

## TERMS AND CONDITIONS OF ENGAGEMENT FOR ATTORNEYS

### 1. Scope of Application

1.1. These Terms and Conditions apply to all legal services and acts of representation in court and out of court, as well as before authorities, which are undertaken in the course of a prevailing contractual relationship between the attorney/the attorneys' company (hereinafter also simply referred to as "*attorney*") and the client (hereinafter also referred to as "*mandate*").

1.2. In the absence of any written agreement on the contrary these Terms and Conditions shall also apply to any engagements of the attorney by the client (including all legal services and acts of representation in court and out of court, as well as before authorities, which are undertaken in the course of the mandate) as well as to any extensions of the scope of existing mandates and any subsequent future engagements.

1.3. Any reference to these Terms and Conditions contained herein shall also include any mandate and fee agreements entered into by the Parties.

### 2. Mandate and Power of Attorney

2.1. The attorney is entitled and obliged to represent the client to the extent that is necessary and expedient in order to comply with the mandate.

In the event that the legal situation changes after the mandate has ended, the attorney is not obliged to draw the client's attention to these changes or the consequences resulting from them.

2.2. When so requested, the client shall sign a written power of attorney for the attorney. This power of attorney entitles the attorney to take either individual, precisely defined or all possible legal services or acts.

2.3. The legal consulting services shall be rendered exclusively in matters pertaining to Austrian law, but not to foreign law. Consequently, the attorney shall bear no liability for lack of expertise in foreign law related questions. The law of the European Union shall not be deemed foreign law, however the laws of its individual member states shall be deemed foreign law. In cases containing an international dimension the attorney shall render his services in cooperation with local legal advisors.

2.4. The legal consulting services shall not include tax or fiscal law related matters. In these matters the client is advised to contact tax and/or fiscal professionals.

2.5. Legal opinions and other written statements shall be prepared exclusively for the client and shall be disclosed to any third parties with the attorney's prior consent only.

### **3. Principles of Representation**

3.1. The attorney shall perform the representation entrusted to him in conformity with statutory provisions and to represent the rights and interests of the client vis-à-vis everyone applying diligence, loyalty and conscientiousness.

3.2. As a matter of principle, the attorney is authorised to carry out his services at his own discretion and to take all measures, especially to use all means of prosecuting and defending a case, as long as they do not conflict with the client's mandate, the attorney's conscience or the law.

3.3. If the client issues an instruction, compliance of which is incompatible with the principles for the proper exercise of the profession of the attorney, based on statutory provisions or other statutory regulations regarding codes of conduct (e.g. the *Richtlinien für die Berufsausübung der Rechtsanwälte* [RL-BA]), i. e. the *Guidelines for the Exercise of the Profession of Attorneys* or the common practice regarding awards of the Supreme Commission for Appeals and Disciplinary Measures for Attorneys and Trainee Attorneys [OBDK]), the attorney shall reject the instruction. If the attorney considers instructions to be inappropriate for, or even to the detriment of the client, the attorney shall inform the client of the possibly negative consequences before carrying out the client's instructions.

3.4. In the event of imminent danger the attorney is authorised to take or to refrain an act, although this may not expressly be covered by the mandate or is contrary to the given instructions, if this appears to be urgently required in the interest of the client.

#### **4. Client's Obligation to Provide Information and to Cooperate**

4.1. After the client has entered into a mandate, the client is obliged to provide the attorney with all information and facts, without delay, which may be of significance for complying with the mandate, as well as to make available all required documents and means of evidence to the attorney.

The attorney has the right to assume that the information, facts, certificates, documents and means of evidence are correct, unless their incorrectness is obvious.

For obtaining all facts the attorney shall ask the client target-oriented questions and/or use other appropriate methods. The second sentence of section 4.1 applies to the correctness of the supplementary information.

4.2. During the term of the mandate the client is obliged to inform the attorney in case of changed or newly arising circumstances which might be of significance in connection with the performance of the mandate, immediately after they have come to the client's attention.

#### **5. Obligation of Confidentiality, Collision of Interests**

5.1. The attorney is bound by professional secrecy in all matters which have been entrusted to him and all facts which he gets to know in his capacity as an attorney, if the confidentiality is in the interest of his client.

5.2. Within the terms of applicable laws and guidelines, the attorney is entitled to assign to all staff members the processing of matters, to the extent that there is a proof that these staff members have been instructed of the obligation to maintain confidentiality.

5.3. The attorney shall be released from the duty of confidentiality only to the extent that is necessary in order to prosecute the attorney's claims (especially claims for the attorney's fee) or to defend claims against the attorney (especially claims for damages by the client or third parties against the attorney).

5.4. The client may release the attorney from the obligation of confidentiality at any time. This release from the confidentiality by the client does not release the attorney from the obligation of verifying whether the attorney's statement is in the best interest of his client.

5.5. The attorney has to examine whether the performance of the mandate creates a risk of conflict of interests under the terms of the Regulations Regarding Attorney's Practices [Rechtsanwaltsordnung].

## **6. Attorney's Obligation to Inform the Client**

The attorney has to inform the client in sufficient detail, in oral or written form, about the actions taken in connection with the mandate.

## **7. Sub-Authorization and Substitution**

The attorney may ask a trainee attorney in attorney's services or another attorney, or that attorney's authorized trainee attorney, to represent the attorney (sub-authorization).

In the case of being prevented the attorney may pass on the mandate or individual activities to another attorney (substitution).

## **8. Fees**

8.1. In the absence of other agreement, the attorney is entitled to receive an adequate fee.

8.2. Also when agreeing on a lump sum or time based fee, the attorney – in addition to the attorney's fee – is at least entitled to the cost refund recovered from the opposing party, to the extent that this amount can be collected; otherwise, the attorney shall receive the agreed lump sum or time based fee.

8.3. The value added tax at the statutory rate shall be added to the fee due to/agreed with the attorney, as well as all required and appropriate expenses (e.g. for travelling expenses, telephone, telefax, copying) and the cash expenses incurred on behalf of the client (e.g. court fees).

8.4. The client takes note of the fact that estimates, made by the attorney, regarding the anticipated amount of the fee are without obligation and can not be regarded as a binding cost

estimate (as defined by § 5 (2) of the Austrian Consumer Protection Act [KSchG]), since it is in the nature of the attorney's performance that its scope can not be reliably assessed in advance.

8.5. The effort required for calculating the fee and preparing the invoice shall not be debited to the client. However, this does not apply to the effort required for translating the list of services provided, upon client's request, into another language than German. Unless there are other agreements, the effort for drawing up letters to the client's auditor, prepared upon client's request, e.g. stating the status of pending cases, assessing the risk for the purpose of setting aside provisions and/or reporting on the state of outstanding fees at a certain reporting date are debited to the client's account.

8.6. The attorney is authorised (but is not under an obligation) to send invoices at any random point in time, in any event, however, every quarter, as well as to ask for advances on the fee.

8.7. In the event that the client is an entrepreneur, an invoice forwarded to the client and properly broken down to its various items shall be deemed to have been approved, if the client does not oppose it in writing within one month of its receipt (receipt by the attorney is the decisive date).

8.8. The payment term for all invoiced amounts is 14 days from the date of invoice.

8.9. If the client is in delay with the paying all or a part of the fee, he shall pay interest on arrears to the attorney at the statutory amount, as a minimum, however, 4 % above the respectively applicable basic interest rate from the final day of the payment term.

Any further legal claims (e. g. pursuant to § 1333 of the Austrian General Civil Law Code [ABGB]) remain unaffected.

8.10. All expenses paid to courts or authorities (cash expenses) and costs (e. g. for sub-contracted performances by third parties) may be forwarded to the client – in the discretion of the attorney – for direct settlement by the client.

8.11. In the event that several clients enter into a mandate with the attorney, all clients are jointly and severally liable for any claims arising to the attorney in this connection.

8.12. Client's claims for cost refunds against the opposite party, in particular arising in connection with a judicial, administrative or arbitral dispute, are herewith assigned to the attorney in the amount of the attorney's fee, as soon as they arise. The attorney is authorised to inform the opposite party of this assignment at any time.

8.13. In case billing an hourly rate is agreed, the attorney shall bill his services in accordance with the most recently specified hourly rates and expenditure of time per each commenced half hour. The hourly rates depend on the professional experience and expertise of the engaged lawyers and associates. The hourly rates are stated in Euro, shall be regularly reviewed by the attorney and the client shall be notified of any changes. Services rendered by individual attorneys and/or associates shall be billed in a single invoice.

## **9. Retainer**

9.1. Retainer payments wired to the attorney shall be held in an escrow account for the time being. Once the services rendered are duly invoiced the attorney shall have the right to transfer the invoiced amount into his own account for his free disposal.

9.2. The attorney shall also have the right to cover from the retainer payments transferred into the escrow account all cash expenses to be made on behalf of the client.

9.3. In the event that an agreed retainer payment is not made in due time, the attorney shall have the right to rescind the mandate with immediate effect and to invoice the outstanding fees.

## **10. The Attorney's Liability**

10.1. The attorney's liability for faulty advice or representation is limited to the insured sum available in every specific case, but amounts at least to the insured sum indicated in § 21 a of the Regulations Regarding Attorney's Practices [Rechtsanwaltsordnung] in its respectively valid version. At present, the amount is € 400,000.00 (in words: euro four hundred thousand). If a mandate relationship has been entered with an attorneys' company in the legal form of a private limited company [GmbH] the amount is € 2,400,000.00 (in words: euro two million four hundred thousand). Any liability in excess of these maximum amounts is expressly waived herewith. The above maximum amount applicable comprises all claims existing against the attorney for faulty

advice and/or representation, such as, in particular, claims for damages and price reduction. In the presence of two or several competing damaged parties (clients), the maximum amount of each damaged party shall be reduced in proportion to the amounts claimed.

10.2. This restriction of liability shall apply to (i) each mandate granted to our firm, (ii) any liability towards third parties, e.g. out of a contract with protective effect for third parties, and (iii) damage due to gross or minor negligence; in the event that the client is a consumer, this restriction of liability applies only to events in which the damage is due to minor negligence.

10.3. Any liability for damage by attorneys not working on the respective case is expressly waived.

10.4. The attorney shall be liable for individual sub contracted services, provided by third parties with the consent of the client in the framework of the attorney's performance (especially external experts or foreign attorneys in cases containing an international dimension), who are neither staff members nor partners, only in case of fault in selecting the third party.

10.5 If an attorneys' company has been engaged the restrictions of liability pursuant to section 10.1 also apply to the benefit of all attorneys acting on behalf of the company (in their capacity as partners, managing directors, employed attorneys or in another function).

10.6. The attorney shall only be liable to the client but not to third parties. The client is obliged to expressly bring this circumstance to the attention of third parties who come into contact with the attorney's performance on account of the client's efforts.

## **11. Lapse / Preclusive Period**

Unless the law stipulates a shorter term of lapse or preclusion, all claims (excluding, however, warranty claims, if the client is not an entrepreneur as defined in the Austrian Consumer Protection Act [KSchG]) against the attorney shall lapse, unless the client has claimed them in court within six months (if the client is an entrepreneur) or within one year (if the client is not an entrepreneur) as of the date at which the client becomes aware of the damage and the damaging

party, or of the incident that otherwise gives rise to a claim, but at latest after the expiry of five years as of the conduct (infringement) causing the damage (giving rise to a claim).

## **12. Client's Legal Expenses Insurance**

12.1. In the event that the client has taken out legal expenses insurance, he shall inform the attorney thereof without delay and present the required documents (if available). However, independent of the foregoing, the attorney is also obliged to obtain information as to whether and to what extent there is insurance of legal expenses and apply for coverage under the legal expenses insurance.

12.2. The disclosure of legal expenses insurance by the client and obtaining coverage under the legal expenses insurance by the attorney do not affect the fee claim of the attorney against the client. Nor shall it be deemed as consent on the part of the attorney, i.e. to accept as the attorney's fee the payment made pursuant to the legal expenses insurance. The attorney shall draw the client's attention to this fact.

12.3. The attorney is not obliged to claim his fee directly from the legal expenses insurance, but may request payment of the full remuneration from the client.

## **13. Termination of the Mandate**

13.1. The client or the attorney may end the mandate at any time without observing a deadline and without giving any reasons. The attorney's fee claim remains unaffected by the foregoing.

13.2. In the event of a termination by the client or by the attorney, the attorney shall continue to represent the client another 14 days, inasmuch as this is necessary in order to protect the client against any legal detriment. This obligation does not apply in the event that the client revokes the mandate and states that he does not wish any further service by the attorney.

## **14. Obligation to Surrender**

14.1. The attorney shall return the originals of documents after the mandate relationship has ended upon the client's request. The attorney has the right to keep copies of these documents.



14.2. Whenever the client asks for further documents (copies of documents) after the end of the mandate, which the client already received during the term of the mandate, the client shall bear the costs incurred in this connection.

14.3. The attorney is obliged to keep the files for a period of five years as of the end of the mandate and to provide the client with copies, if so needed, during that time. Section 13.2 applies in analogy to such costs.

Whenever there are longer statutory periods pertaining to the obligation to keep documents, these shall be observed. The client agrees to the destruction of the files (also of original documents) after the expiry of the obligatory storage period.

### **15. Choice of Law and Jurisdiction**

15.1. The present Terms and Conditions and the client/attorney relationship governed by them shall be subject to Austrian substantive law.

15.2. Unless there are peremptory statutory provisions to the contrary, the parties agree on the sole competency of the court with jurisdiction over the subject matter at the seat of the attorney for all legal disputes arising from, or in connection with the contractual relationship, governed by the present Terms and Conditions, which also include disputes regarding its validity.

However, the attorney has the right to file claims against the client at any other court in Austria or abroad, which has competency over the place at which the client has his seat, domicile, place of business, or property.

The provisions on the legal venue as defined in § 14 of the Austrian Consumer Protection Act [KSchG] applies with regard to clients who are consumers as defined in the Austrian Consumer Protection Act [KSchG].

### **16. Final Provisions**

16.1. Changes or amendments of the present Terms and Conditions shall be made in writing in order to be valid, whenever the client is not a consumer as defined by the Austrian Consumer Protection Act [KSchG].

16.2. Communications by the attorney to the client shall, in any event, be deemed to have been received if they are sent to the address communicated by the client when retaining the attorney, or

to another address communicated subsequently in writing. However, the attorney may correspond with the client in any other form that is deemed to be appropriate, unless agreed to the contrary.

Any communication that needs to be in written form pursuant to the present General Terms and Conditions may also be forwarded by means of telefax or e-mail, unless there are other agreements.

Unless the client issues another written instruction, the attorney has the right to engage in e-mail communication with the client in unencoded form. The client states that he is aware of the attaching risk (especially access, confidentiality, alterations in communications in the course of forwarding) and accepts – in full awareness of these risks – that e-mail communication is conducted in unencoded form.

16.3. The client expressly agrees that the attorney processes, provides or communicates person related data regarding the client and/or the client's enterprise (as defined in the Austrian Data Protection Act) to such an extent as this appears to be necessary and expedient or results from statutory obligations or duties under the provisions on the exercise of the profession of legal counselling (e.g. to take part in the electronic legal data exchange, etc.), in order to comply with the tasks for which the client has retained the attorney.

16.4. Whenever one or several conditions of the present Terms and Conditions or of the contractual relationship governed by the present Terms and Conditions becomes invalid, this does not affect the validity of the remaining provisions. The contracting parties agree to replace the ineffective provision(s) by another provision that comes closest to the intended economic result.

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Attorney

Client