

# General Terms & Conditions.

## 1. SCOPE

- 1.1. These General Terms & Conditions shall apply to all activities and acts of representation in and out of court, as well as before public authorities, which are undertaken during the course of a contractual relationship (hereinafter also referred to as “mandate”) between the attorney/law firm (hereinafter simply referred to as “attorney”) and the client.
- 1.2. These General Terms & Conditions shall also apply to all new mandates, unless deviating contractual terms have been agreed in writing..

## 2. MANDATE AND POWER OF ATTORNEY

- 2.1. The attorney shall be authorized and obligated to represent the client to the extent that is necessary and expedient in order to fulfil the terms of the client’s mandate. In the event that the legal situation changes after the mandate has ended, the attorney shall not be obligated to draw the client’s attention to these changes or their consequences.
- 2.2. At the attorney’s request, the client shall sign a written power of attorney authorizing the attorney to act on the client’s behalf. The power of attorney may relate to the provision of specific, precisely defined, or any other possible legal services or acts..

## 3. PRINCIPLES OF REPRESENTATION

- 3.1. At all times and in all circumstances, the attorney shall represent the client in conformity with statutory provisions and represent the rights and interests of the client vis-à-vis all persons, applying diligence, loyalty and conscientiousness.
- 3.2. In principle, the attorney shall have the right to perform their duties at their own discretion and to take all necessary steps, especially to use all means of prosecuting and defending

a case, insofar as these do not conflict with the client's best interests, the provisions of these General Terms and Conditions, the attorney's conscience, or the law.

- 3.3. If the client issues an instruction to the attorney that is not compatible with the principles of 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 [Rules of Professional Conduct for Attorneys in Austria] or common practice in compliance with judgements issued by the Austrian legal profession's highest Appeals and Disciplinary Board), the attorney shall reject the instruction. In the event that the attorney considers instructions to be inappropriate, or even to the detriment of the client, the attorney shall inform the client of the potential negative consequences before carrying out the client's instructions.
- 3.4. In the event of imminent danger, the attorney reserves the right to act or to refrain from acting, even where this is not expressly covered by the mandate, insofar as the attorney deems this to be urgently required to serve the best interests of the client.

#### **4. CLIENT'S OBLIGATIONS TO PROVIDE INFORMATION AND TO COOPERATE**

- 4.1. Once a client-attorney relationship has been established, the client shall be obligated to provide the attorney with all information and facts, without delay, which may be of relevance in complying with the mandate, as well as to make all required documents and means of evidence accessible. The attorney shall assume that the information, facts, documents, papers and means of evidence are correct, unless their incorrectness is obvious. The attorney shall endeavor to obtain all facts by means of questioning the client and/or resorting to other appropriate means. The second sentence of Section 4.1. shall apply to the correctness of supplementary information.
- 4.2. Throughout the term of the mandate, the client shall be obligated to inform the attorney as to any and all changes or newly arising circumstances that may be of significance in connection with the performance of the mandate as soon as such changes come to the client's attention.

#### **5. DUTY OF CONFIDENTIALITY, CONFLICTS OF INTEREST**

- 5.1. The attorney is bound by the legal profession's duty of secrecy, which obligates attorneys to preserve the confidentiality of all information and matters entrusted to them or which have otherwise become known to them in their capacity as an attorney and whose confidentiality is in the best interests of their clients.
- 5.2. Within the scope of applicable laws and guidelines, the attorney shall have the right to assign the legal services to be provided to all staff members if the attorney is able to demonstrate that these staff members are also bound by the same duty of secrecy as the attorney.

- 5.3. The attorney shall be released from the duty of secrecy only to the extent necessary to prosecute the attorney's claims (especially claims for the attorney's legitimate fees) or to defend claims against the attorney (in particular, claims for damages asserted by the client or third parties).
- 5.4. The client may release the attorney from their duty of secrecy at any time. This release from the duty of secrecy by the client does not, however, release the attorney from the obligation to verify whether the attorney's statements are in the best interest of the attorney's client.
- 5.5. The attorney shall be obligated to examine whether performance of the mandate may create the risk of a conflict of interest under the terms of the Rechtsanwaltsordnung (RAO) [Law Regulating the Professional Practice of Attorneys in Austria].

## **6. THE ATTORNEY'S OBLIGATION TO PROVIDE INFORMATION**

The attorney shall inform the client of all actions taken in performance of the mandate, in oral or written form, and in sufficient detail.

## **7. SUB-AUTHORIZATION AND SUBSTITUTION**

The attorney may ask an associate in the attorney's employment or another attorney, or that attorney's authorized associate, to represent the attorney (sub-authorization). In the event that the attorney is prevented or hindered from performing the mandate. The attorney may temporarily assign the mandate or individual duties to another attorney (substitution).

## **8. FEES**

- 8.1. Unless otherwise agreed, the attorney shall be entitled to receive an appropriate fee.
- 8.2. If a flatrate or hourly fee has been agreed, the attorney – in addition to the attorney's agreed fee – shall at least be entitled to receive any costs recovered from the opposing party, insofar as this amount can be collected. In all other cases, the attorney shall receive the agreed flatrate or hourly fee.
- 8.3. The statutory rate of value added tax shall be added to all fees owed to/agreed with the attorney, as well as all necessary and appropriate expenses (including, but not limited to, travel, telephone, telefax, and copying expenses). The attorney shall also be entitled to the reimbursement of cash expenses incurred on behalf of the client (e.g. court fees).
- 8.4. The client is aware that estimates of anticipated fees provided by the attorney and not expressly referred to as binding are provided for information purposes only and cannot be regarded as a binding cost estimate (as defined in Section 5.2. of the Austrian Consumer Protection Act), since it is in the nature of the attorney's performance of the mandate that its scope cannot be reliably assessed in advance.

- 8.5. Costs incurred in association with the calculation of the fee and preparation of the invoice shall not be charged to the client. However, this shall not apply to the effort required for translating, upon client's request, the list of services provided into a language other than German. Unless otherwise agreed, the invoiced amount shall include the service of drafting letters at the client's request to the client's accountant which relate, for example, to the status of pending cases or provide an assessment of the risks for the purpose of setting aside provisions and/or reporting on the status of fees outstanding at a specified reporting date.
- 8.6. The attorney reserves the right to send invoices at any point in time, in any event, however, once per quarter, as well as to request advance payments against fees yet to be incurred.
- 8.7. Insofar as the client is an entrepreneur, an invoice forwarded to the client and properly itemized shall be deemed to have been approved, if the client does not expressly object the invoice in writing within one month of its receipt (receipt of the client's objection to the invoice by the attorney shall be the decisive date).
- 8.8. If the client is in arrears in paying the attorney's fee, in whole or in part, the client shall pay interest on said arrears to the attorney in the statutory amount, as a minimum, however, 4% above the respectively applicable basic interest rate. The foregoing shall not affect any further statutory claims [e.g. pursuant to Section 1333 of the Austrian General Civil Law Code (ABGB)].
- 8.9. Any and all expenses paid to courts or public authorities (cash expenses) and costs (e.g. for third-party performance) may be forwarded to the client – at the discretion of the attorney – for direct payment by the client.
- 8.10. If several clients enter into a mandate with the attorney regarding a legal matter, all clients are jointly and severally liable for any claims arising to the attorney in connection with the mandate.
- 8.11. Claims for cost refunds in favor of the client against the opposing party are herewith assigned to the attorney in the amount of the attorney's legitimate fee claim, as soon as they arise. The attorney reserves the right to inform the opposing party of this assignment at any time.

## **9. THE ATTORNEY'S LIABILITY**

- 9.1. The attorney's liability for incorrect legal advice or representation is limited to the insured sum in every specific case, but amounts at least to the insured sum indicated in Section 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: four-hundred thousand euros) and € 2,400,000.00 (in words: two million four-hundred thousand euros) for law firms with the legal structure of a limited liability company under Austrian law. In the

event that the client is a private consumer, this restriction of liability shall only apply in the case of minor negligence.

- 9.2. The attorney's maximum liability pursuant to Section 9.1. comprises all claims existing against the attorney for incorrect advice and/or representation, including, in particular, claims for damages and fee reduction. This maximum liability does not include the client's claims to reimbursement of the fee paid to the attorney. Possible deductibles do not reduce the liability.
- 9.3. Under a mandate with the law firm, the restrictions on liability pursuant to Sections 9.1. and 9.2. also apply to the benefit of all attorneys acting on behalf of the law firm (in their capacity as partners, managing directors, employed attorneys or in any other function).
- 9.4. The attorney's liability in respect of individual sub-contracted services provided by third parties, if these are neither staff members nor partners and are acting with the client's consent during the attorney's performance of the mandate (in particular external experts), shall be limited to cases of negligence in selecting the third party.
- 9.5. The attorney shall only be liable to the client and not to third parties. The client is obligated to expressly inform third parties of this limitation of the attorney's liability insofar as they are engaged in any capacity during the attorney's performance of the mandate by the client or on the client's recommendation.
- 9.6. The attorney shall be liable for any knowledge of foreign law only in the event of a written agreement, or if the attorney offers to examine foreign law. EU law shall never be deemed to be foreign law, whereas this exclusion does apply to the law of individual Member States.

## **10. LIMITATION PERIOD/CLAIM PRECLUSION**

Unless the law stipulates a shorter limitation period or period of claim preclusion, all claims (excluding, however, warranty claims, in the event that the client is not an entrepreneur as defined in the Austrian Consumer Protection Act) against the attorney shall lapse, unless the client has exerted a claim in court within six months (in the event that the client is an entrepreneur) or within one year (in the event that 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 the latest after the expiry of five years as of the conduct (infringement) causing the damage (giving rise to a claim).

## **11. CLIENT'S LEGAL EXPENSES INSURANCE**

- 11.1. If the client has taken out legal expenses insurance, the client shall inform the attorney thereof without delay and present the requisite insurance documents (if available). However, the attorney shall also be obligated to obtain information as to whether and to what

extent the client is covered by legal expenses insurance and to apply for coverage under the legal expenses insurance.

- 11.2. The client's disclosure of legal expenses insurance coverage and the attorney's securing of legal expenses insurance coverage shall not affect the attorney's fee claim against the client. Nor shall it be deemed as consent on the part of the attorney, i.e. to accept the payment made pursuant to the legal expenses insurance as the attorney's fee. The attorney shall draw the client's attention to this fact.
- 11.3. The attorney shall not be obligated to claim the attorney's fee directly from the legal expenses insurance, but may request payment of the full remuneration from the client.

## **12. TERMINATION OF THE MANDATE**

- 12.1. The attorney and/or the client may terminate the mandate at any time without observing a notice period and without giving any reasons. The attorney's fee claim shall remain unaffected by the foregoing.
- 12.2. In the event of that the mandate is terminated by the client or the attorney, the attorney shall continue to represent the client for a further 14 days after termination, insofar as this is necessary to protect the client against any legal detriment. This obligation shall not apply in the event that the client revokes the mandate and instructs the attorney to cease providing legal representation services.

## **13. OBLIGATION TO SURRENDER DOCUMENTS**

- 13.1. Upon termination of the mandate and at the client's request, the attorney shall return any and all original documents. The attorney reserves the right to store copies of these documents.
- 13.2. If the client requests further documents (copies of documents) after the termination of the mandate, and the client has already received copies of these documents during the term of the mandate, the client shall bear the costs incurred for their production.
- 13.3. The attorney shall be obligated to store the documents for a period of five years as of the end of the mandate and to provide the client with copies, if needed, during that period. Section 13.2. shall apply to such costs. Insofar as longer statutory retention periods apply for the obligation to retain documents, these shall be observed. The client shall agree to the destruction of the files (also of original documents) upon the expiration of the retention period.

## **14. CHOICE OF LAW AND PLACE OF JURISDICTION**

- 14.1. 14.1. These General Terms & Conditions and the client/attorney relationship governed by them shall be subject to Austrian Substantive law.
- 14.2. For legal disputes arising from or in connection with the contractual relationship governed by these General Terms & Conditions, including disputes about its validity, the attorney and client hereby agree on the exclusive competency of the court with jurisdiction over the subject matter at the attorney's place of business, unless mandatory law precludes this. The attorney shall, however, also be entitled to lodge claims against the client before any other court in Austria or abroad, in whose jurisdiction the client has a registered office, place of residence, branch office or assets. In relation to clients who are consumers within the meaning of the Austrian Consumer Protection Act, the provisions on legal venue set forth in Section 14 of the Austrian Consumer Protection Act (Konsumentenschutzgesetzes) shall apply.

## **15. FINAL PROVISIONS**

- 15.1. Amendments or supplements to these General Terms & Conditions shall be made in writing if the client is not a consumer as defined by the Austrian Consumer Protection Act.
- 15.2. Communications from 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 appropriate, unless provided otherwise. Unless the client has, in writing, instructed the attorney otherwise, the attorney reserves the right to communicate with the client via email in unencoded form. The client shall state that they are aware of the risks associated with communication via email (especially access, confidentiality, alterations in communications in the course of forwarding) and accepts – in full cognizance of these risks – that email communication is conducted in unencoded form.
- 15.3. The client expressly authorizes the attorney to process, provide or transfer personal 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 necessary and expedient or results from statutory obligations or duties under the provisions on the exercise of the profession of legal counsel (e.g. to take part in the electronic legal data exchange, etc.), in order to perform the mandate for which the client has retained the attorney.
- 15.4. If one or more of the provisions of these General Terms & Conditions or of the contractual relationship governed by the present General Terms & Conditions is or becomes ineffective or invalid, the validity of the remaining provisions shall not be affected. The parties agree to replace the ineffective or invalid provision(s) with new provisions, which correspond in a legally permissible way to the original economic intent of the ineffective or invalid provision(s).