



MORE is better than less.

Dear Friends:

The terminology in a media company's insertion orders, contracts, and terms and conditions can be challenging to understand. These documents are often written in "legalese" rather than plain English, crafted by attorneys to stand up in litigation. Your sales and business staff need to understand and explain all these provisions, and they should be readily accessible to your customers. They clarify everyone's contractual responsibilities and serve as a guide to resolving conflicts.

In this newsletter, we share examples of common wording as it appears in advertising contracts, along with summaries in plain English. We cover insertion orders and contracts, terms and conditions, billing and payment terminology, and dispute resolution.

We look forward to the MFM/BCCA 2024 Annual Conference, May 19-22 at the Hyatt Regency Riverfront in Jacksonville, Florida. Szabo Associates is pleased to sponsor the opening night party at The River Club featuring SWITCH Back to the Eighties band.

Best wishes for a happy and healthy spring.

Robin Szabo, President
Szabo Associates, Inc.

Written in Black and White: Understanding Contracts, Insertion Orders, Terms and Conditions

Clear, concise communication between media companies and their customers is key to avoiding future problems. Making sure everyone is on the same page and understands their responsibilities is key to a long-term, successful, and profitable relationship between media companies and their advertising clients. Insertion orders, contracts, and other documents are written by lawyers, using terms that not every customer, salesperson, or business staff understands. These definitions and examples aim to avoid misunderstandings and strengthen relationships between media companies, advertising agencies, and customers.

The media company's entire team should be familiar with the sales process and the related documentation – insertion orders, contracts, and terms and conditions – because they will be involved in the transaction, especially the business staff who may set up the account and will handle invoicing and track payments.

In fact, it is vital that everyone in the sales and business departments be able to quickly access all this information when a question arises. These documents serve as a guide to how to proceed in the event of a problem or a dispute. Consistency is important. The information should be posted online and contain the exact same verbiage as the printed documents given to the customers.

Customers do not always do the best job of recordkeeping. Media companies should be prepared to email customers copies of signed orders or direct customers to the online portal where they can access sample documents and terms and

conditions or log in to a secure area and view their contracts, invoices, and payment history.

Insertion Orders and Contract Basics.

Once the customer agrees to the advertising buy, it's time to get a signature on the insertion order or contract. At a minimum, this document should spell out the price, publication or air date, deadlines for submitting ad materials, and payment terms. By signing, the customer is agreeing to the terms and conditions of the media company, which agrees to publish/air the advertisement for an agreed-upon rate.

Reviewing these terms with the clients and answering any questions can get this business relationship off to a good start. Send a follow-up email with a copy of the signed document and instructions for accessing information online.

Example: IN CONSIDERATION of the providing of advertising services, production services, or related services by WSZB Media (the "Media Provider") now and/or in the future, the undersigned Customer (the "Customer") agrees and shall be governed by the following: Customer acknowledges that services from Media Provider may be purchased by Customer on behalf of an advertiser if Customer is an agency, and such services may be purchased from Media Provider on behalf of Customer through the efforts of an advertising agency or other service entity

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if Customer is an advertiser, for purposes hereof, the advertiser, advertising agency, or other service entity on behalf of which or through which Media Provider provides services shall be known as “Third Parties” and these “Third Parties” hereby grant Media Provider authorization to access applicable credit reporting services in order to establish credit terms and perform periodic reviews of credit history and contact provided references for use in making a decision regarding Customer’s creditworthiness.

In layman’s terms, the customer agrees to the ad purchase from the media company and gives the media company the information needed to determine creditworthiness. The media company can then specify credit terms or require prepayment.

Billing and Payment Terminology.

The billing and payment section of the document should spell out payment liability, penalties for late payment and right to cancel credit and discontinue services.

Example: Whether sums are due under contract or open account, it is understood that all invoices are due upon receipt and are considered delinquent if not paid within fifteen (15) days from the date of invoice. Should timely payments not be made as stated, then a late payment charge equal to 1.5% per month of such past due amount, cumulative (or if such amount exceeds the maximum permitted under applicable law, then such maximum amount) will become due and payable by Customer. Customer agrees to pay all collection agency fees and expenses, and other costs of collection, including reasonable attorney fees and court costs which may be incurred by Media Provider in pursuing and collecting payment. The liability of Customer shall be joint and several with Third Parties. Time is of the essence. If Media Provider does not receive timely payment, then Media Provider in its sole discretion

may revoke any credit privileges of Customer and discontinue further performance of services in addition to such other remedies as may be available to it under this Agreement, at law or in equity.

Payments beyond terms can be costly to the customer. Late fees begin to accrue on the stated schedule and the customer is also liable for collection fees and expenses incurred by the media company in its efforts to receive payment. If an agency is involved in the buy as a Third Party, joint and several liability applies. The media company may also revoke credit privileges, discontinue advertising placements and pursue legal action in accordance with its terms and conditions.

Handling Disputes.

Example: Any discrepancy, dispute or disagreement by Customer with respect to any services provided, or amount charged, must be reported to Media Provider in writing within 30 days from the invoice date. The reporting to Media Provider of any discrepancy, dispute or disagreement does not relieve Customer from its obligation to make full payment of invoice(s) upon receipt. Time is of the essence hereof and any failure by Customer to so notify Media Provider will constitute a waiver by Customer of any and all claims or causes of action arising therefrom or related thereto.

The timeframe for filing a dispute is 30 days from the invoice date in this example. Once those 30 days have passed, the customer waives the right to claim a dispute. Filing a dispute does not relieve payment obligation; full payment is still due within 15 days of invoicing.

Rates and Charges: When Can They Be Changed?

Advertising rates should be clearly stated on the document, reflecting any discounts from the current rates stated on the rate cards. Discounts are offered based on frequency and volume. When an advertising agency is involved, they may qualify for a discount as well. These rates are set in writing and cannot be arbitrarily changed.

Example: Rates for any services purchased by Customer will be as set forth on the applicable order; provided that if no rate is set forth thereon, the applicable rate will be

as set forth on Media Provider’s rate card then in effect. Media Provider reserves the right to disallow any discounts if Customer breaches the agreement and increase rates at any time without prior notice; provided that with respect to any order accepted by Media Provider prior to any such rate increase, such increase will not be applied to services under such Order until 45 days after written notice to Customer of such increase.

In some cases, a media company might decide not to revert to the current rate card rates if a customer, especially a long-time customer with a solid payment history, ran into some temporary difficulties and had to cancel or postpone a schedule. Enforcing the letter of the document might not be worth jeopardizing their future business.

Termination: Canceling An Advertising Agreement.

Written cancellation of an advertising agreement from the customer is considered termination. Requirements differ, based on the type of advertising medium.

Example: Orders for traditional linear spot advertisements of 60 seconds or less in duration may be canceled by Customer with 14 days prior written notice to Media Provider, but no such cancellation will be effective until 14 days after the initial start date unless otherwise expressly agreed upon by Media Provider in writing.

Orders for traditional linear spot advertisements of more than 60 seconds in duration may be canceled by Customer with 28 days prior written notice to Media Provider, but no such cancellations will be effective until 28 days after the initial start date unless otherwise expressly agreed upon by Media Provider in writing.

Advertisements consisting of non-traditional, “advanced,” “internet,” and or “IPTV” advertisements may be canceled by Customer upon delivery of such advance written notice as Media Provider may determine is reasonably necessary under the circumstances considering the applicable advertising campaign,

distribution system, or device requirements.

These provisions are very specific in regard to traditional linear advertising. For other, non-traditional advertising types, the language is a bit more flexible, based on what the media company considers reasonable time to pull the advertising, depending on how the advertisements are distributed and system or device requirements.

Example: Media Provider may, without liability to Customer, terminate or suspend distribution of any advertisement at any time for any reason. No such termination or suspension by Media Provider will relieve Customer of Customer's obligations to timely pay to Media Provider in full all amounts due. Upon any such termination or suspension, all amounts owed to Media Provider will be immediately due and payable.

The media company also retains the right to cancel advertising at any time and for any reason, and all outstanding invoices are due immediately.

Maintaining Confidentiality.

Example: Customer agrees that it will keep all Confidential Information received or obtained from Media Provider in connection

with any services provided by Media Provider completely confidential and will not disclose any such Confidential Information to any third party, unless Customer is an agency or time-buying service acting on behalf of an advertiser and/or agency or both, then Customer may disclose Confidential Information to such advertiser and/or agency on a need-to-know basis and such advertiser and/or agency also will be subject to all of the requirements with respect to the Confidential Information so disclosed. Customer further agrees that it will not use such Confidential Information for any purpose other than its performance of these services.

"Confidential Information" of Media Provider will include all information or material that a reasonable person would consider to be confidential under the circumstances, regardless of whether such information or material is actually marked "Confidential," and will include, but will not be limited to, the financial terms of this Agreement and the rates to be paid by Customer for the services being provided. Additionally, it will not include any information that is generally available to the public.

Customer may use and disclose Confidential Information once it has become publicly disclosed, other

than by customer in breach of its obligations, and to the extent that Customer may be compelled by applicable law to do so and is so advised by legal counsel.

Expenditures, rates, contract details, and other confidential information cannot be disclosed to any third parties by the media company or the customer, regardless of whether the information is actually labeled as confidential, unless that information can be found in public domains.

Arbitration or Suit.

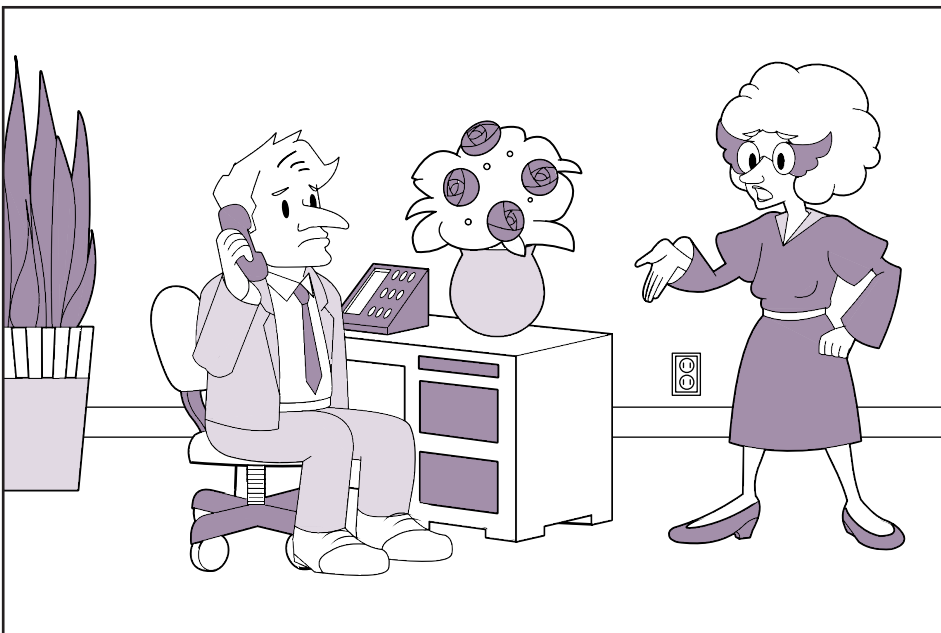
In case of a dispute or claim, when no agreement can be reached, the next steps may include arbitration or suit. Here, the terminology can sometimes be confusing and legalistic.

Example: Media Provider may elect arbitration to resolve any disputes and claims between Media Provider and Customer/Third Parties that cannot be amicably settled and if elected by Media Provider, the parties agree to arbitration before a single arbitrator in accordance with the rules of the American Arbitration Association. The venue for the Arbitration shall be decided solely by the Media Provider.

Judgment upon an award of the arbitrator shall be binding and include the costs and reasonable attorney fees incurred by the prevailing party and will be entered in a court of competent jurisdiction.

The key word here is *may* versus *shall*, allowing the media company flexibility to take the customer to arbitration or use other legal remedies to resolve any disputes or claims with the customer or third party. If arbitration is chosen, the outcome of the arbitration is final, and the non-prevailing party will be responsible for costs and legal fees incurred by the prevailing party.

Key terms to understand when a suit is involved are Venue, Jurisdiction, Governing Law, and Waiver of Jury Trial. Venue and Jurisdiction are commonly confused terms. Venue refers to the location (county or city) in which a court case is filed. In a civil action, venue is often determined by the location of the defendant or plaintiff.



Yes, it was very kind of your client, Southside Florist, to send you that beautiful floral arrangement. But no, we cannot waive their late-payment fees, extend the payment window or tell them what rates their competitors are paying. In fact, if they cancel this month's ads, they will lose their discount. You need to review our terms and conditions.

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Jurisdiction can be defined as the power to decide the case. Venue and jurisdiction are often cited in the same clause.

Example: Any action or proceeding arising out of or related to the services provided, may be brought at the discretion of Media provider in the courts of record of the State of New York in New York County or the U.S. District Court for the Southern District of New York. Customer and Third parties each hereby consent to the jurisdiction of such courts.

Once again, using the word *may* versus *shall* gives the media company flexibility to determine what venue is in their best interest.

Governing Law clauses in legal agreements specify the rules and laws that will govern the dispute resolution process. They seek to clarify the actual legal statutes that will apply.

Example: Media provider and Customer agree that these services will be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of laws principles.

A Waiver of Jury Trial clause limits litigation of the issue to a non-jury trial. This clause should always be included in your agreements. Advertising agreements and the parties that are involved can be complicated and not easily understood by jurors. A determination by a competent judge is faster, less expensive, and has strategic advantages.

Example: All parties waive all rights to trial by jury.

In conclusion, everyone in the sales and business departments needs a thorough understanding of contracts, insertion orders, and terms and conditions.

This information should be easily accessible by both the media company and the customer. It serves as a road map for long and profitable relationships. Speed bumps will occur, but following the provisions in the contract, insertion orders, and terms and conditions will lead to fair and equitable solutions.

Media companies should consult with their general counsel to make sure the language in their agreements is in accordance with the company's culture, management policies, and their state laws. ♦