

General Government Terms and Conditions for public service contracts

I GENERAL

1. Definitions

The following terms are written with initial capitals in these general terms and conditions and are defined as follows:

- 1.1 Professional Errors: shortcomings such as mistakes, acts of carelessness, negligence, omissions and erroneous advice, which a competent and conscientious contractor would, in the given circumstances and assuming a normal degree of attention, competence and professionalism, not commit;
- 1.2 Annexe: a document attached to the Contract which, when initialled by both parties, is considered to form an integral part of the Contract;
- 1.3 Services: the work the Contractor is to perform for the Contracting Authority under the terms of the Contract;
- 1.4 Contract: the written agreement between the Contractor and the Contracting Authority to which the Terms and Conditions are declared to apply;
- 1.5 Contracting Authority's Staff: the staff made available by the Contracting Authority under the terms of the Contract;
- 1.6 Contractor's Staff: the members of staff and/or assistants used by the Contractor for the purpose of performing the Contract, for whom the Contractor is responsible in accordance with the terms of the Contract;
- 1.7 Terms and Conditions: these general terms and conditions, which apply to and form an integral part of the Contract.

2. Applicability

- 2.1 Derogations from the Terms and Conditions are binding only if they have been explicitly agreed in writing by the parties.

- 2.2 Should any parts of the Contract and the pertinent Annexe or Annexes be inconsistent with each other, the contents of the Contract will prevail.

II PERFORMANCE OF THE CONTRACT

3. Guarantees given by the Contractor

- 3.1 The Contractor hereby guarantees that the Services to be provided by it or on its behalf meet the requirements laid down in the Contract.

- 3.2 The Contractor hereby guarantees that the Services to be provided by it or on its behalf will be performed in a professional manner.

4. Acceptance and assessment

- 4.1 The Contractor will be notified that the Services have been accepted.

- 4.2 The Contracting Authority is entitled to assess the results of the Services performed. To this end, the Contracting Authority will designate one or more officials who are entitled to undertake this assessment on its behalf.

- 4.3 If the Contracting Authority decides that the results of the Services performed are not satisfactory, the results of the Services performed will not be accepted. In such an event, the provisions of Chapter VI will apply.

5. Replacement of staff responsible for performing the Services

- 5.1 Only in exceptional circumstances may the Contractor replace staff who are responsible for performing the Services.

- 5.2 Without the prior written consent of the Contracting Authority, the Contractor is not entitled to replace either temporarily or permanently the staff who are responsible for performing the Services. The Contracting Authority will not withhold its consent without good reason and is entitled to attach certain conditions to its consent. The fees charged for the staff originally deployed on the Contract may not be raised if they are replaced.

5.3 If the Contracting Authority wishes to replace staff who are responsible for performing the Services, because it feels that this is either necessary or desirable in the interests of the success of the Contract, the Contractor will comply with the Contracting Authority's request. The fee charged will not be any higher than that laid down in the Contract as applying to the staff replaced.

5.4 If staff responsible for performing the Contract are replaced, the expertise, qualifications and experience of the replacement staff deployed by the Contractor should be at least equal to those of the original staff.

6. Use of Contracting Authority's property and third-party services

6.1 In performing the Services, the Contractor may make use of property belonging to the Contracting Authority, which the Contracting Authority has lent to the Contractor for this purpose. Certain conditions may be attached to the loan of property.

6.2 In performing the Contract, the Contractor may make use of third-party services only once it has obtained the Contracting Authority's written permission to do so. The Contracting Authority will not withhold its permission without good reason and is entitled to attach certain conditions to its permission. The fact that the Contracting Authority has given its permission does not affect the Contractor's responsibility and liability for discharging the obligations imposed on it under the Contract, and for discharging the obligations imposed on it as an employer under tax and social insurance law.

III RELATIONSHIP BETWEEN PARTIES AND STEERING COMMITTEE

7. Progress reports

The Contractor will report to the Contracting Authority on the progress of the work as often as, and in a manner as the Contract prescribes, or as the Contracting Authority deems fit.

8. Representatives

- 8.1 Both parties will designate a representative who will be responsible for maintaining contacts in relation to the performance of the Contract. The parties will notify each other in writing of the person they have appointed as their representative.
- 8.2 The representatives are entitled to represent and bind the parties, unless otherwise provided in the Contract.

9. Steering committee

The Contract may provide for the formation of a steering committee whose duties, powers and composition may be regulated by the Contract.

10. Method of notification

- 10.1 All notices given by the parties in accordance with the terms of the Contract must be in writing.
- 10.2 Oral statements, promises and arrangements have no legal force unless confirmed in writing.

11. Confidentiality

- 11.1 The Contractor undertakes not to divulge in any way any information that comes to its knowledge in performing the Contract and which it knows or may reasonably be assumed to know is confidential, except in so far as it is compelled to divulge such information under a statutory regulation or court ruling.
- 11.2 The Contractor will impose the same duty of confidentiality on its staff.
- 11.3 The Contractor will ensure that any of its staff who work on the Contract, in so far as such work is performed on the Contracting Authority's premises, observe the rules on the observation of confidentiality adopted by the Contracting Authority.
- 11.4 Neither party will issue press releases or make other public statements about the present Contract other than with the prior written consent of the other party. It is not

necessary to obtain such consent if the party in question is under a statutory obligation to publish information.

11.5 The Contractor is obliged to hand over to the Contracting Authority, within 14 days of the completion of the work, all information (i.e. written documents, computer files, etc.) which the Contractor has in its possession for the purpose of performing the Contract.

11.6 If the Contractor acts in breach of its duty of confidentiality, the Contracting Authority is entitled to impose a penalty the value of which is laid down in the Contract. Payment of the penalty, which is payable forthwith, does not discharge the Contractor from its liability for indemnifying any loss caused by the breach.

12. Security

12.1 The Contractor is obliged to ensure that any of its Staff who work on the Contract, in so far as such work is performed on the Contracting Authority's premises, observe the Contracting Authority's security procedures and internal rules. The Contracting Authority will inform the Contractor in good time about these procedures and rules.

12.2 The Contracting Authority is entitled to require certificates of good conduct to be produced in respect of the Contractor's Staff, at least three days before they start work on the Contracting Authority's premises.

12.3 The Contracting Authority is at all times entitled to carry out security checks on members of the Contractor's Staff who are or are to be deployed on the Contract, in accordance with the rules usually applied by the Contracting Authority. The Contractor will lend its full cooperation to any such security checks. The Contracting Authority is entitled, on the strength of the results of a security check, to refuse to allow the person in question to work on the Contract.

IV PAYMENT AND UPWARD AND DOWNWARD CONTRACT VARIATIONS

13.1 The Contracting Authority will pay for all costs actually incurred and all hours actually worked by the Contractor, unless a fixed fee has been agreed in the Contract.

- 13.2 Should any additional requirements stipulated by the Contracting Authority, any new information that is brought to the notice of the Contracting Authority, or any new statutory regulations affecting the work in question, lead to the work performed by the Contractor under the Contract becoming demonstrably more demanding or time-consuming, this additional work will be deemed to constitute an upward contract variation for which the Contractor is entitled to charge a fee. Additional work and/or new information which the Contractor could have foreseen when the Contract was signed is not regarded as constituting an upward contract variation. If a party regards a particular request as constituting an upward contract variation, it will notify the other party thereof in writing as quickly as possible.
- 13.3 The Contractor will not start work on any additional work that constitutes an upward contract variation until it has received a written order to this effect from the Contracting Authority. In order to obtain such a written order, the Contractor will issue a written quotation describing the amount of additional work that is to be performed, its duration and cost. Any additional work performed by the Contractor will be subject to the provisions of the Contract, including those on fees and discounts, where relevant, in so far as these have not been amended by the written order placed by the Contracting Authority. When submitting a quotation, the Contractor is not entitled to impose terms and conditions that are either more detailed or more stringent than the original Terms and Conditions, unless it does so with the Contracting Authority's consent.
- 13.4 The Contractor is obliged to accept and carry out an order for additional work representing up to a maximum of 15% of the original Contract value. Such an order for additional work is subject to the provisions of the Contract.
- 13.5 Should any new information that is brought to the notice of the Contracting Authority, or any new statutory regulations affecting the work in question, lead to the work performed by the Contractor under the Contract becoming demonstrably less demanding or time-consuming, this will be deemed to constitute a downward contract variation for which the Contracting Authority is entitled to a discount. If a party regards a particular change as constituting a downward contract variation, it will notify the other party thereof in writing as quickly as possible. If a fixed fee has been agreed, the parties will consult to agree on the value of the discount, which will be deducted from the agreed fee.

V FINANCIAL PROVISIONS

14. Invoicing

- 14.1 Unless otherwise agreed, the right to payment arises only after the Contracting Authority has accepted the results of the Services performed. The Contractor will invoice the Contracting Authority within 30 days of acceptance.
- 14.2 The Contractor will invoice the Contracting Authority in duplicate. Each invoice will state the date and number of the Contract and the relevant VAT charge. The Contractor will enclose a copy of the notice of acceptance with the invoice, together with any other information requested by the Contracting Authority.
- 14.3 If it has been agreed that the invoice will be based on the actual amount of time spent as calculated after the completion of the contract, the Contractor will compile an itemised invoice in a format which the Contracting Authority is free to specify. The Contractor's invoice will state the number of days and hours actually and necessarily spent on the Contract, as well as the relevant dates, and will also contain a brief description of the work performed, and of any travel and accommodation expenses if these are not included in the daily or hourly rates.
- 14.4 The Contractor will present separate invoices for any upward contract variations after the additional work in question has been completed and after it has been accepted by the Contracting Authority. The invoice or invoices will explicitly state the nature and amount of the additional work performed, which will be itemised on the strength of original documents.

15. Payment and invoice checks

- 15.1 The Contracting Authority will pay the Contractor the amounts owing under the Contract no later than 45 days after receiving the relevant invoice.
- 15.2 If the Contracting Authority fails without good reason to pay an invoice within the time limit stipulated in article 15.1, it will automatically be liable to pay statutory interest on the amount outstanding. The Contractor is not entitled to the payment of interest if the invoice in question has not been drawn up in accordance with the provisions of articles 14.2 to 14.4.

- 15.3 The Contracting Authority is at all times entitled to instruct an accountant designated by the Contracting Authority, as referred to in article 393 (1) of Book 2 of the Dutch Civil Code, to check the accuracy of the invoices submitted by the Contractor. The Contractor will allow the accountant to inspect its books and documents, and will supply him or her with any information he or she requests. This inspection is confidential and does not involve any more than whatever is necessary for the purpose of checking the invoices. The accountant will report as quickly as possible to both parties. The Contracting Authority will pay the cost of the accountant's inspection, unless the latter's work reveals that the invoices in question are not accurate or complete, in which case the Contractor will be liable for the cost of the accountant's inspection.
- 15.4 The Contracting Authority is entitled to defer payment of an invoice or a portion thereof, about which the parties have failed to reach agreement, for the duration of the accountant's inspection. The Contracting Authority will exercise this right only if it has reasonable doubts about the accuracy of the invoice in question.
- 15.5 The Contractor is not entitled to suspend or terminate its work on account of the Contracting Authority's failure to pay an invoice within the stipulated time limit, or if the Contracting Authority does not pay an invoice because it suspects that the invoice is inaccurate or because the Services have not been properly performed.

16. Advance

- 16.1 If the Contracting Authority, for the purpose of performing the Contract, makes one or more payments for Services that have not yet been rendered, it may require the Contractor to issue the Contracting Authority with a 'stand-by' bank guarantee prior to making the payment or payments in question, to the value of the payment or payments in question. The Contracting Authority will not be required to pay any of the cost of the guarantee. If the Contracting Authority does not accept certain Services within the stipulated time limit as a result of a failure that is attributable to the Contractor, the Contractor is liable to pay statutory interest on the advance for as long as the failure persists.

- 16.2 The 'stand-by' bank guarantee will be issued by a bank approved by the Contracting Authority, and will be drawn up in accordance with the model enclosed with these Terms and Conditions (see Annexe 1).

VI NON-PERFORMANCE, DISSOLUTION AND TERMINATION

17. Potential delays

- 17.1 If there is any possibility of the work being delayed, the Contractor will immediately notify the Contracting Authority in writing of this possibility, and will in doing so explain the reasons for and the consequences of the potential delay. The Contractor will also suggest action that could be taken to avoid this and other future potential delays.
- 17.2 Within 14 days of receiving the notification referred to in the preceding paragraph, the Contracting Authority will notify the Contractor whether or not it agrees with the proposed action and the consequences described by the Contractor. Such an expression of agreement does not imply any acceptance by the Contracting Authority of the cause of the potential delay, and does not affect any other rights vested in the Contracting Authority under the Contract.

18. Penalty

- 18.1 If the Services have not been performed in full in accordance with the terms of the Contract within the time limit as agreed or extended, the Contractor will owe the Contracting Authority an immediately payable penalty of 0.1% of the total or maximum Contract price, plus VAT, for every day on which the failure persists, subject to a maximum of 10% of the total or maximum Contract price. Once it is clear that there is no prospect whatsoever of the Services being performed in full for reasons other than force majeure, the Contractor will immediately be liable to the full penalty.
- 18.2 The penalty is payable to the Contracting Authority without prejudice to all its other rights, including:
- a. its right to demand that the Services be performed as agreed;
 - b. its right to compensation.

18.3 The penalty will be set-off against the sums owed by the Contracting Authority, irrespective of whether the rights to such sums have been assigned to a third party.

19. Liability

19.1 If one of the parties fails to discharge its obligations under the Contract, the other party is entitled to give notice of default. The defaulting party is deemed to be immediately in default, however, once it is clear that there is no prospect whatsoever of it discharging the obligations in question within the stipulated time limit for reasons other than force majeure. The notice of default will be given in writing, and the defaulting party will be given a reasonable period of time in which to discharge its obligations. Time is of the essence here: the defaulting party is in default if it fails to discharge its obligations by the deadline set.

19.2 The notice of default referred to in the preceding paragraph is not required if the time limit by which the agreed Services should have been performed has been extended prior to its expiry. If the defaulting party fails to discharge its obligations as described in the preceding paragraph by the end of the extended time limit, the defaulting party is held to be immediately in default as from that date.

19.3 A party who imputably fails to discharge its obligations is liable to the other party for any loss incurred by the other party.

19.4 The Contractor hereby indemnifies the Contracting Authority against any third-party claims for damages resulting from a failure as described in the third paragraph hereof.

19.5 If, in performing the Services, the Contractor makes use of property belonging to the Contracting Authority as referred to in article 6.1, the Contractor is liable for any damage caused to such property. If damage of whatever nature is caused to the Contractor and/or third parties as a result of the Contractor holding the Contracting Authority's property for the purpose of performing the Services, the Contractor will be wholly liable for this damage. Where necessary, the Contractor will indemnify the Contracting Authority against third-party claims in this connection.

19.6 The Contractor is liable for all obligations in respect of the Contractor's Staff, including those arising under tax and social insurance law. The Contractor hereby indemnifies the Contracting Authority against any liability in this connection.

20. Force majeure

The term 'force majeure' is taken in any event not to include: staff shortages, strikes, staff illness, late delivery or the unsuitability of items required for the performance of the Contract, in so far as these circumstances affect or are caused by the defaulting party or the party who fails to discharge its obligations. The term 'force majeure' also excludes non-performance on the part of third parties engaged by the Contractor, as well as liquidity or solvency problems affecting the Contractor or third parties engaged by the Contractor.

21. Dissolution and termination

21.1 Without prejudice to the other provisions of this Contract, either party is entitled to dissolve the Contract in full or in part out of court by registered mail, if the other party remains in default even after being sent a written notice of default in which it is given a reasonable period of time in which to remedy the situation. Once it is clear beyond doubt that, for reasons other than force majeure, the defaulting party will not be able to discharge the obligations in question within the agreed period of time, the defaulting party is held to be immediately in default and there is no longer any need to give it a reasonable period of time in which to remedy the situation.

21.2 The time limit referred to in the preceding paragraph does not need to be imposed if the original time limit has been extended prior to its expiry and the defaulting party has failed to remedy the situation as described in the preceding paragraph by the end of the extended period.

21.3 If one of the parties, for the duration of a period defined in the Contract, is unable to discharge its obligations under the Contract as a result of force majeure, the other party is entitled to dissolve the Contract forthwith in full or in part out of court by registered mail, without its action creating any entitlement to compensation.

21.4 The Contracting Authority is entitled to dissolve the Contract out of court by registered mail, without being required to send any demand or notice of default, if the

Contractor applies for or is granted a provisional or definitive suspension of payments, files for bankruptcy, is declared bankrupt, if its business is wound up, if it ceases trading, if a substantial proportion of its assets are seized, or if it is deemed on any other grounds to be no longer capable of discharging its obligations under the Contract.

- 21.5 The Contracting Authority retains the right to terminate the Contract at any time by giving notice of termination by registered mail. In such an event, the Contracting Authority and the Contractor will reach a financial settlement based on the Services performed by the Contractor for the purpose of discharging the present Contract, the reasonable costs incurred by the Contractor, and reasonable future commitments already assumed for the purpose of discharging the present Contract. The Contracting Authority is not under any obligation to compensate the Contractor in any way whatsoever for the consequences of the termination of the Contract.

22. Retention of right to demand fulfilment

The fact that one of the parties omits to demand the fulfilment of any provision of the Contract within a time limit set by the Contract does not affect its right to demand fulfilment at a later date, unless the party in question has expressly agreed with the non-fulfilment in writing.

VII MISCELLANEOUS

23. Intellectual property rights

- 23.1 The Contracting Authority is the owner of all intellectual property rights that may be exercised now or in the future in relation to the results of the Services performed, irrespective of where and when they may be exercised. In pursuance of the Contract, the Contractor transfers these rights to the Contracting Authority as soon as they arise. The Contracting Authority hereby accepts the transfer of these rights.
- 23.2 In so far as a separate instrument needs to be executed for the transfer of the rights referred to in article 23.1, the Contractor hereby irrevocably authorises the Contracting Authority to draft such an instrument and sign it on the Contractor's behalf, without prejudice to the Contractor's obligation to cooperate in the transfer of these rights as soon as the Contracting Authority requests it to do so, without

attaching any conditions to its cooperation. In consequence, the Contractor irrevocably authorises the Contracting Authority to have the transfer of these intellectual property rights registered in the appropriate registers.

23.3 The Contractor hereby renounces vis-à-vis the Contracting Authority any moral rights vested in it, i.e. the Contractor, as referred to in the Copyright Act 1912, in so far as the relevant regulations allow it to renounce these rights. Acting both in its own capacity and on behalf the members of its Staff working on the Contract, and as authorised to this end, the Contractor hereby renounces vis-à-vis the Contracting Authority any moral rights vested in these members of its Staff, in so far as the relevant regulations allow it to renounce these rights.

23.4 The Contractor is not entitled to make the results of the Services performed available to third parties in any form, nor to give third parties any information about them, unless the Contracting Authority has given its express consent in writing for the Contractor to do so. The Contracting Authority is entitled to attach certain conditions to its consent.

23.5 The Contractor hereby indemnifies the Contracting Authority against all claims brought by third parties in respect of any breach of their intellectual property rights, including equivalent claims relating to knowledge, unlawful competition and suchlike. The Contractor is obliged to take any action that may help to prevent stagnation and to limit the additional costs and/or losses incurred as a result of such breaches, and to do so at its own expense.

23.6 Without prejudice to the above provisions, the Contracting Authority is entitled, if a third party holds the Contractor liable for a breach of its intellectual property rights, to dissolve the Contract in full or in part out of court. The Contracting Authority will not exercise its right to dissolve the Contract until it has first consulted the Contractor.

24. Assignment of rights and obligations under the Contract

With the exception of the right to payment of fees, neither party is entitled to assign to a third party the rights and obligations arising under the Contract without the written consent of the other party. The other party will not withhold its consent without good reason. The parties may attach certain conditions to such consent.

25. Insurance

- 25.1 The Contractor has taken out and will retain adequate insurance cover in respect of the following risks:
- a. professional liability, i.e. the risks arising from Professional Errors;
 - b. business liability, including liability for damage caused to persons or the Contracting Authority's property;
 - c. loss of or damage caused to business property (including as a result of fire or theft), including to items of property owned by the Contracting Authority.
- 25.2 At the Contracting Authority's request, the Contractor will immediately present either the original or certified copies of the policies and proof of the payment of premium for the insurances referred to in paragraph 1. The Contractor will not terminate either the insurance contracts or the terms applying to them without the Contracting Authority's prior written permission. Nor will the Contractor change the insured sum to the Contracting Authority's disadvantage without the Contracting Authority's prior written permission. The insurance premiums owed by the Contractor are deemed to be included in the agreed prices and fees.
- 25.3 The Contractor assigns in advance all rights to the payment of insurance benefits as referred to in paragraph 1, in so far as such benefits relate to damage for which the Contractor is liable to the Contracting Authority under the Contract. The Contractor is obliged to notify its insurance company in writing of this assignment and to send a copy of this written notice to the Contracting Authority, without prejudice to the Contracting Authority's right to notify the insurance company itself. Any insurance benefits paid directly by the insurance company to the Contracting Authority will be deducted from the amount of compensation the Contractor is required to pay to the Contracting Authority in respect of the insured event.

26. Employment of other party's staff, bribery and conflict of interests

- 26.1 Neither party is entitled to employ members of the other party's staff, or to negotiate with members of the other party's staff on the possibility of the latter entering into its employment, without the other party's written consent both during the term of the Contract and for a period of one year following its termination. The other party will not withhold its consent without good reason.

- 26.2 The parties will not offer to each other or to third parties, or ask or accept (whether in fact or as a promise) from third parties, whether for themselves or for any other party, any gift, reward, compensation or benefit of any form whatsoever that could be construed as constituting an illicit practice. Such a practice may form grounds for dissolving the Contract either in full or in part.
- 26.3 Should it transpire that a member of the Contracting Authority's Staff is also in the Contractor's employment, regardless of whether or not such employment is paid, or was in the Contractor's employment at the time when negotiations took place on the formation of the Contract, and that the Contracting Authority was not aware of this during the period leading up to the signing of the Contract, the Contracting Authority is entitled to dissolve the Contract with immediate effect, without being required to give any notice of default or to pay any compensation.
- 26.4 The Contractor is not entitled, other than with the Contracting Authority's consent, to deploy staff on the Contract who were employed by the Contracting Authority during a period of two years prior to the start of the work.

27. Invalidity

If one or more provisions of the Contract are found to be invalid or are nullified by a court of law, the remaining provisions will retain their legal force. The parties will consult on the former provisions in order to make an alternative arrangement. Any alternative arrangement that is made may not detract from the essence of the Contract.

28. Follow-up order

The Contract does not entitle the Contractor to any follow-up orders.

29. Publicity

The Contractor may not refer to the Contract in publications or advertisements and may use the Contracting Authority's name as a reference only with the Contracting Authority's written consent.

30. Long-term obligations

Obligations which by their nature are intended to persist after the Contract has been performed will remain in force after the expiry of the Contract. Such obligations include indemnification against breaches of intellectual property rights, confidentiality, the assignment of rights to insurance benefits, the settlement of disputes, the choice of domicile and applicable law.

31. Disputes and applicable law

31.1 Any dispute between the parties in relation to the Contract will only be submitted to the competent court in the district of The Hague, unless the parties agree on an alternative means of settlement at the time when a dispute arises.

31.2 The Contract is governed by Dutch law.