General Terms and Conditions

Potential Profiling GmbH - Version for business customers

These General Terms and Conditions govern the provision of psychometric assessment instruments via the Thomas International online platform, together with the related certification, training and service offerings of Potential Profiling GmbH. They are directed exclusively at business customers.

Section 1. Scope, Contracting Parties, Order of Precedence

(1) These General Terms and Conditions (the "GTC") apply to all contracts between Potential Profiling GmbH, Am Heumarkt 3/1/47, 1030 Vienna, Austria ("Potential Profiling") and its customers (the "Customer") concerning the provision of psychometric assessment instruments, the use of the associated online platform, and certifications, training courses and accompanying services.

(2) Potential Profiling's offering is directed exclusively at entrepreneurs within the meaning of Section 1 of the Austrian Commercial Code (UGB) and at legal entities under public law. No contracts are concluded with consumers within the meaning of the Austrian Consumer Protection Act. The Customer warrants that it enters into the contract in the course of its commercial or independent professional activity.

(3) These GTC apply exclusively. Deviating, conflicting or supplementary terms of the Customer, in particular purchasing conditions, do not become part of the contract unless Potential Profiling expressly consents to their application in text form. This also applies where Potential Profiling performs without reservation in the knowledge of such terms.

(4) Where a framework agreement or other individual agreement exists between the parties, its provisions prevail over these GTC in the event of conflict. In all other respects, these GTC apply on a supplementary basis.

(5) These GTC, in the version agreed in each case, also apply to all future contracts with the same Customer without any need for renewed reference.

(6) The GTC are made available to the Customer in text form prior to conclusion of the contract. Where the contract is concluded via the online platform, the GTC are available there and must be actively confirmed by the Customer before the order is submitted.

Section 2. Subject Matter and Scope of Services

(1) Potential Profiling is the authorised distributor of Thomas International Ltd., United Kingdom ("Thomas International"), and provides its psychometric instruments – in particular analysis of behavior, personality and competencies – via a web-based platform as software as a service.

(2) The Customer's sole contracting party is Potential Profiling. No direct contractual relationship arises between the Customer and Thomas International.

(3) The specific scope of services follows from the quotation, the order confirmation and the price list applicable at the time. Statements in marketing materials, product descriptions or presentations do not constitute warranties as to specific characteristics.

(4) Clarification regarding artificial intelligence: the instruments provided are based on validated, rule-based scoring algorithms. They do not contain AI systems within the meaning of Regulation (EU) 2024/1689 (AI Act). Potential Profiling does not carry out automated decision-making within the meaning of Article 22 GDPR. The interpretation of results and any personnel decision based on them rest exclusively with the Customer.

(5) Potential Profiling and Thomas international are entitled to further develop the platform and the instruments, provided that the contractually owed functional scope is not materially restricted as a result. Potential Profiling will notify the Customer of material restrictions in text form at least eight weeks before they take effect; in that case the Customer may terminate the contract extraordinarily with effect from that date.

(6) If an instrument for which the Customer has already purchased units or packages is permanently discontinued, Potential Profiling will provide an equivalent or superior instrument in the same price category within twelve months, or refund the pro-rata value of the unused entitlements.

Section 3. Conclusion of Contract

(1) Quotations from Potential Profiling are non-binding unless expressly designated as binding. Quotations designated as binding remain valid for 30 days from their date of issue.

(2) The contract is concluded upon order confirmation in text form, upon countersignature of the quotation by the Customer, or upon activation of the account or provision of the service by Potential Profiling.

(3) Orders placed by the Customer via the platform or in text form are binding for a period of 14 days.

Section 4. Certification as a Prerequisite for Use

(1) The psychometric instruments may only be administered, scored and debriefed by individuals holding a valid certification for the relevant instrument recognised by Potential Profiling or Thomas International.

(2) The Customer's certified users provide a declaration regarding the “Ethical Principles for the Use of Thomas Assessments”. The Customer ensures that these principles are observed within its organization.

(3) The Customer ensures that access credentials are not passed on to non-authorized individuals or third parties, that access is granted on a named-user basis, and that access for departing employees is deactivated without delay. The Customer notifies Potential Profiling immediately of any suspected unauthorised access.

(4) In the event of breaches of this Section, Potential Profiling is entitled to suspend the affected accounts following prior warning and the setting of a reasonable remedy period. In the case of serious or repeated breaches, a right of extraordinary termination applies. The Customer's payment obligation for the agreed service period remains unaffected in such cases.

(5) Where required, a fee currently amounting to EUR 1,500 net per company per training (any number of participants) applies for the certification. The price list applicable at the time is decisive.

Section 5. Provision, Availability and Support

(1) Newly ordered services are generally made available within 72 hours of order confirmation or receipt of payment. This is a target value and not a warranted characteristic. Creation of the customer account or crediting of the ordered units or packages constitutes fulfilment of the provisioning obligation.

(2) The technical operation of the platform is performed by Thomas International. Potential Profiling will use reasonable efforts, in line with the state of the art and within the scope available to it as a distributor, to achieve the highest possible availability of the platform and the services, and will forward disruptions to Thomas International without delay and follow up on their resolution.

(3) Maintenance and update work is carried out outside core hours (Monday to Friday, 08:00 to 18:00 CET/CEST) where possible. Potential Profiling will announce planned work expected to have a significant impact as soon as it receives the relevant information from Thomas International.

(4) Potential Profiling provides German-language user support by e-mail and telephone on Austrian business days, Monday to Thursday from 09:00 to 17:00 and Friday from 09:00 to 14:00. An initial substantive response is generally provided within one business day. User support is included in the annual service fee; certifications, training courses and project-related consulting services are excluded.

(5) The handover point for Potential Profiling's services is the exit of the relevant data centre. The internet connection, end devices, browsers and operating systems used, and IT security within the Customer's sphere of responsibility are the Customer's sole responsibility. In particular, the Customer ensures that communication with the platform servers is not blocked by its own security infrastructure.

(6) Assessment data is processed and stored on servers located in Member States of the European Union.

Section 6. Units and Participant Packages

(1) Units (credits) are accounting units entitling the Customer to administer and score individual assessments. Purchased units remain valid for 24 months from the date they are credited to the customer account.

(2) Participant packages entitle the Customer to use the agreed scope of services for the term stated in the order confirmation, being either twelve or 24 months. No separate unit charges apply within this term; the annual service fee is included in the package price.

(3) Upon expiry of the validity period, unused units and unexhausted package entitlements lapse without compensation; there is no claim to refund or extension. Potential Profiling will notify the Customer in text form of the impending expiry and the remaining balance no later than 14 days before expiry. If this notification is omitted, validity is extended by 14 days from receipt of the subsequent notification.

(4) Units and package entitlements may be used freely within the customer account but are not transferable to third parties. In the event of an intra-group restructuring of the Customer, Potential Profiling will consent to a transfer to an affiliated company provided that company meets the requirements of Section 4; such consent will not be unreasonably withheld.

(5) Units and packages cannot be exchanged for cash. Section 2(6) remains unaffected.

Section 7. Rights of Use, Intellectual Property and Result Data

(1) Potential Profiling grants the Customer, for the duration of the contractual relationship, the non-exclusive, non-transferable and non-sublicensable right to use the platform and the agreed instruments within the contractually defined scope for its own internal business purposes.

(2) Without a separate written agreement, the following are not permitted in particular: transfer, rental or sublicensing to third parties, and use of the instruments to provide services to third parties, for example in the context of consulting, recruitment agency or outsourcing services.

(3) The Customer acknowledges that the instruments, the platform, the scoring logic, the reports and all manuals and accompanying documentation are protected by copyright and constitute trade secrets within the meaning of Sections 26a et seq. of the Austrian Act against Unfair Competition (UWG). The Customer will do nothing that facilitates unauthorised use and will not, in particular, reverse engineer, decompile or disassemble the software. Mandatory statutory rights, in particular under Section 40e of the Austrian Copyright Act, remain unaffected.

(4) As between the parties, all rights in the result data collected by the Customer and in the reports generated from it belong to the Customer. Potential Profiling and Thomas International are entitled to use exclusively anonymised and aggregated data for the purposes of norming, validation and statistical quality assurance of the instruments. Any attribution to individual persons or to the Customer is excluded.

(5) The Customer may use trademarks, logos and other identifiers of Potential Profiling and Thomas International only in the context of the intended use of the reports and only without modification.

Section 8. Customer Obligations

(1) The Customer provides the cooperation required for performance in good time, in full and free of charge. This includes in particular the nomination of contact persons, the provision of necessary information and ensuring the technical prerequisites.

(2) The Customer is responsible for the lawful use of the instruments within its sphere of responsibility. In particular, it ensures that a sound data protection basis exists, that data subjects are properly informed, that any required consents are obtained, and that any co-determination rights of the works council, in particular under Section 96 of the Austrian Labour Constitution Act (ArbVG), are observed.

(3) The results of the instruments are designed as a supplementary decision aid. The Customer will not use them as the sole basis for personnel decisions.

(4) The Customer is responsible for the IT security of its devices and networks and for the compatibility of the browsers and operating systems it uses with the system requirements notified by Potential Profiling.

Section 9. Term, Termination, Data Export and Deletion

(1) Unless otherwise agreed, contracts for use of the platform and for participant packages are concluded for a term of twelve months from activation of the account.

(2) The contract is extended by a further twelve months in each case unless terminated by either party in text form giving two months' notice to the end of the respective term.

(3) The right of either party to terminate extraordinarily for good cause remains unaffected. Good cause exists for Potential Profiling in particular where the Customer is in default of a due payment for more than 30 days following a written reminder, or where the Customer seriously breaches Section 4 or Section 7.

(4) Switching and data portability of EU Regulation 2023/2854 (Data Act): the Customer may at any time request a switch of responsibilities within the company. Potential Profiling will remove contractual and — to the extent possible for it as a distributor — technical obstacles to switching and will support the Customer to a reasonable extent, in particular by providing the platform's export and reporting functions in common formats. No switching charge is levied.

(5) Until the end of the contract, the Customer may retrieve and export all reports and result data using the platform's functions. Following the end of the contract, the Customer may for a further 30 days request an export of the data still stored, such request to be made in text form.

(6) Following expiry of the period under paragraph 5, the personal data stored in the customer account is deleted within 30 days, unless statutory retention obligations apply. On request, Potential Profiling will confirm deletion in text form.

(7) Upon termination of the contract, all rights of use and all access rights of the Customer expire. Services already rendered and commenced billing periods remain payable.

Section 10. Prices, Payment Terms and Price Adjustment

(1) All prices are net prices plus statutory value added tax and any shipping costs. Prices are based on the price list applicable at the time, including the volume tiers set out therein.

(2) Unless otherwise agreed, payment is due within 14 days of the invoice date without deduction. Fees for certifications and training courses are due no later than 14 days before the first day of the event. No cash discount may be deducted.

(3) In the event of default in payment, Potential Profiling is entitled to charge default interest at the statutory rate under Section 456 UGB, reminder fees of EUR 20 per reminder for a maximum of three reminders, and the flat-rate collection cost compensation of EUR 40 under Section 458 UGB. Further necessary and appropriate costs of legal enforcement are reserved. Following an unsuccessful reminder with a 14-day grace period, Potential Profiling is entitled to suspend the Customer's access until payment is received; the Customer's payment obligation remains unaffected.

(4) The Customer may set off only against counterclaims that are undisputed or have been finally determined by a court. The assertion of rights of retention arising from other contractual relationships is excluded.

(5) Price adjustment: Potential Profiling may adjust prices for the respective following contract period. The adjustment must be notified to the Customer in text form no later than four weeks before expiry of the current term and takes effect at the earliest from the beginning of the following period. Where the increase exceeds five per cent of the previous fee, the Customer may terminate the contract extraordinarily to the end of the current term within four weeks of receipt of the notification. Units and packages already purchased are unaffected by price adjustments.

(6) For the shipment of physical documents, actual costs are charged, subject to a minimum of EUR 20 net.

Section 11. Certifications, Training Courses and On-Site Services

(1) By issuing the order confirmation or invoice, Potential Profiling confirms the participation of the nominated individuals in the relevant event.

(2) Where an event must be rescheduled for reasons attributable to Potential Profiling, the registered participants will be informed promptly and offered two alternative dates. If no event takes place on those dates either, the Customer may withdraw from the contract; fees already paid will be refunded.

(3) The Customer may nominate substitute participants at any time free of charge.

(4) Cancellation terms: cancellation is free of charge up to and including 31 days before the start of the event. From the 30th day up to and including the 15th day before the start of the event, 50 per cent of the fee is charged. From the 14th day before the start of the event, and in the event of non-attendance without nomination of a substitute, the full fee is charged. Receipt of the cancellation in text form by Potential Profiling is decisive.

(5) Rebooking to another date is possible free of charge on one occasion up to 15 days before the start of the event. Following a rebooking, further rebooking and free cancellation for the same event are excluded.

(6) For open enrolment events, refreshments and lunch are included in the fee. For in-house events, the Customer provides the premises, technical equipment and catering and bears the associated costs.

(7) For in-house training courses, the fee is currently EUR 1,800 net per training day unless otherwise agreed. Travel time and travel expenses are charged on the basis of actual expenditure (rail first class, car at the official mileage rate, air travel in economy class, accommodation against receipts). The nature and expected amount of travel expenses are agreed with the Customer before the order is placed.

Section 12. Shipment of Documents and Transport Damage

(1) Where externally visible damage to delivered physical documents is apparent, the Customer must have this confirmed by the carrier on the freight documents.

(2) Other transport damage must be notified to Potential Profiling in text form without delay, and in any event within five business days of receipt of the consignment. Otherwise, insurance or compensation payments may be forfeited.

(3) The risk of accidental loss and accidental deterioration passes upon delivery to the Customer.

Section 13. Warranty

(1) The provision of the platform constitutes a continuing obligation. Potential Profiling owes provision in a condition suitable for contractual use throughout the term of the contract.

(2) The Customer notifies defects in text form without delay upon discovery, providing a comprehensible description of the symptoms. For deliveries of physical goods, the duty to inspect and give notice under Section 377 UGB remains unaffected.

(3) Potential Profiling will remedy notified defects within a reasonable period or provide a reasonable workaround. If remediation fails twice, the Customer may demand a reasonable reduction in price or terminate the contract with prospective effect in respect of the affected service.

(4) No warranty applies to impairments attributable to circumstances within the Customer's sphere, in particular its network, end devices, browsers or security infrastructure, nor to the consequences of improper application or of use by non-certified individuals.

(5) For deliveries of physical goods, the warranty period is twelve months from delivery. Rights of recourse remain unaffected.

(6) Potential Profiling does not warrant that the instruments are suitable for any particular purpose pursued by the Customer. Assessment of suitability in the individual case rests with the Customer's certified users.

Section 14. Liability

(1) Potential Profiling is liable without limitation for intent and gross negligence, for damage arising from injury to life, body or health, under the Austrian Product Liability Act, for fraudulently concealed defects, and to the extent of any expressly assumed guarantees.

(2) In cases of slight negligence, Potential Profiling is liable only for breach of material contractual obligations, that is, obligations whose fulfilment is essential to the proper performance of the contract and on whose observance the Customer may regularly rely. In such cases liability is limited to the foreseeable damage typical for this type of contract at the time of conclusion. Liability for slight negligence is otherwise excluded.

(3) Liability under paragraph 2 is limited, for all damaging events in a contract year taken together, to the net fees paid by the Customer in the twelve months preceding the event causing the damage. Paragraph 1 remains unaffected.

(4) Compensation for indirect damage, loss of profit and pure financial loss is excluded in cases of slight negligence. Potential Profiling is liable for the cost of restoring data only to the extent that the Customer has made customary data backups.

(5) Potential Profiling is not liable for decisions taken by the Customer on the basis of assessment results. Responsibility for personnel decisions and their legal admissibility rests with the Customer.

(6) The above limitations of liability apply to the same extent for the benefit of the legal representatives, employees and vicarious agents of Potential Profiling.

Section 15. Force Majeure

(1) Events of force majeure that materially impede or prevent a party's performance release the affected party from its performance obligations for the duration of the disruption. Force majeure includes in particular natural disasters, war, acts of terrorism, epidemics and pandemics, official measures, large-scale failures of power or telecommunications networks, and industrial action not instigated within the party's own operations.

(2) The affected party will inform the other party without delay of the occurrence and expected duration of the disruption.

(3) If the disruption lasts longer than 60 days, either party may terminate the affected contract with immediate effect. No claims for damages arise on account of the disruption. Remuneration for services already rendered remains payable.

Section 16. Data Protection

(1) With regard to the personal data processed in the context of the assessments, the Customer is the controller within the meaning of Article 4(7) GDPR. Potential Profiling acts in this respect as a processor within the meaning of Article 28 GDPR.

(2) The details of the processing are governed by the data processing agreement or data protection commitment, which forms an annex to and part of the contract. In the event of conflict, its provisions prevail over these GTC.

(3) Potential Profiling engages Thomas International Ltd. as a sub-processor. The Customer consents to this engagement. Potential Profiling will notify intended changes to the roster of sub-processors with reasonable advance notice; the Customer may object on important objective grounds.

(4) Assessment data is stored and processed on servers located in Member States of the European Union. Where supporting access takes place from the United Kingdom, such access is based on European Commission adequacy decision (EU) 2021/1772 as amended by the implementing decision of 19 December 2025, which applies until 27 December 2031. Should that decision cease to apply, the parties will conclude the European Commission's standard contractual clauses without delay.

(5) As controller, the Customer ensures the lawfulness of processing, in particular the existence of a legal basis, fulfilment of information obligations towards data subjects, and observance of data subject rights. Potential Profiling supports the Customer in this to the extent provided for by law.

(6) Section 9(5) and (6) apply to the deletion of data following the end of the contract.

(7) Potential Profiling processes the Customer's contact, contract and billing data as controller in its own right on the basis of Article 6(1)(b) and (f) GDPR. Further information is set out in Potential Profiling's privacy notice.

Section 17. Confidentiality

(1) Both parties undertake to keep confidential all confidential information of the other party received in the course of the cooperation, to use it only for the purposes of performing the contract, and to make it accessible only to those persons who require it for performance of the contract and who are subject to a corresponding duty of confidentiality.

(2) Confidential information includes in particular prices and terms, scoring logic and report structures, result data, and all information marked as confidential or confidential by its nature.

(3) The obligation does not apply to information that is or becomes publicly known without breach of this agreement, that was already known to the receiving party before disclosure, that was lawfully obtained from third parties without any confidentiality obligation, or whose disclosure is required by mandatory statutory or official order.

(4) The obligation applies for the term of the contract and for three years following its termination. Statutory protection of trade secrets under Sections 26a et seq. UWG remains unaffected.

Section 18. Reference to the Customer

(1) Potential Profiling is entitled, with the Customer's prior consent in text form, to include the Customer's company name and Logo in a reference list and to name it in its own corporate communications.

(2) The use of images or descriptive case studies requires the Customer's separate consent.

(3) The Customer may revoke consent at any time in text form with prospective effect.

Section 19. Amendments to these Terms

(1) Potential Profiling may amend these GTC with effect for future contract periods, in particular to reflect changes in the law, in case law or in the scope of the services offered.

(2) Amendments are notified to the Customer in text form at least eight weeks before they take effect. The Customer may object to the amendments in text form within four weeks of receipt of the notification.

(3) If the Customer objects, the previous version continues to apply for the current contract period; in that case Potential Profiling may terminate the contract to the end of the current term. If the Customer does not object, the amended terms apply from the beginning of the following period. Potential Profiling will draw specific attention to this consequence in the notification of amendment.

Section 20. Final Provisions

(1) Amendments and additions to the contract, including to this clause, require text form. Transmission by e-mail satisfies the text form requirement.

(2) The Customer may transfer rights and obligations under the contract to third parties only with Potential Profiling's prior consent; such consent will not be unreasonably withheld. Transfers to a company affiliated with the Customer must be notified to Potential Profiling.

(3) The place of performance for all services and payments is Potential Profiling's registered office in Vienna.

(4) Austrian law applies, excluding its conflict-of-law rules and excluding the UN Convention on Contracts for the International Sale of Goods.

(5) The exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationship is the court with subject-matter jurisdiction for Vienna Inner City. Potential Profiling is additionally entitled to bring proceedings at the Customer's general place of jurisdiction.

(6) Should any provision of these GTC be or become invalid or unenforceable, the validity of the remaining provisions remains unaffected. The parties will replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps.

(7) The language of the contract is German. Translations of these GTC serve solely to aid understanding; in case of doubt and in the event of discrepancies, the German version prevails.

Vienna, 1 August 2026
Potential Profiling GmbH