

## INTERNATIONAL TERMS OF BUSINESS

### 1 Schoenherr Structure

Schoenherr Attorneys at Law are an international law firm operating through Schönherr Rechtsanwälte GmbH, a limited liability company incorporated in Austria with seat in Vienna, registered with the Commercial Court Vienna (*Handelsgericht Wien*) under registration no. FN 266331 p, and its subsidiaries, branch offices, cooperation partners and country desks in Central Eastern and South Eastern Europe as listed under "locations" at [www.schoenherr.eu](http://www.schoenherr.eu) as well as aside (together with all of the members, partners, consultants, employees, contractors, owners, directors and associated entities of these persons and entities collectively "**Schoenherr**" and any such person, individual or entity individually a "**Schoenherr Member**").

### 2 Engagement

- 2.1 It is agreed with the Schoenherr Member that sends the communication which references to these International Terms of Business ("**Terms**") to any person appointing Schoenherr as legal counsel ("**Client**"), that except as expressly agreed otherwise in writing, these Terms shall apply to the relationship between the Client and Schoenherr and to any services that any Schoenherr Member may provide to or on behalf of such Client.
- 2.2 By engaging Schoenherr, the Client agrees that these Terms, together with any written confirmation of the Client's instructions or any other agreement in relation to Schoenherr's services on that matter, shall form the contract between the Client and Schoenherr for that particular matter ("**Engagement Contract**", and the engagement which is the subject matter of the Engagement Contract, the "**Engagement**"), except if agreed otherwise in writing between the Client and Schoenherr.
- 2.3 These Terms are subject to changes from time to time and are updated on the website of Schoenherr ([www.schoenherr.eu](http://www.schoenherr.eu)).

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All our activities in these jurisdictions, including cooperations with independent attorneys, are in compliance with relevant law and other rules and regulations, in particular rules of professional conduct.

### **3 Associated Persons of the Client**

- 3.1 If Schoenherr agrees at a Client's request to provide services in relation to the Engagement on any matter to any individual or entity, including any members of the Client's corporate group ("**Associated Person**"), the Client agrees either to accept the terms set out in the Engagement Contract for that matter on behalf of each Associated Person (provided that the Client has authority to do so) or to ensure that each Associated Person enters into the same Engagement Contract with Schoenherr.
- 3.2 The Client agrees to ensure that the Associated Person complies with the terms of the Engagement Contract and that the Client is liable to Schoenherr in case of any non-compliance with such terms by any Associated Person.

### **4 Services and Scope of Work**

- 4.1 Schoenherr will act as a legal advisor in connection with the legal aspects of the Engagement as set out in the Engagement Contract.
- 4.2 These Terms shall apply to all activities and acts of representation in court and out of court, as well as before authorities, which are undertaken in the course of the Engagement Contract.
- 4.3 In addition, Schoenherr may, at the Client's request and upon agreeing a budget therefor, provide other legal services that may become relevant during the Engagement.
- 4.4 Tax and insurance matters (including stamp duty and social security matters) will only be covered by Schoenherr if and to the extent expressly agreed in writing.
- 4.5 Schoenherr will also not provide any non-legal advice, including, but not limited to, business, commercial, financial, technical, accounting or information technology matters.
- 4.6 In the event that a legal framework or situation changes after the Engagement has ended, Schoenherr shall not be obliged to draw the Client's attention to these changes and/or its consequences.

### **5 Power of Attorney**

- 5.1 Schoenherr shall have the right and obligation to represent the Client to the extent necessary and expedient in order to comply with the Engagement.
- 5.2 Schoenherr shall in particular have the right to represent the Client regarding all matters in and out of court and vis-à-vis other authorities, to enter into any settlement whatsoever, to receive money and monetary values on behalf of the Client, and to validly acknowledge receipt thereof, to appoint agents (substitutes) with equal or limited power of attorney, and to take any measures which Schoenherr

and/or any Schoenherr Member as holder of such power of attorney and its substitutes deem(s) appropriate.

- 5.3 If requested, the Client shall sign a written power of attorney for Schoenherr.

## **6 Team**

- 6.1 Each Engagement will be led by a Schoenherr partner, counsel or attorney. Ultimate responsibility for an Engagement lies with the Schoenherr partner responsible for the specific matter.

- 6.2 Additional professional staff, including associates or paralegals, may work on the Engagement from time to time if and to the extent efficient and appropriate.

## **7 Involvement of Third Party Counsel**

- 7.1 Schoenherr may recommend, or assist in the coordination of the activities of third party counsel or advisers but will do so solely in good faith and without liability and without warranting that person's ability or standing.

- 7.2 In relation to the matters handled for the Client, third party counsel is engaged by Schoenherr on behalf of the Client. Third party counsel will be directly responsible to the Client for all advice on the law of their jurisdiction and for ensuring that the relevant matter is properly handled within their competence. Third party counsel may negotiate specific terms of engagement with the Client.

## **8 Fees and Expenses**

- 8.1 In the absence of any other agreement between Schoenherr and the Client, the fees for Schoenherr's services in connection with an Engagement will be calculated on the basis of hourly rates, ie based on time actually spent.

- 8.2 In addition, Schoenherr retains the right to use document generation software for the preparation of templates, respectively first drafts of certain standard documents (e.g. Due Diligence request lists, powers of attorney, confidentiality/non-disclosure agreements, commercial register documentation, etc.). Schoenherr's fees for such software generated documents will not be charged on the basis of time spent but at fixed rates (lump sum fees). Time spent on matter-specific amendments or modifications of such software generated documents will be charged on the basis of hourly rates.

- 8.3 During the term of an Engagement positions of Schoenherr Members may change as a result of increased expertise, experience and seniority. This may lead to changes in individual fee rates of Schoenherr Members.

- 8.4 All fees are exclusive of value added tax (or similar tax) ("**VAT**"), as applicable.

- 8.5 Schoenherr may further incur certain expenses such as court and filing fees, taxi and other travel fares, hotel expenses, costs for encrypted data transmission (please see section 15.3), translation expenses and notary and notarisation fees, all of which will be charged in addition at cost, together with any applicable VAT.
- 8.6 For ordinary expenses such as telecommunication (international phone calls, emails and faxes), bulk photocopying costs and couriers/registered mail, Schoenherr charges 3 (three) % of the total amount of fees due. Schoenherr does not charge separately for word processing; secretarial work is thus included in the fees. All expenses (other than ordinary expenses) incurred will be stated in Schoenherr's invoices.
- 8.7 Schoenherr reserves the right to make an annual index adjustment of the agreed hourly rates.

## **9 Billing Policy**

- 9.1 The Client agrees to pay the fees and disbursements as set out in Schoenherr's invoices.
- 9.2 Unless otherwise agreed, Schoenherr will issue invoices on a monthly basis.
- 9.3 Schoenherr may request the Client to pay upfront retainers, having due regard to the amount of work to be expected over the course of a future period or for individual steps or milestones of an Engagement. For this purpose, Schoenherr may issue retainer invoices. Any payments made on account of such retainer invoices are credited against the regular invoices issued by Schoenherr.
- 9.4 Unless otherwise agreed, invoices are payable in Euro upon receipt. Any balances that remain unpaid more than 30 (thirty) days after issuance accrue interest at the lesser of 1 (one) % per month or the highest lawful rate.
- 9.5 If the Client has any query regarding a bill, it should be raised with the partner(s) responsible for the Engagement as soon as possible.
- 9.6 If the Client is required by law (or otherwise) to deduct or withhold any amount from an invoice or if any deduction is made in the course of payment (e.g. bank charges), the Client undertakes to pay such additional amount to Schoenherr as may be necessary to ensure that Schoenherr receives the amount it would otherwise have received had these deductions or withholdings not been made.
- 9.7 If not instructed by the Client to the contrary in writing, Schoenherr will issue its invoice(s) to the Client to the address last communicated by the Client or an address which can reasonably be deemed by Schoenherr to be the Client's official contact address. Upon request, the Client will notify Schoenherr of additional billing details, such as contact and address details and, as the case may be, the appropriate VAT identification number.

## **10 Conflicts**

- 10.1 Before accepting any Engagement, Schoenherr will perform a thorough conflict check in order to determine whether it is able to act for the Client in accordance with applicable legal, professional and internal regulations.
- 10.2 If the Client, at any time, becomes aware of an actual or potential conflict of interest, it shall notify Schoenherr immediately in writing.
- 10.3 Subject to applicable legal, professional and internal regulations, Schoenherr may act for one or several shareholders or affiliates of a Client, the interests of which may not necessarily be fully aligned with the interests of the Client, and/or for other clients which are, or which the Client considers to be, (market) competitors.
- 10.4 If a conflict of interest arises during the Engagement and applicable legal, professional and internal regulations prohibit Schoenherr from (further) acting for the Client, Schoenherr has the right to terminate the Engagement Contract in accordance with section 18. In this case Schoenherr will not be liable to the Client for any costs or losses arising from the termination of the Engagement.

## **11 Confidential Information**

- 11.1 Schoenherr will keep confidential all information about the Client's business and affairs it receives in respect of the Engagement and any other matter on which the Client instructs Schoenherr to provide services.
- 11.2 In particular, Schoenherr will not disclose any such information to any other person except (i) with the Client's consent, (ii) where disclosure is required or permitted by law (eg bar rules), (iii) to anybody which regulates Schoenherr or a Schoenherr Member, (iv) to the extent that such information enters, or has entered, the public domain, (v) (in confidence only) to Schoenherr's professional indemnity insurers, brokers, auditors or professional advisers or (vi) as may be advisable in order for Schoenherr to defend itself against a claim made by the Client or any other party.
- 11.3 However, once information has been announced or comes into the public domain, Schoenherr may disclose that it acted on behalf of the Client in relation to the Engagement, principally for the purposes of pitches, league tables, transaction lists and directory entries. Schoenherr will, however, not reveal any non-public information about the Engagement without the Client's prior express consent.
- 11.4 The Client agrees that the fact that Schoenherr holds information, whether generally or specifically, about the Client's business and affairs will not, subject to applicable legal, professional and internal restrictions, prevent Schoenherr from acting for another client in relation to a project to which that information might be relevant or who is seen as a competitor. This does not affect the confidentiality obligations under this section 11.

## **12 Client Verification and Compliance Matters**

- 12.1 Pursuant to applicable anti-money laundering regulations, under certain circumstances, Schoenherr must comply with strict statutory client due diligence, monitoring, reporting and record keeping obligations.
- 12.2 In particular, if the Engagement establishes a permanent client-attorney relationship and/or involves a transaction value in excess of EUR 15,000 and covers the sale and/or purchase of real estate or business entities, asset management, the establishment, operation and management of (trust) companies, business entities or similar structures, as well as the procurement of funds required to establish, operate and administer such entities, Schoenherr must, *inter alia*, apply strict client verification measures. In this case, Schoenherr is obliged to request from the Client and its beneficial owner(s) and, as the case may be, from its officers or from natural or legal persons for whom the Client acts as a trustee, satisfactory proof of identity and, as the case may be, of authority of representation. Schoenherr will separately contact the Client regarding the details of such identification and disclosure requirements.
- 12.3 Schoenherr will keep evidence of the client verification (and copies thereof) even after termination of the Engagement due to legal requirements. Schoenherr may not act on the Client's behalf and is legally required to renounce acting on the Client's behalf if it does not receive appropriate evidence of identity within a reasonable time after a disclosure request.

## **13 Limitation of Liability**

- 13.1 Schoenherr shall not be liable for damages, losses, expenses or other disadvantages caused as a result of slight negligence.
- 13.2 Further, except if and to the extent liability cannot be validly excluded under applicable law, Schoenherr shall not be liable for indirect and consequential damages, losses, expenses or other disadvantages or lost profit.
- 13.3 Subject to sections 13.1 and 13.2, any liability of Schoenherr for all damages, losses, expenses and other disadvantages suffered, directly or indirectly, as a result of, or in connection with, Schoenherr's advice under an Engagement or Schoenherr's handling of a matter, shall be limited to EUR 2,400,000 (Euro two million four hundred thousand). This limitation of liability shall not apply in case of Schoenherr acting with bad intent (*Vorsatz*) or blatant gross negligence (*krass grobe Fahrlässigkeit*).
- 13.4 Schoenherr shall only be liable to the Client but not to any third party/-ies.
- 13.5 No claim shall be brought against any partner, member, contractor, employee, consultant or agent of Schoenherr personally.

## **14 Intellectual Property**

The Client has the right to use documents prepared by Schoenherr for purposes of the Engagement and legitimate ancillary purposes (but not, without Schoenherr's prior written consent, for other matters). Without express written agreement to the contrary, Schoenherr does not transfer any intellectual property rights, including copyright, or licenses in any documents or other materials prepared by Schoenherr which are passed to the Client during the course of the Engagement.

## **15 Communication**

- 15.1 The Client agrees to communicate with Schoenherr in a variety of ways, including communication by e-mail and internet.
- 15.2 Any such communication involves risks such as delays, non-delivery, data corruption, hacking, interception, unauthorised amendment, as well as other tampering and, in some cases, use of e-mail may compromise confidentiality and legal privilege. In addition, e-mail can transmit viruses, worms, Trojan horses and other malicious code. Schoenherr cannot be held liable for any damages caused by such incidents.
- 15.3 In case the Client prefers to use encrypted data transmission for the communication in any particular matter (or parts thereof), it should notify the responsible partner. In addition, the Client agrees that Schoenherr works with web-based tools for reasons of cost efficiency and process optimization.

## **16 Processing of Personal Data**

When rendering the services, it is necessary to process personal data of the Client and, if required, also personal data of the Client's contractual partners, employees or other third parties. If the Client provides Schoenherr with these data, Schoenherr assumes that the Client is authorised to do so. In Schoenherr's day-to-day operations, Schoenherr mainly uses electronic forms of communication. Please note that - as stated under section 15 - this does not offer absolute protection against third party access and that servers outside Europe may also be involved in the communication traffic. Schoenherr will always process Client's personal data as well as that of Client's contractual partners, employees or other third parties which the Client has disclosed in accordance with applicable data protection regulations (for details please see Schoenherr's Data Privacy Statement at <https://www.schoenherr.eu/privacy-statementdisclaimer/>). In addition, Schoenherr reserves the right to send electronic mail in accordance with § 107 para. 3 TKG.

## **17 Retention of Files**

Files are kept by Schoenherr in paper or electronic form. Any documents in connection with the Engagement will be retained by Schoenherr (at least) for such period

as required under applicable law. Thereafter, Schoenherr has the right to destroy such files and delete all information from Schoenherr's IT systems without prior notice to the Client of such destruction or deletion. Schoenherr will further so delete files as and when required under applicable law.

## **18 Termination**

- 18.1 Either party may terminate the Engagement at any time on written notice to the other party without stating reasons for the termination. The representation of the Client will terminate immediately upon the giving of this notice by either party. If and to the extent that the immediate withdrawal as the Client's legal advisors would jeopardise the Client's interests, Schoenherr shall continue to be at the Client's service for another 14 days following receipt of the termination notice or as long as required under applicable law or bar rules.
- 18.2 Upon termination of the Engagement by either party for any reason, fees and expenses immediately become due and payable by the Client, including the fees and expenses of any third party retained by Schoenherr or on behalf of the Client, including any VAT applicable to such amounts, incurred up to the date of termination.
- 18.3 Sections 11 (Confidential Information), 13 (Limitation of Liability), 14 (Intellectual Property), 16 (Processing of Personal Data), 17 (Retention of Files), 19 (Governing Law and Jurisdiction) and 20 (Assignment) shall remain in force upon termination the Engagement.

## **19 Governing Law and Jurisdiction**

- 19.1 Subject to any other written agreement between Schoenherr and the Client, these Terms shall be governed by, and interpreted in accordance with, Austrian law, excluding the Austrian conflict of laws rules.
- 19.2 Subject to any other written agreement between Schoenherr and the Client, the competent courts of the first district in Vienna, Austria, shall have exclusive jurisdiction to settle any disputes, controversies or claims arising out of, or in connection with these Terms, or related to their creation, interpretation, validity, performance, violation, termination, or nullity.

## **20 Assignment**

These Terms shall be binding upon, and inure to the benefit of Schoenherr and the Client and their respective successors and permitted assigns. No party shall, nor shall it purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under these Terms, nor grant, declare, create or dispose of any right or interest in them, without the prior written consent of the other party.



## **21 Severability**

The illegality, invalidity or unenforceability of a provision of these Terms under the law of any jurisdiction shall not affect the legality, validity or enforceability of any other provision of these Terms in (i) that jurisdiction or (ii) the legality, validity or enforceability of that, or any other provision of these Terms under the law of any other jurisdiction. Any such invalid, unenforceable or impracticable provision shall, to the extent permitted by law, be deemed replaced by a provision which – to the extent possible – carries out the original intent of the parties.