

# GENERAL TERMS AND CONDITIONS

## Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft

as of November 2018

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

### Our Relationship with You

1. We will perform the Services<sup>1</sup> in accordance with the German Principles of Proper Professional Conduct ("*Grundsätze ordnungsmäßiger Berufsausübung*") for the sole benefit of you, our Client.
2. We are a member of the global network of Ernst & Young firms ("**EY Firms**"), each of which is a separate legal entity.
3. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
4. We may subcontract portions of the Services to other EY Firms, as well as to other service providers, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Reports (as defined in Section 11), the performance of the Services, and our other obligations under this Agreement.<sup>1</sup>
5. We will not assume any management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services.

### Your Responsibilities

6. You shall assign a qualified person to oversee the Services. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
7. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including access to records, systems, premises and people) that we reasonably require to perform the Services. This also applies to those supporting documents and records, events and circumstances which first become known during our work.
8. All information provided by you or on your behalf ("**Client Information**") shall be accurate and complete. The provision of Client Information to us will not infringe any copyright or other third-party rights.
9. We may rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.
10. You shall be responsible for your personnel's compliance with your obligations under this Agreement.

### Our Reports

11. Any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement ("**Reports**"), other than Client Information, are for your internal use only (consistent with the purpose of the Services).
12. You may not disclose a Report (or any portion or summary of a Report) externally (including to your affiliates), or refer to us or to any other EY Firm in connection with the Services, except:

- (a) to your lawyers 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 you will promptly notify us of such legal requirement to the extent you are permitted to do so,
- (c) to other persons (including your affiliates) with our prior written consent, who have executed an access letter and who may use it only as we have specified in our consent, or
- (d) to the extent it contains Tax Advice, as set forth in Section 13.

If you are permitted to disclose a Report (or a portion thereof), you shall not alter, edit or modify it from the form we provided.

13. You may disclose to anyone a Report (or any portion thereof) solely to the extent that it relates to tax matters, including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate ("**Tax Advice**"). With the exception of tax authorities, you shall inform those to whom you disclose Tax Advice that they may not rely on it for any purpose without our prior written consent.
14. You may incorporate into documents that you intend to use our summaries, calculations or tables based on Client Information contained in a Report, but not our recommendations, conclusions or findings. You must assume sole responsibility for the contents of those documents and you must not externally - directly or indirectly - refer to us or any other EY Firm in connection with them.
15. If we are required to present work output in writing as part of the work in executing the engagement, only that written output is authoritative.

You may not rely on any draft Reports (which are non-binding), but only on final written Reports. Draft Reports only serve our internal purposes and/or the coordination with you and, therefore, only constitute preliminary stages of Reports and are neither final nor binding and are subject to further review. We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after the cut-off date indicated in the Report or, in absence of such date, the delivery date of the Report, unless otherwise agreed or we are obliged to do so with regard to the Services provided by us.

### Limitations of Our Liability

16. (a) Our liability for claims for damages of any kind, except for damages resulting from 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<sup>2</sup>, for an individual case of damages caused by negligence is limited to EUR 4 million pursuant to Section 54a para. 1 No. 2 WPO<sup>3</sup>.

<sup>1</sup> Terms which are not defined in these General Terms and Conditions are defined in the Cover Letter.

<sup>2</sup> "Produkthaftungsgesetz" (German Product Liability Act)

<sup>3</sup> "Wirtschaftsprüferordnung" (Public Accountant Act)

- (b) An individual case of damages within the meaning of paragraph a) also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against us is limited to EUR 5 million.
17. If you consider the liability limit stipulated in Section 16 and the amount our liability is limited to where Section 16 applies (“**Maximum Liability Amount**”) as inappropriate, please inform us of the extension of our liability you would like to be agreed on instead. In this case we will endeavor to obtain additional insurance for such increased amount (“**Increased Amount**”). Provided that you are furthermore prepared to bear the additional costs arising from the additional insurance covering the Increased Amount, we are prepared to agree with you on a corresponding extension of our liability. We emphasize that an increase of Maximum Liability Amount only applies if agreed on in writing.
18. If legitimate claims falling within our limitation of liability are brought against us by you and/or one or more third parties who are entitled to invoke this Agreement, the Maximum Liability Amount will be – in accordance with Section 428 BGB<sup>4</sup> – available only once to all – including all future – claimants collectively. Hence, any payment by us to you has discharging effect towards all claimants. In case the sum of all claims (including future claims) to which our limitation-of-liability-provisions apply exceed the Maximum Liability Amount, the allocation of this Maximum Liability Amount amongst all claimants (including you) is entirely a matter for discussion amongst all claimants.
19. The claim expires if legal action is not filed within six months subsequent to the written refusal of acceptance of the indemnity and you were informed of this consequence. This does not apply to claims for damages resulting from scien-ter, 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. The right to invoke a plea of the statute limitations remains unaffected.
20. **Third parties may derive claims from contracts between us and you only when this is expressly agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties. We are entitled to invoke demurs and defenses based on the contractual relationship with you also towards third parties. Section 334 BGB shall apply.**
21. You may not make a contractual claim or bring proceedings arising from the provision of the Services or otherwise based on this Agreement against any other EY Firm or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees (“**EY Persons**”). You shall make any contractual claim or bring such proceedings only against us.

### Indemnity

22. You shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates and lawyers) and resulting liabilities, losses, damages, costs and expenses (including reasonable external legal costs) arising out of the third party’s use of or reliance on any Report (including Tax Advice) disclosed to it by or through you or at your request. You shall have no obligation hereunder to the extent that we have specifically authorized, in writing, the third party’s reliance on the Report.

### Intellectual Property Rights

23. We may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how (“**Materials**”) that we own in performing the Services. Notwithstanding the delivery of any Reports, we retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them).

### Confidentiality

24. We are bound by the strict professional confidentiality obligations as stipulated in Section 43 WPO and Section 57 StBerG<sup>5</sup> and, except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information (other than Tax Advice) provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary.
25. Notwithstanding any superseding legal professional secrecy obligation, either of us may, however, disclose such information to the extent that it:
- (a) is or becomes public other than through a breach of this Agreement,
  - (b) 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,
  - (c) was known to the recipient at the time of disclosure or is thereafter created independently,
  - (d) is disclosed as necessary to enforce the recipient’s rights under this Agreement, or
  - (e) must be disclosed under applicable law or professional regulations.
26. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement and acknowledge that sending information and documents in electronic form (in particular by e-mail) entails risks.
27. Subject to applicable law, we may provide Client Information to other EY Firms, EY Persons and external service providers of us, other EY Firms, or EY Persons (“**Service Providers**”) who may collect, use, transfer, store or otherwise process it (collectively “**Process**”) in various jurisdictions in which they operate (office locations of EY Firms are listed at [www.ey.com](http://www.ey.com)) for purposes related to:
- (a) the provision of the Services,

<sup>4</sup> “Bürgerliches Gesetzbuch” (German Civil Code)

<sup>5</sup> “Steuerberatungsgesetz” (Tax Advisory Act)

- (b) complying with regulatory, and legal obligations to which we are subject,
- (c) conflict checking,
- (d) for risk management and quality reviews, and for
- (e) our internal financial accounting, information technology and other administrative support services.

(lit. (a)-(e) collectively "**Processing Purposes**")

We shall be responsible for maintaining the confidentiality of Client Information regardless of by whom such Information is Processed on our behalf.

28. With respect to any Services if U.S. Securities and Exchange Commission auditor independence regulations apply to the relationship between you or any of your associated entities and any EY Firm, you represent, to the best of your knowledge, as of the date of this Agreement, that neither you nor any of your affiliates has agreed, either orally or in writing, with any other advisor to restrict your ability to disclose to anyone the tax treatment or tax structure of any transaction to which the Services relate. An agreement of this kind could impair an EY Firm's independence as to your audit or that of any of your affiliates, or require specific tax disclosures as to those restrictions. Accordingly, you agree that the impact of any such agreement is your responsibility.

#### **Data Protection**

29. For the Processing Purposes referred to in Section 27 above, we and other EY Firms, EY Persons and Service Providers may Process Client Information relating to identified or identifiable natural persons ("**Personal Data**") in various jurisdictions in which they operate. The transfer of Personal Data within the EY network is subject to EY Binding Corporate Rules policies (listed at [www.ey.com/bcr](http://www.ey.com/bcr)). We will Process the Personal Data in accordance with data protection requirements under applicable law and professional regulations, including national (BDSG)<sup>6</sup> and European legal provisions on data protection. We will require any Service Provider that Processes Personal Data on our behalf to adhere to such requirements.
30. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been processed in accordance with applicable law.

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

31. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the applicable Statement of Work or any of its appendices. You shall also reimburse us for other reasonable expenses incurred in performing the Services. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other than taxes imposed on our income generally). We may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of our Services dependent upon complete satisfaction of our claims. Unless otherwise set forth in the applicable Statement of Work or Agreement on Fees, payment is immediately due following receipt of each of our invoices.
32. We may charge additional professional fees if events beyond our control (including your acts or omissions) affect our

ability to perform the Services as originally planned or if you ask us to perform additional tasks.

33. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation or unless we do get fully reimbursed by public authorities.

34. *-Intentionally left blank-*

#### **Force Majeure**

35. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

#### **Term and Termination**

36. This Agreement applies to the Services whenever performed (including before the date of this Agreement).
37. This Agreement shall terminate on the completion of the Services. Either of us may terminate it, or any particular Services, earlier upon 90 days' prior written notice to the other. In addition, we may terminate this Agreement, or any particular Services, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations. Sections 626 and 627 BGB shall remain unaffected.
38. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement.
39. Our respective confidentiality obligations under this Agreement, as well as other provisions of this Agreement that give either of us rights or obligations beyond its termination, shall continue indefinitely following the termination of this Agreement.

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

40. This Agreement, and any non-contractual matters or obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of Germany.
41. Any dispute relating to this Agreement or the Services shall be subject to the exclusive jurisdiction of the courts of Stuttgart, Germany, to which each of us agrees to submit for these purposes, or, at our discretion, (i) the court located where our office that conducted the main part of the work is registered or (ii) the courts located where you are registered.

We are not prepared to participate in dispute settlement procedures before a consumer arbitration board<sup>7</sup> within the meaning of Section 2 VSBG<sup>8</sup>.

#### **Miscellaneous**

42. Upon our request, you shall confirm the completeness of the documents and further information provided as well as the explanations and statements, in a written statement drafted by us.

<sup>6</sup> "Bundesdatenschutzgesetz" (German Data Protection Act)

<sup>7</sup> "Verbraucherschlichtungsstelle"

<sup>8</sup> "Verbraucherstreitbeilegungsgesetz" (German Act on Consumer Dispute Settlement)

43. You shall refrain from anything that endangers the independence of our staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on one's own behalf.
44. In case there are any deficiencies, you are entitled to specific subsequent performance by us. You may reduce the fees or cancel the contract for failure of such subsequent performance, subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the Agreement was not commissioned by a consumer, you may only cancel the Agreement due to a deficiency if the Service rendered is not relevant to you due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. Section 16 through 21 applies to the extent that further claims for damages exist.
- You must assert a claim for the rectification of deficiencies in writing (Textform)<sup>9</sup> without delay. Claims pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.
- Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a Report may be corrected also versus third parties - by us at any time. Misstatement which may call into question the results contained in our Reports entitle us to withdraw – such statement – also versus third parties. In such cases we should first hear you, if practicable.
45. Unless you qualify as a consumer in the meaning of section 13 BGB, a set off against our claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.
46. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
47. This Agreement and/or any Statement of Work hereunder (and modifications to them) must be executed in writing (Textform).
48. Each of us represents that the person signing this Agreement and/or any Statement of Work hereunder on its behalf is also authorized to execute it and to bind each of us to its terms.
- You represent that your affiliates and any others for whom Services are performed shall be bound by the terms of this Agreement and the applicable Statement of Work.
49. You agree that we and the other EY Firms may, subject to professional obligations, act for other clients, including your competitors.
50. Neither of us may assign any of our rights, obligations or claims under this Agreement.
51. 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.
52. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Cover Letter, (b) the applicable Statement of Work (including – as the case may be – the Agreement on Fees), (c) these General Terms and Conditions, and (d) other annexes to this Agreement.
53. Neither of us may use or reference the other's name, logos or trademarks without its prior written consent. We are allowed to use your name publically to identify you as a client in connection with specific Services or otherwise.
54. The limitations in Sections 16 to 21 and the provisions of Sections 22, 27, 29 and 49 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.

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<sup>9</sup> Translators Note: The German term „Textform“ means in written form, but without requiring a genuine signature.