

Negotiation & Public Service General Terms and Conditions

These are the General Terms and Conditions of Negotiation & Public Service (hereinafter referred to as “NPS”), a company having its registered office at Mathenesserlaan 396b, Rotterdam. NPS is registered at the Trade Register of the Chamber of Commerce under number 51115859.

Definitions

In these General Terms and Conditions the following terms have the subsequent meaning unless explicitly stated otherwise.

- Terms and Conditions: these general terms and conditions.
- Company: the Counterparty acting in the conduct of a business or profession.
- CC: the Dutch Civil Code (Burgerlijk Wetboek).
- Assignment: All activities, in any form, performed by NPS for (the benefit) of the Counterparty.
- Distance Service (dienstverlening op afstand): a contract that is concluded between NPS and the Counterparty under an organized distance service provision scheme, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.
- Agreement: each agreement concluded between NPS and the Counterparty.
- Counterparty: the Company that has accepted these Terms and Conditions and has given instructions to perform an Assignment.

Unless the Terms and Conditions explicitly state otherwise, the singular shall include the plural and vice versa, and reference to the male form shall include the female form and vice versa, in relation to the interpretation of the Terms and Conditions.

Applicability

1. These Terms and Conditions are applicable to all proposals and Agreements made between NPS and the Counterparty unless the parties have expressly waived these Terms and Conditions in writing.
2. These Terms and Conditions are also applicable to agreements with NPS, where third parties should be involved for the fulfillment of the agreement.
3. The applicability of terms and conditions of the Counterparty is hereby excluded explicitly.
4. Deviations of the Agreement and Terms and Conditions shall only be valid in case these have been explicitly agreed upon in writing.

Proposals

1. Prior to acceptance by the Counterparty, all NPS proposals where the contrary has not been explicitly stated qualify as a non-committal proposal and can always be revoked, also if it includes a term for acceptance. Proposals can also be revoked within seven days after receipt of acceptance by NPS, in which case no agreement will be concluded.
2. All proposals of NPS are valid for a period of 30 days, unless indicated otherwise.
3. NPS shall not be bound to his proposals when the Counterparty, based on reasonableness and fairness (redelijkheid en billijkheid) and in general accepted principles (in het maatschappelijk verkeer gangbare opvattingen), should have understood that the proposal (in whole or in part) contains an obvious mistake or error.
4. In the event the acceptance (whether on minor points or not) deviates from the proposal, NPS shall not be bound to such acceptance. Unless NPS states otherwise, the Agreement will not be concluded in accordance with such deviating acceptance.

Conclusion of the Agreement

1. The Agreement is concluded by the acceptance of the Counterparty of the proposal of NPS.
2. Proposals can only be accepted in writing (including those made through electronic means). NPS is nonetheless entitled to acknowledge a verbal acceptance as if this would have been made in writing.
3. The Agreement is concluded upon receipt by NPS of a confirmation of assignment (opdrachtbevestiging) from the Counterparty.
4. The Agreement replaces all previous proposals, correspondence or other communication, in writing or verbally.

Performance of the Agreement

1. The Agreement will be performed by NPS to the best of its knowledge and ability, and in accordance with good professional practice. The activities to be performed are subject to a best efforts obligation on the part of NPS. The application of article 7:404, 7:407 paragraph 2 of the Dutch Civil Code is explicitly excluded.
2. NPS determines how and by whom the Assignment is performed. NPS is authorized to let third parties carry out certain tasks.
3. NPS is authorized to perform the Agreement in phases. In case the Agreement is performed in phases, NPS is entitled to invoice each executed part separately. If, and as long as an invoice is not paid by the Counterparty, NPS is not required to perform the next phase and is authorized to suspend (opschorten) the performance of the Agreement.

Changes and Additional Work

1. If during the performance of the Agreement it appears to be necessary to change or supplement the Agreement for an adequate execution NPS will inform the Counterparty as soon as possible. Parties will proceed changing the Agreement timely and in consultation with each other.
2. If the parties agree that the Agreement needs to be changed/supplemented, the time to completion of the performance can be influenced by this. The Counterparty will be informed accordingly by NPS as soon as possible.
3. If the changes or supplement to the Agreement will have financial, quantitative and/or qualitative consequences, the Counterparty will be informed of this by NPS in advance.
4. If a fixed fee or fixed price is agreed upon, NPS will indicate to what extent the changes/supplement of the Agreement impacts the fee/price. In this case NPS will try – to the extend possible - to provide a quotation in advance.
5. NPS will not be entitled to charge additional costs in case the changes/supplement are due to circumstances attributable to NPS.
6. Changes made to the original Agreement shall only be valid once these changes are accepted by both parties by means of a supplementary or changed agreement, possibly through electronic means.

Obligations Counterparty

1. The Counterparty makes sure that all information, equipment or spaces required for the performance of the Agreement as indicated by NPS, or which the Counterparty should reasonably understand are required for the performance, are available in time. In addition, the Counterparty needs to provide all rights and authorizations to NPS that are required to execute the Assignment adequately.
2. NPS is not liable for any damages, of any kind, as a result of using incorrect and/or incomplete information provided by the Counterparty with respect to the performance of the Agreement, unless this inaccuracy or incompleteness should be known by NPS.

3. The Counterparty will ensure that the employees of the Counterparty's organization who are involved in the activities, are available in time.
4. In case NPS or involved third parties by NPS carry out activities in relation to the Assignment at the Counterparty's location or a location designated by the Counterparty, the Counterparty will provide the reasonably desired facilities without any costs, unless explicitly specified in the Agreement.
5. In case the Counterparty fails to meet its obligations as referred to in this article, NPS has the right to suspend the execution of the Agreement and/or charge the Counterparty for the extra costs, in accordance with the market prices or fees, incurred due to the delay.

Cancellation

1. NPS is, at all times, entitled to change the workshop or training date or to cancel the Assignment. NPS shall inform the Counterparty accordingly as soon as possible. To the extent possible, NPS will offer a new workshop or training. In the event this is not possible, any sums already paid by the Counterparty to NPS will be refunded by NPS.
2. Cancellation of the Assignment by the Counterparty is only possible in accordance with the following provisions:
 - a. Cancellation is only possible in writing;
 - b. In the case of consultancy tasks, the Counterparty is required to pay 50% of the amount in case the cancellation is communicated less than 30 days prior to the start of the consultancy task(s);
 - c. In the case of consultancy tasks, the Counterparty is required to pay the full amount, in case the cancellation is communicated less than 14 days prior to the start of the task(s);
 - d. In the case of workshops or trainings, the Counterparty is required to pay 50% of the amount in case the cancellation is communicated less than 50 days prior to the start of the workshop or training.
 - e. In the case of workshops or trainings, the Counterparty is required to pay the full amount, in case the cancellation is communicated less than 30 days prior to the start of the workshop or training.
3. In the event of cancellation for workshops or trainings, the Counterparty is entitled to let someone else take part in the workshop or training instead.
4. Any sums paid already after deduction of the amount due to cancellation will be, to the extent possible, deducted by NPS from the fees for a new workshop or training. In case this is not possible, the amount will be refunded by NPS to the Counterparty.
5. In the event of misconduct by a person or if a person is violating the applicable order- and safety measures, NPS is authorized to refuse this person access to the workshop or training without the obligation to refund the payments made for the workshop or training.

Rates

1. The by NPS indicated rates and prices are excluding VAT, unless explicitly agreed otherwise in writing.
2. The rates and prices are excluding shipment-, travel-, accommodation and other expenses, unless otherwise agreed.
3. In case no rate or price was explicitly agreed upon, the applicable rate or price will be determined based on the actual hours worked and the usual rates of NPS.
4. Prior to concluding the Agreement, NPS shall promptly provide the Counterparty with an overview of all additional costs, or shall provide information based on which these costs can be charged to the Counterparty.

Payment

1. Payment shall be made by means of a transfer into a bank account indicated by NPS, unless otherwise agreed.
2. NPS will send an invoice for the amounts payable by the Counterparty. The payment period of each invoice is 14 days after the date of the invoice, unless indicated differently on the invoice. In case registration for a training takes place within a period less than 14 days before the training commences, the payment period for the training is adjusted to the day before the first day of training.
3. Invoicing for consultancy tasks takes place on a monthly basis, unless otherwise agreed for the assignment.
4. NPS and the Counterparty may agree that the payments will take place in installments in line with the progress of the work. If payment in installments is agreed, the Counterparty must pay in accordance of the installments and percentages as included in Agreement.
5. Objections with respect to the amount stated in the invoice do not suspend the Counterparty's obligation to fulfill the payment.
6. The Counterparty may not set off (verrekenen) any amounts with the amount to be paid in relation to an alleged counterclaim.
7. In the event of non-payment or an overdue payment, the Counterparty will be in default (verzuim) without any notice of default being required. As from the date such payment is due the Counterparty is required to pay late payment compensation of 300 EUR per month plus the statutory commercial interest rate until the date of full payment. Late payment compensation and interest accrued in relation to a part of a month shall be calculated for a full month.
8. All payments received from the Counterparty shall be applied (i) first to the payment of all costs, expenses and accrued and unpaid interest and (ii) second to the repayment of the oldest overdue invoices, even if the Counterparty states that such payment relates to other invoices overdue.
9. In the event the Counterparty is in default due to breaching its obligations, the Counterparty shall be liable for all reasonable extrajudicial costs incurred in relation to obtaining payment.
10. With respect to all extrajudicial (collection) costs NPS is entitled to a compensation of 15% of the total principal amount outstanding with a minimum of 300 EUR for each invoice which has not been paid in full or in part.
11. In the event of bankruptcy (faillissement), suspension of payments (surséance van betaling), liquidation, seized assets, death or guardianship the claims of NPS and the obligations of the Counterparty towards NPS shall be immediately due and payable.
12. Any reasonably incurred judicial and enforcement costs shall be for the account of the Counterparty as well.

Complaints

1. Upon performance of the Assignment, or at least within 14 days after completion, the Counterparty shall examine whether the performed Assignment meets the Agreement.
2. Complaints should be reported to NPS in writing within 14 days after performing the Assignment.
3. The right to a (partial) refund of the price, replacement or compensation for damages expires if a complaint is not reported within the prescribed term, unless an extended term arises from the nature of the Assignment or the circumstances of the situation.
4. The payment obligation shall not be suspended in the event the Counterparty informs NPS of the complaint within the prescribed term.

Force Majeure and Unforeseen Circumstances

1. Notwithstanding anything in these Terms and Conditions to the contrary, neither party shall be liable to the other party for any failure to perform or delay in the performance of any obligation under the Agreement when such failure to perform or delay in performance is caused by unforeseen circumstances or due to any cause or condition beyond the reasonable control of the party. In such event the parties are not required to comply with the obligations under the Agreement.
2. In addition to the interpretation of this concept under the laws of The Netherlands and case law, the term "force majeure" under these Terms and Conditions shall include all external causes, foreseen or unforeseen, beyond the reasonable control of NPS due to which NPS is unable to comply with its obligations.
3. Force majeure in relation to NPS shall in any case include:
 - a. strikes;
 - b. transport disruptions;
 - c. acts of government that prevent NPS from timely and/or proper fulfillment of its obligations;
 - d. riots, civil disturbance, wars,
 - e. traffic obstructions;
 - f. labor difficulties;
 - g. extreme weather conditions;
 - h. fire;
 - i. embargoes or inability to obtain supplies; and/or
 - j. any circumstances which obstruct the normal course of business resulting in the fact the performance of the Agreement by NPS cannot be reasonable expected by the Counterparty.

Termination

1. Parties may terminate the Agreement at any time by mutual agreement.
2. Parties may prematurely terminate the Agreement in writing with a notice period of 30 days.
3. Parties may terminate the Agreement with immediate effect in writing, in case of:
 - a. application by or granting to the other party of suspension of payment;
 - b. petition of bankruptcy (faillissement) by, or declaration of bankruptcy (faillietverklaring) of, the other party; or
 - c. liquidation of the other party or non-timely discontinuation of the enterprise of the other party.
4. In case the Agreement shall be dissolved, the payments owned by the Counterparty to NPS are immediately due and payable. If NPS suspends the fulfillment of the obligations, it will retain its claims pursuant to the laws and the Agreement. NPS will always retain the right to demand damage compensation.
5. The provisions of the Terms and Conditions and the Agreement, which expressly or due to their nature are intended to remain in force after termination of this Agreement or the performance of the Assignment, shall remain in full force.

Liability

1. NPS is only liable for direct damage caused deliberately or as a result of gross negligence of NPS, and limited to the amount paid out or covered by the insurance to NPS or limited to a one-off payment of the amount specified in the invoice.
2. Direct damage is exclusively understood as:
 - a. the reasonable costs of ascertaining the cause and scope of the damage, to the extent the determination is related to damage as referred to in the Terms and Conditions;
 - b. any reasonable costs incurred to repair the failure in the performance by NPS in order to meet the Agreement insofar as this can be attributed to NPS; or
 - c. reasonable costs incurred to prevent or limit damage, to the extent the Counterparty is able to demonstrate that these costs have led to a limitation of direct damage as referred to in the Terms and Conditions.

3. NPS shall not be liable for any indirect damage, including consequential loss, loss of profits, lost savings and damage caused by interruption of operations, loss as a result of providing insufficient cooperation and/or information to the Counterparty, damage as a result of information or advice provided by NPS, of which the contents do not explicitly form part of the Agreement and all damages which are not covered by direct damage as referred to in these Terms and Conditions.

4. NPS shall not be liable for mistakes in the material provided by the Counterparty or for misunderstandings or mistakes with respect to the performance of the Agreement if these are the result of actions of the Counterparty, such as late or non-delivery of complete, sound and clear information/materials.

5. NPS shall not be liable for mistakes in the event the Counterparty has already given approval, or has had the opportunity to carry out an inspection and has expressed no desire for such an inspection.

6. The liability restrictions set out in this article also apply to third parties appointed by NPS for the performance of the Agreement, and NPS shall not be liable for damages caused by failures of such third parties.

7. NPS shall not be liable for damage or loss of documents during transportation or mailing regardless whether these were transported or mailed by or on behalf of NPS, the Counterparty or third parties.

Confidentiality

1. Both parties undertake not to disclose to third parties any confidential information obtained from each other or from another source in the context of the Agreement. Information is deemed to be confidential if the other party has communicated it as such or if this results from the nature of the information. The party receiving confidential information, shall only use it for the purpose for which it was provided.

2. If NPS is required by law or by any legal authority to disclose confidential information to third parties and NPS cannot invoke a legal privilege or a privilege acknowledged or approved by a competent court of law, NPS shall not be liable for any damages or compensation, and the Counterparty shall not be entitled to dissolve the Agreement pursuant to any damage caused by such disclosure.

3. Notwithstanding the above, NPS is authorized to include the name of the Counterparty in a list of business relations, that is published on the website for third parties or via other means, unless agreed otherwise.

Indemnification

1. The Counterparty indemnifies NPS, to the extent permitted by law, against liability towards one or more third parties, arisen from and/or connected to the performance of the Agreement, irrespective of whether the damage is caused or inflicted by NPS or by the third parties appointed by NPS (hulpverleners), by auxiliary materials or the completed Assignment.

2. In addition, the Counterparty indemnifies NPS, to the extent permitted by law, against all liabilities from third parties in connection with any infringement of Intellectual property rights of these third parties.

3. The Counterparty is always required to use its best efforts to limit the damage to a minimum.

Intellectual property

1. For materials used for training, all intellectual property rights to all the provided products, materials, analyses, designs, software, documentation, opinions, reports, quotes, (electronic) information and preparatory material thereof (together the "IE Material"), developed or provided as part of the Agreement, are owned exclusively by NPS or its licensors.

2. The Counterparty's sole rights and authorizations with respect to intellectual property rights derive from the Agreement and/or are expressly conferred in writing.

3. For materials used for training, the Counterparty is not entitled to transfer any obtained rights or authorizations regarding the IE Material to third parties without prior written consent of NPS.

4. The Counterparty is not entitled to remove or alter any designation concerning intellectual property rights such as copyrights, trademarks or trading names from the IE Material.
5. Each exploitation, reproduction, utilization or publication of the IE Material by the Counterparty outside the scope of this Agreement or rights and authorizations granted, will be regarded as a violation of the intellectual property of NPS.
6. In case the Counterparty has received expressly written consent of NPS for the exploitation, reproduction, utilization or publication of the IE Material outside the scope of this Agreement or granted rights and authorities, this shall not constitute as an infringement of intellectual property rights.

Privacy

1. NPS respects the privacy of the Counterparty. NPS handles and processes all personal data provided in accordance with the applicable legislation, specifically the Personal Data Protection Act (Wet Bescherming Persoonsgegevens). The Counterparty agrees with this handling. NPS applies appropriate security measures for the protection of personal data of the Counterparty.
2. NPS will use the personal data of the Counterparty exclusively for the performance of the Agreement or to deal with a complaint.
3. For more information with respect to privacy we refer to the website of NPS.

Expiration term

1. All claims and/or authorizations which the Counterparty may have against NPS and/or any third parties appointed by NPS have, by way of derogation from statutory limitation period (verjaringstermijn), a limitation period of one year starting upon the occurrence of an event resulting in gaining such claims and/or authorizations by the Counterparty against NPS and/or any third parties appointed by NPS.

Changes to parties

1. The Counterparty is not entitled to transfer its rights and obligations under the Agreement to any third party without the prior written consent of NPS.
2. NPS is entitled to impose conditions in relation to such consent.

Final provisions

1. Any deviations from these Terms and Conditions can only be agreed in writing. No rights shall derive from such deviations with regards to legal relationships entered into subsequently.
2. The administration of NPS is considered, subject to counter-evidence, as proof of the requests made by the Counterparty. The Counterparty recognizes that electronic communication may serve as proof.
3. In case and to the extent that any provision of these Terms and Conditions and/or the Agreement will be declared invalid or unenforceable under the applicable legislation and regulations, the other provisions or parts of the provisions will continue to apply. NPS replaces the provision in question with a valid and enforceable provision that differs as little as possible from the original provision.
4. The place of performance of the Agreement shall be deemed the place where NPS is located.

Governing law and jurisdiction

1. These Terms and Conditions and the Agreement, and all non-contractual rights and obligations arising thereto, are governed by and will be interpreted in accordance with the laws of The Netherlands.
2. All disputes between NPS and the Counterparty related to these Terms and Conditions and the Agreement, or the agreements concluded in the performance of or in connection with these Terms and Conditions and the Agreement, will be submitted exclusively to the competent court of Rotterdam.