







## **Article 5 Amendment of the agreement**

1. If it appears during the implementation of the agreement that a proper implementation requires the amendment or supplementation of the activities to be performed, the parties will adjust the agreement accordingly in good time and in joint consultation.
2. If the parties agree to amend or supplement the agreement, this may affect the moment when implementation is complete. The user will inform the client of this as soon as possible.
3. If the amendment or supplementation of the agreement has financial and/or qualitative consequences, the user will inform the client of this in advance.
4. If a fixed fee has been agreed, the user will indicate on that occasion to what extent the amendment or supplementation of the agreement will result in this fee being exceeded.
5. In derogation from Paragraph 3, the user will be unable to charge additional costs if the amendment or supplementation is the result of circumstances attributable to the user.

## **Article 6 Contract duration; completion period**

1. The agreement between the user and a client is concluded for an indefinite period, unless the nature of the agreement dictates otherwise or the parties expressly agree otherwise in writing.
2. If a deadline for the completion of particular activities has been agreed within the term of the agreement, this will never be a final deadline. If the completion period is exceeded, therefore, the client must give the user written notice of default.

## **Article 7 Fee**

1. When concluding the agreement, the parties may agree a fixed fee.
2. If no fixed fee is agreed, the fee will be determined on the basis of actual time spent. The fee will be calculated in accordance with the user's customary hourly rates applicable to the period in which the activities are performed, unless a different hourly rate has been agreed.
3. The fee and any cost estimates are exclusive of VAT.
4. In the event of orders lasting more than three months, the costs owed will be charged periodically.
5. If the user agrees a fixed fee or hourly rate with the client, the user will nevertheless be entitled to increase this fee or hourly rate.
6. The user will also be entitled to pass on price increases if the rates of, for example, wages have increased between the time of the offer and the time of delivery.



7. Furthermore, the user may increase the fee if it appears during the performance of the activities that the amount of work originally agreed or expected was underestimated to such an extent when the agreement was concluded, which underestimation is not attributable to the user, that the user cannot reasonably be expected to perform the agreed activities for the fee originally agreed. In that case, the user will inform the client of its intention to increase the fee or rate. On this occasion, the user will specify the extent of the increase and the date on which it will take effect.

## **Article 8 Payment**

1. Payment must be effected within 14 days of the invoice date, in a manner to be specified by the user and in the currency stated on the invoice. The payment obligation will not be suspended in the event that an objection is lodged against the amounts of the invoices.

2. If the client fails to effect payment within the 14-day period, the client will be in default by operation of law. In that case, the client will owe interest at a rate of 1% per month or at the statutory interest rate, whichever is higher. The interest on the amount due and payable will be calculated from the moment when the client is in default until the moment when the amount has been paid in full.

3. In the event that the client is wound up, is declared insolvent, has an attachment levied against it or applies for a moratorium, the user's claims against the client will be due and payable immediately.

4. The user has the right to apply the payments made by the client first to settle the costs, then to settle the overdue interest and finally to settle the principal sum and the current interest.

The user may refuse an offer of payment, without this causing it to be in default, if the client assigns a different order to the allocation.

The user may refuse full repayment of the principal sum if this payment does not include the overdue and current interest and the costs as well.

5. The user has the option to add on a late payment surcharge of 2%. This surcharge will not be owed if payment is effected within seven days of the invoice date.

## **Article 9 Retention of title**

1. All items supplied by the user, which may include designs, books, sketches, drawings, films, software, (electronic) files, etc., will remain the property of the user until the client has fulfilled all the subsequent obligations under all the agreements concluded with the user.

2. The client will not be authorised to pledge the items subject to retention of title or to encumber them in any other way.

3. If third parties attach the items supplied subject to retention of title or wish to establish rights or lay claim to them, the client will be obliged to inform the user of this as soon as may reasonably be expected.



4. The client undertakes to take out and retain insurance for the items supplied subject to retention of title against fire damage, explosion damage, water damage and theft, and to allow inspection of the insurance policy on demand.

5. Items supplied by the user which are subject to retention of title pursuant to Paragraph 1 of this article may be resold only in the context of normal business operations and may never be used as a means of payment.

6. In the event that the user wishes to exercise its proprietary rights referred to in this article, the client hereby gives its unconditional and irrevocable permission to the user, or any third party to be designated by the latter, to access any location where the user's property may be stored and to retrieve those items.

### **Article 10 Collection costs**

1. If the client defaults or fails to fulfil one or more of its obligations, all reasonable costs incurred to obtain an out-of-court settlement will be borne by the client. If the client fails to pay a sum of money in time, it will incur a penalty immediately due and payable of 15% of the amount still outstanding, with a minimum of EUR 50.00.

2. If the user incurred higher costs, which were necessary within reason, these costs will also be eligible for reimbursement.

3. Any legal and enforcement costs incurred within reason will be borne by the client as well.

4. The client will owe interest on the collection costs incurred.

### **Article 11 Inspection, complaints**

1. The client must report complaints about the activities performed in writing to the user within eight days of detection and in any case within 14 days of the completion of the activities concerned and/or delivery of the goods. The notice of default must describe the shortcoming in the greatest possible detail, so as to enable the user to respond adequately.

2. If a complaint is well founded, the user will still perform the activities as agreed, unless doing so is demonstrably no longer useful from the client's point of view. The client must state the latter in writing.

3. If the subsequent performance of the agreed activities is no longer possible or useful, the user will only be liable within the limitations of Article 15.

### **Article 12 Cancellation**

1. If the client cancels the agreement prematurely, the user will be entitled to compensation of the loss from lower utilisation demonstrably sustained as a result thereof, unless the cancellation is based on facts and circumstances that can be attributed to the user.



Furthermore, the client will be obliged in that case to pay the invoices for the activities performed until then. The provisional results of the activities performed until then will therefore be made available to the client subject to reservations.

2. If the user cancels the agreement prematurely, the user – in consultation with the client – will see to it that the activities still to be performed are transferred to third parties, unless the cancellation is based on facts and circumstances that can be attributed to the client.

3. If the transfer of the activities entails additional costs for the user, these costs will be charged to the client.

### **Article 13 Suspension and termination**

1. The user will be entitled to suspend the fulfilment of its obligations or to terminate the agreement, if:

- the client has failed to fulfil its obligations under the agreement, or has failed to do so in full;
- circumstances that came to the user's attention after the conclusion of the agreement provide good reasons to fear that the client will not fulfil its obligations. If there is a good reason to fear that the client will fulfil its obligations inadequately or only in part, suspension will only be permitted insofar as the shortcoming justifies this;
- the client, when concluding the agreement, was asked to provide security for the fulfilment of its obligations under the agreement, and has failed to furnish (sufficient) security.

2. Furthermore, the user will be entitled to terminate the agreement, or arrange for this to be done, if circumstances occur which are such that performance of the agreement is impossible or can no longer be required according to the standards of reasonableness and fairness, or if any other circumstances occur which are such that the unaltered continuation of the agreement cannot be expected within reason.

3. If the agreement is terminated, the user's claims against the client will be immediately due and payable. If the user suspends the fulfilment of the obligations, this will not affect its statutory rights and its entitlements under the agreement.

4. The user will always retain the right to demand compensation.

### **Article 14 Return of items made available**

1. If the user made items available to the client in the context of the agreement, the client will be obliged to return the items supplied within 14 days in their original state, free from defects and in full. If the client fails to fulfil this obligation, it will have to bear all the resulting costs.

2. If, following a notice to that effect, the client for whatever reason still fails to fulfil the obligation stipulated in Paragraph 1, the user will be entitled to recover the resulting losses and costs, including the costs of replacement, from the client.



## Article 15 Liability

1. If the user should be liable, this liability will be limited to the amounts stipulated in this article.
2. If the user is liable for any direct loss, this liability will be limited to a maximum of twice the invoice amount, or at least that part of the order to which the liability relates, with a maximum of EUR 5,000 (in words: five thousand euros). Liability will be limited at all times to a maximum of the amount of the payout to be made by the user's insurer in the case concerned.
3. In derogation from the provisions of Paragraph 2 of this article, liability in the case of an order lasting more than six months will be further limited to the part of the fee owed in relation to the last six months.
4. The term "direct loss" refers exclusively to:
  - the reasonable costs of ascertaining the cause and magnitude of the loss, insofar as this ascertainment relates to losses within the meaning of these terms and conditions;
  - any reasonable costs incurred in order to make the user's faulty performance comply with the agreement, unless these costs cannot be allocated to the user;
  - any reasonable costs incurred in order to prevent or limit losses, insofar as the client can demonstrate that such costs did indeed result in limitation of direct losses within the meaning of these terms and conditions.
5. The user will never be liable for indirect losses, including consequential losses, lost profits, missed savings and losses due to business interruptions.
6. The limitations of liability for direct losses stipulated in these terms and conditions will not apply if the loss is attributable to wilful misconduct or gross negligence on the part of the user or its employees.

## Article 16 Indemnification

1. The client indemnifies the user against claims from third parties with regard to intellectual property rights to the materials or data supplied by the client which are used in the context of the agreement.
2. If the client provides the user with information carriers, electronic files, software, etc., the client guarantees that these information carriers, electronic files or software are free from viruses and defects.

## Article 17 Risk transfer

1. The risk of loss of or damage to the items that are the object of the agreement will pass to the client at the moment when they are legally and/or actually transferred to the client and are thereby brought under the control of the client or of a third party to be designated by the client.



## Article 18 Force majeure

1. The parties will not be obliged to fulfil any of the obligations if they are prevented from doing so due to circumstances which are not their fault and for which they are not accountable pursuant to law or a legal act, or according to generally accepted standards.
2. In these general terms and conditions, force majeure, as well as having the meaning given to it in (case) law, is understood to mean all external causes beyond the user's control, whether or not anticipated, which prevent the user from fulfilling its obligations. Such causes include strikes at the user's business.
3. The user will also be entitled to invoke force majeure if the circumstance preventing (further) compliance occurs after the user should have fulfilled its obligations.
4. During the period in which the force majeure continues, the parties may suspend the obligations under the agreement. If this period exceeds two months, either party will be entitled to terminate the agreement without being obliged to compensate the other party for any losses.
5. Insofar as the user, at the time when the force majeure commences, has meanwhile partly fulfilled its obligations under the agreement, or will be able to do so, and the fulfilled part and/or the part to be fulfilled represents independent value, the user will be entitled to issue a separate invoice for the part that has already been fulfilled and/or is yet to be fulfilled. The client will be obliged to pay this invoice as if it concerned a separate agreement.

## Article 19 Secrecy

1. Both parties are obliged to observe secrecy in respect of all confidential information which they obtain from each other or from another source in the context of their agreement. Information is considered to be confidential if it was communicated by the other party or if this ensues from the nature of the information.
2. If, pursuant to a statutory provision or court ruling, the user is obliged to disclose confidential information to a third party designated by the law or by the competent court, and the user is unable to invoke a right of non-disclosure recognised or permitted by the law or by the competent court, the user will not be obliged to pay damages or compensation and the other party will not be entitled to terminate the agreement on the grounds of any resulting loss.

## Article 20 Intellectual property and copyrights

1. Without prejudice to the other provisions of these general terms and conditions, the user reserves the rights and powers conferred on the user by the Copyright Act [*Auteurswet*].





2. Further arrangements with regard to intellectual property and arrangements about copyrights will be laid down in contracts between the user and contractors or clients.

### **Article 21 Samples and models**

1. If the client has been shown or provided with a sample or model, this will be deemed to have been provided as an indication only, unless it is expressly agreed that the product to be supplied will be identical to this sample or model.

2. In the event of an order relating to an immovable property, mention of the surface area or other dimensions and details will also be deemed to be intended as an indication only, without the product to be supplied having to conform to these particulars.

### **Article 22 Non-poaching of staff**

1. During the term of the agreement and during one year after its termination, the client will refrain from hiring staff members of the user or of companies which were engaged by the user for the purpose of this agreement and which are or were involved in the implementation of the agreement, and from having these persons work for it in any other way, either directly or indirectly, except after proper, businesslike consultations in this respect with the user.

### **Article 23 Disputes**

1. The court in whose district the user has its registered office will have exclusive jurisdiction to hear disputes, unless the subdistrict court has jurisdiction. Nevertheless, the user will be entitled to submit the dispute to the court that has jurisdiction according to the law.

2. The parties will only appeal to the court after they have made every effort to resolve the dispute in joint consultation.

### **Article 24 Applicable law**

1. All agreements between the user and the client will be governed by Dutch law.

### **Article 25 Amendment, interpretation and location of the terms and conditions**

1. These terms and conditions have been filed at the office of the Deventer Chamber of Commerce.

2. The Dutch text of these general terms and conditions will always be decisive for the interpretation of their tenor and purport.



3. The applicable version will always be the version most recently filed, or the version in force at the time when the agreement was formed.