

# General Terms and Conditions EVAbits B.V.

version 1.1, November 2019

## Definitions

For the purposes of these terms and conditions, the capitalized definitions below have the following meanings:

- A. Employee: a natural person working for or affiliated with the Contractor, whether or not on the basis of an employment contract;
- B. Assignment or Agreement: the assignment agreement, whereby the Contractor is committed towards the Client to perform certain Activities;
- C. Client: the natural person or legal person who has given the Contractor the Assignment to perform Activities;
- D. Contractor: EVAbits B.V. as known at the Chamber of Commerce;
- E. Activities or Work: all activities to be performed by the Contractor on behalf of the Client for which the Assignment has been given and which have been accepted by the Contractor, as well as all activities and operations ensuing therefrom for the Contractor;

## Article 1: Applicability

- 1. These general terms and conditions apply to: all offers, quotations, Assignments, legal relationships and Agreements, by whatever name, whereby the Contractor undertakes or will undertake to perform Work for the Client, as well as all Work ensuing therefrom for the Contractor.
- 2. Deviations from and additions to the Assignment and / or these general terms and conditions are only valid if they have been expressly agreed in writing in, for example, a (written) Agreement or (a further) order confirmation.
- 3. If any condition in these general terms and conditions deviates from a condition in the order confirmation, the condition included in the order confirmation applies with regard to the contradiction.
- 4. These general terms and conditions also apply to any additional or follow-up assignments.
- 5. The applicability of the general terms and conditions of the Client is hereby expressly rejected.
- 6. These general terms and conditions can also be invoked by those natural and legal entities who are directly or indirectly involved in the provision of services to the Client by or on behalf of the Contractor, whether or not on the basis of an employment contract.

## Article 2: Implementation

- 1. The Contractor determines the manner in which the Assignment is performed and by which Employee(s).
- 2. The Contractor has the right to have Work performed by a third party to be designated by the Contractor.

### Article 3: Intellectual property

1. The execution of the Assignment by the Contractor does not also include the transfer of intellectual property rights that rest with the Contractor. All intellectual property rights that arise during, or ensue from, the execution of the Assignment belong to the Contractor.
2. The Client is expressly forbidden to reproduce, disclose or exploit the products on which the Contractor's intellectual property rights rest, or products that have intellectual property rights, with regard to which the Contractor has acquired usage rights. This includes (but is not limited to): computer programs, system designs, working methods, advice, reports and other mental products.
3. The Client is not permitted to make the products referred to in the second paragraph available to third parties without the Contractor's prior written permission. This does not apply if the Client wishes to obtain an expert opinion about the performance of the Work by the Contractor. In that case, the client will impose its obligations under this article on third parties engaged by it.

### Article 4: Force majeure

1. If the parties cannot, not timely or properly fulfill the obligations under the Agreement as a result of force majeure within the meaning of art. 6:75 BW (Dutch Law) then those obligations are suspended until the parties are still able to fulfill them in the agreed manner.
2. If the situation as referred to in the first paragraph does occur, the parties have the right to terminate the Agreement in whole or in part and with immediate effect in writing, without there being any right to compensation.
3. If the Contractor has already partially fulfilled the agreed obligations upon the occurrence of the force majeure situation, the Contractor is entitled to invoice the Work performed separately at any stage of completion and the Client must pay this invoice as if it concerned a separate transaction.

### Article 5: Cost provisions

1. The Work performed by the Contractor will be charged to the Client on the basis of time spent and costs incurred, unless the parties explicitly agree otherwise, such as, for example, the payment of a fixed price. Payment of the fee is not dependent on the result of the Work, unless agreed otherwise in writing.
2. Travel time and accommodation costs for the Activities will be charged separately, unless agreed otherwise in writing.
3. In addition to the fee, the expenses incurred by the Contractor and the invoices from third parties engaged by the Contractor will be charged to the Client.
4. The Contractor has the right to request payment of an advance from the Client. Failure to pay the advance (in time) may be a reason for the Contractor to suspend the Activities (temporarily).

5. If fees or prices change after the Agreement has been concluded, but before the Assignment has been fully executed, the Contractor has the right to adjust the agreed rate, unless expressly agreed otherwise.
6. If this is required by law, the sales tax will be charged separately on all amounts owed by the Client to the Contractor.

## Article 6: Liability

1. The Contractor is not liable for indirect damage, including: loss of profit, missed savings, damage due to business interruption and other consequential damage or indirect damage that is the result of the Contractor's failure to perform, or to perform on time or improperly.
2. The Contractor's liability is limited to compensation for the direct damage that is the direct result of a (related series of) attributable shortcoming(s) in the performance of the Assignment. Direct damage includes - among other things - the reasonable costs incurred to determine the cause and extent of the damage; the reasonable costs incurred to have the performance of the Contractor meet the Agreement and the reasonable costs incurred to prevent or limit the damage. For all Assignments, this liability is limited to a maximum of one (1) times the fee for the Activities performed - up to the time of the attributable shortcoming (s) - in the context of the relevant Assignment. If the performance of the Assignment covers a period longer than six (6) months, the aforementioned amount will be set at one (1) times the fee for the last six (6) months under the Assignment work performed.
3. A cohesive series of attributable shortcomings counts as one (1) attributable shortcoming.
4. The limitations of liability included in this article do not apply if and insofar as there is intent or deliberate recklessness on the part of the Contractor or its management.
5. The client is obliged to take damage-reducing measures. Contractor has the right to undo or limit the damage by repairing or improving the Work performed.
6. The Client indemnifies the Contractor against claims from third parties due to damage caused by the fact that the Client has provided the Contractor with no, incorrect or incomplete information.
7. The Client indemnifies the Contractor against claims from third parties (including employees of the Contractor and third parties engaged by the Contractor) who suffer damage in connection with the execution of the Assignment, which damage is the result of the Client's acts or omissions or unsafe situations in its company. or organization.
8. The provisions of paragraphs 1 to 7 of this article relate to both the contractual and the non-contractual liability of the Contractor towards the Client.

## Article 7: Payment

1. Payment by the Client of the amounts owed to the Contractor must be made, without the Client being entitled to any deduction, discount, suspension or set-off, within 30 days of the invoice date, unless agreed otherwise. The day of payment is the day on which the amount owed is credited to the Contractor's account.

2. If the Client has not paid within the period referred to in the first paragraph, 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 referred to in the first paragraph, the Client is obliged to reimburse all judicial and extrajudicial (collection) costs actually incurred by the Contractor. The reimbursement of the costs incurred is not limited to any costs ordered by the court.
4. In the event of a jointly given Assignment, the Clients are jointly and severally liable for the payment of the invoice amount, the interest (s) and costs owed.
5. If, in the opinion of the Contractor, the financial position or payment behavior of the Client gives cause to do so, or if the Client fails to pay an advance or an invoice within the stipulated payment term, the Contractor is entitled to demand that the Client immediately (additionally) provides guarantees in a form to be determined by the Contractor. If the Client fails to provide the required guarantees, the Contractor is entitled, without prejudice to his other rights, to immediately suspend the further execution of the Agreement and all that the Client owes the Contractor for whatever reason is immediately due and payable.

## Article 8: Time limits

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 payment - if so agreed - or (b) provide the necessary information and / or materials in time, in full, in to provide the desired form and in the desired manner, the Client and the Contractor will consult on a new term / date within which the Assignment must be performed.
2. Periods within which the Work must be completed can only be regarded as a strict deadline if this has been explicitly agreed (in writing) between the Client and the Contractor.

## Article 9: Suspension of activities

1. The Contractor is authorized, after a careful weighing of interests, to suspend the fulfillment of all its obligations, including the delivery of information, materials or other goods to the Client or third parties, until all due and payable claims on the Client have been paid in full.

## Article 10: Expiry period

1. If not mentioned in the agreement, an expiry period of three (3) months applies to maintenance of all products.
2. The maintenance referred to in paragraph 1 takes place at the expense of the client, unless expressly agreed otherwise in Assignment.

## Article 11: Applicable law and choice of forum

1. The Agreement 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 of paragraphs 1 and 2 of this article are without prejudice to the Client's ability to submit a dispute to the designated bodies.

## Article 12: Other provisions

1. If the Contractor carries out Activities at the Client's location, the Client guarantees a suitable workplace that meets the statutory 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 that, in the opinion of the Contractor, are necessary or useful to execute the Agreement and that meet all (legal) requirements. With regard to (computer) facilities made available, the Client is obliged to ensure continuity, which includes adequate backup, security and virus control procedures. The Contractor will apply virus control procedures when the Contractor uses the facilities of the Client.
2. The Client will not hire or approach any Employees involved in the performance of the Work to enter the employment of the Client, whether temporarily or not, directly or indirectly, or to perform activities directly or indirectly on behalf of the Client, whether or not as an employee during the term of the Agreement or any extension thereof and during the 12 months thereafter.
3. Provisions in the Assignment that, expressly or by their nature, must remain in force after expiry or termination of the Assignment, remain in force after expiration or termination, including articles 3, 5, 6, 11 and 12 paragraph 2.

## Article 13: Final provisions

1. If any provision of these general terms and conditions or of the underlying Assignment / Agreement should be wholly or partly void and / or not valid and / or unenforceable, as a result of any statutory regulation, court decision or otherwise, this will not have consequences for the validity of all other provisions of these general terms and conditions or the underlying Assignment / Agreement.
2. If no appeal can be invoked in law on any single provision in the Assignment or on a part of the Assignment, the remaining part of the Assignment remains in full force, on the understanding that the provision on the part that cannot be invoked must be adapted in such a way that an appeal is possible, whereby the intention of the parties with regard to the original provision or the original part is maintained as much as possible.