

GENERAL TERMS OF BUSINESS
koocoo technology & consulting GmbH

1. General principles and scope

1.1 All legal transactions between Client and koocoo shall be governed by these General Terms of Business. The version as last amended at date of contract signing shall apply.

1.2 These General Terms of Business shall apply likewise to all future contractual agreements, including where supplementary contracts do not explicitly refer to them.

1.3 Any conflicting General Terms of Business of the Client shall be invalid, unless they are explicitly accepted in writing by koocoo.

1.4 If individual provisions of these General Terms of Business should be and/or become ineffective, it shall not prejudice the effectiveness of the remaining provisions and any contracts governed by them. The ineffective provision shall be replaced by an effective provision coming as close as possible in its commercial substance to the ineffective one.

2. Scope of consultancy order, delegation to third party

2.1 The scope of a specific consultancy order shall be contractually agreed in each case.

2.2 koocoo shall be entitled to have the work entrusted to it performed in whole or in part by third parties. Any such third party shall be paid by koocoo itself. There shall be no direct contractual relationship whatsoever between Client and third party.

2.3 The Client undertakes that during this contractual agreement and until expiry of a period of five years from termination of this contractual agreement he shall not enter into any business agreement whatsoever with persons or companies engaged by koocoo to fulfil its contractual obligations. In particular the Client shall not commission such persons and companies to deliver the same or similar services that koocoo offers.

3. Client's duty of information, statement of completeness

3.1 The Client shall ensure that the organisational conditions when fulfilling the consultancy order at his place of business are conducive to the uninterrupted and swiftest possible progress of the consultancy work.

3.2 The Client shall inform koocoo fully about other previous and/or ongoing consultancy agreements, including those relating to other business activities.

3.3 The Client shall ensure that koocoo has at its disposal, promptly and without explicitly requesting it, all documentation necessary for fulfilment and performance of the consultancy order, and that it is kept informed of all activities and circumstances having a bearing on the performance of the consultancy order. This shall also apply to all documentation, activities and circumstances of which the Client only becomes aware during koocoo's period of engagement.

3.4 The Client shall ensure that his employees and the legally prescribed employees' representative body (works council), which shall be established if necessary, is informed of koocoo's work before it commences.

4. Assurance of independence

4.1 The contracting parties undertake each to be loyal to the other.

4.2 The contracting parties mutually undertake to take all possible precautions to avoid posing a risk to the independence of koocoo's appointed third parties and employees. This shall apply in particular to offers of employment made by the Client or the acceptance of commissions on his own account.

5. Reporting system, reporting obligation

5.1. koocoo undertakes to report to the Client on the progress of its work, that of its employees and, where applicable, that of appointed third parties.

5.2 The Client shall receive the final report within a reasonable period of time, i.e. up to four weeks after completion of the consultancy order depending on the nature of the consultancy work.

5.3. koocoo shall not be bound by instructions in the production of the agreed work, shall act at its own discretion and on its own responsibility. koocoo shall not be bound to any specific place or hours of work.

6. Protection of intellectual property

6.1 Copyright of the works created by koocoo and its employees and appointed third parties (especially quotations, reports, analyses, expert reports, organisational plans, programmes, specifications, drafts, calculations, drawings, data media, photos, brochures, texts, publications etc.) shall remain with koocoo. They may be used by the Client during and after termination of the contractual relationship solely for the purposes forming part of the contract. The Client is not entitled therefore to reproduce and/or disseminate the work(s) without koocoo's express permission. In no circumstances shall unauthorised reproduction or dissemination of the work involve liability for koocoo to third parties, in particular for the accuracy of such work.

6.2 Violation of these provisions by the Client shall entitle koocoo to terminate the contractual agreement with immediate effect and bring other lawful claims, especially for omission and/or compensation.

7. Warranty

7.1 Warranty claims may only be asserted after notification of defects, such notification to be made in writing within 14 days of handover of the work or part thereof.

7.2 koocoo shall be entitled and obliged, regardless of fault on its part, to remedy any errors and defects of performance that become apparent. It shall advise the Client of this immediately.

7.3 This claim of the Client shall lapse six months after the respective service is performed.

8. Liability and compensation

8.1 koocoo shall be liable to the Client for damages - except for personal injury - only in the case of malicious intent or gross negligence. This shall apply likewise to damages attributable to third parties engaged by koocoo.

8.2 Claims for damages by the Client must be brought to court within six months of discovering the damage and the wrongdoer, and at the latest within three years from the event giving rise to the claim.

8.3 The Client shall produce proof in such case that the damage is attributable to koocoo's wrongdoing.

8.4 Where koocoo performs the work with the assistance of third parties and warranty and/or liability claims arise against such third parties in this connection, koocoo shall assign such claims to the Client. In this case the Client shall be dealing primarily with such third parties.

9. Confidentiality, data protection

9.1 koocoo undertakes to maintain unconditional secrecy with regard to all business matters coming to its notice, especially business and operational secrets and any information obtained about the nature, scope and operational activities of the Client, where these are not already known to third parties that are not partners in this contractual service.

9.2 koocoo further undertakes to keep secret from third parties the entire content of the work and all information and circumstances to which it is privy in connection with producing the work, especially data relating to the Client's clients.

9.3 koocoo shall be exempt from the obligation of secrecy in relation to all assistants and agents whose services it uses. It shall, however, bind such persons fully to the obligation of secrecy so that they are directly liable to the Client for any violation thereof.

9.4 The obligation of secrecy shall extend for half a year beyond the end of this contractual agreement or project.

9.5 koocoo shall be entitled to process personal data entrusted to it for the declared purposes of the contractual agreement. The Client shall guarantee to koocoo that all necessary steps have been taken in this regard, in particular those relating to the Data Protection Act such as obtaining signed agreements from those concerned.

9.6 After completion of the order koocoo shall be entitled to publish the work contracted for, in whole or in part, for publicity purposes, unless contractually agreed otherwise.

10. Fees

10.1 After completion of the agreed work, koocoo shall receive a fee to be agreed between Client and koocoo. koocoo shall be entitled to submit interim invoices depending on progress of the work (at least monthly) and to request payments on account accordingly. Fees shall be payable net within 14 days from date of invoice by the Contractor.

10.2 koocoo shall prepare an invoice showing the basis for pre-tax deduction with all the items required by law.

10.3 The Client shall also reimburse koocoo for cash outlays, expenses, travel costs etc. on production of invoices.

10.4 If implementation of the agreed work is frustrated for reasons attributable to the Client or due to justified premature termination of the contractual agreement by koocoo, koocoo shall reserve the right to claim payment of the full fee agreed less expenses not disbursed. If an hourly rate was agreed, the fee for the number of hours that had been anticipated for the full scope of works agreed shall be payable, less expenses not disbursed. Expenses not disbursed shall be agreed at a flat 20 per cent of the fee for those services not yet performed by the Contractor by the date on which the contractual agreement is terminated.

10.5 If interim invoices are not paid, koocoo shall be exempted from its obligation to perform further services. This shall not affect the right to bring further claims resulting from non-payment.

10.6 The fees quoted shall not include value added tax, which shall be payable separately by the Client.

10.7 No compensation based on counter-claims shall be allowed for any reason whatsoever.

11. Electronic invoicing

11.1 koocoo shall be entitled to send the Client invoices in electronic form. The Client confirms his explicit agreement to koocoo's transmission of invoices in electronic form.

12. Duration of contract

12.1 This contract shall terminate on completion of the project.

12.2 Regardless of clause 12.1, the contract may be dissolved at any time by either side on substantial grounds without notice. The following grounds in particular shall be regarded as substantial:

- if one party violates essential contractual obligations, or
- if insolvency proceedings are opened in respect of one party
- the filing for bankruptcy is rejected for want of assets.

13. Final provisions

13.1 The parties to the contract confirm that all the information in the contract has been conscientiously and truthfully presented and undertake to inform each other immediately of any changes therein.

13.2 Changes in the contract and these General Terms of Business must be made in writing, likewise any departure from this written form requirement. No ancillary verbal agreements have been made.

13.3 This contract is subject to material Austrian law excluding the standard conventions of international private law. The place of performance shall be the place where koocoo's office is located. The competent court for resolution of disputes shall be that of koocoo's company headquarters.