

## GENERAL TERMS AND CONDITIONS

01.01.2020

### 1. Preamble

- 1.1. Laback Law – RA Mag Petra Laback (the “**Attorney**”) is a legal professional authorised for representation in Austria, which is responsible to safeguard and represent the legal interests of its clients.
- 1.2. This mandate agreement (the “**Agreement**”) between the Attorney and the **Client** (the Client and the Attorney together the “**Parties**”) relates to the performance of legal transactions for the Client for a remuneration (in particular legal transactions and legal proceedings) unless this Agreement provides otherwise. This Agreement is subject to the Regulation for the Lawyers’ Profession (*RAO*) and the provisions of the Civil Code (*ABGB*) relating to agents unless this Agreement includes more specific provisions.

### 2. Scope of application

- 2.1. This Agreement applies in connection with the professional representation of parties, respectively providing legal advice in any in court or out of court matters of the Client.
- 2.2. The Client hereby agrees that this Agreement also applies to future matters unless the Parties agree otherwise.
- 2.3. If the Client is a consumer within the meaning of the Consumer Protection Act (*KSchG*), this Agreement applies only to the extent the Consumer Protection Act (*KSchG*) does not provide for any deviating provisions.

### 3. Client’s obligation to provide information and cooperate

- 3.1. The Attorney requires all relevant information and documentation, which can be provided by the Client in order to provide legal advice and recommend any further actions.
- 3.2. The Client must provide the Attorney with all documents required for a matter in due time and without an express request by the Attorney and inform the Attorney of all facts which could be relevant in connection with a matter.
- 3.3. The Attorney may use the information received following thorough discussions with the Client as the basis for any further steps and advice without having to verify such information unless an error or a misinformation on the side of the Client is obvious for the Attorney.
- 3.4. If foreign law applies to a matter, the Client must procure the relevant legal advice from an attorney-at-law qualified to practice law in such jurisdiction. The Attorney is in this case only liable for its own legal advice subject to Austrian law.

**RA<sup>in</sup> Mag.<sup>a</sup> Petra Laback** - Rotenturmstraße 27/6, 1010 Wien, AUSTRIA  
T: +43 1 919 59 36 F: +43 1 919 59 36 36 E: office@laback.at



#### **4. General obligations of the Attorney**

- 4.1. The Attorney must comply with applicable law when providing its services and must represent the Client with diligence, loyalty and conscientiousness. The Attorney is authorised to take any action, which could support the legal position of the Client, promptly, to use its rights of intervention and defence in any way complying with the instruction, the Attorney's conscience and the law.
- 4.2. The Attorney is not obliged to provide any follow-up services once the agreed services have been provided unless agreed otherwise in writing. The Attorney is not obliged to inform the Client of any new law, new jurisprudence or new requirements introduced by authorities or institutions.

#### **5. Confidentiality obligation of the Attorney**

- 5.1. The Attorney will keep any information disclosed by the Client to the Attorney and any other facts of which it becomes aware in its professional capacity confidential. It is entitled to the right to observe confidentiality in all proceedings at court or other authorities in accordance with applicable procedural rules. It is entitled to this right in particular in civil proceedings (section 321 para 1 item 4 Code of Civil Procedure (*ZPO*)), in criminal proceedings (section 157 para 1 item 4 Code of Criminal Procedure (*STPO*)), in administrative proceedings (section 49 para 2 General Administrative Proceedings Act (*AVG*), section 24 Administrative Offences Act (*VStG*), in disciplinary proceedings (section 107 para 5 Public Service Act (*BDG*) and in fiscal proceedings (section 171 para 2 Federal Fiscal Code (*BAO*)).
- 5.2. The Attorney can only be released from this confidentiality obligation by a written declaration of the Client. However, the Attorney remains subject to the obligation to review whether any statements would be in the interest of the Client.

#### **6. Copyright**

- 6.1. Any documents prepared by the Attorney (including agreements, draft agreements and legal opinions) are subject to the copyright of the Attorney. The Attorney is the sole owner of the copyright to these works.
- 6.2. Any licence granted to the Client to use or exploit any works prepared by the Attorney must be writing unless it is implied by the specific purpose of the services provided by the Attorney.
- 6.3. Any licence granted to the Client or a third party to use or exploit any works prepared by the Attorney, which are subject to the Attorney's copyright, is only granted in an extent required by the specific purposes of the services provided by the Attorney unless agreed otherwise. The Client is in particular not entitled to any repeated use of any proprietary precedents. The Attorney is entitled to charge the Client a separate fee for each individual use of any proprietary work.
- 6.4. Any licence granted to the Client or a third party pursuant to this clause 6 is subject to the complete payment of the agreed fee.

#### **7. Representation in connection with legal proceedings**

- 7.1. The Client acknowledges that legal proceedings involve significant emotional and legal costs and that the Attorney cannot guarantee a certain result.
- 7.2. The Client acknowledges in particular that pursuant to the Code of Civil Procedure (*ZPO*) the unsuccessful party is obliged to reimburse the successful party for all costs incurred in connection with such legal proceedings (including legal fees). This includes in the worst case any court fees (flat fees), expert fees and legal fees incurred by both parties.
- 7.3. The Client acknowledges the risk that courts might issue incorrect decisions or not follow the legal view of the Client even though this is well-founded and reasonable and that this risk exists even if the Attorney has



prepared diligently for the proceedings.

- 7.4. The Client also acknowledges that, should the Client be (partially) successful, the costs allocated by court, which must be reimbursed by the opponent, may be less than the agreed fees to be paid by the Client. The Client furthermore acknowledges the risk that the costs allocated by court cannot be collected from the opponent, for example if the opponent is insolvent.

## **8. Notification of the Client**

- 8.1. The Attorney must provide the Client with regular written updates (depending on the circumstances of the respective matter) and must provide the Client with all relevant documents.
- 8.2. The contact details most recently provided by the Client are deemed up-to-date.
- 8.3. The Attorney is not liable for any oral information provided to the Client by its employees.
- 8.4. The Client agrees to communication via e-mail if it has provided its e-mail address, for example the e-mail address is included on letterhead or has been provided to the Attorney. The Client acknowledges that the communication via e-mail can lead to the loss, falsification, or disclosure of data. The Attorney is only liable in this regard if it is responsible for such loss, falsification or disclosure. The Attorney is only liable for wilful misconduct and gross negligence in connection with any damages of the Client due to the use of any means of electronic communication. The Attorney is also not able to confirm immediately following the receipt of an e-mail if it contains any deadlines. Should this be the case, the Attorney is only liable if it has also been notified of such deadline via phone or fax.

## **9. Liability**

- 9.1. The Attorney is only liable for intentional or grossly negligent non-compliance with this Agreement. The application of section 1298 second sentence Civil Code (*ABGB*) is excluded.
- 9.2. The liability of the Attorney is limited to EUR 400,000.
- 9.3. The right of the Client to claim damages will be reduced in accordance with the relevant provisions of the Austrian Civil Code (*ABGB*) if the Client is partially responsible for such damages. This is in particular the case if the Client does intentionally not comply with its obligation to disclose any facts in accordance with clause 3 of this Agreement or negligently provides incomplete or incorrect information.
- 9.4. Any rights in connection with the non-compliance with this Agreement must be asserted at court within six months upon becoming aware of the damage and at the latest within three years of the event causing in the damage.
- 9.5. The limitation of liability set out in clause 9.2 applies to each individual claim for damages. An individual claim for damages includes all consequences of the non-compliance irrespective of whether such consequences occurred in one or more consecutive years. An action or omission is deemed as a single non-compliance if it is based on the same or similar source of error provided that the underlying matters are legally or commercially connected. Damages are subject to an individual claim for damages even if they are caused by several non-compliances. The liability of the Attorney for lost profits as well as ancillary or consequential damages is excluded unless in the case of wilful misconduct.
- 9.6. The Attorney is not liable if the Client modifies any documents, which have been provided by the Attorney to the Client electronically in modifiable form, without the express prior written consent of the Attorney.
- 9.7. If the Attorney uses the services of a third party, e.g. in connection with the processing of data, for the performance of the services, all claims for warranty or damages against the third party are deemed assigned to the Client upon notification of the Client of such instruction of a third party. Irrespective of clause 9.2 the Attorney is only liable for fault in connection with the selection of the third party (*culpa in eligendo*).



- 9.8. The Attorney is not liable towards third parties. The Client must promptly notify the Attorney of the disclosure of any work product of the Attorney to a third party. If this exclusion of liability is not valid in connection with third parties or the Attorney has assumed a liability towards a third party in exceptional circumstances, the provisions of this Agreement relating to the limitation of the Attorney's liability apply accordingly. A third party is not entitled to assert any claim exceeding any claims of the Client under this Agreement. The liability cap applies irrespective of the number of injured parties (including the Client) even if there are more than one injured party (the Client and the third party or more than one third parties). Claims of injured parties are satisfied according to the priority of the notification of their respective claim. The Client agrees to indemnify the Attorney and/or its employees from any claims of third parties in connection with the disclosure of written and/or oral professional statements of the Attorney and/or its employees to such third parties.
- 9.9. This clause 9 applies also to any claims for damages of the Client in connection with any agents instructed by the Attorney (*Erfüllungs- und Besorgungsgehilfen*) and substitute attorneys.

#### **10. Performance of services, right substitution**

- 10.1. The Client acknowledges and agrees that the Attorney will use its employees in connection with the services provided to the Client.
- 10.2. The Attorney is entitled to instruct another attorney-at-law (substitute) with the provision of the services subject to the same or a limited power of attorney.
- 10.3. The Attorney is only liable for fault in connection with the selection of the substitute (*culpa in eligendo*).

#### **11. Fees**

- 11.1. The Parties agree hourly fees in deviation of the Austrian Lawyers' tariff (*RATG*) and the *Allgemeine Honorarkriterien* (*AHR*). The current hourly rate for attorneys-at-law is EUR 250 (exclusive of VAT). The current hourly rate for legal trainees (*Rechtsanwaltsanwärter*) and other legal assistants (*juristische Mitarbeiter*) is between EUR 150 and EUR 190 (exclusive of VAT) depending on experience.
- 11.2. Expenses incurred in the ordinary course of business and secretarial services are charged with a flat fee of 2.5% of the aggregate net fees. Travel fees, fees for translations and experts are charged at cost.
- 11.3. The Attorney is entitled to issue invoices on a monthly basis at the end of each calendar month. Invoices are due and payable within 14 days of the invoice date. This applies in particular for services provided in connection with ongoing projects or legal proceedings.
- 11.4. The Attorney is entitled to set off due claims for fees (including expenses) with undisputed or legally valid claims of the Client against the Attorney.
- 11.5. The Attorney invoices its services exclusively in accordance with this Agreement unless the Parties agree otherwise in writing. The Attorney will in particular neither issue invoices payable by, nor address invoices to, a legal protection insurance provider of the client and will only communicate with a legal protection insurance provider subject to a separate fee agreement. The Client owes the entire amount as per the respective invoice to the Attorney irrespective of any coverage by a legal protection insurance provider. Any amounts paid by a legal protection insurance provider are set off with the payment claims of the Attorney.
- 11.6. Other attorneys-at-law might provide the requested services for a lower fee. However, such attorneys-at-law might not have an experience comparable with the experience of the Attorney.
- 11.7. The Attorney is entitled to default interest (4% p.a. for consumers and, as applicable, 9.2% for entrepreneurs of the applicable base rate) in the case of a payment default.



## **12. Miscellaneous**

- 12.1. If any provision of this Agreement is or becomes invalid or unenforceable, such defect has no effect on the validity of the other provisions of this Agreement. The Parties agree to replace any defective provision by an executable and enforceable provision which corresponds as close as possible to the purpose intended by the Parties.
- 12.2. The Attorney is only obliged to hand over an item of the Client subject to reimbursement of any expenses incurred in this regard. The Attorney is entitled to this statutory right of retention until it has received complete payment for all provided services and expenses.
- 12.3. The Services Provider is entitled to retain documents until all fees (charges, legal fees) incurred with the preparation of such document have been paid by the Client in full.
- 12.4. A Client, who is a consumer within the meaning of the Consumer Protection Act (*KSchG*), is entitled to rescind this Agreement within 14 days if it has not signed the Agreement in the offices of the Attorney unless it has initiated this Agreement himself or signed the Agreement without the Attorney being present. This 14-day period commences with the date of receipt of this Agreement by the Client, however at the earliest with the effectiveness of this Agreement. The rescission does not require a specific form and is made in a timely manner if the corresponding declaration has been sent within the 14-day period. The Parties agree that any services provided prior to the receipt of the declaration to rescind this Agreement by the Attorney will be invoiced in accordance with clause 11 of this Agreement or a flat fee as agreed otherwise by the Parties.
- 12.5. If the Client is a consumer within the meaning of the Consumer Protection Act (*KSchG*), the Attorney will only provide the agreed services prior to the expiry of the 14-day period set out in clause 12.4 if this has been expressly requested by the Client. If the Attorney provides services prior to the expiry of such 14-day period upon request of the Client, the Client has to pay the agreed fees if it rescinds this Agreement in accordance with clause 12.4.

## **13. Governing law, place of performance, jurisdiction**

- 13.1. This Agreement is exclusively subject to Austrian law.
- 13.2. Place of performance is the registered office of the Attorney.
- 13.3. Any disputes in connection with this Agreement are subject to the exclusive jurisdiction of the competent court at the place of performance.