

General Business Terms and Conditions of 8.2 Consulting AG

1. General

The legal relationship between 8.2 Consulting AG, hereafter referred to as "Contractor" and his customers, hereafter referred to as "Client" shall be regulated in the following General Business Terms and Conditions. Any deviations from the General Business Terms and Conditions or any other restrictions of the Client shall not be accepted unless the Contractor has given his written approval for each individual case.

2. Contract and Scope of Service

2.1 The Contractor can treat data provided by the Client, in particular figures and content of documents, as right and/or valid. Should the Contractor detect any incorrect data in the course of his performance, he will notify the Client in due time. A verification of correctness, completeness and accuracy of such data provided by the Client is considered as additional performance which must be commissioned explicitly in writing.

2.2 Any amendments to the order, contractual supplements or other collateral agreements shall only be considered binding if the Contractor has confirmed them respectively in written form according to Art. 126b BGB ("German Civil Code").

3. Contractual Performance

3.1 All services are performed with impartiality, in all conscience and in adherence to the professional rules and principals which are valid at the time of performance and may be applicable in the individual case.

3.2 In order to fulfil his assignment, the Contractor shall be allowed to subcontract other experts, respectively legal entities within the 8.2 group, in order to carry out various partial tasks to his own discretion. The Client shall be notified in due time when the Contractor considers an appointment of further external experts to be necessary. In this case no direct contractual relationship between the Client and the third party will be concluded.

4. Deadlines

4.1 In general, performance periods and deadlines are considered to be not binding, unless they have been explicitly agreed upon between the parties in writing.

4.2 Periods and deadlines shall begin at the earliest upon receipt of all relevant data and documents which are required for performance and, if requested by the Contractor, of sufficient supply of further information by the Client. If advance payment has been agreed upon between the Parties, said periods and deadlines shall not start until after the Contractor will have received the respective amount in full.

4.3 Provided that an exceedance of deadlines and periods is foreseeable, the Contractor shall notify the Client in due time. In this case said periods and deadlines shall be postponed by a reasonable period of time. Unless otherwise agreed upon, a grace period of two weeks shall be considered to be adequate.

4.4 Force majeure of any kind or similar events, including, but not limited to, adverse weather conditions, unpredictable operational or traffic disruptions, illness, strikes, lock-outs, official measures or other obstacles for which the Contractor is not responsible and which delay, prevent or make the performance unreasonable, shall be considered a release from the obligation to perform for the duration of the disruption. At the same time, any agreed deadline shall be extended for the duration of the delay.

5. Obligations of the Client

5.1 The Client shall be obliged to provide the Contractor, in due time and without charge, with all necessary information and materials, and to submit all documents and data required for the contractual performance. Should the contractual services not be performed at the premises of the Contractor, the Client can deposit said information and materials at the specific place of performance.

The Client shall provide detailed road directions and shall hand over all necessary keys. The Client shall be responsible for accessibility, operability and usability of technical plants and machinery.

5.2 Basically, aforesaid data and information can be transferred to the Contractor in electronic form. Nonetheless, the Contractor can demand a printed version of data and information to his own discretion.

5.3 The Contractor shall be informed by the Client, in due time and without being requested, of any issues and circumstances which are clearly of importance for the contractual performance.

5.4 The performance of certain services may require further participation by the Client or other parties involved in a project who shall then be obliged to co-operate. Any such obligations beyond the present General Business Terms and Conditions may be necessary to create, in particular, the technical prerequisites for a successful performance and, if required, shall be communicated to the Client in the course of the project.

6. Warranty

6.1 The Contractor undertakes to remove the defects primarily by a rectification free of charge. The Client shall give reasonable time and opportunity for any such subsequent improvement.

6.2 Should the rectification not take place within a reasonable deadline or should the defects still be present after two attempts, the Client shall have the right at his choice to demand the rescission of the contract or a price reduction. Unless otherwise agreed upon, a grace period of two weeks shall be considered to be adequate for each attempt of rectification.

6.3 Any claims of the Client with respect to defects, in particular to quality of work, shall be statute-barred upon expiration of one year after the performance of the contractual services provided by the Contractor, unless said defects have not been wrongfully concealed by the Contractor or have been caused by acts of wilful misconduct.

7. Liability

7.1 Unless provided otherwise hereafter, the Contractor shall be liable for his own negligence and for the negligence of his employees according to the respective legal provisions.

7.2 In the case of negligent breaches of important contractual obligations, that is to say all those contractual obligations whose fulfilment shall be considered indispensable for the proper execution of contract and on the fulfilment of which the Client should be able to rely, the liability shall be restricted to any case of damage which is typical and foreseeable for the specific contract irrespective of the legal grounds. Any further claims in particular with reference to replacement of unpredictable indirect damage or consequential damage shall be excluded.

7.3 In addition, the Contractor shall only be liable for any other breaches of duties if these are caused by wilful intent and gross negligence.

7.4 In any case of damage, the contractual and statutory liability shall be limited to the relevant cover of the Contractor's public liability insurance.

7.5 In individual cases, an increased liability sum can be agreed upon, provided that such an increase is requested by the Client explicitly and provided that he shall accept his obligation to bear the additional insurance costs. Furthermore, the explicit consent of the Contractor's insurance company shall be required.

7.6 If any claims for damages against the Contractor are excluded or limited, this shall also apply to any personal liability of statutory organs, vicarious agents and any other auxiliary personnel of the Contractor. The restrictions shall also apply to claims targeted to property damage and financial losses that arise from tort.

7.7 With the exception of claims for damages due to unlawful action or in terms of the Product Liability Act, claims for damages are statute-barred one year after final acceptance of the contractual performance by the Client provided that there does not exist any case of wilful intent or deceitfulness.

- 7.8 The liability restrictions shall not apply in the case of a culpable violation to life, body or health, in the absence of promised qualities and, as far as pertinent, for mandatory entitlements according to the Product Liability Act.
8. Remuneration and Payment Conditions
- 8.1 The remuneration has to be paid 10 days at the latest after receipt of invoice. Ancillary costs and outlays of the Contractor shall either be refunded by the Client against proof of actual expenditures or by payment of a previously fixed lump sum. Unless otherwise agreed, the actual costs have to be refunded plus a handling fee of 5 %.
- 8.2 If waiting periods occur on the part of the Contractor, they shall be compensated by the Client according to the regular tariff agreed upon between the parties. Waiting periods can occur, for example, due to adverse weather conditions so that a transfer to a plant may be temporarily impossible or not adequate, inoperable plants or machinery, missing keys, inoperable control systems or panels, missing or unusable access roads and/or crane hardstandings, switched on antennas, etc.
- 8.3 The Contractor shall be entitled to demand advance payment for services commissioned by the Client (including foreseeable expenses). Moreover, he shall be entitled to demand partial payments if single items of the contractual performance have been completed. The amount of such advance or partial payments shall be agreed upon between the parties within the service contract.
- 8.4 Provided that the performance period for rendering services commissioned by the Client may exceed one month, the Contractor shall be entitled to charge for services already rendered by partial invoices, issued on a monthly basis.
- 8.5 An offset by the Client shall only be permissible if his counterclaims are legally determined, undisputed or have been recognised by the Contractor. Any rights of retention shall be excluded.
9. Termination of Contract
- 9.1 Either party may terminate the contract at any time for good cause prior to the end of its term. A notice of termination must be given in writing.
- 9.2 Good causes authorizing the Client to terminate are, in particular, but not limited to, sustained infringements (caused by the Contractor or his vicarious agents) of the valid and applicable professional standards and/or obligations that are essential for an objective contractual performance by the Contractor.
- 9.3 Good causes authorizing the Contractor to terminate are, in particular, but not limited to, an insufficient participation of the Client, an inappropriate exertion of influence of the Client on the contractual performance by the Contractor and an imminent insolvency of the Client.
10. Secrecy
- 10.1 The Contractor and the Client commit themselves to consider documents, data and information which will be disclosed from one party to the other party in the course of the contractual performance (hereinafter referred to as "information") as strictly confidential, provided that such information is marked as "confidential" or is similarly lettered. In any event, a disclosure of information to third parties must be permitted by prior written notice of the other party. Other experts within the 8.2 group, respectively legal entities affiliated with the Contractor are not considered as third parties within the meaning of this provision. Aforesaid confidentiality obligations shall not apply in the event that there is a duty to disclose information pursuant to the applicable law and/or information is disclosed to persons who are professionally bound by statutory, respectively professional obligations of secrecy. The confidentiality obligations shall also not apply if information has to be disclosed according to German law, court orders, decrees, regulations or any other public directives. The confidentiality obligations shall be maintained for a period of two years after the end of the contract or business relationship.
- 10.2 Excluded from those confidentiality obligations is information for which the receiving party can demonstrate that (a) it was known by that party prior to its receipt, or (b) it was publicly known prior to its receipt, or (c) it becomes available to the public after its receipt through no breach of confidentiality obligations of the receiving party, or (d) it was made available to the public by an authorized third party at any time.
- 10.3 Any information about the Client which is received by someone other than the Client (e.g. public authorities) is treated as strictly confidential.
- 10.4 The Contractor reserves the right to use strictly anonymized information for internal and statistical purposes within the 8.2 group.
11. Intellectual Property Rights
- 11.1 The Contractor holds the intellectual property rights resulting from his services, as for example, copyrights of his expertises, opinions and inspection reports. An utilisation of copyrighted material by the Client shall only be permitted within the purpose agreed upon between the parties in the contract. Any other utilization shall require the consent of the Contractor.
- 11.2 Generally, the results or conclusions laid down in expertises or other reports may only be used entirely and without omission of essential aspects. A partial use, respectively use of excerpts, is only permitted when a distorted or falsified perception of the results or conclusions can be excluded. Otherwise, such partial use or use of excerpts can be prohibited by the Contractor.
12. Non-solicitation
- The client does not undertake to contract employees of the Contractor and other persons contractually connected with the Contractor, who are involved in the performance of the work or the manufacture of a work, for the company or third parties or to support the recruitment activities. This obligation applies to the entire duration of the project, as well as to one year after the end of the project. Any indirect or direct influence on an employee of the Contractor or other persons contractually connected with the Contractor, which is intended to establish a new employment relationship or to enter into a service contract with the client or with a third party, is regarded as an exercise. A contractual penalty of EUR 30,000 shall be payable for each case of offense.
13. Final Provisions
- 13.1 For any changes to the present General Business Terms and Conditions as well as supplements and collateral agreements written form shall be required; this shall also apply to the cancellation of the clause stipulating the written form. Any verbal agreements do not exist.
- 13.2 This agreement shall exclusively be subject to the law of the Federal Republic of Germany with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the rules on conflict of laws of private international law. The place of jurisdiction for merchants, legal persons under public law or special public funds shall be Hamburg.
- 13.3 Should any individual provisions of the present General Business Terms and Conditions be or become ineffective, this shall not affect the effectiveness of the other provisions. In this case, the contracting partners shall be obliged to agree to a clause which comes closest in economic respect to the legally invalid clause.
- 13.4 The German version of the present General Business Terms and Conditions shall be considered to be solely authoritative and legally binding.