

# General Business Terms

Attorney at Law Mag. Christian Ebmer, MBA

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## I. Scope of Application

1. The General Business Terms apply to all activities and judicial and official as well as extrajudicial acts of representation and advice performed in the course of a contractual relationship between the *lawyer* Christian Ebmer, MBA (hereinafter referred to as "*lawyer*") and the client. Any contrary terms and conditions of the client shall not be accepted.
2. The General Business Terms also apply on newly concluded contracts, unless otherwise agreed in writing.

## II. Mandate and Power of Attorney

1. The *lawyer* shall be entitled to have the mandate or individual partial acts carried out by a trainee *lawyer* employed by him without the latter entering into a contractual relationship with the client. This shall merely constitute sub-authorization. The *lawyer* shall be entitled to instruct all employees to handle matters within the framework of the applicable laws and guidelines, provided that these employees have been instructed about the obligation to maintain confidentiality.
2. The *lawyer* may also pass on the mandate or individual acts to another lawyer if he is prevented from doing so (substitution).
3. The commissioning of foreign lawyers by the *lawyer* exclusively takes place in the name and at the expense of the client.

## III. Representation

1. In the event of immediate danger, the *lawyer* shall also be entitled to act or to refrain from taking an action not explicitly covered by the mandate given or contrary to an instruction given if this appears to be urgently required in the interests of the client.
2. The *lawyer* is subject to the duty of confidentiality. Insofar as this is necessary to pursue claims of the *lawyer* (in particular claims for fees) or to defend against claims against the *lawyer* (in particular compensation claims by the client or third parties against the *lawyer*), the *lawyer* shall be released from the duty of confidentiality.
3. The *lawyer* shall be entitled to assume that the information, facts, deeds, documents, and evidence provided by the client are correct, unless their incorrectness is obvious.

## IV. Professional Fee

1. The fee calculation is based on the respective valid General Fee Criteria (Allgemeine Honorar-Kriterien) adopted by the Austrian Bar Association (Österreichischer

Anwaltskammertag) and as well as the Lawyers' Tariff Act (Rechtsanwaltstarifgesetz).

The *lawyer* shall also be entitled to charge an hourly rate of € 360.00 plus VAT and cash expenses (notary's fees, court and other fees, copies, postage, substitution costs, travel costs and expenses, etc.) for the time spent instead of billing the fee in accordance with the General Fee Criteria.

From an amount in dispute of € 35,000.00 the *lawyer* is entitled to charge an hourly rate of € 390.00, and from an amount in dispute of € 100,000.00 an hourly rate of € 420.00, in each case plus VAT and cash expenses.

In the case of services that are performed completely or partially in a language other than German, the respective hourly rate shall be increased by € 90.00 per hour.

The *lawyer* shall be entitled to charge for any expenditure on an hourly basis, particularly including legal research and travel time.

2. The client acknowledges that an estimated fee made by the *lawyer*, which is not explicitly designated as binding, of the amount of the fee likely to be incurred is non-binding and is not to be regarded as a binding cost estimate (within the meaning of Section 5 (2) KSchG), because the extent of the services to be provided by the *lawyer* cannot, by its nature, be reliably assessed in advance.
3. The *lawyer* shall be entitled at any time to submit fee notes and to demand fee advances. All court and official costs (cash disbursements) and expenses (e.g. due to external services) may - at the *lawyer's* discretion - be passed on to the client for direct payment.
4. If the client is an entrepreneur, a duly itemized fee note sent to the client shall be deemed approved if the client does not object in writing within one month of receipt (the date of receipt by the *lawyer* shall be decisive).
5. In an order which is placed by several clients in one case, they shall be jointly and severally liable for all resulting claims.
6. The disclosure of legal expenses insurance by the client and the obtaining of legal protection by the *lawyer* shall not affect the *lawyer's* fee claim against the client and shall not be regarded as the *lawyer's* agreement to be satisfied with the fee paid by the legal expenses insurance. The *lawyer* is not obliged to claim the fee directly from the legal expenses insurance but may demand the entire fee from the client.
7. Claims for reimbursement of costs of the client against the opposing party are hereby assigned to the *lawyer* in the amount of the *lawyer's* fee claim as soon as they arise. The *lawyer* shall be entitled to notify the opposing party of the assignment at any time.

Even if a lump sum or time-based fee has been agreed on, the *lawyer* shall be entitled to at least the amount of reimbursement of costs claimed from the opposing party in excess of this fee, insofar as this can be recovered, otherwise the *lawyer* shall be entitled to the agreed lump sum or time-based fee.

## **V. Liability of the lawyer**

1. The *lawyer's* liability shall be limited to the sum insured under the liability insurance taken out for the specific case of damage.

If the specific case of damage is not covered by the liability insurance - for whatever reason - the *lawyer's* liability shall be limited to a maximum of € 400,000.00. Compensation for damages exceeding this amount is excluded.

The stated maximum amounts refer to one insured event. If there are two or more competing injured parties (clients), the maximum amounts for each individual injured party shall be reduced in proportion to the amount of the claims.

2. The *lawyer's* liability is excluded in the event of slightly negligent damage.
3. The *lawyer* shall only be liable for third parties (in particular external experts or substitutes) commissioned with individual partial services with the knowledge of the client in the context of the provision of services in the event of fault in the selection. These third parties shall therefore not be vicarious agents of the *lawyer*.
4. The *lawyer* shall only be liable to his client, not to third parties. The client shall be obliged to explicitly declare this liability to third parties who come into contact with the *lawyer's* services due to the client's involvement to this fact.
5. The *lawyer* shall only be liable for knowledge of foreign law if this has been agreed in writing, even if a foreign colleague is engaged who is to be regarded as the *lawyer's* vicarious agent.

## **VI. Limitation Period**

Unless a shorter limitation or preclusion period applies by law, all claims for damages against the *lawyer* shall lapse if they are not asserted in court by the client within six months (if the client is an entrepreneur within the meaning of the Austrian Consumer Protection Act) or within one year (if the client is not an entrepreneur) from the time at which the client becomes aware of the damage and the person causing the damage or the event.

## **VII. Attorney at Law and Place of Jurisdiction**

1. The General Business Terms and the client relationship governed by them are subject to Austrian substantive law.
2. Jurisdiction for legal disputes arising from or in connection with the contractual relationship governed by the General Business Terms, including disputes regarding its validity, shall be determined in the competent court in Linz.

## **VIII. Final Provisions**

1. Amendments or additions to these General Business Terms must be made in writing in order to be valid, unless the client is a consumer within the meaning of the Consumer Protection Act.

2. The client agrees to the destruction of the files (including the original documents) after expiry of the statutory retention period.
3. Statements made by the *lawyer* to the client shall in any case be deemed to have been received if they are sent to the address provided by the client when the mandate was granted or to the changed address communicated subsequently.

Unless otherwise agreed, the *lawyer* may correspond in any way he deems appropriate. Unless otherwise instructed in writing, the *lawyer* shall be entitled to conduct e-mail correspondence with the client in unencrypted form. The client declares that he is aware of the associated risks (in particular access, confidentiality, alteration of messages in the course of transmission) and agrees in full knowledge of these risks that e-mail correspondence may be conducted in unencrypted form.

4. The client gives his consent that his personal data and all documents and information disclosed by him may be stored, processed, and used by the *lawyer* with the assistance of an automated system. The data shall not be passed on to third parties (except for substitutes or colleagues who are involved in the handling of the mandate).
5. The invalidity of one or individual provisions of these General Business Terms or of the contractual relationship governed by the General Business Terms shall not affect the validity of the remaining agreement. The contracting parties undertake to replace the invalid provision(s) with a provision that comes as close as possible to the economic effect of the invalid provision(s).

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Place                      Date                      Signature