As at: 25/03/2021

***Preliminary remark on the use of sample contracts - please delete after taking note of contents!***

*As a service to members, sample contracts and explanatory notes relating to them (“Notes on the sample contracts”) are provided, which are intended to help you find the right wording for contract structures.  However, it is in the nature of sample contracts that they only set out “typical” contents of contracts. It is therefore essential for you to adapt the sample contracts to your needs, possibly with the help of a lawyer or in consultation with legal practitioners in your interest groups.*

*The areas highlighted in grey constitute input and selection fields. By pressing the tab key, you can move from one field to the next. Selection fields are marked with a panel on the right, which brings up a pop-up menu, allowing for selection of the requested option. Please find further information on panels and selection fields in the word processing manual.*

*If personal terms are only mentioned using the female form in the Contract, they refer equally to men and women.*

Contract on

entered into by and between:

|  |  |  |  |
| --- | --- | --- | --- |
|  Client |  |  Contractor |  |
|  |       |  |       |
|  |       |  |       |
| Address |       | Address |       |
|  |       |  |       |
| Phone |       | Phone |       |
| Email |       | Email |       |

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1. Subject of the Contract

 The subject of this Contract is formed by the services described in Annex ./1 (Scope of Services), as provided for the  Project.

1. Contractual basis

 The following shall be taken as the basis for the Contract and shall be applicable according to the ranking indicated below:

2.1 this Contract;

2.2 Scope of Services (Annex ./1);

2.3 Proposed Remuneration (Annex ./2);

2.4 Payment Schedule (Annex ./3);

2.5 the planning criteria, which are      ;

2.6 the statutory (building) regulations,

 the latest technology or architecture at the time of concluding the Contract;

2.7 General Rules on Planning Contracts (GR as at 10.04.2014);

2.8 relevant provisions of the Austrian Commercial Code (UGB) and the Austrian General Civil Code (ABGB).

1. Scope of services / additional services

3.1 The Contractor is commissioned with performing the services set out in Annex ./1 (Scope of Services).

3.2 Moreover, if the Client commissions the Contractor with services not included in this Contract, as required to achieve the performance goal, the Parties shall reach an agreement on remuneration prior to service provision.

3.3 In the event of no agreement being reached between the Client and Contractor, the Contractor is obliged to perform the required service, where necessary for achieving the performance goal and where reasonable for the Contractor; this shall be without prejudice for the existence or non-existence of a remuneration claim.

1. The Client’s preliminary tasks and obligation to cooperate

4.1. The Client shall provide the Contractor with the following documents upon contract conclusion:

4.2. The Client intends to commission the following (planning) services separately from specialist planners:

* Soil investigation/geotechnology
* Structural analysis
* Heating, ventilation and plumbing
* Electrics
* Structural physics
* Survey
* Planning and site coordinators under BauKG [Act on Construction Site Coordination]
*

4.3. The Client and the Contractor shall continually inform each other of any significant incidents relevant to the contractual relationship and fulfilment thereof.

4.4. If local site supervision is assigned to the Contractor, the Client shall refrain from issuing direct instructions to those working at the building site in order to avoid giving contradictory orders. At the invitation of the Contracor, the Client shall cooperate in final acceptance.

4.5. The Client shall take necessary decisions in good time to ensure that the planned progress of the project is not delayed.

1. Schedule

5.1. The following time periods are scheduled for the provision of civil engineering services:

5.2. The final deadlines for the provision of individual sub-services and the entire contractual term shall be set out in a mutually prepared schedule.

1. Fees

6.1. Services provided by the Contractor are charged and remunerated pursuant to Annex ./2 (Proposed Remuneration). The fees relate to the specified scope of services within the stipulated implementation period, in compliance with the schedule. An hourly rate of EUR       is agreed for services accounted for by time.

6.2. Ancillary costs:

Ancillary costs (transport/travel expenses within the office location, work copies and internal copies of any kind, copies for those involved in planning services, a sufficient number of documents as required for internal use by the Client) are remunerated at a flat rate for ancillary costs of       % of the fee. In addition, the following ancillary costs are accounted for based on actual expenditure:

* Costs of modelling and perspective depictions and computer simulations

ordered by the Client;

* official commission fees, stamp duties and legal fees, administrative charges, court costs, etc.;
* copies and reproductions of documents and plans, going beyond copies included in the flat rate

for ancillary costs.

* Travel expenses outside the office
* Costs of provision and operation of a project platform
*

6.3. Additional services resulting from changes not brought about by the Contractor, in particular due to regulatory requirements, amendments to relevant regulations and laws and changes in the Client’s requirements, shall be additionally remunerated in accordance with the increased scope of services.

1. Value adjustment/value protection

7.1 Remuneration is adjusted once a year pursuant to the adjustment factor for the base value on the basis of the Agreement of 28/01/2002 between the federal states, the BMWA [Austrian Ministry of Economics and Labour], ÖBB [Austrian Railways], HL-AG, ÖSAG [Motorways Company] and Alpenstrassen AG on the one hand and the Federal Chamber of Architects and Chartered Engineering Consultants on the other hand. The adjustment is made on 1 January each year.

7.2 In the event of the adjustment factor for the base value no longer being disclosed, it shall be replaced as the basis for future value adjustments by the index that succeeds it or best conforms to it.

1. Costing

Costings always conform to the latest state of planning at the time they are submitted and constitute forecasts as far as technically possible and assumed economic marginal conditions at the time of compilation.

1. Payment terms

9.1. The Contractor is entitled to issue partial invoices pursuant to the Payment Schedule Annex ./3.

9.2. Partial invoices shall be due for payment within 14 calendar days, and the final invoice within 30 calendar days of receipt by the Client, whereby the Contractor is also entitled to charge VAT on partial invoices.

9.3. In case of late payment, the Client’s default interest shall be paid at the statutory rate.

9.4. Until payment of the final invoice, all documents (plans, calculations, etc.) drafted by the Contractor shall remain in  ownership.

1. Delay, obstruction and interruption

10.1. If a delay, obstruction or interruption of services of the Contractor of more than 2 months occurs for a reason not attributable to the Contractor, is entitled to additionally invoice verified additional expenditure.

10.2. If the interruption set out under section 10.1 lasts more than 6 months continuously, at the request of the Contractor the status of services provided so far shall be mutually established and accounted for.

10.3. In case of delays, obstructions or interruptions of service provision, which last longer than 6 months continuously, each contractual party has the right to issue a declaration of withdrawal from the Contract.

1. Confidentiality obligation

 Within the scope of statutory confidentiality obligation, the Contractor is subject to a confidentiality obligation for all conditions and circumstances to be disclosed to  in the course of planning and construction, as entrusted to by the Client, provided the Client’s interests would be adversely affected and the Client does not explicitly release it from this obligation.

1. Safeguarding interests and Client consulting

12.1. The Contractor, by virtue of the relationship of trust between  and the Client, is subject to an obligation within the scope of the commitments undertaken by to safeguard the interests of the Client. In particular, is not permitted to accept any benefits offered by a third party; benefits gained in other ways shall be returned to the Client in their entirety.

12.2. The Contractor shall advise the Client within the scope of contractual obligations on relevant circumstances for implementation of the project using due diligence incumbent on and shall use its expertise with regard to technically flawless and economic planning and implementation.

12.3. The Contractor shall at any time provide the Client with information on matters related to the fulfilment of contractual obligations and shall give consideration to the requests and instructions of the Client. If the Contractor in employing due diligence has concerns about the advisability or suitability of the requests and instructions of the Client,  shall verifiably notify the Client hereof within the framework of warning and information requirements.

1. Power of attorney

13.1. Provided that it is also commissioned with local site supervision within the scope of the assigned services, the Contractor is authorised to represent the Client in respect of authorities and all third parties, which have to provide services for the building project. All necessary and customary acts of representation for implementation of the relevant project are covered by this power of representation, in particular conducting necessary negotiations with authorities and all professionals involved in the project, monitoring the activity of companies performing the services and other professionals, placement of orders for remedying defects and substitute performance, and the exercise of property rights on the building site. If the Contractor is not commissioned with local site supervision, authorisation to represent the Client is only valid in respect of authorities, but not to third parties, which provide services for the construction project.

13.2. The placement of orders with contracting companies and necessary specialists for project implementation, and the contractual recognition of partial or closing invoices from contractors and specialists are not covered by the authorisation to represent.

13.3. The Contractor receives a written power of attorney from the Client with content as set out in the above sections in order to allow for verification of authorisation in respect of the authorities, residents, participating professionals and other third parties.

1. Custody and surrender of documents

14.1. The original plans and data remain with the Contractor, who shall store them properly.

14.2. However, the Contractor is obliged to hand over copies of the documents in paper form to the Client on request in return for reimbursement of costs. In the event of a separate agreement resulting in documents being transmitted in editable or non-editable digital form with the Contractor’s consent, the Contractor shall assume no liability whatsoever for errors or damage to the IT system of the recipient of digital data or at third parties. The Client shall indemnify and hold the Contractor harmless in this regard.

14.3. The retention obligation of the Contractor generally ends seven years after issuing the closing invoice to the Client, yet during this period the Contractor may, by surrendering the documents to Client, be released from  storage obligation.

1. Copyright, exploitation right and right of use

15.1. The copyright and the resultant exploitation rights for plans, sketches, models, etc. produced by the Contractor remain, even after payment of the fee, with the Contractor. In particular this includes the right to execute or change the works or reproduce them through third parties.

15.2. The Client has the right to exploit plans for the relevant construction project within the scope of execution of this work if the Client has paid claims for remuneration for all commissioned partial services in full. This right only covers one-off execution in compliance with the plan and the Contract.

The use of plans/documents for other projects and transfer to third parties is only permitted with the written consent of the Contractor.

15.3. The Client is obliged to allow access to the work of the Contractor for the purpose of information on the structural condition or taking photographic or other records following termination of the Contract, unless excluded by legitimate interests of the Client.

15.4. The Contractor is entitled and the Client is obliged to mention the name of the Contractor in publications and disclosures about the works. The Contractor has the right to prohibit the Client from naming the Contractor in publications if the contractual relationship ends early or the project is retrospectively amended without the Contractor’s consent.

1. Insurance

The Contractor hereby declares that it has professional liability insurance with an insured sum of €       and an excess of €      , which shall be maintained as a minimum throughout the contractual term. At the request of the Client, the Contractor shall show confirmation of valid insurance.

1. Warranty and compensation

17.1. The Contractor shall provide services based on generally accepted technology and architecture rules. The Contractor shall be liable to the Client for the correctness and completeness of plans, calculations and other services.

17.2. The warranty period for all services performed by the Contractor is three years from completion of contractually agreed overall performance.

17.3. The Contractor has the right to be commissioned with remedying any established planning deficiencies.

17.4. The Contractor shall be liable to the Client for positive damage within the scope of compensation for ordinary negligence, provided this is covered by insurance pursuant to section 16, but not for consequential damages and lost profit. The Client shall demonstrate the existence of ordinary or gross negligence.

17.5. The Client hereby acknowledges that plans and other documents may only be used following any necessary official approval and explicit release by the Contractor.

1. Withdrawal from the Contract

18.1. Withdrawal from the Contract is only possible for good cause, which makes or would make continuing the contractual relationship unacceptable to one of the contractual partners. The following shall in particular be deemed good cause:

18.1.1. for the Client, if:

 the Contractor continues to behave in breach of the Contract – despite a written warning;

 the Contractor is in default regarding service provision – despite a reasonable period of grace;

 the requirements of section 10.3 are in place.

18.1.2. for the Contractor, if:

 the Client is in breach of the Contract – despite a written warning and reasonable additional deadline – or infringes cooperation obligation;

 the Client definitively frustrates proper service provision;

 the requirements of section 10.3 are in place.

18.2. Withdrawal from the Contract must be declared in writing.

18.3. If withdrawal from the Contract is attributable to the Contrator,  is only entitled to the fee for services that  has performed by the date of withdrawal.

18.4. If withdrawal from the Contract is attributable to the Client, the Contractor shall still be entitled to the agreed fee minus any expenditure saved pursuant to § 1168(1) ABGB [Austrian Civil Code]. The rate of expenditure saved is set out as      % of not yet performed services.

18.5. This shall not affect compensation claims due to each of the contractual parties against the other for its fault in premature contract termination.

1. Offset/retention

19.1. If the Client intends to offset compensation claims against due claims for remuneration, in particular for damages to the property, it is obliged to specify the incurred damages so broadly, based on the merits and amount, that it is possible to allocate damages to individual parts of the property and establish the extent of damage. Any offsetting that does not fulfil these requirements is invalid.

19.2. Retention of the Contractor’s fee or any part of it is only permitted up to the amount of anticipated expenditure on repairs.

19.3 In case of late payment by the Client, the Contractor is released from all other performance and delivery obligations and entitled to retain outstanding goods or services and demand advance payments or guarantees and withdraw from the Contract where appropriate after setting a reasonable additional deadline.

1. Mediation / court of jurisdiction

20.1. Where possible, the Parties shall attempt to settle any disputes amicably by means of mediation proceedings.

20.2. The offices of the Contractor are agreed as exclusive court of jurisdiction.

1. Statute of limitations

 The claims of the Client against the Contractor for compensation become statute-barred within one year of the damage and the party causing the damage being identified, but at the latest within five years of completing contractually agreed overall performance, unless the law stipulates a shorter statutory period of limitation.

1. Final provisions

22.1. In the event of any provision of this Contract being or becoming legally invalid, this shall not affect the validity of the remaining contractual provisions and the Contract itself. In this case, the invalid provision shall be replaced by a valid provision, which is economically equivalent as far as possible. The same applies to contractual loopholes or insufficient contractual arrangements.

22.2. Any amendments and supplements to this Contract require the written form to be effective and the signature of persons authorised to sign pursuant hereto; the same applies in particular to any waiver of this formal requirement.

22.3. Austrian law is solely applicable to this Contract, in exclusion of all conflict of law rules.

22.4. This Contract is drafted in duplicate, with each contractual party receiving one copy.

**Annexes:**

Annex ./1: Scope of Services

Annex ./2: Proposed Remuneration

Annex ./3: Payment Schedule

<Place>, on

 Client Contractor