



## GENERAL CONDITIONS WITH REGARD TO THE PROVISION OF SERVICES AND ADVICE BY DE HOOGE WAERDER GROUP

### A. General

In these General Conditions the following terms mean:

1. **Client:** the natural person who or legal entity which has given an assignment for the performance of activities to the contractor;
2. **Contractor:** Each of the company's of De Hooge Waerder Group, consisting of the following company's : Hooge Waerder Alkmaar B.V., De Hooge Waerder Beverwijk B.V., De Hooge Waerder Heerhugowaard B.V., De Hooge Waerder Corporate Finance B.V., De Hooge Waerder ICT B.V., De Hooge Waerder Juristen B.V, DHW International B.V., De Hooge Waerder Support B.V., De Hooge Waerder Registeraccountants B.V. en De Hooge Waerder Haarlem B.V.. All Assignments are exclusively accepted and carried out by named company's and not by or on behalf of an individual Employee regardless as to whether the Client has made the Assignment explicitly or tacitly with a view to its performance by a certain Employee or certain Employees. Sections 7:404, 7:407 subsections 2 and 7:409 of the Dutch Civil Code ('BW') are explicitly excluded from being applied.
3. **Activities:** All the activities to be performed by the Contractor for the Client for which activities the Assignment was given and which have been accepted by the Contractor as well as all activities resulting from it for the Contractor.
4. **Records:** All the information or data provided by the Client to the Contractor, whether or not incorporated in (im)material carriers including, but not limited to: hard copies, CD-ROMs, hard disks, e-mail and digital environments, whether or not placed with third parties, *as well as* all data prepared or collected in connection with the performance of the Assignment/Contract by the Contractor and whether or not they are incorporated in (im)material carriers including, but not limited to: hard copies, CD-ROMs, hard disks, e-mail and digital environments, whether or not placed with third parties, *as well as* all other information of any relevance for the performance or completion of the Assignment, whether or not incorporated in (im)material carriers;
5. **Assignment/Contract:** The assignment contract whereby the Contractor undertakes towards the Client to perform certain Activities;
7. **Employee:** a natural person employed by or connected with the Contractor whether or not on the basis of an employment contract.

### B. APPLICABILITY

1. These General Conditions are applicable to: all offers, quotations, assignments, legal relationships and agreements howsoever called under which the Contractor undertakes/will undertake to perform Activities for the Client as well as to all Activities resulting from these for the Contractor.
2. Deviations from and additions to these General Conditions will only be valid if they have been agreed explicitly in writing in for instance a (written) agreement or an assignment confirmation note.
3. In the event that these General Conditions and the assignment confirmation note include mutually conflicting conditions, the conditions in the assignment confirmation note will prevail.
4. The applicability of the General Conditions of the Client is explicitly rejected by the Contractor.
5. The underlying Assignment/Contract - together with these General Conditions - represent the complete arrangements between the Client and the Contractor with regard to the Activities for which the Contract was formed. Any arrangements or proposals made previously between the parties in this respect will lapse.
6. The Contractor will perform the assignment to perform activities with due observance of the applicable legislation and regulations including the Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft) and the professional rules and/or codes of conduct applicable to him, which must at all times be fully observed by the Client.

### C. CLIENT DATA

1. The Client is obliged to provide all the Records which the Contractor requires at his discretion for the proper performance of the given Assignment to the Contractor (a) in the required form, (b) in the required manner and (c) timely. The Contractor will determine what the required form, the required manner and timely is understood to mean.
2. The Client warrants the accuracy, completeness and reliability of the Records provided by him even if they originate from third parties insofar as this does not arise otherwise from the nature of the Assignment.
3. The Contractor is entitled to suspend the performance of the Assignment up to the moment that the Client has fulfilled the obligations referred to in paragraphs one and two.
4. The Client indemnifies the Contractor for any losses which are the result of inaccurate or incomplete Records.
5. The extra costs incurred and extra hours spent by the Contractor will be at the expense and risk of the Client as well as any other loss for the Contractor due to the Client not, not timely or not properly providing the Records required for the performance of the Activities.
6. The Contractor will at the first request of the Client return to the Client the original Records provided by the Client.
7. The Client is obliged to retain for himself a proper copy of any Records provided by the Client to the Contractor.
8. After the completion of the Assignment the Records provided will be handed to the Client at the request of the Client. A claim by the Client on the Contractor to surrender the Records provided to the Contractor will become time-barred two years after the completion of the Assignment.
9. If the succeeding accountancy organisation requires access to information, the Contractor will be allowed to charge costs for this if this access is provided or information is provided otherwise.

### D. PERFORMANCE OF THE ASSIGNMENT

1. The Contractor will perform the Assignment to the best of his abilities and with due observance of the applicable legislation and (professional) regulations.
2. The Contractor will determine the manner in which the Assignment is performed and by which Employee(s).
3. The Contractor is entitled to have Activities carried out by a third party to be appointed by the Contractor.

### E. (PROFESSIONAL) REGULATIONS

1. The Client must cooperate each time and fully with the obligations resulting for the Contractor from the applicable (professional) regulations.
2. The Client is aware that the Contractor must do the following - including, but not limited to -:
  - A. under applicable legislation and regulations he might be obliged to report to the authorities designated to this end by the government certain transactions described in this legislation and these regulations and which have become known during the performance of his Activities;
  - B. under applicable legislation and regulations he will be obliged to report fraud in certain situations;
  - C. pursuant to applicable legislation and regulations he can be obliged to investigate the (identity of) the Client or the customer.
3. The Contractor excludes any liability for loss suffered by the Client as a result of the Contractor complying with the legislation and (professional) regulations applicable to him.



## **F. INTELLECTUAL PROPERTY**

1. The performance of the Assignment by the Contractor does not include the transfer of intellectual property rights vested in the Contractor. All intellectual property rights established during or resulting from the performance of the Assignment are owned by the Contractor.
2. The Client is explicitly forbidden from reproducing, disclosing or exploiting the products on which the intellectual property rights of the Contractor are vested or products vested with intellectual property rights with regard to the use of which the Contractor has acquired rights of use - including in this connection in any case, but not limited to: computer programs, system designs, methods of operation, advice, (model) contracts, templates, macros and other intellectual products.
3. The Client is not allowed without the prior written consent of the Contractor to hand over to any third parties the products referred to in the second paragraph, other than to obtain a professional opinion about the performance of the Activities by the Contractor. In that case the Client will impose his obligations under this Clause on the third parties engaged by him.

## **G. FORCE MAJEURE**

1. If the parties cannot, not timely or not properly fulfil the obligations under the Contract as a result of force majeure within the sense of Section 6:75 BW, these obligations will be suspended until such time as the parties are further able to fulfil them in the agreed manner.
2. In the event that the situation as meant in paragraph one occurs, the parties will be entitled to give a written notice of termination of the Contract in whole or in part and with immediate effect, for that matter without there being a right to any compensation.

## **H. FEE**

1. The Client will be charged for the activities carried out by the Contractor on the basis of the time spent and the costs incurred.
2. Apart from the fee the Client will be charged for the expenses incurred by the Contractor and the invoices of the third parties engaged by the Contractor.
3. The Contractor is entitled to demand an advance from the Client.
4. If after the Contract has been formed but before the Assignment has been fully performed, fees or prices are subject to changes, the Contractor will be entitled to adjust the agreed rate accordingly.
5. The fee, if necessary increased by advances and invoices of third parties engaged and expenses incurred, will normally be charged per month. If this is mandatory by law the turnover tax will be charged separately on all amounts owed by the Client to the Contractor.

## **I. PAYMENT**

1. Payment by the Client of amounts owed to the Contractor must take place within 30 days after the invoice date without the Client being entitled to any deduction, discount or set-off, unless otherwise agreed. The date of payment will be the date on which the amount due is credited to the Contractor's account.
2. If the Client has not paid within the period referred to in the first paragraph or another period agreed between the 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 moment onwards.
3. If the Client, has not paid within the period mentioned in the first paragraph, and still hasn't paid after being reminded and given 14 days notice to pay, the Client will be obliged to reimburse all court costs and extrajudicial (collection) costs incurred by the Contractor. The amount of the reimbursement will be based on "Besluit vergoeding voor buitengerechtigke incassokosten"
4. In the event of an Assignment jointly given, the Clients will be jointly and severally liable for the payment of the amount of

the invoice and the interest(s) and costs due insofar as the Activities were performed for the joint Clients.

5. If the financial position or the payment record of the Client gives rise to it, at the Contractor's discretion, or if the Client fails to pay an advance or an invoice within the payment period set for it, the Contractor will be entitled to demand that the Client immediately furnishes (supplementary) security in a form to be determined by the Contractor. If the Client fails to furnish the required security, the Contractor will be entitled - notwithstanding any of his other rights - immediately to suspend the further performance of the Contract and any amount that the Client owes to the Contractor for any reason whatsoever will be immediately due and payable.

## **J. PERIODS**

1. If a period/date has been agreed between the Client and the Contractor within which the Assignment must be performed and the Client fails to: (a) pay an advance, if agreed, or (b) provide the necessary Records in time, complete, in the required form and in the required manner, the Client and the Contractor will consult with regard to a new period/date within which the Assignment must be performed.
2. Periods within which the Activities must be completed can only be considered as a deadline if this has actually been explicitly agreed between the Client and the Contractor.

## **K. LIABILITY AND WARRANTIES**

1. The Contractor is not liable for any of the Client's losses caused because the Client provided the Contractor with inaccurate or incomplete Records. The Contractor is not liable for damage or destruction of Records during transport or during sending by post regardless of whether the transport or the despatch was carried out by or on behalf of the Client, the Contractor or third parties.
2. The Contractor is not liable for any consequential loss, loss of profits or indirect loss as a consequence of the Contractor not, not timely or not properly performing.
3. The Contractor will exclusively be liable to the Client for losses which are the direct consequence of a (related set of) attributable failure(s) in performing the Assignment. This liability is limited to the amount that, according to the liability insurer of the Contractor, will be paid for the respective event, increased by any excess to be borne by the Contractor under the insurance.
4. If for any reason whatsoever the liability insurer does not pay any amount, the liability of the Contractor will be limited to the amount of the fee charged for the performance of the Assignment. If the Assignment constitutes a continuing performance contract with a term exceeding one year, the amount meant above will be fixed at one x the amount of the fee that the Client is charged in the twelve months prior to the event giving rise to the claim. The total compensation will not under any circumstance exceed €30,000 per event whereby a series of related events are considered to be one single event unless the parties on entering into the agreement - considering the extent of the Assignment or the risks involved in the Assignment - see reasons to deviate from this maximum.
5. The limitations of liability included in this Clause will not be applicable if and insofar as the intention or deliberate recklessness of the Contractor or its executive management is involved. The Client is obliged to take measures to restrict the loss.
6. The Client indemnifies the Contractor against claims by third parties due to loss caused because the Client did not provide the Contractor with any Records or with incorrect or incomplete Records.
7. The Client indemnifies the Contractor against claims by third parties (including employees of the Contractor and third parties engaged by the Contractor) who in connection with the performance of the Assignment suffer losses which are the consequence of the actions or omissions of the Client or of unsafe situations in his business or organisation.



## **L. NOTICE OF TERMINATION**

1. The Client and the Contractor may terminate the Contract (prematurely) at any time with due observance of a reasonable notice period. If the Contract terminates before the Assignment has been completed, the Client will owe the fee in accordance with the hours specified by the Contractor for Activities performed for the Client.
2. The notice of termination must be in writing.
3. If the Client has given notice of (premature) termination, the Contractor will be entitled to reimbursement for the loss of capacity caused on the part of the Contractor and made plausible as well as a reimbursement of additional costs already incurred by the Contractor and costs resulting from any cancellation by third parties engaged (such as - for instance - any costs with regard to subcontracting).
4. If the Contractor has given notice of (premature) termination, the Client will be entitled to the cooperation of the Contractor with regard to the transfer of activities to third parties unless there has been intention or deliberate recklessness on the part of the Client by which the Contractor has been forced to give notice of termination of the Contract. The condition for the right to cooperation as provided in this paragraph, is that the Client has paid all underlying and outstanding advances or all the invoices.
5. In the event that the Client or the Contractor is not able to pay his debts, applies for his bankruptcy or moratorium or discontinues his business operations, the other party will be entitled to dissolve the Contract via a registered letter and without having to observe a notice period.

## **M. RIGHT TO SUSPENSION**

1. The Contractor is entitled to suspend the performance of all his obligations after a careful weighing of interests, including the surrender of Records or other items to the Client or third parties, up to the moment that all claims on the Client due and payable have been paid in full.
2. The first paragraph is not applicable with regard to Records of the Client which have not (yet) been processed by the Contractor.

## **N. TERM OF FORFEITURE**

Insofar as not provided to the contrary in these General Conditions, the rights of action and other powers of the Client on any grounds whatsoever on the Contractor in connection with the performance of Activities by the Contractor will lapse in any event one year after the moment at which the Client has become aware or could reasonably have been aware of the existence of these rights and powers. This period does not relate to the possibility of lodging a complaint with the body(bodies) designated to this end for handling complaints and/or the Dutch Council for Disputes.

## **O. ELECTRONIC COMMUNICATION**

1. During the performance of the Assignment the Client and the Contractor can, at the request of the Client, communicate with each other via electronic means.
2. The Client and the Contractor are not liable to each other for loss which might arise for either of them as a result of the use of electronic means of communication, including, but not limited to, loss as a result of the non-delivery or delay in the delivery of electronic communication, the interception or manipulation of electronic communication by third parties or by software/equipment used for sending, receiving or processing electronic communication, transfer of viruses and the non- or improper operation of the telecommunication network or other means intended for electronic communication, except insofar as the loss is the result of intention or gross negligence.
3. The Client as well as the Contractor will do or refrain from doing anything that can reasonably be required from either of them in order to prevent the occurrence of the said risks.
4. The data extracts from the computer systems of the sender furnish mandatory evidence of (the contents of) the electronic communication sent by the sender until the moment that evidence to the contrary has been provided by the recipient.

## **P. MISCELLANEOUS PROVISIONS**

1. If the Contractor performs Activities on the Client's premises, the Client must arrange for a suitable workplace which complies with the working conditions standards provided by law and other applicable rules and regulations with regard to working conditions. The Client must ensure that in that case the Contractor will be provided with office space and other facilities which are necessary or useful at the Contractor's discretion in order to fulfil the Contract and which comply with all the (legal) requirements set on them. With regard to the (computer) facilities provided, the Client is obliged to ensure continuity for instance by means of sufficient back-up, safety and virus control procedures. The Contractor will apply virus controls procedures when the Contractor uses the facilities of the Client.
2. The Client will not engage or approach Employees involved in the performance of the Activities in order to become employed either temporarily, directly or indirectly by or to perform activities either directly or indirectly for the Client whether or not in employment, during the term of the Contract or any extension of it and during 12 months thereafter.

## **Q. APPLICABLE LAW AND FORUM AGREED UPON**

1. The Contract is governed by Dutch law.
2. All disputes will be settled by the competent Court in the district in which the Contractor is established.
3. The provisions set out in paragraphs 1 and 2 of this Clause do not affect the possibility of the Client to submit a dispute to the Dutch Council for Disputes and/or to follow the procedure of the right of complaint.

## **R. REPAIR CLAUSE IN THE EVENT OF NULLITY**

1. If any provision in these General Conditions or in the underlying Assignment/Contract would be fully or partially null and void and/or invalid and/or unenforceable, as a result of any legal provision, judicial decision or otherwise, this will have no consequence whatsoever for the validity of all the other provisions of these General Conditions or the underlying Assignment/Contract.
2. If a provision of these General Conditions or the underlying Assignment/Contract would be invalid for a reason as meant in the previous paragraph but it would be valid if they would have a stricter scope or purport, this provision will - for the time being - be automatically effective with the furthest scope or highest limited scope or purport with which or in which it would indeed be valid.
3. Notwithstanding the provisions set out in paragraph 2, the parties will if required consult each other in order to agree new provisions to replace the invalid or annulled provisions. In doing so the purpose and purport of the invalid or annulled provisions will be adhered to as much as possible.

## **S. COMPLAINTS**

1. Complaints with regard to the Activities performed and/or the amount of the invoice must be expressed in writing to the Contractor within 30 days after the date of dispatch of the documents or the information with regard to which the Client complains or within 30 days after the defect has been discovered if the Client demonstrates that he could not reasonably have discovered the defect sooner.
2. Complaints as referred to in paragraph one do not suspend the Payment Obligation of the Client.
3. In the event of a complaint made with justification at the Contractor's discretion, the Contractor has the choice between adjustment of the fee charged, remedy without charge or re-performing the activities complained of or not or no longer performing the Assignment in full or in part against a refund proportionate to the fee already paid by the Client.



**Extension of General Conditions, applicable to Corporate Finance Assignments:**

**T. Performance of Corporate Finance Assignments**

1. The Contractor will perform the Activities to the best of his understanding and abilities and in accordance with the requirements of proper professional skill. The Contractor will not give any warranties with regard to achieving any intended result with the Activities performed. The Contractor has exclusively an obligation to perform to the best of his abilities unless explicitly agreed otherwise in writing.
3. The Contractor will determine the manner in which and the person(s) by which the given Assignment is to be performed. If possible the Contractor will take into account the sound directions given on time by the Client with regard to the performance of the Assignment. If the Contractor is not prepared on reasonable grounds to perform the Assignment in accordance with the directions given to him by the Client and the Client keeps him nevertheless to these directions, the Contractor will be entitled to give notice of termination of the Contract for serious reasons without any obligation to pay compensation.
4. After consulting the Client the Contractor may change the composition of the consultancy team or replace the person charged with the performance of the Activities by another if this is necessary for the performance of the Activities at the Contractor's discretion. This change should not reduce the expertise of the consultancy team or the person to be deployed nor affect unfavourably the continuity of the performance of the Activities.
5. Neither the Client nor the Contractor is allowed to employ personnel of the other party or negotiate employment with this personnel during the performance of the Activities or within one year after their termination other than in consultation with the counterparty.
6. The Contractor is entitled to have certain activities performed by (a) third party(parties) to be appointed by the Contractor if this is desirable at the Contractor's discretion with a view to an optimum performance of the Activities for the Client. If this third party or these third parties wish to limit his or their liability in this connection, De Hooge Waerder is of the opinion, and if necessary stipulates herein that the Assignments given to them incorporate the power to accept such a limitation of liability on behalf of the Client.

**U. Secrecy and exclusivity**

1. Unless legal provisions or professional rules impose on the Contractor a disclosure obligation, the Contractor will be obliged to observe secrecy towards third parties who are not involved in the performance of the Activities. This secrecy relates to all the Records of a confidential nature which have been provided by the Client to the Contractor and also the results obtained by their being processed.
2. The Contractor is entitled to use the outcome in figures obtained after being processed for statistical or similar purposes, provided the outcomes cannot lead back to individual clients.
3. Except for the provisions set out in the previous paragraph, the Contractor will not be entitled to use Records which have been provided to him by the Client for any other purpose than that for which they were obtained unless the Contractor acts for himself in disciplinary, civil or criminal proceedings in which this information is relevant.
4. During the Contract the Client will not give any assignment for similar activities to third parties other than after having obtained the written consent of the Contractor. The Contractor undertakes to the Client not to accept any assignments from another client if the acceptance and/or performance of these result in conflicting interests between the respective clients.
5. The Client will only maintain a direct contact with parties introduced to him by the Contractor after having obtained the consent of the Contractor. This applies likewise if the Client is approached by these parties.