

# GENERAL TERMS AND CONDITIONS

## EY-Parthenon GmbH

as of October 2021

This is an English translation of the German text (please refer to [www.ey.com/aab](http://www.ey.com/aab)), the German text being the sole authoritative version.

### Structure

1. These General Terms and Conditions, together with the Cover Letter, any applicable Statement of Work and any annexes, form the contractual structure for the provision of Services by EY to Client.
2. For the purposes of this Agreement, "party" means either EY or Client.
3. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless agreed otherwise): (a) the Cover Letter, (b) the applicable Statement of Work and any annexes thereto (including – as the case may be – the Fee Arrangement), (c) these General Terms and Conditions, and (d) other annexes to this Agreement.

### Definitions

4. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Cover Letter or applicable Statement of Work. The following terms are defined as specified below:
  - (a) "Client Affiliate" means a company which is affiliated to Client in the sense of Section 15 AktG [German Stock Companies Act: *Aktiengesetz*].
  - (b) "Client Information" means information obtained by EY from Client or from a third party on Client's behalf.
  - (c) "Deliverables" means any advice, communications, information, technology or other content that EY provides under this Agreement.
  - (d) "EY Firm" means a member of the EY network and any entity operating under a common branding arrangement with a member of the EY network.
  - (e) "EY Persons" means EY's or any other EY Firm's subcontractors, members, shareholders, directors, officers, partners, principals or employees.
  - (f) "Internal Support Services" means internal support services utilized by EY, including but not limited to: (a) administrative support, (b) accounting and finance support, (c) network coordination, (d) IT functions including business applications, system management, and data security, storage and recovery, (e) conflict checking, risk management and quality reviews and (f) for statistical purposes (benchmarking).
  - (g) "Personal Data" means Client Information relating to identified or identifiable natural persons.
  - (h) "Report" means a Deliverable (or any portion of a Deliverable) issued on EY letterhead or under the EY brand or otherwise identifiable as being prepared by or in association with EY, any other EY Firm or EY Person.
  - (i) "Support Providers" means external service providers of EY and other EY Firms and their respective subcontractors.
  - (j) „*Textform*“ refers to Section 126b BGB [German Civil Code: *Bürgerliches Gesetzbuch*] and means a readable declaration on a durable medium (e.g. via email).

### Provision of the Services

5. EY will provide the Services using reasonable skill and care.

6. EY may subcontract a portion of the Services to one or more EY Firms, as well as to other third parties, who may deal with Client directly. EY will remain solely responsible to Client for the performance of the Services.
7. EY will act as an independent contractor and not as Client's employee, agent or partner. Client will remain solely responsible for management decisions relating to the Services and for determining whether the Services are appropriate for its purposes. Client shall assign qualified personnel to oversee the Services as well as the use and implementation of the Services and Deliverables.
8. Client agrees to promptly provide to EY (or cause others to so provide), Client Information, resources and assistance (including access to records, systems, premises and people) that EY reasonably requires to perform the Services.
9. Client Information will be accurate and complete. EY will rely on Client Information, and, unless EY agrees otherwise, EY will have no responsibility to verify it. The provision of Client Information (including Personal Data), resources and assistance to EY will be in accordance with applicable law and will not infringe any copyright or other third-party rights.

### Deliverables

10. All Deliverables are intended for Client's use in accordance with the applicable Statement of Work under which they are provided.
11. To the extent EY is required to present results in writing as part of the work in executing the engagement, only that written work is authoritative. Except as otherwise agreed, oral statements and explanations by EY are binding only when they are confirmed in writing.

Client may not rely on any draft Deliverable. EY shall not be required to update any final Deliverable as a result of circumstances of which EY becomes aware, or events occurring, after its delivery, unless otherwise agreed or EY is obliged to do so with regard to the Services provided by EY.

12. Unless otherwise provided for in a Statement of Work, Client may not disclose a Report (or any portion or summary of a Report), or refer to EY or to any other EY Firm or EY Person in connection with the Services, except:
  - (a) to Client Affiliates, to Client's and Client Affiliates' lawyers and professional advisors (subject to these disclosure restrictions), who may review it only in connection with advice relating to the Services;
  - (b) to the extent, and for the purposes, required by applicable law (and Client will promptly notify EY of such legal requirement to the extent Client is permitted to do so); or
  - (c) to other persons (with EY's prior written consent (*Textform*)), who may use it only as specified in such consent.

If Client discloses a Report (or a portion thereof), Client shall not alter, edit or modify it from the form provided by EY. Client shall inform those to whom it discloses a Report that they may not rely on it for any purpose without EY's prior written consent (*Textform*). Subject to the foregoing, Client is not prohibited by this Section 12 from using Deliverables that do not qualify as Reports in communication with third parties provided that: (i) there is no reference to, or communication of, EY's or any other EY Firm's involvement in the development of such Deliverables, and (ii) Client assumes sole responsibility for such use and communication.

**Limitation of Liability**

13. (a) EY shall be liable for damages or reimbursement of expenses pursuant to the statutory provisions in case of injury to life, body or health, as well as for damages that constitute a duty of replacement by a producer pursuant to Section 1 ProdHaftG [German Product Liability Act: *Produkthaftungsgesetz*].
- (b) EY shall only be liable for other damage subject to the following provisions. EY shall be liable in accordance with the statutory provisions for damage caused by fraud or by willful intent (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*). In the event of simple negligence (*einfache Fahrlässigkeit*) on EY's part EY shall be liable for payment of damages limited to the foreseeable damage typical of the Agreement. The parties shall agree on the amount of the foreseeable damage typical of the Agreement separately for each Agreement based on the liability risks arising from it. All of this also applies in the event of liability towards a person other than Client, in which case Section 334 BGB shall apply. If no liability limit has been agreed for the Agreement, EY shall be liable for any claims under the Agreement together up to one time the total amount of the agreed fees.
- (c) If legitimate claims falling within EY's limitation of liability are brought against EY by Client and/or one or more third parties who are entitled to invoke this Agreement, the liability limit agreed will be – in accordance with Section 428 BGB – available only once to all – including all future – claimants collectively. Hence, any payment by EY to Client has discharging effect towards all claimants. In case the sum of all claims (including future claims) to which EY's limitation-of-liability-provisions apply exceed the liability limit agreed, the allocation of this liability limit agreed amongst all claimants (including Client) is entirely a matter for discussion amongst all claimants.
14. The claim expires if a suit is not filed within six months subsequent to the written refusal of acceptance of the indemnity and Client was informed of this consequence. This does not apply to claims for damages resulting from scienter, gross negligent behaviour (*grob fahrlässiges Verhalten*), a culpable injury to life, body, health as well as for damages that constitute a liability for replacement by a producer pursuant to Section 1 ProdHaftG.
- In any case the right to invoke a plea of the statute of limitations remains unaffected.
15. Client (and any others for whom Services are provided under this Agreement) may not make a contractual claim or bring proceedings arising from the provision of the Services or otherwise under this Agreement against any other EY Firm or EY Person. Client shall make any contractual claim or bring such proceedings only against EY.

**No Responsibility to Third Parties**

16. Unless otherwise agreed with Client, EY's responsibility for performance of the Services is to Client and Client alone. Thus, the Services do not consider the interests of third parties (including recipients under Section 12), are therefore not designed or intended to serve third parties as a basis for their decisions and third parties can neither infer rights nor otherwise benefit from this Agreement. Should any Deliverable be disclosed, or otherwise made available, by or through Client (or at Client's request) to a third party (including but not limited to permitted disclosures to third parties under Section 12), Client agrees to indemnify EY, as well as the other EY Firms and the EY Persons against all claims by third parties, and resulting liabilities, losses, damages, costs (including time spent by EY personnel)

and expenses (including reasonable external and internal legal costs) arising out of such disclosure. Client shall have no obligation hereunder to the extent that EY has specifically authorized, in writing (*Textform*), the third party's reliance on the Deliverable.

**Intellectual Property Rights**

17. Each party retains its rights in its pre-existing intellectual property. Except as set out in the applicable Statement of Work, any intellectual property developed by EY, and any working papers compiled in connection with the Services (but not Client Information contained in them), shall be the property of EY.

**Confidentiality, Data Protection & Security**

18. Except as otherwise permitted by this Agreement, neither party may disclose to third parties any information provided by or on behalf of the other that ought reasonably to be treated as confidential (including, in the case of EY, Client Information). Either party may, however, disclose such information to the extent that it:
- is or becomes public other than through a breach of this Agreement;
  - is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information;
  - was known to the recipient at the time of disclosure or is thereafter created independently;
  - is disclosed as necessary to enforce the recipient's rights under this Agreement; or
  - must be disclosed under applicable law.
19. The parties may also exchange information via e-mail communication. The transmission of an unencrypted e-mail carries the risk that this message is intercepted by an unauthorized third party and that its content is being disclosed. Each party is entitled to encrypt e-mail communication or to request an encryption or other solutions for secure data exchange. Being aware of the immanent risks associated with unencrypted e-mail communication Client declares to agree that EY may also communicate via unencrypted e-mails, including incorporated information and attached documents to Client or any third party being involved in the performance of the Services.
20. EY uses other EY Firms, EY Persons and Support Providers who may have access to Client Information in connection with delivery of Services as well as to provide Internal Support Services. EY shall be responsible for any use or disclosure of Client Information by other EY Firms, EY Persons or Support Providers to the same extent as if EY had engaged in the conduct itself.
21. EY, other EY Firms, EY Persons and their Support Providers may process Client Information, including Personal Data, in various jurisdictions in which they operate (EY office locations are listed at [www.ey.com](http://www.ey.com)). Client Information, including any Personal Data, will be processed in accordance with applicable law, and appropriate technical and organizational security measures will be implemented to protect it. Transfer of Personal Data among members of the EY network is subject to the EY Binding Corporate Rules Program, available at [www.ey.com/bcr](http://www.ey.com/bcr). Further information about EY's processing of Personal Data is available at [www.ey.com/de\\_de/privacy-statement](http://www.ey.com/de_de/privacy-statement).

22. As a professional services firm, EY is required to exercise its own judgment in determining the purposes and means of processing any Personal Data when providing the Services. Accordingly, unless otherwise specified, when processing Personal Data subject to the General Data Protection Regulation or other applicable data protection law, EY acts as an independent controller, and not as a processor under Client's control or as a joint controller with Client. For Services where EY acts as a processor processing Personal Data on Client's behalf, the parties will agree appropriate data processing terms.
23. If Client requires EY to access or use Client or third-party systems or devices, EY shall have no responsibility for the confidentiality, security or data protection controls of such systems or devices or for their performance or compliance with Client requirements or applicable law.
24. To facilitate the performance of the Services, EY may provide access to, or otherwise make available, technology-enabled collaboration tools and platforms to Client personnel or third parties acting on Client's behalf or at Client's request. Client shall be responsible for all such persons' compliance with the terms applicable to the use of such tools and platforms.

#### **Compliance**

25. In connection with the performance of its respective rights and obligations under this Agreement, EY and Client each will comply with all laws and regulations of any jurisdiction applicable to it from time to time concerning or relating to bribery or corruption.

#### **Fees and Expenses Generally**

26. Client shall pay EY's professional fees and specific expenses in connection with the Services as detailed in the applicable Statement of Work or any of its appendices. Client shall also reimburse EY for other reasonable expenses incurred in performing the Services. EY's fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which Client shall pay (other than taxes imposed on EY's income generally). EY may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of its Services dependent upon complete satisfaction of EY's claims. Unless otherwise set forth in the applicable Statement of Work, payment is immediately due following receipt of each of EY's invoices.
27. EY may charge additional professional fees if events beyond its control (including Client's acts or omissions) affect EY's ability to perform the Services as agreed in the applicable Statement of Work or if Client asks EY to perform additional tasks.
28. If EY is required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, Client shall reimburse EY for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless EY is a party to the proceeding or the subject of the investigation or unless EY gets fully reimbursed by public authorities.

#### **Force Majeure**

29. Neither party shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond such party's reasonable control.

#### **Term and Termination**

30. This Agreement applies to all Services whenever performed (including before the date of this Agreement or the applicable Statement of Work).

31. This Agreement shall terminate on the completion of the Services. Either party may terminate this Agreement, or any particular Services, upon 90 days' prior written notice (*Textform*) to the other. In addition, EY may terminate this Agreement, or any particular Services, immediately upon written notice (*Textform*) to Client if EY reasonably determines that it can no longer provide the Services in accordance with applicable law or professional obligations. Sections 626 and 627 BGB shall remain unaffected.
32. Client shall pay EY for all work-in-progress, Services already performed, and expenses incurred by EY up to and including the effective date of the termination or expiration of this Agreement, as well as any applicable termination fees set forth in the applicable Statement of Work.

#### **Governing Law and Jurisdiction**

33. This Agreement, and any non-contractual matters or obligations arising out of it or the Services, shall be governed by, and construed in accordance with, the laws of Germany.

Any dispute relating to this Agreement or the Services shall be subject to the exclusive jurisdiction of the courts of Düsseldorf, Germany, if the Client is a merchant (*Kaufmann*), a corporate body under public law (*juristische Person des öffentlichen Rechts*) or a public law special asset (*öffentlich-rechtliches Sondervermögen*).

EY is not prepared to participate in dispute settlement procedures before a consumer arbitration board (*Verbraucherschlichtungsstelle*) within the meaning of Section 2 VSBG [German Act on Consumer Dispute Settlements: *Verbraucherstreitbeilegungsgesetz*].

#### **Miscellaneous**

34. This Agreement constitutes the entire agreement between the parties as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any previously agreed confidentiality agreements.
35. This Agreement (and any modifications to it) must be agreed in writing (*Textform*).
36. Client agrees that EY and the other EY Firms may act for other clients, including Client's competitors.
37. Neither party may assign or transfer any of its rights, obligations or claims under this Agreement.  
Unless Client qualifies as a consumer in the meaning of Section 13 BGB, a set off against EY's claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.
38. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.
39. Neither party may use or reference the other's name, logos or trademarks without its prior written consent (*Textform*), provided that EY may use Client's name publicly to identify Client as a client in connection with specific Services or otherwise.
40. The limitations in Sections 13 through 15 and the provisions of Sections 16, 21 and 36 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.