

# General terms and conditions (as of July 2022)

These General Terms and Conditions (hereinafter also referred to as 'GTC') of ACTUM Performance Group GmbH, Lastenstraße 36, 4020 Linz (hereinafter also referred to as 'Management Consultant' or 'Contractor' or 'ACTUM' for short) are an integral part of all legal transactions, contracts or agreements between the Client and the Contractor. The version of the GTC valid at the time the contract is concluded shall apply.

## **1 Basis and scope of application**

1.1 These GTC shall also apply to all future business or contractual relationships between the Client and the Contractor, even if no express reference is made to the GTC in supplementary contracts or additional agreements.

1.2 Conflicting general terms and conditions or forms of the Client are invalid and shall not become part of the contract under any circumstances, regardless of whether the Contractor has expressly objected to their validity or not.

## **2 Conclusion of contract and scope of order**

2.1 The contractual relationship between the Client and the Contractor shall come into effect upon the signing of an order or offer letter by both parties or, in the absence thereof, upon the written order confirmation or acceptance of the offer by the Client or by conclusive behaviour on the part of the Client that leaves no reasonable doubt as to the commissioning by the Client.

It is generally clarified that an order is understood to mean any contractual relationship between the Client and the Contractor - regardless of whether it concerns consulting, brokerage or management activities or services. Management activities or services are understood to mean the providing of activities or services directly within the management structure of the Client's company.

2.2 The Contractor shall be entitled to have the activities or services incumbent upon it within the scope of the order performed in whole or in part by third parties or co-operation partners. Payment of a third party or co-operation partner shall be made exclusively by the Contractor itself. No direct contractual relationship of any kind whatsoever shall arise between the third party and the Client.

2.3 The Client obliges not to enter any kind of business relationship with persons or companies that the Contractor uses or has used to fulfil its contractual activities or services (third parties within the meaning of Section 2.2) during and for a period of 3 years after the end of the business relationship with the Contractor. In particular, the Client shall not commission these persons or companies with the same or similar activities or services as those offered by the Contractor.

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## **3. Obligation of the Client to Provide Information / Declaration of Completeness**

3.1 If the agreed activities or services are provided on the client's premises, the client shall provide the office infrastructure free of charge and shall ensure that the organizational framework conditions allow work to proceed as undisturbed as possible and in a manner conducive to the rapid progress of the order.

3.2 The Client shall fully inform the Contractor about any prior and/or ongoing assignments – even in other fields – and provide the Contractor with the corresponding results.

3.3 The Client shall ensure that all information, documents, and records necessary for the fulfillment and execution of the assignment are provided to the Contractor in a timely manner, without the Contractor needing to request them, and shall inform the Contractor of all events and circumstances relevant to the execution of the assignment. This also applies to all information, documents, and records as well as events and circumstances that only become known during the execution of the assignment.

3.4 The Contractor may rely on the accuracy, completeness, and correctness of the information, documents, and records provided by the Client, as well as the described events and circumstances, without assuming any responsibility for verifying their accuracy or completeness.

3.5 The Client shall make all decisions and take all actions that may influence the execution or fulfillment of the assignment only after prior consultation with the Contractor.

3.6 The client shall ensure that its employees and the employee representative body (works council) provided for by law and established where applicable are informed prior to the start of the execution of the order.

3.7 The Client shall not engage any third party for the same or similar activities or services covered by the assignment, or that the Contractor offers, without the prior agreement of the Contractor during the execution of the assignment.

## **4. Protection of Independence**

4.1 The Client and the Contractor are mutually obligated to maintain loyalty towards each other.

4.2 The Client and the Contractor mutually commit to take all measures necessary to prevent any threat to the independence of third parties or employees engaged by the Contractor. This particularly applies to offers made by the Client for employment or independent assignments.

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## 5. Reporting and Reporting Obligations

5.1 The Contractor is obligated to report to the Client on the activities or services provided.

5.2 The Client and the Contractor agree that a progress-based reporting process is deemed to be agreed upon for the assignment. The scope and format of the reports will be determined solely by the Contractor.

5.3 The reports provided by the Contractor are based on information, documents, records, and inquiries, as well as the organizational preparation made by the Client (see section 3). The Contractor is not obliged to verify the accuracy of this information or to investigate the overall legal and economic conditions of the Client but will inform the Client of any obvious errors or deficiencies.

5.4 The Contractor may rely on quantitative or qualitative assumptions made during the performance of activities or services without marking or explaining them as such. The occurrence of such assumptions is uncertain and depends on numerous, unpredictable factors.

5.5 All considerations, recommendations, or opinions expressed by the Contractor, as well as any mentioned estimates, reflect only the Contractor's opinion at the time of the activity or service and may be subject to change without prior notice.

5.6 Any business valuations performed by the Contractor as part of its activities or services do not constitute valuation reports as defined by the relevant professional bodies.

5.7 The Client acknowledges that the Contractor is neither authorized nor obligated to provide legal or tax advice or representation and will not offer services in these areas.

5.8 The Contractor is independent in the performance of the agreed services or activities, acting at their own discretion and responsibility. The Contractor is not bound by any specific workplace or working hours.

## 6. Protection of Intellectual Property / Copyright

6.1 Copyrights for works created by the Contractor, its employees, or third parties engaged by it (particularly offers, reports, analyses, opinions, organizational plans, programs, calculations, drawings, illustrations, etc.) remain exclusively with the Contractor. The Client is not permitted to modify or supplement the works. The Client is not entitled to reproduce or distribute the works, either in whole or in part, without the express written consent of the Contractor. Unauthorized reproduction or distribution does not create any liability for the Contractor towards third parties, particularly regarding the correctness of the work.

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Under no circumstances is the client entitled to make changes or additions to the works. The client is not entitled to reproduce and/or distribute the works or parts thereof without the express written consent of the contractor. Under no circumstances shall any unauthorized reproduction/distribution of the work give rise to any liability on the part of the contractor - for the accuracy of the work - vis-à-vis third parties.

6.2 If works or parts thereof are passed on to third parties with the express written consent of the Contractor, the Client shall agree with the recipient to exclude any liability of the Contractor. Any protective or care duties in favor of the recipient are expressly excluded. The Contractor's liability towards third parties is fundamentally excluded. Should third-party claims arise against the Contractor, the Client shall fully indemnify and hold the Contractor harmless against such claims.

6.3 The Client is not permitted to use any professional statements made by the Contractor for advertising purposes. However, the Contractor may use the existence of the contractual relationship and the services performed as a reference, and mention the Client's company name, logo, or brand, along with a general description of the services or activities provided, to third parties.

6.4 Since the created works are the exclusive intellectual property of the Contractor, the right of use remains with the Client only for its own purposes and in the scope of the agreed services or activities, even after payment of the agreed fee.

6.5 Any violation of these provisions entitles the Contractor to immediately terminate all existing contractual relationships and to terminate any outstanding assignments without notice. The Contractor is also entitled to assert other legal claims, particularly for injunctions or damages.

## **7. Warranty / Liability / Damages**

7.1 The Contractor is entitled, regardless of fault, to remedy any inaccuracies or deficiencies that become known later in its work. The Contractor will promptly inform the Client of such corrections. The Client is obligated to give the Contractor the opportunity to make these corrections.

7.2 The Client shall be entitled to have defects rectified free of charge if the Contractor is responsible for them. This claim of the Client shall expire 6 months after the provision of the activity or service complained about.

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7.3 The Contractor is not responsible for defects or consequential damage caused by defects for which the information, records and documents as well as the described processes and circumstances on the part of the Client or third parties were the cause or contributory cause. There is therefore no warranty for these defects on the part of the Contractor.

7.4 The reversal of the burden of proof, i.e. the obligation of the Contractor to prove its innocence of the defect or damage, is excluded. The Client must provide proof that the defect or damage is attributable to the Contractor's fault.

7.5 If the rectification of any defects fails, the client may request a reasonable reduction in the fee. In the case of warranty, rectification shall in any case take precedence over reduction.

7.6 The Contractor performs the contracted services to the best of its knowledge and belief, in accordance with the generally accepted professional principles of business consultants, and with the care of a prudent entrepreneur. However, the Contractor is not liable for any success, such as missed economic targets, the success of transactions, or specific developments in financial instruments, portfolios, or other assets. The Contractor is not liable for indirect or consequential damages of any kind.

7.7 The Contractor is not liable for damages caused by minor negligence. The Contractor is only liable for gross negligence or intent, and even then, liability is limited to the amount of the agreed fee. This also applies to damages caused by third parties engaged by the Contractor.

7.8 Claims for damages by the Client can only be asserted in court within three months after knowledge of the damage and the party causing it, but no later than three years after the event giving rise to the claim.

7.9 If the Contractor delivers the work or parts thereof with the help of third parties, and warranty and/or liability claims arise against these third parties, the Contractor will assign these claims to the Client. The Client must pursue these claims against the third parties first, and the Contractor is only liable for any fault in selecting the third parties.

7.10 If the client does not base its claim for rectification of defects on warranty but on compensation for damages or if it seeks compensation for consequential damages in such cases, the limitations of liability provided for in points 7.1 to 7.9 shall apply mutatis mutandis. The client's claim for damages shall in any case be limited to the amount of the agreed fee.

## **8. Confidentiality**

8.1 The Contractor undertakes to maintain confidentiality regarding all business matters of the Client that come to its knowledge in connection with the execution of the assignment, particularly business and trade secrets.

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8.2 The Contractor is released from the obligation of confidentiality towards any third parties or representatives it engages. However, he must impose the duty of confidentiality on them in full and shall be liable for their breach of the duty of confidentiality as for his own breach. This shall also apply mutatis mutandis to the Contractor's employees.

8.3 The obligation of confidentiality extends indefinitely, even beyond the termination of the contract. Exceptions exist in the case of legally required disclosures or in connection with the Contractor's professional liability insurance. The obligation of confidentiality does not apply if disclosure is necessary to protect the Contractor's legitimate interests.

8.4 The Contractor is authorized to process personal data entrusted to it as part of the assignment. The Client guarantees that all necessary measures have been taken to comply with data protection laws, such as obtaining consent from affected individuals.

8.5 To avoid conflicts of interest and ensure the required professional independence, the Contractor is entitled to store order data (name, address, contact person, scope of order, fee, and duration) electronically.

## **9. Fee**

9.1 The fee is determined by the content and scope of the agreed services or activities.

9.2 The fee generally consists of a time-based component and a success-based component.

9.2.1 The claim to the time-based fee arises pro rata with the duration of the services or activities provided.

9.2.2 The claim to the success-based fee arises when the defined success is achieved. This applies explicitly regardless of whether the Contractor has performed the agreed services or activities; in this respect, the conclusion of a binding transaction or significant parts of this transaction is understood in particular - irrespective of the actual execution of a transaction.

If the Client terminates the assignment for reasons not attributable to the Contractor, the Contractor is entitled to the full success-based fee.

The same applies if such occurrences improve the outcome of success and thereby alter the calculation basis for the success fee; in this case, the Contractor is entitled to the difference resulting from the increase in the calculation basis compared to the success fee earned up to that point.

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The Client undertakes to inform the Contractor of such occurrences and to provide all documents necessary for the calculation of the success fee in full upon the Contractor's request.

9.3 The Contractor is entitled to issue interim invoices based on the progress of the order and to request advance payments.

9.4 Any cash expenses, fees, travel costs, etc. incurred are to be reimbursed to the Contractor by the Client at their actual amount, upon submission of an invoice. The entitlement to reimbursement for cash expenses, fees, travel costs, etc. arises when such expenses are incurred by the Contractor.

9.5 If the execution of the agreed order is not carried out for reasons attributable to the Client, or due to a justified early termination of the contract by the Contractor, the Contractor retains the right to payment of the full agreed time-based and success-based fees. In these cases, the success fee shall amount to at least the agreed minimum success fee, regardless of whether the defined success has been achieved or not. This applies in particular if, despite termination, the Contractor's previous activities or services are still usable for the Client.

9.6 In the event of non-payment of interim invoices, the Contractor is released from the obligation to continue performing further activities or services. However, this does not affect the Contractor's right to assert further claims arising from the non-payment.

9.7 The Contractor may condition the completion of its activities or services on full satisfaction of its fee claims. Complaints regarding the activities or services – except for obvious defects – do not entitle the Client to withhold payment of the fee.

9.8 The Client is not entitled to set off the Contractor's fee claims against counterclaims.

9.9 The fee is due for payment immediately upon invoicing.

9.10 Any objections to invoices must be made in writing to the Contractor within seven days of receipt. Failure to raise objections within this period shall be deemed an acknowledgment of the invoice.

## **10. Duration of the Contract**

10.1 The contractual relationship between the Client and the Contractor begins with the mutual signing of the engagement or offer letter, or with the commencement of the agreed activities or services, and generally ends upon the completion of the agreed activities or services or upon the expiration of the term (if the contract was time-limited).

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10.2 Both the Client and the Contractor are entitled to terminate the contractual relationship without stating reasons, by giving 60 days notice in writing, effective at the end of a calendar month. The Contractor's claim to any success fee remains unaffected by this.

10.3 Notwithstanding the foregoing, the contract may be terminated at any time by either party without notice for good cause. Good cause is particularly deemed to exist if:

One party substantially breaches its contractual obligations, or

One party defaults on payment after insolvency proceedings have been opened, or

Legitimate concerns regarding the Client's creditworthiness exist, and the Client, despite no insolvency proceedings being opened, neither makes advance payments nor provides adequate security for the Contractor's activities or services upon the Contractor's request, or

The purpose of the engagement becomes unattainable.

## **11. Communication via Electronic Data Transmission**

11.1 All works created by the Contractor, its employees, or any third parties engaged by it are only binding if they are transmitted to the Client in writing, or if the transmission is confirmed in writing by the Client.

11.2 Transmission errors cannot be ruled out when sending information, documents, or records electronically. Neither the Contractor nor any third parties engaged can be held liable for damages resulting from transmission errors. The electronic transmission – particularly via email – is carried out solely at the Client's risk. The Client acknowledges that confidentiality cannot be guaranteed when using the internet.

11.3 The receipt and forwarding of information, records or documents to the Contractor, its employees or authorised third parties is not always guaranteed when using the telephone - in particular in connection with automatic answering systems - fax, e-mail and other electronic means of communication.

Important information, records or documents shall therefore only be deemed to have been received by the Contractor if they have been received in writing (by post or courier), unless receipt is expressly confirmed in individual cases. Automatic transmission and read confirmations shall not be deemed to be such express confirmations of receipt. This applies in particular to the transmission of notices and other information, records or documents relating to deadlines. The handover of information, records or documents to employees of the Contractor or authorised third parties outside the Contractor's branch office shall not be deemed to be a handover.



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11.4 The Contractor is entitled to send invoices to the Client in electronic form. The Client expressly consents to receiving invoices in electronic form from the Contractor.

## **12. Final Provisions**

12.1 The contracting parties confirm that they have provided all information conscientiously and truthfully and undertake to notify each other immediately of any changes.

12.2 Amendments to these general terms and conditions must be made in writing, as must any waiver of this formal requirement.

12.3 Should individual provisions of these general terms and conditions be or become void or ineffective, this shall not affect the validity of the remaining provisions and the contracts concluded based on them. The void or ineffective provision shall be replaced by a provision that comes closest to its intended economic purpose.

12.4 Austrian substantive law shall apply to the order, its execution, and any claims arising from it, excluding the referral norms of international private law. The place of performance is the Contractor's place of business. The court at the Contractor's place of business shall have jurisdiction over disputes.