



# General Terms & Conditions

## Meijburg & Co M&A Tax BV

### **Article 1 – General**

- 1.1 In these General Terms and Conditions, the following terms are defined as stated below:
- Client: the counterparty of Contractor in an agreement as referred to in article 2.1;
  - Contractor: Meijburg & Co M&A Tax BV, established in Amstelveen, Laan van Langerhuize 9, a partnership of limited liability companies;
  - Partners: the companies with limited liability that jointly form Meijburg & Co;
  - Network: the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee.
- 1.2 All assignments from clients are solely given to Contractor, even if the express or implied intention is for an assignment to be carried out by a specific person. Application of Section 7:404 of the Dutch Civil Code and of Section 7:407(2) of the Dutch Civil Code is excluded. The Partners, the direct and indirect shareholders of the Partners, the directors of the Partners, all those who work for or for the benefit of Contractor, whether in employment or not, and members of the Network and third parties engaged by Contractor are not personally bound or liable.

### **Article 2 – Applicability**

- 2.1 These General Terms and Conditions shall apply to all agreements (assignments) under which Contractor is obliged to perform services, all agreements arising there from and/or relating thereto between Client and Contractor or their respective legal successors and all offers and/or proposals made by Contractor. The applicability of any purchase conditions or other conditions of Client is expressly excluded.
- 2.2 Any provisions that deviate from these Terms and Conditions only apply if and insofar as Contractor has expressly confirmed this in writing to Client.
- 2.3 If any clause in these General Terms and Conditions or in the contract is invalid or is held to be invalid, the remainder of the contract shall remain in force to the extent possible and the invalid clause shall be replaced forthwith in consultation between the parties by a clause which reflects the intent of the original clause as closely as possible.
- 2.4 These General Terms and Conditions also apply to the Partners, the direct and indirect shareholders of the Partners, the directors of the Partners, all those who work for or for the benefit of Contractor, whether in employment or not, as well as for members of the Network and third parties engaged by Contractor. They can invoke these against Client.

### **Article 3 – Data and information**

- 3.1 Contractor shall only be obliged to carry out the assignment if Client has submitted all data and information requested by Contractor and/or all data and information which Client should reasonably understand are required by Contractor for the proper performance of the assignment, in time and in the form and in the manner specified by Contractor. Any additional costs that may arise as a result of the fact that Client has not submitted the required data or information, or has not submitted the required data or information in time or properly, will be for Client's account.
- 3.2 Client shall be obliged to notify the Contractor forthwith of any facts and circumstances that may be relevant to the performance of the assignment.

### **Article 4 – Email and internet usage and data storage**

- 4.1 Any electronic communication will be considered to be in writing. Client and Contractor may communicate with each other by means of electronic mail (including email), electronic storage (including cloud applications) and internet. Contractor is not liable for any loss that should arise from the use thereof. Both Client and Contractor will do all that may reasonably be expected of them to prevent such risks.
- 4.2 Contractor will take appropriate technical and organizational measures to ensure that – taking into account the state of the art – Client's data is appropriately secured.
- 4.3 Contractor will keep a file of the assignment, in accordance with the good professional practice, statutory rules and professional rules on retention periods.

**Article 5 – Performance of the assignment**

- 5.1 Contractor shall determine in what manner and by which person/persons the assignment shall be carried out, while insofar as possible taking into account any wishes expressed by Client. If carrying out the assignment reasonably requires Contractor to engage third parties, such as members of the Network, it is authorized to do so at Client's expense.
- 5.2 Client is solely responsible for any decisions Client makes or wishes to make in connection with and/or based on Contractor's work.
- 5.3 Contractor will perform the work to the best of its abilities, acting with the due care that may be expected of a professional. However, Contractor cannot guarantee that any intended result will be achieved. The assignment will be carried out with due observance of the applicable laws and regulations. These regulations include among others the Code of Professional Conduct of the Dutch Association of Tax Advisers ([www.nob.net](http://www.nob.net)).
- 5.4 Dates by which work must be completed shall only be regarded as deadlines whose non-observance constitutes a default ("fatale termijnen") if expressly agreed in writing.
- 5.5 Contractor is legally obliged to establish Client's identity and report unusual transactions to the authorities without informing Client thereof.

**Article 6 – Intellectual property rights**

- 6.1 Any rights with regard to products of the mind that Contractor develops or uses in carrying out of the assignment, which include – among others – advice, opinions, work methods, (model) contracts, systems, system designs and computer programs, will be vested in Contractor insofar as these are not already vested in third parties. Contractor will grant Client a right of use and reproduction of the work products, so that these can be used as intended under the assignment.
- 6.2 Without prejudice to the provisions of Article 7.3, and except with the express prior written permission of Contractor, Client shall not reproduce, publish or exploit the products of the mind or the recording thereof on data carriers, whether or not in collaboration with or by engaging third parties.

**Article 7 – Confidentiality**

- 7.1 Contractor and/or persons who work at/for or are affiliated with Contractor are obliged to maintain confidentiality towards third parties, not including members of the Network or third parties involved in carrying out the assignment. This obligation does not apply in the event of a statutory or professional duty to disclose, which includes obligations pursuant to supervisory regulations that Contractor, members of the Network or third parties that are involved in carrying out the assignment are subject to, or if Client has released Contractor from its duty of confidentiality.
- 7.2 Contractor is only allowed to use the information Client has made available to it, as well as any other data and information that Contractor has become aware of in the carrying out of the assignment, for the objective for which it was obtained, as well as for the benefit of Contractor's normal business operations, which includes Contractor or persons associated with or employed at/for Contractor representing itself/themselves in disciplinary proceedings, civil-law proceedings, arbitration proceedings, proceedings under administrative law or criminal proceedings with regard to which such information may be relevant, and using it in preventing such proceedings.
- 7.3 Except with the express prior written permission of Contractor, Client shall not publish the contents of any reports, advice, opinions or any other communications from Contractor, whether or not written, or otherwise make these available to third parties, except insofar as the disclosure arises from the agreement directly or the Client has the legal obligation to disclose the data concerned. Article 12.5 applies by analogy.

**Article 8 – Protection of Personal Data**

- 8.1 All the definitions in this article have the meaning as defined in the General Data Protection Regulation (GDPR).
- 8.2 In the context of the assignment Contractor will act as Controller, unless expressly agreed otherwise.
- 8.3 Contractor will process personal data relating to Client and/or persons affiliated with or working at/for Client in the context of:
  - a. the assignment, including the client acceptance and monitoring;
  - b. compliance with statutory obligations of Contractor and/or other members of the Network;
  - c. risk management, such as preventing conflicts of interest;
  - d. administrative purposes and IT purposes;
  - e. client relationship, for example in contacting Client regarding the services of Contractor and third parties, including other members of the Network.
- 8.4 Contractor will process personal data in connection with the assignment in accordance with applicable laws and regulations in the field of the protection of personal data, such as the GDPR. Contractor will only process personal data insofar as this is in line with the purpose for which the personal data are obtained. For more information

- regarding the Contractor's privacy statement, please visit the website of Meijburg & Co ([www.meijburg.com](http://www.meijburg.com)).
- 8.5 Client is obliged to comply with the applicable laws and regulations in the field of the protection of personal data. Client guarantees the legitimacy of the provisioning of personal data with regard to Client's employees and other data subjects to Contractor, including if the personal data is obtained from third parties or is provided by third parties on Client's instruction. Client will comply with its obligation to inform data subjects of the provisioning of their personal data to Contractor and the processing thereof in the context of the agreement. Contractor cannot be held liable for any failure to comply with the applicable laws and regulations in the field of the protection of personal data.
- 8.6 Upon request, Client will assist with obligations relating to data subjects exercising their rights and in ensuring that obligations arising from a breach with regard to personal data, as referred to in the GDPR.

#### **Article 9 – Fee**

Client shall owe Contractor the agreed fee. If no fee has been agreed upon, Client shall owe a fee according to Contractor's usual rates.

#### **Article 10 – Payment**

- 10.1 Payment shall be made in Euros, without any deduction, discount or set-off, by deposit in or transfer to the bank account stated on the invoice, within fourteen (14) days of the invoice date, failing which Client shall be in default.
- 10.2 In the event that, acting in the course of a profession or a business, Client has failed to pay within the term referred to in the first paragraph, Client shall be obliged to compensate any extrajudicial expenses, legal costs and collection costs incurred by Contractor, including if such costs exceed the judicial order for costs, unless Contractor is ordered to pay the costs as the losing party.
- 10.3 If Client is not acting in the course of a profession or business, Client shall be obliged to compensate the extrajudicial costs incurred by Contractor, up to the maximum amount according to the Dutch Extrajudicial Collection Costs (Fees) Decree ("Besluit vergoeding van buitengerechtelijke incassokosten"). Client shall owe these extrajudicial costs if, already being in default and having received a notice in which it is demanded that Client pays within fourteen days, he fails to do so.
- 10.4 Contractor reserves the right to request Client to provide for full or partial payment in advance and/or to provide security even during the performance of an assignment, if the financial position or the payment behaviour of Client so warrants in the opinion of Contractor, failing which Contractor shall be entitled to suspend the performance of its obligations.

#### **Article 11 – Complaints**

- 11.1 Without prejudice to the provisions of Article 15, complaints with regard to the work performed or an invoice amount must be communicated in writing to Contractor within 30 days of the date of dispatch of the documents or the information to which Client's complaint pertains or, if Client can demonstrate that it could not reasonably have discovered the fault at an earlier stage, within 30 days of discovery of the fault.
- 11.2 A complaint shall not entitle Client to suspend its payment obligations, unless Contractor has informed Client that it considers the complaint to be justified.
- 11.3 In the event of a justified complaint within the term referred to in article 11.1 Contractor shall, at its own discretion, either to adapt the fees charged, rectify the shortcoming free of charge, again perform the assignment concerned, or to cancel the performance of the assignment, in part or in full, a proportional refund of fees paid by Client.

#### **Article 12 – Liability**

- 12.1 Contractor is only liable towards Client for a shortcoming in the performance of the assignment insofar as the shortcoming consists in a failure to exercise due care or apply the required level of expertise that may be expected with regard to the performance of the assignment.
- 12.2 The liability of Contractor for a shortcoming in the performance of the assignment, as well as for any tort, caused by the actions of Contractor or members of the Network, is limited to three times the fee (excluding VAT) that Contractor has charged relating to the work to which the event that caused the loss pertains or with which it is related, subject to a maximum amount of three hundred thousand euros (EUR 300,000).
- 12.3 The limitation of liability of Contractor as referred to in the second paragraph shall not apply to damages that are the direct result of wilful misconduct or wilful recklessness on the part of Contractor.
- 12.4 However, Contractor shall not be liable for:
- any damages incurred by Client or third parties as a result of Client providing Contractor with incorrect or incomplete data or information or loss that is otherwise caused by an act or omission on the part of Client, which must be understood to include a failure to correctly comply with the applicable laws and regulations in the field of the protection of personal data;

- any damages incurred by Client or third parties as a result of an act or omission on the part of auxiliary persons who were engaged by Client or at Client's request (which does not include employees of Contractor and members of the Network);
  - any indirect damages, loss of profits and consequential damages suffered by Client or third parties;
  - damages suffered as a result of Contractor complying with any applicable laws and regulations.
- 12.5 Client shall hold harmless and indemnify Contractor against any third-party claims, including claims from shareholders, directors, supervisory directors and employees of Client, as well as claims from affiliated legal entities and undertakings and others that are associated with Client's organization, that arise from or are related to Contractor's work for Client, except insofar as such claims concern damages that are the direct result of an wilful misconduct or wilful recklessness on the part of Contractor. This indemnification also covers the costs of the defense against such claims.

#### **Article 13 – Termination**

- 13.1 Client and Contractor can terminate the agreement at all times, subject to a reasonable notice period, unless the rules of reasonableness and fairness stand in the way of termination or termination subject to such a notice period. The termination must be communicated to the other party in writing.
- 13.2 In case of termination, Contractor reserves the right to payment of the invoices for the work already performed.
- 13.3 Contractor may terminate the agreement at all times if Contractor is obliged to do so pursuant to the law or professional regulations.

#### **Article 14 – Additional terms applicable to assignments for SEC-registered Clients or US tax advice**

- 14.1 The special confidentiality obligations included in this article 14 only apply to the assignment if:
- Client, at the commencement of the assignment or at any time thereafter, is an entity or an affiliated company of an entity that is registered with the United States Securities and Exchange Commission and KPMG is the auditor of Client (or the affiliated company) ("SEC-Registered Audit Client"); or
  - the tax advice provided is US tax advice.
- Article 6.2, article 7.3 and article 12.5 of these General Terms and Conditions (with the exception of non-tax services) do not apply to these assignments nor can any provision of the assignment be interpreted as a condition of confidentiality for Client. In the present article, the term 'affiliated company' is interpreted as the term used by the SEC in respect of independence rules for accountants.
- 14.2 If Client is an 'SEC-Registered Audit Client', then Client must immediately inform Contractor of any confidentiality conditions imposed at some point by other tax advisors in respect of transactions or matters for which the tax services of Contractor have been requested.
- 14.3 All advice, recommendations, information or work product provided to or that will be provided to Client by Contractor in connection with an assignment is for Client's sole use. Client agrees that if Client makes such advice, recommendations, information or work product available to any third party, Client will notify such third party, in writing, that Contractor's advice, recommendations, information and work product is for Client's sole benefit based on the specific facts and circumstances and the scope of Contractor's assignment with Client and is not intended to be relied upon by any other person.
- 14.4 If Client makes advice, recommendations, information or work partly or fully available to any third party or refers to it, but does not notify this third party, in writing, as required by article 14.3, then Client must compensate and indemnify Contractor for, as well as protect Contractor against, any loss, damages, costs and liability faced by Contractor as a result of, arising from or in relation to this advice, recommendations, information or work having been made available or having been referred to.

#### **Article 15 – Limitation period**

Unless these General Terms and Conditions provide otherwise, any and all claims of Client against Contractor in connection with its performance of the assignment, regardless of their nature, shall expire one year after the date Client has become aware or could reasonably have become aware of the existence of such claim.

#### **Article 16 – Rights of action**

Any rights of action Client has or believes it has in connection with the agreement against members of the Network may be instituted against Contractor only.

#### **Article 17 – Choice of law and forum**

- 17.1 All agreements between Client and Contractor are exclusively subject to Dutch law.
- 17.2 Any disputes will be submitted to the competent court in the city in which Contractor is established.



Meijburg & Co  
M&A Tax BV

Meijburg & Co M&A Tax BV  
Amstelveen, September 30, 2020

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