

# HOCHLEITNER

*Rechtsanwälte GmbH*

## GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

### 1. Scope of Application

1.1. These General Terms and Conditions of Engagement (hereinafter “*GTC*” in short) shall apply to all activities and judicial, official and extra-judicial acts of representation and/or consulting services performed in the course of a contractual relationship (hereinafter also referred to as “*mandate*”) between Hochleitner Rechtsanwälte GmbH or a lawyer working for Hochleitner Rechtsanwälte GmbH (hereinafter both referred to as “*lawyer*” or “*Hochleitner*”) and the client. In the absence of any other agreement, the GTC shall furthermore serve as an interpretative aid.

1.2. The client-lawyer relationship shall be established by the lawyer’s written, oral or implied acceptance of an order.

1.3. The lawyer reserves the right to start rendering services before the mandate has been established and to invoice these services rendered in advance in accordance with the mandate and these GTC.

### 2. Order and Power of Attorney

2.1. The lawyer shall be entitled to represent and advise the client to the extent necessary and expedient for the performance of the mandate. The lawyer shall in principle also be entitled to perform services related to the mandate at his/her own discretion.

2.2. The client shall sign a written power of attorney vis-à-vis the lawyer upon request. This power of attorney may be directed to the performance of individual, precisely defined or all possible legal transactions or legal acts.

2.3. The lawyer shall render the mandate services on the basis of the Austrian legal provisions in force at the time of rendering the respective service and the publicly available case law in this respect. If the legal situation changes after the provision of the respective mandate service, the lawyer shall not be obliged to inform the client about changes or consequences resulting therefrom.

2.4. The lawyer shall only be obliged to file appeals and legal remedies if he/she has accepted a mandate to do so from the client.

### **3. Principles of Representation**

3.1. As a rule, the lawyer shall be entitled to perform his/her services at his/her own discretion and to take all steps, in particular to use means of attack and defense in any way, as long as this does not contradict the client's mandate, his/her conscience or the law.

3.2. If the client issues an instruction to the lawyer, compliance with which is incompatible with the principles of proper professional practice of the lawyer based on the law or other statutory rules of conduct (e.g. the "*Richtlinien für die Berufsausübung der Rechtsanwälte*" [Guidelines for the Professional Practice of Lawyers, RL-BA] or the ruling practice of the Oberste Berufungs- und Disziplinarkommission für Rechtsanwälte und Rechtsanwaltsanwärter [Supreme Appeals and Disciplinary Commission for Lawyers and Candidate Lawyers, OBDK]), the lawyer shall be entitled to reject the instruction. If, from the lawyer's point of view, instructions are inexpedient or even disadvantageous for the client, the lawyer shall draw the client's attention to the possibly disadvantageous consequences before carrying them out.

3.3. In case of imminent danger, the lawyer shall be entitled to take or refrain from taking any action not expressly covered by the mandate given, if this appears to be urgently required in the client's interest.

3.4. The lawyer shall be entitled to involve suitable employees and/or third parties and to engage subcontractors for the provision of services. In particular, the lawyer shall also be entitled to substitute the mandate or individual acts (applying these GTC) to another lawyer.

### **4. Information and Cooperation Obligations of the Client**

4.1. After the mandate has been granted, the client shall be obliged to immediately and fully inform the lawyer about all information and facts that might be of importance in connection with the execution of the mandate and to provide the lawyer with all necessary

documents and evidence.

4.2. During the term of the mandate, the client shall be obliged to inform the lawyer of any changes or new circumstances that might be of importance in connection with the execution of the mandate immediately after they become known.

4.3. The lawyer shall be entitled to assume the accuracy of the information, facts, documents, records and evidence, insofar as their incorrectness is not obvious. The client shall indemnify and hold the lawyer harmless for any damage caused by incorrect or incomplete information.

4.4. On the basis of the legal obligation incumbent upon the legal profession, the client shall provide the lawyer with the required information, in particular to establish the identity and comparable information, upon the lawyer's request.

## **5. Data Protection, Secrecy Obligation, Conflict of Interests**

5.1. The client agrees that all personal data pertaining to the client collected by Hochleitner within the scope of the contractual relationship will be processed, transmitted and stored (with the assistance of an automated system). The purpose of the data processing and transmission is the processing of the orders, as this is necessary and expedient for the fulfillment of the tasks assigned to the lawyer by the client or results from legal or professional obligations of the lawyer (e.g. participation in electronic legal communication, etc.). The personal data will be stored for the duration of the contractual relationship and beyond that, for example, for the statutory retention period, the assertion of claims or the defense against claims. Hochleitner, as the responsible body, grants the client, in particular, the right to information, correction, deletion or objection regarding the use of personal data. Hochleitner can be reached at [office@iura.at](mailto:office@iura.at). For comprehensive information on the rights of the person concerned, as well as an up-to-date version of the privacy policy, please visit the homepage at [www.iura.at](http://www.iura.at).

5.2. The lawyer is obliged to maintain secrecy about all matters entrusted to him/her and about facts that otherwise become known to him/her in his/her professional capacity, the secrecy of which is in the interest of his/her client. However, this does not include information that (i) is or becomes publicly accessible or generally known in any case, (ii) is not treated confidentially by the client either, or (iii) must be disclosed due to legal

provisions.

Hochleitner shall be entitled to name the client or the subject matter of the mandate in a general manner in its publications as a reference after consultation with the client; this shall also include any company logos or other trademarks or signs protected by trademark law.

5.3. The lawyer shall be entitled to assign all employees to handle matters within the scope of the applicable laws and guidelines, insofar as these employees have been instructed on the obligation to secrecy pursuant to § 6 of the Austrian Data Protection Act (DSG) 2018 and have been obligated in writing to observe secrecy.

5.4. The lawyer shall be released from the obligation of confidentiality only to the extent that this is necessary for the prosecution of claims of the lawyer (in particular claims for the lawyer's fee) or for the defense against claims against the lawyer (in particular claims for damages of the client or third parties against the lawyer).

5.5. The client may release the lawyer from the secrecy obligation at any time. Release from secrecy by his/her client does not relieve the lawyer of the obligation to check whether his/her statement is in the interest of his/her client.

5.6. The lawyer shall check whether the execution of a mandate entails the risk of a conflict of interests within the meaning of the provisions of the Lawyer's Code of Professional Responsibility.

## **6. Reporting Duty of the Lawyer**

6.1 The lawyer shall inform the client in an appropriate manner about the actions taken by him/her in connection with the mandate. However, the lawyer shall not be obliged to communicate each individual service in particular.

6.2 The client is obliged to check the information, documents, contracts, written pleadings, drafts, etc. provided by the lawyer as to whether they correspond to the client's intentions and truthfully reflect the respective facts. Any inaccuracies or incompleteness shall be reported to the lawyer without delay.

## 7. Sub-Authorization and Substitution

7.1 The lawyer may be represented by a candidate lawyer employed by him/her or by another lawyer or his/her authorized candidate lawyer (sub-authorization).

7.2 The lawyer may subcontract the mandate or individual partial acts to another lawyer (substitution).

7.3 The lawyer is entitled to grant such sub-authorizations and/or substitutions also to external lawyers, i.e. lawyers not working for Hochleitner.

7.4 To the extent that legal advice is required under foreign law, the client shall commission corresponding foreign law firms. Hochleitner will be pleased to assist in the selection of foreign legal advisors as well as in the possible coordination of foreign legal advisors.

## 8. Fee

8.1. Unless otherwise agreed, the lawyer is entitled to an appropriate fee. Unless otherwise stipulated in the following provisions – in particular in item 8.2 – hourly rates shall be charged, whereby an appropriate hourly rate shall be set

- for partners from € 280.00 net or € 336.00 gross,
- for lawyers from € 250.00 net or € 300.00 gross,
- for candidate lawyers with the “small certificate of legitimacy” from € 150.00 net or € 180.00 gross and
- for candidate lawyers with the “large certificate of legitimacy” from € 200.00 net or € 240.00

gross.

The time recording and invoicing of Hochleitner’s services shall be based on half hours started.

8.2. **The following is expressly agreed upon:** Even if a lump-sum or time-based fee has been agreed upon, the lawyer shall be entitled to at least the amount of costs recovered

from the opponent in excess of this fee to the extent that this amount can be recovered, otherwise the agreed upon lump-sum or time-based fee.

8.3. Value added tax to the statutory extent shall be added to the fee due to/agreed with the lawyer.

The fee due/agreed does not include cash expenses paid on behalf of the client (e.g. court fees, translation costs, notary fees) and shall be invoiced separately as incurred insofar as not expressly agreed otherwise. Time missed for travel shall be invoiced at a minimum of 50% of the agreed hourly rate. Other expenses and outlays (such as travel expenses) shall only be invoiced on the basis of an express agreement.

8.4. The client acknowledges that any estimate made by the lawyer regarding the amount of the fee likely to be incurred that is not expressly designated as binding shall be non-binding and shall not be regarded as a binding cost estimate (within the meaning of § 5 (2) of the Austrian Consumer Protection Act (KSchG)). This is due to the fact that the extent of the services to be rendered by the lawyer cannot, by their nature, be reliably assessed in advance.

8.5. The client shall not be charged for the time and effort required for calculating and preparing the fee notes. However, this does not apply to the expenses incurred by the translation of service specifications into a language other than German at the client's request. In the absence of any agreement to the contrary, any expenses incurred in writing letters to the client's auditor at the client's request, in which, for example, the status of pending cases, a risk assessment for the formation of provisions and/or the status of outstanding fees as of the balance sheet date are stated, shall be invoiced.

8.6. The lawyer shall be entitled at any time, but in any event on a quarterly basis, to submit fee notes and to request fee advances. Fee notes and fee advances shall be due immediately. Payment shall be made within 14 calendar days.

8.7. If the client is an entrepreneur, a fee note submitted to the client shall be deemed to have been approved if and to the extent that the client does not object in writing within 14 calendar days (receipt by the lawyer shall be decisive) from the date of receipt.

8.8. Insofar as the client is in default of payment of all or part of the fee, the client shall pay interest on arrears to the lawyer at the statutory rate.

Any further legal claims (e.g. § 1333 of the Austrian Civil Code, ABGB) shall remain unaffected.

8.9. All court and official costs (cash expenses) and outlays (e.g. due to purchased external services) may – at the lawyer’s discretion – be forwarded to the client for direct settlement.

8.10. If several clients place an order in the same case, they shall be jointly and severally liable for all claims of the lawyer arising therefrom.

8.11. The client’s claims for reimbursement of costs against the opponent are hereby assigned to the lawyer in the amount of the lawyer’s fee claim as soon as they arise. The lawyer shall be entitled to inform the opponent of the assignment at any time.

8.12. The client shall not be entitled to set off his/her own claims against Hochleitner’s fee claims or the reimbursement of expenses.

## **9. Liability of the Lawyer**

9.1. As a result of the mandate, the lawyer owes the provision of services in accordance with these GTC, in particular in accordance with item 2.3.

9.2. Hochleitner shall be exclusively liable, both in terms of reason and amount, in accordance with the existing liability insurance. Any liability of Hochleitner is limited in amount for each individual case of damage to the specific sum insured paid by Hochleitner’s liability insurance. The existing liability insurance shall correspond at least to a usual professional liability insurance for lawyers. The liability sum is currently up to € 7,000,000.00. If no insurance coverage exists, Hochleitner’s liability is limited to 3 times the fee paid in the mandate.

If the client is not an entrepreneur as defined by the Austrian Consumer Protection Act (KSchG), this limitation of liability shall only apply in the case of slightly negligent infliction of damage.

9.3. Any liability for indirect damages, consequential damages and other financial losses

as well as for lost profits, damages of third parties and expected but not realized savings shall be excluded.

9.4. The maximum amount applicable according to item 9.2. also includes claims, such as in particular for damages and price reduction. This maximum amount shall not include claims of the client to reclaim the fee paid to the lawyer. Any deductibles shall not reduce the liability.

The maximum amount applicable pursuant to item 9.2. and the respective limitation in item 9.4. shall refer to one insured event.

If there are two or more competing injured parties (clients), the maximum amount for each individual injured party shall be reduced in proportion to the amount of the claims.

9.5. If a law firm is engaged, the above limitations of liability shall also apply in favor of all lawyers working for the firm (as its shareholders, managing directors, employed lawyers or in any other capacity).

9.6. The lawyer shall be liable for third parties (in particular external experts) commissioned with individual partial services within the scope of the provision of services, who are neither employees nor partners, only in case of fault in selection.

9.7. In particular, the lawyer shall not be liable for damages (i) caused by third parties, including other consultants, within the scope of the consultation, or (ii) arising as a result of incorrect or incomplete information, in particular with regard to economic data. The lawyer shall not be liable for activities of other lawyers who provide representation and/or advice or similar services outside Austria on behalf of the client or the lawyer, and the lawyer shall not assume such liability.

9.8. The lawyer shall be liable only vis-à-vis his/her client, not vis-à-vis third parties. The client shall be obliged to expressly inform third parties who come into contact with the lawyer's services due to the client's involvement of this circumstance.

9.9. Within the scope of these GTC, information provided orally or by telephone shall only constitute grounds for liability to the extent that it has subsequently been confirmed in writing by the lawyer.

9.10. The lawyer is liable for knowledge of foreign law only in case of a written agreement or if he/she has agreed to examine foreign law. EU law is never considered foreign law, but the law of the other member states is.

## **10. Limitation/Preclusion, Warranty**

Unless a shorter period of limitation or preclusion applies by law, all claims (if the client is not an entrepreneur as defined by the Consumer Protection Act, but not warranty claims) against the lawyer shall expire if they are not asserted by the client within six months (if the client is an entrepreneur as defined by the Consumer Protection Act) or within one year (if the client is not an entrepreneur) from the time when the client learns about the damage and the warranty, the client becomes aware of the damage and the person causing the damage or of the event otherwise giving rise to the claim, but at the latest after the expiry of five years after the conduct (infringement) causing the damage (and giving rise to the claim).

If the client is an entrepreneur as defined by the Austrian Consumer Protection Act (KSchG), the reversal of the burden of proof pursuant to § 924 of the Austrian Civil Code (ABGB) shall be excluded in any event.

## **11. Legal Expenses Insurance of the Client**

11.1. If the client has legal expenses insurance, he/she shall inform the lawyer thereof without delay and submit the required documents (to the extent available).

11.2. The client's notification of legal expenses insurance and the lawyer's obtaining legal expenses coverage shall not affect the lawyer's fee claim against the client and shall not be considered as the lawyer's agreement to be satisfied with the fee paid by the legal expenses insurance. Therefore, the client acknowledges that any fee claims of the lawyer exceeding the above shall be borne by the client personally, which may result in an obligation to pay for the client in spite of an upright legal expenses insurance coverage.

11.3. The lawyer shall not be obliged to claim the fee directly from the legal expenses insurance, but may claim the entire fee from the client.

## **12. Termination of the Mandate**

12.1. The mandate may be terminated by the lawyer or by the client at any time without notice and without giving reasons. The lawyer's fee claim shall remain unaffected. The termination of the mandate shall be made in writing in any event.

12.2. In the event of termination by the client or the lawyer, the lawyer shall continue to represent the client for a period of 14 days to the extent necessary to protect the client from legal disadvantages. This obligation shall not apply if the client revokes the mandate and expresses that he/she does not wish the lawyer to continue working for him/her.

## **13. Duty to Surrender**

13.1 Upon request, the lawyer shall surrender the original documents to the client after termination of the attorney-client relationship. The lawyer shall be entitled to keep copies of these documents.

13.2 If, after the end of the mandate, the client requests documents (copies of documents) again, which he/she has already received within the scope of the mandate, the costs shall be borne by the client.

13.3 The lawyer shall be obliged to keep the documents related to the mandate for the purpose of fulfilling the due diligence obligations imposed on the lawyer within the scope of the respective applicable legal provisions and to hand over copies to the client during this period, if required. Item 13.2 shall apply to the payment of costs.

The client hereby agrees to the destruction of the files (including original documents) after expiry of the obligation to retain them.

## **14. Intellectual Property**

14.1 The client may use the intellectual works created by Hochleitner (such as contracts, presentations, statements, correspondence, etc.) exclusively in connection with the mandate. The use for other matters or in the case of deviating factual arrangements as well

as the passing on of these works is prohibited in the absence of a written agreement to the contrary.

14.2 Hochleitner shall retain the copyright and the associated exploitation rights to the services rendered by the lawyer and to the work results. Any granting of rights to use works or authorizations to use works shall be subject to the lawyer's separate written consent. In the absence of a written agreement to the contrary, the work results and services of the lawyer are also not intended for publication.

## **15. Choice of Law and Place of Jurisdiction**

15.1 The Terms and Conditions of Engagement and the mandate relationship governed by the same shall be governed by Austrian substantive law, excluding the conflict of laws rules of private international law.

15.2 For legal disputes arising from or in connection with the contractual relationship governed by the Terms and Conditions of Engagement, including disputes regarding its validity, it shall be agreed that the court having jurisdiction over the subject matter at the lawyer's domicile shall have exclusive jurisdiction, unless this is opposed by mandatory law.

However, the lawyer shall be entitled to bring claims against the client also before any other court in Austria or abroad, in whose jurisdiction the client has his/her registered office, place of residence, branch office or assets.

With regard to clients who are consumers as defined by the Austrian Consumer Protection Act (KSchG), the jurisdiction provision of § 14 KSchG shall apply.

## **16. Final Provisions**

16.1 Amendments or supplements to these Terms and Conditions of Engagement shall be valid only if made in writing, insofar as the client is not a consumer within the meaning of the Consumer Protection Act.

16.2 Statements made by the lawyer to the client shall be deemed to have been received in any event if they are sent to the address provided by the client when the mandate was

granted or to the changed address provided in writing thereafter. However, unless otherwise agreed, the lawyer may correspond with the client in any way he/she deems appropriate.

Statements to be made in writing in accordance with these Terms and Conditions of Engagement may also be made by fax or e-mail, unless otherwise provided.

Unless otherwise instructed in writing by the client, the lawyer shall be entitled to conduct e-mail correspondence with the client in a non-encrypted form. The client declares that he/she has been informed about the risks associated therewith (in particular access, confidentiality, alteration of messages in the course of transmission) and that, being aware of these risks, he/she agrees that the e-mail communication shall not be conducted in encrypted form.

16.3 The invalidity of one or more provisions of these Terms and Conditions of Engagement or of the contractual relationship governed by the Terms and Conditions of Engagement shall not affect the validity of the remaining agreement. The contracting parties undertake to replace the invalid provision(s) with a provision that comes as close as possible to the invalid provision in terms of the economic result.

Eferding, April 2020

Hochleitner Rechtsanwälte GmbH

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