



Unternehmensberatung · Buchhaltung · IT

**GENERAL TERMS OF BUSINESS for
Management**

consultancy March

2018

**Professional Association for Management Consulting, Accounting and
Information Technology**

Wiedner Hauptstraße 63
A-1045 Vienna

T: +43-(0)590900-3540

F: +43-(0)590900-3178

E-mail: ubit@wko.at

<http://www.ubit.at>

1. General principles / scope of application

1.1 All legal transactions between the Principal and the Agent (Management Consultant) shall be governed exclusively by these General Terms and Conditions. The version valid at the time of the conclusion of the contract shall apply.

1.2 These General Terms and Conditions of Business shall also apply to all future contractual relationships, thus also in the event that no express reference is made to them in supplementary contracts.

1.3 Any conflicting General Terms and Conditions of the Principal shall be invalid, unless the Agent (Management Consultant) expressly accepts them in writing.

1.4 In the event that individual provisions of these General Terms and Conditions of Business are and/or become invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision which comes as close as possible to the meaning and economic purpose of the invalid provision.

2. Scope of the consulting assignment / representation

2.1 The scope of a specific consulting assignment is contractually agreed in each individual case.

2.2 The Agent (Management Consultant) shall be entitled to have the tasks incumbent upon him performed in whole or in part by third parties. Payment of the third party shall be made exclusively by the Agent (Management Consultant) himself. No direct contractual relationship of any kind shall be established between the third party and the Principal.

2.3 The Principal undertakes not to enter into any kind of business relationship whatsoever with persons or companies that the Agent (Management Consultant) uses to fulfill his contractual obligations, neither during nor until three years after termination of this Agreement. In particular, the Principal shall not commission such persons or companies with the same or similar consulting services as are offered by the Agent (Management Consultant).

3. Duty of the client to inform / declaration of completeness

3.1 The client shall ensure that the organisational framework conditions at his place of business during the performance of the consultancy assignment allow for undisturbed work that is conducive to the rapid progress of the consultancy process.

3.2 The Principal shall also inform the Agent (Management Consultant) comprehensively about previously performed and/or ongoing consulting services - also in other areas of expertise.

3.3 The Principal shall ensure that the Agent (Management Consultant) is provided in a timely manner with all documents necessary for the performance and execution of the consulting assignment, even without the Agent's special request, and that the Agent is informed of all processes and circumstances which are relevant to the performance of the consulting assignment. This also applies to all documents, procedures and circumstances which only become known during the consultant's work.

3.4 The Principal shall ensure that its employees and the employee representation (works council) provided for by law and, if applicable, established by the law are informed by the Agent (Management Consultant) prior to the commencement of the Agent's (Management Consultant's) activities.

4. Ensuring independence

4.1 The contracting parties undertake to be loyal to each other.

4.2 The contracting parties shall be mutually obliged to take all precautions suitable to prevent any threat to the independence of the Contractor's (Management Consultant's) commissioned third parties and employees. This applies in particular to offers of employment by the Principal or the acceptance of assignments on his own account.

5. Reporting / reporting obligation

5.1 The Contractor (Management Consultant) undertakes to report to the Principal on the progress of his work, that of his employees and, if applicable, also that of third parties commissioned by him.

5.2 The client will receive the final report within a reasonable period of time, i.e. two to four weeks, depending on the nature of the consultancy assignment, after completion of the assignment.

5.3 The Agent (Management Consultant) shall be free from instructions in the production of the agreed work, shall act at his own discretion and on his own responsibility. He is not bound to any particular place of work or working hours.

6. Protection of intellectual property

6.1 The Agent (Management Consultant) shall retain all copyrights to the works created by the Agent (Management Consultant) and his employees and commissioned third parties (especially offers, reports, analyses, expert opinions, organizational plans, programs, performance descriptions, drafts, calculations, drawings, data carriers, etc.). They may be used by the Principal during and after termination of the contractual relationship exclusively for purposes covered by the Contract. In this respect, the Principal shall not be entitled to reproduce and/or distribute the work(s) without the explicit consent of the Agent (Management Consultant). Under no circumstances shall the Agent (Management Consultant) be liable to third parties for any unauthorized reproduction/dissemination of the Work, in particular for the correctness of the Work.

6.2 Any violation of these provisions by the Principal shall entitle the Agent (Management Consultant) to terminate the contractual relationship immediately and prematurely and to assert other legal claims, in particular for injunctive relief and/or damages.

7. Warranty

7.1 The Agent (Management Consultant) shall be entitled and obligated, regardless of fault, to correct any errors and deficiencies in his services that become known. He shall inform the Principal thereof without delay.

7.2 This claim of the client expires six months after the respective service has been rendered.

8. Liability / Compensation

8.1 The Agent (Management Consultant) shall be liable to the Principal for damages - except for personal injury - only in the event of gross negligence (intent or gross negligence). This shall also apply mutatis mutandis to damages caused by third parties called in by the Agent.

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

8.3 In each case, the Client must provide evidence that the damage is attributable to the fault of the Contractor.

8.4 If the Agent (Management Consultant) performs the Work with the assistance of third parties and if warranty and/or liability claims against such third parties arise in this context, the Agent (Management Consultant) shall assign such claims to the Principal. In this case, the Principal shall give priority to these third parties.

9. Secrecy / Data protection

9.1 The Agent (Management Consultant) shall be obligated to maintain absolute secrecy with regard to all business matters which come to his knowledge, in particular business and trade secrets, as well as any information which he receives about the nature, scope of business and practical activities of the Principal.

9.2 Furthermore, the Agent (Management Consultant) undertakes to maintain secrecy towards third parties with regard to the entire content of the work as well as all information and circumstances received in connection with the preparation of the work, in particular with regard to data of the Principal's clients.

9.3 The Contractor (Management Consultant) shall be released from the obligation of confidentiality towards any assistants and deputies he uses. He shall, however, completely transfer the duty of confidentiality to such persons and shall be liable for their violation of the duty of confidentiality as for his own violation.

9.4 The obligation of secrecy extends indefinitely even after the end of this contractual relationship. Exceptions are made in the case of statutory obligations to give evidence.

9.5 The Agent (Management Consultant) shall be entitled to process personal data entrusted to him within the scope of the purpose of the contractual relationship. The Principal shall warrant to the Agent that all necessary measures have been taken, especially those in accordance with the Data Protection Act, such as declarations of consent by the persons concerned.

10. Fees

10.1 Upon completion of the agreed work, the Agent (Management Consultant) shall receive a fee in accordance with the agreement between the Principal and the Agent (Management Consultant). The Agent (Management Consultant) shall be entitled to submit interim invoices in accordance with the progress of the work and to demand payment on account in line with the respective progress. The fee shall be due upon receipt of the invoice by the Agent.

10.2 The contractor (management consultant) will issue an invoice entitling the customer to deduction of input tax with all the features required by law.

10.3 Any cash expenditures, expenses, travel costs, etc. are to be reimbursed additionally by the Principal against presentation of an invoice by the Agent (Management Consultant).

10.4 If the agreed work is not performed for reasons on the part of the Principal or due to a justified premature termination of the contractual relationship by the Agent (Management Consultant), the Agent (Management Consultant) shall retain the right to payment of the entire agreed fee less any expenses saved. In the event that an hourly fee is agreed upon, the fee shall be paid for the number of hours that could be expected for the entire work agreed upon, less any expenses saved. The saved expenses are agreed at a flat rate of 30 percent of the fee for those services which the contractor has not yet provided by the date of termination of the contractual relationship.

10.5 In the event of non-payment of interim invoices, the contractor (management consultant) is released from his obligation to provide further services. However, this shall not affect the assertion of further claims resulting from non-payment.

11. Electronic invoicing

11.1 The Contractor (Management Consultant) shall be entitled to send invoices to the Client also in electronic form. The Principal expressly agrees to the Agent (Management Consultant) sending invoices in electronic form.

12. contract period

12.1 This contract ends in principle with the completion of the project.

12.2 Notwithstanding this, the contract can be terminated at any time for important reasons by either party without notice. Good cause is to be considered in particular,

- if a contracting party violates essential contractual obligations or
- if a contracting party is in default of payment after the opening of insolvency proceedings.
- if there are justified doubts regarding the creditworthiness of a contractual partner on whom no insolvency proceedings have been opened and who, at the request of the contractor, neither makes advance payments nor provides suitable security before the contractor makes payment and the poor financial circumstances were not known to the other contractual partner at the time of conclusion of the contract.

13. Final provisions

13.1 The contracting parties confirm that all information in the contract has been provided conscientiously and truthfully and undertake to notify each other immediately of any changes.

13.2 Changes to the contract and these General Terms and Conditions must be made in writing; the same applies to any departure from this formal requirement. Oral collateral agreements do not exist.

13.3 Austrian substantive law shall apply to this contract to the exclusion of the referral rules of private international law. The place of performance shall be the place of the Agent's (Management Consultant's) professional establishment. The court at the place of business of the Agent (Management Consultant) shall have jurisdiction over any disputes.

As a business-friendly means of settling disputes, the Association of Management Consultants, Accountants and Information Technology recommends the following mediation clause:

(1) In the event of disputes arising from this contract which cannot be settled by mutual consent, the parties to the contract agree to call in registered mediators (ZivMediatG) with a focus on business mediation from the list of the Ministry of Justice for the out-of-court settlement of the conflict. If no agreement can be reached on the selection of the business mediators or on the content of the mediation, no earlier than one month after the failure of the negotiations legal action has been taken.

(2) In the event that mediation does not take place or is broken off, Austrian law shall apply in any legal proceedings that may be initiated. All necessary expenses incurred as a result of previous mediation, in particular those for legal advisors called in, can be claimed as "pre-litigation costs" in court or arbitration proceedings, as agreed.