

**Applicable from October 2021 for:**

## **ARXADA AG**

**(hereinafter in referred to as "ARXADA")**

### **1. Scope**

1.1 These "general terms and conditions for consulting services" ("terms and conditions") shall apply to consulting services within the meaning of Art. 394 ff. of the Swiss Code of Obligations (Orders) that have been concluded between ARXADA and the contractor in the form of planning, engineering, servicing, consulting and management services and other services carried out for ARXADA by the contractor that have the characteristics of an order ("consulting services"), provided that no express provision to the contrary is made in writing in the individual placing of an order. These terms and conditions shall apply only to consulting services which are not subject to any other contractual provisions.

1.2 Different or additional terms, including in particular other terms and conditions of the contractor, shall apply to ARXADA only where they have been specifically agreed and acknowledged in writing. ARXADA's said terms and conditions shall apply even where ARXADA is aware of different terms on the part of the contractor.

### **2. Invitation to tender and submission of tenders**

2.1 On the basis of an invitation from ARXADA, the contractor is requested to submit a tender at no expense to ARXADA. In the tender, the contractor shall keep precisely to ARXADA's invitation and shall specifically indicate any deviations which arise. If the contractor does not lay down any time limit in his tender, it shall be binding for 90 days.

2.2 By submitting the tender the contractor acknowledges that it is aware of all specifications, facts and conditions relevant to the performance of the consulting services.

### **3. Components of the order**

3.1 All components of the order shall be listed in each order placed from ARXADA. The provisions of each order placed shall take precedence over these terms and conditions.

3.2 An order placed shall be binding for ARXADA only where it has been granted or confirmed by ARXADA in writing or electronically.

The same shall also apply to supplements of all kinds to orders which have been placed.

3.3 The placing of an order shall be confirmed in writing (a confirmation letter) by the contractor within 5 (five) working days, failing which ARXADA shall no longer be bound by its order placed.

The nature and scope of the consulting services shall correspond to the order placed by ARXADA. If the contractor diverges from the order placed in a confirmation letter, it shall notify ARXADA thereof. Unless ARXADA specifically agrees to these divergences, the order as placed by ARXADA shall be valid.

3.4 Before it proceeds to carry out the order, the contractor has to check in detail all the documents, information, specifications, etc. it has been given by ARXADA. Any discrepancies must be

reported to ARXADA in good time in writing before the order is carried out.

### **4. Duties of the contractor**

4.1 The contractor undertakes to carry out the order it has been given carefully, diligently, on time and responsibly. Due care is governed by the rules for orders according to Art. 394 ff. of the Swiss Code of Obligations.

4.2 The contractor is obliged to carry out the order itself.

Third parties may only be used with the prior written approval of ARXADA.

4.3 The contractor must inform ARXADA immediately of anything which might threaten the performance of the consulting services in accordance with the contract.

### **5. Fee**

The fee specified in the order is regarded as the fixed flat-rate price in payment for all consulting services.

### **6. Amendments of the order**

6.1 ARXADA is entitled to inform the contractor as soon as possible of any additional services required as a result of amended specifications which go beyond the order placed. ARXADA undertakes to pay the contractor for these.

6.2 ARXADA reserves the right to reduce or cancel the placed order at any time. The contractor is in this case only entitled to the fee payable for the consulting services actually provided (according to the reduction and up until cancellation).

### **7. Default**

7.1 If the contractor fails to meet the deadline agreed in the order placed, it is automatically in default; for other deadlines, default occurs after a reminder providing a reasonable additional period.

7.2 If the contractor fails to meet the contractually agreed deadline or any extended deadline for performance, it must pay the contractual penalty stipulated in the order placed. This does not affect the right to claim damages.

7.3 The parties shall then not be liable for the late, improper performance or non-performance of the contract if such delay or non-performance is due to events or circumstances entirely beyond the control or responsibility of the respective party and could not reasonably have been foreseen ("force majeure"), provided the party concerned gives prompt notice thereof and makes all reasonable efforts to perform the contract. If a force majeure situation persists for more than 30 days, ARXADA shall be entitled to terminate or revoke the agreement (in whole or in part), with immediate effect in writing.

### **8. Payment terms**

8.1 Payment of the fee shall be made in accordance with the agreed terms. Unless otherwise agreed, ARXADA shall make payment within 60 days of receipt of the invoice. The possibilities of the right to offset counterclaims are reserved.

8.2 In the event of advance payments, the contractor shall provide an appropriate bank or insurance guarantee. The contractor shall bear the costs thereof.

8.3 ARXADA shall be entitled to pay a third party direct, with offsetting against the fee, where the contractor himself fails to prove that he has paid the third party in full. Additionally, ARXADA shall be entitled to deposit disputed amounts and thereby be discharged.

## 9. Property rights

9.1 All property rights resulting from the performance of consulting services (in particular copyright and patent rights) belong to ARXADA. The contractor contractually guarantees that the staff employed by it or by commissioned third parties does not have any copyright or patent rights to results of work carried out.

9.2 The contractor guarantees that, by its tender and its services, it is not infringing any recognized third party property rights (in particular copyright and patent rights).

9.3 Any property rights (in particular copyright and patent rights) from joint development work carried out exclusively for ARXADA belong to the latter. If so requested, all documents, together with copies and duplicates, are to be handed over to ARXADA immediately. The contractor also undertakes, on first request by ARXADA, to make any necessary declarations and carry out any necessary acts.

## 10. Warranty

10.1 The contractor warrants that it will carry out its consulting services faithfully and carefully.

10.2 The contractor is also liable for the expert and careful performance of the order by third parties approved by ARXADA.

10.3 The contractor warrants that it will fully comply with the latest version of ARXADA's Suppliers Code of Conduct which may be accessed via ARXADA's corporate website (<http://www.ARXADA.com/policies>).

## 11. Liability for damage

11.1 The contractor is liable for any damage caused by it or by a third party called in by it as a result of the contractual relationship, unless it knows that neither it nor the third party called in were at fault.

11.2 Any limitation of liability proposed by the contractor requires the express written consent of ARXADA, but shall only be effective if not excluded by any provision of statutory law.

## 12. Consulting services carried out by the contractor at ARXADA's premises

The contractor undertakes to ensure that anyone working on a ARXADA site in Switzerland has a valid permit to undertake gainful employment in Switzerland. Further specific instructions

and regulations apply to work on a ARXADA site in Switzerland in addition to these terms and conditions. These instructions and regulations are provided before work begins and are to be complied with expressly.

## 13. Secrecy and publications

13.1 All details, drawings, models, patents, copyright, etc. that ARXADA provides to the contractor for the performance of its consulting services may not be used for other purposes, copied or made available to third parties without ARXADA's written approval.

13.2 The parties undertake to keep secret any information that is neither in the public domain nor generally accessible. This duty is also to be imposed on third parties called in. In the event of doubt, information is to be treated as confidential. 13.3 The contractor may disclose to commissioned third parties the facts and essential content of the tender.

13.4 Advertising and publications relating to contractually specific services require the written approval of the other party.

13.5 All of the obligations under this paragraph 13 shall apply before the contract is concluded and for 10 years following performance of the consulting services.

## 14. Assignment

Rights and duties under the order cannot be assigned, transferred or pledged to any third party without the prior written consent of the other party.

## 15. Saving clause

If any part of these terms and conditions is or becomes invalid, the validity of the remaining provisions and the contractual agreements which have been made shall be unaffected thereby. The invalid provisions shall be replaced by an admissible agreement or statutory provision which approximates as closely as possible to the commercial purpose.

## 16. Applicable law and jurisdiction

16.1 Swiss law shall apply exclusively to these terms and conditions and to the order. The provisions of the order according to Art 394 ff. of the Swiss Code of Obligations shall be applicable.

16.2 The parties shall endeavour where possible to settle any disputes regarding the creation, interpretation and performance of the order by way of negotiation. **The City of Basel** (Switzerland) shall be the exclusive venue for jurisdiction.