

proprietor: Alexander Wanke, MSc MRICS

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GENERAL TERMS AND CONDITIONS OF CONTRACT

(Version E 01/2017)

§ 1 Scope

- 1.1.** Unless expressly agreed otherwise in writing, the present Terms and Conditions shall apply to all contracts between immo advalue e.U. proprietor: Dr. Alexander Wanke, MSc MRICS as an expert real estate appraiser (hereinafter referred to as the „**Expert**“) and his clients concerning expert opinions, appraisals and other assignments (hereinafter referred to as the „**Client**“).
- 1.2.** A copy of those General Terms and Conditions of Contract signed by both parties shall be attached to any expert opinion forming an integral part thereof.
- 1.3.** The Client is an **entrepreneur** within the meaning of the (Austrian) Consumer Protection Act (*Konsumentenschutzgesetz*) for whom this transaction is part of the normal business of his enterprise.

§ 2 Subject matter of agreement

- 2.1.** The Expert undertakes to provide the contractually agreed services in accordance with the principles of professional practice (see the (Austrian) Real Estate Valuation Act (*Liegenschaftsbewertungsgesetz*), ÖNORMs B1802, RICS Valuation Standards and Code of Conduct). The Expert shall endeavour to give the Client the benefit of the considerable experience gained in the course of his long-term activities in the field.
- 2.2.** The Expert is both a certified member (MRICS) of the international valuation organization, the *Royal Institution of Chartered Surveyors* (RICS – see www.rics.org), and a generally sworn and court-certified expert. He is a member of the Austrian Association of Court Experts (*Hauptverband der Sachverständigen*), and his name is entered in the official list of court-certified experts.
- 2.3.** The Expert undertakes to carry out the assignment(s) entrusted to him on his own responsibility. He shall, however, be entitled to make use of the services of assistants or other experts (hereinafter referred to as hereinafter referred to as the „**Personnel**“) working under his supervision.
- 2.4.** For the duration of the contract, the Client undertakes to employ other Experts in the Expert's field only after having obtained the Expert's prior consent.

§ 3 Deadlines

If deadlines have been agreed by the parties, the relevant periods shall begin to run as soon as the parties have reached an agreement with regard to all the details concerning the project and the Client has provided the Expert with all documents, records, information or other materials on which the Expert has to base his expert opinion according to the relevant contract.

§ 4 Premature termination of contract

- 4.1.** In cases where the Expert is in doubt with regard to his own impartiality, he may be obliged to refuse an assignment; should the reason to doubt his impartiality only be discovered after the contract has been concluded, he may find himself obliged to terminate the contract in question prematurely.

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- 4.2.** Should the contract be terminated prematurely for some other reason, the Expert shall be entitled to remuneration for the services rendered up to the time in question, unless the premature termination of his activities should be entirely the Expert's fault.
- 4.3.** In cases where the premature termination of the contract can be attributed to the Client, the Expert shall receive, in addition to the remuneration mentioned in § 4.2. hereof, lump-sum damages in the amount of 35 % of the remuneration agreed for the services not yet rendered; moreover, the Expert reserves the right to raise further claims for damage.

§ 5 Secrecy and surrender of documents and records

- 5.1.** The Expert undertakes to treat any business and other secrets that he may be given access to in the course of his work for the Client as confidential. Should the Client make a request to this effect in writing, this shall also apply to the assignment itself, which shall then only be disclosed to third parties subject to the Client's approval.
- 5.2.** After satisfaction of all his claims in connection with the assignment, the Expert shall, at the Client's request, surrender all the documents and records that he has received from the Client or on the Client's behalf for the purpose of fulfilling his assignment. However, this shall not apply to any correspondence between the Expert and his Client and to the originals or copies of those documents that the Client already received. The Expert shall be entitled, at the Client's expense, to make copies or photocopies of documents and records that he is obliged to return to the Client, and to retain them in his possession.

§ 6 Client's duty of cooperation

- 6.1.** In order to find out whether there is any reason to doubt the Expert's impartiality, the Client shall be obliged to communicate the names of all persons directly or indirectly involved in the dispute, as well as those of the recipients of the expert opinion, to the Expert unasked.
- 6.2.** The Client undertakes to provide the Expert with all support that the latter may require free of charge, in particular, to provide unhindered access throughout the object(s) to be appraised, and, to supply the information needed within the scope of the subject matter of the contract. In order to do so, the Client shall name a contact person who shall be responsible for the coordination of dates with the Expert and his Personnel, as well as for the procurement of documents and records. At the Expert's request, the Client shall ensure adequate working conditions at the relevant locations.
- 6.3.** The Client shall be obliged to ensure that the Expert is provided with all documents and records necessary to complete the assignment in good time, without the Expert's having to ask for them, and that he is kept informed of all events and circumstances that may be relevant in connection with the performance of the assignment. These shall include, without limitation, any further expert opinions given, including those on the value of the object(s) to be appraised. They shall also include the records, events and circumstances that are only discovered in the course of the appraisal.
- 6.4.** At the Expert's request, the Client shall confirm the completeness of the documents and records submitted and of the information and explanations given in a written declaration.

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- 6.5.** Upon written consent of the Expert, the Client undertakes only to pass on a complete final version of the expert opinion that has been signed by the Expert and stamped or sealed by him. In particular, he undertakes not to pass on any drafts or individual parts of the expert opinion without the Expert's written consent.

§ 7 Acceptance

- 7.1.** The Expert's performance of his assignment shall be deemed to have been accepted unconditionally if the Client does not raise objections to it in writing vis-à-vis the Expert within a period of four weeks after delivery.
- 7.2.** Partial deliveries shall be deemed to have been accepted individually pursuant to § 7.1.

§ 8 Warranty

Defects shall be notified to the Expert in writing within 14 days of their discovery; failure to comply with this deadline shall lead to the exclusion of warranty or damage claims, as well as of claims based on an error regarding the lack of defects of the performance delivered. Warranty claims, if any, shall become statute-barred upon the expiry of a period of six months after acceptance within the meaning of § 7.

§ 9 Liability

- 9.1.** The Client shall only be entitled to claims for damages against the Expert or his Personnel based on violation of contract or culpa in contrahendo – with the exception of cases of personal injury – in those cases where the Expert or his Personnel have acted at least with gross negligence. The Client shall be obliged to supply proof of the Expert's negligence.
- 9.2.** The Expert shall only be liable if, and to the extent that, the damage thus caused was foreseeable at the time of the conclusion of the contract or of the occurrence of the damage in question, taking into account all known circumstances or circumstances that remained unknown as a result of gross negligence.
- 9.3.** The Expert shall not be liable for damage caused by the Client's failure to cooperate as required or to submit the necessary documents and records according to § 6.
- 9.4.** To the extent that the Expert is liable under the provisions of the present paragraph, his liability shall be limited to the contract value of the part of the overall performance during the execution of which the damage occurred. The Expert accepts no liability for indirect or consequential damage.
- 9.5.** Liability vis-à-vis third parties shall be excluded entirely. The present contract imposes no obligations for the benefit of third parties. The only exception shall be the recipients of the expert opinion named to the Expert in writing at the time of his receiving the assignment, however, only within the purpose of appraisal.
- 9.6.** The Expert shall not be liable for any damages inflicted by the Expert's Personnel intentionally or delictually, nor for consequential damage caused by the defects in his performance. As a matter of principle, all claims for damages shall become statute-barred upon the expiry of a period of six months after delivery of the performance owed.
- 9.7.** All damages for which the Expert may be liable shall be limited to a maximum amount of EUR 400,000.00, with the exception of those cases where proof of intentional damage on the part of the Expert himself is provided.

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9.8. The above provisions shall also apply in case of damage caused by mere default.

9.9. In cases where there are several Clients, these shall be jointly and severally liable to the Expert.

§ 10 Default of acceptance and failure to cooperate on the part of the Client

10.1. In cases where the Client is in default with his acceptance of the Expert's performance, or where the Client fails to deliver a notification that he would have been obliged to deliver pursuant to § 6 or to some other provision, the Expert shall be entitled to terminate the contract without notice. In such a case, his claims shall be determined according to the provisions of § 4.2. and § 4.3..

10.2. The Expert's claim for compensation of the additional expenses and for the damage he may have suffered as a result of the Client's default or of the Client's failure to cooperate shall not be affected thereby; this shall also apply in cases where the Expert chooses not to avail himself of his right to terminate the contract.

§ 11 Remuneration

11.1. The fee rates for services charged at an hourly rate are based on an eight-hour day and on five working days per week. Travelling time shall count as working time.

11.2. Unless the parties should have come to a different agreement in individual cases, the Client shall pay the expenses of board and lodging of the Expert and his Personnel as long as they are on location at the rates applicable under fiscal law. Should the said rates be insufficient to cover the actual costs of lodging, reasonable costs as evidenced by the relevant receipts shall be charged. Furthermore, the Client shall pay the travelling costs of the Expert and his Personnel to and from the location, each of them being entitled to one trip home per week, the costs of which shall also be charged to the Client.

11.3. The Expert shall be entitled to demand reasonable advance payments of remuneration and expenses and to make the delivery of the services or performance owed by him dependent on the full satisfaction of his claims or on the provision of security for the payments owed to him.

11.4. The Expert shall submit monthly interim invoices for all services that are charged at an hourly rate.

11.5. For fixed price assignments, the Expert shall submit an invoice for 50 % of the contract value after the assignment has been given. After completion of the assignment, the remaining 50 % shall be charged to the Client. Travelling and other expenses pursuant to § 11.2. shall be invoiced after completion of the assignment if the assignment is completed within three months. Should the assignment take more than three months, travelling and other expenses shall be invoiced at three-month intervals.

11.6. All remunerations agreed shall be understood to be net amounts. The relevant statutory VAT shall be added to these amounts.

11.7. All invoices shall be payable without deductions within 14 days of the date of the invoice, provided the invoice has been posted no later than on the following day. Punctuality of payment shall be determined by the date on which the relevant payment has been credited to the Expert's bank account.

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11.8. Setting-off or the enforcement of retention rights against the Expert's claims for fees shall only be admissible if the Client's claim is undisputed or final and absolute. Setting off by the Client shall be anyhow excluded in all cases where the latter has acquired his counterclaim from a third party by way of assignment.

§ 12 Enticement

12.1. For the duration of the assignment and for a period of 12 months after the termination of the assignment, the Client undertakes not to conclude an employment contract with any of the Expert's Personnel for work within his enterprise or to mandate or to employ them on any other basis in his own or in a controlled enterprise.

12.2. For each violation against this prohibition of enticing away the Expert's Personnel, the Client shall owe the Expert a contractual penalty in the amount of twice the remuneration to which the Expert is entitled under § 11.

§ 13 Final provisions

13.1. Unless otherwise stipulated in the offer itself, all offers made by the Expert shall be understood to have been made without obligation.

13.2. The contract replaces all former agreements made with regard to its subject matter. Alterations and amendments shall be made in writing.

13.3. The place of performance of all services owed under this contract shall be the Expert's principal place of business in Vienna.

13.4. The contract shall be governed by Austrian substantive law, excluding renvoi rules and whatever international conventions. The parties agree that the exclusive venue for any disputes arising from this contract shall be the commercial court in Vienna having jurisdiction according to the relevant value in dispute.

Read and approved:

Date:

Date:

Client

immo advalue e.U.

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