

General Terms and Conditions of PHIDRA ACCOUNTANTS & ADVISEURS

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Article 1. DEFINITIONS

1. The definitions stated with capital letters have the following meanings in the context of these general terms and conditions:

a. Accountants practice: Accountants practice as defined in the Code of Conduct Regulation;

b. Documents: All information or data made available by the Client to the Contractor, whether or not contained in immaterial/material carriers including - but not limited to: paper, CD-ROMs, hard disks, email and digital environments, whether or not transferred to third parties, as well as all data produced or collated by the Contractor in the context of the execution of the Assignment/Agreement, whether or not contained in immaterial/material carriers including - but not limited to: paper, CD-ROMs, hard disks, email and digital environments, whether or not transferred to third parties, as well as all other information of any relevance for the execution or completion of the Assignment, whether or not contained in immaterial/material carriers;

c. Assignment/Agreement: The contract for services whereby the Contractor undertakes towards the Client to execute specific Work;

d. Client: The natural person or the legal entity who/which has provided the Contractor with the assignment for execution of the Work;

e. Contractor: Phidra Accountancy B.V., Phidra Audit & Assurance B.V., Phidra Belastingadvies B.V., Phidra Administratie B.V., Phidra Personeelsadvies B.V., Phidra Accountants & Adviseurs. All Assignments are exclusively accepted and executed by the Contractor, not by or on behalf of an individual Employee, regardless of whether the Client has provided the Assignment expressly or tacitly for the purpose of execution thereof by a specific Employee or specific Employees. The applicability of Sections 404, 407, subsection 2, and 409 Book 7 of the Civil Code is expressly excluded;

f. Code of Conduct Regulation: Code of Conduct Regulation, to be distinguished in Chartered Accountant Code of Conduct Regulation (Chartered Accountant) and Accounting Consultant Code of Conduct Regulation (Accounting Consultant). The Chartered Accountant Code of Conduct Regulation can be found at www.nivra.nl and the Accounting Consultant Code of Conduct Regulation at www.novaa.nl;

g. Employee: A natural person employed by or associated with the Contractor whether or not on the basis of an employment contract;

b. Work: All work to be executed by the Contractor for the benefit of the Client for which an assignment is provided and which has been accepted by the Contractor, as well as all work ensuing therefrom for the Contractor.

2. Articles 1.1.a, 1.1.f, 5 and 17 subclause 3 only apply insofar as Phidra Audit & Assurance B.V. acts as the contractor.

Article 2. APPLICABILITY/COMING INTO EFFECT

1. These general terms and conditions apply to: all tenders, offers, assignments, legal relationships and agreements, by whatever name, whereby the Contractor undertakes/will undertake to execute Work for the Client, as well as all Work ensuing therefrom for Contractor, as well as successive assignments.

2. Derogations from, or addendums to, these general terms and conditions, will only be valid if these have been expressly agreed in writing, in for example, an agreement (in writing) or a confirmation of the assignment.

3. In the event that these general terms and conditions and the confirmation of the assignment contain inconsistent conditions, the conditions included in the confirmation of the assignment will apply.

4. The applicability of the general terms and conditions of the Client is expressly rejected by the Contractor.

5. The underlying Assignment/Agreement - together with these general terms and conditions - represents the complete arrangements between the Client and the Contractor with regard to the Work for which the Agreement is concluded. All arrangements or proposals made earlier between parties related to this matter have lapsed.

6. Notifications by email, or as the case may be in another electronic manner, sent by the Contractor will be deemed to have been received by the Client on the day of the sending, with the exception of proof to the contrary.

7. Offers and tenders from the Contractor are always without obligation.

8. If the acceptance (whether or not on minor points) derogates from the offer included in the offer or tender, the Contractor will not be bound thereby, unless the Contractor expressly accepts this in writing (including by email).

Article 3. CLIENT DATA

1. The Client will be obliged to make all Documents, which the Contractor requires in the Contractor's opinion for the correct execution of the Assignment provided, available to the Contractor (a) in the required form, (b) in the required manner and (c) in a timely manner. The Contractor will determine what must be included in the required form, the required manner and in a timely manner.

2. The Client guarantees the accuracy and reliability of the Documents provided by the Client, also if these originate from third parties, insofar as this does not ensue otherwise from the nature of the Assignment.

3. The Contractor has the right to suspend the execution of the Assignment until the time when the Client has fulfilled the obligations stated in the first and second subclause.

4. The Client indemnifies the Contractor against damage resulting from inaccurate or incomplete Documents.

5. The extra costs incurred by the Contractor and extra hours worked by the Client, as well as the further damage on the part of the Contractor, due to not, not in a timely manner, or not proper provision by the Client of the Documents necessary for the execution of the Work, will be at the Client's expense.

6. The Contractor will, upon first request from the Client, return to the Client the original Documents provided by the Client.

Article 4. EXECUTION OF THE ASSIGNMENT

1. The Contractor will execute the Assignment to the best of the Contractor's abilities and with due regard to the applicable legislation and (professional) regulations.

2. The Contractor determines the manner in which the Assignment will be executed and by which Employee(s).

3. The Contractor has the right to have the Work executed by a third party to be appointed by the Contractor.

Article 5. (PROFESSIONAL) REGULATIONS

1. The Client will each time provide full cooperation to the obligations ensuing for the Contractor from the applicable (professional) regulations.

2. The Client is aware that the Contractor - inter alia, but not exclusively -:

a. can be obliged on the basis of applicable legislation and regulations to report specific transactions, described in the legislation and regulations, which become known to the Contractor during the execution of the Work, to the authorities set up for this by the government;

b. on the basis of applicable legislation and regulations must in certain situations report fraud;

c. pursuant to applicable legislation and regulations can be obliged to conduct an inspection of the (identity of) the Client, or the customer.

3. The Contractor excludes any liability for damage which arises for the Client resulting from the Contractor complying with the legislation and (professional) regulations applicable to the Contractor.

4. The Contractor will be entitled to use the findings acquired after the processing of figures, provided that these cannot be traced back to individual Clients, for statistical or comparable purposes.

Article 6. INTELLECTUAL PROPERTY

1. The execution of the Assignment by the Contractor does not include the transfer of intellectual property rights which are vested in the Contractor. All intellectual property rights arisen during, or ensuing from, the execution of the Assignment belong to the Contractor.

2. The Client is expressly prohibited from reproducing, disclosing or utilising the products, which the intellectual property rights of the Contractor are attached to, or products which intellectual property rights are attached to and with regard to the use of which the Contractor has acquired rights of use - including in this context in any event, but not limited to: computer programs, system designs, working methods, advice, (model) contracts, templates, macros and other intellectual work.

3. The Client is not permitted to provide the products referred to in the second subclause to third parties, without prior permission in writing from the Contractor, other than for the acquisition of an expert opinion with regard to the execution of the Work by the Contractor. In that event the Client will impose the Client's obligations on the basis of this article on the third parties engaged by the Client.

Article 7. FORCE MAJEURE

1. If parties cannot, not in a timely manner, or not properly, fulfil the obligations under the Agreement resulting from force majeure within the meaning of Section 75 Book 6 Civil Code, these obligations will be suspended until the time when parties at a later date will be able to fulfil these in the agreed manner.

2. In the event of the situation as referred to in the first subclause occurring, parties will have the right to terminate the Agreement in writing, wholly or in part, and with immediate effect, without the right to any compensation existing.

Article 8. PRICES/FEE

1. All prices stated are excluding any costs to be incurred in the context of the Agreement, including travel and accommodation costs and turnover tax (VAT) and other duties imposed by authorities, unless agreed otherwise. The price stated by the Contractor for the work to be executed by the Contractor (hereinafter referred to as: "the performance"), applies exclusively to the performance in conformity with the agreed specifications. The Contractor will be entitled to increase the agreed price if, after the concluding of the Agreement there is unforeseen extra work, or an increase of the costs that must be incurred related to the performance of the Agreement, or as a result of legislation or regulations, or as the case may be when this is reasonable on another ground.

2. The Work executed by the Contractor will be charged to the Client, on the basis of time spent and costs incurred.
3. In addition to the fee, the expenses incurred by the Contractor and the invoices of third parties engaged by the Contractor will be charged to the Client.
4. The Contractor has the right to request an advance payment from the Client.
5. If, after the coming into effect of the Agreement, but prior to the Assignment being entirely executed, fees or prices are changed, the Contractor will be entitled to adjust the agreed rate accordingly.
6. The fee, if necessary plus advance payments and invoices of engaged third parties and expenses incurred, will be charged per month. If the law makes this mandatory, turnover tax will be charged separately over all amounts owed by the Client to the Contractor.

Article 9. PAYMENT

1. Payment by the Client of the amounts owed to the Contractor must take place, without the Client having any right to any deduction, suspension, reduction or set-off, within 14 days after the invoice date, unless agreed otherwise. The day of payment is the day of the transfer of the amount owed to the Contractor's account.
2. If the Client has not paid within the period referred to in the first subclause, or within another period agreed between parties, the Client will be in default by operation of law and the Contractor will be entitled to charge the statutory (commercial) interest from that time.
3. If the Client has not paid within the period referred to in the first subclause the Client will be obliged to payment of all judicial and extrajudicial (collection) costs incurred by the Contractor. The reimbursement of the costs incurred will not be limited to any order to pay costs recorded by the court.
4. In the event of a jointly provided Assignment, the Clients, insofar as the Work is executed for the benefit of the Clients jointly, will be jointly and severally liable for the payment of the invoice amount and the interest and costs owed.
5. If the financial position or the payment record of the Client gives cause for this in the opinion of the Contractor, or if the Client omits to make an advance payment, or to pay an invoice within the payment term set out for this, the Contractor will be entitled to require that the Client promptly provides (additional) security in a form to be determined by the Contractor. If the Client omits to provide the required security the Contractor will be entitled, without prejudice to the Contractor's other rights, to immediately suspend the further performance of the agreement, and all that which the Client owes to the Contractor on whatsoever basis, will be immediately due and payable.

Article 10. PERIODS

1. If a period/date has been agreed between the Client and the Contractor within which the Assignment must be executed and the Client omits to:
 - (a) make an advance payment - if agreed - or
 - (b) make the necessary Documents available in a timely manner, completely, in the required form and in the required manner, the Client and the Contractor will enter into consultation regarding a new period/date within which the Assignment must be executed.
2. Periods within which the Work must be completed are only to be regarded as a final deadline if this has been agreed expressly and in so many words between the Client and the Contractor. The Contractor will only be in default after the Client has given the Contractor proper notice of default.

Article 11. LIABILITY AND INDEMNITY

1. The Contractor will not be liable for damage on the part of the Client which has arisen due to the fact that the Client has provided inaccurate or incomplete Documents to the Contractor.
2. The Contractor will not be liable for any consequential loss, loss of profits or indirect loss, which is the result of non-performance, or late performance, or unsatisfactory performance by the Contractor.
3. The Contractor will be exclusively liable towards the Client for damage that is the direct result of (a connected series of) attributable failure(s) in the execution of the Assignment. This liability is limited to the amount, which according to the Contractor's the liability insurer, will be paid for the event concerned, plus any amount of the excess which under the policy conditions is not borne by the insurer and is on the basis of the insurance to be borne by the Contractor.
4. If, for whatsoever reason, the liability insurer does not proceed with payment, the liability on the part of the Contractor will be limited to the amount of the fee charged for the execution of the Assignment. If the Assignment concerns a continuing performance contract with a term of more than one year the amount referred to above will be set at thrice the amount of the fee, which is charged to the Client in the twelve months prior to the arising of the damage. Under no circumstances will the total compensation of the damage on the basis of this article amount to more than € 25,000 per incident, whereby a series of connected incidents apply as one single event, unless parties - having regard to the scope of the Assignment, or the risks which accompany the Assignment - see reason at the entering into the Agreement to derogate from this maximum.
5. The limitations of liability included in this article do not apply if and insofar as there is intention or wilful recklessness on the part of the Contractor or the Contractor's managerial staff.
6. The Client will be obliged to take damage limitation measures.

7. The Client indemnifies the Contractor against claims by third parties due to damage caused due to the fact that the Client has not provided Documents or has provided inaccurate or incomplete Documents to the Contractor.
8. The Client will indemnify the Contractor against claims by third parties (including employees of the Contractor and third parties engaged by the Contractor), who suffer damage related to the execution of the Assignment, which is the result of the acts or omissions of the Client or of unsafe situations in the Client's company or organisation.
9. The Contractor will furthermore not be liable for damage that is caused by the acts or omissions on the part of the auxiliary persons engaged by the Contractor, including incidents of intention and gross negligence on the part of these auxiliary persons.
10. The Contractor will furthermore not be liable for damage arisen on the part of the Client or third parties, as a result of failure or breakdowns in the delivery of services or products by offerors of for example energy, internet services, telecommunication companies, or similar (utility) companies and/or other suppliers/service providers of the Contractor.
11. The Contractor will not be liable for misuse of user names and passwords, and can presume that a user, who registers with the user name and the password of a Client, is in fact this user. As soon as the Client knows, or has reason to suspect, that the user names and passwords have come into the hands of unauthorised persons, the Client must immediately inform the Contractor of this (within 24 hours), without prejudice to the personal obligation on the part of the Client to immediately and personally take effective measures.
12. The Contractor will not be liable for damage to, or loss of, documents during transport, or during sending by mail, regardless of whether the transport or the sending takes place by or on behalf of the Client, the Contractor, or third parties. Parties acknowledge that the use of electronic email entails risks.
13. The Contractor will not be liable for damage arisen on the part of the Client or third parties caused by software delivered by, or under the responsibility of, the Contractor, for errors, defects, or imperfections in advice, designs and analyses during the development of software and/or procedures, and for changes in existing software and/or procedures and files. The Contractor furthermore will not be liable for damage, destruction, loss, or contamination of information carriers and/or information software, files and procedures present therein.

Article 12. NOTICE/TERMINATION

1. The Client and the Contractor can at any time terminate the Agreement (in the interim) without due regard to a notice period. If the Agreement terminates before the Assignment is completed the Client will owe the fee in accordance with the hours stated by the Contractor for Work executed for the benefit of the Client.
2. Termination must take place in writing.
3. If the Client has proceeded with (interim) termination, the Contractor will have the right to compensation of loss resulting on the part of the Contractor from lower capacity utilisation, as well as reimbursement of additional costs which the Contractor has already incurred, or must still incur and costs ensuing from any (impossibility of) cancellation of engaged third parties (such as - inter alia - any costs with regard to subcontracting). The aforesaid damage will be fixed at 25% of the assignment amount, without prejudice to the Contractor's right to claim the actual damage insofar as the actual damage suffered exceeds the 25% referred to.
4. If the Contractor proceeds with (interim) termination, the Client will have the right to cooperation from the Contractor during the transfer of work to third parties, unless there is intention or wilful recklessness on the part of the Client as a result of which the Contractor is compelled to proceed with termination. It is conditional to the right of cooperation, as determined in this subclause, that the Client has paid all underlying outstanding advance payments or as the case may be all invoices.
5. Without prejudice to the provisions of the other articles of these terms and conditions the Contractor will have the right to terminate the Agreement without judicial intervention and without the requirement of any notice of default at the time when the Client:
 - a. is declared insolvent;
 - b. applies for (provisional) moratorium;
 - c. becomes subject to an attachment under a warrant of execution;
 - d. becomes subject to a guardianship or administration order;
 - e. otherwise loses the power of disposition or legal capacity with regard to the Client's assets or parts thereof.
6. The provisions of subclause 1 of this article apply, unless the receiver or the administrator acknowledges the obligations ensuing from the Agreement as super preferential estate debts and will immediately pay these.

Article 13. RIGHT OF SUSPENSION

1. The Contractor will be entitled, after careful balancing of interests, to suspend the fulfilment of the Contractor's obligations, including the handing over of Documents or other items to the Client or third parties, until the time when all due and payable claims against the Client have been paid in full.
2. The first subclause does not apply with regard to the Client's Documents, which have not (yet) been processed by the Contractor.

Article 14. EXPIRY PERIOD

1. Insofar as these general terms and conditions do not determine otherwise, the right (to claim) and other entitlements of the Client, on whatsoever basis, including but not limited to claims on the basis of an unlawful act and/or breach of contract against the Contractor, related to the execution (or failure to execute) the Work by the Contractor, will lapse in any event 6 months after the time when the Client became aware, or reasonably could have become aware, of these rights and entitlements. This time limit does not concern the possibility to submit a complaint to the authority/authorities designated for the complaint handling and/or the Disputes Board. The aforesaid time limit can only be interrupted by means of a registered letter addressed to the Contractor, containing substantiated facts and grounds with regard to the right of claim set out.

2. With regard to invoices and/or (final) accounts concerning complaints, or rights (of claim), an expiry period of 14 days applies, after the sending of the invoice by the Contractor, during which the Client must make the complaints apparent by registered letter addressed to the Contractor, at the risk of forfeiting the right.

3. Following proper interruption of the expiry period the Client must, within 6 months after the interruption, make proceedings pending with regard to the right of claim, or the complaint alleged by the Client, unless the Contractor promises in writing to the Client that this will be derogated from.

Article 15. ELECTRONIC COMMUNICATION

1. During the execution of the Assignment the Client and the Contractor can upon request from the Client communicate with each other by means of electronic resources.

2. The Client and the Contractor will not be liable towards each other for damage which might ensue to one or other of them, resulting from the use of electronic means, including - but not limited to - damage resulting from non-delivery or delay in delivery of electronic communication, interception or interference of electronic communication by third parties, or software/equipment used for the sending, receiving or processing of electronic communication, transmission of viruses and the non-functioning, or not proper functioning of the telecommunication network, or other resources required for electronic communication, except for insofar as the damage is the result of intention or gross negligence. All this applies also to the use the Contractor makes of electronic communication - regardless of the form thereof - in the Contractor's contact with third parties, including the (Dutch) Tax and Customs Administration.

3. The Client as well as the Contractor will do or omit all that which can reasonably be expected from each of them to prevent the occurrence of the aforesaid risks.

4. The data-extracts from the sender's computer system will provide conclusive evidence of (the contents of) the electronic communication sent by the sender until the time when proof to the contrary has been provided by the recipient.

Article 16. MISCELLANEOUS PROVISIONS

1. If the Contractor executes Work at the Client's location the Client will ensure a suitable workplace, which complies with the statutory working conditions standards set out and other applicable regulations with regard to working conditions. The Client must ensure that the Contractor is in that case provided with office space and other facilities, which in the opinion of the Contractor, are necessary or useful for the performance of the Agreement and which comply with all (statutory) requirements to be set out for this. With regard to the (computer) facilities made available, the Client will be obliged to ensure continuity inter alia by means of adequate back-up, security and virus control procedures. The Contractor will apply virus control procedures when the Contractor makes use of the Client's facilities.

2. The Client will not employ or approach Employees involved in the execution of the Work, to commence employment for the Client, whether or not temporarily, directly or indirectly, to commence employment with the Client, whether or not directly or indirectly, to execute work for the benefit of the Client, whether or not in salaried employment, to execute work during the term of the Agreement, or any extension thereof and during 12 months thereafter.

Article 17. APPLICABLE LAW AND CHOICE OF FORUM

1. The Agreement is governed by Dutch law.

2. All disputes will be resolved by the court of competent jurisdiction in the district in which the Contractor, or as the case may be the Contractor's office that executes the Assignment, is actually established.

3. The provisions of subclause 1 and 2 of this article do not affect the possibility for the Client to submit a dispute to the Disputes Board and/or to follow the right of complaint procedure.

Article 18. REPAIR CLAUSE VOIDNESS

1. If any provision of these general terms and conditions, or under the underlying Assignment/Agreement, might be wholly or in part null and void and/or invalid and/or unenforceable, as a result of any provision of law, judicial decision, or otherwise, this will have no consequences whatsoever for the validity of all other provisions of these general terms and conditions or the underlying Assignment/Agreement.

2. If a provision of these general terms and conditions or the underlying Assignment/Agreement might be invalid for a reason as referred to in the previous subclause, but would be valid if this would have a more limited scope or meaning,

this provision will - for the time being - apply automatically with the most far-reaching or most extensive more limited scope or meaning whereby or with which it will be valid.

3. Without prejudice to the provisions of subclause 2 parties can, if required, enter into consultation in order to agree to new provisions to replace the null and void or voided provisions. The objective and the meaning of the null and void or voided provisions will be approached thereby as far as possible.

Our General Terms and Conditions can also be consulted at www.phidra.nl