

CERTIFIED TRANSLATION

# **General conditions**

MPTC Audit & Advisory B.V.

[www.mptc.eu](http://www.mptc.eu)

Chamber of commerce 24456960 (Rotterdam)

Version 2010.1

## Article 1. Definitions

The definitions given in capitals in these general conditions have the following meanings:

- a. Accountancy Firm: Accountancy Firm as defined in the CCR.
- b. Documents: All information or data provided by the Client to the Service Provider, whether or not contained on (non-)material media, including - but not exclusively: paper, CD-ROM's, hard disks, e-mail and digital environments, housed by third parties or otherwise, as well as all data collected or produced in relation to the execution of the Order/Contract by the Service Provider, whether or not contained on (non-)material media, including - but not exclusively: paper, CD-ROM's, hard disks, e-mail and digital environments, housed by third parties or otherwise, as well as all other information of any relevance to the execution or completion of the Order, whether or not contained on (non-)material media.
- c. Order/Contract: The order contract by which the Service Provider undertakes towards the Client to perform certain Activities.
- d. Client: The natural person or juristic person who has placed the order with the Service Provider to perform Activities.
- e. Service Provider: The Accountancy Firm that has accepted the order. *All Orders are accepted and executed solely by the Accountancy Firm, not by or on behalf of an individual Employee, irrespective of whether the Client has expressly or tacitly placed the Order with a view to its execution by a certain Employee or Employees. Articles 7:4044, 7:407 paragraph 2 and 7:409 of the Civil Code are expressly excluded from application.*
- f. CCR Code of Conduct Regulation, divided between the CA Code of Conduct Regulation (Chartered Accountant), and AA Code of Conduct Regulation (Accountant-Administration Consultant). The CA CCR is available on [www.nivra.nl](http://www.nivra.nl) and the AA CCR on [www.novaa.nl](http://www.novaa.nl).
- g. Employee: A natural person working with or attached to the Service Provider on the grounds of a contract of employment or otherwise.
- h. Activities: All activities performed by the Service Provider on behalf of the Client for which an order has been placed and which have been accepted by the Service Provider and all activities arising from it for the Service Provider.

## **Article 2. Applicability**

1. These general conditions apply to all: quotations, offers, orders, legal relations and contracts, however so called, by which the Service Provider undertakes/shall undertake to perform Activities for the Client, *as well as* all Activities arising from them for the Service Provider.
2. Departures and supplements to these general conditions shall only be valid if they have been expressly agreed in writing in, for example, a (written) agreement or order confirmation.
3. If these general conditions and the order confirmation contain mutually contradictory conditions, the conditions of the order confirmation shall apply.
4. The applicability of the general conditions of the Client are expressly set aside by the Service Provider.
5. The underlying Order/Contract – together with these general conditions - reflect the complete agreement between the Client and the Service Provider relating to the Activities for which the Contract has been concluded. All agreements or proposals made earlier in this respect between the parties lapse.

## **Article 3. Client data**

1. The Client is bound to provide the Service Provider with all Documents that in the opinion of the Service Provider are needed for the correct execution of the Order, (a) in the desired form, (b) in the desired way and (c) promptly. The Service Provider shall stipulate what desired form, desired way and promptly mean.
2. The Client is responsible for the correctness and reliability of the Documents provided by him, even if they originate from third parties, unless the situation is different from the nature of the Order.
3. This Service Provider is entitled to suspend the execution of the Order until the time that the Client has satisfied the obligations given in the first and second paragraph.
4. The Client shall indemnify the Service Provider against damage that is the result of incorrect or incomplete Documents.
5. The extra costs and extra hours incurred by the Service Provider, as well as other damage for the Service Provider, on account of the non-provision, late provision or incorrect provision by the Client of the Documents needed for the performance of the Activities are to the charge and risk of the Client.
6. On the first request of the Client, the Service Provider shall return to the Client the original Documents provided by the Client.

#### ***Article 4. Order execution***

1. The Service Provider shall execute the Order to the best of his ability and with observance of the applicable legislation and (professional) regulations.
2. The Service Provider shall determine the way in which the Order shall be executed and by which Employee(s).
3. The Service Provider is entitled to have the Activities performed by a third party designated by the Service Provider.

#### ***Article. 5. (Professional) regulations***

1. In each case the Client shall lend his full assistance for the obligations arising for the Service Provider from the applicable (professional) regulations.
2. The Client is aware that the Service Provider - for example but not exclusively:
  - a. On the grounds of the applicable legislation and regulations, may be required to report certain transactions, defined in these legislation and regulations, and which become known during the performance of his Activities to the authorities set up by the government for this purpose.
  - b. On the grounds of the applicable legislation and regulations, shall have to report fraud in certain situations.
  - c. By virtue of the applicable legislation and regulations, may be required to investigate (the identity of) the Client or customer.
3. The Service Provider excludes any liability for damage arising for the Client as a result of the Service Provider satisfying the legislation and (professional) regulations applicable to him.

#### ***Article 6. Intellectual property***

1. The execution of the Order by the Service Provider does not include the transfer of intellectual property rights that rest with the Service Provider. All intellectual property rights occurring during or arising from the execution of the Order shall belong to the Service Provider.
2. The Client is expressly prohibited from reproducing, publishing or exploiting products that carry the intellectual property rights of the Service Provider, or products that have intellectual property rights relating to the use of them for which the Service Provider has acquired user rights - including in this respect in any case, but not exclusively: computer programs, system designs, processes, advice, (model) contracts, templates, macros and other intellectual products.
3. The Client is not authorised to give the products mentioned in the second paragraph to third parties without the prior written consent of the Service Provider, except to obtain an expert opinion on the performance of the Activities by the Service Provider. The Client shall

in such a case impose his obligations on the grounds of this article on the third parties taken on by him.

#### ***Article 7. Force Majeure***

1. If the parties are unable to observe the obligations of the contract, or observe them promptly or properly, as a result of force majeure in the sense of art. 6:75 of the Civil Code, then these obligations shall be suspended until the time that the parties are in a position to observe them in the agreed way.
2. In the event of the situation given in the first paragraph arising, the parties shall be entitled to entirely or partially end the contract with immediate effect, in writing, without there being a right to any compensation.

#### ***Article 8. Fee***

1. The activities performed by the Service Provider shall be charged to the Client on the basis of the time spent and the costs incurred.
2. In addition to the fee, the expenses incurred by the Service Provider and the accounts of the third parties taken on by the Service Provider shall be charged to the Client.
3. The Service Provider is entitled to request a down payment from the Client.
4. It after the Contract has come into being, but before the Order has been fully executed, the fees or prices undergo a change, the Service Provider shall be entitled to adjust the agreed price accordingly.
5. The fee, if necessary plus the down payments and accounts of the third parties taken on and expenses incurred, shall be charged each month. Sales tax shall be charged separately on all the amounts owed by the Client to the Service Provider if the law so requires.

#### ***Article 9. Payment***

1. The payment of the amounts owed by the Client to the Service Provider must, without the Client being entitled to any deduction, discount or offset, be paid within 14 days of the invoice date, unless agreed otherwise. The day of payment is the day of the entry of the amount owed into the account of the Service Provider.
2. If the Client has not paid within the period given in the first paragraph, or another period agreed between the parties, the Client shall be automatically in default and the Service Provider shall be entitled to charge the statutory (commercial) interest as of that time.
3. If the Client has not paid within the period given in the first paragraph, the Client shall be bound to reimburse all the legal and extra-legal (collection) costs of the Service Provider. The payment of the costs incurred is not limited to any court order to pay costs.

4. In the event of a jointly placed Order, the Clients, insofar the Activities are performed for the joint Clients, shall be jointly and severally liable for the payment of the amount of the invoice and the interest and costs due.
5. If the financial position or payment behaviour of the Client in the opinion of the Service Provider gives cause to do so, or if the Client fails to settle a down payment or account within the payment period set for it, the Service Provider shall be entitled to require the Client to immediately provide (supplementary) security in a form stipulated by the Service Provider. If the client fails to provide the required security, the Service Provider shall be entitled, without prejudice to his other rights, to immediately suspend the further performance of the contract, and everything owed by the Client to the Service Provider on whatever account shall be immediately payable.

#### ***Article 10. Time Limits***

1. If a time limit/date has been agreed between the Client and the Service Provider within which the Order must be executed and the Client fails: (a) to make a down payment - if agreed - or (b) to provide the necessary documents promptly, completely, in the desired form and in the desired way, then the Client and the Service Provider shall consult on a new time limit/date within which the Order must be executed.
2. Time limits within which the Activities have to be completed are only considered as deadlines if this has been expressly agreed in so many words between the Client and the Service Provider.

#### ***Article 11. Liability and indemnities***

1. The Service Provider is not liable for damage to the Client arising because the Client has given the Service Provider incorrect or incomplete Documents.
2. The Service Provider is not liable for any secondary damage, loss of earnings or indirect damage that is the result of the non-performance, late performance or incorrect performance by the Service Provider.
3. The Service Provider is only liable towards the Client for damage that is the direct result of a (connected series of) attributable shortcoming(s) in the execution of the Order. This liability is limited to the amount that according to the liability insurer of the Service Provider is paid out for the case concerned, plus any personal risk borne by the Service Provider on account of the insurance.
4. If, for whatever reason, the liability insurer does not make payment, the liability of the Service Provider is limited to the amount of the fee charged for the execution of the Order. If the Order involves a long-term contract with a duration of more than one year, then the amount set for this is three times the amount of the fee that was charged to the Client in the twelve months prior to the occurrence of the damage. Under no circumstances shall the total compensation for damage on the grounds of this article be more than € 300,000.- per

event, whereby a series of connected events counts as one event, unless the parties - in view of the size of the order or the risks coupled to the order - see a reason to depart from this maximum when entering into the contract.

5. The liability limitations given in this article do not apply if and insofar there is intent or deliberate recklessness on the part of the Service Provider or its senior management.
6. The Client is bound to take damage-limiting measures.
7. The Client shall indemnify the Service Provider against claims of third parties on account of damage as a result of the Client having provided no, incorrect or incomplete Documents to the Service Provider.
8. The Client shall indemnify the Service Provider against claims of third parties (including employees of the Service Provider and third parties taken on by the Service Provider) who in relation to the execution of the Order suffer damage that is the result of the action or negligence of the Client or of unsafe situations in his business or organisation.

#### ***Article 12. Termination***

1. The Client and Service Provider may terminate the contract at any time (in the interim) without observance of a notice period. If the contract ends before the Order has been completed, the Client shall owe the fee in accordance with the hours specified by the Service Provider for Activities performed on behalf of the Client.
2. Notice of termination must be given in writing.
3. If the Client terminates the contract (in the interim), the Service Provider shall be entitled to payment for the utilisation loss occurring or likely to be incurred on his part, as well as the payment of the additional costs that the Service Provider has already incurred and costs arising from any cancellation of third parties taken on (such as - for example - any costs relating to subcontracting).
4. If the contract is terminated (in the interim) by the Service Provider, the Client shall be entitled to the assistance of the Service Provider for the transfer of activities to third parties, unless there is a case of intent or deliberate recklessness on the part of the Client, whereby the Service Provider has been compelled to terminate the contract. The condition for the right to assistance as stipulated in this paragraph is that the Client has settled all underlying outstanding down payments or accounts.

#### ***Article 13. Right of suspension***

1. The Service Provider is authorised to suspend the observance of all his obligations after a careful consideration of interests, including the issue of Documents or other items to the Client or third parties, up until the time that all payable accounts receivable from the Client have been fully settled.
2. The first paragraph does not apply to the Documents of the Client that have not (yet) been processed by the Service Provider.

#### ***Article 14. Expiry period***

Unless stipulated otherwise in these general conditions, the rights to claim and other authorities of the Client on whatever account towards the Service Provider relating to the performance of Activities by the Service Provider shall in all cases lapse one year after the time at which the Client knew or reasonably could have known of the existence of these rights and authorities. This period does not concern the possibility to submit a complaint to the bodies designated to this end for dealing with complaints and/or the Council for Disputes.

#### ***Article 15. Electronic communication***

1. During execution of the Order, the Client and the Service Provider may communicate with one another by electronic means on the request of the Client.
2. The Client and the Service Provider are not liable with respect to one another for any damage arising for either one of them as a result of the use of electronic means of communication, including - but not limited to - damage as a result of the non-delivery or delayed delivery of electronic communications, interception or manipulation of electronic communications by third parties or by software/hardware used for sending, receiving or processing electronic communications, the transfer of viruses and the non-functioning or poor functioning of the telecommunications network or other equipment needed for electronic communications, except if the damage is the result of intent or gross misconduct.
3. Both the Client and the Service Provider shall do or refrain from everything that may be reasonably expected of each of them to prevent the occurrence of the aforementioned risks.
4. The data extracts from the computer systems of the sender provide compelling proof of (the content of) the electronic communications sent by the sender until proof to the contrary is provided by the recipient.

#### ***Article 16. Other clauses***

1. If the Service Provider performs Activities on the location of the Client, the Client shall provide a suitable workplace that satisfies the legally imposed ARBO standards and other applicable regulations relating to working conditions. The Client must ensure that in such a case the Service Provider is given an office and other facilities that in the opinion of the Service Provider are necessary or useful to perform the Contract and which satisfy all (legal) requirements placed on them. With regard to the (computer) facilities made available, the Client is required to ensure continuity, for example with sufficient backup, security and virus control procedures. The Service Provider shall apply virus control procedures when the Service Provider uses the facilities of the Client.



2. The Client shall not hire or approach any of the Employees involved in the performance of the Activities in order to have them work for the Client, temporarily or otherwise, directly or indirectly, or to perform activities or directly or indirectly on behalf of the Client, in paid service or otherwise, for the duration of the Contract or any extension of it and for 12 months afterwards.

***Article 17. Applicable law and choice of forum***

1. The Contract is governed by Dutch law.
2. Any disputes shall be settled by the competent court of the district in which the Service Provider is established.
3. That stipulated in paragraph 1 and 2 of this article does not affect the possibility of the Client to submit a dispute to the Council for Disputes and/or to follow the complaints procedure.

***Article 18. Invalidity replacement clause***

1. If any clause of these general conditions or of the underlying Order/Contract is entirely or partially void and/or invalid and/or not enforceable, as a result of any legal stipulation, court judgement or otherwise, this shall have no effect on the validity of all other clauses of these general conditions or the underlying Order/Contract.
2. If a clause of these general conditions or the underlying Order/Contract is not valid for a reason as given in the previous paragraph, but would be valid if it had a narrower scope or import, then this clause shall - first of all - automatically apply with the most extensive or substantial more limited scope or import within which it is valid.
3. Without prejudice to that stipulated in paragraph 2, if desired the parties can consult in order to agree new clauses to replace the void or invalidated clauses. They shall fit as closely as possible with the purpose and import of the void or invalidated clauses.