General Terms and Conditions of Business for the Placement of Advertising Media

Version: May 23, 2018
Preamble

These General Terms and Conditions of Business for the Placement of Advertising Media (hereinafter “Terms”) shall - in connection with the individual contract - form the relationship between us, the Ligatus GmbH, Christophstraße 19, D-50670 Cologne, Germany (“Ligatus”, “we” or “us”), and our Customers. Unless otherwise explicitly agreed, these Terms shall be exclusively applied to the contract. General contractual or commercial conditions of the Customer shall have no validity. This shall also apply if these conditions are not explicitly contradicted.

Our service

We run the Ligatus network of partner sites on which we provide advertising placements (please see the definitions right below this section). The Terms govern our “Managed Accounts” as well as the “Ligatus Self-Booking Tool”. In both cases (and if not explicitly agreed otherwise), we are the contractual party ourselves, not just a mediator for a third party.

Definitions

Our “Managed Accounts” business is carried out by our Sales Team. Through personal consultation we will help you optimize your advertising in our Network and agree with you on specific conditions following an in-depth case-by-case analysis.

The “Ligatus Self-Booking Tool” is an online service that we offer to our Ligatus Customers. Through this browser-based tool, they can create Ad Campaigns and upload Advertising Media as well as define targets and an individual budget.

“End User” is the human individual using a Partner Site.

“Customer” is the contracting party on the client-side of our service. This can be an agency (with their agency clients), a direct client, a technical partner (such as a Demand-Side-Platform) or an aggregator.

An “Advertiser” shall be deemed to be the legal person offering the products or services that are being promoted.

“Ad Campaigns” consist of Advertising Media for the commercial offer by our Customers. These can be direct response or content recommendation campaigns.

“Advertising Media” are the contents of an Ad Campaign in their individual composition (e.g. images, texts, links, landing pages) that we deliver to Placements.

“Partner” shall be deemed to be the operators of the Partner Sites on which Advertising Media is placed.

“Partner Sites” are the Partner’s desktop or mobile websites and applications on any device.

A “Placement” is the specific area on a Partner Site on which we deliver Advertising Media for Customers.

Our “Network” includes all Placements available for the provision of Ad Campaigns on Ligatus Partner Sites.

I. Delivery of Advertising Media

1. Provision of Advertising Media: The Customer shall not have a right to the provision of Advertising Media on specific Partner Sites or to the achievement of a specific number of agreed upon distributions (e.g. ad impressions, clicks, leads, orders, downloads). We herewith reserve the right to alter, restrict or expand at any time the list of selected Partner Sites and Placements.

2. Entitlement to reject: We may reject the delivery of Advertising Media without stating reasons and/or remove it without delay and without advance notice, in particular should there be any indications that contents of Advertising Media violate statutes, official regulations, third-party rights, our Advertising Guidelines or that their publication is in any other way unacceptable to us (e.g. if suited to endanger our or our Partner’s reputation or if not living up to our network standards).

3. Duty to give notice of defects: The Customer shall give notice of defects in the provision of Advertising Media or leads without delay after becoming aware of them, but at the latest by three (3) working days after the end of the order period; otherwise, guarantee claims shall be ruled out.
4. Content on Partner Sites: We do not have influence on or control over Partner Sites in our network. For this reason, we contractually oblige our Partners by default to design and fill their Partner Sites in a legal manner, especially to not contain pornographic, criminal or illegal services as well as information and portrayals inciting racial hatred, or political extremist content, instigations to commit crimes, illegal file hosting and torrent websites. Nevertheless, our liability for Partner Sites shall be ruled out.

II. Legality of Advertising Media

1. Liability for Advertising Media: Our Customer guarantees and warrants that design and content of their Advertising Media are in adherence with any applicable legal regulations and respect our Advertising Guidelines at http://i.ligatus.com/corporate-resources/guidelines/advertising-guidelines.pdf which are hereby incorporated by reference in their entirety. (We reserve the right to alter and adjust these Guidelines at any time without stating reasons.) In addition, it is the Customer’s sole responsibility to possess all necessary rights to images, texts and any other content of Advertising Media - while not infringing on third party rights (e.g. trademarks and copyrights) or other applicable law.

2. Indemnification: The Customer shall indemnify us and our Partner with regard to any and all third party claims which may arise of the violation of third-party rights or of any applicable statutory provisions in relation to the content of published Advertising Media. Furthermore, the Customer shall release us and the Partner from the costs of an adequate legal defence.

3. Obligation to inspect: Neither we nor our Partners shall be obliged to review Advertising Media as to whether or not it violates any provisions under these Terms or applicable law; statutory obligations to review shall remain thereby unaffected. We reserve the right to carry out a review of the Advertising Media in the Ligatus Self-Booking Tool.

III. Assignment of Rights

1. Rights in drafted Advertising Media: Where we (ourselves or through third parties) create Advertising Media or other content for the Customer or on its behalf for third parties, we shall grant to the Customer a non-exclusive right of utilisation only insofar as is necessary. All rights in Advertising Media or other content created by or on behalf of us, in particular image material and drafted texts, shall remain with us. Such Advertising Media may only be used for advertising booked with us and shall not be published or made available to third parties by other means without our explicit written consent.

2. Assignment of rights: The Customer shall assign us all and any rights of utilisation, ancillary copyright and other rights required for the publication of Ad Campaigns on Placements, in particular the right to duplicate, disseminate, transfer, make publicly accessible and broadcast, for extraction from a database and retrieval, and for the time and content necessary for the implementation of the commission. These rights shall be assigned with unlimited geographical scope, and shall constitute an entitlement to effect placements of advertisements using all known technical procedures, as well as all known forms of digital media. The Customer guarantees herewith that it has all the rights required for the delivery of the Advertising Media in the scope stated, including the right to transfer these rights.

3. Self-Promotion: We are entitled to name the Customer for purposes of own advertising in our business documents and online presentations including the company logo.

IV. Landing Pages; Leads

1. Creation of landing pages: If we are commissioned with the creation of a landing page, we will individually agree upon a scope of the service regarding design, layout and the hosting (including form, function, data transmission as well as additional data storage in the case of Cost-per-Lead bookings). Our standard agreement includes a maximum of three (3) free correction runs. We may bill the Customer for any effort beyond our regular two (2) working-day cycle (e.g. for additional corrections, particularly complex additional functionalities, etc.).

2. Generation and delivery of leads: The generation of datasets (“leads”) shall be effected either on external target sites (with our tracking) or with the aid of the landing page that is hosted by us. If technically possible, we will filter double entries regarding the same Ad Campaign within the last thirty (30) days. The leads shall then be forwarded to the Customer and are subject to invoicing by us.

3. Returning leads: The Customer may object to the invoicing of leads if (a) entries are very obviously made in fun, (b) directly consecutive double entries in the same campaign, (c) leads coming from abroad although only domestic leads are permitted, or (d) if the user asks to delete his/her data. In such cases, the Customer shall inform us within three (3) working days which leads are
incomplete or incorrect in this sense, and hence are to be rejected. Once this deadline has expired, the leads shall in any case be deemed to have been accepted.

4. Data delivery to an interface: If we are to deliver data to an interface of the Customer or of a service-provider commissioned by the Customer, the obligation shall be deemed to have been satisfied if the data are provided in the agreed form to the interface designated by the Customer. We shall not assume any liability for forwarding data beyond the interface. We shall not have any obligations to review or investigate as to the whereabouts and the completeness of the data after provision to the interface. The Customer shall be solely obliged to examine the proper provision and functionality of the interface.

V. Payment; Invoicing

1. Cancellation of advertising commissions: Ad Campaigns which are not yet running may be cancelled free of charge up to two (2) business days prior to their planned commencement. If this deadline is not complied with, we will invoice 30% of the value of the contract. Additionally, we shall be entitled - regardless of the time of the cancellation - to invoice the full costs incurred for the booking up to the time of the cancellation (including, for example, the drafting of Advertising Media).

2. Invoicing; reporting: As a matter of principle, invoicing is based solely on our reporting and shall be delivered monthly via e-mail if so agreed upon with us. The invoice shall be presumed to be correct unless the Customer proves the contrary within two (2) weeks after receipt; otherwise, such proof shall be ruled out and the invoice shall be deemed to have been accepted. Any derogations in measurements of up to ten (10) % shall be considered as slight and not be regarded as a material defect or as overachievement (fluctuation tolerance).

3. Payments: Invoices are payable without deduction within the payment period defined in the agreement with us. After that, we are entitled to demand interest in the amount of nine (9) % above the base interest rate. We only accept payment by bank transfer with no cash discount granted. We reserve the right to demand an advance payment for good cause and, including during the term of the contract, to make the appearance of further Advertising Media dependent on a prepayment. Any open amounts from such pre-payment shall be transferred back to the Customer once they reach a minimum amount of EUR 100,00.

4. Payment with the Ligatus Self-Booking Tool: With the Ligatus Self-Booking Tool, payment shall be effected monthly or on reaching the personal Customer budget using the payment method determined by the Customer in the tool. In the event of payment by credit card, the credit card account must have sufficient funds at each point in time of an ongoing campaign. You acknowledge that we use a third party payment processing service to process orders and bill fees to your credit card and will share your credit card and/or billing information with such third party for that purpose. Where payment proves not to be possible for reasons for which the Customer is responsible, or the Customer cancels a payment, we shall be entitled, until the payment of the outstanding amount, to suspend the provision of the Ad Campaign and to deactivate it, as well as to block the Customer account within our Self-Booking Tool.

5. Bad Debt Insurance: We will, in justified cases, invoice the Customer an initial pre-payment of a total of EUR 100,00 which will be offset with the monthly invoicing from Ligatus. We may recall our contract with the Customer in case our bad debt insurance rejects coverage. If necessary, the Customer hereby agrees to the transfer of its data to the bad debt insurance for purposes of inquiry of coverage.

6. Offsetting, right of retention: The Customer may only offset against counterclaims that have been legally determined or are acknowledged by us. The Customer shall only have a right of retention where the claims are based on the same contractual relationship.

7. Security assignment for agency clients: As per conclusion of the contract with us, the contracting agency shall assign its payment entitlement in this respect against the agency client to us as security; we accept this assignment. We are entitled to disclose this security assignment to the agency client if the contracting agency is at least thirty (30) days in default of payment of our invoice.

VI. Privacy; Confidentiality

1. Collection, processing, utilisation and forwarding of data: Both parties will comply with applicable data protection law, especially including, but not limited to, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, “GDPR”). The Customer is solely liable, without any limitations as set forth in these Terms, for any data collection and/or use and their accordance with applicable law (including corresponding
information, transparency regulations and legally-secure consent). The Customer indemnifies us against all damages that result from a violation against this section of the Terms, including the costs for a legal defense.

2. **Legality of tracking mechanisms:** The Customer - on its own or on behalf of its Advertiser or another involved third party - may only deploy tracking mechanisms with our written consent and only if the providers are actively registered on the IAB Global Vendor List (available under [https://vendorlist.consensu.org/vendorinfo.json](https://vendorlist.consensu.org/vendorinfo.json)). This shall, in addition, be contingent on (a) documentation and verification that personal data is only collected or used with “legitimate interest” in the sense of Art. 6 no. 1 (f) of the GDPR; (b) any tracking used has an effective, legal and valid consent mechanism (Opt-In and/or Opt-Out, as applicable) in place at all times. We may stop the delivery of Advertising Media that does not satisfy these requirements. The Customer shall be solely responsible for the adherence of its or its Advertisers’ or involved third parties’ usage of tracking mechanisms with the provisions of this clause VI.2 and shall indemnify us and our Partners in respect of any and all claims which third parties assert against us or the Partner in respect of the tracking and utilisation of the data collected.

3. **Tracking audit:** We shall be entitled to have the tracking systems incorporated or in any way used/implemented by the Customer (in adherence with clause VI.2 above) verified at our own expense by an auditor for compliance with the agreed conditions and requirements. The Customer shall be solely responsible to make sure that such audit right can be carried out with third parties involved in the audited tracking mechanism(s) on the part of the Customer. The audit may take place at any time during customary business hours, including unannounced, on the business premises of the Customer (or such involved third party). For this purpose, the auditor shall be enabled to inspect documents, files and systems related to the tracking system, also to the extent that they are available in electronic form. The Customer shall meet the cost of the audit in case of more than only negligent derogations from the agreed conditions and requirements.

4. **Confidentiality:** The parties shall treat the content of their individual contract in strict confidence. This shall not apply if disclosure is ordered by a court or authority or is necessary to assert own rights before a court against the other respective contracting party. We shall, furthermore, be entitled to disclose the content of the Advertising Order to commissioned third parties, as well as to affiliated enterprises in accordance with sections 15 et seqq. of the German Aktiengesetz (AktG).

**VII. Liability**

1. **Liability for damage:** We shall be liable for damage – regardless of its legal ground – only where the Customer asserts compensation claims based on intent or gross negligence on our part or of our agents or representatives. This shall not apply to liability for assured properties and to a violation of major contractual duties, i.e. such obligations the fulfilment of which enables the proper execution of the contract and the observation of which the Customer may regularly rely on (cardinal duties). Where we are not accused of an intentional or grossly negligent violation of a contract in the case of a violation of cardinal duties, liability for damage shall be limited to the foreseeable damage typically occurring; this shall also apply where the Customer demands compensation for pointless expenditure in place of damages to compensate for the service. We shall not be liable for indirect damage, consequential harm caused by a defect or loss of profit unless we acted with intent or gross negligence. All and any claims asserted against us for a breach of a contractual provision shall lapse within one year of the statutory commencement of lapse where they do not result from intentional conduct. None of the aforesaid limitations shall apply to the extent that they are not accused of an intentional or grossly negligent violation of a contract in the case of a violation of cardinal duties, liability for damage shall be limited to the foreseeable damage typically occurring; this shall also apply where the Customer demands compensation for pointless expenditure in place of damages to compensate for the service. We shall not be liable for indirect damage, consequential harm caused by a defect or loss of profit unless we acted with intent or gross negligence. All and any claims asserted against us for a breach of a contractual provision shall lapse within one year of the statutory commencement of lapse where they do not result from intentional conduct. None of the aforesaid limitations shall apply to the extent that they are

2. **Force Majeure:** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action/regulation, and technical disturbance) that was beyond the party’s reasonable control.

**VIII. Final provisions**

1. **Severability Clause:** In case any provision of these Terms shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The ineffective provision shall be replaced by an effective provision which approximates the economic purpose of the ineffective provision as closely as possible.

2. **Written form:** Amendments of and supplements to these Terms shall require to be in writing to be effective. This shall also apply to the rescission of the requirement of the form of writing. The parties agree that e-signed or signed declarations sent by fax or scanned via e-mail shall also fulfill the written form requirement.

3. **Transfer of rights and duties:** The Customer shall require our prior, written consent in order to fully or partly transfer its rights and duties from the contract with us. Where the Customer accordingly complies with its obligations through third parties, it shall oblige them in writing to comply with the Terms. We reserve the right to transfer the rights and duties from this contract to third
parties for reasonable factual causes, especially, but not limited to, developments within the Ligatus Group or legal and taxation requirements. We will notify the Customer of any such instance in good time.

4. Amendment of these Terms: We shall be entitled to amend the Terms at any time with effect for the future if technical, legal or commercial occurrences shall make that necessary or if, for example, internal billing processes should change. Amendments to the present Terms shall be notified to the Customer in writing (including e-mail). They shall be deemed to have been approved if the Customer does not object to them in writing within fourteen (14) days after their announcement. We will inform the Customer explicitly of its right of objection. To comply with the deadline, it shall be sufficient to send off the objection in due time.

5. Place of performance, court venue and applicable law: The place of performance and the court venue shall be Cologne, Germany. German substantive law shall apply, to the exclusion of the provisions on conflict of laws.