

General Terms and Conditions

September 01, 2019

Important note: The following "General Terms and Conditions" are a translation of the German "Allgemeine Geschäftsbedingungen der Firma konzept59 GmbH" and is therefore not binding. The authoritative and legal wording is the German version only.

1. Area of application

1.1. The present consulting conditions apply to contracts whose subject-matter is the giving of counsel, the supply of information and training by the contractor to the customer in the areas of planning, preparation and execution of corporate and technical decisions and safety engineering projects in the area of machine and plant construction.

2. Subject-matter of the contract/scope of services

2.1. As far as nothing different has been agreed upon, the agreed consulting activity that is described in the contract is regarded as the subject-matter of the assignment.

In essence, the services include:

- Consulting
- Training
- Project handling
- Development mentoring
- Certification and approval

The services by K59 are considered completed if the required analyses, the subsequent conclusions and recommendations have been worked out and explained to the customer or have been performed.

It is insignificant if or when the conclusions and/or recommendations respectively have been put into practice.

2.2. On demand of the contractor, K59 is obliged to provide information about the state of the execution of the assignment or rather to give account by means of a written report that reflects the essential content of the process and the result of the consulting after the execution of the assignment.

In case K59 shall make a comprehensive written report, especially for the purpose of presentation to third parties this has to be agreed upon separately.

2.3. K59 conducts all activities with utmost diligence always relating to the individual situation and the declared requirements of the customer.

3. Service changes

3.1. K59 is obliged to make allowance for change requests insofar as this is reasonable within the framework of K59 operational capacities, especially in respect of effort and time management.

3.2. As far as the examination of the possibilities of change or the realisation of the desired changes affects the contract conditions, especially the effort or the time management by K59, the contracting parties agree upon an adequate adaptation of the contract conditions, especially in respect of compensation and postponement of project timelines and deadlines.

Unless otherwise agreed K59, in this case, executes the activities without consideration of the change requests until the contract has been adapted.

3.3. In case an extensive examination of the additional effort becomes necessary K59 has the right to request a separate assignment.

3.4. Any Changes and supplements of the assignment need to be in writing to become effective. Protocols about meetings concerning this matter or the factual project status meet the requirements of the conditions mentioned under 3.4. provided that they have been signed by authorised representatives of both contracting parties.

4. Professional secrecy/data protection

4.1. K59 is obliged without any time limits to maintain disclosure about all information characterised as confidential or business and corporate secrets of the customer that become known to K59 in the context of the assignment.

The circulation of information to third parties that are not involved in the execution of the assignment may only be carried out with the customer's consent.

5. Customer's obligation to co-operate

5.1. The customer is obliged use his best endeavours to support K59 and to create all necessary conditions in his sphere of operations for the correct execution of the assignment.

In particular, he has to provide all information and documents necessary or significant for the execution of the assignment in time.

5.2. On demand by K59 the customer has to confirm the correctness and completeness of the documents presented by him as well as the information and oral statements.

6. Remuneration / Payment Conditions / Offsetting

6.1. The remuneration for the services by K59 is calculated according to the time spent for the activity (time fee or fixed-price agreed upon in writing). A fee depending on the degree of success or a fee that is only paid in case of success requires regulation. Unless otherwise agreed the contractor – besides the charge of fee that in case of doubt conforms with the usually calculated daily rates - is entitled to compensation of his expenses.

6.2. As far as accounting is made according to time and effort in the case of long-term contracts, the respective current prices apply. In case of contracts that are concluded in the last quarter the agreed prices also apply for the following year.

6.3. All claims are due upon receipt of an invoice and are payable immediately without deductions.

The statutory value-added tax has to be added to all price statements and has to be specified separately in the invoices.

6.4. If an ordered meeting is cancelled on customer request K59 will charge all costs to the customer which cannot be cancellable or cannot be changed for free.

6.5. Several customers (natural persons and/or legal entities) shall be jointly and severally liable.

6.6. An offset against claims by K59 for remuneration and reimbursement of expenses is only admissible in case of undisputed or legally established claims.

7. Removal of defects

7.1. Insofar as services are capable of being remedied possible defects that K59 is accountable for shall be remedied by the latter if this is possible with a reasonable amount of effort.

The customer is obliged to name possible defects promptly, at the latest, however, within two months after service provision.

7.2. In case of failing to remedy or if it is impossible to remedy the customer can also demand a reduction of the remuneration or a rescission of the contract.

If the assignment has been awarded by a merchant in the context of his commerce, by a legal entity of the public law or by special assets governed by public law, the customer can only demand the rescission of the contract if the service rendered is of no interest to him due to the failing of remedy.

No. 8 applies to claims for compensation going beyond above.

8. Liability

8.1. K59 is liable for all damages caused by his staff either with intent or through gross negligence irrespective of legal basis.

8.2. A liability for ordinary negligence only exists in case of violation of essential contractual obligations.

In this case, a liability for losses or for damages not typically associated with the contract shall be excluded.

For a single case of loss or damage the liability is limited to the extent of the assurance benefits of the liability insurance taken out by K59, however, limited to a maximum amount of 250.000 €. A single case of loss or damage is classified as the sum of claims for damage made by all beneficiaries that results from a single-defined, time-coherently rendered, definable and insofar consistent service.

In case of predictability of a significantly higher damage risk the customer is obliged to indicate the higher risk. In this case, K59 shall offer a higher liability amount to the customer who can adjust remuneration in accordance to his own risk.

Contractual liability claims of the customer become time-barred 2 years after the claim has been lodged.

8.3. K59 is not liable for losses or damages that result from the services mentioned under 2.1.

9. Protection of intellectual property

9.1. The client will ensure that reports, organization charts, outlines, drawings, lists and calculations prepared by K59 in the context of the contractual assignment will only be used for the purposes agreed upon in the contract and not be published without express consent in the particular case.

The use of the rendered services by enterprises connected to the client requires an explicit written agreement.

9.2. As far as a copyright results from the work results K59 remains the originator. In those cases, the customer is granted the irrevocable, exclusive and non-transferable right of use unrestricted by time and place, which is restricted only by 1.1.

10. Fiduciary duty

10.1. The contracting parties shall be committed to mutual loyalty. They inform each other promptly about all circumstances that occur in the course of the execution of the project and that can influence the progress.

10.2. In particular, both shall, for a period covering 12 months from completion of the cooperation, refrain from employing or engaging in any other way employees or former employees that are or have been active in the context of the execution of the assignment.

11. Force majeure

11.1. Events of force majeure that make performance significantly difficult or temporarily impossible shall entitle the respective party to postpone the fulfilment of the service corresponding to the duration of the impairment including an adequate start-up time.

Force majeure includes such events as labour disputes and similar circumstances insofar as they are unpredictable, severe and through no fault of one's own.

The parties inform each other promptly about the occurrence of such circumstances.

12. Termination

12.1. Unless otherwise agreed, the contract can be discontinued at the end of a month with a preceding period of 14 days.

Already rendered services that have not yet been charged are to be settled by the customer.

The right to extraordinary termination shall be unaffected.

12.2. The termination needs to be in writing to become effective.

13. Right of retention/Storage of documents

13.1. Until the full settlement of his invoices, the K59 maintains the right of retention to all documents it has been entrusted with. Yet, the exercise of this right is lacking good faith if the retention would cause a disproportionately high and – weighing both interests – unjustifiable loss or damage for the customer.

13.2. Upon settlement of his claims resulting from the contract K59 is obliged to hand over all documents that the customer or a third party has entrusted to K59 for the purpose of the execution of the assignment.

This does not apply to the correspondence between parties and simple copies of reports produced in the context of the assignment, as well as organisational charts, drawings, lists, calculations etc. insofar as the customer has received the originals.

13.3. The obligation of K59 GmbH to store the documents expires six months after the delivery of the written request for collection, or otherwise three years, in case of retained documents according to 13.1 five years after the termination of the contract.

14. Miscellaneous

14.1. Rights resulting from the contractual relationship with K59 may only be ceded after prior written consent.

14.2. The law of the Federal Republic of Germany exclusively applies to all claims arising from the contract.

14.3. Changes or supplements of these conditions or the contract need to be in writing and have to be expressly identified as such.

14.4. The place of jurisdiction for all disputes arising from the contract is the head office of K59 GmbH insofar as the contract has been assigned by a general merchant in the context of his commerce, a legal entity of the public law or special assets governed by public law.