



## **General Terms and Conditions of Business**

### *§ 1 General Terms*

1. Subject matter of the following conditions are contracts between YOC AG, hereafter known as "yoc" and its contractual partners, hereafter known as "customers", for the delivery of devices, programs, data and other goods (hereafter known as "products"), as well as for rendering services, (hereafter known as "services"). yoc may also supply these services or products through a third party.
2. These general terms and conditions also apply for the parties' future business as well as for the customer's usage of future yoc services.
3. These general terms and conditions apply exclusively for all transmission orders. The customer's contrary or differing conditions do not apply unless yoc acknowledges their validity in writing.
4. Changes in these general terms and conditions become effective 14 days after announcing them to the customer, unless the customer contradicts the respective changes within the said 14 days. In this case, yoc has the right to cancel.

### *§ 2 Subject matter of the contract*

1. yoc offers its registered users (hereafter known as "users") - via mobile phone and in Internet at the address <http://www.yoc.de>, services and information which are sent by E-mail to the user or by SMS or MMS to his mobile phone.
2. Furthermore, yoc offers its customers applications in the field of mobile marketing and mobile commerce (sales processing, customer binding etc).

### *§ 3 Scope of services*

1. yoc can only transmit advertisements when the customer provides yoc with error-free and correct advertising contents in the appropriate advertising format. In individual cases, yoc has the right - not however the obligation, to re-format the content without guaranteeing the quality of the conversion. Further, yoc must receive the advertising content at least 3 days before the planned transmission. yoc sends the commercials to the users registered with yoc or its co-operation partners. For this, yoc allows the specification of available target groups in order to make the advertisement more effective. All statements regarding coverage are estimates, which we do not guarantee. A transmission will only be made to customers who have declared their agreement to receiving advertisements. yoc can only guarantee the correct transmission of the advertisement, not the actual arrival at the user in Internet or in the mobile network.
2. Furthermore yoc receives the addressed users' responses from the mobile networks for its customers. yoc carries out the data collection and reporting. yoc has the right of possession for this data, as long as nothing else has been contractually agreed.
3. Further particulars can arise as a result of the product description or the order confirmation.

### *§ 4 Conclusion of contract*

The contract between the customer and yoc comes about with yoc's confirmation in writing of the transmission order, even when the placement of the advertising transmission has not yet been laid down.

Under no circumstances can we guarantee customers the exclusion of competing business. The placement is carried out in agreement with the customer, or otherwise at yoc's discretion, taking the utmost consideration of the customer's wishes. The "terms for order processing" are an integral part of the contract.

### *§ 5 Purchase contract/Retention of title*

1. The products remain the property of yoc until fully paid for. If the customer resells the subject matter of the contract before paying in full, he assigns yoc all receivables owed by the third party until all outstanding debts have been paid. yoc accepts this assignation. The customer has the right to collect the assigned receivables. The preceding authority for reselling and for the collection of receivables only applies within correct business relations and not in the case of an existing prohibition against assignment between the customer and the third party.
2. Pledging, transfers by way of security, reselling in the form of sale-and-lease-back and other arrangements made by the customer are not permitted, as long as the retention of title is in force.
3. If the customer processes the subject matter of the contract further, yoc gains possession of the resulting item. In the case of combination, mixing or processing of items from several parties, each having retention of title, yoc gains possession of the resulting item proportional to its part of the total value.
4. The customer is obliged to take good care of goods under retention of title. In particular, he is obliged to insure them at his own cost, against damage, theft and destruction, adequately at replacement value. The orderer already assigns all contractual insurance rights to yoc. yoc accepts this assignment. In addition, yoc has the right to demand to see proof of insurance.



5. The customer is obliged to inform yoc immediately and in writing, in the event of seizures or other interventions by third parties, in order that yoc can commence third-party proceedings. If the third party is unable to reimburse yoc the out-of-court costs of the third-party proceedings, the orderer is liable for yoc's incurred losses.

#### *§ 6 Agency orders*

Orders from advertising agencies, media agencies or multimedia agencies will only be accepted for specifically named and precisely identified advertisers. Advertising or media agencies must ensure suitable authorisation and provide evidence of this. yoc will grant an "AE" commission for the above mentioned agencies.

#### *§ 7 The customer's responsibilities*

1. The customer is liable to yoc for the correctness of the content delivered by him as well as for the legality of the requested advertising actions. The customer explicitly guarantees, that the delivered contents do not violate any existing German laws, in particular that they do not glorify violence, are not pornographic and that the contents do not infringe on the rights of any third parties.

2. The customer grants yoc world wide usage rights for the supplied content and especially for the data in terms of § 17, within the scope of the co-operation, where necessary in order to carry out the ordered services or goods.

This includes, in particular, online access and transfer rights, transmission rights, copying and usage rights and archiving and database rights including all digital and analogue transfer and call up techniques, especially using cable, wireless, and satellite. This is carried out using all known protocols and languages and connecting to all receiving devices in particular PC, mobile phone, pocket PC, car radios, computer networks and other end devices of any kind. On conclusion of the co-operation, yoc will leave the usage of the provided content to the customer and return, or demonstrably destroy, any delivered material.

3. The customer guarantees that he is authorised to grant the allowed rights, in particular copyright and achievement rights. The contract partner guarantees, furthermore, that personal rights or other third party rights will not be infringed by evaluating the contents according to the contract.

4. The customer exempts yoc from third party claims, arising in connection with the evaluation of the contents, in accordance with the contract, or through non-compliance with the customer's obligations according to numeral 1. Recoverable costs also include reasonable costs for a legal prosecution and legal defence, arising through yoc's enforcement of the assigned rights as agreed, or through the avoidance of third party claims. However, yoc will inform the customer immediately regarding the proposed legal measures and give the customer the chance to take proceedings himself against the third party or parties.

5. The customer is responsible himself for his own services and goods which he offers. Therefore, numeral 4 applies to all claims made against yoc by users, arising from the use of the customer's own services or goods.

#### *§ 8 Transmission documents and transmission material*

If advertisements cannot be sent or are incorrectly sent, because the customer delivered the documents, texts or transmission copies late, faulty or incorrectly identified, yoc will invoice the agreed amount. In this case the customer has no right to claim for compensation. The customer carries the risks concerning the delivery of transmission documents and material and must make adequate backups.

#### *§ 9 Composite advertising*

Composite advertising must be explicitly agreed in writing. yoc has the right to apply a composite surcharge.

#### *§ 10 Consignment of samples*

Samples will generally be delivered from yoc's or its logistic partner's headquarters or warehouse. All consignments, including any possible return consignments, take place on the customer's account and at his own risk, unless otherwise agreed in writing. The customer bears the risks as soon as the goods leave yoc's or its logistic partner's warehouse. If the customer wishes, yoc will insure the goods against transportation damages for the customer's benefit and at his own costs. The customer must inform yoc and the deliverer immediately in writing in the event of transportation damages. The customer acknowledges this with the placement of the order. yoc must be informed in writing about special methods of consignment, their types and the insurable values, in advance, at the latest, however, at the time of ordering. The customer bears the consignment costs, unless otherwise stated in the price list valid at that time or in the respective offer.

#### *§ 11 Relationship to the vendor*

yoc has no influence on inquiries and orders for the advertised products. Customers who buy the products on account of the transmitted commercial are customers of the respective product vendor. The vendor's general terms and conditions of business apply.

#### *§ 12 Refusal of transmission requests*

yoc reserves the right to view and to check the advertisement before accepting the request for transmission. yoc is, however, not obliged to



do this. For this reason, yoc reserves the right to refuse the transmission, even when previously accepted, for moral or other similar reasons, in particular when it is suspected that the advertisement may be illegal. The customer has the right to be informed in writing of the reasons for such a refusal. If the commercial is transmitted in spite of having been at first rejected, the originally agreed payment obligation applies. yoc explicitly reserves the right to claim compensation in the case of a refusal for legal reasons.

#### *§ 13 Prices and price changes*

1. yoc has the right to raise prices provided that the contract is entered into for an indefinite time. The changes become effective, if yoc does not receive a contradiction within 4 weeks of the customer receiving an appropriate notification of change. In the notification of change, yoc will inform the customer about the time limit for such a contradiction and the consequences of refraining from doing so. The price changes are, however, only effective for agreed and confirmed transmission orders when yoc announces the changes at least one month before the commercial is transmitted. If prices are raised, the customer has the right to cancel. The customer must make use of this cancellation right within 5 working days of receiving the notification.

2. Discounts and other price reductions must be separately agreed by contract.

3. All prices conform to the price list valid at that time and are exclusive of VAT.

#### *§ 14 Terms of payment*

Invoicing takes place after order confirmation for the respective campaign. Payments are due immediately ex invoice without deduction of discount.

#### *§ 15 Withdrawal/Cancellation*

The transmission contract is accepted and becomes binding upon confirmation according to § 3. However, in individual cases and on its own discretion, yoc can grant the customer the right to withdraw, up to 1 week before the first transmission of the commercial. In all cases, an application to withdraw must be sent in writing to yoc. The withdrawal is only effective if and once yoc has explicitly agreed to it in writing. The customer bears any incurred cancellation costs.

A cancellation of the order is only possible up to 24 hours before the agreed transmission. In this case, yoc retains a claim for payment, deducting saved expenditures verifiable by yoc.

#### *§ 16 Liability*

1. yoc is unconditionally liable for intentional and gross negligence.

2. yoc is conditionally liable for simple negligence to the amount of typical and foreseeable damages, as far as essential contractual obligations (cardinal obligations) have been infringed.

3. Liability for indirect and unforeseeable financial losses as well as consequential financial losses caused by defects and lost profits, is excluded by the liability for financial losses, in the case of simple negligence,

4. yoc's liability for financial losses in the case of simple negligence is restricted to the amount of the respective basic price.

5. Liability for compensation over and above the liability provided for in these general terms and conditions is excluded, irrespective of the legal nature of the asserted claim.

6. If yoc's liability is excluded or restricted, this applies equally for the personal liability of its staff, employees, representatives and vicarious agents.

7. The liability restrictions or -exclusions according to numerals 1 to 6 do not apply for statutory liability regardless of negligence or fault, in particular arising from guarantees or product liability laws, as well as for injuries to life, body or health.

8. The customer's claims against yoc, its vicarious agents and/or legal representatives, for faulty service expire one year after their accrual and knowledge or as the case may be gross negligent or deliberate ignorance, of the circumstances justifying the claim. This does not apply to tort law relevant claims, as well as claims resting upon deliberate action on the part of yoc, its vicarious agents and/or legal representatives.

#### *§ 17 Data hosting*

1. yoc offers its customers data hosting and communication services for their members/user profiles (yoc\_Retention). For this purpose, the customer transmits his user data to yoc.

yoc performs as a service provider, who sends messages by SMS/MMS (or E-mail) according to the customers' wishes and specifications. Numeral 7 also applies for the customer's data and contents, which are transmitted for the purpose of data hosting.



2. Customer data used for the transmission of messages is exclusively used by the contracting partner, for the purpose of carrying out the services agreed in the contract.

3. Data managed by yoc for the customer remains the customer's property. It is not permitted to pass data on to third parties or to use it in other ways, unless the customer allows this explicitly and in writing.

4. yoc endeavours to market the messages which are to be sent. The customer may name preferences for sponsoring partners for his messages or, as the case may be, may exclude particular sponsoring partners, when this has been previously laid down in writing.

#### *§ 18 Data protection*

1. yoc points out, that according to § 33 BDSG (German Data Protection Act), data with personal relevance may be electronically stored for the purpose of fulfilling the contract. yoc points out further that the data may be passed on to third parties involved with the registration, for the purpose of fulfilling the contract and may be made public, to the extent necessary, in order to identify a domain's owner. This publication may also be carried out in publicly accessible so-called whois-databases.

2. yoc has the right to use and process users' data, generated by yoc, on behalf of the customer, as long as this is necessary in order to advise the customer, for advertising and market research for its own purposes and to enable yoc to structure its services according to need.

3. yoc points out explicitly to the customer, that data protection for data transmission in public networks such as Internet can not be comprehensively guaranteed, with the present state of technology. The customer is aware that the provider is technically able to view the pages stored on a web server at any time and possibly also the customer data stored there. Other Internet participants are also, possibly, technically able to encroach upon the network's security and to control message traffic. The customer takes the full responsibility for the security of the data he transmits and/or stores on web servers.

#### *§ 19 Miscellaneous*

Changes or additions to the contract including supplementary agreements and including changes in this clause must be laid down in writing. The exclusive court of jurisdiction and place of execution is Berlin. German law applies; excluding the UN sales law (CISG) from 11 April 1998. If one or several of the clauses become ineffective, the remaining conditions remain in effect.

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