

# General Purchasing Conditions of Quisma

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## 1. Basics

- 1.1 Quisma GmbH („QUISMA“) has its headquarter on Rosenheimer Strasse 145d in D-81671 Munich and is one of the leading agencies for performance marketing in Europe. QUISMA is a subsidiary of WPP plc.
- 1.2 These general purchasing conditions of QUISMA („GPT“) become a component of the contract concluded between QUISMA and the supplier, unless the contracting parties reach an agreement that differs from this.
- 1.3 The contract is concluded in written form, and for the effectiveness of all other declarations of intention the text form (in accordance with Section 126 b German Civil Code (BGB)) is sufficient, unless this GPT or the contract between the contracting parties stipulates the written form.

## 2. Conclusion of contract

- 2.1 The contract between QUISMA and the supplier becomes effective once a booking takes place that is signed by QUISMA and the supplier.
- 2.2 This booking must meet the following minimum requirements: Type and scope of the booked advertising surface space, remuneration, format and size of the advertising medium, as well as the beginning and the end of the booking period.
- 2.3 If there is any change in the supplier data stated at the time of contract conclusion, which must be indicated truthfully and completely, the supplier is obligated to correct the original data for QUISMA immediately.

## 3. General terms and conditions of delivery

- 3.1 The supplier will communicate the written technical requirements for the delivery of the advertising medium to QUISMA within 48 hours of contract conclusion. If these deviate from the contractually agreed upon technical requirements, then QUISMA has the right to terminate the contract with immediate effect.
- 3.2 QUISMA shall be obligated to make the data needed for distribution of the advertising medium available to the supplier electronically in a timely fashion (in particular the advertising medium and/or website tags and/or codings). The supplier shall examine the provided data and communicate to QUISMA immediately and in writing any problems which might prevent or impair distribution. QUISMA shall immediately remedy any problems that may occur, and it shall once again make the data available to the supplier. In the event of QUISMA not making available the data in time, and/or the data not being accepted as being in perfect condition by the supplier prior to the start of the booking period, the starting date of the booking period shall be postponed until the supplier has accepted the data being in perfect condition. The quantity to be delivered is reduced accordingly if necessary, in direct proportion to the shortening of the booking period. The supplier shall not be entitled to claim compensation due to any infringement of an obligation on the part of QUISMA.
- 3.3 The supplier shall be obligated to supply the data in the form made available by QUISMA and shall not permitted to make any changes to this.
- 3.4 QUISMA shall not be obligated to use the booked advertising space for the advertising medium of specific customers, and instead it shall be entitled to decide at its own discretion, i.e. QUISMA can decide which advertising medium is delivered to which customers. This shall also include the right of QUISMA to replace the originally agreed upon advertising medium during a current booking period with a new advertising medium. In this case, the supplier shall be obligated to examine the electronically provided data for the delivery of the new advertising medium, in accordance with 3.2, sentences 2 and 3, and to deliver the new advertising medium after it has been accepted as being in perfect condition.
- 3.5 The supplier shall be obligated to inform QUISMA immediately, if the booked advertising space changes in a way that would impair the delivery that is stipulated in the agreement. In this case, QUISMA shall be entitled to terminate the contract with immediate effect.
- 3.6. Unless otherwise agreed in the contract, the advertising medium shall be delivered with even distribution over the booked period per day, placement and format. With CPM single postings, the delivery of the advertising medium occurs with a ‚frequency cap‘ of three identical advertising media per user per booking period, unless otherwise agreed in the contract.
- 3.7 The supplier shall accept the latest version of the WPP Code of Business Conduct for Suppliers, which can be viewed on the homepage of QUISMA.

## 4. Placement of the advertising medium

- 4.1 With the placement of the advertising medium with Rich Media functionality (according to the applicable definition of IAB Europe), the special conditions of the contract must be upheld.
- 4.2 The advertising medium must not appear on web pages or in close proximity to contents that
  - glorifies violence, is blasphemous, racist or sexist,
  - may be classified as harmful to minors,
  - contain or glorify radical political ideas,
  - involve gambling,
  - are sexual or pornographic in nature (unless the sexual nature of the contents serves the purpose of education or information),

- communicate prohibited and/or illegal contents, or
- depict other scandalous, tasteless or inappropriate topics.

This shall also apply if pages with the aforementioned contents are in the immediate proximity of the advertising medium, i.e. it must not be possible with a single click to access such prohibited content from within the advertising medium.

- 4.3 The advertising medium must not be placed on pages that make a direct or indirect reference to illegal infringements of intellectual property.
- 4.4 The advertising medium must not be placed on pages that are on on the QUISMA blacklist, provided that this blacklist is a component of the contract.
- 4.5 The advertising medium must not be placed on pages with chat rooms of any kind or on pages with user-generated content, unless the contract states otherwise.
- 4.6 The advertising medium must only appear on pages that were already a part of the SUPPLIER's portfolio at the time of conclusion of the contract. Delivery of the advertising medium must take place ,above the fold'.
- 4.7. A maximum of 10% of the agreed upon distribution quantity may be placed on community pages (with the exception of the pages specified in 4.5) and/or gaming pages (whereby the games on these pages are not permitted to involve gambling), unless the contract states otherwise.
- 4.8. As a general rule, the delivery of the advertising medium via so-called ,forced clicks' is prohibited.
- 4.9 QUISMA shall be entitled to block the delivery of advertising media that have been placed, or are to be placed, in violation of 4.2 through 4.8, acting either alone or with the help of software-related third parties (e.g. Adsafes), as well as to bill the supplier for the costs involved.
- 4.10 In the event of an infringement of terms or conditions stipulated in the booking and/or of a violation of 4.1 through 4.8, QUISMA shall not be obligated to pay remuneration for the advertising medium that is affected. This also applies if the delivery of said advertising medium was justifiably blocked in accordance with 4.9. Furthermore, the supplier shall be obligated to remedy any such violation of contract and/or to eliminate the violation of 4.1 to 4.8 within 3 hours of receiving notification to this effect from QUISMA. In the case of any violation of 4.2 through 4.8, as well as of 5.1 and 5.2, the supplier shall be obligated to pay a contractual penalty, regardless of whether directly to blame or not, with said penalty payment amounting to 15% of the contractually agreed remuneration amount. The defence of continuation of offence shall be excluded. Moreover, QUISMA shall be entitled to terminate the contract with immediate effect in the event of a violation of 4.2 through 4.8. This shall not affect any other claims that QUISMA may have in connection with the violation of 4.2 through 4.8.

## 5. Tags and data

- 5.1 The supplier shall ensure that the advertising spaces permit the inclusion of all types of tags, e.g. Rich Media tags or other Ad Serving tags. The supplier shall be obligated to set appropriate tags on the contractual advertising spaces with which the URL of the advertising space can be accessed. QUISMA shall be entitled to use these URLs in order to examine, or to have a third party examine on its behalf, the contractually stipulated delivery, and in particular to ensure due compliance with the terms and conditions of 4.2. through 4.8. or - with the agreement of the supplier - to classify data in accordance with 5.3. The use of IP targeting requires the separate written agreement, without which no remuneration shall be forthcoming.
- 5.2 The supplier shall be required to desist from any change to, or abuse of, these tags. Abuse shall also be defined as the setting of tags on advertising spaces that were not part of the portfolio at the time of conclusion of the contract. The supplier shall also be obligated to ensure that cookies are also set with tags. These cookies must at least be able to identify which advertising medium on which advertising space was viewed and/or clicked onto. The tags and cookies must be removed immediately by the supplier after the contract has ended.
- 5.3 If contractually agreed, QUISMA shall be entitled to record data beyond the extent specified in 5.1. The extent of the additional data to be recorded, e.g. age and/or gender of the user, must be precisely specified in writing.
- 5.4 QUISMA shall be entitled to store and use all data permissibly recorded in the context of this contract, insofar as this is permitted by data protection legislation. QUISMA shall never record and save personal data. QUISMA shall be entitled to continue making use of data that is recorded within the context of the contract, even after the contract has ended. In particular, this right of continued use shall also extend to
  - 5.4.1 the compilation of collective statistics, metrics and general trend data aimed at improving and optimising campaigns,
  - 5.4.2 the use of said data for the purposes of marketing, promotion and analysis,
  - 5.4.3 the use of said data in an anonymous database for determining trends, analysis and media planning purposes, and
  - 5.4.4 for the preparation of advertising distributions to optimised target groups.
- 5.5 The supplier shall ensure that it fully complies with all applicable data protection legislation, and it shall prevent QUISMA from obtaining any access to personal data.

## 6. Reporting and monitoring

- 6.1 A comparison shall be made between the documented service provided by the supplier through the Adserver and the relevant data on the QUISMA platform. The supplier shall be provided the login details for the QUISMA platform upon request.
- 6.2 A variance of up to 5% between the data disclosed by the supplier, via ad impressions and clicks, and the data on the QUISMA platform shall have no effect on the calculation of remuneration. In the event of variance that exceeds 5%, the supplier and QUISMA shall immediately undertake a serious effort to identify and remedy the cause of this fault during the term of this contract.
- 6.3 Delivered surplus amounts shall not be refunded. In the case of delivery shortfalls, the values generated from the QUISMA

platform shall apply.

- 6.4 In the case of technically more elaborate advertising media (e.g. Layer Ads, Superstitials), the contact service from both parties shall be examined continuously during the term of contact, in order to be able to intervene in the case of variances in excess of 5% between the total counted by QUISMA and that counted by the supplier.

## **7. Terms of payment**

The contractually agreed upon remuneration is due 30 days after receipt of a written invoice at QUISMA. The invoice may only be issued after the expiration date of the contractually agreed upon delivery period. The supplier shall grant a 2% prompt payment discount on all payments received within 14 days after receipt of written invoice.

## **8. Liability, indemnity, contractual penalty**

- 8.1 The supplier guarantees having these rights in full throughout the term of this contract, and to be able to assign these rights to the required level to QUISMA, without thereby infringing upon the rights of any third party. The supplier guarantees that he holds the intellectual property rights under the law on copyright and other commercial property rights for the contractually agreed advertising spaces, and that he is fully entitled to the publication and assignment to third parties for the purpose of publication of content associated with the delivery of this contract to the required extent and scope. The supplier guarantees that the contractual advertising spaces and their use by QUISMA, as well as the links to further pages, does not violate any applicable legislation.
- 8.2 In the event of an infringement of his contractual obligations, the supplier shall be obligated to compensate QUISMA for any losses resulting from this infraction, and to indemnify QUISMA for any and all claims made by third parties as a consequence of this infringement, and to reimburse in full all costs for any legal action involved. In the case of legal action being brought against QUISMA as a consequence of such a contractual infringement, the supplier shall join forces with its customer QUISMA to defend the action alongside and on behalf of QUISMA.
- 8.3 During the duration of this Agreement and for twelve (12) months thereafter, the supplier shall not, directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate QUISMA in order to entice its costumers and/or employees away. In every case of violation of before mentioned obligation, QUISMA is entitled to a contractual penalty regardless of any fault of the supplier in the amount of EUR 15,000.00. The supplier may not claim continuation of offence.

## **9. Force majeure**

In the event of a force majeure situation arising, e.g. war or civil unrest, natural disasters or fires, epidemics or quarantining, government action or similar circumstances, thereby preventing contractual obligations from being fulfilled on time or otherwise not fulfilled as stipulated, then the contracting party affected is indemnified in full against the impact of said force majeure situation on its ability to meet its contractual obligations. The contracting parties shall immediately inform each other of the outbreak of any force majeure situation.

The supplier shall be obligated, however, to make a serious effort to find alternative ways of satisfying its contractual obligations, and to do so within 5 days of the onset of a force majeure situation. If the supplier fails to do this, the QUISMA shall no longer be required to remunerate the supplier on a pro rata basis for the affected contractual shortcoming. Volume discounts may be considered, and these shall be calculated on the basis of what would normally otherwise have occurred, had there been no force majeure situation. If a force majeure situation lasts for longer than 5 days, both contract parties shall be entitled to terminate the contract without notice.

## **10. Term of contract, special rights to give notice**

- 10.1 The contract term depends on the contractual agreement.
- 10.2 QUISMA shall be entitled at any time to terminate the contract with a notice period of 24 hours prior to the commencement of delivery. If notice is served less than 24 hours before commencement of delivery, then QUISMA shall be obligated to make a proportionate level of remuneration, corresponding to the period that falls within 24 hours of receipt of termination and prior to commencement of delivery.
- 10.3 QUISMA shall be entitled at any time to terminate the contract with a notice period of 24 hours after commencement of distribution.
- 10.4 In the case of a termination of contract in accordance with 10.2 to 10.3, volume discounts shall not be adjusted to reflect the proportion of remuneration still owed by QUISMA.
- 10.5 QUISMA shall be entitled at all times to terminate the contract with immediate effect, if at any time the agreed distribution volume drops below the agreed level by more than 20%.
- 10.6 Both contracting parties shall be entitled to terminate the contract on compelling grounds and to do so without notice, i.e. immediately. A compelling ground that could entitle QUISMA to terminate the contract without notice is definitely deemed to exist, for example, if the behaviour of the supplier jeopardizes existing contractual relationships between QUISMA and its contract partners, if the supplier becomes insolvent, in particular in the case of insolvency or bankruptcy proceedings with regard to the assets of the supplier, or if an insolvency procedure is initiated due to a supplier lacking sufficient liquidity (inability to pay, refusal to pay or termination of business activity - for whichever ground - all of these being tantamount to bankruptcy), or if the supplier violates one or more of the key terms of the terms and conditions defined in this GTC document.
- 10.7 All forms of termination must be served in writing.

## 11. Consent for the use of business information sources

The supplier shall grant entitlement of QUISMA for the communication of details relating to contractually non-compliant behaviour on the part of the supplier to selected business information agencies (e.g. termination on grounds of failure to make payment, late-payment reminders issued against undisputed receivables, as well as compulsory enforcement measures taken as a result of a failure to make payment).

## 12. Non-disclosure and data protection

12.1 The contracting parties shall treat all contractual content as confidential, i.e. not to be disclosed to third parties, and to treat in the same way all information, documentation and data that are not in the public domain, i.e. ensuring that none of it becomes known to any third party or parties. Third parties are defined in this context as entities that are not affiliated in accordance with §§ 15 et seqq. of the Companies Act (AktG), as well as professional advisors of the contracting parties who are obligated to non-disclosure through agreement, professional ethics or law, and who are involved in the bringing about, monitoring or execution of this contract on behalf of one of the contracting parties. This applies in particular to chartered accountants (auditors), tax advisors, attorneys and management consultants. The contracting parties shall commit themselves to taking all appropriate measures, in order to fulfil the contractual terms of this non-disclosure requirement. This shall continue to apply for a period of two years after this contract has ended.

12.2 This obligation shall not apply in cases where

- 12.2.1 this contract or a contracting party expressly authorizes the other to disclose certain items of contractual information,
  - 12.2.2 information was already in the public domain at the time of disclosure, unless said disclosure relates to the release of address details,
  - 12.2.3 information that was independently compiled without use of the confidential information of the other contracting party,
  - 12.2.4 a contracting party, for legal reasons or due to official or judicial arrangements, is authorized to disclose information, or
  - 12.2.5 the perceived confidential nature is at variance with personal entitlements, if applicable.
- The contracting party that claims one of these exceptions also carries the burden of proof.

## 13. Advertising materials and press releases

The contracting parties shall both submit to the other party for prior approval all advertising, press and other publications that relate to or affect this contract, whereby the agreement or refusal is to be stated immediately in each case in writing. Texts authorized for publication by the other party may be used until that consent has been revoked, or until the time-limited consent period end.

## 14. Final provisions

- 14.1 This contract and its implementation are governed exclusively by German Law, under exclusion of the United Nations Convention on the International Sales of Goods from 11 April 1980.
- 14.2 The place of jurisdiction is Munich, to the extent that this is legally permissible.
- 14.3 Since the written form is stipulated for this contract, all agreements between the contracting parties must be made in writing in order to be effective. This also applies to amendments and additions, as well as to the waiver, of this clause requiring the written form.
- 14.4 The latest version of GPT terms and conditions shall apply at the time of the conclusion of the contract. Contradictory terms and conditions of business of the customer shall not apply. QUISMA reserves the right to amend its GPT at any time for future business transactions. In such cases, the intended change must be communicated to the supplier in writing. The changes are deemed to have been agreed upon, if the supplier does not raise an objection in writing. In the event of such an consequence, QUISMA shall be made aware with specific reference to the intended changes. Any such written objection must be received by QUISMA within six weeks of the notification of the amendments. If such an objection is raised, the contract remains in force without the proposed amendments. The right of the contracting parties to terminate this contract remains unaffected by this.
- 14.5 QUISMA shall be entitled to transfer all rights and obligations from this contract to an entity (i.e. an associated company) affiliated with QUISMA, as defined in §§ 15 ff. of the Companies Act (AktG).
- 14.6 The supplier shall only be able only counter claims from QUISMA with undisputed or legally valid stipulations. The supplier shall only be entitled to apply a right of lien over goods if the respective requirements are based on the same contractual relationship.
- 14.7 **Severability.** In the event of one or more terms of the contract between QUISMA and the supplier being or becoming ineffective, in whole or in part, this does not affect the contractually binding nature of the remaining clauses of this contract. In place of this ineffective or impracticable contractual term, the contracting parties shall agree upon a term that most closely approximates the legal and business purpose of the ineffective or impracticable term. In the event of a contractual loophole arising that cannot be closed through application of any of the remaining terms, it is agreed that such loopholes are then governed by the contractual term that, were the point to have been properly considered in the first place, most closely reflects the business interests of both contract parties.