

# General terms and conditions



## Article 1. Definitions

Within the context of these General Terms and Conditions, terms with an initial capital are defined as indicated below:

- a. **Professional Regulations:** The rules regarding conduct and the professional rules to which the Contractor's Employee must adhere;
- b. **Records:** All information or data provided by the Customer to the Contractor, which may or may not be recorded on material and/or virtual data carriers and which may or may not be managed by third parties, and all data produced or gathered by the Contractor within the context of the execution of the Assignment/Agreement, which may or may not be recorded on material and/or virtual data carriers and which may or may not be managed by third parties, and all other information, which may or may not be recorded on material and/or virtual data carriers, that bears any relevance to the execution or completion of the Assignment;
- c. **Firm:** the private limited liability company Flynth adviseurs en accountants B.V. (Chamber of Commerce no. 34058255) or the private limited liability company Flynth Audit B.V. (Chamber of Commerce no. 09063021), both registered in Arnhem, the Netherlands;
- d. **Employee:** A natural person working at or for the Contractor, with or without an employment contract;
- e. **Assignment/Agreement:** The contract for services under which the Contractor undertakes to perform Work for the Customer;
- f. **Customer:** The natural person or legal entity that has awarded the Contractor the Assignment to perform Work;
- g. **Contractor:** The firm that accepted the Assignment. All assignments are accepted and executed exclusively by the Firm, not by or for an individual Employee, regardless of whether the Customer has expressly or tacitly awarded the Assignment with the intention that this be executed by a specific Employee or specific Employees. The application of Articles 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code is explicitly excluded;
- h. **Work:** All work to be performed by the Contractor for the Customer in accordance with an Assignment that has been accepted by the Contractor and all ensuing work for the Contractor.

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## Article 2. Applicability

1. These General Terms and Conditions apply to all offers, quotations, assignments, legal relationships and agreements, however they may be termed, in accordance with which the Contractor undertakes to perform Work for the Customer, and to all ensuing Work for the Contractor.
2. Deviations from and additions to these General Terms and Conditions are only valid if explicitly agreed in writing in, for example, a (written) agreement or confirmation of assignment, inasmuch as this is not contrary to the relevant legislation and regulations.
3. If these General Terms and Conditions and the confirmation of assignment contain conflicting conditions, the conditions set out in the confirmation of assignment apply in relation to this conflict.
4. These General Terms and Conditions will also apply to any additional or follow-up assignments awarded by the Customer to the Contractor.
5. The Contractor explicitly rejects the applicability of any general terms and conditions imposed by the Customer.
6. The Agreement and these General Terms and Conditions document all agreements between the Customer and the Contractor concerning the Work to which the Agreement pertains. All previous agreements concluded between the parties or any proposals that have been made will come to expire.

## Article 3. Commencement And Term Of The Agreement

1. The Agreement will be concluded and commences when the confirmation of assignment has been signed by the Customer and returned to and received by the Contractor.
2. If the confirmation of assignment has not been signed by the Customer and returned to and received by the Contractor, the Assignment will be deemed to have been concluded under the application of these General Terms and Conditions, as soon as the Contractor has commenced the execution of the Assignment at the request of the Customer.
3. Parties are at liberty to prove the conclusion of the Agreement by any means.
4. The Agreement will be entered into for an indefinite period of time, unless the nature or scope of the assignment awarded means that it has been entered into for a definite period of time.

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## Article 4. Data Supplied By The Customer

1. The Customer is obliged to place at the Contractor's disposal all Records that the Contractor considers to be required for the correct execution of the Assignment in the required form, in the required manner and at the required time. The Contractor will determine the required form, the required manner and the required time.
2. Inasmuch as the nature of the Assignment does not dictate otherwise, the Customer is obliged to vouch for the accuracy and reliability of all Records supplied by the Customer, including those obtained from third parties.
3. The Contractor has the right to suspend execution of the Assignment until such time as the Customer has fulfilled the obligations referred to in the first paragraph of this article.
4. The Customer bears the risk and expense of additional time spent by the Contractor and additional costs and losses incurred by the Contractor due to the Customer's failure to provide Records required for the execution of the Work in a proper manner, without delay or at all.
5. At the first written request of the Customer, the Contractor will return the original Records that have been provided by the Customer to the Customer.
6. The Customer indemnifies the Contractor with regard to loss that is due to incorrect or incomplete Records.
7. When information is transmitted by electronic means, including but not limited to tax returns, annual accounts and reports, to third parties by the Contractor at the Customer's request, the Contractor will be designated as being the party that signs and sends the information.

## Article 5. Execution Of The Assignment

1. The Contractor will execute the Agreement to the best of its ability and with due observance of the relevant legislation and regulations and Professional Regulations.
2. The Contractor will determine the way in which, and by which Employee(s), the Agreement is to be executed.
3. The Contractor has the right to arrange for the Work to be performed by a third party appointed by the Contractor.
4. If a term/date has been agreed between the Customer and the Contractor within which the Assignment will be completed and the Customer fails to:
  - a. pay an advance payment – if agreed – or
  - b. provide the necessary Records on time, in full, in the required form and in the required manner, the Customer and the Contractor will meet to agree upon a new term/date within which the Assignment will be completed.
5. Terms within which the Work should be completed will only be treated as deadlines if this has been explicitly agreed in as many words between the Customer and the Contractor.

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## Article 6. Regulations And Professional Regulations

1. The Customer will cooperate fully with the Contractor's obligations under the relevant legislation, regulations and Professional Regulations.
2. The Contractor will take appropriate measures to protect personal data and other confidential information and data obtained from the Customer. The processing of personal data by the Contractor will be done in accordance with the relevant international and national legislation, regulations and Professional Regulations in the field of personal data protection.
3. The Customer is aware that in specific cases under international and national legislation, regulations and Professional Regulations, the Contractor is required to disclose confidential information obtained from the Customer. Inasmuch as is required, the Customer hereby grants permission for the cooperation lent in disclosing this information. This concerns, for example but not exclusively, the following cases:
  - a. reporting specific transactions, defined in the legislation, regulations and Professional Regulations and communicated during the execution of its Work to the authorities appointed by the government for this purpose;
  - b. reporting fraud;
  - c. conducting an investigation into the (identity of the) Customer or the Customer's client.
4. The Contractor excludes all liability for losses incurred by the Customer due to the Contractor's compliance with the legislation, regulations and Professional Regulations that apply to it.
5. Parties will impose the obligations they have under this article on third parties to be engaged by them.

## Article 7. Confidentiality And Exclusivity

1. Except when the law requires the Contractor to disclose specific data, the Contractor is required to observe confidentiality towards third parties who are not involved in the execution of the Assignment. This confidentiality regards all information with a confidential nature that is provided to the Contractor by the Customer and the results of processing this. An exception is, however, made to this in the case the Contractor or an Employee represents itself in disciplinary, civil or criminal proceedings during which this information might be important.
2. The Contractor is entitled to use the results in the form of figures obtained after processing for statistical or comparison purposes, provided these results cannot be traced back to the individual Customer.

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## Article 8. Intellectual Property

1. The execution of the Assignment by the Contractor does not include the transfer of intellectual property rights belonging to the Contractor. All intellectual property rights that are created during or in relation to the execution of the Assignment belong to the Contractor.
2. The Customer is explicitly forbidden from multiplying, publishing or commercially exploiting products that include the Contractor's intellectual rights or products that are subject to intellectual property rights for which the Contractor has acquired user rights, which include but are not limited to: computer programs, system designs, procedures, advice, contracts, model contracts, templates, macros and other intellectual products.
3. The Customer is not permitted to make the products mentioned in the second paragraph available to third parties without the prior written permission of the Contractor except to obtain an expert opinion regarding the Contractor's execution of the Work. In that case the Customer will impose its obligations on the basis of this article on the third parties it engages.

## Article 9. Force Majeure

1. If parties are unable to fulfil the obligations under the Agreement or are unable to do so on time or in full due to force majeure as referred to in Article 6:75 of the Dutch Civil Code, those obligations will be suspended until such time as parties are able to fulfil these in the agreed manner after all.
2. If the situation described in the first paragraph arises, parties have the right to cancel the Agreement in writing in full or in part and with immediate effect and no right to any compensation for loss will be created.
3. If at the start of the force majeure the Contractor has already executed part of the Assignment, the Contractor is entitled to send a separate and interim invoice for the Work already performed and the Customer should pay this invoice as if it concerns a separate transaction.

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## Article 10. Fee And Expenses

1. The Contractor's fee is a pre-established amount or will be calculated on the basis of rates per unit of time worked by the Contractor. If a fixed fee has been agreed, the Contractor is entitled to charge a rate per time unit worked on top of this, if and inasmuch as the scope of the Work exceeds the scope of the Work provided for in the Agreement.
2. The Contractor's fee is not dependent on the outcome of the Work unless agreed otherwise.
3. In addition to the fee, the Contractor will also charge the Customer for expenses incurred by the Contractor and fees charged by third parties appointed by the Contractor.
4. The Contractor is entitled to require an advance payment from the Customer.
5. If fees or prices change after the Agreement has been signed but before the Assignment has been completed, the Contractor is entitled to revise the agreed rates accordingly.
6. Estimated fees regarding the Work should be provided explicitly in writing and are without engagement and non-binding.
7. Travel time and expenses and accommodation expenses will be charged separately.
8. If required by law, value added tax will be charged separately on all amounts that the Customer owes the Contractor.

## Article 11. Payment

1. Unless agreed otherwise, all amounts that the Customer owes the Contractor must be paid within fourteen days of the invoice date. The Customer does not have the right to apply any deduction, discount, suspension or set-off. Payment is considered to have been made on the date on which the payment is credited to the Contractor's bank account.
2. If the Customer fails to pay an invoice within the term of payment specified in the first paragraph, the Customer is in default by operation of law. The Contractor is entitled to charge statutory commercial interest of three percent per quarter from that point on. If the Customer is in default, all the Contractor's claims under the Agreement will become immediately due and payable.
3. If the Customer fails to pay within the term of payment specified in the first paragraph, the Customer is obliged to pay all court and extrajudicial costs and collection costs incurred by the Contractor. The extrajudicial costs are fixed at no less than 15% (in words: fifteen percent) of the amount being claimed subject to a minimum amount of € 500 (in words: five hundred euros). Reimbursement of costs incurred by the Contractor is not limited to the costs awarded against the Customer by a court.
4. Payments made by the Customer will first be used to pay all interest and costs owing and then to pay due and payable invoices. The Contractor will decide which due and payable invoices will be reduced by the payment, even if the Customer states that the payment regards a specific invoice.
5. If an Assignment has been awarded by several Customers, each Customer is jointly and severally liable for payment of the invoice and any interest and costs that may be owed. If the Contractor performs Work for the Customer belonging to a group or joint venture, each entity belonging to that group or joint venture is jointly and severally liable towards the Contractor for payment of the invoice and any interest and costs that may be owed.

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6. If the Contractor is of the opinion that the Customer's financial position or payment performance warrants such a course of action, or if the Customer fails to pay an advance payment or invoice within the specified term of payment, the Contractor is entitled to ask the Customer to provide immediate (additional) security in a form to be determined by the Contractor. If the Customer fails to provide the required security, the Contractor is entitled, without prejudice to its other rights, to suspend further execution of the Agreement and all amounts that the Customer owes the Contractor for any reason are immediately due and payable.

## Article 12. Complaints

1. Subject to the expiry of legal claims, complaints regarding Work and/or invoice amounts must be communicated to the Contractor within fourteen days after the date on which the invoice, the documents or the information in respect of which the Customer is filing a complaint have been sent or within fourteen days after the defect is discovered, provided that the Customer proves that it could not reasonably have discovered the defect earlier.
2. Complaints as referred to in paragraph 1 do not suspend the Customer's payment obligations.

## Article 13. Liability And Indemnity

1. The Contractor is not liable for losses incurred by the Customer due to the fact that Records supplied by the Customer were inaccurate or incomplete or non-existent or due to the fact that these were not provided on time by the Customer.
2. The Contractor is not liable for consequential losses, loss of profits or indirect losses incurred as a result of non-performance, late or defective performance by the Contractor.
3. The Contractor's liability is limited to compensating direct losses directly resulting from (a series of related) attributable failure(s) in the execution of the Assignment. This liability for the direct losses is limited to the amount that in the Contractor's liability insurer's opinion is payable for the case in question, plus any excess risk borne by the Contractor under the insurance contract.
4. If, for any reason, the liability insurer does not proceed to pay, the Contractor's liability is limited to the amount of the fee charged for the execution of the Assignment. If the Assignment regards a long-term agreement with a term in excess of one year, said amount will be set at one time the amount of the fee that has been charged to the Customer in the twelve months preceding the occurrence of the loss. The total damages to be paid on grounds of the provision set out in this paragraph will never amount to more than € 300,000 (in words: three hundred thousand euros) for each attributable failure, unless, given the scope of the Assignment or the risks associated with the Assignment, on concluding the Agreement parties see reason to deviate from this maximum.
5. A series of related attributable failures counts as a single attributable failure.
6. The limitations of liability specified in this article do not apply in the event and inasmuch as the Contractor is guilty of intent or deliberate recklessness.
7. The Customer is obliged to take action to mitigate losses. The Contractor is entitled to undo the loss or to limit this by way of repair or improvement of the Work completed.

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8. The Customer will indemnify the Contractor against third-party claims for losses incurred as a result of the fact that the Customer failed to provide Records to the Contractor or provided Records that were inaccurate or incomplete.
9. The Customer will indemnify the Contractor against claims made by third parties (including employees of the Contractor and third parties appointed by the Contractor) for injury sustained in connection with the execution of the Assignment due to actions or omissions by the Customer or unsafe situations in the latter's company or organisation.
10. The Contractor is not liable for damage to or destruction of Records during transport or during dispatch by post, regardless of whether or not the transport or the dispatch was done by or for the Customer, the Contractor or a third party.
11. The Contractor's Employees are not authorised in any way to accept liability on behalf of the Contractor for the losses referred to in this article.
12. The provisions set out in the previous paragraphs in this article regard both the contractual and the non-contractual liability of the Contractor in relation to the Customer.

## Article 14. Cancellation

1. The Customer and the Contractor can cancel the Agreement (prematurely) at any time without being required to observe a notice period. If the Agreement is terminated before the Assignment has been completed, the Customer is obliged to pay the fee owed for time spent performing Work for the Customer as specified by the Contractor.
2. Notice of cancellation must be issued in writing.
3. If the Customer cancels the Agreement (prematurely), the Contractor has the right to be reimbursed for proven utilisation losses on its side and for additional costs already incurred and costs incurred in connection with any cancellation of contracts with third parties (such as any costs related to subcontractors).
4. If the Contractor cancels the Agreement (prematurely), the Customer has the right to assistance from the Contractor in transferring the Work to third parties, unless the Contractor was forced to cancel the Agreement because the Customer was guilty of intent or deliberate recklessness. The right to assistance as defined in this paragraph applies on the condition that all outstanding underlying advances or claims have been paid by the Customer.

## Article 15. Right To Suspend Performance

1. Following a careful weighing up of the interests involved, the Contractor is entitled to suspend fulfilment of its obligations, including the issuing of Records or other items to the Customer or third parties, until all due and payable claims against the Customer have been settled in full.
2. The first paragraph does not apply to Records provided by the Customer that have not (yet) been processed by the Contractor.
3. The Contractor is not liable for losses incurred by the Customer due to the delayed completion of the Work as a result of the suspension.

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## Article 16. Limitation Period

1. Unless otherwise provided for in these general terms and conditions, any rights of action and other rights or powers of the Client, on whatever grounds, vis-à-vis the Contractor in connection with the performance of the Services by the Contractor, shall in any event lapse upon the expiry of a period of one (1) year after the moment at which the Client became aware, or could reasonably have become aware, of the existence of such rights or powers.
2. The Client may prevent the lapse of its rights of action and other rights or powers by initiating legal proceedings against the Contractor before the competent authority within the aforementioned period of one (1) year, provided that the claim set out in such proceedings specifies with sufficient precision which rights of action and other rights or powers the Client intends to invoke against the Contractor.

## Article 17. Electronic Communication

1. During the execution of the Assignment the Customer and the Contractor can communicate with one another electronically and/or use electronic storage space (cloud applications).
2. The Contractor and the Customer are not liable in relation to each other for losses possibly incurred by either or both of them as a result of the use of electronic means of communication, including but not limited to losses incurred as a result of the non-delivery or late delivery of electronic communication, omission, distortion, interception or manipulation of electronic communication by third parties or by software or hardware used to send, receive or process electronic communication, the spread of viruses, non-performance or poor performance of the telecommunication network or other systems or services required for electronic communication, except inasmuch as the losses in question are incurred as a result of gross negligence or intention. The above also applies with regard to the use made thereof by the Contractor in its contacts with third parties.
3. Both the Customer and the Contractor will do or refrain from doing everything that can be reasonably expected of them in order to prevent the occurrence of said risks.
4. Data extracts from the computer systems of the sender provide compelling proof of (the content of) electronic communication sent by the sender until the recipient provides evidence to the contrary.

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## Article 18. Other Provisions

1. If the Contractor performs Work on the Customer's premises, the Customer must provide a suitable workplace that meets all statutory occupational health and safety requirements and all other relevant laws and regulations that apply to working conditions. The Customer must then ensure that the Contractor is provided with office space and all other facilities that the Contractor considers to be necessary or expedient to execute the Agreement. Office space and facilities provided by the Customer must meet all (statutory) requirements. In providing computer and other facilities, the Customer is obliged to assure continuity by implementing, among other things, adequate backup, security and virus control procedures.
2. The Customer is not to employ Employees involved in performing the Work within its company, or to offer them employment, paid or otherwise, either temporarily or permanently, directly or indirectly, or to perform work for the Customer directly or indirectly, whether or not in employment, during the course of the Agreement or any extension of the Agreement, and for a period of twelve months following the termination of the Agreement.
3. These General Terms and Conditions have been translated from Dutch into English and German. In the event of uncertainty or conflict between the versions in the different languages, the Dutch version will be binding.

## Article 19. Applicable Law And Choice Of Forum

1. The Agreement is governed by Dutch law.
2. All disputes are to be settled by the court of competent jurisdiction in Gelderland.
3. The provisions set out in paragraphs 1 and 2 of this article do not affect the Customer's right to submit a dispute to the relevant bodies at the occupational organisations and/or the Auditor's Office at the District Court of Overijssel in Zwolle.

## Article 20. Rectification Of Invalidity

1. If any of the provisions set out in these General Terms and Conditions or the Agreement prove wholly or partially null and void and/or invalid and/or unenforceable as a result of any statutory regulation or court ruling or for any other reason, this shall not affect the validity of any of the other provisions of these General Terms and Conditions or the Agreement.
2. If any of the provisions of these General Terms and Conditions or the Agreement prove invalid for one of the reasons referred to in the previous paragraph, but would be valid were it more limited in its extent or effect, for the time being the provision in question will automatically apply to the greatest extent or effect possible within the limitations that render the provision valid.
3. Subject to the provisions set out in the second paragraph, if required, the parties can meet to agree new provisions that are to replace the provisions that have been nullified or invalidated. The new provisions must come as close as possible to the purpose and the effect of the provisions that have been nullified or invalidated.

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