

FIBAA, ORGANISATIONAL UNIT

"FIBAA CONSULT" (hereinafter "FIBAA")



General Terms and Conditions of Consultancy

Status: 01 May 2024

§ 1 - Subject matter, time and place of performance

- (1) The subject matter, time and place of performance shall be contractually determined by the parties.
- (2) If the subject matter of the consultation is an evaluation procedure pursuant to ESG¹ (3.1), § 11 of these Terms and Conditions shall also apply in this respect.

§ 2 - Reporting

- (1) FIBAA provides the commissioning party with oral information about its ongoing work and its results.
- (2) Reporting may take the form of written interim and final reports as agreed. Deviations affected by this can be contractually agreed.

§ 3 - Acts of cooperation by the Client

- (1) If the contractually owed service requires the determination of one or more dates by the contracting parties, this shall be done - unless otherwise agreed - at the suggestion of FIBAA in consultation with the commissioning party. If it is not possible to agree on a date within one year of the conclusion of the contract, FIBAA shall have an extraordinary right of termination. If the commissioning party has not made its own initial offers of dates within this year, this constitutes insufficient cooperation and thus a breach of duty.
- (2) The commissioning party must ensure that all documents relevant to the performance of its activities are submitted to FIBAA. Likewise, it must provide FIBAA with all information relevant to the performance of its activities and disclose all events, facts and circumstances relevant to the performance of its activities.
- (3) Notwithstanding subsection (1), FIBAA is entitled to request further documents and information that may be relevant for the fulfilment of its contractual obligations from the commissioning party at any time, setting a reasonable deadline. The specified deadline shall be decisive for the timeliness of the submission of the documents pursuant to sentence 1 by the commissioning party.
- (4) Unless otherwise agreed, the latest time for the transmission of information pursuant to paragraph (1) is eight weeks prior to the agreed date of performance. The commissioning party shall inform FIBAA without delay of any documents, processes, facts and circumstances

¹ Standards and Guidelines for Quality Assurance in the European Higher Education Area, online at: https://enqa.eu/wp-content/uploads/2015/11/ESG_2015.pdf.

pursuant to paragraph (1) of which it only becomes aware during the course of FIBAA's activities.

- (5) FIBAA is not obliged to check the completeness and correctness of data, information or other services provided by the commissioning party, unless there is reason to do so in consideration of the respective circumstances of the individual case or the check is not an explicit part of the contract. At FIBAA's request, the commissioning party must confirm in writing the correctness and completeness of the documents provided by it as well as its information and verbal statements.
- (6) The commissioning party shall in turn appoint and authorise a contact person and representatives.
- (7) Insofar as one or more acts of cooperation by the party placing the order are required for the performance of the service, it shall provide these in good time and at its own expense. If the party placing the order is in default with the acceptance of the services or does not fulfil its duties to cooperate, or does not do so in time, properly or truthfully, FIBAA is entitled, after issuing a reminder and setting a deadline, to invoice it for the additional expenditure incurred as a result or to demand the agreed remuneration for the services not provided as a result of the default or lack of cooperation and to terminate the consultation without being obliged to provide additional services. Further legal claims are expressly reserved.

§ 4 - Remuneration, shipping costs, payment, due date

- (1) The fee agreed for the execution of the order shall only apply to the contractually agreed services. Changes to the scope of the order must be made in writing and are subject to additional payment.
- (2) Unless a lump-sum reimbursement of travel costs and hotel accommodation as well as expenses has been expressly agreed or an individual cost arrangement has been made, all travel costs and hotel accommodation shall be invoiced by the commissioning party in accordance with the provisions of §§ 5 to 7 in addition to the contractually agreed commission remuneration.
- (3) The ordering party shall bear all necessary shipping costs.
- (4) The settlement of the costs and the shipping costs according to paragraphs (2) and (3) shall take place - unless otherwise agreed - after completion of the order. It shall be accompanied by the necessary copies of receipts and proofs.
- (5) The party placing the order shall bear the obligation to perform in advance.
- (6) FIBAA may demand reasonable advances and payments on account on the remuneration and reimbursement of expenses.
- (7) All invoices are to be paid without discount and free of charges according to the agreed payment plan, otherwise within twenty days after receipt of the invoice by bank transfer. The costs of the bank transfer shall be borne by the party placing the order.
- (8) If FIBAA is entitled to more than one claim against the party placing the order, FIBAA shall determine which debt the payment shall be credited against.
- (9) The party placing the order shall only be entitled to possible rights of set-off insofar as its counterclaims have been legally established, are undisputed or have been recognised by FIBAA in writing. The same applies to the assertion of rights of retention. Sentences 1 and 2 shall only

apply to such set-off claims which are not synallagmatic with the claim of FIBAA against which they are objected.

- (10) If, after the conclusion of the contract, it becomes apparent that FIBAA's claims against the commissioning party are at risk due to the commissioning party's lack of ability to perform, FIBAA shall be entitled to perform outstanding services only against advance payment or the provision of security and to withdraw from the contract after the fruitless expiry of a period set for this purpose.

§ 5 - Conditions for travel expenses

- (1) Travel expenses consist of travel expenses, additional subsistence expenses and hotel accommodation and shall be borne by the commissioning party.
- (2) The principles of economic efficiency and economy must be observed when planning and carrying out trips. The booking and payment of travel (airline tickets, train tickets, rental cars, hotel accommodation) is always made via the FIBAA secretariat. In justified cases, travel on the evening before the appointment is guaranteed.
- (3) The calculation of travel expenses and the additional cost of meals shall be made in accordance with the Federal Travel Expenses Act (BRKG) in its currently valid version.
- (4) Further expenses will be reimbursed up to an amount of 50 Euros per counsellor and commenced day of assignment, provided they are justifiable or necessary and proven (e.g. fees for telephone calls, costs for internet use).

§ 6 - Breaches of duty, liability

- (1) FIBAA excludes liability for slightly negligent breaches of duty, unless damages from injury to life, body or health or guarantees are affected. Furthermore, liability for the breach of obligations, the fulfilment of which makes the proper execution of the contract possible in the first place and the observance of which the party placing the order may regularly rely on, shall remain unaffected. The same applies to breaches of duty by vicarious agents.
- (2) In case of doubt, the liability for property damage and financial loss within the meaning of subsection (1) sentence 1 shall be limited to the damage typical for the contract and foreseeable for the contracting parties at the time of conclusion of the contract.
- (3) Insofar as FIBAA's liability for damages is excluded or limited in accordance with the above provisions, this also extends to the personal liability of FIBAA's executive bodies, experts, employees and other staff, representatives and vicarious agents, and also applies to all claims arising from tort (§§ 823 ff. BGB).
- (4) If the party placing the order is in default with the acceptance of services or does not fulfil its duties to provide information or to cooperate in accordance with § 3 - in particular the duty to provide, prepare or adapt information and materials - or does not do so in a timely manner or in a timely, proper or truthful manner, FIBAA shall be entitled to invoice the additional expenses incurred as a result, if this still appears to be fair, or to demand the agreed remuneration for the services not provided as a result of the default or defective cooperation and to terminate the proceedings without being obliged to provide subsequent performance. Further legal claims are expressly reserved. FIBAA's rights in accordance with sentence 1 must be preceded by a reminder and the setting of a deadline by FIBAA, insofar as a reduction in damages can be achieved through this.

§ 7 - Data protection

- (1) FIBAA processes personal data exclusively within the framework of the DSGVO as well as within the provisions set out under Art. 95 DSGVO in conjunction with. §§ 11-15a of the German Telemedia Act ("TMG").
- (2) The data controller is the Foundation for International Business Administration Accreditation (FIBAA), Berliner Freiheit 20-24, 53111 Bonn, Germany. The data protection officer is lawyer Georg Baumann, Eichholzer Str. 80, 50389 Wesseling, Germany (dsb@fibaa.org). FIBAA's privacy policy is published online on the FIBAA website.²

§ 8 - Reviewers: Impartiality, Confidentiality, Security

- (1) If FIBAA commissions further reviewers to fulfil the contract, these will be selected in accordance with the criteria for the appointment of FIBAA reviewers.
- (2) FIBAA is obliged to ensure the impartiality of the reviewers and to instruct them on the confidentiality, data protection and security guidelines to be observed.
- (3) FIBAA has published the declaration of impartiality, confidentiality and data protection instruction and security guideline.

§ 9 - Evaluation procedure according to ESG

- (1) For evaluation procedures according to ESG (3.1) (§ 1 (2)), the regulations of the following paragraphs shall additionally apply.
- (2) The final report of the evaluation process is published on the FIBAA homepage.
- (3) FIBAA recommends that the commissioning party conduct a re-evaluation after the deadline specified in the final report.

§ 10 - Code of Conduct and Anti-discrimination

FIBAA and the reviewers it employs declare that they do not discriminate either directly or indirectly, in particular on the grounds of ethnic origin, religion and belief, disability, age, sexual identity or gender.

§ 11 - Separation between counselling and examination procedure

In accordance with ESG (3.1), a clear functional separation between consulting and accreditation or certification is always observed in order to ensure impartiality and objectivity in FIBAA's assessment procedures.

§ 12 - Contract, exclusion of repayments

- (1) The contract becomes effective with the signature of both parties.
- (2) The repayment of down payments and partial payments already made is excluded.

² <https://www.fibaa.org/datenschutz>.

§ 13 - Final provisions

- (1) Amendments, collateral agreements and supplements as well as agreements on quality or the assumption of guarantees require the express written confirmation of FIBAA in order to be effective. This also applies to a cancellation of this clause.
- (2) If individual provisions of this contract are or become invalid, this shall not affect the validity of the remaining provisions. In this case, the contracting parties shall replace the invalid provision with another provision that comes closest to the economic purpose of the omitted provision and in a permissible manner in appropriate consideration of the interests of both parties. If this is not possible, both parties may withdraw from the contract. In this case, FIBAA is entitled to partial remuneration and reimbursement of all expenses incurred to date.
- (3) Conflicting or deviating terms and conditions of the party placing the order shall only be binding for FIBAA if they are expressly recognised in writing.
- (4) Only the civil law of the Federal Republic of Germany shall apply to all consultancy assignments, their execution and the claims arising therefrom. This shall also apply if the higher education and education law of other states is taken into account in certain proceedings. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (5) The place of jurisdiction for all proceedings is Bonn. In the case of cross-border services, the registered office of FIBAA shall be the exclusive place of jurisdiction for all disputes arising from the contractual relationship. However, FIBAA reserves the right to sue the party placing the order at its general place of jurisdiction or to invoke any other court that has jurisdiction on the basis of the EuGVÜ or the EuGVVO.