

# GENERAL TERMS AND CONDITIONS

*BDO CONSULTING GMBH*

JANUARY 2023

**BDO**

## **1. Scope of Application**

- 1.1. These General Terms and Conditions ("GTC") of BDO Consulting GmbH (hereinafter referred to as "BDO") form an integral part of every offer, assignment and (framework) contract, unless otherwise stipulated in the individual offer or contract.
- 1.2. These General Terms and Conditions also apply to subsequent contracts, unless otherwise agreed.

## **2. Scope of Services and Disclaimer**

- 2.1. The work and analysis performed by BDO neither constitute an (annual financial statement) audit, nor an assurance engagement or due diligence audit and therefore, do not provide the assurance that can be obtained from such activities. As a result, BDO does not express an audit opinion in this respect.
- 2.2. BDO particularly emphasizes that, due to the limited scope of the assignment, there is a risk that illegal acts such as embezzlement, misappropriation or falsification of balance sheets may not be detected and no guarantees or warranties are given for the detection of such acts. The client expressly acknowledges this and waives all claims that may result from the non-detection of unlawful activities. In this context, BDO is, therefore, liable exclusively for intentional or - equivalent to this - negligent violation of the obligations assumed.
- 2.3. In course of the services provided, BDO presents and comments the results of its work. Decision-making is exclusively reserved to the client. Decision-making is neither within the scope of the activities of BDO, nor is BDO involved in the process of decision-making. BDO is only liable to the client for final reports, and not for interim results or drafts brought to the client's attention. Any liability of BDO towards third parties to whom the client forwards, transfers or discloses final reports or other documents from BDO is excluded, even if BDO has consented to the forwarding, transfer or disclosure to third parties.
- 2.4. The client expressly grants BDO the right to contact all persons named by the client, as required, within the scope of the fulfilment of the assignment and provision of services, and to obtain any necessary information from these persons and the client.
- 2.5. BDO is dependent on the provision of information and documents as well as the cooperation of the client in order to perform the contractually agreed services. All resulting delays and their effects (e.g., additional expenses) will be borne by the client, if the client provides BDO with information or documents late, incompletely or incorrectly.
- 2.6. BDO assumes no liability, if the client does not provide or incorrectly provides information that is relevant for the provision of the contractually agreed services, as long as the absence or inaccuracy was neither known nor unknown due to gross negligence.

## **3. Disclosure of reports**

- 3.1. Reports and other documents prepared by BDO are exclusively intended for and addressed to the client. The disclosure of the reports and other documents prepared by BDO to third parties is only permitted with the express prior written consent of BDO and requires the conclusion of an agreement between BDO and the respective third party. A legally required disclosure (e.g., to auditors) of the reports and other documents prepared by BDO is expressly permitted; any other disclosure to third parties can be agreed within the scope of the contractual relationship.

- 3.2. BDO may only provide reports and other documents on the results of its activities to third parties with the consent of the client, unless there is a legal obligation to do so.

#### **4. Confidentiality and references**

- 4.1. All employees of BDO are subject to strict confidentiality obligations due to their employment contracts and are trained accordingly. Documents and further information provided to BDO during the assignment will be treated as strictly confidential. Depending on the request of the client, upon completion of the assignment, the documents will either be deleted or returned to the client and deleted at BDO. The confidentiality obligation does not apply to information that (i) is or becomes publicly known without breach of this agreement, (ii) is made known to the receiving party by a third party that does not have non-disclosure obligations and without a breach of this agreement, or (iii) where the receiving party can prove that it was in its lawful possession before the signing of the agreement or was obtained or developed independently by the receiving party. The confidentiality obligation does not apply if BDO is legally obliged to pass on or disclose the information and documents received. BDO can be released from the confidentiality obligation exclusively by the client him-/herself in writing, but not by the client's agents.
- 4.2. After the performance obligations owed have expired, BDO is entitled to use the fact of the contractual relationship and the subject matter of the contract within the international BDO network as a reference. In this respect, the client already discharges BDO from the confidentiality obligation.
- 4.3. The client gives consent to BDO for using the fact of the contractual relationship for reference and marketing purposes externally. This consent may be withdrawn at any time, however, the withdrawal does not affect references made before receipt of the declaration of withdrawal. With regard to the external references, the client releases BDO from the confidentiality obligation.
- 4.4. The "EU-Meldepflichtgesetz" (EU-MPfG) implemented the EU Directive 2018/822 (DAC 6) of the Council of 25.5.2018 into national law. As of 1.7.2020 the relevant Act entered into force and (potentially aggressive) cross-border tax arrangements have to be reported to the Austrian tax authorities ("Mandatory Disclosure Regime - MDR") if they meet certain hallmarks specified in the law. The notification also applies to arrangements for which the first step of implementation has already been made between 25.6.2018 and 30.6.2020. Such arrangements generally had to be reported until 31.10.2020. Arrangements with their first step being implemented as of 1.7.2020 or arrangements that are designed, marketed, organized, made available for implementation or administered as of 1.7.2020 must be reported within a period of 30 days of the occurrence of the reportable event. As consultants, we are deemed to be intermediaries within the meaning of the "EU-Meldepflichtgesetz" for arrangements in which we perform activities as defined in Section 3 item 3 of the "EU-Meldepflichtgesetz". In principle, we are, therefore, obliged to report notifiable arrangements directly to the competent authority. Orders placed with us do not comprise the verification of arrangements within the meaning of the "EU-Meldepflichtgesetz" or the execution and coordination of the notification with the client. Such verification or coordination of the notification with the client requires an explicit separate assignment as well as a release from the contractual confidentiality obligation.

#### **5. Data processing**

- 5.1. For the purpose of fulfilling statutory duties of due diligence, avoiding conflicts of interest and incompatibilities, ensuring our independence as required by professional law and complying with stock exchange regulations, BDO and all Austrian affiliated companies are entitled, revocably at any time, to electronically store data on the assignment (name, address, contact persons, scope,

fee and period) and to transmit such data to other member firms of the worldwide BDO network<sup>1</sup>. In addition, BDO is entitled to partly or wholly subcontract the order to companies in the BDO network for technical, quality or professional reasons without the separate consent of the client. BDO may store assignment-related information and data in electronically managed files for the purpose of streamlining internal operations.

- 5.2. All data is processed in accordance with the applicable data protection laws and regulations. BDO has implemented appropriate data protection and data security measures to ensure data protection and information security.

## **6. Conflicts of interest**

- 6.1. Any offer by BDO is subject to the suspensory condition of a positive completion of the BDO internal review to ensure independence and avoid any conflict of interest. An integral part of this review is the verification of the identity of the persons acting for the client; in this context BDO may request a proof of identity from client's representatives.

- 6.2. During the assignment, BDO will continuously examine whether there is a conflict of interest based on current data and information. If BDO detects such a conflict of interest, this constitutes an important reason that entitles BDO to refuse to continue the assignment without giving any reasons. In this case, BDO is released from its obligation to provide any further services. Important reasons as mentioned above are, in particular:

- ▶ Concern of bias
- ▶ Serious impairment of an existing client relationship

- 6.3. Where there is an important reason, BDO will immediately inform the client that the assignment cannot be continued.

## **7. Indemnification and remuneration for additional services**

- 7.1. The client shall exempt and indemnify BDO from any obligation arising out of any third party claims as well as claims made against BDO by third parties in connection with any activity performed within the scope of the assignment, any reports to be prepared and information from the client. In this context, BDO is only liable in case of willful or grossly negligent breach or infringement of contractual obligations.

- 7.2. Where civil or criminal proceedings are initiated after the completion of the agreed activities by BDO and where such proceedings are based on the results of the assignment, any (additional) costs incurred by BDO in connection with such proceedings are invoiced to the client at the applicable hourly rates.

## **8. Deviating provisions to the General Terms and Conditions for Management Consultants**

- 8.1. The "General Terms and Conditions for Management Consultants" ("GTC MC") by the Austrian Professional Association for Management Consultancy, Accounting and Information Technology of the Austrian Federal Economic Chamber<sup>2</sup> (edition from June 2021) form an integral part of the assignment between BDO and the client with the following additions and amendments:

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<sup>1</sup> Link: [International BDO network](#)

<sup>2</sup> Link: [General Terms and Conditions for Management Consultants \(June 2021\)](#)

## 8.2. Regarding Section 2: Scope of consulting assignments/representation

- 8.2.1. The activity of BDO is primarily consulting work, meaning that the services of BDO comprise, in particular, the provision of information on economic or technical matters and relations. The decision on the entrepreneurial implementation lies exclusively with the client. Therefore, BDO is not liable for any losses incurred in conjunction with any corresponding investments or other business measures.
- 8.2.2. BDO is not obliged to determine internal deficiencies or misjudgments on part of the client or the target company (legal entity, e.g., a subsidiary of the client that is in the focus of the assignment), which are not directly in the scope of the consulting or auditing work.
- 8.2.3. After completion of the assignment BDO is under no obligation to inform the client, if the conditions given at the time of the placement of the order and, respectively, its execution have undergone any changes whatsoever.

## 8.3. Regarding Section 5: Reporting/obligation to report

- 8.3.1. Insofar as BDO is obliged to prepare documents for the client within the scope of a specific assignment, the submission of such documents shall replace the duty to report.
- 8.3.2. Section 5 of the GTC MC is not applicable where neither the provision of a report nor the preparation of documents have been agreed within the scope of the assignment.

## 8.4. Regarding Section 6: Protection of intellectual property

- 8.4.1. BDO, as a management consulting firm, provides services that in principle do not necessarily have to be associated with (physical) works. Where works of any kind whatsoever - especially offers, reports, analyses, expert opinions and service descriptions, drafts, drawings, calculations, organizational plans, process descriptions - are handed over to the client either in paper form or any other tangible form, or transmitted electronically to the client in an intangible form, or are otherwise disclosed to the client, the client is granted a limited license to use those works, for contractually agreed purposes or purposes which can be directly derived from the contractual provisions.
- 8.4.2. Within the scope of the above-mentioned license, the client is granted the right to reproduce the work insofar as it is necessary for the use of the work in the company or group of the client in the context of the purposes of the contract. The client is entitled to pass on the works within the company or the client's group of companies. Disclosure to third parties requires the explicit written consent of BDO.
- 8.4.3. The granted license to use the work shall include the right to translation, to the extent this is necessary for the purposes of the contract or the contractually stipulated use of the work in the company or group of companies of the client.
- 8.4.4. Without the prior express written consent of BDO, the client is prohibited from using professional statements made by BDO or BDO employees for advertising or other purposes.
- 8.4.5. Any violations by the client of provisions of this section entitles BDO to terminate the contract for cause immediately.

## 8.5. Regarding Section 7: Warranty

- 8.5.1. BDO's obligation under the warranty to remedy inaccuracies and defects in the consulting service that subsequently become known relates exclusively to errors that (i) are the responsibility of BDO and (ii) are to be qualified as errors, taking into account the level of information available to BDO at the time of the (original) delivery of the service and the standard of expertise.
- 8.5.2. The remedy of defects is carried out exclusively on the basis of the information originally provided to BDO by the client (data, key figures, etc.) as well as the scope of services agreed upon in the underlying assignment.
- 8.5.3. The client shall grant BDO the opportunity to remedy defects in the service within a reasonable time period, otherwise the claim is forfeited; for remediating any defects the GTC apply mutatis mutandis. In case of failure to remedy any defects, the client is entitled to a price reduction or - where, as a result of failure to remedy the defect, the service provided is justifiable of no use to the client - the right to cancellation of the contract. For any warranty claim, repeated remedy shall in any case take precedence over price reduction or cancellation. The GTC and GTC MC apply to any claims for damages beyond any warranty.
- 8.5.4. When a period of six months has passed after delivery of the services owed (e.g., submission of the final report) to the client, the client must prove that at the time of delivery the alleged defect already existed and is to be considered a defect as per Section 8.5.1.

## 8.6. Regarding Section 8: Liability/damages

- 8.6.1. BDO is not liable for damages caused by slight negligence.
- 8.6.2. In the case of gross negligence, BDO is only liable up to an amount equal to five times the fee agreed for the relevant assignment (excluding any reimbursement of expenses), but no more than EUR 1.500.000 (one million and five hundred thousand euros).
- 8.6.3. BDO assumes liability for loss of profit only where such loss is caused through gross negligence or willful intent.
- 8.6.4. If claims against a third party, which has been engaged by BDO for the fulfillment of the contract, are assigned to the client, BDO is only liable for fault in selecting such third party.

## 8.7. Regarding Section 10: Remuneration

- 8.7.1. All fees and expenses quoted in BDO's offers are exclusive of VAT, i.e., net, and are shown as amounts in Euros.
- 8.7.2. The amount of the fee is stipulated in the respective contract. In any case the client shall pay a fee that is deemed reasonable and usual.
- 8.7.3. Any services performed in conjunction with the clarification of the assignment (e.g. feasibility, time planning, assignment contents, etc.) prior to signing the offer may be invoiced to the client if the assignment is conducted.
- 8.7.4. Any discounts or rebates granted to the client by BDO are subject to the condition of timely payment of invoices rendered by BDO.
- 8.7.5. Unless otherwise agreed between the client and BDO, any discounts or rebates granted only apply to the assignment for which they were agreed. A reduction of the fee claim for services beyond the specific assignment and the applicability of the reduction to future contracts are excluded unless otherwise agreed.

8.7.6. Unless otherwise agreed, BDO charges the fee based on the actual time spent. Should it be decided in consultation with the client that an assignment is to be discontinued at a certain point, the services actually rendered up to the time of the termination of that assignment will be invoiced.

8.7.7. BDO may make the completion and delivery of services rendered subject to the full satisfaction of the fee claims. If due fee claims remain unpaid, BDO is entitled to refuse further provision of services. In this case, BDO will resume the provision of services upon receipt of the outstanding amount in its own bank account. Delays resulting from the justified refusal of services by BDO and any negative consequences resulting therefrom (such as additional expenses) are borne by the client. The client is only entitled to a right of retention in case of obvious gross defects; the right of retention is limited to the affected parts of the provided services.

#### 8.8. Mediation clause

8.8.1. For the sake of clarity, it is noted that the mediation clause proposed in the GTC MC are not part of the contract, unless expressly agreed otherwise with the client.

### 9. **Provisions for communication via Electronic Data Transmission (Internet, e-mail, data room provider)**

9.1 In general, the communication and the transmission of documents between the client and BDO occurs through e-mail without end-to-end encryption. Internally BDO has taken all state-of-the-art technical and organizational measures to ensure privacy and information security. The client is aware of the potential risk that e-mail messages - during the transmission outside the mail servers of the contracting parties - could be intercepted, recorded, and monitored by third parties contrary to the provision of Article 161(3) TKG 2021 (Austrian Telecommunications Act).

9.2 At the explicit request of the client and a corresponding agreement between the client and BDO, end-to-end encryption or a secure data room is set up for secure electronic communications between the client and BDO. If an end-to-end encryption or secure data room is set up, the transmission of messages and the exchange of data between the client and BDO must take place exclusively via the agreed secure communication channel.

9.3 In the event that e-mail messages exchanged between the client and BDO are actually intercepted, recorded or monitored by third parties in violation of Section 161(3) TKG 2021 (Austrian Telecommunications Act) and the client incurs damage as a result thereof, any liability of BDO in connection therewith is excluded by mutual agreement. The client holds harmless and indemnifies BDO from any third party claims related to breaches of secrecy of telecommunication committed by any third party.

9.4 The receipt of e-mails including any attachments sent by BDO to the client is refutably presumed if the technically correct sending of an e-mail is confirmed by a transmission protocol of the outbound mail server of BDO. The client immediately informs BDO of changes in the e-mail addresses of the client's recipients and contact persons defined within the scope of the order execution; if the client fails to comply with this obligation, the regulation of the first sentence shall apply to the last known e-mail address(es).

9.5 The receipt of e-mails including any attachments sent by BDO to the client is refutably presumed if the technically correct sending of an e-mail is confirmed by a transmission protocol of the outbound mail server of BDO. The client immediately informs BDO of changes in the e-mail addresses of the client's recipients and contact persons defined within the scope of the order execution; if the client fails to comply with this obligation, the regulation of the first sentence applies to the last known e-mail address(es).

## **10. Data protection**

- 10.1 The information on data processing by the BDO Austria Group as per article 13 GDPR is available at <https://www.bdo.at/en-gb/impressum-data-protection-declaration/information-in-accordance-with-art-13-gdpr>. This information provided may also help the client as controller under the GDPR to fulfill his/her data protection related obligations. If the client is required to provide information as per Article 14 GDPR due to or as a part of a specific project, the contracting parties will assist each other in preparing such information.
- 10.2 Where BDO processes or will process personal data on behalf of the client in a specific project, the contracting parties will enter into a data processing agreement according to Article 28 GDPR.
- 10.3 If the client refuses to enter into a data processing agreement required under the GDPR, irrespective of the reasons of such refusal, BDO is entitled to withdraw from the contract or to terminate the contract immediately on serious grounds. The client holds harmless and indemnifies BDO from any losses, damages, claims and expenses.

## **11. Miscellaneous**

- 11.1. The parties will agree on the language(s) in which the assignment is to be carried out and the results presented as part of the assignment. The parties agree that translation services are not part of the contract unless such services have been stipulated in the contract. Unless another language is specified, German is deemed to be mutually agreed upon.
- 11.2. In the event of conflict between the “Allgemeine Auftragsbedingungen BDO Consulting GmbH” and the English translation “General Terms and Conditions BDO Consulting GmbH”, the provisions of the “Allgemeine Auftragsbedingungen BDO Consulting GmbH” shall prevail.
- 11.3. If one or more provisions of the respective agreement and/or these GTC are or become invalid or unenforceable, the remaining provisions of this agreement shall remain unaffected. The invalid or unenforceable provision will be replaced by a valid, enforceable and legally permissible provision, considering the economic purpose of the terms.
- 11.4. The signing representative(s) of the client warrant(s) to be authorized to issue or approve such an order on behalf of the client.
- 11.5. All amendments or additions to the contract must be made in writing. If the scope of the contract is extended during its performance, these extensions must be recorded in written form and countersigned by the client and BDO.
- 11.6. Unless expressly agreed otherwise, these GTC and all contracts concluded with reference thereto are governed by Austrian law, with the exception of the provisions on the conflict of laws and the UN Convention on Contracts for the International Sale of Goods.
- 11.7. The exclusive place of jurisdiction for all disputes arising from the contract is the competent court in Vienna, Austria.



# WE SEARCH FOR GREATNESS.



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