

Allgemeine Geschäftsbedingungen

Stand 25.08.2025

The logo for Lupinum, featuring the word "lupinum" in a lowercase, sans-serif font. The letters are white and set against a solid teal rectangular background.**Lupinum OG**

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0. Scope of Application

0.1 These General Terms and Conditions (GTC) apply to all legal transactions between Lupinum OG (hereinafter "Lupinum") and entrepreneurs with a registered office in Austria.

0.2 An entrepreneur is any natural or legal person or legally capable partnership that, when concluding a legal transaction, acts in the exercise of its independent professional or commercial activity.

0.3 These GTC do not apply to consumers within the meaning of the Austrian Consumer Protection Act (KSchG).

1. Validity and Conclusion of Contract

1.1 Lupinum OG (hereinafter "Lupinum") provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These apply to all legal relationships between the agency and the customer, even if not expressly referred to.

1.2 The version valid at the time of contract conclusion shall always apply. Deviations from these as well as other supplementary agreements with the customer are only effective if confirmed in writing by Lupinum.

1.3 The contractual basis of the business relationship between Lupinum and the customer consists of (i) the written individual agreement ("Individual Agreement") and (ii) these GTC (hereinafter jointly also "Contract" or "Contractual Basis"). In case of contradictions or deviations, the written individual agreement shall prevail first, followed by these GTC. By making a contractual declaration, the customer acknowledges the contractual basis. They apply to all future contracts, even if not expressly agreed upon again. The contractual basis also applies to contractual amendments made after contract conclusion.

1.4 Any terms and conditions of the customer are not accepted, even if known, unless expressly and in writing agreed otherwise in individual cases. Lupinum expressly objects to the customer's terms and conditions. No further objection by Lupinum is required.

1.5 Lupinum has the right to amend the GTC at any time. The customer already agrees to such changes. Amendments to the GTC will be communicated to the customer and are deemed agreed for all current and future business relationships if the customer does not object in writing within 14 days; the customer will be expressly informed of the significance of silence and the specific amended clauses. This presumption of consent does not apply to changes of essential performance contents and fees. If the customer objects in writing to the new version of the GTC within the specified period, the previous version continues to apply. The current GTC are available on Lupinum's website.

1.6 Should individual provisions of these GTC be invalid, the validity of the remaining provisions and contracts concluded on their basis shall not be affected. The invalid provision shall be replaced by a valid one that comes closest to its meaning and purpose.

1.7 Offers from Lupinum are non-binding and subject to change. Price lists are subject to price changes, errors, and misprints.

1.8 In these GTC, the term 'software' also includes organizational concepts and tools that support the development, planning, and use of software.

2. Konzept- und Ideenschutz

2.1 If Lupinum is commissioned to create a concept before conclusion of a contract, a "pitching contract" arises. This contract is also subject to these GTC.

2.2 The potential customer acknowledges that Lupinum already provides cost-intensive preliminary services by preparing the concept, even though the customer has not yet assumed any obligations.

2.3 The concept and creative preliminary services (including marketing and branding strategies) are subject to copyright protection in their linguistic and graphical parts, insofar as they reach the required level of originality. Any use or processing of these parts without Lupinum's consent is not permitted under copyright law.

2.4 The concept also contains advertising-relevant ideas that do not reach the level of originality required for copyright protection. These ideas mark the beginning of any creative process and can be defined as the spark for all subsequent output and thus as the origin of marketing strategies. Therefore, elements of the concept that are unique and give the marketing strategy its distinctive character are protected. For the purpose of this agreement, ideas particularly include advertising slogans, advertising texts, slogans, graphics and illustrations, strategies, claims, etc., even if they do not reach copyrightable originality.

2.5 The potential customer undertakes not to exploit or allow exploitation of these creative advertising ideas presented by Lupinum within the framework of the concept for economic purposes outside the scope of a later main contract, nor to use or allow their use.

2.6 If the customer believes that ideas presented by Lupinum were already conceived independently before the presentation, the customer must notify Lupinum in writing within 14 days after the presentation, providing evidence that allows for chronological allocation.

2.7 Otherwise, the contractual parties assume that Lupinum presented the potential customer with a new idea. If the customer uses the idea, it shall be deemed that Lupinum has contributed to its realization.

2.8 The potential customer can release themselves from these obligations by paying reasonable compensation, calculated on a case-by-case basis, plus 20% VAT. The release takes effect only upon full receipt of payment by Lupinum.

3. Scope of Services and Duties of Cooperation

3.1 Areas of Service

Lupinum provides services in the following areas:

- a)** Marketing Strategy & Branding: Development of brand identities, positioning, naming, claim development, brand architecture, communication strategy, brand manual.
- b)** Creative Services: Design, illustration, print, photography, video.
- c)** Web Development and IT: Websites, CMS, hosting, domains, software development, training.
- d)** SEO Services: Optimization according to current standards.
- e)** Social Media Services: Setup, management, campaigns, community management.
- f)** IT Services: Support, maintenance, organizational concepts.

3.2 General Provisions

3.2.1 Review and Approval

- a)** The customer is obliged to review all services provided by Lupinum (e.g., drafts, test versions, templates, print data, software versions) within 2 weeks of receipt and provide written approval.
- b)** For complex projects, the review period is a maximum of 4 weeks.
- c)** If no feedback is received within this period, the service is deemed approved.
- d)** Insignificant defects do not entitle the customer to refuse acceptance.

3.2.2 Revision Rounds

- a)** Two revision rounds are included by default.
- b)** The first serves comprehensive feedback within the original concept.
- c)** The second is limited to feedback on the implemented changes.
- d)** Additional revisions or adjustments are billed separately according to effort.
- e)** Format adjustments requested after completion are also billed separately.

3.2.3 Raw Data and Project Files

- a)** Raw data (e.g., uncut video footage, project files, source code, strategy documents) remain the property of Lupinum.
- b)** The customer only acquires usage rights to the final products defined in the individual agreement.

- c) Release of raw data occurs only by separate agreement and for an additional fee.
- d) Lupinum stores raw data free of charge for 12 months after project completion; longer archiving is possible for a fee. After expiry, Lupinum may delete the data.

3.2.4 Duties of Information and Provision

- a) The customer provides all information, content, and documents necessary for contract fulfillment on time, completely, and accurately.
- b) The customer informs Lupinum of all circumstances relevant to service provision, even if they become known only during the project.
- c) Additional effort or delays caused by incorrect, incomplete, or late information shall be borne by the customer.
- d) The customer appoints a competent, authorized contact person for the duration of the project who can make binding statements and decisions.

3.2.5 Customer's Rights and Content (Rights Clearance)

- a) The customer is obliged to check provided content (e.g., photos, logos, texts, music, trademarks) for third-party rights and to only provide Lupinum with materials free to use.
- b) The customer guarantees that the content is free of third-party rights and may be used for the intended purpose.
- c) Lupinum is not liable for third-party rights violations in cases of slight negligence or once their duty to warn has been fulfilled.
- d) If Lupinum is held liable by third parties due to such content, the customer indemnifies and holds Lupinum harmless and compensates for all resulting disadvantages, especially reasonable legal defense costs.
- e) The customer supports Lupinum in defending such claims and provides necessary documents without request.

3.2.6 Data Backup

- a) The customer is responsible for their own data backup unless otherwise agreed.
- b) Lupinum is not liable for data loss unless data backup has been expressly and in writing agreed as part of the services.

3.2.7 Lupinum's Rights in Case of Breach of Duties

- a) If the customer breaches their duties of cooperation, Lupinum is entitled to withdraw from the contract after setting a grace period of at least 4 weeks without success. Lupinum retains full entitlement to payment; offset under § 1168 para. 1 ABGB is excluded.
- b) If Lupinum receives legally or morally questionable content from the customer (e.g., suspected copyright, personal rights, trademark infringements, or unlawful content), Lupinum is entitled to reject such content while otherwise fulfilling the contract.
- c) Lupinum is furthermore entitled, in such cases, to withdraw from the contract immediately at its own discretion. In such a case, Lupinum is entitled to proportional remuneration for services already provided.

3.3 Marketing Strategy & Branding

3.3.1 Legal Review: Lupinum does not conduct any legal examination (e.g., registrability of trademarks, conflicts with existing intellectual property rights). The customer is obliged to independently ensure legal admissibility (e.g., trademark search, patent attorney).

3.3.2 Disclaimer: Lupinum is not liable for the marketability, commercial success, or legal enforceability of a developed brand or strategy.

3.4 Creative Services (Design, Video, Print)

3.4.1 Filming Permits and Locations

- a) Lupinum assists in obtaining necessary filming permits. Costs for locations and permits are borne by the customer.
- b) Special circumstances: Outdoor shoots may require weather-related rescheduling. These must be accepted by the customer and do not entitle them to compensation claims.

3.4.2 Output Formats

- a) Videos: Standard aspect ratios (16:9, 9:16, 1:1) in formats such as MP4 or MOV. Other output formats available upon request.
- b) Print designs: Print-ready files (e.g., PDF/X-4).
- c) Illustrations: In the agreed file formats and sizes.

3.4.3 Print Mediation

- a) Customer approval: Before commissioning a printing company, the customer must carefully review the print data provided by Lupinum (e.g., layout, texts, colors, formats) and give written approval.
- b) Binding approval: With the print approval, the customer confirms the content and technical accuracy of the print data. After this approval, Lupinum places the print order in the name and on account of the customer. Subsequent changes are excluded or possible only at additional cost.
- c) Disclaimer: Lupinum assumes no liability for errors or deviations identified after print approval (in particular typos, layout errors, color deviations, incorrect formats). Responsibility lies solely with the customer.
- d) Printer liability: Lupinum is not liable for quality defects, production errors, or delivery delays of the printing company. Any claims must be made directly to the printer.
- e) Color deviations: Technical color differences between screen view, proof, and final print result are unavoidable and do not constitute a defect.

3.5 Web Development and IT

3.5.1 Testing Processes and Acceptance

- a) Lupinum applies a three-stage testing process:
 1. Development phase: Internal tests by Lupinum
 2. Preview/Staging phase: Customer receives access to a staging server for review
 3. Production phase: Final tests after release
- b) Live environment tests: The customer is responsible for data backup. Test data must sufficiently reflect real-world use cases.
- c) Program acceptance is based on the agreed test data. Insignificant defects do not entitle the customer to refuse acceptance.

3.5.2 Traffic and Usage Limits

- a) Agreed traffic limits are defined in the respective maintenance contract.
- b) In case of exceedance, the customer bears additional costs.
- c) Lupinum continuously monitors traffic usage. In case of significant exceedance, extra costs may arise; in cases of severe technical overuse, Lupinum may temporarily and without prior notice take the website offline.
- d) Resumption of service takes place after clarification of technical and economic aspects.
- e) Lupinum informs the customer as soon as traffic limit thresholds are approached in order to coordinate necessary optimizations.

3.5.3 Hosting and Infrastructure

- a) General: Lupinum advises the customer on suitable hosting solutions. Costs for hosting, domains, SSL certificates, and further infrastructure are borne by the customer. Unless otherwise agreed, hosting is carried out on third-party servers.
- b) Contract term: Hosting contracts are typically concluded for one year and automatically renewed unless terminated in time. Notice of termination must be given at least two months before contract end.
- c) Termination: In case of default exceeding two months, Lupinum may terminate the hosting contract with immediate effect.
- d) Liability and availability: Lupinum assumes no responsibility for the availability of third-party services or the internet beyond its control. Responsibility lies exclusively with the provider. The customer indemnifies and holds Lupinum harmless.
- e) Security: In case of threats to network security or system integrity, Lupinum may temporarily restrict access to services as required.

3.5.4 Domains

- a) Registration: Lupinum can register and manage domains on behalf of the customer.
- b) Representation: The customer expressly authorizes Lupinum to issue cancellations within domain administration – even if Lupinum is not listed as domain owner but only as Tech-C or Admin-C.
- c) Contract term: Domain contracts automatically renew unless terminated two months in advance. In case of default exceeding two months, Lupinum may terminate immediately. The customer reimburses Lupinum for any resulting costs and damages.
- d) Legal responsibility: Lupinum is not obliged to examine the legality of a domain. Responsibility lies solely with the customer, who indemnifies Lupinum from all related claims.
- e) Costs: Registration and management fees are borne by the customer. Invoices must be paid within two months.

3.5.5 Maintenance and Updates

- a) Maintenance contracts: These may include security updates, system and software updates, backup management, performance monitoring, and support. Unless otherwise agreed, they are concluded for 12 months and automatically renewed unless terminated 3 months before expiration.
- b) Free updates: Security updates and bug fixes within the warranty period are free of charge.
- c) Paid updates: Functional extensions, adjustments due to new requirements, or updates after the warranty period are subject to fees. Without a maintenance contract, updates are billed according to effort.
- d) Exclusion of statutory update obligation: The statutory update obligation pursuant to § 7 VGG is excluded unless otherwise expressly agreed.
- e) Customer obligations: The customer ensures that system requirements for updates are met, backups are performed before updates, and security-relevant updates can be promptly installed.
- f) Liability: Lupinum is not liable for damages resulting from non-installed updates or incompatibilities with the customer's system environment.

3.5.6 Browser and Device Compatibility

- a) Lupinum develops for the current versions of agreed browsers at the time of development.
- b) Compatibility is tested on common devices and screen sizes.
- c) Adjustments for future browser or OS versions or new devices are subject to additional charges.

3.5.7 Data Protection and Security

- a) Lupinum develops according to current security standards and best practices.
- b) The customer is responsible for the lawful collection and processing of user data.
- c) Lupinum supports the implementation of technical solutions (e.g., cookie banner, opt-in/opt-out). The legal review and ultimate responsibility remain with the customer.

3.5.8 Documentation and Training

- a) Technical documentation (e.g., manuals) is only provided if expressly agreed.
- b) Training is offered on an hourly basis and tailored to customer needs. Lupinum does not guarantee individual learning success. The customer ensures participants have basic computer skills.

3.5.9 System Passwords

Passwords for individually created services are disclosed to the customer only if:

- a) no ongoing maintenance contract exists for the affected component,
- b) all payment obligations are fulfilled,
- c) the customer requires the password for intended use, and
- d) the customer signs a waiver of warranty.

3.5.10 Standard Programs and Libraries

- a) When ordering library (standard) programs, the customer confirms awareness of the service scope.
- b) The customer bears the risk that the programs meet their requirements and are compatible with their systems.

3.6 SEO Services

3.6.1 Service Provision and Guarantees

- a) Lupinum provides SEO services according to current standards and best practices.
- b) Guarantees for specific rankings or results (e.g., traffic, conversions) are explicitly excluded.
- c) Success depends on external factors beyond Lupinum's control, including:
 - Changes in search engine algorithms
 - Market competition
 - Technical limitations of the website
 - Industry trends and user behavior

3.6.2 Customer's Duties and Responsibilities

- a) The customer ensures technical suitability of their environment for SEO measures (e.g., CMS, server configuration).
- b) The customer is responsible for the legal admissibility of provided content and indemnifies Lupinum from third-party claims.

3.6.3 Communication and Cooperation

- a) Lupinum regularly informs the customer through reports including:
 - Implemented optimizations
 - Relevant metrics
 - Recommendations for further actions
- b) The customer provides Lupinum with necessary access (e.g., CMS, analytics tools, servers) and enables implementation of recommended measures.
- c) The customer undertakes to promptly review proposals and either enable implementation or agree on alternatives with Lupinum.

3.7 Social Media Marketing and Campaigns

3.7.1 Scope of Services

Lupinum provides in particular:

- Setup and management of social media profiles
- Development and execution of advertising campaigns
- Content creation and management
- Community management
- Monitoring and reporting

3.7.2 Platform-Specific Conditions

- a) Services are provided based on the terms of use of the respective platforms.
- b) Platforms may remove or block content or ads at any time. No guarantee for permanent availability or reach is given.
- c) Content may be removed without notice due to user complaints or automated checks.

3.7.3 Legal Aspects and Liability

- a) The customer is responsible for rights clearance of provided content.
- b) Lupinum is not liable for:
 - Removal of content or blocking of profiles by platforms
 - Functional changes or restrictions of platforms
 - Technical outages or disruptions on platforms

3.7.4 Risk Notices and Risk Management

- a) Lupinum informs the customer about specific risks before campaign launch (e.g., blocking, legal risks, reputational risks).
- b) These risks are documented and discussed with the customer.
- c) If the customer continues the campaign after risk disclosure, this constitutes risk acceptance.

3.7.5 Monitoring and Quality Assurance

- a) Lupinum monitors ongoing campaigns regarding performance, user reactions, and potential conflicts.
- b) In case of issues, Lupinum takes appropriate measures, such as:
 - Adjusting campaign content
 - Informing the customer of relevant incidents
 - Communicating with platform operators, where possible

4. Third-Party Services & Engagement of Subcontractors

4.1 Service Provision: Lupinum may, at its own discretion, provide services itself, engage competent third parties as vicarious agents, and/or substitute such services with third-party providers ("Third-Party Services").

4.2 Engagement Modalities: Engagement of third parties may be done either in Lupinum's own name or in the customer's name, the latter following prior information to the customer. Lupinum will carefully select these third parties and ensure they have the required qualifications.

4.3 Contractual Obligations: The customer must assume obligations towards third parties that have been disclosed to them and extend beyond the contract term. This explicitly applies also in the event of termination of the agency contract for cause.

5. Project Process and Service Agreement

5.1 General Provisions

5.1.1 The scope of services to be provided is defined in the individual agreement, usually based on an offer. Services not explicitly promised in the offer and/or the individual agreement are not part of the contract and are excluded from the service scope, even if the template used would enable or allow additional functions.

5.1.2 Lupinum is entitled to perform tasks in whole or in part through third parties (see 4.1).

5.1.3 Typically, the offer and/or the individual agreement defines the project roadmap, specifying the scope of services/partial services, possible project packages, and the intended schedule.

5.1.4 Stated delivery or performance periods are approximate and non-binding unless expressly agreed as binding. The proposed schedule serves only as a rough guideline for intended completion of services/partial services. In case of a delay not exceeding one month, the customer is not entitled to assert claims due to delay.

5.1.5 If delivery/performance is delayed for reasons beyond Lupinum's control, such as force majeure or other unforeseeable, unavoidable events, performance obligations are suspended for the duration and scope of the hindrance, and deadlines are extended accordingly. If such delays last more than two months, both parties are entitled to withdraw from the contract (for details see 6.4).

5.1.6 If Lupinum is in default, the customer may only withdraw from the contract after granting Lupinum a written grace period of at least 14 days, which must pass without remedy. Claims for damages by the customer due to non-performance or delay are excluded, except in cases of willful intent or gross negligence.

5.1.7 If the customer subsequently requests changes and/or additions to content or the integration of additional tools etc. that modify the agreed services, or after partial acceptance has been carried out, this must be separately agreed in writing. The associated additional effort will be invoiced separately.

5.2 Acceptance of Services/Partial Services

5.2.1 If the services consist of the creation of a work (e.g., development of a website), Lupinum shall submit the completed work to the customer for acceptance.

5.2.2 The customer is obliged to accept the offered work and to confirm acceptance in writing upon request, provided the work is not materially defective.

5.2.3 Material defects are those that significantly impair the functionality or intended use of the work. Insignificant defects do not justify refusal of acceptance and must be documented in an acceptance protocol.

5.2.4 Acceptance is deemed to have taken place if:

- a) the customer expressly declares acceptance,
- b) the customer puts the work into use or goes live with it,
- c) the customer fails to respond to the acceptance offer within 14 days,
- d) the customer refuses acceptance without specifying material defects, or
- e) the customer pays the invoice unconditionally.

5.2.5 With acceptance, delivery of the work to the customer is complete. Lupinum's obligation is deemed fulfilled. From this point onward, the customer bears the risk of accidental loss.

5.2.6 If the work consists of multiple partial services, Lupinum is entitled to request acceptance of each partial service. Unconditional payment of a partial invoice constitutes acceptance of that partial service.

5.2.7 Lupinum is entitled to issue partial invoices upon partial acceptance. In case of payment default exceeding 14 days, Lupinum may suspend further services until payment is made. After an additional grace period of at least 14 days, Lupinum is entitled to withdraw from the contract while retaining entitlement to payment for the entire work.

5.2.8 After the last partial service has been delivered, a final acceptance of the overall work is carried out, at which only the integration of the partial services and overall functionality are reviewed.

5.2.9 If the customer refuses acceptance due to material defects, these must be detailed in writing. Lupinum is entitled and obliged to remedy these defects within a reasonable period and resubmit the work for acceptance.

5.2.10 If the customer is more than 14 days in default of payment of the final invoice, Lupinum is entitled to take the website offline without further notice if hosted by Lupinum. The website will be brought back online immediately after full payment.

5.3 Project Packages

5.3.1 Project packages are explicitly designated as such in the offer and/or the individual agreement, and their scope is precisely defined.

5.3.2 The schedule for completion of project packages is determined together with the customer at project start. If the customer fails to fulfill their cooperation duties required for completion, Lupinum reserves the right to postpone completion to any date of its choosing. If the customer desires an earlier date, additional costs may be charged.

5.3.3 Upon completion of a project package, an acceptance procedure must be carried out.

5.3.4 After acceptance of a project package, a partial invoice is issued, which must be paid by the customer.

5.3.5 Lupinum is only obliged to continue providing services once the partial invoice for the project package has been paid in full.

6. Early Termination

6.1 Lupinum is entitled to terminate the contract with immediate effect for good cause. Good cause exists in particular if:

- a)** performance becomes impossible due to reasons attributable to the customer, or continues to be delayed despite a 14-day grace period;
- b)** the customer repeatedly, despite written warning and a 14-day grace period, violates essential obligations under this contract, such as payment of due amounts or cooperation duties;
- c)** justified concerns regarding the customer's creditworthiness arise, and the customer neither makes advance payments nor provides suitable security upon Lupinum's request.

6.2 If execution of the order does not take place due to circumstances attributable to the customer, although Lupinum was ready to perform, Lupinum reserves the right to consider the contract terminated. In this case, Lupinum is entitled to the agreed remuneration for the services to be provided.

6.3 Cancellations by the customer are only possible with Lupinum's written consent. If Lupinum agrees, it is entitled to charge, in addition to services already provided and costs incurred, a cancellation fee amounting to 30% of the not-yet-invoiced contract value of the entire project.

6.4 Force Majeure and Serious Performance Obstacles

- a)** Force majeure and serious obstacles include all unforeseeable or unavoidable events that prevent or substantially hinder contract fulfillment. These include in particular:
 - Natural disasters (e.g., floods, earthquakes, storms, fires)
 - Epidemics and pandemics
 - War, armed conflict, terrorist acts
 - Government orders, legal prohibitions, or other state measures
 - Prolonged power or telecommunication outages outside Lupinum's control
 - Serious illness, incapacity, or death of the Lupinum project manager responsible for the project
 - Other unforeseeable, unavoidable, and serious events
- b)** In such cases, both parties are released from performance obligations for the duration and scope of the effects. Deadlines are extended accordingly.
- c)** If the event lasts longer than 6 weeks, both parties are entitled to terminate the contract for good cause with immediate effect. If it lasts more than 2 months, both parties have a mutual right of termination.
- d)** In case of early termination for these reasons, the customer is entitled to:
 - Delivery of all work results produced up to that point
 - Pro-rata refund of payments already made for unperformed services
 - Reasonable support in transferring the project to another service provider
- e)** The customer remains obliged to pay for all services performed and third-party costs incurred up to the occurrence of the event. No further liability for damages exists.
- f)** The cancellation rules in Section 6.3 do not apply in cases of force majeure or serious obstacles.
- g)** Both parties are obliged to immediately notify the other party of such events and to provide information on the expected duration and impact.

7. Remuneration

7.1 Lupinum's entitlement to remuneration arises for each individual service as soon as it has been provided, unless otherwise agreed. Lupinum is entitled to request advance payments to cover expenses. For orders with an (annual) budget exceeding €1,000, or those extending over longer periods, Lupinum is entitled to issue interim or advance invoices or request installment payments.

7.2 Fees are understood as net fees plus statutory VAT. Unless expressly agreed otherwise, Lupinum is entitled to a market-standard fee for the services provided as well as for the granting of copyright and trademark usage rights.

7.3 Additional costs and expenses: All services of Lupinum not expressly covered by the agreed fee will be billed separately. Additional out-of-pocket expenses (e.g., travel, meals, accommodation) are borne by the customer. Costs for equipment rental, locations, actors' fees, and third-party services (e.g., printing) are billed at actual cost.

7.4 Cost estimates by Lupinum are non-binding. If it becomes foreseeable that actual costs will exceed the written estimate by more than 15%, the customer will be notified. Consent is deemed granted if the customer does not object within three business days. For deviations up to 15%, no separate notification is required. Cost estimates are non-binding.

7.5 If the customer changes or terminates assigned work unilaterally without involving Lupinum—without prejudice to other ongoing services—Lupinum must be compensated for the services provided in accordance with the fee agreement and all costs incurred reimbursed. Unless the termination is based on Lupinum's grossly negligent or intentional breach, the customer must also reimburse Lupinum the entire fee agreed for the project (commission), with set-off under § 1168 ABGB excluded. Additionally, the customer indemnifies Lupinum from claims of third parties, in particular subcontractors. Payment does not entitle the customer to any usage rights; unused concepts, drafts, and other documents must be returned to Lupinum immediately.

7.6 Lupinum may request a down payment of 40% of the total contract volume and is not obliged to begin services until payment is received. The customer is not entitled to offset claims against Lupinum, except where such claims have been judicially established or expressly acknowledged in writing by Lupinum. The right of retention is excluded.

7.7 After completion of the two standard revision rounds, further changes are billed at the current hourly rate.

7.8 Price Adjustments

- a)** Lupinum is entitled to pass on price increases for purchased services (e.g., domains, templates) to the customer. The customer will be informed in advance where possible and may withdraw within 7 days. If no objection is raised, the increase is deemed accepted.
- b)** For indefinite contracts and automatically renewable contracts, Lupinum may annually adjust prices reasonably, taking into account the Consumer Price Index. Additionally, Lupinum may adjust prices if costs for services increase by more than 3% due to factors beyond its control.

7.9 If additional effort is unavoidable, Lupinum will notify the customer in due time. Without customer consent, Lupinum is entitled to charge unavoidable additional effort, provided it was not caused by Lupinum.

7.10 If a flat fee/hourly pool is agreed for a defined period, it ensures Lupinum's minimum availability during that period. Unused hours are not transferable to subsequent periods and expire without any entitlement to price reduction. If the hour pool proves insufficient, Lupinum must inform the customer in good time.

8. Payment, Retention of Title

8.1 Fees are due within 14 days of invoice receipt, free of charges and without deductions, unless special written terms are agreed. This also applies to reimbursement of expenses and outlays. Goods delivered by Lupinum remain Lupinum's property until full payment of the fee including ancillary claims.

8.2 In the event of customer default, statutory default interest for business transactions applies. The customer also undertakes to reimburse Lupinum for all reminder and collection costs, as well as (extrajudicial) legal fees necessary for proper enforcement. This includes, at minimum, the cost of two reminders at customary rates and one reminder by a collection lawyer. Further claims remain unaffected.

8.3 In case of default, Lupinum may declare immediately due all services and partial services provided under other contracts with the customer.

8.4 Furthermore, Lupinum is not obliged to provide additional services until outstanding amounts are settled (right of retention). The obligation to pay fees remains unaffected.

8.5 If installment payments are agreed, Lupinum may declare the total outstanding amount immediately due in case of default on an installment or ancillary obligation (loss of deadline).

8.6 The customer is not entitled to offset their claims against claims of Lupinum, unless Lupinum has acknowledged the claim in writing or it has been judicially determined.

9. Ownership and Copyright

9.1 Ownership Rights of Lupinum

9.1.1 All services of Lupinum, including presentations (e.g., suggestions, ideas, sketches, drafts, final artwork, concepts), remain the property of Lupinum. Individual work pieces and originals may be reclaimed at any time, especially upon contract termination.

9.1.2 Upon payment, the customer acquires a simple, non-transferable right of use for the agreed purpose. Unless otherwise agreed, use is limited to Austria. Full payment of fees is a prerequisite for acquiring usage rights.

9.1.3 Use of services before full payment is based on a revocable loan relationship.

9.1.4 Delivery of open files (e.g., raw data, project files, source files) is not part of the contract. The customer has no right to them without express agreement.

9.1.5 The customer may not duplicate or reproduce services or use them beyond the agreed purpose. Archival or backup copies are permitted provided all copyright and ownership notices remain unchanged.

9.1.6 If disclosure of interfaces is necessary to achieve interoperability of the software, the customer must commission Lupinum for a fee. If Lupinum fails to comply and decompilation is carried out under copyright law, results may be used only to achieve interoperability. Misuse leads to damages.

9.1.7 If software is provided for which a third party holds the license (e.g., Microsoft standard software), rights of use are subject to the licensor's terms.

9.1.8 Lupinum reserves all rights to distribute, present, exhibit, and publish services, whether free or paid, unless expressly agreed otherwise. The same applies to editing and reproduction rights.

9.2 Changes and Adaptations

9.2.1 Modifications or further developments of Lupinum's services by the customer or third parties require Lupinum's express approval and, in the case of copyrighted works, also the author's consent.

9.2.2 Editing rights are only granted to the extent expressly agreed (e.g., adding content to websites).

9.3 Scope of Use and Remuneration

9.3.1 Any use beyond the originally agreed purpose requires Lupinum's consent and entitles Lupinum to appropriate additional compensation.

9.3.2 After contract termination, further use of Lupinum's services requires Lupinum's consent. The following fees apply:

- 1st year: full contract fee
- 2nd year: 50% of contract fee
- 3rd year: 25% of contract fee
- From 4th year onward: no fee

9.3.3 The customer is liable for unauthorized use at twice the appropriate fee for such use.

9.4 Copyright Notice

9.4.1 Attribution: Lupinum has the right to place an attribution (e.g., on websites). It may not be removed or altered.

9.4.2 Self-promotion: Lupinum may use completed projects as references, e.g., in showreels, presentations, or on its website. The customer may only object in writing for important reasons.

9.5 Customer Content and Third-Party Rights

9.5.1 For content provided by the customer (e.g., photos, texts, music), the customer is responsible for rights clearance. Lupinum assumes no liability for rights violations.

9.5.2 Lupinum may take legal action against infringement of its copyrights and intellectual property rights. At the customer's request, claims may be assigned without affecting the customer's rights of use.

9.5.3 Content provided by the customer remains their property if they hold the rights.

9.6 Special Provisions for Custom Developments

9.6.1 For custom developments or designs, the customer acquires a non-transferable, exclusive right of use that does not include source code or the underlying concept.

9.6.2 For template-based services, the customer only acquires the rights granted by the template supplier.

9.7 Restrictions on Transfer of Rights

Transfer of rights applies exclusively for the customer's own use. Transfer to third parties, even affiliated companies, is excluded.

10. Attribution & References

10.1 Lupinum is entitled to indicate Lupinum (and possibly the author) on all advertising materials and measures without the customer being entitled to compensation.

10.2 Subject to revocation at any time in writing, Lupinum may use the customer's name and logo on its own promotional materials and website as a reference to the business relationship.

10.3 Lupinum may use work results or extracts thereof for self-promotion free of charge, even after contract termination.

11. Warranty

11.1 Scope of Warranty

Lupinum warrants:

- Proper execution of the agreed services
- Compliance with current technical standards
- Functionality of the implemented solutions at the time of delivery
- Completeness of the agreed documentation

11.2 Periods and Exclusions

11.2.1 The warranty period is six months from documented delivery. Within this period, the customer must report defects in writing. If reported on time, warranty rights remain valid until the defect is remedied or a settlement is reached, even after expiry of the period.

11.2.2 The customer is not entitled to withhold payments due to defects.

11.2.3 The presumption rule of § 924 ABGB is excluded. The customer must prove that the defect existed at the time of delivery.

11.2.4 The right of recourse against Lupinum pursuant to § 933b (1) ABGB expires one year after delivery/performance.

11.2.5 No warranty applies for:

- Compatibility with future software or hardware versions or browser updates
- Changes or interventions by the customer or third parties after acceptance
- Failure to comply with installation requirements
- Misuse or improper operation
- Use of unsuitable hardware or software
- Interference by other programs or systems
- Damage caused by external influences (power failure, natural events)
- Suitability for purposes not expressly agreed

11.2.6 Lupinum also assumes no warranty for limitations or defects attributable to open-source software or external modules. In such cases, Lupinum assigns its claims against the manufacturer/supplier to the customer, who accepts this assignment by agreeing to these GTC. If the assignment is ineffective, Lupinum's liability is limited to a price reduction after a reasonable period (at least 4 weeks).

11.2.7 The statutory update obligation under § 7 VGG is excluded unless expressly agreed otherwise.

11.3 Defect Notification and Duty to Inspect

11.3.1 Under § 377 UGB, the customer must inspect the services immediately after delivery. Any defects must be reported in writing within eight days of delivery, or within eight days of discovery in case of hidden defects, with a detailed description. Otherwise, the services are deemed approved. In such cases, warranty claims, damage claims, and the right of avoidance for error are excluded.

11.3.2 If this duty is breached, the services are deemed approved, and warranty and damage claims as well as avoidance for error are excluded. Exceptions under § 377 (5) UGB remain unaffected.

11.3.3 The customer bears the burden of proof that the defect existed at the time of delivery and that the defect notice reached Lupinum.

11.4 Rights in Case of Defects

11.4.1 In the case of justified and timely defect notification, the customer is entitled to improvement or replacement. The choice lies with Lupinum. Remote support is permitted as a remedy.

11.4.2 If improvement or replacement is impossible or would cause disproportionate expense, the customer is entitled to a price reduction. Rescission of the contract (cancellation) is only possible if the defect is not minor.

11.4.3 Lupinum assumes no liability for defects caused by incorrect or inaccurate instructions of the customer (§ 1168a ABGB).

11.4.4 For improvements, the customer must send the defective item to Lupinum at their own expense.

11.5 Customer's Duties of Cooperation

11.5.1 Conditions for defect remedy are:

- Notification within the deadline under § 377 UGB
- Sufficient defect description by the customer
- Provision of all required documents
- No interventions in the software by the customer or third parties
- Proper operation of the software
- Provision of necessary system resources and access
- Provision of staff for testing, if required (especially for IT services)

11.5.2 If the customer breaches these duties:

- Warranty periods are suspended
- Additional costs are borne by the customer

11.6 Cost Allocation

11.6.1 Unjustified defect notifications:

- Testing and troubleshooting are billed
- Travel costs are borne by the customer

11.6.2 Justified defect notifications:

- Remedy is free of charge under warranty
- Additional services are billed separately

11.7 Legal Review

11.7.1 The customer is responsible for checking the legal admissibility of services (e.g., competition, trademark, or administrative law). Lupinum only conducts a basic review and is not liable for unlawful content provided or approved by the customer in cases of slight negligence.

11.7.2 Lupinum is not liable in cases of slight negligence or after fulfilling its duty to warn the customer, for unlawful content provided or approved by the customer.

11.8 Special Provisions for Modules and Software

11.8.1 Lupinum is not responsible for limitations caused by used software and is not obliged to provide solutions or adjustments.

11.8.2 Lupinum is only obliged to contact the manufacturer/supplier to request defect correction. If unsuccessful within a reasonable period, the customer is only entitled to a price reduction.

11.9 Special Provisions for Custom Developments

For custom developments, only the warranty rights defined in the offer or individual agreements apply.

12. Liability and Product Liability

12.1 General

12.1.1 Lupinum and its agents are not liable for slight negligence, except in cases of personal injury.

12.1.2 The customer bears the burden of proof for gross negligence or intent.

12.1.3 Lupinum is not liable for property or financial damages, lost profits, consequential damages, damages due to delay, impossibility, breach of obligations, or defective performance, except in cases of gross negligence or intent.

12.1.4 Liability per damage event is limited to the net contract amount. This limitation applies to all claimants connected with the damaging event. Lupinum's liability for indirect damages, consequential damages, lost profits, and third-party claims is excluded to the extent permitted by law.

12.1.5 Damage claims expire six months after knowledge of damage and injuring party, and in any case three years after the damaging event.

12.2 Exclusion of Liability for Third-Party Claims

12.2.1 Lupinum is not liable for claims of third parties arising from provided services (e.g., advertising measures) if Lupinum has fulfilled its duty to warn or if such was not identifiable.

12.2.2 The customer indemnifies and holds Lupinum harmless from legal costs, attorney's fees, costs of publication of judgments, or third-party compensation claims.

12.3 Limitations for Software and Modules

12.3.1 Lupinum is not liable for limitations or defects based on open-source software. Solutions for such limitations are not part of the scope of services.

12.3.2 Lupinum is not liable for damages caused by modules from external suppliers. Warranty claims against suppliers are assigned to the customer, who accepts this by agreeing to these GTC.

12.3.3 Lupinum is not liable for data loss caused by use of open-source software or external modules.

12.3.4 For standard software libraries, Lupinum only warrants agreed functionality and assumes no liability for special customer requirements not expressly agreed.

12.4 Liability for Provided Content and Data

12.4.1 Lupinum is not liable for the content, accuracy, or completeness of data provided by the customer.

12.4.2 Lupinum is not obliged to examine trademarks or other identifiers provided by the customer for possible conflicts unless a basic check has been expressly agreed. Comprehensive checks (e.g., EU-wide) are not part of the service and should be carried out by a specialized attorney.

12.5 Special Liability Rules for IT Services

12.5.1 Data backup and loss: The customer must perform a complete backup before IT services. Lupinum is not liable for data loss caused by missing or insufficient backups. Data recovery is not part of standard services and is billed separately.

12.5.2 Lupinum is not liable for system failures or interruptions caused by:

- Force majeure
- Network outages
- Third-party actions
- Misuse by the customer or their employees

12.5.3 For remote access, Lupinum is not liable for:

- Connection interruptions
- Transmission errors
- Technical issues in the customer's infrastructure

12.5.4 Lupinum assumes no liability for functionality of third-party hardware/software. The customer is responsible for complying with license terms.

12.5.5 Lupinum is not liable for damages caused by:

- Viruses, malware, or harmful software
- Incompatibilities between systems or components
- Errors in third-party software

12.5.6 The customer bears the burden of proof for:

- Existence of damage
- Causality between service and damage
- Lupinum's fault

12.5.7 Alleged damages must be reported in writing immediately, at the latest within 48 hours of detection.

12.5.8 In case of data loss, Lupinum's liability is limited to 10% of the contract value per damage case, up to a maximum of EUR 15,000 (fifteen thousand euros).

13. Data Protection in Business Transactions

13.1 Controller under the GDPR

Lupinum OG

Owners: Matthias Amon & Romana Netzberger

Innerzaun 26/1, 3321 Kollnitzberg, Austria

Phone: +43 681 20303240

Email: info@lupinum.com

We have not appointed a data protection officer, as this is not legally required. For all data protection-related questions, you may contact us directly.

13.2 Specific Details of Data Processing

To comply with the General Data Protection Regulation (GDPR), we hereby inform you about the specific details of data processing:

13.2.1 Categories of Processed Data: We process personal data that you actively provide to us as well as data that is generated during business transactions:

- Name/company and contact person
- Business address and other business contact details
- Phone number, fax number, email address
- Company-related data (company register number, VAT ID, etc.)
- Bank details and payment data
- Contract data and correspondence

13.2.2 Purposes of Processing: Data is processed for business transactions and contract performance, compliance with legal obligations (especially accounting and tax retention), business communication, marketing, and business development in the B2B sector.

13.3 Legal Basis for Processing

We process your personal data on the following legal bases:

- Contractual necessity (Art. 6(1)(b) GDPR): For business transactions and contract performance.
- Legal obligation (Art. 6(1)(c) GDPR): To comply with statutory obligations, especially tax and commercial retention.
- Legitimate interests (Art. 6(1)(f) GDPR): For business communication, business development, and B2B marketing. Our interests do not override your fundamental rights.
- Consent (Art. 6(1)(a) GDPR): Where explicit consent is required for certain processing activities.

13.4 Storage and Deletion Periods

Your personal data is stored according to the following retention periods:

- Contract data and invoices: 7 years after contract end (under § 132 BAO tax law).
- Commercially relevant records: 7 years after the fiscal year (§ 190 UGB).
- Business correspondence: 6 years after last contact, unless longer retention periods apply.
- Marketing data: Until withdrawal, but at most 3 years after end of active business relationship.
- Application documents: 6 months after the end of the recruitment process.
- Bank data: Deleted immediately after contract fulfillment unless retention is required by law.

13.5 Data Sharing and International Transfers

13.5.1 Data is only shared with third parties if:

- Necessary for providing services or contract fulfillment (e.g., subcontractors).
- Required by law.
- Necessary for enforcing legal claims.

13.5.2 International Transfers: Data may be processed outside the EU/EEA, particularly in the USA and Canada. Adequate protection is ensured either by an adequacy decision of the European Commission (Art. 45 GDPR) or appropriate safeguards under Art. 46 GDPR, such as standard contractual clauses.

13.6 Processing on Behalf of Clients

13.6.1 Scope: If Lupinum processes personal data on behalf of the customer (e.g., address lists, website visitor data, newsletter subscribers), this is done exclusively under the customer's instructions and in accordance with the GDPR.

13.6.2 Lupinum undertakes to:

- Process data strictly according to the customer's instructions.
- Bind all employees to confidentiality.
- Implement adequate technical and organizational security measures.
- Immediately inform the customer of data breaches.
- Assist the customer in fulfilling data subject rights.

13.6.3 Subcontractors: Lupinum may engage subcontractors (e.g., hosting providers, printers, marketing tools). The customer will be informed of new subcontractors and may object within 30 days. GDPR-compliant processing agreements are concluded with all subcontractors. Subcontractors include in particular:

- Hosting providers and content delivery networks
- Printers and shipping service providers
- Marketing tools and analytics providers
- Video streaming services and multimedia platforms
- Social media management tools

13.6.4 Data Return and Deletion: After project completion or at the customer's instruction, all processed personal data will be either returned or securely deleted, unless legal retention requirements apply.

13.6.5 Proof and Audits: Lupinum maintains records of processing activities and provides the customer with necessary information for compliance verification.

13.7 Agreements with Processors

We have concluded agreements with all service providers processing personal data on our behalf (processors) in accordance with Art. 28 GDPR. These agreements ensure data is processed only on our instructions and in compliance with the GDPR.

13.8 Data Security Measures

Lupinum implements appropriate technical and organizational measures to protect processed data and ensure GDPR compliance. These include:

- Encrypted data transmission
- Access controls and permission management
- Regular security updates and backups
- Employee training in data protection

13.9 Data Breaches

In case of a data breach likely to pose a high risk to your rights and freedoms, we will notify you without undue delay, at the latest within 72 hours of becoming aware of it. The notification will include:

- Nature of the breach
- Categories and approximate number of data subjects and records affected
- Contact details of our responsible contact person
- Likely consequences of the breach
- Measures taken or proposed to address the breach

13.10 Information and Marketing Communication

Lupinum is entitled under § 107 TKG to contact the customer for information and marketing purposes (including via email, phone, post, or electronic channels). The customer may object to the use of their data for marketing at any time, free of charge.

13.11 Consent and Withdrawal

Where processing is based on consent, it is voluntary. Consent may be withdrawn at any time with future effect. After withdrawal, data will no longer be processed for those purposes. **Contact for withdrawal:** E-Mail: info@lupinum.com

13.12 Your GDPR Rights

According to GDPR, you have the following rights regarding your personal data. To exercise them, please contact us at info@lupinum.com.

- a)** Right to information: Clear and transparent details about processing. This privacy statement fulfills that duty.
- b)** Right of access: You may request details of the data we store about you.
- c)** Right to rectification: Correction of inaccurate data.
- d)** Right to erasure ("right to be forgotten"): Deletion of your data unless retention is legally required.
- e)** Right to restriction of processing: Data may be stored but not further used.
- f)** Right to data portability: Data may be provided in a common machine-readable format or transferred to another controller.
- g)** Right to object: You may object to processing based on our legitimate interests at any time.
- h)** Rights related to automated decision-making including profiling: You have the right not to be subject to decisions based solely on automated processing.

13.13 Right to Lodge a Complaint

Complaints may be lodged with the Austrian Data Protection Authority:

- Website: www.dsb.gv.at
- Address: Austrian Data Protection Authority, Barichgasse 40-42, 1030 Vienna, Austria

14. Final Provisions

14.1 Place of Performance and Transfer of Risk

14.1.1 The place of performance for all services provided by Lupinum is its registered office.

14.1.2 In the case of shipment, risk passes to the customer as soon as Lupinum hands over the goods to the chosen carrier.

14.2 Jurisdiction and Applicable Law

14.2.1 The contract and all rights and obligations arising from it are governed exclusively by Austrian law, excluding its conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods.

14.2.2 For all disputes arising from or related to this contractual relationship, the exclusive jurisdiction of the competent court at Lupinum's registered office is agreed. However, Lupinum may also sue the customer at their general place of jurisdiction.

14.3 Adaptation and Interpretation

14.3.1 Should any provision of this contract be invalid, void, or unenforceable, this shall not affect the validity of the remaining provisions. In such case, a provision will apply that most closely reflects the parties' intent. The same applies to potential contractual gaps.

14.3.2 Contesting the contract due to error is limited to the extent permitted by law. The parties waive the right to contest due to *laesio enormis* (shortfall of more than half) under § 934 ABGB, to the extent legally permissible.

14.4 Amendments and Side Agreements

14.4.1 Amendments or supplements to this contract must be in writing to be valid. This also applies to deviations from this written form requirement. Written form includes electronic communication (email), provided it is sent to the last notified email address of the contractual partner.

14.4.2 There are no verbal side agreements. Earlier verbal or written agreements lose validity upon conclusion of this contract, unless expressly included in the contract.

14.5 Transfer of Rights

Rights arising from this contract may only be transferred to third parties with Lupinum's express consent.

14.6 Confidentiality

14.6.1 Each party undertakes to treat as confidential all trade secrets received from the other party in connection with this contract and its performance, and not to disclose them to third parties, unless such information is publicly known, previously lawfully known to the recipient without a confidentiality obligation, provided by a third party without obligation of confidentiality, independently developed by the recipient, or required to be disclosed by binding official or judicial order.

14.6.2. Subcontractors engaged by Lupinum are not considered third parties, provided they are bound by confidentiality obligations equivalent in substance to this clause.

14.7 Alternative Dispute Resolution

14.7.1 In disputes arising from or in connection with this contract, the parties will first seek an amicable settlement before initiating legal proceedings. This may include direct negotiation or alternative dispute resolution.

14.7.2 In disputes with a value of up to EUR 10,000, Lupinum will, at the customer's request, agree to mediation or another suitable alternative dispute resolution procedure. Costs are shared equally, unless otherwise required by law.

14.7.3 In disputes concerning technical aspects or implementation of project requirements, either party may propose obtaining a joint expert opinion. Costs are shared equally, unless otherwise required by law. The expert opinion is not binding but serves as a basis for an amicable resolution.

14.7.4 Participation in alternative dispute resolution is voluntary in all cases. Legal recourse remains unrestricted. Limitation periods are suspended for the duration of ongoing alternative dispute resolution.

14.8 Gender-Neutral Language

Where personal designations are used in the masculine form, they apply equally to all genders. When applied to specific persons, gender-specific forms must be used.

14.9 Contract Language

The contract language is German or English. In the event of discrepancies between multilingual versions (including these GTC), the German version prevails unless expressly agreed otherwise.

14.10 Contract Acknowledgment

The customer confirms having taken note of the GTC. In the event of placing an order, these GTC form the basis of the contractual relationship.