

## **General Procedural Conditions of Contract for Consultancy Services of FIBAA Consult as an Organisational Unit of FIBAA (hereinafter FIBAA)**

as of 01.08.2016

### **Preamble**

The following General Procedural Conditions are applicable in the version valid at the time the contract is concluded for all the consultancy services provided by FIBAA, also in the future with regard to contractors, companies and legal persons under public law.

### **§ 1 – Subject, Time and Place of Consultancy Service**

(1) The contract parties agree by contract on the consultancy matter, time and place of the service provision.

(2) If the object of the consultation is an evaluation procedure, also § 11 of these conditions apply.

### **§ 2 – Reporting**

(1) FIBAA provides the Client with oral information on the ongoing work and their results.

(2) The reporting can according to prior agreement be in form of written interim and final reports. Deviations affected by this may be agreed on by contract.

### **§ 3 – Obligation of the Client to cooperate**

(1) If for the contractually due performance the determination of one or more dates is required by the contracting parties, this is done - unless otherwise expressly agreed on - at the suggestion of FIBAA in consultation with the Client. If an agreed date within one year after conclusion of the contract cannot be found, FIBAA has an extraordinary right of termination. If the Client did not seriously offer dates for appointments within this year, its cooperation is inadequate and therefore a breach of duty.

(2) The Client must ensure that FIBAA is provided with all the documentation necessary to carry out its services. Likewise, it has to ensure that FIBAA is provided with all information relevant to the performance of FIBAA's activities as well as any operations, activities, facts and circumstances which may be relevant to the performance of FIBAA's activities.

(3) Notwithstanding paragraph 1, FIBAA is entitled, at any time, within an adequate appointment of date to request further documentation and information that may be relevant to the performance of

its contractual obligations. The definite deadline is decisive for the timeliness of the transmission of the documents by the Client pursuant to sentence 1.

(4) The latest date for the transmission of information pursuant to paragraph 1 shall be eight weeks prior to the date of the agreed service, if no other date was agreed on by contract. Documents, events, facts and circumstances, which becomes known to the Client during the activities of FIBAA, FIBAA is immediately informed of.

(5) FIBAA is not obliged to check the completeness and correctness of the provided data, information or other services, as far as no reason, taking into account the respective circumstances of the individual case, or agreement by contract exists. At the request of FIBAA, the Client must confirm in writing the accuracy and completeness of the documentation it has submitted as well as its information and verbal declarations.

(6) For its part, the Client will nominate and authorise a contact person and representative for the contracted services.

(7) Insofar as any individual or repeated cooperation is required to undertake the service from the Client, it must provide this promptly and at its own expense. If the Client delays claiming the services or does not satisfy its obligations to cooperate or does not do so promptly, correctly or truthfully, FIBAA is entitled after issuing a warning and setting a deadline to invoice the additional expenditure incurred as a result, if this still seems fair, or to demand the agreed remuneration for the services not provided following the delay or lack of cooperation and to discontinue the procedure without being obliged to provide subsequent performance. More extensive statutory claims remain expressly reserved.

### **§ 3 – Remuneration, Forwarding Costs, Payment, Due Date**

(1) The fee agreed to implement the services applies only to carrying out the services. Extensions to the scope of the order are to be remunerated.

(2) Unless expressly a flat-rate remuneration of the travel and overnight expenses as well as expenditures have been agreed on or an individual cost arrangement has been made, the billing of all travel expenses is made in accordance with the specifications in §§ 5 to 7 in addition to the contractual remuneration by the Client. In this case, additionally the Client has to refund the general rates of living expenses / absence, to such a degree as they incurred.

(3) The customer bears all necessary shipping costs.

(4) Settlement of the costs and shipping costs in accordance with § 2 & 3 will be made after completion of the services. The necessary copies of receipts and documentary evidence will be enclosed.

(5) All the prices indicated are understood to be plus the statutory turnover tax owed.

(6) The Client bears the duty to pay in advance.

(7) FIBAA may demand appropriate advance payments and partial payments for the remuneration and reimbursement of out-of-pocket expenses.

(8) Repayment of already paid in and partial payments is excluded.

(9) All the invoices are to be paid exempt from charges without any cash discount deduction in accordance with the agreed payment plan, otherwise within twenty days after receipt of the invoice by means of a bank transfer. The costs of the transfer are to be borne by the Client.

(10) If FIBAA has several accounts receivable with the Client, then FIBAA will stipulate against which debt the payment will be offset.

(11) The Client has set-off rights only if its counterclaims have been determined in law, are undisputed or recognised in writing by FIBAA. This also applies to the assertion of rights of retention. Sentence 1 and 2 apply only to such set-off claims which not counter-synallagmatically opposes the claim of FIBAA, against which they are objected to.

(12) If it becomes evident after the conclusion of the contract that the accounts receivable of FIBAA towards the Client are jeopardised owing to a lack of performance by the Client, FIBAA is entitled to carry out any outstanding services only against an advance payment or provision of security and to withdraw from the contract, if the deadline set for this expires unsuccessfully.

## **§ 5 – Conditions for Travel Costs**

(1) Travel expenses consist of travel expenses and catering expenses.

(2) In case of travel planning and implementation, the principles of profitability and cost effectiveness are followed. The booking and payment of trips (flight tickets, railway tickets, car rental, hotel accommodation) are made via FIBAA Secretariat.

(3) Travel costs amount to the following per consultant for the use

- of their own vehicle or a vehicle intended for their private use or a powered two-wheeler: € 0.30 per kilometre driven
- of public local transport, ferries, other means of transport: costs of a second class ticket (or comparable)
- of scheduled airlines: for flights within Europe, the costs of the lowest class;
- of taxis and rental cars: actual costs.

All the means of transport may be combined sensibly. Any ancillary costs and fees will also be reimbursed, insofar as they are justified or necessary (e.g. motorway tolls and parking charges).

(4) FIBAA is obliged to calculate travel costs in each case according to the shortest distance and to undertake or approve travel where the costs are not sensibly in relation to the total fee only after consultation with the Client. Travel by the consultants starts and ends at their relevant place of residence. Combinations that are more favourable are considered to be approved.

## **§ 6 – Conditions for Overnight Stays**

(1) In justified cases travel arriving the evening before the service provision date will be approved.

(2) The organisation of the necessary accommodation (single room in a medium price category) will be assumed by FIBAA. All the costs of overnight accommodation (incl. breakfast) during travel to and from the location of the Client and at the location of the Client will be borne by the Client.

## **§ 7 – Conditions for additional Expenses**

Insofar as they are justified or required and evidence has been provided, additional expenses will be reimbursed up to an amount of 50 Euro per person per started day of deployment (e.g. costs of telephone calls, costs for Internet use).

## **§ 8 – Liability**

(1) FIBAA rules out any liability for slightly negligent infringements of obligations, insofar as this does not concern losses from damages arising out of death, injury to body or health or guarantees. In addition, liability for the infringement of obligations, whose satisfaction only makes correct implementation of the contract possible in the first place and on whose satisfaction the Client must rely on a regular basis remain unaffected. This also applies to infringements of obligations by vicarious agents.

(2) In the event of any doubt, liability for material and financial losses, in accordance with paragraph 1 sentence 1, is restricted to losses typical for the contract, and those, which were envisaged by the contracting parties when they concluded the contract.

(3) Insofar as FIBAA's liability to provide compensation is ruled out or restricted in accordance with the above-mentioned regulations, this also covers the personal liability of the bodies, consultants, employees and other staff, representatives and vicarious agents of FIBAA and applies to any claims from unauthorised acts, too (§§ 823 ff. BGB).

(4) If the Client is in default with the acceptance of services or its Information or co-operation obligations pursuant to § 3 - in particular the duty of the transfer, preparation or adaptation of information and materials - not, not In due time or not in due time, in accordance with the regulations or in accordance with the provisions of the law, FIBAA shall be entitled, to charge for the extra costs incurred in this case, if this is still reasonable, or to demand the agreed numeration for, due to the delay or lack of co-operation, not provided services. Further legal claims remain expressly reserved. According to the rights of FIBAA sentence 1, a demand note and deadline set by FIBAA is precedent, provided that this results in a mitigation of damages.

## **§ 9 – Confidentiality, Protection of Data Privacy, Documentation**

(1) FIBAA is obligated to observe secrecy concerning all information relating to its service for the Client, whether towards the Client itself or his business connections, unless the Client releases FIBAA from this confidentiality obligation.

(2) FIBAA is under obligation to process or processing personal data entrusted to it only within the scope of its activity and in connection with the present contract. If third parties are involved, the Contractor must impose the same obligations to the Subcontractor.

(3) All process-relevant data will be stored and processed electronically for the duration of the procedure.

## **§ 10 – Impartiality, Confidentiality, Protection of Data Privacy and Security of the Experts**

(1) If FIBAA assigns additional experts on the fulfilment of a contract, these experts are selected according to published criteria.

(2) FIBAA is obliged to ensure the impartiality of the experts and to instruct them about compliance with the confidentiality, protection of data privacy and security guidelines.

(3) FIBAA has published the declaration of confidentiality, guidelines of privacy and protection of data privacy as well as the safety guideline.

#### **§ 11 – Evaluation Procedure**

(1) For evaluation procedures (§ 1 para. 2) the regulations of the following paragraphs additionally apply.

(2) The Client may file a written complaint with FIBAA against the result of the evaluation within one month after receipt of the final report (§ 2 para. 2). The appeal must be justified. FIBAA's decision-making body decides conclusively on them, taking into account the statement of grounds of appeal. In the event of rejection of the complaint, the Client bears the costs incurred in the appeals procedure.

(3) The final report of the evaluation procedure will be published on the FIBAA homepage.

(4) FIBAA recommends the Client to carry out a re-evaluation after the deadline specified in the final report.

#### **§ 12 – Code of Conduct and Anti-Discrimination**

FIBAA and the experts employed by the FIBAA declare that they do not directly or indirectly discriminate, in particular because of ethnic origin, religion and ideology, disability, age, sexual identity or gender.

#### **§ 13 – Evaluation of Consulting and Evaluation Procedures**

For the purpose of continuous improvement, FIBAA collects feedback on the quality of its activity from the Client after the service has been completed.

#### **§ 14 – Separation between Consultation and Test Processes**

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

#### **§ 15 – Contract Duration and Termination**

(1) The contract becomes effective with the signature.

(2) If no deadline is set, or if the subject of the contract does not conclude the expiration of the contract, the contract is concluded for an indefinite period and may be terminated with due notice two weeks prior to the end of month. The right for a dismissal with immediate effect remains unaffected.

(3) Cancellations must be made in writing in order to be effective.

#### **§ 16 – Final Provisions**

(1) Amendments, ancillary agreements and supplements as well as quality agreements or the assumption of guarantees require the express written confirmation of FIBAA to be effective. This also applies to a cancellation of this Clause.

(2) If individual provisions of this Contract are or become ineffective, then this will not affect the validity of the remaining provisions. The contractual partners will in this case replace the invalid provision with another provision, which is as close as possible in economic purpose to the omitted regulation by observing higher-ranking procedural conditions and with appropriate protection of mutual interests in a permitted manner. If this is not possible, both Parties may withdraw from the Contract. In this case, FIBAA is entitled to partial remuneration and compensation for all previous expenditure.

(3) Conditions of the Client to the contrary or which deviate are binding for FIBAA only if they have been expressly recognised in writing.

(4) Only the civil law of the Federal Republic of Germany applies to all the procedures, their implementation and any claims arising from the latter. This also applies if in certain procedures the Client and education law of other countries is taken into consideration. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is ruled out.

(5) The place of jurisdiction for any proceedings is Bonn. With regard to cross-border services, the registered office of FIBAA is the exclusive place of jurisdiction for any disputes arising from the contractual relationship. However, FIBAA retains the right to take legal action against the Client at its general place of jurisdiction or to apply to any other court, which is responsible based on the EuGVÜ or the EuGVVO.