

**Translation of
GENERAL TERMS AND CONDITIONS
for software and consulting services
provided by Gutwinski Management GmbH
(version dated May 08, 2018)**

1. Fundamentals - scope - severability clause

- 1.1. Any legal relationships between the client and contractor hereafter referred to as "Gutwinski Management GmbH" are exclusively subject to these General Terms and Conditions for software and consulting services. In case of doubt, it can be assumed that the General Terms and Conditions shall be fully applied. In case of contradictions, the provisions and stipulations most favourable for Gutwinski Management GmbH shall be applied. The version of the General Terms and Conditions that is applicable at the moment of conclusion of contract shall be decisive.
- 1.2. These General Terms and Conditions shall also apply to any future contractual and legal relationships, even if this is not explicitly laid out in collateral agreements.
- 1.3. Any General Terms and Conditions by the contracting party that are opposed to or deviate from these General Terms and Conditions will only become effective if they are acknowledged by Gutwinski Management GmbH explicitly and in writing.
- 1.4. Any agreements will only be legally binding if they are executed in writing and duly signed by Gutwinski Management GmbH, and they shall oblige Gutwinski Management GmbH only to the extent stated in the respective agreement.
- 1.5. In the case that any single clauses of these General Terms and Conditions for software and consulting services are ineffective or that they - for whatever reason - do not become a subject of the contract, this will not affect the binding character of the remaining clauses and the contracts concluded on their basis. The ineffective clause will have to be replaced by an effective clause more closely aligned with the sense and purpose of this clause.
- 1.6. The Terms Of Use for the gutwin software modules according to the scope described in the product brochure and the offer shall be deemed agreed upon for the use of the gutwin software. Available at:

<http://www.gutwinski.at/gutwin/Nutzungsbedingungen-Gutwin-Softwaremodule.pdf>.

English translation (not binding):

<http://www.gutwinski.at/gutwin/Translated-Terms-Of-Use-for-the-gutwin-software-modules.pdf>.

2. Terms of payment - interest on arrears - reservation of title

- 2.1. Compliance with the agreed payment dates constitutes a major condition for performing the delivery or fulfilment of the contract by Gutwinski Management GmbH. Noncompliance with the agreed payments shall entitle Gutwinski Management GmbH to repudiate the contract while setting a 30-day grace period. Any related costs and expenses shall be borne by the client.
- 2.2. In case of intermediate accounts not being paid, Gutwinski Management GmbH will be exempt from any responsibility to further provide services. However, this will not affect the right of Gutwinski Management GmbH to assert further claims arising from such non-payment.
- 2.3. In case of default in payment, Gutwinski Management GmbH shall be entitled to apply charges for any resulting costs and expenses, as well as interest on arrears in the amount of 1.2% per month. Moreover, Gutwinski Management GmbH shall, in case of default in payment, be entitled to suspend any services arising from or in connection with service contracts - including clarification, updating, maintenance, etc. - up to complete payment while informing the client in writing. However, this will not relieve the client of the client's financial obligations.
- 2.4. The possibility of withholding payments due to deficiencies that are asserted, but not acknowledged by us, shall be excluded. Neither shall the client be entitled to withhold payments due to an incomplete overall delivery or warranty claims.
- 2.5. Basically payments will first be demanded for accruing costs and expensed and then for interest and only finally on the outstanding capital.
- 2.6. Counterclaims can only be offset against if they have been acknowledged in writing by Gutwinski Management GmbH or stated judicially in a legally binding manner.

2.7. Force majeure, industrial conflicts, natural disasters and transport locks, as well as other circumstances outside the sphere of influence of Gutwinski Management GmbH (i.e. delays) will relieve Gutwinski Management GmbH of the duty to deliver or prolong agreed delivery times for the period that the reasons for such delays exists.

2.8. Gutwinski Management GmbH can revoke the right to use the software until such a time when the price and any related collateral expenses whatsoever have been paid in full.

3. Duty of clarification and participation

3.1. Gutwinski Management GmbH will preferentially contract with companies that have profound technical, economic and legal knowledge, as well as skills and capabilities in the fields of IT, law, controlling and taxes. If individual clients do not have knowledge and skills and capabilities in the fields mentioned above, they will immediately undertake to disclose such a fact to Gutwinski Management GmbH. Otherwise Gutwinski Management GmbH can assume the existence of such knowledge, skills and capabilities and fulfil the major and minor duties to perform as if Gutwinski Management GmbH had contracted with an expert.

3.2. The client shall ensure that any documents required for fulfilling and carrying out the order shall be presented to Gutwinski Management GmbH in a timely manner and that Gutwinski Management GmbH will immediately obtain information on any processes and circumstances that are important for fulfilling the order. This shall also apply to any documents, processes and circumstances that were unknown prior to the activities of Gutwinski Management GmbH. At any rate, for documents and other information and instructions provided or given to Gutwinski Management GmbH by the client, it is assumed that they have been drawn up or provided by an expert. Therefore, Gutwinski Management GmbH may rely on the correctness of such information and instructions without additional verification unless the client explicitly demands additional instruction.

4. Information - passing on to third parties

4.1. The provision of consulting services by employees of Gutwinski Management GmbH, even in connection with the creation, sale, processing and editing (including commissioning and/or adaptation to the client's needs), shall be done in cooperation with the client's representative and based on information made available by the client or his representative. Consulting provides instructions for using the gutwin software and serves to generally explain legal requirements, but does not constitute legal consulting in an individual case.

4.2. Consulting and the information provided in the content and documents made available by Gutwinski Management GmbH shall be provided after detailed processing and editing, but shall not involve guaranteeing the correctness and/ or completeness and integrity thereof. Liability of Gutwinski Management GmbH and the creator, editor or licensor of the content is excluded. Above all, no liability shall be assumed for damage due to the provision of incorrect or incomplete information by the client or subsequent changes to the products made by the client.

4.3. The services rendered and information provided are exclusively intended for the client. Therefore, they shall not be passed on or provided to third parties without receiving the consent of Gutwinski Management GmbH. If the purchase order given in connection with the order also covers other legal entities, these legal entities shall not be deemed third parties. Third parties should neither rely on the correctness of the services and/or information provided by Gutwinski Management GmbH nor can they require Gutwinski Management GmbH to compensate third parties for any damage in this connection. Notwithstanding this, in the case that the client passes on the services and information provided in contradiction to the contract, the client shall hold Gutwinski Management GmbH harmless towards third parties that indirectly or directly assert claims against Gutwinski Management GmbH due to such services and information having been passed on.

5. Availing of third parties

5.1. Gutwinski Management GmbH shall, at any time, be entitled to commission third parties to render parts of the range of services or the full range of services or to assist Gutwinski Management GmbH in providing services and also to replace these parties.

5.2. Gutwinski continually uses the subcontractors

Ebner Media & Management GmbH
Jägerweg 4
4600 Thalheim bei Wels, Österreich

and

Monterail sp. z o.o.
Oławska 27-29
50-123 Wrocław, Polen

with software programming, updates, support and development. The client expressly declares the use of those subcontractors and the possible processing of personal data as approved. Ebner Media & Management and Monterail sp. z o.o. are committed to fulfil data protection requirements.

- 5.3. Legal Claims of Gutwinski against vicarious agents, or third parties are hereby already assigned to the client. In any case, after the assignment of claims against vicarious agents to the client, the client will exclusively address claims to these or insofar as permissible, after assignment of claims against other third parties exclusively address claims to these other third parties.

6. Secrecy

- 6.1. Gutwinski Management GmbH undertakes to assure unconditional secrecy about any business issues made known to Gutwinski Management GmbH, above all business and trade secrets as well as any information Gutwinski Management GmbH is provided about the client's nature, scope and practical activities. This obligation to secrecy shall be unlimited and even extend beyond the termination of this contractual relationship.
- 6.2. Gutwinski Management GmbH shall transfer the obligation to secrecy to assistants and agents but shall not be liable for any infringements thereof committed by such persons or other third parties.
- 6.3. The client expressly declares the processing of personal data for the fulfilment of the contract or pre-contractual measures as well as for information about products and services of the contractor by e-mail, telephone, letter, fax as approved
- 6.4. Gutwinski Management GmbH shall be entitled to process personal data confided to Gutwinski Management GmbH for the purpose of the contractual relationship. The client warrants that the actions required for this, above all those regarding data protection, such as declarations of consent of the persons concerned, have been taken.
- 6.5. The following categories of personal data of client's employees or contact persons are processed by the contractor: name, title, date of birth, gender, personal identification (position in the company, function, user type of software use), e-mail address, telephone number, address.
- 6.6. The client may at any time in writing or by e-mail to datenschutz@gutwinski.at address requests of information, rectification erasure of personal data or object to the processing of personal data.
- 6.7. Gutwinski Management GmbH is entitled to use the client's name and/or company logo as a reference customer, in the context of its commercial activity, regardless of the technique of transfer, carrier or storage.

7. Warranty, liability, changes and amendments

- 7.1. The warranty period shall be 12 months.
- 7.2. The client shall be obliged to inspect and review the service provided by Gutwinski Management GmbH immediately and in detail and to send a written notification of defects immediately, but no later than within 30 working days since their provision, exactly indicating the defects and enclosing suitable evidence of such defectiveness. Otherwise the client will lose any claims that may be asserted as to such defectiveness (warranty, avoidance of the contract on account of mistake, compensation for damage, ...).
- 7.3. However, notifications of defects shall only be valid given reference to reproducible defects. Gutwinski Management GmbH exclusively needs to fulfil its warranty obligations by means of improvements or a price reduction. In the case of warranty, improvements will, in any case, be given priority over a price reduction.
- 7.4. In the event of a justified notification of defects, the defects shall be eliminated within a reasonable time period, the client enabling the contractor to take all actions necessary to investigate and eliminate the defects.
- 7.5. There shall not be any warranty obligations in the case of circumstances that are due to the client impeding its fulfilment and in the case that defects are not eliminated by the client even when the client has been asked to do so by Gutwinski Management GmbH.

- 7.6. The assumption of the presence of a defect and the reversal of evidence against Gutwinski Management GmbH shall be excluded. The onus is on the client to prove the existence of a defect as well as its presence at the moment it was rendered or provided, to indicate the moment the defect has been identified and ensure the timeliness of the notification of defects.

- 7.7. In the event that the notification of defects proves to be incorrect (subsequently), Gutwinski Management GmbH shall be entitled to charge for services provided due to such a notification of defects (support, troubleshooting, and eliminating failures and malfunctions) at the regular daily rates and shall require compensation of material costs.

- 7.8. The rescission of contracts due to shortening by more than the half shall be explicitly excluded.

8. Compensation for damage - exclusion of liability

- 8.1. Except for physical injuries, Gutwinski Management GmbH shall only be liable to the client in the event of gross fault (intent or gross negligence). This shall also apply to damage done by persons employed in the fulfilment of the client's obligations or otherwise by third parties assignable to the client as far as the liability of Gutwinski Management GmbH for such damage is not already further limited by law.

- 8.2. If Gutwinski Management GmbH can assert warranty and/or liability claims against persons employed in performing the client's obligations, suppliers or other third parties, with the exception of ENHESA SA (to which the clauses are applicable), Gutwinski Management GmbH shall assign these claims to the client. In any case, the client will, upon assigning claims to cooperation partners, exclusively address these partners or, as far as admissible, address other third parties upon assigning claims to other third parties.

- 8.3. Moreover, any warranty claims relating to ENHESA SA data, which are asserted against Gutwinski Management GmbH, shall be excluded. This means that Gutwinski Management GmbH shall not assume any warranty for material or legal defects for the contents within the software delivered by ENHESA SA or for missing data or material and legal defects for which ENHESA SA is at fault and that were delivered partly by ENHESA SA within the software.

- 8.4. The client's claims to compensation for damage can only be asserted before the court within a period of six months after such damage has occurred and the damaging party has become known, but not later than three years since the event or circumstance justifying this claim first occurred.

- 8.5. The burden of proof for the unlawful and culpable causation of damage by Gutwinski Management GmbH shall be devolved to the client.

- 8.6. Gutwinski Management GmbH shall not be liable for printing, writing or other errors occurring in documents, lectures, internet pages or other documentation.

- 8.7. Gutwinski Management GmbH has concluded liability insurance for property losses of business consultants with HDI Versicherung (Insurance) AG (Policy Number 01490821) with an insured sum in the amount of € 3,000,000.00 for each damaging event and for no more than three times per year. If and as far insurance coverage is provided by the insurance, the liability of Gutwinski Management GmbH shall be limited to the amount of the insurance benefits plus self-retention. If no insurance coverage is provided under the insurance, for whatever reason, or if the insurer fails to provide insurance, for whatever reason, Gutwinski Management GmbH shall be liable in a subsidiary manner; namely with an insured sum in the amount of €1,500,000.00, which is covered by liability insurance for members of the Technical Association for Business Consulting and Information Technology (Policy Number 2/81/82354875954-0). If one of the aforesaid liability exclusions or liability limitations is inadmissible, null and void or otherwise ineffective, Gutwinski Management GmbH shall, in any case, have limited liability for the remuneration paid for use in the respective year.

9. Conventional penalty

- 9.1. In the event of infringement of the following clauses, which are established in these General Terms and Conditions, a conventional penalty in the amount of € 10,000, shall be paid for each single violation of obligations regardless of negligence or fault. This namely pertains to:
- 9.1.1. infringements in connection with permissions to use the gutwin software;
- 9.1.2. the contracting away of employees of Gutwinski Management GmbH;
- 9.1.3. infringements in connection with the protection of intellectual property;

- 9.2. In addition, the client is liable for damage extending beyond this, including lost profit.
- 9.3. Conventional penalties of the client are not accepted
- 10. Final clauses - choice of law - place of jurisdiction**
- 10.1. Amendments to the contract and these General Terms and Conditions as well as departure from these Terms and Conditions, necessitate an undersigned written document just as much as the departure from this formal requirement. There shall be no oral collateral agreements.
- 10.2. Any legal relationships between the client and Gutwinski Management GmbH are subject to tangible Austrian law under the exclusion of the reference standards and United Nations Convention on Contracts for the International Sale of Goods.
- 10.3. Unless something else has been agreed, the place of fulfilment shall be Perchtoldsdorf even though Gutwinski Management GmbH shall fulfil or need to fulfil the contractual obligations at a different location.
- 10.4. For any disputes between the client and Gutwinski Management GmbH, the parties have agreed to rely on the local jurisdiction of the subject-matter competent court in Vienna.

This English translation is not binding. Only the German text is the contractual version. In case of inconsistency or discrepancy between the German version and the English translation of these General Terms and Conditions for Software and Consulting Services the German version shall prevail. The binding text is available at:

<https://www.gutwinski.at/gutwin/AGB-Gutwinski-Software-und-Beratungsleistungen.pdf>

If you have questions or wish to contact Gutwinski Management GmbH for any other reasons, please do not hesitate:

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