



Anwälte Burger und Partner
Rechtsanwalt GmbH

General Terms and Conditions

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Anwälte Burger und Partner Rechtsanwalt GmbH
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1. Area of application

1.1. The terms and conditions for business and payment shall apply to all activities and acts of representation in court and out of court, as well as before authorities, which are undertaken in the course of a contractual relationship between Anwälte Burger und Partner Rechtsanwalt GmbH (hereinafter simplified to “attorney”) and the client (hereinafter also “mandate”).

1.2. The terms and conditions for business and payment shall also apply to new mandates, unless agreed otherwise in writing.

1.3. If a separate mandate agreement has been concluded between the attorney and client, which excludes the application of the present terms and conditions for business and payment, said mandate agreement shall serve as the basis for the provision of services.

2. Mandate and Power of Attorney

2.1. The attorney shall have the right and be obliged to represent the client to the extent that is necessary and expedient in order to comply with the mandate. In the event that the legal situation changes after the mandate has ended, the attorney shall not be obliged to draw the client's attention to these changes or the consequences resulting therefrom.

2.2. If so requested, the client shall sign a written power of attorney for the attorney. Said power of attorney may relate to the performance of individual, precisely defined or all possible legal transactions or legal acts.

2.3. Where necessary, the client shall agree to issue an appropriate power of attorney for presentation at a relevant location, before a court or other authority or institution relevant to the representation. The attorney shall not be responsible for any omissions or for the consequences of the latter, which relate to an incorrectly signed, missing or late power of attorney.

3. Principles of representation

3.1. The attorney shall perform the representation of the client in conformity with statutory provisions and represent the rights and interests of the client vis-à-vis all persons, applying the necessary diligence, loyalty and conscientiousness.

3.2. Unless specifically agreed elsewhere, the attorney shall not be obliged vis-à-vis the client to achieve a specific outcome or result but shall merely be obliged to continuously strive to protect the rights and interests of the client, whereby the attorney shall continue to meet his/her fiduciary obligations and the obligation to protect the interests of the client.

3.3. As a matter of principle, the attorney shall have the right to provide services at his/her own discretion and to take all steps, specifically use all means of challenge or defence in any way, as long as they do not conflict with the mandate with the client, the attorney's conscience or the law.

3.4. If the client issues an instruction to his/her attorney, compliance of which is incompatible with the principles for the proper exercise of the profession of the attorney, based on statutory provisions or other statutory regulations regarding codes of conduct (e.g. “Rules for the professional conduct of attorneys” [RL-BA] or the Practice of the highest appeals and disciplinary commission for attorneys and trainee attorneys [OBDK]) the attorney shall reject the instruction. In the event that the attorney considers instructions to be inappropriate for or even to the detriment of the client, the attorney shall inform the client of the possible negative consequences before carrying out the client's instructions.

3.5. In the event of imminent danger, the attorney shall have the right to take action or to refrain from an act, although this may not expressly be covered by the mandate, if this appears to be urgently required in the interest of the client.

4. Client's obligations to provide information, cooperate and maintain confidentiality

4.1. After the client has entered into a mandate, the client shall be obliged to provide the attorney with all information and facts, without delay, which may be of significance for complying with the mandate, as well as to make all required documents and means of evidence accessible. The attorney shall have the right to assume that the information, facts, documents, papers and other means of evidence are correct, unless their incorrectness or incompleteness is obvious. The attorney shall work towards obtaining all facts by means of asking the client specific questions and/or resorting to other appropriate means. The second sentence of Section 4.1 shall apply to the correctness of supplementary information.

4.2. During the term of the mandate, the client shall be obliged to inform the attorney of all changed or newly arising circumstances that might be of significance in connection with the performance of the mandate, immediately after they have come to the client's attention.

4.3. In connection with the mandate, the attorney may seek approval from the client for the preparation of specific legally relevant documents. The client shall read said documents carefully and shall ensure that he/she has understood their content correctly. The client shall refer to the attorney for clarification should he/she have any doubts or queries. If the client does not have any further queries, the attorney shall have the right to assume that the client has understood the content and the relevance of the document in question.

4.4. The client shall be bound to maintain confidentiality in respect of all facts that have become known to him/her as part of the mandate, for which confidentiality is in the interests of the attorney.

5. Obligation of confidentiality, conflicts of interest

5.1. The attorney, on the basis of the relevant laws and as a basic principle of service to the client, is bound by professional secrecy in all matters which have been confided to him/her and all facts which have otherwise become known to him/her in his/her capacity as an attorney, the confidentiality of which is in the interest of the client.

5.2. Disclosure requirements are excluded from the obligation of confidentiality on the basis of relevant laws or provisions or case-by-case arrangements of public offices and authorities.

5.3. Within the terms of applicable laws and guidelines, the attorney shall have the right to assign to all staff members the processing of matters, to the extent to which there is proof that these staff members have been instructed about their obligation to maintain confidentiality.

5.4. The attorney shall be released from the obligation of confidentiality only to the extent that is necessary in order to prosecute the attorney's claims (especially claims for the attorney's fee) or to defend claims against the attorney (especially claims for damages by the client or third parties against the attorney).

5.5. The client may release the attorney from the obligation of confidentiality at any time. This release from the obligation of confidentiality by the client does not release the attorney from the obligation of verifying whether the attorney's statement is in the best interest of the attorney's client.

5.6. The attorney shall verify whether the performance of a mandate creates a risk of a conflict of interests under the terms of the Regulations Regarding Attorney's Practices.

6. Attorney's obligation to report to the client

6.1. The attorney shall inform the client appropriately either verbally or in writing about actions taken by the attorney in connection with the mandate.

7. Delegation of authorization and substitution

7.1. The attorney may ask a trainee attorney in the service of the attorney, another cooperating attorney or that attorney's authorized trainee attorney and/or a cooperating patent attorney and/or a cooperating European patent attorney respectively as part of their professional authorization, to represent the attorney in connection with a corresponding mandate (delegation of authorization).

7.2. If he/she is unavailable, the attorney may transfer the mandates or subtasks to another attorney (substitution).

8. Subcontracting services

8.1. The attorney shall have the right to use third parties to fulfil the mandate and to purchase subcontracting services (particularly with regard to representation before the courts and authorities of other countries and legal systems, the payment of professional charges, the payment of fees, search services and other IP services) and to invoice the client for the associated costs.

9. Professional fees

9.1. In the absence of other agreements, the attorney shall be entitled to receive an adequate fee.

9.2. Also, when agreeing on a flat fee or time-based fee, the attorney shall at least be entitled to the cost refund recovered from the adversary, to the extent that this amount can be collected; otherwise, the attorney shall receive the agreed flat fee or time-based fee.

9.3. If a time-based fee is agreed on, the attorney's invoicing is based on a started quarter (1/4) of an hour, such that the respective partial amount is to be paid for every 15 minutes that are started.

9.4. The value-added tax at the statutory rate shall be added to the fee due to/agreed on with the attorney, as well as to all required and appropriate expenses (e.g. for traveling, telephone, fax, copying), and the cash expenses incurred on behalf of the client (e.g. court fees).

9.5. The client takes note of the fact that estimates, made by the attorney and not expressly referred to as binding, regarding the anticipated amount of the fee are without commitment and cannot be regarded as a binding cost estimate (within the meaning of Sec. 5 (2) of the Austrian Consumer Protection Act), since it is in the nature of the attorney's services that the scope of these cannot be reliably assessed in advance.

9.6. If the actual time and service exceed the cost estimate, which should not be considered binding, the client shall be invoiced for the actual time and service.

9.7. The effort required for calculating the fee and preparing the invoice shall not be invoiced to the client. This shall not apply to efforts of translating service specifications into other languages than German at the request of the client. Unless other agreements exist, the invoiced amount shall include the service of drawing up letters upon the client's request to the client's chartered accountant which relate, for example, to the status of pending cases, or give an assessment of the risks for the purpose of setting aside provisions and/or reporting on the state of outstanding fees at a certain reporting date.

9.8. The attorney shall have the right to send invoices at any random point in time, in any event, however, every quarter, as well as to ask for advances on the fees.

9.9. In the event that the client is an entrepreneur, an invoice forwarded to the client and properly broken down into its various items shall be deemed to have been

approved, if and provided that the client does not expressly oppose it in writing within 14 days of its receipt (the date of receipt by the attorney shall be the decisive date).

9.10. Invoices are payable within 14 days of receipt, and the payable amount needs to be available on the corresponding account of the attorney within this period. The amount indicated on the invoice is payable in EUR. The client shall bear any potential bank charges, transaction charges, exchange fees or other fees.

9.11. In the event that the client is in default in paying all or a part of the fee, the client shall pay default interest to the attorney. The default interest is regulated in the payment conditions. Statutory claims exceeding this (e.g. pursuant to Sec. 1333 of the Austrian General Civil Law Code) remain unaffected.

9.12. Any expenses and fees to be paid to courts and authorities (cash expenses) and costs (e.g. for sub-contracted performances by third parties) may — at the discretion of the attorney — be forwarded to the client for direct payment.

9.13. In the event that several clients enter into a mandate with the attorney regarding a legal matter, the clients are jointly and severally liable for any claims of the attorney arising from this.

9.14. If the client belongs to a group of clients represented by the attorney, all of the clients are jointly liable for any claims of the attorney resulting from this.

9.15. Claims for cost refunds by the client against the adversary are herewith assigned to the attorney in the amount of the attorney's fee claim, as soon as they arise. The attorney shall have the right to inform the adversary of this assignment at any time.

10. Liability of the Attorney

10.1. The liability of the attorney as well as that of his/her attorneys, who are acting on the instructions of the attorney or in their own name, for incorrect advice or representation, for the infringement of essential, contractual or precontractual obligations and secondary obligations as well as obligations arising from legal rights, shall be limited to the sum insured which is available in special circumstances, but at least amounts to the insurance sum specified in Sec. 21 a Austrian Attorney's Act (RAO) in the current version. Currently this sum amounts to EUR 400,000.00 (in words: four hundred thousand euro) for individual attorneys and to EUR 2,400,000.00 (in words: two million four hundred thousand euro) for law firms with the legal form of a GmbH (limited liability company) under Austrian law.

10.2. This limit of liability shall not apply to gross negligence, deliberate actions or damage as a result of negligence to life, body or health. The attorney shall not be liable for damage resulting from force majeure.

10.3. The aforementioned maximum amount includes all claims existing against the attorney for incorrect advice and/or representation, in particular, claims for damages and price reductions. However, this maximum amount does not include the client's claims for repayment of the fee paid to the attorney. Possible deductibles do not reduce the liability. The applicable maximum amount relates to a single insurance case. In case of two or several damaged parties (clients), the maximum amount for each damaged party shall be reduced in proportion to the amounts claimed.

10.4. The provision regarding the burden of proof according to Sec. 1298 Austrian Civil Code shall not apply.

10.5. The limitations of liability shall also apply to the advantage of attorneys acting on the instructions of the attorney (in their capacity as partners, directors, appointed attorneys or in another capacity). The attorney shall be liable for individual services, provided by third parties with the consent of the client as part of the services provided by the attorney, who are neither staff members nor permanent cooperation partners in the country of residence of the attorney, only in case of fault in selecting the third party.

10.6. The attorney shall only be liable vis-à-vis the client and not vis-à-vis third parties. If third parties should come into contact with the services of the attorney through efforts of the client, the client shall be expressly obliged to inform the attorney of this fact.

10.7. The attorney shall be liable for knowledge of foreign law only if there is a corresponding written agreement.

10.8. The client shall declare and confirm that he/she understands the significance and consequences of these declarations concerning liability and has accepted them accordingly.

11. Lapse/preclusive period

11.1. Unless the law stipulates a shorter term of lapse or preclusive period, all claims against the attorney shall lapse, unless the client has claimed them in court within six months (in the event that the client is an entrepreneur pursuant to the Austrian Consumer Protection Act) or within one year (in the event that the client is not an entrepreneur) as of the date at which the client becomes aware of the damage and the damaging party, or of the incident that otherwise gives rise to a claim, but at the latest after the expiry of five years as of the conduct (infringement) causing the damage (giving rise to a claim).

12. Client's Legal Expenses Insurance

12.1. In the event that the client has taken out legal expenses insurance, he/she shall inform the attorney thereof without delay and present the required papers (if available). However, independently of the foregoing, the attorney shall also be obliged to obtain information as to whether and to what extent there is legal expenses insurance and apply for coverage under the legal expenses insurance.

12.2. The disclosure of legal expenses insurance by the client and obtaining coverage under the legal expenses insurance by the attorney shall not affect the fee claim of the attorney against the client, nor shall it be deemed as consent on the part of the attorney to accept as the attorney's fee the payment made pursuant to the legal expenses insurance. The attorney shall draw the client's attention to this fact.

12.3. The attorney shall not be obliged to claim his/her fee directly from the legal expenses insurance but may request payment of the full remuneration from the client.

13. Termination of the Mandate

13.1. The attorney or the client may terminate the mandate at any time without observing a deadline and without giving any reasons. The attorney's fee claim shall remain unaffected by the foregoing.

13.2. In the event of a termination by the client or by the attorney, the attorney shall continue to represent the client for another 14 days, inasmuch as this is necessary in order to protect the client against any legal detriment. This obligation does not apply in the event that the client revokes the mandate and states that he/she does not wish to obtain any further service by the attorney. The failure to issue instructions and/or the independent submission of documents to offices or courts, without consulting with the attorney, shall be deemed to be a sign that the client no longer wishes to use the services of the attorney.

14. Obligation to surrender

14.1. The attorney shall return the originals of documents after the mandate relationship has ended upon the client's request. The attorney shall have the right to keep copies of these documents.

14.2. Whenever the client asks for further documents (copies of documents) after the end of the mandate, which the client already received during the term of the mandate, the client shall bear the costs incurred in this regard.

14.3. The attorney shall be obliged to keep the files for a period of five years as of the end of the mandate and to provide the client with copies, if so needed, during that time. Item 14.2 shall apply to the corresponding allocation of costs. If longer periods prescribed by law apply to the period of safekeeping, these shall be adhered to. The client shall consent to the destruction of the files (also of original documents) after the expiry of the safekeeping period.

15. Data protection

15.1. Personal data

The attorney shall collect, process and use the client's personal data only with the consent or mandate or appointment of the latter for the purposes agreed on with the client or if there is another legal basis in conformity with the GDPR; observing data protection and civil law provisions.

Only those items of personal data shall be collected which are necessary for conducting and implementing the services of the attorney or which the client has voluntarily made available to the attorney or which can be found in public registers (e.g. company register, land register etc.).

Personal data includes all data which contain individual details about personal or factual circumstances, for example, name, address, email address, phone number, date of birth, age, gender, social security number, video recordings, photos, voice recordings of persons as well as biometric data such as finger prints. This can also include sensitive data, such as information on health or data associated with criminal proceedings.

15.2. Information and deletion

The client shall have the right at any time – preserving the obligation of confidentiality of the attorney – to access information about his/her saved personal data, the origin and the recipient thereof and the purpose of the data processing as well as the right to a correction, data transfer, objection, restriction of the processing and blocking or deletion of incorrect or inadmissibly processed data.

The client shall be asked to notify the attorney accordingly of any changes to his/her personal data.

The client shall have the right at any time to revoke granted consent to the use of his/her personal data. A request for information, deletion, correction, objection and/or data transfer, in the latter case, provided that this does not involve disproportionate effort, can be directed to the address of the attorney's office indicated in item 15.9. of this agreement.

If the client is of the opinion that his/her personal data is being processed by the attorney in a manner that is contrary to the current Data Protection Act or that his/her data protection rights have been infringed in a different manner, a complaint may be submitted to the responsible regulatory authority. In Austria, the Data Protection Authority is responsible for this.

15.3. Data security

The protection of personal data is provided by corresponding technical and organizational measures (TOM). Said precautions relate specifically to protection from unauthorized, illegal or accidental access, processing, loss, use and manipulation.

Regardless of efforts to continually maintain an appropriately high level of diligence, it is not possible to preclude the fact that information that the client sends to the attorney over the Internet may be looked at and used by other persons.

The attorney shall not be liable in any form for the disclosure of information as a result of errors that have not been caused by the attorney with regard to the transfer of data and/or unauthorized access by third parties (e.g. hacking of email accounts or phones, interception of faxes).

15.4. Use of data

The attorney shall not use the data made available to him/her for other purposes than those covered by the contractual relationship or power of attorney or by consent or otherwise by a provision in conformity with the GDPR.

15.5. Transfer of data to third parties

In order to fulfil the mandate, it may also be necessary to forward the data of the client to a third party (e.g. adversary, substitutes, insurance, service providers that the attorney uses and to whom he/she provides data etc.) courts or authorities. Data shall only be forwarded in accordance with the GDPR, specifically for the implementation of a mandate or on the basis of earlier consent.

Furthermore, the client shall be informed of the fact that for the legal representation and support, factual and case-related information is also regularly obtained from third parties.

Some of the aforementioned recipients of personal data are also located outside of Austria or process personal data there. The level of data protection in other countries might not always correspond to that of Austria. The attorney shall however only send personal data to countries that the EU Commission deems to have an appropriate level of data protection or shall take measures to ensure that all recipients have an appropriate level of data protection, which is why e.g. standard contractual clauses (2010/87/EC and/or 2004/915/EC) are attached.

15.6. Notification of breaches of data



The attorney shall make efforts to ensure that breaches of data are identified at an early stage and that the client or responsible supervisory body are informed immediately taking into account the respective data categories that are affected.

15.7. Data storage

The attorney shall not keep data any longer than is necessary to fulfil his/her contractual and legal obligations and to avert possible liability claims.

15.8. Server log files

To optimize the website www.abp-ip.at with regards to system performance, user-friendliness and provision of useful information about services, the provider of the website automatically raises and saves information in so-called server log files, that the browser sends to the client automatically. These include the Internet protocol address (IP-address), browser and language settings, operating system, referrer URL, Internet service provider and date/time.

This data is not merged together with personal data sources. The attorney shall reserve the right to check this data subsequently, if specific indications of illegal use become known.

15.9. Contact details

Data protection is particularly important to the attorney. Questions or a revocation should be addressed to the data protection officer.

Available at datenschutz@abp-ip.com or further information on the website: abp-ip.at

16. Governing law and jurisdiction

16.1. The terms and conditions for business and payment and the client relationship governed by the latter are subject to Austrian substantive law.

16.2. For legal disputes arising from or in connection with the contractual relationship, governed by the present terms and conditions for business and payment, which shall also include disputes regarding its validity, it is agreed that the sole competency of the court with jurisdiction over the subject matter shall be at the location of residence of the attorney, unless opposed by mandatory law.

16.3. However, the attorney shall also have the right to file claims against the client at any other court in Austria or abroad, which has competency over the place at which the client has his/her registered address, domicile, place of business, or property. The provisions as defined in Sec. 14 of the Austrian Consumer Protection Act shall apply with regard to clients who are consumers within the meaning of the Austrian Consumer Protection Act.

17. Final Provisions

17.1. Changes or amendments of the present terms and conditions for business and payment shall be made in writing in order to be valid, provided that the client is not a consumer within the meaning of the Austrian Consumer Protection Act.

17.2. Communications by the attorney to the client shall, in any event, be deemed to have been received if they are sent to the address communicated by the client when the mandate is awarded, or to the amended address subsequently provided in writing. However, the attorney may correspond with the client in any other form that is deemed to be appropriate, unless agreed otherwise. Any communication that needs to be in written form pursuant to the present terms and conditions for business and payment may also be forwarded by means of telefax or e-mail, unless agreed otherwise. Unless the client issues a written instruction to the contrary, the attorney shall have the right to engage in e-mail communication with the client in unencrypted form. The client shall state that he/she is aware of the associated risks (specifically access, confidentiality, alterations in communications in the course of forwarding) and accepts that e-mail communication is conducted in an unencrypted manner in full awareness of these risks.

17.3. Whenever one or several provisions of the present terms and conditions for business and payment or of the contractual relationship governed by the present terms and conditions for business and payment become(s) invalid, this shall not affect the validity of the remaining provisions. The contracting parties agree to replace the ineffective provision(s) by another provision that comes closest to the intended economic result of said provision.