

## Deloitte Consulting GmbH's Terms And Conditions Of Business

### **1. General Principles**

- 1.1 Deloitte Consulting GmbH (hereinafter referred to as "Deloitte") provides consultancy services on the basis of these "General Terms and Conditions for Consulting Services" ("GTC") and Deloitte's individual written quotations.
- 1.2 These GTC shall also apply to all future contractual relationships, whether or not they are expressly referred to in Deloitte's quotations.
- 1.3 Any conflicting general terms and conditions of the client shall only apply if Deloitte has expressly acknowledged these in writing.
- 1.4 Any amendments to these GTC must be made in writing. Any oral subsidiary agreements and declarations shall only be effective where Deloitte has confirmed these in writing.

### **2. Scope of consultancy services, conclusion of contract**

- 2.1 The scope of the Consulting services shall be in accordance with Deloitte's written quotation.
- 2.2 Quotations are valid for four weeks, unless otherwise specified in the quotation.
- 2.3 With acceptance of the quotation, the client agrees that Deloitte's Consulting services may contain recommendations, but Deloitte is neither responsible nor liable for their implementation nor for decisions that are based on the recommendations or serve their implementation.
- 2.4 The contract is concluded upon acceptance of the quotation sent by Deloitte. Acceptance occurs once the order confirmation attached to the quotation has been duly signed by the client and received by Deloitte.

### **3. Duty to cooperate**

- 3.1. The client shall, of its own accord, ensure that it provides Deloitte with all the necessary information and data in a timely manner, and that the information furnished is reliable, correct and complete. This also applies to any information, data, processes and circumstances that only arise or become known during the provision of the consultancy services.
- 3.2. The mutual trust between the client and Deloitte requires that Deloitte be fully apprised of previous and/or current consultancy activities relevant to the consultancy services to be provided.
- 3.3. The client shall ensure that all the requirements set out in the quotation are correct.
- 3.4. The client shall make all decisions that are necessary for the provision of the agreed consultancy services in a timely manner, and obtain any approvals required (e.g. the consent of the group management, supervisory board, employees or works council).
- 3.5. With acceptance of this offer, you shall be solely responsible for, among other things:
  - a. making all management decisions and performing all management functions;
  - b. designating one or more individuals who possess suitable skill, knowledge, and/or experience, preferably within senior management to oversee the Services;
  - c. evaluating the adequacy and results of the Services;
  - d. accepting responsibility for the results of the Services; establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities

- 3.6. Where the agreed consultancy services are provided on the client's premises, the client shall provide the necessary office facilities and equipment free of charge, and ensure that all organisational conditions have been met and the undisturbed provision of services is guaranteed.
- 3.7. In the event that the client breaches its duty to cooperate, or other circumstances beyond Deloitte's control arise which prevent Deloitte from rendering the agreed consultancy services, any timetable agreed to (milestones) shall be postponed. In addition, Deloitte shall be entitled to charge the client for any additional expenses (e.g. availability of employees assigned).

#### **4. Provision of consultancy services**

- 4.1. Deloitte is responsible for the provision of the consultancy services stipulated in the quotation, but not for the achievement of any specific economic benefits.
- 4.2. Deloitte is entitled to regard the information and documents provided by the client as correct and complete. Unless expressly otherwise agreed, Deloitte is not obliged to identify errors.
- 4.3. Deloitte will endeavour to comply with the client's wishes regarding the assignment of given employees, but expressly reserves the right to assign and reassign its employees at its own discretion depending on what is appropriate, expedient and possible for the provision of its services.
- 4.4. Deloitte is entitled to procure that agreed services are wholly or partly performed by cooperation partners or competent third parties.

#### **5. Rights of use, protection of intellectual property, confidentiality**

- 5.1 All documents provided by Deloitte in paper or electronic form (in particular, quotations, analyses, opinions, expert opinions, etc.) are the intellectual property of Deloitte. The client acknowledges Deloitte's exclusive rights to said documents, whether or not they are protected by copyrights, trademark rights or competition law.
- 5.2 During and after termination of the contractual relationship, the client may use the documents transmitted to it exclusively for such own business purposes., which are covered by the contract and the scope of the Consulting services particularly agreed upon. The client is not entitled to modify Deloitte's analyses, opinions, expert opinions, etc.
- 5.3 Without Deloitte's prior written consent, which may be subject to compliance with further specified conditions, the client is prohibited from passing on the entire documents or excerpts therefrom to third parties, publicly reproducing or citing therefrom, or referring thereto in communications with third parties except (i) where applicable laws, regulations, rules and professional obligations prohibit limitations on disclosure, (ii) in the event that you or your affiliates have securities registered with the United States Securities and Exchange Commission and any Deloitte Entity is your or your affiliates auditor, or (iii) to the extent the United States Internal Revenue Code and applicable Internal Revenue Service guidance relating to confidential tax shelters (or comparable law or guidance from other taxing authorities) apply. This also applies where the client has obtained Deloitte's consent if the economic environment and the relevant conditions have changed since obtaining such consent and/or the consultancy services have since been overtaken by events.
- 5.4 In the event of a breach of sections 5.2 or 5.3, Deloitte shall not be liable for any damages arising therefrom.

- 5.5 The mutual trust between the client and Deloitte requires strict confidentiality. With regard to this contract and all information provided in connection with this consultancy contract which is designated as confidential by the party providing the information, the recipient undertakes to protect confidential information adequately and, in accordance with the applicable professional standards, only to use such information for the purpose of executing this contract, and only to reproduce it to the extent required for the fulfilment thereof. This confidentiality obligation does not apply to information already known to third parties or to the recipient.
- 5.6 Deloitte, its employees and any cooperation partners engaged by it undertake to maintain confidentiality with regard to all matters becoming known to them in connection with their activities for the client.
- 5.7 Deloitte may provide reports, expert opinions or other written material regarding its work and the results arising there from to third parties only with the client's consent.
- 5.8 The duty of confidentiality shall continue to apply after termination of the contract. This excludes cases where the provision of information is required by a statutory obligation or where the client expressly releases Deloitte from its duty of confidentiality.

## **6. Data protection**

- 6.1 Deloitte is controller within the meaning of Art. 4 no. 7 of the General Data Protection Regulation ("GDPR") with regard to all personal data processed within the scope of the contractual consultancy services provided by Deloitte. Within the scope of its consultancy services, Deloitte is entitled to process personal data entrusted to it, to store such data in electronically managed files or to allow such information to be processed by third parties with whom a data processor agreement within the meaning of Art. 28 GDPR has been concluded. Materials (paper and data carriers) provided to Deloitte shall be handed over to the client or to third parties named by the client or, if this has been agreed separately, stored or destroyed by Deloitte. Deloitte is entitled to keep copies of these materials insofar as Deloitte needs them for the proper documentation of his services or it is legally required or customary in his profession.
- 6.2 Deloitte undertakes to observe data secrecy in accordance with the provisions of the GDPR and the *Datenschutzgesetz* (actually Data Protection Act as amended by the Data Protection Adaptation Act 2018 – *Datenschutz-Anpassungsgesetz 2018*) as amended from time to time and to bind its employees and any third parties engaged to the same.
- 6.3 For the purpose of preventing conflicts of interest, securing the guaranteed independence given by law and compliance with stock exchange law, Deloitte and all other member firms of the Deloitte Network are authorized to save contract data (name, address, contact person, size of order, size of fee and process period) electronically and forward these data to other member firms of the Deloitte Network.
- 6.4 Deloitte will provide the client with a reasonable amount of information and notifications regarding services, events etc. in the field of consulting offered by Deloitte by e-mail (based on § 107 of the Telecommunication Act and moreover on the client's consent) as well as by post, telephone and fax (based on the client's consent). The client may disagree with being provided with the aforementioned information and notifications at any time and without giving any reason, respectively revoke his consent. After such disagreement/revocation, the personal data necessary for the provision of the aforementioned information and notifications (title, first and last name, e-mail address, postal address, telephone number, fax number) will no longer be processed for this purpose and will therefore be deleted in this regard. The disagreement/revocation does not affect the legality of the processing of the personal data based on the consent until revocation.

- 6.5 Deloitte uses appropriate technical and organizational measures to secure the data processed, taking into account the nature, scope, circumstances and purposes of the processing as well as the different probabilities of occurrence and severity of risks to the rights and freedoms of the data subjects, and always adapted to the current state of the art, in order to ensure that the data processing is carried out in accordance with the requirements of the GDPR. In the absence of a written agreement to the contrary on an individual basis, electronic communication between the client and Deloitte or vice versa will be unencrypted and unsigned; therefore, reading or manipulation by third parties cannot be excluded with certainty.
- 6.6 Further details on data protection and in particular on the information obligations under Art. 13 and 14 GDPR can be found on the website [www.deloitte.at/Datenschutz](http://www.deloitte.at/Datenschutz).

## **7. Fees**

- 7.1 The amount of Deloitte's fees shall be in accordance with the type and scope of the agreed services as specified in Deloitte's quotation. In the absence of an express agreement, reasonable fees shall be due.
- 7.2 Any travel expenses incurred by Deloitte's employees and out-of-pocket expenses shall be invoiced separately.
- 7.3 Unless otherwise agreed, invoicing shall occur monthly in arrears.
- 7.4 Invoices are due immediately without deductions.
- 7.5 Any objections to invoices must be made to Deloitte in writing within seven days of receipt. Failure to object within this period shall be deemed to constitute acknowledgment of the invoice.
- 7.6 In the event of payment default, Deloitte is entitled to charge default interest at a rate of 9,2% above the base interest rate in the meaning of section §456 UGB *Unternehmensgesetzbuch* (Austrian Business Code [UGB]). Deloitte is furthermore entitled to suspend any current services and to withdraw from the contract after reminders have been issued without success. The client shall bear all incurred reminder and collection fees and all litigation costs necessary for Deloitte to pursue its legal claims.

## **8. Termination**

- 8.1 Unless otherwise agreed (e.g. in the case of delimitable projects or sub-projects), the contract may be terminated in writing by either party at the end of any calendar month by giving 30 days notice.
- 8.2 Deloitte may terminate the contract in whole or in part, with immediate effect upon written notice to the client, if Deloitte determines that (i) a governmental, regulatory, or professional entity or other entity having the force of law has introduced a new, or modified an existing law, rule, regulation, interpretation, or decision, the result of which would render Deloitte's performance of any part of the contract illegal or otherwise unlawful or in conflict with independence or professional rules or (ii) in case of a change in circumstances (including, without limitation, changes in ownership of you or of your affiliates) so that Deloitte's performance of any part of the contract would be illegal or otherwise unlawful or in conflict with independence or professional rules.
- 8.3 The client shall pay Deloitte for all services rendered and expenses incurred until termination of the contractual relationship and compensate Deloitte for all costs and expenses incurred by Deloitte in connection with the termination.

## **9. Liability**

- 9.1 Deloitte shall only be liable for the final report in the scope agreed to below and in no case for any interim reports, including e-mails and other communication, sent to the client during the term of the project.
- 9.2 Deloitte shall only be liable for damages insofar as intent or gross negligence are proven. Liability for minor negligence is excluded in any case. The same shall apply if Deloitte engages third parties to fulfil the contract.
- 9.3 Deloitte shall in no case be liable for lost profits, consequential damages, direct and indirect damages, or any kind of exclusively financial loss.
- 9.4 In addition, Deloitte's liability is limited to the amount of the contract, and shall in no case exceed EUR 350,000. An individual case of damages shall be deemed to be the sum of claims for damages made by all claimants arising from one standard service. In the case of damages arising from several like, standard services due to several breaches originating in the same professional error, Deloitte's liability shall likewise be limited to the contractual amount and not exceed EUR 350,000.
- 9.5 If, in the client's opinion, the potential damages exceed the above amount, at the client's request Deloitte will attempt to take out insurance in addition to the existing indemnity insurance to cover this risk, provided that the client bears the premium for this.
- 9.6 Any claims for damages must be asserted in the courts within three months of becoming aware of the damages, and at the latest three years after the event giving rise to the claim, and shall otherwise be barred.
- 9.7 If Deloitte engages a third party, e.g. a data processing company, a chartered accountant or a lawyer, for the purpose of providing its consultancy services, and has notified the client of same in writing, Deloitte shall be released from its liability, and the third party engaged shall become solely liable as against the client for any damages for which said third party is responsible.
- 9.8 Any liability on the part of Deloitte as against any persons other than the client is expressly excluded. Where documents belonging to Deloitte are passed on to third parties with Deloitte's consent, this shall not justify any liability on the part of Deloitte as against such third party. Should Deloitte nonetheless become liable to a third party, the above liability limitations shall apply not only to the relationship between Deloitte and the client, but also to said third party. The client shall fully indemnify and hold harmless Deloitte in each instance of a third party's claiming damages from Deloitte.

## **10. Loyalty, non-solicitation clause**

During the term of this contract and during a further period of six months after termination of the consultancy services, the client is prohibited from employing Deloitte employees who were involved in the fulfilment of the contract. In the event of breach of this duty, the client must pay a contractual penalty of EUR 50,000.

## **11. Final provisions**

- 11.1 Deloitte is entitled to include the client's company and the project in its reference list, i.e. company name, company symbol or trademarks, and to mention or list a general description of the project to third parties. The client agrees to provide a reasonable amount of information about Deloitte upon prior notification.
- 11.2 The client is not entitled to assign rights or obligations arising from this contract to third parties without Deloitte's prior written consent. Deloitte is entitled to assign rights and obligations arising from this contract to a subsidiary or affiliated company or to any members of Deloitte Touche Tohamtsu (further information about its members is available at [www.deloitte.com/at/about](http://www.deloitte.com/at/about)) with debt-discharging effect and without the client needing to provide separate consent.
- 11.3 Deloitte uses state-of-the-art technology to recognise and filter out unwanted e-mails (spam). It may nevertheless occur that an e-mail is erroneously treated as spam. Deloitte can therefore not guarantee that the client's e-mails will actually be received by the desired recipient.
- 11.4 The place of fulfilment is Vienna. It is agreed that the Commercial Court in Vienna shall have jurisdiction with regard to all disputes arising from this contract.
- 11.5 This contract shall be governed exclusively by Austrian law with the exception of the conflict of law rules.
- 11.6 Should individual provisions of these GTC be or become ineffective, this shall not affect the remaining provisions.