




# Terms and Conditions

Our terms and conditions are deposited with the Chamber of Commerce in Breda under number 343466.

General conditions of supply deposited with the Chamber of Commerce in Breda on date: 01-01-2011. Venturn Holding B.V., Venturn People B.V., Venturn Performance B.V. established and having their registered office in Rotterdam, Maaskade 119, hereafter referred to as: user.

## Article 1 Definitions

1. In these general conditions the following terms have the following meanings, unless otherwise expressly stated.

-  User: the user of the general conditions.
-  Client: user's counterparty.
-  Contract: the contract for the supply of services.

## Article 2 General

1. These conditions apply to all offers, quotations and contracts between user and a client to which user has declared these conditions to be applicable, insofar as parties do not deviate from these conditions expressly and in writing.
2. The present conditions are equally applicable to all contracts with user where third parties are involved in the performance of the contract.
3. Any deviations from these general conditions are only valid if they are expressly agreed in writing.
4. The applicability of any purchasing or other conditions of client is expressly rejected.
5. If one or more of the provisions of these general conditions should prove to be void or capable of being annulled the other provisions of these general conditions remain fully applicable. In that case user and client will consult together in order to agree new provisions to replace the void c.q. annulled provisions, taking into account the purpose and scope of the original provisions as far as possible. (See also: Notes on individual articles under 1).

## Article 3 Offers and quotations

1. All offers are made without obligation unless a period for acceptance is stated in the offer.
2. The quotations submitted by user are free of obligation; they are valid for 30 days, unless otherwise stated. User is only bound by the quotations if their acceptance is confirmed by the counterparty in writing within 30 days, unless otherwise stated.
3. The prices stated in the said offers and quotations do not include BTW and other government levies; neither do they include any expenses incurred in relation to the contract, including delivery and administration expenses, unless otherwise stated.
4. If the acceptance deviates (even on minor points) from the offer contained in the quotation user will not be bound by it. The contract does not come into existence in accordance with this divergent acceptance, unless otherwise stated by user.
5. A combined quotation does not oblige user to perform part of the assignment in return for a proportionate part of the quoted price.
6. Offers and quotations do not automatically apply to future assignments. (See also: Notes on individual articles under 2).

## Article 4 Performance of the contract

1. User will perform the contract to the best of his knowledge and ability and in accordance with the requirements of good workmanship, on the basis of the scientific knowledge which is current at the time.
2. If and to the extent that the proper performance of the contract may call for the involvement of third parties, user is entitled to have certain activities performed by third parties.
3. The client shall supply to user in good time all information which user states that he needs or which the client can reasonably be expected to understand as being necessary for the performance of the contract. If the information that is necessary for the performance of the contract is not supplied to user in good time, user is entitled to suspend performance of the contract and/or to charge client for any extra costs resulting from the delay in accordance with the usual tariffs.
4. User is not liable for damage, of any nature whatsoever, due to user having relied on incorrect and/or incomplete information supplied by client, unless this inaccuracy or incompleteness should have been apparent to user.
5. If it is agreed that the contract is to be performed in phases user can suspend performance of those parts of the contract which belong to a subsequent phase until the client has approved the results of the preceding phase in writing.

6. If activities are performed in the course of the contract by user or by third parties engaged by user at the client's premises or at a location designated by the client, client shall provide such facilities as may be reasonably desired by those employees, free of charge.
7. Client indemnifies user for any claims by third parties who suffer damage in connection with the performance of the contract which is attributable to client. (See also: Notes on individual articles under 3).

#### Article 5 Changes to the contract

1. If in the course of the performance of the contract it becomes apparent that it is necessary for the proper performance of the contract to change or add to the activities to be performed, the parties will adjust the contract accordingly, in good time and in mutual consultation.
2. If parties agree that the contract is to be revised or added to, this may have an influence on the timing of completion of performance. In this case user will inform Client as soon as possible.
3. If the change or addition to the contract is to have any financial and/or qualitative consequences user shall inform client of this in advance.
4. If a fixed fee is agreed user will state to what extent the change or addition to the contract will result in this fee being exceeded.
5. By way of derogation from clause 3 user may not charge for any additional costs if the change or addition results from circumstances which are attributable to user. (See also: Notes on individual articles under 3).

#### Article 6 Contract duration, period of performance

1. The contract between user and client is entered into for an unspecified period of time, unless the nature of the contract prevents this or parties expressly agree otherwise in writing.
2. If a period of time is agreed for the performance of certain activities during the course of the contract this is never a fundamental term. Should the period for performance be exceeded the client is therefore required to give user written notice of default. (See also: Notes on individual articles under 3).

#### Article 7 Fee

1. Clauses 2, 5 and 6 of this article apply in the case of offers and contracts in which a fixed fee is offered or agreed. If no fixed fee is agreed clauses 3 to 6 of this article apply.
2. Parties may agree on a fixed fee at the time of entering into the contract.
3. If no fixed fee is agreed the fee shall be established on the basis of the hours actually spent. The fee is calculated based on user's normal hourly rates which are in force during the period when work is performed, unless an alternative tariff is agreed.
4. The fee and any cost estimates are stated excluding BTW.
5. In the case of assignments lasting more than one month the costs payable will be invoiced monthly.
6. If user agrees a fixed fee or hourly rate with client user is nevertheless entitled to increase this fee or hourly rate. User may pass on price increases if user can demonstrate that significant price increases, for example in wages costs, have occurred between the time when the offer was made and the time of performance. User may also increase the fee if during the performance of the work it becomes apparent that the originally agreed or expected amount of work was underestimated to such an extent when concluding the contract, and this is not attributable to user, that user cannot reasonably be expected to perform the agreed activities in return for the originally agreed fee.
7. User will notify client in writing of any intention to increase the fee or hourly rate. In doing so user will state the amount of the increase and the date upon which it is to take effect.
8. If client does not wish to accept the increase in the fee or hourly rate made known to him, client is entitled to terminate the contract in writing within seven workdays of the said notification, or to cancel the assignment with effect from the date contained in the notification from user upon which the price or tariff increase is to take effect. (See also: Notes on individual articles under 4).

#### Article 8 Payment

1. Payment is to be made within 14 days of invoice date, in a manner to be indicated by user and in the invoiced currency. Objections to the amounts invoiced do not suspend the obligation to make payment.
2. If client fails to make payment within the period of 14 days then client is in default by operation of law. In this case client is liable to pay interest of 2% per month, unless the statutory interest rate is higher, in which case the statutory interest rate applies. Interest on the outstanding amount is calculated from the moment client is in default until the amount owed is paid in full.
3. In the event of the liquidation, bankruptcy or suspension of payment of creditors by client, all amounts payable by client to user become immediately claimable.
4. User is entitled to allocate payments made by client first against expenses, then against interest that has fallen due, and finally in payment of the principal sum and ongoing accrued interest. User is entitled, without being in breach, to reject an offer of payment if the client indicates a different order of allocation. User can reject full settlement of the principal sum if payment is not also made of the interest owed, ongoing accrued interest and expenses.
5. If payment takes place within 14 days user will not apply any surcharge.
6. If payment occurs beyond 14 days client is liable to pay a 2% surcharge, unless otherwise agreed by the parties in writing. (See also: Notes on individual articles under 5).
7. If, following the written or verbal confirmation of an assignment the client changes the date of the assignment or cancels it within 2 to 4 weeks prior to the agreed date of the assignment, user will charge client 50% of the agreed amount of the assignment. If this takes place 0 to 2 weeks prior to the assignment 100% of the agreed assignment will be charged. NB. Costs already incurred will always be charged 100%.

## Article 9 Recovery costs

1. If the client is in default or fails to perform his obligations in a timely manner then all reasonable costs of extrajudicial recovery are for the account of client. In the event of a financial claim client is in any case liable to pay recovery costs. These extrajudicial recovery costs are fixed at 15% of the principal sum and interest on late payment.
2. If user has incurred higher costs, which were reasonably necessary, then these are also eligible for reimbursement.
3. Any reasonably incurred judicial and execution costs are also to be borne by the client. (See also: Notes on individual articles under 6).

## Article 10 Investigation, complaints

1. Complaints regarding the activities performed must be reported in writing to user by client within 8 days of discovery, and in any case within 14 days of completion of the activities in question. The notice of breach should include the most detailed description possible of the deficiency, so that user is able to respond appropriately.
2. If a complaint is justified user will perform the activities once more as agreed, unless this has become demonstrably pointless for the client in the meantime. If this is the case then client should make this known in writing.
3. If the re-performance of the agreed services is no longer possible or useful, user's liability will be limited in accordance with article 13. (See also: Notes on individual articles under 7).

## Article 11 Termination

1. Both parties can terminate the assignment at any time in writing.
2. If the contract is terminated early by the client, user is entitled to compensation due to the resulting and demonstrable capacity loss, unless the termination is the result of facts and circumstances which are attributable to user. Moreover client is bound in that case to pay the invoices for work already performed. The provisional results of the work already performed will also be made available to client.
3. If the contract is terminated early by user, user will consult with client to ensure the handover of activities yet to be performed to third parties, unless the termination is the result of facts and circumstances which are attributable to client.
4. If the handover of the activities results in user incurring additional costs these will be charged to client. (See also: Notes on individual articles under 8).

## Article 12 Suspension and dissolution

1. User is entitled to suspend performance of his obligations or to dissolve the contract, if:
  - client fails to (fully) perform his obligations under the contract;
  - after concluding the contract circumstances become known to user which give him good grounds for fearing that client will not comply with his obligations. If good grounds exist for fearing that client will only be able to comply partially or not properly, then suspension of performance is only permitted to the extent the failure to perform justifies it;
  - client is required at the time of concluding the contract to provide security for the performance of his obligations under the contract and this security is not forthcoming or is insufficient. As soon as security is provided, the entitlement to suspend performance expires, unless payment has been unreasonably delayed as a result.
2. User is also entitled to dissolve the contract if circumstances arise which are of such a nature that complying with the contract is impossible or if compliance cannot reasonably and fairly be demanded of user, or if in some other sense circumstances arise which are of such a nature that the unrevised continuation of the contract cannot reasonably be expected.
3. If the contract is dissolved all user's claims against client become immediately enforceable. If user suspends performance of his obligations, he reserves all rights under the law and the contract.
4. User reserves the right to claim compensation for damage at all times. (See also: Notes on individual articles under 9).

## Article 13 Liability

1. Should user be liable then this liability is limited in accordance with the provisions of this article.
2. If user is liable for direct damage then that liability is limited to a maximum of the amount paid out by user's insurer, in any case to a maximum of twice the invoiced amount, and in any case that part of the assignment to which the liability relates. User's liability for direct damage is at all times limited to a maximum of the total fee payable for the assignment granted.
3. Notwithstanding the provisions contained in clause 2 of this article, in the case of an assignment with a duration longer than three months, liability is further limited to that part of the fee which is payable in relation to the last three months.
4. Direct damage shall be exclusively understood to mean:
  - the reasonable cost of establishing the cause and extent of the damage, insofar as this relates to establishing damage within the meaning of these conditions;
  - the reasonable costs incurred (if applicable) in holding user accountable for his failure to perform the contract adequately, unless these cannot be attributable to user;
  - reasonable costs incurred in preventing or limiting damage, insofar as client demonstrates that these costs have led to the limitation of direct damage within the meaning of these general conditions.
5. User will never be liable for indirect damage, including consequent damage, loss of profits, missed savings and damage due to business interruption.
6. The limitations on liability for direct damage contained in these conditions do not apply if the damage is attributable to gross negligence on the part of user or his subordinates. (See also: Notes on individual articles under 10).

#### **Article 14 Transfer of risk**

1. The risk of loss or damage to the products which are the subject of the contract transfers to client at the moment when they are legally and/or factually delivered to client and thereby come to be under the control of client or a third party designated by client. (See also: Notes on individual articles under 11).

#### **Article 15 Force majeure**

1. Parties are no longer bound to perform any of their obligations if they are prevented from doing so as a result of circumstances which are not attributable to the fault of any party, and for which they are not accountable under legislation, judicial precedent or generally accepted standards.
2. In these general conditions, in addition to the meaning attributed to it under legislation and legal precedent, Force majeure shall be understood to include all external causes, foreseen or unforeseen, upon which user is not capable of exercising any influence, but as a result of which user is not capable of complying with his obligations. This includes strike action within user's business.
3. User is also entitled to invoke Force majeure if the circumstances which prevent the (further) compliance arise after he should have complied with his obligation.
4. Parties can suspend performance of the contract while the Force majeure continues. If this continues for more than two months either party is entitled to dissolve the contract, without being liable to pay damages to the other party.
5. To the extent that, at the time when Force majeure arises, user has partially performed his obligations under the contract, or shall be capable of performing them, and independent value can be attributed to those parts performed or to be performed, user is entitled to invoice those parts performed or to be performed separately. Client is bound to pay this invoice as if it were for a separate contract. (See also: Notes on individual articles under 12).

#### **Article 16 Confidentiality**

1. Both parties are bound to keep secret all confidential information which they have obtained from each other or from other sources in the context of their contract. Information counts as confidential if it is stated to be so by the other party or if this is apparent from the nature of the information.
2. If, on the basis of some provision in the legislation or a court order, user is bound to disclose confidential information to third parties designated by the legislation or the court, and user is unable in this regard to invoke any claim of privilege which is recognised by the law or by the court, then user is not liable to pay compensation for damages or to indemnify client, and any resulting damage will not entitle client to dissolve the contract.

#### **Article 17 Intellectual property and copyright**

1. Notwithstanding the other provisions of these general conditions, user reserves all rights and authority to which he is entitled under the Copyright Act.
2. All documents supplied by user, such as reports, advice, contracts, designs, sketches, drawings, software etc., are solely intended for use by the client and may not without the prior permission of user be reproduced, made public, or made known to third parties by client, unless otherwise clear from the nature of the documents supplied.
3. User reserves the right to use additional knowledge gained during the performance of the activities for other purposes, insofar as this does not result in any confidential information being disclosed to any third parties.

#### **Article 18 Samples and models**

1. If a sample or model is shown or supplied to client, then this will only be presumed to be by way of indication, unless it is expressly agreed that the product to be delivered will be identical.
2. In the case of an assignment relating to real estate any stated surface area shall also be assumed to only be indicative, and will not be binding on the product to be delivered.

#### **Article 19 Non-solicitation**

1. For the duration of the contract and for a period of one year following its end client shall not employ or in any other way either directly or indirectly solicit the services of employees of user or of businesses engaged by user in the performance of the contract, if those employees have been involved in the performance of the contract, without proper prior consultation in accordance with the standards of reasonableness and fairness.

#### **Article 20 Disputes**

1. The court in the place where user is established has exclusive jurisdiction to hear any disputes, unless the district court has jurisdiction. Nevertheless user is entitled to lay the dispute before the court having jurisdiction under the law.
2. Parties will only resort to legal measures after they have made their utmost endeavours to resolve a dispute in mutual consultation. (See also: Notes on individual articles under 13).

#### **Article 21 Applicable law**

1. Dutch law is applicable to every contract between user and client.

#### **Article 22 Revision and location of the Conditions**

1. These conditions have been deposited with the Chamber of Commerce in Breda.
2. The most recently deposited version is applicable, c.q. the version in force at the time of conclusion of the contract.