

GENERAL TERMS OF DELIVERY AND PAYMENT

LACON MARKETING GMBH (HEREINAFTER CALLED LACON GMBH)

I. GENERAL/SUBJECT-MATTER OF THE CONTRACT

1. All the services contained in an order placed with LACON GmbH and the cost estimates and offers made by LACON GmbH shall be effected exclusively on the basis of the following General Terms of Delivery and Payment in their respectively valid version. These shall also be an integral part of all future business relations even if this has not been agreed to explicitly again.
2. No deviating General Terms of Delivery and Payment or purchasing conditions of the customer shall have any validity, unless they have been accepted by LACON GmbH in writing. Side agreements, amendments and supplementations to these provisions shall only be valid if they have been accepted by LACON GmbH in writing.
3. The order placed with LACON GmbH is a contract for copyright services (contract work). The subject-matter of the contract is to fulfil the work contracted and grant the rights of use to this work. The provisions stipulated in work-contract law and copyright law shall be valid.

II. CONCLUSION OF CONTRACT

LACON GmbH shall set up a non-committal cost estimate prior to concluding the contract, unless otherwise agreed. This cost estimate shall serve as a non-committal professional calculation of the anticipated cost of the rough budget estimate. The remuneration shall be calculated subject to later examination of the expenditure. Exceeding the non-committal cost estimate by 15% shall lie within the tolerance and shall not be deemed as a considerably excessive amount. All the declarations of acceptance made by the customer as a result of the cost estimate drawn up shall require the written or e-mailed confirmation by LACON GmbH for their validity. In the event of immediate delivery or immediate execution and delivery, these procedures as such shall serve as order confirmations.

III. PRICES/REMUNERATION/DISPATCH

1. Invoiced amounts shall be understood ex LACON GmbH, main office, i.e. costs for packing, freight, postage, insurance and other dispatch costs shall be borne by the customer. The risk shall pass to the customer as soon as the work passes on to the person carrying out the transport, or has left the main office of LACON GmbH for dispatch. The wishes and interests of the customer and the additional costs thereby incurred shall be borne by the customer. For the rest, LACON GmbH shall choose the manner of dispatch and form of transport; in particular, it shall not be obligated to find out which of all the possibilities is the cheapest in this case.
2. The calculation of the remuneration shall, unless otherwise explicitly agreed, conform with the remuneration recommendations of the Berufsverband der Deutschen Kommunikationsdesigner (Professional Organisation of German Communication Designers). The following shall also be valid: The draft and technical/dimensional drawing, as well as granting the rights of use shall constitute one complete service.
For this service LACON GmbH shall charge:
 - a) the normal remuneration for the utilised drafting work,
 - b) the remuneration for the technical/dimensional drawing.
3. Should the customer not avail of his option of beneficial use and should no rights of use be granted, LACON GmbH shall charge a provisional remuneration equivalent to at least the actual expenditure that has incurred for LACON GmbH up until that time.
4. Proposals and instructions given by the customer for technical reasons, design purposes and any other reasons, and any other form of co-operation shall not have any influence on the remuneration; neither shall they substantiate any joint copyright, unless this has been explicitly agreed to.
5. Consultation, individual concepts, sketches, drafts, text suggestions, photos, trial type-setting, models, functional versions, prototypes and other similar preliminary work shall be charged even if the order is not placed, if these have been requested by the person involved.
6. Advertisements are generally contracted by LACON GmbH unless an agreement has been made to the contrary. Before contracting the first advertisement, LACON GmbH may request payment in advance of 50% of the expenses incurred with the respective publishers for contracting this first advertisement.
7. Remuneration and invoiced amounts shall be understood as net amounts, to be paid plus value added tax.

IV. TIME OF PAYMENT

1. All the invoiced amounts and remuneration shall generally be due upon delivery of the work; they shall be paid without any deduction unless otherwise explicitly agreed to in writing.
2. Should work be delivered in parts, the respective partial remuneration shall be due upon the delivery of this part. Should the execution of an order extend over a longer period of time, LACON GmbH may then demand partial payments respective to the amount of work done.

V. ADDITIONAL SERVICES/ADDITIONAL COSTS AND TRAVEL EXPENSES

1. All additional services, especially subsequent alterations incurred by the customer, including changes in the drafts, the production and presentation of further drafts, alterations to technical/dimensional drawings and any other additional services (study of manuscripts, production monitoring, etc.) that do not constitute a part of the original order, shall be charged separately according to the time spent. New productions of models, proof-reading copies, exposures and specimen print proofs that are requested by the customer due to slight deviations from the master copy shall also be deemed as subsequent alterations.
2. Any additional costs for technical work incurred in connection with the layout or work required for carrying out the layout (e.g. for models, intermediate productions, layout type-setting) shall be reimbursed.
3. Expenses and allowances shall be charged for any business trips agreed to by the customer that shall become necessary for completing the order, for utilisation and for meetings.
4. The above mentioned regulations (Sections 1 - 3) shall also be applicable for lump-sum orders.
5. The remuneration for additional services shall be due upon their performance.
Additional costs paid in advance shall be reimbursed as incurred. Section III, par. 7 shall be valid accordingly.

VI. SERVICES RENDERED BY AN OUTSIDE PARTY

- Orders placed for creative services to be rendered by an outside party (e.g. photographs, models) or for services rendered by an outside party in the course of utilisation (e.g. lithography, printing, dispatch), and also orders placed for additional services for trade show orders (e.g. stand erection) shall only be undertaken by LACON GmbH on the basis of an agreement made with the customer, in his name and on his account. Any other regulation shall require an explicit written agreement.
- In so far as LACON GmbH places orders in its own name for services to be rendered by an outside party upon agreement with the customer, the customer shall exempt LACON GmbH from any obligations resulting therefrom. Section VI, par. 1 clause 2 shall be valid accordingly.

VII. DEFAULT ON PAYMENT

- Should the customer default on payment in fulfilling the bill for services, LACON GmbH shall be entitled to charge interest of 8% in addition to the respective basic interest rate, plus value added tax in each case. It shall be charged to a lower amount if the debit of the customer is low. The assertion of further damage incurred by default shall remain unaffected thereby.
- In the case of substantiated doubt about the solvency and credit standing as a result of any circumstances becoming known after signing the contract, LACON GmbH shall be entitled – notwithstanding any other rights – to demand securities or advance payments for any contractual services still outstanding and to declare all claims resulting from the business relationship immediately due and payable, and until an agreement has been reached, to cease any further work on currently running orders and to retain contractual items not yet delivered.

VIII. SET-OFF

The customer shall only set off a claim against an undisputed or legally ascertained claim. A customer that is a merchant possessing full commercial capacity within the meaning of the commercial code shall not be entitled to rights of retention and set-off rights.

IX. RESERVATION OF OWNERSHIP AND UTILISATION

- With respect to work performed by LACON GmbH that is subject to remuneration, only rights of use shall be granted; a right of ownership shall not be assigned. Agreed rights of use shall not be passed over to the customer until the agreed remuneration has been fully paid.
 - However, in so far as the ownership of individual contractual items is to be procured for the customer as a result of an explicit written agreement, LACON GmbH shall retain the property until complete fulfilment of its claim to payment/remuneration. Should the customer transfer or distribute individual, delivered contractual items to a third person in this case within the scope of his due business operations, the customer shall now assign the debts incurring therefrom to LACON GmbH to their full extent by way of security. The customer shall be revocably authorised to collect the assigned debts for the account of LACON GmbH in his own name. The authorisation to collect shall only be revoked if the customer fails to fulfil his financial obligations in the proper manner.
 - In the event of the customer violating the contract (e.g. default of payment) LACON GmbH may withdraw the goods subject to withdrawal or the contractual services already fulfilled and/or prohibit the utilisation thereof with immediate effect until further notice and/or, if necessary, demand transfer of the customer's rights to recovery against third persons, whereby no withdrawal shall exist therein or in the seizure of the goods subject to reservation in so far as the law on payment by instalments is not applicable. Upon demand LACON GmbH shall release securities, at its own discretion, in so far as their value continues to exceed the debts by more than 20%.
 - LACON GmbH shall be entitled to a right of retention of the manuscripts, drawings, photos, raw materials and other items supplied by the customer in accordance with Article 369 HGB (commercial code) until complete payment of the contractual services.
- In so far as rights of utilisation only are transferred, originals shall be returned to LACON GmbH, undamaged, within a reasonable time-limit unless another form of agreement has explicitly been made. The work shall be sent and returned at the customer's risk and on his account.

X. PROCESSING TIME

- Any agreements concerning the time at which the contractual services are to be fulfilled shall require the written form.
- In cases of force majeure – circumstances and incidents shall be valid as such if they cannot be prevented with the due diligence and thoroughness of prudent business management – the contractual obligations of the parties shall be suspended for the duration of the disturbance and to the extent of its effect. Should delays resulting therefrom exceed the period of six weeks, both contractual parties shall be entitled to withdraw from the contract with respect to the extent of the services affected. No other claims for damages shall exist.
- For the delivery of the contractual items within the meaning of IX., par. 1, b), the paragraphs 1 and 2, above, shall be valid accordingly.

XI. PARTICIPATION

The customer shall be obligated without being specifically requested by LACON GmbH, to supply the latter all the necessary documents in good time that are required for performing the assignment and to inform the same of all business activities and circumstances which may be of importance for executing the order. This shall also apply to documentation, business activities and circumstances that do not become known until during the principal's activity. Should the customer fail to fulfil these obligations, LACON GmbH shall be entitled to terminate the agreement without notice. LACON GmbH shall retain the claim to the full, agreed or usual remuneration minus the amounts to be taken into account in accordance with Article 649 p. 2 BGB (German civil code). The claim of LACON GmbH to compensation of the additional expenses and damages caused due to the customer failing to co-operate, shall remain unaffected thereby. This shall also apply if the right to termination is not availed of.

XII. CORRECTIONS AND SUPERVISION OF THE PRODUCTION

- Before commencement of production proof-reading samples shall be presented to LACON GmbH.
- The production shall only be supervised by LACON GmbH on the basis of a special agreement. Should such an agreement exist, LACON GmbH shall be authorised to make the necessary decisions and give instructions.

XIII. LIABILITY/GUARANTEE

1. No liability shall be assumed by LACON GmbH for the admissibility of its work with respect to competition and the admissibility of drawing rights; the same shall apply for its copyright ability. The exploitation of work undertaken by LACON GmbH shall be at the customer's own risk.
2. LACON GmbH shall have freedom in designing its creative work should no definite specifications be provided by the customer. Should the customer fail to give any explicit instructions regarding the design of the work, complaints concerning the artistic/technical creative design shall be excluded. As regards other technical or economic questions, the customer shall be responsible for his own decisions.
3. Upon approval of the work, the customer shall assume the responsibility for the correctness of images and text; the customer shall, in particular, check the proof-reading copies and print proofs for any errors, and the preliminary and intermediate products (concepts, drafts, drawings, etc.) likewise. The risk of possible errors shall pass to the customer upon approval of the work. The work submitted for inspection shall, however, also be deemed as approved, unless the customer sends LACON GmbH explanations for his non-acceptance, requests and information in all clarity, within eight days of the work being presented to the customer. Any changes notified by telephone shall require written confirmation. In cases where alterations are made after approval has been given, all the follow-up costs including the costs for machine idle time shall be borne by the customer. LACON GmbH shall reserve its claim for remuneration of the amount incurred for any work already commenced.
4. Type-setting errors caused by LACON GmbH shall be remedied free of charge; however, necessary changes not due to the fault of LACON GmbH as a result of illegibility of the manuscript, or due to deviations from the print master, especially corrections made by the customer or author, and construction corrections shall be charged according to the respective working time expended. In the case of colour reproductions it shall not be possible in all printing processes to reject slight deviations from the original. The same shall apply for the comparison between print proofs and the first printed edition, and between subsequently printed editions and the first printed editions that have already been produced. LACON GmbH shall only be held liable for deviations in the quality of the material used, up to the amount of its own claims against the respective sub-suppliers. No objections shall be accepted for deliveries deviating by up to 10% more or less than the ordered amount; the quantity delivered shall be charged for.
5. Objections shall only be permissible, in all cases, within one week of delivering the contractual obligation. Claims against LACON GmbH for hidden defects that are not immediately detectable upon inspection, shall only be asserted within a period of six months.
6. In so far as LACON GmbH places orders, at the customer's request, for services to be rendered by an outside party on its behalf and for its account, LACON GmbH shall not be held liable for the services and working results of those commissioned to render the service. This shall also apply especially to those rendering services in connection with exhibition and software projects, e.g. web programming.
7. The customer shall be responsible for the release of production and publication. Should the customer, in an exceptional case, delegate LACON GmbH the release as a whole entity or in parts, the former shall exempt the latter from liability.
8. In the case of objections to the contractual obligations and the contractual items delivered in the case of Section IX par. 1 b) and the services rendered by outside parties in the case of Section VI. par. 2, the guarantee shall be restricted at the discretion of LACON GmbH to making improvements or sending a another delivery free of charge, i.e. up to one half of the order value, unless a guaranteed quality is missing, or LACON GmbH or its persons employed for fulfilling the obligation are accused of wrongful intent or gross negligence. Should the improvement or new delivery prove unsuccessful, or a further reasonable deadline set by the customer for making an improvement or sending a new delivery lapse without any success, the legal warranty claims shall be revived, under threat of a rejection. Defects in a part of the contractual obligation shall not entitle an objection to be made to the rest of the contractual obligations, excepting the remaining part is without interest to the customer.
9. Claims for damages resulting from breaches of an obligation, culpa in contrahendo and tort shall be excluded against LACON GmbH, its persons employed for performing an obligation or its vicarious agents, unless wrongful intent or gross negligence is concerned. This shall also apply for claims for damages due to non-fulfilment, yet only in so far as compensation is asserted for indirect damage or consequential damage due to defects, unless the liability is based on a warranty for securing the customer against the risk of such damages. Any liability shall be limited to the damage foreseeable at the time of concluding the contract.

XIV. PROTECTION BY COPYRIGHT

1. The work (ideas, concepts, drafts, workshop drawings, etc.) of LACON GmbH shall be protected by copyright as personal intellectual creative property, the regulation of which shall also be deemed as agreed, even if the required level of creativity according to Article 2 UrhG (Copyright Act) is not attained.
2. Without the agreement of LACON GmbH its work, including the name of the author, shall not be changed either in the original or in reproductions. No imitations shall be permissible, not even of parts of the work.
3. The work performed by LACON GmbH shall only be used for the agreed purpose of utilisation. For lack of an explicit agreement, the purpose of the contract shall only be the purpose made evident by the customer at the time of placing the order. The right to use the work within the agreed scope shall be acquired by the customer upon payment of the normal remuneration.
4. Repetitive utilisation (e.g. a subsequently printed edition) or multiple utilisation (e.g. for another product) shall be subject to remuneration; they shall require the consent of LACON GmbH.
5. The assignment of granted utilisation rights to third persons shall require the consent of LACON GmbH.
6. LACON GmbH shall be entitled to inquire about the extent of the utilisation.
7. The DP files and business items, especially films, clichés, lithographs, templates, printing plates, etc., set up by LACON GmbH for producing the contractual items (of the work), shall remain the property of LACON GmbH, even if these are charged separately.

XV. INSURANCE

The customer shall be obligated to insure the work of LACON GmbH against fire, burglary, theft, robbery and damage by water, until the purchase price has been fully paid. The customer himself shall ensure that an insurance is taken out for the items, such as manuscripts, original documentation, samples, etc. taken by him to LACON GmbH. LACON GmbH shall only be held liable for the customary due care of these items, unless otherwise agreed.

XVI. SPECIMEN COPIES

1. LACON GmbH is authorised to use the work it has designed and which the customer has accepted and published, for its own advertising purposes.
2. As far as duplicated work is concerned, LACON GmbH shall be given at least 10 specimen copies free of charge, that it may also use for its own advertising purposes.

XVII. NAMING THE CREATIVE DESIGNER, MARKING, INFORMATION

LACON GmbH shall mark the products, means of advertising and publications produced according to its own drafts with a designation of its own choice indicating LACON GmbH as the creative designer. Should justified interests of the customer prevent this, the customer shall give notification thereof in good time.

XVIII. OBLIGATION TO MAINTAIN SECRECY / DATA PROTECTION

1. LACON GmbH agrees to maintain secrecy regarding all the facts that it becomes aware of in connection with its activity for the customer.
2. Personal data relating to the customer is collected, processed, utilised and if necessary, passed on to third persons by LACON GmbH within the scope of the work commissioned. This applies particularly for the transfer of production data. The customer shall have the right to raise an objection to this processing and utilisation of his data, and may demand information, at any time, on the data stored relating to his person, or the rectification or deletion thereof.

XIX. APPLICABLE LAW, PLACE OF PERFORMANCE, PLACE OF JURISDICTION, EFFECTIVENESS

1. The laws of the Federal Republic of Germany shall be valid for these general terms and conditions of trade and all the legal relationships between LACON GmbH and the customer.
2. The place of performance and place of jurisdiction for all claims and disputes arising from the contractual relationship, including legal proceedings based on a bill of exchange or promissory note, cheques and proceedings restricted to documentary evidence, shall be the domicile of LACON GmbH, in so far as the customer is a full-time businessman in the sense of the commercial code, a legal person of the public law, or a public law entity with special funds.
3. Should one of the provisions of these terms and conditions of trade, or a provision within the scope of other agreements be or become ineffective, the validity of all the remaining provisions or agreements shall not be affected thereby.