

# GENERAL CONDITIONS



## Association of Management Science Practitioners and Management Consultants

### 1. Definitions

1. In these General Conditions the following terms are defined as follows:

<i>general conditions:</i>	the present terms and conditions;
<i>consultancy:</i>	the management consultancy Consiglio Corporate Development BV, CIC, Groothandelsgebouw 4 <sup>th</sup> floor, Stationsplein 45, 3013 AK Rotterdam, registered with the Rotterdam Chamber of Commerce nr. 71341897
<i>client:</i>	the party contracting or intending to contract the consultancy;
<i>assignment:</i>	any agreement between the consultancy and the client for products and services to be supplied to the client;
<i>quotation:</i>	any verbal or written offer by the consultancy to enter into an assignment with it;
<i>materials:</i>	any reports, recommendations, results, drawings, software, databases, drafts, presentations and any other material objects developed by the consultancy in the scope of the assignment.

### 2. Applicability General Conditions

1. The general conditions are applicable to all offers, quotations, assignments, activities, agreements and legal transactions, in the scope of which the consultancy supplies products and/or services of whatever nature to the client.
2. The applicability of conditions of purchase or any other terms and conditions of the client is rejected explicitly.
3. Any modifications to the assignment or amendments to the general conditions shall be effective only if and to the extent that they were agreed upon in writing by authorised representatives of both parties.

### 4. Entering into Assignment

1. A quotation of the consultancy is always free of engagement, unless explicitly stated otherwise.
2. Quotations are based on the information that has been provided by the client to the consultancy up to the date of the quotation. Client guarantees that all the information that is essential for organising and performing the assignment has been provided to the consultancy. The consultancy shall not be responsible or liable for the information provided by the client being correct and complete and for the use thereof.
3. The assignment is entered into in accordance with the rate agreed upon following acceptance of the quotation submitted by the consultancy in writing by the client. If the quotation is not confirmed by the client in any way and the consultancy nevertheless

proceeds to perform the assignment with the client's agreement, the contents of the quotation shall be deemed to have been agreed upon between parties.

4. The consultancy has the right to engage third parties in performing the assignment.

#### **4. Rights and obligations of the consultancy**

1. The consultancy shall make efforts to perform the assignment to the best of its knowledge and ability, in accordance with the requirements of professional skills and expertise and the rules of conduct of the Association of Management Science Practitioners and Management Consultants. However, the consultancy cannot guarantee that the objective aimed for or the result intended by the client by means of the assignment is achieved.
2. During performance of the assignment the consultancy and the client will conduct consultations about the current situation and the manner in which the assignment is performed on a regular basis.
3. In the event that, when the assignment is accepted and during performance thereof, facts or circumstances arise that (may) adversely affect the progress of the assignment or the result thereof, the consultancy and the client shall notify each other thereof as soon as possible.
4. If the information from the client that is required for performing the assignment is not available to the consultancy in a timely manner or is not available in accordance with the agreements or if the client does not comply with its obligations otherwise, the consultancy shall have the right to suspend performance of the assignment and to charge the costs incurred as a result thereof to the client in accordance with its usual rates.
5. The consultancy has the right to substitute the consultant(s) or employee(s) allocated by it. The consultancy shall make efforts to allocate one or more substituting consultants or employees who are operating at the same level to guarantee the continuity and quality of the assignment to the greatest possible extent.

#### **5. Rights and obligations of the client**

1. The client shall ensure that:
  - a) the consultancy is provided with all the useful and necessary information, documents and details in a timely manner that are required by the consultancy for performing the assignment;
  - b) the consultancy is notified of all facts and circumstances that are arising as a result of, for example, changes in client's policy and/or organisation and changes in its direct (market) environment that are relevant to and required for the assignment as soon as possible, so that the consultancy can take them into account properly in performing the assignment;
  - c) client's employees involved in the assignment being performed are available and employable to an adequate degree;
  - d) unless explicitly otherwise agreed upon, the consultant(s) or employee(s) of the consultancy is (are) given a workplace of his (their) own at the client's premises, equipped with telecommunication facilities (such as telephone, fax and internet connection) operating properly free of charge at the first request.
2. Client shall indemnify the consultancy against any claims of third parties (which include consultants and employees of the consultancy) which, in the scope of the assignment

being performed, suffer damage and/or loss as a result of actions or omissions of the client or of unsafe situations in its business or organisation.

3. The client shall indemnify the consultancy and the consultants and employees allocated by it and compensate them for any claims whatsoever, howsoever called and based on whatever point of view, from the Fiscal Authorities and/or the Employee Insurance Administration Agency (UWV) to withhold and/or pay taxes and/or social security contributions, including the interest thereon and administrative fines, if any, that are related to the activities performed by the consultancy and the consultants and employees allocated by it.

## **6. Adjustment to the (substance of the) assignment**

1. In the event that in the scope of the assignment circumstances arise that were not anticipated at the start of the assignment, a solution will be sought in mutual consultation and in good harmony, including for example adjustment to the (substance of the) initial assignment.
2. Client acknowledges and accepts that adjustments to (the substance of) the assignment (for example changes in the volume, operating procedure or approach) may affect the planning agreed upon. If adjustment to (the substance of) the assignment results from requests or actions of the client or any other circumstances that are attributable to the client, the consultancy shall be allowed to charge the additional work resulting therefrom, if any, as a supplementary or separate assignment.

## **7. Confidentiality**

1. Both parties ensure that all details received from the other party of which they are aware or should be aware that they are of a confidential nature remain secret, unless a statutory obligation dictates that those details are published. The party receiving confidential details shall use them only for the purpose for which they were provided. Details shall be regarded as confidential in any case if they are designated as such by either party. Client shall not inform any third parties about the approach, operating procedure and materials of the consultancy without the consultancy's prior permission in writing.

## **8. Duration and termination of the assignment**

1. The assignment is entered into for its duration and shall therefore be concluded when the assignment has been completed by operation of the law.
2. Client acknowledges that the duration and the planning of the assignment may be affected by all kinds of unanticipated factors, including but not limited to the quality of the information provided by the client in the scope of the assignment and the (degree) of availability and employability of employees of client who are involved in the assignment.
3. The consultancy shall make efforts to perform the assignment within the planning agreed upon. However, this planning and the (partial) terms thereof shall not be designated as deadlines at any time. Except in case of intent or gross negligence of the consultancy, the planning and the (partial) terms thereof being exceeded shall not give client the right to proceed to rescind or terminate the assignment in full or in part and neither shall this give it the right to any loss suffered by the client as a result thereof being compensated.

4. Parties have the right to terminate the assignment prematurely in writing, giving one (1) calendar month' notice, if and to the extent that either of them demonstrates that, due to weighty causes or reasons, performing the assignment agreed upon originally and supplementary assignments, if any, has become considerably more difficult or impossible and completion of the assignment cannot be demanded in reason.
5. In case of termination of the assignment for whatever reason, client shall pay for all activities performed by the consultancy in the scope of the assignment up to that time in full and in a timely manner. All invoices sent to the client earlier shall remain payable in full and shall fall due immediately at the time when the assignment is terminated.
6. Either party shall have the right to rescind the assignment in full or in part with immediate effect and without any judicial intervention, if in respect of the other party (a) an application for bankruptcy has been submitted, (b) suspension of payments has been applied for, (c) the business is liquidated or closed down or (d) a substantial part of the other party's assets is attached. In case of rescission the consultancy shall not be obliged to refund any monies received earlier or to pay any compensation to the client.

## **9. Rates and costs**

1. Unless otherwise agreed upon in writing, the activities performed and the services provided by the consultancy shall be charged to the client on the basis of time spent and costs incurred. Unless an arrangement in writing reading otherwise has been agreed upon, the consultancy sends a (provisional) invoice once a month. In case of products supplied, an invoice is sent on or after delivery thereof.
2. The consultancy's rates and the cost estimates based thereon include all costs such as normal office expenses and hotel and travelling expenses. The expenses involved in trips abroad, if any, and large print runs of materials, if any, are charged to the client separately. Products are subject to the current price lists or prices quoted. The costs of third parties that have to be incurred by the consultancy are charged on to the client, the relevant bills being attached to the invoice.
3. All prices and rates are excluding sales tax (VAT) and any other levies imposed by the public authorities. Interim changes necessitating the consultancy to adjust rates or prices shall be charged on to the client with a maximum frequency of once every six months.

## **10. Payment**

1. Client shall pay all invoices from the consultancy within thirty days from invoice date at the latest into an account number specified by the consultancy.
2. In the event that client does not pay the amounts payable in full or in a timely manner, client shall be in default, without any summons or notice of default being required, and the legal commercial interest on the outstanding amount shall be payable by it. If the client fails to pay the amount payable even after having been summoned to do so, the consultancy may pass on the amount payable to an external agency, in which case client is obliged, in addition to the total amount then payable, to pay all judicial and extrajudicial expenses, including costs charged by external experts, in addition to the costs determined by the court.
3. The consultancy has the right, before complying with any obligations on its part, to demand full payment and/or adequate security for the client's compliance if, in the

consultancy's opinion, it may be assumed that client will not (be able to) comply with its obligations in full or in a timely manner.

## **11. Liability**

1. The consultancy and the consultants and employees allocated by it shall be liable only for any loss suffered by the client resulting directly from an imputable failure in performing the assignment.

In all cases the aforesaid contractual liability of the consultancy and the liability on other accounts shall be limited to the level of the amount received from the client by the consultancy for its activities in the scope of the assignment. If the assignment continues for more than six months, said liability shall be limited to an amount equalling the total amount received by the consultancy from the client in the scope of the assignment in the last six months before the loss arose.

2. The consultancy and the consultants and employees allocated by it shall not be liable for any loss suffered by the client or any third party as a result of the application or the use of the materials and/or the results of the activities. Client shall indemnify the consultancy and the consultants, employees and third parties engaged by it in the scope of the assignment against any loss referred to in this article.
3. The consultancy's liability on account of imputably failing to comply with an agreement shall arise only if the client gives the consultancy notice of default in writing properly and without delay, providing a reasonable term for rectifying the failure, and the consultancy imputably continues to fail to comply with its obligations also after said term having elapsed. The notice of default shall set out the failure in the greatest possible detail, enabling the consultancy to respond adequately.
4. The consultancy shall not be liable for any consequential damage and/or loss, loss due to business interruption or any indirect loss of the client resulting from the consultancy not performing, not performing in a timely manner or not performing properly.
5. The limitations of liability contained in this article 11 shall not be applicable if and to the extent that intent and/or gross negligence of the consultancy or its senior management is involved.
6. Any right to compensation shall arise only subject to the condition that the client reports the damage and/or loss to the consultancy in writing as soon as possible after its arising. Any claim for compensation against the consultancy shall lapse by merely six (6) calendar months from the claim arising having elapsed.

## **12. Intellectual property rights**

1. Unless the consultancy and the client have explicitly agreed otherwise in writing, the consultancy is and remains the party fully and exclusively entitled to the (intellectual) property rights (including but not limited to copyrights, personality rights, model rights and database rights) resting upon the materials.
2. The consultancy grants the right to the client to use the materials exclusively within and for the benefit of its own organisation, but only when client has complied with all its (financial) obligations on account of the assignment.
3. Client is not permitted without the consultancy's prior permission in writing: a) to make the materials available for inspection, to publish or to multiply them in whatever manner

beyond the circle of persons who, within the scope of the assignment, constitute the employees who are directly involved in the assignment; or b) to use the materials or to cause the de materials to be used (in full or in part) for instituting legal claims, conducting legal procedures or for advertising or promotion purposes.

### **13. Rules of Conduct of the Association of Management Science Practitioners and Management Consultants**

1. In performing the assignment the management science practitioner or management consultant allocated by the consultancy shall comply with the professional rules of conduct contained in the Code of Conduct of the Association of Management Science Practitioners and Management Consultants. The Code of Conduct is sent free to the client of charge at its request and is also accessible through the website [www.ooa.nl](http://www.ooa.nl). If the client holds the view that the management science practitioner or management consultant does not comply with this code of conduct, the client may submit its complaint to the Supervisory Committee.

### **14. Final clauses**

1. Parties shall not recruit each other's employees who were involved in performing the assignment without the other party's permission in writing for a period of one year after completion of the assignment by the consultancy.
2. In the event that either party is affected by a situation of force majeure in the sense of section 6:74 of the Netherlands Civil Code, the party involved shall notify the other party thereof without delay. Subsequently parties will try to reach a reasonable solution in mutual consultation. If the situation of force majeure continues for a period exceeding three (3) months, both parties have the right to terminate the agreement by means of a written notice. In case of force majeure, the activities that were performed in the scope of the assignment shall be paid for pro rata, without anything being mutually payable by parties otherwise.

### **15. Applicable law and settlement of disputes**

1. Dutch law is applicable to any disputes related to and/or arising from the general conditions and/or assignments or agreements to which these general conditions were declared applicable.
2. In case of any disputes between the client and the consultancy, parties will try first to settle the dispute amicably. Any disputes that cannot be settled amicably shall be submitted exclusively to the competent court in Amsterdam.