Status: Dec 2023

***Preliminary remark on the use of sample contracts - please delete after taking note of contents!***

*As a service to members, sample contracts and explanatory notes relating to them are provided, which are intended to help you find the right wording for contract structures. However, it is in the nature of sample contracts that they only set out “typical” contents of contracts. It is therefore essential for you to adapt the sample contracts to your needs, possibly with the help of a lawyer or in consultation with legal practitioners in your interest groups.*

*GTC apply only by virtue of express or implied agreement. The reference to the GTC must therefore be made before or at the conclusion of the contract. It is sufficient if an undertaking declares prior to the conclusion of the contract that he/she only wishes to contract under his/her GTC and his/her contractual partner then concludes the contract with him/her. An implied submission of the contractual partner to the GTC may only be assumed if it is clearly recognizable to the contractual partner that the other contractual partner only wishes to conclude the contract under its GTC. In addition, the contractual partner subject to the GTC must at least have the opportunity to obtain knowledge of the content of the GTC. If the contract was concluded without including the GTC, the GTC cannot be subsequently made part of the contract unilaterally. In addition to this review of validity, the GTC are also subject to a strict review of their content.*

*In the case of contracts with Consumers within the meaning of the Consumer Protection Act, it is essential that the provisions of the Consumer Protection Act are strictly observed; these special provisions have been considered in these* ***GTC-ZT******vis-à-vis Consumers****.*

*Business transactions with Consumers should only be concluded on the Contractor's office premises, because otherwise the* ***provisions of the Distance and Off-Premises Contracts Act (FAGG)*** *may apply, which require the Consumer to be informed of his or her 14-day right of withdrawal and to be provided with a sample withdrawal form for exercising the right of withdrawal.*

General Terms and Conditions for Services provided by “Ziviltechniker” (Architects and Chartered Engineering Consultants)

vis-à-vis Consumers

(GTC-ZT-Consumers)

**1. Validity and conclusion of contract**

The offers, order confirmations, conclusion of contracts and services of the Ziviltechniker offices (Ziviltechniker company) as the Contractor shall be made exclusively on the basis of these **GTC-ZT-Consumers**. Any terms and conditions of the Client that conflict with or deviate from these GTC-ZT-Consumers shall not apply unless their validity has been expressly agreed to in writing. These GTC-ZT-Consumers shall also apply as a framework agreement for all further legal transactions between the Contractor and the Client.

2. Contract on

The following shall be taken as the basis for the Contract and shall be applicable according to the ranking indicated below:

* 1. order and order confirmation or contract

(each including scope of services, proposed remuneration and payment schedule);

supplementary to these GTC-ZT-Consumers;

2.2. the planning criteria;

2.3. the statutory (building) regulations;

2.4. the latest technology or architecture at the time of concluding the Contract;

2.5. General Rules on Planning Contracts (GR as at 15.9.2023);

2.6. the relevant provisions of the Austrian Consumer Protection Act (KSchG), Austrian Commercial Code (UGB) and the Austrian General Civil Code (ABGB).

3. Scope of services/Additional services

3.1. The scope of services results from the order and the order confirmation or the contract and these GTC-ZT-Consumers.

3.2. If the Client commissions the Contractor with services that go beyond the subject matter of the service according to the order and order confirmation or contract, but are necessary to achieve the service objective, an agreement on the fee shall be reached before the service is rendered.

3.3. In the event of no agreement being reached between the Client and Contractor, the Contractor is obliged to perform the required service, where necessary for achieving the performance goal and where reasonable for the Contractor; this shall be without prejudice for the existence or non-existence of a remuneration claim.

1. The Client’s preliminary tasks and obligation to cooperate

4.1. The Client and the Contractor shall continually inform each other of any significant incidents relevant to the contractual relationship and fulfilment thereof.

4.2. If local site supervision is assigned to the Contractor, the Client shall refrain from issuing direct instructions to those working at the building site in order to avoid giving contradictory orders. At the invitation of the Contracor, the Client shall cooperate in final acceptance.

4.3. The Client shall take necessary decisions in good time to ensure that the planned progress of the project is not delayed.

4.4. The Client shall commission the necessary specialist planning, which does not fall within the Contractor's scope of services, separately from the relevant specialist planners.

1. Performance deadlines and performance dates

5.1. The time periods specified in the proposed remuneration are intended for the provision of the services.

5.2. The final deadlines for the provision of individual sub-services and the entire contractual term shall be set out in a mutually prepared schedule.

1. Fees

6.1. Services provided by the Contractor are charged and remunerated pursuant to the proposed remuneration. The fees relate to the specified scope of services within the stipulated implementation period, in compliance with the schedule.

6.2. Ancillary costs (transport/travel expenses within the office location, work copies and internal copies of any kind, copies for those involved in planning services, a sufficient number of documents as required for internal use by the Client) are remunerated at a flat rate for ancillary costs of the proposed remuneration. In addition, the following ancillary costs are accounted for based on actual expenditure:

* Costs of modelling and perspective depictions and computer simulations ordered by the Client;
* official commission fees, stamp duties and legal fees, administrative charges, court costs, etc.;
* copies and reproductions of documents and plans, going beyond copies included in the flat rate for ancillary costs;
* Travel expenses outside the office
* Costs of provision and operation of a project platform
*

6.3. Additional services resulting from changes not brought about by the Contractor, in particular due to regulatory requirements, amendments to relevant regulations and laws and changes in the Client’s requirements, shall be additionally remunerated in accordance with the increased scope of services.

1. Value adjustment/value protection

7.1. Remuneration is adjusted once a year pursuant to the adjustment factor for the base value on the basis of the Agreement of 28/01/2002 between the federal states, the BMWA [Austrian Ministry of Economics and Labour], ÖBB [Austrian Railways], HL-AG, ÖSAG [Motorways Company] and Alpenstrassen AG on the one hand and the Federal Chamber of Architects and Chartered Engineering Consultants on the other hand. The adjustment is made on 1 January each year.

7.2. In the event of the adjustment factor for the base value no longer being disclosed, it shall be replaced as the basis for future value adjustments by the index that succeeds it.

1. Costing

Costings always conform to the latest state of planning at the time they are submitted and constitute forecasts as far as technically possible and assumed economic marginal conditions at the time of compilation.

1. Payment terms

9.1. The Contractor is entitled to issue partial invoices.

9.2. Partial invoices shall be due for payment within 14 calendar days, and the final invoice within 30 calendar days of receipt by the Client, whereby the Contractor is also entitled to charge VAT on partial invoices.

9.3. In case of late payment, the Client’s default interest shall be paid at the statutory rate.

9.4. Until payment of the final invoice, all documents (plans, calculations, etc.) drafted by the Contractor shall remain in her/his ownership.

9.5. In the event of default in payment, the Client shall reimburse any dunning charges incurred in the amount of € 15.00 plus postage for each reminder issued, as well as an amount of € 5.00 per half-year for keeping records of the debt relationship in the dunning process. In addition, all costs and expenses arising from the reminder or the collection of due payments, in particular the necessary out-of-court lawyer's fees, etc., in accordance with the tariff for the appropriate prosecution, shall be reimbursed.

1. Delay, obstruction and interruption

10.1. If a delay, obstruction or interruption of services of the Contractor of more than 2 months occurs for a reason not attributable to the Contractor, she/he is entitled to additionally invoice verified additional expenditure.

10.2. If the interruption set out under section 10.1 lasts more than 6 months continuously, at the request of the Contractor the status of services provided so far shall be mutually established and accounted for.

10.3. In case of delays, obstructions or interruptions of service provision, which last longer than 6 months continuously, each contractual party has the right to issue a declaration of withdrawal from the Contract.

1. Confidentiality obligation

Within the scope of her/his statutory confidentiality obligation, the Contractor is subject to a confidentiality obligation for all conditions and circumstances to be disclosed to her/him in the course of planning and construction, as entrusted to her/him by the Client, provided the Client’s interests would be adversely affected and the Client does not explicitly release it from this obligation.

1. Safeguarding interests and Client consulting

12.1. The Contractor, by virtue of the relationship of trust between her/him and the Client, is subject to an obligation within the scope of the commitments undertaken by her/him to safeguard the interests of the Client. In particular, she/he is not permitted to accept any benefits offered by a third party; benefits gained in other ways shall be returned to the Client in their entirety.

12.2. The Contractor shall advise the Client within the scope of contractual obligations on relevant circumstances for implementation of the project using due diligence incumbent on her/him and shall use its expertise with regard to technically flawless and economic planning and implementation.

12.3. The Contractor shall at any time provide the Client with information on matters related to the fulfilment of contractual obligations and shall give consideration to the requests and instructions of the Client. If the Contractor in employing due diligence has concerns about the advisability or suitability of the requests and instructions of the Client, she/he shall verifiably notify the Client hereof within the framework of warning and information requirements.

1. Power of attorney

13.1. Provided that it is also commissioned with local site supervision within the scope of the assigned services, the Contractor is authorised to represent the Client in respect of authorities and all third parties, which have to provide services for the building project. All necessary and customary acts of representation for implementation of the relevant project are covered by this power of representation, in particular conducting necessary negotiations with authorities and all professionals involved in the project, monitoring the activity of companies performing the services and other professionals, placement of orders for remedying defects and substitute performance, and the exercise of property rights on the building site. If the Contractor is not commissioned with local site supervision, authorisation to represent the Client is only valid in respect of authorities, but not to third parties, which provide services for the construction project.

13.2. The placement of orders with contracting companies and necessary specialists for project implementation, and the contractual recognition of partial or closing invoices from contractors and specialists are not covered by the authorization to represent.

13.3. The Contractor receives a written power of attorney from the Client with content as set out in the above sections in order to allow for verification of authorisation in respect of the authorities, residents, participating professionals and other third parties.

1. Custody and surrender of documents

14.1. The original plans and data remain with the Contractor, who shall store them properly.

14.2. However, the Contractor is obliged to hand over copies of the documents in paper form to the Client on request in return for reimbursement of costs. In the event of a separate agreement resulting in documents being transmitted in editable or non-editable digital form with the Contractor’s consent, the Contractor shall assume no liability whatsoever for errors or damage to the IT system of the recipient of digital data or at third parties. The Client shall indemnify and hold the Contractor harmless in this regard.

14.3. The retention obligation of the Contractor generally ends seven years after issuing the closing invoice to the Client, yet during this period the Contractor may, by surrendering the documents to Client, be released from her/his storage obligation.

1. Copyright, exploitation right and right of use

15.1. The copyright and the resultant exploitation rights for plans, sketches, models, etc. produced by the Contractor remain, even after payment of the fee, with the Contractor. In particular this includes the right to execute or change the works or reproduce them through third parties.

15.2. The Client has the right to exploit plans for the relevant construction project within the scope of execution of this work if the Client has paid claims for remuneration for all commissioned partial services in full. This right only covers one-off execution in compliance with the plan and the Contract.

The use of plans/documents for other projects and transfer to third parties is only permitted with the written consent of the Contractor.

15.3. The Client is obliged to allow access to the work of the Contractor for the purpose of information on the structural condition or taking photographic or other records following termination of the Contract, unless excluded by legitimate interests of the Client.

15.4. The Contractor is entitled and the Client is obliged to mention the name of the Contractor in publications and disclosures about the works. The Contractor has the right to prohibit the Client from naming the Contractor in publications if the contractual relationship ends early or the project is retrospectively amended without the Contractor’s consent.

1. Insurance

The Contractor hereby declares that it has professional liability insurance, which shall be maintained as a minimum throughout the contractual term. At the request of the Client, the Contractor shall show confirmation of valid insurance.

1. Warranty and compensation

17.1. The Contractor shall provide her/his services based on generally accepted technology and architecture rules. The Contractor shall be liable to the Client for the correctness and completeness of her/his plans, calculations and other services.

17.2. The warranty period for all services performed by the Contractor is three years from completion of contractually agreed overall performance.

17.3. The Contractor has the right to be commissioned with remedying any established planning deficiencies.

 17.4. The statutory provisions shall apply to claims for damages.

17.5. The Client hereby acknowledges that plans and other documents may only be used following any necessary official approval and explicit release by the Contractor.

1. Withdrawal from the Contract

18.1. Withdrawal from the Contract is only possible for good cause, which makes or would make continuing the contractual relationship unacceptable to one of the contractual partners. The following shall in particular be deemed good cause:

18.1.1. for the Client, if

 - the Contractor continues to behave in breach of the Contract – despite a written warning;

 - the Contractor is in default regarding service provision – despite a reasonable period of grace;

 - there are delays, impediments or interruptions in the provision of services that last continuously for more than six months.

18.1.2. for the Contractor, if

 - the Client is in breach of the Contract – despite a written warning and reasonable additional deadline – or infringes her/his cooperation obligation;

 - the Client definitively frustrates proper service provision;

 - there are delays, impediments or interruptions in the provision of services that last continuously for more than six months.

18.2. Withdrawal from the contract must be declared in writing.

18.3. If withdrawal from the Contract is attributable to the Contrator, she/he is only entitled to the fee for services that she/he has performed by the date of withdrawal.

18.4. If withdrawal from the Contract is attributable to the Client, the Contractor shall still be entitled to the agreed fee minus any expenditure saved pursuant to § 1168(1) ABGB [Austrian Civil Code]. The rate of expenditure saved is set out as       % of not yet performed services.

18.5. This shall not affect compensation claims due to each of the contractual parties against the other for its fault in premature contract termination.

1. Offset/retention

 The statutory provisions shall apply to offsetting and rights of retention.

1. **Mediation / court of jurisdiction**

20.1. Where possible, the Client and the Contractor shall attempt to settle any disputes amicably by means of mediation proceedings.

20.2. The statutory provisions apply to the place of jurisdiction (Section 14 of the KSchG).

21. Statute of limitations

 The claims of the Client against the Contractor for compensation become statute-barred within one year of the damage and the party causing the damage being identified, but at the latest within five years of completing contractually agreed overall performance, unless the law stipulates a shorter statutory period of limitation.

1. Final provisions

22.1. In the event of any provision of these GTC-CE-Consumers being or becoming legally invalid, this shall not affect the validity of the remaining provisions.

22.2. Any amendments and supplements to this Contract require the written form to be effective; the same applies in particular to any waiver of this formal requirement.

22.3. Austrian law is applicable in exclusion of all conflict of law rules.

22.4. The Client shall be obliged to notify any changes to his/her residential or business address as long as the legal transaction has not been completely fulfilled by both parties. If the notification is omitted, declarations shall be deemed to have been received even if they are sent to the last address notified.

22.5. The Client expressly agrees that the personal data relating to the Client may be processed, provided or transmitted by the Contractor to the extent that this is necessary and expedient for the performance of the assigned tasks or results from statutory or professional obligations.

<Place>, on the