

## General Terms and Conditions for “Ziviltechniker” (Architects and Chartered Engineering Consultants) Services (hereafter: Terms)

### I. Definition and Interpretation

The services and offers as well as all agreements concluded between the Client and the Ziviltechniker Office (Ziviltechniker Society) shall be governed exclusively by these Terms, irrespective of the nature of the legal transaction. These Terms shall also be understood as the basis for all of our declarations of intent under private law. Conditions of the Client which conflict with or deviate from our Terms are not applicable unless we have explicitly agreed to their validity in writing. Any action taken by us to fulfil contractual obligations shall not be regarded as acceptance of any conditions which deviate from our Terms. These Terms also serve as a frame agreement for any further legal transactions between the contract parties.

### II. Contract Conclusion

- A) All of our fee proposals and offers are subject to change and non-binding. Any verbal commitments, ancillary agreements or similar which deviate from these Terms or any other of our written declarations of intent are non-binding, in particular any which are given by employees, delivery staff, etc. The content of any brochures, promotional materials etc. used by use shall not form a component of the contract unless this has been explicitly agreed.
- B) In the case that our order confirmation contains amendments to the order, these are considered to have been accepted by the contract partner unless an immediate objection is raised. For offers made to us, the supplier is bound to the offer for a reasonable period of at least eight days after receipt of the offer.
- C) The content of the contract concluded with the contract partner primarily consists of a written contract including annexes, signed authorisation and these Terms. Point II A) 1st and 2nd sentences and B) do not apply to consumer transactions.

### III. Remuneration

- A) Our services shall be measured on the basis of the goal, scope, time period and the conditions for the provision of services, appropriate to the specific area of expertise. Should the parameters for calculation change during the execution period, any services subsequently rendered shall be calculated on the basis of the new parameters.
- B) In any instance where labour costs change in the period between contract conclusion and service provision as a result of collective agreement regulations within the sector or internal works agreements, or where there are changes to other cost centres relevant to the calculation or service provision, such as for materials, energy, transport, subcontracted works, financing, etc., we shall have the right to increase or decrease the prices accordingly. Point III B) does not apply to consumer transactions.
- C) Additional services caused by changes which are not attributable to the sphere of the Ziviltechniker and which necessitate the revision or adaptation of individual sections – in particular as the result of official administrative requirements, amendments to relevant directives and laws and any resulting changes to the Client’s requirements – shall be remunerated additionally in line with the increased scope of services.

#### **IV. Payment Conditions, Interest on Late Payments**

- A) We have the right to require payment by issuing partial invoices which may contain Value Added Tax at the relevant legal amount. Partial invoices are payable within 14 calendar days; the final invoice within 30 calendar days following receipt by the Client. The deduction of a discount is not permitted unless agreed otherwise.
- B) For late payments we are entitled to claim default interest at the statutory rate starting on the due date.

#### **V. Withdrawal from the Contract**

- A) In addition to general legal grounds, we are also entitled to withdraw from the contract if the Client defaults on acceptance or if other important grounds emerge such as the service being postponed by the Client for more than three months or if the Client impedes service provision. The provisions of the ABGB (Austrian Civil Code) apply in the case of withdrawal from the contract.
- B) In the case of delayed payment by the contract partner we are released from any further obligations to deliver and provide services and are entitled to withhold further deliveries and services, to demand pre-payments or deposits, or to withdraw from the contract after setting a reasonable grace period.
- C) In the case that the contract partner – without a legally justified cause – withdraws from the contract or demands its cancellation without justification, we are entitled to choose whether to insist on contract fulfilment or cancellation; in the latter case, Point A) last sentence shall apply.
- D) In the case that the contract partner withdraws from the contract with a legally justified cause, we are only entitled to remuneration for services provided up to the effective date of withdrawal.
- E) Withdrawal from the contract must be announced in writing by registered post.

#### **VI. Reminder and Debt Collection Fees**

In the case of delayed payment the contract partner undertakes to reimburse the costs incurred for reminders in the form of a flat rate of € 15- plus postage, as well as an amount of € 5- every six months for keeping a record of the debt relationship within the reminder system. Furthermore, any costs and expenses arising from payments which incur reminder or debt collection fees must be paid by the debtor, in particular those required for appropriate prosecution and extrajudicial costs at the standard rate.

#### **VII. Title Retention**

- A) Title to all goods and documents (plans, calculations etc.) shall remain vested in us and shall remain our property until full payment has been received. In the case of default we are entitled to retake the goods at any time.
- B) In the case that we demand the return or retake any of the goods to which we retain title, contract rescission shall only occur if this has been explicitly agreed.
- C) The Client bears the full risk for the goods to which we retain title, in particular the risk of destruction, loss or deterioration.

#### **VIII. Exclusion of Set-Off**

- A) Offsetting any counterclaims against our (remuneration) claims is not permitted, regardless of the grounds stated.

- B) Claims against us shall not be transferred without our explicit consent. Point VIII A) does not apply to consumer transactions.

### **IX. Copyright**

- A) Irrespective of whether the works produced by us (e.g. plans, drafts, models, other documentation) are protected by copyright or not, the Client shall have the right to use the works for their contractually stipulated purpose only when the contract conditions have been met in full.
- B) We shall have the right to unlimited use of the data we produce in the course of fulfilling the order (this also applies to data in digital form). In particular this can also be used when realising a subsequent order.

### **X. Storage and Distribution of Documents**

- A) Original plans, original drafts and documents are generally stored on our premises, whereby we also able to use the 'Ziviltechniker Electronic Document Archives' for this purpose. We are obliged to provide our contract partner with paper copies of these documents upon request for a small fee to reimburse the actual costs.
- In case it is agreed that the documents be provided in a digital form, we bear no liability of any kind. The Client shall indemnify us and hold us harmless in this respect. We bear no liability for any error or damage which may result to the IT facilities of the recipient of the digital data. We employ IT programmes to prevent aggressive IT programmes (viruses, worms, etc.).
- B) Our duty to retain records ends ten years after issuing the final invoice to the Client. We shall be relieved from our storage obligation if we release the original documents to the contract partner during this period.

### **XI. Retention**

Except in cases of rescission, the contract partner shall not have the right in the case of a justified complaint to retain the total amount of the gross invoice but only a reasonable amount appropriate to the estimated cost of repair or damage. Point XI does not apply to consumer transactions.

### **XII. Overdue Payment Making the Whole Sum Immediately Payable (*Terminverlust*)**

- A) Should part payment be agreed with the contract partner, it is agreed that if even just one instalment is late, the entire outstanding balance shall be due and payable (*Terminverlust*) without any extended period of notice.
- B) Point XII applies to consumer transactions, as long as we have provided our services in full, in the case that even one instalment by the Client is at least six weeks in arrears and when we have issued a reminder to the Client notifying that full payment will be due (*Terminverlust*) after a grace period of at least two weeks.

### **XIII. Warranty, Examination and Notice of Non-Conformity**

- A) Any warranty claims by the contract partner shall be met with our choice of replacement, repair within a reasonable period, or price reduction if there is a repairable defect. Any compensation claims by the Client aimed at remedying the defect may only be asserted if we have defaulted on meeting the claims under warranty.
- B) The contract partner must inform us in writing about any defects upon delivery; complaints about hidden defects must be made in writing immediately, but at the latest within one week of being discovered. If a complaint about a defect is not made, or is not made in time, the services provided by us shall count as approved. Point XIII A) and B) do not apply to consumer transactions.
- C) The warranty period for all services provided by us extends to three years from completion of all contractually agreed services.
- D) For consumer transactions if there is an actual instance of indeterminate obligation, we may disburden ourselves of any claims to rescind the contract or reduce the price commensurately if we exchange the defective goods for ones free of defect in a timely fashion. We may disburden ourselves of any claims to a commensurate price reduction if we provide an improvement or supply any missing goods within an appropriate time period and manner reasonable to the consumer.

#### **XIV. Indemnity**

- A) In the case of slight negligence any entitlement to damages is excluded. The existence of slight or gross negligence has to be proven by the injured party.
- B) The limitation period for entitlement to damages is two years from the conclusion of our services, at the latest within two years of issuing the final invoice, as long as there is no applicable law allowing for a shorter period of entitlement.  
All provisions about indemnity included in these Terms or otherwise agreed upon are also valid if entitlements to damages are claimed additionally or instead of warranty claims.
- C) Our plans and other documentation may not be used for execution until all necessary official permits have been acquired and our explicit approval has been given, otherwise all compensation claims are excluded.
- D) With regard to Point XIV A) and B) first sentence, the provisions laid out in the Consumer Protection Act shall apply to contracts with consumers.

#### **XV. Governing Law and Jurisdiction**

The Austrian law applies. The application of the UN Convention on Contracts for the International Sale of Goods is explicitly excluded. The contract language is German. The contract parties agree on Austrian, domestic jurisdiction. Arbitration, ruling and settlement of disputes is agreed to be done exclusively by the local and competent Court at the registered office of our organisation. Point XV final sentence does not apply to consumer transactions.

#### **XVI. Place of Performance**

The place of performance is the registered office of our organisation.

#### **XVII. Change of Address**

The contract partner is required to inform us of any change of home address/business address, until such time as the contractual business has been fully concluded by both parties. In case such notifi-

cation is not issued, statements from our side sent to the last known address are considered as delivered and received.

#### **XVIII. Severability**

Should an individual provision of these Terms become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions.