

RareLoot GmbH

Ausstellungsstraße 50C
1020 Vienna
Austria



General Terms and Conditions

of

RareLoot GmbH

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There is a German and an English version of these Terms and Conditions. Only the German version of these Terms and Conditions shall be legally binding.

1. Applicability; Conclusion of contract

- 1.1. RareLoot GmbH (hereinafter referred to as "Agency") 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 they are not expressly referred to.
- 1.2. The version valid at the time of the conclusion of the contract shall be authoritative in each case. Deviations from these as well as other supplementary agreements with the customer are only effective if they are confirmed in writing by the agency.
- 1.3. Any terms and conditions of the customer, even if known, are not accepted, unless otherwise expressly agreed in writing in individual cases. AGB of the customer contradicts the agency expressly. A further objection to GTC of the customer by the agency is not required.
- 1.4. Amendments to the GTC shall be notified to the customer and shall be deemed to have been agreed if the customer does not object to the amended GTC in writing within 14 days; the customer shall be expressly informed of the significance of the silence and of the specifically amended clauses in the



notification. This fiction of consent shall not apply to the amendment of essential service contents and charges.

- 1.5. Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid one that comes closest to the meaning and purpose.
- 1.6. The offers of the agency are subject to change and non-binding.

2. Social Media Channels

Before placing an order, the agency expressly points out to the customer that the providers of "social media channels" (e.g. Facebook, 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 may be removed without cause. In the event of a complaint by another user, the providers are granted the opportunity to make a counterstatement, but even in this case the content is removed immediately. In this case, the restoration of the original, lawful state may take some time. The agency works on the basis of these terms of use of the providers, over which it has no influence, and also bases the order of the customer on them. By placing the order, the customer expressly acknowledges that these terms of use (co-)determine the rights and obligations of any contractual relationship. The agency intends to execute the order of the customer to the best of its knowledge and to comply with the guidelines of "social media channels". However, due to the currently valid terms of use and the simple possibility of each user to claim violations of rights and thus achieve a removal of the content, the agency cannot guarantee that the commissioned campaign is also retrievable at all times.

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 regulation shall apply:

- 3.1. Already through the invitation and the acceptance of the invitation by the agency, the potential customer and the agency enter into a contractual relationship ("pitching contract"). This contract is also based on the GTC.

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- 3.2. The potential customer acknowledges that the agency already provides cost-intensive preliminary services with the concept development, although he has not yet assumed any service obligations himself.
- 3.3. The concept is subject to the protection of the copyright law in its linguistic and graphic parts, as far as these reach work height. The potential customer is not permitted to use or edit these parts without the consent of the agency, 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 are protected which are peculiar and give the marketing strategy its characteristic imprint. In particular, advertising slogans, advertising texts, graphics and illustrations, advertising materials, etc. are considered to be an idea in the sense of this agreement, even if they do not reach the level of a work.
- 3.5. The potential customer 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 must inform the agency of this within 14 days after the day of the presentation by e-mail, citing evidence that allows a temporal allocation.
- 3.7. In the contrary case, the contracting parties shall assume that the Agency has presented the potential customer with an idea that is new to him. If the idea is used by the customer, it shall be assumed that the agency became meritorious in the process.
- 3.8. The potential customer can release himself from his obligations from this point by paying an appropriate compensation, which is calculated according to the individual case, plus 20% VAT. The exemption shall only come into effect after the full payment of the compensation has been received by the Agency.

4. Scope of services; Order processing; Customer's duties to co-operate



- 4.1. The scope of the services to be provided results from the service description in the agency contract or any order confirmation by the agency, as well as any briefing protocol ("offer documents"). Subsequent changes to the service content require written confirmation by the agency. Within the framework specified by the customer, the agency has the freedom to design the fulfillment of the order.
- 4.2. All services of the Agency (in particular all preliminary drafts, sketches, final drawings, blueprints, copies and electronic files) are to be reviewed by the customer and approved by him within three working days of receipt by the customer. After expiry of this period without feedback from the customer, they shall be deemed to have been approved by the customer.
- 4.3. The Customer 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 will inform it of all circumstances that are of importance for the execution of the order, even if these 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 his incorrect, incomplete or subsequently changed information.
- 4.4. The customer is also obliged to check the documents provided for the execution of the order (photos, logos, etc.) for any copyrights, trademark rights or other rights of third parties (rights clearing) and guarantees that the documents are free of rights of third parties and can therefore be used for the intended purpose. The Agency shall not be liable in the event of merely slight negligence or after fulfillment of its duty to warn - at least in the internal relationship with the Customer - due to an infringement of such third-party rights by documents provided. If a claim is made against the Agency by a third party due to 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 due to 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 defense of 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 Service").

- 5.2. The commissioning of third parties in the context of an External Service shall be carried out either in the Agency's own name or in the name of the Customer, the latter after prior information to the Customer. The Agency shall carefully select this third party and ensure that it has the required professional qualifications.
- 5.3. The customer shall enter into obligations towards third parties that have been named to the customer and that extend beyond the term of the contract. This also expressly applies 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 are only approximate and non-binding. Binding deadlines are to be recorded in writing or confirmed by the agency in writing.
- 6.2. If the delivery/service of the Agency is delayed for reasons for which it is not responsible, such as 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 customer and the agency are entitled to withdraw from the contract.
- 6.3. If the Agency is in default, the customer may withdraw from the contract only after he has given the Agency in writing a reasonable grace period of at least 14 days and this has passed fruitlessly. Claims for damages by the customer due to non-fulfillment or delay are excluded, except in the case of evidence of intent or gross negligence.

7. Early termination

- 7.1. The agency is entitled to dissolve the contract for important reasons with immediate effect. An important reason exists in particular if

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- 7.1.1. the performance of the service becomes impossible for reasons for which the customer is responsible or is further delayed despite a grace period of 14 days being set;
 - 7.1.2. the customer continues, despite a written warning with a grace period of 14 days, to violate essential obligations under this contract, such as payment of a due amount or obligations to cooperate.
 - 7.1.3. there are justified doubts regarding the creditworthiness of the customer and the customer does not make advance payments at the request of the agency nor does the customer provide suitable security prior to the agency's performance;
- 7.2. The customer is entitled to terminate the contract for good cause without granting a grace period. Good cause shall be deemed to exist in particular if the Agency continues to violate essential provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the violation of the contract.

8. Fees

- 8.1. Unless otherwise agreed, the Agency's fee claim arises for each individual service as soon as it has been rendered. The agency is entitled to demand advance payments to cover its expenses. From an order volume with an (annual) budget of EUR 10,000.--, or those that extend over a longer period of time, the agency is entitled to create interim invoices 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 individual cases, the Agency shall be entitled to a fee in the amount customary in the market for the services rendered and the transfer of the rights of use under copyright and trademark law.
- 8.3. All services of the Agency that are not expressly covered by the agreed fee shall be remunerated separately. All cash expenses incurred by the agency are to be reimbursed by the customer.
- 8.4. Cost estimates of the agency are not binding. If it is foreseeable that the actual costs exceed those estimated by the Agency in writing by more than 15%, the Agency will inform the customer 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 working days of such notification and at the same time discloses less expensive alternatives. If the



cost overrun is up to 15%, a separate notification is not required. This cost estimate overrun shall be deemed approved by the customer from the outset.

- 8.5. If the customer unilaterally changes or cancels work commissioned without the involvement of the agency - notwithstanding the ongoing other support provided by the agency - the customer shall compensate the agency for the services provided up to that point in accordance with the fee agreement and reimburse all costs incurred. If the termination is not due to a grossly negligent or intentional breach of duty by the Agency, the Customer shall also reimburse the Agency for the entire fee agreed for this order (commission), whereby the credit compensation of § 1168 ABGB is excluded. Furthermore, the Agency shall be indemnified and held harmless against any claims of third parties, in particular contractors of the Agency. With the payment of the fee, the customer does not acquire any rights of use to work already performed; concepts, drafts and other documents that have not been executed are to be returned to the agency immediately.

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 payment terms are agreed in writing in individual cases. This also applies to the charging of all cash expenses and other expenses. The goods delivered by the Agency shall remain the property of the Agency until full payment of the remuneration including all ancillary liabilities.
- 9.2. In the event of default in payment by the customer, the statutory default interest shall apply at the rate applicable to business transactions. Furthermore, the customer agrees in the case of default to reimburse the Agency for the resulting reminder and collection costs, to the extent that they are necessary for appropriate legal action. This includes in any case the costs of two reminders in the usual market amount of currently at least € 20.00 per reminder, as well as a reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims remains unaffected.
- 9.3. In the event of default of payment by the customer, the Agency may immediately call due all services and partial services rendered under other contracts concluded with the customer.
- 9.4. Furthermore, the Agency is not obliged to provide further services until the outstanding amount is paid (right of retention). The obligation to pay the fee remains unaffected.



- 9.5. If payment in installments has been agreed upon, the Agency reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts 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 acknowledged by the Agency in writing or has been established by a court of law.

10. Property right and copyright

- 10.1. All services of the Agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final drawings, concepts, negatives, slides), 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 customer acquires the right of use for the agreed purpose. In the absence of an agreement to the contrary, however, the customer may use the services of the agency exclusively in Austria. The acquisition of rights of use and exploitation of services of the Agency requires in any case the full payment of the fees charged by the Agency for it. If the customer already uses the services of the Agency before this time, this use is based on a loan relationship that can be revoked at any time.
- 10.2. Changes or adaptations of services of the agency, such as in particular their further development by the customer or by third parties working for him, are only permitted with the express consent of the agency and - insofar as the services are protected by copyright - of the author. The release of all so-called. "Open files" is thus expressly not part of the contract. The agency is not obliged to surrender. I.e. without contractual assignment of the rights of use also for "electronic works" the client has no legal claim to them.
- 10.3. For the use of services of the agency, which goes 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. The Agency and the author shall be entitled to a separate appropriate remuneration for this.
- 10.4. For the use of services of the Agency or of advertising material for which the Agency has developed conceptual or design templates, the consent of the Agency shall also be required after the expiry of the Agency agreement, irrespective of whether this service is protected by copyright or not.



- 10.5. For uses in accordance with Paragraph 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 the expiry of the contract, only half or a quarter of the remuneration is agreed in the contract. From the 4th year after the end of the contract, no more agency remuneration is to be paid.
- 10.6. The customer shall be liable to the agency for any unlawful use in the double amount of the fee appropriate for such use.

11. Identification marks

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

12. Warranty

- 12.1. The customer shall report any defects in writing without delay, in any case within eight days after delivery/service by the agency, hidden defects within eight days after recognition of the same, describing the defect; otherwise any deviation of the service shall be deemed 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 case of a justified and timely notice of defects, the customer has the right 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 performance if this is impossible or involves a disproportionately high effort for the Agency. In this case, the customer is entitled to the statutory rights of conversion or reduction. In the case of improvement, it is the responsibility of the client to carry out the transfer of the defective (physical) item at his expense.

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- 12.3. It is also incumbent on the client to carry out the review of the performance for its legal, in particular competition, trademark, copyright and administrative law permissibility. The agency is only obligated to a rough check of the legal admissibility. The Agency shall not be liable for the legal admissibility of content in the event of slight negligence or after fulfilling any duty to warn the Customer if the content was specified or approved by the Customer.
- 12.4. The warranty period is six months from delivery/service. The customer is not entitled to withhold payments due to defects. The presumption provision of § 924 AGBG is excluded.

13. Liability and product liability

- 13.1. In cases of slight negligence, liability of the agency and those of its employees, contractors or other vicarious agents ("people") for material or financial damage to the customer is excluded, regardless of whether it is direct or indirect damage, loss of profit or consequential damage, damage due to delay, impossibility, positive breach of contract, culpa in contrahendo, defective or incomplete performance. The existence of gross negligence has to be proven by the injured party. As far as the liability of the agency is excluded or limited, this also applies to the personal liability of its "people".
- 13.2. Any liability of the Agency for claims made against the customer on the basis of the service provided by the Agency (e.g. advertising measure) is expressly excluded if the Agency has fulfilled its duty to inform or if such a duty was not recognizable to it, whereby slight negligence does not harm. In particular, the Agency shall not be liable for litigation costs, the Customer's own legal fees or costs of judgment publications, as well as 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 of the customer expire in six months from knowledge of the damage; in any case, however, after three years from the infringing act of the agency. Claims for damages are limited to the net order value.

14. Applicable law

The Agreement and all mutual rights and duties resulting therefrom as well as any claims between the Agency and the Customer shall be subject to Austrian substantive law, and its conflicts of laws rules and UN Sales Law shall be excluded.

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15. Place of performance and place of jurisdiction

- 15.1. The place of performance shall be the registered office of the Agency. In the case that goods are shipped the risk shall pass to the Customer once the Agency has delivered the goods to the carrier chosen by it.
- 15.2. The agreed place of jurisdiction for all legal disputes arising between the Agency and Customer in connection with this contractual relationship shall be the court having jurisdiction over the subject matter and the Agency's registered office. Notwithstanding the foregoing, the Agency shall be entitled to sue the Customer at his general place of jurisdiction.
- 15.3. If only the masculine form is used herein for describing natural persons it shall equally refer to women and men. If a specific person is referred to, the respective gender-specific form shall be used.