

**GENERAL TERMS AND CONDITIONS  
OF  
PROACT UNTERNEHMENSENTWICKLUNG GMBH**

These Terms and Conditions are based on the General Terms and Conditions for Management Consultants issued by the Austrian Economic Chambers, dated March 2003.

### **1. General Principles / Scope of Validity**

1.1 All legal transactions between the Principal and the Agent (Management Consultant) shall be subject to these General Terms and Conditions exclusively. The version valid at the time the Agreement is concluded shall be applicable.

1.2 These General Terms and Conditions shall also apply to any future contractual relationships even if these General Terms and Conditions are not expressly referred to in supplementary contracts.

1.3 Any conflicting General Terms and Conditions on the part of the Principal shall be invalid unless explicitly accepted in writing by the Agent (Management Consultant).

1.4 If any individual provision of these General Terms and Conditions is or becomes invalid, this shall not affect the validity of the remaining provisions nor any contracts concluded on the basis of the same. The invalid provision shall be replaced by a valid provision that best corresponds to the intention and economic purpose of the invalid provision.

### **2. Scope of the Consultancy Assignment / Representation**

2.1 The scope of each particular consultancy assignment shall be individually agreed by contract.

2.2 The Agent (Management Consultant) shall be entitled to subcontract, in whole or in part, the services for which the Agent is responsible to third parties. Said third parties shall be paid exclusively by the Agent (Management Consultant). No direct contractual relationship of any kind shall exist between the third party and the Principal.

2.3 The Principal undertakes, during this contractual relationship and for three years following termination thereof, not to enter into any business relationship of any kind with persons or companies whose services the Agent (Management Consultant) employs in performance of their contractual duties. In particular, the Principal shall not commission these persons or companies to render consultancy services similar or identical to those also offered by the Agent (Management Consultant).

### **3. Principal's Duty to Inform / Declaration of Completeness**

3.1 The Principal shall ensure that, during performance of the consultancy assignment, organisational conditions in the Principal's place of business allow the consultancy process to proceed in a timely and undisturbed manner.

3.2 The Principal shall also fully inform the Agent (Management Consultant) of any previously conducted and/or currently active consultancy projects, including those in other areas of competency.

3.3 The Principal shall, in a timely manner and without a specific request from the Agent (Management Consultant), provide the Agent with all documents necessary to fulfil and perform the consultancy assignment and inform the Agent of all activities and circumstances pertinent to performance of the consultancy assignment. This includes all documents, activities and circumstances of which the Principal becomes aware during performance of the Consultant's assignment.

3.4 The Principal shall ensure that their employees and, if applicable, employee representation (Works Council) provided by law are informed of this information before commencement of the Agent's (Management Consultant) assignment.

3.5 The Agent (Management Consultant) shall take into consideration all data and facts of which they are aware and to which they have access at the time in order to prepare and produce analyses. The analysis is an external representation and can lay no claim to completeness; the accuracy of the results must always be inspected by the Principal and, if required, reinterpreted with the Consultant.

#### **4. Maintenance of Independence**

4.1 The contracting parties shall be committed to mutual loyalty.

4.2 The contracting parties shall be mutually obligated to take all necessary precautions to ensure that the independence of employees of the Agent (Management Consultant) and any third parties engaged by the Agent is not jeopardised. This applies in particular to any employment offers made by the Principal or the acceptance of contracts on their own account

#### **5. Reporting / Reporting Obligation**

5.1 The Agent (Management Consultant) shall be obligated to report to the Principal accordingly on the progress of the work performed by the Agent, the Agent's employees and, where applicable, any third parties engaged by the Agent.

5.2 The Principal shall receive the final report within a reasonable period of time, i.e. two to four weeks after completion of the assignment depending on the assignment type.

5.3 The Agent (Management Consultant) shall be free from instructions while performing the contractually agreed work, and shall act at the Agent's own discretion and under the Agent's own responsibility. The Agent shall not be required to work in a particular workplace or to keep particular working hours.

#### **6. Protection of Intellectual Property**

6.1 The Agent (Management Consultant) shall retain all copyrights to any work completed by the Agent and/or by employees of the Agent and/or by third parties engaged by the Agent (in particular tenders, reports, analyses, expert opinions, organisational plans, programmes, service descriptions, drafts, calculations, drawings, data media, etc.). The Principal may use said materials during and following termination of the contractual relationship exclusively for the purposes specified by the Contract. The Principal shall not be entitled to copy and/or distribute said materials without the express prior consent of the Agent (Management Consultant). Unauthorised copying/distribution of said materials shall not result in liability of any kind – in particular regarding the accuracy of said materials – on the part of the Agent (Management Consultant) toward third parties.

6.2 Any violation of this provision by the Principal shall entitle the Agent (Management Consultant) to terminate the Contract prematurely and enforce other legal claims, in particular for restraint and/or damages.

## **7. Warranties**

7.1 The Agent (Management Consultant) shall be entitled and obligated, without regard for fault, to correct any errors and inaccuracies in their work which may become known. The Agent shall inform the Principal immediately of any such errors or inaccuracies.

7.2 This right of the Principal shall expire six months after completion of the respective service.

7.3 All our services are performed on the basis of information provided by the Client and in collaboration with the client; all concepts, documents and other measures must be inspected and approved as suitable by the Client prior to their implementation/execution.

## **8. Liability / Damages**

8.1 The Agent (Management Consultant) shall be liable to the Principle for damages – with the exception of personal injury – only to the extent that such damages are the result of serious fault (intent or gross negligence). This also applies correspondingly to damages resulting from third parties employed by the Agent.

8.2 We therefore accept no liability for specific results from our consultancy, training or coaching services, for specific outcomes (i.e. increased frequency, revenue or profits) or for expected but unrealised savings.

8.3 The Principal shall furnish evidence to prove that any damages are the fault of the Agent.

8.4 If the Agent (Management Consultant) engages third parties to assist in performance of the contractual work, and warranty claims or claims for damages subsequently arise against said third parties, the Agent (Management Consultant) shall assign such claims to the Principal. In this case, the Principal shall primarily refer to the third party. Claims against the Agent (Management Consultant) may only be asserted within a period of six months after the incident or after termination of the Contract.

8.5 Nevertheless, if the work performed by the Agent (Management Consultant) results in damages to the Principal with a legal claim, the following shall apply to the liability of the Agent (Management Consultant), irrespective of the legal grounds:

In the event of violation of a major contractual obligation, the Agent (Management Consultant) shall only be liable in the amount of the consultancy fee paid to the Agent (Management Consultant) by the Principal for the consultancy assignment.

## **9. Confidentiality / Data Protection**

9.1 The Agent (Management Consultant) shall be obligated to maintain complete confidentiality concerning all business matters of which he becomes aware in the course of services performed, in particular trade and company secrets as well as any information of any kind concerning the type or scope of the business or practical activities of the Principal.

9.2 Furthermore, the Agent (Management Consultant) shall be obligated to maintain complete confidentiality towards third parties concerning the entire content of the work performed as well as all information and circumstances which the Agent accesses in completing the required work, in particular in relation to data concerning the Principal's clients.

9.3 The Agent (Management Consultant) shall not be obligated to maintain confidentiality towards any persons working for or representing the Agent. However, the Agent is required to obligate such persons to maintain complete confidentiality, and shall be liable for any violation by such persons in the same way as if the Agent had violated the confidentiality obligation.

9.4 The obligation to maintain confidentiality shall persist indefinitely, including following termination of this contractual relationship.

9.5 The Agent (Management Consultant) shall be entitled to process any personal data provided to the Agent for the purposes of the contractual relationship. The Principal shall guarantee the Agent that all necessary measures shall be taken for this purpose, in particular those within the meaning of the Austrian Data Protection Act (DSG), such as obtaining declarations of consent from the parties concerned.

9.6 The Principal agrees that Proact Unternehmensentwicklung GmbH and its partners may make a corresponding entry in their reference list concerning the type and scope of the assignment.

## **10. Remuneration**

10.1 After completion of the agreed assignment, the Agent (Management Consultant) shall receive remuneration pursuant to the agreement reached between the Principal and the Agent (Management Consultant). For an assignment value of €10,000.00 or above, an advance payment in the amount of 30% must be made.

The Agent (Management Consultant) is entitled to submit intermediate invoices and to demand payment on account as required by progress of the assignment. Remuneration shall be due and payable immediately after submission of the invoice by the Agent.

10.2 The Agent (Management Consultant) shall render accounts which entitle deduction of input tax and contain all elements required by law.

10.3 Any cash expenditures, expenses, travel costs, etc. shall be separately reimbursed to the Agent (Management Consultant) by the Principal upon submission of the corresponding receipts. A kilometre allowance and vehicle payment of €0.50/km shall apply insofar as no flat rates are agreed. One man-day corresponds to 8 hours, while additional services are charged proportionately.

10.4 In the event that the agreed assignment is not completed due to reasons on the part of the Principal, or due to premature termination of contract by the Agent (Management Consultant) for due cause, the Agent (Management Consultant) shall be entitled to claim payment in full of the agreed remuneration, less expenses not incurred. In the event that hourly remuneration is agreed, the remuneration for the expected number of hours required to perform the entire service shall be paid, less expenses not incurred. Expenses not incurred shall be calculated at a flat rate of 30% of the remuneration for the services not performed by the Agent by the date of termination of the agreement.

In the event of cancellations up to four weeks prior to the event, we shall charge the incurred conceptual costs or a maximum of 50% of the assignment value, and for cancellations one week prior to the event we shall charge 100% of the assignment value.

10.5 In the event that intermediate invoices are not paid, the Agent (Management Consultant) shall be released from the obligation to provide further services. This shall not apply to any further claims resulting from default of payment.

## **11. Duration of the Contract**

11.1 In principle, this Contract terminates with completion of the project.

11.2 Apart from this, this Contract may be terminated in writing at any time for due cause by either party and without notice. Due causes for premature termination include in particular:

- violation of major provisions of the Contract by a contracting party, or
- instigation of insolvency proceedings by a contracting party or refusal of a bankruptcy petition due to insufficient assets to cover costs.

## **12. Final Provisions**

12.1 The contracting parties declare that all information contained herein is truthful and made in good conscience. The contracting parties shall be mutually obligated to inform the other party immediately of any changes.

12.2 Amendments to the Contract or these General Terms and Conditions shall be made in writing, including any derogation from this written form requirement. Verbal collateral agreements shall not apply.

12.3 This Contract is governed by the substantive law of the Republic of Austria excluding the conflict-of-law rules of international private law. The place of fulfilment is the registered business establishment of the Agent (Management Consultant), Proact Hauersteigstrasse 13, 3003 Gablitz. The place of jurisdiction for all disputes is Vienna.