

## General Terms and Conditions for Management Consulting

B&M TRICON GmbH

B&M TRICON Deutschland GmbH

(below B&M | TRICON)

### 1. Scope of application

1.1 These General Terms and Conditions shall apply to contracts for work the subject-matter of which is expert consulting of customers in the areas stipulated in the respective contract unless the parties have expressly agreed otherwise in writing.

Delivery of components and services provided directly related thereto, such as processing, assembling and installing of the same shall be subject to the "General Terms and Conditions of Contract and Delivery for Components" of B&M | TRICON Consulting GmbH & Co.KG.

1.2 If individual provisions of these GTC are ineffective, the effectiveness of the remaining provisions shall not be affected. The ineffective provision shall be replaced by a valid one which comes as close as possible to the objective intended.

1.3 All consulting orders and other agreements shall only be legally binding if confirmed and duly signed by Customer and shall only lead to mutual obligations to the extent agreed by written contract (contract for work).

1.4 Individually stipulated terms replace GTC as far as affected. Unconcerned Terms of GTC remain unaffected

### 2. Offer/conclusion of contract/scope of the consulting order

2.1 Offers made by B&M | TRICON shall be non-binding.

2.2 The contract shall be deemed concluded upon signing by both parties.

2.3 B&M | TRICON's activity within the scope of the present agreement shall primarily consist of consulting services, i.e. providing information about facts and circumstances including reports, analyses and the preparation of customised solution-oriented concepts.

2.4 The scope of services shall be stipulated in detail by contract. The rights and duties between B&M | TRICON and its customers will be determined in detail in an order letter (specifications) regulating the order concerned.

### 3. General basis of co-operation

3.1 B&M | TRICON shall be entitled to have the order executed (in whole or in part) by skilled employed staff or co-operation partners that may be businesses or self-employed persons.

3.2 If the order is executed at the place of Customer's registered office, Customer shall ensure that the organisational framework conditions will, to the extent possible, allow undisturbed work which supports quick progress of the consulting process.

3.3 Customer shall ensure that the documents required for performance and execution of the order will be presented to B&M | TRICON in time even without special request and that B&M | TRICON will be informed of all events and circumstances which are important to the execution of the order. This shall also apply to any and all documents, events and circumstances which become known only in the course of the consultant's work.

3.4 The relation of trust between Customer and B&M | TRICON requires that B&M | TRICON will be informed comprehensively

about consulting already provided and/or ongoing also with respect to other special fields. Customer shall assure this.

### 4. Safeguarding independence

4.1 The parties undertake to be loyal to each other.

4.2 The parties mutually undertake to take all appropriate precautions to prevent that the independence of B&M | TRICON's partners and staff will be jeopardised.

This shall in particular apply to offers of Customer for employment and/or acceptance of orders for its own account.

### 5. Reporting

5.1 B&M | TRICON undertakes to report in writing on its work, the work of its staff and, if applicable, also on the work of its co-operation partners.

5.2 Customer and B&M | TRICON agree that regular reports for the consulting order shall be provided according to the progress of work.

5.3 In principle, Customer shall receive the final report upon completion of consultancy but not later than 2 to 4 weeks after completion of the order (depending on the nature of the consulting order).

### 6. Protection of B&M | TRICON's intellectual property/copyright/use

6.1 Customer shall be obliged to ensure that the offers, reports, analyses, expert opinions, organisation plans, programmes, specifications, drafts, computations, drawings, concepts, data carriers and the like prepared by B&M | TRICON, its staff and co-operation partners in the course of execution of the consulting order will exclusively be used for purposes of the order. In particular any passing on of professional statements of whatsoever kind made by B&M | TRICON to third parties for consideration or free of charge shall be subject to B&M | TRICON's written consent. Such passing on of information shall not lead to any liability of B&M | TRICON vis-à-vis the third party.

6.2 Customer must not use professional statements of B&M | TRICON for advertising purposes. A violation of this provision shall entitle B&M | TRICON to rescind all orders not yet executed with immediate effect.

6.3 B&M | TRICON shall retain a copyright in all of its services.

6.4 In view of the fact that the consulting services rendered are B&M | TRICON's intellectual property, Customer shall only be entitled to use the same for its own purposes and to the extent defined in the contract even after having paid the fee. For each passing on of intellectual property despite this provision, even in the course of winding-up of the business or in case of bankruptcy, or making available of the same temporarily for reproduction purposes the parties agree on a contractual penalty in the amount of EUR 200,000. This contractual penalty is not subject to reduction by judgment. Any additional damage suffered by B&M | TRICON that exceeds the amount of contractual penalty agreed shall also be compensated to the full extent.

## 7. Repair of defects and warranty

- 7.1 If the agreed terms of payment are complied with B&M | TRICON shall according to the provisions set forth below warrant for any errors or defects in its consulting services which are detected at a later point in time. Warranty claims may only be deduced from statements contained in catalogues, brochures and advertising leaflets or from written or oral statements if they are explicitly referred to in the offer or in the contract.
- 7.2 The warranty period is 12 months unless special warranty periods have been agreed for individual parts of the service. The warranty period shall commence upon completion of the order, i.e. upon reporting on the analysis carried out or delivery of the developed concept, respectively.
- 7.3 Customer may only assert a warranty claim if it immediately notifies B&M | TRICON of the defects that have occurred in writing and in verifiable way including a detailed description of the same. Customer shall always have to prove that the defect existed at the time of delivery. The assumption rule of Section 924 ABGB [Austrian General Civil Code] shall be excluded.
- 7.4 B&M | TRICON shall, if a defect subject to warranty exists, at its option improve the defective service or reduce the price reasonably. In this connection Customer shall have a right that the defects be repaired free of charge.

## 8. Rescission of contract for important reason

- 8.1 Both Customer and B&M | TRICON may rescind the contract for important reason.
- 8.2 Important reasons shall include but not be limited to: if the agreed objective cannot be achieved or if either party fails to fulfil its obligations under the contract with wilful intent or gross negligence and despite a written warning fails to desist from its behaviour which is in violation of the contract within 30 days of receipt of such warning.

## 9. Liability

- 9.1 When rendering the consulting services B&M | TRICON and its staff shall act in accordance with the generally accepted principles of practice. B&M | TRICON shall be liable for damage beyond the scope of application of the Product Liability Act within the scope of statutory provisions if it can be proven that it acted with wilful intent or gross negligence. This shall also apply to violations of obligations by co-operation partners that may be businesses or self-employed persons.
- 9.2 In case of gross negligence B&M | TRICON shall be liable up to an amount of EUR 500,000. Liability for lost profit shall only apply in case of wilful intent.
- 9.3 Liability for slight negligence, compensation for lost savings, lost interest and damage due to claims of third parties vis-à-vis Customer shall be excluded. Liability for consequential and pecuniary damages shall only arise if it results from damage to property or persons.
- A reversal of the burden of proof of Section 1298 ABGB shall be excluded.
- 9.4 Claims for damages may only be asserted in court within six months of the date on which the person(s) entitled thereto became aware of the damage, however, not later than three years after the event constituting the claim occurred.
- 9.5 Damages on grounds of default may not be claimed instead of warranty claims.
- 9.6 If the activity is carried out in co-operation with a third party, e.g. a data processing company, a *Wirtschaftstreuhänder* [chartered accountant] or a lawyer, and Customer has been notified thereof,

warranty and liability claims vis-à-vis the third party which arise according to the law and the terms and conditions of the third party shall be deemed assigned to Customer. B&M | TRICON shall only be liable for fault regarding selection of that third party.

- 9.7 If contractual penalties have been agreed, any additional claims of Customer under the respective title shall be excluded.

## 10. Obligation to maintain secrecy

- 10.1 B&M | TRICON, its staff and the colleagues called in undertake to maintain secret all matters which become known to them in connection with their work for Customer. This obligation to maintain secrecy relates both to Customer and its business relations.
- 10.2 B&M | TRICON may only hand over reports, expert opinions and other written statements on the results of its work to third parties with the consent of Customer.
- 10.3 The obligation to maintain secrecy imposed on B&M | TRICON, its staff and the colleagues called in shall continue also after completion of the order. Cases in which disclosure of information is required by law shall be excluded.
- 10.4 In addition, the obligation to maintain secrecy shall not apply to information
  - which was already known to B&M | TRICON and did not originate from Customer
  - which is publicly known or will become publicly known in future without any violation of the present secrecy obligation
  - which was made accessible to B&M | TRICON in a lawful manner by third parties
  - the passing on or disclosure of which was authorised in writing by Customer.
- 10.5 B&M | TRICON shall be authorised to process personal data or have the same processed by third parties within the scope of the objectives of the consulting order. In accordance with the provisions of the Data Protection Act B&M | TRICON warrants to maintain data secrecy. As a matter of principle, any material (data carriers, data, check digits, analyses, programmes, etc.) made available to B&M | TRICON as well as all results obtained in the course of execution of the work will be returned to Customer.
- 10.6 Additional confidentiality agreements remain unaffected

## 11. Fee entitlement

- 11.1 B&M | TRICON shall be entitled to be paid a reasonable fee by Customer in consideration of the provision of consulting services.
- 11.2 If Customer prevents execution of the order after the contract has been signed B&M | TRICON shall nevertheless be entitled to the agreed fee.
- 11.3 If the order is not executed due to circumstances which constitute an important reason on the part of B&M | TRICON (cf. clause 8) it shall only be entitled to that portion of the fee which corresponds to the services rendered so far. This shall in particular apply if B&M | TRICON's services rendered so far can still be exploited by Customer despite rescission of contract.
- 11.4 B&M | TRICON may demand that its fee entitlements be fulfilled completely before it completes its service. Complaints about B&M | TRICON's work, unless in case of obvious defects, shall not entitle Customer to retain B&M | TRICON's consideration.

## 12. Fee

- 12.1 Unless otherwise agreed in writing the fee shall be calculated in accordance with the "Calculation Guidelines for Management Consultants" issued by the Association of Management Consulting

and Information Technology applicable at the date on which the bill of fees is issued.

- 12.2 Unless expressly otherwise agreed in writing the travel expenses incurred by the persons instructed by B&M | TRICON to provide a service shall not be covered by the fee.
- 12.3 In case of unauthorised use of services B&M | TRICON shall be entitled to invoice the costs incurred to Customer at the rates applicable from time to time.

**13. Applicable law, place of performance, arbitration clause**

- 13.1 The contract or agreement shall be subject to substantive Austrian law. Applicability of UN Sales Law shall be excluded.
- 13.2 The place of performance shall be the place of B&M | TRICON's registered office.
- 13.3 All disputes arising out of this contract or relating to its violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Austrian Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with the said Rules.