

5th Mind

Turning Knowledge into Action

General Terms and Conditions of Business for 5th Mind® Training & Consulting GmbH (hereinafter referred to as "5th Mind")

Preamble: 5th Mind offers a wide range of services in the area of training and consulting, which are commissioned by the Client. It is made clear to the Client that 5th Mind does not guarantee any success for services in the area of training.

§ 1 Scope of Application

- 1.1 There is no agreement to the general terms and conditions of business of the Client. If 5th Mind remains silent about the General Business Terms and Conditions of the Client, this will not represent agreement to adhere to these terms & conditions.
- 1.2 Deviations from these General Terms and Conditions will only apply if they are agreed in writing. Any deviation from this clause must also be agreed in writing.

§ 2 Schedule and Deadlines

- 2.1 Agreed schedules and deadlines will only be adhered to by 5th Mind if the Client fulfils all of its obligations for cooperation, in particular if it performs the work prescribed by 5th Mind and provides all necessary documents.
- 2.2 Delays that result from inaccurate or incomplete information, or information that has been subsequently altered by the client, are not the fault of 5th Mind and 5th Mind will not be considered to be in default.

§ 3 Guarantee

- 3.1 Claims to guarantee on the part of the Client will expire six months after the performance of the service.
- 3.2 5th Mind must be given the opportunity for improvement within an appropriate period of time. Only when the improvement has failed will the Client have the right to a reduction in price or to a conversion.

§ 4 Liability

- 4.1 5th Mind will only be liable in case of malice or gross negligence. Liability for slight negligence is excluded.
- 4.2 Claims to compensation for damages on the part of the Client will expire 6 months after the performance of the service.

§ 5 Fee, Payment Conditions

- 5.1 Fees that are to be charged on the basis of the time spent are based on an eight-hour day and five working days per week. Travel time will count as working time. Invoicing will be performed each month for the preceding month.
- 5.2 In the case of flat-rate orders, 5th Mind is entitled to 50% of the agreed flat-rate fee when the order is issued.
- 5.3 For training sessions, fees and expenses will be invoiced after the seminar.
- 5.4 The Client will be responsible for the following expenses: expenses for room and board at the project site, costs of travel to and from the project site (the trainers and consultants employed by 5th Mind are entitled to one trip home per week).
- 5.5 The fee is payable without deductions within 7 days of the invoice date. The credit note to the bank account stated in the invoice will be decisive with regard to the assessment of whether the payment was on time.
- 5.6 In the case of delayed payment, the Client must pay compensation for the dunning and collections costs (lawyer's dunning letter, collections agency...) and also to pay interest of EONIA + 500 BP p.a.
- 5.7 The agreed fee is net, excluding legal value-added tax, which will be invoiced separately.

§ 6 Cancellation Conditions

- 6.1 The Client has the right to cancel his order.
- 6.2 In the case of cancellation of an order less than 40 days before the date on which the service was to be performed, 50% of the total fee will be invoiced. In the case of cancellation less than 7 days before the date on which the service was to be performed, 100% of the fee will be invoiced. Travel expenses and expenses (in particular conceptual expenses such as adaptations, individualization) that have been incurred before cancellation will also be invoiced.
- 6.3 In the case of the cancellation of an order for which hourly or daily invoicing was agreed, 5th Mind will be entitled to a fee for each service that has already been performed. If 5th Mind has not yet performed any services, 5th Mind will be entitled to a cancellation fee that cannot be judicially mitigated of EUR 5,000.00.

5th Mind
Turning Knowledge into Action

§ 7 Protection of Intellectual Property

- 7.1 The Client will be obliged to ensure that offers, reports, analyses, expert opinions, organisational plans, programmes, service descriptions, drafts, calculations, diagrams, data storage media and similar items created during the consultancy order are only used for the purposes of 5th Mind's consultancy order. In particular, the paid and unpaid transmission of professional statements of any kind to third parties requires written approval from 5th Mind. This is not grounds for liability on the part of 5th Mind to the third party even if it approves the transmission. If 5th Mind is nevertheless called upon to accept liability, the Client will hold 5th Mind harmless with regard to damages and claims.
- 7.2 The use of professional statements by 5th Mind for advertising purposes is not permitted and requires separate written approval.
- 7.3 Any breach of 7. is to be penalised by means of a contractual penalty that cannot be judicially mitigated of 10% of the agreed fee, but at least EUR 5,000.00. 5th Mind retains the right to dissolve the agreement irrespective of this fee. In this case, the Client will not have any claim against 5th Mind.

§8 Confidentiality Clause

- 8.1 5th Mind will be obliged to keep confidential all issues of which it becomes aware in connection with its activity for the Client. This obligation relates both to the Client and to his business connections. 5th Mind will also impose this confidentiality obligation on its employees and other third parties who become active on behalf of 5th Mind as part of the order.
- 8.2 Only the Client itself, and not its agents, may release 5th Mind from this confidentiality obligation in writing.
- 8.3 The confidentiality obligation also applies to the time after the completion of the order. This excludes cases where there is a legal obligation to provide information.
- 8.4 5th Mind is authorised to process or have processed by third parties the personal data with which it is entrusted within the scope of purpose of the consultation order. The stipulations of the data protection law will be adhered to.
- 8.5 The Client will be obliged to store contractual documents provided to him, as well as documentation and if necessary source programs carefully in order to exclude the possibility of misuse.

§9 Headhunting

- 9.1 From within the period of the creation of an order until 12 months after the performance of the order, the Client will not employ employees of 5th Mind or employ them in another form within its company or an associated company (holdings of 25% or more).
- 9.2 If the Client breaches 9.1, a contractual penalty that cannot be judicially mitigated of one year of the employee's salary, however, at least EUR 50,000.00 is to be paid to 5th Mind.

§10 Concluding Stipulations

- 10.1 The invalidity or ineffectiveness of individual stipulations of these general terms and conditions of business will not affect the validity of the others. Each ineffective stipulation will be replaced by a regulation that comes as close as possible to the ineffective stipulation in an economic sense.
- 10.2 The offsetting or assertion of rights to withholding on the part of the Client is not permitted.
- 10.3 The place of performance is the registered headquarters of 5th Mind.
- T10.4 The agreement is subject to Austrian law. The exclusive place of jurisdiction is Vienna.