

Terms of Engagement

of Flick Gocke Schaumburg Lawyers Public Auditors Tax Advisors Partnership with limited professional liability (Partnerschaft mbB)

1. These Terms of Engagement ("Terms") apply to all agreements between the Partnership with limited professional liability ("Partnership") and the Client except where the Partnership and the Client have made an express agreement in writing to the contrary or mandatory provisions of law provide otherwise. The Client's contract is with the Partnership and not with its individual partners and/or persons employed by the Partnership. However, these Terms will also apply in the event that the Client engages one or more partners individually.
2. The professional liability of the Partnership will be covered solely by the Partnership's assets. To the extent legally permissible, the liability of the Partnership for damage caused by negligence will be limited to EUR 10 million per case except in the event of death, bodily injury or illness. Where work is performed by lawyers (Rechtsanwälte), however, this limitation of liability will only apply to cases of simple negligence. The limitation of liability will also apply to any liability of the Partnership to third parties. Damage resulting from several breaches of duty will constitute a single case of damage. Each single case of damage will encompass all consequences of a breach of duty, irrespective of whether the damage occurred in one or more successive years. Multiple acts or omissions resulting from the same or a similar source of error will be considered a single breach of duty if they relate to matters that are either legally or economically related. The total liability of the Partnership will be limited to EUR 10 million where several Clients and/or third parties are entitled to assert a claim against it. The Partnership maintains third-party liability insurance with coverage several times that of the minimum amounts prescribed by law.
3. A claim for damages may be brought against the Partnership no later than one year from the date when the Client becomes aware of the damage and of the event giving rise to the claim; however, no claim may be brought later than five years from the date of the event giving rise to the claim. The claim will expire if the Client does not commence action within a period of six months after he or she is notified by the Partnership in writing that it refuses to remedy the damage and is notified of the six-month time limit. The foregoing will be without prejudice to the Partnership's right to plead that the claim is time-barred.
4. The Client is hereby advised of the possibility of single item insurance. Where he or she considers the liability coverage specified in clause 2. to be inadequate, the Partnership will take out single item insurance upon request if the Client agrees to bear the additional costs incurred thereby.
5. The Partnership will not be held liable for any statements made and information given by telephone or by any other verbal means.
6. Where the Partnership acts for two or more Clients, the Clients will be jointly and severally liable to the Partnership for all obligations owed to the Partnership. The Clients will also be joint and several creditors in respect of the Partnership. Instructions issued and information given to the Partnership by one Client will be binding on the other Clients unless one of them objects in writing. If this occurs, the Partnership may terminate the engagement immediately.
7. The Partnership will be entitled to receive money and money equivalents on behalf of the Client and will be entitled to use same to satisfy its claims for remuneration and reimbursement.
8. The Partnership's duty to keep and hand over working files will expire five years from the termination of its engagement. At the end of the five-year period, it may destroy all of the Client's files in its possession if it has first requested the Client to take receipt of the working files and the Client has not done so within six months of receiving such request.
9. Exclusively German substantive law applies to all agreements between the Partnership and the relevant principal, the performance thereof and any claims arising therefrom.
10. The Partnership wishes to draw attention to Sec. 36 of the German Consumer Dispute Resolution Act (Verbraucherstreitbeilegungsgesetz) and the fact that it is not obliged or willing to participate in dispute resolution procedures before a consumer arbitration board.
11. These Terms will apply to all current and future engagements without any necessity for reference to them to be repeated. They do not release the Partnership from compliance with the relevant professional codes of conduct.
12. The Client undertakes to treat confidentially all written documents (expert opinions, memorandums, etc.) provided to him or her and will not pass them on or reveal their content to third parties unless the Partnership's prior written approval has been obtained. The Client undertakes to impose the same obligation on his or her own employees. The Client may allow an expert bound by professional secrecy rules who is advising him or her in the same matter access to documents provided by the Partnership, even without its prior approval, if he or she has placed such expert under an obligation to treat the documents confidentially.
13. If the Client uses or has supplied the Partnership with an address for electronic communication, in particular an email address or another communication channel, the Partnership may use this means to communicate with the Client on matters related to the engagement. The Client is hereby advised that electronic communication, in particular by email, bears risks because (i) it can contain viruses or other malware, and (ii) there is no guarantee that communicated content actually originated from the sender indicated. If the requirements for encryption are not met, (iii) electronic communication cannot be securely protected against access by third parties (e.g. interception, reading).

The Partnership uses transport encryption (SSL/TLS) for all outgoing emails. If the Client has also set transport encryption as the default, email communication is encrypted from the start and without further coordination. The content of the email is then protected while it is transmitted via the internet. For an even higher level of encryption, content encryption (S/MIME) can be used for email correspondence. On engaging the Partnership and at any time thereafter, the Client can decide to communicate electronically with the Partnership using S/MIME encryption. To do so, the Client needs only to expressly notify the Partnership accordingly.

Please also read our general data protection notice for further information on electronic communication.
14. Should any of the provisions of these Terms be or become invalid or should there be any gaps in these Terms, this will not affect the validity of the remaining provisions. The parties undertake to replace the invalid provision and/or fill the gap with such valid provision as most closely approximates the provision the Client and the Partnership would have agreed upon if they had been aware of the invalidity or gap. This applies in particular to the situation where a provision is invalid because it is broader in scope than what is legally permissible.

As of May 2020