

GENERAL TERMS AND CONDITIONS

for mindberry Consulting GmbH

1. General Terms and Conditions / Scope

1.1 All legal transactions between you ("Client") and mindberry Consulting GmbH ("Contractor") shall be subject to these General Terms and Conditions exclusively. The version valid at the time of conclusion of Contract shall be applicable.

1.2 These General Terms and Conditions shall also apply to any future contractual relationship even if these General Terms and Conditions are not expressly referred to in additional contracts.

1.3 Any conflicting General Terms and Conditions on the part of Client shall be invalid unless explicitly accepted in writing by Contractor.

1.4 If any provision of these General Terms and Conditions is or becomes invalid, the other provisions and any contracts concluded pursuant to these provisions shall not be affected thereby. The invalid provision shall be replaced by a valid provision which best corresponds to the intention and economic purpose of the invalid provision.

1.5 In case any provision of these Terms and Conditions may conflict with provisions of an individual contract concluded with contracting party, the latter shall prevail.

2. Scope of Consulting Assignments / Representation

2.1 The scope of each particular consulting assignment shall be agreed upon by individual contract.

2.2 Each individual contract is based on a specific written offer including a cost estimate of Contractor. The offer shall be nonbinding until its written acceptance by Client and simultaneous signing by Contractor.

2.3 Contractor shall be entitled to subcontract, in whole or in part, its services to third parties (e.g. commercial/self-employed cooperation partners and experts). This, however, shall not establish a contractual relationship between Client and third party.

2.4 User Research and Conversion Rate Optimization (CRO) services

In case Client orders User Research or CRO services from the Contractor, the following terms apply, unless explicitly otherwise agreed in an individual agreement.

2.4.1 Tools and test platforms needed:

In order to conduct user research and run tests it is necessary to use third party tools which may include

- Testing platforms (such as Optimizely and Visual Website Optimizer)
- Website feedback mechanisms (such as Kampyle)
- "On-page" web analytics (such as ClickTale)
- Software for surveying customers

Any cost that might occur for using a testing platform will be covered by the client. Client shall obtain all licenses required for the envisaged usage.

For user research purposes we typically use various third party tools. Some of them are free of charge, some charge a fee. Any cost that might occur for using such third party tool will be covered by the client. Client shall adhere to any applicable license terms of such third party tool.

It is the sole responsibility of the client to set up these tools and testing platforms on their website. Client acknowledges, that proper implementation is a crucial precondition to achieve the envisaged success metrics. In addition client is responsible to ensure that all applicable legal obligations, particular applicable license terms of third party tools are met. In particular, client shall be responsible for all duties arising out of applicable data protection provisions. For example, client shall obtain necessary consents of its users to the processing of their data and shall comply with notification or approval requirements of applicable data protection authorities – if any.

2.4.2 Access rights

The client is responsible for the registration in the tools and testing platforms and needs to grant mindberry subsequently in line with the terms access to the test platform as well as the user research tools.

2.4.3. Implementation

mindberry provides recommendations on activities only, but is not involved in their implementation:

mindberry's CRO services comprises recommendations

- on how to gain user insights
- how to build on these insights with concrete actions
- what tests to run including wireframe proposals
- how to evaluate the outcome of tests

mindberry's service does neither include the implementation of any changes on the website nor technical advice on how to implement testing and other tools.

Clients are in charge of and solely responsible for any changes to or activities (and their outcome) on their website:

It is the client's responsibility to

- implement user research tools and tracking tools on their website

- do any graphical, technical or copy changes on their website needed to run tests
 - check that any recommended tool, test, copy, activity or any other change to the website adheres to applicable legal requirements before implementing or conducting them
 - ensure that any test can be stopped immediately in case it has a negative effect on the business
- mindberry cannot be held liable for any damages to the website or business because of implementing or conducting a recommendation of mindberry as it is at the discretion of the client to decide what and how to implement the mere recommendations on their webpage or for their business. It is mainly in the sphere of the client that envisaged metrics can be achieved.

3. Client's Obligation to Provide Information / Declaration of Completeness

3.1 Client shall ensure that during the performance of the consulting assignment, organisational conditions in Client's place of business allow the consulting process to proceed in a timely and undisturbed manner.

3.2 Client shall also inform Contractor in detail about previously conducted and/or currently active consulting projects, including those in other areas of competency.

3.3 Client shall, in a timely manner and without special request by Contractor, provide Contractor with all documents necessary to fulfill and perform the consulting assignment and shall inform Contractor of all activities and conditions pertinent to the performance of the consulting assignment. The same applies to all documents, activities and conditions that become known or available during the performance of the consulting assignment.

3.4 Client shall ensure that all employees as well as any employee representation (works council) provided by law, if established, are informed of Contractor's consulting activities prior to the commencement of the assignment.

3.5 Client shall be responsible for the finalization of texts, the technical and graphical implementation as well as the substantial revision of compliance of work results (works) with applicable legal obligations. In particular, Client shall ensure compliance with advertisement and competition law as well as general legal provisions. In this respect, Client shall indemnify Contractor against any third party claims resulting from non-compliance with national legal provisions including any costs of legal enforcement and attorney's fees.

4. Maintenance of Independence

4.1 The contracting parties shall be committed to mutual loyalty.

4.2 The contracting parties shall be obligated to take all appropriate measures to ensure that the independence of third parties mandated by Contractor and Contractor's employees is not jeopardized. In particular, this shall apply to any employment offers by Client or the acceptance of assignments on their own account.

5. Reporting / Obligation to Report

5.1 Contractor shall be obligated to draft a final report about service provision within a reasonable time upon completion of the assignment and forward it to Client. Ongoing reporting shall not be envisaged.

5.2 Contractor shall not be bound by directives while performing the agreed service and shall be free to act at its own discretion and responsibility. Contractor shall not be required to work in a particular location or to keep particular working hours.

6. Protection of Intellectual Property

6.1 Contractor shall own all intellectual property rights to any works done by Contractor and employees and by third parties mandated by Contractor (including but not limited to offers, reports, analyses, expert opinions, organization charts, programmes, performance descriptions, drafts, calculations, drawings, data media, etc). During the contract period and after termination thereof, Client may use such rights exclusively for the purposes described under the Contract. Therefore, Client shall not be entitled to copy and/or distribute the works without explicit consent of Contractor. Any distribution of Contractor's works without Contractor's consent shall be illegal and shall entitle Contractor to remuneration and damages. Accordingly, Contractor shall not be liable for any unauthorized copy or distribution of works towards third parties – in particular for the accuracy of works.

6.2 Client shall not be entitled to use Contractor's written documented statements for marketing or PR purposes.

6.3 Any violation of these provisions by Client shall entitle Contractor to prematurely terminate the Contract with immediate effect and to enforce other legal claims, in particular for omission and/or damages.

6.4 Contractor shall only be entitled to use work results for his own PR activities after Client's consultation.

7. Warranties

7.1 Contractor shall be entitled and obligated to correct any defects and inaccuracies in Contractor's work attributable to Contractor and which have become known subsequently. Contractor shall immediately inform Client thereof. Such claim shall expire six months after completion of the respective work by Contractor.

7.2 The remedy or correction of defects shall in any case be performed by subsequent rectification/correction by Contractor. Client shall be entitled to claim for price reduction or conversion only if remedy of defect failed twice.

7.3 Contractor may refuse remedy of defects, as long as Client fails to meet its contractual obligations, in particular its payment obligations. Claims for removal of defects due to known defects shall expire to their full extent if not notified or filed at completion of work. The same shall apply to modifications by Client or if Client complicates discovery or remedy of defects.

8. Liability / Damages

8.1 Contractor shall be liable versus Client for damages - except personal injury - resulting from intention or gross negligence, only. Liability for lost profit and consequential damages shall be excluded.

8.2 Any claim for damages on the part of Client may be enforced within six months after the damaged party gained knowledge of the damage and the party causing damage.

8.3 Client shall provide evidence of Contractor's fault.

8.4 If Contractor performs the work by engaging third parties, any warranty claims and claims for damages against the third party and claims for damages against the third party resulting from such engagement shall be assigned to Client. In such case, Client's claims versus Contractor shall be limited to the assignment.

8.5 Any claims for compensation of Client shall be limited to the respective contractual value and shall in no event exceed EUR 10.000,-.

9. Confidentiality / Data Protection

9.1 Contractor shall be obligated to maintain absolute confidentiality concerning all business matters Contractor gains knowledge of, in particular company and business secrets and any other information concerning type, scope of business and practical activities of Client.

9.2 Furthermore, Contractor shall be obligated to maintain absolute confidentiality towards third parties concerning the work content as well as any information and conditions Contractor gained knowledge of in the course of completion of work, in particular concerning Client's customers' data.

9.3 Contractor shall not be obligated to maintain confidentiality towards any accessory or representative of Contractor. However, Contractor shall be obligated to impose the same confidentiality obligations to its accessories or representatives.

9.4 The obligation to maintain confidentiality shall persist indefinitely even after termination of this Contract. Legal obligations to disclose information shall be exempted.

9.5 Client or its legal representative may release Contractor in writing from its obligation to maintain confidentiality.

9.6 Contractor shall be entitled to process any personal data entrusted to Contractor for the purposes of the works performed. Client warrants to Contractor that all necessary measures have been taken, in particular those regarding data protection laws, e.g. that declarations of consent have been obtained from the persons involved.

10. Remuneration

10.1 Remuneration and payment terms shall apply as specified in the individual contract. Unless otherwise agreed, in principle the payment claim shall accrue at the time of delivery of work. However, Contractor shall be entitled to render intermediate accounts and to demand down payments according to the progress of the work. Remuneration as well as intermediate remuneration shall be due within 14 days after rendering accounts and sending the invoice to Client.

10.2 Contractor shall render accounts which entitle to deduct input tax and correspond to all legal requirements.

10.3 Any cash expenditure, expenses, travel expenses (flights: business class; train: first class; accommodation: 4 star hotel), etc. shall be reimbursed additionally to Contractor by Client, upon submission of the appropriate receipts.

10.4 In the event that the work agreed upon is not completed due to reasons in sphere of Client, or due to a justified premature termination of the contractual relationship by Contractor, Contractor shall be entitled to claim full remuneration agreed upon in advance. In case an hourly rate was agreed upon, the amount of hours expected shall be charged.

10.5 In case of Client's delay in payment of intermediate remunerations or down payments, Contractor shall be released from its obligation to provide the work agreed upon after a reminder and a 14 days grace period until Client's full payment of the outstanding amounts. Further claims resulting from default of payment shall not be affected.

11. Electronic Invoicing

Contractor shall be entitled to transmit invoices electronically to Client. Client explicitly agrees to accept invoices transmitted electronically by Contractor.

12. Duration of the Agreement

12.1 This Contract terminates in general with the completion of the project or delivery of work.

12.2 Besides that, this Contract may be terminated for good cause by either party at any time without notice period. In particular, a good cause is given if one party breaches essential provisions of the Contract.

13. Final Provisions

13.1 The parties declare that all information contained herein is accurate and made in good conscience. The parties shall be mutually obligated to immediately inform the other party of any possible changes.

13.2 Modifications of this Contract or these General Terms and Conditions shall be made in writing. This shall also apply to a waiver of this requirement. Oral side-agreements do not exist.

13.3 E-Mails, mail or faxes fulfill the requirement of the written form.

13.4 This Contract as well as all contracts subject to these General Terms and Conditions shall be governed by the substantive laws of the Republic of Austria excluding the conflict-of-law rules of international private law and the United Nations Convention on the Sale of Goods. Place of execution is the registered business establishment of Contractor. Any and all disputes, including the question of lawful conclusion of an individual contract, shall be referred to the exclusive jurisdiction of the court competent in the subject-matter for 1010 Vienna. Place of execution is Vienna.