

# GENERAL TERMS AND CONDITIONS OF THEVOZ ATTORNEYS LLC

**JANUARY 2021**



## 1. LEGAL FRAMEWORK

### 1.1 LEGAL BASIS

The law firm THEVOZ Attorneys LLC, in Lausanne and in Geneva (hereafter, the "Law firm") and the undersigned (hereafter the "Client") are bound by a contract of agency within the meaning of Articles 394 and following of the Swiss Code of Obligations (CO; RS 220).

### 1.2 CONTRACTUAL BASIS

The Client confirms having received a copy of these Terms and Conditions and accepts them by signing this document.

## 2. SCOPE OF THE CONTRACT

These Terms and Conditions are applicable to the services agreed between the Client and the Law firm in the original contract of agency as well as to any subsequent extension of said contract of agency and to services covered by new contracts of agency.

The Law firm agrees to carry out its services with diligence and care in the best interest of the Client. The favourable result is never guaranteed, particularly the favourable outcome of the legal proceedings. Unless agreed otherwise, the Client authorises the Law firm to collect all payments related to the case as well as all compensations granted by the Court.

## 3. REPRESENTATION OF THE CLIENT TOWARDS THE AUTHORITIES, OPPOSING PARTIES, ETC.

When the Law firm represents the Client towards third parties, it justifies its power of representation by way of a power of attorney.

## 4. TERMINATION OF THE CONTRACT

The execution of the contract is based on mutual trust between the parties. At any time, the Client may terminate the ongoing contract and revoke all related powers of attorney ex nunc. The Law firm may also terminate the contract at any time (subject to §9.1. in fine). The Law firm will take every reasonable precaution to avoid terminating it at an inappropriate time (art. 404 al. 2 CO). There is no termination at an inappropriate time if the Client does not pay requested retainer for fees, leading the Law firm to terminate or suspend the contract for this reason (see §9.2)

## 5. MUTUAL DUTY TO PROVIDE INFORMATION

### 5.1 ON THE LAW FIRM SIDE

The Client may request complete information on the evolution of his or her case at any time.

The Law firm discusses important correspondence and legal proceedings with the Client before sending them. The Law firm spontaneously informs the Client about the result of the undertaken negotiations and forwards correspondence regarding the case through the firm's secure portal, by email, via fax or mail. The Law firm informs the Client about the most important legal aspects of the case.

After the end of the contract, the Law firm is not obliged to inform the Client about subsequent legal developments (new legislation, new case law, changes in administrative procedures, etc.).

In the context of this duty to inform, in case of uncertainty, the Client should spontaneously request explanations from the Law firm or inform the latter about its dissatisfaction in the execution of the contract.

Unless the Client gives contrary instructions, the Law firm may exchange information about the case with employees or the external advisors of the Client as well as with third parties providing their services in the execution of the contract (ch.8).

## **5.2 ON THE CLIENT'S SIDE**

The Client has an obligation to provide complete and exact information in order to allow the Law firm to properly carry out its mandate even if the circumstances evolve in the course of the execution of the contract. Furthermore, proper execution of the contract by the Law firm depends on the timely delivery of necessary documents by the Client. The Law firm assumes that the information provided by the Client is correct.

Where the Client, in the course of execution of previous cases, has already provided other persons working in the Law firm with information that may be useful for the ongoing mandate, he or she should inform the attorney in charge.

## **6. ELECTRONIC COMMUNICATION**

### **6.1 RISKS**

The Law firm takes every effective and reasonable measures to safeguard information related to the client. In this regard, the Law firm works with leading providers like Microsoft, Box, Wrike, Adobe Sign, and Bill4time.

However, electronic exchange of information (email, fact, internet applications, etc.) and use of computer systems entail risk, in particularly gaining access to secured data by unauthorized third parties or misuse of such data, or of defective transfer.

The Client may request at any time information on security measure taken by the Law firm.

Under no circumstances shall the Law firm be held liable.

### **6.2 COMMUNICATION IN EXECUTION OF THE ONGOING CONTRACT**

Unless the Client gives contrary instructions in writing, the Client authorises the Law firm to send him or her unencrypted electronic information in relation to the execution of the contract mandate or to use an electronic platform (for example, Box, Bill4time, Outlook, and Wrike).

If a communication by electronic mail from the Client or/and from the Law firm or documents saved on an electronic platform were to be intercepted, lost or modified by a third party, the Law firm will not be held liable except in case of fault. Similarly, the Law firm will not be held liable in the case of communication or transmission errors resulting from the use of the mean of communication, except in case of fault. Finally, the Law firm will not be held liable for communication or transmission errors resulting from power cuts, connection defects or downtimes caused by telecommunication companies or other public or private intermediaries or all other failure or malfunction of the relevant IT systems.

## 7. RECORDS KEEPING

In the execution of the contract, the Law firm will freely choose the appropriate method of keeping records of the case. In particular, the Law firm may maintain electronic record in addition to, or in place of, physical records. Such electronic records may include addresses, all data related to the services offered, electronic mail, as well as copies of all documents entering or leaving the Law firm. Such electronic records are accessible to all employees of the Law firm.

The Law firm forwards copies of all correspondence regarding the contract to the Client, by electronic or regular mail (see also §6.1). The Client may also request that such copies be sent to him or her by regular mail only or require to be sent originals instead of copies. In such case, the Client is sole responsible for the safekeeping of original documents sent to him or her by the Law firm.

To comply with its bookkeeping and accounting obligations (in particular towards tax authorities), the Law firm keeps a number of documents (e.g. invoices) during a period of 10 years as of termination of the contract. The Law firm may further keep records for a longer period in order to be able to reply to late queries. Should the Law firm cease its activity, all its records (hard-copy or electronic) may be entrusted to the partners personally or to the cantonal Order of Counsels.

The maintenance and running of the Law firm computer systems is outsourced to third parties. By signing these Terms and Conditions, the Client validates such outsourcing and related externalisation of data.

## 8. PARTICIPATION OF OTHER EMPLOYEES OF THE LAW FIRM

In the execution of the contract, the Counsel in charge may call on other employees of the Law firm (in particular partners, associates or assistants) to work on the case.

Subject to prior approval of the Client, the Law firm may also call on third-party specialists (for example by contacting a partner Counsel in Switzerland or abroad, as well as other experts). Unless expressly stated otherwise, the related agency contracts are made on behalf and for the account of the Client and at the Client's own risk. Fees payable to third-party specialists are due by the Client. Under no circumstances shall the Law firm be held liable for improper execution of the contract by third-party professionals.

## 9. FEES AND EXPENSES

### 9.1 FEES

Unless agreed otherwise, fees due to the Law firm are charged on a time-spent basis. The hourly rates currently applicable range between CHF 360.- and CHF 650.- (excl. VAT and expenses) depending on the complexity of the case, its stakes, the level of responsibility carried by the Law firm and the level of experience of the Counsel in charge. Time spent on the case includes in particular: meetings and discussions with the Client or third parties, case analysis, necessary legal research, drafting of legal proceedings and correspondence as well as the travel time.

The Law firm reserves the right to adjust the above indicated hourly rates at any time.

**In an event of successful completion of the matter, the Law firm has the right to charge additional fees (*pactum de palmario*).** These additional fees are determined according to the financial stakes of the matter, the legal complexity of the matter and the result obtained. Unless otherwise agreed, such fees represent **6% of the**



**amount recovered for the Client or the saving that the Client was able to achieve.**

A budget proposal for the execution of a contract serves **indicative purposes only**. Under no circumstance may such proposal be regarded as a fixed-fee offer or a quote.

Administration tasks carried out by secretaries is generally not charged, unless they are particularly complex or heavy.

Unless agreed otherwise, **a first contact meeting** is scheduled for every new client of the Law firm. **This first meeting is charged at an hourly rate of CHF 360.- (excl. VAT and expenses)**, no matter how many Counsels take part. After this first meeting, the Client may freely decide to continue working with the Law firm and, in such case, shall pay a first retainer for fees (see §9.2) before any task is carried out by the Law firm. As part of the execution of the contract, the current hourly rates indicated in the attached appendix will be applicable according to the lawyer appointed by the Law firm for the treatment of the case. Should the Client decide not to continue working with the Law firm after this first meeting, **fees related by said first meeting remain payable**.

In the event of termination of the contract, the Law firm shall invoice all services provided until the date of termination.

In addition, all tasks required in relation of the termination of a contract (informing Courts and parties, transmitting records to a newly appointed Counsel) shall be invoiced in accordance with the hourly rates stated under §9.1 and the attached appendix.

## **9.2 RETAINER FOR FEES**

The Law firm may request payment of retainer for fees at any time (for future services of partly executed services). Such retainers do not bear interest and must not be regarded as quotes or fee estimates.

The Law firm can edit detailed statements of services rendered and payments made (instalments or payments by third parties as provided by §9.7), periodically or after the end of the contract. The Client may request intermediary invoices at any time.

## **9.3 INVOICING**

Time spent is registered in detail and the Client may request a statement of the services provided by the Law firm at any time. The Law firm may send intermediary invoices at any time.

**Invoices (intermediary and final) are payable within 30 days** after sending, unless expressly stated otherwise. **Retainers are payable within 10 days**. The Law firm may suspend the execution of a contract should a retainer or an intermediary invoice remain unpaid. In order to facilitate identification of the payment, the Client shall use the reference number provided. VAT is added to fees and expenses at the current legal rate.

The Client can pay invoices issued by the Law firm by cash, by bank transfer or using debit or credit cards. In case of payment by debit cards, transaction fees of 2.5 % will be charged.

**Fees may be sent to the Client electronically or on a computer platform (E.g. Bill4time).**

## 9.4 EXPENSES

The reimbursement of the costs generated by the execution of the contract is added to the hourly rate. This reimbursement is generally calculated on a fixed basis, at the rate of 3% of the amount of fees. The following are not included in the fixed expenses described above and will be invoiced separately:

- Translation costs;
- Accommodation and travel expenditures (invoiced at cost);
- All the costs and disbursements paid to third parties (such as notary fees, fees charges by official bodies, fees for third-party opinions, reports and appraisals, etc.).

Where peremptory norms prevent invoicing on a fixed basis (in particular if the Client is entitled to legal representation appointed by the State), the expenses will be invoices at cost.

Administrative or judicial fees and similar costs charged by third parties to be borne by the Client shall not be paid by the Law firm upfront even when they are billed to the Law firm. Should the Law firm pay such fee upfront, it is entitled to full compensation by the Client.

## 9.5 COMPENSATION AWARDED BY COURTS

The reimbursement of Counselling fees as awarded by a Court is governed by law. However, the provisions of these Terms and Conditions (§9.1) remain solely relevant between the Client and the Law firm. Where the compensation awarded by Courts does not cover the fees provided by these Terms and Conditions (in particular in cases where considerable work was required in spite of a low litigious value), the Law firm is entitled to payment of the difference, without prejudice to applicable law. Where the compensation awarded by Courts exceeds the fees provided by these Terms and Conditions, the Law firm is entitled to the full amount awarded by the Court.

## 9.6 POLICY OF REMINDER

The Law firm's policy of reminder is the following:

- 1st Reminder, 40 days after the invoice has been issued.
- 2nd Reminder, 20 days after the 1st reminder has been issued. Reminder fees of CHF 40.- (excl. VAT and expenses) will be charged.
- 3rd Reminder, 10 days after the 2nd reminder has been issued. Reminder fees of CHF 60.- (excl. VAT and expenses) will be charged.
- Legal procedure, 5 days after the 3rd reminder has been issued. Administrative fees of CHF 500.- (excl. VAT and expenses) will be charged.

However, the Law firm reserves the right to open a collection procedure 40 days after its invoice has been issued without further notice.

When payment has failed to be made by the due date, the Law firm's invoices will give rightfully cause for legal interests (annual interest rate of 5%) as from the due date.

**By signing these general terms and conditions, the Client hereby waives the Attorney's professional secrecy obligation in advance for any possible debt collection or court proceedings against the Client for the recovery of the Attorney's fees, cost, advances or expenses.**

## 9.7 LEGAL PROTECTION INSURANCE

If the Client is covered by a legal protection insurance, the Client will detail the extent of the cover to the Law firm. The Client should inform the Law firm about the coverage. The Client explicitly authorises the Law firm to provide oral or written information concerning the case to the insurer. The Law firm informs the Client about the correspondence with the insurance company as well as about the payments made by the insurance company.

Where the insurer offers a cover up to a certain amount, the Law firm shall invoice its fees and expenses to the insurer up to said amount. Where the amount covered by the insurer is above or below the amount provided by these Terms and Conditions, §9.5 is applicable.

## 9.8 CLIENT'S ASSETS

Amounts received by the Law firm on behalf of the Client are deposited on a specific account for clients' assets. This account is used for all assets of all Clients of the Law firm. The amounts on this account are held completely separate from the Law firm own assets. The Law firm informs the Clients about all payments concerning said Client.

Clients' assets, unless expressly agreed otherwise, do not bear interest. Should the Client receive his or her assets, they will be transferred to him or her immediately. However, the Law firm holds the right to deduct its fees and expenses from such assets.

## 9.9 RESPONSIBILITY

The Law firm bears an obligation of means and performance but no obligation of result.

The Law firm may be held liable for faulty execution of the contract of agency and only where a direct chain of causality can be demonstrated between such faulty execution and the damage caused to the Client. In any case, the amount of damages the Law firm may be required to pay in compensation for any damage caused in the execution of a specific contract of agency is limited as follows:

- in case of the minor faults, to ten times the amount of fees already generated by the execution of the specific contract of agency, up to a maximum amount of CHF 1'000'000.- (one million Swiss francs) ;
- in case of major fault, to twenty times the amount of fees already generated by the execution of the specific contract of agency, up to a maximum amount of CHF 2'000'000.- (two million Swiss francs).

Where several contracts of agency of similar nature were executed consecutively and the damage caused to the Client and proved by the Client originates in a single fault committed by the Law firm or its employees, substitutes or auxiliaries, the liability of the Law firm is limited to the above mentioned maximal amounts (based on the average amount of fees generated in the execution of each contract of agency) for the entire damage caused to the Client even when the addition of the damage caused in the execution of all said contracts of agency of similar nature executed consecutively is higher.

The Law firm is solely liable for the damage caused by the faulty execution of the contract, to the exclusion of its partners, employees, substitutes and auxiliaries. Where they are held liable for the damage by law (in particular under Articles 42 CO), the aforementioned limits of responsibility are applicable by analogy. If both the Law firm and its partners and/or its employees and/or its substitutes and/or its auxiliaries are liable for the same damage, the total amount of damages shall not exceed the aforementioned amounts.

Where the Client has appointed such auxiliaries himself or herself and has entered into separate contractual relations with them, the Law firm shall not be held liable for the actions of said persons. This also applies for all third-party specialists mandated on behalf and for the account of the Client (§8). The Client undertakes to release the Law firm and hold it harmless from any claim brought by a third party and from any sentence awarded to a third party, in principal, interest and costs (including Counselling fees).

## 10. JURISDICTION AND APPLICABLE LAW

This agreement shall be governed by Swiss law exclusively. By signing these Terms and Conditions, the Client accepts that any dispute arising out of or in relation with these Terms and Conditions or any contract between the Law firm and the Client shall be submitted to the courts of Lausanne, Switzerland, without prejudice to applicable law.

## 11. SIGNATURE

By signing these Terms and Conditions, the Client confirms that he or she has received, read, understood and accepted their contents.

If the Client is a legal person, the undersigned certifies that he or she has a right to represent this legal person. He or she undertakes to inform the Law firm immediately if his or her power of representation is cancelled.

Place: \_\_\_\_\_, Date: \_\_\_\_\_

First and last names of the Client: \_\_\_\_\_

If applicable, the name of the companies represented by the Client

\_\_\_\_\_

Signature(s): \_\_\_\_\_

Appendix : the current hourly rates of the Law firm



## HOURLY RATES

### LAWYERS

	ORDINARY HOURLY RATE	SPECIAL HOURLY RATES
<b>OLIVIER THEVOZ</b> Partner Attorney-at-law admitted to the Bar in Canton of Vaud Foreign legal consultant in Texas (USA) Master's degree in Law, summa cum laude (Lausanne, 2011) Swiss Certified Fiduciary Expert (2006)	Fr. 550	Fr. 650
<b>FABRICE KUHN</b> Partner Attorney-at-law admitted to the Bar in Canton of Vaud Swiss certified tax expert (2013) Master's degree in Law bilingual french-german (Fribourg, 2003)	Fr. 450	Fr. 550
<b>LUDIVINE VEUTHEY</b> Attorney-at-law admitted to the bar in Canton of of Vaud Master's degree in law, magna cum laude, bilingual french-german and in european law (Fribourg, 2016)	Fr. 360	Fr. 400
<b>GABRIEL NUÑEZ-LAFONTAINE</b> Attorney-at-law admitted to the bar in Texas (USA) Juris Doctor from the University of Colorado School of Law (Boulder, 2015)	Fr. 360	Fr. 400
Assistant	Fr. 80	Fr. 100

The hourly rates above are mentioned for information only and can be modified at anytime. They do not include VAT and expenses. The special hourly rates apply when the cases raise complex questions and/or when the financial stakes are high and/or when the Law firm must act urgently.

**Unless otherwise agreed, the Law firm charges additional 6% of the amount recovered for the Client or the savings the Client has been able to realize.**