

## **Model of General Terms and Conditions of Contract for Lawyers**

### **Entrepreneurs**

#### **1. Applicability**

1.1. The Terms and Conditions of Contract shall apply to all activities carried out and all representation provided in courts and public authorities and out of court under the contractual relationship between the lawyer/law firm (hereinafter referred to as the "Lawyer") and the Client (hereinafter referred to as the "Client-Lawyer Relationship").

1.2. Unless otherwise agreed in writing, the General Terms and Conditions of Contract shall also apply to new Client-Lawyer Relationships.

#### **2. Retainer agreement and power of attorney**

2.1. The Lawyer is entitled and obliged to represent the Client to the extent necessary or useful for fulfilling the contractual relationship. If the legal situation changes after termination of the Client-Lawyer Relationship, the Lawyer shall be under no obligation to inform the Client about changes or consequences resulting therefrom.

2.2. Upon request, the Client shall sign a written power of attorney for the Lawyer. The power of attorney may cover either specific, exactly defined or all potential legal transactions or legal acts.

#### **3. Principles of representation**

3.1. The Lawyer shall provide the representation sought in accordance with the law and represent the Client's rights and interests vis-à-vis everyone with diligence, loyalty and conscientiousness.

3.2. As a matter of principle, the Lawyer is entitled to render his services at his own discretion and to take any and all steps, including but not limited to employing means of attack and defence in any way, unless this is in conflict with the Client's instruction, his conscience or the law.

3.3. If the Client gives the Lawyer an instruction compliance with which is incompatible with the principles of proper professional conduct of lawyers based on the law or other professional rules (e.g. the Austrian Guidelines on Practising as a Lawyer [RL-BA 2015] or the line of decisions of the Appellate Panel and the Disciplinary Panels for Lawyers and Trainee Lawyers at the Austrian Supreme Court [*der Berufungs- und die Disziplinarsenate für Rechtsanwälte und Rechtsanwaltsanwärter beim Obersten Gerichtshof*] and of the former Supreme Appellate and Disciplinary Commission for Lawyers and Trainee Lawyers [*Oberste Berufungs- und Disziplinarkommission für Rechtsanwälte und Rechtsanwaltsanwärter/OBDK*]), the Lawyer shall refuse to follow the instruction. If, from the Lawyer's point of view, instructions are not expedient or even detrimental to the Client, the Lawyer shall inform the latter of any potential negative consequences before acting on his behalf.

3.4. In the case of imminent danger the Lawyer is entitled to take or refrain from taking actions that are not expressly covered by or are even contrary to the instruction given if this seems to be urgently required in the Client's interest.

#### **4. Client's duty to provide information and to cooperate**

4.1. After he has retained the Lawyer, the Client shall immediately provide the Lawyer with all information and the facts that may be relevant in connection with the latter's work on behalf of the Client and make accessible all necessary documents and evidence. The Lawyer is entitled to assume that information, facts, documents, records and means of evidence are accurate, unless inaccuracy of the same is obvious.

The Lawyer shall seek to obtain complete and accurate information on the facts and circumstances by asking the Client specific questions and/or by other suitable means. As regards accuracy of supplementary information the second sentence of Clause 4.1 shall apply.

4.2. As long as the Client-Lawyer Relationship validly exists the Client shall inform the Lawyer about all changed or newly occurring circumstances that could be of relevance in connection with the Lawyer's work on behalf of the Client immediately after they have become known to him.

4.3. If the Lawyer acts as draftsman of a contract, the Client shall provide the Lawyer with all information required for self-calculation of land acquisition tax, the registration fee and real estate income tax. If the Lawyer does the self-calculation on the basis of information provided by the Client, the Lawyer shall in any case be released from any liability vis-à-vis the Client. The Client, on the other hand, shall indemnify and hold harmless the Lawyer from and against pecuniary disadvantages in the case that information provided by the Client turns out to be wrong.

#### **5. Obligation to maintain secrecy; Conflict of interests**

5.1. The Lawyer shall keep secret all matters confided to him and any other information which becomes known to him in his professional capacity, secrecy of which is in his Client's interest.

5.2. The Lawyer is entitled to ask all staff to handle matters within the scope of applicable laws and guidelines, provided that the staff has been informed about the obligation to maintain secrecy in a manner that can be evidenced.

5.3. The Lawyer shall be released from his obligation to maintain secrecy only to the extent that this is necessary for pursuing the Lawyer's claims (including but not limited to the Lawyer's fee) or for defending himself against claims raised against him (including but not limited to claims for damages raised against the Lawyer by the Client or third parties).

5.4. The Client is aware of the fact that due to statutory orders the Lawyer may in some cases be obliged to provide information or to make reports to public authorities without having to obtain the Client's approval; particular reference is made to the statutory provisions on the prevention of money laundering and terrorist financing and to tax-law provisions (e.g. the Austrian Statute on Account Registers and Inspection of Accounts [*Kontenregister- und Konteneinschaugesetz/KontRegG*], the Austrian Act on Common Reporting Standards [*Gemeinsamer Meldestandard-Gesetz/GMSG*], etc.).

5.5. The Client may release the Lawyer from his obligation to maintain secrecy at any time. No release from the obligation to maintain secrecy by his Client shall release

the Lawyer from the obligation to check whether his statement is in line with the Client's interest. If the Lawyer acts as a mediator, he shall exercise his right to maintain secrecy despite having been released from the obligation to maintain secrecy.

5.6. The Lawyer shall examine whether his work for the Client would result in a conflict of interest as defined by the provisions of the Austrian Lawyers' Code [*Rechtsanwaltsordnung/RAO*].

## **6. Lawyer's reporting duty**

The Lawyer shall orally or in writing reasonably inform the Client of the actions taken by him in connection with representation of the Client.

## **7. Delegation of powers**

The Lawyer may have himself represented by a trainee lawyer employed by him or by any other lawyer or that lawyer's qualified trainee lawyer [*Unterbevollmächtigung*]. If the Lawyer is not available, he may delegate the job or specific actions to any other lawyer [*Substitution*].

## **8. Fee**

8.1. Unless otherwise agreed, the Lawyer is entitled to a reasonable fee.

8.2. Even if a lump-sum fee or billing by the hour has been agreed, the Lawyer is at least entitled to the amount of reimbursement of the costs obtained from the opponent in excess of the agreed fee, provided that such amount can be recovered; otherwise he is entitled to the agreed lump-sum fee or hourly fee.

8.3. If the Lawyer is included in the carbon copy of an e-mail from the client or the client's sphere, the Lawyer is not obliged to read the e-mail without being instructed explicitly. However, if the Lawyer reads the e-mail, he is entitled to a fee according to an explicit agreement for comparable services or according to the "Rechtsanwaltstarifgesetz" (RATG – Lawyers' Fees Act) or the "Allgemeine Honorarkriterien für Rechtsanwälte" (General Fee Criteria for Lawyers).

8.4. Value-added tax at the statutory rate, any necessary and reasonable expenses (e.g. travel expenses, costs of phone, fax or copies) and the out-of-pocket expenses paid by the Lawyer on behalf of the Client (e.g. court fees) shall be added to the fee payable to/agreed with the Lawyer.

8.5. The Client acknowledges that an estimate made by the Lawyer of the expected amount of fees which has not been explicitly defined as binding shall be non-binding and not be considered a binding quotation (as defined in Section 5 (2) of the Austrian Consumer Protection Act [*Konsumentenschutzgesetz/KSchG*], as the amount of work to be rendered by the Lawyer cannot be reliably assessed in advance due to its nature.

8.6. The Client shall not be charged the costs of billing and preparation of bills of fees. However, this shall not apply to the costs of a translation of statements of services into a language other than German that is requested by the Client. Unless otherwise agreed, the Client shall be charged for preparation of letters to the Client's auditor at the Client's request stating, for instance, the status of pending cases, a risk assessment for setting up provisions and/or the status of outstanding fees as at the closing of accounts date.

8.7. The Lawyer shall be entitled to submit bills of fees or ask for advances on fees at any time and in any case once every quarter.

8.8. A properly itemised bill of fees sent to the Client shall be deemed approved unless the Client objects thereto in writing within one (1) month of receipt (receipt by the Lawyer shall be decisive).

8.9. If the Client is late in paying the total or a portion of the fee, he shall in any case pay late payment interest at the statutory rate of 4%. If the Client is responsible for such late payment, the statutory interest rate shall amount to 9.2 percentage points above the relevant base interest rate and he shall also compensate the Lawyer for any additional damage actually suffered. Any additional statutory claims (e.g. under Section 1333 of the Austrian Civil Code [*Allgemeines Bürgerliches Gesetzbuch/ABGB*]) shall remain unaffected.

8.10. Any and all costs of courts and public authorities and any expenses (e.g. for purchased third-party services) arising in connection with the Client-Lawyer Relationship may, at the Lawyer's discretion, be submitted to the Client for direct payment.

8.11. If the Lawyer is retained by several Clients in one case, they shall be jointly and severally liable for all resulting claims of the Lawyer.

8.12. Any claims of the Client vis-à-vis the opponent for reimbursement of costs shall hereby be assigned to the Lawyer in the amount of the Lawyer's fee entitlement from the time at which they arise. The Lawyer is entitled to notify the opponent of the assignment at any time.

## **9. Lawyer's liability**

9.1. The Lawyer's liability for incorrect advice or representation shall be limited to the sum insured that is available for the specific case but shall at least be the sum insured stated in Section 21a RAO as amended. Currently, this is EUR 400,000 (in words: four hundred thousand euros); in the case of law firms organised in the form of a limited liability company this is EUR 2,400,000 (in words: two million four hundred thousand euros).

9.2. The maximum amount applicable according to Clause 9.1. shall cover all claims vis-à-vis the Lawyer for incorrect advice and/or representation, including but not limited to claims for damages and price reduction. Such maximum amount shall not include claims of the Client for refund of fees paid to the Lawyer. Deductibles, if any, shall not reduce liability. The maximum amount applicable according to Clause 9.1 shall apply to one insured event. If there are two or more competing harmed persons (Clients), the maximum amount for every single harmed person shall be reduced pro rata the amount of the claims.

9.3. If a law firm is retained, the liability limits of Clauses 9.1. and 9.2. shall also apply to all lawyers who work for the law firm (as its shareholders or partners, managing directors, employed lawyers or in any other capacity).

9.4. The Lawyer shall be liable for third parties whom he instructed to render specific services under the Client-Lawyer Relationship with the Client's knowledge and who are neither employees nor shareholders or partners (in particular external experts) only in the case of negligence in selection.

9.5. The Lawyer shall be liable only vis-à-vis his Client and not vis-à-vis third parties. The Client shall expressly inform third parties who come into contact with the Lawyer's services because of the Client's actions of this fact.

9.6. The Lawyer shall be liable for knowledge of foreign law only in the case of a written agreement or if he offered to review foreign law. EU law shall never be deemed foreign law; however, the law of the Member States shall be deemed foreign law.

## **10. Statutory limitation/Preclusion**

Unless a shorter limitation period or preclusive period applies, any and all claims vis-à-vis the Lawyer shall become forfeited unless the Client asserts them in court within six (6) months of the time at which the Client obtains knowledge of the damage and of the person who caused the damage or of any other event that led to the claim and in any case not later than five (5) years after the conduct (violation) that caused the damage (led to the claim) occurred.

## **11. Client's legal expenses insurance**

11.1. If the Client has taken out legal expenses insurance, he shall immediately notify the Lawyer thereof and present the required documents (if available). However, independent thereof the Lawyer shall, without being requested to do so, obtain information about whether and to what extent legal expenses insurance has been taken out and ask that his services be covered by the insurance.

**11.2. Where the Client informs the Lawyer that he has taken out legal expenses insurance and the Lawyer ensures that his services are covered by the insurance this shall not affect the Lawyer's entitlement to his fee vis-à-vis the Client and shall not be regarded as an agreement on the part of the Lawyer to settle for the fee paid under the legal expenses insurance.**

**11.3. The Lawyer is not obliged to directly claim the fees from the legal expenses insurer but may claim the total fees from the Client.**

By his below signature the Client confirms that he has acknowledged and understood Clauses 11.2. and 11.3.

.....  
(Client's signature)

## **12. Termination of the Client-Lawyer Relationship**

12.1. The Client-Lawyer Relationship may be terminated by the Lawyer or by the Client at any time without notice and without stating reasons. The Lawyer's fee entitlement shall not be affected thereby.

12.2. In the case of termination by the Client or by the Lawyer the latter shall continue to represent the Client for a period of fourteen (14) days insofar as this is necessary to protect the Client from legal disadvantages. This duty shall not apply if the Client rescinds the Client-Lawyer Relationship and expresses that he does not want the Lawyer to continue his activities.

*12.3. The parties put on record that the Client-Lawyer Relationship shall terminate upon ..... (e.g. settlement of the legal dispute with XY, non-appealable/final judgment/decision or the like in the XY case or the like), unless it is terminated by the Client or the Lawyer in accordance with Clause 11 of the General Terms and Conditions of Contract.*

**Alternative:** *The parties put on record that the Client-Lawyer Relationship has, in principle, been entered into for an indefinite period of time, unless it is terminated by the Client or the Lawyer in accordance with Clause 11 of the General Terms and Conditions of Contract.*

**(delete as appropriate)**

### **13. Duty to surrender documents**

13.1. After termination of the Client-Lawyer Relationship the Lawyer shall, upon the Client's request, return original documents to the Client. The Lawyer is entitled to retain copies of such documents.

13.2. If, after termination of the Client-Lawyer Relationship, the Client again asks for (copies of) documents which he already received in the course of the Client-Lawyer Relationship, the costs shall be borne by the Client.

13.3. The Lawyer shall retain files for a period of five (5) years from termination of the Client-Lawyer Relationship and, if necessary, provide the Client with copies during that period. As regards the costs Clause 13.2. shall apply. If the law provides for longer retention periods they shall be observed. The Client agrees to destruction of files (including original documents) after expiration of the retention period.

### **14. Choice of law and jurisdiction**

14.1. These General Terms and Conditions of Contract and the Client-Lawyer Relationship regulated by them shall be subject to substantive Austrian law.

14.2. The parties agree on exclusive jurisdiction of the court having jurisdiction over the subject matter at the Lawyer's registered office for legal disputes arising out of or in connection with the contractual relationship that is regulated by the General Terms and Conditions of Contract, including disputes over validity of the same, unless mandatory law provides otherwise. However, the Lawyer is entitled to file claims against the Client also before any other court in Austria or abroad in the circuit of which the Client has his registered office, domicile, a branch or assets.

### **15. Final provisions**

15.1. Modifications of or amendments to these General Terms and Conditions of Contract shall be made in writing in order to be valid.

15.2. Statements or declarations of the Lawyer vis-à-vis the Client shall in any case be deemed received if they are sent to the address advised by the Client at the time he enters into the Client-Lawyer Relationship or to the changed address advised in writing thereafter. Unless otherwise agreed, the Lawyer may, however, correspond with the Client in any way that seems appropriate to him, including via email, using the email address which the Client has advised to the Lawyer for communication purposes. If the Client sends email messages to the Lawyer from other email addresses, the Lawyer shall also be allowed to use those email addresses to communicate with the Client. Unless otherwise provided, statements or declarations to be made in writing under these General Terms and Conditions of Contract may also be made via fax or email.

Unless the Client has given other written instructions, the Lawyer is entitled to communicate with the Client by email in an unencrypted form. The Client represents that he is aware of the risks involved (in particular access, secrecy, alteration of

messages in the course of transmission) and of the possibility to use TrustNetz and, being aware of such risks, agrees to email correspondence in an unencrypted form.

For that purpose the Client advises the following email address for communication with the Lawyer: .....

By his signature he confirms that he agrees to the agreed terms and conditions on email communication:

.....  
(Client's signature)

15.3. The Client expressly agrees that the Lawyer will process, make available or transmit (as defined by the Austrian Data Protection Act [*Datenschutzgesetz/DSG*]) personal data concerning the Client and/or his business insofar as this is necessary or expedient for rendering the services requested from the Lawyer by the Client or as this is required by statutory or professional obligations of the Lawyer (e.g. using electronic legal communication [*ERV*], etc.).

15.4. Ineffectiveness of any provision(s) of these General Terms and Conditions of Contract or of the contractual relationship regulated hereby shall not affect the validity of the remaining agreement. The parties undertake to replace the ineffective provision(s) by a regulation that comes as close as possible to the business result of the ineffective provision.

The Lawyer/the law firm:

The Client:

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Last revised on: 06 June 2017