

## General Terms of Business of Austrian Consulting Engineers/Firms

### 1.) The validity of the General Terms of Business and exceptions thereto

- a) The following General Terms of Business shall apply to all current and future contracts between the Client and the Consulting Engineer/Firm.
- b) Exceptions to these Terms of Business and, in particular, also terms of business laid down by the Client shall only apply if they have been expressly agreed to and confirmed in writing by the Consulting Engineer/Firm.
- c) In case of contracts with consumers as defined by the Konsumentenschutzgesetz (consumer protection act), the mandatory provisions of this act shall prevail over the following General Terms of Business.<sup>1</sup>

### 2.) Offers, subsidiary agreements

- a) Unless stated otherwise, offers made by the Consulting Engineer/Firm shall be subject to change with regard to all data stated therein, including the fee.
- b) If an order confirmation by the Consulting Engineer/Firm deviates from the order, the deviation shall be deemed to be acceptable to the Client if the Client does not promptly state disagreement in writing.
- c) Agreements shall generally require written form.

### 3.) The placing of orders

- a) The nature and scope of the agreed services shall be as specified by the Contract, the Power of Attorney and these General Terms of Business.
- b) Alterations and additions to the order must be confirmed by the Consulting Engineer/Firm in writing to become part of the contractual relationship in question.
- c) The Consulting Engineer/Firm undertakes to execute the order as placed properly, in conformity with generally accepted engineering standards and in accordance with the principles of economic efficiency.
- d) In the completion of the Contract, the Consulting Engineer/Firm can enlist the services of others who possess the necessary competence and place orders with them on behalf of and for the account of the Client. The Consulting Engineer/Firm shall however be obliged to inform the Client in writing of that intention and to give the Client the possibility of objecting within 10 days to the placing of such an order with a third party.
- e) In the completion of the Contract, the Consulting Engineer/Firm can also enlist the services of others who possess the necessary competence as sub-planners and place orders with them on behalf of and for the account of the Consulting Engineer/Firm. The Consulting Engineer/Firm shall however be obliged to inform the Client in writing of its intention to have orders carried out by a sub-planner and to give the Client the possibility of objecting within one week to the placing of such an order with the sub-planner. In the event of objection, the Consulting Engineer/Firm shall execute the order him/her/itself.

### 4.) Warranties and damages

- a) Warranty claims can only be lodged after a notification of deficiencies has been made. Such a notification of deficiencies must be made by registered letter within 14 days of the time the work or part of the work is delivered.
- b) Claims for cancellation of the contract or a reduction in price shall be barred. The Consulting Engineer/Firm shall satisfy claims for the remedying of defects or the subsequent completion of omitted work within a reasonable period of, in general, one third of the period agreed for the execution of the order. Claims for compensation for damage caused by delay cannot be asserted within that period.
- c) The Consulting Engineer/Firm shall render services with the care that can be expected of the Consulting Engineer/Firm as an expert (§1299 ABGB: Austrian general civil code).

### 5.) Revocation of the Contract

- a) Revocation of the Contract shall only be permitted for grave and weighty reasons.
- b) In the event of a delay in performance on the part of the Consulting Engineer/Firm, the Client can only revoke the Contract after a reasonable period of grace to be set by registered letter.

---

<sup>1</sup> Therefore, the following regulations are not valid and/or applicable with the following moderations for consumers:

- Items 1.b, 2.c and 3.b do not exclude the effectiveness of informally submitted explanations of the Consulting Engineer/Firm or its representatives.
- The Consulting Engineer/Firm will indicate the legal consequences of forborne contradiction within the term according to items 3.d and 3.e in its communication.
- Items 4.a and 4.b are not applicable.
- Item 5.b does not apply to fixed business.
- Item 5.d is applicable on condition that only the regulation of § 1168 ABGB applies.
- The contractual exclusion of set-off in item 6.c does not apply in the case of insolvency of the Consulting Engineer/Firm and regarding counterclaims that have been determined by a court, recognized by the Consulting Engineer/Firm or that are in a legal connection with the demand of the Consulting Engineer/Firm.
- The last two sentences in item 9.d are not applicable.
- Item 10.b only applies if this place is the Client's place of residence, place of his usual sojourn or his place of occupation. Other places of jurisdiction to which the Client is entitled are thereby not excluded.

- c) In the event of a delay in part performance or agreed co-performance on the part of the Client that makes it impossible for the Consulting Engineer/Firm to execute the order or significantly hampers the Consulting Engineer/Firm therein, the Consulting Engineer/Firm shall be entitled to revoke the Contract.
- d) If the Consulting Engineer/Firm is entitled to revoke the contract, the Consulting Engineer/Firm shall remain entitled to the entirety of the agreed fee. That shall also be the case in the event of unjustified revocation by the Client. Furthermore, § 1168 ABGB shall be applicable; in the event of justified revocation by the Client, the Client shall pay for services rendered by the Consulting Engineer/Firm.

#### **6.) Fee, Scope of service**

- a) Unless otherwise agreed, all fees shall be denominated in Euro.
- b) The specified fees do not contain sales (value added) tax. That shall be paid by the Client as a separate item.
- c) It shall not for any reason whatsoever be permissible to offset the fee against counterclaims.
- d) Insofar nothing else is regulated, the non-binding calculation recommendations issued by the Fachverband Technische Büros-Ingenieurbüros (Association of Consulting Engineers) are a part of the contract.

#### **7.) Place of performance**

The place of performance with regard to any office services shall be the principal place of business of the Consulting Engineer/Firm.

#### **8.) Maintenance of secrecy**

- a) The Consulting Engineer/Firm shall be obliged to secrecy with regard to any information divulged by the Client.
- b) The Consulting Engineer/Firm shall also be obliged to secrecy with regard to the Consulting Engineer's/Firm's planning activities if and for as long as the Client has a legitimate interest in such secrecy. When the order has been executed, the Consulting Engineer/Firm shall be entitled to publish the work that is the subject matter of the Contract either as a whole or in part for advertising purposes unless it has been contractually otherwise agreed.

#### **9.) The protection of plans**

- a) The Consulting Engineer/Firm reserves all rights and types of utilization to the documentation (in particular plans, brochures, reports, technical documents) it has drafted.
- b) Every form of use (in particular editing, drafting, duplication, dissemination, public presentation, provision) of documents or its parts is only admissible with the express permission of the Consulting Engineer/Firm. All documents may therefore only be used for the express purposes determined at the time of order placement or based on a subsequent agreement.
- c) The Consulting Engineer/Firm is authorized, the Client obliged to indicate the name (company, business name) of the Consulting Engineer/Firm in publications and announcements about the project.
- d) In the case of infringement of these provisions for the protection of the documents the Consulting Engineer/Firm is entitled to a penalty double the amount of the appropriate remuneration for unauthorized use, in which case the Consulting Engineer/Firm reserves the right to assert an exceeding damages claim. The penalty is not subject to a judge's mitigation. The Client must provide evidence that the Client did not utilize the documents of the Consulting Engineer/Firm.

#### **10.) Choice of law and legal venue**

- a) Austrian law shall apply exclusively to contracts between the Client and the Consulting Engineer/Firm.
- b) The court with jurisdiction over the subject matter at the principal place of business of the Consulting Engineer/Firm shall be agreed to have competence with regard to all disputes under this Contract.

As of November 22<sup>nd</sup> 2006