

## General Terms

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## General Terms

### 1 Subject matter and scope

- (a) The following General Terms and Conditions apply to all consultancy contracts and other services provided by QPark Consulting.
- (b) These General Terms and Conditions constitute an integral part of every contract concluded, unless agreements to the contrary are reached in individual instances. They shall also apply to future business relationships with the client even if their applicability is not expressly indicated.
- (c) Deviating terms and conditions of the client and amendments and additions to these General Terms and Conditions shall only be valid insofar as acknowledged in writing by QPark Consulting. The same shall apply even if the client's Terms of Trade and/or Delivery have not expressly been opposed.

### 2 Content of the order

- (a) QPark Consulting is obliged to render the services specified in further detail in the contract. It cannot be held responsible for the attainment of specific results, in particular the materialisation of any forecasts.
- (b) If consultancy is provided in written form, the written explanations shall be binding. Oral comments by employees of QPark Consulting outside the scope of the order in question shall always be made without commitment.
- (c) QPark Consulting may call upon the services of third-party experts in meeting its obligations.
- (d) If factual circumstances change following the completion of consultancy work and QPark Consulting becomes aware of this, QPark Consulting shall not be obliged to draw these changes and the resulting consequences to the client's attention.

### **3 Deadlines; warranty**

- (a) Unless expressly agreed in writing, deadlines shall fundamentally be without commitment and represent merely an approximate period for performance. If performance agreed in writing by QPark Consulting is delayed beyond the agreed period, ensuing rights may only be enforced following written notice of a deadline of at least three weeks and warning of rejection.
- (b) If QPark Consulting performs remunerated work in the context of the order, the client shall examine it immediately following handover/commissioning and provide written notice of apparent defects within 14 days, and of hidden defects immediately upon their discovery. In such instances, QPark Consulting's warranty obligations shall be limited to rectification, price reduction or cancellation, as we deem fit. For commercial transactions, QPark Consulting shall moreover be entitled to limit warranty to the assignment of its own warranty entitlements in respect of manufacturers, suppliers and developers. If rectification by QPark Consulting fails, the client may demand cancellation or price reduction, as it deems fit. All further entitlements, in particular to compensation for direct or indirect consequential losses as a result of the defect, are excluded unless the loss is attributable to the absence of a warranted quality.
- (c) QPark Consulting is entitled to use the factual material received from the client as a complete and accurate basis. It shall be checked only for obvious inaccuracies.
- (d) QPark Consulting's consultancy services shall have no protective effect for the benefit of third parties. If claims for compensation should nevertheless be made against QPark Consulting by third parties, Section 4 shall apply.
- (e) QPark Consulting is obliged to treat in confidence all business secrets of the client of which it acquires knowledge as a result of the partnership.

### **4 Copyright and rights of use, ownership**

- (a) All drafts, concepts, ideas, work etc. prepared by QPark Consulting constitute work are protected by copyright pursuant to Luxembourgish law, even if they do not satisfy the requirements completely. All performance by QPark Consulting may consequently not be used or processed for purposes other than that specified in the contract, without the permission of QPark Consulting.
- (b) In the event of the transfer of rights, the geographical, temporal and material scope of these rights shall be based exclusively on the contractual agreements or the contractual purpose; Sections of the Luxembourgish copyright law shall apply accordingly. The rights shall only pass to the principal upon full payment of the total order.
- (c) In publications, particularly in Internet domains, QPark Consulting shall be named as the originator/developer in the customary form.
- (d) Ownership of the results of work by QPark Consulting shall only pass to the principal upon full payment of the order.

### **5 Exclusion of competition; confidentiality**

- (a) QPark Consulting undertakes to inform the principal of potential conflicts of interest involving other companies and shall, on request, grant exclusion of competition for individually specified product and service areas to the credit of QPark Consulting.
- (b) QPark Consulting undertakes to treat with confidentiality all confidential facts of which it has become aware during the fulfilment of its contract.

- (c) The principal shall be responsible for refraining from all actions which could undermine the independence of QPark Consulting's employees. The client consequently undertakes not to recruit any QPark Consulting employees who were involved in the project that forms the subject matter of the contract, nor to employ them in any other way or to make any such offers of employment to them, for the duration of the consultancy contract with QPark Consulting and for a period of 24 months afterwards. In case of violation a contract penalty of 12 monthly gross salaries of the respective employee apply.

## **6 Invoices; offsetting**

- (a) Prices agreed shall in each case be exclusive of statutory turnover tax. Invoices shall be payable in full, immediately upon receipt. After the elapsing of 30 days after the invoice date, interest shall be charged at 3% above the central-bank discount rate.
- (b) The offsetting against counterclaims or the assertion of a right of retention shall only be permissible if the client's entitlements are not disputed or are legally declared.

## **7 Remuneration**

- (a) Insofar as no fixed fee has been agreed, the actual time required shall be invoiced, taking QPark Consulting's daily rates as the basis. The basis used in calculating one day's work shall be one man-day comprising 8 hours of working time. Each hour or part of an hour shall be charged for at 1/8th of the daily rate. Each hour of overtime shall in addition incur a supplement of 25% or, from the 11th hour on the same day, a supplement of 50% per hour of overtime.
- (b) The client shall meet all expenses associated with the completion of the order, in particular for journeys by passenger car: EUR 0.60/km; rail: 1st class; air: business class or according to company policy applied to comparable staff; hotel expenses up to max. EUR 160.-. QPark Consulting shall endeavour to use the cheapest form of transport in each situation.

## **8 Costs for outside services**

- (a) QPark Consulting shall be reimbursed costs for outside and auxiliary services, such as costs for services performed by third-party experts and expenses for telephone, telefax, courier, etc. upon presentation of vouchers, unless covered by agreed lump sums.
- (b) QPark Consulting shall in addition be entitled to place orders for all external services required for fulfilment of the contract, on behalf of and for the account of the client.

## **9 Liability and dispatch**

- (a) In the event of claims based on ordinary negligence, QPark Consulting shall be liable only for an amount equivalent to the value of the order. A claim shall be deemed to mean the total entitlements of all claimants resulting from a uniform service. QPark Consulting shall not be liable for unforeseeable, contractually atypical claims based on ordinary negligence. Insofar as the client wishes insurance for a higher amount by third-party risk insurer, it shall be the client's responsibility to indicate this. In this instance, the client shall meet the costs of the higher insured amount, insofar as such cover can be arranged.
- (b) It shall not be the duty of QPark Consulting to examine legal issues, in particular relating to copyright, competition and trademark law. QPark Consulting s.a r.l shall consequently not be liable for the legal admissibility of the content and/or presentation of the results of its work. Nor can QPark Consulting be held liable for the material

claims regarding the client's products and services made in Internet domains or other publications.

- (c) If QPark Consulting receives any demands of forbearance or claims for damages from third parties on account of the presentation and/or content of the results of its work, the principal shall release QPark Consulting from liability.
- (d) Original documents shall be dispatched at the client's risk. This applies likewise if they are dispatched within the same city or via QPark Consulting's employees or vehicles. QPark Consulting is entitled, but not obliged, to insure consignments on behalf of and for the account of the client.
- (e) All claims for compensation shall be time-barred to a period of 3 years from the time when the loss became known.

## **10 Concluding provisions**

- (a) The place of performance for delivery and payment and the legal venue for all disputes between the parties to the contract shall be Luxembourg, insofar as the contractor is a trader, a legal person under public law or a public special fund. The legal venue likewise applies for other than the aforementioned persons if the contractor does not maintain a general venue in the Grand Duchy of Luxembourg, transfers its domicile and/or place of business from abroad immediately after conclusion of the contract or its domicile and/or place of business or usual place of residence are not known at the time at which proceedings are instituted.
- (b) Unless otherwise agreed, Luxembourgish law shall likewise apply to contractual relationships with foreign contractors.

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