

General terms and conditions of the business field planning



1. General terms, scope

1.1 Our offers, deliveries and services - including future ones - for the persons named in Item 1.2 shall take place exclusively on the basis of the present General business terms and conditions - Business field: Planning. Any conflicting terms and conditions of the principal or those different terms and conditions of said principal not included in our General business terms and conditions shall not be acknowledged by us.

1.2 Our general business terms and conditions are solely valid regarding persons that act in performance of their commercial or independent professional activity in the conclusion of the contract ("Contractor") as well as regarding legal persons subject to public law or a special property subject to public law. They shall not be valid regarding natural persons that conclude the contract for a purpose that cannot be ascribed either to their commercial or independent professional activity ("Consumer")

2. Contract conclusion and contents

Our offers are subject to change without notice. For the scope of the services, the written consulting and planning contract as well as the offer shall be regarded as a definitive standard. Other auxiliary agreements and amendments require our written confirmation for their validity.

3. Cooperation obligations of the principal, confidentiality, enticement

3.1 The best possible consulting success may only occur if the principal cooperates with us in full trust. We shall always include our newest status of knowledge in the area of the relevant consulting. However, their application on the circumstances and requirements of the principal individual to its operation and management has the precondition that we receive all necessary information from the principal. Therefore, the principal undertakes to make available to us immediately all necessary information in full about its operational specifics, work processes etc. and to direct its co-workers regarding the relevant disclosure of information. It is incumbent to us to communicate whether the information received from the principal is suitable for the contractually agreed consulting activity. If this is not the case, the principal shall immediately supplement the missing information.

3.2 For performance of the works in the house of the principal, our co-workers shall be provided suitably equipped work areas.

3.3 We hereby undertake to treat strictly confidentially all knowledge obtained in relation to the consulting concerning the principal. This shall also be valid for the period after complete performance of the assignment. Moreover, we further undertake to impose the same confidentiality on our co-workers.

3.4 The principal undertakes not to entice away any employees of the contractor. For each case of culpable violation of this clause, the principal undertakes to pay a contractual penalty to be determined by the contractor at its reasonable discretion, but at least in the amount of the last gross annual salary of the person concerned. The right to claim damages in excess thereof shall be reserved; the contractual penalty shall be credited against the damage compensation claim. In the event of dispute, the contractual penalty shall be reviewed by a competent court.

4. Place of performance, partial performance

4.1 The services specified in the order shall be performed at a location where it is most expedient according to our consideration. In general, the required information shall be obtained on site at the principal's premises, whereas evaluation, required concepts, designs as well as summary evaluations shall be performed in our planning office.

4.2 We shall be entitled to the production of partial services up to a reasonable extent.

5. Processing deadlines, delay of acceptance, deficient performance of the principal

5.1 Processing deadlines shall only be mandatory if agreed upon in writing. The processing deadline shall commence with the date specified in writing.

5.2 That period shall not be included in the processing deadline in which the principal is in default with an agreed payment, i. e. the processing deadlines shall be extended by the period in which said default persisted. Moreover, compliance with the processing deadlines requires timely and proper fulfilment of responsibilities and obligations of the principal. This especially includes timely and proper information delivery to us pursuant to Item 3.1 and the provision of our co-workers with work areas pursuant to Item. 3.2. In the event that the principal causes a contractual amendment on the basis of which compliance with the original processing deadline is not possible, said processing deadline shall be prolonged up to a reasonable extent.

5.3 The processing deadline shall be prolonged - even within a delay - to an adequate manner in the case of force majeure and all previously unexpected obstacles occurring after conclusion of the contract for which we are not responsible, as long as these obstacles have a certifiable influence on the delivery of the defaulted service. We shall communicate the beginning and end of such obstacles to the principal as soon as possible.

5.4 In the event that we recognize that the projected processing deadline is not sufficient, we shall submit to the principal - by specification of the reasons - written modification proposals for a consensual prolongation of the processing period.

5.5 In the event that we end up in a delay with the delivery of our services, our liability shall be limited to the provisions set forth in Item 11.

5.6 In the event that the principal ends up in a delay with an action required for the delivery of the services, the additional expenditure arising therefrom shall be assumed by the principal.

5.7 Moreover we shall be also entitled to specify to the principal a reasonable deadline for supplementary performance of its obligations, with the statement that we shall terminate the contract unless the required action is taken by the expiry of the respective deadline. For the case

of a termination, we shall demand remuneration of our services so far as well as additional expenditures pursuant to Item 5.6. Any further claims shall not be influenced by this clause.

5.8 In the event that after contract conclusion it is recognized that our payment claim is risked due to performance deficiencies of the principal, we shall be entitled to deny our services or our actions to the effect of preparation of our services. This right to deny services shall be inapplicable if payment is performed or a suitable security is provided. For payment / provision of security, we can specify a reasonable deadline to the principal. After unsuccessful expiry of the deadline, we shall be entitled to withdraw from the contract.

6. Payment terms

6.1 Unless it is agreed otherwise in the service program, the principal shall be obliged to pay according to individual partial account settlements the individual service portions arising from the underlying consulting and planning contract.

6.2 Unless other agreement is made, our invoices shall be due and payable ten days after the day of the invoice.

6.3 Bills of exchange and checks shall only be accepted on account of performance and shall only be valid after unconditional credit as payment. All incidental expenses, especially bank, discount, exchange and other related expenditures plus sales tax shall be payable by the principal and due immediately.

6.4 A set-off, or a withholding of payment with the legal effect of a set-off is only allowed in the case of legal claims of the client that have been acknowledged and not disputed by us, which are ready for decision or established as binding.

6.5 From the commencement of the delay, late payment interests may be assessed in the amount of nine percentage points p. a. above the prevailing basis prime rate. The contractual parties shall be at liberty to certify a higher or a substantially lower actual damage amount.

6.6 In the event that the principal ends up in a delay with the payment of our fee, we may withdraw from the contract after unsuccessful expiry of a supplemental deadline required by law and specified by us and/or require compensation for damages instead of the services.

6.7 In the event that the principal ends up in a delay with the payment of the purchase price, we shall be entitled to discontinue further services up to said payment as long as a supplementary, reasonable deadline provided to the principal has expired without success.

7. Copyright, trademark rights

7.1 As long as our services are capable of being protected by copyright or trademark law, we shall reserve all rights regarding copyrights or trademarks.

7.2 The principal shall only receive a right of utilization of our protected intellectual property only within the framework of the following regulation: The principal may utilize the technical plans only for its own purposes within the framework of the consulting and planning contract. It may neither disclose them to third parties nor utilize them for purposes outside its own enterprise or area of management.

7.3. For each case of culpable violation of this clause, the principal obligates itself to pay a contractual penalty to be reasonably specified by the contractor, and in the event of a dispute, to be inspected by a competent court. The amount of the contractual penalty shall depend according to the individual case of the severity, duration and consequences of the violation. The withholding of an additional damage shall be reserved by the relevant party; in doing so, the contractual penalty shall be credited against the damage compensation claim.

8. Reservation of title

As regards drawings and other documents, the principal shall only acquire ownership title after full payment of the agreed remuneration subject to requirements set forth in Item 7. Our property may not be given as a pledge or assigned as a security.

9. Publications

The principal shall only be entitled after our prior written consent to publicize the plans even if in extracts or shortened in contents. We ourselves and the author shall be named upon publication.

10. Rights in the case of material defects

10.1 We shall provide the consulting services and the other contractually specified services (hereinafter: "Work") free of defects. As long as a Work includes a defect, the principal - subject to Item 10.2 - may demand as supplementary service at our discretion either remediation of the defect (reparation) or the delivery of a work free of defects (supplementary service). In the event that we are not ready for such remediation/supplementary service or not in the position to do so, especially if such action is delayed beyond reasonable deadlines due to causes for which we are responsible or the remediation/supplementary service fails for other reasons, the principal shall be entitled as long as further attempts for supplementary performance are not reasonable for said principal to withdraw from the contract or reduce the remuneration at its discretion. In the case of a non-substantial defect, the principal may only withdraw from the contract upon our consent.

10.2 Rights pertaining to material defects may only occur if the work shows a material defect upon transfer of the risk.

10.3 The lapsing period for material defect claims shall amount to five years in the case of a building and in the case of a product the success of which consists of planning and supervisory services. In other cases, the term of expiry for material damage claims - subject to sentence no. 3 - shall be one year. In the event of an injury to life, body or health for which we are responsibly

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as well as in the events of deliberate act and gross negligence, the term of expiry for material defect claims in the case of sentence no. 2. shall be two years.

10.4 For damages due to defects of the work, we shall be only liable up to the limits set forth in Item 11.

11. Limitation of liability

11.1 We shall be liable in the cases of inability or unfeasibility for which we are responsible. Moreover, we shall be responsible for damages according to provisions of relevant law in the case of wilful intention, gross negligence, upon assumption of a guarantee or in the case of an injury to life, body or health for which we are responsible. In the event that we otherwise violate a responsibility by simple negligence the satisfaction of which makes possible the proper implementation of the contract in the first place and the principal can regularly trust the satisfaction of said responsibility, or an obligation by the infringement of which the objective of the contract cannot be achieved, our obligation of compensation is limited to foreseeable damages typical of contracts. In all other cases of liability, damage compensation claims due to violation of a contractual obligation as well as due to an illegitimate action shall be excluded as long as we are not liable for unrealized profits or other material damages of the client.

11.2 As long as our liability on the basis of the foregoing provisions is excluded or limited, this shall also be valid for the personal responsibility or our employees, workers, co-workers, representatives and auxiliary workers.

12. Termination

12.1 In the event that the principal terminates the contractual liability, or the principal is responsible for the ground of termination, we shall be entitled to demand the agreed fee. Nevertheless, we must credit the amount of expenditures saved by us as a result of termination of the contract or by other application of our workforce and we shall refrain from malicious demands.

12.2 In the event that termination takes place for a cause within our range of responsibility, we shall be entitled to remuneration for the services provided up to such termination.

12.3 Each termination shall be made in writing.

13. Data Protection

13.1 We shall use the data (title, name, address, email address, telephone number, fax number, bank details) supplied by a Customer in accordance with the statutory provisions, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

13.2 For the purpose of fulfilling the contractile obligations e.g. in relation to the delivery and settlement the personal data will be forwarded to the carrier or the accounts department in so far as required. Once the contract is fulfilled and the complete payment settlement and complete payment, including payments of all agreed fees, all data that do not have to be stored for legal reasons shall be erased and no longer made available for any other purpose. The Customer shall be entitled at any time by contacting the e-mail address privacy@bene.com to request that its data be amended, blocked or erased. Beyond this, none of the personal data provided to the Company shall be made accessible to third parties without the separate written consent of the Customer. Unless this is required by law.

13.3 In case the Customer agrees to the use of its data, we ensure that any sub-processors engaged by the Company are subject to the same obligations as Bene and that we remain directly liable to the Customer for the performance of a sub-processor's data protection obligation.

13.4. The Customer gives his consent that their personal details may be used for the sending of information about new products and services via email. The Customer furthermore consents that their personal data may be used for purposes of market research. A dissemination of these data as well as survey results to third parties will not take place. The Customer expressly declares in this context to agree to be contacted via email by us (or by data protection service providers commissioned by us). The customer shall at all times have the right to object to such use. The objection shall be sent to BENE GmbH, Schwarzwiesenstrasse 3, 3340 Waidhofen/Ybbs Austria or via email to privacy@bene.com.

14. Place of performance, applicable law, jurisdiction

14.1 Unless agreed otherwise, the place of performance shall be our headquarters. These General business terms and conditions and the complete legal relationship between us and the principal shall be governed by the law of the Federal Republic of Germany.

14.2 As long as the principal is a trader in the sense of the commercial code, a legal person subject to public law or a special property subject to public law, the place of jurisdiction for all rights and responsibilities of the contractual parties arising from all types of business transactions - for exchange- and check-related disputes, as well - shall be our headquarters. Nevertheless, we shall be entitled to bring legal action against the principal at its headquarters.

Version: 13 April 2022