

# TERMS AND CONDITIONS FOR CONTRACT

## JANK WEILER OPERENYI RECHTSANWÄLTE GMBH

### 1. SCOPE

- 1.1 These terms and conditions for contracts (the "*Terms and Conditions for Contracts*") shall apply to all activities and acts of representation in court and out of court, as well as before authorities, which are performed by Jank Weiler Operenyi Rechtsanwälte GmbH ("*Jank Weiler Operenyi*") in course of a contractual relationship between *Jank Weiler Operenyi* and a respective client (the "*Client*") (the "*Mandate*").
- 1.2 The *Terms and Conditions for Contracts* shall also apply to new *Mandates* in connection with an existing *Client*, unless otherwise agreed in writing.

### 2. MANDATE AND POWER OF ATTORNEY

- 2.1 The Client hereby mandates Jank Weiler Operenyi based on the Terms and Conditions for Contracts.
- 2.2 Jank Weiler Operenyi shall have the right and obligation to represent the Client to the extent necessary and appropriate in order to fulfill the Mandate. In the event legal provisions change after the Mandate is terminated, Jank Weiler Operenyi shall not be obliged to draw the Client's attention to these changes or the consequences resulting therefrom.
- 2.3 To the extent required, the Client shall sign a written power of attorney for Jank Weiler Operenyi. This power of attorney may relate to the performance of individual, precisely defined or all possible legal services or acts.

### 3. PRINCIPLES OF REPRESENTATION

- 3.1 Jank Weiler Operenyi shall (i) perform the Mandate in compliance with statutory provisions and (ii) represent the rights and interests of the Client vis-à-vis all third parties by applying diligence, loyalty and conscientiousness.
- 3.2 Jank Weiler Operenyi shall have the right to provide its performance at its own discretion and to take all steps, especially to use all means of pursuing and defending a case, as long as such means do not conflict with the Mandate, its conscience or statutory law.

- 3.3 If the Client issues an instruction to Jank Weiler Operenyi compliance of which is incompatible with the principles for proper exercise of the profession of Jank Weiler Operenyi, either based on statutory provisions or other statutory regulations regarding professional codes of conduct for lawyers (e.g. the "Richtlinien für die Berufsausübung der Rechtsanwälte oder der Spruchpraxis des Berufungs- und der Disziplinarsenate für Rechtsanwälte und Rechtsanwaltsanwärter beim Obersten Gerichtshof"), Jank Weiler Operenyi shall reject such instruction. In the event that Jank Weiler Operenyi considers instructions by the Client as inappropriate for, or even to the detriment of the client, Jank Weiler Operenyi shall inform the Client of possible negative consequences before executing the Client's instructions.
- 3.4 In the event of imminent danger, Jank Weiler Operenyi shall have the right to take or to refrain from any act, although such act or omission may not expressly be covered by the Mandate or contrary to a Client's instruction, if it appears to be urgently required in the interest of the Client.

#### 4.

#### **CLIENT'S OBLIGATIONS TO PROVIDE INFORMATION AND TO COOPERATE**

- 4.1 After the Client has entered into a Mandate, the Client shall be obliged to provide without delay Jank Weiler Operenyi with all information and facts, all documents and means of evidence which may be of significance for performance of the Mandate. Jank Weiler Operenyi shall assume that the information, facts, documents, papers and means of evidence are correct, unless their incorrectness is obvious. Jank Weiler Operenyi shall work towards obtaining all necessary facts by means of asking the Client appropriate questions and/or resorting to other appropriate means. The second sentence of this Section 4.1 shall apply to the correctness of such supplementary information.
- 4.2 During the term of the Mandate, the Client shall be obliged to communicate to Jank Weiler Operenyi all changed or newly arising circumstances that might be of significance in connection with the performance of the Mandate, immediately after they have come to the Client's attention.
- 4.3 If Jank Weiler Operenyi acts as draftsman of a contract, the Client shall provide Jank Weiler Operenyi with all information required for self-calculation of land acquisition tax, the registration fee and real estate income tax. If Jank Weiler Operenyi performs the self-calculation on the basis of information provided by the Client, Jank Weiler Operenyi shall in any case be released from any liability vis-à-vis the Client. The Client, on the other hand, shall indemnify and hold harmless Jank Weiler Operenyi from and against pecuniary disadvantages in the case that information provided by the Client turns out to be wrong.
- 4.4 The Client shall be solely responsible for, among other things: (A) making all management decisions and performing all management functions, (B) designating one or more individuals who possess suitable skill, knowledge, and/or experience, preferably within senior manage-

ment to oversee the Mandate, (C) providing oversight of the Mandate and evaluating the adequacy and results of the Mandate, (D) accepting responsibility for the action, if any, to be taken arising from the results of the Mandate, and (E) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

- 4.5 Furthermore Client is responsible for immediately informing Jank Weiler Operenyi on any changes in direct or indirect ownership of Client's company or of Client's affiliates.

## 5.

### **OBLIGATION OF CONFIDENTIALITY, CONFLICT OF INTERESTS**

- 5.1 Jank Weiler Operenyi is bound by professional secrecy laws with respect to all matters which have been provided to them and all facts which have otherwise become known to them in their capacity as lawyers, to the extent confidentiality is in the interest of the Client.
- 5.2 Based on applicable laws and guidelines, Jank Weiler Operenyi shall have the right to assign the processing of matters to its employees provided that such employees have been instructed with respect to the obligation to maintain confidentiality.
- 5.3 Jank Weiler Operenyi is hereby released from its obligation to maintain confidentiality only to the extent necessary to pursue Jank Weiler Operenyi's claims (including but not limited to claims for legal fees) or to defend claims against Jank Weiler Operenyi (including but not limited to claims for damages by the Client or third parties against Jank Weiler Operenyi).
- 5.4 The Client is aware of the fact that due to statutory orders Jank Weiler Operenyi may in some cases be obliged to provide information or to make reports to public authorities without having to obtain the Client's approval; particular reference is made to the statutory provisions on the prevention of money laundering and terrorist financing and to tax-law provisions (e.g. the Austrian Statute on Account Registers and Inspection of Accounts ("Kontenregister- und Konteneinschaugesetz/KontRegG"), etc.).
- 5.5 The Client may release Jank Weiler Operenyi from its obligation to maintain confidentiality at any time. Such release by the Client does not release Jank Weiler Operenyi from the obligation of verifying whether any statement made is in the best interest of the Client.
- 5.6 Jank Weiler Operenyi shall examine whether the performance of the Mandate bears the risk of conflict of interests according to the provisions of the Regulation Regarding Lawyer's Practices (Rechtsanwaltsordnung).

## 6.

### **THE LAWYER'S OBLIGATION TO INFORM THE CLIENT**

Jank Weiler Operenyi shall inform, in oral or written form, the Client with respect to all actions

taken and any changes of circumstances in connection with the Mandate.

## 7.

### **SUB-AUTHORIZATION AND SUBSTITUTION**

- 7.1 Jank Weiler Operenyi may be substituted by lawyers associated with Jank Weiler Operenyi. Further-more, Jank Weiler Operenyi may be substituted by any of its associates or any other lawyer, or that lawyer's associates.
- 7.2 To the extent allowed under applicable law and professional regulations, Jank Weiler Operenyi may subcontract any services under the Mandate to any other Deloitte Entity ("Subcontractor"). The Client's relationship is solely with Jank Weiler Operenyi as the entity contracting to provide the services. Each party is an independent contractor and neither party is, nor shall be considered to be, the other's agent, distributor, partner, fiduciary, joint venturer, co-owner or representative.
- 7.3 Jank Weiler Operenyi remains responsible to the Client for all of the services performed or to be performed under the Mandate, including services performed by its Subcontractors. Accordingly, to the fullest extent possible under applicable law (i) none of the Deloitte Entities will have any liability to the Client, (ii) the Client will not bring any claim or proceedings of any nature (whether in contract, tort, breach of statutory duty or otherwise, and including, but not limited to, a claim for negligence) in any way in respect of or in connection with the Mandate against any of the Deloitte Entities, and (iii) the Client will also ensure that no other member of the Client's group which is not a party to the Mandate brings any claim or proceedings of any nature (whether in contract, tort, breach of statutory duty or otherwise, and including, but not limited to, a claim for negligence) in any way in respect of or in connection with the Mandate against any of the Deloitte Entities and the Client shall keep each and every Deloitte Entity fully indemnified against any such claim or proceeding by any member of the Client's group and the consequences of any failure by any member of the Client's group so to comply.
- 7.4 "Deloitte Entities" means Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its member firms and their respective subsidiaries and affiliates (including Deloitte Austria), their predecessors, successors and assignees, and all partners, principals, members, owners, directors, employees, subcontractors (including the Subcontractors) and agents of all such entities. Neither DTTL nor, except as expressly provided herein, any member firm of DTTL has any liability for each other's acts or omissions. Each member firm of DTTL is a separate and independent legal entity operating under the names "Deloitte", "Deloitte & Touche", "Deloitte Touche Tohmatsu" or other related names; and services are provided by member firms or their subsidiaries or affiliates and not by DTTL.

## 8. LEGAL FEES

- 8.1 In the absence of other explicit agreements in written form, Jank Weiler Operenyi shall be entitled to receive a time-based fee. Jank Weiler Operenyi charges for the overall-time of all lawyers, associates, trainee lawyers and other legal staff members contributed to the Mandate, including but not limited to kick-off meetings, reviewing of documents, travelling, research of law, literature and jurisprudence, reports pursuant to Section 6 above, revision of written documents as well as internal conferences.
- 8.2 The fee is based on the hourly rates for lawyers, associates and trainee lawyers as communicated by Jank Weiler Operenyi; in case of ongoing servicing, the fee is based on the hourly rates agreed upon with the Client with respect to former Mandates, unless explicitly agreed otherwise. Jank Weiler Operenyi charges the effectively provided working-time; the minimum unit is ten minutes.
- 8.3 Jank Weiler Operenyi explicitly notes that the fee based on hourly rates may exceed possible insurance proceeds out of legal expenses insurances (Rechtsschutzversicherung) of the Client or a claim for cost refunds based on the Austrian Lawyers Tariff Act (RATG) against third parties, hence the difference has to be paid by the Client.
- 8.4 In case the fees have not been agreed based on hourly rates, Jank Weiler Operenyi's fees for legal services are based on the Austrian Lawyers Tariff Act or the Austrian General Charge Criteria (Allgemeine Honorar-Kriterien), both as applicable from time to time; in any event, Jank Weiler Operenyi shall be entitled to receive an adequate fee from the Client.
- 8.5 Also in case of an agreed lump-sum or time-based fee, Jank Weiler Operenyi shall at least be entitled to the cost refund recovered from any third party, to the extent such amount can be collected; otherwise, Jank Weiler Operenyi shall receive the agreed lump-sum or time-based fee.
- 8.6 The value-added tax at the statutory rate shall be added to the fee. In addition, Jank Weiler Operenyi is entitled to a lump-sum for expenses and out-of-pocket costs (e.g. for mailing, telephone, telefax, copying, commercial and land register excerpts, etc.) in the amount of 3% of the respective net fee. Such lump-sum does in particular not cover transportation and travelling expenses, accommodation costs, court fees, third-party fees, taxes and charges as well as fees of a notary public, if applicable, which have to be borne by the Client.
- 8.7 The Client hereby agrees that fee estimates made by Jank Weiler Operenyi regarding the anticipated amount of the fee which are not expressly referred to as binding, are not binding and cannot be regarded as a binding cost estimate (within the meaning of clause 5 (2) of the Austrian Consumer Protection Act), as the scope of legal services cannot reliably be assessed in advance and may exceed the fee estimates significantly. If explicitly requested, Jank Weiler Operenyi will inform the Client in writing (e.g. by e-mail) in case of exceeding the estimated

fees for the Mandate.

- 8.8 The effort required for calculating the fee and preparing the fee statement shall not be debited to the client. However, this shall not apply to the effort required for translating the list of services provided into another language than German upon the Client's request. Unless otherwise agreed, the service of drafting letters upon the Client's request to the Client's chartered accountant which relate, for example, to the status of pending cases, or give an assessment of the risks for the purpose of making provisions and/or reporting on the status of outstanding fees at a certain reporting date shall be chargeable pursuant to this Section 8.
- 8.9 Jank Weiler Operenyi shall have the right to send invoices at any point in time. Unless otherwise agreed, services are normally charged on a monthly basis at the end of each calendar month. Jank Weiler Operenyi's non-exercise or delay concerning the issuance of an invoice is not to be regarded as a waiver of such fees. The invoices include a specification of the service provided by Jank Weiler Operenyi within the invoice period.
- 8.10 In the event that the Client is an entrepreneur, an invoice forwarded to the Client shall be deemed to have been approved, if and to the extent that the Client does not expressly oppose to it in writing within ten bank working days (the date of the outbox at Jank Weiler Operenyi's office shall be the decisive date).
- 8.11 In the event that the Client's payment is delayed with respect to part of or the whole fee, the Client shall pay interest to Jank Weiler Operenyi in the statutory amount, as a minimum, however, 4% above the respectively applicable basic interest rate. The foregoing shall not affect any further statutory claims (e.g. pursuant to clause 1333 of the Austrian General Civil Law Code). Jank Weiler Operenyi is entitled to charge adequate reminder charges.
- 8.12 Jank Weiler Operenyi is entitled to claim a retainer. All expenses and out-of-pocket costs which are not covered by the lump-sum for expenses and out-of-pocket costs according to Section 8.6 may – in the sole discretion of Jank Weiler Operenyi – be forwarded to the Client for direct payment by the Client.
- 8.13 In the event that several Clients enter into one Mandate with Jank Weiler Operenyi regarding a legal matter, each Client is jointly and severally liable for any claims of Jank Weiler Operenyi in this regard.
- 8.14 Claims for cost refunds by the Client against any third party are herewith assigned to Jank Weiler Operenyi in the amount of Jank Weiler Operenyi's claim for legal fees, as soon as they arise. Jank Weiler Operenyi shall have the right to inform any third party of this assignment at any time.

## 9.

### LAWYER'S LIABILITY

- 9.1 Jank Weiler Operenyi's liability for false advice or representation by its lawyers, its associates or any of its employees is limited to EUR 2,400,000 (in words: two million four hundred thousand euros). In the event that the Client is a consumer, such limitation of liability shall only apply to events in which the damage is caused by slight negligence (leichte Fahrlässigkeit).
- 9.2 The maximum liability amount pursuant to section 9.1 shall apply to any and all claims against Jank Weiler Operenyi for false advice and/or representation, such as claims for damages and price reduction. Such maximum amount does not comprise the Client's claim to receive back the fee paid to Jank Weiler Operenyi. Possible deductibles of Jank Weiler Operenyi do not reduce their liability. The maximum amount applicable pursuant to Section 9.1 relates to a single insured incident. In case of two or more competing damaged parties (Clients), the maximum amount for each damaged party shall be reduced in proportion to the amounts claimed.
- 9.3 The liability limits of Sections 9.1. and 9.2. shall also apply to all lawyers who work for Jank Weiler Operenyi (as its shareholders or partners, managing directors, employed lawyers or in any other capacity).
- 9.4 Jank Weiler Operenyi shall only be liable for individual sub-contracted services provided by third parties with the consent of the Client (including but not limited to external experts), only in case of fault in selecting such third parties.
- 9.5 Jank Weiler Operenyi shall only be liable to the Client but not to any third parties. The Client shall be obliged to expressly inform any third parties which might be affected by Jank Weiler Operenyi's performance in relation to the Mandate due to actions taken by the Client about such liability limitation.
- 9.6 Jank Weiler Operenyi shall be liable for knowledge of foreign law only in the event of a written agreement, or if Jank Weiler Operenyi expressly offers to examine foreign law. EU law shall not be deemed to be foreign law, whereas this applies to the law of any Member State.

## 10.

### TIME LIMITATION / PRECLUSIVE PERIOD

Unless applicable law stipulates a shorter time limitation (Verjährung) or preclusion, all claims (excluding, however, warranty claims in the event that the Client is not an entrepreneur as defined in the Austrian Consumer Protection Act) against Jank Weiler Operenyi shall lapse (verfallen) unless the Client has claimed them in court within six months (in the event that the Client is an entrepreneur) or within one year (in the event that that the Client is not an entrepreneur) as of the date at which the Client becomes aware of the damage and the damaging party, or of the incident that otherwise gives rise to a claim, but at the latest after the expiry of

five years as of the conduct (infringement) causing the damage giving rise to a claim.

## **11.**

### **CLIENT'S LEGAL EXPENSES INSURANCE**

- 11.1 In the event that the Client has concluded a legal expenses insurance (Rechtsschutzversicherung), he/she shall inform Jank Weiler Operenyi thereof without delay and provide the required documents (if available). Upon receipt of sufficient information with respect to a legal expenses insurance, Jank Weiler Operenyi shall apply for coverage under such legal expenses insurance.
- 11.2 The disclosure of legal expenses insurance by the Client and obtaining coverage under the legal expenses insurance by Jank Weiler Operenyi shall not affect the fee claim of Jank Weiler Operenyi against the Client and shall not be deemed as consent by Jank Weiler Operenyi to limit Jank Weiler Operenyi's fee claim to any payment made pursuant to the legal expenses insurance; the foregoing is applicable especially in case Jank Weiler Operenyi's time-based fee exceeds the sum paid by the legal expenses insurance according to its terms and conditions.
- 11.3 Jank Weiler Operenyi shall not be obliged to claim its fee directly from the legal expenses insurance, but may request payment of the full legal fee from the Client.

## **12.**

### **TERMINATION OF THE MANDATE**

- 12.1 Jank Weiler Operenyi or the Client may terminate the Mandate at any time without any notice period and without cause. Jank Weiler Operenyi's fee claim shall remain unaffected by the foregoing.
- 12.2 In the event of termination by the Client or by Jank Weiler Operenyi, Jank Weiler Operenyi shall continue to represent the Client for another 14 days, to the extent necessary to protect the Client against any legal detriment. This obligation does not apply in the event the Client revokes the Mandate and states that he/she does not wish to obtain any further service by Jank Weiler Operenyi.

## **13.**

### **OBLIGATION TO RETURN DOCUMENTS**

- 13.1 After the Mandate has terminated, Jank Weiler Operenyi shall return the originals of documents upon the Client's request. Jank Weiler Operenyi shall have the right to keep copies of such documents.



- 13.2 If the Client asks for further documents (copies of documents) after the end of the Mandate, which the Client has already received during the term of the Mandate, the Client shall bear the costs incurred in this connection.
- 13.3 Jank Weiler Operenyi shall be obliged to keep the files for a period of five years as of the end of the Mandate and to provide the client with copies, if so needed, during that time. Section 13.2 shall apply mutatis mutandis to such costs. In case of longer statutory periods pertaining to the obligation to keep documents, these shall be observed. The Client hereby agrees to the destruction of the files (also of original documents) after the expiry of the storage period.

## **14.**

### **CHOICE OF LAW AND JURISDICTION**

- 14.1 This Terms and Conditions for Contracts and the Mandate governed by them shall be subject to Austrian substantive law.
- 14.2 Unless provided otherwise by statutory law, for any and all legal disputes arising from, or in connection with, the contractual relationship, governed by the present Terms and Conditions for Contracts, which shall also include disputes regarding its validity, the court with jurisdiction over the subject matter at the seat of Jank Weiler Operenyi shall have exclusive competence. Notwithstanding the above, Jank Weiler Operenyi shall also have the right to file claims against the Client at any other court in Austria or abroad, which has competence based on the Client's seat, domicile, place of business, or place of property. With respect to Clients being consumers as defined in the Austrian Consumer Protection Act, clause 14 of the Austrian Consumer Protection Act shall apply.

## **15.**

### **FINAL PROVISIONS**

- 15.1 Changes or amendments to these Terms and Conditions for Contracts shall be made in writing in order to be valid.
- 15.2 Notices made by Jank Weiler Operenyi to the Client shall, in any event, be deemed to have been received if they are sent to the address communicated by the Client when mandating Jank Weiler Operenyi, or to any other address communicated subsequently in writing. In any event, Jank Weiler Operenyi may correspond with the Client in any other form that is deemed to be appropriate, unless agreed otherwise. Any communication that needs to be in written form pursuant to these Terms and Conditions for Contracts may also be sent by means of telefax or e-mail, unless agreed otherwise. Unless the client issues a written instruction to the contrary, Jank Weiler Operenyi shall have the right to communicate with the Client via e-mail in un-encoded form. The Client hereby declares to be aware of the attached risks herewith (especially with respect to access, confidentiality, alterations in communications in the course

of forwarding) and accepts – in full awareness of these risks – that e-mail communication is conducted in un-encoded form.

15.3 The Client expressly agrees that Jank Weiler Operenyi processes, provides or communicates person-related data regarding the Client and/or the Client's enterprise (as defined in the Austrian Data Protection Act) to such an extent as this appears to be necessary and expedient or results from statutory obligations or duties under the provisions on the exercise of the profession of legal counseling (e.g. to take part in the electronic legal data exchange, etc.), in order to comply with the tasks for which the Client has retained Jank Weiler Operenyi.

15.4 In case one or several provisions of these Terms and Conditions for Contracts or of the contractual relationship governed by these Terms and Conditions for Contracts become(s) invalid, this shall not affect the validity of the remaining provisions. The contracting parties agree to replace the ineffective provision(s) by another provision that comes closest to the intended economic result; this applies mutatis mutandis to gaps in these Terms and Conditions for Contracts.

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