

# Penta Advokater

## Terms of Business as at 1 January 2016

### **1. The Agreement and the Parties**

- 1.1. The terms and any subsequent written modifications thereof specified in the order confirmation as well as these Terms of Business shall constitute the entire agreement ("the Agreement") between the Customer and Penta Advokater.
- 1.2. The clauses 2.5, second sentence, 3.3, 9.8, third sentence, 9.10 and 9.6, second sentence below shall not apply in so far as the client of Penta Advokater is regarded as a private consumer.
- 1.3. The parties to the Agreement are Penta Advokater and the Client. The Client shall be defined in the order confirmation. Penta Advokater is a limited liability company with the legal name Penta Advokater A/S, business registration number (CVR number) 25575288.
- 1.4. Neither party shall be entitled to assign or transfer any rights or obligations under the Agreement or parts thereof to others, without the other party's prior written consent.
- 1.5. When concluding the Agreement with Penta Advokater, the Client accepts that in case of any disputes between Penta Advokater and the Client about the concluded Agreement or about the assignment to be delivered under the Agreement, claims shall only be made and legal proceedings shall only be initiated against Penta Advokater A/S, CVR number 25575288.
- 1.6. In the event of any discrepancy between the terms specified in the order confirmation and these Terms of Business, the order confirmation shall prevail over the Terms of Business.
- 1.7. If the Client has specified any special terms in tender documents, order or the Client's own terms of business, such terms shall not be considered to be valid unless Penta Advokater has accepted such terms in writing.

### **2. The scope and performance of the assignment**

- 2.1. The assignment shall be described in the order confirmation.
- 2.2. Penta Advokater shall safeguard the Client's interests in the best possible way. All work shall be performed at the responsibility of a partner or attorney in charge. The partner or attorney in charge shall be responsible for the work being performed optimally in relation to the Client's requirements, including that the partner or attorney in charge may choose to rely on other members of staff at Penta Advokater to perform the entire or part of the assignment.
- 2.3. Penta Advokater shall strive to deliver the assignment in accordance with the time schedule agreed between the parties. Unless the Client and Penta Advokater, expressly and in writing, have agreed a final delivery date, all dates specified by Penta Advokater e.g. in the order confirmation shall be for guidance only.
- 2.4. Penta Advokater shall not be obliged to update recommendations, conclusions, reports, presentations or other products, either in oral or written form, after the delivery of such products in their final form to the Client.
- 2.5. Any modification or additional services which Penta Advokater performs in connection with the assignment shall be covered by these Terms of Business. Any change in the scope of the assignment shall entitle Penta Advokater to change any agreed fee and/or time schedule.

### **3. Cooperation**

- 3.1. The parties shall keep each other informed of any material matter relating to the performance of the assignment.
- 3.2. The Client shall cooperate loyally with Penta Advokater about the solution of the assignment, including making timely arrangements for Penta

Advokater to have access to all the Client's data, information and employees which are necessary for the delivery of the agreed assignment, as well as immediately informing Penta Advokater of any proposal, development or other matters or issues that are important to the solution and delivery of the agreed assignment by Penta Advokater.

- 3.3. Penta Advokater shall register all business clients in RKI's (the Danish Credit Information Register) data guard and credit monitoring. The Client accepts this when entering into the Agreement.
- 3.4. When the Client enters into the Agreement, Penta Advokater shall be entitled to register the Client as a receiver of relevant newsletters, and when the assignment is initiated, the Client moreover accepts that Penta Advokater shall be entitled to send relevant information to the Client by e-mail. Pursuant to the Danish Marketing Practices Act, the Client thus allows Penta Advokater to market itself to the Client when the assignment is initiated. It shall always be possible for the Client to unsubscribe from marketing materials.

#### 4. Confidentiality

- 4.1. The parties are mutually obliged to treat all material and all information about the other party confidentially.
- 4.2. The confidentiality provision shall not apply to materials and information (i) which are publicly known, (ii) which the recipient is already familiar with, (iii) which have been passed on by a third party without any restrictions, (iv) which have been independently developed, or (v) which have been disclosed pursuant to a statutory requirement or order.
- 4.3. Neither the Client nor Penta Advokater shall publicly comment on the assignment without the other party's prior written consent. For marketing purposes as well as with a view to clarifying conflicts of interest, Penta Advokater shall, however, unless otherwise agreed in writing with the Client, be entitled to disclose to a third party that Penta Advokater performs legal work for the Client.

#### 5. Protection of personal data

- 5.1. Being a law company, Penta Advokater is subject to the rules of the Danish Money Laundering Act, which means that Penta Advokater is under an obligation to collect identity information from the clients and store such information.
- 5.2. In case of a private client or a business in the form of a personally owned business, identification by way of health insurance card as well as picture ID by way of driving license, passport or the like shall be forwarded. In case of a company, a copy of the register of shareholders as well as health insurance card and picture ID with civil registration no. by way of driving license, passport or the like shall be forwarded for each of the shareholders.
- 5.3. Being a law company, Penta Advokater shall meet the requirements of the Danish Act on Processing of Personal Data. Penta Advokater shall fully respect our clients' wish to keep personal data confidential. The collection and handling of personal data by Penta Advokater shall therefore take place pursuant to the Danish Act on Processing of Personal Data. Penta Advokater shall only collect and store the personal data about our clients, which is necessary in order to ensure that our clients receive a professional and proper treatment, and which is dictated by the Act.
- 5.4. Penta Advokater shall in its work use third-party suppliers of supporting IT systems, and these suppliers shall act as data processors for Penta Advokater, cf. the rules of the Danish Data Protection Agency on this subject, and have a duty of confidentiality with respect to all information which is exchanged.
- 5.5. Penta Advokater shall not disclose our clients' personal data to any third party without the consent of our clients.

#### 6. Storage of data

- 6.1. All cases and documents shall generally be stored for 3 years after the completion of the assignment. Original documents shall always be returned to the client upon completion of the assignment.

## **7. Electronic communication**

- 7.1. Penta Advokater shall communicate electronically via e.g. e-mails with respect to all documents and messages, unless the Client wishes another special form of communication. If communication is to take place by ordinary mail, all mail shall be sent as non-priority mail.
- 7.2. The parties are aware that electronic communication is unreliable and that data can be destroyed, that messages are not always delivered promptly (or at all delivered) or may be brought to the knowledge of unauthorised persons.
- 7.3. Electronic messages are vulnerable to computer viruses. Each party is responsible for protecting its own systems and interests. Penta Advokater shall not be liable to the Client for any loss or damage which may arise as a result of the use of the Internet, the Client's network, programs, electronic data or other systems by Penta Advokater.

## **8. Conflict of interest**

- 8.1. Being a law company, Penta Advokater shall check whether there is a conflict of interest before Penta Advokater undertakes to perform an assignment.
- 8.2. Penta Advokater recommends that if the Client is or becomes aware of any possible conflicts of interest that may affect the assignment, the Client immediately informs Penta Advokater hereof.
- 8.3. If a conflict of interest has been identified, Penta Advokater shall at any time refer the Client to another attorney.

## **9. Fees, expenses and terms of payment**

- 9.1. The order confirmation describes how the fee of Penta Advokater for the performance of an assignment is calculated.
- 9.2. The specification of a fee by Penta Advokater in the order confirmation shall represent an estimate based on the conditions stated by the parties when the assignment is initiated. This means that even if a fixed fee has been agreed for the performance of the assignment, Penta Advokater shall be entitled,

in the following situations, to charge fees for the additional time spent by Penta Advokater on the delivery of the assignment, where it becomes apparent after concluding the Agreement, that (a) the conditions for the delivery of the assignment have changed, or that (b) the conditions for the delivery of the assignment were not accurate or sufficient. In case the scope of the agreed assignment is increased or decreased, reference is made to clause 2.5.

- 9.3. Penta Advokater shall, moreover, be entitled to include any considerations with respect to the scope and responsibility of the assignment as well as the need for any special competencies when fixing the fee.
- 9.4. Penta Advokater shall always be entitled to charge a deposit for the performance of the assignment. In so far as a deposit is charged before the assignment is initiated, this will be stated in the order confirmation. Penta Advokater shall, moreover, be entitled to charge a deposit if the performance of the assignment requires the involvement of a surveyor or similar independent bodies.
- 9.5. Unless otherwise agreed in the order confirmation, Penta Advokater shall be entitled to make fee settlement on account every month or every quarter. A settlement on account shall be based on the time spent and thus will not take other elements or the total scope of the work fully into account. Final settlement of the assignment shall thus take place in connection with the completion of the assignment.
- 9.6. Assignment-related costs and disbursements, including reasonable travelling expenses, accommodation, living expenses, publications, data etc., shall be paid by the Client in addition to the fee. Transport within a distance of 10 km from one of the offices of Penta Advokater shall not be invoiced. Fees to external advisers and specialists who are engaged by the Client shall be paid directly by the Client and shall be of no concern to Penta Advokater.
- 9.7. Fees to subsuppliers engaged by Penta Advokater shall not constitute a part of the fee of Penta Ad-

vokater, but shall be invoiced to the Client as ordinary disbursement. The use of subsuppliers will be stated in the order confirmation.

- 9.8. All amounts are excl. VAT. Terms of payment are 14 days net cash from the invoice date. In case of non-payment, interest shall be charged pursuant to the rules of the Danish Interest Act. Penta Advokater shall, moreover, be entitled to immediately stop working on the assignment in case of non-payment.
- 9.9. At the request of the Client, Penta Advokater shall provide a list of the work tasks that have been performed and by which employees.
- 9.10. In so far as the court has awarded costs to the Client, or the Client qualifies for commercial legal aid coverage, but the amount awarded is lower than the fee which Penta Advokater has invoiced – or will invoice – to the Client, Penta Advokater shall, regardless of the amount awarded by the court or the legal expenses insurance company, be entitled to invoice the remaining fee to the Client.

## 10. Rights

- 10.1. Penta Advokater shall have title to any intellectual property rights, products and material that are brought into existence as part of the performance of the assignment.
- 10.2. The Client shall have the right to use materials and products delivered under the Agreement internally in its organisation. This right of use shall not, however, include any general models and methods or the like which are used in connection with the performance of the assignment and which belong to Penta Advokater.
- 10.3. Materials and products which Penta Advokater has delivered to the Client shall not be disclosed to any third party unless Penta Advokater has consented to this in writing or Danish law or any judicial decision requires/entitles the Client to make such disclosure.
- 10.4. Penta Advokater shall not accept any responsibility or liability in the event that products and materials

are used for another purpose than the one stated in the Agreement.

- 10.5. The Client itself shall be obliged to keep the supplied standard contracts and formulations updated in relation to the statutory requirements in force at any time.

## 11. Insurance cover and limitation of liability

- 11.1. Penta Advokater shall be liable for the assignment delivered under the Agreement in accordance with the general provisions of Danish law.
- 11.2. Our legal services are provided in accordance with the ethical rules of the Danish Bar and Law Society and the provisions of the Danish Administration of Justice Act. Further information on the rules can be found on [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk). Penta Advokater has compulsory liability insurance and provides a guarantee according to the rules laid down by the Danish Bar and Law Society with an established and approved Danish insurance company. Penta Advokater uses HDI Danmark, CVR no.: 37276251 (see website). The liability insurance covers all legal services within Danish law, regardless of where the services are performed, however, with the exception of USA and CANADA.
- 11.3. Neither the attorney personally nor Penta Advokater shall in any case be held liable for any indirect loss or consequential damage, including exchange loss, operating loss, loss of: goodwill, revenue, customers, image, earnings, profits, interest, interest expenses, legal costs or loss of data.
- 11.4. Penta Advokater shall not be liable for any errors made by advisers, to whom Penta Advokater has referred the Client, nor shall Penta Advokater be liable for any errors made by subsuppliers, to whom Penta Advokater, in agreement with the Client, has left parts of the assignment.
- 11.5. Penta Advokater shall not be liable for any claims arising as a result of false, misleading or incomplete information, data or documentation provided by other parties than Penta Advokater.

11.6. In connection with the formulation of any recommendation, conclusion, report, presentation or other product as part of the assignment, Penta Advokater shall be entitled to orally discuss ideas with the Client or to present the Client with drafts of such products. Penta Advokater shall not be liable for the contents of oral reports or draft materials and products to be subsequently replaced by finished materials and products.

11.7. Penta Advokater shall not be liable towards other parties (including third parties) who benefit from or use the materials and products delivered by Penta Advokater or who gain access to such materials and products. The Client shall indemnify Penta Advokater from any liabilities, losses, expenses or other costs which Penta Advokater may incur in connection with claims from such other parties as well as claims against Penta Advokater as a result of the Client's breach of the Agreement.

11.8. The maximum and total liability of Penta Advokater for direct losses shall in any case be limited to the amount that will be covered by the insurance sum, however, up to a maximum of DKK 10 million per year per attorney. Several assignments in the same case shall be considered as one single assignment. In so far as the Client requires a higher insurance sum, a specific agreement shall be made in writing between Penta Advokater and the Client about the increase of the insurance sum for the specific assignment.

11.9. The rules applying to ordinary bank accounts shall also apply to any funds deposited into client accounts. Clients who have money both in their own accounts and in client accounts in the same bank shall thus only be able to have EUR 100.000 covered by the guarantee scheme. If the bank charges negative interests on client accounts Penta Advokater is entitled to charge the client this expense. Clients who have special wishes with respect to the choice of bank shall inform us thereof no later than when receiving the entrusted funds.

11.10. Penta Advokater shall not be made liable for any loss in connection with the depositing of entrusted funds into client accounts caused by the given bank being distressed.

## 12. Termination of the Agreement

12.1. The Client shall be entitled at any time to ask the attorney to stop working on the assignment if the nature of the assignment changes, or if it is deemed that the result which the Client requests or expects cannot be achieved.

12.2. In case of termination of the Agreement by Penta Advokater, termination shall take place by giving sufficient notice for the Client, without facing unreasonable difficulties, to find another attorney to perform the assignment.

12.3. In case of termination of the Agreement by the Client or Penta Advokater, the Client shall pay Penta Advokater for the services provided until the time of termination and/or unpaid time spent working on the assignment as well as all incidental expenses and disbursements. The Client shall, moreover, pay the reasonable costs incurred by Penta Advokater as a result of the termination.

12.4. Unless the Agreement has been terminated at an earlier time in accordance with the above, it shall expire when the assignment has been delivered.

12.5. Any provisions of the Agreement which either expressly or by their nature extend beyond the time of termination of the Agreement shall, notwithstanding the above, still apply after the Agreement has expired.

## 13. Applicable law and venue

13.1. Any disagreement or dispute between the parties regarding the interpretation of the Agreement and/or these Terms of Business shall be settled according to Danish law by the Danish courts of law with the Court in Esbjerg as venue.