



ertl advisory

GENERAL TERMS AND CONDITIONS
FOR CONSULTING AND SUPPORT SERVICES

Version 1.0 | As of: April 22, 2024

1. Principles and scope of application

- 1.1. For all legal transactions between the Client and the Contractor, these "General Terms and Conditions" (hereinafter referred to as the "GTC"), which are published on Ertl Advisory's company website at <https://ertladvisory.com/agn> in the currently valid version, shall apply exclusively in addition to the acceptance of offers, consulting, advisory, fee and work contracts. The version valid at the time of the order, acceptance of the offer or conclusion of the contract shall apply in each case.
- 1.2. These GTC shall also apply to future contractual relationships and thus also in cases of additional agreements in which no express reference is made to them.

2. Consultancy scope and conclusion of contract

- 2.1. The specific scope and objectives of consulting assignments and projects shall be regulated in each individual case by legally binding acceptance of an offer or by conclusion of a consulting, advisory, fee or work contract ("individual contracts") between the Client and the Contractor.
- 2.2. A contract is concluded upon acceptance of the offer or individual contract submitted by the Contractor. Acceptance shall take place upon receipt by the Contractor of the order confirmation attached to the offer or individual contract and signed by the Client.
- 2.3. If necessary, the Contractor shall be entitled to have the tasks incumbent upon it performed in whole or in part by third parties (subcontractors). Third parties shall be remunerated exclusively by the Contractor itself. No direct contractual relationship of any kind whatsoever shall arise between third parties and the Client.
- 2.4. The Client undertakes not to enter into any business relationships with third parties of the same or similar content as those offered by the Contractor during and for a period of three years after termination of the contractual relationship with the Contractor.
- 2.5. The Contractor shall be free from instructions in the production of the agreed work and shall act at its own discretion and under its own responsibility. He is not bound to a specific place of work or specific working hours.

3. Duty of the Client to inform and cooperate

- 3.1. The Client shall ensure the organizational framework conditions for the Contractor in fulfilling the consulting assignment at the respective place of business in order to enable the consulting process to proceed efficiently and effectively.
- 3.2. The Client shall inform the Contractor comprehensively of any measures previously implemented or ongoing that could have an impact on the fulfillment of the contract.
- 3.3. The Client shall ensure that all documents necessary for the fulfillment and execution of the consulting assignment are submitted to the Contractor in a timely manner, even without the Contractor's special request, and that the Contractor is informed of all processes and circumstances that are of importance for the execution of the consulting assignment.
- 3.4. The Client shall ensure that its employees and any employee representative body (works council) are informed by the Contractor before the Contractor starts work, insofar as effects in this context are to be expected.

4. Loyalty, independence and non-solicitation

- 4.1. Both contracting parties (Client and Contractor) undertake to be mutually loyal and to take all necessary measures to prevent the independence of the Contractor's employees and subcontractors from being jeopardized.
- 4.2. During the term of contracts and for a further period of six months after completion of the consulting services, the Client is prohibited from employing employees or subcontractors of the Contractor who were involved in the performance of the contract without the express written consent of the Contractor. In the event of a breach of this obligation, the Client shall pay a contractual penalty in the amount of EUR 30,000.

5. Availability and delivery dates

- 5.1. The Contractor shall endeavor to provide information within a reasonable period of time in response to inquiries from the Client during the Contractor's business hours.
- 5.2. The Client shall not be entitled to withdraw from the contract or to claim compensation for damages due to failure to meet promised deadlines. Partial deliveries are permissible.

6. Protection of intellectual property and copyright

- 6.1. The copyrights to the works created by the Contractor and its employees and commissioned third parties (in particular offers, reports, analyses, expert opinions, programs, tools, methods, drafts, calculations, drawings, diagrams, data carriers, etc.) shall remain with the Contractor. They may be used by the Client during and after termination of the contractual relationship exclusively in the contractual context. In this respect, the Client shall not be entitled to reproduce or distribute the work(s) without the express consent of the Contractor. Under no circumstances shall any unauthorized reproduction/distribution of the work give rise to any liability on the part of the Contractor - in particular with regard to the accuracy of the work - towards third parties.
- 6.2. Any breach of these provisions by the Client shall entitle the Contractor to terminate the contractual relationship prematurely with immediate effect and to assert any statutory claims, in particular for injunctive relief or damages.

7. Acceptance, rectification of defects and warranty

- 7.1. The Contractor shall be entitled and obliged, regardless of fault, to rectify any inaccuracies and defects in its performance that become known. The Contractor shall inform the Client thereof without delay. This obligation of the Contractor shall expire four weeks after provision of the respective service.
- 7.2. In case of warranty, improvement shall in any case take precedence over price reduction or rescission.
- 7.3. The Contractor shall be entitled to refuse the chosen remedy if it is either completely impossible or involves a disproportionately high effort for the Contractor compared to other remedial measures.
- 7.4. Complaints are only valid if they concern reproducible defects and are documented in writing.
- 7.5. The Client shall be entitled to the rectification of defects free of charge insofar as these are demonstrably the fault and responsibility of the Contractor. This claim shall expire six months after the Contractor has provided the service complained about.

8. Confidentiality, discretion, secrecy and data protection

- 8.1. The Contractor undertakes to maintain absolute confidentiality about all business matters of which it becomes aware in the course of providing the service, in particular business and trade secrets as well as any information it receives about the nature, scope of operations and practical activities of the Client.
- 8.2. Only the Client itself, but not its vicarious agents, can release the Contractor from this confidentiality obligation in writing.
- 8.3. The Contractor may only hand over reports, expert opinions and other written statements on the results of its activities for the Client to third parties with the express written consent of the Client.
- 8.4. This duty of confidentiality extends indefinitely beyond the end of the contractual relationship. Exceptions are cases in which there is a legal obligation to provide information.
- 8.5. Until revoked in writing, the Contractor shall be entitled to publicize the Client, including the corresponding company logo and the respective contract or project topic, as a reference on its business channels, e.g. on its company website or upon request.
- 8.6. The Contractor shall be entitled to process personal data entrusted to it within the scope of the purpose of the contractual relationship. The Client warrants to the Contractor that all necessary measures have been taken for this purpose, in particular those within the meaning of data protection law (GDPR, Austrian DSG, etc.) and that the corresponding legal basis exists.
- 8.7. In the event of order-related, intensive processing of personal data by the Contractor, for which the Client is the controller within the meaning of the GDPR, a separate order processing agreement must be concluded between the Client and the Contractor (as processor).

9. Liability and compensation

- 9.1.** The Contractor and its employees or vicarious agents shall act in accordance with the generally recognized principles of professional practice when providing consultancy services. He shall only be liable for damages in the event that intent or gross negligence on his part is proven and only up to an amount equal to three times his fee agreed and already invoiced for the order in question (excluding any reimbursement of expenses), but not exceeding EUR 25,000 per damage event.
- 9.2.** A claim for damages can only be asserted within six months of the claimant becoming aware of the damage. However, the claim shall become time-barred after three years in any case, unless other limitation periods are stipulated by law.
- 9.3.** The Client must provide proof that such damage has actually occurred and is attributable to the Contractor's fault. The reversal of the burden of proof is excluded.
- 9.4.** If the activity causing the damage was carried out by a third party and the Client was notified thereof, any warranty and liability claims against such third party shall be deemed assigned to the Client in accordance with the law and the terms and conditions of such third party.
- 9.5.** Compensation for consequential damages and financial losses, unrealized savings, loss of interest and damages from third-party claims against the Contractor is excluded in any case, as far as legally permissible.
- 9.6.** The Contractor shall only be liable for services laid down in writing and therefore not for information provided by telephone or otherwise verbally.
- 9.7.** If and as long as obligations cannot be fulfilled on time or properly after conclusion of the contract due to force majeure, such as war, terrorism, natural disasters, fire, strike, sovereign intervention, failure of power supply, means of transportation, telecommunications networks or data lines, changes in the law affecting the consulting service and the like, this shall not constitute a breach of contract by the Contractor. Liability on the part of the Contractor in cases resulting from the effects of force majeure is therefore excluded.

10. Fees, prices and invoicing

- 10.1.** Unless otherwise agreed in a legally binding, countersigned offer or consulting, advisory, fee or work contract, the Contractor shall receive the agreed fee from the Client after completion of the agreed work. Unless otherwise agreed in the individual contracts, the Contractor shall be entitled to submit interim invoices in accordance with the progress of the work and to demand payment on account in accordance with the respective progress. The fee shall be due in each case upon invoicing by the Contractor.
- 10.2.** If the execution of the order is frustrated by the Client after the contract has been signed, the Contractor shall nevertheless be entitled to the agreed fee.
- 10.3.** Ancillary and special costs are not included in the basic fee (daily rate) stated by the Contractor. Cash outlays, expenses, travel costs, etc. shall be charged separately.
- 10.4.** If the agreed work is not carried out for reasons on the part of the Client or due to a justified premature termination of the contractual relationship by the Contractor, the Contractor shall retain the right to payment of the entire agreed fee less expenses saved. If a daily fee is agreed, the fee shall be paid for the number of days that could have been expected for the entire agreed work, less the expenses saved. The expenses saved shall be agreed at a flat rate of 30 percent of the fee for those services that the Contractor has not yet provided by the date of termination of the contractual relationship.
- 10.5.** The Contractor may make the completion of its performance dependent on the full satisfaction of its fee claims. Complaints about the Contractor's work shall not entitle the Contractor to withhold the remuneration to which it is entitled, except in the case of obvious defects.
- 10.6.** Work at weekends and on Austrian public holidays shall be at double the hourly rate, night work on working days between 10 p.m. and 6 a.m. at 1.5 times the hourly rate, unless otherwise agreed. The time of the place of work shall apply. Travel time shall be charged at half the agreed hourly rate. For rail travel, 1st class will be charged; for air travel, the cheapest possible option will be chosen.
- 10.7.** Unless otherwise agreed in individual cases, the Client shall bear the expenses for appropriate accommodation and meals for the Contractor, its employees and vicarious agents.
- 10.8.** The Contractor may make the completion of its performance dependent on the full satisfaction of its fee claims. Complaints about the Contractor's work shall not entitle the Contractor to withhold the remuneration to which it is entitled, except in the case of obvious defects.
- 10.9.** All prices quoted are exclusive of statutory value added tax (VAT) ex place of performance.
- 10.10.** In case of non-payment of interim invoices, the Contractor shall be released from its obligation to provide further services. However, this shall not affect the assertion of further claims resulting from non-payment.
- 10.11.** After the due date of the fee, 12 percent default interest on the gross invoice amount shall be deemed agreed. The due date shall be 14 days (two weeks) after receipt of the invoice. The first reminder costs a flat rate of EUR 30 excl. VAT and is sent 14 days after the due date of the fee. Each further reminder shall be sent two weeks thereafter and shall cost a flat rate of EUR 40 excl. VAT expense allowance.

11. Electronic invoicing

- 11.1.** The Contractor shall be entitled to send invoices to the Client exclusively in electronic form, unless otherwise agreed in the individual contracts. The Client expressly agrees to the sending of invoices in electronic form by the Contractor.

12. Contract duration and termination

- 12.1.** The contracts generally end upon completion of the consulting project and the provision of services or in accordance with any specific notice periods agreed in the individual contracts.
- 12.2.** Nevertheless, contracts can be terminated by either party at any time for good cause without observing a notice period. Good cause shall be deemed to exist in particular if a contracting party breaches material contractual obligations or if insolvency proceedings are instituted against a contracting party or the bankruptcy petition is dismissed for lack of assets to cover costs.

13. Severability clauses

- 13.1.** The contracting parties confirm that they have provided all information in the contract conscientiously and truthfully and undertake to notify each other of any changes without delay.
- 13.2.** Amendments to individual contracts must be made in writing. This shall also apply to any waiver of this formal requirement. Verbal collateral agreements do not exist.
- 13.3.** In the event that individual provisions of the individual contracts or these GTCs are or become invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. Ineffective or unenforceable provisions shall be replaced by effective provisions that come closest to them in terms of meaning and economic purpose.

14. Applicable law and place of jurisdiction

- 14.1.** Unless otherwise agreed in individual contracts, Austrian law shall apply exclusively, even if the order is carried out abroad.
- 14.2.** Any disputes shall be settled exclusively by the court having subject-matter and local jurisdiction for the Contractor's registered office.