

Terms of Usage of the ADAC certification mark

Terms and conditions set forth by Allgemeiner Deutscher Automobil-Club e.V. (ADAC), Hansastr.19, 80686 Munich, for the commercial use of the official ADAC certification mark by third parties in their advertising

Background

As an independent and recognised consumer protection organisation, ADAC regularly conducts comprehensive mobility and technology-related test series and assessments. With its unbiased, objective and independent assessments, ADAC aims at giving consumers a market overview and at ensuring market transparency. The ADAC verdicts published in the media have a very high public profile.

The parties are aware that ADAC as an organisation has been most trusted and highly appreciated for decades, so that it has become associated with the very highest expectations of quality and trust in ADAC's test findings. The present Terms of Usage aim to ensure that by using any ADAC emblems including the element "ADAC", the user shall strengthen and by no means reduce, diminish or damage the excellent reputation of the ADAC organisation. Therefore, at all times the parties shall ensure the comprehensive protection of any emblems including the element "ADAC" and apply the diligence a prudent businessman would use.

In line with the Terms of Usage as defined below, commercial third parties may use the official ADAC certification mark in their advertising.

1 Using the ADAC certification mark

1.1 ADAC owns the copyright in the results of ADAC test series und ADAC studies. ADAC is the duly registered owner of a series of trade marks for the protection of the name "ADAC" – either standing alone or in combination with other elements. In addition, ADAC owns the rights in trade marks and emblems with regard to the commercial designation "ADAC". "ADAC" is a well-known trademark. The official ADAC certification mark is a registered word/figurative mark (DE302010033718, IR1079633).

1.2 The official ADAC certification mark is a graphic device linking the ADAC logo with the official test findings and presenting the complete objective test result. The official ADAC certification mark contains the particulars listed here: Source including test date, tested product(s) or service(s), test verdict, scope of the test (when referring to a comparative study) and, potentially, any additional specifications.

1.3 On the strength of the official publication of test findings resulting from a consumer protection test in the ADAC media, ADAC herewith grants the manufacturer of a tested product or the provider of a tested service or a third party advertising with the ADAC certification mark for their own benefit (e.g. a re-seller or distributor) the licence to use the official ADAC certification mark in all advertising materials, advertising platforms or advertising sales channels in relation with the tested product(s) or service(s), subject to the terms and conditions below.

1.4 Any unauthorised use of the ADAC certification mark is a trademark infringement. Should any licensee acquire rights in any ADAC emblems in relation with the use of the ADAC certification mark, such rights will revert to ADAC automatically after the expiry of the licence. The licensee will not have the right to sublicense the use of the official ADAC certification mark to third parties.

1.5 Other than the agreed content, scope of usage and presentation of the ADAC certification mark, the licensee will refrain from any sales support activities referring to an ADAC company and/or using any type ADAC emblems (including but not limited to linking, incorporation into source text, search engine optimisation, digital advertising programmes).

2 Purchase and administrative fee

2.1 Upon placement of an order using the electronic order form available on the ADAC website www.adac.de/guetesiegel, the ADAC certification mark will be produced by ADAC for the tested product(s) or service(s) as a graphic device in black and white (b/w) or in colour (4c) and transmitted electronically in various data formats (such as .eps, .ai, .jpg).

2.2 Only the manufacturer of a tested product or the provider of a tested service or a third party advertising with the ADAC certification mark for their own benefit (e.g. a re-seller or distributor) can place an order for an ADAC certification mark. In doing so, they will become ADAC licensees.

2.3 Upon placement of an order, the ADAC certification mark will be produced for one country in the language of that country. ADAC charges an administrative fee of €650 + any applicable taxes per country for the production of the ADAC certification mark.

2.4 The administrative fee must be paid without any deduction and no later than 14 days after invoicing to the ADAC bank account. Compliance with above deadline will depend on the date on which the payment is in ADAC's account.

3 Approval process and liability

3.1 The licensee and/or the entity placing the order will coordinate any incorporation in advertising materials of the certification mark with ADAC by e-mailing proofs of the layout to marke@adac.de. The ADAC certification mark must not be incorporated in any materials without final approval by ADAC. The final approval will be communicated in writing.

3.2 The approval will cover the content and the design of the layout proofs submitted. The licensee will be required to coordinate any changes to the content and design of the layout proof or to the incorporation of the ADAC certification mark into the amended material with ADAC and obtain new approval.

3.3 Any approval by ADAC will only refer to the verification of the designs' compliance with the internal ADAC design guidelines and the present Terms of Usage and may not be understood as a legal review. ADAC will not advise the licensee and/or entity placing the order regarding the compliance of such advertising using the ADAC certification mark and/or ADAC test results with relevant legal requirements. ADAC will therefore not warrant or represent that the use of the ADAC certification mark and/or ADAC test results by the licensee is in compliance with the applicable legal requirements for advertising. The licensee will undertake to hold ADAC free and harmless from and against any third-party claims arising from the usage described above or indemnify ADAC for any such third-party claims. The licensee will be free to prove that any such usage caused no or significantly lower damage.

4 Presentation

The licensee will not use the ADAC certification mark unless as supplied by ADAC. No alterations to the design, colours, content and language of the ADAC certification mark will be allowed. Specifically, the ADAC certification mark must not be used

- with any graphic alterations such as cropping, visual enhancements (mirroring, high-gloss, 3D effects, rotation etc.) or changed proportions;
- with any changes to the colour scheme delivered;
- with the device at a skewed angle or shown without the required margin/space;
- with additional artwork or copy in the immediate surroundings;
- translated into another language than the one in which it was provided;
- with added or changed wording/content.

5 Advertising content and design

The ADAC certification mark must not be used if the advertising and promotional materials mislead consumers regarding the objectiveness, neutrality and independence of the test results and if the objective, neutral and independent test results are placed in the wrong context. In particular, no such use must create the impression of any direct ADAC recommendation for any of the manufacturer's products/services. The objective, neutral and independent status of ADAC as a consumer advocate must not be jeopardised. Specifically, the ADAC certification mark must not be used

- unless the ADAC findings (ADAC certification mark and other ADAC test findings) are clearly set apart from the advertising message;
- if the ADAC findings are paraphrased in any way;
- if literal ADAC findings are set into relation with advertising referring to products, services or features not tested by ADAC;
- unless the ADAC certification mark is used in relation to specific products and/or services;
- if the findings in the ADAC certification mark are adapted for or obliquely set in relation to products and/or services that are identical (or identical in construction) and were not tested;
- if favourable partial results and/or any other test findings are highlighted or presented out of context when other partial results and/or findings are less favourable;
- unless the value of a verdict is given visibility even if other products/services received better verdicts;
- unless the legibility (type size) and visibility (for instance in TV spots) of the findings in the ADAC certification mark are ensured and the ADAC certification mark is used in the language version corresponding to the language of the ad.

6 Validity of the licence

6.1 The ADAC certification mark can be used only as long as the findings of the ADAC test retain their validity for the product/service being promoted. Notably, test findings for the advertised product/service are no longer valid if

- the tested product/service has changed (the advertised product/service is no longer technically identical with the tested product/service);
- the test procedure has changed (the test or rating methodology was amended);
- the same product/service was tested again (same product/service tested using the same test methodology resulting in a new test result superseding the former).

6.2 Furthermore, the ADAC certification mark must no longer be used for the advertised product/service if the ADAC media published the official result more than four years previously for a product test (e.g. tyres, child seats) and more than one year previously for a services test (e.g. garage test). The deadline count starts on the first day of the month following such publication.

6.3 In the aforementioned cases, the ADAC certification mark must be removed from any advertising materials without prior notification from ADAC at the own cost of the licensee or entity having placed the order. The licensee must provide written proof of the due removal and/or cessation of use of the ADAC certification mark.

7 Revocation of the approval

7.1 It is in ADAC's discretion to revoke any approval of the use of the ADAC certification mark if the licensee is in breach of a material term or condition hereunder. Material terms or conditions hereunder include the provisions regarding the presentation of the ADAC certification mark, provisions regarding the content and design of an ad using the ADAC certification mark, provisions regarding the validity of the test findings and the obligation to resubmit and obtain the final approval of changes made to the final release version of advertising materials using the ADAC certification mark.

7.2 In the case of a revocation, the licensee/entity placing the order shall discontinue the use of the ad within ten business days from the receipt of the revocation notice at their own cost. The ADAC certification mark device must be removed from any ad it was used in. The revocation may be notified in writing. The licensee must provide written proof of the due removal and/or cessation of use of the ADAC certification mark. The administrative fee paid will not be refunded.

8 Liquidated damages

8.1 The licensee undertakes not to use the ADAC certification mark except as coordinated with and finally approved by ADAC. Notably, in the cases listed below, the licensee will be required to pay liquidated damages to the amount of €5,000 per case:

- The coordinated and finally approved advertising materials using the ADAC certification mark were altered after the release.
- The licensee continues using the ADAC certification mark although the test findings for the advertised product/service are no longer valid or the period of permitted use elapsed.
- The licensee unilaterally makes reference to ADAC in presenting their company and/or offerings in any other way as to create the impression of an endorsement of their company and/or offerings by ADAC and in doing so jeopardise the status of ADAC as an objective, neutral and independent consumer protection organisation.

8.2 In the event of continued non-compliance, each week or part thereof will trigger the liquidated damages defined above. This will not affect ADAC's right to claim further damages. Any liquidated damages due will be deducted from other claims for damages. The licensee may avoid payment of the full sum of liquidated damages or reduce the amount of liquidated damages due if they are able to prove no damage or loss or a lesser amount of damage or loss.

9 Data protection

The personal data of the licensee/entity placing the order and/or any physical persons acting on their behalf will be kept confidential and collected, stored, processed and used exclusively for the purpose of order fulfilment and approval of the advertising materials using the ADAC certification mark. The data will under no circumstances be transferred to third parties for commercial purposes.

10 Final provisions

If any provision of the present Terms of Usage is invalid or unenforceable, this will not affect the remaining provisions. The parties will replace such invalid or unenforceable provisions by a provision best meeting the commercial results intended. The present Terms of Usage will be governed by the laws of Germany. The Convention on Contracts for the International Sale of Goods (CISG) and choice of law provisions will not be applicable. If any licensee is a merchant as defined in the German Commercial Code (HGB), they submit to the exclusive jurisdiction of the Munich courts.