

General Terms and Conditions

Last revision: 01 January 2010

Article 1: General Principles

- 1.1 The following General Terms and Conditions shall apply to any and all business conducted with our Clients. As a rule, we shall not recognize any deviating terms and conditions used by a Client, nor shall such terms and conditions be deemed part of the contract simply because an order has been confirmed, and performed, without reservation. To be applicable, such terms and conditions – as well as any other deviating agreement – must have been confirmed in writing by us, E-BRIDGE Consulting GmbH, Bonn (hereinafter referred to as "E-BRIDGE").
- 1.2 These General Terms and Conditions shall apply only vis-à-vis entrepreneurs within the meaning of Sec. 310 (1), (14) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*).

Article 2: Conclusion of the Contract

- 2.1 Except where an individual offer states otherwise, our offers shall, as a rule, remain valid for 60 calendar days. A contract with us shall be deemed concluded only if the relevant offer is expressly accepted by the Client in writing (*Textform*) within said deadline.
- 2.2 In each case, E-BRIDGE's offer is based on information provided to us by the Client. The Client shall be responsible for the correctness of such information.
- 2.3 In each individual case, to be effective, any supplementary agreements, conditions, amendments or additions to an offer must be confirmed by us in writing.
- 2.4 The recipient of an offer shall be entitled to use the information (including information gained through experience) provided in the offer, by E-BRIDGE, solely for purposes of evaluating the offer itself. Such information may not be made available to any third party. In receiving our offer documents, the Client recognizes the applicability of Article 6 of these General Terms and Conditions regarding the use of such information, even in cases in which no contract with us is concluded. The same shall also apply to research proposals provided on request.

Article 3: Performance of the Contract; the Client's Obligations to Provide Assistance

- 3.1 The Client shall support the performance of the contract to the best of his ability and shall make available to E-BRIDGE the information, materials and facilities needed for performance of the contract. The Client shall take every measure to assure the safety of E-BRIDGE personnel present on the Client's premises or, upon the Client's request, at another location. The Client shall also take every measure to protect any movable property of E-BRIDGE located within the Client's sphere of responsibility during the performance of the contract.
- 3.2 In providing its consultancy services, E-BRIDGE works carefully and to the best of its capabilities and knowledge. Unless expressly agreed otherwise, E-BRIDGE shall be under no obligation for its consultancy to bring about any specific success.
- 3.3 Unless otherwise agreed, after completion of the order, we shall be entitled to dispose of, at the Client's expense, any substances, materials, or objects provided to us for the performance of the contract.

- 3.4 If the order issued to us encompasses the study, assessment or inspection of samples, the Client shall be solely responsible for selecting suitable samples and ensuring that samples are sufficiently representative.

Article 4: Modification, Delay, Extension and Termination of the Order

- 4.1 In each case, our offer is based on the understanding that the Client will fully perform all of his obligations under Article 3.1, for the entire term of the contract. We shall be entitled to claim from the Client an adequate adjustment of the pertinent order, especially with a view to its term, contents and scope, if such support should not, or not sufficiently, be provided, or if any modification of the procedures, methods or scope for the order should become necessary.
- 4.2 E-BRIDGE shall report to the Client, without delay, any circumstances that could lead to delays in performance of the contract, extensions of the term of the contract, or increases of our remuneration. In addition, E-BRIDGE shall propose to the Client any amendments or additions to the order that are suitable in light of such circumstances.
- 4.3 Where the scope of the order is modified, performance of the contract is delayed, the term of the contract is extended or the contract is terminated early, for reasons beyond our control or the control of our agents, we shall be entitled to compensation, from the Client, for any costs and damages resulting from such changes, except in cases in which a pertinent agreement expressly provides for other arrangements.

Article 5: Rates of Remuneration, Payment

- 5.1 In each case, the rates agreed for our services shall be subject to Value Added Tax in the amount required by law, as well to any other taxes or duties which E-BRIDGE is legally obliged to pay in connection with the order. The Client shall be responsible for any applicable taxes and duties not imposed or payable in Germany.
- 5.2 In general, we shall be entitled, also during the term of an order, to adjust our rates in keeping with increases in costs of labour and materials, where such cost increases are significant, where such costs could not have been foreseen when the relevant contract was concluded, and where the relevant adjustments, in light of our interests, are reasonable for the Client.
- 5.3 Services performed on a time and expenditure basis shall be charged monthly at the rates applicable at the time of invoicing. If a fixed total remuneration has been agreed upon, monthly advance instalments shall be invoiced. Moreover, expenditures actually incurred, but not included in the rates, shall be charged on a monthly basis.
- 5.4 Unless a specific payment plan, payment by cash, or payment by documentary credit has been expressly agreed upon, any and all payments to us are to be made by bank transfer, within the applicable statutory deadline (Sec. 286 (3) BGB – no later than 30 days following receipt of invoice). Any complaint regarding any of our invoices should be submitted in writing within one month; such submission shall not, however, affect the Client's obligation of payment.
- 5.5 In case of default in payment, the Client's unpaid debts shall be subject to default interest in the amount of 8 percentage points p. a. above the ECB basic interest rate (Sec. 247 BGB). Article 288 (3) and (4) shall remain unaffected.
- 5.6 The Client shall be entitled to set off his own counter-claims against our claims only where such

counter-claims are undisputed, have been accepted by us or have been recognized by declaratory judgment. The Client shall have no rights of retention of any type, except where we have already received, for a defective performance on our part, that part of the Client's counter-performance which corresponds to the value of our performance.

- 5.7 In the event of the Client's default, we shall be entitled to make any continued performance of the contract contingent upon adequate advance payments or security deposits.

Article 6: Protection of Information and Intellectual Property Rights

- 6.1 Each of the parties shall keep confidential any and all information which it has received from the respective other party within the scope of performance of the contract issued to E-BRIDGE, or of which it has acquired knowledge in any other manner, where the confidential nature of such information has been established or should reasonably have been recognized (Sec. 122 (2) BGB) by the recipient. The parties shall use such information only for the purpose for which it was provided. Such obligations shall remain in force after the relevant contract has ended or has been cancelled. Subject to the provisions in Articles 6.2 and 6.3, only upon prior written consent by E-BRIDGE may the Client disclose to a third party the models, methods, techniques and instruments (including software) used by E-BRIDGE, as well as the specifications applied by E-BRIDGE in its performance.
- 6.2 Only with the express written consent of E-BRIDGE shall the client be entitled to inform any third party regarding E-BRIDGE's procedures and working methods, or to make a report prepared by E-BRIDGE available to any third party, notwithstanding the Client's right to provide to third parties commissioned for its business operations the information necessary to that end. The Client shall subject such third parties to the same obligations of secrecy and confidential use of the information as are imposed upon the Client by this present Article 6.
- 6.3 The provisions of this Article shall not apply to information that
- a) is public, or becomes public without any unlawful act on the part of the recipient, or
 - b) is legally made available to the recipient by a third party not subject to an obligation of secrecy, or
 - c) can be shown to already have been in the recipient's possession before his receipt thereof, or
 - d) has been designated as non-confidential by the other party in a written document, or
 - e) the recipient must publish, or submit to the competent authority, by virtue of a statutory obligation.

- 6.4 Where our services are protected under provisions of intellectual property law, we transfer to the Client the rights of use pertaining to those services, with such rights being limited exclusively to the scope of use intended by the contract. The scope of the right of use, with regard to location, time and content, shall be determined by the purpose of the contract. The agreed remuneration shall cover the rights of use, under laws pertaining to intellectual property and to service protection, to this extent. Any use above and beyond said scope shall be subject to the payment of a separate remuneration that must be agreed upon with us in writing. The use intended by the contract in the above sense shall be deemed to encompass duplication, regardless of medium, of documents provided by us, for use solely within the Client's own organization and business operation.
- 6.5 Where a report prepared by E-BRIDGE is clearly intended, in light of its nature, to be provided to third parties, for the purposes of evaluation, testing, inspection or examination, such provision shall be permissible only via verbatim publication of the entire report in the language in which it was written. Without explicit permission by E-BRIDGE in writing, the Client may not in any way imply to third parties that such a report has been certified or approved by E-BRIDGE.
- 6.6 Without E-BRIDGE's explicit written permission, the Client shall not be entitled to use, or allow the use of, E-BRIDGE's name or the name of a report provided by E-BRIDGE, in whole or in part, in order to enforce claims, to conduct legal proceedings, or to carry out advertising purposes.

Article 7: Performance by Third Parties

For the due performance of our obligations under the contract, we shall be entitled to employ the services of third parties. Our own responsibility for due performance of the contract shall remain unaffected thereby.

Article 8: Liability

- 8.1 E-BRIDGE shall be liable for damages – regardless of legal grounds – only if the damage a) was caused by culpable violation of a material obligation under the contract (*schuldhaftes Verletzung einer vertragswesentlichen Pflicht – Kardinalpflicht*) in such a way as to endanger the achievement of the purpose of the contract, or b) has arisen out of gross negligence or wrongful intent (*grobe Fahrlässigkeit oder Vorsatz*) of E-BRIDGE, its directors or its officers.
- 8.2 To the extent that we are liable, under Article 8.1 a), for the violation of a material obligation under the contract, without such violation's having been caused by gross negligence or wrongful intent, our liability shall, as a general principle, be limited to the amount of the remuneration agreed upon (exclusive of Value Added Tax). In no event shall it exceed 500,000.00 €, however.

- 8.3 The limitation of liability under 8.2 shall apply, *mutatis mutandis*, to the liability of E-BRIDGE for damages which were caused by gross negligence or wrongful intent on the part of any of E-BRIDGE's employees or agents who are neither directors nor officers of E-BRIDGE.
- 8.4 E-BRIDGE shall also be liable for the loss of data, programmes and other information and their recovery, but only within the scope defined by 8.1 to 8.3, and only to the extent that such loss could not have been avoided by adequate precautions on the part of the Client, especially by the daily production of back-up copies of all data and programmes.
- 8.5 The limitations of liability under 8.1 to 8.4 shall, by analogy, also apply in favour of the employees and agents of E-BRIDGE.

Article 9: Statute of Limitations

Any and all of the Client's claims for damages shall expire within three years. Sec. 634a BGB – special limitation periods, *inter alia*, for construction works – shall not be affected.

Article 10: Termination of Contract, Delay by Force Majeure

- 10.1 We shall have the right to terminate the contract with the client, without having to observe any notice period, for an important reason. Important reasons shall include, but not be limited to,
- a) the impossibility of providing our services, for reasons for which the Client is responsible,
 - b) the opening of insolvency proceedings in respect of the Client's assets, or an application for opening of such proceedings, provided that said application has not been withdrawn within two weeks from the date of its filing, or the rejection, for lack of assets, of an application for the opening of insolvency proceedings in respect of the Client's assets,
 - c) the closure or dissolution of the Client's business enterprise.
- 10.2 Our obligation to perform shall be suspended in cases of force majeure, i.e., of war, strike, lock-out, civil unrest, extreme weather conditions or general shortages of supplies. Should the period during which the performance of our obligations is impossible, due to force majeure, last longer than 30 days, each of the parties shall have the right to terminate the contract without having to observe a notice period; any reciprocal rights of damages shall, however, be excluded in such case.

Article 11: Applicable Law, Jurisdiction, Language

- 11.1 This contract shall be governed by, and construed in accordance with, German law.
- 11.2 Any and all disputes arising out of, or in connection with, the contract, or regarding its validity, shall exclusively be brought in the competent courts at the business seat of E-BRIDGE. E-BRIDGE shall also have the right to bring legal action in any other admissible venue.

- 11.3 To the extent that no other agreement has been made with us, the language of the contract, of correspondence and of documentation to be provided by us shall be German. Any necessary translations shall be at the Client's expense.
- 11.4 This translation of our General Terms and Conditions into English is provided for convenience only. In case of any divergence between this translation and the original German text, the latter shall prevail.

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