

# Terms & Conditions

As of: 27/07/2023

## General business terms and conditions of gominga eServices GmbH

### 1. Object and sphere of validity of these general business terms and conditions

1. These Allgemeinen Geschäftsbedingungen [General Business Terms and Conditions] (hereafter: "AGB") shall regulate the rights and obligations related to the use of the Internet sites (i.a. [www.gominga.com](http://www.gominga.com) and [app.gominga.com](http://app.gominga.com) hereafter: gominga) of the service provider gominga eServices GmbH, Atelierstr. 1, 81671 Munich (hereafter: "Service Provider").
2. Exclusively the Service Provider's AGB shall be valid. Any terms and conditions of the user which oppose or deviate from these AGB shall not be recognised by the Service Provider unless their validity has been expressly approved in writing or in text form. These AGB shall also then be valid if the Service Provider, while being aware of the user's terms and conditions which oppose or deviate from these AGB, unconditionally renders its services to the user.
3. Insofar as the term "Internet Site of the Service Provider" is used below, the Internet site and/or the Internet sites of the Service Provider are meant, where the services specified in Paragraph 1 are generally made available on the Internet by the Service Provider.

### 2. Services rendered by the service provider

1. The Service Provider shall offer different information services and other services to users and, if applicable, third parties, for temporary use.
2. The content and scope of the services are based upon the respective contractual agreements; otherwise, based upon the respective services currently available on the Internet Site of the Service Provider.

3. The Service Provider's services shall include particularly: Review Monitoring, Q&A Monitoring, Data Analysis, Review and Questions Response. The individual services may vary depending on the pricing model that is selected.

### **3. Conclusion of the contractual agreement**

1. Provided that nothing to the contrary has been expressly agreed in the individual case, a contractual agreement shall only then be considered to have been concluded upon the successful completion of the registration and setup process whereby the Service Provider sends a confirmation to the user in text form (e-mail).
2. The user shall have the option of printing out the contractual text during the registration process and before concluding the contractual agreement. Before completing the registration process, the user shall be shown the data he has provided during the registration process and he can make any required corrections.
3. The user shall have no claim to the conclusion of a contractual agreement. The Service Provider shall be at liberty to reject any offer from any user to conclude a contractual agreement without being required to state reasons for so doing.
4. The requirement for the registration is that the user is at least 18 years old. Minors are forbidden from registering. With regards to a juridical person, the registration must be made by a natural person who has unlimited powers of representation and unlimited authority to conduct business dealings.

### **4. Responsibility for access data**

1. The registration data (user name, password, etc.) provided during the registration process must be kept secret by the user and not disclosed to unauthorised third parties.
2. Furthermore, the user must ensure that the access to and use of the services rendered by the Service Provider with the user data are undertaken exclusively by the user and/or authorised users. Insofar as

factual circumstances exist which substantiate the assumption that unauthorised third parties have obtained knowledge of, or will obtain knowledge of, the user's access data, the Service Provider must be promptly informed of this (via this email: information-security@gominga.com).

3. The user shall be liable in accordance with the statutory directives for any usage and/or any other activity which is undertaken via his access data.
4. The user shall be responsible for ensuring that the user name does not violate third-party rights—particularly naming or trademark rights.

### **5. Note regarding the non-validity of a right of rescission**

The Service Provider shall render its services only for entrepreneurs in accordance with § 14 of the German Civil Code. Thus, a right of rescission does not apply as would have to be granted to consumers in accordance with § 13 BGB.

### **6. User's obligations**

1. The user shall be obliged to be truthful when providing information about his person when using the service.
2. The user shall be obliged to follow the applicable laws when using the service.
3. The user shall be obliged to keep the e-mails and other electronic messages confidential which he receives from the Service Provider or other users during his use of the service and not to pass them on to third parties without the communication partner's consent.
4. Any additional obligations which are stipulated in other provisions of these AGB shall remain unaffected.

### **7. Prices and payment terms and conditions**

The Service Provider shall offer its services in various fee-based variants. The agreed prices are defined in the client contract.

## **8. Payment**

1. The payment for the service shall be made on account.
2. The payment claim shall immediately become payable upon receipt of the invoice. The respective invoiced amount must be paid within 15 days by the user to the Service Provider, unless other payments terms have been defined in the client contract.
3. The unconditional availability of the payment amount to the Service Provider shall be prevailing for the timeliness of the payment.
4. If the payment is late or not promptly paid in full, the user shall enter into payment default without the sending of a warning letter being required. In this case, the Service Provider may block the user's access while taking the user's justified interests into consideration until the invoice is paid in full.

## **9. Availability of the services**

In its sphere of control, the Service Provider shall guarantee an availability of 98% for gominga upon a yearly average. Not included in the availability calculations shall be regular maintenance timeframes which, as a rule, are each night between 1:00 a.m. and 5:00 a.m. Central European Time. Insofar as this is possible, the Service Provider shall notify the users of any deviating planned maintenance work in advance in text form.

## **10. Usage rights**

1. Insofar as more extensive use is not expressly permitted in these AGB or enabled on the Internet Site of the Service Provider by a corresponding functionality, the user may retrieve and display the contents online that have been made available on the Internet Site of the Service Provider exclusively for his own purposes. This right of use is restricted to the duration of the contractual

relationship with the Service Provider;

The user is forbidden from, in whole or in part, processing, altering, performing, presenting, publishing, exhibiting, reproducing or disseminating the contents provided on the Internet Site of the Service Provider. The user is likewise forbidden from removing or altering copyright notices, logos and other identifying labels or proprietary right notices.

2. The user shall respectively receive a right of use—which is unrestricted by time and non-exclusive—to the contents of the Internet Site of the Service Provider which the user himself has saved and/or printed out for use for the user's own purposes. The Service Provider may revoke the rights granted in the event that a payment is not rendered.

3. The user's mandatory legal rights (including to make reproductions for private and other usage upon his own behalf in accordance with § 53 of the German Copyright Act) shall remain unaffected.

## **11. Indemnification**

1. The user will release the Service Provider from all third party claims against the Service Provider due to a violation of the user against legal provisions, against third party rights (in particular, personality, copyright and trademark rights) or against contractual obligations, warranties or guarantees, including costs of the necessary legal defense (legal and judicial costs at the statutory amount) upon initial request.
2. In the event of the assertion of claims within the meaning of paragraph (1), the user is obliged to cooperate immediately and fully in the course of the investigation and to make the necessary information available to the Service Provider in a suitable manner.

## **12. End of usage / termination**

1. The minimum contractual term shall be dependent upon the product that the user respectively chooses. After the minimum contractual term lapses, the contract will renew for another contractual term (unless otherwise stated in the contract). The client must send a termination in writing or in text form (e.g. e-mail) to the Service Provider.
2. The Service Provider may terminate the usage relationship, at any time and without being required to state reasons for so doing, by providing three months' notice in text form (e.g. e-mail), unless otherwise stated in the contract.
3. Each party's right to make extraordinary termination shall remain unaffected. The Service Provider shall then have a right to make extraordinary termination particularly if the user has intentionally violated provisions of these AGB and/or undertaken forbidden actions that are based upon intentional wrongdoing or gross negligence. Furthermore, a reason to make extraordinary termination shall then exist if the user is in arrears with the payment of two monthly amounts.

### **13. Blocking access**

The Service Provider may block the user's access to the Internet Site of the Service Provider, temporarily or permanently, if concrete indications exist that the user is violating, or has violated, these AGB and/or applicable law or if the Service Provider has another justified interest in blocking the user. When making the decision about whether to block the user or not, the Service Provider shall appropriately take the user's justified interests into consideration.

### **14. Liability restrictions**

1. The Service Provider shall be liable in unrestricted fashion for intentional wrongdoing or gross negligence for all damages caused by the Service Provider in conjunction with the rendering of the contractual services.
2. In the event that simple negligence has been committed, the Service Provider shall be liable in unrestricted fashion in the event of the loss of life, bodily injury or damage to health.

3. Otherwise, the Service Provider shall be liable only insofar as it has violated an essential contractual obligation. In this regard, essential contractual obligations shall abstractly be considered to be those obligations whose fulfilment only then makes possible the proper implementation of the contractual agreement at all and upon whose fulfilment the user may regularly rely. In these cases, liability shall be restricted to providing compensation for foreseeable, typically-occurring damages.
4. Insofar as the Service Provider's liability is excluded or restricted in accordance with the aforementioned directives, this shall also be valid for the Service Provider's vicarious agents.
5. The liability stipulated in the German Product Liability Act shall remain unaffected.

## **15. Data Protection**

1. The Service Provider shall ensure that the users' personal data are collected, saved and processed only insofar as this is required for the contractual rendering of services and permitted by the statutory directives or mandated by the lawmakers. The Service Provider shall keep the personal data confidential as well as handle them in accordance with the valid data protection law directives and not pass them on to third parties insofar as this is not required for the fulfilment of the contractual obligations and/or a legal obligation exists to disclose them to third parties.
2. In the event that, for the use of the Service Provider's services, declarations of consent under data protection law are obtained from the user, the user shall be informed that these declarations of consent may be revoked at any time by the user with effectiveness for the future.

## **16. Customer referenceability**

1. Unless otherwise agreed in writing, the user agrees to conclude the contract as a customer reference for gominga.

2. The references may be presented in all usual forms both digitally (e.g. on websites, in e-mails and videos), as well as non-digitally (for example in letters, brochures, posters and measuring stands). The examples cited are not intended to be exhaustive.
3. The representation of the references may include the user's company, its logo, and other publicly known information such as industry.
4. The consent of paragraph 1 may be revoked at any time in writing with a period of one month for easily changeable uses (own website, own e-mails, oral communication) and a period of six months for removal of the reference for all other uses as agreed.

### **17. Changes to the business terms and conditions**

The Service Provider reserves the right to modify these AGB at any time with validity—even within the existing contractual relationships. The Service Provider shall notify the registered users of such changes at least 6 weeks before the planned changes become effective. Insofar as the user does not object to these planned changes within 6 weeks after receiving the corresponding notification and the utilisation of services is continued even after the deadline for lodging objections lapses, the changes shall be considered to have been validly agreed when the deadline for lodging objections lapses. In the notification about the changes, the Service Provider shall inform the user of his right to lodge objections and of the consequences of lodging an objection. In the event that an objection is lodged, the Service Provider shall have the right to terminate the contractual relationship with the user on the date that the planned changes become effective.

### **18. Final provisions**

1. The law of the Federal Republic of Germany shall be valid whereby the validity of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
2. If the user is an entrepreneur, a juridical person under public law or a special foundation under public law, the Service Provider's commercial residence shall be the exclusive legal venue for all disputes arising from the contractual relationship.



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3. In the event that individual provisions of these Usage Terms and Conditions should be or become invalid, this shall not affect the validity of the remaining provisions.