

GENERAL TERMS AND CONDITIONS

I. Definitions

In these general terms and conditions the following terms have the meanings referred to:

- a) Vijverborgh: De Vijverborgh B.V., or another legal entity affiliated to it in a group, as referred to in Article 2:24b of the Dutch Civil Code.
- b) Client: Vijverborgh's contract party.
- c) Action Plan: the project plan that shows the content and time schedule of the agreed work by Vijverborgh.

II. Applicability of the conditions

- a) These conditions apply to any offer and any agreement, including professional services agreements, between Vijverborgh and the client, unless agreed otherwise in writing.
- b) As an integral part of these general terms and conditions Vijverborgh complies with the relationship arrangement between the client and the consultancy as described in the 'The New Rules 2011 [De Nieuwe Regeling 2011] (DNR 2011), amended in 2013', as published by BNA and NLIingenieurs. This does not include the aspect of liability for technical elements.
- c) The applicability of the client's general terms and conditions is hereby explicitly rejected. If Vijverborgh declares its agreement with the client's terms and conditions of delivery, this will always be based on the exclusion of the aspect of liability for technical aspects.
- d) These general terms and conditions can only be deviated from in a written agreement. This is an agreement of evidence.

III. Offers and formation of agreements

- a) Offers issued by Vijverborgh (of which the Action Plan is part) are non-binding and are valid for 60 days, unless indicated otherwise.
- b) An assignment given to Vijverborgh is considered to be an offer by the client that can only be considered to be accepted by Vijverborgh after written confirmation from Vijverborgh.
- c) An order confirmation sent by Vijverborgh to the client is considered to be a correct and full portrayal of the content of the concluded agreement.
- d) In the event of an order confirmation sent by Vijverborgh, the agreement will be considered to have been formed at the moment at which Vijverborgh sends the order confirmation.
- e) The client is regarded as agreeing with the content of the order confirmation unless the client has informed Vijverborgh in writing within three working days after the date on which the order confirmation was signed that they cannot agree with the content.
- f) The agreement does not contain any guarantees regarding the results of the services provided by Vijverborgh, unless that has been agreed explicitly and in writing.

IV. Prices

- a) All prices referred to by Vijverborgh exclude VAT, unless agreed otherwise explicitly and in writing.
- b) All prices referred to by Vijverborgh are based on cost factors which apply at the time the agreement is formed and can be indexed annually on 1 January in accordance with the Services Price Index Figure [Dienstenprijsindexcijfer] (DPI).
- c) Vijverborgh reserves the right to change prices, unless agreed otherwise in writing. The client is entitled to dissolve the agreement by means of a written declaration in the event of a price increase of more than 10%. The dissolution must take place immediately after the price increase.
- d) If a price increase is a consequence of a statutory or other government measure, Vijverborgh will be entitled to charge this on to the client, even if it has been agreed that the price is fixed, without this resulting in the client having a right of dissolution.



V. Performance of the agreement

- a) When performing the agreement Vijverborgh will work in accordance with the Action Plan and will also exercise the care of a good contractor. With its services Vijverborgh will aim to achieve the results intended by the client.
- b) If and insofar as such is required, according to Vijverborgh, for a proper execution of the agreement, Vijverborgh will be entitled to have certain work performed by third parties it designates.
- c) The client will ensure that any details which Vijverborgh has indicated as being essential, or with regard to which the client reasonably ought to understand are essential, for the execution of the agreement, are provided to Vijverborgh in good time, correctly and completely. If part of the Action Plan involves the client making employees available, the client will ensure that these employees are available on time and are sufficiently qualified. If the details required for the performance of the agreement are not issued to Vijverborgh on time, or the employees in question are not made available, Vijverborgh will be entitled to suspend performance of the agreement and/or to charge on costs resulting from the delay to the client in accordance with the rates agreed with the client or, in the absence thereof, in accordance with the usual rates.
- d) If the Action Plan implies that the agreement is to be executed in phases, Vijverborgh can suspend performance of those parts which belong in a subsequent phase until the client has approved the results of the previous phase in writing.

VI. Implementation period

- a) An agreed period for performance is not a strict deadline, unless expressly agreed otherwise.
- b) Vijverborgh will not be in default until it has been issued with a written notice of default at the end of the period referred to in a) and it has been set a reasonable period for fulfilment which has passed without being used.
- c) An agreed period is based on the expectation that Vijverborgh can continue with the performance as foreseen at the time the agreement was concluded.

VII. Amendment of the Agreement

- a) If it transpires during execution of the agreement that it is necessary for proper execution to amend or supplement the work to be performed, the parties will amend the agreement accordingly in good time and on the basis of mutual consultation.
- b) If the parties agree that the agreement is to be amended or supplemented, the deadline by which performance has to have been completed may be affected. Vijverborgh will inform the client as soon as possible in the event that the time of completion is changed.
- c) If the amendment or supplement to the agreement has financial and/or qualitative consequences, Vijverborgh will inform the client to this effect in advance. If a fixed fee has been agreed, Vijverborgh will also indicate to what extent the amendment or supplement to the agreement will result in this fee being exceeded.

VIII. Termination of the agreement

- a) Vijverborgh's claims against the client are immediately exigible in, among others, the following instances:
 - If, after concluding the agreement, Vijverborgh becomes aware of circumstances which give Vijverborgh sufficient grounds to fear that the client will not fulfil its obligations.
 - In the event of bankruptcy, liquidation, or a suspension of payments on the part of the client, or an application or filing for bankruptcy or a suspension of payments.
 - If the client is in default and does not fulfil its obligations under the agreement.
- b) In the aforementioned instances Vijverborgh is authorised to suspend further performance of the agreement and/or to proceed to dissolve, subject to the client's duty to compensate loss or damage suffered by Vijverborgh and without prejudice to the other rights which accrue to Vijverborgh.
- c) Both parties are entitled to cancel the agreement at any time by means of a written notification addressed to the other party in which, at least, the ground for cancellation must be stated, as well as the date on which the cancellation commences.
- d) In the event of cancellation the client is obliged to pay the following upon receipt of Vijverborgh's invoice in accordance with the status of the work at the time that the cancellation takes effect: the fee, the additional costs and all reasonably (yet to be) incurred costs resulting from obligations already entered into by Vijverborgh at the time of the cancellation with a view to the further fulfilment of the agreement. In the event of cancellation by the client the total payable amount will be increased by 10% and in the event of cancellation by Vijverborgh the total payable amount will be reduced by 10%.



IX. Confidentiality

- a) Both parties are obliged to observe secrecy with regard to all confidential information which they have acquired from each other, or from another source within the framework of the agreement. Information is deemed confidential if the other party has communicated this, or if this follows from the nature of the information.

X. Intellectual property

- a) Any (claims to) intellectual property rights (IP rights) which can be exercised – in any place and at any time – with regard to any outcome resulting from the agreement are vested in Vijverborgh. If and insofar as IP rights arise which are legally vested in the client (the claims to) these IP rights will be transferred by the client to Vijverborgh at the time they arise, which transfer is hereby accepted by Vijverborgh. If and insofar as supplementary (legal) actions are needed to that end, the client hereby grants Vijverborgh the power of attorney to perform said (legal) actions in its name.
- b) Any documents issued by Vijverborgh, such as reports, recommendations, designs, sketches, drawings, software, data carriers, etc., are exclusively intended to be used by the client within the framework of the agreement and the client may not copy, publish, or disclose them to third parties, without Vijverborgh's prior permission.
- c) Vijverborgh is entitled to use the knowledge acquired during the performance of the work for other purposes than the performance of the agreement, insofar as this does not involve any confidential information from the client being disclosed to third parties.

XI. Ban on acquisition of Vijverborgh staff

- a) The client will ensure that neither the client nor a person affiliated to the client – whether in a group or otherwise as referred to in Article 2:24b of the Dutch Civil Code – in whatever form or capacity, whether directly or indirectly, will convince or attempt to convince an employee of Vijverborgh, or a third party (for example an expert) engaged by Vijverborgh to terminate his or her (employment) relationship with Vijverborgh, or in any other way create a situation in which this (employment) relationship is, or might be, adversely affected during a period of 1 (one) year after performance of the agreement has been completed.
- b) In the event of violation of the previous paragraph the client will forfeit to Vijverborgh, without prior notice of default or legal proceedings being required, an immediately due and payable penalty of € 30,000.00 for each violation, without any need for loss or damage and without prejudice to Vijverborgh's right to fulfilment of the provisions of paragraph 1 of this article and/or compensation.

XII. Payment

- a) Payment must take place within 30 days after the date of the invoice by legal tender by transferring the payable amount to Vijverborgh's bank account. If this deadline is exceeded without full payment having taken place, the client will be legally in default and late payment interest equal to the applicable statutory commercial interest will be payable.
- b) In the event of payment to Vijverborgh's bank account the day of crediting will apply as the day of payment.
- c) Payment must take place without discount or set off and neither can the payment of Vijverborgh's invoices be suspended.
- d) If the parties have agreed an hourly rate, the hours worked must be sufficiently specified on the invoice.
- e) If the parties have agreed that the assignment is to be carried out for a unit price, the invoice must specify how many units of work are being charged.
- f) If the parties have agreed a contract price, no further specification in hours or units will be required, unless the contractor exceeds the amount or number of hours referred to in the offer.
- g) All legal costs incurred by Vijverborgh, which Vijverborgh is required to make in order to enforce its rights in relation to the agreement concluded between Vijverborgh and the client, will be for the client's account, unless they are unreasonably high.
- h) If Vijverborgh takes collection measures against a client that is in default, those costs incurred in connection with such collection will be payable by the client, subject to a minimum of 15% of the outstanding amount. Extrajudicial collection costs are also payable if only a single demand is sent.

XIII. Complaints

- a) A legal claim on account of an attributable failure lapses and is inadmissible if the client has not submitted a relevant written complaint to Vijverborgh, accompanied by reasons, within fourteen days after the client has, or reasonably should have, discovered the failure.



XIV. Liability

- a) Vijverborgh's liability vis-à-vis the client and third parties for loss or damage, irrespective of the relevant basis, is always limited to the amount to which the liability insurance gives entitlement in the case in question, plus the excess. If and insofar as, for whatever reason, no payment is made under said insurance, any liability on the part of Vijverborgh will be limited to the amount of the invoice value of the assignment, subject to a maximum of the fee that was charged by Vijverborgh to the client in the 12 months prior to the loss or damage arising (excl. VAT).
- b) Vijverborgh is only liable for direct loss or damage. Direct loss or damage does not include, in any event, consequential loss (including damage to the client's image), production loss, loss of turnover and/or profit and/or interest, a reduction in the value of products and the costs which would have been incurred in relation to performance if the assignment had been properly executed from the beginning. Neither does Vijverborgh accept any liability in relation to any air volumes and technical cooling capacity provided. The data provided is always an indication.
- c) Any right of action on the part of the client vis-à-vis Vijverborgh will lapse at the end of one year after the assignment has been completed by Vijverborgh in accordance with the agreement. In the case of sub-assignments this deadline will be regarded as applying after the completion of each sub-assignment.
- d) The client indemnifies Vijverborgh against third-party claims in connection with the performance by Vijverborgh of the assignment insofar as, pursuant to the agreement and these general terms and conditions, this loss or damage is not for Vijverborgh's account and risk in relation to the client.
- e) Vijverborgh will, at all times, exercise due care when engaging third parties. Vijverborgh is not liable for any failures by these third parties.
- f) The limitation of liability under a) also applies to mistakes by third parties engaged by Vijverborgh, or to the improper functioning of equipment, software, data files, registers or other items, without exception, used by Vijverborgh for the performance of the agreement.
- g) Vijverborgh is not liable for loss or damage, of whatever nature, caused due to Vijverborgh having used inaccurate and/or incomplete data issued by the client, unless Vijverborgh should have been aware of said inaccuracy or incompleteness.
- h) The liability restrictions included in these conditions do not apply if the loss or damage is the consequence of intent or deliberate recklessness on the part of Vijverborgh.

XV. Applicable law

Any agreement between Vijverborgh and the client is governed by Dutch law.

XVI. Settlement of disputes

Contrary to the rules of the competence of the civil court, any dispute between the client and Vijverborgh will be settled by the court of Zeeland-West-Brabant, Breda location.

