

# GENERAL TERMS AND CONDITIONS

## EY-Parthenon GmbH

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)), the German text being the sole authoritative version.

### Our Relationship with You

1. We will perform the Services<sup>1</sup> using reasonable skill and care 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.
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.
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.

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 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.
14. 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 upon.

### Limitations of our Liability

15. We 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<sup>2</sup>.
16. We shall only be liable for other damage subject to the following provisions. We 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 our part we 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 engagement based on the liability risks arising from the Agreement. This also applies in the event of liability towards a person other than you, in which case Section 334 BGB<sup>3</sup> shall apply. If no liability limit has been agreed for the Agreement, we shall be liable up to the total amount of the agreed fees.
17. 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 scienter, 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.

<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> "Bürgerliches Gesetzbuch" (German Civil Code)

In any case the right to invoke a plea of the statute limitations remains unaffected.

18. 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

19. 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 a third party's use of or reliance on any Report 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

20. 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

21. Except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. 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.
22. 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.
23. Subject to applicable law, we may disclose Client Information to other EY Firms and EY Persons and external service providers of us, other EY Firms, or EY Persons ("**Service Providers**") who may collect, use, transfer, store or other-

wise 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,
  - (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 as well as for statistical purposes (benchmarking)
- (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.

#### Data Protection

24. For the Processing Purposes referred to in Section 23 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>4</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.
25. 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

26. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the 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, payment is immediately due following receipt of each of our invoices.
27. 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.
28. 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

<sup>4</sup> "Bundesdatenschutzgesetz" (German Data Protection Act)

or the subject of the investigation or unless we do get fully reimbursed by public authorities.

#### **Force Majeure**

29. 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**

30. This Agreement applies to the Services whenever performed (including before the date of this Agreement).
31. 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.
32. 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.
33. Our respective confidentiality obligations under this Agreement shall continue for a period of ten years following the termination of this Agreement. The 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**

34. 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.
35. Any dispute relating to this Agreement or the Services shall be subject to the exclusive jurisdiction of the courts, of Düsseldorf, 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>5</sup> within the meaning of Section 2 VSBG<sup>6</sup>.

#### **Miscellaneous**

36. 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.
37. This Agreement and/or any Statement of Work hereunder (and modifications to them) must be executed in writing (Textform<sup>7</sup>).
38. 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.

39. You agree that we and the other EY Firms may act for other clients, including your competitors.
40. Neither of us may assign any of our rights, obligations or claims under this Agreement.

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.

41. 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.
42. 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, (c) these General Terms and Conditions, and (d) other annexes to this Agreement.
43. 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.
44. The limitations in Sections 15 to 18 and the provisions of Sections 19, 23, 24 and 39 are intended to benefit the other EY Firms and all EY Persons, who shall be entitled to enforce them.

<sup>5</sup> "Verbraucherschlichtungsstelle"

<sup>6</sup> "Verbraucherstreitbeilegungsgesetz" (German Act on Consumer Dispute Settlement)

<sup>7</sup> Translators Note: The German term „Textform“ means in written form but without requiring a genuine signature.