

LIGANOVA

The BrandRetail Company

General Terms & Conditions of LIGANOVA GmbH

(Sales Terms & Conditions – Last modified on: April 21nd, 2011)

Preamble

These Terms & Conditions apply for all business relationships of the company LIGANOVA with third parties for which LIGANOVA acts as contractor.

1 Scope, applicable law

1. These Terms & Conditions apply exclusively for relationships with customers which are entrepreneurs in the meaning of Section 310(1) German Civil Code (BGB) in conjunction with Section 14 German Civil Code (BGB), even if reference is no longer made to them with respect to individual transactions and unless explicitly agreed otherwise in writing.

2. These Terms & Conditions apply exclusively, even if the customer refers to different or supplementary terms and conditions on its behalf or in a confirmation letter. The inclusion and interpretation of these Terms & Conditions and the conclusion and execution of the transactions with the customer itself are governed exclusively by German law subject to exclusion of the UN Convention on the International Sale of Goods.

3. These Terms & Conditions supersede all prior Terms & Conditions.

2 Conclusion of contract

1. A contract is not concluded until the order is confirmed by LIGANOVA or the order is executed tacitly. The order confirmation of LIGANOVA alone is decisive for determining the scope of contractually owed performance.

2. Any side agreements or changes are only valid if confirmed in writing by LIGANOVA. Communications by fax and/or email also meet this requirement for written form.

3. Agreements with respect to deadlines and dates are only binding if put in writing.

3 Duties and responsibilities of the customer

1. The customer must provide LIGANOVA with all information available to it which is required to carry out the task entrusted to LIGANOVA. The customer warrants that it is authorised to use and exploit any and all documents and data it provides. The customer is responsible for any incorrectness or inaccuracy of the data or information it provides. Any claims based on the infringement of author's rights or copyright are borne in full by the customer.
2. The customer indemnifies LIGANOVA against any and all third party claims which may be asserted against LIGANOVA on the basis of conduct or action for which the customer is responsible under this Agreement.
3. Prior to the commencement of the assignment or the project to be handled, the customer will specify the available budget which is not to be exceeded during planning or execution. If the customer does not specify any upper limit, it must offset any losses and disprofits of LIGANOVA caused by not specifying an upper limit.
4. Even if goods or services are delivered directly to or provided directly in stores or to/at other locations of the customer, the employees of the customer on site must check the goods for defects and notify LIGANOVA of any defects discovered. The customer must meet this obligation within three days of the goods/services being supplied. Later notifications of defects are impermissible pursuant to Section 377 German Commercial Code (HGB).

4 Cancellation charges

If the customer unjustifiably cancels any order which it has placed, LIGANOVA may, without prejudice to the possibility of asserting higher actual damages, demand a fixed charge of 10 % of the price quoted for the costs incurred by the handling of the assignment and for lost profit. The customer remains entitled to evidence that less damage has been incurred.

5 Remuneration, VAT, calculation risk, foreign taxes

1. The prices of LIGANOVA are subject to change without notice. All quoted or offered prices are net prices and do not include statutory VAT which may be incurred in the individual case. The exchange rates and commodity prices on the day of the quotation or offer apply. If exchange rates or the calculated commodity prices change during the execution of the contract by more than 1 %, LIGANOVA may adjust its own remuneration accordingly. The customer has no right to adjust the prices.
2. The remuneration of LIGANOVA is based on the type and scope of performance as described and calculated in the order confirmation. Travel and ancillary expenses (e.g., telecommunication costs etc.) will be invoiced separately and also evidenced upon request.
3. If due to subsequent changes or supplements to the contract by the customer the costs incurred by the customer are higher than planned (e.g., for production, shipping, logistics, customs clearance etc.), these will be passed on to the

customer. This also applies if the subsequent changes or supplements to the contract lead to a budget limit being exceeded.

4. In the event that VAT is incurred with respect foreign suppliers or subcontractors which is reimbursed to LIGANOVA within the scope of the input tax refund procedure, the customer must indemnify LIGANOVA against the foreign VAT. The gross invoice of the foreign supplier or subcontractor will be invoiced to the customer as a net price. LIGANOVA will following completion of the input tax refund procedure refund the customer the input tax without undue delay insofar as such is reimbursed to it. The customer must indemnify LIGANOVA against foreign taxes collected at source (e.g., Indian withholding tax), irrespective of whether a refund is possible on the basis of a double taxation agreement or not. The tax collected at source will be passed on to the customer as a net price. In the event that LIGANOVA is refunded, it will pay the refund amount to the customer without undue delay.

6 Payment terms

1. After the order has been placed, LIGANOVA may request an appropriate advance on the total value of the order. The advance may not exceed 70 %. In case the customer is in delay of payment for more than ten days (see § 6.4.) LIGANOVA has the right to cancel the contract. The contract can also be cancelled by LIGANOVA in case the customer or one of his creditors is filing for bankruptcy.

2. LIGANOVA may issue interim invoices for services rendered with respect to individually completed parts of the order. In case the customer is in delay of payment for more than ten days (see § 6.4.) LIGANOVA has the right to cancel the contract.

3. Following execution and acceptance of the order LIGANOVA issues a final invoice stating all services, expenses and costs, as well as any payments on account which have already been made. This invoice is payable immediately without any deductions and without providing any documentary support.

4. In the event of default in payment LIGANOVA may charge interest of 8 % above the applicable base interest rate of the European Central Bank. The right to assert more extensive damage caused by default remains reserved. Default occurs also without any reminder at the latest 30 days after the due date and receipt of the invoice. The customer is also in default if the invoice has a payment date of 14 days or less and the customer does not observe the payment date.

5. The customer may only offset claims against LIGANOVA or assert any right to withhold payment on the basis of any other claims if such claims are undisputed, have been established by a court of law or are acknowledged by LIGANOVA. Any set-off is only valid if LIGANOVA has given its consent to such.

7 Performance deadlines, dates

1. Any performance deadlines and dates are only binding if all documents, information and statements, in particular release statements of the customer, are received by LIGANOVA in due time, in full and in fully legible form. LIGANOVA does not assume any liability for delays with respect to deadlines or dates if such are caused by customer documents, information or statements which are submitted late, or are incomplete or not fully legible, by changes requests of the customer or by any extensions of the originally agreed scope of the order.

2. Deadlines which are not met due to reasons for which LIGANOVA is not responsible (e.g., operational disruptions, power failures etc. and all force majeure events and circumstances) do not entitle the customer to rescind the contract or to hold LIGANOVA responsible for any damage caused.

3. If an agreed deadline or execution date is not met without the existence of any force majeure event or circumstances or any responsibility of the part of LIGANOVA, the customer is entitled to set LIGANOVA a reasonable extension period in which to render performance. If the obligation to render performance is not met within such reasonable extension period, the customer has the right to cancel the order. Such cancellation must be declared in writing at the latest one week after expiry of the extension period. The performance period is in each case interrupted for the duration of the time required by the customer to check drafts, production samples, concepts etc. from the date on which the work product is sent to the customer until LIGANOVA receives a response from the customer.

8 Retention of title and transfer of risk upon shipment

1. LIGANOVA retains full title to the services supplied until full payment for such. After payment of the fee or the fixed remuneration LIGANOVA retains full title to all industrial property rights in the services which are not explicitly transferred to the customer.

2. If the goods are at the request of the customer sent to a location other than that where the registered office of LIGANOVA is located, the risk of accidental loss or accidental destruction passes to the customer as soon as LIGANOVA has given the goods to a carrier.

9 No obligation of LIGANOVA to retain records

Following completion of the order LIGANOVA is free to hand back, return, retain or destroy any and all artwork, drafts, work materials or any other documents created by LIGANOVA or provided by the customer. No obligation to hand back, return or destroy such materials exists.

10 Copyright, usage

1. All services of LIGANOVA are protected as personal intellectual creations by the German Copyright Act (UrhG), the provisions of which are deemed to apply even if the threshold of originality required by Section 2 German Copyright Act (UrhG) has not been met.

2. LIGANOVA transfers to the customer a simple exploitation right in the agreed scope, but not beyond the scope of the general known types of exploitation set forth in Section 15 German Copyright Act (UrhG). In the absence of any explicit agreement, the purpose of the contract is deemed only to be the intention of the customer recognisable for LIGANOVA upon conclusion of the contract. The rights of LIGANOVA to its own planning processes, software programmes, media buying methods and similar, which constitute the corporate know-how of the agency, are excluded from this transfer obligation.

3. The customer may only exploit the services of LIGANOVA for the purpose for which the services have been ordered and purchased. The transfer to third parties of exploitation rights which have been granted requires the written consent of LIGANOVA. LIGANOVA has the right to information regarding the scope of exploitation.

4. The drafts, works etc. of LIGANOVA, including designation of authorship, may not be altered without its consent in any originals or reproductions thereof. Any copying – also of parts of a work – is prohibited.

5. The remuneration paid to LIGANOVA in accordance with Section 5 of these Terms & Conditions also constitutes compensation for the transfer of rights or warranty specified in Section 10.2. The right to use the services in the agreed scope, however, is not acquired by the customer until the remuneration pursuant to Section 6 of these Terms & Conditions has been paid in full.

6. LIGANOVA is entitled to use the drafts, works etc. it has created for its own advertising activities. LIGANOVA is likewise entitled to reproduce communication media, drafts etc. which it has created for the customer in any quantities it wishes and to use such for the purposes of its own advertising activities. LIGANOVA is further entitled to mention its work for a customer within the scope of its own advertising activities or to publish such in the press.

11 Complaints

Complaints are to be differentiated as follows:

- a) If services are concerned which consist of a one-off event or measure, complaints are to be asserted without undue delay after the alleged defect or irregularity has become apparent; any warranty claim is otherwise forfeited.
- b) Complaints are only permissible for all other services of LIGANOVA if such are received in writing, by fax or by electronic data transfer within three days of receipt of the service by the customer.

12 Liability

1. LIGANOVA will submit the artwork, drafts etc. created by it to the customer so that the customer can review the correctness of the information and details contained in such. If the customer approves the artwork it assumes sole liability for the correctness of such information and details contained in such. Changes or additions requested by telephone must be confirmed by LIGANOVA in writing.
2. LIGANOVA is not liable for the eligibility of the ideas, suggestions, proposals, concepts or drafts etc. which it supplies for patent, design, copyright and trademark protection or registration.
3. The customer bears the risk of the legal permissibility of an advertising measure. This in particular applies in the event that such measures violate competition, copyright or special advertising law regulations, the personality rights of third parties or administrative regulations (e.g., building code, pollution, environmental protection or freedom of assembly regulations etc.).
4. LIGANOVA is only liable to the customer for damages, for whatever legal reason, in cases of deliberate action or gross negligence. The above exclusion of liability does not apply for the essential contractual obligations unless the liability for defects is concerned. In the event of any breach of material contractual obligations liability is limited to typically foreseeable damage. Sentence 1 of this Clause 4 does not apply for damage arising from injury to life, body or health due to a negligent breach of duty of the part of LIGANOVA or any deliberate or negligent breach of duty by legal representatives or agents of LIGANOVA.
5. Claims for damages on the basis of contractual liability become statute-barred one year after the provision of services, except in the case of deliberate action. This also applies for any congruent, competing claims arising from non-contractual liability. Any liability for damages due to a warranty assumed by LIGANOVA remains unaffected by the above provisions.

13 Non-disclosure obligation with penalty clause

1. The customer is obliged not to disclose to any third parties any details which become known to it, for example, with respect to the organisation, production or sales of LIGANOVA or companies affiliated to or which maintain business relationships with LIGANOVA. This non-disclosure obligation applies beyond the term of the contract.
2. The customer is responsible for the fact that an appropriate non-disclosure obligation is entered into with its employees and any other agents and with any third party or external companies engaged by it.
3. If the customer or any of the persons specified in Clause 2 breaches this non-disclosure obligation a contractual penalty of 50 % of the net order volume, however, at least € 50,000 becomes due to LIGANOVA. The contractual penalty is not incurred if the customer or any of the persons specified in Clause 2 is not responsible for the breach of this non-disclosure obligation.

14 Final provisions

1. Side agreements, exceptions or additions within the scope of any order are only valid if approved in writing by LIGANOVA.
2. Jurisdiction lies with the court which has local and material jurisdiction at the location of the registered office of LIGANOVA GmbH.

15 Severability

If individual provisions of these General Terms & Conditions are or become invalid this does not affect the validity of the remaining provisions. The invalid provision is to be replaced by a valid provision which comes closest to the economic meaning and intent of the invalid clause.