

# General Conditions Frits Mehrstens Consultancy BV

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## 1. Definitions

The following terms are defined in these general conditions as indicated below:

- 1.1** Task: an agreement for a task in the sense of Article 7:400 et seq. of the Civil Code, in which one party, Frits Mehrstens Consultancy bv (the party carrying out the task), hereafter mentioned as FMC, undertakes to the other party, the client, to carry out consultancy activities for the organization of the client (or have them carried out). The agreement is laid down in writing and contains (inter alia) a description of the activities to be carried out.
- 1.2** Advisory task for the organization: the task to provide a contribution to determining, analyzing and solving questions of management, policy, organization and operation for a client which arise in and/or with regard to an organization and/or between organizations
- 1.3** Client: the natural person or legal person who has concluded an agreement as the other party with FMC to carry out a consultancy task for an organization (or have it carried out).
- 1.4** Executor of the task: the natural person or legal person who is charged with carrying out the task on behalf of FMC.
- 1.5** Parties: the client and FMC.

## 2. General

- 2.1** All the tasks are exclusively accepted and carried out by FMC setting aside articles 7:404, and 7:407 of the Civil Code
- 2.2** All the clauses in these general conditions have also been made on behalf of all those who are employed by FMC.
- 2.3** All the activities which are carried out by the executors of the task in the context of a task are deemed to be activities by or on behalf of FMC

## 3. Applicability of these conditions.

- 3.1** All the clauses in these general conditions apply to all the offers, activities, tenders made by FMC and to all the agreements for consultancy tasks for organization related to carrying out activities for the client including all the agreements arising from this or related to this between FMC and the client or their legal successors respectively.
- 3.2** It is possible to deviate from these general conditions only on the basis of an agreement in writing
- 3.3** If any clause in these general condition is null and void, the remainder of the agreement continues to apply and the clause concerned will be replaced on the basis of consultation between the parties by a clause which is as similar as possible to the scope of the original clause.

**3.4** FMC is competent to make changes to these conditions. The changes enter into effect at the time that FMC indicated for entering into effect. The above-mentioned changes do not have an influence on the tasks carried out during the entry into effect unless the parties agree otherwise.

#### **4. Starting points**

**4.1** FMC is responsible for the integrity of his activities, must act with expertise in relation to the task and the client, must guarantee his professional and client-related independence, avoid other interests from those of the task itself and undertakes the obligation to talk to the client regarding his conduct if he does not conduct himself as a good client.

**4.2** The client is careful about providing information which is required, whether asked for and unasked for, in order to carry out the task well and effectively.

**4.3** The client acts as a reliable partner, by promptly and wholly fulfilling agreements, including the payment of the invoices.

#### **5. Drawing up the agreement for the task**

**5.1** The agreement for the task is drawn up at the moment that the agreement for the task is signed by the parties, or the confirmation of the task and the necessary data and information on the basis of the law and regulations have been received by FMC.

**5.2** The agreement for the task is the agreement of the wishes of the client and FMC drawn up in writing which, when applicable, contains the following agreements on the content and conditions of execution of the contract:

- A description of the content and limits of the task;
- The intended aim of the task;
- The (part of) the organization to which the task relates;
- Reciprocal relations in the organization and joint working methods;
- The restrictions of the execution of the task;
- The choice of the persons executing the task to be put in by FMC and the employees deployed by the client as well as the appointment of a project leader and contact persons;
- The procedure(s) for controlling the advisory process;
- The bodies, groups or people to whom information must be provided in advance, during and after the task;
- An indication of the time required for the execution of the task, the stages of the period and the course of action if the actual period deviates from the indication;
- Determining the person or persons advised by FMC and to whom and how reports are sent on the process of the task;
- An estimate of cost and the course of action if the actual costs exceed the estimate;
- The basis for fees and the method of invoicing;
- The course of action when third parties are brought in and the invoicing for this;
- (if applicable) the property and copyrights;
- The discussion afterwards and the evaluation of the task;
- The desired or necessary aftercare.

## **6. Provision of information, employees and work space by the client.**

- 6.1** The client is responsible for ensuring that all the data and information which FMC indicates are necessary or which the client should reasonably understand are necessary for the execution of the agreement, are provided promptly and in the form and in the way as requested, to FMC.
- 6.2** If the data and information required for the execution of the agreement have not been provided promptly or correctly to FMC, FMC has the right to suspend the execution of the agreement or to charge the extra cost arising from the delay to the client in accordance with the customary rates.
- 6.3** The client is obliged to inform FMC immediately of facts and circumstances which could be important in connection with the execution of the task.
- 6.4** The client is responsible for the accuracy, completeness and reliability of the data and information provided by him or in his name to FMC
- 6.5** If FMC requests this, the client will make available employees of his own organization free of charge, who are (will be) involved in the activities of FMC.
- 6.6** If FMC requests this, the client shall make available a workplace and the (office) facilities to FMC free of charge, which could be necessary to be able to carry out a task on location.

## **7. Confidentiality**

- 7.1** FMC shall observe the rules of due diligence and confidentiality with regard to third parties who are not involved in the execution of the task, regarding all the confidential data or information that is sensitive to competition of the client which has to come to his knowledge in the context of the task, unless there is a legal or professional duty for FMC to reveal this, FMC has to defend himself before the (disciplinary) court, the client has discharged FMC from the obligation of confidentiality or the information is available through public sources. FMC must take all the precautionary measures necessary in the context of the task to protect the client's interest.
- 7.2** Without the consent of FMC, the client may not make any statement to third parties regarding the approach, procedure, content of the advice or opinions of FMC, or make this report or any other written or unwritten material available or publicise it in any other way, unless there is a legal or professional obligation for the client to make it public.

## **8. Intellectual property**

- 8.1** Models, techniques, instruments, including software and other intellectual products which have been used for the execution of the task or are included in the advice or result of the examination are and continue to be the property of FMC insofar as they are not already owned by third parties. Therefore their publication, further use or further dissemination can take place only after obtaining the consent of FMC, without prejudice to the provision of 5.2

**8.2** The client has the right to reproduce documents for use in his own organization insofar as this is appropriate with regard to the aim of the task. In the event of the interim termination of the task, the above applies accordingly.

## **9. Execution of the task.**

**9.1** The task is carried out by or on behalf of FMC in accordance with his best insight and ability and in accordance with the demands of professionalism and due diligence.

**9.2** The obligation referred to in 9.1 has the character of an obligation of due diligence because achieving the intended result cannot be guaranteed unless FMC and the client explicitly conclude an agreement in writing about the result to be achieved before accepting the task and if it has been agreed between the parties that the description of the result to be achieved can only be interpreted in one way and the result can be objectively determined (obligation with regard to results). If the obligation in writing with regard to results does not comply with the above cumulative requirements the client cannot appeal to the obligation with regard to results of FMC. The same applies if the result is not achieved for reasons unrelated to the influence of FMC.

**9.3** After consultation with the client FMC can replace one or more executors of the task.

**9.4** Involving or bringing in third parties in carrying out the task by a client or by FMC can only take place following mutual consultation.

**9.5** The client accepts that the timing and cost of the task can be changed if the parties reach an interim agreement to change the approach, procedure or size of the commission or to extend the advisory activities for the organization arising from this.

**9.6** If an interim change becomes necessary in the task or the execution of the task as a result of the activities of the client, FMC must make the necessary adaptations if the quality of the services require this. If this sort of adaptation results in additional work, this must be confirmed as an additional task by the client. If the client does not confirm this within fourteen days after being requested to do so in writing, FMC has the right to immediately terminate the agreement without any legal intervention and without being obliged to pay the client compensation for damages.

## **10. Duration and conclusion of the task**

**10.1** The duration of the task can be influenced by all sorts of factors apart from the efforts of FMC, such as the quality of the information obtained by FMC and the cooperation which is provided. Therefore FMC cannot say exactly in advance how long the period will be to carry out the task. For this reason the periods within which the activities must be completed are only firm periods if this has been agreed in writing.

**10.2** The task is concluded in a financial sense as soon as the final invoice has been approved by the client. The client must inform FMC of this within a period of 14 days after date of the final invoice. If the client does not respond within this period the final invoice is deemed to have been approved.

## **11. Interim termination of the task**

**11.1** The parties can unilaterally terminate the agreement prematurely if one of them considers that the execution of the task can no longer take place in accordance with the agreement on the task and any later additional agreements. The other party must be informed of this in writing, stating reasons, FMC or the client may only make use of the possibility of terminating the agreement prematurely if the completion of the task cannot reasonably be carried out as a result of the facts and circumstances which cannot be attributed to (the influence of the party) terminating the agreement. FMC retains the possibility to claim for the payment of the statement of expenses for activities carried out up to that time and the interim results of the activities carried out up to that time are provisionally made available to the client if possible.

**11.2** In the case that one of the parties is declared bankrupt, requests a suspension of payments or ceases business activities, the other party has the right to terminate the task without observing a period of notice, while retaining rights.

## **12. Fees**

**12.1** If forms of calculating fees are used to calculate the consultancy activities for the organization other than the amount of work and costs devoted to the task or the fee is a fixed sum, a clear description must be included of this in the agreement with the client. In that case FMC must make sure that this serves the interests of the client and that FMC's own independence is guaranteed.

**12.2** With regard to the rates and the estimates of costs based on these, the agreement explicitly states whether this includes the secretarial costs, travelling hours, travel and accommodation expenses and other costs related to the task. Insofar as these costs are not included, they can be calculated separately provided explicit agreements have been made on this in writing. Any interim change in the level of the wages and costs which imply that FMC must adapt the rates or other above-mentioned reimbursement of costs is charged on. The fee does not include any interest costs unless indicated otherwise in the agreement.

**12.3** The fee for FMC, if necessary increased by advances and statements from third parties who have been contracted in, is charged weekly, monthly, quarterly, yearly or after the conclusion of the consultancy activities for the organization, unless the client and FMC have made other agreements about this. The V.A.T. is charged separately on all the amounts due by the client to FMC.

## **13. Conditions of payment**

**13.1** The payment by the client must take place without a deduction, discount or settlement of debts within the agreed period but in no case later than 14 days after the date of the invoice. Payment must be made by means of a transfer to a bank account indicated by FMC.

**13.2** If the client has not paid within 14 days after the date of invoice FMC has the right, after he has reminded the client at least once to make the payment, to charge the client the

legal interest from the date of expiry up to the date of complete payment, without any further notification of default and without prejudice to the other rights of FMC.

- 13.3** All the reasonably incurred court costs and other cost of collection incurred to FMC as a result of the failure of the client to observe his obligations with regard to payment are at the client's expense
- 13.4** If the financial position or the payment behavior of the client gives rise to this in the opinion of FMC, FMC has the right to request the client to immediately provide (additional) security in a form determined by FMC. If the client fails to provide the required security FMC has the right, without prejudice to FMC's other rights, to immediately suspend the remaining execution of the agreement and everything which the client is due to FMC for any reason can be claimed immediately.
- 13.5** In the case of a task commissioned jointly by more than one client, the clients are severally responsible for the payment of the invoiced sum irrespective of the name on the statement, insofar as the consultancy activities for the organization have been carried out for the joint clients.

## **14. Complaints**

- 14.1** A complaint about activities carried out or about an invoiced sum must be sent to FMC in writing within 14 days after sending the documents or the information about which the client is complaining or, if the client is demonstrating that he reasonably could not have discovered the shortcoming earlier, within 14 days after the discovery of the shortcoming. Exceeding this period results in the expiry of all claims.
- 14.2** A complaint does not suspend the client's obligation for payment.
- 14.3** In the case of a justified complaint, FMC has the choice between adapting the sum of the invoice, improving the activities free of charge or carrying out the concerned activities again or to partly or wholly not/no longer carry out the task.

## **15. Liability**

- 15.1** FMC is never liable for damage as a result of shortcomings in the execution of the task unless the damage is the result of gross negligence or intent.
- 15.2** In case FMC is liable for damage as a result of shortcomings in the execution of the task the liability is limited to the sum of the fee which FMC has received related to that task during the fourteen days previous to the day the damage has occurred.
- 15.3** Any liability of FMC as mentioned in 15.1 will lapse when one month has elapsed from the time at which the damage occurred respectively at which the task has been ended by delivery, dissolution or termination.
- 15.4** In case FMC is liable according to 15.1, FMC's liability is limited to the compensation of the direct material damage. Direct material damage is never understood to mean: consequential loss, loss consequential on business interruption, loss of production, loss of turnover or profits, or decrease in value or loss of products or sums that would have been included in the operational cost if the task had been carried out well from the start.

## **16. Applicable law**

- 16.1** Dutch law is applicable to every agreement between the client and FMC.
- 16.2** Disputes arising as a result of the execution of the agreement or further agreements who are related to this agreement will be submitted to the Court of Justice in Breda, Netherlands.
- 16.3** There is a dispute as referred to in 16.2 if one of the two parties informs the other party of this by registered letter.

## **17. Final Provisions**

- 17.1** These General Conditions are registered at the Chamber of Commerce in Breda, Netherlands under number 62238221.
- 17.2** The Dutch text of the General Conditions Frits Mehrtens Consultancy bv is always prevailing for interpretation of these conditions.