



# ***GENERAL TERMS AND CONDITIONS FOR COMMERCIALS ORF-RADIO AND TELEVISION***

01.06.2020

## **GENERAL TERMS AND CONDITIONS FOR COMMERCIALS (01.06.2020)**

### **Radio and Television Advertising on Channels across Austria**

In accordance with the provisions of Austrian broadcasting legislation and the respectively valid version of the General Terms and Conditions (GTC) for Commercials, the Austrian Broadcasting Corporation (Österreichischer Rundfunk, ORF) executes corresponding advertising orders specific to radio and television channels across Austria. Separate General Terms and Conditions apply to radio advertising in programmes specific to federal states and regional television advertising.

#### **1. GENERAL**

- a)** Radio and television advertising, as set forth in the regulations of ORF legislation, is available for truthful advertisements of a commercial nature (commercial advertising) or for the provision of support to an object or concept (ideational advertising). Advertising may not be misleading and/or harm the interests of the consumer. In commercials, good taste and the statutory provisions relating to advertising, including predominantly, but not exhaustively, those within ORF legislation, those within legislation against unfair competition and those of media (criminal) law, must be observed.
- b)** Specific times are available for radio commercials on the channels Hitradio Ö3 and radio FM4, as well as on the television channels ORF 1, ORF 2 and ORF SPORT +.
- c)** The days that are statutorily advertisement-free in accordance with ORF legislation (currently: Good Friday, 1 November, 24 December) are to be observed. Furthermore, the ORF reserves the right to keep specific days commercial-free.
- d)** Ideational advertising on the part of public institutions is not broadcast during the six weeks prior to parliamentary elections, state elections, European Parliament elections and the election of the Federal President, nor before referendums, public opinion polls and petitions for a referendum. This restriction does not apply to advertisements affecting non-political issues. Public institutions include legal entities that are tasked with administrative duties in consequence of a legal mandate, the Austrian National Union of Students, statutory professional advocacy groups, the Austrian Federation of Trade Unions and the Austrian Industry Association.

#### **2. BOOKING PROCESS**

ORF advertising orders are accepted by ORF-Enterprise GmbH & Co KG (LP) on behalf of the ORF. The ORF makes time schedules or media schedules available to clients.

These form the basis of the ORF offers countersigned by the clients (as described in Item a) below) and are integral to the order.

- a)** Booking preferences communicated to the ORF are processed by the ORF immediately and submitted to the client in the form of an offer signed by an authorised signatory of the company. Depending upon availability, the offer may incorporate two types of booking options:
  - Fixed bookings:** If a booking preference is feasible at the time of the enquiry, it can proceed as a fixed booking.
  - Standby bookings:** If, at the time of enquiry, a booking preference is not feasible in a fixed capacity owing to insufficient capacities (block, hour or day), the booking preference may – without any further consultation – be converted into a fixed booking by the ORF at any time upon the corresponding capacities being released. The client shall be informed of such conversion immediately.

Upon confirmation (signed by an authorised signatory of the company) by the client, fixed or standby bookings become legally binding (order). Orders are accepted only from companies identified by name, with the trademark, the product or the service that is to be advertised being duly specified. In the event of disparity between the client of the ORF and the advertising customer (with whom the ORF, in such an instance, does not establish a contractual relationship), the advertising customer is to be announced to the ORF in the order. Even if the client is an advertising agency acting on behalf of an advertising customer (cf. Item 13), solely the advertising agency is the party with entitlement and obligation arising from the contractual relationship established between that party and the ORF. Statutory claims vis-à-vis the advertising customer, especially those pertaining to unjust enrichment, shall remain reserved by the ORF, particularly in the instance that the client, for whatsoever reason, fails to provide the consideration owed to the ORF by that party for the execution of the commercial.

- b)** All orders existing upon the opening of bookings shall be treated equally during commercial scheduling.
- c)** Acceptance of an order may be declined without providing substantiation. Even in the instance of orders that have been accepted in a legally binding manner, the ORF reserves the right to reject or discontinue broadcast of advertising owing to the advertisement's

origin, its content or its technical form. In such instances, the client shall be informed of the reasons for the rejection.

- d)** Orders for radio and television commercials shall be processed within one calendar year.
- e)** The ORF undertakes to ensure technically faultless broadcast of commercials. It assumes no liability of any kind for the reception quality.

### **3. RESTRICTIONS**

#### ***The following is/are excluded:***

- a)** Advertising that falls short of the perception threshold;
- b)** Advertising that offends human dignity or breaches the basic rights of others;
- c)** Advertising that incorporates discrimination against race or ethnic origin, gender, age, disability, religion or faith or nationality or sexual orientation;
- d)** Advertising with a religious or party-political content, as well as advertising that offends religious or political convictions;
- e)** Advertising that appeals to superstition;
- f)** Advertising that promotes modes of behaviour that jeopardise health or safety;
- g)** Advertising for alcoholic beverages, cigarettes or other tobacco products;
- h)** Advertising that plays down exposure to alcohol and possible consequences of alcohol consumption;
- i)** Advertising for prescription-only drugs and advertising for drugs and medicinal products that, while not subject to mandatory prescription, bear names that contain the same invented word or the same scientifically standard expression as the name of a prescription-only drug.
- j)** Advertising for therapeutic treatments and medicinal products that are only available upon medical prescription;
- k)** Advertising that promotes modes of behaviour that significantly jeopardise environmental conservation;
- l)** Advertising for products that cause violence to be played down, such as, in particular, war toys, whereby entertainment electronics and similar products are to be understood as belonging to this category;
- m)** Advertising that makes use of a “hook” that must remain the preserve of official broadcasting communications, reports on disasters and emergency calls for action (e.g. “We interrupt this programme/this advertisement”, use of traffic report identifiers, etc.);
- n)** Radio advertising that makes use of sirens, other sounds or tonal sequences (e.g. police siren, horns), each of which is apt to exert an adverse effect on attention – particularly of vehicle drivers;

- o)** Advertising in which staff or freelance personnel of the ORF participate, insofar as consent for such participation has not been explicitly provided by the ORF in advance;
- p)** Advertising in which persons appear, either visually or aurally, who routinely present news programmes and programmes on politics and current affairs, or who moderate other programmes in their capacity as programme planners and journalistic staff of the ORF. Any disclosure in respect of the legal reconcilability of the advertising activity of an ORF moderator on the part of the ORF or of ORF-Enterprise is effected in good faith and is gratis. Liability for such disclosure is, nevertheless, excluded;
- q)** Advertising in which active politicians appear either visually or aurally;
- r)** Teleshopping on television, i.e. broadcasts incorporating direct offers to the public for the sale of goods or the provision of services, including those pertaining to immovable objects, rights and obligations for a monetary consideration. A direct offer to the public is constituted, for example, by specification of a telephone number by means of which an order process can be directly initiated or a service directly availed of;
- s)** Wedding announcements, advertisements pertaining to private money lending;
- t)** Radio advertising that is intermittently (for more than one second) absolutely silent and television advertising that intermittently (for more than three seconds) displays a black screen and, at the same time, is not underpinned by a clearly perceptible, structured sound (this applies in particular to the beginning and end of a commercial);
- u)** Advertising that promotes illegal practices;
- v)** Advertising that misleads and that harms the interests of consumers;
- w)** Advertising that offends decency, particularly under given external circumstances;
- x)** Advertising that impinges upon editorial independence;
- y)** Advertising that is impermissible in consequence of statutory provisions, regulations or codes of practice of specific professional groups or in consequence of a judicial or official order.

### **3. OTHER RESTRICTIONS**

- a)** Advertising for remedies (advertising for non-prescription drugs) and advertising for non-prescription medicinal products: this is possible only in accordance with the corresponding statutory provisions (e.g. Pharmaceuticals Act, Medicinal Products Act) and the

regulations imposed by the Federal Minister for Health. Any regulatory approvals relating to the admission of advertising copy are to be appended to the orders or booking schedules. Advertising for non-prescription drugs, medicinal products and therapeutic treatments that are available without a medical prescription must be honest, truthful and verifiable. It must not harm people. When devising these radio and television commercials, advertising by means of the following is prohibited:

- I.** Expert reports, testimonials, scientific or specialist publications;
- II.** Information claiming that the remedy (product) is medically or clinically recommended or tested;
- III.** Accounts of medical history;
- IV.** Graphic representation of bodily changes referencing illness and the involvement of a drug by comparative representations of the physical condition before and after use;
- V.** Advertising messages that are apt to evoke or exploit feelings of fear.

Pursuant to Section 52 Paragraph 2 of the Pharmaceuticals Act, radio and television spots for non-prescription medicines must be supplemented by the message: “The patient information leaflet, physician or pharmacist will provide information on the effect and possible adverse effects”. The client must integrate this message according to the specifications published on the website of the ORF-Enterprise. This message is to be added to the spot duration and is subject to the same tariff regulations as the spot itself.

- b)** Furthermore, according to the Food Safety Act and Consumer Protection Act, when advertising a foodstuff, attributing properties to it that prevent, treat or cure a human illness is prohibited, as is allowing the impression of such properties to arise.
- c)** Pursuant to Article 72 of the Ordinance on Biocide Products, any advertisement for biocide products is to be supplemented by the following message: “Use biocide products with caution. Always read the label and the product information prior to use.” These sentences must be clearly distinguishable from the actual advertisement and must be clearly legible or audible. In the advertisement, the words “biocide products” in the prescribed sentences may be replaced by an unambiguous reference to the type of product advertised. When advertising biocide products, the product may not be represented in a manner that is misleading in terms of the risks of the products for the health of humans or animals or for the environment or its efficacy. Under no circumstances may advertising for

a biocide product contain the statements: “biocide product with low risk potential”, “non-toxic”, “harmless”, “natural”, “environmentally friendly”, “animal-friendly” or similar indications. This message is to be added to the spot duration and is subject to the same tariff regulations as the spot itself.

- d)** Statutory provisions (e.g. gambling legislation, the Austrian Banking Act, the Capital Market Act, the Austrian Investment Fund Act, etc.) and codes of practice of specific professional groups provide for special conditions for and restrictions on the advertising of specific products or services. It is the responsibility of the client (cf. Item 7 a, h) to inform the ORF in a timely manner whether or under which conditions or with which restrictions a product or a service may be advertised on the radio and the television and whether/ which hazard warnings, safety advice or similar must therefore be published with it. Such a message is to be added to the spot duration and is subject to the same tariff regulations as the spot itself.
- e)** Alcohol advertising: any alcohol advertising relating to children, young people or vehicle drivers is prohibited. In alcohol advertising, any non-product-related textual and visual reasoning is excluded. The advertising message is required to confine itself to the recommendation of a particular product or a particular group of products. Furthermore, advertising for alcoholic beverages is admissible only in compliance with the following criteria:
  - I.** It may not be specifically orientated towards minors and promote the excessive consumption of such beverages;
  - II.** In particular, it may not depict minors consuming alcohol;
  - III.** No link may be established between an improvement in physical performance and alcohol consumption or driving vehicles and alcohol consumption;
  - IV.** The impression must not be created that alcohol consumption promotes social success or sexual prowess;
  - V.** The advertising may not suggest that alcohol exerts a therapeutic, stimulating, calming or conflict-resolving effect;
  - VI.** Abstinence or moderation in relation to the consumption of alcoholic beverages may not be presented in a negative manner;
  - VII.** The alcohol content of beverages may not be highlighted as a positive characteristic;
  - VIII.** There must be no instruction in respect of consuming alcoholic beverages, e.g. “Drink ...”. Advertising for mixed beverages containing spirits may

- be booked for activation of a television slot only after prime time (7.25 p.m. onwards);
- f)** Minors in advertising messages: Advertising may cause neither physical nor psychological damage to minors and is thus required to satisfy the following requirements in particular for their protection:
- I.** It may not make any direct appeals to minors to buy or rent goods or services that exploit their lack of experience or credulity;
  - II.** It may not directly instruct minors to prompt their parents or third parties to buy the goods or the service advertised;
  - III.** It may not exploit the special trust that minors repose in parents, teachers and other confidants;
  - IV.** It may not show minors in dangerous situations without justified cause;
  - V.** The broadcast of advertising aiming at minors under guardianship is prohibited immediately before and after children's programmes. In all further respects, the international codes of conduct for advertising practice shall apply analogously to the planning of such advertising spots.
- g)** Advertising for intimate, personal articles is subject to separate approval by the ORF.
- h)** Advertising whose form, content or message references programmes or programme elements of the ORF or other broadcasters is subject to the approval of the ORF.
- i)** The ORF reserves the right to refrain from broadcasting advertising initiatives that are contested by the Austrian Advertising Council (including immediately halting an advertising campaign that is already in progress). For this reason, it may both decline acceptance of an advertising order and withdraw from orders that have been accepted in a legally binding manner.
- j)** The ORF reserves the right to broadcast advertisements only later in the day rather than in its programme setting and at its programme time owing to its content.
- k)** When planning advertisements, the acoustics and/or visuals of the medium in which the advertisement in question is to be broadcast are to be taken into account. Above all, the zeitgeist of the respective medium must also be taken into consideration. Advertising carried out in foreign languages is subject to agreement with the ORF.
- l)** Furthermore, the provisions of the code of conduct of "inappropriate audio-visual commercial communication for children's programmes" of Austrian broadcasters shall apply in its respectively valid version.
- m)** The Foundation Board may stipulate further restrictions on content.

## 5. TECHNICAL REQUIREMENTS

### a) Radio

#### I. Spot duration

Spots are usually of a duration of 20 seconds or more. For spots with a duration of less than 20 seconds, but excluding those with a duration of 5, 10 or 15 seconds, agreement must be reached with the ORF. For technical reasons, spots that are less than 5 seconds long may on no account be accepted. Only spots with a duration of minimum 20 and maximum 30 seconds may be booked as standalone spots.

#### II. Broadcast material

Email submission via the homepage of ORF-Enterprise (enterprise.ORF.at) or directly to radiospot@orf.at in the file format mp2, mp3 or wav (256 kbit, 48 kHz, -9db). For error-free identification, spot sheets that are completed in full must be submitted in conjunction with the broadcast material. For submission timelines, see Item 6.

### b) Television

#### I. Spot duration

Spots are usually of a duration of 15 seconds or more. For spots with a duration of less than 15 seconds, but excluding those with a duration of 5 or 10 seconds, agreement must be reached with the ORF. For technical reasons, spots that are less than 5 seconds long may on no account be accepted.

#### II. Broadcast material

##### i. Submission via spot upload

#### Image and sound-bearing media in HD format:

Container: MXF OP1A

Codec: XDCAM HD 422 according to SMPTE RDD-09 / 1920x1080 / 25i (50i) / 50 Mbit

Audio: 8 AES audio tracks / with one audio channel, respectively / 24-bit, EBU norm R128

The spot commences with the first image (upperfield first). For error-free identification, spot sheets that are completed in full must be submitted in conjunction with the broadcast material. For submission timelines, see Item 6.

## 6. TIMELINES

There must be three working days (Monday to Friday) between the date of booking and the date of broadcast. The broadcast-ready image and/or sound-bearing media are to be made available to the ORF for review at least two working days prior to first broadcast, together with the corresponding documents (completed spot sheet and booking activation plan). Shorter periods are possible in special instances. These shall be subject to a separate agreement. The booking activation schedules (broadcast

date approx. mid-month for the following month) made available by the ORF should be received by the ORF promptly and, in any case, no later than by the 25th of the current month, specifying the relevant information. Spots for which no spot sheet is provided will be returned to the client or deleted if they have been made available to ORF-Enterprise by way of a spot upload. The legal consequences of withdrawal on the part of the client shall come into effect (see Item 10).

## **7. CONTENT AND EXECUTION**

- a)** The client shall bear sole responsibility for the content and legal admissibility of the commercials, and that party declares that it indemnifies the ORF and holds it harmless vis-à-vis all claims relating to the commercial in question and asserted against the ORF; this includes, in particular, the acquisition of any consent to production and broadcast relating to copyright, performance protection rights and privacy rights, including all ancillary rights that may be required for each of the latter. The client shall grant the ORF rights of use specific to each programme and online offering of the ORF that are unlimited in terms of content and time and that are geographically limited to the territory of Austria and emanating from Austria. In particular, the ORF shall be entitled to broadcast the commercial using any technical method (e.g. also as a live stream), to make it available, to distribute it and present it to the public, and to use it in any other manner. The client takes note of the fact that the programmes of the ORF are also further broadcast abroad.
- b)** For commercials that use voices which evoke associations with specific, publicly known persons or characters, a confirmatory, written declaration in respect of the identity of the speaker vis-à-vis the publicly known person must be produced. If the identity of the speaker vis-à-vis the impersonated person is not provided, written proof must be submitted showing that the impersonated person is in agreement with the imitation or use of their voice for advertising purposes. Similarly, specific to other visual or aural impersonations, written proof must be produced of the agreement of the impersonated person or the person embodying the character represented.
- c)** The ORF is not obligated to the client to check the legal admissibility of the content of the commercials. The ORF reserves the right to review image and sound-bearing media submitted for usability and admissibility. If a copy is unusable or if broadcast cannot be effected for other reasons, the ORF shall notify the client, stating the reasons (also see Item 2 c).
- d)** The client shall bear responsibility for the commercials commissioned by that party being compliant, especially in terms of their content, design and participants, with regulations that these participants must observe vis-à-vis sports associations or other associations and institutions, the ÖOC or IOC or similar institutions. No obligation of review, nor any liability, shall be incumbent upon the ORF in this regard.
- e)** The client shall be required to bear the production costs incurred, including the settlement of all copyright, performance rights and privacy rights.
- f)** ORF commercials may be advertised in other advertising media only if explicit verbal reference is made to the fact that the respective broadcast is being or has been effected in the ORF's television advertising or radio advertising functions. Formulations such as: "The Austrian Broadcasting Corporation (ORF) presents" or "This evening on the Austrian Broadcasting Corporation (ORF)" are not permitted.
- g)** Image and sound-bearing media for radio and television that are older than 12 months (from the first broadcast) are deleted from the archive of the ORF at the risk of the client. In the instance of renewed activation, the ORF is to be provided with the spot once more, along with documents (see item 6), by the client.
- h)** The client shall be obligated to declare to the ORF any advertising that is subject to specific identification or referential obligations (cf. Item 4 a, c, d, Item 7 i, j), specifying this as such on the spot sheet or on the order confirmation.
- i)** Insofar as the client is subject to Section 3a of the Media Cooperation and Media Promotion Transparency Act (MedKF-TG) or the resultant directives, the ORF shall broadcast this accordingly in the commissioned advertising spot by means of the words "activation of ... against payment" or "paid advertisement of", duly appending the name of the organ of the legal entity in question or a logo clearly identifying that party. The client is required to integrate an identifier. The client shall bear sole responsibility for obligations of disclosure and content-specific requirements of the MedKF-TG and shall be required to indemnify the ORF and hold it harmless against all claims that might be asserted against the ORF in relation to the activation in question.
- j)** Advertising spots longer than 90 seconds in duration are to be continuously identified by means of an insert stating "advertisement". This also applies to commercials broadcast directly one after the other, which generate the impression of contiguous spots. The identifier, uniform in terms of lettering and size, is

to appear on the upper edge of the screen, either in the right or the left half of the screen. The respectively valid version of the corresponding details is retrievable on the homepage of ORF-Enterprise at [enterprise.ORF.at](http://enterprise.ORF.at).

#### **8. TELEVISION ADVERTISING FOR PRINT PERIODICALS**

- a) General considerations: television advertising for print periodicals may refer to the title (name of the printed publication) and the field of interest, but not to the content thereof. If the request of the media proprietors of these printed publications in the television programmes of the ORF exceeds the statutorily stipulated maximum broadcast time (currently two minutes per calendar week), an aliquot allocation in accordance with the number and type of requested print titles shall be effected. The allocation of broadcast times and tariffs is to be effected vis-à-vis all media proprietors of these printed publications on the same, rather than discriminating, terms. The spot duration is stipulated to be a maximum of ten seconds.
- b) Timelines: booking preferences must be furnished on the homepage of ORF-Enterprise at [enterprise.ORF.at](http://enterprise.ORF.at) no later than by the dates published.
- c) Advertising prices of printed publications: specific current advertising prices for printed periodicals are retrievable at [enterprise.ORF.at](http://enterprise.ORF.at). Item 12 shall apply analogously.

#### **9. MODIFICATION OR CANCELLATION OF THE ORDER ON THE PART OF THE ORF**

- a) The ORF is obligated to observe the broadcast times agreed with the client in relation to the acceptance of the advertising order, except in instances of force majeure, an operational exigency or on occasions of particular topicality that make a modification of the planned programme an inevitable necessity for the reason stated. In such instances, the commercials are to be subsequently made good by mutual agreement, or the amount paid for the omitted broadcast is to be credited, inclusive of advertising tax and value added tax, or, in substantiated, exceptional cases, refunded. Further claims, particularly claims for compensation for damages, are excluded.
- b) Furthermore, the ORF reserves the option to withdraw from orders in the instance of other programme changes or deferrals. This right of withdrawal shall apply to those commercials whose planned broadcast time is encompassed within or directly (15 minutes) before or after the period of the changed or deferred programme section. In such instances, the ORF shall provide written notification of its withdrawal prior to

the planned broadcast date. The ORF shall endeavour to make proposals to those clients affected by omission of a commercial owing to programme change or deferment in respect of any commercials planned during this period. In the instance of withdrawal owing to programme changes or deferment, amounts already paid, inclusive of advertising tax and value added tax, shall be credited or, in substantiated, exceptional cases, refunded. Further claims, particularly claims for compensation for damages, are excluded.

#### **10. MODIFICATIONS OR WITHDRAWAL ON THE PART OF THE CLIENT**

Modifications may be effected to the order and the booking activation plan no later than two working days (editorial deadline: 9.00 a.m.) prior to the date of the planned broadcast. Subsequent modifications cannot be taken into account for production-specific reasons. Withdrawal from an order or from a part thereof on the part of the client may be effected, without incurring a cancellation fee, no later than four weeks prior to the broadcast date. If (complete or partial) withdrawal is effected at a later point in time, the client shall be required to pay a cancellation fee equating to the following amount: within four weeks prior to the broadcast date 10%, within three weeks prior to the broadcast date 30%, within two weeks prior to the broadcast date 50%, within one week prior to the broadcast date 100%. The basis for the calculation of the cancellation fee is the corresponding advertising price (i.e. without deducting discounts = gross order total) plus value added tax in the amount statutorily prescribed.

#### **11. LIABILITY**

- a) The client shall be obligated to check the broadcast of the spots and to lodge complaints within two months of the broadcast. Claims arising from subsequent complaints, in particular those arising from warranty, compensation for damages, further default or an aliud performance, are excluded. Furthermore, liability on the part of the ORF is excluded, other than in instances of intent.
- b) In the event that a commercial breaches statutory provisions, regulations or codes of practice of specific professional groups or a judicial or official order, the client shall be required to indemnify the ORF and hold that party harmless against all claims of third parties, costs, expenses, outlay, fines, asset-specific disadvantages, etc. asserted against the ORF arising from or in connection with the commercial in question, whether they be of a civil, administrative or criminal nature.

## **12. ADVERTISING PRICES**

The most current advertising prices excluding advertising tax and value added tax as statutorily prescribed – which are to be added thereto pursuant to Item 14 – are each announced specific to radio and television. For ongoing orders, too, the new advertising price shall become applicable upon coming into effect. In this instance, the client is accorded the option of withdrawal, pursuant to Item 10, for advertising blocks whose prices have been raised, without, in this instance, incurring cancellation fees. In terms of tariffs, the respectively valid version of all advertising prices and surcharges is published on the homepage of ORF-Enterprise, retrievable at [enterprise.ORF.at](http://enterprise.ORF.at).

## **13. DISCOUNTS**

The ORF shall award discounts in accordance with the respectively valid tariff for advertising orders that are placed within one calendar year specific to radio (programming across Austria and across a specific state) or television.

### **a) Television**

Discounts for television are granted in the form of spots and allowances. Discounts in the form of allowances are to be understood as such that these allowances are not rendered for settlement, i.e. the value of the allowances thus corresponds to the discount. Allocation to spots and allowances, as well as their deployment, is the responsibility of ORF-Enterprise acting on behalf of the ORF.

The entire discount available to the advertising customer is yielded by the amount of that party's sales volume, booked so as to be binding, for the calendar year in question at the end of that calendar year. The planned sales volume for the calendar year in question must be notified by ORF-Enterprise no later than on the occasion of the first booking and, thereafter, also in the event of modifications during the year (= registration of sales), so that the discount provisionally available for the calendar year can be taken into account on an ongoing basis (= campaign-parallel aliquot specific to the sales volume booked in during the month of entitlement). In the instance that such registration of sales is in abeyance, the discount granted is that which is derived from the annual sales volume, booked so as to be binding at the current time (whereby only fixed bookings are taken into account). Discounts that are not availed of during the month of entitlement at the request of the advertising customer shall lapse. In the event that, at the end of any given month of entitlement, over-fulfilment should be evinced on the part of the

ORF, ORF-Enterprise shall offset these in one of the succeeding months. In the event that a higher entitlement to discount should be yielded during the calendar year, this shall be granted after receipt of the corresponding registration of sales. In the event that a lower entitlement to discount should be yielded during the calendar year, after receipt of the corresponding registration of sales, further discounts shall continue to be suspended until such time as the discount already fulfilled is in keeping with the actual entitlement. If, as of 31.12. of any given calendar year, over-fulfilment of discount is evinced on the part of the ORF, offsetting shall be effected in the form of a subsequent charge. All discounts that are not availed of within the calendar year in question shall lapse and shall not be carried forward to the following year.

### **b) Radio**

In the event that the volume discount available to the advertising customer is notified in writing to ORF-Enterprise in a timely manner (by the 20<sup>th</sup> of any given month) for purposes of settlement, this will already be taken into account from the next month onwards. Volume discounts that are not announced can only be taken into account on a quarterly basis. Determination of the volume discount actually available to the advertising customer, as well as the corresponding settlement (credit of subsequent charge) shall be effected as of 31.12. of the calendar month in question.

### **c) Group discount for television**

In the instance of corporate shareholding of individual advertising customers\* among one another, discounts are granted on the basis of the provisions of Item 13 a and on the following pre-conditions: for a group discount to be granted, only the order totals of those advertising customers (parent companies, subsidiaries, sub-subsidiaries, etc.) are aggregated in which the parent company has a shareholding of at least 51% – such calculation originating from a shared parent company – irrespective of whether the percentage of the shareholding is, as a whole, calculated on the basis of direct or indirect shareholding. One and the same company may only be advantaged within the parameters of a group discount, i.e. only within the parameters of a specific corporate association. The definitive corporate shareholding ratios are to be demonstrated by the individual advertising customers in communications signed by an authorised signatory of the company and directed to ORF-Enterprise, duly appending corresponding written evidence. The group discount is granted for all sales activated after receipt



of the evidence by ORF-Enterprise. Changes within the corporate shareholding ratios are to be announced to ORF-Enterprise immediately. Group discounts that are unlawfully availed of shall be payable and shall be invoiced.

#### **d) Group discount for radio**

Based upon the provisions of Item 13 b, for a group discount to be granted, only the order totals of those advertising customers\* (parent companies, subsidiaries, sub-subsidiaries, etc.) are to be aggregated in which the parent company has a shareholding of at least 51% – such calculation originating from a shared parent company – irrespective of whether the percentage of the shareholding is, as a whole, calculated on the basis of direct or indirect shareholding. One and the same company may only be advantaged within the parameters of a group discount, i.e. only within the parameters of a specific corporate association.

The definitive corporate shareholding ratios are to be demonstrated by the individual advertising customers in communications signed by an authorised signatory of the company and directed to ORF- Enterprise, duly appending corresponding written evidence, no later than by 31 December of the respective calendar year. If such evidence is produced by 30 June (postmark date) of the respective calendar year, the group discount shall be granted with retrospective effect specific to the date of group creation, and in any case no later than by 1 January of the respective calendar year, otherwise only after 1 January of the following year. Changes within the corporate shareholding ratios are to be announced to ORF-Enterprise immediately. Group discounts that are unlawfully availed of shall be payable and shall be invoiced.

\* These shall be deemed to be only providers of products or services on behalf of which advertising orders are placed on the radio and television or that place such orders (on their own behalf), but not the advertising intermediaries acting in their capacity as counterparts to the ORF.

#### **e) Intermediary discount (agency commission)**

Intermediary discounts are granted to commercially authorised advertising intermediaries\* on the condition that the latter use such discounts to cover their costs. If this is not the case (e.g. if a portion of the discount is passed on to the advertising customer), the ORF reserves the right to reduce the intermediary discount accordingly. The basis for calculation of the intermediary discount is the advertising price reduced by any discounts.

\* Evidence is to be produced by way of submission of the trade licence no later than upon the first booking.

## **14. DUTIES AND TAXES**

All taxes and other duties incurred upon conclusion and execution of the advertising order are to be paid by the client. In particular, advertising tax and value added tax as statutorily prescribed are to be borne by the client and are to be paid to the ORF along with the advertising price. The ORF is, nevertheless, entitled to collect advertising tax or value added tax from the client prior to transfer thereof to the tax authorities. Once repaid by the ORF, any advertising tax or value added tax subsequently prescribed in tax notices is to be rendered in account to the ORF against subsequent settlement (cf. Item 15). Value added tax is to be added, in particular, to all considerations (advertising prices, reimbursement for outlay and costs, advertising taxes, etc.) to be effected to the ORF; it is payable at the same time. Equally, any ancillary claims in respect of the advertising tax or value added tax are to be reimbursed to the ORF irrespective of the reason for their accrual. Insofar as the ORF, in its capacity as the legal debtor of the advertising tax or value added tax, shall initiate administrative proceedings or proceedings before public courts of law or European bodies (of the Council of Europe or of the EU) on behalf of the client, it shall be entitled to invoice the outlay it incurs thereby, inclusive of any interest, to the client on a pro rata basis (calculated on the basis of the ratio of the order values, deducting discounts of the clients in question) after the outlay has been determined. The above regulations of this Item and other provisions of these General Terms and Conditions for Commercials relating to advertising tax or value added tax shall apply, analogously, to the advertising tax or value added tax of comparable duties that are levied in the area of coverage outside Austria. Insofar as a shift, declaration and transfer of the advertising tax is effected consistent with the decree issued by the Federal Ministry of Finance respective to the execution of the Advertising Tax Act 2000, such a procedure shall not bring about any (conclusive) change to the provisions of the General Terms and Conditions for Commercials in this regard. The client confirms that he is an entrepreneur as set out in the Austrian Value Added Tax Act (UStG), has his tax domicile at the address specified in the order and operates his enterprise there. Furthermore, in the event that his tax domicile is located abroad, he confirms that the services are to be attributed to him at the domicile provided and that he does not have a permanent business establishment in Austria. The client agrees to provide, upon demand, a confirmation that he is an entrepreneur within the meaning of öUStG. Upon initiating business relations for the first time with a contractual partner of an EU member state, the latter shall provide evidence of his UID number to the ORF

by submitting a copy of the valid UID notice. In the event that the party's value added tax status and the UID number should change, the contractual partner shall inform the ORF thereof immediately. For all taxes and duties that the client is required to pay by way of self-assessment ("self-assessment taxes"), incurred by way of the conclusion and execution of the advertising order, the client undertakes to keep suitable evidence ready of the transfer of the self-assessment tax and to submit it to the ORF upon request. In the event that the client shall be required to pay the taxes and duties by way of self-assessment, that party shall indemnify the ORF and hold that party harmless in the instance of liability of the ORF in respect of these self-assessment taxes. Indemnification shall also include the costs of suitable legal defence and ancillary fees.

#### **15. PAYMENT (due date, default of payment)**

The advertising price, inclusive of advertising tax and value added tax, is payable after invoicing has been effected, and no later than with a payment timeline of 21 days from the invoice date (reaching the account of the ORF specified in the invoice). Settlement is effected on a monthly basis in accordance with the commercials broadcast. With regard to advertising tax or value added tax, including ancillary claims, prescribed by way of a tax notice, it shall be deemed covenanted, irrespective of any rendering to account pursuant to Item 14, that the claim for compensation of the ORF asserted against the client shall arise only in the instance of legal validity of the tax notice (this being the most recent tax notice in the instance of annulment effected by a public court of law).

When an order is placed to new customers/agencies, as well as in the instance of existing or anticipated payment difficulties, the ORF may demand payments prior to fulfilment of the order. In the event that the advance payment is not effected on time (up to ten days before the first broadcast), the order shall be deemed to be cancelled. In addition to the legal consequences of Item 10, the client shall, under all circumstances, be obligated to reimburse the ORF for any resultant loss of earnings. New customers/agencies are to be understood as clients who have not effected any bookings in the radio and television channels across Austria in the past 36 months.

In the instance of delayed payment, default interest shall be charged in accordance with the statutory amount. In the instance of default of payment or unpunctual payment, the ORF shall be entitled to halt the broadcast of all further commercials (advertising spots) and to withdraw from the order. The client shall not be entitled to offset the claims of

the ORF with its own claims (exclusion of compensation), unless the latter have been recognised beforehand by the ORF in writing or have been judicially established. Any reminder fees shall be borne by the client. The provisions of Items 10 and 14 shall apply vis-à-vis the above only in a subsidiary capacity.

#### **16. ORF AWARDS**

Spots that are broadcast on ORF television or on ORF radio for the first time during the assessment period are eligible for participation. The assessment period is redefined annually and can be found in the currently valid participation conditions (published under [enterprise.ORF.at/awards](http://enterprise.ORF.at/awards)).

#### **17. FINAL PROVISIONS**

The place of performance is Vienna. Austrian law shall be applicable.

The place of jurisdiction is covenanted as being the respective competent court with commercial jurisdiction in Vienna.

The client (advertising agency or advertising customer) shall be required to indemnify and hold the ORF harmless vis-à-vis all claims of third parties relating to an order placed in accordance with these General Terms and Conditions. This shall also include the costs of legal defence. In the event that individual provisions should be or should become ineffective or impracticable, this shall not impact the validity of the remaining provisions of these General Terms and Conditions. Ineffective or impracticable provisions shall be replaced by new provisions that satisfy the regulation contained in the ineffective or impracticable provision in a legally admissible manner. The same shall apply to lacunae in regulations. The ORF and the client undertake to work towards eliminating the lacuna in a manner that most closely approximates what they would have stipulated in keeping with the spirit and purpose of the contractual order if the point had been considered. Amendments or supplements to a contract awarded shall be required to be drawn up in writing in order to assume validity. No oral ancillary agreements have been made.

The Terms and Conditions governing commercials shall remain valid until their revocation by the ORF. The client shall, in any case, recognise their validity by facilitating the ORF's execution of the commercial, above all itself catering to the advance outlay stipulated in Items 5 and 7. The ORF reserves the right to modify these General Terms and Conditions at any time. In the instance of such an amendment, the General Terms and Conditions valid at the

time of individual broadcast shall be definitive, even for orders that have been placed at the time of the amendment but not (completely) processed. In case of doubt the general terms and conditions in the german version shall prevail.

***You can retrieve the respectively valid version of the GTC at any time on the homepage of ORF-Enterprise at [enterprise.ORF.at](http://enterprise.ORF.at).***