

General Terms and Conditions of crossvertise GmbH

As of: 16 March 2020

1. Scope of application

1. crossvertise GmbH (hereinafter “crossvertise”) operates an online booking platform for advertising media (hereinafter “platform”), through which advertisers (hereinafter “customers”) can book advertising campaigns.
2. The following General Terms and Conditions (hereinafter “GTC”) shall apply to all services of crossvertise GmbH.
3. Terms and conditions of the customers or users shall have no validity, even if crossvertise does not object in individual cases, unless their inclusion has been explicitly confirmed by crossvertise in writing.

2. Registration via the platform, receipt of declarations, granting of rights

1. Only entrepreneurs or companies within the meaning of Section 14 BGB [German Civil Code], who are fully legally competent, shall be entitled to use and book.
2. The use of the platform is in general open to the public, however, certain functions will require prior registration. The user shall not be entitled to registration. crossvertise may refuse to confirm the registration without giving reasons.
3. When registering on the platform and (subsequently) using it, the user shall be obliged to provide correct, up-to-date, and complete information, and to keep its information always up to date.
4. If the user has indicated that it is an agency, crossvertise shall be entitled to demand a suitable proof (e.g. copy of the extract from the trade register).
5. Within the scope of registration, a user account will be created for the user. The user account will be personalized. When registering, the user shall therefore select a username and an authentication method (e.g. a password) (hereinafter “access data”), and the user shall have to provide the information which is required for the use of the platform and the processing of payment transactions.
6. The user is aware that it may receive legal declarations (e.g. offers or acceptances, references to changes of the GTC, etc.), as well as invoices via email. These are deemed to have been received if, under normal circumstances, they are available in the user's mailbox on the platform (i.e. in its user account), or in the email inbox that the user has specified and/or entered in its user account within the framework of the use.
7. The following shall apply, regardless of whether users make bookings via the platform, or outside of the platform: Users grant crossvertise - only for the purpose of self-advertising (online or offline) - a non-exclusive, sublicensable right of use with regard to the trademarks, logos, and company names which are used by the users. Users guarantee that they are entitled to grant such a right of use.

3. General obligations of users when using the platform

1. The registered user shall be fully responsible for all activities which are carried out via its user account. Access data may not be passed on to unauthorized third parties.
2. Users must set up their systems and programs in such a way that neither the security, integrity, nor availability of the systems which crossvertise uses to provide the platform and the associated services will be compromised. crossvertise shall be entitled to take necessary measures (e.g. block the right of access) which are necessary to ensure the integrity of the systems used.
3. crossvertise shall be entitled to permanently block the access of users to the platform and their user account and, if necessary, to terminate this user agreement and the bookings if they use the platform for purposes other than those intended, or if they use the platform bypassing the processes provided for on the platform (for example to directly conclude contracts with each other for the procurement of advertising media/space).

4. Legal relationships, conclusion of contracts and services

1. Customers may use the platform to book advertising spaces. crossvertise sometimes procures these from third parties (hereinafter “publishers”). crossvertise shall be the exclusive contractual partner of the customers and publishers. There shall be no contract conclusion between the customers and the publishers. The procurement of advertising space for the customer by crossvertise shall take place by way of a real contract for the benefit of third parties within the meaning of Section 328 subsection (1) BGB [German Civil Code], which crossvertise concludes with the publishers in favour of the customer as a third party within the meaning of Section 328 subsection (1) BGB [German Civil Code]. The customer thus receives an own right vis-à-vis the publishers to demand the contractual service (placement of the advertising and corresponding provision of the advertising medium). crossvertise shall only owe the customer the conclusion of such a contract, but not the placement of the advertising and the corresponding provision of the advertising spaces. The customer shall acquire corresponding claims directly vis-à-vis the publishers.
2. Insofar as expected prices for certain advertising spaces are communicated, these are calculated by crossvertise on the basis of the information provided by the publishers and/or other parameters (e.g. currently available supply and demand, technical costs, discounts, commissions, payment costs, remuneration of crossvertise). Such prices shall be non-binding indicators which support customers with regard to the preparation of enquiries.
3. A contract between crossvertise and the customer shall be concluded as follows:
 - The customer can make a binding offer to conclude a contract (hereinafter “booking”) by assembling a shopping cart on the platform and booking it. Alternatively, the customer can (for example via the shopping cart, a contact form, telephone, or other means) also make a request to crossvertise for an advertising space. The customer can then make a binding booking for the proposal received.
 - Such a booking is directed at the obligation of crossvertise to conclude a contract with a publisher for the benefit of the customer according to the agreed offer conditions. Bookings are not revocable, and shall have a validity of ten working days from submission. Working days within the meaning of these GTC shall be all weekdays with the exception of (i) Saturdays and

Sundays, as well as (ii) all public holidays in the states of the Federal Republic of Germany. At the end of this period of ten working days, the booking shall forfeit if it has not previously been accepted by crossvertise. Upon acceptance of the booking by crossvertise, the customer shall, at the agreed due date, be obliged to pay crossvertise the fees specified in the booking for (i) the advertising placement and (ii) the conclusion of an agreement-based contract with publishers for the benefit of the customer. If “service against prepayment” has been agreed, the service shall only be provided after the receipt of the payment. The due date of remunerations shall be governed by Section 13.

- After the customer has submitted the booking, the customer will receive an email (confirmation of receipt), which contains the receipt of the booking, as well as its details. This confirmation shall not constitute an acceptance of the booking by crossvertise. The acceptance shall only take place by a corresponding booking confirmation, which crossvertise sends via email to the email address provided by the customer in the context of the booking.
4. crossvertise shall reserve the right to reject requests or offers in the form of bookings without giving reasons, in particular if it is foreseeable that the execution of the contract would violate the rights of third parties or applicable law. In this case, crossvertise will inform the user of the rejection via email.

5. Services

1. After completion of a specific booking, crossvertise shall be obliged towards the customer to place the customer's advertising. In return, the customer shall owe the fee that was agreed in the booking.
2. After completing a booking, the customer shall be obliged to observe any technical conditions which are communicated by crossvertise before the completion of the booking. The conditions that are relevant to the customer for the respective booking will be sent to the customer via email (or can be accessed by the customer on the platform).
3. Unless explicitly agreed, crossvertise shall not make any qualitative or quantitative assurances or statements to customers regarding the advertising space to be procured, on the advertising value, or on the amount a publisher is paid for a particular advertising space. Through its entries, the customer shall decide on its own responsibility, on which advertising media the advertising shall be booked. An exclusion of competing companies in the allocation of advertising space shall not be promised.
4. The parties may agree that crossvertise will, in addition to the services described in the above-mentioned Sections, also provide additional fee-based services. Such services shall in particular include media planning, media strategy, media purchasing, and media processing. Corresponding details shall result from the respective individual agreement.
5. When booking outdoor advertising, the special provisions for outdoor advertising shall apply in addition to the present GTC. The special provisions are available at <https://www.crossvertise.com/rechtliches/besondere-bestimmungen-zur-aussenwerbung>.
6. Insofar as this results from the contract or in particular from an individual agreement, the customer shall be obliged to cooperate in the case of booking of creation and

production services (for example: design of motif templates, creation of print templates, research and licensing of the required image and text material, conception of radio commercials, selection of the speaker and of the music for radio commercials, coordination and preparation for printing, creation of advertising media, or creation of radio commercials). In particular, the customer shall be obliged to provide the necessary advertising material (for example: advertising statements) on time. If changes are requested by the customer in the course of the provision of the creation and production services, and if these changes have not already been regulated at the time of the conclusion of the contract, crossvertise shall be entitled, after consultation with the customer, to invoice these changes in addition based on the hourly rate which is valid at the time of the change request. crossvertise shall be entitled to any and all rights with regard to the results of the creation and production services.

At its sole discretion, crossvertise shall be authorized to use third-party companies for the provision of the creation and production services, which are respectively known to the customer at the time of the conclusion of the contract. Crossvertise shall be the only contractual partner of the customer. There will be no contract conclusion between the customer and such third-party companies.

Insofar as the service is based on a contract for work and services, the acceptance of the contractual service shall take place when the results are delivered by crossvertise. crossvertise and the third-party company which may be commissioned with the provision of the creation and production services shall be entitled to partial delivery. The customer may not refuse the acceptance due to insignificant defects. Any aesthetic reasons (“displeasure”) shall not be considered a defect, unless the work has not been produced in accordance with the contractual agreements. The customer shall have the right to express its concerns within the scope of the agreed correction rounds before the finalization of the work. The commissioning of crossvertise with the execution of the campaign, which is based on the results of the creation and production services, shall be considered an acceptance.

6. Responsibility for and requirements with regard to contents

1. The customer shall be obliged to attach the advertising content, i.e. motifs to be advertised (hereinafter “advertising material”) to the booking, or to send the advertising material to crossvertise up to a date which is specified by crossvertise in the context of the conclusion of the contract, the so-called “copy deadline”. In case of violations of the above-mentioned obligation, it may happen that the advertising material is rejected by publishers for violation of the publisher's requirements for advertising material, and thus no advertising will be made in this regard. In the event of a faulty breach of the above-mentioned obligation, the full individual contractually agreed fee shall nevertheless be due for payment to crossvertise, unless the customer is able to prove that no damage has occurred at all, or that the damage is actually much lower.
2. crossvertise shall only take over the procurement of advertising space, and shall not be responsible for contents of the users, particularly not for advertising material of the customers, or for contents of the publishers in the vicinity of the advertising space. crossvertise will not adopt the contents as its own.
3. crossvertise shall not be obliged to check the contents mentioned in the Sections 6.1 and 6.2, however, it shall be entitled to do this at its own discretion.

4. The customer shall be obliged not to upload, link, enter, or otherwise provide any advertising material on the platform for the use in the context of bookings that
 - if it is intended for the use in the field of editorial reporting, does not clearly indicate the advertising character (e.g. by marking it as “advertisement” or “advertising”);
 - does not observe the basic rules for commercial communication of the “Deutscher Werberat” [German Advertising Council];
 - violates the “Jugendschutzrecht” [German Youth Protection Law];
 - has violence-glorifying, war-glorifying, hate-speech, or inhuman contents;
 - contains characteristics of unconstitutional organizations;
 - violates the rights of third parties; or
 - is otherwise illegalor refers to advertising material of such content.
5. In the event of a breach of this obligation by the customer, crossvertise shall be entitled to withdraw from the contract, and to assert the incurred expenses.

7. Responsibility of the customer, release from liability

1. The customers shall be completely responsible for the advertising material that they use (both technical and with regard to the contents), as well as for the timely delivery of the advertising material to the notified place in compliance with the notified requirements.
2. The customer warrants that advertising material provided by it on the platform or otherwise for the purpose of use in connection with contracts according to the Sections 4 and 5, as well as the advertised contents, do not violate applicable law in the intended area of distribution of the advertising and the Federal Republic of Germany, and that it is allowed to freely dispose of all rights to the advertising materials, in particular property rights and/or personal rights, insofar as this is necessary for the placement of the advertising material.
3. If claims are asserted against crossvertise in connection with the execution of contracts which were concluded with or for the benefit of the customer because of the actual or alleged violation of rights of third parties, or because of other violations of applicable law, which are attributable to the contractual use of the advertising material which is provided by the customer (hereinafter “third-party claims”), crossvertise and the customer will inform each other immediately, and will coordinate the defence of third-party claims in close coordination, whereas the customer shall take the lead. If the customer fails to provide appropriate instructions within a reasonable period of time, crossvertise will treat the asserted third-party claims at its reasonable discretion.
4. If crossvertise incurs costs and/or damages in connection with the defence or other handling of third-party claims (including the legally stipulated costs for legal prosecution or defence), the customer will indemnify crossvertise against such costs and damages. If crossvertise incurs costs and/or damages (including the legally stipulated costs for legal prosecution or defence) as a result of a settlement concluded by crossvertise, which must first be agreed and jointly resolved between

crossvertise and the customer, the customer will indemnify crossvertise correspondingly.

8. Deviations with regard to the provision of services, complaints, and restrictions in case of specific forms of advertising, limitation

1. Unless specifically regulated in the present GTC, the customer acknowledges that insignificant and minor deviations in print quality, colour reproduction, adhesive edge tolerance, and absence of bubbles with regard to the poster application are product-imminent, and cannot be completely avoided due to the transmission of the information which is contained in the advertisement between different media. In addition, the customer acknowledges that certain media are exposed to weather conditions which are beyond the control of crossvertise and the publisher. Claims of the customer in the event of weather-related damages do not exist, unless it has explicitly and in writing determined that the respective medium withstands the present weather conditions, or that it is intended for the use under certain weather conditions. Section 14 of the present GTC shall apply in case of damages and defects that can be traced back to behaviour which can be attributed to crossvertise or the publishers.
2. The customer shall be obliged to check the execution of the respectively ordered service (e.g. publication of an advertisement). Complaints in the event of recognizably non-contractual execution of the service must immediately be reported to crossvertise, stating the specific location, the time of the determination of the complaint, and must be accompanied by suitable evidence (photographs).
3. If the execution of the booked service does not correspond to the contractually agreed service, and if there is not only an insignificant or minor deviation within the meaning of Section 8.1, the customer shall be entitled to the legal rights.
4. Unless otherwise agreed in the present GTC, claims for defects of the customer due to a defect of the advertising material which consists in a right in rem of a third party, on the basis of which the surrender of the advertising material can be demanded, or in another right which can be entered into the land register, shall become time-barred within three years after their creation, unless shorter statutory limitation periods exist. Other claims due to a contractual breach of duty by crossvertise shall become time-barred after one year from the start date of the statutory limitation period. Claims in connection with the injury to life, body, or health, claims for other damages which are based on an intentional or grossly negligent breach of duty by crossvertise, its legal representatives, or vicarious agents, as well as claims for fraudulent concealment of a defect or a guarantee shall become time-barred according to the statutory provisions.

9. Granting of rights, transmission of data, publication in other media

1. With the provision of the advertising material for the use in connection with bookings, the customer grants crossvertise and the publisher - for the duration of the agreed advertising placement - the non-exclusive and spatially unlimited right to use the advertising material in the individually agreed manner for advertising placements.

2. crossvertise and the publisher shall be entitled to transmit information on the customer's advertising turnover to Nielsen Media Research or similar companies for publication.
3. crossvertise shall be entitled, but not obliged, to also publish advertising orders, that were placed within the scope of the bookings, in other media. The materials that are provided by the customer can in this process be adapted to the respective media-specific requirements. The presentation in the additional media may differ from the publication result in the booked media. The customer does not incur any further costs due to this additional publication. If the customer does not want to receive additional publication, it shall be obliged to correspondingly inform crossvertise within the scope of the booking.

10. Availability of the platform

The use of the platform shall be free of charge. Accordingly, crossvertise does not guarantee the permanent availability of the platform.

11. Termination of the user contract; duration and termination of contracts according to Section 4 and 5

1. Each user shall be entitled to terminate the user agreement which was concluded by registering on the platform at any time and without giving reasons by deleting the respective user account, or by written termination. crossvertise may terminate the user relationship with a notice period of two weeks and without giving reasons.
2. crossvertise shall be entitled to terminate the user contract and/or contracts according to Sections 4 and 5 with immediate effect if the user or customer violates essential obligations under this user contract and/or under a contract in accordance with Sections 4 or 5, and does not provide a timely remedy despite a warning with a reasonable deadline. A warning is not required if it does not promise any success, or if the violation is so serious that crossvertise's adherence to the contract is not reasonable. The same shall apply if a user misuses the user account.
3. Already concluded contracts for bookings shall remain unaffected by a termination of the user contract, unless crossvertise has explicitly issued an effective termination in this regard.
4. The term of contracts according to Sections 4 and 5 and any corresponding ordinary termination rights is/are regulated in the respective contracts. The obligation to pay already incurred liabilities of a user towards crossvertise shall remain unaffected by a termination of the user contract.
5. The termination of contracts according to Sections 4 and 5 must be made in writing.

12. Credit check and data collection

1. crossvertise shall be entitled to process all business-relevant data of the customer in compliance with the EU General Data Protection Regulation and the "Bundesdatenschutzgesetz" [German Federal Data Protection Act], in particular with regard to the storage. crossvertise may request creditworthiness and company data of the customer from Creditsafe Deutschland GmbH and Echobot Media Technologies GmbH in order to carry out creditworthiness and credit checks if there is a legitimate interest. The customer will directly receive information on the stored data from

Creditsafe Deutschland GmbH (www.creditsafe.com), or from Echobot Media Technologies GmbH (www.echobot.de).

2. For all information in connection with the handling of the users' personal data, crossvertise refers to its separate privacy policy (www.crossvertise.com/rechtliches/datenschutz).

13. Remuneration, cancellation by the customer, termination by crossvertise

1. If not otherwise stated, invoice amounts will not include statutory value added tax, unless there is no statutory value added tax. crossvertise shall be entitled to assign receivables.
2. Contractually agreed fees shall be due at the time that is agreed in the respective contract. The customer agrees that - in the case of payment by credit card, direct debit, or PayPal - the card or account may be debited before the performance of the service by crossvertise or by a third party who is commissioned by crossvertise for processing.
3. The customer shall be entitled to different payment methods. The respectively possible payment methods will be displayed in the course of the booking procedure or will be communicated to the customer by crossvertise. Individual payment methods can be provided with a service surcharge. The customer will be informed about this surcharge before submitting its binding booking. For each payment method, the user shall be obliged to provide correct, up-to-date, and complete information when providing the payment data.
4. Under certain conditions (e.g. maximum gross order amount of EUR 20,000, company based in Germany, no overdue receivables), the customer can be offered to pay for the booked services by bank transfer only after conclusion of the contract and receipt of the invoice ("purchase on account"). In order to be able to make this offer, crossvertise cooperates with the financial service provider Billie GmbH. After a successful address and creditworthiness check by Billie GmbH within the scope of the booking process and subsequent making of the booking by the customer as well as the sending of a booking confirmation by crossvertise (i.e. after conclusion of the contract and complete provision of the service), crossvertise assigns the claim to Billie GmbH. The customer shall transfer the invoice amount to the account listed on the invoice within the payment period specified on the invoice. Further information on the processing of the Customer's personal data in connection with the performance of address and creditworthiness checks as well as payment processing by Billie GmbH can be found at: <https://www.billie.io/datenschutz/kar/>. For the rest, reference is made to the data protection declaration of crossvertise (cf. section 12.2 of these GTCs).
5. Any cash discounts, bonuses, and bundling discounts that are granted by publishers, shall solely be available to crossvertise. The customer shall not be entitled to the payment of such cash discounts, bonuses, and bundling discounts, or to a reduction of the agreed remuneration.
6. The customer shall be entitled to cancel certain bookings in writing until a date which is specified in the confirmation of the respective booking. The cancellation shall not require any justification. After the expiry of the respective cancellation period, a cancellation shall no longer be possible. In the event of a cancellation, the customer shall be obliged to pay crossvertise a flat-rate expense allowance of 15 %

of the net order value, unless the customer can prove that no damage has occurred at all, or that the damage is actually lower.

7. The business relationship between crossvertise and the respective publisher largely depends on the timely order and full payment of the advertising measure. In particular, any special conditions will depend on the proper execution of the previous orders. For this reason, the following shall apply: If the customer does not pay the agreed fees in full and until the due date, crossvertise shall be entitled to cancel the respective booking. In the event of such a termination, the customer shall be obliged to pay crossvertise an amount of 15 % of the net order value of the respective booking. Further legal rights of crossvertise shall remain unaffected. In case of compensation payments, the above payment will be counted towards the amount of the damages.
8. If fee-based services are provided by crossvertise, and if the booking which is based on these services is not commissioned by the customer, crossvertise shall be entitled to invoice the customer for the fee-based services carried out at the agreed hourly rate, unless otherwise agreed between crossvertise and the customer.

14. Liability of crossvertise, force majeure

1. crossvertise shall be liable without limitation
 - in case of intent or gross negligence,
 - for injury to life, limb, or health,
 - as well as to the extent of a guarantee assumed by crossvertise.
2. Without prejudice to the provision in Section 14.1., crossvertise shall only be liable in the event of ordinary negligence in case of a breach of essential contractual obligations, i.e. the violation of obligations the fulfilment of which makes the proper execution of the contract possible in the first place, and on the observance of which the user may regularly rely (“cardinal obligation”). In the event of a slightly negligent breach of a cardinal obligation, crossvertise's liability shall be limited to such contractually typical damages and/or to such a contractually typical scope of damage that were foreseeable at the time of the conclusion of the contract.
3. The above-mentioned limitations of liability shall also apply in the event of the fault of a vicarious agent of crossvertise, as well as to the personal liability of the employees, representatives, and organs of crossvertise.
4. The limitation period of claims for damages of the user due to the liability according to Section 14.1 shall be measured according to the statutory provisions. The limitation period with regard to other claims for damages of the user shall be one year. It shall begin at the end of the calendar year in which the claims arose, and in which the user became aware of the circumstances giving rise to the claim and the person of the debtor, or did not obtain them due to gross negligence, but at the latest in five years from their occurrence, and ten years from the commission of the act, the breach of duty, or the other event causing the damage.
5. Force majeure, occurring operational disruptions, or other cases of impossibility for which crossvertise is not responsible, and which temporarily prevent crossvertise from providing the contractual services on the agreed date or within the agreed deadline, shall change the deadlines and dates by the duration of the service disruptions caused by these circumstances. The legal rights of the users shall remain unaffected.

15. Miscellaneous

1. The law of the Federal Republic of Germany shall apply.
2. The exclusive place of jurisdiction for disputes arising from or in connection with these GTC, or under contracts that were previously concluded, shall be Munich, [Germany].
3. Insofar as written form is mentioned in the context of the present GTC, this shall include the text form within the meaning of Section 126 b BGB [German Civil Code].

16. Severability clause

If the above-mentioned provisions are partially ineffective, or contain unintentional regulatory gaps, this shall not affect the validity of the remaining provisions. In this case, maybe ineffective provisions shall be replaced by the respective statutory regulation, which, according to the party's intent, comes closest to the meaning and purpose of the ineffective provision.