

## **Standard terms and conditions for the real estate services**

(KP YSE 2007)

### **§1 Area of Application**

These standard terms and conditions shall be applicable within the contracts of real estate services entered into between a Contractor and Subscriber. These standard terms and conditions may be varied by prior written agreement.

### **§2 Purpose of the Contractual Relationship**

The parties to a contract of real estate services shall strive for long-term cooperation, in the interests of life-spans and the environment, in order to meet the agreed objectives.

Openness, trust and regular interaction between the contractual parties shall be required to develop the contractual operations.

Meetings to be held during the contract term to monitor the fulfilment of the objectives under the contract and to develop the contractual operations shall be separately agreed.

### **§3 Performance of Contractual Duties**

The Contractor shall be obliged, for the fee set out in the contract, to carefully undertake the services defined in the contract to the extent required, in accordance with the applicable legislation and good management practice.

The Contractor shall undertake the agreed contractual duties within the specified periods. In the event that the completion of the duties should have to be carried out outside the agreed periods due to reasons dependent on the Subscriber, then any procedures or losses arising from the revised arrangements for working hours or acquisition of extra employees as necessary shall be separately agreed.

The Contractor shall provide sufficient and professional employees for the performance of the contractual duties, together with sufficient equipment and appliances.

### **§4 Fulfilment of Obligations under the Subscriber Liability Act**

The Contractor shall ensure that the Contractor and any subcontractors shall, at the commencement of and throughout the contract term, comply with the statutory requirements concerning any disclosure obligations or liabilities of the Subscriber in respect of outsourcing external contractors, insofar as relates to registration with any necessary bodies, or other statutory obligations.

### **§5 Quality Assurance between the Contract Parties**

The Subscriber shall take steps to ensure the fulfilment of its contractual obligations so that the Contractor may be afforded the necessary prerequisites to fulfil its own obligations.

The Contractor shall comply with the quality assurance procedure set out in the contractual documents. Where required, prior to the commencement of any contractual duties, the Contractor shall demonstrate how it seeks to ensure the quality of the work.

The Subscriber shall have the right to obtain details of the quality assurance procedure of any key subcontractors engaged by the Contractor, before their approval.

#### §6 Contribution Liability by the Subscriber

The Subscriber shall, at its own cost, provide to the Contractor any documentation and information concerning the contractual premises, which are necessary to perform the contractual duties.

The Subscriber shall maintain standard real estate insurance. The Subscriber shall notify the Contractor of any relevant insurance conditions, and any changes thereto, in terms of real estate services.

The Subscriber shall ensure access by the Contractor to such premises as necessary in order to undertake the contractual duties, either by way of providing the Contractor, in return for a signed receipt, with a sufficient number of individual keys, or by other means to be separately agreed. The Subscriber shall be liable to ensure that the Contractor is not supplied with any unnecessary keys. The Contractor and Subscriber shall agree separately as to the surrender of the keys to any third parties.

The Subscriber shall ensure that the Contractor is able to perform its contractual duties at the relevant premises in compliance with industrial safety regulations.

The Subscriber shall coordinate the tasks of any other service providers at the real estate. In the event that such other tasks should interfere with the performance of any duties by the Contractor, any changes and effects to the contractual duties must be agreed in advance. In the event that the Subscriber should carry out work outside the scope of the contract, which results in added duties for the Contractor, the effect of such on the performance of the contractual duties shall be separately agreed.

The Subscriber shall notify any occupants of the real estate as to the essential content of the contractual duties.

#### §7 Contribution Liability by the Contractor

The Contractor shall maintain liability insurance, the terms and conditions of which, integral to the Contract, or any changes thereto, shall be advised by the Contractor to the Subscriber.

The Contractor shall notify the Subscriber without delay of any defects or deficiencies the Contractor has observed in the premises in the course of performance of its duties, which may cause damage or risk to the real estate or to any individual, or which may impede the performance of the Contractor's contractual duties.

The Contractor shall notify the Subscriber without delay of any defects or deficiencies the Contractor has observed in the premises, which may endanger the safety of the Contractor's employees. In the event that any defects or deficiencies at the premises may seriously endanger the safety of the Contractor's employees, the Contractor shall be released from liability to perform its contractual duties, without recourse by the Subscriber to cancel the Contract or to suspend payment for service fees, until such time that the relevant defect or deficiency has been rectified.

In the event that a defect or deficiency requiring immediate attention is observed by the Contractor, the Contractor shall have the right to take steps to rectify the same with immediate effect, for the account of the Subscriber, in circumstances where this is necessary in order to prevent greater losses, and where the responsible person appointed by the Subscriber cannot be reached straight away. In the event that the defect or deficiency observed may endanger lives, the Contractor shall have the right and obligation to isolate the danger area or, where this is not possible, to arrange for a diversion bypassing the danger area, with the aid of the appropriate signs or other markings, whereby the danger area may be safely avoided.

Any regular reporting to the Subscriber shall be separately agreed.

#### §8 Transfer of the Contract

The parties to the contract shall not have the right to transfer the contract to third parties without the written consent of the other. The contract may be transferred in the event of a corporate transfer or change of ownership of the real estate. In circumstances where either the Subscriber, the new owner of the real estate or the Contractor should disagree with the Transfer of the Contract, they shall have the right to terminate the contract within one month of notification of the corporate transfer or change of ownership of the real estate, with a notice period of four (4) months, unless a different notice period has been set out in the contract.

#### §9 Use of Subcontractors

The Contractor shall have the right to engage subcontractors, whose work and procedures shall be the liability of the Contractor.

The Contractor shall be obliged to present for approval by the Subscriber any key subcontractors under this contract in good time prior to their engagement. Approval may be withheld only for a just reason. A just reason may constitute lack of the agreed quality assurance procedure, or neglect of tax or employer's statutory payments. Approval of a subcontractor by the Subscriber shall not reduce liability by the Contractor.

The Contractor shall also be obliged to inform the Subscriber of any other subcontractors engaged to perform under the contract.

#### §10 Payment of Contractual Fees

The Subscriber shall remit the agreed service fee on the agreed date.

Where a payment date or fee has not been agreed, invoicing of the contractual fees shall be effected on a monthly basis, with the terms for payment being 10 days from the date of the invoice.

Any late payments by the Subscriber shall incur interest pursuant to the Interest Act.

Any reclamation concerning invoices should be made without delay and, in any event, prior to the due date for payment.

#### §11 Modification of the Contract

Any modification in relation to the agreed services, level of quality or the fees payable may be effected only by mutual agreement between the contract parties.

In the event that one or both of the parties to the contract should request that the content and price of the contract should be reviewed in order to realise the required targets, the contract parties should commence negotiations to this effect. The requirement for modification may be resultant from a change in circumstances or change of requirements by the other party.

Any errors or revisions in the information which forms the basis of the contract should be notified to the other contract party without delay. The contract party shall have the right to insist that the contract is amended to reflect the correct information. A party to the contract shall be entitled to claim damages or compensation only for losses derived after the relevant claim has been presented to the other.

#### §12 Price Review

Unless otherwise agreed, the contractual fees may be subject to a review during the contract term.

Any proposal for a price review should be presented to the Subscriber in writing and in good time, so that the basis for the review proposal may be clarified. It is a precondition for acceptance of any price review proposal that the basis for the review have arisen after the offer resulting in the contract was made, and that this basis has had a direct impact on performance under the contract. Where the Subscriber is not prepared to accept a price review, this must be notified to the Contractor in writing within one month of the review proposal, whereafter any potential review negotiations should be initiated without delay.

In the event that an agreement on prices cannot be reached, the Contractor shall have the right to terminate the contract mid-term, with three (3) months' notice.

In the event that the Value Added Tax percentage applicable to the services under the contract, or any other tax or statutory fee, should become subject to revision during the contract term, the contractual fee shall be adjusted accordingly.

In the event that the services provided under the contract should become subject to any new levy of tax, which could not be taken into account at the time of the offer, the contractual fee shall be adjusted to correspond accordingly.

### §13 Contract Term

The contract may remain in force until further notice, or for a fixed term. Unless otherwise agreed, the contract shall be deemed to remain in force until further notice. In addition, the contract may be agreed to continue upon the expiry of each contract term, unless agreed notice has been given to terminate the contract at the end of the contract term.

### §14 Termination of the Contract

#### Termination

A contract valid until further notice may be terminated in writing. Subject to any other provisions of the contract, the notice period shall be four (4) months.

Both a contract valid until further notice and a fixed-term contract may be terminated immediately, provided that the terminating party will recompense the other with a sum amounting to the fees due for the notice period or for any remaining contract term.

#### Cancellation

The contract may be cancelled with immediate effect where the other contract party, despite written notice, continues to essentially neglect its performance obligations or is otherwise in breach of contract.

Upon cancellation of the contract for breach by a contract party, the innocent party shall be entitled to compensation from the breaching party. The amount of such compensation shall equal one month's fee payable under the contract, unless the innocent party can show greater losses or the breaching party can show smaller losses, taking into account, however, the provisions of §18 in relation to damages, or any other provisions separately agreed.

In the event that a party to the contract should be subject to bankruptcy, administration or receivership, the other shall have the right to cancel the contract.

In the event of the death of an independent entrepreneur acting as Contractor, the Subscriber and the estate of the Contractor shall have the right to cancel the contract.

### §15 Force Majeure

The parties to the contract shall be released from their obligations under the contract insofar as exceptional circumstances referred to in the Emergency or Defence State Act shall apply, or where an equivalent reason of force majeure shall prevent the fulfilment of the contract, or where it would be unreasonable to demand fulfilment of the contract.

The parties to the contract shall have the right to suspend their performance of duties under the contract where such performance is prevented by industrial action, boycott, lockout or any other equivalent activity.

In the event that industrial action on the side of the Subscriber should prevent the Contractor from the performance of its contractual obligations, the Contractor shall be entitled to charge the Subscriber for salary expenses incurred for the interruption in relation to the contractual real estate, for a maximum period of two weeks. Save for the aforesaid, any losses incurred to either contract party for non-performance under the contract as a result of force majeure shall be subject to compensation only in the event that this has been separately agreed.

The parties to the contract shall have the right to cancel the contract where the performance of the duties under the contract, as a result of force majeure, shall have to cease for an undetermined period.

#### §16 Contract Termination Procedure

The contract must be terminated in writing.

At the end of the contract term and at the request of the Subscriber, an inspection of the real estate and any equipment therein shall be carried out without any additional charge to the Subscriber insofar as the contract subject to termination covers the same, and a similar inspection was carried out at the premises at the commencement of the contract.

#### §17 Notices and Instructions

Both the Subscriber and the Contractor shall appoint a responsible person, to whom the Contractor, Subscriber or a representative of either may give notices and instructions in relation to the contract as if they had been given directly to the Subscriber. Any such notices and instructions must be issued in writing, save for any minor or urgent issues.

The Subscriber shall be obliged to notify the Contractor of any potential damage without delay. The Subscriber shall take immediate steps to mitigate losses.

Any notices concerning performance under the contract of either contract party shall be made in writing, without delay. At the same time, any demands pertaining to the notice should be set out. In the event that the Contractor may be liable for the losses incurred, the Subscriber should present any claim to the Contractor in writing.

The provisions governing dispute resolution are set out in §22.

#### §18 Liability for Damages by the Contract Parties

The parties to the contract shall be responsible for the fulfilment of their respective obligations under the contract. The parties to the contract shall be liable to compensate the other for losses

arising from any non-performance under the contract, provided that the complaint has been issued directly after such negligence has been brought to the attention of the innocent party.

It is possible to make different contractual arrangements over the limitation of liability for damages or the extent of the quantum of damages. Unless the limitation of liability for damages or the extent of the quantum of damages have been otherwise agreed between the parties, the contract parties shall be liable to compensate the other for any personal or tangible damage incurred and any related financial losses, which fall within the scope of responsibility of the Contractor under the applicable legislation. Indirect losses shall not be subject to compensation in any other respect. The maximum amount of compensation in any event shall be limited to five hundred thousand (500,000) euros. In the event that any losses should have been caused intentionally or through gross negligence, the said maximum limitation amount shall not apply.

#### §19 Confidentiality

The contract parties shall be bound to keep as confidential any trade or professional secrets divulged to the other. The offer, order confirmation and contract terms and conditions shall be regarded as confidential and the provisions of this clause shall apply thereto. The confidentiality agreement shall bind the parties also after the expiry of the contract. The confidentiality agreement shall not prevent the parties from submitting details for statistical purposes.

Notwithstanding the confidentiality agreement, the Contractor shall have the right to include the Subscriber in its list of customers.

#### §20 Engagement of Employees

The Subscriber may not, without express consent by the Contractor, admit into its service any person in the employment of the Contractor who has, within the previous three (3) months undertaken services for the Subscriber at the relevant premises. In the event that the Subscriber should breach this provision, the Subscriber shall remit to the Contractor reasonable compensation in consideration of recruiting a new employee, albeit no more than a sum equivalent to one month's gross salary of the employee in question. Such compensation shall be calculated in accordance with the final month's salary of the relevant employee while in the Contractor's employment.

#### §21 Data Ownership and Data Security

The Subscriber shall own any data in relation to the Subscriber's real estate provided to, acquired or collected by the Contractor, other than data available through public records or otherwise in the public domain. The ownership, application or utilisation rights for any data gathered or processed by the Contractor during the contract term, which forms the basis for the contract, shall be separately agreed.

The Contractor shall be liable to ensure that, in the course of production of services under the contract, all aspects of data protection legislation shall be complied with.

Data security methods, such as safety copies, storage of documents and fire and theft security, shall be separately agreed.

## §22 Disputes

Any disputes arising from this contract shall be endeavoured to be resolved by negotiation between the parties, appointing, if necessary, an external mediator.

In the event that a solution cannot be reached, a claim may be brought before the District Court of the domicile of the Subscriber.

The parties to the contract may agree that the dispute be resolved by a single arbitrator, in the order set out in the Arbitration Act.

## §23 Order of Validity of the Contract Documents

The contract documents shall complement each other in such a way that the provision of any one document shall apply even in the event that it should have been omitted from the other contract documents.

In the event of conflict between the contract documents, the agreed order of validity of the documents shall be observed.