

General Terms and Condition (GTC)

Mosam Real Estates e.U., FN 481397m, Pfluggasse 5/26, 1090 Vienna, Austria

1. Contractual Contents and Terminology

1.1. Services

All consultancy and other services to be delivered by the Contractor (short: AN) according to the contract.

1.2. Subject of the Contract

The subject of the contract are all the services to be delivered by the Contractor in the context of and during the duration of the contract in line with the scope of services described and the related remuneration from the Client (short: AG) as well as with the general rules related to mutual rights and obligations.

1.3. General Terms and Conditions (GTC)

These GTC – in their latest version - are part of the contract and are to be regarded as being agreed by all parties, including for all future contractual relationships between the parties to the contract.

1.4. Scope of Services

The basis for the services to be delivered by the AN is the written Description of Services produced by the AN on the basis of information provided to him or provided by the AG. This Description of Services is to be checked for correctness and completeness by the AN and AG and initialled as approved. Any changes requested at a later date by the AG require a separate written agreement regarding timetable and remuneration.

1.5. Fees

If a lump sum fee is agreed for the services to be delivered, this applies exclusively to the scope of services and timetable confirmed in writing at the moment of the agreement. Additional services are not covered by the lump sum fee and have to be invoiced directly on a time and material basis.

2. Rights and Obligations of the AG and AN

2.1. Obligations to give Information and to Review

The AG will punctually supply to the AN all information that is required for fulfilling the contract and executing the agreed services and inform him of all factors which are significant for the execution of the contract. This also applies to all that information which only becomes available after the AN has started to deliver the services. The AG bears the costs of all services the delivery of which must be repeated by the AN or are delayed as a result of incorrect, incomplete or subsequently changed information supplied by him. The AN will check the information given to him by the AG, in particular in terms of technical feasibility and will voice misgivings to the AG.

2.2. Documents and the Obligation to Archive

The AN will archive all documents connected with the delivery of the services up to the completion of the project and, if required and in return for payment, provide the AG with a copy or digital version thereof and guarantee that these can be inspected. Written documents from the statutory authorities and original documents provided by the AG are to be returned as originals after the completion of the delivery of the services.

2.3. Meetings / Reports

The AN will report to the AG on the progress of the services being delivered by him and, if relevant, by any third party contracted by him, according to a timetable expressly agreed in advance. The AG will take part in the meetings organised by the AN.

2.4. Freedom from Directives

The AN is free to deliver the agreed services as he wishes; he is bound neither to deliver these services in any specific place nor by any specific working hours

2.5. Changes in the Services

Each party to the contract can request from the other a change in the agreed scope of services in writing. After receiving this change request the addressee must check whether and under what conditions this change is executable and to explain his acceptance or rejection of the change in writing without delay. If changes requested by the AG lead to a change in the cost of execution and to the originally agreed timetable, the AN is to agree an additional contract with the AG as appropriate.

If the AG changes or reduces the type and scope of the agreed services or the circumstances under which they are delivered, or if the AG demands extra services which represent a fundamental alteration of the structure and delivery of the agreed services, the AN has the right to suspend ongoing work until the additional contract is agreed. The AN cannot be held responsible for any delay in the delivery of the services caused by this situation.

2.6. Right to Delegate

The AN has the right to wholly or partially delegate the execution of the services he has agreed to deliver to third parties as his agents.

2.7. Timetable

Contractually agreed periods for delivering the agreed services or deadlines only commence when the AG has fully fulfilled his obligation to cooperate. All agreements regarding periods and deadlines are to be recorded in writing. The failure to meet periods and deadlines gives the AG the right to enforce a claim against the AN after the expiry of an appropriate additional period of at least 4 weeks after the recorded delivery of a warning letter setting out the legal consequences. If this additional period expires without a satisfactory outcome, the AG has the right to withdraw from the contract. An obligation to provide compensation as a result of a delay exists only for gross fault of the AN or of his agents. Unavoidable or unforeseeable circumstances free the AN from his obligation to meet agreed periods or deadlines. The same is the case if the AG has failed to meet his obligations regarding the execution of the contract (e.g. to provide information). In such a case, the agreed deadline will be set back by at least the amount of time lost by this failure of the AG to meet his contractual obligations.

3. Rights of Ownership and Intellectual Property

3.1. Property Rights and Rights of Use

The AN holds the full intellectual property rights, as well as copyright for all services delivered by him – especially suggestions, ideas and concepts and individual parts thereof; the return of all documents handed over during the delivery of the services can be demanded at all times. The copying, alteration (including further development), reproduction and publication of the services delivered by the AN – in whatever form – is not permitted without the prior written agreement of the AN. The AG only acquires the right set out in the contract to use the services for the agreed purpose and within the agreed scope upon full payment of the fees.

3.2. Uses

Prior written agreement, which also includes any agreement about remuneration, is required for the use of any services delivered by the AN which transcend the originally agreed purpose and scope.

4. Guarantees, Compensation and Liability

4.1. Obligation to Give Notice of Reminder

The AG is to inform – with justification - the AN without delay of all disorders in the delivery of the services; the AG bears the obligation of proof – as long as this is legally permitted. If this defect notice is punctually delivered and justified, the AG only has the right to the making good or replacement of the service in question by the AN – unless the situation is otherwise determined by a binding condition of the Law of Consumer Protection.

4.2. Improvements

In the case of a justified reminder notice the disordered services are to be made good in a reasonable time period and the AG is obliged to make it possible for the AN to carry out all measures necessary for doing so. The AN has the right to refuse to carry out this improvement if this is impossible or can only be carried out at unreasonable cost to the AN.

4.3. Limitation of Liability

The AN is excluded from compensation claims in cases of minor negligence. In cases of gross negligence, the burden of proof rests with the damaged party.

4.4. Enforcement Period

Except in cases of special periods of limitation, compensation claims are to be made to the relevant legal authorities within six months of the damage becoming apparent; these are to be limited to the amount of the fee for the contract excluding VAT and other charges.

5. Extraordinary Cancellation of the Contract

5.1. Extraordinary Reasons for Cancellation by the AG

The AG can cancel the contract without notice if he has an important reason for doing so, especially if the AN has failed to meet his contractual obligations despite an appropriate additional period of at least 4 weeks after the recorded delivery to the AN of a warning letter setting out the legal consequences of not doing so. In the case of such a cancellation, the AN also has the right to suspend the delivery of all services and not to make good any damage caused to the AG by him doing so.

5.2. Extraordinary Reasons for Cancellation by the AN

The AN can cancel the contract without notice and without being obliged to respect any cancellation period or deadline if he has an important reason for doing so, especially if

5.2.1. the AG is in arrears with the payment of the contractually agreed fee or other payment obligations despite a written warning with a 14-day extension period,

5.2.2. the AG is in arrears with his contractual obligations despite a written warning from the AN with a reasonable 14-day extension period,

5.2.3. the AN has justifiable concerns about a significant decline of the credit rating of the AG.

6. Fees

6.1. Fee Claims

If not agreed otherwise, the fee for any single service can be claimed by the AN upon the completion of the delivery of that service. The AN has the right to demand down-payments. If not otherwise determined by the contract the fee excludes the legally determined VAT. All services delivered by the AN which are not expressly covered by the agreed fee will be remunerated separately. All cash expenses paid by the AN are to be reimbursed by the AG.

6.2. Preliminary Fee Estimates

Unless agreed otherwise in writing preliminary fee estimates by the AN are not binding. If it is foreseen that the actual fee will exceed the fee estimated by the AN by more than 10% the AN is to inform the AG of the increased costs in writing. This higher fee will be regarded as accepted by the AG unless he delivers a written objection to the AN within three days of this information together with a suggestion of a more economical alternative solution.

7. Payment Terms and Conditions

7.1. Payment

The invoices from the AN are payable without discount from the date of issue and, if not otherwise agreed, to be paid within ten calendar days of the date of issue. In the case of late payment, an agreed default interest of 10 % p.a. is payable; higher interest losses can also be claimed.

7.2. Fees

The AG commits himself to bear all costs arising from the enforcement of claims.

7.3. Payment Delays

In the case of the delay of a payment by the AG the AN can immediately regard as payable all other payments and partial payments for all services already delivered arising from other contracts agreed with the AG.

7.4. Counter Claims

The AG does not have the right to offset payments to the AN with counter claims, unless the counter claims by the AG have already been agreed to in writing or legally confirmed

8. General Contract Terms and Conditions

8.1. Choice of Law

The parties to the contract agree to the application of material Austrian Law without regard for the conflict of law doctrine of either Austrian international private law or UN commercial law.

8.2. Legal Jurisdiction

The relevant and responsible court in Vienna is agreed as the exclusive place of jurisdiction for all conflicts arising from this contractual relationship; the AN reserves the right to take legal action against the AG at any other legally permitted location.

8.3. Requirement of Written Form and Contract Language

Changes and additions to these GTC and/or the contract based upon them and all integral elements thereof are only valid if made in writing; this also refers to agreements to deviate from this written form requirement. It is agreed that German is the contract language.

8.4. Severability Clause

If any individual conditions of these GTC and/or of the contract and all integral elements thereof are deemed invalid, refutable or ineffective in any other way, this does not affect the validity of all other conditions of these GTC and/or of the contract and all integral elements thereof. Each invalid condition is to be replaced by a new condition which comes as close as possible to achieving the same economic outcome and contractual purpose. This also applies to the making good of gaps in the contract through a supplementary interpretation of the contract carried out as set out above.

8.5. Claims

The AG does not have the right to offset claims by the AN based on this contract with counter claims, unless the counter claims by the AG have already been agreed to in writing by the AN or are already legally binding.

8.6. Assignment of Claims

The passing on to third parties of claims against the AN is not permitted without the agreement of Mosam Real Estates.

8.7. Invalidity

All agreements related to this contract arrived at before the signing of the contract based on these GTC become invalid upon its signature.

8.8. Legal Domicile

The legal domicile of this contract is Vienna unless another legal domicile is explicitly set out in the contract.

8.9. Forwarding of Data

In addition to this, the AN has the right to use data related to this contractual relationship in connection with fulfilling and realising the contract and he and his agents have the right to record and store such data on data carriers.

8.10. Backup Cloud

The AG expressly agrees to the storing of his data in a Cloud. The use of a Cloud is not part of the AN services. The AN is not liable for damage, secondary damage or loss of profit of any sort related to the storage of data in a Cloud, the temporary unavailability of data, the loss of stored data and documents or the abuse of these by a third party. In the case of damage caused by the AN is not liable for mild negligence.

8.11. Publication Right

The AN has the right to publish his services on his website and to use it as part of his marketing.

8.12. Coming into Effect and Validity of these GTC

The contract comes into effect upon its signature by both parties. Conflicting GTC of the AG are invalid unless these have been expressly agreed to by the AN in writing.

8.13. Validity

These GTC are valid (in their latest version) from the moment of publication on the website of the AN (www.mosam-realestates.com/en/contact/#gtc). The AN reserves the right at any time to alter or add these GTC. Any such changes come into effect from the moment of publication of the GTC on the above-mentioned website.

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