

## GTC – General Terms and Conditions

**SANDRA KLINKENBERG • Advisory Business Economist, independent Business and Management Advisor**

### **1. General principles / scope of application**

- 1.1. These General Terms and Conditions shall apply exclusively to all legal transactions between the Client and the Contractor (Management Advisor). The version valid at the time of the conclusion of the contract shall be authoritative.
- 1.2. These General Terms and Conditions shall also apply to all future contractual relationships, thus even if no express reference is made to them in supplementary contracts.
- 1.3. Any conflicting general terms and conditions of the Client shall be invalid unless expressly accepted in writing by the Contractor (Management Advisor).
- 1.4. In the event that individual provisions of these General Terms and Conditions should be and/or become invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision which comes as close as possible to its meaning and economic purpose.

### **2. Scope of the advisory mandate / deputisation**

- 2.1. The scope of a specific advisory assignment shall be contractually agreed in the individual case and shall be subject to the service contract relationship.
- 2.2. The Contractor (Management Advisor) shall be entitled to have the tasks incumbent upon it performed in whole or in part by third parties. Payment of the third party shall be made exclusively by the Contractor (Management Advisor) himself. No direct contractual relationship whatsoever shall be established between the third party and the Client.
- 2.3. Any enticement or direct commissioning of employees and commissioned third parties of the Contractor (Management Advisor) by the Client shall be prohibited - see 4.2 - and shall be subject to a claim for damages in the amount of EUR 25,000.00 net per individual case.
- 2.4. The Client undertakes not to enter into any business relationship whatsoever with persons or companies used by the Contractor (Management Advisor) for the fulfilment of its contractual obligations during or up to three years after the termination of this contractual relationship. In particular, the Client shall not commission these persons and companies with such or similar advisory/consulting services that are also offered by the Contractor (Management Advisor).

### **3. the client's duty of disclosure / declaration of completeness**

- 3.1. The client shall ensure that the organisational framework conditions for the fulfilment of the advisory assignment remotely and at its place of business allow work to proceed as undisturbed as possible and, in a manner, conducive to the rapid progress of the advisory process.
- 3.2. The Client shall also inform the Contractor (Management Advisor) comprehensively about previously conducted and/or ongoing consultations - also in other specialist areas.
- 3.3. The Client shall ensure that the Contractor (Management Advisor) is provided with all documents necessary for the fulfilment and execution of the advisory assignment in a timely manner, even without the Contractor's specific request, and that the Client is informed of all processes and circumstances that are of importance for the execution of the advisory assignment. This shall also apply to all documents, processes and circumstances which only become known during the work of the advisor.
- 3.4. The Client shall ensure that its employees and the employee representation (works council) provided for by law and established, if any, are informed by the Contractor (Management Advisor) already before the commencement of the Contractor's activities, insofar as relevant and necessary for the advisory service.

### **4. safeguarding independence**

- 4.1. The contracting parties undertake to be loyal to each other.

- 4.2.** The contracting parties shall mutually undertake to take all precautions suitable to prevent the independence of the commissioned third parties and employees of the Contractor (Management Advisor) from being jeopardised. This shall apply in particular to offers made by the Client for employment or the acceptance of assignments on its own account.
- 5. reporting / reporting obligation**
- 5.1.** The Contractor (Management Advisor) undertakes to report to the Client on its work, that of its employees and, if applicable, that of any third parties brought in on an order-related basis, in accordance with the progress of the work.
- 5.2.** The client shall receive a final report within a reasonable period of time, i.e. two to four weeks, depending on the type of advisory assignment, after completion of the assignment.
- 5.3.** The Contractor (Management Advisor) shall be free from instructions in the provision of the agreed service and shall act according to her own judgement and on her own responsibility. She is not bound to any particular place of work or working hours. The service is provided under a fee-based service contract and in compliance with the professional rights of the liberal professions.
- 6. protection of intellectual property**
- 6.1.** The copyright to the works created by the Contractor (Management Advisor) and its employees and third parties brought in on an order-related basis (in particular offers, reports, analyses, expert opinions, organisational plans, programmes, performance specifications, drafts, calculations, drawings, data carriers, etc.) shall remain with the Contractor (Management Advisor). They may be used by the Client during and after termination of the contractual relationship exclusively for purposes covered by the contract. In this respect, the Client shall not be entitled to reproduce and/or distribute the work(s) without the express consent of the Contractor (Management Advisor). Under no circumstances shall an unauthorised reproduction/dissemination of the work give rise to any liability on the part of the Contractor (Management Advisor) - in particular for the accuracy of the work - vis-à-vis third parties.
- 6.2.** The Client's breach of these provisions shall entitle the Contractor (Management Advisor) to terminate the contractual relationship immediately and prematurely and to assert other statutory claims, in particular for injunctive relief and/or damages.
- 7. Guarantee**
- 7.1.** The Contractor (Management Advisor) shall be entitled and obliged, irrespective of fault, to remedy any inaccuracies and defects in its services that become known. The Contractor shall inform the Client thereof without delay.
- 7.2.** This claim of the Client shall expire after six months after the respective service has been rendered.
- 8. Liability / Compensation**
- 8.1.** The Contractor (Management Advisor) shall be liable to the Client for damages - except for personal damages - only in the case of gross negligence (intent or gross negligence). This shall also apply mutatis mutandis to damage caused by third parties called in by the Contractor.
- 8.2.** Claims for damages by the client are subject to applicable law and can only be asserted in court within six months of knowledge of the damage and the damaging party, but at the latest within two years of the event giving rise to the claim.
- 8.3.** The Client shall in each case provide evidence that the damage is due to the fault of the Contractor.
- 8.4.** If the Contractor (Management Advisor) performs the work with the assistance of third parties and if warranty and/or liability claims arise against these third parties in this context, the Contractor (Management Advisor) shall assign these claims to the Client. In this case, the Client shall give priority to these third parties.
- 9. Secrecy / data protection**

- 9.1. The Contractor (Management Advisor) undertakes to maintain confidentiality about all business matters coming to its knowledge, in particular business and trade secrets as well as any information it receives about the nature, scope of operations and practical activities of the Client and which are not available to the public.
  - 9.2. Furthermore, the Contractor (Management Advisor) undertakes to maintain secrecy vis-à-vis third parties regarding the content of the subject matter of the contract as well as information and circumstances that have come to her knowledge in connection with the performance of the contract, in particular also regarding the data of the Client's customers, insofar as these are not publicly accessible.
  - 9.3. The Contractor (Management Advisor) shall be released from the duty of confidentiality vis-à-vis any assistants and substitutes she may use. However, she shall transfer the duty of confidentiality to them in full and shall be liable for their breach of the duty of confidentiality as for her own breach.
  - 9.4. The duty of confidentiality also extends beyond the end of a contractual relationship.
  - 9.5. The Contractor (Management Advisor) shall be entitled to process personal data entrusted to it within the scope of the purpose of the contractual relationship. The Client shall guarantee the Contractor that all necessary measures have been taken for this purpose, in particular those within the meaning of the Data Protection Act, such as declarations of consent by the persons concerned.
- 10. Honorarium / fee**
- 10.1. Upon commencement of the performance of the agreed assignment, the Contractor (Management Advisor) shall receive a fee in accordance with the agreement between the Client and the Contractor (Management Advisor). The Contractor (Management Advisor) shall be entitled to issue interim invoices in accordance with the progress of the work or for a fixed period of time and to demand payment on account in accordance with the respective progress. The fee shall be due upon presentation of the invoice by the Contractor. A daily rate is based on 8 hours and is invoiced net in ¼-hour mode plus statutory tax.
  - 10.2. The Contractor (Management Advisor) shall issue an invoice entitling to input tax deduction with all legally required features.
  - 10.3. Any expenses, out-of-pocket expenses, travel expenses, etc. incurred shall be reimbursed by the Client in addition against invoicing by the Contractor (Management Advisor).
  - 10.4. If the service is not provided for reasons attributable to the Client or due to justified premature termination of the contractual relationship by the Contractor (Management Advisor), the Contractor (Management Advisor) shall retain the right to payment of the entire agreed fee less any expenses saved. If an hourly fee has been agreed, the fee shall be paid for the number of hours that could have been expected for the entire agreed service, less the expenses saved. The saved expenses are agreed as a lump sum of 50 percent of the fee for those services which the contractor has not yet rendered by the date of termination of the contractual relationship.
  - 10.5. In the event of non-payment of interim invoices, the Contractor (Management Advisor) shall be released from her obligation to provide further services. However, this shall not affect the assertion of further claims resulting from non-payment.
- 11. electronic invoicing / accounting**
- 11.1. The Contractor (Management Advisor) shall be entitled to send invoices to the Client also in electronic form. The Client expressly agrees to the Contractor (Management Advisor) sending invoices in electronic form.
- 12. duration of the agreement / contract**
- 12.1. The provision of services shall be fixed in the individual contract. The contract ends with the provision of the service in the agreed and fixed scope and can be terminated by either party with a notice period of 3 weeks, giving reasons. The provisions of termination without notice shall remain unaffected. Consideration of pre-contractual agreements, confirmations on the part of the Contractor (Management Advisor), service provision commitments or a necessity to provide

services in the individual contract and fee-fixed field of activity beyond the service fixed in the individual contract and commissioning, including follow-up commissioning, shall be ensured by the client and shall be fixed in a corresponding individual contract in a timely manner.

- 12.2.** The contract may nevertheless be terminated at any time for good cause by either party without notice. Good cause shall be deemed to exist in particular
- if a contracting party breaches essential contractual obligation or
  - if insolvency proceedings are instituted against a contracting party or the petition in bankruptcy is dismissed for lack of assets to cover costs.

**13. final provisions / clauses**

- 13.1.** The contracting parties confirm that they have provided all the information in the contract conscientiously and truthfully and undertake to notify each other immediately of any possible changes and to comply with these GTC.
- 13.2.** Amendments to these GTC must be made in text form; likewise, any waiver of this formal requirement. Verbal subsidiary agreements do not exist. Contractual amendments to an individual contract must be made in writing.
- 13.3.** These GTC and each individual contract shall be governed by German law. The place of performance is the place of the Contractor's (Management Advisor's) professional location. The court at the Contractor's (Management Advisor's) place of business shall be responsible for disputes.

Version: February 2021

GTCs read, understood and accepted

Place, date: \_\_\_\_\_

Signature: \_\_\_\_\_