

General Terms of Business of Phoron Consulting GmbH (Phoron) Valid as of 1 January 2008

1. General terms / applicability

1. These General Terms of Business apply without exception to all legal transactions taking place between our clients and us (i.e. contractor; Phoron). Any general terms of business issued by a client which might conflict with or depart from the following are not applicable unless expressly recognized as such by Phoron in writing. We hereby expressly contradict the right of the client to provide counter-confirmation of terms while imposing their own terms. Furthermore, any actions taken by the contractor in performance of the contract may not be considered as consent to any contractual terms that might depart from those stipulated here.

1.2. These General Terms of Business additionally apply to any contractual relationships in the future, even in the case when supplementary contracts do not expressly refer to the terms. The version valid at the time when the contract is concluded will be regarded as authoritative. Any changes to these General Terms of Business will be considered as approved and to have effect on any existing contracts if the client does not raise any objections to them within one month from when the modified General Terms of Business are delivered or notification is otherwise given. Delivery or notification of the modified General Terms of Business may also be made using electronic means (i.e. by e-mail).

2. Contract conclusion

2.1. Any offer of contract (order) addressed to us requires written order confirmation by Phoron. The client will be bound by the offer of contract for two weeks from when it is received by Phoron.

2.2. Our offers are non-binding.

3. Scope of consultancy contract / representation

3.1. The scope of a specific consultancy contract will be stipulated by contract in the individual case.

3.2. Phoron are entitled to commission a third party with the full or partial completion of any task for which Phoron are responsible. The contractor is solely responsible for remunerating the contracting third party. No immediate contractual relationship whatsoever shall arise between the third party and the client.

4. Performance of services by Phoron

4.1. Phoron will appoint a responsible project manager to serve the client as contact person for the entirety of the project. In the case that the project manager's employment or contract with Phoron should terminate before the end of the consultancy contract, Phoron will be entitled to appoint another project manager and will inform the client thereof without delay; in such a case Phoron will ensure that upon beginning work the new project manager is instructed about the consultancy contract and the current status. The same shall apply in the case that the project manager becomes ill for a longer period or for any other important reason is no longer able to be deployed in the project.

4.2. In intervals corresponding to work progress, Phoron shall undertake to report to the contact person appointed by the client, providing details of their work and that of their employees as well as any contracting third parties.

4.3. The client will receive the final report within an appropriate period, i.e. two to four weeks after termination of the contract depending on the type of consultancy contract.

4.4. In providing deliverables as stipulated, Phoron will not be subject to instructions by the client and will act according to their best judgment and under their own responsibility. Phoron will not be bound to any particular working site or working hours.

4.5. Phoron will provide the services stipulated by contract through duly qualified employees or third parties and will ensure that appropriate numbers of personnel from among their own employees or third parties are available in order to provide services according to schedule. The client is not entitled to issue any instructions of any sort whatsoever to Phoron employees. Instead, the client will address any requests concerning the services to be provided only to the contact appointed by Phoron.

5. Client cooperation

5.1. The client will support Phoron in performing the contract, in a comprehensive manner and at no charge, specifically by meeting in their company any conditions necessary for providing the stipulated services, by providing staff, working areas, hardware and software, data and telecommunications facilities and by cooperating in testing, final inspection and similar tasks. Unless important grounds to the contrary exist, the client will provide Phoron with access to any hardware and software and will allow access to software systems

by means of remote data transmission. The client will ensure that any authorizations required for the use of software systems are available.

5.2. For the purpose of ensuring that the contract is able to be duly performed, the client will appoint a contact person with decision-making authority or who is responsible for ensuring that decisions are taken immediately.

5.3. The client is responsible for meeting in a timely manner any obligations to cooperate with Phoron, so that Phoron are not impaired in providing the stipulated services. If the client does not meet an obligation to cooperate, either not at all, not completely or not on schedule, the services provided by Phoron will be considered to have been performed in conformance with the contract, despite any possible limitations. In such a case, any deadlines by which Phoron is obligated to provide services will be postponed to an appropriate extent. Based on the rates stipulated in the contract, the client will provide separate compensation to Phoron for any additional expense or effort resulting in the aforementioned case.

6. Ensuring independence

6.1. The contractual partners will undertake to be loyal toward each other.

6.2. The contractual partners will mutually undertake to take any measures which are appropriate to or helpful in preventing threats to the independence of contracting third parties and Phoron staff. The aforementioned applies specifically to the client making employment offers or offers to take over jobs at their own expense.

6.3. The client pledges not to enter, for a period of three years following termination of this contractual relationship, into any business relationships of any kind with persons or companies which Phoron employ to perform their contractual duties. Specifically, the client will not award to such persons or companies contracts for providing consultancy services of the kind or similar to the those offered by Phoron. In the event of any infringement of this obligation, Phoron shall be entitled to a contract penalty in the amount of EUR 50,000.00. Any additional claims which might arise will remain unaffected thereby.

7. Protection of intellectual property

7.1. Phoron will retain the copyright on any deliverables (including tender offers, reports, analyses, expertises, organization plans, programs, descriptions of deliverables, drafts, calculations, drawings, data storage media etc.) produced by Phoron, their employees or contracting third parties. Such may be used by the client during and after the term of the contract exclusively for the purposes stipulated in the contract. The client is therefore not entitled to reproduce and/or distribute the particular deliverable (or deliverables) without the explicit consent of Phoron. The granting of such consent does not, however, constitute grounds for any liability on the part of Phoron toward third parties. If consent is not granted yet such a deliverable is passed on to a third party, notwithstanding any claims for the client to refrain from doing so, Phoron shall be entitled to appropriate compensation; the fee stipulated in the agreement between Phoron and the client will in any case be considered appropriate. Unauthorized reproduction or distribution of such deliverables will in no case result in any liability (i.e. in particular for the deliverables to be correct) on the part of Phoron toward third parties.

7.2. Any infringement of these terms by the client will entitle Phoron to terminate the contractual relationship with immediate effect and to assert other legal claims, specifically to refrain from such action and/or for indemnification.

7.3. In any deliverables provided by Phoron, we are entitled to make reference to ourselves or any other authors that might be responsible.

8. Warranty and liability / indemnification

8.1. The client is entitled to assert warranty claims only on condition that the client has complied with their duty, as stipulated in Art. 377 UGB (Austrian Corporate Code), to first examine goods and lodge a complaint.

8.2. The client's warranty claims expire at the end of six months after the particular service has been provided.

8.3. Phoron fulfill their warranty obligations primarily by correcting any defects. Phoron provides corrections either by eliminating the defect or by indicating reasonable options for avoiding the effects of the defect. The contractual partner will herein support Phoron to the necessary extent.

8.4. Only in cases of intent or gross negligence will Phoron provide indemnification, in which case the contractual partner must provide proof that such a case of intent and gross negligence does indeed exist. To the extent provided for by law and regardless of the particular legal grounds, Phoron's liability for claims asserted by the client will be limited to the value of the contract or, in the case of property damage for which Phoron is proven to be directly responsible, to the amount of EUR 1,500,000.00 per damage incident.

To the extent provided for by law, Phoron will in no case assume liability for loss of profit, expected yet unrealized savings, damage claims asserted by third parties against the client, indirect or consequential damage, interest loss, or for damage to stored data or for the expense of restoring such data.

8.5. The client may assert indemnification claims no later than within six months from the point in time when the damage and the party responsible are recognized and no later than within a year from the incident constituting grounds for the claim.

8.6. If Phoron provides deliverables with the assistance of a third party and warranty and/or liability claims arise against that third party, Phoron will assign any such claims to the client. In such a case the client will primarily hold that third party liable for claims.

8.7. The right of the client to contest contracts on grounds of lesion beyond moiety (*laesio enormis*; Art. 934 Austrian Civil Code) is hereby precluded.

9. Non-disclosure / privacy policy

9.1. The contractual partners will treat with confidentiality any mutually exchanged business or trade secrets, even in cases when such information is not specifically designated as such or as secret.

9.2. In order to prevent any misuse, the client will undertake to maintain with care any documents pertaining to the contract as well as any documents, documentation and, if applicable, source programs that might be handed over to the client.

In the event of any infringement of these obligations due to intent or gross negligence on the part of the client, Phoron will be entitled to a contract penalty in the amount of EUR 50,000.00.

9.3. These obligations retain validity for an indefinite period of time beyond termination of the contractual relationship.

9.4. Within the bounds of data privacy laws, Phoron is entitled to store and utilize client data in a legally permissible manner for their own purpose.

10. Fee / payment terms

10.1. Once the stipulated deliverables have been provided in their entirety, Phoron will receive a fee as stipulated in the agreement between the client and Phoron. If the contractual partners have neglected to agree on the amount of the fee, Phoron shall be entitled to an appropriate fee.

10.2. Value-added tax as provided for by law will be added to all prices. This tax will be listed as a separate item on the invoice, in the amount provided for by law on the date of issue.

10.3. Phoron is entitled to issue interim invoices in intervals corresponding to work progress and to request payments commensurate with actual progress. In the case of services charged according to actual effort involved, Phoron will maintain records of the type and duration of these activities and present these records together with the invoice. Fees are due in each case when Phoron issues the particular invoice. In other cases, invoices issued by Phoron are due within 14 days from the date of issue and payable without reduction. Any alternative payment periods that might be stipulated will also begin with the invoice issue date.

10.4. Phoron are entitled first to balance payments made by the client against any amount the client might already owe; in such cases Phoron will inform the client of the manner in which accounting has been carried out. If charges and interest have already been incurred, Phoron is entitled first to balance the client's payment against such charges, then against the interest and only lastly against the main amount owing.

10.5. Bills of exchange will only be accepted based on a special agreement and then only in lieu of payment.

10.6. The date when payment is received by Phoron, or the date on which a cheque or bill of exchange is able to be unconditionally redeemed, will determine whether payment has been made on time. Phoron is entitled to charge interest on overdue payment or on arrears in the amount provided for by law and at a rate of 12% p.a. in any case. Compound interest in the amount of 12% p.a. may also be charged.

10.7. If Phoron obtains knowledge of circumstances which might cast doubt on the client's creditworthiness, e.g. when a cheque is not redeemed or the client stops payment, and the client is already in arrears, Phoron will be entitled to request immediate payment of the entire amount outstanding. In such a case, Phoron will also be entitled to provide outstanding goods or services only on condition of advance payment or of securities and to request securities for outstanding payments.

10.8. The client may set off payment claims, yet only against receivables that are undisputed or have been established in court. Similarly, the client may only withhold payment if the client's counter-claim is based on the same legal relationship.

10.9. In the case of a default on payments, the client will undertake to reimburse Phoron for all reminder and collection fees specified in the regulations governing fees charged by collection agencies, which have been issued by the Federal Ministry for Economic Affairs and published in the Austrian Federal Law Gazette no. 141/1996.

11. Term of the contract / right of rescission

11.1. Phoron make all efforts to meet agreed schedules. If Phoron does not adhere to a schedule, unless stipulated otherwise in the individual case, the client will only be entitled to rescind the contract after providing Phoron with written notice, including a period of grace of at least 14 days. This period will commence with receipt of the letter of reminder by Phoron.

11.2. In general, this contract will terminate at the end of the day on which the contractual partners have completely performed the mutual obligations stipulated in this contract.

11.3. The right of either partner to prematurely terminate this contract on serious grounds in exceptional cases remains unaffected by the foregoing. Specifically, such serious grounds exist when, despite a formal written request and threat to terminate the contract, the other party infringes significant duties arising from this contract, or bankruptcy or other insolvency proceedings against the other party are filed for, opened or refused due to lack of assets. A registered letter providing notice of termination will also be considered to have been delivered if after one unsuccessful attempt at delivery the recipient has been left notification of attempted delivery. If the client is in arrears with acceptance of a deliverable provided by Phoron, or if the client neglects their duty to cooperate, Phoron will be entitled to terminate the contract without notice.

11.4. Phoron will be additionally entitled to prematurely terminate the contract if important parameters governing provision of services change and Phoron can no longer be expected to continue providing services in an economically feasible manner.

11.5. The contract will be adjusted appropriately after the fact if any of the following unforeseeable hindrances occur: force majeure; major interruptions of operations; delivered items are unusable or supplies are not delivered which significantly modify the economic value or contents of the deliverables provided by Phoron or which have a significant effect on Phoron's operations; or any case in which it becomes apparent in the aftermath that the contract cannot be performed. If such adjustment of the contract is not reasonable in business terms, Phoron will be entitled to rescind the contract in part or in full. The client will not be entitled to indemnification in the case of such a rescission.

12. Consent to e-mail advertising; reference list

12.1. The client consents to receiving from Phoron a reasonable amount of information by e-mail. The client may withdraw this consent at any time.

12.2. The client consents to being listed in Phoron's reference list used for advertising purposes. For this purpose, Phoron is authorized to display a copy of the client's company logo.

13. Travel Expenses

3.1. In case of business trips outside Vienna, related to the services delivery, Phoron will charge travel expenses (daily allowance, mileage, flight, train- and hotel expenses, car rental or taxi charges) in addition to the proposed hourly rates.

13.2. Flights inside Europe will be booked in Economy Class; intercontinental flights in Business Class.

14. Severability

14.1. In the event that individual terms from among these General Terms of Business are and/or become invalid, the validity of neither the remaining terms nor the contracts stipulated on the basis of them will be affected thereby. In such a case, the invalid term will be replaced by another that comes closest to the original with respect to meaning and economic purpose.

14.2. The same applies for any matters not expressly covered by the contract.

15. Legal venue / governing law

15.1. This contract is governed exclusively by Austrian law. United Nations trade law as well as national and international rules for the conflict of laws are hereby excluded.

15.2. Any disputes whatsoever that might arise between Phoron and the client, including whether valid contracts have been established as well as any possible pre-contractual and post-contractual effects, will be decided by the competent court of law that is responsible for Phoron's registered seat of business or, at Phoron's discretion, by the competent court of law with jurisdiction over the territory where the client maintains their seat of business or a branch office or owns assets.