



Unternehmensberatung · Buchhaltung · IT

# GENERAL TERMS AND CONDITIONS

## Accountants

### according to the Austrian Certified Management Accountant Law of 2014 (BiBuG 2014)

(Only valid for members of the Austrian Professional Association of Management Consultancy, Accounting and IT of the Austrian Economic Chambers, and not valid for transactions with consumers according to the Austrian Consumer Protection Act (KSchG))

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## **Preamble**

A freelance accountant performs their professional work according to the Austrian Certified Management Accountant Law of 2014 (hereinafter referred to as the BiBuG) and is publicly appointed to do so having provided proof of the high qualifications required by law.

### **1. General Principles of Cooperation**

- 1.1 These "General Terms and Conditions for Accountants" shall apply to all legal transactions between the accountant, as contractor, and the client, particularly for works contracts, contracts regarding performing accounting and creating balance lists and profit and loss accounts to the extent of those professional rights and commercial ancillary rights established by the BiBuG, the content of which are expert services and the consultation of clients by the accountant within the scope of the generally approved professional principles and ethics of the profession. The version valid at the time of the conclusion of the contract shall be applicable.
- 1.2 Should one or more clauses of these Terms and Conditions be or become invalid, the validity of the remaining clauses as well as of the concluded contracts based thereupon shall remain unaffected. The invalid clause shall be replaced with a valid one, the intention of which comes as close as possible to the meaning and economic purpose of the invalid one.
- 1.3 The accountant shall be entitled to have competent employees or commercial/freelance partners (full or partial) conduct the service and/or consulting order. Collaboration with other freelance accountants shall be agreed upon in writing.
- 1.4 The client shall ensure that the organizational frame conditions at their place of business permit the fewest possible interruptions of work and facilitate rapid progress of processes while the service and/or consulting is conducted. The accountant shall act according to the policies of professional practice when conducting the service agreed.

### **2. Area and Scope of Application**

- 2.1 These Terms and Conditions shall apply both insofar as the application thereof is expressly agreed upon and to additional agreements between the accountant and the client.
- 2.2 All service and/or consulting orders and other agreements shall only be legally binding insofar as the client confirms and signs these with the legally binding signature of the company, and shall only oblige both parties to the extent determined in the written contractual agreement (works contract).
- 2.3 The accountant shall render all services according to prevailing legal norms. Should the legal norms change after the accountant submits their concluding professional statement, the accountant shall not be obliged to indicate changes or implications arising therefrom to the client. This shall also apply to completed parts of an order.

### **3. Scope and Execution of Orders**

- 3.1 The scope as well as the execution of service and/or consulting orders shall be agreed upon in a contract.

### **4. Duty of Disclosure of the Client/Declaration of Completeness**

- 4.1 The client shall, at the request of the accountant, confirm in writing to the accountant the completeness of the documents submitted as well as the information and explanations provided. Furthermore, this declaration of completeness shall not be subject to any formal requirements.
- 4.2 The accountant shall be entitled to presume that the information of the client, particularly numbers, is accurate when working to perform accounting, prepare and create balance lists and profit and loss accounts and in conducting consulting tasks and other tasks. However, the accountant shall notify the client of any incorrectness the former discovers.
- 4.3 The client undertakes to provide all documents necessary for the execution and implementation of the service and/or consulting order in a timely fashion, even without a specific request from the accountant, and to inform the accountant of all processes and circumstances of importance for the execution of the order. The definition of a "timely" submission shall be agreed separately. The client shall guarantee that all documents and information provided are accurate and complete. This shall also apply to all documents, processes and circumstances which only become known during the work of the accountant.

The accountant shall not be held responsible for delays due to the delayed provision of documents or information by the client.

### **5. Assurance of Independence**

- 5.1 The parties to the contract agree to mutual loyalty.
- 5.2 The contractual parties each undertake to make apt provisions to prevent threats to the independence of the cooperation partners and employees of the accountant. This shall particularly apply to employment offers or offers to accept orders on one's own account by the client.

### **6. Reporting**

- 6.1 The accountant undertakes to submit reports regarding their work, the work of their employees and, if applicable, also the work of their cooperation partners in writing, provided that no other agreements are expressly made. Submission via e-mail shall be admissible.
- 6.2 The client and the accountant agree that either continuous or one-time reporting, depending on work progress, shall be considered agreed for the service and consulting order. The conditions of reporting shall be agreed upon separately.
- 6.3 Should the accountant submit a written statement about their work, this statement alone shall be decisive for an evaluation.

## **7. Intellectual Property/Copyright/Utilization Protection**

- 7.1 The services of the accountant shall be protected by copyright.
- 7.2 The client undertakes to use those assessments, reports, analyses, drafts, calculations, plans, programmes, drawings, data storage media and the like created in the course of the service, consulting or representation order by the accountant or employees and cooperation partners thereof only for the business purposes of the client. Further utilization shall be inadmissible.
- 7.3 The utilization of professional statements of the accountant by the client for advertising purposes shall be inadmissible. Any violation thereof shall entitle the accountant to terminate without notice all orders not yet performed.
- 7.4 With regard to the fact that the services rendered are the intellectual property of the accountant, the right of utilization thereof shall only apply to those business purposes of the client and only within the scope agreed upon in the contract, even after remuneration has been paid. Every illicit disclosure, including in the course of dissolution of the company or insolvency, but also every short-term allocation for reproduction purposes shall entail claims for damages by the accountant.
- 7.5 On their part, the accountant undertakes to respect the intellectual property of the client, as far as this has been expressly indicated to the former upon transferal.

## **8. Rectification of Defects and Guarantee**

- 8.1 The accountant shall be entitled and obliged to remove incorrectness and defects in their service and/or consulting work that only become known retrospectively. The accountant shall immediately inform the client thereof. The accountant shall be entitled to notify of the changes those third parties informed about the initial statement.
- 8.2 The client is entitled to the rectification of defects free of charge provided that the accountant is responsible for these. In any case, this claim shall expire six months after the client gains knowledge of the defects in the performance in dispute of the accountant.
- 8.3 Should the rectification of any defects fail, the client shall be entitled to a reduction, or, in case the provided service is justifiably no longer of interest to the client due to failure of rectification, to redhibitory action. With regard to guarantee, rectification shall, in any case, prevail over price reduction or redhibitory action.
- 8.4 Insofar as there are additional claims to damages, the provisions of Clause 9 shall apply.

## **9. Liability**

- 9.1 The accountant and their employees shall act according to the generally accepted principles of professional practice when consulting. The accountant shall have professional liability insurance according to the provisions of Section 10 of the BiBuG.

The liability of the accountant in the event of simple gross negligence shall be limited to the minimum insurance sum stipulated by Section 10, Para. 3 of the BiBuG.

This limitation of liability shall only apply in the event of of slightly negligent inflicted damage insofar as the client is a consumer as defined by the Austrian Consumer Protection Act (KSchG).

This shall also apply to the infringement of obligations by involved colleagues as stipulated in Clause 1.4.

- 9.2 Claims for damages may only be legally pursued within six months of the entitled person(s) obtaining knowledge of the damage.

## **10. Obligation to Discretion/Data Protection**

- 10.1 According to Section 39 of the BiBuG, the accountant, employees thereof and any freelance accountants involved shall be bound to discretion regarding all matters of which they gain knowledge in their work for the client. This discretion shall include both the client and business connections thereof.
- 10.2 Only the client themselves, but not agents thereof, may release the accountant from this obligation to discretion in writing.
- 10.3 The accountant may only deliver reports, assessments and other written statements about their work to third parties with the consent of the client unless there is a legal obligation to do so.
- 10.4 The obligation to discretion of the accountant, employees thereof and any freelance accountants involved shall also apply to the time after order completion. Cases in which there is a legal obligation to disclosure shall be exempt from this.
- 10.5 The accountant shall be authorised to process, or have third parties process entrusted personal data insofar as this serves the purpose of the service and/or consulting order. The accountant shall guarantee the obligation to protect data secrecy according to the clauses of the Austrian Data Protection Act (DSG). Material given to the accountant (data storage media, data, documents, assessments, programmes, etc.) as well as all work results shall, in principle, be returned to the client.
- 10.6 The accountant undertakes to make provisions in order for the client to be able to comply with their obligation of disclosure according to Section 26 of the Austrian Data Protection Act, Article 15 of the General Data Protection Regulation. Provided that remuneration for such disclosures has not been agreed upon, the actual expense shall be charged to the client.
- 10.7 The accountant shall release all documents received from the client for the work of the former upon request and at the cost of the client. However, correspondence between the accountant and clients thereof and original documents owned by the accountant shall be exempt from this. The accountant may produce or retain transcripts or copies of documents they return to the client.
- 10.8 The accountant shall be entitled to retain documents given to them or created by themselves in relation to an order according to Clause 10.5 as well as the correspondence relating to the order within the legal framework.

## **11. Right to Remuneration and Amount**

- 11.1 The accountant shall be entitled to adequate remuneration from the client in exchange for the provision of service and/or consulting services of the former. The

amount of the remuneration shall be determined by written agreement between the client and the accountant.

- 11.2 Should the accountant not fulfil an order, remuneration shall nevertheless be due to them provided that they were ready to render the service and were prevented from doing so by circumstances attributable to the client. However, the accountant shall offset what they saved due to the non-performance.
- 11.3 Should the order not be fulfilled due to circumstances that constitute an important reason for the accountant, the accountant shall only be entitled to remuneration corresponding to the services rendered until that point. This shall particularly apply if services rendered by the accountant hitherto are of use to the client in spite of termination.
- 11.4 50% of the remuneration agreed shall be due upon commissioning and the other 50% at completion of the order with payment terms of 14 days. A complaint regarding the work of the accountant shall not entitle the client to retain the remuneration due to the former, except in the case of blatant defects.
- 11.5 Alongside adequate remuneration, the accountant shall be entitled to reimbursement of their expenses. The accountant may request corresponding advance payments.
- 11.6 The accountant may only deliver their performance if they are paid in full. In this regard, the legal right of lien (Section 471 of the Austrian Civil Code (ABGB), Section 369 of the Austrian Commercial Code (UGB)) shall be indicated. Should the right of lien be wrongfully executed, the accountant shall only be liable for blatant gross negligence up to the amount of their outstanding claim. In case of permanent contracts, the further rendering of services may be refused until previous services have been paid. This applies accordingly to partial performance and outstanding partial payment.
- 11.7 A complaint regarding the work of the accountant shall not entitle the client to withhold the remuneration due the accountant according to Clause 11.5, except in the event of blatant substantial defects.
- 11.8 Set-offs against remuneration claims of the accountant according to Clause 11.5 shall only be admissible with undisputed or legally determined claims.

## **12. Termination**

- 12.1 Insofar as nothing else is agreed in writing or prescribed by mandatory law, the parties to this contract may terminate the contract at any time with immediate effect. The claim to remuneration shall be determined by Clause 11.
- 12.2 Insofar as nothing else is agreed in writing, a permanent contract - always presumed as such in case of doubt - may only be terminated without an important reason subject to a period of three months at the end of a calendar month.

## **13. Applicable Law/Place of Performance/Legal Venue**

- 13.1 This contract between the accountant and the client is subject to substantive Austrian law under exclusion of the reference standards of private international law.
- 13.2 The place of performance shall be the business address of the accountant.
- 13.3 Disputes shall be settled at the court at the place of business of the accountant.



#### 14. Contracts with Consumers

According to the Austrian Consumer Protection Law (KSchG), for sale/delivery to consumers the T&C above are valid as far as the Austrian Consumer Protection Law does not foresee other obligatory conditions.

**The Austrian Professional Association for Consulting and IT recommends the following mediation clause as a pro-business method of dispute resolution:**

In the event that any disputes, which cannot be solved by mutual agreement, arise from this contract, the parties to the contract agree to engage a listed mediator (Austrian Civil Rights Mediation Law (ZivMediatG)) specialized in business mediation from the list of the Austrian Ministry of Justice in order to reconcile these out of court. Should no mutual agreement regarding the selection of the business mediator or with regard to content be possible, legal measures shall be initiated no sooner than one month after the negotiations fail.

In the event that mediation could not be held or was discontinued, any litigation initiated shall be subject to Austrian law. As agreed, all necessary costs incurred due to previous mediation, particularly for legal advisors consulted, may be claimed in litigation or arbitration as "pre-trial costs".