



DIGITAL CHANGE

General Terms and Conditions

Digital Change GmbH

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Valid from 2020-04-01

§ 1 Scope

- 1.1 These general terms and conditions of service (GTC) apply to all legal relationships between the client (customer) and the contractor (Digital Change GmbH). With signing of the order confirmation, these GTC apply as agreed. The version valid at the time of signing the order confirmation applies.
- 1.2 The GTC of the contractor also apply to all future business relationships entered into with the client. The contractor acknowledges that the GTC are valid even if no longer explicitly stated. This also applies to additional agreements.
- 1.3 The client acknowledges that its own terms and conditions contrary to these GTC are invalid, even if they were not expressly contradicted. Deviating terms and conditions are only valid if they have been expressly acknowledged in writing.
- 1.4 Should individual parts of these GTC be or become invalid, this has no effect on the validity of the remaining provisions or the legal relationship entered into. The invalid provision is to be replaced by a provision that comes closest to its purpose and economic purpose.

§ 2 Performance and provision by third parties

- 2.1 The respective scope of the service to be provided is to be contractually agreed in individual cases, whereby the billing takes place according to the actual expenditure.
- 2.2 The contractor is not obliged to render the service personally. It may also have the agreed service provided by third parties (other companies or its employees). Before contracting third parties, the contractor shall inform the client accordingly and the client has the right to object to the subcontracting for legitimate reasons. At the same time, the contractor undertakes to oblige the third parties to observe the confidentiality obligations (see § 8). The payment of the third party takes place exclusively by the contractor; there is no direct contractual relationship between the client and the third party.
- 2.3 The client is prohibited from entering into any contractual relationship during the business relationship or within a period of four years with contracted subcontractors. At the same time, it is prohibited in this period from recruiting employees of the contractor and from establishing an employment relationship with them or entering into other contractual relationships with them. The period begins with the termination of the last legal relationship. This can only be deviated from if the contractor expressly agrees. In the case of the infringement, a contractual penalty of € 50,000 will be due immediately.

§ 3 Obligations of the client

- 3.1 The client undertakes to provide the contractor with all the information it needs for the fulfillment of its order. At the same time, it undertakes to create the organizational framework necessary for the fulfillment of the contract. This includes, among other things, the setup of necessary access, the timely provision of information about appointments and the necessary access to information or business premises.
- 3.2 The obligations refer both to information that already existed when the order was confirmed and to information that was added during the business relationship.
- 3.3 If the rights of employees are affected by the activity of the contractor (e.g. due to necessary evaluations), the client undertakes to carry out the corresponding communication or to obtain legally required authorizations. The contractor does not undertake a check as to whether such authorizations are necessary or present.

§ 4 Obligations of the contractor

- 4.1 The contractor undertakes to report on its activities, the activities of its employees or its third-party agents regarding the progress of activities at any time with the setting of an appropriate deadline of at least three working days.
- 4.2 Documents created for the client are to be handed over. On request, documentations can be made about the work steps it has created. The time spent on this will be remunerated accordingly.
- 4.3 The contractor is free in providing its services; it acts on its own discretion and responsibility. However, the client can prioritize the commissioned work packages, which must be done in writing. The contractor is not bound to any particular place of work or working hours.

§ 5 Intellectual property

- 5.1 The copyrights of all works created by the contractor, its employees or commissioned third parties remain with the contractor. Any deviation from this requires the express written consent of the contractor. In particular, works include reports, analyzes, checks, concepts, organizational plans, etc. The client may only use them for the purposes covered by the order. The client does not have the right to reproduce these works without the consent of the contractor or to use or pass them on outside the client's organization.
- 5.2 Any infringement entitles the contractor to immediately terminate the contract. The client is obliged to pay for the damage incurred and under no circumstances will the contractor be liable to third parties. The client must indemnify and hold the contractor harmless in this regard.

§ 6 Warranty

- 6.1 Defects resulting from the fault of the contractor shall be remedied by the contractor. The client must immediately inform the contractor of the defect.
- 6.2 This obligation does not arise if the defect arose because of missing information on the part of the client.
- 6.3 The contractor must set a reasonable deadline to remedy the defects, depending on the complexity of the defect to be remedied. The remedying of the defect is at the discretion of the contractor.
- 6.4 The obligation to remedy the defect expires three months after the service has been provided. If the service is accepted, an existing defect must be reported immediately, otherwise the warranty obligation expires.
- 6.5 Defects do not exist when systems have been changed after the service has been provided and this has a negative impact on the performance, which was unpredictable for the contractor.
- 6.6 In general, the contractor owes no success, but only effort to achieve success.
- 6.7 The burden of proof that a defect exists resides with the client.

§ 7 Liability

- 7.1 Liability on the part of the contractor exists only in case of gross negligence (intent or gross negligence). This does not include personal injury. This limitation of liability shall apply to the same extent for third parties or employees. For indirect or intermediate damages liability is completely excluded.
- 7.2 All claims, in particular those for damages, must be asserted immediately after becoming aware of the damage and the cause. The limitation period is three years. The burden of proof that the damage was caused by the contractor is borne by the client.
- 7.3 The liability is limited in any case to the amount of the order.

§ 8 Confidentiality / Privacy

- 8.1 The contractor undertakes to maintain absolute confidentiality about all business matters that come to its knowledge, in particular business and trade secrets, as well as any information that it gains about the nature, scope and practical activity of the client. Publicly known or published information is not included.
- 8.2 Furthermore, the contractor undertakes to maintain confidentiality with regard to the precise content of its work as well as all information and circumstances received in connection with its work, in particular the data of clients of the client.

- 8.3 The contractor is released from the confidentiality obligation vis-à-vis any assistants and deputies it serves. But it must transfer the confidentiality obligation completely to the aforementioned.
- 8.4 The confidentiality obligation extends beyond the end of this contractual relationship. Exceptions exist in the case of statutory disclosure obligations.
- 8.5 The contractor is entitled to process personal data entrusted to it within the scope of the purpose of the contractual relationship. The client warrants to the contractor that all necessary measures have been taken for this, in particular those in the sense of the data protection law, such as consent declarations of the persons concerned.
- 8.6 All confidentiality obligations also apply to the client in relation to the information received from the contractor. The client is also not entitled to pass on information regarding the activity of the contractor to third parties.

§ 9 Fee

- 9.1 The billing takes place on a monthly basis on the basis of the daily rates fixed in the concluded agreement. Work packages can be charged by the contractor immediately after completion. It is expressly pointed out that billing always takes place according to the effort made. The contractor is entitled to demand a corresponding advance payment for the work progress. The fee is payable by the contractor and billed within 10 days without deduction.
- 9.2 The contractor shall issue a bill entitling to deduction of input tax with all legal characteristics.
- 9.3 Expenses incurred in cash, expenses, travel expenses, etc., shall be additionally reimbursed by the client after provision of proof by the contractor.
- 9.4 If the performance of the agreed service is omitted for reasons which lie on the side of the client or due to a justified premature termination of the contractual relationship by the contractor, the contractor reserves the right to payment of the entire agreed fee. In the case of an agreed daily rate with a fixed number of days to be billed per month, the fee that would have been payable for the entire activity must be paid.
- 9.5 In the event of non-payment of interim bills, the contractor shall be released from its obligation to provide further services. The assertion of further claims resulting from non-payment shall not be affected by this.
- 9.6 The customer has no right of retention or right of set-off.

§ 10 Electronic billing

- 10.1 The contractor is also entitled to submit its bills in electronic form. The payment period begins to run with the transfer. The client expressly agrees to the sending of bills in electronic form.

§ 11 Duration of the contract

11.1 The contract ends with the termination of the underlying agreement. If the agreement does not specify a date for termination, it shall end upon completion of the work to be performed for the client.

11.2 Regardless of this, the contract can be dissolved at any time for good cause by any party without observing a notice period. Good case includes, in particular,

- if a contractor violates essential contractual obligations
- if insolvency proceedings are opened on a contracting party
- if there are legitimate concerns about the creditworthiness of a contracting party over which no insolvency proceedings have been initiated, and the latter fails after request by the contractor to make any advance payments or provide any suitable security before the contractor's performance and the poor financial circumstances were unknown to the other contracting party upon conclusion of the contract.

§ 12 Final provisions

12.1 The contracting parties confirm that they have faithfully and truthfully provided all information in the contract and undertake to announce any changes mutually immediately.

12.2 Changes to the contract and these GTC must be in writing, as must a departure from this form requirement. Verbal collateral agreements do not exist.

12.3 Substantive Austrian law is applicable to this contract to the exclusion of the reference norms of private international law. The place of performance is the place of employment of the contractor. The court at the place of business of the client is responsible for disputes.