

# General Terms and Conditions of Mocuntia Property Consulting GmbH

## November 2016

### 1. Scope

- 1.1. For the business relationship between Mocuntia Property Consulting GmbH, An der Stegwiese 8a, 86938 Schondorf, Germany, (hereinafter called the "Consultant") and the Client (hereinafter "the client", only the following General Terms and Conditions apply, which are accepted by the client by concluding the assignment. These terms and conditions are also valid for all future business with the Client. Deviating, contrary or and/or supplementary business terms and conditions of the Client do not apply, even if they are not expressly contradicted by the Consultant. An exception to this shall apply only if the Consultant agrees to such amendments in writing.
- 1.2. Amendments and supplements of these General Terms and Conditions require a written agreement.
- 1.3. References to the validity of statutory regulations shall only be for the purpose of clarification. Even without such clarification, the statutory regulations shall apply, as far as they have not been changed directly or have been excluded expressly.

### 2. Conclusion of a contract

- 2.1. Offers by the Consultant are subject to change without notice and are not binding.
- 2.2. The assignment by the client is considered as binding offer. Unless not otherwise provided, the Consultant is entitled to accept this offer within two weeks after its receipt with the Consultant. The acceptance can be made in written form (e. g. confirmation), in text form (e. g. by mail) or as an oral statement.
- 2.3. Individual agreements in particular cases with the client (including subsidiary agreements, supplements and amendments) shall prevail over these General Terms and Conditions. A written agreement is decisive subject to a counter-evidence.
- 2.4. Legally relevant declarations and notifications, which are to be submitted towards the Consultant by the client after conclusion of the contract (such as deadlines, notice of defects) shall require the written form in order to be effective.

### 3. Remuneration and terms of payment

- 3.1. Unless otherwise agreed individually, the agreed fee of the Consultant contains any probable incidental costs, reimbursables (such as all expenditures, daily allowances, etc.) plus VAT.
- 3.2. All invoices are due for payment 14 days of the issuing of the invoice and delivery of the service without any deduction. The Consultant is entitled to demand an appropriate advance payment as well as to submit interim/partial invoices.
- 3.3. Payments shall be made only to the account shown on the invoice. Money orders, cheques, and, in particular, bank drafts will be accepted only if a special arrangement has been agreed in advance; they will be accepted as payment on account, however, and not as payment fulfilment. All types of banking costs, such as direct debit fees, draft fees and discount charges shall be paid by the Client. Renegotiations and prolongations will not be considered as fulfilment.
- 3.4. The Client may raise objections to any Clause of an invoice within 14 days of receipt. For the final invoice this period shall be 21 days. In any case, the Client shall pay the undisputed amount.

### 4. Set-off, retention, reduction, prohibition of assignment

- 4.1. The client is only entitled for set-off or retention if his claim is effective or indisputable.

- 4.2. The claim of the right for reduction by reducing the contractually agreed payment is only allowed if the right for reduction is indisputable or legally established. A probable claim for restitution caused by an overpay remains unaffected.

- 4.3. Claims from the agreement with the Consultant may only be transferred prior to written consent of the Consultant.

### 5. Consultant's General Obligations

- 5.1. The Consultant shall keep the Client fully and properly informed of all matters concerning and related to the Project for which the Consultant is responsible under the terms of the contract.
- 5.2. The Consultant shall perform all services which arise from the contract with due care of a reasonable businessman. In this connection, the Consultant can also engage third parties as experts at his discretion.
- 5.3. The site inspection is carried out as a mere visual inspection.

During the visual inspection, no functionality tests, material tests, or exercise test of the found equipment, building constructions and systems or of the inventory will take place. There is no routine check of accordance of the found equipment and systems with the legal requirements. There is no expert's inspection or functionality tests of the M&A installations. The condition of the M&A installations will only be inspected visually as well as to the available maintenance documentation; functionality tests will not be carried out. A detailed inspection of the building regarding the compliance with law regulations and rules (such as workplace ordinance (Arbeitsstättenverordnung) will not be carried out. There will be no inspection of the land development plan, occupancy permission, town development plans, street development plans, fire safety expert's report, or fire safety conformity certificates and risk assessments, the correctness of the plot boundary and the entry in the land register. Also, the correctness of the calculations, such as the structural analysis of the façade and the supporting structure and the design of technical installations will not be inspected. If not otherwise stated in the TDD report, it is presumed that all legal and judicial permissions are available for the property and that they correspond with the relevant laws and regulations. Furthermore, it is presumed that the ownership structures are clear and that all zoning regulations and structural restrictions were met. In addition, it is assumed that the use of the property and the buildings are located within the boundaries of the plot and that there is no violation of the boundaries or trespassing.

Inspections of the outer area and the façades are being carried out from the ground respectively from areas which can be entered without danger. Whenever a hazard-free access is possible, visual inspections of the building and the building envelope as well as of the accessible rooms will be carried out from inside. Flat roofs which can be accessed without danger and which are equipped with security facilities (such as anchor points) will be inspected visually in individual cases. The decision whether or not a flat roof can be accessed without any danger is made by the respective consultant in-situ. Sloped roofs or steep roofs are never inspected.

### 6. The Client's General Obligations

In order to enable the Consultant to perform the agreed services the Client shall:

- 6.1. obtain all the necessary information (including reports and other relevant documentation) relating to the services or the project and make this information available to the Consultant;
- 6.2. provide the Consultant promptly with any other

information with reference to the property that the Consultant may request;

- 6.3. make decisions on all reports, recommendations and any other matters which are referred to the Client by the Consultant and notify the Consultant of these decisions without undue delay or within the agreed period of time.

## 7. Additional services

As far as not otherwise agreed individually, the Consultant shall be entitled to payment of an additional fee and to reimbursement of any costs incurred for any additional work which may arise from:

- 7.1. changes in the scope or timing of the project caused by measures introduced by the Client, such as change orders or instructions given by the Client or the Client's representative, or
- 7.2. delays, poor performance, or failure or lack in performance of the Client,
- 7.3. the additional remuneration and reimbursement of costs shall be paid by the Client based on the hourly rates and cost reimbursement regulations stated in the proposal unless otherwise agreed in writing by the parties in advance. The payment provisions of Clause 3 shall apply to invoices relating to additional services.

## 8. Consultant's Liability

- 8.1. Any claims by the client for damages are excluded. Exceptions to this rule are damages of the client caused by violation of life, body, health, or the violation of relevant contractual duties as well as the liability for other damages which are based upon a wilful or grossly negligent violation of duty of the Consultant, his legal representatives or auxiliary persons. Relevant contractual duties are such duties which allow the proper fulfilment of the contract, thus the Client may trust the compliance of this fulfilment as standard practice.
- 8.2. In case of a violation of relevant contractual duties, the Consultant is only liable of the predictable damage typical for the contract, if this was caused simply negligently, unless these are claims for damages of the Client due to a violation of life, body or health.
- 8.3. The limitations of the above-mentioned Clauses 8.1 and 8.2 shall apply also for the benefit of the legal representatives and auxiliary persons of the Client, if claims are made directly against them.
- 8.4. The further assigned external experts or consultants (such as fire safety experts, environmental experts etc.) who are assigned upon request or with the consent of the Client will perform independently of the Consultant and are responsible for their performance. They are not auxiliary persons of the Consultant.
- 8.5. In the case of errors in the Consultant's work, such as typographic or calculation errors, the Consultant is entitled to rectify those errors at any time, also with respect to third parties. Errors which could cast doubt on the results contained in the Consultant's reports and documents can be immediately withdrawn and corrected by the Consultant, also with respect to third parties. The Client shall be consulted in each case before corrections are made.
- 8.6. By implementing the contractual services, the Consultant shall assume that the information and documentation supplied by the Client, the owner of the property to be inspected and their representatives and auxiliary persons (such as janitor, property manager, real estate agent) are correct and complete. The Consultant's services shall be considered free from defects insofar as these defects are based on incorrect or incomplete documentation supplied by the Client.

8.7. Building condition assessments are limited exclusively to a visual inspection of the surface of the accessible areas and parts of the building. Covered, hidden or covered building components or inaccessible areas resp. areas which are not made accessible on the day of inspection are excluded from the assessment. It cannot be excluded that there are further deficiencies in the inaccessible or not inspected building parts which are not mentioned in the report.

8.8. If by implementing his contractual services the Consultant assigns third parties, the Client shall first assert any claims against a third party directly, amicably and out of court. The Client has no obligation to seek legal recourse against the third party.

8.9. Any warranty against third parties is excluded. This particularly applies, e. g., if a report of the Consultant is made available to third parties by the Client in the course of a property transaction and this third party does not make their decision on the basis of own inspections and analyses but use the report of the Client or the statements and assessments therein as the basis for their decision.

8.10. It cannot be excluded that there are further damages of the buildings, which will not be identified within the scope of the Technical Due Diligence carried out by the Consultant resp. which cannot be identified on the basis of the provided information.

8.11. The capital expenditure assessments (CAPEX) are estimations which serve as a first indication and which cannot be used as a basis for planning (budget), for repair and/or refurbishment measurements. They are based, amongst others, on rough estimations of surface and quantity and are carried out on the basis of commonly accessible cost key values or experience. The cost prognosis can deviate substantially from the actual costs. In order to get a higher cost and planning reliability, further detailed building condition assessments, quantity and cost estimations as well tender offers are necessary.

8.12. The limitation of liability of this Clause 8 shall also apply in the case of a termination of the contract.

## 9. Termination

9.1. The Client and the Consultant each has the right to terminate the contract for important reasons if the other party is in breach of his obligations in relation to this contract and, despite served written notice in this regard, has failed to remedy such breach or breaches within a reasonable specified period (usually 7 days) after the notice was served.

9.2. The contract may be terminated by the Client at any time, but must give the Consultant 14 days' prior written notice.

9.3. Termination, for whatever reason, of the contract shall be without prejudice to the rights and claims of the parties arising prior to such termination.

9.4. The Consultant shall be entitled to suspend his services or make them subject to reasonable advance payments if the Client has suspended payments or if insolvency proceedings against the Client have been filed, commenced, or refused due to lack of assets. If such a situation continues for more than two months, the Consultant may terminate the contract immediately, without prior notice.

9.5. The Consultant shall be entitled to terminate the contract if the Client is in arrears with payment.

9.6. If the contract has been terminated, the Client shall pay to the Consultant in any case all outstanding fees due to the Consultant for the services performed (whether wholly or in part), and all costs and due VAT.

9.7. If the contract is terminated by the Consultant acc. to

Clauses 9.1, 9.4 or 9.5 or by the Client acc. to Clause 9.2, the Consultant shall be compensated acc. to § 649 BGB. Therefore, in addition to the proved costs and reimbursements, the parties agree to the following:

- (a) In so far as a fixed or total fee was agreed for the services or parts thereof, the Client shall pay 10 per cent of the fees for those services which as a result of the termination of the contract need not be performed.
- (b) In so far as the fees were to be calculated according to hourly or daily rates, monthly fees, or other time-related units, the Client shall pay a sum amounting to 10 per cent of the average fees charged or to be charged by the Consultant for the last three months before the contract was terminated.

9.8. Both parties are entitled to prove that in the individual case the reimbursement acc. to § 649 BGB is higher or lower as mentioned in Clause 9.7.

9.9. If the contract is terminated by the Consultant under Clause 8.2 or by the Client under Clause 8.1 then the Consultant shall immediately submit to the Client a final invoice for the services performed up to the time of the termination. Clause 3 shall apply to this final invoice. Furthermore, the Consultant shall submit to the Client copies of any documents prepared by the Client or on the Client's behalf or that belong to the Client, as necessary in order to minimise disturbances to the project.

## 10. Force Majeure

10.1. The Consultant shall not be liable for any failure to carry out or for any delay in carrying out these services where such failure or delay is due to force majeure. Force majeure means civil revolts, riots, invasions, war, threats or preparations for war, act of terrorism, fire, explosions, storms, floods, earthquakes, subsidence, epidemics or other natural catastrophes, industrial disputes, political interference with the Consultant's normal operation, or any other severe event attributable to any cause of whatever nature outside the Consultant's control.

10.2. The Consultant shall without undue delay notify the Client of the existence of the force majeure event and of its anticipated duration and shall endeavour to overcome the effects of the force majeure event to the best of his ability. The Consultant shall be entitled to an appropriate extension of time to take account of a force majeure event.

10.3. If a force majeure event permanently prevents the Consultant from performing his contractual services or if the extension of time under Clause 10.2 continues for a period of more than 3 months, the Client may terminate the contract on compelling grounds.

## 11. Period of limitation

11.1. The period of limitation for claims and rights on account of defects of the delivery/service, regardless of the legal basis, shall be 1 year.

11.2. The period of limitation acc. to 11.1 shall apply to the following conditions:

- (a) The period of limitation does not apply in case a deficiency was intentionally or fraudulently concealed or the Consultant has accepted warranty for the performance.
- (b) The period of limitation does not apply for buildings or works in which the success is based on the delivery of planning or monitoring performance.
- (c) The period of limitation does not apply for claim for damages for gross negligent breach of duty, in cases of the culpable violation of essential contractual obligations (and which does not consist

of a deficient performance), in cases of culpable violation of life, body or health or for claims according to the product liability law. Damage claims as described in this regulation also mean claims for compensation for any unnecessary expenditures.

11.3. Unless stipulated explicitly elsewhere, the statutory regulations on the start of the period of limitations, suspension of the period, stay and recommencement of the period remain unaffected.

11.4. The provisions above apply for claims for damages which do not occur in the context of a deficiency.

11.5. An amendment of the burden of proof to the disadvantage of the Client shall not be associated with the provisions mentioned above.

## 12. Copyright and Intellectual Property Rights

12.1. The copyright and intellectual ownership rights for all documents prepared by the Consultant in connection with the project shall be vested in the Consultant. Subject to compliance with his payment obligations the Client is granted an irrevocable, non-exclusive, royalty-free licence to copy and use the documents for all purposes related to the project.

12.2. The Consultant shall not be liable for any use of the documents for any purpose other than the purpose for which they were prepared. The Consultant assumes no responsibility or liability vis-à-vis any third party for the correctness, completeness or accuracy of the documents, unless otherwise agreed between Consultant and Client.

## 13. Confidentiality

Except as may be necessary for the performance of the services or as may otherwise be required by law, neither party shall, at any time, without the prior written consent of the other, disclose to any third party or otherwise make use of any of the documents or any other confidential information relating to the business relation and/or the services. This obligation shall apply unless and until such information comes into the public domain through no fault of either party.

## 14. Severability Clause

Should one or more provisions of the General terms and Conditions be determined to be invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of these General Terms and Conditions shall not in any way be affected or impaired by this. The invalid or unenforceable provision shall be replaced with a valid provision, which serves the economic purpose of the invalid or unenforceable clause as closely as possible. The same shall apply in the event of any missing provision.

## 15. Place of Jurisdiction

Munich shall be the place of performance for all duties arising from the contractual relationship and shall be the place of jurisdiction for all legal disputes arising from business relationships with a client who is a merchant, a legal person under public law, or who has a separate fund under public law. The same also applies if the Client does not have a general place of jurisdiction in the Federal Republic of Germany.