

I GENERAL

1. Definitions

The following terms are written with initial capitals in these general terms and conditions and are defined as follows:

- 1.2. Professional Errors: shortcomings such as mistakes, acts of carelessness, negligence, omissions and erroneous advice, which a competent and conscientious contractor would, in the given circumstances and assuming a normal degree of attention, competence and professionalism, not commit;
- 1.3. Schedule: a document attached to the Contract which, when initialled by both Parties, forms an integral part of the Contract;
- 1.4. Services: the work the Contractor is to perform for the Contracting Authority under the terms of the Contract;
- 1.5. Contracting Authority: the State of the Netherlands or any other contracting authority using these general terms and conditions;
- 1.6. Contractor: the counterparty of the Contracting Authority;
- 1.7. Contract: the written agreement between the Contracting Authority and the Contractor to which the Terms and Conditions are declared to apply;
- 1.8. Party: the Contracting Authority or Contractor, depending on the context;
- 1.9. Contracting Authority's Staff: the staff made available by the Contracting Authority under the Contract;
- 1.10. Contractor's Staff: the members of staff or assistants used by the Contractor for the purpose of performing the Contract for whom the Contractor is responsible under the terms of the Contract;
- 1.11. Terms and Conditions: these general terms and conditions, which apply to and form an integral part of the Contract.
- 1.12. Working Day: calendar day, except weekends and generally recognised public holidays within the meaning of section 3, subsection 1 of the General Extension of Time Limits Act.

2. Application

- 2.1 Amendments or additions to the Contract or derogations from the Terms and Conditions (or parts of them) are binding only if they have been explicitly agreed in writing by the Parties.
- 2.2 In the event of inconsistency between the Dutch text of these Terms and Conditions and translations of them, the Dutch text prevails.

II PERFORMANCE OF THE CONTRACT

3. Guarantees given by the Contractor

- 3.1 The Contractor guarantees that the Services to be provided by it or on its behalf meet the requirements laid down in the Contract.
- 3.2 The Contractor guarantees that the Services to be provided by it or on its behalf will be performed in a professional manner.

4. Assessment and acceptance

- 4.1 The Contracting Authority will assess the results of the Services within 10 Working Days of their performance. If it decides that the results are satisfactory, it will notify the Contractor that they have been accepted.
- 4.2 If the Contracting Authority decides that the results of the Services are unsatisfactory, it will notify the Contractor that they have not been accepted.
- 4.3 The Contracting Authority may have the results of the Services assessed by third parties.
- 4.4 If the Contracting Authority deems it necessary, it may extend the acceptance period by another 10 Working Days after notifying the Contractor to that effect.
- 4.5 If the Contracting Authority has not notified the Contractor within 10 Working Days of the performance of the Services, it will be deemed to have accepted the results.

5. Replacement of staff responsible for performing the Services

- 5.1 Only in exceptional circumstances may the Contractor replace staff who are responsible for performing the Services.
- 5.2 Without the prior consent of the Contracting Authority, the Contractor may not replace either temporarily or permanently the staff who are responsible for performing the Services. The Contracting Authority will not withhold its consent without good reason and may attach conditions to its consent. The fees charged for the staff originally deployed may not be raised if they are replaced.
- 5.3 If the Contracting Authority wishes to replace staff who are responsible for performing the Services, because it feels that this is either necessary or desirable for the proper performance of the Contract, the Contractor will comply with the Contracting Authority's request. The fee charged will not be any higher than that laid down in the Contract for the staff replaced.
- 5.4 If staff responsible for performing the Contract are replaced, the expertise, qualifications and experience of the replacement staff deployed by the Contractor must be at least equal to those of the original staff or must meet the criteria agreed by the Parties in this regard.

6. Use of Contracting Authority's property and third-party services

- 6.1 In performing the Services, the Contractor may make use of property belonging to the Contracting Authority, which the Contracting Authority has lent to the Contractor for this purpose. Conditions may be attached to the loan of property.
- 6.2 In performing the Contract, the Contractor may make use of third-party services only after it has obtained the Contracting Authority's consent. The Contracting Authority will not withhold its consent without good reason. It may attach conditions to its consent. The fact that the Contracting Authority has given its consent does not affect the Contractor's responsibility and liability for discharging the obligations imposed on it under the Contract, and for discharging the obligations imposed on it as an employer under tax and social insurance law.

III RELATIONSHIP BETWEEN PARTIES AND SUPERVISION

7. Progress reports

The Contractor will report to the Contracting Authority on the progress of the work as often as and in a manner as the Contract prescribes, or as the Contracting Authority deems fit.

8. Contacts

- 8.1 Each Party will designate a contact who will be responsible for maintaining contacts in relation to the performance of the Contract. The Parties will notify each other in writing of the person they have appointed as their contact.
- 8.2 The contacts may represent and bind the Parties, unless otherwise provided in the Contract.

9. Supervisory/steering committee

The Contract may provide for the formation of a supervisory or steering committee whose duties, powers and composition may be laid down in the Contract.

10. Method of notification

- 10.1 All notices given by the Parties on the basis of the Contract must be in writing.
- 10.2 Oral communications, undertakings or agreements have no legal force unless confirmed in writing.
- 10.3 'In writing' is understood to include 'electronically', provided:
 - a. the notification can be consulted by the addressee;
 - b. the authenticity of the notification is sufficiently guaranteed; and
 - c. the identity of the sender can be determined with sufficient certainty.

11. Confidentiality

- 11.1 The Contractor will not divulge in any way any information that comes to its knowledge in performing the Contract and which it knows or may reasonably be assumed to know is confidential, except in so far as it is compelled to divulge such information under a statutory regulation or court ruling.
- 11.2 The Contractor will impose the same duty of confidentiality on its Staff and guarantees that they will fulfil it.
- 11.3 The Contractor is responsible for ensuring that any of its Staff who perform work under the Contract, in so far as such work is performed on the Contracting Authority's premises, observe the rules on confidentiality specified by the Contracting Authority.
- 11.4 The Contractor will not issue press releases or make other public statements about the present Contract except with the prior consent of the Contracting Authority.
- 11.5 The Contractor must hand over to the Contracting Authority, within 10 Working Days of the completion of the work, all information (i.e. written documents, computer files, etc.) which the Contractor has in its possession for the purpose of performing the Contract.
- 11.6 If the Contractor breaches its duty of confidentiality, the Contracting Authority may impose a penalty, as laid down in the Contract. Payment of the penalty that is payable immediately does not discharge the Contractor from its liability for indemnifying any loss caused by the breach.

12. Security

- 12.1 The Contractor's Staff involved in the performance of the work, in so far as the work is performed on the Contracting Authority's premises, must comply with the Contracting Authority's security procedures and other rules. The Contracting Authority will inform the Contractor in good time about these procedures and rules.
- 12.2 The Contracting Authority may require certificates of good conduct to be produced in respect of the Contractor's Staff, at least three Working Days before they start work on the Contracting Authority's premises.
- 12.3 The Contracting Authority may carry out security checks on members of the Contractor's Staff, in accordance with the rules usually applied by the Contracting Authority. The Contractor must lend its full cooperation to such checks. The Contracting Authority may, on the basis of the results of a security check, refuse to allow the person in question to work on the Contract, without giving any reasons.

IV FINANCIAL PROVISIONS

13. Payment and upward and downward contract variations

- 13.1 The Contracting Authority will pay for the costs actually incurred and the hours actually worked by the Contractor, unless a fixed fee has been agreed in the Contract.
- 13.2 Should any additional requirements stipulated by the Contracting Authority, any new information that is brought to the notice of the Contracting Authority or any changes to the statutory regulations applicable to the work in question lead to the work performed by the Contractor under the Contract becoming demonstrably more demanding or extensive, this additional work constitutes an upward contract variation for which the Contractor may charge a fee. Additional work or new information which the Contractor could have foreseen when the Contract was signed is not regarded as constituting an upward contract variation. If a Party regards a particular request as constituting an upward contract variation, it will notify the other Party thereof as quickly as possible.
- 13.3 The Contractor will not start any additional work that constitutes an upward contract variation until it has received a written order to this effect from the Contracting Authority. In order to obtain such an order, the Contractor will issue a written quotation specifying the amount of additional work that is to be performed, its duration and cost. Any additional work performed by the Contractor will be subject to the provisions of the Contract, including those on fees and discounts, where relevant, in so far as these have not been amended by the Contracting Authority's written order. When submitting a quotation, the Contractor may not impose terms and conditions that are either more detailed or more stringent than the original Terms and Conditions, unless it does so with the Contracting Authority's consent.
- 13.4 The Contractor must accept and carry out an order for additional work representing up to a maximum of 15% of the original Contract value. Such an order for additional work is subject to the provisions of the Contract.
- 13.5 Should any new information that is brought to the notice of the Contracting Authority or any changes to the statutory regulations applicable to the work in question lead to the work performed by the Contractor under the Contract becoming demonstrably less demanding or extensive, this constitutes a downward contract variation for which the Contracting Authority is entitled to a discount. If a Party regards a particular change as constituting a downward contract variation, it will notify the other Party thereof in writing as quickly as possible. If a fixed fee has been agreed, the Parties will consult to agree on the value of the discount, which will be deducted from the agreed fee.

14. Invoicing

- 14.1 The right to payment arises after the Contracting Authority has accepted the results of the Services performed. The Contractor will invoice the Contracting Authority within 30 days of acceptance.
- 14.2 The Contractor will send the invoice electronically so that the Contracting Authority can receive and process it electronically, in accordance with the specifications issued by the Contracting Authority.
- 14.3 The Contractor will send invoices to the Contracting Authority. Each invoice will state the date and number of the Contract and the relevant VAT charge. If applicable under article 14.1, the Contractor will enclose a copy of the notice of acceptance with the invoice, together with any other information requested by the Contracting Authority.
- 14.4 If it has been agreed that the invoice will be based on the actual amount of time spent as calculated after the completion of the Contract, the Contractor will compile an itemised invoice in a format which the Contracting Authority is free to specify. The Contractor's invoice will state the number of days and hours actually and necessarily spent on the Contract, as well as the relevant dates, and will also contain a brief description of the work performed, and of any travel and accommodation expenses if these are not included in the daily or hourly rates.
- 14.5 The Contractor will present separate invoices for any upward contract variations after the additional work in question has been completed and accepted by the Contracting Authority. The invoices will explicitly state the nature and amount of the additional work performed, which will be itemised on the basis of authentic documents.

15. Payment and invoice audits

- 15.1 The Contracting Authority will pay the Contractor the amount owing under the Contract no later than 30 days after the relevant invoice has been received, provided it satisfies the provisions of the Contract.
- 15.2 If the Contracting Authority fails without good reason to pay an invoice within the time limit stipulated in article 15.1, it will automatically be liable to pay statutory interest on the amount outstanding. The Contractor is not entitled to the payment of interest if the invoice in question has not been drawn up in accordance with the provisions of articles 14.2 to 14.5.
- 15.3 The Contracting Authority may instruct an accountant designated by the Contracting Authority, as referred to in article 2:393, paragraph 1 of the Dutch Civil Code, to audit the invoices submitted by the Contractor to determine their accuracy. The Contractor will allow the accountant to inspect its books and documents, and will supply him with any information he requests. This audit is confidential and does not involve any more than is necessary to check the invoices. The accountant will report as quickly as possible to both Parties. The Contracting Authority will pay the cost of the accountant's audit, unless the latter's work reveals that the invoices in question are not accurate or complete, in which case the Contractor will be liable for the cost of the inspection.
- 15.4 The Contracting Authority may defer payment of an invoice or a portion thereof, about which the Parties have failed to reach agreement, for the duration of the accountant's audit. The Contracting Authority will exercise this right only if it has reasonable doubts about the accuracy of the invoice in question.
- 15.5 The Contractor is not entitled to suspend or terminate its work on account of the Contracting Authority's failure to pay an invoice within the stipulated time limit, or if the Contracting Authority does not pay an invoice because it suspects that the invoice is inaccurate or because the Services have not been properly performed.

16. Advance

- 16.1 If the Contracting Authority, for the purpose of performing the Contract, makes one or more payments for Services that have not yet been rendered, it may require the Contractor to issue the Contracting Authority with a 'stand-by' bank guarantee prior to making the payment or payments in question, to the value of the payment or payments in question. The Contracting Authority will not be required to pay any of the cost of the guarantee.
- 16.2 If the Contracting Authority does not accept certain Services within the stipulated time limit as a result of a failure that is attributable to the Contractor, the Contractor is liable to pay statutory interest on the advance for as long as the failure persists.
- 16.3 The 'stand-by' bank guarantee will be issued by a bank approved by the Contracting Authority, in accordance with the model enclosed with these Terms and Conditions (see Annexe 1).

V NON-PERFORMANCE

17. Potential delays

- 17.1 If there is any possibility of the work being delayed, the Contractor will immediately notify the Contracting Authority, explaining the reasons for and the consequences of the potential delay. The Contractor will also propose measures to avoid further delay.
- 17.2 Within 14 days of receiving the notification referred to in the preceding paragraph, the Contracting Authority will notify the Contractor whether or not it agrees with the proposed measures and the consequences described by the Contractor. Agreement does not imply any acceptance by the Contracting Authority of the cause of the potential delay, and does not affect any other rights vested in the Contracting Authority under the Contract.

18. Penalty

- 18.1 If the Services have not been performed in full in accordance with the terms of the Contract within the time limit as agreed or extended, the Contractor will owe the Contracting Authority an immediately payable penalty of 0.1% of the total or maximum Contract price, for every day the failure persists, subject to a maximum of 10% of that price. If it is clear that there is no prospect whatsoever of the Services being performed in full for reasons other than force majeure, the Contractor will immediately be liable for the full penalty.
- 18.2 The penalty is payable to the Contracting Authority without prejudice to all its other rights, including:
 - a. its right to demand that the Services be performed as agreed;
 - b. its right to compensation.
- 18.3 The penalty will be set off against the sums owed by the Contracting Authority, irrespective of whether the rights to such sums have been assigned to a third party.

19. Liability

- 19.1 If one of the Parties fails to discharge its obligations under the Contract, the other Party may give notice of default. The defaulting Party is deemed to be immediately in default, however, if it is clear that there is no prospect whatsoever of it discharging the obligations in question within the stipulated time limit for reasons other than force majeure. The notice of default will be given in writing, and the defaulting Party will be given a reasonable period of time in which to discharge its obligations. This is a strict deadline. The defaulting Party is in default if it fails to discharge its obligations by the deadline set.
- 19.2 The notice of default referred to in the preceding paragraph is not required if the time limit by which the agreed Services should have been performed has been extended prior to its expiry. If the defaulting Party fails to discharge its obligations as described in the preceding paragraph by the end of the extended time limit, the defaulting Party is held to be immediately in default as from that date.
- 19.3 A Party who imputably fails to discharge its obligations is liable to the other Party for any loss incurred by the other Party.
- 19.4 The Contractor indemnifies the Contracting Authority against any third-party claims for damages resulting from a failure as described in paragraph 3.
- 19.5 If, in performing the Services, the Contractor makes use of property belonging to the Contracting Authority as referred to in article 6.1, the Contractor is liable for any damage caused to such property. If damage of whatever nature is caused to the Contractor and/or third parties as a result of the Contractor using the Contracting Authority's property for the purpose of performing the Services, the Contractor will be wholly liable for this damage. Where necessary, the Contractor will indemnify the Contracting Authority against third-party claims.
- 19.6 The Contractor is liable for all obligations in respect of the Contractor's Staff, including those arising under tax and social insurance law. The Contractor indemnifies the Contracting Authority against any liability in this connection.

20. Force majeure

The term 'force majeure' is in any event understood not to include: staff shortages, strikes, staff illness, shortages of raw materials, transport problems, late delivery or the unsuitability of items required for the performance of the work, liquidity or solvency problems on the part of the Contractor or failures on the part of third parties engaged by the Contractor.

21. Dissolution and termination

- 21.1 Without prejudice to the other provisions of the Contract, either Party may dissolve the Contract in full or in part out of court by registered mail, if the other Party is in default or is permanently or temporarily unable to fulfil its obligations.
- 21.2 If one of the Parties is unable to discharge its obligations under the Contract for a reasonable period as a result of force majeure, the other Party is entitled to dissolve the Contract, subject to a reasonable period, in full or in part out of court by registered mail, without its action creating any entitlement to compensation.

- 21.3 In the event of force majeure, the Parties will not dissolve the Contract until a period of 15 Working Days has elapsed since the force majeure arose, unless the Parties have agreed another time limit.
- 21.4 The Contracting Authority may dissolve the Contract forthwith out of court by registered mail, without being required to send any demand or notice of default, if the Contractor applies for or is granted a provisional or definitive suspension of payments, files for bankruptcy, is declared bankrupt, if its business is wound up, if it ceases trading, if a substantial proportion of its assets are seized, if it undergoes a merger or a division or is dissolved, or if it is deemed on any other grounds to be no longer capable of discharging its obligations under the Contract.
- 21.5 If the Contract is dissolved, the Contractor will repay any undue amounts already paid by the Contracting Authority, plus the statutory interest on those amounts from the date on which they were paid. If the Contract is partially dissolved, the Contractor only has to repay payments relating to the part of the contract that has been dissolved.
- 21.6 In addition, the Contracting Authority may terminate the Contract at any time by giving notice of termination by registered mail. In such an event, the account between the Contracting Authority and the Contractor will be settled on the basis of the Services provided and costs reasonably incurred by the Contractor in carrying out the assignment in question and of any commitments reasonably entered into for the future for the purposes of the present Contract. The Contracting Authority is not obliged to compensate the Contractor in any way for the consequences of the termination of the Contract.

22. Retention of right to demand performance

The fact that one of the Parties omits to demand the performance of any provision of the Contract within a time limit set by the Contract does not affect its right to demand performance at a later date, unless the Party in question has expressly agreed to the non-performance in writing.

VI MISCELLANEOUS

23. Intellectual property

- 23.1 The Contracting Authority is the owner of all intellectual property rights that may be exercised now or in the future in relation to the results of the Services performed by the Contractor, irrespective of where and when they may be exercised. In pursuance of the Contract, the Contractor assigns these rights to the Contracting Authority as soon as they arise. The Contracting Authority hereby accepts the assignment of these rights.
- 23.2 In so far as the results referred to in paragraph 1 are achieved using existing intellectual property rights that do not accrue to the Contracting Authority, the Contractor grants the Contracting Authority a non-exclusive right of use for an indefinite period. In such an event, the Contractor guarantees that it is entitled to grant the aforesaid right of use.
- 23.3 In so far as a separate instrument needs to be executed for the assignment of the rights referred to in paragraph 1, the Contractor irrevocably authorises the Contracting Authority to draft such an instrument and sign it on the Contractor's behalf, without prejudice to the Contractor's obligation to cooperate in the assignment of these rights as soon as the Contracting Authority requests it to do so, without attaching any conditions to its cooperation. In consequence, the Contractor irrevocably authorises the Contracting Authority to have the assignment of these intellectual property rights registered in so far as is necessary in the appropriate registers.
- 23.4 If there is a difference of opinion between the Parties on intellectual property rights in relation to the results of the Services performed, it will be assumed, in the absence of proof to the contrary, that the rights rest with the Contracting Authority. In all cases, the Contracting Authority may use the results for the purposes specified in the Contract.
- 23.5 The Contractor renounces vis-à-vis the Contracting Authority any moral rights vested in it, i.e. the Contractor, as referred to in the Copyright Act, in so far as the relevant regulations allow it to do so. Acting both in its own capacity and on behalf of the members of its Staff working on the Contract, and as authorised to this end, the Contractor renounces vis-à-vis the Contracting Authority any moral rights vested in these members of its Staff, in so far as the relevant regulations allow it to do so.
- 23.6 The Contractor may not make the results of the Services performed available to third parties in any form, or give third parties any information about them, unless the Contracting Authority has given its express consent. The Contracting Authority may attach conditions to its consent.
- 23.7 The Contractor indemnifies the Contracting Authority against all claims brought by third parties in respect of any breach of their intellectual property rights, including equivalent claims relating to knowledge, unlawful competition and suchlike. The Contractor is obliged to take any action that may help to prevent stagnation and to limit the additional costs or losses incurred as a result of such breaches, and to do so at its own expense.
- 23.8 Without prejudice to the above provisions, the Contracting Authority may, if a third party holds the Contractor liable for a breach of its intellectual property rights, dissolve the Contract in writing, in full or in part, out of court. The Contracting Authority will not exercise its right to dissolve the Contract until it has first consulted the Contractor.

24. Assignment of rights and obligations under the Contract

- 24.1 The Parties may not transfer their rights and obligations under the Contract to third parties without from the other Party. The other Party will not withhold its consent without good reason. The Parties may attach conditions.
- 24.2 Paragraph 1 does not apply to the establishment of limited rights, such as a right of pledge.

25. Insurance

- 25.1 The Contractor has taken out and will retain adequate insurance cover in respect of the following risks:
- professional liability, i.e. the risks arising from Professional Errors;
 - business liability, including liability for damage caused to persons or the Contracting Authority's property;
 - loss of or damage to business property (including as a result of fire or theft), including items of property owned by the Contracting Authority.
- 25.2 At the Contracting Authority's request, the Contractor will immediately present either the original or certified copies of the policies and proof of the payment of premium for the insurances referred to in paragraph 1 or a statement from the insurer to the effect that these policies exist and the premium has been paid. The Contractor will not terminate either the insurance contracts or the terms applying to them without the Contracting Authority's prior written consent. Nor will the Contractor change the insured sum to the Contracting Authority's disadvantage without the Contracting Authority's prior written consent. The insurance premiums owed by the Contractor are deemed to be included in the agreed prices and fees.
- 25.3 The Contractor assigns to the Contracting Authority in advance all rights to the payment of insurance proceeds as referred to in paragraph 1, in so far as such proceeds relate to damage for which the Contractor is liable to the Contracting Authority under the Contract. The Contractor is obliged to notify its insurance company in writing of this assignment and to send a copy of this written notice to the Contracting Authority, without prejudice to the Contracting Authority's right to notify the insurance company itself.
- 25.4 Any insurance proceeds paid directly by the insurance company to the Contracting Authority will be deducted from the amount of compensation the Contractor is required to pay to the Contracting Authority in respect of the insured event.

26. Employment of other Party's Staff, bribery and conflict of interests

- 26.1 Neither Party may employ members of the other Party's Staff, or negotiate with members of the other Party's Staff on the possibility of the latter entering into its employment, without the other Party's consent both during the term of the Contract and for a period of one year following its termination. The other Party will not withhold its consent without good reason.
- 26.2 The Parties will not offer to each other or to third parties, or ask for, accept or obtain a promise of, from each other or third parties, whether for themselves or for any other party, any gift, reward, compensation or benefit of any form whatsoever if this could be construed as constituting an illicit practice. Such a practice may constitute grounds for dissolving the Contract either in full or in part.
- 26.3 Should it transpire that a member of the Contracting Authority's Staff is also in the Contractor's employment, regardless of whether or not such employment is paid, or was in the Contractor's employment at the time when negotiations took place on the formation of the Contract, and that the Contracting Authority was not informed of this prior to the signing of the Contract, the Contracting Authority may dissolve the Contract with immediate effect, without being required to give any notice of default or to pay any compensation.
- 26.4 The Contractor will not deploy staff on the Contract who were employed by the Contracting Authority during a period of two years prior to the start of the work other than with the Contracting Authority's consent.

27. Invalidity

If one or more provisions of the Terms and Conditions or the Contract are found to be invalid or are nullified by a court of law, the remaining provisions will retain their legal force. The Parties will consult on the former provisions in order to make an alternative arrangement. The alternative arrangement must not undermine the purport of the Terms and Conditions or the Contract.

28. Follow-up order

The Contract does not entitle the Contractor to any follow-up orders.

29. Publicity

The Contractor may not refer to the Contract in publications or advertisements and may use the Contracting Authority's name as a reference only with the Contracting Authority's consent.

30. Long-term provisions

Provisions which by their nature are intended to persist after the Contract has been performed will remain in force after the expiry of the Contract. These obligations include the provisions on intellectual property rights (article 23), confidentiality (article 11), the assignment of rights to insurance proceeds (article 25), the employment of the other Party's Staff (article 26.1), and disputes and applicable law (article 31).

31. Disputes and applicable law

- 31.1 Any dispute between the Parties in relation to the Contract will be submitted only to the competent court in the district of The Hague, unless the Parties agree on an alternative means of settlement at the time when a dispute arises.
- 31.2 The Contract is governed by Dutch law.