

Standard Consultancy Terms and Conditions

WAGENER & HERBST Management Consultants GmbH

§ 1 Applicability; non-application of the terms and conditions of our counterparty

1.1 These Standard Consultancy Terms and Conditions apply in respect of contracts with companies where the object of the contract is the provision of advice and information by the contractor to the client in connection with the planning, preparation and implementation of business or specialist decisions and projects in the following areas:

- business management/management consultancy
- human resources and social welfare
- marketing and distribution
- technology and logistics
- data processing including preparation for hardware and software selection decisions
- finance and accounting
- financial controlling
- administration and organisation
- foreign trade (export/import)
- company evaluations
- company purchases and sales

An entrepreneur within the meaning of these terms and conditions of business means any individual, legal entity or partnership that carries on a commercial or independent professional activity.

1.2 Differing terms and conditions of business of our client which we have not expressly approved shall not be binding on us even if we have not expressly rejected them.

1.3 Oral or written assurances which differ from our contractual terms and all side agreements and contractual amendments must be approved by the authorised number of members of our executive bodies or 'Prokuristen' (holders of commercial powers of attorney).

1.4 The client's terms and conditions of business shall only apply if this has been expressly agreed in writing.

§ 2 Object of the contract/scope of services; use of subcontractors; reservation regarding delivery by subcontractors

2.1 The object of the instruction is the agreed consultation work specified in the contract, not the achievement of a particular financial outcome or the drafting of expert reports or other works unless individual agreement to the contrary is reached.

2.2 Data supplied by third parties or by the client is only checked for plausibility. The conclusions and recommendations derived from the investigations shall be made to be the best of the contractor's knowledge and in accordance with recognised rules of research and practice.

2.3 Insofar as nothing to the contrary is agreed, the contractor may make use of expert subcontractors for carrying out the instruction; in this event the contractor shall always retain a direct obligation towards the client.

2.4 If subcontractors are used, delivery by the contractor is subject to punctual performance by

these subcontractors. This shall only apply where the contractor is not responsible for the failure of the subcontractor to deliver punctually, in particular where a congruent covering transaction has been entered into with the subcontractor.

The contractor shall inform the client without delay of the unavailability of its services. Any consideration already paid by the client shall be refunded by the contractor without delay.

§ 3 Non-disclosure obligation/data protection

3.1 The contractor is obliged without any time limit to keep secret all information and company or trade secrets of the client designated as confidential which become(s) known to the contractor in connection with the instruction. Such information or secrets may only be passed on to third parties who are not involved in the execution of the instruction with the written authorisation of the client.

3.2 The contractor undertakes to impose a written obligation of compliance with this provision on all persons employed by it in the execution of the instruction.

3.3 The contractor is authorised to process or have processed by a third party any personal data entrusted to it for the purposes of the contract subject to compliance with the applicable data protection provisions.

§ 4 Client's cooperation obligations

4.1 The client must make every effort to support the contractor and to ensure that all necessary prerequisites for proper execution of the instruction are in place in its operating environment; the client must ensure in particular that it makes available all necessary or relevant information for execution of the instruction in good time.

4.2 At the contractor's request the client is obliged to confirm in writing that the documents provided by it and also its information and oral statements are accurate and complete.

§ 5 Remuneration/payment terms/set-off

5.1 The fee for the services provided by the contractor will be calculated on the basis of the time spent on the activity (time-based fee) or agreed in writing as a fixed price. A fee payable in accordance with the degree of success achieved or only in the event of success is always excluded unless individual agreement to the contrary is reached. Insofar as nothing to the contrary is agreed, in addition to the fee claim the contractor has a claim for reimbursement of expenses. Details of the method of payment are stipulated in the contract.

5.2 The contractor's current price list at the time of conclusion of contract is applicable in each case. Increases in costs and/or services which occur after the conclusion of contract entitle the contractor to raise prices in line with these increases if there is a period of more than 2 months between conclusion of

contract and performance of services and the contractor is not responsible for the increase.

5.3 The contractor's claims become due upon invoicing and are payable immediately without deduction. If the contract is a contract for work and services (*Werkvertrag*), in accordance with the statutory provisions acceptance or, instead of acceptance, completion is an additional prerequisite for the invoice becoming due. Value added tax at the statutory rate shall be added to all pricings and shall be shown separately on invoices.

5.4 Multiple clients (individuals and/or legal entities) are liable jointly and severally.

5.5 The contractor's claims to remuneration and reimbursement of expenses may only be set off against undisputed claims or claims that have been finally determined by the courts.

§ 6 Limitations on liability

6.1 The following limitations on liability do not affect claims by the client on the basis of product liability. Likewise these limitations on liability do not affect loss or damage attributable to the contractor arising from loss of life, physical injury or damage to health. The contractor is not liable for breaches of immaterial contractual duties due to ordinary negligence.

In relation to other breaches of duty due to ordinary negligence the contractor's liability is limited to the direct average damage typical of the contract and foreseeable for the type of service involved. This shall also apply in relation to breaches of duty due to the ordinary negligence of the contractor's statutory representatives or any person employed by the contractor for whom the contractor is vicariously liable. For a single case of damage liability is limited to a maximum of €50,000.00. A single case of damage is defined as the total of the damages claims of all the parties entitled to claim arising from a single, temporally-linked, definable and thus unitary provision of service.

Damages claims by the client on account of a breach of duty by the contractor become time-barred one year after the end of the year in which the claim arose and the client became aware of the circumstances giving rise to the claim and the identity of the party liable or ought to have become aware of these matters but for its gross negligence.

This shall not apply if the contractor can be legitimately accused of fraudulent intent or gross negligence.

§ 7 Protection of intellectual property

7.1 The client warrants that the reports, organisation plans, drafts, drawings, lists and calculations prepared by the contractor in the connection with the instruction will only be used for the contractually agreed purposes and that they will not be made public without express consent in the individual case. Express written agreement is required for the use by associated companies of the client of the consultancy services provided.

7.2 Insofar as the consultancy results are capable of copyright protection, the contractor shall retain the copyright. In such cases the client shall receive the irrevocable, exclusive and non-transferrable right to use the consultancy results, such right of use being

unrestricted as regards time and territory, and restricted only by the provision contained in the first sentence of paragraph 1 above.

§ 8 Termination

8.1 Insofar as nothing to the contrary is agreed and insofar as the contract is not a contract for work and services, the instruction may be terminated on 14 days' notice to the end of a month. The right of extraordinary termination is not affected.

8.2 Notice of termination must be given in writing in order to be valid.

8.3 The contractor has the right to payment for any services provided up to the date of termination that were agreed with the client.

§ 9 Right of retention/storage of documents

9.1 The contractor shall have a right of retention in all documents provided to it until its claims have been settled in full; exercise of the right of retention shall, however, be contrary to good faith if the retention would cause the client a disproportionately high degree of damage or loss which, on weighing up the interests of both parties, is not justifiable.

9.2 After settlement of its claims under the contract the contractor must return all documents to the client which the client or any third party handed over to the contractor in connection with the execution of the instruction. This shall not apply in relation to the correspondence exchanged between the parties or to simple copies of the reports, organisation plans, drafts, drawings, lists, calculations etc. where the client has received the originals.

9.3 The contractor's obligation to store the documents shall expire six months after service of the written request for their collection or otherwise in three years and in the case of documents retained pursuant to clause 9 (1), five years after the end of the contractual relationship.

§ 10 Miscellaneous provisions

10.1 Rights arising out of the contractual relationship with the contractor may only be assigned with prior written consent.

10.2 The law of the Federal Republic of Germany shall apply exclusively in respect of all claims arising out of the contract.

10.3 The place of jurisdiction for all disputes under the contract is the contractor's principal place of business if the instruction was issued by a registered trader acting in the course of its commercial activity, a legal entity under public law or a special fund under public law. The contractor may, however, also institute proceedings at the place where the client's principal place of business is located.