

# General Terms and Conditions for Consultancy Services of Forspol GmbH

Status: 1<sup>st</sup> June, 2014

## 1. Scope of validity

(1) These general terms and conditions apply to consultancy and expertise and/or market research contracts (hereinafter also: "contract") between Forspol GmbH (hereinafter: "AN") and the principal (hereinafter: "AG").

(2) Deviating terms and conditions of AG apply only if accepted in writing by AN. AN's rejection of terms and conditions of AG, referred to in order confirmation letters or in any other form, is hereby declared.

## 2. Scope and performance of order

(1) The contract will be performed with due diligence and, in the case of preparing technical / constructional expertises, on the basis of the specialist know-how of engineers experienced in construction, architecture and related disciplines and in compliance with applicable standards.

(2) AN warrants proper performance of the services agreed upon, not, however, achievement of any commercial benefits.

(3) The services of AN are deemed completed as soon as the agreed analysis will have been carried out and elucidated to AG or - in the case of an agreed expertise or any other agreed exposition in writing – submitted to AG. If AN undertakes to present results in writing, only the written exposition will be binding and valid. Any verbal information and explanation provided by staff/agents of AN beyond the scope of the contract are in no case binding.

(4) Services of AN do not comprise any legal or tax consultancy, nor is the elaboration of plans ready for carrying out new construction or changes to existing buildings part of the contract

(5) AG may not require AN to entrust specific persons with performing the services. In performing the contract AN is free to make use of the services of qualified third parties.

(6) Should any changes to the factual or legal basics of the results elaborated occur after completion of the contract, AN will not be obliged to point out such changes and their possible consequences to AG.

## 3. Co-operation and information to be provided by AG

(1) AG is under an obligation to co-operate comprehensively and timely in performing the contract, even without being expressly requested to do so. In particular, AG is obliged to make available all documentation needed for performing the contract in good time and to notify in good time AN of all occurrences and circumstances, which may be or become to be of consequence for performing the contract. That also applies to any documents, occurrences and circumstances which come into existence or become known after AN commenced work.

(2) Should AG fail to provide any acts of co-operation due from

AG, AN will be entitled to terminate the contract without prior notice, irrespective of and without prejudice to AN's right to claim refund of additional expenditure or claim damages.

(3) Upon AN's request AG will confirm correctness and completeness of documents, information and verbal explanations provided by AG to AN in writing.

(4) AN will check information provided by AG to AN, particularly figures, for obvious errors only. Beyond such checks, AN - in using information provided by AG – will consider same as correct and complete, irrespective of whether or not an express confirmation from AG has been requested according to paragraph (3) or has been provided.

## 4. Date of delivery and delay in acceptance by AG

(1) In the case of force majeure, which makes performance by AN either materially more difficult or impossible, and also in the case of any other temporary impediments to performance beyond AN's control, any date of delivery agreed will be postponed by the period of duration of any such occurrence plus a reasonable period of mobilisation. AN will notify AG promptly of any such impediment to performance and the expected duration of any delay resulting therefrom.

(2) Should AG be in arrears in respect of acceptance of the contractual services provided by AN, AN will be entitled to terminate the contract without prior notice, irrespective of and without prejudice to AN's right to claim refund of additional expenditure or claim damages.

## 5. Fees, off-setting, assignment

(1) The fee for the services of AN is to be calculated on the basis of time spent by AN and their staff/agents, unless something different is agreed in writing. Further details (fee rates, refund of expenses and travelling expenses, etc.) are to be agreed separately.

(2) Should AN in connection with the contract provide any additional services required by the AG and should the contract parties not come to an agreement on a remuneration for such additional services, the total fee will be increased in accordance with additional time and expenditure spent by AN.

(3) The fee is due upon receipt of invoice and will become payable immediately without any deductions. VAT at the statutory rate is to be added to all amounts quoted and will be shown separately on the invoices.

(4) Several principals are jointly and severally liable.

(5) Any off-setting of fees invoiced by the AN is permissible only against undisputed and legally valid claims of the AG.

(6) AG may not assign any rights from a contract to third parties without prior approval of AN in writing.

## 6. Warranty

(1) In the case of any deficiencies AG is entitled to supplementary performance if rectification of any deficiencies is possible for the AN at reasonable cost. Unless any deficiencies cannot be remedied by supplementary performance or supplementary performance fails, AG may not demand cancellation of the contract or reduction of fee. If the contract is placed by a commercial entity in the meaning of § 14 BGB (German Civil Code), a public authority or corporation or other

public entity, AG may demand cancellation of the contract only if the services provided are no longer of any interest due to a failure of supplementary performance. The provisions in item 8 apply to any possible claims for damages.

(2) AN must be notified in writing of any obvious deficiencies by the AG within two weeks after performance of the services concerned. If AG is a commercial entity in the meaning of § 14 BGB (German Civil Code), a public authority or corporation or other public entity, AN must be notified in writing of any obvious deficiencies without delay; deficiencies not obvious may be claimed beyond the foregoing time limit not later than one year from the start of the statutory limitation period as soon as they become apparent. Should AG not make a deficiency claim in time, there will be no right to rectification of such deficiency.

## 7. Liability of AN

(1) Forspol GmbH only assumes unlimited liability – irrespective of the legal reason – for damage resulting from wilful misconduct or grossly negligent conduct caused by a legal representative, employee or vicarious agent (“Erfüllungsgehilfe”) of Forspol GmbH. Otherwise, Forspol GmbH's liability for damage caused by Forspol GmbH, its legal representatives, employees and vicarious agents – irrespective of the legal reason – shall be limited to a maximum total amount of € 1.5 million (in words: oneandahalf million euros), unless agreed otherwise by the Advisor and the Client.

(2) Any liability for lost profits shall be excluded.

(3) The aforementioned maximum liability amount shall also apply if the damage is based on various or several similar professional errors or an error that has resulted in different types of damage and/or if there is more than one claimant.

(4) If compensatory damage claims against Forspol GmbH are excluded or limited, this shall also apply with regard to the personal liability of Forspol GmbH's legal representatives and employees.

(5) The aforementioned exclusions and limitations of liability shall not apply to damages arising from injury to life, limb or health.

(6) The contractual remuneration has been determined on the basis of the performance and obligations specified in the particular Agreement. Forspol GmbH's responsibilities under the particular Agreement and its performance shall be towards the Client exclusively. The results of the work executed by Forspol GmbH shall remain confidential and are intended exclusively for the Client and only for the purposes specified in the particular Agreement. Any other use and, in particular, disclosure to third parties or other publications (disclosure to third parties) – including extracts – without Forspol GmbH's prior written consent shall be prohibited. In the event of consent to disclosure to a third party, the Client agrees to notify the respective third parties in writing and to underline that Forspol GmbH generally assumes no liability towards third parties for the work and services provided and that third parties may make no claims whatsoever against Forspol GmbH on the basis of the work and services provided. The Client also agrees to indemnify Forspol GmbH against any third party claims and associated costs asserted by third parties against Forspol GmbH as a result of unauthorised disclosure or publication of the results of the work and services provided. "Third parties" in this context shall also include the Client's Affiliates.

(7) Forspol GmbH may assume liability towards third parties for its valuation only if the relevant third party has accepted the limitation of liability set forth in section 7 and has accounted for

the respective additional remuneration for the joint and several liability.

(8) Forspol GmbH have assumed liability as against third parties for its valuation pursuant to section 7(6) and 7(7), this shall be done only on the basis of the following fee rates per contract volume:

| Mode   | First party   | Second and subsequent parties   |
|--|---|---|
| 1. Lettable area (portfolio) < 1,750 sqm                                       | € 2,000 (net)   | € 2,000 (net)   |
| 2. Lettable area (portfolio) >= 1,750 sqm:                                     |   |   |
| a) For the first € 30.00 (net) Backlog and/ or Capex per sqm lettable area     | € 2,000 (net) + ((total of Backlog and/ or Capex) * lettable area * 0.10000%) | € 2,000 (net) + ((total of Backlog and/ or Capex) * lettable area * 0.04000%) |
| b) For the following € 40.00 (net) Backlog and/ or Capex per sqm lettable area | (Backlog and/ or Capex) * lettable area * 0.06550%                            | (Backlog and/ or Capex) * lettable area * 0.03000%                            |
| c) Thereafter  | (Backlog and/ or Capex) * lettable area * 0.01250%                            | (Backlog and/ or Capex) * lettable area * 0.00625%                            |

The above-mentioned rates apply to the Backlog- and Capex-numbers shown in Forspol GmbH's written final report and/ or final cost estimation table.

## 8. Limitation of utilisation, copyright, data protection

(1) AG undertakes that the results of the work of AN and in particular the expertises, reports, plans, drafts, drawings, schedules and calculations prepared within the framework of the contract will only be used for the purposes agreed. In principle the results of the work of AN are not intended for third parties. AG may not pass on the results of the work and of the consultancy services to third parties, except if they are affiliated with AG. Prior written approval of AN in each individual case is mandatory. The provisions of item No. 8 above also apply to any liability of AN towards third parties.

(2) To the extent results of work can be copyrighted, AN remains the author. In such cases AG is accorded the irrevocable, exclusive and non-transferable right of utilisation of the results of work, restricted only by the provisions of paragraph (1) above. Such a right of utilisation, however, is not due to AG if AG terminates the contract for reasons beyond the control of AN prematurely without notice or if AG is in arrears with payment of the remuneration due to AN.

(3) AN is entitled to process personal data made available to AN within the framework of the contractual purposes or to have them processed by third parties.

## 9. Return of documents

(1) Upon completion of the contract for consultancy, expertises and/or market research, AN will return to AG upon request all documents, which AG made available to AN for the performance of the contract. This does not apply to the correspondence between the parties and the copies of the documents made within the framework of the contract, in particular to expertises, reports, plans, drafts, drawings, schedules and calculations. AN may retain copies of any documents returned for safekeeping in their records.

## **10. Confidentiality**

(1) AN will not disclose any trade and operating secrets of AN, which can be discerned as such, as well as all information described by AG as confidential, which become known to AN in connection with the contract, unless obligatory legal provisions make it necessary to disclose them, in particular to authorities. AN will not hand over reports, expertises and other results of work to third parties without prior approval of AG.

## **11. Applicable law, place of performance, place of jurisdiction, requirement of the written form**

(1) The contract is subject to the laws of the Federal Republic of Germany, excluding international civil law and international law.

(2) Freiburg im Breisgau is agreed as place of performance for the obligations of both parties under the contract.

(3) Freiburg im Breisgau is agreed as place of jurisdiction, if AG is Vollkaufmann (registered trader), a public authority or corporation or other public entity a public authority or corporation or other public entity. The same applies if AG is not generally under German jurisdiction or if AG transfers its registered office, domicile or place of usual sojourn to a place outside Germany. AN remains entitled to institute proceeding against AG also in the general jurisdiction of AN.

(4) Any changes or amendments of the contract must be made in writing to be valid. That also applies in particular to any changes or waivers of this requirement for the written form.

## **12. Severability**

(1) Should any provision of the contract, including the general terms and conditions, be or become wholly or partly invalid and/or unenforceable or should there be a gap in the provisions, the validity and/or unenforceability of the remainder of the provisions shall not be affected thereby. In the place of the invalid and/or unenforceable provision, such a valid and/or enforceable provision is deemed to be agreed, which conforms most closely to the original purpose of the invalid and/or unenforceable provision. In the case of a gap, such provision is deemed to be agreed, which would have been agreed in the light of the purpose of the contract had the parties originally contemplated such a case. That also applies if the invalidity and/or the unenforceability of a provision is due to a measure of service or time used in the contract. In such a case a legally permissible measure of performance or time, which comes closest to the one originally intended, will replace the agreed measure.