

# GENERAL TERMS AND CONDITIONS AS AT: 04/2018

## A. GENERAL STIPULATIONS

### 1. Scope of Application

**1.1** These General Terms and Conditions (GT&C) shall apply for the duration of the business relationship between FERCHAU and the Client in respect of all services to be rendered by FERCHAU, particularly services under a service agreement or under a contract for work, as well as services within the framework of employee transfer and direct placement. They shall also apply to all future transactions with the Client.

**1.2** These GT&C apply exclusively. GT&C of the Client which conflict with or deviate from these GT&C are not recognised, unless FERCHAU has given its express written consent to their applicability.

### 2. Offers and Documents

**2.1** Offers from FERCHAU shall be subject to change without notice, until the order is finally confirmed.

**2.2** The Client's purchase order shall be a binding offer.

**2.3** FERCHAU shall fully retain rights of title and exploitation rights under copyright law in respect of cost estimates, drawings and other documents. These documents may only be made accessible to third parties with FERCHAU's prior written consent. The respective data and information contained in the documents shall not constitute guarantee undertakings. Guarantee undertakings shall, in any event, require FERCHAU's express written confirmation.

### 3. Prices/Payment Terms

**3.1** FERCHAU's price list, as amended, shall apply supplementarily. Prices may be agreed upon as a binding fixed price, as a percentage-based fee, as a recommended price, according to hourly outlay or according to a measurement. In principle, prices shall be subject to the addition of statutory value-added tax.

**3.2** If the scope of the service under the respective order is altered, particularly extended, by mutual agreement during the handling of the order, FERCHAU may demand a corresponding adjustment of the agreed prices and remunerations, particularly an increase therein. FERCHAU shall be entitled to temporarily discontinue implementing services under an order, until agreement is reached on a corresponding adjustment of the prices and remunerations, provided that FERCHAU has pointed this out to the Client in writing beforehand. Delays occurring as a result thereof shall not be to the detriment of FERCHAU. Unilateral change of the service under an order by the Client is excluded.

**3.3** Except where otherwise agreed upon, FERCHAU shall be entitled, according to reasonable discretion, to demand a reasonable advance and issue, in stages, sub-invoices for services already rendered under an order and/or in relation to performance progress.

**3.4** All invoices from FERCHAU shall be due and payable, strictly net cash, immediately upon receipt.

**3.5** The Client shall only be entitled to rights of set-off if its counterclaims have been declared valid by a final and non-appealable court judgement, are undisputed or have been recognised by FERCHAU. The Client shall only be authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

### 4. Fixed Dates/Duties of Cooperation

**4.1** Where no fixed dates are agreed upon, FERCHAU shall stipulate dates according to its own reasonable discretion.

**4.2** If the Client fails to comply with its duties of cooperation in due time, particularly in respect of the submission of essential documents, information and data, delays resulting therefrom shall be to its detriment.

**4.3** The Client shall be liable to FERCHAU that the services provided by it and the documents, information, data and items made available within the framework of cooperation are free from third party property rights which preclude or impair use by FERCHAU in conformity with the contract.

**4.4** In the event of default, the Client shall be entitled to demand, for every full week of delay, lump-sum compensation for default at the rate of 0.5 % of the order value, but not exceeding 5 % of the order value. Further claims on the part of the Client to compensation for damages and reimbursement of expenditures due to default are excluded. The stipulations under section 6 apply accordingly to exemptions from this exclusion of liability.

**4.5** In the event of force majeure, the performance period shall be extended by the duration of the hindrance and a reasonable start-up period. If performance or implementation of the service becomes impossible or unreasonable due to the said circumstances, FERCHAU shall be released from the obligation to render the service.

### 5. Confidentiality

**5.1** The Client and FERCHAU shall be mutually obliged to treat all information with strict confidentiality concerning the business and/or operational affairs of the respective other Party and use such information merely for the purpose intended under the respective order placed. Within the framework of this intended purpose, FERCHAU shall be entitled to pass on the information to third parties.

**5.2** The Client and FERCHAU mutually undertake to refrain from enticing away employees, or attempting to entice away employees, of the respective other Party for the duration of the business relationship and thereon for a period of 12 months after the last invoicing.

### 6. Liability/Compensation for Damages

**6.1** FERCHAU shall, regardless of the legal basis, pay compensation for damages exclusively in accordance with the principles set forth below.

**6.2** In cases of intent or gross negligence, FERCHAU shall be fully liable for damages ensuing from a breach of the duty of care.

**6.3** In cases of breach of material contractual duties due to ordinary negligence, FERCHAU shall be liable for damages typical of this type of contract and foreseeable at the time of the conclusion of the contract. In the event of any other culpable breach of duty caused by ordinary negligence, liability shall be limited to EUR 10 million per violation in the case of property damages and pecuniary damages. In the case of damages negligently caused due to the same violations, liability shall be limited to EUR 10 million in total, even if the violations are committed over several years.

**6.4** Liability to compensate for damages beyond the foregoing is excluded, regardless of the legal nature of the claim asserted. In particular, therefore, FERCHAU shall not be liable for unforeseeable damages, consequential damages caused by a defect, other indirect damages or damages arising from loss of profit.

**6.5** Claims of the Client to compensation for damages shall be subject to a 24-month limitation period.

**6.6** The restrictions and limitations under sections 6.1-6.5 shall not apply to injury to life, body or health, to liability arising from guarantees or to liability under the Product Liability Act or other mandatory statutory stipulations.

**6.7** The aforesaid restrictions and limitations (6.1-6.6) shall apply equally if the violation of the obligation has been committed by a legal representative, body or vicarious agent of FERCHAU and claims for compensation for futile expenses (§ 284 BGB); this does not imply a change in the burden of proof to the disadvantage of the Client.

**6.8** Insofar as FERCHAU's CAD systems are used within the framework of an order or are rented out to the Client, the Client shall be liable for all direct and indirect damages occurring due to improper handling of the CAD systems, as well as for their loss or destruction and for any and all damage to the CAD systems used within the framework of the order.

### 7. Rights of Use

**7.1** For all work and work results developed by FERCHAU on behalf of the Client, FERCHAU shall grant the Client, upon full payment, the exclusive and permanent right to use them to the extent described in the respective order.

**7.2** If employees of FERCHAU make any employee inventions or suggestions for improvement in the course of carrying out individual orders, FERCHAU shall be obliged, at the Client's request, to lay claim to the invention, with or without limitation, and transfer the rights resulting therefrom to the Client concurrently against indemnification against any and all financial obligations which result, in relation to FERCHAU's employees, from an employee invention. The Employee Inventions Act [Arbeitnehmererfindungsgesetz] applies accordingly.

## B. EMPLOYEE TRANSFER CONTRACTS

### 8. Special Terms and Conditions for Employee Transfer Contracts

The following terms and conditions apply supplementarily to employee transfer contracts between the Client and FERCHAU:

**8.1** FERCHAU shall be responsible that the employee seconded is generally suitable for the job agreed upon, has been carefully selected and has been checked in respect of essential qualifications. A duty of scrutiny over and above the foregoing shall not apply.

**8.2** The Client will promptly inform FERCHAU, if a temporary agency worker is or is to be leased to the Client, who during the last six months prior to the start of this lease assignment (a) was already assigned to the Client via another hirer-out, or (b) had an employment relationship with the Client or an affiliated company of the Client that forms jointly with the Client a group of companies in terms of Section 18 German Stock Corporation Act [AktG].

**8.3** FERCHAU itself shall not owe to the Client performance of work or any particular success in respect of the work. The employee seconded shall be neither an authorised representative of FERCHAU, an assistant of FERCHAU with employee or independent contractor status for the purposes of vicarious liability in contract nor an assistant of FERCHAU with employee status for the purposes of vicarious liability in tort. The employee seconded shall not be entitled to collect payment or issue or take receipt of contractual declarations with effect for or against FERCHAU.

**8.4** The Client shall be obliged to introduce the seconded employee to the job and instruct and supervise him during the work. Furthermore, the Client shall ensure that all statutory, official and other regulations are complied with. In particular, the Client shall be responsible for compliance with the duties ensuing from section 618 of the German Civil Code [BGB] and section 11 (6) of the Employee Transfer Act [AÜG] (law on health and safety at work). If health and safety stipulations are not complied with, the employee seconded shall be entitled to refuse to work, without FERCHAU losing its entitlement to the contractual remuneration.

**8.5** FERCHAU shall not be liable for the type, scope, execution or quality of the work performed by the seconded employee for the Client. In this connection, the Client indemnifies FERCHAU against all third party claims which may result to FERCHAU in connection with execution of the activities assigned to the seconded employee and/or are asserted in relation to FERCHAU.

**8.6** If there is a strike at the Client's business establishment, FERCHAU shall not be obliged to provide labour for leasing.

**8.7** FERCHAU's remuneration shall be calculated on the basis of the contractually agreed hourly rate plus value-added tax in effect. To that extent, the following surcharges shall apply: A 25 % surcharge shall be levied for each hour of overtime. A 50 % surcharge shall be levied for hours worked on Saturdays, a 70 % surcharge shall be levied for hours worked on Sundays and a 100 % surcharge shall be levied for hours worked on public holidays. Unless otherwise agreed in individual contracts, a working time of 8 hours per day and 40 hours per week shall be deemed agreed. Overtime is deemed given only if the monthly planned time has been exceeded. All job-related travel costs incurring due to the Client's demands shall be charged separately. All job-related travel times will be charged free of surcharges for up to a maximum of 10 hours per day.

**8.8** If the Client concludes an employment agreement with the seconded employee during the lease or within a period of up to 3 months after the end of the lease, the Client shall owe FERCHAU a reasonable placement fee, which falls due upon conclusion of the employment agreement and within 14 days upon receipt of the invoice. The placement fee upon taking over the employee within the first 12 months from the beginning of the lease amounts to 30 % of the gross annual salary agreed between the Client and the employee taken over plus the statutory value-added tax in effect. After 12 months of the lease, the placement fee is reduced to 25 %, and after 24 months to 10 %. Different arrangements can be agreed in the respective individual contracts. The placement fee shall also fall due if, without any foregoing lease and merely based on the introduction of the employee, an employment agreement is concluded within 12 months of the introduction. The Client shall inform FERCHAU immediately of the date of the employment commencing and the gross annual salary, and furnish evidence to that effect on request.

**8.9** The employment relationship between FERCHAU and the employee is subject to collective bargaining agreements in terms of Section 8 (2) German Temporary Employment Act [AÜG] by which the statutory principle of "equal treatment" is waived. If after the conclusion of the relevant employee transfer contract regarding the assignment of the seconded employee to the Client

- (1.) an increase of the seconded employee's remuneration occurs
  - (a) due to a standard wage increase, switch of the applicable collective labour agreement by FERCHAU or
  - (b) because sector-specific supplemental payments are to be paid for the first time or higher sector-specific supplemental payments are to be paid to the seconded employee than FERCHAU assessed on the conclusion of the relevant employee transfer contract, or
  - (c) because the statutory principle of "equal treatment" or "equal pay" applies according to the German Temporary Employment Act [AÜG] and for this reason the seconded employee has a claim to higher remuneration than FERCHAU assumed on the conclusion of the relevant employee transfer contract and the parties to the employee leasing agreement did not expressly provide for the applicable remuneration in this case, and

- (2.) the obligation to pay this remuneration increase
  - (a) could not be identified by FERCHAU based on the information provided by the Client or
  - (b) is caused by the fact that the actual circumstances as communicated by the Client to FERCHAU did change,

FERCHAU has the right to demand that the agreed hourly rates for the respective seconded employee are renegotiated with retroactive effect for the period from which the aforementioned remuneration increases became effective.

**8.10** So that FERCHAU is in a position to comply with its obligation arising from the German Temporary Employment Act [AÜG], the Client is obliged, upon FERCHAU's request ("Duty to provide Information"), to promptly provide FERCHAU in writing, at the latest ten (10) days from FERCHAU's request for information,

- (1.) the material terms and conditions for employment and remuneration of a comparable regular employee of the Client in terms of the statutory requirement regarding "equal treatment" - and/or "equal pay" and
- (2.) the information required to verify the applicability of "Collective labour agreements on sector-specific supplemental payments" for temporary employment, as well as for the determination of sector-specific supplemental payments, if any, and
- (3.) the information required to determine the statutory maximum leasing period for a seconded employee.

The Client is also obliged, without a request for information by FERCHAU being required, to notify FERCHAU without undue delay of any subsequently occurring changes to the information provided by the Client according to Sentence 1.

If the Client does not, not completely or not timely provide the information according to Sentence 1, FERCHAU has a right to extraordinary termination of the employee transfer contract to which the information request relates. If the Client violates its duty to inform according to Sentence 1 with intent or negligence, the Client is also liable to FERCHAU for all damages and expenses arising from such violation.

**8.11** Without prejudice to the right to terminate an employee transfer contract with immediate effect, employee transfer contracts may be terminated by either Party to the contract with 14 days' notice effective end of month.

## C. CONTRACTS FOR WORK

### 9. Special Terms and Conditions for Contracts for Work

The following special terms and conditions shall apply supplementarily in the event that contracts for work are concluded between the Client and FERCHAU.

**9.1** In principle, the order shall be carried out in FERCHAU's technical offices. Full or partial execution at the Client's business establishment may be agreed upon, if, for example, work documents cannot be handed.

**9.2** The right to issue directives to its assistants with employee or independent contractor status and to its employees, particularly induction, instructing and supervision, shall fall exclusively to FERCHAU, even if the order is carried out at the Client's business establishment. The Client's right to issue order-related instructions on execution relating to the result of the work in the individual case shall remain unaffected by this.

**9.3** The progress of performance shall be confirmed by the Client by means of signing the project progress reports

submitted to it. Over and above the foregoing, the following stipulations apply to acceptance of services:

**9.3.1** Upon successful execution of a function test, but no later than two weeks after handover of the result of the order, the Client shall declare acceptance in writing without undue delay. The function test shall be deemed successfully executed, if the result of the order fulfils in all material points the requirements provided for in the contract.

**9.3.2** The Client shall be obliged to notify FERCHAU in writing without undue delay, if it becomes aware of defects during the function test. In the event of material defects in performance, FERCHAU shall, excluding claims over and above this, first be given the opportunity to rectify the defects within a reasonable period.

**9.3.3** If, despite its duty to accept, the Client fails to declare acceptance without undue delay, FERCHAU may set the Client a two-week time limit in writing for submission of this declaration. Insofar as FERCHAU has pointed this out when setting the time limit in writing, acceptance shall be deemed effected, unless, within a one-week period, the Client specifies in writing the reasons for refusal of acceptance. Furthermore, acceptance shall be deemed effected, if and when the Client begins to productively use the result of the order.

**9.4** FERCHAU shall provide warranty for any and all defects in the results of the order initially by rectification or re-performance, at its own option. If rectification/re-performance fails despite at least two attempts at supplementary performance, the Client may demand abatement or rescission as well as compensation for damages, subject to the limitation of liability as per section 6. In the case of only minor defects, the Client shall not be entitled to any right of rescission. The warranty period for defects not caused by intent is 24 months from commencement of the respective statutory limitation period.

## D. SERVICE AGREEMENTS

### 10. Special Terms and Conditions for Service Agreements

The following special terms and conditions apply supplementarily to service agreements between Client and FERCHAU:

Without prejudice to the right to terminate a service agreement with immediate effect, service agreements may be terminated by either Party to the contract with 14 days' notice effective end of month.

## E. CLOSING STIPULATIONS

### 11. Place of Performance/Place of Jurisdiction/Applicable Law

**11.1** The place of performance for FERCHAU's services under the order is FERCHAU's respective place of establishment or the location of FERCHAU's technical office where the services under the order are rendered. The place of performance for the Client's payment obligation is the location of FERCHAU's registered office.

**11.2** The place of jurisdiction is the location of FERCHAU's registered office. However, FERCHAU shall be entitled to also bring an action against the Client at any other statutory place of jurisdiction.

**11.3** The contract is subject to the laws of the Federal Republic of Germany, excluding the rules of private international law.