

ALLGEMEINE GESCHÄFTSBEDINGUNGEN (AGB) Translation with informative character only

GENERAL BUSINESS TERMS (GBT)

LOEVENS OG Advertising- & Online marketing Agency

Reg. Office without public reception: 9400 Wolfsberg, Grahofferstraße 7 Top 10, Österreich / Austria EU

Reg. N°: FN 364520 i Reg. Court: Landesgericht Klagenfurt UID-Nr.: ATU66523924

Web: www.lvm.cc E-Mail: office@lvm.cc

Valid from 1st August 2024

1) Validity, conclusion of the contract

1.1 The company Loevens OG (in the following "agency") renders its services exclusively on the basis of the following general terms and conditions of business (GBT). These are valid for all legal relations between the Agency and the customer, even if they are not expressly referred to.

1.2 The version valid at the time of conclusion of the contract shall be authoritative in each case. Deviations from these as well as other supplementary agreements with the Customer shall only be effective if they are confirmed in writing by the Agency.

1.3 Any terms and conditions of business of the Client shall not be accepted, even if known, unless expressly agreed otherwise in writing in individual cases. The Agency expressly rejects the Client's General Terms and Conditions of Business. No further objection to the Client's General Terms and Conditions of Business by the Agency shall be required.

1.4 Amendments to this GBT shall be notified to the Client and shall be deemed agreed if the Client does not object to the amended GBT in writing within 14 days; the significance of silence shall be expressly pointed out to the Client in the notification.

1.5 Should individually provisions of these General Business Terms (GBT) be invalid, this shall not affect the binding force of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid one that comes as close as possible to the meaning and purpose.

1.6 The agency's offers are subject to change and non-binding. The agency may refrain from making an offer or cancel an offer that has already been made without giving reasons. All prices are quoted and invoiced in euros; other currencies are for information purposes only. The prices are subject to the applicable Austrian tax legislation.

1.7 The contractual language shall be German (Austria); should the contract be or have been concluded in another language, this shall be for information purposes only and it shall be expressly stated and agreed that it shall be for information purposes only.

2) Social media channels

2.1 Before placing an order, the agency expressly points out to the client that the providers of "social media channels" (e.g., LinkedIn, hereinafter referred to as "providers") reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. Accordingly, the providers are not obliged to forward content and information to the users. There is therefore a risk, which cannot be calculated by the agency, that advertisements and appearances are removed without reason. In the case of a complaint by another user, the providers are granted the possibility of a counterstatement, but in this case, too, the content is removed immediately. In this case, it may take some time to restore the original, lawful status. The agency works on the basis of these terms of use of the providers, over which it has no influence, and also bases an order from the client on these. By placing an order, the client expressly acknowledges that these terms of use (also) determine the rights and obligations of any contractual relationship.

LOEVENS OG

Firmensitz: Wolfsberg, Kärnten, Österreich / Firmenbuchnummer: FN 364520i Firmenbuchgericht: Landesgericht Klagenfurt
UID-Nr.: ATU66523924 www.lvm.cc | office@lvm.cc | Lieferungen oder Leistungen nur gegen Eigentumsvorbehalt.

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3) Protection of concepts and ideas

If the potential client has already invited the Agency to prepare a concept in advance and the Agency complies with this invitation before the main contract is concluded, the following provision shall apply:

3.1 The potential Client and the Agency shall enter into a contractual relationship ("Pitching Contract") as early as the invitation and the acceptance of the invitation by the Agency. This contract is also based on the General Business Terms (GBT).

3.2 The potential Client acknowledges that the Agency is already providing cost-intensive preliminary services with the concept development, although the Client has not yet assumed any service obligations.

3.3 The linguistic and graphic parts of the concept, insofar as they reach the level of a work, are protected by copyright law. The potential Client is not permitted to use or edit these parts without the Agency's consent, if only on the basis of copyright law.

3.4 The concept also contains ideas relevant to advertising which do not reach the level of a work and therefore do not enjoy the protection of copyright law. These ideas are at the beginning of every creative process and can be defined as the igniting spark of everything that is later produced and thus as the origin of marketing strategy. Therefore, those elements of the concept which are peculiar and give the marketing strategy its characteristic character are protected. In particular, advertising slogans, graphics and illustrations, advertising material, etc. are considered to be ideas within the meaning of this agreement, even if they do not reach the level of a work.

3.5 The potential Client undertakes to refrain from commercially exploiting or having exploited or using or having used these creative advertising ideas presented by the Agency within the framework of the concept outside the corrective of a main contract to be concluded at a later date.

3.6 If the potential customer is of the opinion that ideas were presented to him by the Agency which he had already come up with before the presentation, he shall inform the Agency of this by e-mail within 14 days of the day of the presentation, citing evidence which allows a chronological allocation.

3.7 In the opposite case, the contracting parties shall assume that the Agency has presented the potential Client with an idea that is new to him. If the idea is used by the client, it shall be assumed that the agency became meritorious in the process.

3.8 The potential Client may release itself from its obligations under this point by paying reasonable compensation plus the legally applicable turnover tax. The release shall only come into effect after the Agency has received payment of the compensation in full.

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4) Scope of services, order processing and obligations of the Client to cooperate

4.1 The scope of the services to be provided shall be determined by the service description in the order confirmation by the Agency, as well as any briefing protocol ("offer documents"). Subsequent changes to the content of the service shall require written confirmation by the Agency. Within the framework specified by the Client, the Agency shall have freedom of design in the fulfilment of the order.

4.2 All services provided by the Agency (in particular all preliminary drafts, sketches, final artwork, brush prints, blueprints, copies, colour prints and electronic files) shall be checked by the Client and approved by him within five working days of receipt by the Client. If they are not released in time, they shall be deemed to have been approved by the Client.

4.3 The Client shall make available to the Agency in a timely manner and in full all information and documents required for the provision of the service. He shall inform the Agency of all circumstances that are of importance for the execution of the order, even if they only become known during the execution of the order. The Customer shall bear the costs arising from the fact that work has to be repeated or delayed by the Agency as a result of incorrect, incomplete or subsequently changed information provided by the Customer.

4.4 The Client shall also be obliged to check the documents (photos, logos, etc.) provided for the execution of the order for any copyrights, trademark rights or other rights of third parties (rights clearing) and shall guarantee that the documents are free of third-party rights and can therefore be used for the intended purpose. The Agency shall not be liable in the case of only slight negligence or after fulfilment of its duty to warn - in any case in the internal relationship with the Client - due to an infringement of such third-party rights by documents made available. If a claim is made against the Agency by a third party on account of such an infringement of rights, the Customer shall indemnify and hold the Agency harmless; the Customer shall compensate the Agency for all disadvantages incurred by the Agency as a result of a claim made against it by a third party, in particular the costs of appropriate legal representation. The customer undertakes to support the Agency in the defence against any claims by third parties. The customer shall provide the Agency with all documents for this purpose without being requested to do so.

5) External services / commissioning of third parties

5.1 The Agency shall be entitled, at its own discretion, to perform the service itself, to make use of competent third parties as vicarious agents in the performance of services that are the subject matter of the contract and/or to substitute such services ("third-party performance by third parties").

5.2 The commissioning of third parties within the framework of an external service shall be carried out either in the Agency's own name or in the name of the Client. The Agency shall carefully select such third parties and ensure that they have the necessary professional qualifications.

5.3 Insofar as the Agency commissions necessary or agreed third-party services, the respective contractors shall not be vicarious agents of the Agency.

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5.4 The Client shall enter into obligations towards third parties that extend beyond the term of the contract. This shall also apply expressly in the event of termination of the Agency contract for good cause.

6) Deadlines

6.1 Unless expressly agreed as binding, stated delivery or service deadlines shall only be approximate and non-binding. Binding agreements on dates shall be recorded in writing or confirmed by the Agency in writing.

6.2 If the Agency's delivery/service is delayed for reasons for which it is not responsible, e.g., events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the service obligations shall be suspended for the duration and to the extent of the hindrance and the deadlines shall be extended accordingly. If such delays last more than two months, the Client and the Agency shall be entitled to withdraw from the contract.

6.3 If the Agency is in default, the Client shall only be entitled to withdraw from the contract after having granted the Agency a reasonable period of grace of at least 14 days in writing, which shall have expired to no avail. Claims for damages by the Client due to non-fulfilment or delay shall be excluded, except in the case of evidence of intent or gross negligence.

6.4 The customer shall be granted a voluntary 14-day cancellation option from the order after the service has been commissioned, which the customer can accept or reject when commissioning the service. If the voluntary cancellation period is accepted, the start of the Agency's services will naturally also be delayed. If the customer has made payments and wishes to cancel the contract within the deadline, all payments made will be refunded to the customer in full.

7) Early termination

7.1 The Agency shall be entitled to terminate the contract with immediate effect for good cause. An important reason shall be deemed to exist in particular if

- a) the performance of the service becomes impossible for reasons for which the Client is responsible, is further delayed despite the setting of an additional period of 14 days;
- b) the customer continues to violate material obligations under this contract, such as payment of a due amount or duties to cooperate, despite a written warning with a grace period of 14 days.
- c) there are justified doubts about the creditworthiness of the customer and the customer does not make advance payments at the Agency's request or provide suitable security prior to the Agency's performance;
- d) professional and contractual communication with the Client is not possible or is not perceived by the Client for whatever reason.

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7.2 The customer shall be entitled to terminate the contract for good cause without setting a grace period but by stating the reasons given. Good cause shall be deemed to exist in particular if the Agency continues to violate material provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the breach of contract. If there is no breach by the Agency and the Customer cancels an order that is being implemented, the Customer shall be invoiced for the Agency's own and third-party expenses plus 15% (but at least EUR 150.00 plus taxes) to compensate for the loss of earnings.

8) Fees

8.1 Unless otherwise agreed, the Agency's fee claim shall arise for each individual service as soon as it has been commissioned. Payment for services shall be made at the time of commissioning, in particular if services are provided online. In the case of other agreements, the Agency shall be entitled to demand advance payments to cover its expenses. In the case of an order volume extending over a longer or not clearly defined period of time, the Agency shall be entitled to issue interim or advance invoices or to call for payments on account.

8.2 The fee shall be understood as a net fee plus VAT at the statutory rate. In the absence of an agreement in an individual case, the Agency shall be entitled to a fee for the services rendered and the transfer of the rights of use under copyright and trademark law in the amount customary in the market.

8.3 All services rendered by the Agency that are not expressly covered by the agreed fee shall be remunerated separately. All cash expenses incurred by the Agency shall be reimbursed immediately by the Client.

8.4 The Agency's cost estimates shall not be binding. If it is foreseeable that the actual costs will exceed those estimated by the Agency in writing by more than 15%, the Agency shall draw the Client's attention to the higher costs. The cost overrun shall be deemed to have been approved by the customer if the customer does not object in writing within three working days of this notification and at the same time discloses more cost-effective alternatives. In the case of a cost overrun of up to 15%, a separate notification is not required. This cost overrun shall be deemed approved by the Client from the outset.

8.5 The Agency shall be entitled to the agreed remuneration for all work carried out by the Agency which, for whatever reason, is not carried out by the Client. The offsetting provision of § 1168 ABGB shall be excluded. On payment of the fee, the Client shall not acquire any rights of use to work already performed; rather, concepts, drafts and other documents that have not been executed shall be returned to the Agency without delay and excluded from any use by the Client.

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9) Payment, retention of title

9.1 The fee shall be due for payment immediately upon receipt of the invoice and without deduction, unless special terms of payment have been agreed in writing in individual cases. This shall also apply to the charging of all cash expenses and other outlays. The goods delivered by the Agency shall remain the property of the Agency until full payment of the remuneration including all ancillary liabilities. Invoicing in PDF format and transmission by electronic means, i.e. by e-mail, shall be deemed to have been agreed upon when the order is placed. Agreements to the contrary must be made in writing.

9.2 In the event of default in payment on the part of the Client, interest on arrears of 1% p.m. shall be deemed to have been agreed. Furthermore, in the event of default in payment, the Client undertakes to reimburse the Agency for the reminder and collection costs incurred, insofar as they are necessary for appropriate legal action. These shall in any case include the costs of two reminders in the customary amount of currently at least € 50.00 (fifty euros) per reminder as well as a reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims shall remain unaffected.

9.3 In the event of default in payment on the part of the Client, the Agency shall be entitled to demand immediate payment for all services and partial services rendered under other contracts concluded with the Client.

9.4 Furthermore, the Agency shall not be obliged to provide further services until the outstanding amount has been settled (right of retention). The obligation to pay remuneration shall remain unaffected.

9.5 If payment in instalments has been agreed, the Agency reserves the right to demand immediate payment of the entire outstanding debt in the event that instalments or ancillary claims are not paid on time (loss of time).

9.6 The Customer shall not be entitled to set off its own claims against claims of the Agency unless the Customer's claim has been recognised by the Agency in writing or has been established in court.

10) Property rights and copyright

10.1 All services provided by the Agency, including those from presentations (e.g., suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, negatives or structural sequences as well as strategy concepts), including individual parts thereof, shall remain the property of the Agency, as shall the individual workpieces and design originals, and may be reclaimed by the Agency at any time - in particular upon termination of the contractual relationship. By paying the fee, the client acquires the right of use for the agreed purpose. The acquisition of rights of use and exploitation of the Agency's services shall in any case require full payment of the fees invoiced by the Agency. If the Client already uses the Agency's services before this time, this use shall be based on a loan relationship that can be revoked at any time.

10.2 Modifications or adaptations of the Agency's services, in particular their further development by the Client or by third parties working for the Client, shall only be permissible with the express consent of the Agency and - insofar as the services are protected by copyright - of the author.

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10.3 The Agency's consent shall be required for the use of the Agency's services that goes beyond the originally agreed purpose and scope of use, irrespective of whether this service is protected by copyright. The Agency and the author shall be entitled to a separate appropriate remuneration for this.

10.4 The Agency's consent shall also be required for the use of the Agency's services or of advertising material for which the Agency has prepared conceptual or design templates, after expiry of the Agency agreement, irrespective of whether this service is protected by copyright or not.

10.5 For uses in accordance with Paragraph 10.4, the Agency shall be entitled to the full Agency remuneration agreed in the expired contract in the 1st year after the end of the contract. In the 2nd or 3rd year after expiry of the contract only half or a quarter of the remuneration agreed in the contract. From the 4th year after the end of the contract, no more agency remuneration shall be payable.

10.6 The Client shall be liable to the Agency for any unlawful use in the double amount of the appropriate fee for this use.

11) Labelling

11.1 The Agency shall be entitled to refer to the Agency and, if applicable, to the originator on all advertising media and in all advertising measures, without the Customer being entitled to any remuneration for this.

11.2 Subject to the Customer's written revocation, which shall be possible at any time, the Agency shall be entitled to refer to the existing or former business relationship with the Customer by name and company logo (reference) on its own advertising media and in particular on its Internet website.

12) Warranty

12.1 The Customer shall notify the Agency in writing of any defects without delay, in any case within eight days of delivery/service by the Agency, and of hidden defects within eight days of their discovery, describing the defect; otherwise, the service shall be deemed to have been approved. In this case, the assertion of warranty claims and claims for damages as well as the right to contest errors due to defects shall be excluded.

12.2 In the event of justified and timely notification of defects, the Customer shall be entitled to improvement or replacement of the delivery/service by the Agency. The Agency shall remedy the defects within a reasonable period of time, whereby the Customer shall enable the Agency to take all measures necessary for the examination and remedy of defects. The Agency shall be entitled to refuse to improve the service if this is impossible or involves a disproportionately high effort for the Agency. In this case, the customer shall be entitled to the statutory rights of conversion or reduction. In the event of improvement, it shall be incumbent on the Client to carry out the transfer of the defective (physical) item at its own expense.

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12.3 It is also incumbent on the client to check the service for its legal admissibility, in particular under competition, trademark, copyright and administrative law. The Agency shall only be obliged to carry out a rough check of legal admissibility. The Agency shall not be liable for the legal admissibility of content in the event of slight negligence or after fulfilment of any duty to warn the Client, if such content was specified or approved by the Client.

12.4 The warranty period shall be six months from delivery/service. The right of recourse against the Agency pursuant to Section 933b (1) ABGB shall expire one year after delivery/service. The customer shall not be entitled to withhold payments due to defects. The presumption provision of § 924 ABGB is excluded.

13) Liability and product liability

13.1 In cases of slight negligence, liability on the part of the Agency and its employees, contractors or other vicarious agents ("people") for material or financial damage to the Client shall be excluded, irrespective of whether the damage is direct or indirect, loss of profit or consequential damage, damage due to delay, impossibility, positive breach of duty, culpa in contrahendo, defective or incomplete performance. The existence of gross negligence shall be proven by the injured party. To the extent that the Agency's liability is excluded or limited, this shall also apply to the personal liability of its "people".

13.2 Any liability on the part of the Agency for claims made against the Client on the basis of services rendered by the Agency (e.g., advertising measures) shall be expressly excluded if the Agency has fulfilled its duty to inform the Client or if such a duty was not apparent to it, whereby slight negligence shall not be prejudicial. In particular, the Agency shall not be liable for legal costs, the Customer's own lawyer's fees or the costs of publishing judgements or for any claims for damages or other claims by third parties; the Customer shall indemnify and hold the Agency harmless in this respect.

13.3 Claims for damages on the part of the Customer shall expire six months after knowledge of the damage; in any case, however, after three years after the Agency's act of infringement. Claims for damages shall be limited to the net order value.

14) Data protection

14.1 The data protection declaration is publicly accessible at our website (www.lvm.cc/privacypolicy)

15) Applicable law

15.1 The contract and all mutual rights and obligations derived therefrom as well as claims between the Agency and the Customer shall be governed by Austrian substantive law, excluding its conflict of law rules and excluding the UN Convention on Contracts for the International Sale of Goods.

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16) Place of performance and jurisdiction

16.1 The place of performance shall be the registered office of the Agency. In the case of dispatch, the risk shall pass to the Customer as soon as the Agency has handed over the goods to the carrier chosen by it.

16.2 The place of jurisdiction for all legal disputes arising between the Agency and the Customer in connection with this contractual relationship shall be the court having subject-matter jurisdiction for the registered office of the Agency. Notwithstanding this, the agency is authorised to sue the customer at his general place of jurisdiction.

16.3 Insofar as this contract refers to natural persons only in the masculine form, they refer to all genders in the same way. All previous editions or versions of the GBT - General Business Terms are invalid upon publication on the agency's website.