

## General Terms and Conditions for Consultancy Services

Status: 8<sup>th</sup> January, 2007

Note: This is an English translation of the German text, which is the sole authoritative version.

### 1. Scope of validity

(1) These general terms and conditions apply to consultancy and expertise and/or market research contracts (hereinafter also: "contract") between ASA 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) AN is only liable for any loss or damage resulting from any intentional or grossly negligent violation of obligations/duties, if and to the extent liability does not arise from violation of so-called cardinal obligations. Cardinal obligations are major contractual obligations which are essential to the proper performance of the contract and on compliance with which AG may rely.

(2) (a) Liability of AN for any single claim of ordinary negligence – independent of legal grounds – will be agreed with AG individually for each contract., with the exception of damage from impairment of life, body and health. Single claim means the aggregate of all claims by all parties entitled to compensation, which results from a comprehensive service defined as to time of performance and subject matter. A single claim includes all consequences of a violation of obligations/duties, especially those, which irrespectively arose/will arise from (partial) losses in one year or different years in sequence.

(b) If AG is a commercial entity in the meaning of § 14 BGB, a public authority or corporation or other public entity, the limitation of liability as to amount insured and other provisions in paragraph (2)

(a) also applies to damage not caused by officers or vicarious agents of AG due to gross negligence.

(3) Limitation of liability as to amount in paragraph (2) (a) also applies to losses arising from several identical comprehensive services on account of violations due to the same or to a closely similar error. Paragraph (2) (b) applies mutatis mutandis.

(4) AN is not liable for any atypical contractual damage/loss caused by negligence, unless AN had been previously informed by AG of a risk of unusual damage AG.

(5) Unless the statute of limitations provides for a shorter period, claims for damages, which are not due to an impairment of life, body, health and personal liberty and not to intention or gross negligence, will become statute-barred after one year; the limitation starts with the claim becoming effective and knowledge or the grossly negligent ignorance of AG of the circumstances giving rise to the claim. That also applies to claims for damages on account of culpa in contrahendo.

## 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, even if they are affiliated with AG, without prior written approval of AN in each individual case. 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

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

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) Berlin is agreed as place of performance for the obligations of both parties under the contract.

(3) Berlin 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

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.