

## Terms and conditions

valid from 01.05.2023

**LINKING  
BRANDS**

### 1. Validity

- 1.1. The LINKING BRANDS LIB GmbH company, hereinafter referred to as the Agency, provides its services exclusively on the basis of these General Terms and Conditions (T&Cs).
- 1.2. Adjustments, changes and additions to the T&Cs can be made by the agency at any time and are effective for existing contractual relationships as well as for all future business relationships, even if they are not expressly referred to. The current version is available on the website of the agency [T&Cs\\_englisch.pdf \(linkingbrands.com\)](#). The agency will inform the customer in writing of any adjustments, changes and additions to the T&Cs.
- 1.3. The following terms and conditions apply only to business customers and companies, not to consumers within the meaning of the Austrian Consumer Protection Act (KSchG).
- 1.4. These T&Cs apply to all services of the agency that are provided directly or indirectly (i.e. via third parties). By requesting or placing an order, you confirm that you have read, understood and agree to the terms and conditions listed below (including the data protection policy).
- 1.5. Side agreements, reservations, changes or additions to these T&Cs must be made in writing in order to be valid. This also applies to deviations from the requirement of written form.
- 1.6. Conflicting or deviating terms and conditions of use or business by the customer shall not become part of the contract even if they are known – and are only effective if they are expressly acknowledged by the agency in writing.
- 1.7. Should individual provisions of these T&Cs be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on their basis. The invalid provision shall be replaced by an effective provision that comes closest to the same meaning and purpose.

### 2. Conclusion

- 2.1. The basis of concluding the contract is the respective offer of the agency or order of the customer, in which the scope of services provided and fees are specified. The offers of the agency are subject to change and non-binding.
- 2.2. We reserve the right to make changes acceptable to the customer. Likewise, offers of the agency as well as accepted orders are subject to the availability of the offered advertising platforms and advertising partners.
- 2.3. Should the customer accept an offer or place an order, the customer is bound to this request for two weeks from receipt of the request by the agency, and in any case from the interim acceptance by the agency, unless they express another binding period in writing. Orders of the customer shall only be deemed to be accepted by a written order confirmation from the agency, unless the agency indicates by other actions made on the basis of the order that it has implicitly accepted the order.
- 2.4. The written order confirmation by the agency can only be made legally effective by the named persons (see point 20 **Fehler! V erweisquelle konnte nicht gefunden werden.**).
- 2.5. All changes to the contract must be made in writing. This also requires signatures or written confirmation from management or representative bodies. Employees of the agency without a power of representation or a supply agent cannot make legally effective declarations to the customer.

### 3. Scope of services and customer's obligation to cooperate

- 3.1. The scope of the services to be provided is determined in the context of the order by the service description or the information provided in the offer or in the written order confirmation (including briefing protocol). Subsequent changes to the details of the service must be made in writing.

- 3.2. All services of the agency (in particular all preliminary drafts, sketches, final drawings, proofs, blueprints, colour prints, banners and internet pages) are to be checked by the customer and approved within two days. If they are not formally approved in time, they shall be deemed to be accepted by the customer. The customer shall immediately provide the agency with all information, documents (e.g. photos, logos, ...), licenses and other trademark and usage rights that are necessary for the provision of the service. Image, sound, text or similar material must be made available immediately and in a regular, immediately usable, preferably digital format. If a conversion of the material provided by the customer into another format is necessary, the customer shall bear the costs incurred for this.
- 3.3. The customer will also inform the agency of all processes that are important for completing the order, even if these circumstances only become known during the processing of the order. The customer shall bear expenses arising from the fact that work has to be repeated or has been delayed by the agency as a result of information that is incorrect, incomplete or subsequently changed.
- 3.4. The customer is obliged to check, in relation to documents provided for the processing of the order (photos, logos etc.) for any existing copyright, trademark, patent or attribution rights etc. or other rights of third parties. The agency shall not be liable for any violation of such rights. If the agency faces legal action for an infringement in this area, the customer shall indemnify and hold the agency harmless and must compensate for all financial and other disadvantages caused by a claim by third parties.
- 3.5. The customer may not violate legal prohibitions or morality with the form, content and purpose of their advertising material. The customer confirms that the services provided by the agency or advertising created is not discriminatory, racist, erotic, pornographic and does not contain glorifications of violence or left-wing or left-wing right-wing extremist content, nor is reference made to such content. The agency shall bear an obligation to check this. In the event that the customer's advertising violates legal prohibitions or morality, the customer is liable and indemnifies and holds the agency harmless.
- 3.6. The customer must deliver digitally transmitted documents free of so-called computer viruses or other corruptions. In particular, they are obliged to use commercially available protection programmes that must contain the latest technology. In the event that a transmitted file is found to be corrupted, the agency will not make use of it and, in order to avoid or limit damage, will delete it without the customer being able to assert claims for damages in this context. The customer is liable to the agency for all damages caused to them by computer viruses or other sources of corruption.

### 4. Third-party services / commissioning third parties

- 4.1. The agency is entitled, at its own discretion, to perform the service itself or to make use of third parties in the provision of contractual services and/or to substitute such services (*procurement agents*).
- 4.2. The commissioning of procurement agents takes place either on its own initiative or on behalf of the customer, for which the customer hereby expressly grants the relevant power of attorney. In any case, however, this is done at the expense of the customer.
- 4.3. The agency will carefully select procurement agents and ensure that they have the necessary professional qualifications. For products and services of third parties, the agency assumes no liability and offers no guarantee as to their function and accessibility. The customer is aware that the time for

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a domain registration or launch cannot be specified or guaranteed by the agency. If the agency is commissioned to take over an existing domain but the change is rejected by the NIC, the customer must bear the costs incurred. By requesting the domain change, the agency has fulfilled its obligation for registering a domain.

4.4. The agency expressly highlights this to the customer and the customer acknowledges that the providers of social media channels (e.g. Facebook, Instagram, etc.) reserve the right in their terms of use to reject and thus remove advertisements and advertising campaigns for any reason.

### 5. Fees

5.1. Unless otherwise agreed, the agency is to claim a fee for every individual service as soon as this has been provided in full. The agency is entitled to demand advance payments to cover its expenses.

5.2. For the services provided and the settlement of the copyright and trademarked usage rights of the agency, the agency is to receive a fee amounting to 15% of the advertising budget processed through it, unless otherwise agreed. The fee excludes statutory sales tax.

5.3. All services of the agency that are not expressly compensated by the agreed fee are to be remunerated separately. This applies, in particular, to all side services of the agency. All cash expenses incurred by the agency are to be reimbursed by the customer.

5.4. Cost estimates of the agency are non-binding. If actual costs are forecast to exceed those estimated by the agency in writing by more than 10%, the agency will inform the client of 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 days of this notice and at the same time details more cost-effective alternatives.

5.5. For all work of the agency that, for whatever reason, is not carried out by the customer, the agency shall be entitled to appropriate remuneration. By paying this remuneration, however, the customer does not acquire any rights to this work. Concepts, drafts and other documents that have not been completed are to be returned to the agency without delay, subject to the data of the customer which has been made available by them and is to be kept by them.

### 6. Presentations

6.1. For participation in presentations, the agency is entitled to a reasonable fee, which, in the absence of an agreement, covers at least the entire personnel and material expenses of the agency for the presentation as well as the costs of all external services.

6.2. If the agency does not receive an order after the presentation, all services of the agency, in particular the presentation documents and their content, remain the property of the agency. The customer is not entitled to continue to use them – in any form whatsoever – and the documents must be returned to the agency immediately. The passing of presentation documents to third parties as well as their publication, duplication, distribution or other utilisation is not permitted without the express consent of the agency.

6.3. Likewise, the customer is prohibited from making further use of the ideas and concepts introduced in the course of the presentation, regardless of whether the ideas and concepts are copyright protected. By paying the presentation fee, the customer does not acquire any utilisation and/or usage rights to the presented services.

6.4. If the ideas and concepts introduced in the course of a presentation for communication tasks are not used in advertising material designed by the agency, the agency is

entitled to use the presented ideas and concepts elsewhere.

### 7. Ownership and copyright protection

7.1. All services of the agency, including those from presentations (e.g. ideas, concepts, suggestions, sketches, preliminary drafts, brainstorming, final drawings, negatives, slides) and also individual parts thereof, as well as the individual items of work and design originals, remain the property of the agency and can be reclaimed by the agency at any time – in particular upon termination of the contractual relationship. The property rights and/or copyrights remain with the agency or the author. By paying the fee, the customer only acquires the right of use (including reproduction) for the agreed purpose and within the agreed scope of use. Unless otherwise agreed with the agency, the customer may only use the services of the agency itself, only in the local region and only for the duration of the contract. The acquisition of rights of use for services of the agency requires, in any case, the full payment of the fees invoiced by the agency for this purpose. An exclusive right of use exists only if stated in a separate agreement.

7.2. Any changes to the services of the agency, such as, in particular, their further development by the customer or by third parties acting on their behalf, are only permitted with the express consent of the agency and – insofar as the services are protected by copyright – of the author.

7.3. For the use of services of the agency that go beyond the originally agreed purpose and scope of use, the consent of the agency is required – regardless of whether this service is protected by copyright. For this, the agency and the author are entitled to a separate appropriate remuneration.

7.4. For the use of services of the agency or advertising material for which the agency has developed conceptual or design templates, after the end of the cooperation – regardless of whether these services are protected by copyright or not – the consent of the agency is also required.

7.5. The agency is entitled in the first year after the end of the contract to claim, in full, the agency fee agreed in the expired contract. In the second or third year after expiry of the contract, it is only entitled to half or a quarter of the fee agreed in the contract. In the fourth year after the end of the contract, no further agency remuneration is payable. The customer undertakes to indemnify and hold harmless the agency against all claims due to infringements of copyrights, rights of use of works, personal rights or other rights of third parties.

### 8. Attribution

8.1. The agency is entitled to refer to the agency and, if necessary, to the author, on all advertising media and in all advertising material, without the customer or the cooperation partner being entitled to a financial claim.

8.2. Subject to the written revocation of the customer and/or the cooperation partner, which can be made at any time, the agency is entitled to refer to the existing business relationship with the customer or cooperation partner on its own advertising media and in particular on its website, with its name and company logo, without paying a fee. Furthermore, the agency is entitled to publicly reproduce the services provided for demonstration purposes or to refer to them, unless the customer or cooperation partner can assert a conflicting legitimate interest.

### 9. Dates

9.1. Deadlines and appointments must be recorded or confirmed in writing. The agency shall endeavour to meet the agreed deadlines. Failing to meet deadlines does not entitle the customer to assert the rights to which it is legally entitled until it has granted the agency a reasonable grace period of at least 14 days. This period begins with the receipt of a reminder letter by the agency.

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- 9.2. Should the grace period pass without a reasonable response, the customer may withdraw from the contract. An obligation to pay damages due to a delay exists only in the event of intent or gross negligence on the part of the agency.
- 9.3. Unavoidable or unforeseeable events – in particular due to force majeure, official measures or delays at contractors of the agency – free the agency from its requirement to comply with the agreed delivery date. The same applies if the customer is behind schedule with obligations necessary for completing the order (e.g. the provision of documents or information). In this case, the agreed date will be postponed at least to the extent of the delay.
- 9.4. In the event of an unforeseeable cancellation by a brand partner, the agency will endeavour to find an equivalent replacement and immediately notify the customer of the cancellation of or changes to the appointment.
- 9.5. The delivery obligations of the agency are fulfilled as soon as the work and services have been dispatched. The delivery risks (e.g. damage, loss, delay), regardless of the form of delivery, shall be borne by the customer.

### 10. Withdrawal from the contract

- 10.1. The agency is entitled to terminate the contract for a good cause with immediate effect. A good cause exists, in particular, if
- delivering the service is impossible for reasons for which the customer is responsible or is further delayed despite the setting of a 14-day grace period;
  - the customer becomes insolvent and/or insolvency proceedings are opened against its assets or such insolvency proceedings are rejected due to a lack of assets;
  - there are justified concerns about the creditworthiness of the customer and it does not make advance payments at the request of the agency nor offers a suitable security to the agency before providing the service, or a required security becomes invalid in whole or in part
  - internet services are repeatedly used in breach of contract or a one-off gross breach of contract occurs. Furthermore, this leads to the immediate withdrawal of access and use authorisation and to the offsetting of localisation expenses, the determination of the scope and the remedying of the damage.

### 11. Payment, title retention

- 11.1. The invoices of the agency are due for net payment without any deduction from the invoice date and, unless otherwise agreed, are to be paid within ten calendar days from receipt of the invoice. In the event of late payment, default interest of 9.2% above the respective discount rate of the Austrian National Bank shall apply, as agreed. Furthermore, the agency is entitled to charge reminder costs to the amount of EUR 25.00 for each reminder. The above also applies to the offsetting of all cash expenses and other expenses of the agency. Delivered goods remain the property of the agency until full payment has been made.
- 11.2. The customer is obliged to bear all costs and expenses associated with the collection of the claim, such as, in particular, collection expenses or other costs necessary for appropriate legal action.
- 11.3. In the event of a late payment by the customer, the agency may immediately make all services and partial services provided within the framework of other contracts concluded with the customer due for payment.
- 11.4. The customer is not entitled to offset its own claims against claims of the agency, unless the customer's claim has been acknowledged in writing by the agency or determined by a court. In the event of a late payment, the agency is entitled to withhold its own services until the customer has fulfilled its

payment obligation. A right of retention for the customer is excluded. Any disadvantages resulting from the delay are the responsibility of the customer.

- 11.5. For expected external costs (e.g. printing costs, advertising material production costs, advertising media costs, etc.) the agency can already make advanced calculations of the sum of the expected costs after the conclusion of the contract.
- 11.6. If the parties have not made an agreement on the fee for a service of the agency, the provision of which the customer could only expect for a fee, the customer must pay the usual remuneration for this service. In case of doubt, the remuneration rates requested by the agency for its services shall be deemed to be standard.

### 12. Data protection

- 12.1. The (personal) data provided by the customer will be stored by the agency, processed and used in accordance with the applicable data protection regulations. In this regard, reference is made to the data protection declaration, which can be accessed under [Declaration on Data Protection – LINKING BRANDS](#) and contains detailed information on data protection. By requesting or placing an order, the customer declares to be in agreement with these data protection provisions and accepts them.
- 12.2. If data is transferred to the agency – in whatever form – the customer is obliged to make backup copies of it. In the event of data loss, the customer is obliged to send the relevant datasets to the agency again, free of charge.
- 12.3. Depending on the campaign, the customer receives a user ID and password to maintain its virtual host/database or CMS. In this context, it is obliged to store the personal password acting as an access code carefully, protect it against access by third parties and against misuse and loss. The customer indemnifies the agency from costs and claims of third parties arising from the violation of the above obligations.
- 12.4. The customer is aware that all participants in the transmission path have the possibility of intercepting transmitted data and accepts this risk. Furthermore, the agency does not guarantee that data or files stored on a virtual host/server are not accessible to third parties.

### 13. Warranty and compensation

- 13.1. The customer must assert and justify any complaints in writing immediately, but in any case, within three days of the agency delivering a service, otherwise they shall be deemed to have been properly rendered. In the case of justified and timely complaints, the customer is only entitled to the right of an improvement or replacement of the service by the agency.
- 13.2. In the event of a justified notification of defects, the defects shall be remedied within a reasonable period of time, whereby the customer must enable the agency to take all measures necessary for the examination and rectification of defects. The agency is entitled to refuse to improve the service if this is impossible or involves a disproportionately high expense for the agency.
- 13.3. Regarding online presences, the agency guarantees the best possible reproduction of the advertising material within the framework of the foreseeable requirements in accordance with the usual technical standards. However, the customer is aware that according to the limits of technology, it is not possible to create a programme completely free of errors. For this reason, the warranty does not apply to insignificant errors. An insignificant error in the presentation of the advertising material exists, in particular, if it is caused by (i) the use of unsuitable display software and / or hardware (e.g. browser) (ii) disruptions to the communication networks of other operators (iii) incomplete and / or non-updated offers on so-called proxies

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(caches).

- 13.4. For the measurement of click, response and conversion figures, LINKING BRANDS is to use internal systems as well as tracking systems of the booked media. All claims for damages can only be asserted on the basis of the LINKING BRANDS systems.
- 13.5. A reversal of the burden of proof in accordance with § 924 ABGB at the expense of the agency is excluded. The existence of a defect at the time of delivery, the time of discovery of the defect and the timeliness of the notice of defects must be proven by the customer.
- 13.6. Claims for damages of the customer, in particular due to delay, impossibility of delivering a service, a positive breach of a claim, fault in the conclusion of the contract, defective or incomplete delivery of a service, consequential damage caused by defects or due to unlawful acts are excluded, unless they are due to intent or gross negligence by the agency. All claims are limited in amount to the order value, excluding taxes.
- 13.7. Claims for damages can only be asserted within six months of becoming aware of the damage and the party at fault. All claims arising from this contractual relationship shall, in any case, become statute-barred within one year from the conclusion of the contract.
- 14. Liability**
- 14.1. The agency will carry out work it is commissioned with in compliance with generally accepted legal principles and inform the customer in good time of any risks recognisable to them. The agency is only liable for damages within the framework of the statutory provisions provided that intent or gross negligence can be proven. The burden of proof lies with the aggrieved party.
- 14.2. The liability of the agency for minor negligence (except personal injury), indirect and consequential damages, lost profits, application errors, for damages, in particular due to delay, impossibility of delivering a service, a positive breach of contract, violation of pre-contractual protection obligations, defective or incomplete service delivery, consequential damages or arising in tort as well as damages from claims of third parties, as well as damages from the use or non-use of data, documents and information made available or caused by the use of incomplete or non-error-free data, documents and information is excluded.
- 14.3. Any liability of the agency for claims made against the customer due to the advertising campaign (e.g. the use of a trademark/logo) is expressly excluded. In particular, the agency shall not be liable for legal costs, solicitors' fees of the customer or costs for the publication of judgments as well as for any claims for damages, infringements of copyrights, trademarks or other (intellectual property) rights or similar claims of third parties, in particular with regard to the advertising material made available to them by the customer or the cooperation partner, which contain intellectual property rights.
- 14.4. If claims are made against the agency due to an infringement of the law, the customer shall indemnify and hold the agency harmless in its entirety and compensate it for all disadvantages that the agency has incurred or is suffering as a result of the claims of third parties.
- 14.5. The agency assumes no liability whatsoever for the documents provided by the customer for processing or for the incorrect or inaccurate information or instructions provided by them.
- 14.6. Liability is limited to the agency's own culpability and that of its proxies and employees.
- 14.7. Any liability is limited to the material costs and the free restoration of the goods (as far as possible). The customer is not due any further claims; in particular, the agency is not liable for any travel and accommodation expenses as well as for third-party costs or for lost profits and consequential damages.

- 14.8. The agency is not liable for the success of the distribution of the advertising material.

### **15. Changes to the General Terms and Conditions**

- 15.1. The agency is entitled to amend or supplement these general terms and conditions at any time. If the customer does not object to the amended terms and conditions within a period of four weeks after receipt of the notification of their change, the new general terms and conditions shall also be effective for existing contractual relationships in accordance with the notice. If the customer objects within the set period, the agency has the right to terminate the contract at the time from which the amended conditions become effective.

### **16. Succession**

- 16.1. The rights and obligations of the parties in the present context shall be transferred to their legal successors and, if necessary, shall be transferred in full by the parties to any individual and universal successors in title.

### **17. Applicable law**

- 17.1. The legal relationship between the customer and the agency shall be governed exclusively by Austrian law to the exclusion of the conflict-of-law rules of private international law and the UN Convention on Contracts for the International Sale of Goods.

### **18. Place of performance and jurisdiction**

- 18.1. The place of performance is the registered office of the agency.
- 18.2. The place of jurisdiction for all legal disputes arising directly or indirectly between the agency and the customer, including the question of formation, validity or dissolution, shall be the Austrian court of Vienna that is responsible for the locality and the subject of the registered office of the agency.

### **19. Commissioning by LINKING BRANDS**

- 19.1. Commissions made by LINKING BRANDS are only legally effective if they are signed by authorised signatories.

### **20. Authority to sign**

The following employees have authorisation to sign:  
Martin Prantl, CEO  
Caroline Mudrak, COO  
Sonja Prettenthaler, CFO

Vienna, May 2023