

Vorbemerkung zur Anwendung der Vertragsbeispiele - bitte nach Kenntnisnahme löschen!

Als Serviceleistung für die Mitglieder werden Vertragsbeispiele sowie Erläuterungen dazu („Anmerkungen zu den Vertragsbeispielen“) zur Verfügung gestellt, die Ihnen helfen sollen, bei Vertragskonstruktionen die richtige Formulierung zu finden. Allerdings liegt es in der Natur von Vertragsbeispielen, dass sie lediglich den „typischen“ Vertragsinhalt regeln. Es ist daher unumgänglich, die Vertragsbeispiele an Ihre Bedürfnisse anzupassen, u.U. unter Beiziehung einer Rechtsanwältin/eines Rechtsanwaltes bzw. mit Rücksprache bei den Juristinnen/Juristen Ihrer Interessenvertretung. Insbesondere bei Verträgen mit VerbraucherInnen im Sinne des Konsumentenschutzgesetzes ist eine genaue Beachtung der dortigen Bestimmungen unumgänglich. Weiters sind im Vertrag bei den Punkten 12, 13 und 18 Alternativen dargestellt, aus denen die für den jeweiligen Fall passendste auszuwählen ist und die restlichen Alternativen zu löschen sind.

Zu Ihrer Unterstützung wird der Vertragstext auch in englischer Sprache zur Verfügung gestellt. Bitte beachten Sie jedoch, dass bei Übersetzung von Rechtstexten immer Unschärfen entstehen können.

Die grau hinterlegten Felder stellen Eingabe- und Auswahlfelder dar. Durch Drücken der Tabulatortaste gelangen Sie von einem Feld zum nächsten. Weitere Informationen zu Feldern und Auswahlfeldern entnehmen Sie bitte dem Handbuch ihrer Textverarbeitung.

Contract for "Ziviltechniker" services

concluded between:

Client

Contractor

Address

Address

Telephone

Telephone

E-Mail

E-Mail

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- 4.5. The Client shall make the necessary decisions at short notice and in good time and inform the Contractor of the decisions made.

5. Schedule

- 5.1. The following time periods are planned for the provision of the “Ziviltechniker” services described in point 3:
- 5.2. The final dates for realising individual services and the total contract period shall be specified in a mutually agreed schedule which forms an integral part of this contract.
- 5.3. The Client is obliged to make decisions in a timely manner so that the planned interim dates can be met by the Contractor.

6. Remuneration

- 6.1. The services of the Contractor shall be calculated and settled in accordance with the annex. An hourly fee of EUR shall apply for services which are calculated on an hourly basis.
- 6.2. Additional costs:
Additional costs (e.g. costs for modelling, administrative charges to authorities, travel expenses etc.) shall be invoiced separately based on actual expenditure.
- 6.3. In instances where the costs which are relevant for the calculation (wages, materials, energy, financing etc.) change during the contract period, the Contractor is entitled to adjust the price accordingly. This does not apply to consumer transactions as per the Consumer Protection Act.
- 6.4. Additional services which were not caused by the Contractor, in particular as the result of official administrative requirements, amendments to relevant directives and laws and any resulting changes to the Client’s requirements, shall be remunerated additionally in line with the increased scope of services.

7. Payment conditions

- 7.1. The Contractor is entitled to issue partial invoices.
- 7.2. Partial invoices are payable within 14 calendar days; the final invoice within 30 calendar days following receipt by the Client whereby the Contractor is also entitled to add sales tax (VAT) to partial invoices.
- 7.3. For late payments the Client is obliged to pay default interest at the statutory rate.
- 7.4. Until the final invoice has been settled in full, all of the documents (plans, calculations etc.) produced by the Contractor remain the property of the Contractor.

8. Delay/interruption/hindrance to tender execution

- 8.1. If there is a delay, hindrance or interruption to carrying out the services of the Contractor lasting for more than 2 months, and which is not his fault, the Contractor is entitled to invoice the additional work involved upon submission of proof.
- 8.2. Should the interruption specified in point 8.1. last continuously for more than months, the Contractor is entitled to demand payment for services rendered up to that date. The state of services rendered is determined by mutual agreement.
- 8.3. In instances of delays, hindrances or interruption preventing service provision and continuing uninterrupted for longer than months, each contract partner has the right to withdraw from the contract.

9. Duty of confidentiality

The Contractor is obliged to maintain the strictest confidentiality regarding all information which he is made aware of in the course of planning and construction and all circumstances, conditions and relations entrusted to him by the Client unless the Client expressly releases him from this duty.

10. Safeguarding interests and advising the Client

- 10.1. The Contractor is obliged to safeguard the interests of the Client on the basis of the relationship of trust between him and the Client in respect of the obligations taken on by him to protect the Client's interests. Specifically he is not permitted to accept any possible benefits offered by a third party. Any other benefits derived must be transferred in full to the Client.
- 10.2. The Contractor shall advise the Client about any circumstances relevant to realising the project as part of the contractual obligations, in his role as a specialist with a duty of diligence, and apply the specialist knowledge for the purpose of ensuring planning and execution which is impeccable in both technical and economic terms.
- 10.3. The Contractor shall answer the Client's questions about any issues related to fulfilling the contractual obligations at any time and take into account the wishes and instructions of the Client. After the application of due diligence, should the Contractor have any concerns about the appropriateness or suitability of the wishes and instructions of the Client, the Contractor is obliged to communicate these concerns as part of the duty to provide warnings and clarifications.

11. Power of attorney

- 11.1. The Contractor shall be given power of attorney to represent the Client before the authorities and all third parties who will provide services on the construction project in accordance with the order and the services assigned. This power of attorney shall cover all necessary and common representation rights required to carry out the specific project, in particular leading the requisite negotiations with the authorities and all professionals involved in the project, submitting withdrawal notices as per § 918 Austrian Civil Code, monitoring the activities of the companies involved and other professionals, assigning orders to correct faults or for substitute performance as well as exercising authority on the construction site.
- 11.2. The power of attorney for representation does not include the right to award contracts to construction companies and the specialists required for project execution or the legal authority to accept partial or final invoices from the companies and additional specialists working on the project.
- 11.3. The Contractor shall receive a power of attorney document from the Client containing the content listed in the previous points in order to prove the power of attorney to the authorities, affected local parties, relevant professionals and other third parties.
- 11.4. The Contractor is entitled to use qualified employees to fulfil the order. Specifying the number and the qualification of individual staff is the responsibility of the Contractor.

12. Storage and distribution of documents

- 12.1. Original plans and data remain with the Contractor who is obliged to store them properly.
- 12.2. The Contractor is however obliged to provide the Client with paper copies of these documents upon request for a small fee reimbursing the actual costs.

Möglicher Zusatz 1 zu 12.2. (BITTE STREICHEN, WENN UNERWÜNSCHT !):

- 12.2.1. *The Contractor is also obliged to provide the Client with copies in a non-editable digital format (e.g. PDF) upon request for a small fee reimbursing the actual costs.*

The Contractor bears no liability for any error or damage which may result to the IT facilities of the recipient of the digital data. The Contractor employs IT programmes to prevent aggressive IT programmes (viruses, worms, etc.).

Möglicher Zusatz 2 zu 12.2. (BITTE STREICHEN, WENN UNERWÜNSCHT !):

- 12.2.2. *The Contractor is also obliged to provide the Client with copies in an editable digital format (e.g. DWG) upon request for a small fee reimbursing the actual costs.*

In this case the Contractor bears no liability of any kind for the documents provided. The Client shall indemnify the Contractor and hold him harmless in this respect.

The Contractor bears no liability for any error or damage which may result to the IT facilities of the recipient of the digital data. The Contractor employs IT programmes to prevent aggressive IT programmes (viruses, worms, etc.).

- 12.3. The duty of the Contractor to retain records ends ten years after issuing the final invoice to the Client, however, the Contractor can be relieved from the storage obligation if he releases the original documents to the Client during this period.

13. Copyright / intellectual property rights

- 13.1. The copyright and resultant intellectual property rights of the plans, drafts, models etc. produced by the Contractor remain with the Contractor even after full payment has been made. This applies in particular to the right to execute or change the work and/or to reproduce it by a third party.
- 13.2. The Client has the right to use the plans for the specific construction project in the course of realising the work if the Contractor is charged with all partial services involved in the planning/design and the Client has met his contractual obligations, particularly as regards settling all remuneration demands in full. This right only applies to one-off execution in line with the plans and the contract.

Using plans/documents for other projects or passing them on to third parties is only permitted with the written approval of the Contractor and the Contractor bears no liability of any kind for any contraventions. The Client shall indemnify the Contractor and hold him harmless in this respect. The rights of the Contractor regarding contractual violations of use of the plans/documents remain unaffected.

Alternative 1 zu 13.2 erster Absatz:

The Client has the right to use the plans for the specific construction project in the course of realising the work if the Contractor is charged with the partial services for the preliminary design, draft and submission and the Client has met his contractual obligations, particularly as regards settling all remuneration demands in full. This right only applies to one-off execution in line with the plans and the contract.

Alternative 2 zu 13.2. erster Absatz:

The Client has the right to use the plans for the specific construction project in the course of realising the work if the Client has met his contractual obligations, particularly as regards settling all remuneration demands in full. This right only applies to one-off construction execution in line with the plans and the contract.

- 13.3. The Client is obliged to allow the Contractor access to the site to gather information about the structural condition or to make photographic or other records after the end of the contract, as long as this does not contravene the rights of the Client.
- 13.4. The Contractor is entitled, the Client is obliged to quote the name of the Contractor in any publications or announcements related to the site. The Contractor has the right to withhold the right of the Client to issue publications with the name of the Contractor if the contractual relationship has been prematurely terminated or if the project has subsequently been changed without the approval of the Contractor.

14. Insurance

The Contractor declares that he has taken out adequate liability insurance with an insurance sum of € and a deductible of € to cover any damages related to the obligations outlined in this contract. The Contractor shall provide the Client with proof of this insurance upon request.

15. Liability / warranty

- 15.1. In consortia or joint ventures, every single partner is liable for the overall work on the solidarity principle.
- 15.2. The Contractor shall provide his services according to the standard norms and with state-of-the-art technology. The Contractor shall be liable to the Client for the correctness and completeness of the plans, calculations and other services in relation to the subject matter as per this contract.
- 15.3. In the case of slight negligence any entitlement to damages is excluded. The existence of slight or gross negligence has to be proven by the injured party. Consumer transactions are subject to the provisions laid out in the Consumer Protection Act.

- 15.4. The warranty period for all services provided by the Contractor is three years from the conclusion of all contractually agreed services.
- 15.5. If a shortcoming in the design/planning is determined, the Contractor has the right to be charged with remedying this shortcoming himself.
- 15.6. The Client acknowledges that the plans and other documents may only be used following any required permits from the authorities and the explicit approval of the Contractor.

16. Withdrawal from the contract

- 16.1. Withdrawal from the contract is only permitted with good cause that makes the continuation of the contractual relationship unacceptable for one of the contract partners. The following in particular count as good cause:
 - 16.1.1. for the Client, if
 - the Contractor continues – despite written notification – to be in breach of contract;
 - despite a reasonable grace period, the Contractor defaults in the provision of services;
 - the conditions of point 8.3. have been met.
 - 16.1.2. for the Contractor, if
 - the Client – despite written notification and a reasonable grace period – is in breach of the contract and/or fails to fulfil his duty of cooperation;
 - the Client definitively prevents the proper provision of services;
 - the conditions of point 8.3. have been met.
- 16.2. Withdrawal from the contract must be announced in writing by registered post.
- 16.3. Should the withdrawal of the contract be caused by the actions of the Contractor, he is only entitled to be remunerated for the services which he has provided up to the date of withdrawal.
- 16.4. Should the withdrawal of the contract be caused by the actions of the Client in line with § 1168 Section 1 Austrian Civil Code, the Contractor is entitled to the agreed remuneration less expenditure not incurred. The amount of the expenditure not incurred shall be set at % of the services not yet provided.
- 16.5. The rights of both contractual parties to claim for compensation through premature withdrawal from the contract where the fault lies with the other party remains unaffected.

17. Set-off/retention

- 17.1. Offsetting any counterclaims against the (remuneration) claims of the Contractor or withholding part or all of the remuneration of the Contractor is not permitted. Consumer transactions are subject to the provisions laid out in the Consumer Protection Act.
- 17.2. In the case of delayed payment by the Client, the Contractor is released from any further obligations to deliver and provide services and is entitled to withhold further deliveries and services, to demand pre-payments or deposits, or – possibly after setting a reasonable grace period – to withdraw from the contract.

18. Mediation/arbitration agreement/jurisdiction

- 18.1. Wherever possible, before filing a suit before a court or arbitration court, the parties shall attempt to resolve the dispute as part of a mediation process. The mutually agreed solution determined in the mediation process shall be binding for all parties involved in the dispute.
- 18.2. The registered office of the Contractor is agreed as the place of jurisdiction as long as no other place of jurisdiction must be obligatorily applied in line with § 14 Consumer Protection Act.

Alternative zu 18.2. (siehe Anmerkungen zu den Vertragsbeispielen!):

- 18.2. *Any legal disputes arising between the contractual parties from this contract shall - without recourse to the ordinary courts - be referred to an arbitration court, specially convened for this individual case and consisting of three arbiters. The ruling of the arbitration court is final and binding for both contractual parties.*

The registered office of the Contractor is agreed as the place of jurisdiction as long as no other place of jurisdiction must be obligatorily applied in line with § 14 Consumer Protection Act. The arbitration court rules by majority vote.

In other cases §§ 577ff Code of Civil Procedure is applicable.

Should the arbitration court, for whatever reason, fail to reach an agreement or should a claim for repeal of the decision of the arbitration court be successful, the registered office of the Contractor is agreed as the place of jurisdiction for any disputes arising from this contractual relationship, as long as no other place of jurisdiction must be obligatorily applied in line with § 14 Consumer Protection Act.

19. Limitation

The limitation period of the Client for entitlement to damages is two years from the conclusion of the services of the Contractor, at the latest within two years of issuing the final invoice, as long as there is no applicable law allowing for a shorter period of entitlement. Consumer transactions are subject to the provisions laid out in the Consumer Protection Act.

20. Final provisions

- 20.1. Should an individual provision of this contract be or become invalid, this shall have no effect on the validity of the remaining contractual provisions or the contract itself. In cases such as this, the invalid provision shall be replaced by a valid provision which corresponds as closely as possible to the economic spirit of the original provision. This also applies to contractual omissions or insufficient contractual specifications.
- 20.2. In order to be binding, amendments and additions to this contract must be in writing and must be signed by persons with the power of authorisation under the terms of this contract; this applies in particular to a change in this formal requirement.
- 20.3. Austrian law is the only law to which this contract is subject.
- 20.4. This contract shall be produced in duplicate, whereby the Client and the Contractor shall each receive one copy.

Annexes:

<Place>, <Date>

Client:

Contractor: