

# General Terms and Conditions for Training Services

Mindbreeze Corporation

US Law

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public



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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 Scope

1.1 Mindbreeze Corporation and its affiliate companies (collectively, “Mindbreeze”) provide training services for various software products. These training services are in the form of both physical events (training courses, seminars, conferences) as well as virtual events (webinars, online training courses, tutorials) (“Training Courses”).

1.2 These General Terms and Conditions for Training Services (“GTCs”) and the resources specifically incorporated herein by reference shall exclusively govern the business relationship between you (the “Customer”) and Mindbreeze with regard to the Training Courses and related services provided by Mindbreeze. Mindbreeze expressly rejects any and all terms and conditions that deviate from those set forth in these GTCs.

1.3 The specific Training Courses to be provided by Mindbreeze are described on the “Mindbreeze Academy” webpage, which may be viewed online at <https://www.mindbreeze.com/academy>. Unless otherwise agreed in writing by the parties, the scope and subject matter of the Training Courses shall be as described on the Mindbreeze Academy webpage.

1.4 Mindbreeze reserves the right to amend these GTCs at any time. Customers will be informed of any amendments at least one (1) month prior to their effective date by means of a notification by email sent to the email address provided by the Customer at the time of registration and also by means of publication on the website <https://www.mindbreeze.com>.

## 2 Registration for Training Courses; Acceptance by Mindbreeze

2.1 Customers may apply to register for Training Courses offered by Mindbreeze by email, fax, letter or directly through the Mindbreeze Academy webpage.

2.2 The Customer’s registration application submission constitutes a binding offer of the Customer. Mindbreeze shall then either accept the offer to provide the Training Courses or propose alternative terms. Mindbreeze is not contractually obligated to provide the Training Courses until such time that it provides written order confirmation to the Customer and/or activates online access to the Training Course, as confirmed by an electronic receipt sent to Customer.

## 3 Training Courses

3.1 Mindbreeze will provide the Training Courses only to named participants provided by the Customer and as confirmed by Mindbreeze (“Participants”).

3.2 Customer shall ensure that access to the Training Courses and all materials provided in connection therewith are accessed and used only by the Participants. Access to and use of the Training Courses and related materials by others is strictly prohibited.

3.3 The scope of standard Training Courses shall be as described on the Mindbreeze Academy webpage. Mindbreeze may in its sole and absolute discretion agree to offer individualized or customized Training Courses upon request.

3.4 Customer acknowledges and agrees that online Training Courses can only be accessed and delivered via the Internet and their use is therefore dependent on a functioning Internet connection. Online Training Courses are deemed available for the purposes of calculating the applicable Activation Period (as described herein) if they can be accessed via an up-to-date Internet browser.

3.5 The system requirements needed to use online Training Courses are described in the Mindbreeze system requirements for training courses, which can be accessed online at <https://www.mindbreeze.com/academy> and which are hereby incorporated in and made part of these GTCs.

3.6 The Training Courses can be ordered and purchased in individual training modules or in the form of an annual subscription. Mindbreeze will make individual online training modules available to

Customer for a period of two (2) weeks after activation (the "Limited Activation Period"). The individual training modules can be accessed by Customer at any time during the Limited Activation Period. For annual subscriptions, Mindbreeze will make the online training modules available to Customer for a period of one (1) year after activation (the "Annual Activation Period")

3.7 An annual subscription includes all online training courses offered by Mindbreeze in a calendar year plus a physical, hands-on training course; provided, however, that Mindbreeze shall not be obligated to provide a physical, hands-on training course if one or more of the circumstances listed under Section 9.1 apply and/or if conducting such a training course would create an unreasonable economic burden and/or pose a material health risk to the trainers or attendees, as determined in Mindbreeze's sole and absolute discretion.

3.8 Nothing contained in these GTCs shall be construed as a warranty, either express or implied, on the part of Mindbreeze that the Training Courses will lead to any particular results, have the desired effect anticipated by Customer, or lead to Participants implementing and/or being able to implement the know-how conveyed during the Training Courses.

3.9 In the event that a Training Course description identifies a specific trainer or lecturer, Mindbreeze reserves the right to replace this person with a different appropriately-qualified trainer or lecturer in its sole and absolute discretion.

3.10 Upon completion of a Training Course, a certificate of attendance will be made available to Customer and the Participants.

3.11 The Training Courses are offered in German or English, and written materials offered in connection with the Training Courses are in English.

## 4 Intellectual Property

4.1 All written materials, orally-communicated training instructions and commentary, documents, documentation, and other training documents made available to Customer and the Participants in connection with the Training Courses, including training examples, training materials and every type of software or software component whether in paper or electronic form ("Training Content") constitute protected know-how or trade and business secrets and are the sole and exclusive property of Mindbreeze and/or its licensors and contractual partners.

4.2 Mindbreeze grants to Customer a limited, non-exclusive, fully revocable, and non-transferable license to use the Training Content during the applicable Activation Period solely for the purpose of educating and training the Participants in a manner consistent with the purpose of these GTCs and for no other purpose. All other uses of the Training Content are strictly prohibited.

4.3 Unless otherwise agreed, Customer shall return all Training Content to Mindbreeze upon the conclusion of the applicable Activation Period.

4.4 Participants and Customer are not granted any exclusive rights, in particular no property rights, copyrights or any other rights of use, to the Training Content. Transmission, reproduction or dissemination - in any form whatsoever - is not permitted. The recording of virtual Training Courses in any form of media is strictly prohibited as is the sharing of Training Content with individuals or organizations other than the Participants.

4.5 Any and all works subject to copyright (or other protection under intellectual property laws of any jurisdiction) created during or as a direct result of the Training Courses shall be the exclusive property of Mindbreeze, and Customer hereby assigns all right in and to such works to Mindbreeze. Customer may only use such works with the written authorization of Mindbreeze.

## 5 Confidential Information

Mindbreeze (as the "Disclosing Party") may disclose or make available to the Customer (as the "Receiving Party") information about its business affairs, products/services, confidential intellectual

property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of these GTCs by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed pursuant to applicable federal, state, or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations hereunder; and (C) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations hereunder. The Receiving Party shall be responsible for any breach of this Section 5 caused by any of its representatives. The Disclosing Party may seek equitable relief (including injunctive relief) against the Receiving Party and its representatives to prevent the breach or threatened breach of this section 5 and to secure its enforcement, in addition to all other remedies available at law. At the Disclosing Party's written request, the Receiving Party and its representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information.

## 6 Dates and Times of Training Courses

6.1 Training Courses will take place on the dates announced on the Mindbreeze Academy webpage or as otherwise agreed upon by the parties. A lunch break of twenty (20) minutes is scheduled for physical, hands-on training sessions. Mindbreeze reserves the right to amend these training times in its sole and absolute discretion.

6.2 Mindbreeze may cancel or postpone individual physical, hands-on training sessions due to reasons for which Mindbreeze is not responsible. Such reasons include, for illustration purposes only, illness or other exigencies causing the unavailability of trainers or lecturers and/or not achieving the minimum number of Participants specified in the training description available on the Mindbreeze Academy webpage or as otherwise specified by Mindbreeze. In the event of a cancellation or postponement, Mindbreeze will offer Customer an alternative date within three (3) months, calculated from the original date of the cancelled Training Course. Customer hereby acknowledges and agrees that it shall have no other remedy in the event of a postponement or cancellation and hereby waives any and all claims that might arise under such circumstances.

## 7 Participation

7.1 For purposes of quality assurance, Mindbreeze may specify in the applicable Training Course descriptions certain minimum training, experience, or knowledge required of the Participants (e.g. with regard to language, previous completion of other training courses, levels of difficulty, etc.) ("Training Requirements"). Customer is solely responsible for ensuring that Participants meet these Training Requirements.

7.2 With regard to physical, hands-on Training Courses, Customer may submit the name of a suitable substitute Participant to Mindbreeze in writing, provided that Mindbreeze receives this information at least seven (7) calendar days prior to the date of the Training Course.

7.3 Physical, hands-on Training Courses shall take place at the venue indicated in the course description as determined by Mindbreeze in its sole and absolute discretion. In limited circumstances, Mindbreeze may agree to provide Training Courses on Customer's premises ("On-Site Training") subject to additional terms mutually agreed upon by the parties in writing. In the event Customer provides hardware or software for the Training Course, Customer is solely responsible for securing any data stored on or connected with such software or hardware at its own expense. With regard to On-Site Training, Customer must provide at its own expense a sufficiently-sized meeting space, equipment, and other resources as specified in advance by Mindbreeze.

## 8 Course Fees, Terms of Payment, Cancellations

8.1 Customer shall pay all fees for courses within seven (7) days after Customer's receipt of the order confirmation or activation of online access. Customer shall have no right to set off or retain any amounts otherwise payable to Mindbreeze.

8.2 Online Training Courses and annual subscriptions may not be cancelled. Physical, hands-on Training Courses can be cancelled free of charge by notifying Mindbreeze in writing of such cancellation at least thirty (30) calendar days prior to the start of the course. A cancellation fee amounting to fifty-percent (50%) of the course fee will be charged in the event that Mindbreeze receives Customer's written notice of cancellation at least ten (10) calendar days prior to the start of the physical, hands-on Training Course. Thereafter, the full course fee will be charged for cancellations or in the event a Participant fails to appear on the agreed date. Travel expenses incurred in connection with On-Site Training shall increase the cancellation fee accordingly. The day on which the Training Course is held is not included in the calculation of the time periods set forth in this Section 8.2. In the event of a cancellation, any course fees already paid will be refunded within fourteen (14) calendar days minus the applicable cancellation fee.

8.3 All additional costs arising from or in connection with On-Site Training, such as allowances, travel expenses, accommodation expenses etc., will be charged to Customer separately by Mindbreeze.

## 9 Warranty and Liability

9.1 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these GTCs, for any failure or delay in fulfilling or performing any term hereunder (except for any obligations of the Customer to make payments to Mindbreeze hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; (g) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party.

9.2 Mindbreeze warrants to Customer that it shall perform the services provided for hereunder using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations to Customer.

9.3 EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 9.2, MINDBREEZE MAKES NO WARRANTY WHATSOEVER REGARDING THE TRAINING COURSES OR ITS SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY MINDBREEZE, OR ANY OTHER PERSON ON MINDBREEZE'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 9.2.

9.4 IN NO EVENT SHALL MINDBREEZE AND/OR ITS AFFILIATE COMPANIES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH HEREUNDER, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT MINDBREEZE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

9.5 IN NO EVENT SHALL MINDBREEZE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ITS RELATIONSHIP WITH CUSTOMER HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT (INCLUDING BREACH OF WARRANTY), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO MINDBREEZE FOR THE CORRESPONDING TRAINING COURSE(S) SOLD HEREUNDER.

9.6 CUSTOMER AGREES THAT ANY CLAIM OR LAWSUIT ARISING UNDER OR RELATING TO THESE GTCs OR MINDBREEZE'S PROVISION OF TRAINING COURSES MUST BE FILED NO MORE THAN ONE (1) YEAR AFTER THE DATE OF OCCURRENCE OF THE EVENT THAT IS THE SUBJECT OF THE CLAIM OR LAWSUIT. CUSTOMER HEREBY WAIVES ANY STATUTE OF LIMITATIONS TO THE CONTRARY.

## 10 Privacy

10.1 Mindbreeze will process the personal data of Customer and Participants named by the Customer for the purposes of registration and the conducting of Training Courses and provision of services to Customer in accordance with the privacy policy available online at <https://www.mindbreeze.com>, which is hereby incorporated herein by reference and made part of these GTCs.

10.2 In the case of payment by credit card or electronic funds transfer, the data required for the processing of the payment will be provided to a designated payment service provider as the commissioned data processor for the purpose of the processing of the payment.

## 11 General Provisions

11.1 Mindbreeze and Customer are independent parties. Nothing herein shall establish a partnership, joint venture or a representation relationship between the parties.

11.2 These GTCs may not be amended, altered or modified except by a written instrument executed by the parties. No course of dealing between or among the parties will be deemed effective to modify, amend or discharge any part of these GTCs or any rights or obligations of any party under or by reason of this Agreement. No waiver of any of the provisions of these GTCs shall be deemed or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

11.3 All notices, demands and other communications to be given or delivered to Mindbreeze under or by reason of the provisions of these GTCs will be in writing and will be deemed to have been given when personally delivered, sent by reputable overnight courier or when transmitted by facsimile or e-mail (with transmission confirmed), in each case as appropriate, to the address indicated below (unless another address is so specified by Mindbreeze in writing):

academy@mindbreeze.com

11.4 These GTCs and all of the provisions hereof shall be binding upon and inure to the benefit of each of the parties and their respective successors and permitted assigns. Neither these GTCs nor any rights, benefits or obligations set forth herein may be assigned by Customer without the written consent of Mindbreeze.



11.5 Whenever possible, each provision of these GTCs will be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereunder is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these GTCs.

11.6 These GTCs, including the documents referred to herein, constitute the complete agreement and supersede any prior understandings, agreements or representations, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof.

11.7 These GTCs shall be governed by and construed in accordance with the law of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Delaware. Each of the parties hereby irrevocably agrees that any claim, dispute or controversy (of any and every kind or type, whether based on contract, tort, statute, regulation or otherwise, and whether based on state, federal, foreign or any other law), arising out of, relating to or in connection with these GTCs or the transactions between the parties shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the U.S. Federal District Court has exclusive jurisdiction over a particular matter, any federal court within the State of Delaware). Each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such action, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all claims in respect of the action shall be heard and determined only in any such court, and agrees not to bring any action arising out of or relating to these GTCs in any other court.