

# General Consulting Terms 2019

## KÖTTER Consulting Engineers GmbH & Co. KG (KCE)



as part of a service contract according to BGB (German Civil Code) published: 29.01.2019

Please note: The text below is a courtesy translation of the original German Consulting Terms which are based on German law.

### **§ 1 Scope of Application / Scope of Services**

1. Subject matter of the contract is the consulting work agreed to as stated in KCE's quotation or bid and order confirmation. Any and all agreements made regarding the performance of the consulting contract have been set forth in writing in this contract. KCE has the right to use subject-matter experts to perform the contract.
2. At client's request KCE will furnish the requisite information regarding the status of contract performance as well as rendering an account of the execution of the contract in appropriate form, in particular with regard to the process and result(s) of the consulting project.
3. KCE's Consulting Terms shall apply exclusively. Consulting Terms in contravention of KCE's terms, or any terms of the client's which differ from KCE's terms, shall be deemed as not having been accepted save an express written acceptance on KCE's part. KCE's Consulting Terms shall even apply in the event that KCE has performed the contract without reservation despite having had knowledge of the existence of contravening Consulting Terms or client's terms differing from KCE's terms.
4. KCE's Consulting Terms shall only apply vis-à-vis businesses as defined by Section 310 paragraph 1 BGB (German Civil Code).
5. These terms shall also apply to any future business transactions with client.

### **§ 2 Mutual Cooperation**

1. The parties agree to work together in the spirit of mutual cooperation and trust. They shall inform each other without delay about any circumstances of relevance to the execution of the project.
2. KCE performs all of its work with utmost care in compliance with the Professional Principles for Consulting Engineers.
3. Client shall make available all information, documents and data required for the performance of the contract. KCE will check the data furnished by client, or any third party, for plausibility but shall not be liable for the correctness of such data.  
Missing data may be supplemented from KCE's wealth of experience.

### **§ 3 Terms for Use of Manpower/Equipment**

1. The use of manpower or equipment outside KCE's engineering centre will be charged based on the actual period of usage, starting with the departure from KCE's premises and ending upon the return to KCE's premises. Save any other agreement, charges will be based on an 8-hour workday (see § 6). Missions exceeding 8 hours will be deemed overtime (see item 3).
2. Equipment hire/rental fees will also be charged for those times in which KCE is deprived of the use of such equipment due to no fault of its own. After a time of 7 working days 2 percent of the purchase price per week will be invoiced. Should a return of equipment for reasons outside the realm of KCE's responsibilities be impossible, client shall reimburse KCE in the amount of the purchasing value of the equipment requiring replacement. After the return being overdue for three months, the equipment shall be deemed as having been lost.
3. In case of overtime and night work (from 10:00 p.m. to 6:00 a.m.) as well as in extreme environmental and working conditions (heat, cold, dirt, danger) a cumulative surcharge of 25%, in case of missions performed on Saturday, Sunday and bank holidays, a cumulative surcharge of 50% and at the end of the year (New Year's Eve and New Year's Day), Easter (Good Friday through Easter Monday), Pentecost and Christmas (Christmas Eve through "Boxing Day") a cumulative surcharge of 100% will be added to manpower rates.
4. As a matter of principle, field investigations are performed by two experienced specialists on the basis of daily rates as indicated on our remuneration schedule. Any exceptions are subject to prior written agreement.
5. As a general rule, air travel will be business class.
6. The allowance is 54 € per day.

### **§ 4 Special Terms for Use of Manpower/Equipment Abroad [EU and Similar Countries (Switzerland, Norway)], in Addition to §3**

1. For missions exceeding three days, client will furnish KCE an office at the project location free of charge.
2. If required, client will assist KCE in obtaining requisite visa.

### **§ 5 Confidentiality**

KCE undertakes to treat any information of a confidential nature of which KCE becomes aware within the scope of performing work for the client, in particular business and operating secrets, as confidential matter and will not disclose such information to any third party. The obligation to maintain confidentiality shall endure for maximum 5 years.

### **§ 6 Remuneration / Terms of Payment**

1. KCE will charge its fees as per the lists of rates in effect at any particular time. Special fees and flat rates are subject to written confirmation.
2. At client's request, fees may be based on HOAI (Remuneration Regulations for Architects and Engineers) subject to separate written agreement.
3. All invoices for fees and expenses, save any separate written agreement stating otherwise, are payable within 14 days after the date of the invoice, without any deductions. All prices are subject to legally applicable value added tax or any other legal requirements.
4. The possibility to offset or withhold payment(s) against KCE's receivables is excluded save in the event of counterclaims which are either undisputed or the validity of which has been determined by a final court decision.
5. According to the default provisions (§288, German Civil Code - BGB) put into effect on 1 May 2005, KCE will automatically be entitled to default interest in the amount of 5 percentage points above the base rate 30 days after receipt of the invoice. The right to make any further claims for damages as a result of default shall not be affected by this. Client shall have the right to prove lower damages.
6. In the event of a cancellation of contract prior to or during the performance of contract work, KCE reserves the right to charge the costs incurred as well as lost income (minimum flat rate of costs = 15% of the contract value).

### **§ 7 Warranty**

1. KCE grants warranty with the existing Business liability insurance for the services provided under the terms of the contract to the extent that KCE is required to warrant its services in accordance with its obligations to exercise proper care. Initially, warranty claims will be limited to compensation in the form of rework.
2. In the event that rework should fail, client may demand a reasonable reduction of remuneration or an annulment of the contract.
3. Client is required to submit claims for correction of details in writing without delay. Warranty claims are limited to six months. The limitation period does not apply to personal injury (§9).

### **§ 8 Liability**

1. KCE shall be liable for damages caused by KCE and/or its employees either by intent or gross negligence.
2. We exclude liability for slightly negligent breach of duty, provided that no essential contractual obligations, damages resulting from the destruction of life, personal injury or health damages or guarantees are affected or claims under product liability law are concerned. The same applies to breach of duty by our vicarious agents. Essential contractual obligation is the independent consultancy service in the form of calculations and measurements for tasks of the sound and vibration engineering, fluid mechanics and thermal building physics.
3. KCE shall not be held liable for any production disruptions or downtimes which are not covered under its existing professional liability insurance.

### **§ 9 Intellectual Property**

Client shall exclusively use the reports, plans, drawings, cost estimates, calculations, etc. prepared by KCE in conjunction with the purposes of the project as agreed. Client shall be permitted to disclose the data or information. Any intellectual property rights/copyrights to the results of such work to which KCE may be entitled will not be affected by this provision. Only documents bearing an original signature shall be deemed authentic.

### **§ 10 Force Majeure**

Incidents of force majeure which make it more difficult, or temporarily impossible, for either of the parties to provide services authorise the party affected by such circumstances to postpone the provision of its services by the duration of the obstruction as well as a reasonable relaunch period. Qualifying as force majeure, as well, are labour disputes and similar circumstances, to the extent that they could not be anticipated, are of a serious nature and have not been culpably caused.

### **§ 11 Data Storage**

Client agrees that data relevant for the performance of the contract, in particular client data, be stored at KCE (§ 26, Federal Data Protection Act - Bundesdatenschutzgesetz).

### **§ 12 Miscellaneous**

1. As a company committed to social responsibility KCE complies with the international "Social Accountability 8000" standard.
2. Any and all claims arising under this contract shall be exclusively subject to German law.
3. Should any of the provisions of these terms or the terms of the contract be or become invalid, this shall not affect the remainder of the provisions.
4. Legal venue for any disputes arising under the contract shall be the Local Court (Amtsgericht) Rheine resp. the District Court (Landgericht) Münster, Germany.

### **Information regarding Online Dispute Resolution**

The commission of the European Union provides on the website <http://ec.europa.eu/consumers/odr/> the option to carry out a complaint procedure regarding the Online Dispute Resolution for consumers. The provider is not willing and not obliged to participate at an Online Dispute Resolution at a consumer arbitration body.