly as a result of inadequate or inappropriate publication templates (grid too fine, lines too narrow, script too small, etc.) or because of discrepancies caused by technical aspects of the publication process (e.g. variations in colour). The same applies to advertising material that has been the subject of a quality complaint from SBB Digital Advertising and which, in spite of this, was not replaced by fault-free material.

The new German orthography is used. Reports (e.g. e-newsletters) edited by SBB Digital Advertising are published in accordance with the new guidelines unless the customer expressly wishes otherwise. SBB Digital Advertising accepts no responsibility for translation which arise when submissions are made in another language.

The contracts between customers and SBB Digital Advertising are dependent upon the licensing regulations applicable to SBB Digital Advertising. If an order cannot therefore be carried out, or can only be carried out in part, SBB Digital Advertising shall only invoice for the completed parts of the order, but it is not obliged to pay any damages or expenses. If the use of an advertisement is made completely impossible for SBB Digital Advertising, then the contract relating to it shall be cancelled without compensation.

#### **14. Data protection**

SBB Digital Advertising and the contracting party shall process the end client's personal data in compliance with the Swiss Data Protection Act and – where applicable – with the Swiss Telecommunications Act.

The contracting party shall take appropriate measures to ensure the technical security of the end client's data.

The contracting party is hereby informed that the personal data provided in connection with using SBB Digital Advertising's services, and in particular the data provided when the order is placed and processed, will only be stored in machine-readable form, processed and used for the purposes for which the data were given to SBB Digital Advertising, unless consent has been given for them to be used in another way, as well as for the purpose of invoicing and payment.

SBB Digital Advertising is entitled to collect, process, store and use the contracting party's personal data insofar as far as is required for the contracting party to implement its advertising campaign and use SBB Digital Advertising's services and for payment to be settled. SBB Digital Advertising is further entitled to access these data in order to maintain normal operations. SBB Digital Advertising shall guarantee that these data are handled confidentially.

For its part, SBB Digital Advertising undertakes to use the data that comes to its attention in connection with the contract for the purposes of these GTC alone in accordance with general data protection regulations, unless otherwise agreed, and to protect data secrecy and commit its staff to do the same, to the extent required by law.

In order to determine the extent to which the offer is in the interests of the contracting party and can be improved, general, non-personal data, in particular statistics, about the use of SBB Digital Advertising's online services shall be recorded.

#### **15. Notification of defects.**

The advertiser must check the advertising material as soon as it is first published online and report any defects immediately. The period for notification of defects begins, in the case of obvious defects, when the advertising material is published online

and must be reported immediately. If the advertiser fails to report defects immediately, then the order is regarded as having been fulfilled satisfactorily. Any complaints about invoicing must be made within 10 days of the date of invoice.

#### **16. Charges.**

The cost of advertising is calculated on the basis of a tariff. Where measurements are made, for example of "advertising impressions", SBB Digital Advertising's measurements and counter readings are decisive.

#### **17. Prices, discounts and payment conditions.**

Prices are subject to change. All prices quoted exclude VAT. Unless otherwise agreed, invoices must be paid net within 30 days. Any unauthorised deductions will be reclaimed. SBB Digital Advertising reserves the right to request payment as soon as the order is placed.

- Discounts are given in accordance with the tariff.
- In the event of contractual obligations not being fulfilled or being fulfilled late by the customer, SBB Digital Advertising may terminate the contract after an unsuccessful reminder and request the payment of further damages in addition to the invoice amount.
- In the event of late payment, a reminder fee of CHF 50 will be charged, plus 5% interest for late payment. Discounts and agents' commissions will no longer be paid in the event of prosecution, a moratorium or bankruptcy. Any agents' commissions already paid out will be reclaimed.
- SBB Digital Advertising reserves the right to carry out a credit check on advertisers at any time.

#### **18. Amendments to the GTC; tariff changes.**

SBB Digital Advertising is entitled to change these advertising conditions, the tariff and any other regulations at any time. Any amended advertising conditions, regulations and tariffs come into effect for all advertisers simultaneously and apply to advertising orders that have been agreed on but are not currently being processed. However, in the event of price changes, the advertiser has the right to withdraw from the contract within two weeks of receiving notification of the new prices. In such a case, he or she is only entitled to a refund for the media service which has not yet been provided at the time in question, and to the discount based on the media service that has been provided according to the discount scale. SBB Digital Advertising reserves the right to alter the advertising spaces that are made available for booking at any time, or to remove advertising spaces completely or partially from the offer. If advertising space which has already been booked is significantly altered or removed by SBB Digital Advertising during the intended advertising period, the advertiser will receive credit for the media service not yet provided when the new situation comes into force, and this can be used directly to book the amended or other advertising spaces on the same website.

#### **19. The advertisers' GTC.**

Any GTC used by the advertiser do not apply, even if the advertiser refers to his or her own GTC and SBB Digital Advertising fails to expressly object to or exclude the advertiser's GTC (in each case).

#### **20. Premature contract termination.**

If an advertising medium ceases to be made available during the duration of the contract, SBB Digital Advertising may withdraw from the contract with no obligation to pay compensation. Premature termination of the contract does not exempt the advertiser from paying for the advertising material that has been published. No subsequent discounts can be applied, but credit can be offered if a higher level of discount has been reached by the time the contract is terminated.

#### **21. Severability clause.**

Should individual provisions of these GTC prove to be invalid or unlawful, the validity of the remaining provisions will not be affected. In this case, the provision concerned will be replaced by a valid clause which reflects the commercial purpose of the invalid provision as closely as possible.

#### **22. Applicable law and place of jurisdiction.**

This contract is governed exclusively by Swiss law. The place of jurisdiction shall be Bern.

*January 2020 version*