

General Business

Terms and Conditions of



A. General Part

A.1 The General Business Terms and Conditions (the „AGB“) in their applicable version are valid for the whole business relationship between the Customer and VALMACOR Immobilienreuhand GmbH, Messenhausergasse 14/33, A-1030 Vienna (the „Agent“). Our activities as real estate agent are offered exclusively on the basis of these AGB. Any ongoing business operations imply an unconditional acceptance to these AGBs.

A.2. Any eventual existing General Business Terms and Conditions on the Customer's side or any, in whatever form existing or referred to, standardized, Customer's contractual conditions are fully replaced by these AGBs. Contradictory or other sounding Customer's General Business Terms and Conditions shall not apply even though attached or referred to in the ongoing business correspondence between the Customer and the Agent.

A.3. Deviations from the existing AGBs are only possible if and only when a direct written agreement between the Customer and the Agent led explicitly to the acceptance of such deviations.

A.4. No contract would materialise on other terms and conditions than those specified in these AGBs or explicitly agreed upon between the Customer and the Agent; this will cause no prejudice to any commission claims of the Agent on other legal basis.

A.5. Any changes to these AGBs are coming into force at the beginning of the month after the Customer was informed upon and are to remain in force for all existing and future business relationships, as long as no written objection are addressed to the Agent. The Customer is considered to be informed when the new version of the AGBs are published on the Agent's website (www.VALMACOR.at)

VALMACOR Immobilienreuhand GmbH / 1030 Wien, Messenhausergasse 14 / Top 33

T: +43 1 585 2960 / F: +43 1 585 2960 60 / eMail: Immobilien@VALMACOR.at / www.VALMACOR.at

UniCredit Bank Austria AG IBAN: AT21 1200 0100 0554 6303, BIC: BKAUATWW

ATU: 68344838 / Handelsgericht Wien: FN 407561f / WKÖ 849.418

A.6. The business relationship between the Customer and the Agent is subject to these AGBs as well as subject to all relevant legal regulations, especially to the Real Estate Agent's Law BGBl 1996/262, as amended, to the Regulations of the Ministry of Economic Affairs on professional ethics and practice rules for Real Estate Agents (IMV, BGBl 297/1996, in the applicable version) and to the Consumer Protection Act, BGBl 1979/140, as amended.

A.7. To the extent no compulsory legal provisions oppose or contradict to these AGBs, the AGBs shall prevail. In case any provision of these AGBs will become invalid or unenforceable, such holding shall not affect the remaining provisions. The invalid or unenforceable provision will be replaced by the provision that is closest to the parties' will from an economical point of view.

A.8. The agent is entitled in order to fulfil his obligations to seek and enter into co-operations with other real estate agents, as long as such action will not affect the commission rate to be charged. In general the Agent is entitled to assign his obligations or even the whole contract to a third party with discharging effect and is, in such case only to be held liable for the party selection. With respect to consumer related transactions, the Agent is authorised, at his own risk, to engage other companies to provide services under the contract.

A.9. Verbal side agreements are - with the exception of declarations and assurances to consumers - not effective.

B. Offer and Conclusion of agreements

B.1. Any conclusion of agreement is exclusively subject to these AGBs as well as to the conditions presented in the offer. The conclusion of agreement does not require written confirmation from either Customer nor from the Agent.

B.2. Offers of the Agent are nonbinding offers. More over the offer is subject to any eventual meantime realisation (sale, rental or lease) by the Agent or by the owner.

C. Commission Claims

C.1. The customer is obliged to pay a commission in all cases as stipulated under §6 Real Estate Agents Act (Maklergesetz). This payment obligation applies especially in case that the transaction subject to brokerage materialises by the meritorious contribution of the Agent with a third party.

C.2. The claim for commission becomes effective as the brokered transaction comes into force.

C.3. In case the customer has already been offered (for sale, rent or lease) the same object offered by the Agent directly by the owner or by a third party, the customer shall have the obligation to inform the Agent about such circumstance without any delay, detectable and in written form, however no later than 48 hours from the receipt of the offer. In case the parties have different views on such circumstances, the Customer has the burden of proof. Any violation against this provision will lead to commission claim of the Agent in case a contract with regard to the offered object comes into force.

C.4. The commission claim of the Agent shall be void for reasons as stipulated under §7 section 2 Real Estate Agent Act (Maklergesetz). In case of a deferring condition, the commission claim of the Agent shall exist even in case the conditional contract is terminated before the deferring provision occurred, however that the deferring provision would have occurred if the contract had not been early terminated.

C.5. The commission claim of the Agent arises upon naming the object to be intermediated, regardless if the contract comes into force with or without the Agent's intervention and regardless as of when the contract came into force.

C.6. The amount of the commission claim is subject to the actual economical quid pro quo. In economic dependence with the brokered object occurring enhancements of the agreement between the Customer and the Owner, however not restrictions to it, will have effect on the commission claim of the Agent, as long as these enhancements are agreed within six months from the initial legal effectiveness of the agreement.

C.7. Our commission claim arises and becomes due upon agreement (common will and any other conditions precedent) for the conclusion of a contract with regard to the offered object. It is irrelevant in this respect if the agreement reached upon was due to our intervention and when this was achieved or if the contractual agreement has been reached at terms and conditions as stipulated in the offer or at different provisions. Our commission claim remains in place also when due to our activities not

the offered object however an economically similar object is mediated. In case of a deferring provision, the commission claim of the Agent shall exist even in case the conditional contract is terminated before the deferring provision occurred, however that the deferring provision would have occurred if the contract had not been early terminated. In addition the customer will have to pay a compensation in the amount of owned commission or otherwise owned remuneration if:

C.7.1. The customer refrained from pursuing the closing of the brokered transaction against good will and the contract came not into force against the previous course of negotiations only because the customer refuses to formalise a legal document without a notable reason;

C.7.2. The customer chooses to close a different, not economically similar contract with a third party mediated by us, as long as the mediation of such transaction falls in our object of activity.

C.7.3. The transaction subject to the Agent's Contract is not closed with the Customer but with a different person, because the Customer disclosed to this person the business opportunity brokered by us or the transaction is not concluded with the mediated third party, but with another person, because of the mediated person disclosed the business opportunity to this person, or

C.7.4. if the business does not come into force with the mediated third party because a statutory or contractual pre-emption right, resale right or a right to enter into the contract is being exercised.

C.8. In case of an exclusive agent agreement, the commission claim arises also in cases when

C.8.1. The customer terminates the exclusive agent agreement without sound reason

C.8.2. The object is mediated by a third agent against the provisions of the exclusive agent agreement during the validity of the exclusive agent agreement, or

C.8.3. The transaction is closed otherwise as by a third agent assigned against the provisions of the exclusive agent agreement by the Customer.

C.9. If a brokered transaction by us is enhanced or supplemented within three years from coming into force of the initial agreement, a commission or an otherwise due compensation shall also become due for the new closed contract. The Customer is obliged to inform us of such enhancements or supplements of the initially by us brokered contract within 14 days from the completion of the new agreement.

C.10. If we mediated an agreement by which the Customer or the mediated third party is granted the right over a limited period of time to close the contract by unilateral sole statement (option contract), then 50% of the commission for the underlying agreement is to be paid upon entering the option agreement. The other 50% are to be paid if and when the option is called.

D. Terms of payment

D.1. The applicable provisions of the contract and the prices indicated in the offer determine the amount of the commission at the time of closing the contract. We do not require any compensation for the general costs incurred during the mediation process. However, expenses incurred due to additional and in excess of the brokerage activity by the Customer required activities, shall be reimbursed separately even if the intended transaction is not concluded.

D.2. All payments under agent contract are due without any deductions within 14 days after the invoice date.

D.3. The customer is obliged to inform the Agent immediately and in writing upon changes of Name, payment details, authorised representatives as well as of changes of legal form, company name and register number. In case no such information was submitted, documents are considered to be received by the customer if dispatched at the last informed address or - as long as the customer is not a consumer – at the Paying Agent.

D.4. All given prices are in EURO. VAT and other additional fees and charges are to be shown separately.

D.5. Customer's payments shall - in lack of any information - be booked against the oldest debt irrespective of different given statements of the Customer (as long as the Customer is not a consumer in the sense of the Consumer Act (KschG)). The counting shall be first against costs, subsequent against interest and finally against the open capital.

D.6. Payments shall be deemed to be received only when booked on Agent's bank account. The risk of erroneous or delayed payments is for the Customer's account.

D.7. The retention of payments that are not in connection with the same contract or offsetting of counterclaims, which are not legally final or expressly recognised by the Agent are not permitted. This interdiction of offsetting shall not apply for consumer under the Consumer Protection Act, §1 (KSchG).

D.8. If the customer is in default of payment the Agent is entitled to charge the customer with default interests according to the law provisions as well as with the incurred, necessary and appropriate corresponding dunning and collection costs, whereby the Agent has the right to engage third parties in this regard. Furthermore, the Agent is entitled to charge his actual incurred legal costs pursuant to the applicable Attorney Fees Act in the latest version. The right to claim further damages remains the broker expressly reserved.

D.9. The Customer is to be aware of the fact that the Agent is entitled to transfer the prosecution of his claims after the first dunning level to a collection agency or a lawyer.

D.10. If the Customer is in payment default with a significant amount of the invoice and fails to perform payment within a two weeks period after the dunning, all granted discounts are obsolete and the originally agreed commission becomes due.

E. Warranty, Liability

E.1. All information and data regarding the mediated object shall be provided with the due diligence of a prudent real estate agent. Our offers and all provided object-information are based on the information obtained from the property owner or seller or by third parties on their behalf. Our liability for the accuracy and completeness of such information is therefore excluded. The customer himself has to check all details before signing the agreement. Our liability is limited to direct and intentional or due to negligence grossly caused damages. Liability is excluded for slight negligence on our part. Our offers are non-binding. Prior sale, prior lease or rent is reserved to the landlord.

E.2. The Agent is liable towards the customer according to the statutory warranty and liability legal provisions. The liability for particular characteristics of the mediated object is excluded, unless such characteristics are specifically pledged towards the customer.

E.3. The Agent accepts no liability for the legal form and content of the agreement to be concluded for the mediated object. Per request of the Customer, the Agent will be pleased to refer the Customer to a specialized lawyer. All legal fees for legal counseling shall be for the Customer's account.

E.4. The Agent is liable for negative consequences of faulty services only in case of gross negligence or wilful fault. This does not include personal injuries to consumers. Any further liability of the Agent, especially for consequential damages is specifically excluded towards legal entities. Towards consumers, such liability is excluded only in case of slight negligence. Particularly no liability whatsoever is taken for whatever deficiency of the rendered service due to Force Majeure or to circumstances outside the influence of the Agent.

E.5. The liability of the agent is limited per each event against the total number of victims to EUR 10.000 and against individuals to EUR 2.000. As far as the agreement is subject to the Consumer Protection Act the amount restrictions apply only to slight negligence and not to personal injury.

E.6. The Agent is not liable for damages caused by the customer due to non-observance of the agreements between the Agent and the Customer as well as due to the non-observance of these AGBs.

E.7. The Agent shall not be liable for delays or performance shortages due to circumstances out of his area or responsibility. Particularly, the Agent shall not be held liable for any damages whatsoever due to actions of third parties (in case of consumer agreements this does not apply for vicarious agents according to §1313a ABGB), Force Majeure, Customer's act or other causes outside Agent's sphere of responsibility.

F. Consumer Protection

F.1. With regard to customers who are consumers, the provisions of the Consumer Protection Act, particularly §§ 3 and 30a regarding the Right of Withdrawal shall be explicitly referred to.

F.2. In case the Consumer Protection Act, as amended, provides for mandatory provisions that eventually contradict these AGBs, the mandatory provisions shall prevail.

F.3. In case of business relationships with consumers the applicable court of jurisdiction shall be the consumer's habitual residence or place of employment. In this case the regulated jurisdiction under Paragraph 8.2. is merely a provisional choice.

G. Privacy

G.1. With regard to the storage and processing of customer data, the Agent will comply with all relevant statutory data protection provisions in force.

G.2. The Customer agrees that his data be saved in connection with the execution of the agreement to include the saving of contact details, all in compliance with all legal requirements.

H. Place of Performance, Applicable Law, Place of Jurisdiction

H.1. The place of performance is Vienna, 3rd District, Landstrasse. For consumers § 14 of Consumer Protection Act applies.

H.2. The exclusive jurisdiction of Vienna and the exclusive jurisdiction of Vienna Commercial Court are agreed upon for all out of or in connection to contracts between the Customer and the Agent arising disputes, to the extent permitted by the law.

H.3. The parties agree to the exclusive applicability of Austrian law.

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