

terms and conditions of sale

Effective from 01/01/2011

Introduction

BuzzParadise is a platform for the communications agency Vanken, whose parent company VKGP S.A. is incorporated in Luxembourg. It designs communication and promotion services via a network of bloggers/publishers, offered by its French subsidiary LGTF Sàrl.

Clause 1: Definitions

In these terms and conditions:

Advertiser means any individual or legal entity requesting an advertising campaign or operation from the BuzzParadise network.

Agreement means the combination of the Terms and Conditions of Sale, the Proposal, the Insertion Order, the Commercial Conditions governing performance of the Services, including any other document mentioned hereinafter.

Authorised Agent means a professional individual or legal entity dealing with BuzzParadise on behalf of the Advertiser on the basis of a mandate.

BuzzParadise means the French company LGTF Sàrl.

Campaign/Operation means the object of the Services provided by BuzzParadise, describing the Campaign or the promotion operation carried out via the members of the BuzzParadise network, whether or not in return for payment, and governed or not by the provisions of the *Loi Sapin*.

Client means, depending on the case, the Advertiser or the Authorised Agent, the signatory of the Agreement.

Commercial Conditions means all the provisions described as Services, their performance conditions, and the price and application of any discount if applicable.

Insertion Order means a document issued by BuzzParadise and approved by the Client, or the Advertiser, detailing the methods for conducting the Campaign/Operation, including, but without limitation, the message and/or content to be broadcast via the BuzzParadise network.

Loi Sapin means the French Law 93-122 of 29 January 1993, applicable to any media purchase made by a French Advertiser for a broadcast aimed at French territory.

Party/Parties means BuzzParadise and/or the Client.

Proposal means the document issued by BuzzParadise, specifically detailing the Services which are to be provided, their conditions of performance, and their price pursuant to the application of the Commercial Conditions.

Services means all the services provided by BuzzParadise for the Advertiser, details of which are set forth in the Insertion Order.

Terms and Conditions of Sale means these terms and conditions of sale.

Clause 2: Application

The Client's signing of the Proposal represents unreserved acceptance of all the terms of the Agreement and the application of the Terms and Conditions of Sale and the Commercial Conditions, excluding any other purchase conditions that may be issued by the Client.

A Client who is an Authorised Agent must provide a mandate declaration signed by the Advertiser.

Pursuant to the mandate granted by the Advertiser, the latter shall be committed by the Authorised Agent with respect to all the terms of the Agreement.

BuzzParadise reserves the right to amend the wording of the Terms and Conditions of Sale and the Commercial Conditions at any time, with any amendment becoming effective thirty (30) days after their written notification to the Client, and to the Advertiser if applicable.

Any other amendment to the Agreement, and especially an amendment to the Services supplied as specified in the Proposal, will only be effective after drawing up a written agreement duly signed by the Parties.

Clause 3: Effective date – duration

The Client's acceptance of the Proposal represents a firm order on its part to BuzzParadise, and the Agreement therefore becomes effective on the date of its signature.

BuzzParadise cannot be bound to perform any Services whatsoever prior to receipt of the duly validated Proposal.

Notwithstanding the foregoing, the performance of the Services is subordinate to the presentation of the mandate declaration that is required if the Client is the Authorised Agent.

The Campaign/Operation itself cannot be launched until after receipt of the Insertion Order duly validated by both parties, or the Advertiser if applicable. Accordingly, the Insertion Order shall determine the launch date (the "Launch Date").

The Agreement shall terminate at the end of the Campaign/Operation as described in the Insertion Order. Any extension or amendment shall give rise to the signing of an amended Insertion Order duly signed by the Parties.

Clause 4: Price – payment

4.1. Price

The price of the Services ordered is specified in the Proposal, pursuant to the Commercial Conditions in force.

All prices for Services determined from statistical data, especially from viewer numbers for broadcast content, shall be defined exclusively on the base of results returned by BuzzParadise through its measurement tools.

All supplementary costs incurred for the proper performance of the Services, that cannot be determined at the date of signing the Agreement, shall be billed to the Client, especially, but not limited to, costs relating to the transport of people, and to the dispatch of objects and merchandise.

The Client shall not be able to benefit from any discount other than that mentioned in the Insertion Order.

All prices are expressed in euros, excluding VAT. All duties or other taxes are the Client's responsibility.

BuzzParadise reserves the right to alter the rates applied under the conditions stipulated in Clause 2.

4.2. Invoicing

Unless otherwise specified, invoices shall be addressed to the registered office of the Client, and according to the timetable defined by the Parties in the Proposal if applicable.

As an exception to the preceding paragraph, the invoices for all Campaigns/Operations to which the *Loi Sapin* applies shall be sent to the registered office of the Advertiser if this is not the Client, and a copy sent to the Authorised Agent.

The invoices shall specify any discount granted that is specified in the Proposal.

4.3. Payment

The Client shall pay invoices in euros by bank transfer to the account of BuzzParadise within 30 days of the invoice date.

If the Advertiser has expressly given authority for payment to the Authorised Agent under the prevailing mandate declaration, the period for payment by the Authorised Agent is extended to 60 days from the invoice date.

Late payment by the Client who is the Authorised Agent shall entitle BuzzParadise to claim payment directly from the Advertiser, and to apply the provisions stipulated hereunder regarding late payment.

The Client, or the Advertiser if applicable, shall only be discharged from its obligation to BuzzParadise on receipt of the due amount in the designated bank account.

Late payment shall give rise to default interest, applying the legal rate stipulated in Article L.441-6 of the French *Code de commerce* without any requirement to send out a preliminary final demand.

BuzzParadise will also be entitled to require payment of recovery costs in the amount of fifty euros (€50).

Clause 5: Obligations on BuzzParadise

BuzzParadise shall perform the Services in accordance with the terms and conditions of the Agreement and complying with prevailing law and professional practice, whether codified or not.

In this respect, BuzzParadise shall perform the Services as defined in the Proposal and shall launch the Campaign/Operation pursuant to the Insertion Order.

BuzzParadise cannot be bound by obligations and guarantees other than those to which it is committed professionally, or agreed in writing between the Parties if applicable.

Unless otherwise stated, BuzzParadise is bound by an obligation of means and shall do its utmost to perform the Services ordered and deliver any element defined by the Parties.

Any mention of a deadline and indication of a date is only given for indicative purposes, except for the Launch Date.

BuzzParadise shall use its advisory obligation to inform the Client of any event or factor of any nature whatsoever, hindering the performance of the Services in the conditions defined in the Insertion Order and any other document related to the performance of the Services.

The Client shall assume sole responsibility for the performance of all Services conducted in spite of reservations expressed by BuzzParadise.

BuzzParadise shall be entitled to refuse to perform Services and launch the Campaign/Operation in conditions that do not comply with the law, codes and practices in force without incurring its liability.

Clause 6: Obligations on the Client

The Client shall send BuzzParadise all the information required to ensure the proper performance of the Services and the Campaign/Operation, especially any equipment, document and information necessary to enable the Campaign/Operation to be launched in optimum conditions.

The Client is required to send this within the deadlines required by BuzzParadise in order to ensure compliance with the defined schedule of performance.

The Client is bound to ensure that all information sent adheres to the technical and operational constraints applicable to the campaign and shall comply with all the legal provisions in force.

It is therefore the Client's responsibility to communicate any legal notice that is required to be mentioned in the course of the campaign, especially for any online communication.

Should the Client fail to respond within the time specified, this will be deemed to be acceptance on its part for the elements sent by BuzzParadise, or at least agreement to any consequent amendment to the schedule.

The Client shall be solely responsible for the content sent to BuzzParadise and broadcast unchanged in the same form during the Campaign/Operation.

The Client is solely responsible for its agents, employees, suppliers and partners.

Clause 7: Performance of the Services

7.1. Specific points

The Client confirms it is aware of all the specific features related to the Services requiring the participation of individual or legal-entity members of the BuzzParadise network, in particular those in the capacity of bloggers or publishers.

Accordingly, it specifically recognizes that each member:

- is only bound to BuzzParadise by the principles of the community that he has accepted,
- is the publisher of his blog and is therefore bound to comply with the legislation in force concerning the publication of content online, including the publication of content for promotional purposes.

Specifically as regards bloggers, the Client warrants it is aware of the fact that the aforementioned members shall retain their freedom of expression concerning the publication of any article, subject to compliance with their undertaking to BuzzParadise, especially in accordance with the type of Campaign/Operation, releasing BuzzParadise from all liability concerning the content published on their blog.

All risks associated with the material or electronic sending of, in particular, a document, object (e.g. a buzzkit or sample), image (e.g. a banner), or video, or with the organisation of events, shall be borne by the Client.

7.2. Suspension of performance

BuzzParadise shall be entitled to suspend performance of the Services, including termination of a Campaign/Operation, unilaterally, without invoking its liability, in the following circumstances:

- the Client's non-adherence to its undertakings, including those of communicating the information necessary for the performance of the Services,
- receipt of a claim, complaint or notice of default from a third party or public organisation relative to publications made pursuant to the Services,

- the occurrence of any event significantly increasing the risks related to the performance of the Services,
- the occurrence of any event of *force majeure*, as defined by law and precedent, and generally, any event that could not be reasonably predicted and controlled by BuzzParadise, including any malfunction of an electricity, telecommunications or internet network.

The suspension shall be notified in writing and become effective on receipt of such notification, excluding emergencies. In no case shall it suspend the obligation to pay the invoices due.

The suspension of Services pursuant to this clause shall not invoke the liability of BuzzParadise nor grant the Client any right whatsoever to indemnity other than that contractually agreed between the Parties for such an eventuality.

Clause 8: Confidentiality

Each of the Parties undertakes to treat as confidential the Agreement and all the documents, information, data, content (text, images, videos) and software exchanged during negotiations and the performance of the Services, including those transmitted by the Advertiser.

Information not considered as confidential is that known to the other Party or made public prior to its transmission, provided its prior disclosure was done legally and without breaching any other commitment to confidentiality.

Each Party consequently undertakes not to disclose such information to any unauthorised third party without the prior agreement of the other Party, unless its communication is necessary for the due performance of the Services.

This confidentiality clause shall remain in force for three (3) years after the termination of the Agreement.

Clause 9 – Non-competition

The Parties, including the Advertiser if applicable, undertake to behave fairly towards each other, especially concerning contacts with members of the BuzzParadise network.

The Client agrees that BuzzParadise and its members are not bound by any commitment to exclusivity towards it. BuzzParadise shall, however, notify the Client of the potential existence of a risk of conflict of interests.

The Client, and the Advertiser if applicable, undertake not to contact any BuzzParadise employees directly outside the contractual framework agreed between the Parties during the performance of the Agreement, and for one year after its termination.

Clause 10: Personal data

BuzzParadise shall conduct all its operations with due regard for the legal provisions in force, especially those stipulated in the amended French Law 78-17 of 6 January 1978 on data protection and civil liberty.

All data concerning employees of the Client, and of the Advertiser if applicable, are consequently processed by BuzzParadise for the proper administration and management of this Agreement according to the legal provisions in force on commercial transactions.

The Newsletter of BuzzParadise and the Vanksen group will be sent to all employees of the Client and the Advertiser; they may unsubscribe by the method indicated in the Newsletter.

The Client recognizes that data concerning members of the BuzzParadise network participating in the Campaign/Operation that is the subject of the Services, are the sole property of BuzzParadise, and that their communication is subject to strict prior approval from the said members and compliance with the legal provisions in force.

The Client shall not engage in any processing of data transmitted by BuzzParadise in accordance with the foregoing provisions, nor claim any right of ownership over such data.

Furthermore, the Parties mutually undertake to conduct any processing of personal data for persons other than those mentioned above in strict compliance with the law on data protection and civil liberty.

Clause 11: Intellectual property

Each of the Parties, and if applicable the Advertiser, remains the owner of all intellectual property rights relating to any information, reports, documents, software, images, videos, texts and other material created prior to the performance of the Services, or transmitted for the performance of the Campaign/Operation.

The Client warrants to BuzzParadise that none of the items transmitted and especially, but not limited to, all data, information, images, logos, videos, slogans, and text, breach or infringe the intellectual copyright of third parties.

The Client undertakes to hold BuzzParadise harmless from any claim and complaint from third parties, and in this respect to guarantee its indemnity, including against any demand for damages by the members concerned.

The Client recognizes that the intellectual property rights attached to articles drafted and published by the members remain the property of those members, except for the utilisation of the content transmitted by the Advertiser and broadcast unchanged in the same form, and that simple authorisation for reproduction on any medium and by any means is granted to the Advertiser for any communication on the campaign conducted, whether internal or public, without a time limit.

Any other utilisation shall require the conclusion of a licence or transfer of copyright in a separate document, through the intermediary of BuzzParadise.

Should any transfer of copyright take place between the Parties, the terms and conditions thereof shall be expressly stipulated in writing in a document signed by the Parties and expressly forming part of the Agreement.

Clause 12: Termination

12.1. Termination by the Client

Any termination of the Campaign/Operation by the Client within (30) days before the Launch Date, or a circumstance listed in Clause 12.2, shall lead to the application of compensation for termination as follows:

- 100% of the budget stipulated in the Proposal for the Campaigns/Operations, for which remuneration for the members of the network is payable.
- 30% of the budget stipulated in the Insertion Order for the other Services, especially any Campaigns/Operations not coming under the preceding category, as well as payment of any costs incurred, including man-hours spent, since the date of its entry into force.

If the cancellation is partial, BuzzParadise reserves the right to apply these provisions on a pro rata basis for the cancelled Services.

Payment of compensation shall not entail renunciation by BuzzParadise of any claim for damages for any losses incurred.

12.2. Termination for due cause

Each of the Parties shall be entitled to terminate the Agreement free of charge in the following circumstances:

- breach by the other Party of its undertakings,
- non-payment of invoices due,
- the liquidation or cessation of activity of one of the parties
- an event of *force majeure* lasting more than 3 months

The termination shall be effective immediately on receipt of notification sent by registered post with acknowledgement of receipt.

The termination of the Agreement shall not release the Parties from their obligations to each other regarding:

- payment of invoices due,
- respect for the commitments stipulated in Clauses 9 to 15, or any other provision surviving at the end of the Agreement as stipulated hereunder.

Termination due to breach of undertakings by the Client shall not give rise to repayment of the amounts paid, without prejudice to any claim for compensation as reparation for damages suffered.

Clause 13: Liability

The Client undertakes to hold BuzzParadise harmless from any claim by third parties, or under any action taken against BuzzParadise, or one of its members due to breach of its undertakings.

If applicable, the Advertiser shall be jointly and severally liable with the Authorised Agent who is the Client.

BuzzParadise cannot be held liable beyond the commitments undertaken under the terms of the Agreement, especially for any lack of public success for a campaign, or for any delay or non-performance of the Services due to the Client's breach of undertakings and/or the legislation in force.

The Client shall consequently indemnify BuzzParadise against all damages suffered, including all the costs borne related to the invoking of its liability (damages suffered, lawyers' fees, and other costs incurred in connection with the action).

In the event that the liability of BuzzParadise were to be sought, this could not in any case exceed the total amount received by BuzzParadise under the Agreement, including all the fees incurred related to the invoking of its liability (damages suffered, lawyers' fees and other costs incurred in connection with the action).

Neither of the Parties shall be held liable vis-à-vis the other due to the non-performance or delay in performance of an obligation of the Agreement as a result of an event of *force majeure*.

Neither of the Parties can be held liable due to the occurrence of any event of *force majeure*, as defined by law and precedent, and generally any event that cannot be reasonably predicted and controlled by BuzzParadise, including any malfunction in the electricity, telecommunications or internet network.

Clause 14: General provisions

BuzzParadise reserves the right to subcontract the performance of part of its Services.

BuzzParadise shall nevertheless continue to manage and be responsible for the performance of the Agreement.

In the event of the cancellation of any of the clauses of this Agreement, the said clause shall be deemed nugatory and all the other clauses shall remain in force. The Parties undertake in this respect to regularise their relations in such an event, by signing a written agreement.

The fact of either Party tolerating any default by the other Party of its obligations arising under this Agreement, may not be construed as a waiver of claiming its rights in the future.

Only the French version of the Agreement is binding between the Parties and the Advertiser; translation into another language is provided solely for the purposes of information.

Clause 15: Applicable law

The Agreement is governed by French law. In the event of any dispute as to its interpretation, performance or fulfilment, the Commercial Court of Paris shall have sole jurisdiction. This jurisdiction shall also apply for interim orders in urgent cases.

Notwithstanding the previous paragraph, the Parties undertake to do their utmost to resolve amicably any difference that may arise concerning the performance of the Agreement.