

Terms & Conditions – Management Consulting

1. Definitions

- 1.1. Scope: This document defines the general terms (and provides additional explanation to clarify and amplify those terms) that shall apply to all consultancy agreements involving Catenion Services. These clauses are incorporated into and form an integral part of our contract.
- 1.2. The parties: Catenion GmbH, Germany (hereinafter known as 'Catenion') and the Client: 'the Client' is the party with whom a contract of supply exists.

2. Performance

- 2.1. All commitments with respect to the timing and scope of a project given to the client by Catenion - whether verbal or written - are made in good faith but are made necessarily in advance of knowing the full scope of the difficulty that may pertain to performance on specific points (for example, un-foreseeable difficulty in obtaining certain information requested by the client). For this reason, whilst Catenion agrees to use its best endeavours to fulfil such commitments to clients on the timing and the scope of consultancy and other projects we cannot guarantee performance in either respect.
- 2.2. Where the contract specifies that our service will be provided by a named individual, Catenion agrees to take all reasonable steps to ensure that these persons will remain on these assignments for the full length of the contract.
- 2.3. Catenion further agrees to obtain the client's agreement to any significant substitution of personnel that is necessitated by unforeseen circumstances - such as staff sickness.

3. Confidentiality

- 3.1. Catenion agrees to hold all information provided by the Client confidential where the client so specifies, save where such information is known to Catenion already, or exists already in the public domain, until, either the information enters the public domain, or Catenion is given the same information by a third party, or is released from its confidentiality requirement by the client, or the client is found in breach of contract with Catenion by a court of law (including non-payment of account) or three years have elapsed - whichever is the sooner.
- 3.2. The client agrees to hold confidential all information about Catenion's proposal(s), fee structures, fees and personnel.

4. Materials Supplied

- 4.1. Catenion agrees to handle any materials, such as product samples or documents, supplied by the client to Catenion in a responsible fashion and return them to the client upon request. However, Catenion will not be responsible for any wear or tear occasioned nor for any loss or theft that might occur. All such material is supplied at the client's own risk and no liability for any financial restitution for any direct or indirect value is accepted nor any consequential loss.

5. Conflict of Interest

- 5.1. Catenion will decline any third party contract that would create a conflict of interest with the client's previously agreed instructions. Where such a conflict only becomes apparent after our agreement to act for the third party we will invoke Clauses 5.2 and 5.3 in respect of their contract.
- 5.2. Catenion warrants to bring to the attention of the client any conflict of interest that may arise between the client's instructions and the terms under which Catenion is acting, or has acted, for another client at the time that it becomes apparent to Catenion officers (where such third party instructions were received prior to the client's instructions). The client will then be free to vary his contract with Catenion in the light of this revelation to the extent that it is affected by

the potential conflict of interest. Such a declaration by Catenion will be general in nature, so as not to prejudice the confidentiality with the third party.

- 5.3. Catenion will have the right to resign its contract in such circumstances if, in its judgement, it is unable to proceed with the contract and maintain its fiduciary duty. Catenion shall receive payment in full for hours worked and expenses incurred to the date of disclosure, including all due contract stage payments but not including any entitlement to pro-rata payment for any amounts payable on completion such as performance fees or terminal payments.

6. Rights of Ownership

- 6.1. Catenion warrants that all personnel, whether full-time employees or not, will be employed on terms that protect the Clients intellectual property rights.
- 6.2. Notwithstanding any payments received from the client, all rights of ownership to all materials prepared by Catenion, whether written or not, shall remain the property of Catenion - copyright and distribution rights are reserved by Catenion at its sole discretion, except where these rights are explicitly stated in writing to have been waived or where the contract between Catenion and the client explicitly so provides or where the material is so endorsed by Catenion.
- 6.3. Catenion however grants the right, without prejudice to its position under the previous paragraph, to the client to copy freely any material provided by Catenion as part of work wholly commissioned by the client provided that distribution of these copies is exclusively within the client's particular organisation.
- 6.4. This clause shall apply to all reports, including the final client report, and all presentation materials. It shall also apply to any audio or videotaping of any presentations made by Catenion for the client.
- 6.5. The right to distribute copies of Catenion material internally within the Client's organisation does not extend to multi-client and off-the-shelf market research reports which have been bought from Catenion. Additional copies of such reports for internal distribution are available, at the time of purchase or later, at greatly reduced cost.
- 6.6. The client's interests in respect of this clause and any materials provided by the client to Catenion are protected by Catenion's blanket confidentiality commitment in respect of the dissemination of any and all materials related specifically to the client's affairs.

7. Time Basis for Contracts

- 7.1. Where applicable, activity time is calculated inclusive of travel time from the prior non-client activity (such as from the consultant's home, office, or third party premises).
- 7.2. The unit of activity is normally the Day, except where otherwise agreed in advance.
- 7.3. Activity time includes all office time spent acting for the client.
- 7.4. Where the unit of activity is by the hour, all travel, office, administrative, preparatory, production and telephone time in addition to actual client meetings and external interviews, are chargeable at the agreed hourly rate for the individual concerned.
- 7.5. Activity logs will be provided to clients upon request.

8. Expenses

- 8.1. Catenion contracts with clients stipulate whether they are 'fixed price' (ie all expenses will be included within the pre-negotiated fee and not charged supplementary to the client) or 'fee plus expenses' - in which case expenses of 20% are levied in addition to our agreed professional fee.

9. Fees

- 9.1. The remuneration structure agreed between the client and Catenion may be based on a number of methods. These are a 'fixed fee', a 'capped fee' and a 'time based rate' (e.g. day rate, also known as a per diem fee, or an hourly rate).
- 9.2. The client agrees to pay Catenion according to the fee structure outlined in Catenion's project proposal, as amended by subsequent written correspondence.
- 9.3. Fixed fee contracts cover the performance of an agreed service as outlined in our Project Proposal for an agreed remuneration. Extra time incurred by Catenion in the performance of the 'fixed fee' component of a contract shall be borne by Catenion. The fee shall be fixed in the currency in which the quotation is made, regardless of exchange rate movement.
- 9.4. Capped fee contracts are similar to 'fixed fee' contracts including monthly accounts based on work performed, with the provision that Catenion will invoice the client only the days actually worked up to an agreed maximum per month or the whole contract.
- 9.5. The 'daily rate' and 'hourly rate' shall be charged in accordance with the criteria defined in Clause 7.

10. Cancellation Rights

- 10.1. The contract shall be regarded as a whole unless there are break points within it agreed in advance or it is divided into stages or where it is subject to periodic renewal. Where no such division is agreed in advance and stipulated in the contract, the client shall be liable for the totality of the value of the contract - including all expenses incurred to the date of cancellation - whether or not the client wishes the work to be completed.
- 10.2. If a consultancy contract is expected to be for an extended period or to have phases contingent upon the results of earlier work, it will normally be divided into stages or subject to periodic renewal. Where such divisions apply, either party may choose not to continue the contract into the next phase without penalty (unless otherwise provided in the specific contract). Where such cancellation is by Catenion the client shall be entitled to a refund of that proportion of any advance of fees that relate to the remaining part of the contract.
- 10.3. Annually renewed service contracts and retainers shall be renewed automatically for a further 12 months unless either party gives the other the minimum notice of termination set out in the individual contract or in the absence of such a provision 90 days notice.
- 10.4. Where the client cancels, the client shall pay for all stages of the contract that have been commenced. Should he choose not to have work completed on the stage underway prior to cancellation he remains liable for payment in full of this stage. The client also agrees to pay all expenses incurred, whether or not these relate to the stages cancelled or to any prior stages.
- 10.5. Where performance under the contract of Catenion's service is contingent upon the availability of a specific Catenion employee or Associate, the client shall have the right to cancel the contract if the person or persons essential to the timely completion of the project is unable to carry out the agreed function within a period of sixty days of the agreed deadlines due to ill health or other reason. In such circumstances the client shall not be liable for any further payment of fees but Catenion shall be entitled to retain payments already made in lieu of work carried out to date and to recover all reasonable expenses incurred up to the date of cancellation.

10.6. Specific terms apply to cancellation in the event of a conflict of interest (see Clause 5), client insolvency (see Clause 17), illegal activities (Clause 18) or force majeure (Clause 20).

10.7. In the event of cancellation, expenses incurred referred to in this Clause shall be interpreted as including all monies spent on behalf of the client plus all spending irrevocably committed to on the client's behalf by Catenion up to the date of cancellation plus any cancellation charges that may be levied by third party suppliers as a result of the contract cancellation.

11. Payment Terms

11.1. The client agrees to be bound by the payment terms stipulated in the contract.

11.2. If the client fails to make any final payment without giving notification of due cause, then Catenion will withhold delivery of any final reports and will not be responsible for any inconvenience, loss or damage so caused.

11.3. In respect of any delays in interim payments attention is drawn to Clause 13.2 below.

11.4. The currency of payment will be stipulated in the client contract. Both parties agree to accept this in respect of all invoices and payments.

11.5. Unless otherwise explicitly provided by an individual contract, no account will be taken of any exchange rate fluctuations during the life of the contract. Each party accepts as their own responsibility the variation, whether favourable or unfavourable, that they may see in local currency terms in respect of the contract.

11.6. The client's responsibility is for payment to Catenion of the full amount agreed. The client agrees to adjust all payments to take into account any charges levied (such as may be made by the transferring bank), such that the full amount is received by Catenion. The client accepts that Catenion shall be entitled to recover all deducted amounts.

11.7. The client agrees to make payment by the method stipulated in the contract to the location stipulated in the contract. Catenion shall be entitled to recover any costs caused by any client variations in this respect not agreed in advance.

11.8. The client agrees to pay all government taxes and duties, regardless of origin, that may apply to all payments to Catenion. The client further agrees that, should there be a change in type or value during the life of the contract, whether favourable or unfavourable to the client, he will be responsible for them in totality. Each party will be responsible for recovering his own entitlements in respect of pre-payments (for example in respect of VAT or sales tax).

11.9. Catenion shall be entitled to charge interest at the rate of 2% per month on all amounts that remain unpaid 30 days after the agreed payment date.

11.10. In the absence of any other agreed payment terms, all invoices shall be payable in full within 30 days of the date of the invoice.

12. Stage Payments

12.1. Most contracts that extend across several months provide for stage payments. These are negotiated in advance as part of the normal discussions prior to agreement of the contract.

12.2. Catenion shall have the right to suspend all work on behalf of the client should these payments not be made on time to the agreed schedule. Any adverse impact that this suspension has upon the completion schedule or the quality of the product for the client shall be at the client's sole responsibility. This right applies not just to the contract in arrears but also any other contracts with the client, whether or not payments against these contracts are in arrears.

12.3. In particular, clients should note that where it has been agreed that payment of all or part of a contract is to be made 'in advance' work will not commence on the client's behalf until payment is actually received.

13. Liability for Advice Given

- 13.1. Catenion provides information, advice and services in good faith based upon information available at the time. We do not warrant the accuracy of information provided. It is for the client to decide whether or not to accept our advice in making his own management decision. We advise that any data critical to a decision should be independently verified prior to being acted upon. Therefore Catenion accepts no liability for the consequences of its information opinions and advice whether direct or indirect.

14. Publicity

- 14.1. Catenion shall have the right, without further reference to the client, to publicise the fact that the client is, or was, a client and to utilise the client's name in publicity materials in this respect. Catenion may also describe in general terms the type of work conducted for the client, but shall not be permitted to link the two without the prior permission of the client.
- 14.2. Wherever the results of any commissioned work are cited by the client, the client agrees to make due reference to Catenion so as to make it clear who carried out the work, except where Catenion explicitly waives this right. This provision is notwithstanding the over-riding position over ownership of said product (outlined in Clause 6, Rights of Ownership, above).

15. Recruitment of Personnel

- 15.1. Each Party undertakes not to attempt to solicit or procure the services of staff employed by the other party who are involved in the performance of this contract during the course of this contract and for a period of twelve months thereafter without the written permission of the other party.
- 15.2. The client agrees to pay Catenion a 'finders fee' should the client recruit a Catenion consultant to a paid employment position within two years of the conclusion of any work on behalf of the client by that Consultant or of that Consultant being introduced to the client whichever is the later.
- 15.3. In respect of this clause, the definition of 'Consultant' shall include all Catenion employees and Associates that are involved in the provision of services to the Client under this or any other contract.
- 15.4. The 'finders fee' shall be 50% of the first year's gross remuneration payable by the Client or its Associates to the Consultant.

16. Insolvency

- 16.1. Catenion shall have the right to discontinue immediately all work for the client should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.
- 16.2. In these circumstances Catenion will also be entitled to have a general lien on all goods and property of the client that is within Catenion's possession and, following 14 days notice to dispose of such goods and property in such manner and at such prices as Catenion thinks fit and to apply the proceeds towards such debts.

17. Illegal activities

- 17.1. Catenion will not carry out any illegal activities on behalf of the client. Any requirement in this respect will nullify this contract in respect of performance and Catenion will be entitled to recover in full its fee and expenses.
- 17.2. The client agrees not to make any illegal use of any information provided by Catenion.
- 17.3. Neither party shall be liable to the other for any indirect, special or consequential damages.

18. Limitation of liability

- 18.1. Without prejudice to other more restrictive limitations elsewhere in this contract, liability on the part of Catenion is limited to the value of the contract with the client or the value of the loss whichever is the smaller. Catenion accepts no liability for the consequences of its information, opinions and advice, whether direct or indirect.

19. Force Majeure

- 19.1. Whilst Catenion agrees to use its best endeavours to perform the contract for the client as specified, Catenion will not be responsible for any delays or failure to complete the contract which are beyond Catenion's control and which could not have been reasonably predicted.
- 19.2. Where the delay caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the contract. In such circumstances the client will not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and Catenion will be entitled to recover any costs already incurred.

20. Jurisdiction

- 20.1. Any disputes or claims shall be governed by and construed in accordance with German law and the jurisdiction of the German courts.

21. Arbitration

- 21.1. All unresolved disputes between the Parties shall be referred to arbitration in Berlin, Germany before a single arbitrator to be appointed, in default of agreement otherwise, by the President for the time being of the Institute of Management Consultants.
- 21.2. Both parties also agree that all disputes arising with respect to this contract will be arbitrated upon within the German legal system.

22. Waiver

- 22.1. The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

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