

Terms & Conditions KFAS BV.

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Article 1 Definitions

1. In these general conditions the following terms have the following meanings, unless explicitly stated otherwise;

Contractor: KFAS BV, hereinafter as "KFAS"
Client: the counterpart of KFAS,
Assignment: the by mutual agreement between the client and KFAS to be determined work that will be performed by KFAS, and the conditions under which this should be done.

Article 2 General

1. The general conditions apply to all offers, quotations, activities, contracts and agreements between KFAS and clients, or their successors. Standard conditions of the client shall only apply in writing if accepted by KFAS in advance.
2. These conditions also apply to all contracts with KFAS, for which third parties should be involved.
3. If one or more of the provisions in these terms and conditions are invalid or void, the remaining provisions of these general terms and conditions apply. KFAS and client shall then consult to make new conditions to replace the void provisions or annulled provisions, whereby insofar as possible the purpose and intent of the original provision is taken into account.

Article 3 Offers

1. Tenders by KFAS are based on the information provided by the client. The client warrants that he has provided to the best of his ability all essential information for the planning, execution and completion of the contract.
2. The tender by KFAS is without obligation. The tender is valid for 30 days, unless otherwise specified. KFAS is only bound by the tender if the acceptance thereof is confirmed by the other party in writing within 30 days, unless otherwise specified.
3. The prices in the above tender are exclusive of VAT and other government levies, as well as costs incurred as part of the contract, including shipping and handling, unless otherwise specified.
4. If the acceptance (on secondary items) deviates from the offer included in the tender, then KFAS is not bound to this. Then the contract does not come into effect in accordance with said deviating acceptance, unless otherwise indicated by KFAS.
5. A compound tender does not obligate KFAS to execute part of the assignment against a corresponding part of the price.
6. Tenders do not automatically apply to future assignments.

Article 4 Provision of information and cooperation

1. The client provides KFAS with all documents, information and contacts necessary for proper execution of the contract in a timely manner.

Article 5 Execution of the assignment and the involvement of third parties

1. KFAS performs the work under the contract to the best of its knowledge, expertise and ability.
2. For the proper execution of the contract, KFAS has the right to have (parts of) the work performed by third parties. KFAS will do so in consultation with the client.
3. KFAS is committed to maximum effort so that the agreed obligations and quality are achieved.
4. KFAS accepts no liability for the activities by third parties to the extent that they have entered into an agreement with the client.
5. KFAS is not liable for damages of any kind resulting from inaccurate information and/or incomplete information that was provided to KFAS by the client, unless KFAS should have been aware of such inaccuracy or incompleteness.
6. If it is agreed that the contract will be performed in phases, KFAS can delay the execution of parts of the work belonging to a following stage until the client has approved the results of the preceding stage in writing.
7. If work is performed by KFAS or by third parties hired by KFAS in connection with the contract at the location of the client or a location designated by the client, the client shall make available reasonably required facilities for those employees free of charge.

Article 6 Amendment of the assignment, more work

1. The client accepts that the timing of the assignment may be affected if the parties decide to amend the approach, method or scope of the contract and the resulting work. If changes are made to the implementation of the contract by the client, KFAS in consultation with the client will make the necessary adjustments. If this leads to more work, this will be charged to the client in an additional contract. KFAS is entitled to charge the extra costs for the modification of the contract to the client.
2. Notwithstanding paragraph 1, KFAS will not be able to charge additional fees if the change or addition to the contract is the result of circumstances that are attributable to KFAS.

Article 7 Contract duration; implementation time

1. The agreement between KFAS and a client shall be concluded for a fixed period or for a predefined project, unless the nature of the contract provides otherwise or the parties expressly agree otherwise in writing.
2. If within the duration of the contract for the completion of certain work a timeline is agreed upon, this is never a firm deadline.

Article 8 Rates

1. If the parties have not agreed otherwise, the rates of KFAS are determined on the basis of an hourly rate.
2. The rate of KFAS includes the normal cost of secretarial work and any standard telephone charges (domestic) for the client. Travel time is calculated with the hourly rate. Travel and subsequent expenses shall be declared in accordance with agreements in the tender. For all tenders it applies that the time spent will be charged.
3. The amounts stated by KFAS in its tenders and order confirmations amounts are exclusive of VAT.
4. If KFAS has agreed an hourly rate with the client, KFAS is entitled to increase this rate.
a. KFAS has the right, without prior notice, on 1 January of each calendar year to increase the rate agreed in the tender with the by CBS given rate of inflation in the previous year (consumer price index).
b. KFAS, in the event of price increase, beyond inflation, is entitled to increase prices.
5. The client is entitled to cancel the contract if the increase (annually) is more than 5%. Client is not entitled to terminate the contract if the rate increase results from an authority under the law.
6. KFAS shall notify the client of the intention to increase the rate under paragraph 4 in writing. KFAS shall communicate the volume of and the date when the increase will take effect.
7. If client does not wish to accept the rate increase announced by KFAS, the client is entitled within two weeks after the notification to terminate the contract in writing or to cancel the job from the specified date in the notification of KFAS on which the rate adjustment would become effective and in compliance with the agreed notice period(s).

Article 9 Payment Terms

1. Payment must be made within two weeks after the invoice date, unless the client and KFAS have agreed otherwise. Objections to the amount of the claims do not suspend the payment obligation.
2. After the expiration date, the client is in default and KFAS shall have the right to charge statutory interest. The interest on the amount due will be calculated from the time the client is in default until the moment of payment of the full amount, whereby a portion of the month is considered a whole month. The cost of a reminder, notice and summons due to failure of the client amounts each time to € 45,- to be borne by the client. These costs cover the administrative costs incurred by KFAS.
3. If payment is not made, KFAS may suspend performance of the contract until payment has been made.
4. In the event of liquidation, bankruptcy, seizure or suspension of payment of the client, the claims by KFAS to the customer are payable immediately.
5. KFAS has the right to apply payments made by client first to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal and accrued interest. KFAS, without being in default, has the right to refuse an offer for payment, if the client utilizes a different sequence of attribution. KFAS can refuse total repayment of the principal amount, if the accrued interest and costs are not met.
6. For the breach of obligations by the client, the collection costs incurred shall be borne by the client, both the judicial and extrajudicial costs.

Article 10 Completion of the contract

1. The contract is concluded in the final financial sense when the client has approved the final accounting.
2. The client must notify KFAS of this within 14 days after invoice date.
3. If the client does not respond within this period, the final invoice is deemed approved.

Article 11 Retention of ownership

1. All goods delivered by KFAS, possibly also including designs, drawings, software, (electronic) files, etc., remain the property of KFAS until the client has fulfilled his obligations under all contracts concluded with KFAS.
2. The client is not entitled to pledge or otherwise encumber any matters that fall under the ownership rights.
3. If third parties wish to establish or assert rights to the goods delivered under retention of ownership, the customer is required to inform KFAS of this as soon as may reasonably be expected.
4. The client undertakes to insure the property delivered under title and keep it insured against fire, explosion and water damage and theft, and upon request shall present the insurance policy for inspection.
5. Property delivered by KFAS, that fall under the ownership rights under 1 of this article, may only be sold within the framework of normal business activities and must never be used as payment.
6. In case KFAS wants to exercise her property rights in this article, the client already gives unconditional and irrevocable permission to KFAS or third parties to access all those places where the properties of KFAS are located and to take this property back.

Article 12 Research, claims and complaints

1. Complaints by the client about the work performed or property supplied must be submitted within two weeks after invoice date, but no later than three weeks after completion of the respective work or delivery of respective goods, in writing, by registered letter to KFAS. This report must include a detailed description of the shortcoming, so that KFAS is able to adequately respond.
2. If a complaint is justified, KFAS shall still perform the work or supply the goods or repair these or have these repaired as agreed, unless already demonstrably shown by the client that this no longer makes sense. The client must notify KFAS of the latter within 14 days after notification thereof in writing.
3. If the performance of the agreed work or re-supply of the goods or (to) repair is no longer possible or useful, KFAS shall only be liable within the limits of Article 16.

Article 13 Termination

1. Both parties may terminate the contract at any time unilaterally.
2. Premature termination must be substantiated in writing by registered letter.
3. In case of early termination by the client, KFAS is entitled to compensation of the quoted work, whereby the until then average monthly declaration is the starting amount. The preliminary results of the work done so far will be made available to the client.
4. In case of early termination by the client, KFAS shall upon request and in consultation with the client ensure the transfer of additional work to third parties.
5. If for the transfer of the work KFAS incurs additional costs, these shall be charged to client.

Article 14 Suspension and dissolution

1. KFAS is entitled to suspend the fulfilment of the obligations or terminate the contract if:
 - Client does not or not fully comply with the obligations under the contract.
 - After the conclusion of the contract, KFAS learns of circumstances giving good grounds to fear that the client will not fulfil its obligations. If good ground exists to fear that the client will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far this is justified by the shortcoming.
 - The client at the conclusion of the contract must provide security for the fulfilment of his obligations under the contract, and this security is not provided or is insufficient.
2. In addition, KFAS is authorised to terminate the contract if circumstances arise of such a nature that fulfilment of the contract is impossible or to standards of reasonableness and fairness it can no longer be requested or if other circumstances arise of such a nature that the unaltered maintenance of the assignment cannot reasonably be expected.
3. If the contract is terminated, the claims of KFAS to the client are immediately payable. If KFAS suspends the fulfilment of the obligations, it shall retain its rights under the law and contract.
4. KFAS retains the right to claim damages.

Article 15 Return of property made available

1. If KFAS for the execution of the contract has made property available to client, client is required upon written request to return the property within 14 days in original condition, free from defects and in their entirety. If the client fails to fulfil this obligation, all resulting costs shall be borne by him.
2. If, for any reason, after notice to that effect, client still remains in default of the obligation under 1, KFAS has the right to charge the resulting damages and costs, including replacement costs, to the client.

Article 16 Liability

1. For each contract accepted by KFAS there is a commitment. KFAS can never be held responsible for non-performance. KFAS is solely liable for demonstrable shortcomings in the performance of the contract resulting from gross negligence in giving its advice and the performance of tasks.
2. If KFAS is liable for direct damage, then said liability shall be limited to the amount of billed hours. Liability shall at all times be limited to the amount insured by KFAS with the insurer.
3. Contrary to what is determined in 2. of this article, in a contract with a duration of longer than six months, the liability is limited to amount of hours billed in the last six months.
4. In no case can a claim be filed for compensation for damages caused by loss of income from the client (in any way whatsoever) or indirect and consequential damages.
5. The client can invoke a failure in the performance of the contract if, within two months of completion of the contract, the client has notified KFAS of this in writing by registered letter.

Article 17 Safeguarding

1. The client indemnifies KFAS of claims by third parties concerning intellectual property rights on client supplied materials or information that is used in the execution of the contract.
2. If the client provides to KFAS information carriers, electronic files or software etc., he shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

Article 18 Risk Transfer

1. The risk of loss or damage to the goods that are subject of the contract shall pass to the client at the moment they are legally and/or actually delivered and are thereby delivered in the power of client or a third party designated by client.

Article 19 Force Majeure

1. Parties are not required to fulfil any obligations if they are hindered due to a circumstance that is not due to negligence, and not under the law, a legal act or generally accepted practice expense.
2. Force majeure in these terms and conditions means, in addition to the provisions of the law and jurisprudence, all external causes, foreseen or unforeseen, which KFAS cannot influence but which prevents KFAS to meet its obligations, including strikes in the company of KFAS, illness and/or disability.
3. KFAS also has the right to invoke force majeure if the circumstances hinder (further) fulfilment after KFAS should have fulfilled its obligations.
4. Parties may suspend the obligations under the contract during the period of force majeure. If this period lasts longer than two months, either of the parties shall be entitled to terminate the contract without any obligation to pay damages to the other party.
5. Insofar KFAS at the time of the occurrence of force majeure has fulfilled or will fulfil its obligations under the contract, and this fulfilment has an independent value, KFAS is entitled to invoice the already performed or to be performed work part separately. The client is required to pay this invoice as if it were a separate contract.

Article 20 Confidentiality

1. Both parties are required to keep confidential any confidential information obtained in the course of their activities from each other or from another source. Information is considered confidential if given by the other party or when it arises from the nature of the information.
2. If, under a statutory provision or a judicial decision, KFAS must provide confidential information by law or by the designated court to third parties, and KFAS cannot rely on a legal or by the competent court recognised or permitted obligation, then KFAS is not liable for damages or compensation and the opposite party shall not be entitled to dissolve the contract on the grounds of any resulting damage.

Article 21 Intellectual Property and Copyright

1. Notwithstanding the other provisions of these general terms and conditions, KFAS reserves the rights and powers that KFAS is entitled to under the Copyright.
2. Models, methods and tools developed and/or used by the client for the execution of the contract, are and remain the property of KFAS. Publication or other forms of publication of this can only be used after written permission of KFAS.
3. All documents provided by KFAS, such as reports, opinions, orders, designs, sketches, drawings, software, etc. on behalf of the client, can be used by the client and can be multiplied by the client for their own use in the organisation.
4. All documents provided by KFAS may not be made public by the client or be disclosed to third parties without prior consent of KFAS, unless the nature of the documents dictates otherwise.
5. KFAS reserves the right to use knowledge obtained through the execution of the work for other purposes, in so far no confidential information is disclosed to third parties.

Article 22 Other

1. During the assignment, and for two years after termination of a contract, the client without the prior written permission of KFAS is not allowed to offer professionals who were involved in the contract implementation on behalf or from KFAS (whether or not based on employment) paid activities. Infringement of this rule can result in a fine of € 100,000.00, one hundred thousand euros.

Article 23 Disputes

1. In the event of any dispute arising from this agreement or from any subsequent contracts, the parties shall seek resolution in the first instance using "Mediation" in accordance with the relevant means of regulations of the Stichting Nederlands Mediation Instituut in Rotterdam, as outlined on the commencement date of the Mediation.
2. If it proves impossible to resolve a dispute as referred to by mediation, the dispute will be settled by the competent court in Arnhem.

Article 24 Applicable law

1. Each contract between the client and KFAS is subject Dutch law; even if the client resides or is established abroad.

Article 25 Amendments

1. These conditions can always be adjusted by KFAS.
2. Applicable each time is the version that was valid (and was attached to the contract) at the time of conclusion of the contract.