

## **General Contractual Terms and Conditions**

### **1. Written Form**

Both contractual parties shall only be bound by agreements in written form (Sections 884, 886 Civil Code). Amendments of, and additions to the Contract shall also be made in writing to be valid.

### **2. Obligations of Confidentiality and Data Protection**

Contractor undertakes to comply with all legal confidentiality obligations, in particular with keeping confidential all knowledge obtained when performing the services, unless Principal has released him/her from this obligation in a specific case. Moreover, Contractor shall be liable without fault, when assigning the execution of services to other persons, unless he/she extends this confidentiality obligation also to all other persons he/she has contracted to progress the fulfilment of the services and employs only such staff or agents as have been expressly obligated in writing to maintain confidentiality pursuant to Section 11(1), item 2 of the Data Protection Act 2000, FLG. I No. 165/1999.

### **3. Obligation to Notify**

As soon as Contractor becomes aware of any circumstances which could put the fulfilment of the contract in question, he/she shall notify Principal without delay in writing about such circumstances and about any measures to be taken.

### **4. Additional Services**

If, in the course of implementing the contract, services are required which originally were not contractually agreed, Contractor shall obtain Principal's prior consent before performing such services. If the necessity or expediency of such services is mutually agreed upon, the corresponding remuneration shall be agreed upon at the same time, if such agreement is permissible, in particular pursuant to the provisions of the Federal Procurement Act 2002, FLG. I No. 99, as last amended, and in particular pursuant to Section 25(6) items 4 and 5 thereof. If Contractor performs services without previously agreeing remuneration in writing, Principal shall not be held to pay such remuneration.

### **5. Deficiencies**

Once Contractor has delivered the work to Contractor, he/she shall be obliged upon request by Principal to remedy any deficiencies (amendments or additions by supplying the missing items), or to replace the work without delay and without requiring additional remuneration. This must occur within a reasonable period of time and with minimum inconvenience to Principal

This obligation by Contractors shall expire, unless Principal has sent such a request to Contractor not later than 2 (two) years after having received the work (date of postmark or dispatch).

If a deficiency cannot be remedied or a replacement is not possible or would result in unreasonably high expenses for Contractor – in comparison with other remedies – or if Contractor has remedied the deficiency not at all, not in time or not completely, or if such action would cause major inconveniences to Principal or is unacceptable for justified reasons related to the person of Contractors, – whilst reserving the right to raise further claims irrespective of the legal basis from which they arise – the following shall apply:

- a) If a major deficiency has occurred, Contractor shall lose entitlement to remuneration pursuant to clause 3 of the Contract; amounts already received shall be paid back by Contractor with interests of 4% over and above the current base rate p.a., to be calculated as from date of receipt of such amounts.
- b) If only a minor deficiency has occurred, Principal is entitled to receive a proper reduction of the remuneration agreed.
- c) If in the cases of lit. a or b the deficiency can be remedied by a third party, Principal may raise an additional claim against Contractor – irrespective of any claims under lit. a or b – in compensation of the actual costs incurred in eliminating such deficiency, inasmuch such costs in the case of lit. a are in excess of the remuneration stipulated under clause 3, or in the case of lit. b are in excess of the price reduction agreed.

Principal may enter claims under lit. a to c by legal action not later than 6 months after the agreed time limit for amendments has expired, but in any case not later than 2 (two) years after receiving the work. If no specific time limit for amendments was agreed, the deadline for legal action shall be 1 (one) year after sending (date of postmark or dispatch) the request to remedy the deficiency, but not later than 2 (two) years after receiving the work.

## **6. Employment Contracts and Subcontractor Agreements**

If, within the framework of implementing the Contract, Contractor wishes to employ staff or conclude subcontractor agreements, Contractor shall act as employee or principal, conclude the relevant employment contracts and subcontractor agreements in his/her name and for his/her account and bear the obligations arising therefrom. Subcontractor agreements for performing professional tasks within the contractual services (clause 1) shall in any event require written prior consent by Principal. Contractor shall be liable for the faults of any person he/she has employed to progress the fulfilment of his/her contractual obligations to the same extent as for his/her own faults.

## **7. Intellectual Property**

The right to use the contracted work (or parts thereof) and all relevant results in any form or manner whatsoever – including the right of passing them on to third parties – shall exclusively reside with Principal.

## **8. Inventions**

If the contractual work has resulted in a new invention by Contractors, which can be patented or licensed, Contractor shall immediately notify Principal thereof and shall apply for a patent, provided Principal agrees, and transfer his/her rights derived from such patent to Principal.

## **9. Assignment of Interest**

Contractor may not mortgage, assign or transfer the rights under this contract, and any such action shall be invalid in relation to the Austrian Federation. Therefore, no direct money transfer shall be made to creditors of Contractor.

## **10. Cancellation**

Principal shall be entitled to cancel the contract at any time. Unless cancellation is based on clause 11, Principal shall reimburse Contractor for all expenses incurred and substantiated and pay a fee proportionate to the workload of Contractor to date and a cancellation fee of 10% of the fee which was payable for the work outstanding.

## **11. Termination**

Principal shall be entitled to terminate the contract with immediate effect,

- a) if Contractor has a receiving order made against him/her, or bankruptcy proceedings are dismissed for lack of assets. Termination of contract shall be possible for the duration until services are concluded;
- b) if Contractor falls behind schedule with the work; if partial work deliveries were agreed, and Contractor only misses the schedule with respect to one partial delivery, termination shall only involve such part or all partial deliveries still outstanding, unless the partial delivery already received has no or only little value for Principal. The notice of termination shall in any case include a reasonable grace period and shall only be legally valid if Contractor also fails to deliver the work still outstanding (partial work) within this grace period;
- c) if circumstances prevail which make it impossible to fulfil the contract in a timely manner, unless such circumstances are the fault of Principal;
- d) if Contractor concludes a subcontractor agreement without approval by Principal required as per clause 6 above;
- e) if Contractor directly or indirectly offers, promises or grants a financial advantage to a staff member of Principal involved in concluding and/or implementing the contract or to a third person;
- f) if Contractor himself or a person employed by him/her to fulfil the contract violates the confidentiality obligation under clause 2 above;
- g) if Contractor – in the case of several contractors even only one of them – dies or loses his/her self-employed status;
- h) if a major breach of the terms of the Contract has occurred; if such a breach of contractual obligations has occurred over a longer period of time and is being repeated notwithstanding written notices received;
- i) if Contractor engages in any activity detrimental to the interests of Principal, in particular if he/she enters into agreements with other firms to the disadvantage of Principal and contrary to standards of morality and fair competition.

If Principal has terminated the Contract under the provisions above, Contractor shall forfeit any claims to remuneration under clause 3 of the Contract, unless he/she has already delivered usable partial work to Principal. Unless Contractor can claim remuneration under clause 3 of the contract, he/she shall pay back to Principal any payments already received, subject to interests of 4% p.a. over and above the current base rate. If Contractor can prove not being responsible for the event causing the termination, the repayment amount will be subject to interests of 4% p.a. only as from date of receipt of such amounts.

If Contractor is responsible for the event causing the termination, Contractor shall compensate Principal also for any additional costs incurred by transferring the Contract to a third party, unless such costs are covered by the liquidated damages stipulated.

## **12. Several Contractors**

If several Contractors are employed, they have a joint liability to Principal for fulfilling all obligations under this Contract.

## **13. Exceeding Service Deadlines**

Unless otherwise agreed in the special section of the Contract, Contractor shall pay a contractual penalty of 1‰ of the remuneration stipulated under clause 3 of the Contract for each calendar day in excess of the service deadline.

The contractual penalty shall be due upon Contractor failing to deliver, and not being able to prove that he/she is not responsible for this failure; it is not necessary to furnish proof of any actual damage.

The contractual penalty shall be calculated for the period in excess of the service deadline until completion of the work; however, if the Contract was terminated before and the circumstances resulting in the termination were Contractor's fault, the contractual penalty shall be calculated only for the period until the termination notice was served to the contracting party – notwithstanding any other legal consequences of the termination. If a contractual penalty is not defined by days, but by months or weeks, one calendar day is calculated as 1/7 of a week or 1/30 of a month.

If Contractor violates his/her duties and obligations in the manner described in clause 11, lit. d, e and f by his/her own fault, Principal shall be entitled to raise a claim against Contractor for liquidated damages in the amount of 50% of the remuneration agreed under clause 3 of the Contract.

## **14. Contract Copies**

The contract shall be made in two copies of which each contracting party shall receive one.