

## General Terms for services

### SEC Consult Unternehmensberatung GmbH

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(“SEC Consult”, “Contractor”, “CR”)

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#### 1 Scope of application, formation of contracts

- 1.1 SEC Consult Unternehmensberatung GmbH (hereinafter “**Contractor**”) provides services to the Client (hereinafter “**Client**”) on the basis of these General Terms and Conditions and the relevant individual contract. The Client’s general terms and conditions are hereby excluded from application and shall not apply even if the Client refers to them in a standard order form or otherwise in connection with an order and/or the Contractor does not expressly object to them.
- 1.2 The individual contract between the Contractor and the Client is only formed at such time as both Parties have signed the offer document. These General Terms and Conditions form an integral part of each contract and the Client is deemed to accept them when accepting the offer (= conclusion of the specific individual contract).
- 1.3 The individual contract and the associated General Terms and Conditions (hereinafter referred to collectively as the “Contract”) shall be deemed to constitute the entire agreement between the Client and the Contractor. Any prior agreements, other commitments and undertakings or other arrangements shall have no application; they are deemed replaced and superseded in full by the Contract.
- 1.4 The creation of obligations on the part of the Contractor shall require the signature of an agent or officer authorised to represent it. Amendments and additions to the General Terms and Conditions or the individual contract shall only be valid if agreed in writing. The revocation of this written form requirement is likewise subject to an irrevocable written form requirement.

#### 2 Scope and performance of services; subsequent changes (Changes)

- 2.1 The Contractor undertakes to properly perform its agreed services. The scope of the Contractor’s services is indicated in the

respective service description in the individual contract.

- 2.2 Performance deadlines and time limits shall only be binding on the Contractor if they have been expressly designated as binding in the Contract.
- 2.3 Both Parties may propose amendments or additions to the agreed scope of services (“**Change**”) in writing to the other Party during the term of the individual contract. At the same time as the Contractor makes a proposal for a Change, it shall inform the Client of the conditions (costs, effects on deadlines, time limits, etc.) on which the proposed Change is premised. In the event that the Client wishes to make Changes, the Contractor shall inform the Client whether and on what conditions (costs, effects on deadlines, time limits, etc.) the Contractor should carry out the proposed Changes. The expense incurred in ascertaining those conditions (costs, effects on deadlines, time limits, etc.) shall be invoiced to the Client in accordance with the Contractor’s generally applicable compensation and expense rates.
- 2.4 Any agreed Change or modification to the service otherwise agreed by the Parties shall become an integral part of the respective individual contract.

#### 3 Organisational guidelines

- 3.1 The Contractor and the Client shall, either in the individual contract or immediately after its conclusion, each designate a project manager responsible for the service, who may also make and receive declarations in writing with binding effect on the Party who appointed him. These include in particular decisions, votes, approvals and the “*permission to attack*.” The project manager appointed by the Contractor shall be the sole point of contact for the Client for all questions and aspects of the performance of the service. If no project manager is designated in this way, then the person who is introduced at the first meeting or kick-off meeting as the project manager (or a similar designation) or who identifies himself as the project manager or

takes over the role of the project manager shall be considered the project manager. The project manager shall only be replaced by another person for good cause; any such change must be notified to the other Party in writing; the replacement of a project manager shall only become effective upon receipt of the notification to such effect.

- 3.2** The Contractor shall be entitled to engage third parties as subcontractors in order to perform its obligations. In this case as well, the Contractor shall be responsible for the contractually agreed performance of the services and shall be responsible, vis-a-vis the Client, for deploying sufficiently qualified personnel in each case to perform the services.
- 3.3** The Contractor's personnel providing the services shall be subject exclusively to the Contractor's instructions and supervision.

#### **4 Compensation**

- 4.1** As a rule, compensation shall be paid on a time and materials basis, unless the Parties agree in writing in the individual contract on a different form of compensation. Where compensation is invoiced on a time and materials basis, the Contractor shall issue invoices at the end of the month.
- 4.2** If, in the case of a fixed-price agreement, the labour costs of the Contractor or its subcontractors exceed the cost estimates underlying the agreed fixed price due to incomplete or inadequate information provided by the Client or due to the Client's failure to provide proper cooperation, the Contractor shall be entitled to a corresponding increase in the originally agreed compensation at the Contractor's then-current rates.
- 4.3** If services cannot be provided for reasons for which the Client is responsible, the Contractor shall be entitled to the full agreed compensation.
- 4.4** Invoices are due for payment within 14 days of receipt.
- 4.5** All prices are stated net of the applicable statutory VAT and all other applicable taxes and public charges.
- 4.6** The Client is not authorised to set off its own claims against claims of the Contractor. The only exception is in the case of claims awarded by *res judicata* judgment or claims accepted in writing by the Contractor.
- 4.7** Compliance with the payment deadline in accordance with section 4.4 above by the Client is an essential prerequisite for the Contractor's (further) performance of the Contract. The Client's failure to make agreed payments shall entitle the Contractor, at its option, to discontinue ongoing services, to withdraw in whole or in part from the individual contract in question or to terminate the individual contract; this is notwithstanding the provisions of sec. 4.3.

#### **5 Warranty & error**

- 5.1** The Contractor warrants that the agreed services shall be provided with reasonable

care, in a proper manner and according to the state of the art, by appropriately qualified staff and in accordance with the scope of the Contract.

- 5.2** A service is only owed under a contract for work and services if the individual contract expressly specifies this.
- 5.3** No warranty claims may be asserted based on information in prospectuses, advertising materials and general product and service descriptions and other written or oral statements that are not expressly included in the contract, nor for minor or non-material defects.
- 5.4** No warranty whatsoever shall apply in the event of incidents or circumstances, the causes of which are beyond the control of the Contractor and for which the Client or third parties engaged by it are responsible in whole or in part, as well as in the event of *force majeure*. In particular, the Contractor does not provide any warranty if the service has subsequently been altered or modified by the Client or third parties, unless the Contractor has expressly consented to such change in advance and in writing.
- 5.5** If in the course of work in connection with the assertion of warranty claims it is revealed that the Client does not have a warranty claim, the Contractor shall be entitled to bill the Client on a time and material basis, based on the agreed prices.
- 5.6** The Client shall immediately notify the Contractor in writing of any alleged defects, together with a precise description of the problem. Only the project manager designated by the Client in accordance with section 3.1, or his/her deputy, shall be entitled to lodge complaints.
- 5.7** The burden of proof for the existence of a defect at the time of handover or provision of the services shall be borne by the Client.
- 5.8** The Parties hereby agree that the Client shall not be entitled to assert any action to avoid the Contract on the grounds of error, unless the error was caused by gross negligence or wilful act on the part of the Contractor; the burden of proof that an error was caused by gross negligence or wilful act shall be borne by the Client.

#### **6 Liability**

- 6.1** The Contractor shall only be liable to the Client for losses wrongfully caused by the Contractor to the extent that the latter is liable for wilful acts or gross negligence. The damage and the causal link between the actions of the Contractor or its employees or subcontractors deployed and the resulting losses, as well as wilfulness or gross negligence, must be demonstrated by the Client.
- 6.2** Liability of the Contractor for slight and moderate negligence as well as for indirect and consequential damages, lost profits, anticipated or not incurred savings, as well as for damage

to data, is hereby disclaimed to the extent permitted by law.

- 6.3** This limitation of liability applies with regard to all claims for damages, irrespective of their legal basis, in particular also with regard to pre-contractual and extra-contractual claims.
- 6.4** The limitation of liability pursuant to this section 6 is deemed to have been taken into account when calculating the prices or compensation rates.

## **7 Special liability provisions and precautions**

- 7.1** The Client is aware that even in the event of a controlled hacker attack, which is carried out for testing purposes as part of an external security check or similar services, there are risks that data or software may be damaged, rendered unusable or destroyed. For this reason, the Client assumes the following obligations.
- 7.2** The Client undertakes to comply with the precautions described in more detail in this sec. 7. In the event of non-compliance with these precautions, the Contractor shall not be liable for any losses that may arise in the course of providing the services (e.g. security checks). The Client shall bear the burden of proving compliance with the precautions.
- 7.3** The Client assumes sole responsibility for ensuring that all data and software stored or otherwise used by it are properly secured and that it has back-up copies of all data stored and/or processed or edited by it prior to the agreed start of the external security check. As regards other services provided by the Contractor, the Client must ensure regular data storage and backup in order to avoid or reduce any data losses so far as possible.
- 7.4 As a rule, the Contractor shall take the following precautions:**
- **Impacts on operations**  
In the course of performing the security checks, the Contractor will not warn the Client, and in particular will not inform the Client in advance of the commencement and the techniques/methods used. However, the Contractor shall endeavour to use only those methods which have no or only non-material impacts on ongoing operations. However, the Contractor shall not assume any liability for any impairments to the Client's ongoing operations. Within the meaning of this section, a 'non-material impact' is specified as an average increase in utilisation by 10% of maximum utilisation (average over a 24 hour measurement period) with a peak value of 50% of maximum utilisation (average over a 5 minute measurement period) due to side-effects of a technical origin, as well as an increase of system utilisation due to intrusion detection mechanisms used by the Client.
  - **Direct change of data**  
Absent prior notice to the Client, the Contractor shall endeavour to use only such techniques/methods in the provision of the services as do not directly change the data processed or stored by the Client in production operations. A direct change should be

understood to mean a material change or deletion of data.

A change of data caused by technical side effects and intrusion detection mechanisms used by the Client does not constitute a direct change of data within the meaning of this section.

- **System reconfiguration**

Absent prior notice to the Client, the Contractor shall endeavour in the performance of the services to use only such techniques/methods as do not cause any direct changes to configuration data. A direct change of configuration data should be understood to mean a material change or deletion.

A change of data due to technical side effects, as well as a change occurring due to intrusion detection mechanisms used by the Client, does not constitute a direct change of configuration files within the meaning of this section.

- **Special attacks**

The Contractor shall inform the Client's project manager in advance of the use of methods/techniques which, according to the state of the art, may have significant impact on ongoing operations or result in data changes. The use of these methods/techniques shall only be deemed to have been approved if the Client's project manager expressly confirms such use.

### **7.5 Precautions of the Client:**

The Client is aware that the integrity of the systems checked by the Contractor may be compromised. In the event of special attacks, the Contractor will use methods/techniques that may jeopardise the integrity of the systems checked. The Client takes note of this fact.

The Client undertakes to secure those systems, the failure or impairment of which could entail (economic) losses to it or its customers, prior to the performance of the security checks by the Contractor, as follows:

- **Data backup**

The Client shall ensure in a timely manner prior to the commencement and for the duration of the provision of the services by the Contractor that data that is potentially at risk is backed up at least daily, and that particularly critical data is backed up several times a day (total backup or incremental backup).

- **System redundancy**

The Client shall ensure in good time prior to the commencement and during the term of the provision of the services by the Contractor that systems that are potentially at risk are designed redundantly so that, in the event of the failure of one sub-system, a second sub-system can automatically take over operations.

- **Traceability**

In order to be able to quickly identify and trace the problem in the event of a system failure or loss of data, the Client shall ensure, in good time before the commencement of and during the term of the Contractor's provision of the services, that corresponding logging mechanisms are activated.

- **Explicit exemption of systems**

If the Client wishes to ensure that certain systems, defined by their network address, are not included in the security check or other services, this must be notified in writing upon acceptance of the offer or in the Permission to Attack.

- 7.6** In addition, the rules of clause 6 above also apply in connection with the special liability provisions.

## **8 Poaching of staff or subcontractors**

- 8.1** The Parties shall endeavour at all times to ensure mutual loyalty.
- 8.2** The Client undertakes in particular to refrain from actively soliciting employees and other employees of the Contractor (whether employed or not) during the term of the Contract and one year after the term of the Contract without the prior written consent of the Contractor, whether directly or indirectly (e.g. through third parties or affiliated companies of the Contractor). In the event of a breach, the Client undertakes to pay a contractual penalty, irrespective of fault, equal to six gross monthly salaries (including any prorated allowances and premiums) of the employee in question. The Contractor shall be free to assert claims for any additional losses or other rights.
- 8.3** The Client undertakes not to enter into contracts with subcontractors of the Contractor either directly or through third parties during the term of the Contract and within one year of termination of the Contract. If the Client intends to do so, it shall obtain the Contractor's prior written consent. In the event of a breach, the Contractor may claim a contractual penalty, irrespective of fault, equal to five times the order value of the individual contracts in question. The Contractor shall be free to assert claims for any additional losses or other rights.

## **9 Data protection and confidentiality**

- 9.1** Both Parties undertake to comply with the relevant data protection laws in their own data processing.
- 9.2** The Contractor shall collect, store and process only those data that are required for the performance of the Contract.
- 9.3** If the Contractor engages subcontractors for the provision of services, the Contractor may disclose to the subcontractor the data necessary for the provision of services, subject to the restrictions set forth in sections 9.1 and 9.2 hereinabove.
- 9.4** The Parties undertake to treat as confidential all information that is not generally known and which they learn in the course of their collaboration, where the other Party has or asserts an obvious interest in confidentiality.
- 9.5** The Parties undertake that they shall not disclose to third parties information that is not generally known and in which the other Contracting Party has an obvious interest in confidentiality or claims to have such an interest unless the other Party expressly permits this or

if this is required by a court order or a statutory obligation.

- 9.6** If the Contractor engages subcontractors for the provision of services, the Contractor may disclose to the subcontractor the information necessary for the provision of services, subject to the restrictions set forth in sections 9.4 and 9.5 hereinabove.

## **10 Duties of the Client**

- 10.1** The Client shall provide all necessary and appropriate supplies (e.g. information, documents, aids, technical requirements, system environment, test system, etc.), cooperation (e.g. in security checks, etc.) and measures in a timely manner, free of defects, in complete form and at its own expense and shall put all other prerequisites in place so that the Contractor can implement the agreed measures and/or services in a contractually compliant and timely manner.
- 10.2** The Client shall provide the staff of the Contractor and its subcontractors with the necessary support and furnish the requisite qualified staff so that the Contractor can provide the agreed services in a contractually compliant and timely manner.
- 10.3** Depending on the scope of services specified in the individual contract, security checks may also be carried out by the Contractor on the systems, software and databases of third-party suppliers/service providers (third-party systems), which may take place both at the Client's (on site) and at the Contractor's premises; in the latter case, the Contractor may also transfer (copy) copies of affected third-party software and third-party databases to its systems for testing purposes only. The Client shall be responsible for ensuring that such third parties consent or have consented to the testing of the third-party systems in question. By placing the order with the Contractor, the Client confirms that the necessary consents have been given by the third parties in question. In the event that third parties claim or assert rights or claims against the Contractor as a result of such testing activities, the Client shall support the Contractor in defending such claims or rights to the best of its ability and at its own expense, and in any event the Client shall indemnify and hold the Contractor fully harmless in such cases upon first demand.
- 10.4** With respect to its own systems and any third-party systems, the Client confirms that the Contractor and the personnel providing the services may lawfully proceed in the performance of their services and access to the systems in the course of the security checks within the meaning of the provisions of the Swiss Criminal Code and that they have been lawfully granted access to those systems.
- 10.5** The duties of cooperation and furnishing of supplies incumbent upon the Client constitute material obligations of the client. If the Client fails to provide cooperation or to furnish supplies or fails to do so in a timely manner or in the agreed manner, the resulting



consequences, such as delay or additional expense, shall be borne by the Client. The price and service calculation underlying an individual contract is based on the Client's proper furnishing of supplies and cooperation.

## **11 Rights to work product**

**11.1** All rights to the work product arising in connection with the provision of the services, in particular all copyrights, shall be vested exclusively in the Contractor, even if such work product has arisen as a result of the cooperation or instructions of the Client.

**11.2** The Contractor grants to the Client the non-exclusive and non-transferable right, limited to the territory of Austria, to use the work product resulting from an individual contract exclusively for its own internal operational purposes, but without the right to pass such work product on to third parties.

## **12 Publications / References**

**12.1** The Client shall allow the Contractor to refer publicly to the basic subject-matter of its activities for the Client as well as to the reasons why it has chosen the relevant services of the Contractor. To the extent the Client gives its written consent to this, the Contractor may also refer to the subject-matter of the services provided to the Client and publish a high-level profile concerning the Client's reasons for selecting the Contractor or the subject-matter of its services and the advantages thereof.

**12.2** Any publication – even partial – (in particular on the internet, e.g. on a website) of the work product generated on the basis of an individual contract shall require the prior written consent of the Contractor.

## **13 Miscellaneous**

**13.1** The Contractor shall be permitted to use in anonymised form any knowledge gained or applied in the course of providing the services, to the extent that it does not specifically relate to the Client's situation.

**13.2** The Client shall not disclose to third parties any knowledge gained as a result of the Contractor's provision of services without the prior written consent of the Contractor, in particular, it may not do so in the course of any activity or service to be provided to third parties. The Client undertakes to impose a written prohibition on disclosure of this kind on its employees and third parties who may have access to such information in the course of the Contractor's provision of the services.

**13.3** Neither Party may assign any rights and obligations under this Contract with discharging effect for that Party without the prior written consent of the other Party.

## **14 Contract termination**

**14.1** The individual contract, as well as the General Terms it contains as an integral component, applies upon signature by the two contracting parties. For subsequently concluded individual contracts, the currently valid General Terms

and Conditions apply - unless agreed otherwise in the individual contract.

**14.2** In the individual contract, services are agreed between the parties that can be qualified depending on the concrete assignment as a service and/or work. Depending on the agreed services, different termination regulations apply.

**14.3** For services the following applies: If no termination date or specific duration of the service performance has been agreed in the individual contract, it is deemed concluded for an indefinite period. Such an individual contract for an unlimited period can be terminated in writing with a notice period of six months to the end of the month - unless agreed otherwise in the individual contract. For fixed-term services, ordinary termination is excluded.

**14.4** For works the following applies: Works are according to the concrete agreement and end with the completion of the service. If no explicit provision has been agreed in the individual contract, ordinary termination and a full or partial cancellation (§ 1168 ABGB) are excluded.

**14.5** However, each contracting party is entitled for the performances of services or work to declare extraordinary termination of the individual contract in writing, complying with a notice period of 30 calendar days, if the other contracting party contravenes a significant agreement in the individual contract and/or the associated General Terms and Conditions. The extraordinary termination is only permissible if the other contracting party was previously warned in writing, whereby the grounds for the warning are to be explicitly stated, and if the other contracting party subsequently fails to fully eliminate the consequences of the contravention within 15 calendar days of sending the warning. The extraordinary termination must be declared at the latest within three months from knowledge of the extraordinary grounds for termination, otherwise extraordinary termination is not permissible. Important grounds that entitle the contractor to an extraordinary termination include, in particular, the incomplete payment of due remuneration.

## **15 Severability clause**

**15.1** Should any provision of the individual contract or the General Terms and Conditions be or become invalid or if the individual contract or the General Terms and Conditions contain a gap, this shall not affect the legal validity of the remaining provisions. In lieu of the invalid or missing provision, such valid provision shall be deemed to have been agreed as comes the closest in economic respects to the result desired by the Parties.

## **16 Applicable law; jurisdiction and venue**

**16.1** The contractual relationship between the Parties, including the individual contract and these General Terms and Conditions, as well as all claims and rights arising therefrom or in

connection therewith, shall be governed exclusively by Austrian law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the (international and national) conflict of laws rules.

- 16.2** Except where mandatory jurisdiction and venue rules provide otherwise, exclusive jurisdiction over all disputes arising out of or in connection with the contractual relationship shall be vested solely in the courts of Vienna. However, the Contractor shall also be entitled, at its option, to file an action against the Client in any other venue in which jurisdiction is vested by law.
- 16.3** The Parties agree to treat the existence, content and outcome of proceedings as confidential unless and to the extent that, notwithstanding the confidentiality thereof, their contents are or become publicly known.