

## **General Terms and Conditions of Business (AGB /GTC) of h + p hachmeister + partner GmbH & Co. KG (“h + p”)**

### **§1 Incorporation of the General Terms and Conditions of Business**

**1.1** Our General Terms and Conditions of Business shall apply exclusively. We do not accept any terms and conditions of our customer differing from or contrary to our General Terms and Conditions of Business unless their application has been expressly agreed upon by us in writing. Our General Terms and Conditions of Business shall also apply if we perform our services without reservation despite our knowledge of terms and conditions of the customer differing from or contrary to our General Terms and Conditions of Business.

**1.2** Our General Terms and Conditions of Business shall only apply vis à vis entrepreneurs (“Unternehmer”) within the meaning of sec. 310 para. 1 BGB (German Civil Code).

**1.3** Our General Terms and Conditions of Business shall also apply to future business transactions, even if no express further written reference is made thereto.

### **§2 Award of contract**

**2.1** Usually a contract is awarded to h+p in writing.

In case of an ongoing business relationship the application of these General Terms and Conditions of Business is agreed upon in advance even if the contract is awarded informally.

**2.2** If the order is qualified as an offer in accordance with sec. 145 BGB (German Civil Code) h+p shall be entitled to accept this offer within a period of two weeks.

### **§3 Duties (“Obliegenheiten”) of the customer to cooperate**

**3.1** To provide h+p with a clear understanding of the initial situation and the objectives of the customer as an essential part of the professional consulting services, the customer will answer as timely, completely and correctly as possible, all respective questions from h+p about the company, its legal relationships, structures, employees, client relationships and competitive situation that have to be clarified in order to proceed with the consulting services. The h+p consultants will only ask questions if the answers are of relevance for the project.

**3.2** For that purpose the customer will, unasked, also inform about such circumstances that could be, in the customer's opinion, of importance for the consulting services. The customer will do everything necessary to ensure the success of h+p consulting services; in particular, he will provide h+p with all information and documentation necessary to fulfill the awarded contract.

**3.3** Interim results and interim reports delivered by h+p will be immediately reviewed by the customer to ascertain if the information contained therein about the customer or its company respectively, is accurate; necessary corrections or wishes for amendments must be reported to h+p in writing immediately.

### **§4 Consultancy fee and ancillary expenses, remuneration**

**4.1** If a particular fee has not been expressly agreed upon, then h+p is entitled to charge the h+p daily rates usually applied.

**4.2** **Ancillary expenses** must be paid for separately by the customer according to the agreement. If a certain amount for the **ancillary expenses** has not expressly been agreed upon, the customer shall pay for **ancillary expenses** in the amount of 20 % of the agreed fee for the assignment of the h+p research department and h+p offices, for travel, stopovers and documentation.

**4.3** The statutory value added tax is not included in the fee agreed; it will be displayed separately in the invoice at the applicable statutory rate on the date of the invoicing.

**4.4** The h+p invoices become due for payment within ten days after receipt. The statutory provisions concerning the consequences of default in payment shall apply.

**4.5** In the event that invoices are not paid within 30 days after the date of the invoice, we shall be entitled to suspend continuation of the contract without our claims for remuneration being affected. Sec. 615 BGB (German Civil Code) shall apply *mutatis mutandis*.

**4.6** The customer shall be entitled to offset only insofar as the customer's counterclaim is acknowledged by us, undisputed or assessed in a legally binding judgement. Moreover, the customer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

## **§5 Time of performance**

**5.1** The commencement of the time of performance stated by us shall be subject to the prior final clarification of all issues relevant for us to render our services according to § 3.

**5.2** Compliance with our performance obligation is further subject to the timely and correct performance of the obligations of the customer. The defence of unperformed contract remains reserved.

**5.3** Should the customer be in default in acceptance or in other breach of his obligations to cooperate cooperation, we are entitled to claim any resulting damages including but not limited to additional expenses, if any. Further claims remain reserved.

## **§6 Obstacles to performance**

**6.1** In case members of h+p staff assigned to the project are absent due to illness, h+p shall be entitled to postpone the performance of h+p's contractual obligations for the duration of the obstacle but for no longer than a period of four weeks. In case these members of h+p staff are absent beyond this period, h+p is entitled to assign the project and work included to other members of h+p staff with comparable skills.

**6.2** Events of force majeure, which make it substantially difficult or impossible to perform our contractual obligations, entitle h+p to postpone the performance of its contractual obligations for the duration of the obstacle plus an appropriate start-up time or to withdraw from the contract entirely. Force majeure includes strike, lock-out and similar circumstances which affect h+p either directly or indirectly.

## **§7 Liability**

**7.1** h+p will perform the contract awarded diligently and professionally with the diligence of a prudent businessman. h+p is not responsible and liable to the customer for a specific economic or operating success or for the achievement of specific company objectives such as e.g. achieving specific sales or profit objectives or preventing or minimising losses.

**7.2** Complaints regarding the performance of h+p are to be asserted in writing immediately, at the latest however within 8 days. In the case of justified complaints, e.g. inaccurate documentation, errors in calculation or planning, h+p is entitled upon its own choice and at its own expense to remedy the complaint or to repeat the service.

**7.3** We are liable according to the statutory provisions if the customer claims compensation for damages caused by intent or gross negligence, including intent or gross negligence of our agents or assistants in performance ("Erfüllungsgehilfen").

**7.4** We are liable according to the statutory provisions if we culpably breach a fundamental contractual obligation; in this case our liability for damages is limited to the foreseeable, typically occurring damage. A fundamental contractual obligation exists if the breach of duty applies to an obligation the fulfillment of which the customer relied on and had reasonable right to rely on.

**7.5** Our liability for culpable damage to life, body or health shall remain unaffected; the same applies to the mandatory liability under the Produkthaftungsgesetz (German Product Liability Act) and to our liability for damages based on a guarantee (“Garantie”) furnished by us.

**7.6** Any liability not expressly provided for above shall be disclaimed.

## **§8 Headhunting**

**8.1** During the implementation of the contract and for a period of two years after its completion, the customer and h+p mutually agree not to employ, not to let be employed by third parties, not to invite to employ and not to let be invited to employ, any employee, member of corporate management or partner of the other party. This obligation also applies to an employment as freelancer or any other form of provision of services as well as to contracts aimed at the provision of services.

**8.2** For each culpable infringement of this obligation, the infringing party shall be obliged to pay the other party a contractual penalty of €100,000.-. Further rights e.g. to injunction, information, compensation or similar remain unaffected.

## **§9 Data Storage**

Data of the customer will be treated under the general provisions of the Bundesdatenschutzgesetz (German Federal Data Protection Act). Referring to the Bundesdatenschutzgesetz (German Federal Data Protection Act) we advise the customer that data accrued in connection with the business relationship will be stored if and insofar as necessary for the implementation of the business relationship. The data will remain exclusively within the business domain of the consulting company

## **§10 Surrender of Use of Calculation Models**

**10.1** If calculation models based on software programmes that can be purchased on the market (Excel etc.) are developed by h+p under the consulting contract, e.g. to support planning or controlling processes, these calculation models will be made available to the customer for use only by the customer on a suitable data carrier.

**10.2** The customer may use the calculation models in his business operations. Duplication is only allowed, if it is necessary for the use of the calculation models or for backup purposes

**10.3** The customer is obliged to prevent unauthorized access to the calculation models by third parties and to take all appropriate precautions to fulfill this obligation. The sale and distribution to third parties in any form is not permitted

**10.4** Notwithstanding the surrender of use according to § 10.1 and 10.2 above h+p retains all rights to the calculation models. The customer acknowledges h+p's intellectual property rights and know-how regarding the calculation models

**10.5** The consulting contract is fulfilled with the completion of the consulting project. The customer has no right or claim to support for and updates of the calculation models

## **§11 Confidentiality**

h + p will treat all information received from the customer during the cooperation concerning the company, its client relationships and its employees strictly confidential, insofar as this information is not already in the public domain. The same applies to knowledge about the customer's internal company procedures that h + p receives during the cooperation. The confidentiality obligation will survive termination of the contract.

## **§12 Final Provisions**

**12.1** The contractual relationship and its implementation shall be governed solely by the laws of the Federal Republic of Germany with the exception of the German private international law and the UN Convention (CISG) on the International Sale of Goods.

**12.2** Place of performance for services to be rendered and payments shall be Bielefeld.

**12.3** Provided that the customer is a merchant within the meaning of sec. 38 para. 1 ZPO (German Code of Civil Procedure) or has no general place of jurisdiction in the Federal Republic of Germany, exclusive place of jurisdiction for all disputes arising out of or in connection with the contract and its implementation is Bielefeld, Germany. However, h+p is also entitled to bring an action against the customer at the court having jurisdiction over the place of business of the customer.

**12.4** This English translation of the General Terms and Conditions of Business is for the convenience of the customer only. Only the German version of the General Terms and Conditions of Business is legally binding.

**As per 07 2017**