

## **GENERAL TERMS AND CONDITIONS OF DELOITTE FINANCIAL ADVISORY GMBH (VERSION OF 2020)**

### **1. General principles**

- 1.1 Deloitte Financial Advisory GmbH (hereinafter "Deloitte FA") shall render all of its advisory services on the basis of these "General Terms and Conditions" (hereinafter "FA GTCs") and Deloitte FA's individually tailored written offer.
- 1.2 These FA GTCs shall also apply to all future contract relations, even if Deloitte FA's offer does not expressly refer to them.
- 1.3 Any general terms and conditions of business of the Client departing herefrom shall only apply where Deloitte FA has expressly acknowledged them in writing.
- 1.4 Amendments to these FA GTCs shall only be valid if made in writing. The foregoing shall also apply with respect to any departure from this requirement of written form. Any ancillary agreements or declarations shall only be deemed valid if Deloitte FA has confirmed them in writing.

### **2. Formation of contract**

- 2.1 Offers shall be valid for a period of four weeks unless otherwise indicated in the offer. The engagement shall be deemed to arise at such time as the Client accepts the offer forwarded by Deloitte FA. Acceptance shall be deemed to occur upon receipt by Deloitte FA of the confirmation of the engagement appended to the offer, which the Client has duly executed in the proper corporate form.

### **3. Duties of cooperation**

- 3.1 The Client shall ensure that, even where not separately requested, Deloitte FA shall be provided in a timely fashion with all necessary information/data and that the requisite information shall be provided to Deloitte FA in a reliable, correct and complete fashion. The foregoing shall also apply to all information, data, events and circumstances which only occur or come to light during Deloitte FA's advisory work.
- 3.2 The relations of trust between the Client and Deloitte FA require that Deloitte FA be comprehensively informed of deliberations which have been carried out previously and/or which are ongoing in connection with the advisory services to be rendered. The Client shall ensure that all of the conditions precedent as noted in Deloitte FA's offer are correct and complete.
- 3.3 The Client shall make all decisions required for Deloitte FA's performance of the agreed advisory services in a timely manner and shall procure any consents required in respect thereof (e.g. consents of group management, the supervisory board, employees, works council, etc.).
- 3.4 Where the agreed advisory services are performed at the Client's premises, the Client shall furnish the necessary office infrastructure free of charge and shall ensure that all organisational framework conditions required are furnished and that Deloitte FA is ensured of its ability to render the services free from disruption.
- 3.5 In the event that the Client breaches its duties of cooperation or in the event that there are other circumstances outside Deloitte FA's control which constitute obstacles to Deloitte FA's performance of the agreed advisory services, any agreed schedule (milestones) shall be deemed deferred. In addition, Deloitte FA shall be entitled to invoice the Client for any additional costs (e.g. downtimes of staff deployed on the project).

### **4. Performance/scope of advisory services**

- 4.1 Deloitte FA's contractual duty is to perform the advisory services agreed in the offer, but not to warrant any particular commercial outcome. Accordingly, the assessment of the entrepreneurial expediency and costs and benefits as well as decisions on entrepreneurial implementation of the results of Deloitte FA's advisory services shall remain the sole responsibility of the Client.
- 4.2 Deloitte FA is entitled to regard the information provided by the Client and the documents furnished to it by the Client as correct and complete. Unless expressly otherwise agreed, Deloitte FA shall not be obliged to review any such information or documents for correctness and/or completeness.

- 4.3 Deloitte FA shall endeavour to accommodate the Client's requests for deployment of particular members of staff, but expressly reserves the right to deploy staff based in its own discretion and to reassign them as appropriate, expedient and possible for performance of the advisory services.
- 4.4 Deloitte FA is authorised to engage cooperation partners or knowledgeable third parties to perform the agreed advisory services in whole or in part and to obtain third-party information from such cooperation partners or knowledgeable third parties. Where, for purposes of performing its advisory services, Deloitte FA utilises a cooperation partner or a knowledgeable third party, such as a data processing company, a chartered accountant or a lawyer, and where Deloitte FA has notified the Client thereof in writing, Deloitte FA shall be relieved of liability and in such case only the third party engaged shall be liable to the Client for losses for which that third party bears responsibility.
- 4.5 The scope of Deloitte FA's advisory services, unless otherwise expressly agreed between Deloitte FA and the Client, shall not include any audit in accordance with the principles of proper performance of audits or any audit review undertaken pursuant to the international standards on review engagements (or the like), and Deloitte FA is unable to/will not furnish any opinion (review clearance/opinion) in respect of the financial and other data depicted in Deloitte FA's reports.

## **5. Licence rights, protection of intellectual property, confidentiality**

- 5.1 All documents provided by Deloitte FA in hard copy or electronic form (including, but not limited to, the offer, analyses, appraisals, opinions, etc.) shall constitute Deloitte FA's intellectual property. The Client acknowledges Deloitte FA's exclusive rights to the documents, whether such documents are protected under copyright, trademark rights or competition law or not. Consequently, the Claimant shall only be entitled to use the intellectual property rights held in Deloitte FA's ownership to the extent that Deloitte FA has expressly granted a licence in connection with the agreed advisory services. Any use thereof going beyond the foregoing, of any kind whatsoever and for whatever reason, is prohibited.
- 5.2 The Client may only use the documents provided to it for its own business purposes. The Client is not authorised to amend or modify documents of Deloitte FA (such as analyses, appraisals, opinions, etc.).
- 5.3 In the event of any breach of this section 5.2, Deloitte FA shall be deemed relieved of any and all liability for any losses resulting therefrom.
- 5.4 The relationship of trust between the Client and Deloitte FA requires strict confidentiality. With respect to this engagement and all information provided in connection with this engagement which the disclosing party refers to as confidential, the recipient hereby undertakes that it shall protect such confidential information in a sufficient manner/in a manner comporting with the applicable ethical standards, and shall only use such information for the performance of this engagement and shall only duplicate it to the extent required in order to perform the engagement. This duty of confidentiality shall not apply to information already known to third parties or to the recipient, which was provided to the recipient thereof by a third party without any breach of a confidentiality obligation and without any breach of the present duty of confidentiality, or as to which the recipient of the information is able to prove that he had already held the information prior to the date of execution of the engagement letter or acquired or developed it independently thereof.
- 5.5 Deloitte FA, its staff members and the cooperation partners engaged by it hereby undertake to preserve confidentiality with respect to all matters coming to their knowledge in connection with their work for the Client.
- 5.6 Deloitte FA may only release reports, opinions and other documents on its activities and the results thereof to third parties with the Client's consent.
- 5.7 This duty of confidentiality shall also apply to periods following completion of the engagement. Excepted herefrom are cases in which there is a statutory duty to provide the information or where Deloitte FA has been expressly relieved by the Client of its duty of confidentiality.

## **6. Data protection**

- 6.1 Deloitte FA is a controller within the meaning of the General Data Protection Regulation ("GDPR") with respect to all personal data processed in course of the engagement. Deloitte FA is authorised to process personal data entrusted to Deloitte FA in course of its advisory work, to store such data in electronically managed files and to permit third parties to process the same. Upon completion of the respective services,

materials (papers and data carriers) entrusted to Deloitte FA shall in principle be handed over to the Client or to third parties designated by the Client or, if agreed separately, be stored by Deloitte FA against an appropriate fee or be irretrievably destroyed. Deloitte FA shall be entitled to store copies thereof, so far as such copies are required for proper documentation of its services or such storage is legally required or customary in its profession.

- 6.2 Deloitte FA hereby undertakes on its own behalf and on behalf of its employees (contractually, if need be) to preserve data secrecy in line with the provisions of the GDPR and the Austrian Data Protection Act (DSG as amended by the Data Protection Amendment Act 2018) as amended from time to time, and shall likewise impose the same duty on any third parties it may engage.
- 6.3 The Client hereby confirms its agreement to receiving a reasonable extent of information and notices of the services, events, etc. offered by Deloitte FA via mail, e-mail, telephone and facsimile. The Client may revoke this consent at any time.
- 6.4 If Deloitte FA supports the Client in fulfilling the obligations of the Client as controller vis-à-vis data subjects, Deloitte FA shall be entitled to charge the actual expenses incurred to the Client. The same applies to expenses incurred by Deloitte FA for disclosures in connection with the engagement which are provided to third parties upon release from the duty of confidentiality by the Client.

## **7. Fees**

- 7.1 The amount of Deloitte FA's fees shall be governed by the type and scope of the advisory services agreed, and shall be stated in Deloitte FA's offer. Absent any express agreement, the Client shall owe Deloitte FA a reasonable fee.
- 7.2 Any travel expenses of Deloitte FA's staff members and any cash disbursements shall be charged separately. Cash disbursements include, for example, costs of overnight accommodation, costs of external databases and courier services. Expenses for photocopies, postal shipments, telephone, facsimile and email fees are (unless expressly otherwise agreed in the offer) already deemed included in Deloitte FA's fees and no separate charge to the Client will be made.
- 7.3 Unless otherwise agreed, invoicing shall be on a monthly basis in arrears.
- 7.4 Invoices shall be due for payment immediately, without any deductions.
- 7.5 Any objections to invoices must be asserted in writing three months from their receipt to Deloitte FA. The failure to raise objections within such period shall be deemed to constitute acknowledgement of the invoice.
- 7.6 In the event of any default of payment, Deloitte FA shall be entitled to charge default interest at a rate of 9.2% over the base interest rate (pursuant to § 456 of the Austrian Entrepreneurial Code [UGB]). In addition, Deloitte FA shall be entitled to temporarily cease performance of ongoing advisory services and, following a dunning notice to no avail, to rescind the engagement. The Client shall be responsible for all dunning charges and collection fees and the costs of legal action incurred and necessitated for Deloitte FA's expedient pursuit of its legal rights.

## **8. Termination**

- 8.1 As a general principle, this engagement shall end at such time as Deloitte FA hands its written final report, containing its original signature, to the Client or, in the absence of any such written report, at such time as Deloitte FA has completed the engagement. Notwithstanding this, either party may terminate the engagement upon written notice of 30 days to the end of any calendar month, unless otherwise agreed (such as where Deloitte FA is engaged on specifically delineated projects or sections of projects). In addition, either party may at any time declare rescission of the engagement for good cause with immediate effect. In particular, the following grounds shall be deemed to constitute good cause: (a) breach of material obligations of the engagement by any party; (b) the opening of insolvency proceedings (where such are not in conflict with § 25b (2) of the Austrian Insolvency Code [IO]) over the assets of a party or dismissal of an application for bankruptcy due to the lack of assets covering costs; (c) occurrence of new facts (regulatory changes, etc.) in the course of the project under which the engagement must be terminated pursuant to legal rules, or under which the project can no longer be brought to an end; (d) substantial delays to the schedule for which the Client bears fault, in particular with respect to the supply of information and documents.

8.2 The Client shall compensate Deloitte FA for the advisory services rendered up to the end of the engagement within the meaning of section 8.1 of these FA GTCs as well as for expenditures incurred, in line with the actual hours worked pursuant to Deloitte FA's hourly records, in accordance with the hourly rates agreed in the engagement letter, and shall compensate Deloitte FA for all costs and expenses arising in connection with the termination. The foregoing shall also apply in the case of any premature termination of the engagement, irrespective of which party terminates it and irrespective of the grounds thereof.

#### **9. Duty of loyalty, non-solicitation**

9.1 During the term of this engagement and for a further period of six months following the end of the agreed advisory services, the Client is prohibited from employing staff members of Deloitte FA who were involved in performing the engagement. In the event of any breach of this obligation, the Client shall pay a standard contract penalty of EUR 50,000.00 per breach.

#### **10. Final provisions**

10.1 The Client is not authorised to delegate rights or duties under this engagement to third parties without Deloitte FA's prior written consent. Deloitte FA is authorised to delegate/transfer rights and duties under this engagement to any subsidiary or affiliate and/or member of Deloitte Touche Tohmatsu (you will find more detailed information on members at [www.deloitte.com/at/about](http://www.deloitte.com/at/about)) without any separate consent by the Client, with a debt-discharging effect.

10.2 Deloitte FA uses high-tech tools to identify and to filter out undesirable email/spam. Nevertheless, it may occur that an email is mistakenly identified as spam. Deloitte FA can thus not provide a guarantee that emails from the Client will actually be received by the intended recipient.

10.3 The place of performance is Vienna. With respect to any disputes arising from this engagement, the parties agree that jurisdiction shall be vested in the Vienna Commercial Court.

10.4 This engagement shall be governed exclusively by Austrian law, with the exception of its conflict-of-law rules.

10.5 In the event that individual terms of these FA GTCs should be or become invalid, the remaining contents hereof shall not be affected thereby.

10.6 Unless otherwise agreed in these FA GTCs and/or in the offer between Deloitte FA and the Client, the terms of part I of the General Terms and Conditions of Contract for the Public Accounting Professions ("AAB 2018") as from time to time amended, which were prepared by the Austrian Chamber of Chartered Accountants, shall apply.