

# General Terms and Conditions of Business

**Business Upper Austria – OÖ Wirtschaftsagentur GmbH**  
**Hafenstrasse 47-51, 4020 Linz, FN 89326, LG Linz**

(Valid from January 22<sup>nd</sup>, 2019)

## §1<sup>[1]</sup><sub>[SEP]</sub> General principles / Scope of validity

1. The services of Business Upper Austria – OÖ Wirtschaftsagentur GmbH (subsequently referred to as the Contractor) are provided exclusively on the basis of these General Terms and Conditions of Business (GTC for short) in the respective, current version. These General Terms and Conditions of Business thus apply. Contradictory or divergent conditions of the Client shall be invalid and ineffective unless the Contractor has explicitly recognized them in written form.
2. These General Terms and Conditions of Business shall also apply to all future contractual relationships even when no specific reference to this fact is made. <sup>[1]</sup><sub>[SEP]</sub>

## §2 Contractual agreement

Tenders of the Contractor shall be subject to confirmation and non-binding. Contracts shall first be regarded as concluded when the written order of the Client has either been confirmed in writing, or has actually been completed. The requirement for the written form is also seen as fulfilled through e-mail.

## §3<sup>[1]</sup><sub>[SEP]</sub> Scope of the order

1. The services to be provided on the part of the Contractor and their scope shall be documented in the respective tender of the Contractor and agreed upon through the acceptance of the tender or an individual contract.
2. The selection of suitable personnel and in particular also the determination of the working arrangements shall be at the discretion of the Contractor.

3. The Contractor shall be entitled at its own discretion to include third parties in the provision of its services (e.g. experts). The Contractor alone shall complete the remuneration of these third parties. No contractual relationship whatsoever shall exist between the third party and the Client. During the course of the business relationship and for a period of twelve months after its expiry with regard to services also offered by the Contractor, the Client shall undertake not to enter into any type of business relationship with persons or companies that the Contractor employs for the fulfilment of its contractual obligations.

1

#### **§4 Obligation of the Client to cooperate**

Where the Contractor can only render its services with the cooperation of the Client, the latter shall undertake to make available to the Contractor without delay all the documentation and information that is essential or merely useful for the provision of its services.

This shall apply to documents and information that first become known during the activities of the Contractor. The Contractor shall not be obliged to examine the correctness and completeness of the documentation and information supplied. Therefore, the Contractor shall under no circumstances be liable for damages that result from the incorrectness or incompleteness of the documents and information provided. The obligation to furnish mutual information and coordination shall apply to both contractual parties.

#### **§5 Claim to remuneration and remuneration amount**

1. Unless otherwise explicitly agreed in writing between the contractual parties, the prices quoted in the tender shall apply. All prices and hourly rates shall be understood as exclusive of VAT. They shall only apply to the order in question.
2. Remuneration is understood as being from the business address of the Contractor and unless otherwise expressly regulated shall

consist exclusively of any cash expenditure, expenses and travel costs, any contractual fees, etc. or other fees and taxes, etc. that may occur in individual cases.

3. At the latest, invoices presented by the Contractor shall be paid fourteen days after receipt without any deductions and free of charges. Payment shall take place via a transfer to the account to be made known by the Contractor.
4. The Contractor shall also be entitled to send invoices to the Client in electronic form. The Client declares its explicit consent to such communications in electronic form by the Contractor.
5. The Contractor shall be entitled to present part-invoices in line with work progress or request payments on account.
6. The Client shall not be entitled to compensation through possible counterclaims, irrespective of for whatever reason these come about.
7. Cancellation of the order shall only be possible with the written consent of the Contractor. Should the Contractor consent to a cancellation, unless otherwise specifically regulated, apart from the services and costs incurred up the date of the cancellation, a cancellation fee amounting to 30 per cent of the not yet invoiced order value shall be paid.
8. In the case of a payment default that may also relate to only one (part) invoice, the Contractor shall be entitled to cease the ongoing work and withdraw from the contract subject to the provision of a 14-day period of grace. In such a case, irrespective of any further legal claims to damages, the Contractor shall be entitled to the entire agreed remuneration plus default interest of eight per cent p.a. above the standard rate of interest.

Regardless of fault, the Client shall pay for all the damages incurred by the Contractor relating to the default of the Client.

## **§6** **Securing of independence**

1. The contractual parties undertake an obligation to mutual loyalty.
2. The Contractor undertakes an obligation to take all precautions that are suitable for the prevention of the endangerment of the independence of personnel of the Contractor, as well as third parties contracted by the Contractor. In particular this shall apply to offers of the Contractor relating to the cessation or acceptance of orders at its own expense.

## **§7** **Protection of intellectual property/ Copyright/ Use**

1. Rights to intellectual property such as copyright, brand rights, design rights, patent rights, utility patent rights and know-how, as well as unprotected inventions in particular, commercial experience, company secrets, etc. shall in any case remain the property of the Contractor irrespective of the point in time that they are made known to the contractual partner. The Client may only employ such property during and after the expiry of the contractual relationship for the purposes covered by the contract. The Client is thus insofar under no circumstances entitled to duplicate, disseminate or use the work without the express consent of the Contractor. Under no circumstances shall a liability derive for the Contractor towards third parties, in particular for the correctness of the work, from the unauthorized duplication, dissemination or use of the work. In such a case, the Client shall indemnify the Contractor in full.
2. The use of statements made in the course of the contractual relationship between the contractual parties for advertising purposes by the Client shall require the express written consent of the Contractor.

3. An infringement of the conditions contained in § 7 Para. 1 and/or Para. 2 of these GTC shall entitle the Contractor to withdraw immediately from the contract, whereby in such a case the Contractor shall have the right to the entire agreed amount of remuneration. In addition, the Contractor shall expressly retain the right to assert other legal claims, in particular to injunctive relief and/or compensation.
4. Should the intellectual property of the Contractor and in particular copyright, know-how, etc. be infringed, full compensation shall be paid.

## **§8 Warranty**

1. The warranty period shall extend for six months following acceptance. A warranty obligation shall only exist with regard to defects that can be repaired. The warranty is excluded in the case of evident defects. In the case of other deadlines, claims relating to other defects shall be asserted without delay (max. within three working days) by registered letter together with a concrete description of the type of defect.
2. The assumption of § 924 of the Austrian General Code of Civil Law is expressly waived.
3. At the discretion of the Contractor, repairable defects shall be either corrected through improvements, or the supply of replacements within a reasonable period. Price reductions and transformation are expressly waived.
4. Even in the case of justifiable complaints about defects, the responsibility for repair shall cease to apply should the Client not have enabled the Contractor to carry out all the measures necessary for defect examination and repair. Recourse claims against the Contractor pursuant to § 933b of the Austrian General Code of Civil Law are excluded.

5. In exchange for reasonable payment, the Contractor shall bear the costs for assistance that are not or are no longer included in any warranty claim on the part of the Client and also complete other corrections, alterations and supplements requested subsequently by the Client.
6. In the case of unjustified complaints, i.e. no warranty performance case exists, the costs incurred shall be invoiced by the Contractor to whom a reasonable payment shall be due.

## **§9 Liability**

1. With the exception of personal injury, the Contractor shall only be liable to the Client for damage in the case of intent or crass gross negligence. The burden of proof shall lie with the injured party.
2. The period of limitation for claims for damages on the part of the Client shall amount to six months from the date of knowledge of damage and the injured party. However, at the latest claims are to be asserted judicially within three years of the provision of the service (i.e. from the occurrence of the event underlying the claim). The period of limitation shall then commence even if the damage has not yet occurred.
3. The liability of the Contractor shall be limited to the agreed amount of remuneration. The replacement of subsequent damage, purely financial damages and lost profits and interest is excluded.
4. Where the Contractor carries out the work with the assistance of third parties and in this connection, claims of the third parties result (warranty and/or liability), the Contractor shall assign these claims to the Client. In this case, the Client shall refer to the third party.

## **§ 10 Obligation to maintain secrecy**

1. The contractual parties undertake an obligation to maintain secrecy regarding all matters that become known to them directly or indirectly in connection with this contractual relationship.

2. This obligation to secrecy shall be inapplicable to information/documentation with regard to which the respective contractual party can verify that:
  - a. It was already known prior to receipt;
  - b. This was known publicly prior to receipt;
  - c. This became known publicly following its receipt, but that it was not responsible for this occurrence;
  - d. That this was obtained legally from a third party prior to or during the validity of this contract.
3. The Contractor shall be released from the obligation to secrecy with regard to possible helpers and other third parties that it employs. However, it must transfer the obligation to secrecy to the latter in full. Also excluded from the obligation to secrecy shall be situations in which a mandatory or an agreed commitment to funding bodies to provide information exists. In addition, the Contractor may only pass on information/documentation subject to secrecy with the consent of the Client.
4. The obligation to secrecy of the contractual partners shall apply during the period of this contract and for a period of five years following its expiry. Exceptions shall exist in the case of mandatory obligations to provide information.
5. The Contractor shall be entitled to process person-related data provided to it within the scope of the intended purpose of the order, or to allow it to be processed by a third party. If the Contractor passes person-related data of third parties on to the Contractor (eg contact person in his company etc.), the Contractor may assume that the client has the authorization to pass on this data and the Contractor is entitled to process this data. In this regard, the Client indemnifies the Contractor against any claims from third parties, under any denomination. The Client shall guarantee that all possible measures within the meaning of

the applicable data protection regulations have been taken. The Client is aware of the Data protection informations published on the website of the Contractor ([www.biz-up.at/en/legal/](http://www.biz-up.at/en/legal/)).

## **§ 11 Withdrawal**

1. Only in the case of a default on the provision of services emanating from the general fault of the Contractor shall the Client be entitled to withdraw from the contract by means of registered letter, as well as when, within a reasonable period of grace, important parts of the agreed services have not been carried out. The Contractor shall be entitled to part of the remuneration that corresponds with the services provided prior to the withdrawal taking legal effect.
2. Force majeure and in particular natural disasters or fire, as well as other situations that are beyond the control of the Contractor, shall release the Contractor from the obligation to provide services, or allow it to redefine the agreed delivery date. In such a case, the Contractor shall inform the Client in appropriate form of the existence of a performance hindrance. However, independent of whether or not the obstacle to the performance of the contractor continues to exist, the obligation to deliver may only be postponed for six months. After this period, the Client shall be entitled to the right of withdrawal. However, it shall not be entitled under whatever legal title to assert claims against the Contractor. In addition, the Contractor shall be entitled to appropriate remuneration for the part services already provided.
3. Should the order remain uncompleted for reasons that relate to the Client, or owing to a justified, premature termination of the contractual relationship by the Contractor, the latter shall retain a claim to the payment of the entire agreed remuneration less saved expenses. Should an hourly rate have been agreed, the remuneration for the number of hours expected as being necessary for the fulfilment of the entire order shall be employed for measurement purposes. This shall also apply to the conditions contained in §§ 5 Para. 8, 6 Para. 3 and 9 Para. 3 of

these GTC.

4. A withdrawal shall always take place in writing in the form of a registered letter.

## **§ 12 Final provisions**

1. If any of the individual provisions of these General Terms and Conditions of Business be or become ineffective, this shall have no effect upon the validity of the remaining provisions and the contracts concluded with them as a basis. The contractual partners shall cooperate in replacing the ineffective provision with one that is effective, that is in line with their wishes and corresponds as closely as possible with the economic purpose.
2. However, ineffective provisions can nonetheless be employed to the extent that they serve contractual interpretation.
3. Amendments to contracts and these General Terms and Conditions of Business shall require written form. This shall also apply to a departure from this required form. The requirement for the written form shall be seen as fulfilled by e-mail and/or fax, when the respective other contractual partner has confirmed their receipt. Verbal, additional agreements do not exist.
4. The Client shall inform the Contractor immediately in writing of any changes of address. At all events, written communications are regarded as delivered when they are sent to the address last made known to the Contractor.
5. Unless otherwise agreed, Austrian law shall apply to the contractual parties subject to the exclusion of any referral regulations and UN purchasing law.
6. Any eventual disputes shall be subject to the exclusive jurisdiction of the responsible court at the business address of the Contractor.