

Terms and Conditions of co|wana GmbH

§ 1 Scope

All services, deliveries and offers of co|wana GmbH (hereinafter: co|wana) are exclusively determined by these terms and conditions. Consequently, they will also govern any future business relations even if not expressly agreed upon again. The terms and conditions are deemed to have been accepted on receipt of the goods or services at the latest. Any opposing confirmations of the purchaser citing his own business or purchasing policies are hereby expressly disagreed upon. These terms and conditions are also valid if co|wana, being aware of conflicting or differing terms and conditions of the purchaser, provides its services without reservation.

§ 2 Offers and Conclusion of Contract

1. All offers of co|wana are conditional and unbinding. The order of the purchaser is a binding offer that becomes legally effective when a written acceptance confirmation is delivered by co|wana.
2. Drawings, illustrations, dimensions, weights or other performance data are only binding if they have been expressly agreed upon in written form. Otherwise they are trade-specific approximations that may allow for customary deviations. Technical changes as well as changes in shape, color, quality and/or weight are permissible within reasonable limits. This applies also when specimen or samples have been provided to the purchaser.

§ 3 Prices

The prices that apply are those quoted by co|wana plus value-added tax at the prevailing rate. Any additional deliveries and services will be invoiced separately, specifically costs for but not limited to packaging, freight, insurance, customs and GEMA fees.

§ 4 Time of Delivery and Performance

1. Unless otherwise agreed, delivery shall occur two weeks after conclusion of contract. This delivery period can be extended if it is within appropriate reason. If a contribution of the purchaser is required or if an advance performance of the purchaser has been agreed upon, this time period will not start until the purchaser has fulfilled his obligations correctly and punctually.
2. Should the delivery or performance be delayed or rendered impossible not just temporarily due to impediments such as strike, lockout, war, riot or other cases of force majeure, even if occurring at a supplier or sub-contractor of co|wana, co|wana cannot be held responsible. These events shall entitle co|wana to postpone the delivery or performance by the duration of the impediment plus a reasonable start-up period or to cancel the contract in whole or in part with regard to the non-performed part.
3. Should the impediment last longer than three months, the purchaser, after setting a reasonable extension period, shall be entitled to revoke that part of the contract that has not been fulfilled. Should the time of delivery or performance be extended or should co|wana be released from its obligations, the purchaser cannot derive any claim for compensation from this.
4. As far as co|wana is responsible for the non-observance of agreed terms and dates or if co|wana is in default, the purchaser has a claim on compensation for default of 0,5 percent for every completed week, but altogether not

more than 5 percent of the invoice amount for the delivery or performance affected by the delay. Additional claims are excluded unless the default is due to intent or gross negligence.

5. Partial deliveries and partial performances are only permissible if they can be reasonably expected from the purchaser.

6. If the purchaser is in default of acceptance, co|wana shall be entitled to demand compensation for any loss occurred thereby. Effective from the time of default of acceptance, the risk of random deterioration and random destruction shall pass onto the purchaser.

§ 5 Transfer of Risk

Risk is transferred to the purchaser as soon as the shipment is transferred to the person carrying out the transport or as soon as it has left the office of co|wana or that of its manufacturing or service partner for shipping. If the shipment is delayed at the request of the purchaser, the risk is transferred to the purchaser when he is notified that the shipment is ready.

§ 6 Defects

1. The products offered by co|wana are delivered free of manufacturing and material defects. The purchaser does not receive any guarantees in any legal sense. The warranty period is one year from the date of delivery of the products or the acceptance of services rendered. Should the services be recorded on a data carrier, the warranty period starts when the purchaser has received the data carrier.

2. The purchaser must inspect incoming goods for defects, condition and warranted characteristics immediately upon receipt. Obvious defects must always and immediately be reported in written form and with the packing slip enclosed, but no later than one week after receiving the goods at their destination or after accepting the services rendered or the data carrier.

3. In case of a legitimate claim, co|wana is entitled to choose a respective substitute delivery.

4. If and when subsequent improvement fails or if and when a substitute delivery is impossible, the purchaser is entitled to demand either a reduction in price or the cancellation of the contract.

5. In case of damage claims due to a defect, § 9 of these terms and conditions applies.

§ 7 Reservation of Ownership

1. Until all claims against the purchaser now or in the future have been satisfied, including all current account balance claims which co|wana is entitled to exercise for any legal reason, co|wana is granted the following securities which will be released to the agency on demand and which will be freely selected at the agency's discretion, provided their value exceeds the demands on a sustained level by more than 20 percent.

2. The delivered goods shall remain the property of co|wana until the purchaser has completely paid all open claims resulting from the delivery or services rendered. If the goods are resold by the purchaser, the purchaser passes on all claims to his customer(s) corresponding to the value of goods delivered by co|wana for the purpose of securing all existing primary and secondary debts without the need for a special declaration of assignment. Upon request, the purchaser shall provide co|wana with the name(s) and address(es) of his customer(s). The purchaser is not entitled to assign his claim against his customer to a third party.

3. In cases where third parties access the goods subject to reservation of title, particularly in the case of distraint, the purchaser will point to the ownership of co|wana and inform co|wana immediately so that co|wana can implement its right of ownership. If the third party is unable to reimburse co|wana the judicial or out-of-court costs accrued within this context, the purchaser shall be held liable for these.

4. In case of a breach of contract by the purchaser, particularly default of payment, co|wana is entitled to cancel the agreement and to demand the immediate return of the delivered goods.

§ 8 Terms of Payment

1. Unless otherwise agreed, the invoices issued by co|wana are payable within 14 days after being issued without any deductions. Timeliness of payment shall be determined by the time at which the payment is being received by co|wana. In case of payment by check the payment is considered received when the check has been cleared. After the aforementioned deadline has expired, the purchaser is in default of payment. The statutory rules concerning the consequences of default of payment apply.

2. Notwithstanding any conflicting provisions of the purchaser, co|wana has the right to set off payments against existing debts of the purchaser and will inform the purchaser of the nature of this settlement. If any expenses and interest have already occurred, co|wana has the right to appropriate the payments first to the expenses, then to the interests and finally to the primary debt.

3. Should co|wana become aware of circumstances that place the creditworthiness of the purchaser into question - in particular if a check is not honored or payments are stopped - or should co|wana learn about other circumstances that put the creditworthiness of the purchaser into question, co|wana shall be entitled to demand immediate payment of the reminding debt. Furthermore, co|wana shall be entitled to demand payment advances or provisions of security.

§ 9 Liability

1. Liability of co|wana for breach of contractual obligations as well as in tort is limited to intent and gross negligence.

2. This does not apply to claims that have arisen because of fraudulent conduct on the part of co|wana, together with liability for guaranteed specifications, for claims under product liability law, for damages from the loss of life, personal injury or impairment of health, for claims arising from the violation of cardinal obligations, i.e. obligations derived from the nature of the contract and whose violation would endanger the fulfilment of the contract as well as for the replacement of damage caused by delay according to § 286 BGB. Insofar, co|wana shall be liable for all degrees of fault. However, liability in case of a delivery delay is limited to a standard compensation claim of 0,5 percent of the declared value of goods for each completed week, but no more than 5 percent of the declared value of goods. Liability in case of nonfulfillment of cardinal contractual obligations shall be limited to the regularly foreseeable damage.

3. To the extent that the liability of co|wana is excluded or limited, this shall also apply to the personal liability of the employees, representatives, agents and sub-contractors of co|wana.

4. To the extent that liability for damages not involving loss of life, personal injury or impairment of health of the purchaser caused by ordinary negligence is not excluded, such claims shall be subject to a limitation period of one year from the accrual of the claim. This also applies to claims for damages based upon defects, from the delivery of goods or the acceptance of work.

§ 10 Usage and License Rights / Exemption

1. The purchaser is obligated to ensure that he owns all required rights of use and other rights, especially the reproduction and distribution rights of all audio, video and data content that he provides to co|wana in order for co|wana or a sub-contractor of co|wana to execute the obligations specified in the contract. Furthermore, he is obligated to ensure that he owns all rights of use of all audio, video and data content as well as all other recordings that are part of the contract. He is also obligated to ensure that all copyright and ancillary copyright fees will be paid to the proper authorities. The purchaser expressly confirms all of the above upon placement of the order.
2. Without prejudice to any additional claims of co|wana, the purchaser is obligated to exempt co|wana on first request of all third-party claims against co|wana concerning the usage of audio, video and data recordings necessary for the execution of the order. This includes the costs of a reasonable legal defense. This right to exemption includes claims of national and international copyright societies and respective organizations for implied or actual infringements of rights as well as any costs for legal representation and legal fees.
3. The purchaser grants co|wana a non-exclusive, non-transferrable right of use for all products created during the execution of the order to be used for self-promotion purposes especially on flyers and online. To this extent, the purchaser ensures that he is entitled to transfer this kind of right of use which is part of his obligation to indemnify.

§ 11 Other Provisions

1. These terms and conditions and the entire legal relationship between co|wana and the purchaser are governed by the law of the Federal Republic of Germany. The terms of the UN Sales Convention shall not apply.
2. As far as the purchaser is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship is Nuremberg, Germany. Furthermore, co|wana is authorized to sue the purchaser at the court of his place of residence.
3. Should an individual provision of these terms and conditions or a provision within the framework of other agreements be or become invalid, the validity of all other provisions or other agreements shall remain unaffected thereby.

(August 2017)