

## TERMS AND CONDITIONS OF ENGAGEMENT (TERMS) OF WARBEK ATTORNEYS AT LAW

### SECTION 1

#### SCOPE OF APPLICATION

- 1.1 WARBEK Attorneys at Law is a cooperation of the independent and self-employed lawyers Dr. Stefan Warbek and MMag. Dr. Johannes Ziller (hereinafter: the "Attorney"). A client-attorney relationship shall only be established between the respective Attorney commissioned and the Client. These Terms and Conditions of Engagement (hereinafter: the "Terms") shall apply equally to each of the aforementioned attorneys.
- 1.2 These Terms are applicable to any services provided by the Attorney in respect of the professional representation of parties and the provision of legal advice in judicial and extra-judicial matters, the acceptance of escrows, the drafting of documents or any other services provided in the context of a contractual relationship between the Attorney and the Client.
- 1.3 Unless the following terms and conditions modify any existing legislation, an engagement is governed by and construed in accordance with the provisions of the Regulations Regarding Lawyers' Practices (*Rechtsanwaltsordnung - RAO*), the Civil Code (*Allgemeines Bürgerliches Gesetzbuch - ABGB*), including but not limited to those on granting power of attorney (Sections 1002 *et seq* ABGB). Engagements which are subject to the Consumer Protection Act (*KSchG*) shall be governed by these Terms only to the extent that these Terms are not opposed to those of the Consumer Protection Act. Amendments or side agreements shall be made in writing to be valid and are applicable only for a particular engagement.
- 1.4 These Terms shall be valid from the first engagement accepted in reliance on these Terms until new Terms are issued, as well as for all future or new engagements, even if those are accepted without any reference to these Terms.

### SECTION 2

#### ENGAGEMENT AND POWER OF ATTORNEY, PRINCIPLES OF REPRESENTATION

- 2.1 Attorney is entitled and obliged to represent the Client in a way necessary for and conducive to executing his engagement. If there is any change in legislation after the end of an engagement, even in case of a regularly recurring Client-Attorney-relationship ("Permanent Business Relationship") Attorney shall not be required to point out any changes or resulting consequences to the Client.
- 2.2 Engagements may either be written or oral, or by way of implied action (for example by making legal inquiries or search inquiries). For this purpose, the Client grants Attorney the following authorities, provided that these are necessary to execute the engagement:
  - a) Authority as process agent (Section 9 Service Act (*ZustellG*)).
  - b) Authority to conduct all kinds of civil proceedings (Section 31 Code of Civil Procedure (*ZPO*)).
  - c) Authority to receive for the Client's account any capital, along with interest, paid by an opponent or awarded by authorities or courts, or any other monies to be refunded by the court, as well as cost reimbursements.
  - d) Authority to make filings with the land register (including but not limited to those aimed at a loss of the principal's registered rights) and to conduct all related procedures (Section 77 (1) Land Register Act (*GBG*) in conjunction with Section 75 (2) GBG in conjunction with Sections 1, 4 and Section 6 (4) Non-Litigious Proceedings Act (*AußStrG*) in conjunction with Section 30 (2) ZPO; Section 30 (2) ZPO in conjunction with Section 77 (2) GBG).
  - e) Authority to represent the Client in all kinds of proceedings before administrative authorities (Section 10 (2) of the Act on General Administrative Procedure (*AVG*) in conjunction with Sections 1006 or 1008 ABGB).
  - f) Authority to conduct proceedings before constitutional and administrative courts (Section 8 (1) RAO and Section 30 (2) ZPO in conjunction with Section 17 (2) and

- Section 35 (1) of the Constitutional Court Act (*VfGG*); Section 8 (1) RAO and Section 10 AVG in conjunction with Section 24 (2) and Section 62 of the Supreme Administrative Court Act (*VwGG*)).
- g) Authority to defend the Client in criminal cases (Section 39 Criminal Code (*StPO*)).
  - h) Authority to represent the client in all kinds of proceedings before fiscal authorities (Section 83 Federal Tax Code (*BAO*) and by analogy the provisions of the provincial tax codes of all Austrian provinces, in conjunction with Sections 1006 and 1008 ABGB) and authority to prepare tax returns (*abgabenrechtliche Selbstberechnungserklärungen*).
  - i) Authority to procure the electronic archiving of documents in the document archives of the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*), which are intended to be filed electronically with the courts.
- 2.3 Client acknowledges that an engagement may be executed by any associate of Attorney, subject to his or her professional qualifications (sub-power of attorney). Attorney is also entitled to appoint at any time another attorney-at-law not employed by Attorney (substitute) with the same or a limited power of attorney in order to execute the engagement. In this context, Attorney shall only be liable for fault when selecting the substitute (*culpa in eligendo*).
- 2.4 As a matter of principle, Attorney may provide its services at its own discretion and do anything, including but not limited to employing any means of attack or defense, which are not incompatible with the Client's engagement, its conscience or the law. Attorney will refuse to follow any of the Client's instructions, if this would be incompatible with standards of proper professional practice based on the law or other professional legal principles (such as the Legal Practice Guidelines (*Richtlinien für die Berufsausübung der Rechtsanwälte [RL-BA]*) or the case law of the Austrian Supreme Court [*Oberster Gerichtshof*]). If Attorney believes that instructions would not be reasonable or even disadvantageous for the Client, Attorney will notify Client of potentially detrimental consequences before executing these.
- 2.5 In case of imminent danger, Attorney may also do or omit anything not expressly covered by the engagement or do or omit anything contrary to the issued instruction, if Attorney believes that this needs to be done or omitted in the Client's interest.
- 2.6 Client shall sign a written power of attorney form upon Attorney's request. That power of attorney may be issued for certain defined or all possible transactions or acts.
- 2.7 Attorney shall inform Client on an on-going and written basis about the results of his services and provide Client with all relevant documents. Those documents shall be served to the last address disclosed to Attorney.
- 2.8 Client agrees that communication takes place via electronic mail ("e-mail") if he discloses his e-mail address on stationary or business cards or sends an e-mail to Attorney. Client acknowledges that due to the technical realities of the Internet, data may be lost, forged or uncovered by third parties during transmission via e-mail. Attorney does not accept any liability for those consequences. Attorney may transmit e-mails without digital signature and without specific electronic security precautions (specific e-mail encryption, such as S/MIME-based e-mail encryption and signature). At Client's request, secure electronic communication may be used. Cash expenses due to the use of secure electronic communication shall be borne by the client.
- 2.9 Electronic communication with Attorney shall be made exclusively via the e-mail address [office@warbek.at](mailto:office@warbek.at). When sending messages in new matters that contain deadlines or appointments, Client must reassure himself/herself by telephone in due time before the end of the deadline or appointment that the message in question has actually reached Attorney.

### SECTION 3 PROFESSIONAL FEES

- 3.1 Attorney notes that initial legal information and advice, respectively, is chargeable. Free initial legal services are offered by the Bar Association of Tyrol and will be provided by the lawyers assigned for that purpose; you may register directly with the Bar's offices at Meranerstraße 3/III, A-6020 Innsbruck, phone: +43(0)512/587067) (current information is available at <http://www.tirolerrak.at>).
- 3.2 In consideration for its services, Attorney is entitled to reasonable professional fees (Further information about legal fees is available at the Bar Association at "http://www.rechtsanwaelte.at/downloads/mein\_recht\_ist\_kostbar.pdf"). If Attorney has not agreed with Client on the fees in advance, the rates of professional fees are governed by the following: *Rechtsanwaltstarifgesetz* (RATG), at "http://www.rechtsanwaelte.at/downloads/ratg\_01082010.pdf", *Allgemeine Honorarkriterien des Österreichischen Rechtsanwaltskammertages* (AHK), at „http://www.rechtsanwaelte.at/downloads/ahk\_03102012.pdf“ and *Notariatstarifgesetz* (NTG), at „www.ris.bka.gv.at“.
- 3.3 Attorney may calculate his professional fees by reference to the time spent on the basis of hourly rates that depend on the questions raised and the value of money involved in an engagement. Attorney will bill Client for the full time Attorney, his employees and substitutes have devoted to the matter, including but not limited to perusing documents, reading laws, legal writings and case law, travel times, errands (referred to as *Kommis-sionen*, such as inspecting files in court), client reports, drafting and revising documents and holding internal meetings. This includes also any report letters or e-mails, phone calls in the matter with the opponent or with authorities carried out by its secretaries. Attorney will not charge pure secretarial work which is done at its office (such as typing, telephone exchange services, fixing appointments between Client and Attorney, document management). Professional fees by reference to the time spent are billed on the basis of the disclosed hourly rates or, if regular services are provided to Client, at the hourly rates charged for a previous already billed engagement, unless specifically agreed otherwise. Attorney will bill Client for five-minute units. Client should specifically acknowledge that professional fees based on hourly rates may exceed the legal expenses insurance cover or any fees to be determined on the basis of RATG recoverable from third parties and that it will be the Client's responsibility to pay for any difference (see Section 4).
- 3.4 Attorney is entitled to professional fees for each single service provided, including for all services of Attorney which may not be implemented as intended for any reason not attributable to Attorney (for example, if the debtor paid a claim due to Client after drafting, yet before filing the complaint with the court or because Client is not able to execute a contract with his contracting party).
- 3.5 Flat-rate fees may be agreed for a certain maximum volume of services (e.g. terms and conditions, draft contracts) based on written quotes issued by Attorney. Any (additional) services Client may request will be charged separately. All or any portion of these flat-rate fees may be billed at any time even before all underlying services were provided. Client will have to pay the agreed flat-rate fees also if he does not use all services covered (for example because contract negotiations were prematurely discontinued or because the Client has not requested any changes or modifications). If Client does not use the services covered by a flat-rate payment of fees within a reasonable period of time, the following shall apply: Attorney is required to ask Client for feedback within a reasonable grace period. Should Client not appropriately cooperate, Attorney may assume that Client accepts the services covered by the flat-rate fee. If Client wishes to use still outstanding services covered by the flat-rate payment after expiry of the grace period, he shall pay for any additional efforts (such as the requirement to re-read documents) due to the delay at the disclosed rates for additional services or pursuant to Section 3.2.
- 3.6 Even if Attorney has agreed on flat-rate fees or charges by reference to the time spent,

Attorney will be entitled to any costs awarded in (judicial or non-judicial) proceedings in which the Client prevails and which are recoverable; otherwise Attorney is entitled to the agreed flat-rate fees or charges in reference to the time spent.

- 3.7 Professional fees are net amounts, subject to statutory value-added tax. Those Clients who are entrepreneurs must disclose their valid VAT number. Besides professional fees, Attorney will also charge Client for necessary and reasonable disbursements (such as travel expenses, accommodation, phone and fax charges, photocopies) and for any fees incurred on behalf of Client (such as court fees, patent office fees, trademark fees, patent fees, design fees, fees to obtain excerpts from the companies register and the land register, other official fees). Client is required to make reasonable advance payments for expenses and costs (collectively "disbursements") at the commencement of our retainer.
- 3.8 Attorney may remit invoices progressively at any time and may ask Client to provide Attorney with funds in advance at any time. As a rule, Attorney will remit invoices once a month as of the last day of a month. Attorney will attach a statement of his services to invoices, unless flat-rate fees were agreed with Client. Disbursements, including but not limited to expenses paid to courts and authorities (e.g. taxes, duties) and costs (e.g. for sub-contracted services by translators, experts or foreign correspondence lawyers) may be remitted to Client for direct payment by Client.
- 3.9 Client may not retain payments or set off his own claims against fees payable, unless professional standards provide otherwise in a particular case or those claims were expressly acknowledged or determined with final effect.
- 3.10 Client acknowledges that any of Attorney's cost quotes, which were not expressly referred to as being binding in respect of the anticipated amount of professional fees, are non-binding in nature and cannot be regarded as binding cost quotes (pursuant to Section 5 KSchG), since by their very nature the scope of legal services cannot be reliably determined in advance, which is why professional fees that actually accrue may be significantly higher than those estimates.
- 3.11 As a matter of principle, estimated amounts of other costs which are expected to arise (e.g. expenses payable in court proceedings, costs arising for the registration of property rights by virtue of oppositions of third parties, official fees, taxes and the like) are non-binding in nature, because payments claimed by third parties, by their nature, cannot be reliably determined in advance. Unless otherwise agreed, those cost quotes, statements of fees in case of international applications for registration of property rights and the like are always chargeable.
- 3.12 An invoice shall be deemed approved, unless the Client objects to it by written notice within one month from receipt of the invoice. If the Client objects to charged flat-rate fees or time-based fees in writing or defaults on payment, Attorney may charge fees at the rates set forth in RATG, NTG and AHK rather than the flat-rate fees or time-based fees, and invoice any discounts granted. If cost reimbursement payments are deposited with a court pursuant to Section 19 RAO, Attorney may irrevocably pay any arising court fees and/or other disbursements from the amount to be deposited.
- 3.13 Invoices are due for payment within five days. Payments can be made with debt-discharging effect only directly to Attorney. If Client owes Attorney several claims, Client's payments will be applied to the earliest claim. Payments are always applied towards disbursements (Section 3.7), then towards interest, and finally towards the principal claim. In case of default with payment, default interest at the statutory rate shall be payable. Attorney may particularly charge reasonable dunning charges.
- 3.14 If Attorney has been retained by several Clients in a single matter, those Clients shall be jointly and severally liable for the professional fees of Attorney.
- 3.15 Whenever Client is entitled to recover costs from his opponent, those claims are assigned to Attorney in an amount equal to Attorney's professional fees (Section 19a RAO). Attorney may disclose the assignment to the opponent at any time.



#### **SECTION 4**

##### **CLIENT'S LEGAL EXPENSES INSURANCE**

- 4.1 Client shall immediately and unsolicitedly inform Attorney in case he holds any legal expenses insurance, and Client shall disclose the necessary documents. If Client has not yet obtained a commitment from the insurer to provide cover, he shall independently do so in due time. Client may also instruct Attorney to do so. In this case, Attorney will make a request for cover of legal expenses. Legal reviews of the existence and scope of legal expenses insurance cover (and especially if insurance cover is denied) are carried out only upon separate instruction.
- 4.2 As a matter of principle, reporting takes place only to Client. Reports will not be made to third parties such as Client's insurance brokers or agents, unless Attorney was expressly released from confidentiality in writing.
- 4.3 The following Sections 4.3.1 – 4.3.3 do not apply in cases in which Attorney and the insurer have directly agreed otherwise. Client may assume such an agreement, if the insurer or its insurance broker or agent directly refers the case to Attorney.
  - 4.3.1 It should be noted that correspondence to the insurance company (especially inquiries for cover) and reports to Client are regularly not covered by legal expenses insurance and are therefore payable by the Client himself.
  - 4.3.2 Attorney's entitlement to recover professional fees from Client shall not be affected by Client's disclosure of legal expenses insurance or the insurer's commitment to provide cover; that notification shall not be deemed an agreement that the insurance benefits will cover the professional fees. Client shall particularly pay for deductibles, if any, which his legal expenses insurance may provide, and for any differences to other forms of invoicing (hourly billing by reference to the time spent, flat-rate expenses).
  - 4.3.3 Attorney shall not be required to recover its fees directly from the insurer, but may claim the total compensation from Client.

#### **SECTION 5**

##### **CLIENT'S OBLIGATION TO PROVIDE INFORMATION AND TO COOPERATE**

- 5.1 For the purpose of executing the engagement, Attorney needs all relevant information and documents in Client's possession in order to issue a sound legal opinion and recommendations as to the further course of action. Consequently, Client shall immediately provide Attorney with any information and facts, including but not limited to any changes in or new circumstances, which may be significant in connection with executing the engagement, and shall make available any necessary documents and evidence. Attorney may assume that such information, facts, documents, records and evidence are correct, unless their incorrectness is obvious.
- 5.2 Attorney may base the further course of action on the information received from Client without verification, unless Attorney is aware of any error or misinformation on Client's part.
- 5.3 If any matter involves the - even partial - application of the laws of another state, Client shall procure advice from an attorney licensed in the relevant jurisdiction, unless expressly agreed otherwise in writing. Attorney shall be liable for its advice only by reference to the laws applicable in Austria (see Section 7.6).

#### **SECTION 6**

##### **CONFIDENTIALITY, CONFLICTS OF INTEREST**

- 6.1 Attorney is obliged to keep confidential any matters confided to him and all facts which have otherwise become known to him as a legal practice. In case of judicial and other regulatory proceedings, Attorney may assert this right of confidentiality subject to procedural rules. This right exists in particular in civil proceedings (Section 321 (1) (4) of the Code of Civil Procedure (ZPO)), in criminal proceedings (Section 157 (1) (2) of the Code of Criminal Procedure (StPO)), in administrative proceedings and criminal administrative

proceedings (Section 49 (2) of the General Administrative Procedure Act (AVG), Section 24 of the Administrative Penalties Act (VStG)), in disciplinary proceedings (Section 107 (5) of the Federal Disciplinary Act (BDG)) and in tax proceedings (Section 171 (2) of the Federal Tax Code (BAO)).

- 6.2 Attorney shall be released from the confidentiality obligation by written notice of Client; however, Attorney may refuse to provide information if it is not ensured that its statements would not be incompatible with Client's interests. Attorney shall be released from his confidentiality obligation pursuant to the Regulations Regarding Lawyer's Practices (RAO) to the extent this is necessary to recover its own claims (e.g. professional fees payable) or to defend claims (e.g. damages).
- 6.3 Attorney is required to verify whether the execution of an engagement gives rise to a conflict of interest pursuant to the Regulations Regarding Lawyer's Practices (RAO).

## **SECTION 7**

### **LIABILITY**

- 7.1 Attorney shall be liable for property and pecuniary damage only if he has breached contractual obligations due to intent or gross negligence. Attorney's liability for erroneous advice or representation shall be limited to the insured sum available for the specific claim, but amounts at least to the insured sum set forth in Section 21a RAO, as amended, which is currently EUR 400,000 (four hundred thousand Euros). If there are two or more competing injured parties (Clients), the maximum amount due to any single injured party shall be reduced in proportion of the amounts claimed.
- 7.2 Whenever Client himself is (partly) to blame for the occurrence of damage, his entitlement to liability shall be reduced pursuant to the terms and conditions of the Civil Code (ABGB). Such (contributory) fault of Client is deemed to exist in particular if he fails to cooperate as necessary, conceals significant circumstances or provides incomplete information to Attorney.
- 7.3 The Client acknowledges that Attorney is liable only for those services which Client uses according to the purpose of the engagement. As a result, Attorney shall not be liable in any event for any use of services by the Client contrary to or outside an engagement (e.g. use of a draft contract prepared by Attorney in another context or with another contracting party).
- 7.4 Attorney shall be liable for services provided by third parties independently selected and engaged by Attorney (e.g. external experts, tax advisors, patent attorneys) only in case of *culpa in eligendo*.
- 7.5 Client acknowledges that Attorney is liable only to Client himself, but not to third parties. Client shall expressly bring this fact to the attention of third parties who come into contact with Attorney's services (e.g. an opinion) on account of the Client's efforts.
- 7.6 Attorney shall be liable for the knowledge of foreign law only if this was agreed in writing. The laws of the EU Member States, but not EU law as such, shall be regarded as foreign law (see Sections 5.3, 10.3).
- 7.7 Unless a shorter limitation or preclusion period applies by law, all claims (with the exception of warranty claims, if Client is a consumer as defined in the Consumer Protection Act) against Attorney shall lapse, unless Client has asserted them in court within six months (if Client is an entrepreneur as defined in the Consumer Protection Act) or within one year (if the Client is a consumer) from the point in time at which Client has become aware of the damage or the damaging party, or of the incident that otherwise gave rise to a claim, but at the latest after the expiry of five years as of the conduct causing the damage.

## **SECTION 8**

### **REPRESENTATION OF DEBTORS, INFORMATION ABOUT DEBTOR'S LIABILITIES IN AUSTRIA**

- 8.1 Client is made aware of the provisions of Sections 66 *et seq* of the Austrian Insolvency Code (IO), in particular of the fact that, if insolvency filing requirements are fulfilled, the relevant petition shall be filed without culpable delay, but at least within 60 days after a

- reason for insolvency has occurred. If the requirements for insolvency exist (Sections 66, 67 IO) the debtor may also produce a rescue plan or apply for workout.
- 8.2 For the sake of clarity, Attorney incorporates by reference the insolvency offences set out in the Criminal Code (*StGB*) (Sections 156 to 159 thereof), in particular fraudulent infringement of bankruptcy laws (Section 156 *StGB*) as well as negligence affecting creditors' interests (Section 159 *StGB*).
- 8.3 Furthermore, Attorney incorporates by reference the liability provisions applicable to members of the managing board and managing directors set out in the relevant legislation, i.e. the Stock Corporation Act (*AktG*) (Sections 84, 255, 258 thereof) and the Act on Limited Liability Companies (*GmbHG*) (Sections 25 to 27, 122, 125 thereof), the Business Reorganisation Act (*URG*) (Sections 22 to 24, 26 to 28 thereof) as well as tax legislation (Sections 9 (1), 80 et seq. of the Federal Tax Code (*BAO*), Section 67 of the General Social Security Act (*ASVG*). The same shall apply in respect of the relevant liability provisions applicable to members of the supervisory board (Section 99 *AktG*; Section 33 *GmbHG*; Section 25 *URG*).

## SECTION 9 ESCROWS

- 9.1 Whenever Attorney acts as escrow agent, the *Treuhandbuch der Tiroler Rechtsanwaltskammer*, as amended, shall apply.
- 9.2 If Attorney has procured filings (eg request for cancellation, filings with the land register or the companies register or other changes of entries in registers) or procured documents or statements from third parties, these shall be pure commitments of use rather than a warranty obligation for a corresponding success. Client shall be obliged to best possibly cooperate and shall issue all statements pursuant to the *Treuhandbuch der Tiroler Rechtsanwaltskammer* (including but not limited to the forms provided by the Bar Association). Client agrees that the auditor may inspect the file and releases Attorney from its professional confidentiality obligations in respect of executing the escrow towards the auditor and the Bar Association.
- 9.3 The escrow may be a unilateral or multi-party escrow. In case of doubt, the escrow shall be deemed a multi-party escrow. A multi-party escrow may be revoked only by all grantors collectively.
- 9.4 Attorney may retain any document it needs in order to fulfil the escrow and the related obligations.
- 9.5 If any disputes arise between the grantors in respect of the requirements or terms under which escrow monies may be released, Attorney, as escrow agent, may deposit the escrow monies with a court. In any event, Attorney shall irrevocably be entitled to pay any court fees and disbursements arising in connection with depositing escrow monies with the court from the escrow monies and may recover any outstanding professional fees from such monies. Attorney shall disclose to the escrow parties the deposit and shall indicate the case number and the amounts deducted from the escrow monies.
- 9.6 Attorney will charge a fee at least at a rate set forth in Section 24 *NTG* for the receipt and custody of monies, savings books, securities, valuables, including but not limited to the booking, settlement and release and return or deposit thereof with authorities, and for the execution of escrows by Attorney.
- 9.7 In view of the risk of money laundering and terrorist financing, Attorney is obliged by law to review particularly thoroughly any transactions in which it carries out finance or real estate transactions in the name and for the account of the Client or in respect of which it participates in planning or executing those transactions for its Clients, which concern the following:
- a) the purchase or sale of real estate or companies,
  - b) the management of funds, securities or other assets, the opening or management of bank accounts, savings accounts or securities deposits, or

- c) the formation, operation or management of trust companies, companies or similar structures, such as trusts or foundations, including the procurement of the funds necessary to set up, operate or manage companies.

Client shall reasonably cooperate to allow Attorney to fulfil his corresponding diligence obligations and provide the necessary information and evidence (eg proof of identity, evidence to determine the actual beneficial owner in case of legal entities, bank clearance certificates).

## **SECTION 10**

### **DRAFTING OF CONTRACTS**

- 10.1 In connection with the execution of its engagement, Attorney shall be obliged only vis-à-vis its Client. Furthermore, Attorney shall be liable only for those services which Client is using according to the purpose of the engagement (see also Section 7.3). Accordingly, Client acknowledges that Attorney shall not be obliged to take any precautions for any situations in which Client uses a contract contrary to or outside an engagement (e.g. use of a draft contract prepared by Attorney in another context or with a different contracting party). Such multiple use shall rather be prohibited (see Section 12 below), if it is inconsistent with the purpose of the engagement (e.g. terms and conditions) or was not approved by Attorney in writing.
- 10.2 In principle, a contract drafted upon Client's request, which is used as a template also by the Client's unrepresented contract partner will only constitute a commitment of Attorney vis-à-vis its Client.
- 10.3 Attorney is thus liable towards Client's contract partners for tort only. Contracts that involve situations outside of Austria are governed by Section 7.6. Attorney disclaims any liability to (non-involved) third parties also if Attorney could assume that they are aware of the contract and could make dispositions thereon.

## **SECTION 11**

### **ENGAGEMENTS CONCERNING PATENTS, UTILITY MODELS, TRADEMARKS, DESIGNS, COPYRIGHTS**

- 11.1 Patents, utility models, trademarks, designs, copyrights (collectively "Industrial Property Rights") frequently represent a significant part of a company's value. Client acknowledges that such Industrial Property Rights, although granted by authorities, may be subject to opposition by third parties or cancellation by the respective office if the statutory requirements exist.
- 11.2 Naturally, the confidentiality obligation pursuant to Section 6 of these Terms includes also any signs (e.g. names, logos), inventions, designs or other services eligible for protection which Attorney has become aware of and for which Client seeks protection (e.g. as trademark, domain, company name, patent, model).
- 11.3 Client acknowledges that IP searches, by their very nature, cannot always provide reliable and complete results (e.g. due to open priority periods, local or non-registered property rights or prior publications). Accordingly, Attorney disclaims any liability for the correctness and completeness of search results. IP searches shall primarily provide an overview and support the decision-making process (e.g. in case of apparent conflicts).
- 11.4 Attorney notes that the sign to be registered as trademark should be selected carefully and should be clearly distinguishable from other signs in the industry, and that third-party copyrights, including but not limited to logos, should be taken into account. The flat-rate fees offered for trademark searches or registrations regularly do not include advice in respect of the selection or design of the sign which shall be registered as trademark. Such advice is chargeable and will be provided by Attorney only upon the Client's request. Attorney recommends that Client conducts searches to discover similar signs of third parties (e.g. trademarks, company names, domains) before making an application to register a trademark (see Section 11.3 above). Attorney will conduct searches only upon Client's separate request and will charge separate fees for those activities. If the RATG applies, fees are charged at the rates set forth in TP 7/2. If Attorney has agreed



- on hourly billing, Attorney will charge his current hourly rates plus disbursements (e.g. fees payable to the offices for data base inquiries).
- 11.5 Attorney will file applications for the registration of trademarks or models no later than ten business days after completed coordination with Client and Client's written release notice (sending date). Attorney has only limited ability to influence the length of the registration proceedings and the actual registration date of a trademark or model, as these decisions are predominantly within the control of the corresponding trademark offices.
- 11.6 Flat-rate fees for applications to register trademarks and models include generally the application proceedings until the registration of the property right; a flat-rate price does not include any services which are necessary due to oppositions of the offices or rights asserted by other rightholders, such as oppositions or judicial action of third parties. Those services are chargeable separately if they arise in the context of the application process. Unless otherwise agreed, statements of fees in case of international applications for registration of property rights and the like are always chargeable. The terms and conditions for an application disclosed by Attorney in a particular case shall apply.
- 11.7 After receipt of the registration certificate, Attorney will examine its consistency with the application. In case of Community trademarks, the registration certificate states the goods and services in all official languages of the European Union. Attorney will only examine the German text of the goods and services. Other languages are reviewed only if Client instructs Attorney to do so, and those services are charged separately.
- 11.8 If a trademark or design application is not filed after it has been commissioned - e.g. because conflicting trademarks or designs have become known or Client's business interests have changed in the meantime - Section 3.4 shall apply.
- 11.9 All matters relating to intellectual property rights (e.g. product piracy prosecution, intellectual property rights infringement proceedings, criminal private prosecution proceedings, opposition proceedings, nullity proceedings) are charged on the basis of the assessment basis for intellectual property rights according to AHK as well as according to the corresponding statutory tariff items of civil court proceedings. Searches (e.g. IP searches, design searches, similarity searches) are charged according to TP 7/2 if RATG applies, otherwise at the current hourly rate if an hourly rate agreement is in place, plus cash expenses in each case (e.g. fees of the offices for database searches).

## **SECTION 12**

### **COPYRIGHTS**

- 12.1 Legal contracts, drafts, opinions, legal briefs etc are copyrighted. Attorney holds the exclusive copyrights to any materials prepared by Attorney. In case of any doubt, Attorney will only grant Client the right to use the work exclusively for Client's purpose.
- 12.2 Unless evident from the purpose of the contract, the grant of a right to use these works to the Client requires Attorney's written consent.
- 12.3 Unless otherwise agreed, any permission or right granted to Client or third parties to use Attorney's copyrighted works shall apply only to the scope covered by the contractual relationship. Client's multiple use of copyrighted contract templates is prohibited, if this is inconsistent with the purpose of the engagement (e.g. terms and conditions) or was not specifically approved by Attorney.
- 12.4 Any permission or right to use works granted to Client shall be deemed granted only after full payment of the agreed compensation.

## **SECTION 13**

### **TERMINATION OF ENGAGEMENT**

- 13.1 An engagement may be terminated by Attorney or Client at any time without notice and without cause, without affecting Attorney's right to its professional fees.
- 13.2 If an engagement is terminated by Client or by Attorney, Attorney shall represent the Client for another 14 days when this seems necessary to protect Client from any legal disadvantage. This obligation does not exist if Client revokes the engagement and implies that he does not require any further services from Attorney.

- 13.3 After termination of an engagement, Attorney shall return original documents upon Client's request. Official documents (such as birth certificates, certificates of citizenship) will be returned in any event. Attorney may retain copies of those documents for purposes of documentation.
- 13.4 Client shall pay for any costs arising from Client's request to receive documents (copies of documents) after termination of an engagement, which he had already received in the course of executing the engagement.
- 13.5 Attorney must preserve files over a period of five years from termination of an engagement and shall issue copies to Client during this period, should Client request those. The corresponding costs shall be borne by Client. Attorney maintains an electronic archiving system. Accordingly, after termination of an engagement, files are scanned and the hard copies destroyed, except for those original documents which are returned to Client.
- 13.6 Attorney will save documents over longer periods of time if this is prescribed by law. Client agrees that hard copies of files (and also original documents) may be destroyed and electronic files deleted after expiration of the preservation period.

## **Section 14**

### **RIGHT OF WITHDRAWAL FOR COMSUMERS**

- 14.1 If Client is a consumer and has commissioned Attorney with the provision of legal services via remote communication (exclusively by e-mail, telephone, online conference or other means of remote communication) or outside business premises, Client may withdraw from the concluded contract within 14 days from the conclusion of the contract. In order to meet the deadline, it shall be sufficient if Client sends the written withdrawal within the 14-day period. Attorney shall render his services only after the expiry of the 14-day withdrawal period, unless Client expressly requests that Attorney's services be rendered already before the expiry of the withdrawal period. Client acknowledges that in such a case, in the event of a withdrawal within 14 days, he shall pay an amount which, in comparison to the contractually agreed total fee, proportionately corresponds to the services rendered by the lawyer until the withdrawal. If the lawyer has already rendered all agreed services in full, the client shall no longer be entitled to withdraw from the contract (Section 18 FAGG).
- 14.2 In order to exercise the right of withdrawal, Client must inform Attorney (Schöpfstraße 15, A-6020 Innsbruck, [office@warbek.at](mailto:office@warbek.at)) by means of a clear declaration (e.g. a letter sent by mail or e-mail) of his/her decision to withdraw from the commission. If required, Attorney will provide Client with a withdrawal form. However, the use of a withdrawal form is not mandatory.
- 14.3 If Client revokes the engagement in due time, Attorney shall refund all payments already made by the client without undue delay, but no later than within 14 days from the declaration of revocation. Attorney shall retain only that part of the fee which corresponds to the services already rendered, provided that the client has expressly requested that the services be rendered before the expiry of the withdrawal period (see Section 14.1). For the repayment, Attorney shall use the same means of payment that Client used for the settlement of the payment.

## **Section 15**

### **DATA PROTECTION**

Our data protection policy applies (see [www.warbek.at/dataprotection](http://www.warbek.at/dataprotection)). It forms an integral part of these Terms.

## **Section 16**

### **CHOICE OF LAW AND JURISDICTION, OTHER PROVISIONS**

- 16.1 Amendments, supplements and ancillary agreements to these Terms must be made in writing to be effective. This shall also apply to any agreement to deviate from this formal requirement.
- 16.2 Place of performance and jurisdiction is A-6020 Innsbruck. If the Client is an entrepreneur, the competent court in A-6020 Innsbruck shall have exclusive jurisdiction. Austrian law shall apply exclusively, to the exclusion of the reference norms of the IPRG and the Rome I Regulation.
- 16.3 In the event of a dispute between Attorney and Client regarding the fee, Client shall be free to request a review of the fee by the Tyrolean Bar Association; if the lawyer agrees to the review by the Bar Association, this shall result in an out-of-court review of the adequacy of the fee free of charge. If the client is a consumer, the arbitration board for consumer transactions ([www.verbraucherschlichtung.or.at](http://www.verbraucherschlichtung.or.at)) shall act as an extrajudicial arbitration board in disputes between Attorney and Client. Client acknowledges that Attorney is not obliged to involve or submit to this dispute resolution body, and that in the event of a dispute, Attorney will decide whether or not to agree to an out-of-court dispute resolution procedure.

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