

# GENERAL TERMS AND CONDITIONS FOR RUITENBURG AUDIT B.V.

## A. General

The following terms and definitions shall apply in these general terms and conditions:

- 1 Instructing Client: the party that has instructed the Contracted Party to carry out Activities.
- 2 Contracted Party: private company with limited liability Ruitenburg Audit B.V., having its registered office in Maassluis, a partnership of private companies. With the exclusion of Sections 7:404, 7:407(2) and 7:409 of the Dutch Civil Code (*Burgerlijk Wetboek*), all Agreements shall be concluded with the Contracted Party and shall be performed by the Contracted Party. The same shall apply if it is the explicit or implicit intention of the Instructing Client that the Activities be carried out by a certain person or persons.
- 3 Activities: all Activities for which an Instruction has been issued and that the Contracted Party has accepted and also all Activities ensuing for the Contracted Party from the aforementioned and/or connected with the aforementioned.
- 4 Documents: all information or data that the Instructing Client has made available to the Contracted Party, whether or not saved on (in) tangible carriers and whether or not placed with third parties, and also all data produced or collected by the Contracted Party in the context of the performance of the Agreement, whether or not saved on (in) tangible carriers and whether or not placed with third parties, as well as all other information of any relevance for the performance or completion of the Instruction, whether or not saved on (in) tangible carriers.
- 5 Agreement/Instruction: the letter of engagement in which the Contracted Party undertakes to carry out certain Activities. Performing a contract for a Client also comprises waiving the right to hold persons engaged for the performance of the Works liable for compensation for damages resulting from the performance of the Works as well as the right to take legal action against them.

## B Applicability

- 1 These general terms and conditions shall apply to all Instructions or Agreements between the Instructing Client and the Contracted Party and their legal successors and also to all Agreements ensuing for the Contracted Party from the aforementioned and/or related Agreements, as well as all offers and/or quotations that have been issued.
- 2 These General Conditions have been concluded for the partners of the Contracted Party, as well as its directors and all individuals that are or have been employed by the Contracting Party
- 3 Derogations from and additions to these general terms and conditions shall only be valid if agreed on explicitly and in writing, in an Agreement or instruction confirmation, whether or not written, for example.
- 4 Should these general terms and conditions and the instruction confirmation contain conflicting terms and conditions, the terms and conditions set out in the instruction confirmation shall prevail.
- 5 The Contracted Party explicitly rejects the applicability of the general terms and conditions drawn up by the Instructing Client.
- 6 If any clause that forms part of these general terms and conditions or the Agreement is found to be null and void or is voided, the other provisions of this Agreement shall remain unimpaired wherever possible and the clause in question shall immediately be replaced by a clause that reflects the essence of the original clause as much as possible.

## C Commencement and term of the Agreement

- 1 Each Agreement shall only be concluded and commence when the Contracted Party has received the signed instruction confirmation from the Instructing Client and has been signed by the Contracted Party. The confirmation shall be based on the information that the Instructing Client has provided to the Contracted Party at this time. The confirmation shall be deemed to be a correct and complete reflection of the Agreement.
- 2 If the Instruction has been issued verbally, or if a signed copy of the instruction confirmation has not been received (yet), the Instruction shall be deemed to have been concluded subject to the applicability of these general terms and conditions at the time at which the Contracted Party commenced performance of the instruction at the request of the Instructing Client.
- 3 The Agreement shall be entered into for an indefinite period of time, except where it is clear from the nature, content or essence of the Instruction that the Agreement has been entered into for a specified period of time.

## D Instructing Client details

- 1 The Instructing Client shall be obliged to promptly make available to the Contracted Party all data and Documents that the Contracted Party deems necessary for the correct performance of the Agreement and shall do so in the manner required by the Contracted Party.
- 2 The Instructing Client shall be obliged to immediately inform the Contracted Party of any facts and circumstances that could be important for performance of the Agreement.
- 3 The Instructing Client shall warrant the correctness, completeness and reliability of the data and Documents made available to the Contracted Party by or on behalf of the Instructing Client, even if these data and Documents originate from third parties.
- 4 The Contracted Party shall have the right to suspend performance of the Agreement until the time at which the Instructing Client has met the obligation set out in Paragraphs 1, 2 or 3.
- 5 The extra costs and extra fee ensuing from a delay in performance of the Agreement and also any other losses that the Contracted Party sustains as a result of the failure of the Instructing Client to fulfil the obligation referred to in Paragraphs 1, 2 or 3 shall be at the expense and risk of the Instructing Client.
- 6 If and insofar as requested by the Instructing Client, the Documents made available shall be returned to the Instructing Client, subject to the provisions under O.

## E Performance of the Agreement

- 1 The Contracted Party shall determine the way in which and the person(s) by which the Agreement is to be performed.
- 2 The Contracted Party shall perform the Activities to the best of its ability and as befits a prudent professional. However, the Contracted Party shall not be able to guarantee the achievement of any result envisaged.
- 3 The Contracted Party shall have the right to have certain Activities performed by a third party to be appointed by the Contracted Party.
- 4 If the Instructing Client has given the Contracted Party permission to allow third parties access to the file on the Instructing Client, the Contracted Party shall not be liable for any losses ensuing from the said access.
- 5 The Instruction shall be performed with due observance of the relevant rules (of professional practice) and that which is required of the Contracted Party under or pursuant to law. The Instructing Client shall always renders its full cooperation in the fulfilment of the obligations that ensue for the Contracted Party from the Instruction.
- 6 The Instructing Client is aware that the following requirements amongst others may apply for the Contracted Party:
  - a. Current legislation and rules (of professional practice) may require the Contracted Party to report certain transactions that are described in the said legislation and rules (of professional practice) and become known to the Contracted Party during performance of the Activities; in the situation, the Contracted Party shall be required to make the aforementioned report to the authorities established by government for this purpose;
  - b. In certain situations, current legislation and rules (of professional practice) may require the

Contracted Party to report the occurrence of fraud;

- c. Current legislation and rules of professional practice may require the Contracted Party to take steps to establish the (identity of the) Instructing Client and/or client.
- 7 The Contracted Party shall exclude any liability for losses that the Instructing Client sustains as a result of compliance by the Contracted Party with the legislation and rules (of professional practice) to which it is subject.
  - 8 The dates by which the Activities are to have been completed shall only be regarded as final deadlines if this has been agreed to explicitly and in so many words between the Instructing Client and the Contracted Party. Except where it has been established that performance will never be possible, the Instructing Client shall not be able to dissolve the Agreement due to any failure to meet deadlines until the Instructing Client has, after the expiry of the period of time agreed on, granted the Contracted Party a reasonable period of time in which to perform the Instruction (in full) and the Contracted Party then also fails to perform the Instruction or fails to do so in full within the period of time allowed for this purpose.
  - 9 If the Instructing Client is required to make an advance payment or if it is required to make available the data and information necessary for performance of the Instruction, the period of time in which the Activities are to have been completed shall not start until the Contracted Party has received the payment required in full or until all of the data and information required have been made available in full to the Contracted Party.

## F Confidentiality and exclusivity

- 1 The Contracted Party shall be obliged to maintain confidentiality towards third parties that are not involved in performance of the Agreement, except where the Contracted Party has a statutory or professional duty to disclose certain information.
- 2 The Contracted Party shall be entitled to use the numerical outcomes it receives after processing for statistical or comparative purposes, provided the said outcomes cannot be traced back to individual Instructing Clients.
- 3 The Contracted Party shall not be entitled to use the information that the Instructing Client makes available to it for a purpose other than that for which it was obtained. However, this does not apply where the provisions of Paragraph 2 are concerned or if the Contracted Party is acting for itself in disciplinary proceedings, civil proceedings, proceedings under administrative law or criminal proceedings in which these documents could be important.
- 4 The Contractor waives its right to seek from the Client a copy or excerpt of, or the opportunity to inspect, documents as referred to in Article 843a of the Code of Civil Procedure (disclosure requirement).
- 5 Except where it has the explicit prior written permission of the Contracted Party to do so, the Instructing Client shall not be permitted to disclose the content of advice, opinions or other (written) communications by the Contracted Party that were not prepared or provided with the object of providing third parties with the information set out in them. The Instructing Client shall not be permitted to make the said content available to third parties otherwise either.
- 6 The Contracted Party and the Instructing Client shall impose the obligations ensuing from this article on any third parties that it engages.

## G Intellectual property

- 1 The Contracted Party shall reserve all rights and defences for intellectual products that it is using or has used in the context of the performance of the Agreement with the Client, insofar as rights to the said products could exist or be established in a legal sense.
- 2 The Instructing Client shall be explicitly forbidden from providing these products, which products shall include but not be limited to computer programs, system designs, working methods, advice, (model) contracts, reports, templates, macros and other intellectual products, all of the aforementioned in the broadest sense of the word, whether or not through the involvement of third parties. The Instructing Client shall not be permitted to reproduce, disclose or exploit the said products either.
- 3 The Instructing Client shall not be permitted to place (aids for) the said products in the hands of third parties for any purpose other than obtaining an expert opinion on the Activities of the Contracted Party. In this situation, the Instructing Client shall impose the obligations arising for it under this article on third parties that it has engaged.

## H Force majeure

- 1 If the Parties are unable to perform the obligations ensuing from the Agreement as the result of a force majeure situation in the sense of Section 6:75 of the Dutch Civil Code, or a situation of this nature renders this impossible for the Parties to do so on time or properly, the said obligations shall be suspended until the time at which the concerning Party is able to fulfil them in the manner agreed on.
- 2 If the situation referred to in Paragraph 1 arises, the parties shall have the right to terminate all or part of the Agreement in writing with immediate effect and shall be able to do so without there being any right for the other party to demand compensation.

## I Fee

- 1 The Contracted Party shall have the right to require an advance from the Instructing Client. In principle, any advance that the Instructing Client has paid shall be deducted from the amount of the final bill.
- 2 The fee that the Contracted Party charges shall not depend on the outcome of the Activities carried out.
- 3 The Activities that the Contracted Party carried out shall be charged to the Instructing Client on the basis of the time spent and the costs incurred.
- 4 Besides the fee, the Instructing Client shall also be charged for the expenses incurred by the Contracted Party and the invoices submitted by third parties engaged by the Contracted Party.
- 5 If factors that determine the fee applicable, including factors like pay and/or prices, change after the Agreement is concluded, but before the instruction has been completed in full, the Contracted Party shall be entitled to adjust the fee agreed on in line with the changes applicable.
- 6 The fee due to the Contracted Party, where necessary increased to include disbursements and invoices from the third parties engaged and also the expenses incurred, and including any turnover tax due, shall be charged to the Instructing Client per month, per quarter, per year or following completion of the Activities.

## J Payment

- 1 The Instructing Client shall pay the invoice amount without having any right to a deduction, discounts or setoff and shall do so in euro within the periods of time agreed on, but never any later than 14 days after the invoice date, by transferring the amount in question to a bank account to be specified by the Contracted Party. The payment date shall be the date on which the amount due is credited to the account of the Contracted Party.
- 2 If the Instructing Client has not paid within the period of time referred to in Paragraph 1, or within the period of time agreed on at a later date, it shall be in default by operation of law and the Contracted Party shall have the right to charge statutory (commercial) interest on the amount invoiced from that time onwards, without any further warning or notice of default being required, which it shall be able to do until the date on which the amount due is paid in full, all of the aforementioned without prejudice to the other rights that the Contracted Party has.
- 3 All costs that arise as a result of judicial or extrajudicial collection of the amount due shall be borne by the Instructing Client, acting in the conduct of a business or profession, even if these costs exceed the judicial order for costs. The extrajudicial costs shall be fixed at a minimum of 15% of the amount due, subject to a minimum of € 250.00.

4 If the Instructing Client is not acting in the conduct of a business or profession, it shall be obliged to reimburse extrajudicial collection costs equal to the maximum amount stipulated in the Extrajudicial Collection Costs (Fees) Decree (*Besluit vergoeding van buitengerechtelijke incassokosten*). The defaulting Instructing Client shall be required to pay these extrajudicial collection costs after it has been ordered to pay within 14 days and no payment is forthcoming.

5 If the Instructing Client believes that the financial position or payment history of the Instructing Client is such, or if the Instructing Client fails to pay an advance or invoice within the term of payment applicable, the Contracted Party shall be entitled to require the Instructing Client to immediately provide (additional) security, the form of which security shall be determined by the Contracted Party. If the Instructing Client fails to provide the security required, the Contracted Party shall be entitled to immediately suspend further performance of the Agreement, without prejudice to its other rights, and all that which is due to the Contracted Party from the Instructing Client for whatever reason shall be due and payable immediately.

6 In the event of a joint instruction and insofar as the Activities have been carried out for the joint Instructing Clients, the said Instructing Clients shall be jointly and severally liable for payment of the invoice amount, the interest due and the other costs incurred, regardless of the name in which the invoice in question is made out.

#### K Complaints

1 The Contracted Party shall be notified in writing of complaints relating to the Activities carried out and/or the invoice amount within 30 days of the send date of the documents or information about which the Instructing Client is submitting a complaint, or within 30 days of the date on which the shortcoming is discovered if the Instructing Client demonstrates that it could not reasonably have discovered the shortcoming any earlier.

2 The complaints referred to in Paragraph 1 shall not suspend the payment obligation to which the Instructing Client is subject.

3 If a complaint is found to be just, the Contracted Party shall be able to choose between adjusting the fee charged, improving or repeating the Activities rejected at no cost to the Instructing Client or deciding not to perform all or part of the Instruction (any more) and refunding the Instructing Client proportional to the fee that the Instructing Client has already paid.

4 If a complaint is not submitted on time, all rights that the Instructing Client has where complaints are concerned shall lapse.

#### L Liability and indemnification

1 The Contracted Party shall only be liable towards the Instructing Client for any losses that are the direct result of an attributable failure or failures (that may be a related series of attributable failures) in the performance of the Agreement, insofar as the failure consists of the failure to observe the care and expertise that may be relied on when performing the Agreement. This liability, which shall also apply for any wrongful act caused by the Contracted Party, shall be limited to the amount to be paid out by the liability insurer of the Contracted Party for the occurrence in question, plus any excess to be borne by the Contracted Party under the insurance. If the liability insurer does not proceed to effect payment for any reason whatsoever, the liability of the Contracted Party shall be limited to the amount of the fee (excluding turnover tax) that the Contracted Party has charged to the Instructing Client in relation to the Activities to which the loss-causing occurrence relates or with which it is connected. If the Agreement is a continuing performance agreement with a term of more than one year, the amount referred to above shall be fixed at once the amount of the fee (excluding turnover tax) charged to the Instructing Client for the Activities to which the loss-causing occurrence relates, or with which it is connected, in the twelve months prior to the date on which the loss occurred. Under no circumstances shall the total compensation for loss under this article exceed an amount of € 300,000, per occurrence, whereby a series of connected occurrences shall be deemed to be one occurrence, except where the parties see reason to deviate from this maximum when entering into the Agreement – given the size of the instruction or the risks accompanying the Instruction. A connected series of attributable failures shall be regarded as one attributable failure.

2 The Contracted Party shall not be liable for:

- any losses that the Instructing Client or third parties sustain as a result of the provision by the Instructing Client of incorrect or incomplete data or information to the Contracted Party, or otherwise as a result of an act or omission on the part of the Instructing Client;
- any losses that the Instructing Client or third parties sustain as a result of an act or omission on the part of auxiliary persons engaged by the Contracted Party (which persons shall not include employees of the Contracted Party), even if the said auxiliary persons work for an organisation that is affiliated to the Contracted Party;
- any consequential damage or loss or loss of profits that the Instructing Client or third parties sustain, including but not limited to a stagnation of normal business operations in the organisation run by the Instructing Client.

3 The Contracted Party shall always have the right to reverse or limit the loss sustained by the Instructing Client if and insofar as possible.

4 The Contracted Party shall not be liable for damage to or the loss of Documents during transportation or while being sent by post, regardless of whether transportation or sending is effected by or on behalf of the Instructing Client, the Contracted Party or third parties. During performance of the Instruction, the Instructing Client and the Contracted Party shall be able to communicate with each other by means of electronic means, when requested to do so by the Instructing Client. The Instructing Client and the Contracted Party shall not be liable towards each other for any loss that might ensue for one or each of them as a result of the use of electronic means of communication, including – but not limited to – losses resulting from the non-delivery or delayed delivery of electronic communication, the interception or manipulation of electronic communication by third parties or by software/equipment used to send, receive or process electronic communication, infection by viruses and the non-functioning or poor functioning of the telecommunications network or other resources required for electronic communication, except where a loss is the result of intent or gross negligence. Both the Instructing Client and the Contracted Party shall do or omit all that which may reasonably be expected of each of them to avoid the aforementioned risks. The data-extracts from the computer systems of the sender provide conclusive proof of (the content of) the electronic communication sent by the sender until the time at which the receiver provides evidence to the contrary.

5 The Instructing Client shall indemnify the Contracted Party against any claims brought by third parties, including shareholders, directors, supervisory directors and employees of the Instructing Client, as well as affiliated legal entities and organisations and others that are involved in the organisation of the Instructing Client, when the said claims are directly or indirectly connected to performance of the Agreement. The Instructing Client shall particularly indemnify the Contracted Party against claims from third parties in relation to losses that have been sustained because the Instructing Client provided the Contracted Party with information that was incorrect or incomplete. The aforementioned shall not apply to instructions to audit annual accounts as referred to in Section 2:393 of the Dutch Civil Code.

6 The Instructing Client shall indemnify the Contracted Party against any possible claims from third parties in situations where the Contracted Party is forced by law and/or its rules of professional practice to terminate the instruction and/or is forced to render its cooperation to government agencies that are entitled to receive information, whether solicited or unsolicited, which the Contracted Party has received from the Instructing client or third parties in its performance of the Instruction.

7 The Instructing Client shall indemnify the Contracted Party against claims from third parties (including employees of the Contracted Party and third parties engaged by the Contracted Party) that sustain losses

in connection with performance of the Instruction, which losses are a result of an act or omission on the part of the Instructing Client or of unsafe situations in its company or organisation.

8 The exclusions from or limitations of liability ensuing for the Contracted Party from the aforementioned and also the indemnification obligation ensuing for the Instructing Client from the previous paragraph shall not apply if the losses in question are a result of intent or deliberate recklessness on the part of the Contracted Party.

9 The contracting Party is part of MSI Global Alliance Ltd, which is an alliance of legally independent firms. Neither MSI Global nor its participants accept any responsibility or liability for any services and/or advice rendered by the Contracting Party to her clients. By signing the confirmation letter attached to the General Conditions the Client confirms that no obligation whatsoever for MSI Global and its participants will derive from the services and/or advice of the Contracting Party to its Clients.

#### M Expiry date

Except where provided for otherwise in these general terms and conditions, rights of claim and other powers that the Instructing Client has in relation to the Contracted Party for whatever reason in connection with performance of Activities by the Contracted Party shall lapse one year after the date on which the Instructing Client became aware or could reasonably have become aware of the existence of these rights and powers if not earlier.

#### N Termination

1 The Instructing Client and the Contracted Party shall be able to terminate the Agreement with immediate effect (before the end of the term) by giving notice at any time. If the Agreement is ended before the Instruction has been completed, the Instructing Client shall be required to pay the fee due in accordance with the hours that the Contracted Party has specified for Activities that have been carried out for the Instructing Client.

2 The other party shall be notified of the termination in writing.

3 If the Instructing Client has proceeded to effect termination (before the end of the term), the Contracted Party shall have the right to compensation of the loss ensuing as a result of lower capacity utilisation, which loss the Contracted Party shall be required to demonstrate and also to the payment of additional costs that the Contracted Party has already incurred and costs that ensue from any cancellation of the third parties engaged.

4 If the Contracted Party has proceeded to effect termination (before the end of the term), the Instructing Client shall have the right to the cooperation of the Contracted Party in the transfer of Activities to third parties, except where intent or deliberate recklessness is the case on the part of the Instructing Client, as a result of which the Contracted Party is compelled to proceed to effect termination. The right to cooperation provided for in this paragraph shall be subject to the condition that the Instructing Client has paid all underlying outstanding advances or all invoices.

5 If the transfer of Activities results in extra costs for the Contracted Party, these costs shall be charged to the Instructing Client.

#### O Right to suspend performance

1 The Contracted Party shall have the right, after a careful weighing up of interests, to suspend performance of all of its obligations, including but not limited to issuing Documents or other items to the Instructing Client or third parties, until the time at which the Instructing Client has paid all debts due and payable in full.

2 Paragraph 1 shall not apply to original Documents that the Instructing Client has supplied.

#### P Other provisions

1 If the Contracted Party (or its employees) carries out Activities at the premises of the Instructing Client, the Instructing Client shall ensure that it (or they) have a suitable work area that is in compliance with the statutory working conditions standards and other applicable legislation and regulations relating to working conditions. In this situation, the Instructing Client shall ensure that the Contracted Party is provided with office space and other facilities that the Contracted Party deems to be necessary or useful to performance of the Agreement and that meet all (statutory) requirements applicable in this respect. As regards the (computer) facilities that have been made available, the Instructing Client shall be obliged to take steps to ensure continuity, which it shall do by ensuring that effective back-ups, security and virus scanning procedures are in place, amongst other things. The Contracted Party shall apply virus scanning procedures when the Contracted Party utilises the facilities offered by the Instructing Client.

2 The Instructing Client shall not recruit or approach any Employees that are involved in performance of the Activities to enter the employment of the Instructing Client, whether or not temporarily, directly or indirectly. Nor shall the Instructing Client recruit or approach any of the aforementioned Employees directly or indirectly carry out Activities for the Instructing Client, whether or not in salaried employment, during the term of the Agreement or any extension thereof in the twelve months following the original term of the Agreement.

#### Q Applicable law and choice of forum

1 Dutch law shall apply to all Agreements between the Instructing Client and the Contracted Party to which these general terms and conditions apply.

2 Any disputes relating to Agreements between the Instructing Client and the Contracted Party to which these general terms and conditions apply shall be resolved by the competent court in the court district in which the Contracted Party has its place of business.

#### R Amendments

1 The Contracted Party shall always have the right to amend these General Terms and Conditions.

2 Any amendments shall only bind the Instructing Client if the amended General Terms and Conditions have been filed with a chamber of commerce and industry or at the registry of a district court and the Contracted Party has notified the Instructing Client of the amendments to the General Terms and Conditions and fourteen days pass after the date of this notification without the Instructing Client informing the Contracted Party in writing of its non-agreement to the amendments in question

