

General terms and conditions for engineering companies in Austria – B2B (between companies)

1.) Validity of the general terms and conditions and deviations

- a) The following general terms and conditions shall apply for the current and future contracts between the client in its capacity as an operator and the engineering company.
- b) Deviations from these conditions, and in particular the conditions of the client, shall apply only if the engineering company has expressly acknowledged and confirmed them in writing.

2.) Quotations, subsidiary agreements

- a) Unless otherwise indicated, the quotations from the engineering company shall be non-binding with regard to all indicated details, including the fee.
- b) If a contract confirmation from the engineering company contains modifications to the contract, these shall be considered approved by the client unless the client promptly indicates otherwise in writing.
- c) Agreements must in principle be in writing.

3.) Awarding of contract

- a) The nature and scope of the agreed service shall be based on the contract, power of attorney and these general terms and conditions.
- b) Modifications and additions to the contract shall require written confirmation by the engineering company in order to become part of the contractual relationship.
- c) The engineering company shall fulfil the contract awarded to it properly and in accordance with generally recognised good engineering practice and the principles of sound financial management.
- d) The engineering company may enlist the services of other appropriately authorised parties to fulfil the contract and place orders with them on behalf of and for the account of the client. The engineering company is however obliged to inform the client of this intention in writing and grant the client the option of rejecting this order placement with third parties within 10 days.
- e) The engineering company may enlist the services of other appropriately authorised parties as sub-planners and place orders with them on behalf of and for the account of the engineering company. The engineering company shall, however, undertake to inform the client in writing if it intends to have orders fulfilled by a sub-planner and grant the client the option of rejecting this order placed with the sub-planner within one week; in that case, the engineering company shall fulfil the order itself.

4.) Warranty and compensation for damage

- a) Warranty claims may only be lodged after notification of deficiencies. These claims must be submitted exclusively by registered letter within 14 days of the provision of the service or part service.
- b) Claims to cancellation of sale and price reductions shall be excluded. Claims for improvement and/or amendment of the deficiency must be met by the engineering company within a reasonable period; this period should in principle be one third of the agreed period for fulfilment of the service. A claim for damage caused by delay cannot be invoked within this period.
- c) The engineering company shall provide its services with the care expected of a specialist (Austrian General Civil Code [ABGB], Section 1299).
- d) If in breach of its contractual obligations the engineering company is guilty of causing damage to the client, its liability to make good the damage caused – unless otherwise arranged in individual cases – by slight negligence shall be limited as follows:
 - 1) for cancellation of sale and personal injury, no limitation,
 - 2) the following limitations shall apply in all other cases:
 - in the case of a contract amount up to 250,000.00 euros: a maximum 12,500.00 euros;
 - in the case of a contract amount above 250,000.00 euros: 5% of the contract amount but a maximum of 750,000.00 euros.
 - 3) Liability for consequential damages and lost income shall also be excluded in the case of gross negligence unless otherwise arranged in individual cases.

5.) Withdrawal from contract

- a) Withdrawal from the contract shall only be permitted for cause.
- b) In the event of a delay in the engineering company supplying a service, it shall only be possible for the client to withdraw after a reasonable period of grace has been set; this period of grace must be set by means of a registered letter.
- c) In the event of a delay in the client providing a partial service or an agreed collaboration activity which makes the fulfilment of the contract by the engineering company impossible or significantly impedes it, the engineering company shall be entitled to withdraw from the contract.
- d) If the engineering company is entitled to withdraw from the contract, it shall retain the right to claim the entire agreed fee, including in the case of unjustified withdrawal by the client. ABGB, Section 1168, also applies; in the case of justified withdrawal on the part of the client, the client must remunerate the engineering company for the services provided.

6.) Fees, scope of services

- a) Unless otherwise indicated, all fees shall be in euros.
- b) The VAT (turnover tax) shall not be included in the fee amounts; this shall be paid separately by the client.
- c) Compensation with counter-claims, for whatever reason, shall be inadmissible.
- d) Unless otherwise agreed, the non-binding calculation recommendations from the Austrian Association of Consulting Engineers shall be part of the contract content.
- e) Unless expressly agreed to the contrary, payment must be made without deductions within 30 days of invoice submission. This payment shall be made into the account specified by the engineering company at a bank with a branch within Austria. In the event of a delay in payment, interest in the amount of 9.2% per annum above the base interest rate of the ECB plus the cost of reminders shall be paid.

7.) Place of fulfilment

The place of fulfilment for all company services shall be the registered office of the engineering company.

8.) Confidentiality

- a) The engineering company shall be obliged to maintain confidentiality regarding all information provided by the client, unless there is a legal obligation to disclose. In case of disclosure of confidential information, the client will be informed in advance, unless prohibited by law.
- b) The engineering company shall also be obliged to keep its planning activities confidential if and so long as the client has a justified interest in this confidentiality. Upon fulfilment of the contract, the engineering company shall be entitled to make public for advertising purposes, in whole or in part, the work specified in the contract, unless otherwise contractually agreed.

9.) Protection of plans

- a) The engineering company shall retain all rights and uses regarding the documents created by it (especially plans, brochures and technical documents).
- b) Any use (in particular processing, execution, reproduction, distribution, public display, provision) of the documents or parts thereof shall only be permitted with the express approval of the engineering company. All documents must therefore be used only for the purposes expressly determined when the order is placed or through a subsequent agreement.
- c) The engineering company shall be entitled and the client obliged to indicate the name (company and trade name) of the engineering company in publications and announcements about the project.
- d) In the event of the contravention of these provisions for protecting documents, the engineering company may claim a contractual penalty in the amount of twice the appropriate compensation for unauthorised usage, whereby the right to a claim an additional compensation for damages is retained. This contractual penalty shall not be liable to a judicial reduction of compensation. The client shall be responsible for furnishing proof that it has not used the engineering company's documents.

10.) Governing law, place of jurisdiction

- a) Austrian law shall apply exclusively for contracts between the client and the engineering company.
- b) It is agreed that all disputes arising from this contract shall be the responsibility of the competent court at the location of the registered offices of the engineering company.

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