

2009**General contractual terms and conditions**
(hereafter T&Cs)**I.**
Applicability

The services and offers of our Company, as well as all contracts concluded with the Client, take place exclusively on the basis of these T&Cs, and this is so regardless of the type of legal business. All our declarations of intent under private law are to be understood on the basis of these T&Cs. We do not recognise contrary or divergent conditions from the Client, unless we have given express consent to their application in writing. In this respect, actions taken by us in fulfilment of the contract shall not be considered consent to contract conditions that diverge from our T&Cs. By accepting the performance without reservation, the Client in any case accepts the applicability of these T&Cs. These terms and conditions of business shall also be considered a framework agreement for all further legal business between the contractual parties.

II.
Conclusion of contract

- A) Our fee offers are to be understood as non-binding and subject to alteration. Oral promises, collateral agreements and the like, which deviate from our T&Cs or written declarations of intent, in particular those given by employees or delivery agents, etc., are non-binding for us. The content of brochures, advertisements, etc. does not form part of the contract unless explicit reference to it was made.
- B) If our order confirmation contains changes compared to the order, these are considered to be approved by the contractual partner unless an immediate objection to them is made. If offers are made to us, the offering party is bound for a reasonable length of time after the offer is made, however at least eight days.
- C) The content of the contract concluded with the contractual partner results primarily from the written contract including all appendices, the power of attorney and these T&Cs. For consumer business, Point II. A) clauses 1 and 2 and B) do not apply.

III. Fee

- A) Our services will be compensated in each case on the basis of the civil engineering fee guidelines valid at the time for the applicable specialist field. If the fee rates change while the work is being performed, services performed by us shall be charged at the new fee rates from the day on which the new fee rates enter into force.
- B) If between the conclusion of the contract and the performance of the service, wage costs should increase because of collective bargaining agreements within the industry or agreements made within the company, or if other cost items should change that are relevant to the calculation or costs that are required for the creation of the service, such as those for materials, energy, transport, third-party work, financing, etc., we shall be entitled to increase or decrease the prices accordingly. Point III B) does not apply to consumer business.
- C) Additional services resulting from changes that do not fall within the building contractor's responsibility and that require new work or the reworking of individual areas, in particular those resulting from officially imposed conditions, changes to relevant provisions and laws and changes in what the Client wants, are to be compensated in accordance with the increased scope of performance.
- D) Costs that are incurred by the contractor as a result, arising from further work due to the orders of courts or arbitration tribunals, shall be invoiced to the Client according to the actual expenditure and must be paid by it. Costs awarded by a court will be deducted from this.

IV. Payment conditions, interest arrears

- A) We are entitled to make our claims payable through the presentation of partial invoices, which may contain VAT in the legally applicable amount. Partial invoices are due within 14 days, the final fee statement within 30 days, in each case after the invoice is presented. In the absence of a special agreement, the deduction of a discount is not permitted.
- B) If payments are late we are entitled to charge arrears interest in the legally-applicable amount from the time at which they are due.

V. Withdrawal from contract

- A) As well as the general legal grounds we are also entitled to withdraw from the contract when there is default of acceptance or other substantive grounds, such as the opening of insolvency proceedings against the assets of a contractual partner or if a petition for insolvency is rejected due to insufficient assets, if the service is interrupted for more than three months by the Client and if the performance is prevented by the Client. In the case of withdrawal, the provisions of the ABGB (Austrian Civil Code) apply.
- B) When the contractual partner's payments are in arrears we are freed from all further service or delivery obligations and are entitled to hold back any outstanding deliveries or services and to require pre-payments or securities or – if applicable after a reasonable deadline is set – to withdraw from the contract.
- C) If the contractual partner withdraws from the contract without authorisation – or demands its cancellation without authorisation, we have the option to insist on the fulfilment of the contract or to consent to the cancellation of the contract; in the latter case, Point A) final clause applies.
- D) If our contractual partner withdraws from the contract in an authorised way we shall only be entitled to compensation for the services performed until the withdrawal takes effect.
- E) The withdrawal is to be declared in writing by means of registered letter.

**VI.
Reminder and collection costs**

In the case of payment arrears our contractual partner must reimburse us for the reminder costs incurred in the fixed amount of €8.72 exclusive of postage per reminder that takes place as well as an amount of €3.63 every 6 months for keeping track of the circumstances of the debt in reminders. Furthermore, all costs and expenses incurred by us from reminders or collection of due payments, in particular legal action required for this purpose and out-of-court fixed-rate lawyers' fees, are to be reimbursed by the debtor.

**VII.
Reservation of proprietary rights**

- A) All items and documents (plans, calculations, etc.) are handed over by us under the reservation of proprietary rights and remain our property until full payment has been made. In the case of arrears, we are entitled to take them back at any time.
- B) If the goods for which proprietary rights have been reserved are taken back or their return is requested, a withdrawal from the contract only takes place if this is expressly declared.
- C) The Client bears the full risk associated with the goods whose proprietary rights have been reserved, in particular for the risk of their destruction, loss or deterioration.
- D) If the company's ownership expires as a result of combination, it is now already agreed that the client's ownership of the unified object will be transferred to us proportionately (invoice value). For the case of onward sale the Client assigns all rights arising from the onward sale with effect in rem.

**VIII.
Offset prohibition**

- A) The payment of any possible counterclaims with our (fee) claim is not permitted on any grounds whatsoever unless these are connected legally with our (fee) claim and are recognised by us or have been upheld by a court.
- B) Claims against us may not be assigned without our express consent.

**IX.
Copyright**

- A) Work created by us is protected by copyright (eg. plans, sketches, models, other documentation and written pieces). The contractual partner receives no work usage approval and no work usage right. Only under the condition of complete contract fulfilment does the Client receive the right to use the work for the contractually stipulated purpose.
- B) The contractor has the right to use without restriction the data and information collected by it in the course of processing the order (even in digital form). In particular, it can also be used for fulfilment of a new order.

**X.
Retention of documents**

- A) Plans created by us
Original plans and original drawings are generally retained by us. Upon request, copies of these documents will be handed over to our contractual partner in return for reimbursement of costs. Our duty of retention ends ten years after acceptance of the services. During this time, we may free ourselves of our duty of retention by giving the original documents to the contractual partner.
- B) Test samples

- C) Material samples handed over will be disposed of 3 months after the report is drawn up. Storage beyond this will only take place by special arrangement on payment of a storage fee.

XI. Retention

When there is a justified complaint, the contractual partner is not entitled, other than in the case of restitution, to withhold the entire gross fee amount, only the part of it that corresponds to the foreseeable repair costs or damage. Point XI does not apply to consumer business.

XII. Processing of orders

- A) The implementation dates are to be redefined by mutual agreement if there are changes to the schedule.
- B) Damage reports and expert opinions

Any refurbishment costs or refurbishment suggestions that are created in the course of damage reports and expert opinions are used only for the purposes of estimated amounts of damage. These refurbishment suggestions are naturally not fully projected in detail. In the course of a detailed projection that is required, the implementation details are to be determined.

The damage reports or expert opinions are created on the basis of the facts existing at the time of the examination. If other circumstances occur, the expert expressly reserves the right to a different opinion.

XIII. Default

- A) Insofar as the contractual partner must fulfil its payment obligations in partial amounts, it is considered agreed that if even payment for one instalment is not made on time, all further partial performances shall be considered due immediately without the setting of any further deadlines.
- B) Point XII applies to consumer business, to the extent that we have fully performed our service, also only a partial performance of the client has been due for at least six weeks, and when we have warned the Client, setting a deadline of at least two weeks under threat of default.

XIV. Warranty, obligation to examine and object

- A) When a repairable fault is presented, we shall fulfil the warranty of the contractual partner by replacement, repair within a reasonable period or a reduction in price, according to our own discretion. The Client may only assert claims for damages aimed at the repair of the fault if we are late in fulfilling the warranty claims. Warranty claims going beyond this are excluded.
- B) The contractual partner must immediately object in writing to faults about which no complaint had yet been made when the handover took place, within three working days of their discovery however at the latest. If a complaint about a fault is not raised or is not raised in a timely fashion, our performance is considered to have been approved. Point XIII A) and B) do not apply to consumer business.
- C) In consumer business, when there is an obligation to supply unascertained goods, we may free ourselves of the client's claim to dissolution of the contract or a reasonable reduction in price by replacing the faulty item for one that is fault-free within a reasonable period. We may free ourselves from the obligation to grant a reasonable reduction in price by remedying the fault later or bringing about an improvement in a way that is reasonable for the customer.

XV. Liability

- A) All damage claims in cases of casual negligence are excluded. The injured party must demonstrate the existence of a case of gross negligence.
- B) The statutory period of limitations for damage claims is six months from awareness of the damage and the damaging party, in any case one year from the time at which the service was performed or delivery made. The provisions contained in these T&Cs or other agreed provisions then also apply if the damage claim is asserted alongside or instead of a warranty claim.
- C) Our plans and other documents may only be used for implementation purposes, to the exclusion of any claims for damages, with approval from the authorities and express approval from us.
- D) In consumer business, Point XIV A) does not apply to personal injury and to injury to the items taken for processing. Point XIV A) second clause and B) first clause do not apply to consumer business.
- E) The contractor assumes no liability if in a later court process the expert or judge reaches a different conclusion.
- F) Liability is however limited to the insurance amount that is available for the specific case of damages. The preceding clause does not apply to consumer business. Our liability for consequential damages and in relation to third parties is expressly excluded. For consumer business, our liability for consequential damages in cases of casual negligence is excluded.

The Client is obligated to expressly point out these circumstances to third parties that come into contact with our services.

Within the framework of the performance of services, we are liable for third parties who, with the client's knowledge, are commissioned with performing individual parts of the work, in particular external co-workers who are neither employees nor partners, only in cases of negligent selection.

- G) All statements made in reports, in other written communications (including email, fax, etc.) as well as orally, by telephone or in any other form on the question of whether a damaging event is covered in the sense of the legal insurance provisions to be applied in each case and thus whether the damage, according to reason or amount (in the sense of coverage or coverage statements), will be reimbursed by the responsible insurance company, represent non-binding recommendations to the insurance company only. The checking of the legal and factual circumstances, whether insurance coverage exists or not and the decision to grant or reject cover, is performed exclusively by the insurer.

XVI Confidentiality

- A) For the duration of the contract and after the end of the contract relationship, we and the Client shall not make accessible to third parties information of a technical or commercial nature that is mutually communicated and declared to have a confidentiality requirement. This does not apply to information that is generally accessible or whose right to confidential treatment we or the Client have waived in writing.
- B) Unless otherwise agreed, the contractor is entitled to include the name and the project in its customer and reference list and to use "general" photographs in its reference documents.
- C) If the contractor supports the client in fulfilling data protection obligations towards the parties concerned, the contractor is entitled to charge the actual costs incurred to the client. The same applies to expenses incurred for information in connection with the contractual relationship, given to third parties after release from the duty of confidentiality by the client to third parties.

XVII.
Choice of law, legal venue

Austrian law applies. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. The contract language is German. The contractor bears no responsibility for translation mistakes in reports in other languages. The contractual parties agree that Austrian domestic law has jurisdiction. For deciding on all disputes arising from this contract, the materially responsible court where our legal chambers are located has exclusive local jurisdiction. The final clause of Point XV does not apply to domestic consumer business.

XVIII.
Place of fulfilment

The place of fulfilment is where our legal chambers are based.

XIX.
Address change

The contractual partner is obligated to make us aware of changes to its living or business address for as long as the contracted legal business between us has not been fulfilled on both sides. If this communication is not made, declarations are considered to have arrived if they are sent to the last known address.

XX.
Severability clause

If individual provisions of these T&Cs prove to be ineffective or unimplementable in whole or in part, this does not affect the validity of the remaining conditions.