

NOAB – DELIVERY CONDITIONS



GENERAL DELIVERY, PAYMENT AND PERFORMANCE CONDITIONS APPLICABLE TO THE LEGAL RELATIONSHIP BETWEEN THE COMMISSIONING PARTY AND THE ACCOUNTING AND TAX EXPERT

General

Article 1

- a. These General Conditions will enter into effect when the Commissioning Party requests the assistance of the Contractor. All provisions of these General Conditions will be in force between the parties, unless explicitly stated otherwise in writing.
- b. In these General Conditions, the following terms will have the following meaning:
 - Contractor: the natural person who or legal entity that performs the work identified in Article 2;
 - Commissioning Party: the natural person who or legal entity that calls in the Contractor;
 - Assignment: the work to be mutually agreed between the Commissioning Party and the Contractor that shall be performed by the Contractor and the conditions on which it shall be performed.

Purpose

Article 2

- a. All offers will be without obligation, unless the Contractor explicitly states otherwise in his/her/its offers or quotations to the Commissioning Party.
- b. The Contractor's work comprises (or may comprise), *inter alia*, keeping the complete accounts and/or books and records on the Commissioning Party's behalf, drafting the annual report and accounts, filing tax returns and any follow-up, providing advice on financial, tax and/or business issues, and performing any and all acts that – in view of the legal relationship and the ensuing Assignment – may be appropriate in connection with the work identified above.
- c. If a contract was concluded with the Commissioning Party subject to these General Conditions earlier, the Commissioning Party will be deemed to tacitly accept the applicability of these General Conditions to subsequent contracts concluded with the Contractor.

Conclusion

Article 3

The contract enters into effect upon the Contractor's acceptance of an Assignment. The provision set out in the previous sentence will also apply to amendments to Assignments. If the Commissioning Party's interests require that the Contractor immediately deliver an Assignment in full or in part, or if the Commissioning Party has explicitly requested the immediate full or partial delivery of an Assignment, the contract will be deemed to have entered into effect upon the Contractor's actual full or partial delivery of the Assignment to the Commissioning Party.

Contractor's obligations

Article 4

- a. The Contractor shall represent the Commissioning Party's interests to the best of his/her/its knowledge and ability, insofar as possible and desirable in view of the legal relationship and the ensuing Assignments.
- b. The Contractor shall perform the work with due observance of the applicable Code of Professional Conduct and Practice [Gedrags- en Beroepsregels] of the Dutch Association of Accounting and Tax Experts [Nederlandse Orde van Administratie- en Belastingdeskundigen or NOAB]. The Contractor shall promptly send the Commissioning Party a copy of the most recent version of the aforesaid Code of Professional Conduct and Practice at the latter's written request.
- c. The manner in which the books and records are kept and the other work is performed shall satisfy the requirements ensuing from the Commissioning Party's obli-

- gations and responsibilities, with due observance of any applicable statutory provisions.
- d. If the purpose of the work is to achieve a certain end result (financially or otherwise), no guarantees are issued that the intended end result will effectively be achieved.

Commissioning Party's obligations

Article 5

- a. The Commissioning Party shall refrain from performing any act that thwarts the Contractor's performance of the Assignment or renders it impossible.
- b. The Commissioning Party shall provide the Contractor with all the data, information and documents required for the performance of the Assignment in a timely manner, in full and in the proper fashion.

Confidentiality

Article 6

The Contractor undertakes to maintain the confidentiality and secrecy of any and all data and documents related to the Assignment that in all reasonableness are considered to be confidential and secret. The Contractor will not be liable for any breach of confidentiality by persons in his/her/its employment if he/she/it can make a plausible case that he/she/it could not have prevented that breach.

Cooperation with third parties

Article 7

- a. Within the framework of performing the Assignment, the Contractor may engage other experts not associated with his/her/its own firm only after the need and/or desirability to do so has been established in consultation with the Commissioning Party.
- b. The Contractor will accept no liability for work performed by third parties, including the experts referred to in Article 7a.

Breach of contract by the Contractor

Article 8

- a. The Contractor will be liable vis-à-vis the Commissioning Party for damage incurred by the latter as a direct consequence of a breach of contract by the Contractor or persons in his/her/its employment committed while performing the Assignment only if and insofar as that breach could have been prevented under normal circumstances in the context of normal expert knowledge, exercising normal care and attention and professional conduct, all of the foregoing subject to the further restrictions set out below.
- b. The Contractor shall remedy the breach of contract referred to above for no consideration in the shortest possible term if and insofar as the costs incurred with respect to the remedy do not exceed the fees charged for the relevant work. If the costs exceed the fees, the Contractor will be obliged to remedy the breach only if the Commissioning Party certifies in writing in advance that he/she/it will bear the additional costs involved.
- c. The Contractor's liability in each separate case will lapse not later than 60 months (5 years) after the tax returns for the relevant financial year have been filed, to be increased by the term for which a postponement was granted.
- d. The Contractor's liability in each separate case will lapse if the Commissioning Party fails to give the Contractor

the opportunity to attend any tax audit with respect to the relevant period of time, if the Commissioning Party fails to give the Contractor the opportunity to remedy the relevant breach and if the Commissioning Party fails to involve the Contractor in any additional work performed further to and/or in connection with the aforesaid breach.

- e. The Commissioning Party shall notify the Contractor of any breach of contract within the meaning of this Article within 1 month after he/she/it became aware or reasonably should have been aware of that breach, failing which any liability on the part of the Contractor will be excluded. Liability will be excluded in any event and at any time unless and insofar as the professional liability insurance taken out by the Contractor pays out.

Breach of contract by the Commissioning Party

Article 9

- a. If and insofar as a breach of contract in the context of the work performed by the Contractor is a consequence of the Commissioning Party's failure to fulfil his/her/its obligations in conformity with the provisions of Article 5, or his/her/its failure to do so in a timely or sufficient manner, the Contractor will not be liable for that breach in any way.
- b. In that event, the Commissioning Party shall bear the costs incurred with respect to the remedy.

Termination by the Commissioning Party

Article 10

- a. The Commissioning Party can terminate a given Assignment at any time.
- b. Assignments shall be terminated by registered letter.
- c. If an Assignment is terminated, the parties shall in principle observe a period of at least 1 month between the date on which notice of termination is given and the date on which the termination takes effect, in order to enable the Contractor to prepare the work in progress and/or the books and records for transfer to the Commissioning Party and/or a third party to be designated by the Commissioning Party in an acceptable manner without damage to the progress of the work involved, with due observance of the provisions of Article 9 of these General Conditions.
- d. Assignments given to the Contractor will not lapse if the Commissioning Party dies; the latter's rights and obligations will pass to his/her/its beneficiaries and/or legal successor.

Suspension/dissolution/ termination by the Contractor

Article 11

- Without prejudice to the general power of suspension or dissolution set out in these General Conditions, if the Commissioning Party fails to fulfil any obligation ensuing from the contract concluded between the parties or fails to do so in a timely manner, in full or in a sufficient manner, if the Commissioning Party files for bankruptcy or a suspension of payments (or bankruptcy or moratorium proceedings are instituted against him/her/it by a third party), if an attachment of whatever description is levied against the Commissioning Party, if the Commissioning Party winds up his/her/its company, closes it down or transfers it in full or in part or if the Commissioning Party fails to pay outstanding fee statements in a timely manner, the Contractor will be authorised to:
- a. terminate a given Assignment at any time, whereby no-

- tion of termination shall be given by registered letter;
- b. demand that the Commissioning Party make an advance payment or provide security for all current and future contracts, before proceeding to deliver his/her/its work (or further work);
 - c. suspend the provision of his/her/its services;
 - d. deem the entire relevant contract or the parts not performed dissolved by giving the Commissioning Party written notice, without judicial intervention being required, all of the foregoing without prejudice to the Contractor's right to claim compensation for dissolution;
 - e. If the Contractor exercises his/her/its rights as set out in this Article, he/she/it will never be liable vis-à-vis the Commissioning Party for any damage that may ensue either directly or indirectly from that exercise.

Provision, delivery period and delivery

Article 12

- a. Subject to any further contract between the Commissioning Party and the Contractor, the required documents, books, records, accounting and/or other data and the like shall be provided to the Contractor by or on behalf of the Commissioning Party, and will be delivered by the Contractor to the Commissioning Party, in the manner, form and quantity to be determined by the Contractor.
- b. If the Commissioning Party fails to fulfil the obligation set out in Article 12a, regardless of the reasons therefor, the Contractor will be authorised to suspend his/her/its work. Any ensuing damage, in whatever form or scope, cannot give rise to liability on the Contractor's part.

Right of retention

Article 13

- a. The Commissioning Party and the Contractor explicitly agree that the Contractor will be authorised to suspend the delivery of property until the Commissioning Party has fulfilled his/her/its obligation to pay any outstanding fee statements, including the interest and costs due in that respect, and has fulfilled his/her/its obligation to compensate the damage incurred by the Contractor within the framework of the legal relationship in question or has provided security in that respect that is deemed adequate in the banking industry, e.g. an irrevocable bank guarantee.
- b. The property referred to in Article 13a will in any event include books, records, documents, accounting data and other data and data carriers created in respect of the performance of the Assignment.

Force majeure

Article 14

- a. In the event of a strike, theft, government measures, fire, computer breakdowns, epidemics, loss of data, war, water damage or any other circumstances that prevent the Assignment from being performed, whether or not temporarily, the Contractor will be entitled either to dissolve the contract by registered letter or to extend the delivery period by the duration of the force majeure.
- b. In the event of force majeure, the Contractor shall promptly notify the Commissioning Party accordingly.
- c. The Commissioning Party will be liable for any damage to or loss of third-party documents or records that the Contractor retains on the Commissioning Party's behalf.
- d. If a situation of force majeure continues for more than 1 month, the Commissioning Party will be entitled to terminate the contract. Notice of termination shall be given by registered letter and should have been received by the Contractor prior to the end of the situation of force majeure.
- e. The aforesaid dissolution will not discharge the Commissioning Party from his/her/its obligation to pay the amounts set out in Article 19. Costs in respect of the pe-

riod between the date of the last fee statement and the date of dissolution will be at the Commissioning Party's expense. In the event that the contract is dissolved, it will be impossible for the Commissioning Party to claim compensation.

- f. When the situation of force majeure has ended, the Contractor shall notify the Commissioning Party as soon as possible, whereupon the Contractor shall resume performing the Assignment.

General financial provisions

Article 15

- a. Unless the parties agree otherwise in writing, the Contractor's fee will be calculated on the basis of an hourly rate.
- b. At the Commissioning Party's request, the Contractor shall provide an estimate in advance of the costs for the work to be performed by him/her/it and/or his/her/its staff, either with respect to a particular assignment or with respect to a particular calendar and/or financial year.

Fee statement

Article 16

Unless otherwise agreed, the fee statement shall be itemised in such a manner that the Commissioning Party has sufficient insight into the components that together make up the amount charged.

Claims

Article 17

- a. Claims shall be submitted to the Contractor in writing within 30 days of delivery or – if the defect or defects involved was/were discovered at a later date – within 30 days of the aforesaid discovery. Claims shall contain a substantiated description of the complaints and/or the discovered defects.
- b. The Contractor shall inform the Commissioning Party within 14 days after receiving a claim whether, and if so how, the claim will be settled.
- c. Claims in respect of deliveries made and/or services/activities performed by the Contractor and work performed to that end explicitly do not authorise the Commissioning Party to suspend his/her/its obligation to pay any outstanding fee statements.
- d. Claims in respect of fee statements sent to the Commissioning Party by the Contractor shall be submitted within 2 weeks of the date of dispatch stated in the relevant fee statement. All rights to submit claims in respect of fee statements will lapse if the term referred to in this paragraph is exceeded, unless the Commissioning Party asserts and substantiates that a situation of force majeure prevented him/her/it from taking note of the content of the fee statement within the aforesaid 2-week term. In that event, the term will commence on the date on which the Commissioning Party takes note of the fee statement.

Intellectual property

Article 18

All intellectual property rights in relation to computer software, system designs, procedures, research methods, reports, etc. originating from or used by the Contractor will become and will remain the explicit and exclusive property of the Contractor, during as well as after the performance of the Assignment, all of the foregoing regardless of the Commissioning Party's share or the share of any engaged third party in the creation of the aforementioned software, designs, procedures, etc. The right to exercise the aforesaid rights will be exclusively and explicitly reserved for the Contractor, during as well as after the performance of the Assignment.

Payment

Article 19

- a. Fee statements shall be paid within 14 days after the date of the fee statement, failing which the Commissioning Party will be in default by operation of law.
- b. After the expiry of the term referred to in Article 19a, the Commissioning Party will owe interest at the statutory rate pursuant to Section 6:119a of the Dutch Civil Code [BW], in which respect a portion of a month will be regarded as a full month.
- c. After the expiry of the term referred to in Article 19a, the Commissioning Party will also owe the Contractor all costs reasonably incurred in order to obtain payment of the fee statement out of court, which costs will amount to at least 15% of the principal sum increased by turnover tax, with a minimum of EUR 70, without the Contractor being obliged to demonstrate whether he/she/it actually incurred the costs in question. In that event, the Commissioning Party will also owe the Contractor all legal costs incurred by the latter. If the Contractor engages third parties for the aforementioned legal or other work, the Commissioning Party will also directly or indirectly owe the Contractor all costs incurred by those third parties in connection with their extrajudicial work.
- d. If the Commissioning Party fails to adequately respond to a request for an advance payment or the provision of security, the Contractor will be entitled to dissolve the contract by registered letter or letter with acknowledgement of receipt or by fax with confirmation of dispatch and/or confirmation of receipt with effect from two 24-hour periods after the date of dispatch, all of the foregoing without prejudice to the Contractor's right to claim payment for the delivered portions of the Assignment and the compensation to which he/she/it is entitled on account of the dissolution.
- e. Regardless of any statements of the Commissioning Party upon making payment and regardless of how the Commissioning Party processes payments in its accounts, payments made by the Commissioning Party will at all times exclusively serve to reduce amounts payable to the Contractor in the manner set out below. Each payment will first be applied to settle collection costs and interest payable by the Commissioning Party and subsequently the Contractor's fee statements that have been outstanding for the longest period.

Disputes

Article 20

- a. All agreements between the Commissioning Party and the Contractor to which these general conditions apply will be governed by Dutch law.
- b. All disputes relating to the agreements between the Commissioning Party and the Contractor to which these conditions apply and which are beyond the competence of the Sub-District Court will be adjudicated by the competent court in the district in which the Contractor is located, unless disputes are involved that do not relate to the business or profession of the Commissioning Party.
- c. The Commissioning Party will be free to follow the course of disciplinary proceedings.