These Model General Terms and Conditions are applicable to engagements performed by Signature Audit + Advisory B.V.
Model General Terms and Conditions of NBA (the Netherlands Institute of Chartered Accountants) 2017 ©
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Article 1. DEFINITIONS

The definitions stated below in capital letters have the following meaning in the context of these general terms and conditions:
a. Professional regulations: the professional rules and rules of conduct that govern all accountants due to registration in the accountants' register of the NBA (the Netherlands Institute of Chartered Accountants);
b. Documents: all information or data made available by the Client to the Contractor; all data produced or collected by the Contractor in the context of the execution of the Assignment/Agreement; and all other information of any relevance for the execution or completion of the Assignment. The aforesaid information can be stored in tangible or intangible data carriers, whether or not placed with third parties;
c. Employee: a natural person employed by or associated with the Contractor, whether or not on the basis of an employment contract;
d. Assignment/Agreement: the agreement for the provision of services, under which the Contractor undertakes towards the Client to execute specified Work;
e. The Client: the natural person or the legal entity who/which has provided the Contractor with the Assignment to execute Work;
f. The Contractor: the firm that has accepted the Assignment. All Assignments are exclusively accepted and executed by the firm, not by or on account of an individual Employee, even if 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;
g. 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, and to be executed by, the Contractor;
h. Audit Assignment: an Assignment for auditing as defined in the Further regulations for auditing and other standards ("Nadere voorschriften controle- en overige standaarden");
i. Services other than audit of financial statements: an Assignment that does not fall under the definition of Audit Assignment.

Article 2. APPLICABILITY

1. These general terms and conditions apply to: all offers, tenders, Assignments, legal relationships and Agreements, by whatever name, for which the Contractor undertakes/will undertake to execute Work for the Client, as well as all Work ensuing therefrom for the Contractor.
2. Derogations from, or addendums to, these general terms and conditions, shall only be valid if these have been expressly agreed in writing in, for example, an Agreement (in writing) or in (a further) confirmation of the Assignment.
3. If any provision in these general terms and conditions and the Assignment confirmation letter were to conflict, the provision set out in the Assignment confirmation letter shall be applicable as regards the contradiction.
4. These general terms and conditions also apply to any additional or subsequent Assignments.
5. The applicability of the general terms and conditions of the Client is hereby expressly rejected by the Contractor.
6. Natural persons and legal entities that are involved in the provision of service to the Client by or on behalf of the Contractor, directly or indirectly or in any manner whatsoever, whether or not on the basis of an employment contract, can rely on these general terms and conditions.

Article 3. CLIENT DATA

1. The Client will be obliged to make all Documents that the Contractor in his/her opinion requires for the correct execution of the Assignment, available to the Contractor in the required form, in the required manner and in a timely manner. The Contractor will determine what must be taken to mean by the required form, the required manner and a timely manner.
2. The Client guarantees the accuracy, the completeness and the reliability of the Documents provided by the Client, also if these originate from third parties, in so far as this does not ensue otherwise from the nature of the Assignment.
3.The Client indemnifies the Contractor against any loss or damage resulting from inaccurate or incomplete Documents.
4. The extra costs incurred by the Contractor and extra hours worked by the Contractor, as well as the further loss or damage suffered by the Contractor, due to not, not in a timely manner, or not properly providing by the Client of the Documents necessary for the execution of the Work, will be at the Client's risk and expense.
5. In the event of electronic sending by the Contractor of information including, but not limited to tax returns, annual accounts, reports of (and on the orders of) the Client to third parties, the Client will be regarded as the party that signs and sends the information concerned.
6. The Contractor has the right to suspend the execution of the Assignment until the time when the Client has fulfilled the obligations referred to in the first subclause.
7. The Contractor will, upon first request in writing 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 his/her 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 Work executed by a third party to be appointed by the Contractor.

Article. 5. (PROFESSIONAL) REGULATIONS

1. The Client will provide full cooperation to the obligations ensuing for the Contractor from the applicable (Professional) regulations.
2. The Contractor will take suitable measures for the protection of the personal data and other confidential information originating from the Client. The Contractor will inform the Employees and the third parties to be engaged of the confidential character of the information. The processing by the Contractor will take place in conformity with the applicable (inter)national legislation and (Professional) regulations in the field of the protection of personal data.
3.The Client is aware that the Contractor is in some cases obliged on the basis of (inter)national legislation or (Professional) regulations to disclose the Client's confidential information. In so far as necessary the Client hereby provides permission and cooperation to such disclosure, including (but not limited to) in the cases that the Contractor:
a. must report executed or intended unusual transactions described in legislation and (Professional) regulations, which become known to the Contractor during the execution of the Work, to the authorities appointed for this purpose by the government;
b. must report fraud in specific situations;
c. is obliged to conduct an investigation of the (the identity of) the Client, or the Client's client.
4. The Contractor excludes liability for loss or damage sustained by the Client due to the Contractor's compliance with the legislation and (Professional) regulations to which it is subject.
5. Parties will impose their obligations on the basis of this article on any third parties to be engaged by them.

Article 6. INTELLECTUAL PROPERTY

1. The execution of the Assignment by the Contractor does not include the transfer of intellectual property rights that 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, publishing or utilising the products which the Contractor's intellectual property rights are vested in, or as the case may be the products intellectual property rights are vested in with regard to the use of which the Contractor has acquired the rights of use. This concerns for example (but is not limited to): computer programs, system designs, working methods, advice, (model) contracts, reports, 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. This does not apply in the event that the Client wishes to acquire an expert opinion regarding 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 of the Civil Code, these obligations will be suspended until the time when parties will be able to fulfil these in the agreed manner.
2. In the event that the situation occurs as referred to in the first subclause, parties will have the right to terminate the Agreement, wholly or in part, in writing and with immediate effect, without the right to any compensation existing.
3. If at the occurrence of the force majeure situation the Contractor has already partially fulfilled the agreed obligations, the Contractor will be entitled to in the interim separately invoice the executed Work, and the Client must pay this invoice as if it concerned a separate transaction.

Article 8. FEE AND COSTS

1. The Work executed by the Contractor will be charged to the Client, on the basis of time spent and costs incurred, unless parties have agreed expressly otherwise such as, for example, payment of a fixed price. The payment of the fee will not be depending on the result of the Work, unless agreed otherwise in writing. The travel time and accommodation costs for the purpose of the Work will be charged separately.
2. 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.
3. The Contractor has the right to require an advance payment from the Client. The failure to make the advance payment (in a timely manner) may be a reason for the Contractor to (temporarily) suspend the Work.
4. If after the coming into effect of the Agreement, but before the Assignment is entirely executed, fees or prices are changed, the Contractor will be entitled to adjust the agreed rate accordingly, unless expressly agreed otherwise.
5. If required by law, the turnover tax ("omzetbelasting") will be charged separately on 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, reduction, suspension, or setoff, within 30 days after the invoice date, unless agreed otherwise. The day of payment is the day the amount owed is credited to the account of the Contractor.
2. If the Client has not paid within the period referred to in the first subclause, 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 pay all judicial and extrajudicial (collection) costs actually incurred by the Contractor. The reimbursement of the costs incurred will not be limited to any order to pay costs determined by the court.
4. In the event of a jointly provided Assignment the Clients 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 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/TERMS

1. If a period/term 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/terms within which the Work must be completed are only to be deemed to be a final deadline if this has been agreed expressly and in so many words (in writing) between the Client and the Contractor.

Article 11. LIABILITY AND INDEMNITY

1. The Contractor will not be liable for any loss or damage on the part of the Client which arises due to the fact that the Client has provided no, inaccurate or incomplete Documents to the Contractor, or due to the fact that these have not been provided in a timely manner. This also includes the situation in which the Contractor is unable to file the annual report and accounts with the Chamber of Commerce within the statutory period as a result of acts or omissions (on the part) of the Client.
2. The Contractor will not be liable for any indirect loss or damage, such as: lost profit, lost savings, loss due to business interruption and any other consequential loss, or indirect loss or damage, which is the result of no, or not in a timely manner, or unsatisfactory, performance by the Contractor.
3. The liability on the part of the Contractor is limited to compensation of direct loss or damage that is the direct result of (a connected series of) attributable failure(s) in the execution of the Assignment. Direct loss or damage is - inter alia - taken to mean: the reasonable costs incurred to establish the cause and extent of the damage; the reasonable costs incurred to ensure that the Contractor's performance complies with the Agreement, and the reasonable costs incurred for the prevention and limitation of the damage.
This liability is:
a. limited for Audit Assignments to a maximum of three times the fee for the Work executed in the context of the Audit Assignment concerned until the time of the occurrence of the attributable failure(s). If the execution of the Audit Assignment covers a period of more than 12 months, the amount referred to above will be set at three times the fee for the Work executed in the context of the Assignment concerned during the last 12 months;
b. limited for all Services other than audit of financial statements to a maximum of once the fee for the Work executed in the context of the Service other than audit of financial statements concerned until the time of the occurrence of the attributable failure(s). If the execution of the Service other than audit of financial statements covers a period of more than six months, the amount referred to above will be set at once the fee for the Work executed in the context of the Services other than audit of financial statements during the last six months.
4. A connected series of attributable failures will apply as one single attributable failure
5. The limitations of liability included in this article do not apply if and in so far as there is intent or wilful recklessness on the part of the Contractor or its managerial staff ("leidinggevend management").
6. The Client is obliged to take measures to limit loss or damage. The Contractor has the right to remedy or limit loss or damage by means of repairing or improving the executed Work.
7. The Client indemnifies the Contractor against any claims by third parties on account of loss or damage caused due to the fact that the Client has not provided Documents or inaccurate or incomplete Documents to the Contractor.
8. The Client will indemnify the Contractor against any claims by third parties (including Employees of the Contractor and third parties engaged by the Contractor) who suffer loss or damage related to the execution of the Assignment, which is the result of the acts or omissions on the part of the Client or is the result of unsafe situations in the Client's company or organisation.
9. The provisions of subclauses 1 up to and including 8 of this article relate to the contractual as well as the non-contractual liability of the Contractor to the Client.

Article 12. TERMINATION

1. The Client and the Contractor may at any time terminate the Agreement (in the interim) with immediate effect without observing a notice period, by means of notice in writing to the other party. 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. If the Client terminates the Agreement (in the interim), the Contractor will have the right to: compensation of loss resulting from lower capacity utilisation arisen on its part and to be made plausible by the Contractor; reimbursement of additional costs that the Contractor has already incurred; and costs ensuing from any cancellation of engaged third parties (such as - inter alia - any costs with regard to subcontracting).
3. If the Contractor terminates the Agreement (in the interim), the Client will have the right to cooperation from the Contractor during the transfer of Work to third parties, unless there is intent or wilful recklessness on the part of the Client as a result of which the Contractor feels compelled to terminate the Agreement. It is conditional to the right of cooperation, as specified in this subclause, that the Client has paid all underlying outstanding advance payments or as the case may be all invoices.

Article 13. RIGHT OF SUSPENSION

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

Article 14. EXPIRY PERIOD

In so far as these general terms and conditions do not determine otherwise, rights of claim and other entitlements of the Client on whatsoever basis against the Contractor related to the execution of Work by the Contractor will lapse, in any event after one year from the time when the Client knew about or reasonably could have known about the existence of these rights and entitlements. This period does not concern the possibility to submit a complaint to the authority (authorities) designated for the complaint handling and/or the Disputes Board ("Raad voor Geschillen").

Article 15. ELECTRONIC COMMUNICATION AND ELECTRONIC FILING OF THE ANNUAL REPORT AND ACCOUNTS

1. During the execution of the Assignment the Client and the Contractor can communicate with each other by means of electronic resources and/or make use of electronic storage (such as Cloud applications). Unless agreed otherwise in writing, parties may assume that the sending of correctly addressed fax messages, emails (including emails sent through the internet) and voicemail messages, regardless of whether these contain confidential information or Documents related to the Assignment, will be mutually accepted. The same applies to other means of communication used or accepted by the other party.
2. The Client and the Contractor will not be liable towards each other for loss or damage that might ensue for one or both of them, resulting from the use of electronic means of communication, networks, applications, electronic storage, or other systems, including - but not limited to – loss or damage resulting from non-delivery or delay of delivery of electronic communication, omissions, distortion, interception, or manipulation of electronic communication by third parties or by software/equipment used for sending, receiving or processing of electronic communication, transmission of viruses and the not, or not properly, functioning of the telecommunication network or other resources required for electronic communication, except to the extent that the loss or damage is the result of intent or gross negligence. The above also applies to the use that the Contractor makes thereof in its contact with third parties.
3. In addition to the previous subclause the Contractor does not accept any liability for any loss or damage arisen due to or related to the electronic sending of (electronic) annual report and accounts and the digital filing thereof with the Chamber of Commerce.
4. The Client as well as the Contractor will do or omit all that can reasonably be expected from each of them to prevent the occurrence of aforesaid risks.
5. 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 proof to the contrary has been provided by the recipient.
6. The provisions of article 11 accordingly apply.

Article 16. MISCELLANEOUS PROVISIONS

1. If the Contractor executes Work at the Client's location, the Client will guarantee a suitable workplace, which complies with the statutory occupational health and safety standards 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 for this. With regard to (computer) facilities made available, the Client is 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 take up employment with the Client, whether or not temporarily, directly or indirectly, or to execute work for the benefit of the Client, directly or indirectly, whether or not in salaried employment, during the term of the Agreement or any extension thereof and during 12 months thereafter.
3. These general terms and conditions have been drawn up in Dutch as well as the English language. In the event of a difference or conflict between the English and the Dutch text, the Dutch text will be binding.
4. The provisions in the Assignment, which must expressly or by their nature remain in force after the end or the termination of the Assignment, will remain in force after the end or termination, including articles 6, 8, 9, 11, sub clause 2 and article 17

Article 17. APPLICABLE LAW AND CHOICE OF FORUM

1. The Agreement is governed by Dutch law.
2. All disputes will be resolved by the competent court in the district in which the Contractor is established.
3. The provisions of subclauses 1 and 2 of this article will not affect the possibility on the part of the Client to submit a dispute to the Disputes Board and/or to submit a complaint to the Contractor personally, the Accountancy Division (disciplinary law) or the Complaints Committee (right of complaint).

Article 18. REPAIR CLAUSE

1. If any provisions of these general terms and conditions or of the underlying Assignment/Agreement might be wholly or in part null and void and/or invalid and/or unenforceable as a result of any statutory regulation, 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 any provision in the Assignment or any part of the Assignment cannot be relied on in law, the remaining part of the Assignment will remain in full force, always provided that provisions in the part which cannot be relied on will be deemed to have been adjusted in such a manner that reliance thereon will be possible, whereby the intention of parties with regard to the original provision or original part will remain in existence as much as possible.
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