

Model General Terms and Conditions

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Article 1. DEFINITIONS

In these general terms and conditions, the definitions specified with a capital letter have the following meanings:

- a. Firm: A Firm as defined in the PCC;
- b. Client: The natural person or the legal entity that has engaged the Contractor to perform Work;
- c. Documents: All information or data made available by the Client to the Contractor, whether or not contained on material or nonmaterial carriers, including but not confined to: paper, CD-ROMs, hard disks, e-mail and digital environments, entrusted to third parties or otherwise, *as well as* all data produced or compiled by the Contractor in connection with the execution of the Engagement, whether or not contained on material or nonmaterial carriers, including but not confined to: paper, CD-ROMs, hard disks, e-mail and digital environments, entrusted to third parties or otherwise, *as well as* all other information of any relevance to the execution or completion of the Engagement, whether or not contained on material or nonmaterial carriers;
- d. Employee: A natural person employed with or working for the Contractor, whether or not under an employment contract;
- e. Contractor: The Firm that has accepted the Engagement. *All Engagements are accepted and executed solely by the Firm, not by or on the instructions of an individual Employee, irrespective of whether the Client has awarded the Engagement expressly or tacitly with a view to having such Engagement executed by a specific Employee or specific Employees. Sections 7:404, 7:407 subsection 2 and 7:409 of the Dutch Civil Code explicitly do not apply;*
- f. Engagement: The letter of engagement, under which the Contractor undertakes towards the Client to perform certain work;
- g. PCC: The Professional Code of Conduct (*Verordening Gedragscode*), to be distinguished into the Professional Code of Conduct for Registeraccountants (“*Verordening Gedragscode RA*”) and the Professional Code of Con-

duct for Accounting Consultants (“*Verordening Gedrag-
score AA*”). The Professional Code of Conduct for Reg-
isteraccountants (VGC RA) can be found at
www.nivra.nl and the Professional Code of Conduct for
Accounting Consultants (VGC AA) can be found at
www.novaa.nl;

- h. Work: All work to be performed by the Contractor on the Client's behalf for which an assignment has been awarded and which has been accepted by the Contractor as well as all work for the Contractor ensuing from such Work.
- i. Audit Engagement: An Audit Engagement (“*Controle opdracht*”) as defined in the Dutch Auditing Standards (“*Nadere voorschriften controle- en overige standaarden*”).
- j. Other Engagement: An Engagement that is not an Audit Engagement.

Article 2. APPLICABILITY

1. These general terms and conditions are applicable to: all offers, quotations, engagements, legal relationships and agreements, by any name, whereby the Contractor undertakes/will undertake to perform Work for the Client *as well as* to all Work for the Contractor ensuing from any of the above.
2. Any deviations from, and additions to, these general terms and conditions shall only be valid if they have been explicitly agreed in writing in, for example, a (written) agreement or engagement confirmation letter.
3. In the event that these general terms and conditions and the engagement confirmation letter contain mutually contradictory terms and conditions, the terms and conditions set out in the engagement confirmation letter shall be applicable.
4. The applicability of the Client's general terms and conditions is explicitly excluded by the Contractor.
5. The underlying Engagement– together with these general terms and conditions – reflect the full scope of the agreements between the Client and the Contractor with respect to the Work for which the Engagement has been concluded. All previous agreements or proposals made between the parties in this respect shall cease to be applicable.

Article 3. CLIENT DATA

1. The Client is obliged to make available to the Contractor all the Documents which the Contractor considers to be necessary to enable it to perform correctly the Engagement that has been awarded, (a) in the required form, (b) in the required manner and (c) in good time. The Contractor shall determine what required form, required manner and in good time shall be understood to mean.
2. The Client warrants the accuracy and the reliability of the Documents provided by it, even where such Documents originated with third parties, to the extent not otherwise evident or arising from the nature of the Engagement.
3. The Contractor may suspend the execution of the Engagement until such time as the Client has fulfilled the obligations referred to in paragraphs 1 and 2 above.
4. The Client indemnifies the Contractor against any loss or damage due to inaccurate or incomplete Documents.
5. Any additional costs incurred and hours spent by the Contractor as well as any other loss or damage sustained by the Contractor due to the Client's failure to provide the Documents required for the execution of the Engagement, or its failure to provide such Documents in good time or properly, shall be for the account and risk of the Client.
6. The Contractor will return the original Documents, provided by the Client, to the Client on first demand by the Client.

Article 4. EXECUTION OF THE ENGAGEMENT

1. The Contractor shall perform the Engagement to the best of its ability and with due regard for the applicable rules (of professional practice) and laws.
2. The Contractor shall determine the manner in which the Engagement will be executed and by which Employee(s).
3. The Contractor may have Work performed by a third party to be designated by the Contractor.

Article 5. RULES (OF PROFESSIONAL PRACTICE)

1. The Client shall each time extend its full cooperation in respect of the obligations arising for the Contractor from the applicable rules (of professional practice).
2. The Client is aware that the Contractor amongst other things, but not confined to the following:
 - a. may be obliged under applicable laws and regulations to report certain transactions, specified in such laws and regulations and which have become known during the execution of its Work, to the authorities set up by the government for such purpose;
 - b. may in certain situations be required by applicable laws and regulations to report an instance or instances of fraud;
 - c. may be obliged by applicable laws and regulations to conduct an investigation into the (identity of) the Client issuing the Engagement or other client.
3. The Contractor excludes any and all liability for loss or damage sustained by the Client due to the Contractor's compliance with the laws and rules (of professional practice) to which it is subject.

Article 6. INTELLECTUAL PROPERTY

1. The execution of the Engagement by the Contractor does not constitute the assignment of intellectual property rights vested in the Contractor. All intellectual property rights that are created during, or which arise from, the execution of the Engagement shall belong to the Contractor.
2. The Client is explicitly prohibited from reproducing, publishing or exploiting the products incorporating intellectual property rights of the Contractor, or products in which intellectual property rights are vested with regard to the use of which the Contractor has acquired rights of use, including in this connection in any event, but not confined to: computer programs, system designs, working methods, advice, (model) contracts, templates, macros and other intellectual products.
3. The Client is not permitted to submit the products referred to in paragraph 2 above to any third party without the prior consent in writing of the Contractor, other than for the purpose of obtaining an expert opinion regarding the execution of the Work by the Contractor. The Client will in such case impose its obligations under this article on the third party or parties engaged by it.

Article 7. FORCE MAJEURE

1. In the event that the parties fail to perform the obligations under the agreement, or fail to perform such obligations in good time or properly, as a result of force majeure within the meaning of Section 6:75 of the Dutch Civil Code, such obligations will be suspended until such time as the parties are able to perform them in the agreed manner.
2. In the event that the situation referred to in paragraph 1 above occurs, the parties shall be entitled to terminate all or part of the agreement in writing and with immediate effect, without any right to any compensation otherwise existing.

Article 8. FEE

1. The Client will be charged for the work performed by the Contractor based on the amount of time spent and the costs incurred by the Contractor.
2. In addition to the fee, the Client will also be charged any expenses incurred by the Contractor and the expense claims submitted by any third parties engaged by the Contractor.
3. The Contractor may ask the Client for an advance payment.
4. In the event that fees or prices are subject to change after the formation of the Engagement, nonetheless before the Engagement has been fully executed, the Contractor shall be entitled to amend the agreed fee accordingly.
5. The fee, where necessary plus any advance payments and expense claims of third parties who have been engaged, will be charged on a monthly basis. Where statutorily required, turnover tax ("*omzetbelasting*") will be charged separately on all amounts payable by the Client to the Contractor.

Article 9. PAYMENT

1. Unless otherwise agreed, the Client shall ensure that the amounts owing to the Contractor are paid, without the Client being entitled to any deduction, discount or set-off, within 30 days after the date of invoice. The date of payment shall be the date on which the amount due is credited to the Contractor's account.
2. If the Client has not made payment within the term specified in paragraph 1 above, or any other term agreed between the parties, the Client shall be in default by operation of law and the Contractor shall be entitled to charge the statutory (commercial) interest from that moment.
3. If the Client has not made payment within the term specified in paragraph 1 above, the Client shall be obliged to reimburse all judicial and extrajudicial (collection) costs incurred by the Contractor. The reimbursement of the incurred costs shall not be limited to any order for costs that is given by any court.
4. In the event of a jointly awarded Engagement, the Clients shall be jointly and several liable, to the extent that the Work has been performed on behalf of the joint Clients, for the payment of the invoice amount and the interest (payments) and costs due.
5. If the Contractor is of the opinion that the Client's financial position or payment record gives it reason to do so, or if the Client fails to make an advance payment or to meet an expense claim within the specified term of payment, then the Contractor may demand that the Client immediately provide (additional) security in a form to be determined by the Contractor. If the Client fails to provide the required security, the Contractor shall be entitled, without prejudice to its other rights, to suspend the further execution of the agreement forthwith and all amounts owed to the Contractor by the Client of whatever nature and for whatever reason shall become immediately due and payable.

Article 10. TERMS

1. If a term/date within which the Engagement is to be performed has been agreed between the Client and the Contractor and the Client fails to: (a) make an advance payment – if agreed – or (b) make the necessary Documents available in good time, in full, in the required form and in the required manner then the Client and the Contractor will consult one another about agreeing a new term/date within which the Engagement is to be performed.
2. Any term within which the Work must be completed shall only be considered as a strict deadline if such has been explicitly agreed and in as many words between the Client and the Contractor.

Article 11. LIABILITY AND INDEMNITIES

1. The Contractor is not liable for any loss or damage sustained by the Client due to the fact that the Client has provided inaccurate or incomplete Documents.
2. The Contractor is not liable for any consequential loss or damage, business interruption loss or indirect loss or damage due to the Contractor's failure to perform, failure to perform in good time or failure to ensure proper performance.
3. The Contractor is only liable towards the Client for direct loss or damage resulting directly from an (interrelated series of) attributable shortcoming(s) in the execution of the Engagement. This liability is limited:

- a. in the case of *Audit Engagements* to no more than three times the fee for the work performed – until the moment of the attributable shortcoming(s) – in the context of the Audit Engagement concerned. If the Audit Engagement is executed over a period longer than 12 months, the aforementioned amount will be set at three times the fee for the work performed in the context of the engagement concerned during the last 12 months;
 - b. in the case of all *Other Engagements* to no more than one time the fee for the work performed – until the moment of the attributable shortcoming(s) – in the context of the Other Engagement concerned. If the Other Engagement is executed over a period longer than six months, the aforementioned amount will be set at one time the fee for the work performed during the last six months in the context of the Other Engagement.
4. An interrelated series of attributable shortcomings shall constitute a single attributable shortcoming.
 5. The limitations of liability specified in this article are not applicable if and to the extent that there is evidence of wilful misconduct or gross negligence committed by the Contractor or its senior management ('leidinggevend personeel').
 6. The Client is obliged to take measures to mitigate any loss or damage.
 7. The Client indemnifies the Contractor against claims by third parties in respect of loss or damage caused by the Client's failure to provide the Contractor with any Documents, or its failure to provide the Contractor with fully accurate or complete Documents.
 8. The Client indemnifies the Contractor against claims by third parties (also including employees of the Contractor and any third party engaged by the Contractor) who sustain loss or damage in connection with the execution of the Engagement due to any action taken or omitted to be taken by the Client or due to unsafe situations in its company or organisation.

Article 12. TERMINATION

1. The Client and the Contractor may (prematurely) terminate the agreement at any time without notice. If the agreement ends before the Engagement has been completed, the Client shall be liable to pay the fee in accordance with the hours specified by the Contractor for Work performed on behalf of the Client.
2. Notice of termination must be given in writing.
3. If the Client has effected (premature) termination, the Contractor shall be entitled to compensation for utilisation losses that have arisen for it and which can be demonstrated as well as to reimbursement of any additional costs already incurred by the Contractor and any costs resulting from any cancellation of the services of third parties who have been engaged (such as – amongst other things – any subcontracting-related costs).
4. If the Contractor has effected (premature) termination, the Client shall be entitled to receive the Contractor's assistance in transferring work to third parties, unless in the event of wilful misconduct or gross negligence committed by the Client as a result of which the Contractor feels compelled to effect termination. The entitlement to assistance as provided in this paragraph is dependent on the Client having made all underlying outstanding advance payments or having met all expense claims.

Article 13. RIGHT TO SUSPEND PERFORMANCE

1. The Contractor may, after a careful weighing of interests, suspend the performance of all its obligations, including handing over Documents or other items to the Client or any third party, until such time as all amounts owed and payable by the Client on demand have been settled in full.
2. Paragraph 1 above does not apply with respect to Documents of the Client which have not (yet) been processed by the Contractor.

Article 14. EXPIRY PERIOD

To the extent not otherwise provided in these general terms and conditions, rights of action and other powers of the Client of whatever nature and for whatever reason against the Contractor in connection with the performance of Work by the Contractor shall always expire after one year from the moment the Client became aware, or could reasonably have been aware, of the existence of such rights and powers. This period does not relate to the possibility to submit a complaint to the body or bodies duly designated to handle the complaint and/or the Disputes Handling Board ("*Raad voor Geschillen*").

Article 15. ELECTRONIC COMMUNICATION

1. During the execution of the Engagement, the Client and the Contractor can, at the Client's request, communicate with one another using electronic means.
2. The Client and the Contractor shall not be liable towards one other for any loss or damage that may be sustained by either or each of them as a result of the use of electronic means of communication, including – but not restricted to – loss or damage due to non-delivery or delayed delivery of electronic communication, interception or manipulation of electronic communication by third parties or by software/equipment used for transmitting, receiving or processing electronic communication, transmission of viruses and the failure or poor functioning of the telecommunications network or other resources required for electronic communication, unless the loss or damage is the result of wilful misconduct or gross negligence.
3. The Client and the Contractor will both do or omit to do everything that may reasonably be expected of each of them in order to prevent the risks referred to above from occurring.
4. The data abstracts from the sender's computer systems shall constitute conclusive evidence of (the content of) the electronic communication sent by the sender until such time as evidence to the contrary is furnished by the receiver.

Article 16. OTHER PROVISIONS

1. If the Contractor performs Work on location at the Client, the Client shall ensure that a suitable place of work is provided which meets the statutory occupational health and safety standards and complies with other applicable regulations in the field of OH&S. The Client shall ensure that the Contractor is in that case provided with office space and other facilities which the Contractor considers to be necessary or useful to execute the Engagement and which comply with all the (statutory) requirements to be made in that regard. With regard to any (computer) facilities made available, the Client is obliged to ensure continuity, amongst other things by means of adequate back-up, security and virus control procedures. The Contractor will implement virus control procedures when using the Client's facilities.
2. The Client will not take on any Employees involved in the execution of the Work or approach them with a view to offering them direct or indirect employment, temporary or otherwise, with the Client or asking them to perform work directly or indirectly for the Client, in salaried employment or otherwise, during the term of the Accounting Services Agreement or any extension thereof and during the 12 months thereafter.
3. This English-language version of these general terms and conditions is a translation of an original Dutch-language text. In the event of any discrepancy between the two, the Dutch text will prevail.

Article 17. APPLICABLE LAW AND JURISDICTION

1. The Accounting Services Agreement shall be governed by Dutch law.
2. Any dispute will be settled by the competent court in the district in which the Contractor has its registered office.
3. The provisions in paragraphs 1 and 2 above do not affect the possibility for the Client to submit a dispute to the Disputes Handling Board ("*Raad voor Geschillen*") and/or to follow the right of complaint proceedings.

Article 18. REPAIR CLAUSE IN RESPECT OF NULLITIES

1. If any provision from these general terms and conditions or from the underlying Engagement should be wholly or partly void and/or invalid and/or unenforceable as a result of any statutory provision or regulation, court judgment or otherwise, then this will have no effect whatsoever on the validity of all other provisions in these general terms and conditions or the underlying Engagement.
2. If any provision in these general terms and conditions or the underlying Engagement should not be valid for a reason referred to in the preceding paragraph, but would be valid if it had a more limited scope or intention, then such provision will – firstly – automatically apply with the most far-reaching or most extensively more limited scope or intention with which or within which it is valid.
3. Without prejudice to the provisions in paragraph 2 above, the parties may, at their discretion, consult one another with the aim of agreeing new provisions that will replace the void or nullified provisions, with every possible attempt being made to ensure they are as close as possible to the object and the intention of the void or nullified provisions. [●]