

SCHAGEN HELDER &

Advies | Finance

General Terms and Conditions

For the services provided by
Schagen en Helder Bedrijfsadviseurs B.V.
with its registered office in Amstelveen, the Netherlands



1. Definitions

In these General Terms and Conditions, the following terms have the following meanings:

- 1.1 **Client:** the natural person who, or legal entity that, has instructed the Contractor to perform various types of work.
- 1.2 **Work:** all activities which have been formally instructed, or which are performed by the Contractor on any other basis. The above applies in the broadest sense of the term and comprises, in any event, the Work specified in the purchase order.
- 1.3 **Contractor:** Schagen en Helder Bedrijfsadviseurs B.V.
- 1.4 **Documents:** any and all items provided by the Client to the Contractor, including paperwork and data media, as well as any goods produced by the Contractor as part of the performance of the contract, including paperwork and data media.
- 1.5 **Agreement:** the contract for professional services under which the Contractor undertakes to perform Work for the Client.
- 1.6 **Parties:** The Client and Contractor jointly.

2 Applicability

- 2.1 These General Terms and Conditions apply to all contracts for professional services, ranging from the performance of Work by the Contractor of any and all contracts and agreements arising therefrom and/or connected therewith, entered into between the Client and the Contractor, as well as any offers made and/or quotes issued by the Contractor.
- 2.2 Any clauses which depart from these terms will only be applicable if and to the extent that the Contractor has confirmed these to the Client explicitly in writing.
- 2.3 By entering into an Agreement with the Contractor, the Client waives any terms and conditions under any name which it might apply. so that all contracts entered into between the Contractor and the Client shall be subject only to the Terms and Conditions applied by the Client.
- 2.4 The Client will be authorised to amend these Terms and Conditions. These amendments will take effect on the announced effective date. If no effective date has been announced, any amendment in relation to the Client will take effect as soon as the Contractor has informed the Client of the change.



3 Negotiation and Term of the Agreement

- 3.1 The Agreement will be deemed to have been negotiated and will commence as soon as the purchase order signed by the Client has been returned and signed by the Client and received by the Contractor.
- 3.2 The Parties will be entitled to prove that the Agreement has been negotiated in another manner.
- 3.3 The Agreement solely comprises these General Terms and Conditions, along with the signed purchase order, unless expressly otherwise agreed between the Parties in writing after signing the Agreement.
- 3.4 The Agreement is being entered into for an indefinite period of time, unless otherwise provided for under the Agreement or the Parties have expressly agreed otherwise in writing.

4 Provision of Information by the Client

- 4.1 The Client will be required to provide the Contractor with all data, information and Documents which the Contractor believes it requires for the correct performance of the contract, and to do so in a timely manner and in the manner and format requested.
- 4.2 The Client guarantees the accuracy, completeness and reliability of the data, information and documents provided to the Contractor, including those provided by third parties, unless otherwise required due to the nature of the contract.
- 4.3 If so requested by the Client, the Documents provided will be returned to the Client, subject to the provisions of articles 13.4 and 13.5.
- 4.4 If the Client has provided the Contractor with data media, electronic files, software, etc., the Client warrants that such data media, electronic files or software are free of viruses and defects.
- 4.5 If the data and information required for the performance of the Agreement have not been provided to the Contractor, or have not been provided in time or in the manner required, the Contractor will be entitled to suspend the performance of the Agreement and/or charge the Client for the additional costs arising from the delay, in accordance with the applicable rates.



- 4.6 The Contractor will not be liable for any loss or damage of any kind whatsoever, as a result of the inaccurate and/or incomplete data or information provided by the other Party, unless the Contractor was expected to be aware of such inaccuracy or incompleteness.

5 Performance of the Contract

- 5.1 The Contractor determines the manner in which the Contract is to be performed. The Contractor will follow, to the extent possible, any sensible instructions provided by the Client concerning the performance of the Contract in a timely manner.
- 5.2 If and to the extent that this is required for the proper performance of the contract, the Contractor will be entitled to have specific work performed by third parties; the costs of such work will also be borne by the Client.
- 5.3 If any Work has been performed during the contract for the benefit of the Client's profession or business which cannot be classified under the Work activities as agreed in the purchase order, this will lead to the conclusion that, based on the relevant notes in the Contractor's records. such Work has been performed on behalf of the Client on an occasional basis. These notes must relate to consultation between the Client and the Contractor during the term of the Agreement.
- 5.4 If it becomes apparent during the performance of the contract that it is necessary for the proper performance of the contract to modify or supplement the work to be performed, the Parties will amend the Agreement accordingly in a timely manner and by mutual agreement.
- 5.5 The performance of the Contract is not – unless explicitly specified otherwise in writing – aimed specifically at the detection of fraud. If the Work performed were to reveal any signs of fraud, the Contractor will report this to the Client.
- 5.6 Articles 404 of Book 7 and 407 of Book 7 of the Netherlands Civil Code do not apply to contracts accepted by or on behalf of the Contractor.

6 Confidentiality and Exclusivity

- 6.1 Unless expressly otherwise provided for under the law, the Client and the Contractor shall maintain confidentiality in their dealings with any third parties with regard to any data and information which they might have obtained from each other or from any source as part of the Agreement, and of which they are aware, or should reasonably be aware, that this constitutes confidential information.



- 6.2 Without the Client's prior written consent, the Contractor will not be authorised to use confidential information it has received from the Client for any purpose other than that for which it was obtained, unless the Contractor deems this necessary during, or in light of, legal proceedings.

7 Intellectual Property

- 7.1 The Contractor will retain all intellectual property rights to which it is entitled pursuant to the Dutch Copyright Act (*Auteurswet*) and/or any and all other laws or regulations relating to intellectual property rights.
- 7.2 The Client is expressly prohibited from copying, publishing or commercially exploiting any such products, including software applications, system designs, procedures, recommendations, contracts (including model contracts) and other intellectual properties, either through the engagement of third parties or otherwise.
- 7.3 The Client will not be permitted to provide tools related to such products to any third parties, other than to obtain an expert opinion regarding the Contractor's Work.

8 Force Majeure

- 8.1 The Contractor will not be liable for any loss or damage arising from force majeure. 'Force majeure' refers to situations where the Contractor is unable to fulfil its obligations due to circumstances beyond its control and for which it cannot otherwise be held liable or responsible pursuant to the law, based on a guarantee it has provided, or according to generally accepted standards.
- 8.2 In the event of temporary force majeure, the mutual obligations between the Parties relating to the portion of the Agreement affected by the force majeure event will be suspended.
- 8.3 Should a permanent force majeure event arise, the Parties will discuss amending the Agreement such that its performance will continue to make sense for both Parties. If there is no reasonable scope for such amendments, each Party will be authorised, to the extent they have been affected by a force majeure event, to rescind all or a portion of the Agreement by means of a written statement, without the possibility of holding the Contractor liable for any compensation to the Client.



9 Fees

- 9.1 Prior to, and during, the performance of the Work, the Contractor will be entitled to suspend the performance of the Work until such time as the Client has paid an advance on the Work to be performed, to be determined by the Contractor based on the standards of reasonableness and fairness, or has provided security for this purpose.
- 9.2 The fee charged by the Contractor does not depend on the outcome of the contract granted.
- 9.3 If the Contractor and the Client agree to a fixed fee, the Contractor will be authorised to raise this fee if the circumstances of the case, including the size and scope of the Work performed and to be performed in the future, warrant an increase in the fee.
- 9.4 If no fixed fee is agreed between the Parties, the fee will be set based on actual hours worked. The fee will be calculated based on the applicable hourly rates set by the Contractor, valid for the period during which the Work is performed, unless the Parties have agreed to an alternative hourly rate.
- 9.5 The Contractor reserves the right to increase the fee if it becomes apparent during the performance of the Work that the original amount of Work agreed or expected by the Parties was underestimated to such an extent on entering into the Agreement that this cannot be blamed on the Contractor and that the Contractor cannot reasonably be expected to perform the Work agreed at the rate originally agreed between the Parties.
- 9.6 The fee and any cost estimates are always exclusive of VAT.



10 Payment

- 10.1 The Contractor's fee, plus disbursements and expense statements submitted by any third parties whose services have been engaged, will be charged to the Client including the VAT payable, on a monthly, quarterly or annual basis, or on completion of the Work.
- 10.2 The Client shall pay the invoice amount within 14 days of the invoice date, in euros, by means of a bank transfer to an account to be specified by the Contractor, or at the Contractor's offices, and to the extent that the payment relates to Work, without any entitlement to discount or set-off.
- 10.3 If the Client fails to make payment within the period specified in Article 10.2 or within the period to be agreed between the Parties, the Client will be in default by operation of law. In such an event, the Client will be authorised, without any further warning or notice of default being required, to charge the Contractor statutory interest (commercial interest).
- 10.4 Any and all reasonable court and out-of-court expenses (including fees payable to collection agencies) incurred by the Contractor as a result of failure by the Client to fulfil its payment obligations will be borne by the Client. Any out-of-court expenses (including fees charged by collection agencies) will be calculated in accordance with the provisions below.
- a.) In the event that the Client was not acting in the exercise of a profession or business, the Contractor will be entitled to claim an amount equivalent to the compensation of out-of-court collection agency fees, as provided for, and as calculated pursuant to, Netherlands Extrajudicial Collection Costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*), unless the outstanding amount – after commencement of the default – is paid by the Contractor within 14 days following the day after the date of the payment reminder.
- b.) In the event that the Client was acting in the exercise of a profession or business, the Contractor will be entitled to compensation of the out-of-court collection agency fees, which fees, in such an event, contrary to the provisions of Section 96 of Book 6, subsection 4 of the Netherlands Civil Code and contrary to the provisions of the Extrajudicial Collection Costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*), have been established at an amount equivalent to 15% of the total outstanding principal, subject to a minimum of €100 for each invoice which has been partially or fully unpaid.



11 Complaints

- 11.1 Any complaints regarding the Work performed and/or the invoice amount must be made in writing to the Contractor within 30 days of the dispatch date of the items, data or information to which the Client's complaint relates, or within 30 days of the detection of the defect if the Client demonstrates that they could not reasonably have detected the defect earlier.
- 11.2 Any complaint as referred to in paragraph 1 above will not suspend the Client's payment obligation.
- 11.3 If the complaint is not filed in time, the Client will forfeit all rights in relation to the complaint.
- 11.4 If a complaint is ruled to be warranted, the Contractor can choose to either have the fee charged adjusted or to remedy the rejected work, or perform the Work again, free of charge.
- 11.5 If a complaint is ruled to be unfounded, any costs arising as a result, including any legal costs and costs of investigation, will be fully borne by the Client.

12 Liability

- 12.1 The Contractor will perform its Work to the best of its ability and will exercise a level of care expected of a business consultant. If an error is made due to inaccurate or incomplete information provided by the Client, the Contractor will never be liable for any ensuing loss or damage.
- 12.2 The Contractor will never be liable for any indirect loss, including consequential loss, lost profits, lost savings and loss caused by business interruption.
- 12.3 The Client is responsible for providing the accurate Collective Agreement (*Collectieve Arbeidsovereenkomst/CAO*) and sector code applicable to its company. The Contractor can never be held liable for any supplementary tax assessments sent by the Dutch tax authorities (Tax and Customs Administration/*Belastingdienst*), the UWV Employee Insurance Agency and/or pension funds in connection with the inaccurate application of the Collective Agreement/CAO or sector code.
- 12.4 The Contractor will be entitled at any time, if and to the extent possible, to remedy the damage or loss incurred by the Client, and the Client shall cooperate fully with the Contractor in this process.



- 12.5 The Client indemnifies the Contractor against any third-party claims relating to the performance of the Agreement either directly or indirectly.
- 12.6 The limitations of liability set out in this article are stipulated in part for the purpose of any third parties whose services the Contractor has engaged for the performance of the Contract and who, as such, can make a direct claim to this limitation of liability.
- 12.7 The Contractor's contractual and extra-contractual liability for any loss arising from or in connection with the performance of contracts and any defects therein, shall be limited to the amount which would be paid in this case under the professional liability insurance policy taken out by the Contractor, plus the Contractor's excess (deductible) under the policy terms of this professional liability insurance policy. To this end, the Contractor has taken out professional liability insurance with a reputable insurance company based on a sum insured of €1,250,000.00 per claim.
- 12.8 The limitations of liability contained in these Terms and Conditions for direct and/or consequential loss do not apply if the loss is the result of gross negligence or wilful misconduct on the part of the Contractor or its subordinates.

13 Rescission and Suspension

- 13.1 If specific deadlines have been agreed between the Parties within the term of the Agreement for the completion of specific Work, these will never constitute strict deadlines. If the implementation period is exceeded, the Client will serve the Contractor with a written notice of default, as provided for in Section 82 of Book 6 of the Netherlands Civil Code.
- 13.2 The Parties are authorised to terminate the Agreement unilaterally prior to its expiry date if one of them is of the view that the contract can no longer be performed in accordance with the purchase order confirming the engagement and any subsequent, additional contract specifications. This must be communicated to the other Party immediately and in writing, including supporting arguments. The above does not affect the Client's obligation to compensate the Work previously performed by the Contractor.
- 13.3 The Contractor is authorised to suspend fulfilment of the obligations or rescind the Agreement in the following cases:
- a) If the Client fails to satisfy all or part of the obligations under the Agreement;
 - b) If, after the Parties have entered into the Agreement, the Contractor fears, based on circumstances of which it has become aware, that there are valid grounds to assume the Client will not fulfil its obligations;



- c) If there are valid reasons to fear that the Client will not fulfil all its obligations or will not do so in a satisfactory manner, the suspension is permitted only if this is warranted by the default.
 - d) If, on entering into the Agreement, the Client was requested to provide security for the fulfilment of its obligations under the Agreement and such security is not forthcoming or has proved to be unsatisfactory;
 - e) If the Client has requested a moratorium;
 - f) If bankruptcy is filed on behalf of the Client;
 - g) If the Client decides to liquidate its business;
 - h) If the Client loses access to a substantial portion of its assets.
- 13.4 The Contractor will therefore be authorized to suspend fulfilment of all its obligations, including the issue of any documents or other items to the Client or any third parties, until such time as all payable claims against the Client have been paid in full.
- 13.5 The provisions of Article 13.4 do not apply to any items or documents of the Client which have not yet been processed by the Contractor.
- 13.6 On termination of the Agreement, each Party shall immediately return to the other Party any goods, items and documents belonging to the other Party in its possession at that time, including any copies and other derivatives thereof.
- 13.7 The Client and the Contractor may terminate the Agreement with observing a notice period of six months, by means of notice in writing to the other Party. If the Agreement terminates before the Assignment for the agreed financial year and/or calendar year (from 1 January to December 31) is completed, the Client will owe the fee in accordance with the hours or budget stated by the Contractor for Work executed for the benefit of the Client.

14 Repair Clause for Nullities

- 14.1 If any provision of these General Terms and Conditions or the underlying Agreement were ruled to be null and/or invalid and/or unenforceable in whole or in part pursuant to any statutory regulations, court ruling or otherwise, this will not affect the validity of all other provisions of these General Terms and Conditions or the underlying Agreement.



- 14.2 If any provision of these General Terms and Conditions or the underlying Agreement were proved to be invalid for any of the reasons specified in the foregoing paragraph, but would be valid if it had a more limited scope or meaning, such provision will – initially – apply automatically based on the most far-reaching or comprehensive scope or meaning through which or in which it *would* be valid.
- 14.3 Notwithstanding the provisions of paragraph 2, the Parties can, if so desired, consult with one another in order to agree new provisions to replace the void or invalid provisions. In so doing, they will ensure that the purpose and intent of the void or invalid provisions will be matched as closely as possible.

15 Dispute Settlement and Applicable Law

- 15.1 All Agreements entered into between the Parties will be governed exclusively by Dutch law.
- 15.2 Unless expressly otherwise agreed between the Parties, any and all disputes relating to the Agreement between the Client and the Contractor will be settled by the competent court in Amsterdam, the Netherlands.

Amstelveen, January 2019