

# GENERAL TERMS AND CONDITIONS OF REPRESENTATION

of

## Müller Partner Rechtsanwälte GmbH

### 1. Applicability

- 1.1. These General Terms and Conditions of Representation shall apply to all activities engaged in and acts of representation performed before the courts, public authorities or out of court in connection with a contractual relationship existing between Müller Partner Rechtsanwälte GmbH (hereinafter "**MPLaw**") and the Client.
- 1.2. The General Terms and Conditions of Representation shall also apply to new mandates unless expressly agreed otherwise in writing. Any General Terms and Conditions set forth by the Client are void and shall not apply, not even if MPLaw has not contradicted expressly.

### 2. Instruction and power of attorney

- 2.1. The Client authorizes MPLaw subject to these General Terms and Conditions of Representation.
- 2.2. MPLaw shall be authorized and obliged to represent the Client to the extent that is necessary and expedient for performance of the mandate. If the legal situation changes after termination of the mandate, MPLaw shall not be obliged to inform the Client of changes or consequences resulting therefrom.
- 2.3. Upon request, the Client shall sign a written power of attorney vis-à-vis MPLaw. Such power of attorney may be for specific, precisely defined, or for any legal transactions or legal acts whatsoever.

### 3. Principles of representation

- 3.1. MPLaw shall engage in the activities and/or effect the representation entrusted in accordance with the law and shall represent the Client's rights and interests vis-à-vis anyone with diligence, loyalty, and conscientiousness.
- 3.2. MPLaw shall, in principle, be entitled to render services at its own discretion and to take any steps, in particular to use any means of challenge or defense in any manner, unless it contradicts the mandate granted, its conscience, or the law.
- 3.3. If the Client gives a direction to MPLaw with which would be incompatible with principles of proper professional conduct of attorneys based on the law or other professional codes (e.g. the "*Richtlinien für die Berufsausübung der Rechtsanwälte*" [Guidelines for Legal Practice] or the line of decisions of *Berufungs- und Disziplinarsenate für Rechtsanwälte und Rechtsanwaltsanwärter beim Obersten Gerichtshof* [Appeals and Disciplinary Senates for Attorneys and Trainee Attorneys at the Supreme Court] and the former *Oberste Berufungs-*

*und Disziplinarkommission für Rechtsanwälte und Rechtsanwaltsanwärter* [Supreme Appeals and Disciplinary Commission for Attorneys and Trainee Attorneys]), MPLaw shall refuse the direction. If, from MPLaw's point of view, directions are inexpedient or even detrimental to the Client, MPLaw must inform the Client of possible detrimental consequences.

- 3.4. In the case of imminent danger MPLaw shall be entitled to take a measure not expressly covered by or even contrary to the instruction given or to refrain from taking such measure if this appears to be urgently necessary in the Client's interest.

#### **4. Client's duty to provide information and cooperate**

- 4.1. After MPLaw has been instructed, the Client shall be obliged to immediately provide MPLaw with all information and facts which may be significant in connection with performing the mandate, and shall make available all necessary documents and means of evidence. MPLaw shall be entitled to assume that information, facts, documents, records and means of evidence are accurate unless inaccuracy of the same is obvious. MPLaw shall seek to obtain the complete facts by asking the Client targeted questions and/or by other suitable means. As regards correctness of supplementary information the second sentence of this clause 4.1 shall apply.
- 4.2. For the term of the mandate the Client shall be obliged to inform MPLaw about all changed or newly occurring circumstances which may be significant in connection with the performance of the mandate immediately after they have become known.
- 4.3. If MPLaw is mandated to draw up a contract, the Client shall inform MPLaw about all information which may be relevant for the calculation of the land transfer tax, registration fee and real estate income tax by MPLaw. If MPLaw carries out the calculation on the basis of the information given by the Client, MPLaw is discharged from all liability towards the Client. On the contrary, the Client shall be liable for any loss or damage MPLaw might suffer due to wrong information given for the calculation by the Client.

#### **5. Confidentiality obligation and conflict of interests**

- 5.1. MPLaw shall be obliged to keep secret all matters entrusted and all other facts which have become known to it in its professional capacity the secrecy of which is in the Client's interest.
- 5.2. MPLaw shall be entitled to ask all staff of MPLaw within the scope of applicable laws and guidelines to perform the mandate or to process matters related to the mandate to the extent that such staff have been provably informed of the confidentiality obligation.
- 5.3. Only to the extent that this is necessary for the pursuit of claims of MPLaw (in particular claims for fees) or for the defense of claims against MPLaw (in particular claims for damages by the Client or third parties), MPLaw shall be released from its confidentiality obligation.

- 5.4. The Client is aware that MPLaw in some instances and due to legal directives shall be obliged to report to the authorities without prior consent of the Client; particularly pointing out the provisions for the prevention of money laundering and terrorist financing as well as the tax law provisions (e.g. *Kontenregister- und Konteneinschaugesetz, Gemeinsamer Meldestandard-Gesetz* ["GMSG"]).
- 5.5. The Client may release MPLaw from its confidentiality obligation at any time. A release from confidentiality by the Client shall not release MPLaw from its obligation to check whether its statement is in line with the Client's interest. If an attorney of MPLaw acts as mediator, the attorney shall make use of its confidentiality obligation notwithstanding a release from its confidentiality obligation by the Client.
- 5.6. MPLaw shall check whether performance of a mandate involves the risk of a conflict of interests as defined by the provisions of the *Rechtsanwaltsordnung* [Austrian Attorneys' Code].

## **6. Reporting Duty**

MPLaw shall inform the Client of the actions taken and of any developments in connection with the mandate orally or in writing.

## **7. Granting of sub-power of attorney and substitution**

MPLaw may have it represented by a trainee attorney employed by MPLaw or by a different attorney of his/her trust or the latter's authorised trainee attorney (substitution).

## **8. Fee**

- 8.1. The services rendered by MPLaw shall be charged per hour unless agreed otherwise in writing. The total hours the attorneys and the trainee attorneys and other legal staff or substitutes worked to perform the mandate shall be charged, including but not limited to file studies, travel times, study of laws, academic writing and case law, reports as defined in Clause 6, revisions of written documents and in-house meetings.

Billing shall be effected on the basis of the hourly rates for attorneys and trainee attorneys advised to the Client by MPLaw or, in the case of regular support of the Client, of the hourly rates according to which services were billed for a mandate granted earlier, unless different hourly rates have been expressly agreed. Billing shall be effected according to hours actually worked and not according to minimum units.

- 8.2. The Client is expressly advised that the fee calculated according to the hourly rates may exceed any insurance payment under a legal expenses insurance or any entitlement to reimbursement of costs to be calculated on the basis of the *RATG* [Austrian Statute on Attorneys' Tariffs] vis-à-vis third parties of the Client and that the resulting difference shall be payable by the Client.

- 8.3. If hourly billing has not been agreed, the services rendered by MPLaw shall be billed on the basis of the *RATG* or of the *Autonome Honorarkriterien* [Autonomous Fees Criteria] as amended from time to time; MPLaw shall in any case be entitled to a reasonable fee.
- 8.4. Even if a lump-sum fee or hourly billing has been agreed, MPLaw shall be entitled at least to the amount of reimbursement of costs in excess of the fee gained by the opponent by litigation, provided that it can be collected; otherwise MPLaw shall be entitled to the agreed lump-sum fee or hourly fee.
- 8.5. Statutory VAT, necessary and reasonable expenses (e.g. for traveling, registered mail, documents sent by courier) as well as the cash expenses incurred on behalf of the Client (e.g. court fees, business register excerpts, inquiries to the Central Registration Office) shall be added to the fee to which MPLaw is entitled.
- 8.6. The Client acknowledges the fact that estimates of the presumed amount of the fees made by MPLaw which has not been expressly declare to be binding shall be non-binding and shall not be regarded as a binding cost estimate (as defined by Section 5 para 2 of the Austrian Consumer Protection Act [*KSchG*]), as the amount of work to be rendered by attorneys cannot be reliably assessed in advance because of its nature and the fees actually incurred may significantly exceed the estimate. Upon an express written request (including by e-mail) of the Client MPLaw shall notify the Client if and when the fees of a certain mandate exceed the estimated fee.
- 8.7. The client shall not be charged for the costs of billing and preparation of bills of fees. Unless otherwise agreed, the work required for letters to the Client's auditor which were written at the Client's request and describe, for example, the status of pending cases, a risk assessment for setting up provisions and/or the status of outstanding fees at the billing date constitutes billable work.
- 8.8. MPLaw shall be entitled to bill its work at any time. Unless expressly agreed otherwise in writing, the work of MPLaw shall usually be billed once a month as of the last day of the month. Unless on a case-by-case basis agreed otherwise and with the exception of lump-sum agreements, a work sheet shall be attached to the bill(s) of fees which shall state the work rendered by MPLaw during the billing period.
- 8.9. If the Client is an entrepreneur, a bill of fees sent to the Client that is duly itemized shall be deemed accepted unless the Client objects thereto in writing within fourteen banking days of the date the bill was posted by MPLaw.
- 8.10. MPLaw's bills of fees are due fourteen days from the date of the outgoing mail. If the Client is in default of payment of the total or a portion of the fee, s/he shall pay default interest in the statutory amount, however, at least at a rate of four percentage points above the relevant base interest rate. In case of a culpable default of payment, the Client shall pay default interest in the statutory amount, however, at least at a rate of nine point two percentage points above the relevant base interest rate and s/he shall be liable for any

further loss or damage MPLaw might suffer. Any additional statutory claims (e.g. Section 1333 Austrian General Civil Code [ABGB]) shall remain unaffected. MPLaw shall, in particular, be entitled to invoice dunning charges in a reasonable amount.

- 8.11. MPLaw shall be entitled to ask for retainers. Any and all court and official costs (cash expenses) and out-of-pocket expenses (e.g. for purchased third-party services) may, at the discretion of MPLaw, be passed on to the Client for direct payment by him/her.
- 8.12. If MPLaw is retained by several clients in one legal matter, the clients shall be jointly and severally liable for all resulting claims of MPLaw.
- 8.13. Claims of the Client for reimbursement of costs vis-à-vis the opponent shall hereby be assigned to MPLaw in the amount of the fees claim of MPLaw at the time they arise. MPLaw shall be entitled to notify the opponent of such assignment at any time.

## **9. Liability of the attorney**

- 9.1. MPLaw's liability for false advice or representation shall be limited to the sum insured available to the specific event of damage, but shall at least be the sum insured stated in Section 21 a RAO [Austrian Attorneys' Code] as amended from time to time; currently this is EUR 2.400,000 (in words: two million four hundred thousand euros). If the Client is a consumer, this limitation of liability applies only in the case the damage was inflicted by ordinary negligence.
- 9.2. The maximum amount applicable according to Clause 9.1. of these Terms and Conditions of Representation shall include all claims vis-à-vis MPLaw due to false advice and/or representation, such as, in particular, claims for damages and price reduction. Such maximum amount shall not include claims of the Client for refund of fees already paid to MPLaw. Deductibles, if any, shall not reduce his/her liability. The maximum amount applicable according to Clause 9.1 of these General Terms and Conditions of Representation shall apply to an event insured. If there are two or more competing harmed parties (clients) the maximum amount for every harmed party shall be reduced pro rata the amount of the claims.
- 9.3. The client-attorney relationship does solely exist vis-à-vis MPLaw. All communications to and of MPLaw's attorneys are deemed communications to and on behalf of MPLaw. Any claims for damages directly or indirectly asserted vis-à-vis MPLaw's attorneys are excluded. However, in case liabilities occur in a particular case, the limitations of liability according to Clause 9.1 and 9.2. of these Terms and Conditions of Representation shall also apply to the benefit of all attorneys acting on behalf of MPLaw (being their shareholders, managing directors, employed attorneys or in other function).
- 9.4. With respect to third parties, who are neither employees nor shareholders, called in for specific (parts of) services in connection with the rendering of services with the knowledge of

the Client (in particular external experts) MPLaw shall be liable only in the case of fault in selecting the third party.

9.5. MPLaw shall only be liable vis-à-vis the Client, not vis-à-vis third parties. The Client shall be obliged to expressly inform third parties who get in touch with the services of MPLaw because of the Client's actions of this fact.

9.6. MPLaw shall not be liable for any tax advice. MPLaw shall be liable for knowledge of foreign law only upon written agreement or if MPLaw offered to check foreign law. EU law shall never be deemed foreign law, however, the law of the Member States shall be deemed foreign law.

## **10. Statutory period of limitation and preclusion**

Unless a shorter statutory period of limitation or an absolute deadline applies, any and all claims (unless the Client is an entrepreneur as defined by the Austrian Consumer Protection Act), except for warranty claims, vis-à-vis MPLaw shall forfeit if they are not asserted by the Client in court within six months (if the Client is an entrepreneur as defined by the Austrian Consumer Protection Act) or within one year (if the Client is no entrepreneur) from the time at which the Client obtains knowledge of the damage and of the person that inflicted the damage or otherwise of the event that led to the claim, and in any case not later than five years after the conduct (violation) that caused the damage (that led to the claim).

## **11. Client's legal expenses insurance**

11.1. If the Client has taken out a legal expenses insurance, s/he shall immediately notify MPLaw thereof and present the necessary documents (to the extent available). If sufficient information is available, MPLaw shall ask for coverage via an existing legal expenses insurance of the Client.

11.2. Notification of a legal expenses insurance by the Client and the obtaining of legal expenses coverage by MPLaw shall not affect MPLaw's entitlement to its fees vis-à-vis the Client and shall not be deemed an agreement by MPLaw that s/he will be satisfied with the payment under the legal expenses insurance, especially if the services are billed at hourly rates and the legal expenses insurance pays lower fees according to the terms and conditions of the insurance contract. MPLaw shall advise the Client thereof.

11.3. MPLaw shall not be obliged to directly claim the fees from the legal expenses insurance but may claim the total fees from the Client.

## **12. Termination of representation**

- 12.1 Representation may be terminated by MPLaw or by the Client at any time without observing a period of notice and without stating a reason. MPLaw's claim for fees shall not be affected thereby.
- 12.2 In the case of termination by the Client or by MPLaw the latter shall continue to represent the Client for a period of fourteen days insofar as that is necessary to protect the Client from legal disadvantages. This duty shall not apply in the case that the Client terminates representation and expresses that s/he does not wish MPLaw to engage in any further activities for him/her.

## **13. Duty to surrender documents**

- 13.1. Upon termination of representation MPLaw shall, upon request, return original documents to the Client. MPLaw shall be entitled to retain copies of such documents.
- 13.2. If after the end of representation the Client again asks for (copies of) documents which s/he already received in the course of representation the costs shall be borne by the Client.
- 13.3. MPLaw shall be obliged to keep files for a term of five years after termination of representation and, if necessary, to provide the Client with copies during such term. As regards costs, Clause 13.2 of these General Terms and Conditions of Representation shall apply. If longer statutory periods apply to the keeping of records, they shall be observed. The Client agrees that the files (including original documents) will be destroyed after expiration of the period for which records must be kept.

## **14. Copyright**

- 14.1. Any contents and works generated by MPLaw such as correspondence, memorandum and written pleadings are protected by copyright. The copyright exclusively belongs to MPLaw.
- 14.2. The Client obtains a one-time permission to use the work to the mandate's extent. Any exceeding usage of the works protected by copyright is prohibited unless expressly permitted in writing. Any infringements of our copyrights are subject to the relevant provisions particularly to the copyright law (*Urheberrechtsgesetz*). Moreover, the Client has to pay a contractual penalty amounting to the twofold of the gross fee.

## **15. Choice of law and place of jurisdiction**

- 15.1. These General Terms and Conditions of Representation and the client-attorney relationship based thereon shall be subject to Austrian substantive law.
- 15.2. Exclusive jurisdiction of the court at the registered office of MPLaw that has jurisdiction over the subject-matter shall be agreed for disputes arising out of or in connection with the

contractual relationship regulated by these General Terms and Conditions of Representation, which shall also include disputes regarding its validity, unless mandatory law provides otherwise. However, MPLaw shall be entitled to file claims against the Client before any other national or foreign court in the circuit of which the Client has his/her registered office, domicile, a branch, or assets. The regulation on the place of jurisdiction of Section 14 Austrian Consumer Protection Act shall apply to Clients who are consumers as defined by that Act.

## **16. Final provisions**

- 16.1. Modifications of or amendments to these General Terms and Conditions of Representation shall be made in writing in order to be valid unless the Client is a consumer as defined by the Austrian Consumer Protection Act.
- 16.2. Communications of MPLaw to the Client shall in any case be deemed received if they are sent to the address the Client advised at the time the client-attorney relationship was entered into or to a different address notified later. However, MPLaw may communicate with the Client in any way deemed appropriate, unless agreed otherwise. Statements which, according to these General Terms and Conditions of Representation, must be made in writing may also be made via fax or e-mail (sent to the address the Client announced for the purpose of communication or sent to all other email addresses from which the Client sends emails to MPLaw) unless otherwise provided. In the absence of any instruction by the Client to the contrary MPLaw shall be entitled to communicate with the Client via e-mail in an unencrypted form. The Client declares that s/he is familiar with the risks involved (in particular access, secrecy, alteration of messages in the course of transmission) and with the option to using *TrustNetz* and, being aware of such risks, agrees that e-mail correspondence will be effected in an unencrypted form.
- 16.3. The Client expressly agrees that MPLaw may process, make available or transmit (as defined by the *Datenschutzgesetz* [Austrian Data Protection Act]) the personal data concerning the Client and/or his/her enterprise to the extent necessary and expedient for fulfillment of the tasks assigned to MPLaw by the Client or to the extent they result from the obligations prescribed by law or professional rules of conduct of the attorney (e.g. participation in electronic communication between the courts and attorneys-at-law, etc.).
- 16.4. Any set-off of Clients' claims against MPLaw's claims shall be excluded unless a netting agreement has been recognised in writing by MPLaw or adjudged by the courts.
- 16.5. Ineffectiveness of any provision(s) of these General Terms and Conditions of Representation or of the contractual relationship regulated by the same shall not affect the validity of the remaining agreement. The contracting parties undertake to replace the ineffective provision(s) by a regulation which comes as close as possible to the economic result of the ineffective provision.

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