



General terms and conditions

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## **I. DEFINITIONS**

- i. In these general terms and conditions the following terms are used in the following meaning, unless otherwise is specifically stated or is clear from the context:
  - a. Contractor: the private limited liability company VersGil, having its registered office in Haarlem under number 67979912.
  - b. The Client: the other party of the Contractor who has given the Assignment for the performance of work.
  - c. Assignment: the activities to be determined by the Client and the Contractor which the Contractor is obliged to perform.
  - d. Agreement: The assignment for the providing of services, including these General Terms and Conditions, concluded by the Client and the Contractor on the basis of which the Assignment is performed.

## **II. APPLICABILITY**

- i. The General Terms and Conditions apply to: any offers, quotes, Assignments, legal relations and Agreements concluded by the Contractor and the Client and their legal successors. The terms and conditions of the Contractor are explicitly excluded.
- ii. If one or more of the provisions in these General Terms and Conditions are nullified or removed, these other provisions of these general terms and conditions remain applicable in full. In that case, the Contractor and the Client will meet in order to agree new provisions to replace the nullified or removed provisions, whereby the aim and intent of the original provision are followed to the extent possible.
- iii. Deviations and additions of these General Terms and Conditions are only valid if and insofar these have explicitly been concluded between the Parties in writing. Insofar as such deviations have not taken place, the provisions in these General Terms and Conditions remain applicable in full.
- iv. If any provision of the General Terms and Conditions contradicts with a provision of the Agreement, then the provision of the Agreement prevails.

## **III. OFFER AND CONCLUDING OF THE ASSIGNMENT**

- i. The Agreement is concluded in one of the following manners and at the following moments:
  - a. if an Agreement has been signed in writing by the Client; or
  - b. if no Agreement is signed, the moment the Contractor has made an offer that is explicitly accepted by the Client orally or in writing;
  - c. if no Agreement preceded an order confirmation of the Contractor, the moment the Contractor commences the performance of the Assignment.However, each of the parties is free to prove that the Agreement has been concluded in a different manner and/or on a different moment.
- ii. The Client guarantees the correctness and completeness of the information provided by or on behalf of the Client to the Contractor.
- iii. Quotes, offers and unsigned Agreements have a validity of 30 days.

#### **IV. PERFORMANCE ASSIGNMENT**

- i. The Contractor determines the manner in which the service is provided. The Contractor performs the activities as it sees fit, with expertise and with due observance of the applicable legislation and (professional) regulations.
- ii. The Contractor has the right to engage the services of third parties for the performance of the activities. The costs for engaging the services of third parties are recharged to the Client.
- iii. The assignments provided to the Contractor only result in a best efforts obligation, not to a result obligation, unless a result obligation has explicitly been agreed.

#### **V. DETAILS CLIENT**

- i. The Client must make all the information and documentation the Contractor deems necessary for the correct performance of the granted assignment available to Contractor in the desired form, in the correct manner and in time. The Contractor decides what the desired form, desired method and time is.
- ii. The Client guarantees the correctness and reliability of the information and documents made available by him, even if these are obtained from third parties.
- iii. The Contractor has the right to suspend the performance of the Assignment until the time the Client has complied with the obligation stated in the first and second subsection.
- iv. The Client indemnifies the Contractor for damage resulting from incorrect or incomplete information and documentation.
- v. Additional hours and costs incurred as a result of the absence of information and documentation or the late or incomplete provision thereof, are payable by the Client.

#### **VI. CHANGES AND ADDITIONAL WORK**

- i. The instalments stated by the Contractor are target instalments and never deadlines.
- ii. If, due to the Client, changes arise in the Assignment resulting in additional work, then this additional work will be invoiced to the Client.

#### **VII. ALLOWANCE**

- i. The Client must pay the Contractor a fee in accordance with the usual fees, calculation methods and work methods usually used by the Contractor. These are or will be made available in advance.
- ii. The Agreement will provide an indication of the hours needed for the Assignment. This involves an estimate and the hours actually spent will be invoiced.
- iii. In addition to the hours actually spent, the expenses and costs incurred by the Contractor for third parties engaged by the Contractor will be invoiced to the Client.
- iv. The Contractor has the right to request an advance from the Contractor.

## **VIII. PAYMENT CONDITIONS**

- i. Invoices of the Contractor must be paid by the Client within 14 days of the date of invoice, unless otherwise has been agreed.
- ii. If the Client has not paid within the period stated in the first subsection, then the Client is legally in default and the Contractor is authorised to invoice statutory interest from that moment on. The Contractor is also authorised to invoice judicial and extra-judicial (debt collection) costs to the Client.
- iii. In the event of a jointly given Assignment, all the Clients are jointly and severally liable for the payment of the invoiced amount and the interest and costs due.

## **IX. Complaints**

- i. A complaint with regard to the Assignment must be notified to the Contractor in writing within 30 days after the date the documentation or information with regard to which the Client has a complaint, unless the Client can prove that he couldn't reasonably have discovered this earlier.
- ii. A complaint does not suspend the payment obligation of the Client, unless the Contractor has informed the Client that he considers the complaint valid.

## **X. DEADLINE**

- i. If the Client is or remains of the opinion that the Contractor has not adequately taken care of the Assignment or with due care, then the Client will immediately notify the Contractor thereof and validate the claims by law based on them within one year after the date of the above mentioned notification, or within one year after that notification should have been done by; in the absence of which all his rights and claims in this respect lapse as a result of the lapsing of the abovementioned period.

## **XI. LIABILITY**

- i. For each Assignment accepted by the Contractor there is a best efforts obligation. The Contractor can never be held liable for results not achieved. The Contractor is exclusively liable for shortcomings in the performance of the Assignment as a result of intent, gross negligence during the provision of advice and the performance of the assignments.
- ii. If the Contractor is liable than this only involves direct damage, which is the direct consequence of a shortcoming attributable to the Contractor in the compliance of the obligations resulting from the Assignment, then that liability is limited to no more than the fee for the Assignment. The liability of the Contractor is always limited to no more than the amount paid out by the insurer of the Contractor in the case at hand.
- iii. In no event can a claim be made for payment of damages caused by a loss of income of the Client (due to whatever cause) or of indirect damage and consequential damage.
- iv. The Contractor is also not liable for damage caused by the act or failure to act of the third parties engaged by the Client in the performance of the Assignment, unless that damage is also caused by intent or gross negligence of the Contractor.



- v. The Contractor is also not liable for damage which could only have been prevented by an act or a failure to act that would violate or be incompatible with the professional conduct or code of conduct of the professionals involved with the Assignment, unless this damage is caused by intent or gross negligence of the Contractor.
- vi. The Contractor is always authorised to limit or undo the damage of the Client to the extent possible, to which the Client will provide it's every cooperation.
- vii. The Client indemnifies the Contractor against claims of third parties of damage relating to or resulting from the Assignment performed by the Contractor, if and insofar as the Contractor is not liable for this pursuant to that stated in this article.

## **XII. FORCE MAJEURE**

- i. The Contractor is not obliged to comply with any obligation if this is not reasonably possible for the Contractor as a result of changes arising beyond the control of the Contractor in the circumstances as they existed upon entering into the Assignment. A force majeure includes, but is not limited to, fire, riot or strikes, war, failure of computer equipment and the suppliers' delayed delivery to the Contractor.

## **XIII. CONFIDENTIALITY**

- i. The parties must keep confidential any information they have obtained from each other or another source as part of the Assignment. Information is confidential when this has been indicated as such by the other party or if this is clear from the nature of the information.
- ii. If, on the basis of a legal provision or a judgement, the Contractor must provide confidential information to the competent court or a third party appointed by law, then the Contractor is not liable to pay damages or compensation and the Client is not authorised to dissolve the Assignment on the basis of any damage arising as a result thereof.
- iii. Without prior written permission of the Client, the Contractor is not authorised to use the information and/or results referred to in subsection i for any other purpose than for which they are intended on the basis of their nature, content or intent of the Assignment. An exception applies to the foregoing if the Contractor acts on its own behalf in an arbitrary, judicial or criminal law procedure, whereby the use of that information and/or results could be important for the outcome of the proceedings.

## **XIV. INTELLECTUAL PROPERTY AND COPYRIGHTS**

- i. The performance of the Assignment by the Contractor does not involve the transfer of intellectual property rights held by the Contractor. All intellectual property rights arising during, or arising from, the performance of the Assignment are held by the Contractor.
- ii. The Client is explicitly forbidden to multiply, publish or exploit the products and documents that include the intellectual property rights of the Contractor, or the products which are subject to intellectual property rights regarding the use of which the Contractor has obtained the right of use - including in this respect, but not limited to: work methods, advice (model) contracts, templates, macros, models.

- iii. The Client is not permitted to make the products and documents referred to in the second subsection to third parties without prior written permission of the Contractor, other than for the obtaining of expert assessment for the performance of the activities by the Contractor. The Client can in that case impose his obligations under this article to the third parties he has engaged.
- iv. The Client indemnifies the Contractor against claims of third parties with regard to intellectual property rights on the materials and data provided by the Client that are used by the Contractor for the performance of the Assignment.

## **XV. PERSONAL DATA PROTECTION**

- i. The personal data that is made available to the Client by the Contractor will not be used or made available to third parties for purposes other than for the performance of the Assignment it has issued or the communication etc. it provides the Client, except insofar as the Contractor is obliged by law or public order to provide the competent authority the relevant information.
- ii. If the Client objects to the inclusion of its personal data for any form of communication of the Contractor, then the Contractor will remove the relevant information from the file in question upon first written request of the Client.

## **XVI. TERMINATION**

- i. The Client and the Contractor can (intermediately) terminate the Agreement at any time without observing a notice period. If the Agreement ends before the Assignment is completed, then the Client must pay a fee in accordance with the hours indicated by the Contractor for the activities performed for the Client.
- ii. The notice must be given in writing.
- iii. If the Client has proceeded to (intermediately) terminate the agreement, the Contractor is entitled to a payment of the operational loss it has suffered and which can be substantiated, as well as payment of additional costs already incurred by the Contractor and the costs resulting from the possible cancellation of third parties engaged in the agreement (such as any costs with regard to subcontracting).
- iv. If the Contractor has given an (intermediary) notice, then the Client is entitled to the cooperation of the Contractor for the transfer of activities to third parties, unless it involves intent or recklessness of the Client as a result of which the Contractor is forced to terminate the agreement. The conditions for the right to cooperation as stated in this subsection, is that the Client has paid all the underlying advance payments or expense payments.

## **XVII. AMENDMENT GENERAL TERMS AND CONDITIONS**

- i. The Contractor is authorised to change these General Terms and Conditions. The General Terms and Conditions amended by the Contractor also apply to the Client as of thirty days after he has been made aware of this amendment, unless the Client informs the Contractor within this period of time that he objects against the amendment.

In the latter case the Client is authorised to terminate the Agreement the moment the amended General Terms and Conditions would take effect on the Agreement, though only if the amendment entails an essential increase of the obligations of the Client resulting from the Agreement. The notice must be given in writing.

- ii. If the Client notified the Contractor on time that he objects against the amendment without having terminated the Agreement, then the unaltered General Terms and Conditions will continue to apply between the parties until the Assignment has been completed or the Agreement has been terminated, though no longer than six months from the end of the above mentioned period of 30 days. If the Agreement continues after this time, then the amended General Terms and Conditions will apply as of that time.

## **XVIII. REPAIR CLAUSE NULLIFICATIONS**

- i. If any provision of these General Terms and Conditions or from the underlying Assignment are fully or partly nullified and/or invalid and/or not enforceable as a result of any legal requirement, court judgement or otherwise, this will not affect the validity of the other provision of these General Terms and Conditions or the underlying Assignment/agreement in any way.
- ii. If a provision in these General Terms and Conditions or the underlying Assignment should be invalid for a reason stated in the preceding subsection, but would be valid were they to have a more limited scope or intent, then this provision will initially automatically apply with the most far-reaching or largest limited scope or intent in which it is valid.
- iii. Notwithstanding that stated in subsection ii, the parties can meet to discuss new provisions to replace the nullified or cancelled provisions. In doing so, the intent and nature of the cancelled and nullified provisions will be followed to the extent possible.

## **XIX. Applicable law and choice of forum**

- i. The Agreement and any unlawful act committed by the parties are governed by Dutch law.
- ii. Any disputes will be brought before the competent court in Haarlem.