

## Model General Terms and Conditions of Contract for Lawyers

### Consumers

#### 1. Applicability

- 1.1. These Terms and Conditions of Contract shall apply to all activities carried out and all representation provided in courts or public authorities and out of court under the contractual relationship between the lawyer/law firm (hereinafter referred to as the "Lawyer") and the Client(s) (hereinafter also referred to as the "Client-Lawyer Relationship").<sup>1</sup>
- 1.2. Unless otherwise agreed in writing, the Terms and Conditions of Contract also apply to new Client-Lawyer Relationships.

#### 2. Retainer agreement and power of attorney

- 2.1. The Lawyer is entitled and required to represent and act as counsel for the Client to the extent necessary or useful for fulfilling the contract. If the legal situation changes after termination of the Client-Lawyer-Relationship, the Lawyer shall be under no obligation to inform the Client about changes or consequences resulting therefrom.
- 2.2. Upon request, the Client shall sign a written power of attorney for the Lawyer. The power of attorney may cover either specific, exactly defined or all potential legal transactions or legal acts.

#### 3. Principles of representation

- 3.1. The Lawyer shall provide the representation sought in accordance with the law and represent the Client's rights and interests vis-à-vis everyone with diligence, loyalty and conscientiousness.
- 3.2. As a matter of principle, the Lawyer is entitled to provide his services at his own discretion and to take any and all steps, including but not limited to employing means of attack or defence in any way, unless this is in conflict with the Client's instruction, or with the Lawyer's conscience or the law.
- 3.3. If the Client gives the Lawyer an instruction compliance with which is incompatible with the principles of proper professional conduct of lawyers based on the law or other professional rules (e.g. the Austrian Guidelines on Practising as a Lawyer [*Richtlinien für die Ausübung des Rechtsanwaltsberufs/RL-BA 2015*] or the line of decisions of the Supreme Appellate and Disciplinary Commission for Lawyers and Trainee Lawyers [*Oberste Berufungs- und Disziplinarkommission für Rechtsanwälte und Rechtsanwaltsanwärter/OBDK*], now: Supreme Appellate and Disciplinary Panels for Lawyers and Trainee Lawyers [*Berufungs- und der Disziplinarsenate für*

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<sup>1</sup> To be adapted accordingly.

*Rechtsanwälte und Rechtsanwaltsanwärter*] at the Austrian Supreme Court [*Oberster Gerichtshof*]), the Lawyer shall refuse to follow the instruction. If, from the Lawyer's point of view, instructions are not useful or even detrimental to the Client, the Lawyer shall inform the latter of any potentially negative consequences before following the same.

- 3.4. In the case of imminent danger the Lawyer will be entitled to take or refrain from taking actions that are not expressly covered by or are even contrary to an instruction given if this seems to be urgently required in the Client's interest.

#### **4. Client's duty to provide information and to cooperate**

- 4.1. After he has retained the Lawyer the Client shall immediately provide the Lawyer with all the information and facts that may be relevant in connection with the Lawyer's services under the Client-Lawyer Relationship and make accessible all necessary documents and evidence. The Lawyer is entitled to assume that information, facts, documents, records and means of evidence are accurate, unless inaccuracy of the same is obvious.

The Lawyer shall seek to obtain complete and accurate information on the facts and circumstances by asking the Client specific questions and/or by other appropriate means. As regards accuracy of supplementary information the second sentence of Clause 4.1 applies.

- 4.2. As long as the Client-Lawyer Relationship validly exists the Client shall inform the Lawyer about all changed or new circumstances that could be of relevance in connection with the Lawyer's services under the Client-Lawyer Relationship immediately after they have become known to him.
- 4.3. If the Lawyer acts as draftsman of a contract, the Client shall provide the Lawyer with all information required for self-calculation of land acquisition tax, the registration fee and real estate income tax. If the Lawyer does the self-calculation on the basis of information provided by the Client the inaccuracy of which was not, and could not have been, detected by the Lawyer, the Lawyer shall in any case be released from any liability vis-à-vis the Client in this respect. However, the Client shall indemnify and hold harmless the Lawyer from and against any pecuniary disadvantages in the case that information provided by the Client turns out to be incorrect.
- 4.4. Under the statutory provisions on the prevention of money laundering and terrorist financing the Lawyer is required to carry out certain checks if transactions are likely to constitute money laundering. These checks include, without limitation, identification of the parties and beneficial owner(s). The Lawyer must also check the purpose of the transaction and the origin of funds, where applicable. In connection with such transactions the Client must provide the Lawyer with all information requested and submit appropriate evidence in full and truthfully without delay. This shall also apply where the Lawyer requests such information on behalf of an involved bank.

## **5. Obligation to maintain secrecy; Exceptions**

- 5.1. The Lawyer shall keep secret all matters confided to him and any other facts which have become known to him in his professional capacity secrecy of which is in his Client's interest.
- 5.2. The Lawyer shall be released from his obligation to maintain secrecy to the extent that this is necessary for pursuing the Lawyer's claims (including but not limited to claims to his fee) or for defending himself against claims raised against him (including but not limited to claims for damages raised against the Lawyer by the Client or third parties).
- 5.3. The Client is aware of the fact that due to statutory orders the Lawyer may in certain cases be required to provide information or make reports to public authorities without having to obtain the Client's approval; particular reference is made to the statutory provisions on the prevention of money laundering and terrorist financing and to tax-law provisions (e.g. the Austrian Statute on Account Registers and Inspection of Accounts [*Kontenregister- und Konteneinschaugesetz/KontRegG*], the Austrian Act on Common Reporting Standards [*Gemeinsamer Meldestandard-Gesetz/GMSG*], etc.).
- 5.4. The Client may release the Lawyer from his obligation to maintain secrecy at any time. No release from the obligation to maintain secrecy by his Client shall release the Lawyer from the obligation to check whether his statement is in line with the Client's interest. If the Lawyer acts as a mediator or collaborative lawyer, he shall exercise his right to maintain secrecy despite having been released from the obligation to maintain secrecy.

## **6. Lawyer's reporting duty**

The Lawyer shall, orally or in writing, reasonably inform the Client of the actions taken by him in connection with the Client-Lawyer-Relationship.

## **7. Delegation of powers**

The parties agree that the Lawyer may have himself represented by another lawyer (*Unterbevollmächtigung*). In the case of the Lawyer's temporary inability to provide services, he may delegate the job or specific actions to another lawyer (*Substitution*). In both cases of delegation of powers to another lawyer, the delegating Lawyer shall only be liable for negligence in selecting.

## **8. Fee**

- 8.1. Unless otherwise agreed, the Lawyer shall be entitled to a reasonable fee.
- 8.2. Even if a smaller fee than that provided for by the Austrian Statute on Lawyers' Tariffs [*Rechtsanwaltstarifgesetz/RATG*] has been agreed, the Lawyer shall in addition be entitled to the amount of reimbursement of costs obtained from the opponent in excess of the agreed fee, provided that such amount can be recovered.

By his below signature the Client confirms that he has acknowledged and understood Clause 8.2.

.....  
(Client's signature)

- 8.3. If the Lawyer receives an email from the Client or the Client's sphere which is not addressed to him but merely transmitted cc or bcc, the Lawyer shall not be required to read the message unless he is expressly instructed to do so.
- 8.4. Value added tax at the statutory rate, necessary and reasonable expenses (e.g. travel expenses, costs of phone, fax or copies) and the cash expenses paid by the Lawyer on behalf of the Client (e.g. court fees) shall be added to the fee payable to/agreed with the Lawyer.
- 8.5. The Client acknowledges that an estimate made by the Lawyer of the expected amount of his fees which has not been explicitly described as binding shall be non-binding and not be considered a binding quotation (as defined in Section 5(2) of the Austrian Consumer Protection Act [*Konsumentenschutzgesetz/KSchG*], since, due to its nature, the amount of work to be done by the Lawyer cannot be reliably assessed in advance.
- 8.6. The Client shall not be charged the costs of billing and preparation of bills of fees. However, this shall not apply to the costs of a translation of statements of services into a language other than German that is requested by the Client. Unless otherwise agreed, the Client will be charged for letters to the Client's auditor drafted at the Client's request, informing them about, e.g., the status of pending cases, a risk assessment for setting up provisions and/or the status of outstanding fees as at the closing of accounts date.
- 8.7. The Lawyer is entitled to submit bills of fees or ask for advances on fees at any time and in any case once every quarter.
- 8.8. If the Client is late in paying the total or a portion of the fee, he shall pay statutory interest of 4% p.a. If the Client is responsible for late payment, he shall compensate the Lawyer for any additional interest losses which the latter actually suffers. Any additional statutory claims (in particular under Section 1333 of the Austrian Civil Code [*Allgemeines Bürgerliches Gesetzbuch/ABGB*]) shall remain unaffected.
- 8.9. Any and all costs of courts and public authorities (cash expenses) and any expenses (e.g. for external services purchased) arising in connection with the Client-Lawyer Relationship may, at the Lawyer's discretion, be submitted to the Client for direct settlement.
- 8.10. Where the Lawyer has been retained by several Clients in a specific case, they shall be jointly and severally liable for all resulting claims of the Lawyer to the extent

that the Lawyer's services provided under the Client-Lawyer Relationship cannot be divided and that they were not provided clearly for one specific client only.

## **9. Lawyer's liability**

- 9.1. In the case of damage caused by slight negligence, the Lawyer's liability for faulty advice or representation shall be limited to the sum insured that is available for the specific case but shall at least be the sum insured stated in Section 21a of the Austrian Lawyers' Code [*Rechtsanwaltsordnung/RAO*] as amended. Currently, this is EUR 400,000 (in words: four hundred thousand euros); in the case of law firms organised in the form of a limited liability company [*GmbH*] it is EUR 2,400,000 (in words: two million four hundred thousand euros).
- 9.2. The maximum amount applicable according to Clause 9.1 covers all claims vis-à-vis the Lawyer for faulty advice and/or representation, including but not limited to claims for damages or price reduction. Such maximum amount includes no claims of the Client for refund of fees paid to the Lawyer. Deductibles, if any, shall not reduce liability. The maximum amount applicable according to Clause 9.1 refers to one insured event. If there are two or more competing harmed persons (Clients), the maximum amount for each harmed person shall be reduced pro rata the amount of the claims.
- 9.3. If a law firm is retained, the liability limits of Clauses 9.1 and 9.2 shall also apply to all lawyers who work for the law firm (as its shareholders, managing directors, employed lawyers or in any other capacity).
- 9.4. The Lawyer shall be liable for third parties whom he instructed to provide specific services under the Client-Lawyer Relationship (in particular external experts) with the Client's knowledge and who are neither employees nor shareholders only in the case of negligence in selecting.
- 9.5. The Lawyer shall be liable only vis-à-vis his Client and not vis-à-vis third parties. The Client shall expressly inform third parties who come into contact with the Lawyer's services because of the Client's actions of this fact; otherwise the Lawyer shall be indemnified and held harmless. This shall not apply where the Lawyer is able to see that his services would infringe upon the sphere of a third party.
- 9.6. The Lawyer shall be liable for knowledge of foreign law only in the case of a written agreement or if he offered to check foreign law. Foreign law also means the law of the EU Member States.

## **10. Client's legal expenses insurance**

- 10.1. If the Client has taken out legal expenses insurance, he shall immediately notify the Lawyer thereof and present the required documents (if available).
- 10.2. Where the Client informs the Lawyer that he has taken out legal expenses insurance and the Lawyer ensures that his services will be covered by the insurance this shall not affect the Lawyer's entitlement to his fee vis-à-vis the Client and shall not be regarded as an agreement on the part of the Lawyer to settle for the fee paid under the legal expenses insurance.

10.3. The Lawyer is not required to directly claim the fee from the legal expenses insurer but may claim the total fee from the Client.

By his below signature the Client confirms that he has acknowledged and understood Clauses 10.2. and 10.3.

.....  
(Client's signature)

## **11. Termination of the Client-Lawyer Relationship**

11.1. The Client-Lawyer Relationship may be terminated by the Lawyer or by the Client at any time without observing a notice period and without stating reasons. The Lawyer's fee entitlement shall not be affected thereby.

11.2. In the case of termination by the Client or by the Lawyer the latter shall continue to represent the Client for a period of fourteen (14) days insofar as this is necessary to protect the Client from legal disadvantages. This duty shall not apply if the Client terminates the Client-Lawyer Relationship and expresses that he does not want the Lawyer to continue to provide services for him.

## **12. Duty to surrender documents**

12.1. After termination of the Client-Lawyer Relationship the Lawyer shall, at the Client's request, return original documents belonging to the Client to him. The Lawyer is entitled to retain copies of such documents.

12.2. If, after termination of the Client-Lawyer Relationship, the Client again asks for (copies of) documents which he already received in the course of the Client-Lawyer Relationship, the costs of EUR ..... per page shall be borne by the Client.

12.3. The Lawyer shall retain the files for a period of five years after termination of the Client-Lawyer Relationship. If the law provides for longer retention periods, they shall be observed. The Client agrees that the files (including original documents) will be destroyed after expiry of the retention period.

## **13. Choice of law and out-of-court dispute resolution**

13.1. The Terms and Conditions of Contract and the Client-Lawyer Relationship regulated by them are subject to Austrian law, except for its conflict of laws rules.

13.2. In the case of disputes between the Lawyer and the Client over the fee the Client shall be free to ask for a review of the fee by the ..... Bar (competent regional bar); if the Lawyer agrees to a review by the bar, the fee shall be reviewed for its reasonableness out of court and free of charge. In the case of disputes between Lawyers and Clients the Conciliation Service for Consumer Transactions shall act as an out-of-court conciliation body ([www.verbraucherschlichtung.or.at](http://www.verbraucherschlichtung.or.at)). The Client

acknowledges that the Lawyer is not required to call in that body for dispute resolution or to submit to it and that the Lawyer will decide whether or not he will agree to out-of-court conciliation proceedings only if and when there is a dispute with the Client.

#### 14. Final provisions

14.1. Unless otherwise agreed, the Lawyer may correspond with the Client in any way that seems appropriate to him, including via email using the email address which the Client advises to the Lawyer for communication purposes. If the Client sends emails to the Lawyer from other email addresses, the Lawyer shall also be allowed to use those email addresses to communicate with the Client, unless the Client expressly objects thereto in advance. Unless otherwise provided, statements to be made under these Terms and Conditions of Contract in writing may also be made by fax or email.

Unless the Client has given different written instructions, the Lawyer shall be entitled to communicate with the Client by email in an unencrypted form. The Client represents that he is aware of the risks involved (in particular access, secrecy, alteration of messages in the course of transmission) and of the option to use the context platform and, being aware of such risks, agrees to email correspondence in an unencrypted form.

For that purpose the Client advises the following email address for communication with the Lawyer: \_\_\_\_\_

By his signature he confirms that he consents to the agreed terms and conditions on email communication:

.....  
(Client's signature)

14.2. The Client will be informed of the purpose of and the manner in which his personal data will be processed by the Lawyer by means of separate Data Protection Information.

The Lawyer/law firm:

The Client:

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Last revised on: 22 February 2024