

# GENERAL TERMS AND CONDITIONS

Ernst & Young Law GmbH Rechtsanwaltsgesellschaft Steuerberatungsgesellschaft

as of November 2018

This is an English translation of the German text (please refer to <http://www.ey.com/DE/DE/Home> and click on "AAB" at the bottom of the website, please refer to the section "Non-Assurance Dienstleistungen"), the German text being the sole authoritative version

## Our Relationship with You

1. We will perform the Services<sup>1</sup> in accordance with applicable professional standards for the sole benefit of you, our Client.
2. We are a member of the global network of Ernst & Young firms ("EY Firms"), each of which is a separate legal entity.
3. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
4. We may subcontract portions of the Services to other EY Firms, as well as to other service providers, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Reports (as defined in Section 11), the performance of the Services, and our other obligations under this Agreement.<sup>1</sup>
5. We will not assume any management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services.

## Your Responsibilities

6. You shall assign a qualified person to oversee the Services. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
7. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including access to records, systems, premises and people) that we reasonably require to perform the Services.
8. All information provided by you or on your behalf ("**Client Information**") shall be accurate and complete. The provision of Client Information to us will not infringe any copyright or other third-party rights.
9. We may rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.
10. You shall be responsible for your personnel's compliance with your obligations under this Agreement.

## Our Reports

11. Any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement ("**Reports**"), other than Client Information, are for your internal use only (consistent with the purpose of the Services).
12. You may not disclose a Report (or any portion or summary of a Report) externally (including to your affiliates), or refer to us or to any other EY Firm in connection with the Services, except:
  - (a) to your other advisors legally obliged to professional secrecy, who may review it only in connection with advice relating to the Services,
  - (b) to the extent, and for the purposes, required by applicable law and you will promptly notify us of such

legal requirement to the extent you are permitted to do so, or

- (c) to other persons (including your affiliates) with our prior written consent, who have executed an access letter and who may use it only as we have specified in our consent.

If you are permitted to disclose a Report (or a portion thereof), you shall not alter, edit or modify it from the form we provided.

13. You may incorporate into documents that you intend to use our summaries, calculations or tables based on Client Information contained in a Report, but not our recommendations, conclusions or findings. You must assume sole responsibility for the contents of those documents and you must not externally - directly or indirectly - refer to us or any other EY Firm in connection with them.
14. You may not rely on any draft Reports (which are non-binding), but only on final written Reports. Draft Reports only serve our internal purposes and/or the coordination with you and, therefore, only constitute preliminary stages of Reports and are neither final nor binding and are subject to further review. We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after the cut-off date indicated in the Report or, in absence of such date, the delivery date of the Report, unless otherwise agreed or we are obliged to do so with regard to the Services provided by us.

## Limitations of Our Liability

15. Our liability for cases of damage resulting from slight negligence (*einfache Fahrlässigkeit*) is limited to a maximum amount of EUR 10 million (in words: ten million Euros). This limitation of liability applies to all claims for damages caused by slight negligence of us, our representatives or agents – except for damages resulting from injury to life, body or health, as well as for damages that constitute a duty of replacement by a producer pursuant to Section 1 ProdHaftG<sup>2</sup>.
16. If you consider the liability limit stipulated in Section 15 and the amount our liability is limited to where Section 15 applies ("**Maximum Liability Amount**") as inappropriate, please inform us of the extension of our liability you would like to be agreed on instead. In this case we will endeavor to obtain additional insurance for such increased amount ("**Increased Amount**"). Provided that you are furthermore prepared to bear the additional costs arising from the additional insurance covering the Increased Amount, we are prepared to agree with you on a corresponding extension of our liability. We emphasize that an increase of the Maximum Liability Amount only applies if agreed on in writing.
17. If legitimate claims falling within our limitation of liability are brought against us by you and/or one or more third parties who are entitled to invoke this Agreement, the Maximum Liability Amount will be – in accordance with Section 428 BGB<sup>3</sup> – available only once to all – including all future – claimants collectively. Hence, any payment by us to you has discharging effect towards all claimants. In case the sum of all claims (including future claims) to which our limitation-of-liability-provisions apply exceed the Maximum Liability

<sup>1</sup> Terms which are not defined in these General Terms and Conditions are defined in the Cover Letter.

<sup>2</sup> "Produkthaftungsgesetz" (German Product Liability Act)

<sup>3</sup> "Bürgerliches Gesetzbuch" (German Civil Code)

Amount, the allocation of this Maximum Liability Amount amongst all claimants (including you) is entirely a matter for discussion amongst all claimants.

Section 334 BGB shall apply.

18. You may not make a contractual claim or bring proceedings arising from the provision of the Services or otherwise based on this Agreement against any other EY Firm or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("**EY Persons**"). You shall make any contractual claim or bring such proceedings only against us.

#### **Indemnity**

19. You shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates and lawyers) and resulting liabilities, losses, damages, costs and expenses (including reasonable external legal costs) arising out of the third party's use of or reliance on any Report disclosed to it by or through you or at your request. You shall have no obligation hereunder to the extent that we have specifically authorized, in writing, the third party's reliance on the Report.

#### **Intellectual Property Rights**

20. We may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("**Materials**") that we own in performing the Services. Notwithstanding the delivery of any Reports, we retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them).

#### **Confidentiality**

21. We are bound by the strict and mandatory professional confidentiality obligations as stipulated in Section 43 a BRAO<sup>4</sup> and Section 57 StBerG<sup>5</sup> and except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary.
22. Notwithstanding any superseding legal professional secrecy obligation, either of us may, however, disclose such information to the extent that it:
- (a) is or becomes public other than through a breach of this Agreement,
  - (b) is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information,
  - (c) was known to the recipient at the time of disclosure or is thereafter created independently,
  - (d) is disclosed as necessary to enforce the recipient's rights under this Agreement, or
  - (e) must be disclosed under applicable law.
23. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement and acknowledge that sending information and

documents in electronic form (in particular by e-mail) entails risks.

24. Subject to applicable law, we may provide Client Information to other EY Firms, EY Persons and external service providers of us, other EY Firms, or EY Persons ("**Service Providers**") who may collect, use, transfer, store or otherwise process it (collectively "**Process**") in various jurisdictions in which they operate (office locations of EY Firms are listed at [www.ey.com](http://www.ey.com)) for purposes related to:
- (a) the provision of the Services,
  - (b) complying with regulatory, and legal obligations to which we are subject,
  - (c) conflict checking,
  - (d) for risk management and quality reviews, and for
  - (e) our internal financial accounting, information technology and other administrative support services.
- (lit. (a)-(e) collectively "**Processing Purposes**")

We shall be responsible for maintaining the confidentiality of Client Information regardless of by whom such Information is Processed on our behalf.

#### **Data Protection**

25. For the Processing Purposes referred to in Section 24 above, we and other EY Firms, EY Persons and Service Providers may Process Client Information relating to identified or identifiable natural persons ("**Personal Data**") in various jurisdictions in which they operate. The transfer of Personal Data within the EY network is subject to EY Binding Corporate Rules policies (listed at [www.ey.com/bcr](http://www.ey.com/bcr)). We will Process the Personal Data in accordance with data protection requirements under applicable law and professional regulations, including national (BDSG)<sup>6</sup> and European legal provisions on data protection. We will require any Service Provider that Processes Personal Data on our behalf to adhere to such requirements.
26. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been Processed in accordance with applicable law.

#### **Fees and Expenses Generally**

27. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the applicable Statement of Work or any of its appendices. You shall also reimburse us for other reasonable expenses incurred in performing the Services. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other than taxes imposed on our income generally). We may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of our Services dependent upon complete satisfaction of our claims. Unless otherwise set forth in the applicable Statement of Work or Agreement on Fees, payment is immediately due following receipt of each of our invoices.
28. We may charge additional professional fees if events beyond our control (including your acts or omissions) affect our ability to perform the Services as originally planned or if you ask us to perform additional tasks.

<sup>4</sup> "Bundesrechtsanwaltsordnung" (Federal Lawyer's Act)

<sup>5</sup> "Steuerberatungsgesetz" (Tax Advisory Act)

<sup>6</sup> "Bundesdatenschutzgesetz" (German Data Protection Act)

29. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation or unless we do get fully reimbursed by public authorities.

#### **Force Majeure**

30. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

#### **Term and Termination**

31. This Agreement applies to the Services whenever performed (including before the date of this Agreement).

32. This Agreement shall terminate on the completion of the Services. Either of us may terminate it, or any particular Services, earlier upon 90 days' prior written notice to the other. In addition, we may terminate this Agreement, or any particular Services, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations. Sections 626 and 627 BGB shall remain unaffected.

33. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement.

34. Our respective confidentiality obligations under this Agreement, as well as other provisions of this Agreement that give either of us rights or obligations beyond its termination, shall continue indefinitely following the termination of this Agreement.

#### **Governing Law and Jurisdiction**

35. This Agreement, and any non-contractual matters or obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of Germany.

36. Any dispute relating to this Agreement or the Services shall be subject to the exclusive jurisdiction of the courts of Stuttgart, Germany, to which each of us agrees to submit for these purposes, or, at our discretion, (i) the court located where our office that conducted the main part of the work is registered or (ii) the courts located where you are registered.

We are not prepared to participate in dispute settlement procedures before a consumer arbitration board<sup>7</sup> within the meaning of Section 2 VSBG.<sup>8</sup>

#### **Miscellaneous**

37. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.

38. This Agreement and/or any Statement of Work hereunder (and modifications to them) must be executed in writing (Textform<sup>9</sup>).

39. Each of us represents that the person signing this Agreement and /or any Statement of Work hereunder on its

behalf is also authorized to execute it and to bind each of us to its terms.

You represent that your affiliates and any others for whom Services are performed shall be bound by the terms of this Agreement and the applicable Statement of Work.

40. You agree that we and the other EY Firms may, subject to professional obligations, act for other clients, including your competitors.

41. Neither of us may assign any of our rights, obligations or claims under this Agreement.

Unless you qualify as a consumer in the meaning of section 13 BGB, a set off against our claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

42. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.

43. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Cover Letter, (b) the applicable Statement of Work (including – as the case may be – the Agreement on Fees), (c) these General Terms and Conditions and (d) other annexes to this Agreement.

44. Neither of us may use or reference the other's name, logos or trademarks without its prior written consent. We are allowed to use your name publicly to identify you as a client in connection with specific Services or otherwise.

45. The limitations in Sections 15 to 18 and the provisions of Sections 19, 24, 25 and 40 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.

<sup>7</sup> "Verbraucherschlichtungsstelle"

<sup>8</sup> "Verbraucherstreitbeilegungsgesetz" (German Act on Consumer Dispute Settlement)

<sup>9</sup> Translators Note: The German term „Textform“ means in written form but without requiring a genuine signature.