

# **e1 Business Solutions GmbH**

## **Standard Terms of Business**

### **1. Scope of application**

- 1.1 These Standard Terms of Business (STB) shall apply to all transactions between the Client and e1 Business Solutions GmbH (the "Contractor"), including consulting services to be provided by the Contractor. Departures from these terms shall only be effective if acknowledged by the Contractor in writing.
- 1.2 The STB shall also apply to all future contractual relationships, hence in particular even if no express reference is made to such when contracts are concluded.
- 1.3 Client's standard terms of business in conflict with the present shall be invalid unless expressly acknowledged in writing by the Contractor.

### **2. Quotation / contract / handling of the contract**

- 2.1 The Contractor's quotations shall be deemed to be without obligation. Details in catalogues, brochures and the like shall only be decisive if express reference is made to such in the confirmation of order. All quotation and project documents may not be reproduced or made accessible to third parties without the Contractor's written consent. They shall remain the Contractor's property and shall be returned at any time upon the Contractor's request.
- 2.2 The scope of the specific consulting contract ("contract") shall be agreed in the individual case by contractual agreement. On the basis of the STB, the corresponding contract shall be concluded with legal effect either by written confirmation of order by the Contractor or actual provision of the performance by the Contractor.
- 2.3 The Contractor shall be entitled to have the functions for which it is responsible carried out in whole or in part by third parties. The payment of the third party shall be effected by the Contractor itself, unless the contrary is agreed in the contract. In the latter case, there shall be no direct contractual relationship of whatever kind between the third party and the Client.

### **3. Client's duty to inform / declaration of completeness**

- 3.1 Where the contract is carried out at the Client's place of business, the Client shall ensure that the organisational conditions permit the works necessary for the rapid progress of the consulting process with a minimum of disturbance.
- 3.2 The Client shall also provide comprehensive information to the Contractor about previous and/or ongoing consulting work, including consulting work in other specialist areas.
- 3.3 The Client shall ensure that the Contractor, even without specific request, shall be provided in good time with all information and documents necessary for the performance and execution of the contract, and that it is informed about all processes and circumstances that are of significance for the performance of the

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contract. This shall also apply to all information, documents, processes and circumstances that only become known during the Contractor's activity.

### **4. Loyalty obligations**

- 4.1 The contracting parties undertake to apply reciprocal loyalty.
- 4.2 The Client undertakes to effect all precautions that are capable of preventing a risk to the independence of the contracted third parties and employees of the Contractor. The Client undertakes in particular not to entice any employees of the Contractor for a period of one year after termination of the contract.
- 4.3 The Contractor undertakes to report to the Client about its work in accordance with the progress of the work.

### **5. Acceptance**

- 5.1 If an acceptance test is agreed in the contract, the Client and the Contractor shall sign the acceptance minutes immediately after the test has been conducted, unless any substantial defects – which shall be such that render impossible the commercially reasonable use of the work results – are identified and set out in writing in the minutes. The Client shall not be entitled to refuse acceptance on the grounds of insignificant defects.  
If the Client refuses to participate in the acceptance test or refuses to sign the acceptance minutes although no substantial defects have been identified, the work results shall be deemed to be accepted upon execution of the acceptance test.  
If there are substantial defects that are sufficiently documented in writing, a second acceptance shall be necessary after the defects have been remedied.
- 5.2 The work results shall likewise be deemed to be accepted if they are used in productive operations before acceptance.
- 5.3 If no acceptance test is provided for, the work results shall be deemed to be accepted upon delivery.

### **6. Intellectual property rights**

- 6.1 All existing ideas, know-how and patents (and applications for such) of the Contractor that are not the result of a contract but are provided by the Contractor for the performance of the contract in question shall remain the Contractor's exclusive property.
- 6.2 All ideas, know-how and inventions that are developed by the Contractor's employees within the framework of the works on a contract shall transfer to the Contractor's exclusive property.
- 6.3 All project-related drawings and technical documents that are delivered by one of the contracting parties to the other within the framework of a contract before conclusion of the agreement or as a consequence thereof shall remain the

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exclusive property of the party providing such, and shall be treated by the other contracting party as confidential information. These drawings and technical documents shall only be used for the contract in question.

- 6.4 Subject to Sections 6.1 to 6.3, the Client shall upon performance of its payment obligations as regulated in the relevant contract, receive
- a) a non-exclusive user right to the Contractor's ideas, know-how and inventions listed in Sections 6.1 and 6.2, whether such are patented or not, for all applications covered by the contract in question, but not for any other purposes, and
  - b) a user right to the results and documentation of the contract in question; the Client shall treat the project documentation received from the Contractor as confidential information.

Thus the Client shall not be entitled to reproduce and/or disseminate the work result without the Contractor's express consent. Under no circumstances shall an unauthorised reproduction/dissemination of the work results give rise to liability to third parties on the part of the Contractor – in particular e.g. for the accuracy of the work results. Any infringement by the Client against these provisions shall entitle the Contractor to immediately terminate all contractual relationships with the Client prematurely and to assert other statutory claims, in particular a claim to a cease-and-desist order and/or damages.

### **7. Third party intellectual property rights**

7.1 The Contractor shall make every effort to ensure that the work results do not infringe third party intellectual property rights.

7.2 If the intended use of a work result leads to a claim based on an (alleged) infringement of a third party intellectual property right, the Client shall immediately notify the Contractor thereof in writing. The Contractor shall in such a case provide appropriate support to the Client in defending such claims. If the use of a result of a work result actually infringes a valid third party intellectual property right, the Contractor shall make every effort

- a) to modify the result of the contract in such a way that intellectual property rights are no longer infringed, or
- b) to obtain a licence from the holder of the intellectual property right.

The Contractor's above obligations shall be limited to a total amount of 10% of the contract total in question, and shall be subject to the assertion of the claim within the deadline according to Section 8.5.

7.3 In any event, the Contractor shall not be liable for any settlements or agreements between the Client and third parties that are concluded without the Contractor's written consent. Nor shall the Contractor be liable for the consequences of an infringement of combination or process patents that concern the use of the work results in combination with other goods/services not originating from the Contractor. Section 7.2 sets out the Contractor's entire responsibility for infringements of intellectual property rights. The Contractor shall under no circumstances be liable for

- a) consequential losses due to an infringement of intellectual property rights,
- b) litigation and/or other representation costs incurred by the Client, or

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c) damages awarded by the courts to third parties.

## **8. Warranty**

- 8.1 The Contractor warrants that it shall execute the contract professionally and competently in accordance with the state of the art and in compliance with Austrian legislation, standards and regulations. The documentation prepared within the framework of a contract shall correspond to the existing usual standards for comparable projects in the IT sector.
- 8.2 The Client shall examine the work results upon receipt and shall notify the Contractor in writing about any defects within a reasonable deadline not exceeding ten (10) working days. If this obligation to inspect and notify immediately in writing is not complied with, the warranty claims shall be forfeited.
- 8.3 In the event of defective work results (including incomplete or incorrect documentation), the Contractor shall remedy such defects (complete or correct the documentation) within a reasonable period.
- 8.4 The Contractor's warranty obligations shall be restricted to the obligations defined in this present Section 8 and shall replace all other assurances and warranties, whether express or implied. The Contractor shall not be liable for any (consequential) losses that are due to defective work results unless the Contractor is guilty of intent or gross negligence.
- 8.5 The warranty period shall be six months after provision of the performance in question.

## **9. Performance of the contract**

The contract shall be performed after

- a) delivery of the corresponding reports and documentation that contain the work results of the order in question, and
- b) complete payment by the Client pursuant to Section 13.

## **10. Liability**

- 10.1 The Contractor shall only be liable for losses if it is guilty of intent or gross negligence. Any liability for indirect losses and/or consequential losses, including lost profit, product recall costs, impossibility to use, etc, shall be expressly excluded.
- 10.2 The Client's claims for damages can only be judicially asserted within a period of six months following the acquisition of knowledge of the loss and the party responsible, at the latest however within two years after the event giving rise to the claim.
- 10.3 The Client shall submit evidence that the loss is due to fault on the part of the Contractor.

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10.4 If the Contractor provides the work results with the assistance of third parties and if in such connection warranty and/or liability claims arise against the third party, the Contractor shall assign these claims to the Client. The Client shall primarily obtain satisfaction from this third party.

10.5 The Contractor shall not be subject to any obligations that arise on the basis of strict liability claims and shall be indemnified and held harmless by the Client with respect to any losses and costs incurred by the Contractor in connection with any product liability claims.

## **11. Force majeure**

If the Contractor or one of its subcontractors shall be the victim of force majeure or an event that lies outside the control of the Contractor or its subcontractor, such as war, natural events, government interventions and prohibitions, energy and raw materials shortages, strikes, civil unrest, transport damage or delays etc, the Contractor shall be entitled to extend the agreed delivery period accordingly, provided that the Contractor informs the Client in writing about such an event within fourteen (14) days.

## **12. Confidentiality / data protection**

12.1 The Contractor undertakes to maintain confidentiality with respect to business and trade secrets becoming known to it in the course of the handling of the contract.

12.2 The Contractor shall be released from confidentiality as against any subcontractors and any enterprises affiliated with the Contractor (i.e. such in which the Contractor or its holding company has an at least 50% direct or indirect shareholding) which it uses to handle the contract. However, it shall impose the obligation to maintain confidentiality on the aforesaid and shall be liable for any infringement by them of the confidentiality obligation as for its own infringements.

12.3 The confidentiality obligation shall also apply for a period of three years after the end of the contract in question.

12.4 The Contractor shall be entitled to process personal data entrusted to it within the framework of the purpose of the contract in question. The Client shall guarantee the Contractor that all measures necessary for such measures, in particular those within the meaning of the Data Protection Act, such as declarations of consent by the parties affected, have been taken.

## **13. Fee**

13.1 After the corresponding provision of the performance, the Contractor shall receive the agreed fee. The Contractor shall be entitled to submit interim invoices in accordance with the progress of the work and to demand corresponding payments on account. The fee shall be due upon rendering of invoice by the Contractor.

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- 13.2 Any cash expenditure, expenses, travel costs etc shall in addition be refunded by the Client in return for rendering of accounts by the Contractor.
- 13.3 If the performance of the agreed contract is not provided for reasons for which the Client is responsible or as a result of a justified premature termination of the contractual relationship by the Contractor, the Contractor shall retain the claim to payment of the entire fee agreed less expenditure saved. If an hourly fee is agreed, the fee shall be paid for the number of hours that were to be expected for the entire work result, less the expenditure saved. The expenditure saved shall be agreed globally at 30% of the fee for those services that the Contractor has not yet provided as of the date of the termination of the contract in question.
- 13.4 The Client shall not be entitled to retain or offset payments on the grounds of warranty or other counterclaims.
- 13.5 In the event of payment default, the Contractor can
- a) postpone performance of its own obligations until the payments due have been effected
  - b) call in all outstanding payments (payment target shall be deemed to have been missed)
  - c) charge default interest from the due date at a rate of 8% above the base rate of interest (main refinancing operations) of the European Central Bank applicable at the time
  - d) if a reasonable grace period is not complied with, withdraw from the contract and, at its election, also from further still outstanding contracts.

The aforesaid shall not affect the assertion of further claims resulting from non-payment.

**14. Premature termination of contract**

- 14.1 A contract shall end as a matter of principle following provision of the performances in question by the Contractor and the Client pursuant to Section 9.
- 14.2 However, each contracting party can terminate a contract with immediate effect by written notification to the other contracting party if one of the following cases occurs:
- a) insolvency proceedings are commenced with respect to the assets of the other contracting party or an application for the commencement of bankruptcy is dismissed for lack of assets;
  - b) the other contracting party infringes an essential provision of the contract in question and fails to remedy this infringement within 60 (sixty) days after written warning.
- 14.3 In addition to the circumstances listed in Section 14.2, the Contractor can terminate the contract immediately by written notification to the Client if
- a) the provision of the performance becomes impossible for reasons for which the Client is responsible or is delayed for such reasons by more than a reasonable grace period to be notified to the Client in writing;

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- b) despite due provision of performance by the Contractor, the Client fails to effect payment within a reasonable grace period notified to it in writing;
- c) a change in the ownership relationships in the Client's company occurs that has an essential influence on the Contractor's interests.

**15. General**

15.1 In the event that individual provisions of the STB and/or the orders shall be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision that comes closest to its meaning and commercial purpose.

15.2 Modifications and/or additions to a contract and the STB shall be invalid unless concluded in writing and signed by the bodies of the contracting parties entitled to represent. The requirement of the written form can only be set aside by written agreement between all contracting parties. No oral collateral agreements have been concluded.

15.3 The STB and all contracts shall be subject to Austrian substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods – UNCITRAL) is excluded by mutual agreement.

15.4 The legal venue for all disputes resulting from the contractual relationship shall be the court competent for such cases in Graz, Austria. The Contractor can, however, seize another court with jurisdiction for the Client.