



# General Terms and Conditions of Examiz Ltd

Status: January 2022

**Examiz Ltd**

71 Baggot Street Lower, D02 P593, Dublin, Ireland

Registration Office

Dublin, Ireland

Company No. 674918

## § 1 Scope of application

1. These General Terms and Conditions of Business apply to all contracts between EXAMIZ Ltd. and its clients. Conflicting or deviating terms and conditions of business, contract and/or purchase are not recognized unless their validity is agreed to in writing.
2. *Examiz Business Consulting* und *Examiz Analytics* sind nicht-selbständige Geschäftsbereiche von EXAMIZ Ltd, Dublin, Irland. Diese Allgemeinen Geschäftsbedingungen gelten daher uneingeschränkt auch für Verträge, die mit *Examiz Business Consulting* und *Examiz Analytics* geschlossen werden.
3. Insofar as individual contractual agreements have also been made between the contracting parties, these shall take precedence over the provisions of these General Terms and Conditions. These general terms and conditions of business shall then only apply in addition, insofar as and to the extent that nothing or nothing to the contrary is regulated in the individual contract.

## § 2 Services

1. The contracting parties agree that EXAMIZ Ltd. only owes the provision of services, but not the production of a work or the achievement of a certain result. The contracting parties further agree that the exclusively service-contractual character of the obligation to perform of EXAMIZ Ltd. does not change even if EXAMIZ Ltd. undertakes to record the results of its services in writing and to prepare and hand over corresponding reports, studies and the like. In particular, such written reports,

studies and the like do not constitute expert opinions - unless expressly agreed otherwise - but only reflect the essential content of the process and the result of the services.

2. EXAMIZ Ltd. is entitled to use expert third parties as subcontractors for the execution of the order or to have the contract executed in whole or in part by third parties. Furthermore, the contracting parties agree that EXAMIZ Ltd. does not owe or provide any legal advice, tax advice or activities belonging to the work of auditors. Insofar as EXAMIZ Ltd. provides for the performance of such activities through the involvement of corresponding professionals, it acts only as an intermediary without itself becoming the debtor/contractual partner of such activities.
3. If the contractually agreed services of EXAMIZ Ltd. include the use of software or the purchase or subscription of software licenses, the general terms and conditions and data protection provisions of the respective licensor or software provider apply additionally. Unless otherwise contractually regulated, the transaction is concluded between the client and EXAMIZ Ltd. and not directly with the respective software provider.
4. The contracting parties agree that the contract between the parties is concluded either by the written conclusion of the contract, or by the placing of an order by the Client, or the sending of an order confirmation by EXAMIZ Ltd. which has not been objected to in writing by the Client within five (5) working days.
5. The contracting parties agree that EXAMIZ Ltd. is not obliged to check the information, data or documents provided to it in writing or orally for their factual or mathematical correctness, completeness or regularity. However, if EXAMIZ Ltd. recognizes that the information, data or documents provided to it in writing or orally are obviously incorrect, incomplete or improper, it will point this out.
6. The Client shall be entitled to the rectification of any defects. This claim must be asserted immediately, at the latest, however, ten (10) working days after the performance of the service. EXAMIZ Ltd. is to be given the opportunity to rectify the defect.

### **§ 3 Retention of documents**

EXAMIZ Ltd. is no longer obligated to store the documents handed over to it by the Client for the purpose of providing the services owed if three years have passed since the date of termination of the contractual relationship or six months have passed since a written request to the Client to collect the documents.

### **§ 4 Duty to cooperate**

1. The client is obligated to support EXAMIZ Ltd. to the best of his ability, namely to provide all information and documents necessary for the execution of the order, and to create all conditions necessary for the proper execution of the order in his business sphere.

2. Furthermore, the Client is obligated to name to EXAMIZ Ltd. one or more persons who are authorized to make binding declarations for the Client that are necessary for the provision of the owed service.

## **§ 5 Data protection, data transmission**

1. The Client agrees that the exchange of data and information in the cooperation with the Client and with all parties involved in the project may also take place via unencrypted e-mails. If the Client wishes that data is not sent via unencrypted e-mails and e-mail attachments, it shall inform the Contractor of this in writing - either in individual cases or in general. In this case, e-mail attachments will be sent in encrypted form, which the Client can only open with a password. If encryption is desired, encryption and decryption methods that can be used with standard software (in particular MS Office, Apple Mail) without additional installations shall be used both for sending data from the Client to the Contractor and vice versa.
2. EXAMIZ Ltd. is entitled to mechanically collect, automatically process and store personal data entrusted to it by the Client and its employees within the scope of its activities and - within the scope of the subject matter of the order - to transfer such data to a service computer centre or other suitable third parties for further commissioned data processing, if necessary. If third parties are involved, EXAMIZ Ltd. must ensure their obligation to maintain confidentiality.
3. The client is aware that the content of unencrypted emails or their attachments can possibly be read by unauthorized third parties. Nevertheless, the client agrees to a communication as well as a transmission of documents by unencrypted email. Should the Client wish to use a different communication technique, he will inform EXAMIZ Ltd. of this.
4. Privacy inquiries can be sent to [dataprotection@examiz.tech](mailto:dataprotection@examiz.tech).

## **§ 6 Rights to the work results**

1. EXAMIZ Ltd. is exclusively entitled to all copyrights or rights from supplementary protection under competition law to all documents created by EXAMIZ Ltd. for the purpose of providing the services owed.
2. The use, duplication, and publication of such documents created by EXAMIZ Ltd. for the purpose of providing the services owed is permitted to the client only for his own business for the contractually required purposes.
3. The transfer of the work results of EXAMIZ Ltd. to third parties requires the written consent of EXAMIZ Ltd. insofar as the consent to transfer does not already result from the content of the order.

## **§ 7 Right of retention**

Until the complete fulfilment of its claims from the contractual relationship, EXAMIZ Ltd. is entitled to a right of retention to the documents handed over to it by the client

for the purpose of providing the services owed. This right of retention does not exist insofar as and to the extent that the client would thereby suffer a disproportionate disadvantage, also taking into account the performance interest of EXAMIZ Ltd.

## **§ 8 Remuneration**

1. Unless otherwise agreed, the usual remuneration and the reimbursement of expenses in the usual amount shall be deemed to have been agreed.
2. EXAMIZ Ltd. is entitled to invoice for the work performed every 14 days after the start of the contractual relationship. The fee is due immediately after invoicing.
3. If the agreed service includes an event, specific training or coaching, the remuneration is to be paid in advance, unless otherwise agreed.
4. In addition to the fee claim pursuant to Paragraph 1, EXAMIZ Ltd. is also entitled to a claim for reimbursement of all expenses and outlays made in order to provide the services owed.
5. The client can only declare a set-off against the fee claim and the claim for reimbursement of expenses with undisputed or legally established claims.
6. The value added tax is calculated in each case in the legal height.
7. Several clients of the same order are liable for the remuneration as joint debtors.
8. With the payment of invoices of EXAMIZ Ltd. by the Client or third parties commissioned by the Client, the claims asserted with the respective invoice are deemed to be acknowledged. Claims for repayment are excluded.
9. Flat-rate usage fees are due for payment in advance on the first working day of each month.
10. Offsetting against payment claims of EXAMIZ Ltd. is only permissible with undisputed or legally established claims.
11. Objections to invoices of EXAMIZ Ltd. must be asserted within four (4) weeks after receipt at the latest; later objections are excluded.
12. If the customer is an entrepreneur in the sense of § 14 BGB, he is not entitled to a right of revocation.
13. If an order placed is<sup>1</sup> substantially reduced in scope, revoked, cancelled or otherwise not pursued further by the Client unilaterally<sup>2</sup>, the Client shall owe EXAMIZ Ltd. the following pro rata remuneration: written receipt of the relevant information by the Contractor 60 days before the start of the order 30% of the order sum; 30 days

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<sup>1</sup> In addition to the written notification of cancellation by the Client, a total postponement of the commencement of the order by more than one hundred (100) calendar days shall also be considered as a cancellation or non-proceeding of the placed order.

<sup>2</sup> A substantial reduction is deemed to be an expected reduction in the agreed order volume of more than 20%. The remuneration owed in this case relates to the reduction.

before the start of the order 60% of the order sum; and 10 days before the start of the order 80% of the order sum.

14. If the order ends before its complete execution, EXAMIZ Ltd. receives a share of the remuneration corresponding to the scope of its work performed until the end of the order. If the order is terminated prematurely for reasons for which the client is responsible, EXAMIZ Ltd. is additionally entitled to 90% of the remuneration to which it is entitled for this period for the period from the termination of the order to the expiry of the agreed ordinary notice period. The contracting parties have the possibility to prove a lower or higher damage.

## **§ 9 Confidentiality**

EXAMIZ Ltd. undertakes to maintain secrecy about all facts that come to its knowledge in connection with the execution of the order, unless the client releases us from this obligation.

The duty of confidentiality does not exist insofar as disclosure is necessary to protect the legitimate interests of EXAMIZ Ltd. EXAMIZ Ltd. is also released from the duty of confidentiality to the extent that it is obligated to provide information and cooperation according to the insurance conditions of its professional liability insurance.

The duty of confidentiality does not apply to the client's lending banks.

## **§ 10 Liability**

1. The liability of EXAMIZ Ltd. for damages of the client is excluded, insofar as there is no intentional or grossly negligent breach of duty; in the case of negligence, the amount is limited to EUR 15,000.00 per case of damage.
2. However, EXAMIZ Ltd. is liable for damages resulting from culpable injury to life, limb, and health as well as damages resulting from culpable violation of essential contractual obligations (so-called cardinal obligations); in the case of the latter, however, in the event of slight negligence, the amount of liability is limited to the foreseeable damages typical for the contract at the time of the beginning of the contract.
3. EXAMIZ Ltd. is not liable for loss of production and loss of profit on the part of the client. The liability for the success or the achievement of certain goals of the client is basically excluded, unless it is expressly agreed otherwise in writing.
4. Otherwise, the liability of EXAMIZ Ltd. is excluded. In particular, EXAMIZ Ltd. is not liable in cases of force majeure. Cases of force majeure are in particular:
  - Computer sabotage by a third party;
  - Spying and interception of data as a result of third parties bypassing the security system at the certification body;

- circumvention of the security system at EXAMIZ Ltd. , its commissioned partners or the Client, insofar as the security system corresponds to the current state of the art at that time and is customary in the market;
- Forces of nature, and fire;
- Failure of communication networks and infrastructure;
- administrative orders.

## **§ 11 Limitation**

All claims of the client against EXAMIZ Ltd. resulting from the contractual relationship become time-barred after 2 years. Deviating from this, the statutory limitation period of 3 years applies if EXAMIZ Ltd. is charged with intent.

## **§12 Termination of the contractual relationship**

Unless otherwise agreed, the contractual relationship may be terminated by either party with 14 days' notice to the end of the month. Any termination must be in writing in order to be effective.

## **§ 13 Termination of the contract**

The order placed with EXAMIZ Ltd. is terminated by the provision of the services owed. If EXAMIZ Ltd. notifies the Client in writing of the complete provision of all services owed, the Client can no longer demand the provision of further services if he does not object in writing to the incompleteness of the services provided within four weeks of receipt of the written statement from EXAMIZ Ltd.

## **§ 14 Alternative dispute resolution**

The EU Commission provides a platform for online dispute resolution on the Internet at the following link: <https://ec.europa.eu/consumers/odr>.

This platform serves as a contact point for the out-of-court settlement of disputes arising from online purchase or service contracts involving a consumer.

EXAMIZ Ltd. is neither willing nor obliged to participate in dispute resolution proceedings before a consumer arbitration board. If you have any questions or problems, please always contact [contact@examiz.tech](mailto:contact@examiz.tech).

## **§ 15 Final provisions**

All claims arising from or in connection with this contractual relationship shall be governed exclusively by German law.

The place of jurisdiction is the registered office of EXAMIZ Ltd. These general terms and conditions and the contracts concluded with the customer are subject to Irish law.

Should individual provisions of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall then be obliged to agree on a replacement provision that comes as close as possible to the economic purpose of the invalid clause.

Ireland, 13.01.2022

EXAMIZ Ltd.