

# General Terms and Conditions

General Terms and Conditions (GTC) of Business for Adler Real Estate AG and its affiliated companies ("Company" or "Client")

Version: September 2017

The hiring of third parties as subcontractors shall require the written consent of the Client.

## § 1 Scope

- (1) These General Terms and Conditions apply exclusively to contracts in which the Company is a party. Opposing or deviating terms and conditions issued by the contract partner (also referred to as the "Contractor") shall not apply, not even if the service is accepted without reservation in awareness of opposing or deviating terms and conditions issued by the Contractor.
- (2) Unless otherwise agreed to, only contacts, orders, service requests, master contracts and other declarations of intent submitted in writing and personally signed by an authorised representative shall be legally valid.

## § 2 Elements of a contract

The elements of a contract shall take precedence in the following order:

- Master agreement
- Individual order
- Service description
- These General Terms and Conditions of Business

## § 3 Scope of service, prices and terms of payment

- (1) The price agreed to in the contract includes delivery to the named destination. Unless otherwise agreed, the price shall cover all costs of transport, insurance, packing and other ancillary costs and fees until the goods have been delivered or set up in operational condition at the place of delivery named by the Client.
- (2) The Contractor shall provide its goods and services to the Client at the most favourable conditions and, therefore, not offer its goods or services at a lower cost in terms of quantity, quality or market conditions.
- (3) The agreed price shall cover the costs of any work involving installation, integration and transfer, which the Contractor is required to perform without disrupting ongoing operations, if necessary even outside normal business hours.
- (4) Instructions or other documents necessary for usage, running, operation and service must be provided to the Client in the appropriate national language and are included in the agreed price.
- (5) A packing list must be included with every shipment. Packing lists and — if agreed to separately — dispatch notes must contain the following information:
  - Number, reference, and date of order
  - Number of any partial delivery
  - Number and date of packing list
  - Shipping date
  - Information on type and scope of delivery as well as material and item numbers noted in the order
  - Method of shipment
- (6) If it has been agreed that the services are to be billed by the hour or as a lump sum, then the amounts shall be understood to include travel, waiting times and commuting (to and from the destination). No separate compensation for such expenses shall be provided.
- (7) The Contractor's invoices will be settled after the goods or services have been provided. The payment terms shall be 14 days with 3% cash discount, 30 days with 2% cash discount or 60 days net. The deadline for payment shall begin on the first day after the verifiable invoice is received but not before the goods or services have been provided and accepted. The factor for determining compliance with the payment terms shall be the date on which the Client issues the payment order.
- (8) Payment of the invoice amount by the Client without reservation shall not mean that the goods or services provided by the Contractor are recognised as conforming to the contract.
- (9) If the parties have agreed to self-billing, the Client shall make payments without the need for the Contractor to issue invoices. The deadline for payment shall begin upon completion of data entry by the Client but no more than three days after the packing list or proof of performance has been presented and not before the goods or services have been provided and accepted. In all other matters, the provisions of paragraphs 1 through 8 above apply.

## § 4 Performance by third parties

## § 5 Rescission or termination for due cause

In particular, the Client can rescind the contract or terminate the same with immediate effect if insolvency proceedings against the assets of the Contractor have been either requested or opened or denied due to a lack of assets. The same rule shall apply if proper performance of the contract is called into question because the Contractor has ceased making payments on more than a temporary basis or the Client notices other indications that the Contractor might not be in a position to fulfil its contractual obligations.

## § 6 Risk transfer, acceptance, inspection for defects

- (1) Unless otherwise agreed, the transfer of risk and ownership are governed by statutory provisions.
- (2) The delivery of goods to be produced or manufactured requires the written acceptance by the Client as does installation work. The performance risk is transferred upon acceptance. In all other matters involving goods, the risk is transferred after the goods have been received at the place of delivery and signing of the delivery note by the Client. The Client shall inspect the goods upon delivery for obvious defects only. The Client is otherwise exempt from its obligations to perform an inspection and file any complaints in accordance with Section 377 of the *Handelsgesetzbuch* (HGB – German Commercial Code).

## § 7 Liability for defects

- (1) Within the periods stipulated by law, beginning with the transfer of risk, the Contractor shall assume liability for defects deviating from the contractually agreed condition and function of the goods and services for which it is responsible. The statute of limitations on claims arising from defects shall be extended by the time during which the defective good or service cannot be used as intended.
- (2) The Contractor is obliged to cover all expenses incurred by the Client as a result of the defect. The right to file further legal claims remains unaffected.
- (3) The Client's right to file claims for defects of title shall expire two years after the date on which a third party asserts a claim for violation of its property rights or other rights or the Client otherwise learns that a defect of title exists.

## § 8 Third-party property rights and product liability

- (1) The Contractor is liable for ensuring that the goods and services it provides are not encumbered by any third-party property rights that may limit or exclude their use in accordance with the contract.
- (2) Upon initial request, the Contractor shall indemnify the Client against any claims asserted by a third party in connection with the goods and services provided by the Contractor. The Client shall immediately notify the Contractor if any such claims for compensation are asserted and not make any payments or recognise any claims without prior consultation.
- (3) This duty of indemnification also extends to payment of any and all expenses incurred by the Contractor in connection with the claims asserted by a third party. This also includes reasonable costs of legal defence.

## § 9 Billing and taxes

- (1) The Contractor is required to bill its services in a verifiable manner. Invoices for instalments, partial payments, partial final payments and final payments must be designated as such, listed individually and numbered sequentially. Each invoice must state the contracting authority, the order number and the receiving office. Invoices must also meet the requirements in Section 14 of the *Umsatzsteuergesetz* (UStG – German Value Added Tax Act). If the invoice does not meet the stated requirements, the Client shall not be obliged to make payment until the Contractor sends it a correct invoice. The invoice shall not be issued any earlier than the day on which the goods or services have been provided as contractually agreed and accepted and must be sent to the billing address stated in the order.
- (2) Unexpected items must be specially marked on the invoice and will be paid only if a supplemental agreement governing them has been signed.

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- (3) The agreed prices are net prices. Value added taxes in the appropriate amount prescribed by law may be added to them.
- (4) In the case of services and goods that are subject to value added tax in Germany and that are provided by foreign contractors, the Client shall bear the tax liability (Section 13a and b of the UStG). The Contractor is prohibited from listing any German value added tax on its invoices for those goods and services. If, while performing the previously named services, the Contractor transports items from a third country to Germany and it incurs turnover taxes on imports in these circumstances, then the Contractor shall bear that tax liability.
- (5) The Client is entitled to deduct any withholding taxes from the gross amount billed and pay them to the tax authorities for the account of the Contractor unless the Contractor submits a valid certificate of exemption.
- (6) If the parties have agreed to self-billing, then paras. 1 and 2 shall be replaced as follows: "The goods and services shall be billed on the basis of the packing list or proof of performance. On the third working day of each month, the Contractor shall receive from the Client as documentation of the goods and services recorded by the Client in its data processing systems a statement of self-billing for the previous month containing the information stipulated in Section 14 of the UStG. For each packing list and proof of performance, the statement of self-billing shall include the type and amount of the goods and services, net prices, value added tax rate, value added tax amount and the total amount billed.

## § 10 Assignment and offsetting of receivables

- (1) Receivables owed by the Client to the Contractor may be assigned only with the express written consent of the Client. If the transaction is a commercial transaction for both parties, then Section 354a of the HGB shall apply.
- (2) The Contractor is not entitled to withhold payment where such right is derived from counterclaims based on other transactions with the Client.
- (3) The Contractor is permitted to offset only those receivables that are undisputed or have been legally established.

## § 11 Quality management, environmental protection, minimum wage

- (1) The Contractor is required to comply with the Client's requirements regarding quality management, energy management and environmental protection. If the specifications demand so, the Contractor shall verify that it has a quality management system pursuant to DIN EN ISO 9001:2015 and an energy management system pursuant to DIN EN ISO 50001 as well as supply data using the metrics described in the TL 9000 *Quality Management System Measurements Handbook*.
- (2) The Contractor undertakes to comply with the provisions of the *Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten* (ElektroG – German Act Regarding the Sale, Return and Environmentally Sound Disposal of Electrical Appliances and Electronic Devices) and fulfil the obligations imposed on the Client on the basis thereof and, where such obligations cannot be transferred to the Contractor, assist the Client in their fulfilment. In particular, the Contractor undertakes to affix to the contractual items at no cost to the Client a manufacturer's label in accordance with Section 7, sentence 1, of the ElektroG, as instructed by the Client. The Contractor shall also label the goods with the symbol defined in Section 7, sentence 2, of the ElektroG in conjunction with Annex 2 of the ElektroG as instructed by the Client.
- (3) The Contractor is required to take back, properly collect and dispose of packing materials free of charge. Upon request, the Contractor shall provide appropriate documentation of disposal in compliance with the law. If the Contractor does not fulfil this requirement, the Client shall have the right to have the waste collected and disposed of at the Contractor's expense.
- (4) The Contractor undertakes to pay its employees, at the very least, the minimum wage stipulated in Section 1 of the *Mindestlohngesetz* (MiLoG – German Minimum Wage Act). The Client is entitled to demand at any time current documentation (time sheets, anonymised pay statements and employee lists) from the Contractor and any subcontractors it has employed and that have been approved by the Client. The Contractor is obliged to ensure that contracts entered into between it and other companies and between those companies and their subcontractors contain provisions requiring them to meet the same standards. If the Contractor culpably violates its obligation to pay the minimum wage, the Client shall be entitled to terminate the contract with immediate effect. If the Contractor culpably violates its

obligation to supply documents by a reasonable deadline set by the Client, the Client shall be entitled to terminate the contract with immediate effect.

## § 12 Integrity, cooperation

- (1) The Client and the Contractor undertake to take any and all actions required to prevent activities harmful to the economy, such as money laundering and corruption. The Contractor shall provide the Client with all information and documents for fulfilling its identification requirements under Section 4 of the *Geldwäschegesetz* (GwG – German Anti-Money Laundering Act). Furthermore, the Contractor shall notify the Client immediately of any changes (e.g. legal form or within a governing body) occurring during the term of the contract.
- (2) The requirements in the ADLER Group's Code of Conduct shall also apply whenever possible. The Code can be viewed at [www.adler-ag.com](http://www.adler-ag.com).

## § 13 Data protection and confidentiality

- (1) Each party undertakes to comply with the statutory data protection provisions and brief any and all individuals employed by them on the legal requirements concerning the protection of information.
- (2) Each party undertakes to treat as confidential all information pertaining to the other party that is not generally available to the public and to which the party becomes privy during the business relationship. In particular, the parties shall not use such information for their own or third-party purposes.
- (3) All documents made available to the Contractor by the Client for the performance of the former's services shall remain the property of the Client and must be turned over to the Client or destroyed upon request along with any copies (physical or electronic).
- (4) These obligations shall remain in force after the contract has ended.

## § 14 Final provisions

- (1) No verbal side agreements have been entered into outside this contract and its annexes. Any changes or amendments to the contract must be made in writing to be legally valid.
- (2) The place of performance is the destination named by the Client for provision of the goods and services. Where allowed by law, the legal venue shall be the place where the Client has its registered office.
- (3) The contract shall be interpreted and construed according to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sales of Goods shall not apply.
- (4) The Contractor shall independently ensure that it observes and complies with customs- and export-related regulations as well as their associated legal requirements. The Client shall have no obligations related to the provision of goods and services under customs regulations and export laws. In this regard, the Contractor indemnifies the Client against any such liability.
- (5) If any provisions of this contract are invalid, the validity of the remaining provisions of the contract shall not be affected. In place of the invalid provision, the parties shall agree to one that complies with statutory regulations or — if such regulations do not exist — a legally valid provision that the parties would have agreed to in good faith if they had been aware that the original provision was invalid.