

**General Terms & Conditions for Consulting of  
mbi Unternehmensberatungs-GmbH  
as of 01.05.2012**

**§ 1 Scope**

- 1.1. These General Terms & Conditions of Business apply – to the extent the client is a business or of equivalent status – to consulting contracts of the contractor.
- 1.2. Consulting contracts within the meaning of these General Terms & Conditions are contracts of which the subject is provision of advice and information by the contractor to the client in the planning, preparation and execution of business or technical decisions.
- 1.3. Terms & conditions of business of the client shall only apply when agreed expressly in writing. These General Terms & Conditions shall apply even if the Contractor is rendering its services unconditionally in the knowledge of contradicting or deviating terms & conditions of the client.

**§ 2 Object of contract / Scope of service**

- 2.1. The object of the assignment is the agreed consulting work agreed and identified in the contract, and not achievement of a certain financial result or preparation of expert opinions or other works. The contractor's services are deemed rendered when the required analyses, the conclusions derived from them and the recommendations have been drawn up and explained to the client. Whether or when the conclusions or recommendations are acted upon is of no relevance.
- 2.2. At the client's request the contractor shall give information on the status of the work on the assignment or, on completion of the assignment, give account of itself by means of a written report showing the main aspects of the course and outcome of the consulting. If the contractor is expected to prepare an extensive written report, especially for presentation to third parties, this must be agreed separately.
- 2.3. The contractor shall perform all work with the greatest care and at all times related specifically to the client's individual situation and needs.
- 2.4. The contractor undertakes to correctly and completely reflect the company's situation with regard to the issue at hand in the surveys and analyses. Data supplied by third parties or the client will be checked only for plausibility. The conclusions and recommendations to be derived from the investigations are given to the best of the contractor's knowledge and in accordance with recognised principles of science and practice. Recommendations shall be presented in comprehensible and verifiable form.
- 2.5. Except where agreed otherwise, the contractor may use the services of expert subcontractors in fulfilment of contract, whereby the contractor remains directly liable vis-à-vis the client. The contractor shall deploy properly trained employees equipped with the required know-how and support and control them continuously in fulfilment of contract. Otherwise it shall decide at its own discretion which employees it deploys or substitutes.

**§ 3 Changes**

- 3.1. The contractor shall be obliged to take account of the client's change requests insofar as it can reasonably be expected to do so within the context of its operational capacities, especially in terms of the workload and the scheduling.
- 3.2. Insofar as the review of the possibility of making the changes or of realising the desired changes affects the contractual conditions, especially in terms of the contractor's workload or the schedule, the parties shall agree an appropriate adjustment of the contractual conditions, especially any increase in remuneration and postponement of deadlines. Except where agreed otherwise, the contractor shall carry on the work without taking the desired changes into account until such time as the contract has been adjusted.
- 3.3. Where an extensive review of the additional workload is necessary, the contractor may demand a separate order and remuneration for that purpose.
- 3.4. Amendments and addenda to the contract shall only be effective in writing. Minutes of the meetings in this respect or on the project status shall be deemed to meet this condition once signed by the authorised representatives of both sides.

#### **§ 4 Confidentiality / Data protection**

- 4.1. The contractor shall be obliged for an unlimited period to maintain confidentiality over all information or transactions of the client identified as confidential that it learns of in connection with the contract. Information may only be passed on to third parties not involved with fulfilment of the contract with the written permission of the client.
- 4.2. The contractor undertakes to oblige all persons it engages in fulfilment of contract to adherence to this requirement.
- 4.3. Within the scope of the purpose of contract, the contractor is authorized to process all personal data entrusted to it, or have such data processed by third parties, subject to observation of the data protection regulations.

#### **§ 5 Client's duty to assist**

- 5.1. The client shall be obliged to support the contractor to the best of its abilities and to create all the conditions within its sphere of operation necessary for orderly fulfilment of contract; in particular, it shall make all the documents necessary or important for fulfilment of contract available in good time.
- 5.2. At the request of the contractor, the client shall confirm in writing the correctness and completeness of all documents submitted and of its information given and verbal statements.

#### **§ 6 Remuneration / Terms of Payment / Offsetting**

- 6.1. The charges for the contractor's services shall be billed according to the time expended for the work (hourly fee) or as fixed price agreed in writing. Any fee based on the degree of success or only in the event of success shall under any circumstances be precluded. Except where otherwise agreed, the contractor shall be entitled to reimbursement of incidental expenses in addition to the fee payable. Details of the method of payment are governed in the contract.
- 6.2. Except where agreed otherwise, in cases of doubt the contractor's price list current at the point in time of service delivery shall apply. This shall be provided to the client in good time. In the case of contracts concluded during the last quarter, the prices valid upon conclusion of contract still apply to the entire subsequent year, after which the prices will then be based on the valid price list in each case. In the event of a price increase, the client has the option to accept the new price or to terminate the consulting contract on the next permissible date; in the event of termination, the present price remains unchanged.
- 6.3. All amounts shall fall due upon invoicing and are payable immediately without deduction. The statutory value-added tax shall be added to all prices and will be shown separately on the invoices.
- 6.4. Multiple clients (natural and/or legal entities) shall be jointly and severally liable.
- 6.5. Rights derived from the contractual relationship with the contractor may be assigned only with the prior permission of the contractor.
- 6.6. Any offsetting against the contractor's claims for remuneration and reimbursement of incidental expenses shall only be permitted where the counterclaim is undisputed, legally enforceable or ripe for judgement.

#### **§ 7 Warranty period / Period of limitations**

- 7.1. The warranty period amounts to one year beginning on delivery of the goods or production of the work.
- 7.2. The period of limitations for damages claims of the customer due to a defect in the case of purchase or work contracts amounts to one year beginning on delivery of the goods or production of the work; otherwise, the period of limitations for damages claims of the customer amounts to one year beginning at the point in time at which the claim arises. To the extent, however, that we have acted with malicious intent or in gross negligence, and in all cases of injury to the life, limb or health of the customer, the statutory periods of limitations shall apply.

#### **§ 8 Liability for damages**

- 8.1. Our liability for breaches of contractual obligations and for unlawful acts is limited to malicious intent and gross negligence and to compensation of the losses typically incurred. This shall not apply to injury to life, limb or health of the customer. Claims due to breach of cardinal duties, to mean duties arising by the very nature of the contract and for which breach thereof puts attainment of the purpose of the contract at risk and compensation to damages due to delays (§ 286 German Civil Code - BGB). To that extent we shall be liable for every degree of fault. Inasmuch as this involves damages not as a result of injury to the life, limb or health of the customer, however, we shall be liable only for the losses typically incurred.
- 8.2. The contractor shall not be liable for inappropriate application or realisation by the client of the recommendations included within the context of the services or the working documents.

- 8.3. In the event of losses of data, the contractor shall be liable only for the damage that would also have occurred in the event the client had backed up the data in an orderly manner.
- 8.4. If liability for damages towards the contractor is excluded or limited, this also applies with regard to the personal liability for damages of its employees, collaborators, representatives and assistants in performance.

## **§ 9 Protection of Intellectual Property**

- 9.1. The client affirms that it will use the reports, organization plans, drafts, drawings, listings and calculations prepared by the contractor within the scope of the assignment only for the contractually agreed purposes and shall not copy, edit, translate, reprint, forward or disseminate them without explicit permission in each case. Use of the consulting services rendered for companies affiliated with the client requires explicit written agreement.
- 9.2. Inasmuch as results of work are capable of copyright, such copyright remains with the contractor. In such cases, subject to the limitations provided for in paragraph 1, first sentence, the client shall receive an otherwise indefinite and geographically unlimited, irrevocable, exclusive and non-transferable right to use the results of the work.

## **§ 10 Force majeure**

Events of force majeure that hamper or temporarily prevent provision of service shall entitle the party concerned to postpone fulfilment of its services by the period of the hindrance plus a reasonable start-up period. Industrial disputes and similar circumstances, insofar as they are unforeseeable, serious and unintentional, shall be deemed equivalent to force majeure. The parties shall notify one another forthwith on occurrence of such circumstances.

## **§ 11 Loyalty**

- 11.1. The parties obligate themselves to mutual loyalty. They shall inform one another forthwith of any circumstances arising during the course of the project and possibly influencing the work.
- 11.2. In particular, they shall refrain from hiring or otherwise employing any employees or former employees that work, or have worked, within the scope of fulfilment of contract before expiry of a period of twelve months following termination of the cooperation.
- 11.3. The client undertakes to inform the contractor of any intentions it learns of on the part of employees of the contractor deployed in fulfilment of contract to serve notice or otherwise change employer.

## **§ 12 Termination**

Except where otherwise agreed, contracts may only be terminated with notice of 14 days to the end of a month. This shall not affect the right to extraordinary termination for cause.

## **§ 13 Rights to withhold / Retention of documents**

- 13.1. Until full settlement of all its claims, the contractor shall have the right to withhold the documents provided to it, but exercise of such right shall be deemed contrary to good faith where, in weighing up the interests of both parties, such withholding would inflict disproportionately high and unjustifiable damages on the client.
- 13.2. Following settlement of its claims from the contract, the contractor shall surrender all documents given to it by the client or a third party for the purposes of fulfilment of contract. This shall not apply to correspondence between the parties and to simple copies of reports, organisation charts, drawings, listings, calculations etc. prepared within the context of the contract insofar as the client has received the originals.
- 13.3. The contractor's duty to retain the documents lapses six months after delivery of a written request for collection and otherwise three years, and for documents withheld as defined in § 13.1. five years, after termination of the contractual relationship.

## **§ 14 Written form / choice of law / place of jurisdiction and performance**

- 14.1. Notices of termination and other declarations with substantial legal implications or notices of the client vis-à-vis the contractor shall only be effective if in writing.
- 14.2. All claims relating to the Agreement are governed exclusively by the law of the Federal Republic of Germany.
- 14.3. Place of jurisdiction and performance for all disputes arising from this Agreement is the contractor's principal place of business to the extent the client is a merchant or of equivalent status, or where it has its principal place of business or branch abroad. The Contractor, however, shall be entitled to call upon the court that would have been competent by law if no agreement on place of jurisdiction had been made.