

## Article 1. GENERAL

1. Actum Advies is an accountancy and tax consultancy which is affiliated with the Royal Netherlands Institute of Chartered Accountants [Koninklijke Nederlandse Beroepsorganisatie van Accountants] (NBA).
2. In these general terms and conditions the following terms have the meanings referred to:
  - Commissionee: the commissionee within the meaning of these conditions is Actum Advies as stated in the preamble and/or its legal successors.
  - Commissioning party: the natural person or legal entity that has commissioned the commissionee to perform work.
  - Agreement: the multilateral legal act whereby the commissioning party and the commissionee enter into a commitment by issuing and accepting the assignment and by making arrangements to regulate the assignment.
  - Assignment: a request to perform work as described below, on either a continuity or an incidental basis. An incidental assignment may include the performance of work during a certain, predetermined period, or an entirety of work in order to achieve or obtain an intended result.
  - Work: all work which has been commissioned, or which is being performed by the commissionee on another account. The above applies in the widest sense of the word and covers, in any event, the work referred to in the confirmation of assignment. Among other things this work can include the keeping of (complete) accounts or records on behalf of the commissioning party, the compilation of annual reports and accounts, the preparation of tax returns and any follow-up, acting as an authorised representative in tax proceedings, advising on issues of a fiscal and financial nature, providing assistance in these fields to the commissioning party, as well as all actions, services and operations which, based on a general understanding, are (or may be) conducive, at any point in time, in connection with the work referred to.
  - Professional regulations: the professional rules and rules of conduct which apply to the accountant due to the registration in the NBA register of accountants.
  - Documents: all information or data made available by the commissioning party to the commissionee, whether or not contained on (in)tangible media and whether or not accommodated with third parties, as well as all data created or collected within the framework of performing the assignment/agreement by the commissionee, whether or not contained on (in)tangible media and whether or not accommodated with third parties, as well as all other information of any relevance for the performance or completion of the assignment, whether or not contained on (in)tangible media.

## **Article 2. APPLICABILITY**

1. These general terms and conditions are applicable to all offers, quotes, assignments, legal relationships and agreements which the commissionee enters into within the framework of performing work. Deviations from, and additions to, these general terms and conditions can only be implemented by the commissionee and at any time and without the commissioning party's permission.
2. The commissioning party's general terms and conditions will never have an effect on the agreements entered into with the commissioning party. The commissionee explicitly rejects the applicability of the commissioning party's general terms and conditions.

## **Article 3. COMMISSIONING PARTY DETAILS**

1. In accordance with legal regulations, namely the Money Laundering and Terrorist Financing (Prevention) Act [Wet ter voorkoming van witwassen en financieren van terrorisme] (Wwft), the commissioning party is obliged to provide proof of identity before starting the work. These identification details must be recorded in a permanent dossier kept by the commissionee. This measure applies both to a commissioning party/natural person and to a commissioning party/legal entity. The commissionee is entitled to investigate the (identity of the) commissioning party.
2. The commissioning party is obliged to make available to the commissionee all documents which the commissionee considers it needs for the correct execution of the assignment granted, in the desired form, in the desired way and on time. The commissionee determines how the expressions 'desired form' and 'desired way' and 'on time' should be interpreted.
3. The commissioning party guarantees the accuracy, completeness and reliability of the documents it makes available, even if these have come from third parties, insofar as not determined otherwise by the nature of the assignment. The commissioning party indemnifies the commissionee for loss or damage which arises as a consequence of incorrect or incomplete documents. The extra costs and extra hours incurred by the commissionee, as well as other loss or damage incurred by the commissionee, due to the non-provision, late provision, or improper provision of documents required for the execution of the work, are for the commissioning party's account and risk.
4. The commissionee is entitled to suspend execution of the assignment until the moment that the commissioning party has fulfilled the obligations referred to in the first and second paragraphs. If the commissioning party does not fulfil the stipulations of paragraph 2, the commissionee will be entitled to refuse the assignment, without any notice of default or legal intervention being required.
5. If and insofar as the commissioning party requests such, the documents made available will be returned to it.

#### **Article 4. COMMENCEMENT AND DURATION OF THE AGREEMENT**

1. The agreement will only be formed and start at the moment at which the commissionee has received and signed the commissioning party's written confirmation of assignment. The confirmation of assignment is based on the details and/or documents issued at the time by the commissioning party. The confirmation of assignment is considered to be a correct and full representation of the agreement. By signing the confirmation of assignment the commissioning party explicitly accepts these general terms and conditions, which will be handed over when the confirmation of assignment is signed. The parties are free to provide evidence of the formation of the agreement by some other means. For example, in the event of small-scale advice or other work, other than an assignment carried out within the framework of the Further Regulations on Auditing and Other Standards (NV COS), an assignment agreement can also be formed simply by email, telephone or other medium, without having to draw up any formal confirmation of assignment. The commissioning party will therefore explicitly accept this, unless it wishes to receive a formal confirmation of assignment.
2. The agreement is to be entered into for an indefinite period of time, unless the nature or purport of the assignment granted means that it has been entered into for a definite period of time.
3. Arrangements or agreements with subordinate staff members of the commissionee will not be binding for the commissionee, insofar as it has not confirmed them in writing.

#### **Article 5. PERFORMANCE OF THE ASSIGNMENT**

1. The commissionee will determine the way in which the assignment is to be performed and by which employees. Wherever possible, the commissionee will take account of timely and responsible instructions by the commissioning party regarding the execution of the assignment, such at the commissionee's absolute discretion.
2. The commissionee is entitled to have certain work carried out by a person or third party designated by the commissionee without notifying the commissioning party if, in the commissionee's opinion, such is desirable with a view to optimal performance of the assignment for the parties.
3. The commissionee will perform the assignment in accordance with the legislation and (professional) regulations that apply to accountants.
4. If work is carried out during the assignment on behalf of the commissioning party's profession or business which is not covered by the work as agreed in the confirmation of assignment, it will be presumed from the corresponding notes in the commissionee's records that this work has been performed on the basis of an incidental assignment granted by the commissioning party. By signing these conditions the commissioning party gives the commissionee permission to perform this work on the basis of an incidental assignment (in other words as 'additional work'), of which the value will not exceed an amount of €2,000.00 excluding VAT on your instructions and for the account of the commissioning party. If the value of the work performed on the basis of an incidental assignment exceeds an amount of €2,000.00 excluding VAT, the commissioning party and the commissionee must first consult verbally or in writing. Any dispute in relation to this work on the basis of an incidental assignment will have to take place within one month after the commissioning party has invoiced the work.
5. Unless explicitly stated otherwise in writing, the performance of the assignment is not specifically aimed at detecting fraud. If the work reveals indications of fraud, the commissionee will report accordingly to the commissioning party in writing. When doing so the commissionee is bound by the fraud guidelines issued by the professional organisations, as well as the provisions in the Money Laundering and Terrorist Financing (Prevention) Act, according to which the commissionee is obliged to report

unusual transactions (monetary payments which must be regarded as unusual due to the amount of the payment and/or the way they are performed carried out) to the Financial Intelligence Unit Nederland (FIU-NL). In turn this organisation will report the suspicious transactions to the investigative authorities.

6. The commissionee is entitled, without any legal intervention or notice of default being required, to reject the assignment on the grounds of the applicable code of conduct and rules of professional conduct and regulations, as well as if the commissioning party is declared bankrupt, is declared subject to a debt rescheduling arrangement as referred to in the Netherlands Debt Rescheduling (Natural Persons) Act [Wet Schuldsanering Natuurlijke Personen] (WSNP), or if the commissionee is notified of a request for a bankruptcy order or the application of the WSNP scheme, or if the commissioning party requests a provisional suspension of payments, it leaves due debts unpaid, goes into liquidation, or transfers its permanent residence or place of business to a location outside the Netherlands before having provided security, to the commissionee's satisfaction, for the fulfilment of the obligations resulting from the order granted by the commissioning party, or if the commissioning party loses the authority to dispose of its assets or parts thereof by attachment, tutelage or otherwise, unless adequate security is provided on behalf of the commissionee, to the latter's satisfaction, for the payment of that which is already payable and will become payable in relation to performance of the order.
7. The commissionee is obliged to inform the commissioning party immediately if it becomes aware of an application for bankruptcy, or if it requests application of the WSNP scheme or a suspension of payments.

## **Article 6. INTELLECTUAL PROPERTY**

1. The performance of the assignment by the commissionee does not mean the transfer of intellectual property rights vested in the commissionee. All intellectual property rights which arise during, or result from, the execution of the assignment belong to the commissionee.
2. The commissioning party is explicitly prohibited from copying, publishing, or using the products containing the commissionee's intellectual property rights, or products in which intellectual property rights are vested with regard to the use of which the commissionee has acquired user rights – including in this context, in any event, but not exclusively: computer programmes, working methods, (model) contracts, reports, templates, macros and other products of the mind.
3. The commissioning party is not permitted to make the products referred to in the second paragraph available to third parties without the commissionee's prior written consent, other than to acquire an expert opinion regarding the performance of the work by the commissionee. In that case the commissioning party will impose its obligations on the grounds of this article on third parties it engages.
4. In the event of violation of the provisions referred to in this article, the commissioning party will forfeit to the benefit of the commissionee an immediately payable penalty of €500.00 for each day that the commissioning party is in violation. This does not prejudice the commissionee's right to claim full compensation as well for the loss or damage suffered in this regard.

## **Article 7. CONFIDENTIALITY AND EXCLUSIVITY**

1. The commissionee is obliged to observe confidentiality vis-à-vis third parties that are not involved in the performance of the assignment. This confidentiality concerns all information of a confidential nature made available to it by the commissioning party and the results obtained from processing it. This confidentiality does not apply insofar as statutory or professional rules impose an obligation to provide information.
2. The commissionee is entitled to use the numerical outcomes obtained after processing for statistical or comparable purposes, provided those outcomes cannot be traced to individual commissioning parties.
3. Notwithstanding the provisions of the previous paragraph the commissionee is not entitled to use the information the commissioning party makes available to it for a purpose other than for which it was obtained. An exception will be made, however, in the event that the commissionee acts for itself in disciplinary, civil or criminal proceedings whereby these documents may be important.

## **Article 8. FORCE MAJEURE**

1. If the commissionee cannot fulfil its obligations resulting from the agreement, or cannot do so properly, as a consequence of a cause which cannot be attributed to the commissionee, including but not limited to, delays to operations within its company, said obligations will be suspended until such time as the commissionee is able to fulfil them after all in the agreed manner, without the commissionee being in default with respect to the fulfilment of said obligations and without the commissionee being held liable for any compensation.
2. If the situation as referred to in the first paragraph occurs, the parties will be entitled to cancel the agreement wholly or partially and with immediate effect without, incidentally, being entitled to any compensation.

## **Article 9. FEE**

1. The work performed by the commissionee will, in principle, be charged to the commissioning party on the basis of time spent and costs incurred. Payment of the fee is not dependent on the result of the work, unless agreed otherwise. In the confirmation of assignment the parties can make a fixed price arrangement for the period of one month or one year. The parties will agree which work will be carried out for the fixed price on the basis of mutual consultation. All other work which is not covered by this agreement and which is considered essential in order to achieve the set goals will be invoiced separately on the basis of time spent and costs incurred.
2. Before the work starts and in between times the commissionee is entitled to suspend performance of the work until such time as the commissioning party has paid the commissionee an advance determined in accordance with principles of reasonableness of fairness for the work to be performed, or has provided appropriate security.
3. The expenses incurred by the commissionee and the expense claims of third parties engaged by the commissionee are to be charged to the commissioning party in addition to the fee. The full amount, including any payable turnover tax, is to be

charged to the commissioning party per month, per quarter, per year, or after completion of the work, or in any other way to be agreed.

4. If, after formation of the agreement and before the agreed delivery time, the prices of auxiliary materials, wages, or any other price-determining factors change, the commissionee will be entitled to adjust the price accordingly.
5. Price increases after the formation of the agreement, which result from supplementing and/or changing the assignment, will be for the client's account.
6. If the assignment is suspended or terminated by the commissioning party or the commissionee, the commissionee will be entitled to full payment of the work performed and costs incurred up to the moment of suspension or termination.

#### **Article 10. PAYMENT**

1. The commissioning party must, in principle, pay the invoice amount within 14 days after the invoice date, unless a different deadline is stated on the invoice, in euros, at the commissionee's offices or by means of deposit to the benefit of a bank account designated by the commissionee, without any entitlement to discount, set-off, or deduction.
2. If the commissioning party has not paid by the above-mentioned deadline, or within the additionally agreed deadline, it will be legally in default and the commissionee will be entitled, without further demand for payment or notice of default, to charge the commissioning party statutory interest as from the due date until the date of full payment, such without prejudice to the commissionee's additional rights.
3. All costs which arise from judicial and extrajudicial collection of the claim are for the commissioning party's account. The extrajudicial costs are set at a minimum of 15% of the amount due, based on a minimum amount of €100.00. The reimbursement of the costs incurred is not limited to any court order to pay costs.
4. In the event of a joint assignment, the commissioning parties will be jointly and severally liable for payment of the invoice amount insofar as the work was performed on behalf of the joint commissioning parties.

#### **Article 11. COMPLAINTS**

1. A complaint with regard to the work performed and/or the invoice amount must be communicated to the commissionee in writing within 14 days after the date on which the documents or information about which the commissioning party is complaining were sent, or within 14 days after the discovery of the defect, if the commissioning party demonstrates that it could not reasonably have discovered the defect any earlier.
2. A complaint as referred to in the first paragraph will not lead to a suspension of the commissioning party's payment obligation.
3. If the complaint is not made time, all the commissioning party's rights in relation to the complaint will lapse.

## Article 12. LIABILITY

1. The commissionee is not liable for loss or damage suffered by the commissioning party which arises because the commissioning party issued incorrect or incomplete documents to the commissionee. Neither is the commissionee liable for loss or damage and/or fines if the commissioning party has failed to issue the necessary documents on time or properly.
2. With regard to any direct loss or damage suffered by the commissioning party which is related in any way to, or caused by, a failure to perform the assignment, or a failure to perform it on time or properly, and which is a direct consequence of a related series of attributable failures in the performance of the assignment, the commissionee's liability will be limited to the amount for which the commissionee has insurance in relation to the failure to fulfil, or the failure to fulfil on time or properly, or to the amount of the fee charged if the commissionee has not taken out professional liability insurance, or if the insurer does not proceed to pay out. If the assignment is a continuing performance contract with a term of more than one year, the aforementioned amount will be set at one time the amount of the fee that was charged to the commissioning party in the twelve months prior to the occurrence of loss or damage. Under no circumstances will the overall compensation payable for loss amount be more than €5,000.00 (five thousand euros).
3. The commissionee is never liable for any indirect loss or damage, including delays to operations within the commissioning party's company, which is connected in any way, or caused by, an error in the performance of the work by the commissionee.
4. The commissionee always has the right, if and insofar as possible, to reverse the loss or damage suffered by the commissioning party.
5. The commissionee is not liable for damage or destruction of documents during transportation or forwarding by post, irrespective of whether the transportation or forwarding takes place by, or on behalf of, the commissioning party, commissionee or third parties.
6. The commissionee indemnifies the commissioning party against all third-party claims which are directly or indirectly related to the performance of the agreement.
7. If the commissioning party does not accept delivery of the documents within one month after completion of the assignment and after payment of all due amounts relating to that assignment, they will be stored for the commissioning party's account and risk from that time onwards.
8. Any personal liability of advisors or employees acting on behalf of the commissionee is explicitly excluded.
9. The liability for loss or damage on the part of the commissionee will lapse 1 year after it has arisen.

### **Article 13. CANCELLATION**

1. Without prejudice to the obligation to fulfil in full the obligations resulting from the agreement between the commissionee and the commissioning party during the term of the agreement, the commissionee and the commissioning party are always entitled to cancel the agreement in writing in the form of a letter sent by registered post. In doing so, the commissioning party must explicitly indicate that the assignment is being withdrawn. The term of an agreement for an indefinite period of time is considered to end on the final tax return postponement date (in accordance with the postponement arrangement for intermediaries) resulting from obligations of the current financial year.
2. If the agreement ends before the assignment has been completed, the commissioning party will owe the fee in accordance with the hours stated by the commissionee for work performed on behalf of the commissioning party.
3. The commissionee and commissioning party can dissolve the agreement formed between them entirely or, insofar as it has not yet been performed, for the as yet unperformed part, by sending a registered letter with proof of receipt to the other party, if and as soon as one of the following circumstances occurs:
  - a. The other party does not fulfil its obligations within 20 working days, or does not fulfil them on time or properly, under the agreement formed between the commissioning party and the commissionee, after having been appropriately placed in default in writing.
  - b. The other party has been declared bankrupt, or has applied for a suspension of payments.
  - c. The other party is placed under the tutelage, or under administration.
  - d. The other party wholly or partially ceases or suspends its business operations, or transfers them wholly or partially to a third party.

### **Article 14. RIGHT TO SUSPEND PERFORMANCE WITH REGARD TO SUBMITTING DOCUMENTS**

1. The commissionee is authorised, after carefully weighing up the interests, to suspend the fulfilment of all its obligations, including the issuing of documents or other matters to the commissioning party or third parties, until all payable claims against the commissioning party have been paid in full.
2. The provisions of the first paragraph do not apply to items or documents of the commissioning party which have not yet undergone any processing by the commissionee.



## **Article 15. ELECTRONIC COMMUNICATION**

1. While performing the assignment, the commissioning authority and the commissionee can communicate with each other by electronic means.
2. The commissioning party and the commissionee are not mutually liable for loss or damage which may result for one or each of them as a consequence of the use of electronic means of communication including – but not limited to – loss or damage as a consequence of non-delivery or delay in the delivery of electronic communication, interception or manipulation of electronic communication by third parties or by software/equipment used to transmit, receive or process electronic communication, the transmission of viruses and the non-functioning or improper functioning of the telecommunications network or other resources required for electronic communication, except insofar as the loss or damage is the consequence of intent or gross negligence.

## **Article 16. APPLICABLE LAW**

1. Dutch law applies to all agreements between the commissioning party and the commissionee to which these general terms and conditions are applicable.
2. The commissioning party is free to instigate disciplinary proceedings, or to submit a dispute to an arbitration committee established for that purpose.

## **Article 17. NULLITY REPAIR CLAUSE**

1. If any provision in these general terms and conditions or the underlying assignment/agreement turns out to be entirely or partially null and void and/or invalid and/or non-enforceable, as a consequence of any legal stipulation, court decision or otherwise, this will not have any consequence for the validity of all other provisions of these general terms and conditions, or the underlying assignment/agreement.
2. If any provision of these general terms and conditions, or the underlying assignment/agreement, should prove to be invalid for a reason as referred to in the previous paragraph, but would be valid if its scope or purport were more restrictive, said provision will automatically apply - initially - to the maximum extent of the more restrictive scope or purport in which it would be valid.
3. Without prejudice to the provisions of paragraph 2 the parties can, if they wish, consult in order to agree new provisions to replace the null and void or nullified provisions. In doing so, the new provisions will match the purpose and purport of the null and void or nullified provisions as much as possible.