

General terms of business of Battermann & Tillery

1. Area of application

1. These general terms of business shall be applicable to all contractual relationships between Battermann & Tillery GmbH (hereinafter „agent“) and the client. These General Terms of Business shall be applicable in business operations with entrepreneurs.
2. Any conflicting or deviating terms of the client shall not be accepted unless the agent expressly confirms their validity in writing.
3. These General Terms of Business shall be valid in their respective current version, including for subsequent instructions/assignments and on-going business relationships. The client confirms their validity by issuing the instructions.
4. The General Terms of Business are available for review in the offices of the agent and on its internet page www.ba-ty.com.

2. Issuing of instructions

1. The instructions shall be binding for the agent not until and only insofar as they were confirmed in writing. Amendments, changes and verbal supplements shall be required in written form in order to render them valid. This shall apply in particular to promises and information provided by the agent's staff members and Surveyors instructed by the agent.
2. The requirement of written form shall also apply to changes and revocation of the requirement of written form.
3. If the instructions for the agent's services are received electronically, the agent shall immediately confirm the instructions. The confirmation of receipt shall not constitute a binding confirmation of the instructions but it may be combined with the confirmation of acceptance.

3. Client's duties

1. The client shall provide the agent with all documents, records and information required to complete the assignment. These documents, records and information shall be provided conscientiously, completely, free of charge, in due time and on the client's account, if no other written agreements exist.
2. The agent shall not be required to review the documents, information or other services made available by the client for completeness and accuracy insofar as the circumstances of the individual case do not require this or the instructions do not expressly include this.
3. The agent shall be informed of all occurrences and circum-

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stances which may be of substance for the completion of the assignment in due time and without making any respective requests.

4. Carrying out the assignment without fulfilment of the above items 3.1 to 3.3 shall be done at the sole risk of the client insofar as there is no contributory negligence on the part of the agent.
5. The client shall, at its own risk and on its own account, carry out all preparatory actions required to carry out the assignment. Items which are to be surveyed shall be freely accessible and shall be kept available for inspection.
6. If it is not possible to complete the assignment at the agreed upon time due to a circumstance within the sphere of the responsibility of the client, the agent reserves the right to invoice the loss incurred (order value less saved expenses with regard to the respective appointment). The client shall be permitted to provide proof that no loss was incurred or that the loss was lower than specified.
7. If there are any delays during the arranged appointment as a result of the client's neglect of duty, the agent reserves the right to invoice the additional costs at the agreed upon rate or alternatively the customary hourly rate.

4. Agent's duties

1. The agent shall provide its services neutrally, impartially and to the best of its knowledge with the due diligence of a respectable Surveyor. As far as this is included in the instructions, the provisions and codes of practice existing and recognised at the time of accepting the assignment shall be observed.
2. The services to be rendered by the agent shall be defined in writing by issuing the instructions. Partial services shall be possible. In case there are any deviations, changes and/or amendments of the defined scope of the assignment or the agreed upon fixed compensation these shall be settled by the contractual parties supplementary in writing, and in advance as far as possible. Insofar as the client may not be expected to adhere to the contract in view of the deviations, changes and/or amendments, the client may rescind the contract. The client shall be obligated to compensate for services rendered up to that point upon exercising the right of withdrawal.
3. The agent shall have the right to have the assignment carried out by qualified third parties in full or in part.
4. In order to complete the assignment, the agent shall, at the

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expense of the client, carry out the required and normal inspections and efforts as per dutiful discretion, make inquiries and carry out investigations, travel and carry out surveys and prepare or have prepared photographs, drawings, pictures and records. This does not require a separate approval from the client provided that no time-consuming or costly investigations are required or the measures to be taken are not extraordinary.

5. For consultation services, the explanations, indications and statements made by the agent generally shall be considered suggestions only. Unless expressly agreed upon in writing, the Page - 3 - of 6 agent does not guarantee an increased or otherwise substantiated degree of safety upon carrying out any or all suggestions.

5. Confidentiality

1. The agent shall not disclose, use or forward without authorisation the survey report or any other facts or documents which emerge in the course of carrying out the assignment and which pertain to the client and the object of the assignment. Legal, governmental or court ordered obligations for disclosure as well as obvious facts shall be excluded from the above.
2. The agent shall be authorised to make copies of the documents provided for review for their own records or for carrying out the assignment.

6. Copyright and rights of use

1. The agent expressly retains the copyright to the results of the assignment which are subject to copyright.
2. The scope of services of the agent is defined in writing by the confirmation of the order. The client may use the services rendered or the results obtained with all related details only for the purpose which was agreed upon as the instructions were issued. Any other application or usage is permissible only after prior expressed written consent from the agent.

7. Compensation and terms of payment

1. The agent is entitled to compensation which conforms to the valid scale of fees of the agent unless fixed compensation

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had been agreed upon in writing. Alternatively compensation shall be paid in accordance with rates customarily charged by freelance marine and cargo surveyors.

2. The agent shall be entitled to demand advance payment and/or issue partial invoices for services rendered. If the client is in default of payment of a partial invoice in spite of extension of time, the agent may refuse to further carry out the assignment, may rescind the contract or demand damages.
3. Once the assignment has been carried out and the invoice submitted respectively, compensation shall be paid immediately or, in case a due date is specified in the invoice, by said due date, without deductions. Multiple clients shall be liable as joint debtors.
4. The value added tax in effect at the time the instructions are confirmed shall be identified separately and is charged to the client in addition to the compensation.
5. Cheques, bills of exchange and payment authorisations are accepted on account of performances only and shall be considered payment upon redemption. Any normal expenses customary in banking are on account of the client.
6. Offsetting with a counterclaim and the right of retention of the client with regard to compensation are excluded unless the counterclaim is undisputed or has been established as final and absolute.

8. Warranty

1. Insofar as the agent renders services, the agent does not owe any specific success. It is incumbent upon the client alone to make the decisions resulting from the services provided by the agent.
2. The client shall immediately review the services provided for any recognisable deficiencies. The agent is to be notified in writing of these deficiencies immediately after they are found and they are to be specified precisely in type and extent. Otherwise, the contractual service shall be considered as properly rendered.
3. In case of any justified claim the client shall have the right to demand supplementary performance (removal of deficiencies or reissuing) after the agent was notified of the deficiency. The agent shall be entitled to choose between removal of deficiencies and reissuing.
4. In case that supplementary performance is finally and seriously refused, was not carried out in due time or a second

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attempt at supplementary performance failed, the client shall have the right to demand to lower compensation (diminution) or rescinding the contract (rescission) under the prevailing legal requirements. Any further warranty rights shall be excluded.

5. The right of withdrawal shall also be excluded in case of merely minor deficiencies or if the agent is not responsible for the breach of duty leading to a deficiency.

9. Termination

1. Both contractual parties may withdraw from the contract in writing for important reasons at any time. Proper notice of termination is possible only if this was previously agreed upon contractually.
2. An important reason for the client is at hand particularly if the agent continues to grossly neglect its duties as Surveyor in spite of a previous written warning.
3. An important reason for the agent is at hand particularly if the client refuses to provide the cooperation necessary to carry out the assignment, manipulates/influences the services and/or their results negatively or enters financial collapse or debtor's delay
4. If the reason for termination is within the responsibility of the agent, the agent may demand compensation for services rendered up to the time of termination only insofar as these services are objectively useable for the client.
5. If the reason for termination is within the responsibility of the client, the agent shall retain the right to compensation for the services rendered as per the contract with setting off of saved costs. The client shall provide proof of fewer contractual services or higher saved costs.

10. Liability

1. The subsequent liability provisions shall be applicable regardless of which contractual or extra-contractual basis the claim for damages is based on. Further limitations of liability in individual agreements shall remain unaffected.
2. The client is to point out to the agent prior to conclusion of the contract any particular risks, extraordinary contingencies and unusually high amounts of loss. The client shall notify the agent in writing of any damage immediately after it becomes

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- known.
3. The agent shall be held liable without limitation in cases of wilful intent or gross negligence on the part of the agent or a legal representative or assistant / vicarious agent and in case of injury to life, limb or health.
 4. Regardless of the above, the agent's liability shall be limited as follows:
 - The agent shall be liable only for culpable infraction of contractually essential obligations by the agent, a legal representative or assistant / vicarious agent. Obligations shall be defined as contractually essential when their fulfilment renders the contract possible in the first place, their violation endangers the achievement of the purpose of the contract and the contractual partner can trust that they will be adhered to on a regular basis. If the violation of the contractually essential obligations is due to simple negligence, the obligation to indemnify shall be limited to the loss foreseeable at the time of closing the contract and typical for the contract.
 - Beyond this, the agent's liability shall be limited to 100,000.00 per incident of loss in cases described in the preceding paragraph. This limitation of liability shall be applicable regardless of how many claims are raised as a result of one incident of loss. If the sum of all individual claims exceeds 100,000.00, the amount shall be distributed on a prorata basis in proportion of the claims raised. If the distribution is contested among the claimants, for whatever reason, the agent shall be able to relieve itself of liability against all claimants by lodging a maximum amount of liability.
 - Insofar as claims for damages against the agent are ruled out, limited or restricted, this shall also apply to possibly existing liability of the agent's mouthpieces or employees as well as assistants / vicarious agents or other third parties which the agent employs/uses in order to fulfil the contract.
 - Insofar as the agent owes only the closure of the contracts required in order to render the contractually required services, it shall be liable only for the diligent selection of the instructed third party.
 - Liability for collateral consequential loss, including contractually typical consequential damage, is excluded.
 5. Beyond that, the agent's liability is excluded.

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11. Closing provisions

1. The relations among the parties are based on the contract for which the only applicable law is German law. The United Nations Convention of Contracts for the International Sale of Goods (CISG) shall be excluded.
2. The place of performance for obligations from the contract is the seat of the agent's headquarters (Bremen/Germany).
3. The seat of the agent's headquarters (Bremen/Germany) shall be the jurisdiction for all disputes.

12. Severability clause

In case individual provisions of these General Terms of Business are or will be invalid or if there is an unintentional gap, the remainder of the contract shall remain in effect. In that case, client and agent shall commit to settle the intended purpose by agreeing on a substitute/alternate provision.

This is a translation of the original German General Terms of Business. In case of any deviation in wording and/or interpretation of these General terms of Business, the German original shall prevail.

As from 28.12.2012
Battermann & Tillery

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