

# Terms and Conditions of Business

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## **Section 1. Scope**

- (1) The following Terms and Conditions of Business (T&Cs) apply to all the business relations of Sandmeier Consulting GmbH (hereinafter 'SANDMEIER') with its clients. These T&Cs shall apply only if the client is an entrepreneur (Section 14 of the German Civil Code [BGB]), a legal person under public law or a special fund under public law.
- (2) Our offers, deliveries and services (in particular consultancy services) are effected solely on the basis of the more detailed description of the services to be rendered pursuant to the individual contracts in question, the corresponding appendices, any SANDMEIER performance specifications (hereinafter 'Services') and these Terms and Conditions of Business. The Terms and Conditions of Business thus also apply to all future business relations vis-à-vis companies, even if their inclusion has not been or will not be explicitly agreed on again.
- (3) These T&Cs shall apply exclusively; SANDMEIER shall not recognise other terms and conditions which contradict these T&Cs or which diverge from the statutory provisions unless SANDMEIER has explicitly consented to their application in writing. This equally applies if SANDMEIER has not explicitly objected or has performed services without reservation.

## **Section 2. Principles of service provision**

- (1) The client shall determine the duties in the form of individual orders. The performance of duties shall be planned by SANDMEIER. SANDMEIER may refuse to accept an order if performance of the requirements appears unenforceable or impracticable or if there are insufficient capacities available.
- (2) The persons deployed by SANDMEIER do not enter into an employment relationship with the client and are not subject to its authority. This shall apply in particular insofar as the persons deployed by SANDMEIER render services at the client's premises. SANDMEIER reserves the option of replacing an employee at any time with a different employee with the necessary qualifications.
- (3) SANDMEIER shall, with the prior written approval of the client, be authorised to use subcontractors for the services. The client shall not unfairly refuse such approval. SANDMEIER shall ensure that all of the service requirements applicable to the part to be executed by the subcontractor shall be made part of the contract which SANDMEIER concludes with said subcontractor. This shall apply in particular to non-disclosure obligations.

## **Section 3. Fees and payment**

- (1) All services shall be invoiced at cost in accordance with the consultants' hourly rates as agreed in the contract in question or as a fixed price for the services plus statutory value added tax.
- (2) Unless agreed otherwise contractually, payments shall fall due in full immediately upon being invoiced. Upon expiry of the payment date, the client shall be in arrears. During delayed payment, the agreed fees shall be subject to interest at the applicable default interest rate. SANDMEIER reserves the right to assert further default damage claims.
- (3) Expenses, travel time and travel expenses (hereinafter 'Incidental Expenses') are not included in the service fees as per Section 1. Incidental Expenses shall be calculated on the basis of the conditions as agreed in the contract in question. In the absence of any contractual provision, Incidental Expenses are to be paid as follows, in particular if travel occurs at the explicit behest of the client:
  - a. Travel expenses based on the actual amount as per supporting document or, in the case of car journeys, at a rate of EUR 0.65 per kilometre
  - b. Travel time is classified as working time and shall be charged at 50% of the consultants' hourly rate
  - c. Expenses as per the applicable statutory lump-sum expense allowance
  - d. Hotels, rail travel, taxis, etc. shall be invoiced based on receipts

#### **Section 4. Duration and termination**

- (1) Individual orders shall enter into force upon the order form in question being signed and shall end upon all the services commissioned in relation to said project having been provided. The contractual relationship shall end without the requirement of a termination explicitly being expressed.
- (2) Both contracting parties are entitled to terminate the contract without notice for cause. Cause is deemed to exist in particular if the counterparty violates material provisions of these Terms and Conditions of Business (e.g. the payment of invoices due) or is unable to comply with these provisions and, even after a written warning stipulating an appropriate time limit, fails to comply with the provisions in question of these Terms and Conditions of Business.
- (3) In the event of ordinary termination or termination for cause of the contract in question by the client, SANDMEIER shall be entitled to payment for the services provided (including any retentions) and for any Incidental Expenses in accordance with the aforementioned conditions up to the entry into force of the termination. Insofar as the contracting parties agreed on a fixed price, the services provided and Incidental Expenses incurred by the contractor up to the validity of the termination shall be invoiced at cost based on the consultants' hourly rates and the Incidental Expenses as agreed in the contract in question or, in the absence of a contractual agreement, in accordance with the aforementioned conditions.

#### **Section 5. Retention of title**

- (1) The delivery items (goods subject to retention of title) shall remain the property of SANDMEIER until the satisfaction of all claims on the part of SANDMEIER vis-à-vis the client arising from the business relations.
- (2) SANDMEIER delivery items are always processed or remodelled by the client on behalf of SANDMEIER.
- (3) The client must notify SANDMEIER without undue delay of the attachment, confiscation or any other disposition of the delivery items or interference by third parties.
- (4) Insofar as the value of the security interests to which SANDMEIER is entitled exceeds the amount of the secured claims by more than 10%, SANDMEIER shall release a corresponding part of the security interests at the client's request.
- (5) SANDMEIER reserves property rights above and beyond the delivery item, industrial property rights or similar rights in law of any kind (e.g. patent rights, trademark rights, utility model and design rights, copyrights), in particular in relation to documents made available by SANDMEIER in physical or electronic form (e.g. presentations, calculations, concepts, product requirements documents, expertise) and to software.

#### **Section 6. Client cooperation**

- (1) The client shall support SANDMEIER in its service provision comprehensively and to the best of its abilities, in particular with precise, written specifications, the answering of questions without undue delay, interim examinations of the deliverables and tests. Any disadvantages and additional expenses arising from a breach of this duty shall be borne by the client. The agreed performance deadlines require the clarification of all technical issues, presentation of the necessary authorisations and documents, and the client's compliance with the duties incumbent upon it until then.
- (2) In addition to the obligations to cooperate as specified in a contract, the client's cooperation includes in particular the free-of-charge and timely provision of all the means, information, clearances and documents needed for the successful provision of the services as well as of a suitable infrastructure, including workplaces, IT facilities, communication facilities and any other facilities.
- (3) The client shall appoint a qualified contact, i.e. a person with, in particular, sufficient skills and experience as well as decision making authority within the client's company, who shall be at SANDMEIER's disposal with any necessary information and shall make or precipitate decisions without undue delay. Considerable extra expenses to additionally be paid by the client may potentially otherwise accrue.
- (4) The client is responsible itself for the state-of-the-art safeguarding of its data. In the absence of an explicit indication in writing, the employees of SANDMEIER shall always assume that all data with which they come into contact has been secured.

- (5) The services to be provided by the client are an obligation and not a mere incumbency. If the provision of services by SANDMEIER is delayed because the client fails to perform one of its cooperation or provision duties as agreed or on time or otherwise because of the actions of or failure to act of the client or of third parties contracted by the client, SANDMEIER may – notwithstanding farther-reaching rights – demand an appropriate amendment of the contractual agreements (for example changes to the schedule and to payment). Insofar as SANDMEIER incurs additional costs due to the improper or unpunctual provision of the cooperation services, SANDMEIER may invoice the client for these additional costs separately, using the consultants' hourly rate as agreed in the contract in question.

### **Section 7. Change of control**

- (1) In the event of a change of control, the client shall be obliged to notify SANDMEIER in good time of the occurrence of such circumstances.
- (2) There is a change of control for the client if there is a change in the corporate ownership structure/majority shareholdings and/or if the composition of the management bodies (management, Management Board) changes.
- (3) If SANDMEIER's interests (e.g. the loyal collaboration of the contracting parties) are impaired by a change of control, the contracting parties shall immediately initiate talks to determine how the impairment of said interests can be prevented. If no agreement is reached within 20 working days of the initiation of such talks or of the occurrence of the circumstance, SANDMEIER shall be entitled to terminate all contractual relations without compensation, without notice and with immediate effect (termination for cause).

### **Section 8. Damages and reimbursement of expenses**

- (1) SANDMEIER shall not be liable for damages or the reimbursement of expenses irrespective of the legal grounds, in particular due to defects, breaches of obligations arising from the contractual relationship and tortious acts. This shall apply in particular – but not exclusively – to claims for damages relating to loss of revenue or profit, financing costs and damage due to business interruption or production losses.

This exclusion of liability shall not apply in the event of

- a. intent or gross negligence,
- b. liability pursuant to Germany's Product Liability Act (ProdHaftG) and
- c. culpable injury to life, limb or health.

In accordance with the statutory provisions, SANDMEIER shall additionally be liable for the violation of material contractual obligations (e.g. obligations without whose performance the orderly execution of the contract would not be possible and on which the client regularly relies and may rely for the proper fulfilment of the contract).

- (2) Insofar as SANDMEIER is not liable due to intent or gross negligence, due to injury to life, limb or health or pursuant to ProdHaftG, SANDMEIER's liability shall be limited to foreseeable damage the occurrence of which may typically be expected. This limitation shall equally apply in the event of gross negligence on the part of SANDMEIER employees and vicarious agents with the exception of executive staff and legal representatives.

### **Section 9. Intellectual property and the violation of third-party rights**

- (1) SANDMEIER shall remain the owner of all materials ('Materials') which are or can be protected by industrial property rights or similar rights in law of any kind (e.g. patent rights, trademark rights, utility model and design rights, copyrights) and irrespective of whether or not they are registered ('Intellectual Property Rights') to which SANDMEIER is entitled at the time of the conclusion of the contract in question or which are developed by SANDMEIER (or by third parties on SANDMEIER's behalf) following conclusion of the contract in question ('SANDMEIER Materials'). The same shall apply to edits, modifications and further developments.

Upon delivery of the SANDMEIER Materials, SANDMEIER shall grant the client the non-exclusive, perpetual, non-transferable right to use the SANDMEIER Materials delivered pursuant to these T&Cs insofar as this is derived from the purpose of the contract in question.

- (2) The client shall remain the owner of all Materials to which it is entitled at the time of the conclusion of the contract in question or which are developed by it (or by third parties on its behalf) following conclusion of the contract in question ('Client Materials'). The same shall apply to edits, modifications and further developments. Insofar as these are implemented by SANDMEIER, they are effected for the client's exclusive use and exploitation. The client shall grant SANDMEIER a non-exclusive, non-transferable right to use the Client Materials which is limited to the term and purpose of the contract performance.
- (3) SANDMEIER shall ensure that there are no third-party rights which obstruct, limit or exclude the client's contractual use of the Materials supplied by SANDMEIER pursuant to the contract in question. Should third parties nevertheless assert claims on the basis of the violation of their rights, the following shall apply unless SANDMEIER is not culpable for the violation of Intellectual Property Rights asserted:
  - a. In the event that a third party asserts a claim of the violation of Intellectual Property Rights against the client on the basis of the Materials produced by SANDMEIER pursuant to the contract in question, the client shall notify SANDMEIER hereof without undue delay in writing. The client shall, as far as possible, allow SANDMEIER to defend itself against these claims and shall grant it all the necessary authorisations for judicial and extrajudicial measures. The client shall not recognise the third party's claims without the approval in writing of SANDMEIER. The client shall assist SANDMEIER to a reasonable degree in defending itself against the claims asserted.
  - b. Insofar as third-party rights are violated, SANDMEIER may choose either to procure the opportunity for the client to use the Materials in question or to modify or substitute the Materials in question which violate Intellectual Property Rights such that Intellectual Property Rights are no longer violated, without any consequences or only with consequences which are reasonable for the client.
  - c. SANDMEIER shall indemnify the client against all claims, demands for damages and other costs which arise in conjunction with an asserted or determined violation of Intellectual Property Rights. In the event of wrongful legal action, the client shall assign to SANDMEIER any claims for compensation to which it is entitled vis-à-vis the third party.
- (4) Insofar as the client itself modifies the Materials supplied by SANDMEIER in accordance with the contract in question or has said Materials modified by a third party, the claims pursuant to this Section 9 shall lapse unless the client proves that the modifications made by it or by a third party did not cause the violation of third-party Intellectual Property Rights.
- (5) Farther-reaching claims of the client due to the violation of third-party Intellectual Property Rights shall be excluded. This shall not apply in the event of intent, gross negligence, injury to life, limb or health or a material contractual obligation.
- (6) The aforementioned provisions of Sections 3 to 5 shall accordingly apply vice versa in the event that legal recourse is sought vis-à-vis SANDMEIER due to the violation of third-party Intellectual Property Rights by Client Materials or third-party Materials provided by the client.

## **Section 10. Statutory limitation**

- (1) The limitation period for claims and rights due to a material defect or defect of title (compensation in lieu of or in addition to the service, claims for the reimbursement of expenses, price reduction, withdrawal or subsequent performance) shall be one (1) year.

In derogation of this, the statutory limitation period shall apply

- a) in relation to all claims and rights of the client in the event of Section 438 (1) no. 1 of the German Civil Code (BGB), Section 438 (1) no. 2 BGB, Section 634a (1) no. 2 BGB and Section 479 (1) BGB or the fraudulent concealment of a defect by SANDMEIER

and, in the event of claims for damages, also

- b) if there is injury to life, limb or health, claims pursuant to ProdHaftG and grossly negligent or wilful breaches of duty.
- (2) The provision stipulated in Section 7 (1) re the limitation period shall apply to all claims and rights due to a defect, irrespective of the legal grounds.

- (3) The limitation period for all claims and rights due to a defect shall commence upon the service being provided, in the case of purchases upon delivery and in the case of work and services upon acceptance.
- (4) For all other claims of the client which are not attributable to contractual service defects and irrespective of the legal grounds, the regular limitation period shall be reduced to two (2) years from the start of the statutory limitation period.

### **Section 11. Force majeure**

- (1) If the performance of a contract is impaired by *force majeure*, in particular due to war, war-like conditions, natural disasters, accidents, industrial action and official or political acts of caprice, the intended time limits and periods for performance of the services shall be extended accordingly. The client undertakes to negotiate a corresponding amendment of the other contractual conditions (in particular payment agreements) with SANDMEIER.
- (2) Insofar as a contractual amendment due to *force majeure* cannot be economically advocated, both parties shall be entitled to withdraw from the contract in question.
- (3) These conditions shall not affect the existing statutory termination rights.

### **Section 12. Confidentiality and safe custody**

- (1) The client shall be obliged to handle confidentially vis-à-vis third parties the deliverables produced by SANDMEIER and all other information, in particular information of a technical or financial nature, intentions, experience, insights, constructions and documents, including SANDMEIER's pre-existing documents to which the client becomes privy due to the business relations (collectively referred to as 'Confidential Information'), including after termination of the business relations, to not make said Confidential Information accessible to third parties, to protect it from third-party access and to not make it the subject of its own intellectual property right registration.
- (2) Only with the prior approval of SANDMEIER shall the client be authorised to duplicate this Confidential Information either wholly or in part in any form or to share said information with third parties subject to the imposition of a confidentiality obligation.
- (3) The aforementioned obligations shall not apply to Confidential Information of which the client was aware prior to its communication in the course of the business relations, which was independently compiled or otherwise lawfully obtained by the client or which is general or becomes widely known without these T&Cs being violated. The burden of proof for the existence of such an exception shall lie with the client.
- (4) Upon termination of the business relations, the documents including all copies, physical deliverables and other SANDMEIER Confidential Information which are in the possession of or under the control of the client are to be returned to SANDMEIER by the client in full and without undue delay.
- (5) The aforementioned provisions shall accordingly apply vice versa in the event that SANDMEIER becomes aware of Confidential Information of the client.

### **Section 13. Data protection**

- (1) Both contracting parties shall undertake to comply with the statutory data protection provisions. They shall in particular oblige their employees to observe data secrecy pursuant to Section 53 of Germany's Federal Data Protection Act (BDSG) (as amended) and comply with the principles of the processing of personal data as per Article 5 of the General Data Protection Regulation (GDPR).
- (2) Should SANDMEIER be required to process personal data during the performance of a contract, the client shall conclude an agreement re outsourced data processing with SANDMEIER pursuant to Article 28 GDPR.

### **Section 14. Final provisions**

- (1) Contractual amendments and addenda must be made in writing. This shall equally apply to a change in the requirement of the written form. Emails and faxes are also considered the written form. Collateral verbal agreements shall not constitute part of the contract.
- (2) The client may only assert set-off and retention rights vis-à-vis SANDMEIER claims on the basis of its own claims which have been recognised by a declaratory judgement or which are uncontested.

- (3) Should individual provisions of the contract be ineffective, this shall not affect the effectiveness of the remaining provisions. An ineffective provision shall be replaced by a legally valid provision which most closely approximates the commercial meaning and purpose of the ineffective provision. The same shall apply to any legal gaps.
- (4) The exclusive place of jurisdiction for all disputes between the contractual partners shall be Bielefeld.
- (5) All legal relations between SANDMEIER and the client shall be subject exclusively to the laws of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).