© **FM Forum Business Solutions GmbH**
A-1200 Wien, Dresdner Straße 45
E-Mail: kundenservice@forum-media.at

Redaktion FORUM Media - Wolfgang Steinberger - Randolph Schwab - Albert Scherzer | Muster | Vertragsmuster

Dokument-ID: 783421

Consultancy Agreement

concluded between

…
hereinafter “The Consultant”
on one side

and

…
hereinafter “The Principal”
on the other side

as follows:

I. Introduction

The Principal plans to … In this context, the Principal requires consulting in the field of … the Consultant has specific experience in … Therefore, the Consultant and the Principal conclude the contract at hand concerning consulting in the field of …

II. Content and Extent of Consulting

The Consultant shall consult the Principal in the field of … The area of … shall not be covered. For that purpose, the parties shall meet each other once per week at the seat of the Principal. Within one week, the Consultant shall summarize the contents of these meetings and send them to the Principal.

Upon consulting, the Consultant is not bound to any working time, instructions or working place. The Consultant is free to consult other principals in the field of …

The Consultant shall consult in accordance with generally accepted professional standards. The Consultant shall use his specific experience and knowledge in the field of … and permanently update his knowledge in this field.

The Consultant is entitled to engage experts, employees and freelancing cooperation-partners for consulting.

The Principal endeavours that the Consultant disposes of all documents necessary for complying with the Consultancy Agreement and that Consultant gets knowledge of all circumstances which are relevant for the consulting.

Any change, extension, or modification of the scope of consulting services must be agreed upon in writing by both parties prior to implementation. The Consultant shall be entitled to adjust the agreed fees and timelines accordingly. Without such written agreement, the Consultant is not obliged to perform additional services.

> **Variation 1: Extent of Consulting**
>
> The Consultant shall recommend measures in the field of … to the Principal in a written report. The report shall have the structure as described in Annex … and shall contain between … and … marks. It shall not cover … On … the Consultant shall send a first draft of the report to the Principal for review. Within … days,

the Principal may require amendments of or supplements to the draft. The Consultant shall complete the report in accordance with these requests to the extent they are consistent with the then present state of the Consultant's art. Due date for delivery of the report is …

The Consultant shall be available for meetings at the seat of the Principal in the extent of … hours per month from Monday to Friday, between … and … o'clock. The parties shall fix date and duration of every meeting mutually. The Principal shall contact the Consultant at the latest … days before the envisaged date.

Variation 2: Personal Rendering of Service

The Consultant guarantees to render consulting services exclusively personally.

III. Fees

For his consulting services, the Principal shall pay to the Consultant a monthly lump sum in the amount of EUR … plus VAT, including all expenses.

The fees are due on the last day of the month in which the billed services were rendered.

If the Consultant fails to render consulting services due to circumstances in the Principal's sphere, the Consultant keeps his claim for payment.

Variation 1: Fees Hourly Rate

For consulting services, the Principal shall pay to the Consultant an hourly rate of … plus VAT and expenses.

Variation 2: Term of Validity of Lump Sum

The lump sum shall remain valid for the duration of … months. Afterwards, the parties shall mutually fix a new lump sum.

Variation 3: Due Date of Fees

The fees are due within one week after receipt of the statement of fees concerning the preceding calendar month.

IV. Confidentiality and Data Secrecy

The Consultant undertakes to keep secret all facts (incl personal data) disclosed to the Consultant during the course of this Consultancy Agreement which concern the Principal and are not generally known. The Principal shall oblige his personnel to confidentiality accordingly.

This obligation of confidentiality and data secrecy shall survive the termination of this Consultancy Agreement.

Variation 1: Mutual Obligation of Secrecy: in General

The parties shall keep business and trade secrets and personal data of the other party strictly confidential and

shall oblige their personnel to confidentiality accordingly.

Variation 2: Mutual Obligation of Secrecy: in more Detail

Either party undertakes to keep secret all facts (incl personal data) disclosed to it during the course of this Consultancy Agreement which concern the other party and are not generally known. This obligation of secrecy particularly applies to the consulting tool which the Consultant applies in fulfilment of his contractual obligation.

V. Protection of Intellectual Property

The Principal is granted an unrestricted and unlimited right to use those works in the sense of the Copyright Act which the Consultant creates in the course of the Consultancy Agreement. The Consultant may use these works only for purposes of this contract. For any other use, he requires the Principal's approval.

Variation: Protection of Intellectual Property

The Principal is granted an unrestricted and unlimited right to use those works in the sense of the Copyright Act which the Consultant creates in the course of the Consultancy Agreement. The Consultant may use these works only for purposes of this contract. For any other use, he requires Principal's approval. The Principal shall not be granted any rights to the tool which the Consultant applies in fulfilment of his contractual obligation.

VI. Data Protection

For the avoidance of doubt, it is hereby stated that both the Principal and the Consultant shall act as independent data controllers regarding any personal data processed under this Agreement. However, the Consultant shall not be entitled to process personal data of the Principal for its own purposes which are not subject to statutory law. The Consultant and the Principal undertake to mutually comply with any obligations to provide information under data protection law pursuant to Art 13 and Art 14 GDPR.

Variation: Data Processor

The Principal shall act as the controller with respect to the personal data processed under this Agreement. The Consultant serves as a processor of the Principal and therefore processes the personal data provided to it only upon documented instruction of the Principal. The processing of personal data by the Consultant on behalf of the Principal shall be based on a separate data processor agreement to be concluded pursuant to Art 28 GDPR.

Notice:

Consultants may have different roles under data protection law and therefore act depending on the concrete processing activity as controllers pursuant to Art 4 No 7 GDPR, or as processors pursuant to Art 4 No 8 GDPR. Decisive for the respective classification is the actual activity of the consultant as well as the related processing activities. The more influence the contractor has regarding the purposes (the “why” of the processing) and the means (the “how” of the processing), the more likely it is to be classified as a data controller.

VII. Warranty and Damages

The Consultant is obliged to remove any incorrectness or incompleteness of his consulting services upon the Principal's request. Only if this is not possible or not done within adequate time, the Principal may demand price reduction. After elapse of … months from rendering the consultancy services (i.e. after the meetings or after delivery of the reports, respectively), the Principal may neither demand removal of such defects nor price reduction.

For evaluating the consultancy services as to their correctness and completeness, changes in the general professional standards and developments in the field of … after rendering the consultancy services (i.e. after the meetings or after delivery of the reports, respectively) have to be kept out of consideration.

The Consultant's liability for damages to the Principal is limited to wilful misconduct or particular gross negligence. The Consultant’s total liability arising out of or in connection with this Agreement, regardless of the legal basis of such claim, shall be limited to the total amount of fees paid by the Principal to the Consultant under this Agreement during the twelve (12) months preceding the event giving rise to such claim. This limitation shall not apply in cases of intent or personal injury.

VIII. Term of Contract

The contract enters into force upon signing by both parties and is concluded for an indefinite period of time. It may be terminated by registered mail either party with … months' notice with effect to the end of each calendar year without indication of reasons by.

Either party may terminate the contract with immediate effect by registered mail if

- the other party infringed an essential contractual obligation and does not cease to do so despite written request within 30 days;
- …

In the case of termination of the contract, the Consultant has to return to the Principal all documents which are subject to the obligation of confidentiality in chapter 4. If the termination of the contract was not the Consultant's fault, he is entitled to pro-rata fees for the last month of the contractual relationship. In any other case, the Consultant loses his claim for payment for this month.

> **Variation: Term of Contract**
>
> The contract enters into force on … and ends after … years without notice of termination.
>
> The Consultant receives such part of the lump sum as consideration, which corresponds to the development of the report.

VIX. Final Clauses

This contract shall be governed by Austrian Law.

The competent court in Innere Stadt Wien shall have exclusive jurisdiction.

Should any provision of this contract be or become invalid, the validity or enforceability of all other provisions shall not be affected. In this case, the invalid provision is replaced by a provision consistent with the original intention of the contracting parties.

Amendments and additions to this Agreement shall only be legally effective if they are made in writing signed by the contracting parties or signed by means of an advanced or qualified electronic signature. This formal requirement shall also apply to any waiver of this formal requirement.

> **Variation: Validity of qualified electronic signatures only**

Amendments and additions to this Agreement shall only be legally effective if they are made in writing signed by the contracting parties within the meaning of § 886 ABGB (Austrian Civil Code) or § 4 (1) Signature and Confidential Services Act (SVG). This formal requirement shall also apply to a waiver of this requirement of writing.

Notice:

In the context of digitalization, an increasing trend towards electronic signing can be observed. In this context, the Austrian legislator has clarified in Section 4 (1) of the Signature and Trust Services Act (SVG) that only a qualified electronic signature fulfills the legal requirement of written form within the meaning of Section 886 of the Austrian Civil Code (ABGB). This means that, in the absence of a clarifying definition, only a qualified electronic signature fulfills the formal requirement of being in writing. In view of the fact that such formal requirements mostly only serve to exclude the validity of mere declarations of intent (verbal or as e-mail), there are no recognizable reasons why an advanced electronic signature should not also be permissible.

This contract is executed in two counterparts, each party receiving one. This Agreement is executed in the English language. In the event of any translation into another language, the English version shall prevail. All correspondence, notices, and documentation under this Agreement shall be in English.

All costs and duties connected with the execution of this agreement are borne by …

Variation: Arbitration

All disputes arising out of this contract or related to its violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these Rules.

Anmerkungen:

1 Selbstständigkeit

Der Consultant ist in der Regel kein Arbeitnehmer, sondern selbstständig tätig. Er unterliegt keiner Weisungsgebundenheit, keiner organisatorischen Eingliederung und keinem arbeitsrechtlichen Schutz. Damit wird verhindert, dass ein Scheinselbstständigkeitsverhältnis entsteht, das zu rückwirkender Sozialversicherungspflicht nach dem ASVG führen könnte. Der Vertrag sollte daher klarstellen, dass der Consultant seine Tätigkeit frei gestaltet, eigene Arbeitsmittel verwendet und mehrere Auftraggeber gleichzeitig betreuen darf. Diese Punkte sind auch aus steuerrechtlicher Sicht von Bedeutung.

2 Honorarvereinbarung

Die Vergütungsregelung in Consultancy Agreements folgt dem Grundsatz der freien Vereinbarung (§ 1152 ABGB). Üblich sind entweder Pauschalhonorare, Zeitvergütungen oder erfolgsbezogene Honorare. Wichtig ist, dass die Fälligkeit klar geregelt ist (zB monatlich im Nachhinein) und Verzugszinsen bei verspäteter Zahlung automatisch entstehen (§ 1333 ABGB). Wird die Beratung aufgrund von Umständen aus der Sphäre des Principals nicht erbracht, behält der Consultant dennoch seinen Honoraranspruch. Bei langfristigen Verträgen sollten Anpassungsklauseln (Indexierung, Neubemessung) vorgesehen werden, um eine faire Vergütung zu sichern.

3 Geheimhaltung

Confidentiality-Klauseln sind im Consultancy Agreement von zentraler Bedeutung. Sie schützen Betriebs- und Geschäftsgeheimnisse sowie personenbezogene Daten. Die Verpflichtung gilt während und nach Beendigung des Vertrags und muss auch für Mitarbeiter und Subunternehmer gelten. Verstöße können Schadenersatzansprüche

begründen und nach dem Gesetz gegen unlauteren Wettbewerb (UWG) strafbar sein. In der Praxis empfiehlt sich, die Dauer der Geheimhaltungspflicht unbegrenzt festzulegen und auch elektronische Kopien, Daten und Backups ausdrücklich zu erfassen.

4 Datenschutz

Da Beratungsleistungen regelmäßig die Verarbeitung personenbezogener Daten umfassen, muss vertraglich klargestellt werden, ob der Consultant als data controller (Verantwortlicher) oder als data processor (Auftragsverarbeiter) tätig ist. Diese Unterscheidung richtet sich nach Art 4 Z 7 und Z 8 DSGVO. Handelt der Consultant im Auftrag des Principals, ist ein Data Processing Agreement nach Art 28 DSGVO verpflichtend. Beide Parteien müssen zudem ihre Informationspflichten nach Art 13 und 14 DSGVO erfüllen und geeignete technische und organisatorische Schutzmaßnahmen nachweisen.