

General Conditions (model NOB)

Version: May 2018

Note on translation:

This is an English translation of a document drawn up in Dutch. Every effort has been made to render the source text as literally as possible without compromising continuity. In the event of any disparity between the Dutch original and this translation, the Dutch text will prevail.

In this translation, Dutch legal concepts are expressed in English terms and may not be identical to the concepts described by those English terms as understood under the laws of other jurisdictions.

Article 1 - General

- 1.1 The terms below are defined as follows in these general conditions:
- a) The Client: the party commissioning the assignment;
 - b) the Contractor: Vastrecht Belastingadvies BV
located in: Den Haag,
being a Company (Besloten Vennootschap)
also acting under the name Vastrecht Belastingadviseurs and Vastrecht;
 - c) Assignment and/or Agreement: the agreement for the assignment, in which the Contractor undertakes to perform various activities vis-à-vis the Client;
- 1.2 All Assignments are exclusively accepted and performed by the Contractor, notwithstanding Articles 7:404 and 7:407, paragraph 2 of the Netherlands Civil code, regardless of whether the Client has expressly or tacitly granted the Assignment with the intention of having a certain person or persons perform the activities.
- 1.3 All clauses in these general conditions have also been drawn up on behalf of all the parties who are working for the Contractor in the context of the performance of the Assignment, including Mon Bijou BV, Willemijn van Sandick. These parties can also invoke these clauses vis-à-vis the Client.

Article 2 – Applicability

- 2.1 These general conditions apply to all Assignments and/or Agreements between the Client and the Contractor, and their respective legal successors. These general conditions also apply to all agreements arising on this basis and/or associated agreements, as well as all to offers and/or quotations provided by the Contractor.
- 2.2 The applicability of the Client's General Conditions is expressly rejected by the Contractor.
- 2.3 Clauses deviating from these conditions are only applicable if and insofar the Contractor has confirmed these expressly to the Client in writing.
- 2.4 If any clause, which forms a part of these general conditions or the agreement, is invalid or declared void, then the rest of this agreement shall continue to exist as far as possible, and the clause in question will immediately be replaced in consultation by the parties by a clause that corresponds as much as possible to the meaning of the original clause.

Article 3 – Establishment of the Agreement

- 3.1 The Agreement shall be established at the time that the assignment confirmation signed by the Contractor and the Client is received by the Contractor. The assignment confirmation is based on the information provided to the Contractor by the Client at that time. The assignment confirmation is deemed to accurately and fully represent the Agreement.
- 3.2 If the Assignment is granted verbally, or if the assignment confirmation has not yet been received, the Assignment is deemed to be established under the applicability of these general conditions at the time that the Contractor commences the performance the Assignment at the request of the Client.

Article 4 - Data and information

- 4.1 The Client is obligated to provide all the data and information requested by the Contractor, as well as the data and information that the Client can reasonably know that the Contractor needs for the correct performance of the Assignment, a) on time, b) in the form desired by the Contractor and c) in the way desired by the Contractor.
- 4.2 The Client guarantees the accuracy, completeness, reliability and legitimacy of the data and information provided to the Contractor by the Client or on the Client's behalf, also if this data and information have been provided through a third party or originate from a third party, unless the nature of the Assignment provides otherwise.
- 4.3 The Client is obliged to immediately inform the Contractor with respect to facts or circumstances that could be important in connection with the performance of the Assignment.
- 4.4 The Contractor has the right to suspend the performance of the Assignment until the time that the Client has fulfilled the obligations referred to in the first, second and third paragraphs.
- 4.5 Extra costs, extra hours, and other damages that arise for the Contractor because the Client has not fulfilled the obligations referred to in the first, second and third paragraphs, are for the expense and risk of the Client.
- 4.6 At the first request of the Client, the Contractor shall return the original documents provided by the Client.

Article 5 - Performance of the Assignment

- 5.1 The Contractor shall determine the way and by which person(s) the Assignment is performed, yet he/she shall take into account as far as possible the wishes expressed by the Client. If, in the performance of the Assignment, the Contractor wishes to engage third parties at the expense of the Client, he/she may only do this with the Client's approval.
- 5.2 The Contractor shall perform the activities to the best of his/her ability and as a professional acting with due care; however, the Contractor also cannot guarantee that any desired result shall be achieved.
- 5.3 The Assignment will be performed with due observance of the applicable professional and other regulations required by or in accordance with the law. The Client shall provide full cooperation at all times with the obligations that arise for the Contractor on this basis.
- 5.4 The Client acknowledges, on the basis of the Act on Prevention of Money Laundering and Financing of Terrorism (*Wet ter voorkoming van witwassen en financieren van terrorisme – Wwft*) the Contractor:
- a) May be required to conduct an investigation into the identity of the Client and/or the customer;

- b) May be required to report certain transactions to the authorities appointed by the government for that purpose.
- 5.5 Professional and other regulations include, in any case, the Professional Practice Regulations of the Dutch Association of Tax Advisers (*Reglement Beroepsuitoefening van de Nederlandse Orde van Belastingadviseurs* - NOB).
- 5.6 The Contractor excludes any liability whatsoever for damages arising as a result of the Contractor's compliance with legislation and professional and other regulations applicable to him/her.
- 5.7 For the Assignment, the Contractor shall maintain a work file containing copies of the relevant documents, which is the property of the Contractor.
- 5.8 During the performance of the Assignment, the Client and the Contractor, at the request of one of the parties, shall be able communicate with each other by electronic mail. The Client and the Contractor are vis-à-vis each other not liable for any damages that arise from use of electronic mail. Both the Client and the Contractor shall do that which can reasonably be expected to prevent risks, such as spreading viruses and distortion.
- 5.9 In the case of doubt concerning the content and/or sending of electronic mail, the data extracts from the Contractor's computer systems shall prevail.

Article 6 – Terms

- 6.1 The terms during which activities must be completed are only considered final deadlines if this is agreed in writing.
- 6.2 If the Client owes an advance payment or if the Client must provide the necessary data and information for the performance of the Assignment, then the period during which the activities should be completed shall not commence before the payment in full has been received by Contractor, or before all of the data and information has been provided to the Contractor.
- 6.3 Unless it has been established that performance thereof remains impossible, the Agreement may not be terminated by the Client because the deadline is not met, before the Client, after the expiry of the agreed term, has given the Contractor notice of reasonable term to perform the Assignment (in full) as yet, and the Contractor still does not perform the Assignment at all or within the term provided.

Article 7 – Termination

- 7.1 The Agreement is concluded for an indefinite period, unless, due to the content, nature or purport of the Assignment granted, it is clear that the Assignment has been concluded for a fixed term.
- 7.2 The Client and the Contractor may terminate the Agreement at any time (in the interim) with due observance of a reasonable period of notice, unless the termination or the termination in such a period is contrary to the principles of reasonableness and fairness. The termination must be communicated to the other party in writing.
- 7.3 The Agreement may be terminated by either the Contractor or the Client (in the interim) by means of registered post, without due observance of a period of notice, if the other party is not able to pay its debts or if an official receiver, administrator or liquidator is appointed; if the other party undergoes debt restructuring; if the other party ceases its activities for any other reason; if one party considers it reasonably plausible that one of the abovementioned circumstances will arise for the other party; or if a situation arises that justifies the immediate termination in the interest of the terminating party.

- 7.4 In all cases of interim or other termination, the Contractor retains the right to payment of the fee notes for all of the activities performed by the Contractor that point in time, which will be made available to the Client, subject to the provisional results of the activities performed until then.
- 7.5 If the Client decides on interim or other termination, the Contractor has a right to compensation for capacity utilisation loss, which has arisen for and which can be demonstrated by the Contractor, as well as for reasonable additional costs that were or will be incurred by the Contractor as a result of the early termination of the Agreement (such as costs relating to possible subcontracting), unless there are facts and circumstances that are the basis for the termination and which can be attributed to the Contractor.
- 7.6 If the Contractor decides on interim or other termination, the Client has a right to cooperation from the Contractor for the transfer of activities to third parties, unless there are facts and circumstances that are the basis for termination which can be attributed to the Client.
- 7.7 Insofar as the transfer of the activities for the Contractor is accompanied by extra costs, these will be charged to the Client.
- 7.8 Upon termination of the Agreement, each of the parties shall immediately return to the other party all goods, items and documents in their possession that belong to the other party.

Article 8 - Intellectual property rights

- 8.1 All rights concerning products of the mind that the Contractor develops or uses in the performance of the assignment, also including recommendations, working methods model or other contracts, systems, system designs and computer programs, belong to the Contractor, insofar as they do not already belong to third parties.
- 8.2 Except for with the express written advance permission of the Contractor, the Client is not permitted to reproduce, make public or exploit products of the mind or the recording thereof on data carriers, including together with or through the engagement of third parties, without prejudice to the provisions of Article 9.3.

Article 9 - Confidentiality

- 9.1 The Contractor is required to maintain confidentiality with respect to the data and information provided by or on behalf of the Client with respect to third parties that are not involved with the performance of the assignment. This obligation does not apply insofar the Contractor is subject to a statutory or professional duty that dictates disclosure of the information, including the obligations arising from the Act on Prevention of Money Laundering and Financing of Terrorism and other national or international regulations of a similar meaning, or insofar as the Client has released the Contractor from the duty of confidentiality.
- 9.2 The first paragraph does not prevent confidential consultation between colleagues within the Contractor's organisation, insofar as the Contractor considers this necessary for the proper performance of the assignment or for proper fulfilment of a statutory or professional duty of disclosure.
- 9.3 If the Contractor represents him/herself in a disciplinary, civil, arbitration, administrative or criminal procedure, he Contractor has the right to use the data and information which he/she came to know in the performance of the assignment insofar as this data and information could be of importance in his/her reasonable opinion.
- 9.4 Except for with the express advance written permission of the Contractor, the Client is not permitted to disclose the content of the recommendations, opinions

or other written or unwritten communications of the Contractor or to make them available in any other way to third parties, except for if this arises directly from the Agreement, if this takes place to obtain an expert opinion concerning the relevant activities of the Contractor, if the Client is subject to a statutory or professional duty of disclosure, or if the Client represents him/herself in a disciplinary, civil, arbitration, administrative or criminal procedure.

- 9.5 The Contractor has the right to state the name of the Client and the main points of the activities performed to commercial and other business associates of the Contractor to indicate the Client's experience.

Article 10 – Personal data and the General Data Protection Regulation

- 10.1 In providing the Contractor with personal data, the Client shall abide by the General Data Protection Regulation (*Algemene Verordening Gegevensbescherming*) and other applicable regulations and legislation concerning the protection of personal data.
- 10.2 In performing the assignment, the Contractor shall abide by the General Data Protection Regulation and other applicable regulations and legislation concerning the protection of personal data. The Contractor shall process the personal data exclusively for the purpose for which the personal data were obtained.
- 10.3 If necessary, the Client and Contractor shall conclude a processing agreement.
- 10.4 The Contractor shall take suitable technical and organisational measures to secure the personal data against destruction, loss and unauthorised access.
- 10.5 The Client agrees to the fact that, in order to provide and optimise the service, the Contractor will work with third parties such as ICT service providers and suppliers of administration tools, and will share personal data with third parties in this context. The Contractor shall conclude a processing agreement with processors and sub-processors in accordance with the stipulations of the General Data Protection Regulation.

Article 11 - Fee

- 11.1 The Client shall owe the Contractor a fee and an allowance for costs incurred in accordance with the Contractor's normal rates, calculation methods and working methods.
- 11.2 The Contractor has the right to request an advance payment from the Client.
- 11.3 If, after the establishment of the Agreement, but before the Assignment has been completed in full, factors affecting the rate such as wages and/or prices undergo a change, the Contractor has the right to adjust the rate agreed earlier in accordance with the situation.
- 11.4 The rates do not include VAT or other taxes imposed by the authorities.

Article 12 – Payment

- 12.1 Payment must take place without any deductions, discount or set-off, in Dutch currency, by means of deposit or transfer to the bank account indicated on the invoice, within 14 days after the invoice date. The day of payment is the day that the amount owed is credited to the Contractor's bank account. Objections to the level of the invoice do not suspend the Client's payment obligation.
- 12.2 If the Client has not paid within the term stated in the first paragraph, or within another term agreed by the parties, the Client is in default by operation of law and the Contractor has the right to charge statutory interest from that point in time.
- 12.3 If the Client, acting in the course of a business or profession, has not paid within the term stated in the first paragraph, the Client is obliged to pay all the out-of-court and court collection and other costs incurred by the Contractor, also insofar as these costs surpass any court order for costs, unless the Contractor, as the losing party, is ordered to pay the costs.
- 12.4 If the Client is not acting in the course of a business or profession, the Client is obliged to pay extrajudicial collection costs amounting to the maximum amount in accordance with the Extrajudicial Collection Costs Decree (*Besluit vergoeding van buitengerechtelijke incassokosten*). These extrajudicial collection costs are payable by the Client if he fails to pay the amount due after receiving a demand for payment within fourteen days.
- 12.5 In the case of a jointly granted Assignment, insofar as the Assignment is performed on behalf of the joint Clients, the Clients are jointly and severally liable for the payment of the invoice amount, the interest owed and the costs.
- 12.5 The Contractor reserves the right – also during the performance of an assignment, if the financial position or the payment behaviour of the Client gives reason for this in the Contractor's opinion – to demand a full or partial advance payment from the Client and/or to demand that security be provided, and in the absence of this, the Contractor has the right to suspend the fulfilment of his/her obligations.

Article 13 - Complaints

- 13.1 At the risk of forfeiting all rights, a complaint relating to the activities performed or to the invoice amount must be communicated to the Contractor in writing within 30 days after the sending date of the documents or information over which the Client is lodging a complaint, or, if the Client demonstrates that he/she was not reasonably able to discover the shortcoming earlier, within 30 days after the discovery of the shortcoming.
- 13.2 A complaint does not suspend the payment obligation of the Client, except insofar as the Contractor has indicated to the Client that Contractor believes the complaint is justified.
- 13.3 In the case of a rightfully lodged complaint, the Contractor may choose between adjusting the fee invoiced, improving the activities in question free of charge, performing them again free of charge, or ceasing to perform the Assignment in whole or in part, and repaying a pro rata amount of the fee already paid by the Client.

Article 14 – Liability

- 14.1 The Contractor is liable vis-à-vis the Client only for any shortcoming in the performance of the assignment insofar as a shortcoming has arisen due to the non-observance of due care and expertise, as a result of which the performance of the assignment cannot be trusted.
- 14.2 The Contractor's liability for any shortcoming in the performance of the assignment and for any wrongful act caused by the Contractor is limited to three times the amount that the Client, on the basis of the provision in Article 10, has paid as a fee (not including VAT) to the Contractor and/or still owes for the activities to which the loss-causing occurrence relates or is associated with, up to a maximum of three hundred thousand euros (€ 300,000).
- 14.3 The limitation of the liability referred to in the previous paragraph does not apply insofar as the loss or damage is a result of wilful misconduct or gross negligence on the part of the Contractor.
- 14.4 The Contractor is also not liable for the following:
- Any loss or damage arising for the Client or third parties that is the result of incorrect or incomplete data or information provided by the Client to the Contractor or which is otherwise the result of acts or omissions by the Client;
 - Any loss or damage arising for the Client or third parties that is the result of acts or omissions by auxiliary persons who are engaged by the Client or the Contractor (not including employees of the Contractor), also if these persons are employed at an organisation affiliated with the Contractor;
 - Loss of profits, indirect or consequential damage arising for the Client or third parties.
- 14.5 A claim for the reimbursement of loss or damage must be submitted to the Contractor no later than 12 months after the Client has discovered or reasonably could have discovered the loss or damage. If this does not occur, the right to compensation for loss or damage shall be forfeited.
- 14.6 The Client is obligated to reimburse the Contractor and indemnify the Contractor against all claims from third parties – also including the shareholders, managing directors, supervising directors and staff of the Client, as well as affiliated legal entities and businesses and others involved with the Client's organisation – which arise from or are connected with the activities of the Contractor for the Client, except insofar as these claims are the result of wilful misconduct or gross negligence on the part of the Contractor.

Article 15 – Expiry period

Insofar not determined otherwise in these general conditions, the Client's right of action, which also applies vis-à-vis the Contractor in connection with the performance of the activities by the Contractor, shall be forfeited in any case after one year after the time which the Client learned or could have reasonably learned of the existence of these rights.



Article 16 – Choice of law and jurisdiction

- 16.1 All agreements between the Client and the Contractor are subject exclusively to the law of the Netherlands.
- 16.2 Unless expressly agreed otherwise in writing by the parties, any disputes associated with Agreements between the Client and the Contractor shall be submitted to the competent court in the location where the Contractor is established.
- 16.3 Contrary to the previous paragraph, the Client and the Contractor may select another method of dispute resolution.

Notes to the General Conditions (model NOB)

I Introduction

The document below offers you an explanation of some of the provisions of the general conditions. These notes are preceded by several comments about how the general conditions are utilised.

II Use of the general conditions

General

The regulation concerning general conditions is set out in Articles 231 to 247 of Book 6 of the Netherlands Civil Code, and involves mandatory law. These articles focus mainly on general conditions that are used by business owners in agreements with consumers (natural persons who do not act in the operation of a profession or business) and 'small businesses' (companies which are not required to publicise their financial statements, or which never undertake publication and have fewer than 50 employees). These other parties can invoke the grounds for declaring the general conditions void as stated in the regulation (Art. 6:233 and 234 of the Netherlands Civil Code).

If the adviser's client is a company that is not a 'small business' in the sense of the previous paragraph, then this party, in principle, cannot directly invoke these grounds for declaring the general conditions void.

The grounds for declaring general conditions void

Grounds for declaring general conditions void are present if (Art. 6:233 of the Netherlands Civil Code):

- a A clause is included in the general conditions, in view of the nature and the other content of the agreement, that the method in which the conditions were realised, the mutual apparent interest of the parties and other conditions of the case are unreasonably onerous to the other party; or
- b The party that utilises the general conditions has not given the other party a reasonable opportunity to examine these general conditions.

Sub a Black and grey list

An elaboration of the concept of 'unreasonably onerous' can be found in the so-called 'black and grey list'. The scope of these lists is, in principle, limited to agreements with consumers, yet according to the legislature, the provision can also exert a certain regulating effect in the review of transactions between business owners.

If a clause is present on the 'black list' (Art. 6:236 of the Netherlands Civil Code), the following is characterised as unreasonably onerous: no evidence to the contrary is possible. A clause is *suspected* of being unreasonably onerous if it is present on the 'grey list' (Art. 6:237 of the Netherlands Civil Code). This suspicion can be refuted by the user of the conditions.

Sub b Disclosure requirement

In agreements with clients established in the Netherlands, the adviser should take account of the so-called 'disclosure requirement', which means that consumers and 'small businesses' (see above) must be given the opportunity to examine the content of the general conditions before they are accepted. In principle, the disclosure requirement does not apply with respect to larger counterparties.

If the adviser has not given the client a reasonable opportunity to examine the content of the adviser's general conditions and the client is a consumer or a 'small business', then this party can declare these general conditions void on this basis by means of an extrajudicial declaration (Art. 6:233 sub b of the Netherlands Civil Code).

Because, in practice, in many cases, the adviser will not be able to determine quickly or at all whether a client is a 'small business', the preference is to observe the disclosure requirement with respect to all clients.

General rule: delivery

The general conditions must be delivered to the other party before or upon the conclusion of the agreement (Art. 6:234, paragraph 1 of the Netherlands Civil Code). To be certain that the client is given every opportunity to examine the general conditions, the adviser should refer to the conditions at an early stage, such as by delivering the conditions during an intake interview or sending them along with the quotation or an accompanying letter.

The conditions can be printed on the reverse of the quotation paper or stationery, in which case the front side should contain a clear reference to these conditions. Filing the conditions (see below) is not essential, but also not superfluous. Printing the conditions on the reverse of the fee note is not recommended, because this would mean that the conditions are being delivered *after* the conclusion of the agreement. For that matter, the Supreme Court has determined that such a reference can in fact exert an effect in the case of a number of successive assignments. There is no objection to a reference on the fee note in addition to a declaration of applicability elsewhere.

A possible phrase that can be used for the declaration of applicability for general conditions, such as printed on the adviser's stationery, is as follows:

“The general conditions of (adviser) apply to all offers made by (adviser) and all agreements concluded with (adviser)”.

Exception: filing

If it is not reasonably possible for the adviser to deliver the conditions to the client before or upon the conclusion of the agreement (such as because the conditions are exceptionally long), the adviser may make them available for inspection at his/her office, or file them with the Chamber of Commerce and Industry or with a court registry. However, in this case, prior to the realisation of every agreement, the applicability of the conditions in question and the location where they can be examined or where they have been filed must be indicated. One way of doing this is to state this fact on the stationery. It should also be indicated that the conditions can be sent to the client upon request, free of charge. However, in most cases, it should not be assumed that delivery is not reasonably possible.

Mutual reference

In legal matters, the situation can arise that both the adviser and the client refer to the applicability of their own general conditions. In principle, the conditions that are referred to in the first instance apply to the agreement concerned, unless the other party *expressly* rejects the applicability of the conditions. A rejection by means of a single reference to a party's own general conditions or to a pre-printed standard sentence in these conditions will probably not lead to the intended result. If the client expressly rejects the adviser's conditions and also refers to the applicability of his/her own general conditions, then these will apply, unless the adviser immediately raises objection to this. In this situation as well, the rejection must be made expressly.

International aspects

It should be noted that, for agreements between parties that act in operation of a profession or business, and for which both of the parties are not established in the Netherlands, the regulation for general conditions described above is not applicable by law, regardless of the law that controls the agreement. Nonetheless, it is possible that the regulation (and its provisions) may still have an effect in disputes of an international nature, such as the rules on the disclosure requirement.

The judgement of whether and to what extent general conditions apply in these cases is dependent in part on the legal system that the court considers applicable for the legal relationship between the parties. In certain countries, it is required that a party's reference to its own general conditions must be made in a language reasonably understandable to the counterparty, and sometimes this also applies to the conditions themselves. For international transactions, it is therefore recommended that care be taken to adapt the reference and translation of the conditions. In many cases, a reference and conditions in

English will be sufficient. Here as well, it is recommended that care be taken to deliver the general conditions prior to the realisation of the agreement.

III Notes to several articles

Article 1.2

Art. 7:404 of the Netherlands Civil Code establishes that, if the Assignment is granted with the intention of having it be performed by a certain person, this person is, in principle, obligated to perform the Assignment him/herself. Art. 7:407, paragraph 2 of the Netherlands Civil Code determines that, if two or more persons have received an assignment, each of them is jointly and severally liable vis-à-vis the client. In Article 1.2, this joint and several liability is excluded; only the contractor – in most cases, a partnership – is the contracting party, and is therefore obligated to perform the assignment, in which he/she is free to determine which person or persons will perform the Assignment. See also Art. 5.1.

Article 1.3

In principle, general conditions only apply between contracting parties. The purpose of this provision is to protect the legal entities or other persons – which are not party to the agreement – against claims from the client arising from wrongful acts.

Article 2.1

See paragraph II ('Use') under: General.

Articles 2.2 and 2.3

Idem, under: Mutual reference.

Article 4.1

This provision creates, among other things, a right to suspension by the contractor if the data and information in question is not provided on time or at all.

Article 5.1

The provision prevents the client from being able to obligate the contractor to have a specific person perform the assignment. Of course, the parties may contractually deviate from this provision if desired.

Article 5.2

In accordance with this article, the assignment is qualified as a best efforts obligation. In a best efforts obligation, the contractor undertakes to put forth his/her best effort to achieve a desired result. A shortcoming is only possible if the contractor has not put forth sufficient

effort to achieve the result; whether or not the desired result is actually achieved is therefore, in principle, not relevant.

Article 6.1

A 'final deadline' implies that an obligor is in default by the simple act of not meeting the deadline, at least if he/she cannot deliver the required performance. According to the legislation (Art. 6:83 of the Netherlands Civil Code), every deadline is, in principle, final, unless the parties have decided otherwise, for example. Article 6.1 establishes that deadlines agreed with the client are, in principle, not final deadlines, unless this is agreed in writing.

Article 6.3

If the contractor is in default – such as after the expiry of a final deadline agreed on the basis of Article 6.1 or due to another reason – the client, in principle, has the right to terminate the agreement. This article deviates from this principle and the contractor receives a 'second chance' before the client can exercise his/her right to terminate the agreement.

Article 9.3

The inclusion of the phrase "reasonable opinion" should create a certain objectification, and the contractor may not disclose information unconditionally.

Article 9.4

Please note that the requirement of the "reasonable opinion" (see Article 9.2) is not included here.

Article 12.2

A result of the late payment of an invoice is that the client owes statutory interest over the outstanding amount with effect from the date on which the default entered into effect (Art. 6:119 of the Netherlands Civil Code).

Article 12.3

The Act on the Standardisation of Extrajudicial Collection Costs (*Wet Normering Buitengerechtelijke Incassokosten*) came into effect on 1 July 2012. This Act distinguishes between consumers and non-consumers. If the debtor is a consumer, the parties are bound to the graduated rate of the Extrajudicial Collection Costs Decree (*Besluit vergoeding van buitengerechtelijke incassokosten*) when setting collection fees. This may not be varied from at the expense of the consumer. If the debtor is acting in the course of a business or profession, a higher fee (such as the actual costs incurred) may be agreed. This must be expressly agreed upon (for example, through General Terms and Conditions). If Article 12.3 is not included, the graduated rate of the Extrajudicial Collection Costs Decree also applies to non-consumers.

Article 12.4

If the debtor is a consumer, the parties are bound to the graduated rate of the Extrajudicial Collection Costs Decree (*Besluit vergoeding van buitengerechtelijke incassokosten*) when setting collection fees. This may not be varied from at the expense of the consumer. Furthermore, under the Act on the Standardisation of Extrajudicial Collection Costs, a debtor who is not acting in the course of a business or profession, must be sent one more demand for payment after he has come into default. The demand for payment must give the debtor a period of fourteen days to pay the amount owed without additional collection costs. The demand for payment must state the consequences of non-payment, including the amount to be charged in collection costs in accordance with the law. The above applies regardless of whether Article 12.4 is included in the General Conditions.

Article 12.5

Requesting an advance payment prior to the Assignment is always allowed (Article 11.2). A supplemental or other advance payment may only be requested later based on the financial position or payment behaviour of the client.

Article 13.1

The term stated is a further substantiation of Art. 6:89 of the Netherlands Civil Code, which establishes that the obligee must protest to the obligor within 'due time' after he/she has discovered or reasonably could have discovered the shortcoming.

Article 14.4

The limitation of liability as stated under the second point deviates from the statutory regulation on the basis of which, in principle, an obligor is liable for the actions of auxiliary persons he/she has engaged (Art. 6:76 of the Netherlands Civil Code, see also Art. 6:171 of the Netherlands Civil Code).

Article 14.5 / 15

The terms stated imply a reduction of the statutory limitation periods (Art. 3:306 et seq. of the Netherlands Civil Code); for most claims, the statutory limitation period is five years. Submitting a legal claim must in any case be distinguished from reporting any shortcomings (complaints), see Art. 13.

Article 16.1

This provision declares that the law of the Netherlands applies exclusively. This is recommended in consideration of foreign clients.

Article 16.2

This paragraph stipulates that disputes will be submitted to the competent court in the contractor's business location. However, account must be taken of the possibility that this



clause may have no effect for sub-district cases or if the Client is a consumer. In accordance with Articles 101 and 108 sub 2 of the Code of Civil Procedure, a choice of jurisdiction in an agreement does not have an effect if it concerns claims not exceeding (at present) € 5000 or in cases concerning an agreement between a professional party and a consumer, unless:

- The parties have made the agreement about the choice of jurisdiction after the dispute has arisen.
- The consumer has applied to the court chosen.