

# Standard Terms of Engagement of ALTHUBER SPORNBERGER & PARTNER Rechtsanwälte GmbH

## 1. Application

- a) These Standard Terms of Engagement ("**Standard Terms**") shall apply to any and all activities and advisory and representation services, both before the courts/authorities and out of court, performed in connection with the contractual relationship ("**Mandate**") between ALTHUBER SPORNBERGER & PARTNER Rechtsanwälte GmbH ("**ASP**") and the Client. The Client acknowledges that ASP will act exclusively on the basis of these Standard Terms.
- b) Any reference made hereinbelow to ASP shall also be deemed to include ASP's shareholders as well as any and all persons acting for ASP under any employment contract, contract for works and services or other contractual agreement (including e.g. other attorneys authorized as proxies, office clerks, etc.).
- c) Unless agreed otherwise in writing, these Standard Terms shall also apply to any new Mandates.

## 2. Mandate and power of attorney

- a) ASP shall have the right and the duty to represent the Client in such a way and to such an extent as is necessary and expedient for performing the Mandate. If the legal situation should change after the termination of the Mandate ASP shall be under no obligation to advise the Client of any such changes or any related consequences.
- b) Upon request by ASP the Client shall sign a written power of attorney to ASP. Such a power of attorney may refer to individual clearly specified legal transactions or actions or extend to any and all possible legal transactions or actions.

## 3. Principles governing the provision of legal services

- a) ASP shall provide their counselling and representation services to the Client in compliance with the applicable laws and shall faithfully, diligently and conscientiously represent the Client's rights and interests towards everyone.
- b) ASP shall have the right to provide their services in their discretion and to take any steps, and in particular to adopt any means of prosecuting and defending a case, in whichever manner, unless any such steps or means are in conflict with their conscience, the Mandate or the law.

- c) If compliance with any instruction issued by the Client to ASP would be incompatible with any principles of proper professional conduct based on the applicable laws or other rules of professional conduct (e.g. the "Guidelines for the Practice of the Legal Profession" [RL-BA] or the rulings of the Supreme Appeal and Disciplinary Commission for Attorneys and Trainee Lawyers [OBDK]), ASP shall refuse to accept such an instruction.
- d) In cases of imminent danger ASP shall have the right to take or omit any steps even if the relevant action or omission is not expressly covered by the Mandate or is in conflict with any instruction received, provided such action or omission appears imperative for protecting the Client's interests.

#### **4. Client's duty to cooperate and provide information**

- a) Following the awarding of the Mandate, the Client shall be obliged to inform ASP without delay about any and all details and facts that may be of relevance in connection with the performance of the Mandate, and to make accessible to ASP any required documents and evidence.
- b) ASP shall have the right to rely on the correctness of such information, facts, instruments, documents and evidence unless their incorrectness is obvious.
- c) While the Mandate is in force the Client shall be obliged to inform ASP without delay about any changed or new circumstances that may be of relevance in connection with the performance of the Mandate as soon as such circumstances become known.

#### **5. Duty of confidentiality, conflict of interests**

- a) ASP shall be obliged to keep confidential any and all matters entrusted to them and any and all facts they have otherwise come to know in their professional capacity which it may be in the Client's interest to keep confidential.
- b) ASP shall have the right, within the framework of the applicable laws and guidelines, to assign duties in connection with legal matters to any of their employees, provided these employees have been verifiably advised of the duty of confidentiality.
- c) Only to the extent required for enforcing claims of ASP (in particular claims for the payment of fees) or for fighting claims raised against ASP, their shareholders or any others acting for ASP, the said persons shall be deemed to be released from their duty of confidentiality.
- d) The Client may release ASP from their duty of confidentiality at any time.
- e) In connection with accepting the Mandate ASP shall check whether the performance of the Mandate may cause a conflict of interests within the meaning of the provisions of the RAO (Austrian Attorneys' Code).

- f) ASP shall have the right to disclose the Mandate for advertising purposes or as a reference, e.g. in connection with a press release, unless this would be in conflict with the Client's reasonable interests.

## **6. Duty to report**

ASP shall report to the Client verbally or in writing in reasonable detail about any steps taken by ASP in connection with the Mandate.

## **7. Fees**

- a) A fee agreement shall be concluded separately between ASP and the Client. In the absence of any separately relevant agreements ASP shall have the right to claim a reasonable fee.
- b) Also in cases where a fixed fee or a fee based on hourly rates has been agreed, ASP shall have the right to claim, in addition the agreed fee, at least the amount out of a due reimbursement of costs by which such fee is exceeded, insofar as a statutory liability to reimburse costs applies and to the extent such a reimbursement is collectible, failing which the agreed fixed fee or fee based on hourly rates shall apply.
- c) In addition to the reasonable fee or agreed fee, VAT at the statutory rate, all necessary and reasonable expenses (e.g. traveling expenses, telephone and fax charges, the cost of copies, translations) as well as all disbursements made on behalf of the Client (e.g. court costs) shall be payable.
- d) The Client acknowledges that any estimate provided by ASP regarding the expected amount of fees, unless expressly designated as binding, shall be non-binding and shall not constitute a binding quote (within the meaning of § 5(2) KSchG (Austrian Consumer Protection Act)), given that the scope of the services to be provided by ASP, due to the nature of such services, is impossible to reliably estimate in advance.
- e) The Client will not be charged for any expenditure relating to invoicing. This shall, however, not apply to any expenditure incurred for having breakdowns of services translated into any language other than German upon the Client's request. Unless agreed otherwise, the Client will be charged for letters to the Client's auditors prepared upon the Client's request in order to e.g. report on the status quo of pending cases, risk assessments for the purpose of setting up provisions, and/or the amount of outstanding fees as per the balance sheet date.
- f) ASP shall have the right at any time, however, at least quarterly, to submit invoices and request the payment of an advance.
- g) If the Client is an entrepreneur, any correctly itemized invoice submitted to the Client shall be deemed to have been approved unless the Client objects in writing and such objection is received by ASP within two weeks from the Client's receipt of the invoice.

- h) If the Client is in default of payment in respect of the fee or any part thereof, the Client shall pay to ASP default interest at the statutory rate, however, in no event less than 4% above the relevant base rate. Any further claims in accordance with the applicable legal provisions (e.g. § 1333 Austrian Civil Code) shall not be affected.
- i) ASP may decide in their discretion to forward invoices in respect of any and all court costs and official fees (disbursements) and expenses (e.g. for third-party services) to the Client to be settled directly by the Client.
- j) If ASP is mandated by several Clients in respect of the same legal matter, all Clients shall be jointly liable for any claims of ASP that result from the Mandate.
- k) Any claims for the reimbursement of costs the Client may be entitled to against the opposing party (e.g. after the end of a civil proceeding) shall herewith be deemed to be assigned to ASP, effective from the time such claims for reimbursement arise, up to an amount equalling ASP's claim for the payment of fees. ASP shall have the right at any time to inform the opposing party about the assignment.

## **8. Liability by ASP**

- a) ASP's liability for any negligent counselling or representation services shall be limited to the insured sum available for the relevant specific event of loss but shall not be less than the insured sum specified in § 21a RAO, as amended. Currently the relevant amount specified for law firms organized in the form of a company with limited liability is € 2,400,000 (in words: two million four-hundred thousand euros). If the Client is a consumer the aforesaid limitation of liability shall only apply in cases where the loss was caused by slight negligence.
- b) The maximum amount specified in the preceding paragraph shall include any and all claims against ASP on the grounds of negligent counselling and/or representation services, such as in particular claims for damages and price reduction. The said maximum amount shall not include claims by the Client for the repayment of any fees paid to ASP. Any insurance deductibles shall not reduce the liability. The said maximum amount applies to one event of loss. If two or more injured parties (Clients) are involved, the said maximum amount shall be reduced for each injured party proportionately to the amounts of the relevant claims.
- c) The above specified limitations of liability shall also apply in favour of all attorneys at law and other legal staff working for ASP (as their shareholders, managing directors, employed attorneys or in any other position).
- d) ASP shall be liable for third parties (including in particular external experts) who are contracted with the Client's knowledge to provide individual services in connection with the Mandate and who are neither employees nor shareholders of ASP only in cases of *culpa in eligendo*. The aforesaid shall, however, only apply if the involvement of such third party was not discussed with and approved by the Client beforehand.

- e) ASP shall be liable only to their Client but not to any third parties. The Client shall be obliged to expressly communicate the aforesaid to any third parties who due to the Client's doing may be affected by the services provided by ASP. The Client undertakes to indemnify and hold ASP harmless against any claims of third parties.

### **9. Limitation/preclusion of claims**

Except where any shorter period of limitation or preclusion is stipulated by law, any and all claims (except warranty claims if the Client is not an entrepreneur within the meaning of the KSchG) against ASP shall become forfeited unless the claims are enforced before the courts by the Client within six months (if the Client is an entrepreneur within the meaning of the KSchG) or within one year (if the Client is not an entrepreneur) from the the time when the Client becomes aware of the loss and the identity of the injurer or otherwise of the event giving rise to the claim, but shall in any event become forfeited at the latest after the expiry of five years from the conduct (infringement) that resulted in the loss (gave rise to the claim).

### **10. Client's legal expenses insurance**

- a) If the Client has taken out a legal expenses insurance the Client shall forthwith inform ASP about such insurance and submit the required documents (if available). However, irrespective of the aforesaid ASP shall have the right of their own accord to obtain information as to whether a legal expenses insurance has been taken out, and for which amount, and to apply for cover for legal expenses. Any effort for ASP resulting from coverage inquiries or other correspondence with the client's legal expenses insurance shall be appropriately compensated on the basis of the fee agreement reached, just like any other advisory or representation service.
- b) Confirmation by the Client that a legal expenses insurance has been taken out, and ASP's obtaining of cover for legal expenses, shall not affect ASP's claim against the Client for the payment of the fee and shall not be deemed to constitute ASP's acceptance of the amount paid under the legal expenses insurance as full payment of ASP's fee.
- c) ASP shall be under no obligation to demand payment of the fee directly under the legal expenses insurance but has the right to demand payment of the entire fee from the Client.

### **11. Correspondence with Auditors**

Any effort for ASP resulting from correspondence with auditors of the Client shall, like any other advisory or representation service, be adequately compensated by the Client on the basis of the fee agreement reached.

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

- a) The Mandate may be terminated by ASP or by the Client at any time without prior notice and without giving a reason. Such a termination shall not affect ASP's claim for the payment of the fee.

- b) In the event the Mandate is terminated by ASP or by the Client ASP shall have the duty to represent the Client for a period of another 14 days to the extent this is required to protect the Client from any negative legal consequences. This duty shall not apply if the Client revokes the Mandate and communicates that it does not wish ASP to provide any further services.

### **13. Duty to return documents**

- a) Following the termination of the Mandate ASP shall return the originals of instruments to the Client upon the Client's request. ASP shall have the right to retain copies of these instruments.
- b) If upon the termination of the Mandate the Client requests documents (copies of documents) that had already been supplied to the Client in the course of the performance of the Mandate the related costs shall be borne by the Client.
- c) ASP shall be obliged to retain the files for a period of five years from the termination of the Mandate, and if required to deliver copies to the Client during such period. The costs related to the delivery of such copies shall be borne in accordance with the provision in the preceding paragraph. Where a longer retention period is stipulated by law, such longer retention period shall be complied with. The Client consents to the files (including originals of instruments) being destroyed after the expiry of the retention period.

### **14. Applicable law and jurisdiction**

- a) These Standard Terms and the contractual relationship governed by these Standard Terms shall be subject to Austrian substantive law.
- b) Any and all legal disputes arising out of or in connection with the contractual relationship governed by these Standard Terms, including disputes relating to the validity of such contractual relationship, shall be subject to the exclusive jurisdiction of the court having subject matter jurisdiction at the place where ASP's registered place of business is located, unless stipulated otherwise by mandatory legal provisions. ASP shall, however, have the right to enforce claims against the Client also before any other court in Austria or abroad in whose district any of the Client's registered place of business, permanent residence, establishments or assets is or are located.
- c) In respect of Clients who are consumers within the meaning of the KSchG the jurisdiction rules in accordance with § 14 KSchG shall apply.

### **15. Final provisions**

- a) Any changes or amendments to these Standard Terms shall only be valid if made in writing.
- b) Any notices by ASP to the Client shall be deemed to have been served if forwarded to the address supplied by the Client at the time the Mandate was awarded or new address communicated in writing at a later time. However, unless agreed otherwise

ASP may correspond with the Client in any way that appears appropriate. Any notices by ASP for which written form is required in accordance with these Standard Terms may also be forwarded via facsimile transmission or e-mail.

- c) In the absence of any written instruction by the Client requesting otherwise, ASP shall have the right to use unencrypted e-mail to communicate with the Client. The Client confirms to be aware of the related risks (in particular regarding access, confidentiality, modification of messages during transmission) and to consent to the use of unencrypted e-mail being fully aware of these risks.
- d) The Client expressly consents to the processing, provision and transmission (within the meaning of the Austrian Data Protection Act) by ASP of the personal data relating to the Client and/or its business to the extent this is necessary or expedient for the performance of the duties assigned to ASP by the Client or to comply with requirements imposed on ASP under applicable laws or rules of professional conduct (e.g. participation in e-justice systems). The Client herewith confirms having received and taken note of the information sheet on data protection, which sets out any and all relevant information regarding the processing of data and its rights and which the Client can access at any time at [www.asp-law.at](http://www.asp-law.at) and/or has been delivered to the Client.
- e) The invalidity of any individual provision in these Standard Terms or in the contractual relationship governed by these Standard Terms shall not affect the validity of the remainder of the agreement. The contracting parties undertake to replace any invalid provision by a provision reflecting as closely as possible the economic purpose of the invalid provision.

Current as of January 2023

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Place, date

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Read and approved

NAME:

FUNCTION: