

Terms & Conditions

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MindTech FlexCo
Hüttelbergstrasse 119/2
1140 Wien



1. General Provisions and Scope

1.1. These General Terms and Conditions ("GTC") govern all contractual relationships between MindTech FlexCo, Hüttelbergstrasse 119/2, A-1140 Vienna, Austria ("Contractor") and its business clients ("Client") in Austria. They apply to all offers, contracts, deliveries, and services provided by the Contractor in the areas of software development (custom and standard software), IT consulting, system integration, maintenance, support, and other IT services.

1.2. These GTC also apply to all future business relationships and contracts, even if not expressly referenced again.

1.3. Any general terms and conditions of the Client that conflict with, differ from, or supplement these GTC are expressly excluded unless the Contractor has expressly agreed to their validity in writing. Performing contractual obligations shall not be deemed acceptance of any differing terms.

1.4. These GTC apply exclusively to business transactions with entrepreneurs as defined in § 1(1)(1) of the Austrian Consumer Protection Act (KSchG). In business-to-business transactions, the parties are presumed to negotiate on equal terms and have greater contractual flexibility.

1.5. By concluding the contract, the Client confirms that they have read, understood, and accepted these GTC. The GTC will be provided to the Client in text form prior to contract conclusion or are available at any time on the Contractor's website.

2. Subject Matter and Scope of Services

2.1. The exact subject matter and scope of services to be provided by the Contractor are set out in the relevant written service description, offer, or individual contract. This may include in particular:

- **Software development:** design, programming, and implementation of custom software or adaptation of standard software in line with the Client's specific requirements.
- **Standard software:** delivery of library or standard programs and granting of usage rights.
- **IT consulting:** preparation of organizational concepts, high-level and detailed analyses.
- **Maintenance and support:** software maintenance, bug fixing, updates, hotline service, and remote support.
- **Commissioning:** assistance with implementation and migration support.

- **Documentation:** preparation of technical and/or user documentation.
- **Other IT services:** any other IT-related services defined in the individual contract.

2.2. The basis for developing custom software and program adaptations is a written service specification (requirements document) prepared by the Contractor or provided by the Client. If none exists, the offer is deemed the service specification. The Client must review this document for accuracy and completeness and confirm approval by signature. Subsequent change requests may require separate agreements on deadlines and pricing.

2.3. The Contractor is entitled to use third parties (subcontractors) to fulfill contractual obligations in whole or in part.

3. Changes in Scope (Change Request Management)

3.1. Changes to the agreed scope, specifications, schedule, or costs ("Change Request" or "CR") are subject to a formal change management process.

3.2. A Change Request may be submitted in writing by either party. It must describe and justify the desired change in detail.

3.3. The Contractor will assess the CR's impact on costs, schedule, resources, and overall project objectives. Costs for this assessment may be charged separately if agreed in the individual case.

3.4. After assessment, the Contractor will provide the Client with a written proposal outlining the additional costs, adjusted timeline, and any other relevant impacts.

3.5. The CR will only be implemented once the Client has accepted the proposal in writing. If the proposal is rejected, the project will continue without the requested changes.

3.6. The Contractor may refuse a CR if it is unreasonable, technically infeasible, or would cause significant delays.

3.7. All CRs and their contractual implications must be documented in writing and will become part of the contract.

4. Client's Duties of Cooperation

4.1. The successful execution of the Contractor's services depends heavily on the Client's active and timely cooperation. The Client must in particular:

- Provide all information, documents, data, and tools required for service delivery (e.g., system access, interface descriptions, test environments) fully and on time.
- Provide realistic test data and adequate testing opportunities.
- Appoint one or more qualified contact persons and deputies who can make and receive binding statements; changes to these contacts must be reported immediately.
- Promptly notify the Contractor if any provided information or requirements are incorrect, incomplete, unclear, or infeasible, and inform them of any foreseeable consequences.
- Ensure proper data backups, especially when testing on live systems.

4.2. If the Client fails to meet cooperation duties on time, the Contractor's deadlines will be extended accordingly. Additional costs resulting from such delays (e.g., waiting times, extra work, travel expenses) will be borne by the Client.

4.3. If defects within the Client's responsibility hinder the Contractor's ability to correct errors, the Contractor is released from that obligation until the defects are resolved.

5. Fees and Payment Terms

5.1. Agreed prices are ex works and specified in the offer or individual contract. All prices are net in euros, exclusive of VAT unless explicitly stated, and remain valid until revoked.

5.2. Costs for storage media, documentation, travel, accommodation, and any contractual fees will be invoiced separately.

5.3. All applicable taxes and charges, particularly VAT, are calculated in accordance with current laws. Any additional taxes or charges imposed by authorities will be borne by the Client.

5.4. Unless otherwise agreed, invoices are payable without deduction and free of charges within 14 days from the invoice date.

5.5. Adherence to agreed payment dates is an essential condition for service delivery.

5.6. In the event of late payment, the Contractor may charge statutory default interest for business transactions. The statutory rate is 9.2 percentage points above the base rate; if the Client is not responsible for the delay, the rate is 4% per annum.

5.7. In case of payment default, the Contractor may suspend ongoing work and/or withdraw from the contract.

5.8. The Client must reimburse all reasonable costs incurred for legal enforcement, including reminder and collection costs.

5.9. The Client is not entitled to withhold payment due to incomplete delivery, warranty claims, or complaints.

5.10. For larger projects or if agreed, advance payments upon order and/or partial payments upon reaching defined milestones may be required.

6. Price Adjustment (Indexation)

6.1. If the contract runs for more than one year or includes recurring services (e.g., maintenance, support, SaaS), the agreed fees will be adjusted annually, in line with the Austrian Consumer Price Index (CPI) 2020 published by Statistics Austria.

6.2. The base value for indexation is the CPI figure for the month in which the contract was signed. The adjustment is based on the percentage change between this base value and the CPI figure for the same month of the previous year.

6.3. A negative index change will not reduce the fee below the originally agreed amount.

6.4. The adjusted fee will be communicated to the Client in writing and will apply from the adjustment date.

7. Software Acceptance Procedure

7.1. For custom-developed software or program adaptations, formal acceptance by the Client must take place no later than four weeks after delivery or availability.

7.2. Acceptance is confirmed in writing in an acceptance protocol. Testing is carried out against the agreed service specification and the Client's provided test data.

7.3. If the Client fails to carry out acceptance within the four-week period, the software will be deemed accepted at the end of that period.

7.4. The Client may not refuse acceptance for minor defects.

7.5. A fixable defect exists if the software deviates from its specification or documentation in the latest version and the deviation is reproducible by the Client.

7.6. Defects must be reported to the Contractor in writing immediately upon discovery. Late reporting may result in additional costs borne by the Client.

7.7. The Contractor will correct acknowledged defects for which it is responsible within a reasonable period, usually through updates or appropriate workarounds.

7.8. The Client must support the Contractor in defect resolution and promptly provide all necessary information in writing or by email.

8. Warranty and Liability

8.1. The Contractor warrants for defects that exist at the time of delivery or availability of the software or service.

8.2. Warranty periods are:

- For one-off digital services (e.g., one-time software delivery) and hardware defects for goods with ongoing digital services: two years from delivery or availability.
- For ongoing digital services (e.g., SaaS, subscriptions, continuous updates): for the entire contract term.

8.3. The statutory reversal of the burden of proof under § 924 ABGB is excluded by mutual agreement. The Client must prove that a defect existed at delivery or availability.

8.4. In business-to-business transactions, defects must be reported immediately upon discovery to preserve warranty and defect damage claims.

8.5. Rectification (repair or replacement) always takes precedence over price reduction or rescission.

8.6. The Contractor is liable to the Client for proven damages only in cases of gross negligence. This also applies to damages caused by third parties engaged by the Contractor.

8.7. Liability for indirect damages - such as lost profits, costs related to business interruption, data loss, or third-party claims - is excluded.

8.8. The Contractor's liability for personal injury is unlimited.

8.9. Product liability claims remain unaffected and cannot be excluded or limited between the liable party and the injured party.

9. Intellectual Property and Usage Rights

9.1. The Contractor is the author or co-author of the developed software. Copyright remains with the Contractor and cannot be transferred inter vivos.

9.2. The Client acquires a non-exclusive, non-transferable right of use for internal purposes, within the agreed scope and duration.

9.3. Where software is created by the Contractor's employees as part of their duties, the Contractor acquires unlimited usage rights by law (*ex lege*).

9.4. Where software is created by freelancers or under a works contract, an explicit contractual grant of the necessary usage rights is required.

9.5. **Background IP** means all knowledge and IP contributed by the parties at the start of a project (e.g., existing software, algorithms, libraries, technical drawings). Ownership remains with the original owner.

Foreground IP means all knowledge and IP created during the project by the Contractor. Rights to Foreground IP are granted to the Client within the usage rights defined in clause 9.2.

Use of the other party's Background IP and subsequent use of Foreground IP is governed by separate license agreements.

9.6. **Open Source Software (OSS)**: Where OSS components are used, they are subject to their respective OSS licenses. The Contractor provides no warranty or liability for OSS components, as these licenses typically exclude such claims.

9.7. **Source Code Escrow**: Source code and associated materials may be deposited with a neutral third party by separate agreement for Client protection in the event of the Contractor's insolvency or serious breach. The Contractor notes that escrow agreements in Austria may not provide absolute security in insolvency cases.

10. Confidentiality and Data Protection (GDPR Compliance)

10.1. Both parties agree to comply with the EU General Data Protection Regulation (GDPR), the Austrian Data Protection Act (DSG), and the Telecommunications Act 2021 (TKG 2021).

10.2. Detailed information on how the Contractor processes personal data is provided in the separate Privacy Policy available on the Contractor's website. This policy forms an integral part of these GTC.

10.3. Where the Contractor processes personal data on behalf of the Client, a separate written Data Processing Agreement (DPA) in accordance with Art. 28 GDPR will be concluded.

10.4. The Contractor implements appropriate technical and organisational measures (TOMs) to ensure data security, including access, entry, transfer, availability, and separation controls.

10.5. For third-party services involving data transfer to non-EU/EEA countries (e.g., USA), the Contractor ensures compliance with the CJEU's "Schrems II" decision and European Data Protection Board (EDPB) guidelines, including conducting Transfer Impact Assessments (TIAs) and implementing additional safeguards where necessary.

10.6. Data retention periods comply with statutory obligations (e.g., 7 years for accounting records) and the GDPR's storage limitation principle. Data is deleted when processing purposes no longer apply.

10.7. The Contractor's website uses cookies and similar technologies. For non-essential cookies, explicit user consent is obtained via a GDPR-compliant cookie banner with equal reject/accept options.

10.8. In the event of a data breach, the Contractor will notify the data protection authority and, where required, affected individuals in accordance with legal requirements.

11. Contract Term and Termination

11.1. The contract term is set out in the individual contract and may be fixed-term or open-ended.

11.2. Unless otherwise agreed, open-ended contracts may be terminated by either party with notice to the end of a month.

11.3. Termination must be in writing and demonstrably delivered (e.g., registered mail). Simple email is insufficient.

11.4. The right to terminate without notice for cause remains unaffected. Good cause includes:

- Serious or repeated breach of essential contractual obligations.
- Payment default despite reminder and grace period.
- Opening or dismissal of insolvency proceedings due to insufficient assets.

12. Force Majeure

12.1. Events beyond the Contractor's control that make performance impossible or significantly more difficult-such as natural disasters, war, pandemics, official orders, strikes, terrorist attacks, or similar-release the Contractor from performance obligations for the duration of the event.

12.2. The Contractor will promptly inform the Client of the occurrence and expected end of such events.

12.3. If a force majeure event lasts beyond a reasonable period, either party may terminate the contract without notice.

13. Final Provisions

13.1. **Jurisdiction and Applicable Law:** The competent court at the Contractor's registered office in Vienna has exclusive jurisdiction. Austrian law applies, excluding conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods (CISG).

13.2. **Severability:** If any provision of these GTC is or becomes invalid or unenforceable, the remaining provisions remain unaffected. The invalid provision will be replaced by one that most closely reflects its economic purpose.

13.3. **Written Form:** Amendments and supplements to this contract and these GTC must be in writing. This also applies to any waiver of the written form requirement. No verbal side agreements exist.

13.4. **Assignment:** Rights and obligations under this contract may only be assigned with the other party's prior written consent, except assignments to a company affiliated with the Contractor.

13.5. **No Set-off:** The Client may not set off its own claims against those of the Contractor unless the Client's claims are undisputed or established by final judgment.

13.6. **Headings:** Headings are for convenience only and have no independent legal significance.