

General Terms and Conditions for Training Services

Mindbreeze GmbH

Austrian law

Valid as of 28.01.2021

strictly confidential



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For reasons of simplified readability gender-specific differentiation, e.g. he/she, is not used. The respective terms apply equally to both genders within the meaning of equal treatment.

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1 Preliminary remarks

1.1 Mindbreeze GmbH, FN 262155y, Honauerstraße 2, 4020 Linz ("Mindbreeze") sells software products that have been produced by Mindbreeze GmbH and/or Fabasoft R&D GmbH (FN 190091x, Honauerstraße 4, 4020 Linz) ("software products").

Mindbreeze has the requisite knowledge with regard to the fields of application, functioning, features and nature of these software products to offer its customers training courses in the "Mindbreeze Academy".

Customers can order these training courses in the form of both physical events (training courses, seminars, conferences) as well as virtual events (webinars, online training courses, tutorials) (hereafter also "training courses").

1.2 The subject matter of the training agreement concluded with the customer is the training course selected by the customer as a service provided by Mindbreeze. The specific scope of performance of the training course is dependent upon the contents indicated on the website or in the registration confirmation.

In compliance with the training agreement, the training service in the case of standard training courses is based on the brief description published on the Mindbreeze website or in the case of individual customer training courses on the course description specifically developed and agreed with the specific customer.

2 Scope

2.1 In the course of the ordering process these General Terms and Conditions for Training Services ("GTCs") are accepted by the customer of the online shop www.mindbreeze.com/academy ("Mindbreeze Academy") in their currently valid version, which also serve as the basis for the respective business relationship between the customer and Mindbreeze.

2.2 Mindbreeze reserves the right to amend these GTCs at any time. The customer undertakes to read the GTCs before each order and not to accept until he has done so.

Mindbreeze expressly reserves the right to make reasonable amendments to these GTCs. Customers will be informed of any amendments at least 1 (one) month prior to their entry into force by means of a notification by email sent to the email address indicated by the customer with the registration ("customer email address") and by means of their publication on the website www.mindbreeze.com ("Mindbreeze website"). The respective amendments are deemed accepted if the customer does not object to the amendments within one month after their announcement by email. The consequences of this, namely the implication of the planned amendment for the customer, the customer's right of objection and the time limit for the objection, are indicated separately in the notification. The date on which the objection is sent is decisive for its timeliness.

Business processing and the provision of the service is effected based exclusively on these GTCs. Any deviating terms and conditions are not accepted by Mindbreeze, neither can they be tacitly accepted.

2.3 An enterprise is understood as every permanently established organization pursuing independent business activities, even if it is not profit-oriented. Legal entities under public law are always deemed an entrepreneur. A consumer is understood as a natural person who concludes a contract for a purpose that is outside his trade, business or profession and which serves to create the prerequisites for this before commencing business operations. Mindbreeze does not conclude agreements with consumers, but only with enterprises.

2.4 Agreements concluded via the Mindbreeze Academy online, can only be concluded in German or English.

3 Conclusion of an agreement: Offer and offer acceptance

3.1 The training courses offered by Mindbreeze constitute a non-binding invitation to customers to place a binding offer for the training course offered. Registration for a training course offered by Mindbreeze can be undertaken by customers by email, fax, letter or directly in the online shop and constitutes a binding offer of the customer. The training agreement between the customer and Mindbreeze does not come about until Mindbreeze has accepted the offer of the customer by means of a separate confirmation or by activating the online access.

3.2 The offers of Mindbreeze are subject to confirmation and do not constitute a binding offer on the part of Mindbreeze to conclude a training agreement.

3.3 Acceptance of the customer's offer by Mindbreeze is effected by means of a separate order confirmation. In the online shop acceptance of the offer is effected by means of an automatically generated confirmation of receipt and activation of the online access.

4 Subject matter of the training course

4.1 Based on the training agreement Mindbreeze provides a training service vis-à-vis the participants named by the customer.

4.2 The customer is obliged to keep all access data secret and to ensure that the named participants only use these personally. Multiple use of the access data inside and outside of the group of participants named by the customer is not permitted.

4.3 In the case of standard training courses the scope of performance of the training agreement is based on the brief description published on the Mindbreeze website or in the case of individual customer training courses on the course description specifically developed and agreed with the specific customer.

4.4 In the case of online training courses (online courses, webinars, tutorials, etc.) the customer is granted the non-exclusive, non-transferable right to use contents for his own purposes for a limited time.

4.5 The customer takes note that online training courses can only be called up via the Internet and their use is therefore dependent on a functioning Internet connection. The training course is deemed available if the training course can be called up via an up-to-date Internet browser.

4.6 The system requirements needed to use the training course are set out in the Mindbreeze system requirements for training courses, which can be found at <https://www.mindbreeze.com> and which are an integral part of the training agreement.

4.7 The training courses can be booked individually or in the form of an annual subscription.

4.8 The respective training module is active [2 weeks] after activation and is available and can be called up by the customer. Depending on the individually agreed training service, the respectively booked online training module can be called up by the customer at any time during the activation.

4.9 An annual subscription includes all online training courses offered by Mindbreeze in a calendar year plus a physical, hands-on training course. The legal right to a physical, hands-on training course does not apply should it not be possible to conduct the course due to the occurrence of one of the circumstances listed under Point 9.1 or conducting it is disproportionate for economic or health reasons.

4.10 Under the terms of the training agreement Mindbreeze is liable for conducting the training course in the agreed scope as indicated in the brief description. Mindbreeze is liable here for due diligence, but not however for any specific success, in particular not with regard to the participant implementing and/or being able to implement the know-how conveyed during the training course or with regard to the requirements or expectations of the customer or participant being fulfilled.

Insofar the course description indicates the prospect of a specific trainer or lecturer, Mindbreeze reserves the right to replace this person with a different appropriately qualified trainer or lecturer, without any special reason being required.

The customer or the customer's participants can call up a certificate of attendance after taking part in a training course.

4.11 The training courses are offered in German or English. The training documents are offered in English.

5 Granting of rights (intellectual property, secrecy, confidentiality)

5.1 The customer is granted the non-exclusive, non-transferable right to use contents for his own purposes for a limited period. Commercial use on the part of the customer is prohibited.

5.2 Software made available to the participant by Mindbreeze, the trainer or lecturer during the training sessions, is the exclusive property of Mindbreeze, as is the information it contains. The right of the participant arising from participation in the training course is limited to the right of use of this software or this information solely to the extent necessary for the respective training course.

5.3 All documents, documentation and other training documents provided for the participants within the framework of the training course, including training examples, training materials and every type of software or software component whether in paper or electronic form ("training documents"), are protected to the benefit of Mindbreeze or a contractual partner of Mindbreeze or constitute protected know-how or trade and business secrets of Mindbreeze.

5.4 Unless otherwise agreed, the customer is obliged to return and/or ensure the return of all information and training documents made available during the training course to Mindbreeze on conclusion of the training course, for which the customer is liable.

5.5 Neither the participant nor the customer are granted any exclusive rights, in particular no property rights, copyrights or any other rights of use, to this information or these training documents. Transmission, reproduction or dissemination - in any form whatsoever - is not permitted. The recording of virtual training courses, by means of screen recording for example, is prohibited as is the sharing of training contents inside or outside of the group of participants.

5.6 Should copyright-protected works come about by reason of the training course, these belong exclusively to Fabasoft. The customer is only authorized to use such copyright-protected works in accordance with an individual licence agreement that is to be concluded.

5.7 The parties undertake to treat all confidential information received during the training course as strictly confidential and to otherwise refrain from using such information. In particular, it is not permitted to pass on this confidential information to any third parties without the prior written approval of the other party. The customer undertakes with regard to the participants attributed to him to point out this non-disclosure obligation to said persons, to obligate these to non-disclosure and to take all suitable measures to ensure the confidential information is not disclosed.

5.8 The non-disclosure obligation does not apply to confidential information that (i) became public knowledge without any activity of a party, (ii) was lawfully received from a third party without any violation of a non-disclosure obligation, (iii) is released in writing by the respectively authorized party, (iv) the respective party is obliged to pass on due to binding legal regulations or a final decision of a judiciary or administrative authority.

6 Dates and times of the training courses

6.1 The training courses take place on the dates announced in the Mindbreeze Academy or the individually agreed dates. A lunch break of 20 min. is scheduled in the case of physical, hands-on training courses. Mindbreeze reserves the right to amend these training times where necessary.

6.2 Individual physical, hands-on training courses can be postponed or completely cancelled due to reasons for which Mindbreeze is not responsible. Such reasons include for example not achieving the minimum number of participants indicated in the training description or illness.

The customer will be offered an alternative date within 3 months, calculated from the date of the cancelled training course. In this case the concluded training agreement remains valid and is deemed adapted to the new date of the training course. Any more extensive claims of the customer or the individual participant are excluded.

6.3 In the case of online training courses the respective training module is active [2 Weeks] after activation and is available and can be called up by the customer. The respective training course is deemed consumed by the customer on its activation for the customer.

7 Participation in a seminar

7.1 For reasons of quality assurance training requirements with regard to the prior knowledge of the participants, e.g. with regard to language, previous completion of other training courses, levels of difficulty, etc. ("training requirements"), are specified in the course description. The customer is obliged to ensure that the participants it registers for a course fulfil these training requirements.

7.2 in the case of physical, hands-on training courses the customer is entitled to submit the name of a suitable substitute participant in writing up until 7 calendar days prior to the date of the training course.

7.3 Physical, hands-on training courses take place at the venue indicated in the course description. As a matter of principle this is a venue determined by Mindbreeze ("in-house"). Training courses on the customer's premises must be agreed separately ("on-site training"). In the event the customer provides hardware or software for the training course, the customer is obliged to secure any data stored on or connected with such software or hardware at its own expense. In the case of on-site training courses the customer must provide the rooms plus demonstration and the EDP equipment as specified by Mindbreeze at its own expense. The Mindbreeze system requirements for training courses is essential and must be observed by the customer.

8 Course fees, terms of payment, cancellations

8.1 The course fees fall due for payment within 7 days after receipt of the order confirmation or activation of the online access (receipt). Offsetting against claims of the customer vis-à-vis Mindbreeze is excluded.

8.2 Online training courses and annual subscriptions cannot be cancelled. Physical, hands-on training courses can be cancelled free of charge at the latest 30 calendar days prior to the start of a training event. A cancellation fee amounting to 50% of the course fee will be charged in the event of a cancellation by at the latest 10 calendar days prior to the start of the physical, hands-on training event. A cancellation fee amounting to 100% of the course fee will be charged for cancellations received later than this or in the event a participant fails to appear on the agreed date. Travel expenses already incurred in the case of on-site training courses increase the cancellation fee accordingly. Receipt of the cancellation by Mindbreeze is decisive for its timeliness. The day on which the training course is held is not included in the calculation of the time limit.

In the event of a cancellation any course fees already paid will be refunded within 14 calendar days minus the cancellation fee.

8.3 In the case of on-site training courses all additional costs arising from or in connection with the on-site training course, such as allowances, travel expenses, accommodation expenses etc., will be charged for separately by Mindbreeze.

9 Warranty and liability

9.1 Neither of the parties is liable vis-à-vis the other party for non-performance or delayed performance of the service arising from circumstances outside of the control of the party, provided these are not the fault of the party whose performance is not fulfilled or is delayed. This shall apply in particular in the case of force majeure, acts of war, terror attacks, pandemics, epidemics, natural disasters, accidents, industrial action and acts, omissions and negligence of third parties or official, administrative and/or judicial measures or acts.

9.2 Insofar the customer is a consumer pursuant to § 1 KSchG (Consumer Protection Act), warranty and compensation rights are governed by the statutory regulations, provided nothing to the contrary is specified below: Mindbreeze is liable solely for damage caused by willful intent or gross negligence on the part of Mindbreeze. Mindbreeze is liable solely for personal damage in the case of simple negligence. This shall in no way affect the statutory right of revocation (see Point 10 of the GTCs).

Insofar the customer is an entrepreneur pursuant to § 1(2) KSchG (Consumer Protection Act), warranty and compensation rights are governed by the statutory regulations, provided nothing to the contrary is specified below:

1. Mindbreeze or the trainer or lecturer must be notified immediately in writing of any deficiency in the service performed by Mindbreeze, i.e. during the training course, however, at the latest immediately afterwards. Presumption pursuant to § 924 ABGB (Austrian General Civil Code) is expressly excluded.
2. In the event of a warranty claim, Mindbreeze can at its own discretion offer to replace, remedy the service or offer a reduction in price. All other warranty remedies (revocations) are expressly excluded. The customer will support Mindbreeze with the removal of deficiencies to a reasonable extent.
3. The judicial assertion of claims under warranty rights must be made within 6 months as of the performance of the service.
4. Mindbreeze is liable solely for damage caused by its willful intent or blatant gross negligence. Liability for simple negligence, provided this is legally permissible, is excluded in all cases. The customer shall bear the burden of proving willful intent or blatant gross negligence on the part of Mindbreeze.
5. In as far as it is permitted by law, Mindbreeze assumes under no circumstances liability for loss of profit, anticipated savings that did not materialize, loss of interest, third party claims for damages against the customer, indirect damage or consequential damage.
6. A limitation period of one year applies to claims for compensation against Mindbreeze. The limitation period starts at the time the customer gains knowledge of the deficiency.
7. Mindbreeze assumes no liability for any damage to the EDP system of the customer or its databases caused by the work, demonstrations, installations or any other manipulations involved in its use. Mindbreeze expressly points out that it is the sole responsibility of the customer to secure its EDP system in such a way that neither the participants nor the trainer or lecturer can damage it or the databases.

10 Right of revocation, revocation instruction

In the event that contrary to Point 2.3 a valid contract is concluded with a consumer pursuant to § 1 KSchG (Consumer Protection Act) and if this is concluded by way of distance selling or outside of the business premises of Mindbreeze, the sole statutory right of revocation of this consumer is as follows:

Right of Revocation

The customer has the right to revoke this training agreement within fourteen days without having to state any reasons.

The revocation period is fourteen days as of the day the agreement is concluded.

In order to exercise the right of revocation, the customer must notify Mindbreeze GmbH with its registered offices in Honauerstraße 2, 4020 Linz, telephone: +43 732 606162-0, fax: +43 732 606162-609, email academy@mindbreeze.com of its intention to revoke this training agreement by means of a clear declaration of such (e.g. sent to Mindbreeze in letter form by post or by fax or email). The customer may use the attached sample revocation form for this (available at www.mindbreeze.com/academy), although this is not obligatory.

In order to observe the revocation period it is sufficient that the customer sends the notification of the exercising of the right of revocation before expiry of the revocation period.

Consequences of the revocation:

In the event the customer revokes this training agreement, Mindbreeze is obliged to return all payments to the customer that it has received from it without delay and at the latest within fourteen days as of the day Mindbreeze receives notification of the revocation of this training agreement. Unless expressly agreed with the customer to the contrary, Fabasoft will use the same means of payment for the refund as the customer used for the original transaction; under no circumstances will the customer be charged for this refund.

In the event the customer demanded that the services should begin during the revocation period, the customer is obliged to pay Mindbreeze a reasonable sum proportional to the part of the service already performed at the time the customer notifies Mindbreeze of the exercising of the right of revocation of the training agreement compared to the total scope of the service indicated in the training agreement.

Exclusion of the right of revocation

The right of revocation is excluded in the event Mindbreeze has started performance of the service – based on the express demand of the customer and confirmation of its knowledge of the loss of the right of revocation in the case of full performance of the agreement – and completely performed the service before expiry of the revocation period.

11 Privacy Policy

11.1 Mindbreeze processes the personal data of the customer and the participants named by the customer for the purposes of registration and the conducting of training courses and fulfilment of the training agreement and in this respect makes reference to the privacy policy available at www.mindbreeze.com, which constitutes an integral component of such.

11.2 The customer registers for participation in a training course at <https://www.mindbreeze.com/academy> or orders access to the online training modules.

To this end the customer must register with his full name, company details and email address. The customer receives an order confirmation after complete registration. The invoice is sent by post.

11.3 In the case of payment by credit card [or instant transfer] the data required for the processing of the payment is conveyed to [name of the payment service provider] as the commissioned data processor for the purpose of the processing of the payment.

11.4 Mindbreeze is expressly entitled to use video and audio recordings made during the physical training course, in which the customer or the participant of the customer are recognizable, for webinars and marketing purposes. The customer or participant of the customer hereby agrees that Mindbreeze may process and edit these video and audio recordings and use them in any conceivable way for the purposes mentioned. The customer or the participant of the customer is entitled to object to such video

and audio recordings in writing up until the start of the event. Separate consent shall be obtained in the case of application.

12 General provisions, place of jurisdiction

12.1 Mindbreeze and the customer are independent parties to the agreement. No regulation included herein shall establish a partnership, joint venture or a representation relationship between the parties.

This training agreement sets forth the entire and finalized agreement between the parties to the agreement.

12.3 All amendments require the written form (require a signature). This also applies to the any amendment to this written form requirement. Any prior agreements become null and void. There are no verbal subsidiary agreements.

12.4 Austrian law is exclusively applicable under exclusion of the UN Convention on the International Sale of Goods (CISG).

12.5 The statutory place of jurisdiction applies vis-à-vis consumers. If the place of residence, normal domicile or place of employment of the customer is not in Austria, the place of jurisdiction is 4020 Linz. 4020 Linz is agreed as the exclusive place of jurisdiction vis-à-vis enterprises pursuant to § 1 KSchG. At the discretion of Mindbreeze proceedings can also be brought before the competent court in whose jurisdiction the customer has its registered offices, a subsidiary or assets.

12.6 Should a point in these GTCs or the training agreement be invalid, this shall in no way affect the remaining points. A point that is valid and comes as close as possible to the economic purpose of the invalid point is deemed agreed to replace said invalid point.