

General Terms and Conditions of Business
common sense – eLearning & training consultants GmbH

These General Terms and Conditions of Business are based on a template of the Austrian Federal Economic Chamber for its members in the Professional Association for Management Consulting and Information Technology.

1. General principles / Scope of application

1.1 All legal transactions between the client and the contractor (common sense - eLearning & training consultants GmbH) are exclusively subject to these General Terms and Conditions in the version valid at the time of the conclusion of the contract.

1.2 These General Terms and Conditions of Business also apply to all future contractual relationships, even if no express reference is made to them in supplementary contracts.

1.3 All orders and agreements are only legally binding if they are signed by the contractor (common sense - eLearning & training consultants GmbH) in writing and in accordance with these General Terms and Conditions, and are only binding to the extent stated in the order confirmation. Conflicting General Terms and Conditions of the client are invalid unless they are expressly accepted by the contractor in writing.

1.4 In the event that individual provisions of these General Terms and Conditions of Business are or become invalid, this shall not affect the validity of the remaining provisions and of the contract(s) 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 consultancy or service contract / Representation

2.1 The scope of a specific consulting or service contract will be contractually agreed for each individual project.

The scope may include:

- Development of organizational concepts
- Global and detailed analyses
- Creation of individual learning software (WBT/CBT) for internet or mobile distribution
- Consultancy and Training
- Community Support and/or Online Tutoring
- Delivery of individually customized Open Source programs
- Acquisition of usage rights for learning content
- Acquisition of licenses for the use of works
- Graphic and design services
- Support for the introduction of eLearning processes
- Telephone consultation on the above
- Maintenance of learning management systems
- Creation of individual software to support learning processes

- Other services

2.2 The contractor shall be entitled to have the mentioned tasks performed in part or in whole by third parties. Payment of the third party shall be made exclusively by the contractor himself. No direct contractual relationship of any kind shall arise between the third party and the client.

2.3 The client will not undertake to enter into any kind of business relationship whatsoever with persons or companies (third parties) of which the contractor makes use for the fulfilment of his contractual obligations during and until the expiry of three years after the termination of this contractual relationship.

In particular, the client will not commission these persons and companies with such or similar consulting services that are also offered by the contractor.

3. Obligation of the client to provide information / Declaration of completeness

3.1 The client shall ensure that the organizational conditions at his place of business during the performance of the consulting/service order allow for undisturbed work that is conducive to the rapid progress of the consulting or service process.

3.2 The client shall also inform the contractor comprehensively about previously performed and/or ongoing consulting services or IT services associated with the project in question.

3.3 The client shall ensure that all documents necessary for the performance and execution of the consultancy/service order are submitted to the contractor in a timely manner, even without the contractor's special request, and that the contractor is informed of all processes and circumstances which are of importance for the execution of the consultancy/service order. This also applies to all documents, procedures and circumstances that only become known during the activity of the consultant/service provider.

3.4 The client shall ensure that his employees and - if necessary for the project - a legally provided established employee representation (works council) are informed of the Consultant/Service Provider before the commencement of the Consultant's activities.

4. Ensuring independence

4.1 The contracting parties commit themselves to mutual loyalty.

4.2 The contracting parties undertake to take all precautions suitable to prevent the independence of the third parties and employees of the contractor from being endangered. This applies in particular to offers of the client for employment or the acceptance of orders on his own account.

5. Reporting / Reporting obligation / Approvals

5.1 The contractor will report to the client on the progress of his work, that of his employees and, if applicable, of third parties commissioned by him.

5.2 The client shall receive a final report, if provided for in the project, within a reasonable period of time, i.e. two to four weeks, depending on the type of project, after completion of the order.

5.3 Individually created learning software or program adaptations require program approval at the latest four weeks after delivery by the client, or according to individual agreement/project schedule. This approval shall be confirmed in writing by the client (statement of correctness and completeness on the basis of the performance project description/scope accepted by all parties). If the client allows a period of four weeks to elapse without program approval, the delivered learning software shall be deemed to have been accepted with the end date of the aforementioned period. If the learning software is used or distributed by the client, the software shall be deemed approved in any case.

5.4 The contractor shall be free from instructions when producing 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 copyrights to the works created by the contractor and its employees and commissioned third parties (in particular offers, reports, analyses, expert opinions, organization charts, WBTs, software programs, performance descriptions, drafts, calculations, drawings, data carriers etc.) shall remain with the contractor, unless otherwise contractually agreed. The client acquires a permit to use the work. This shall not apply to the provision of open source software (software as defined by the Open Source Initiative). In this case the open source license used in each case shall apply.

In the case of individual productions of educational software (learning content()), the agreement of the rights of use is generally part of the contract.

7. Warranty

7.1 Should corrections and additions prove necessary due to technical program deficiencies for which the contractor is responsible, these shall be carried out by the contractor free of charge.

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

7.3 Occurring deficiencies are deviations from the performance description or storyboards agreed in writing. These must be documented by the client and reported to the contractor, who will endeavour to rectify the defects as quickly as possible.

7.4 Assistance, misdiagnosis as well as error and malfunction removal of errors for which the client is responsible as well as other corrections, changes and additions will be carried out by the contractor against payment. This also applies to the elimination of defects if program changes, additions or other interventions have been made by the contractor himself or by third parties.

7.5 Furthermore, the contractor does not assume any warranty for errors, malfunctions or damage which are due to improper operation of created learning software, changed operating

system components, interfaces and parameters or the use of unsuitable organisational resources and data carriers.

8. Liability / Compensation

8.1 The contractor shall be liable for damages, if intent or gross negligence can be proven, within the scope of the statutory provisions. Liability for slight negligence is excluded. This shall also apply mutatis mutandis to damage caused by third parties called in by the contractor.

8.2 Claims for damages by the client can only be asserted in court within six months of knowledge of the damage and the party causing the damage, but at the latest within three years of the event giving rise to the claim.

8.3 In each case the client shall provide evidence that the damage is due to the fault of the contractor.

8.4 If the contractor performs the work with the assistance of third parties and if in this connection warranty and/or liability claims arise against these third parties, the contractor shall assign these claims to the client. In this case the client shall give priority to these third parties.

9. Secrecy / Data protection

9.1 The contractor undertakes to maintain absolute silence about all business matters which come to his knowledge, in particular business and trade secrets and any information which he receives about the type, scope of business and practical activities of the client.

9.2 Furthermore, the contractor undertakes to maintain secrecy towards third parties regarding the entire content of the work as well as all information and circumstances which he has received in connection with the production of the work, in particular also regarding the data of customer of the client.

9.3 The contractor shall be released from the obligation of secrecy towards any assistants and deputies which he uses. However, he shall completely transfer the obligation of secrecy to them and shall be liable for their violation of the obligation of secrecy as for his own violation.

9.4 The obligation of secrecy shall extend indefinitely beyond the end of this contractual relationship.

9.5 The contractor is entitled to process personal data entrusted to him within the scope of the purpose of the contractual relationship. The client guarantees the contractor that all necessary measures have been taken for this purpose, in particular those in the sense of the Data Protection Act, such as declarations of consent by the persons concerned.

10. Payment

10.1 After completion of the agreed work, the contractor shall receive a fee in accordance with the agreement between the client and the contractor. The contractor is entitled to submit interim invoices according to the progress of the work and to demand payment on account

according to the respective progress. The fee is due upon presentation of the invoice by the contractor.

10.2 The contractor will issue an invoice with all legally required features entitling the client to deduct input tax.

10.3 Any cash outlays, expenses, travel costs, etc. incurred shall be reimbursed additionally by the client against presentation of the invoice by the contractor.

10.4 If the agreed work is not performed for reasons on the part of the client or due to a justified premature termination of the contractual relationship by the contractor, the contractor reserves the right to claim payment of the entire agreed fee less any expenses saved.

10.5 In the event of non-payment of interim invoices, the contractor shall be 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 is entitled to send invoices to the client also in electronic form. The client expressly agrees to the receiving of invoices in electronic form.

12. Duration of the contract

12.1 This contract shall generally end upon completion of the project.

12.2 Notwithstanding the foregoing, the contract may be terminated at any time for good cause by either party without notice. Good cause shall be deemed to exist in particular, - if a contractual partner violates essential contractual obligations or - if insolvency proceedings are opened against a contractual partner or the bankruptcy petition is rejected due to lack of cost-covering assets.

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 GTC must be made in writing. There are no verbal collateral agreements.

13.3 This contract shall be governed by Austrian substantive law, excluding the rules of conflict of laws. The place of performance shall be the place of the contractor's professional establishment. The court at the place of business of the contractor shall be competent for disputes.