



1. Definitions

In these general conditions the following terms have the following meanings, unless otherwise indicated.

Client: the counterpart of Cushion consultancy;

Parties: Cushion consultancy and Client;

Agreement: the agreement for service by Cushion consultancy.

2. General

2.1. The agreement shall come into force by the general terms and conditions at hand together with the confirmation of order signed by Cushion consultancy and Client;

2.2. These general terms and conditions are applicable to any and all offers, quotations and agreements between Client and Cushion consultancy, insofar as the parties not explicitly deviate from these general terms and conditions;

2.3. The applicability of any purchasing terms and conditions and/or any other terms and conditions Client is expressly denied;

2.4. Cushion consultancy is an management consultancy. All orders are only accepted by and on behalf of the management consultancy;

2.5. Not only Cushion consultancy and all people working for the management consultancy or have worked for it, but also all persons involved in the execution of the order, may claim these conditions.

3. Coming into effect of the agreement and quotations

3.1. Quotations by Cushion consultancy are based on the information supplied by Client. Client warrants that he has timely and truthfully supplied all information that is essential for the planning, execution and completion of the order;

3.2. All quotations and offers by Cushion consultancy shall be free of obligations, unless the quotation states an acceptance term. If no acceptance term is stated, no right in any manner whatsoever can be derived from the quotation or offer;

3.3. The agreement shall come into effect as per the day of signing by both Cushion consultancy and Client or the day of sending the written confirmation of order by Cushion consultancy to Client respectively;

3.4. The agreement shall be entered into for an indefinite period, unless the content, nature or purpose of the order determines that it has been entered into for a fixed period.

4. Execution by third parties

4.1. Cushion consultancy has the right, insofar as this is required for a proper execution of the agreement, to have the order partly carried out by third parties. Cushion consultancy shall only proceed thereto after consultations with Client;

4.2. The applicability of the articles 6:6 paragraph 2, 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code is hereby expressly excluded.

5. Execution of the order

5.1. Cushion consultancy shall observe the care of a good supplier in the execution of his activities;

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5.2. By force of the agreement, Cushion consultancy undertakes a best efforts obligation and therefore does not provide any guarantees concerning the results of the order, unless explicitly determined otherwise.

6. Changes in the order

6.1. Changes in the order by Client that could not have been foreseen by Cushion consultancy and that entail additional work, shall be paid by Client to Cushion consultancy pursuant the rate agreed in the agreement. Additional work shall furthermore be the rescheduling of activities by Cushion consultancy if this is required as a result of supplying incorrect or incomplete data by Client. Cushion consultancy shall invoice the costs for additional work to Client on the basis of a subsequent calculation;

6.2. Client shall timely inform Cushion consultancy in writing of any changes in the execution of the order requested at a later time by Client after confirmation of the order. In the event that these changes are not supplied in writing, the risk of the execution of such changes shall be to the account of Client;

6.3. Changes made in an order that has already come into effect, may result in exceeding the originally agreed delivery time by Cushion consultancy.

7. Cooperation of Client

7.1. Client shall at all times, thereto requested and at his own initiative, supply all relevant information to Cushion consultancy that is required for a correct execution of the order granted;

7.2. If information required for the execution of the agreed order, is not or not timely or not in agreement with the arrangements entered into made available, or if Client has not met his (information) obligations, Cushion consultancy has the right to suspend the execution of the agreement;

7.3. In order to let the execution of the order proceed orderly and as far as possible according to the time schedule, Client shall timely make staff from his own organization available, unless the nature of the order determines otherwise. Client shall ensure that his staff has the proper skills and experience to carry out required activities.

7.4. If and insofar as Cushion consultancy requests such, Client supplies Cushion consultancy at his premises and free of charge a private workspace with telephone and, if so desired, a fax and/or data net connection, unless the nature of the order determines otherwise;

7.5. If there are ensuing costs to Cushion consultancy as a result of the fact that Client has not, not timely or not properly made staff, requested data, documents and facilities available, such costs shall be to the account of Client.

8. Confidentiality

8.1. Client and Cushion consultancy are held to secrecy of all confidential information that they have acquired from each other within the framework of the agreement or from any other source. Information shall be considered confidential when this has been indicated as such by the other party or when this ensues from the nature of the information;

8.2. If Cushion consultancy, on the grounds of a legal condition or a court order, is held to supply confidential information to a third party appointed thereto by law or the competent court and Cushion consultancy cannot appeal to any entitlement to refuse to give evidence, Cushion consultancy shall not be held to any compensation or redress for damages and Client shall not have the right to terminate the order on the grounds of any resulting damages;

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8.3. Client and Cushion consultancy shall impose their obligations on the grounds of this article to any other third parties to be commissioned by them.

9. Intellectual property

9.1. All models, works and/or inventions developed by Cushion consultancy on behalf of Client are and shall remain the property of Cushion consultancy. This shall include all intellectual property rights including but not limited thereto, any copyrights, model rights and or patent rights;

9.2. All documents, such as reports, computer programs, system designs, methods, advice and contracts issued by Cushion consultancy on behalf of Client, may be used by Client and may be multiplied by Client for his own use within the own organization. The documents supplied by Cushion consultancy may not be made public, multiplied and/or exploited or made known to any third parties by Client unless the nature of the supplied documents determines otherwise.

10. Rates and Fees

10.1. Parties may agree for an agreement with a fixed pricing fee;

10.2. If no fixed pricing fee has been agreed upon, the fee will be determined based on the actual number of hours worked for Client. The fee is calculated based on the usual rates of Cushion consultancy, applicable for the period in which the work is performed , unless a different hourly rate has been agreed upon.

10.3. If, after the agreement has come into effect, but before the order has been completed, rate-determining factors (e.g. wages and/or prices) are subject to change, Cushion consultancy shall be entitled to change the previously agreed rate accordingly;

10.4. The fee of Cushion consultancy is exclusive of: direct expenses of Cushion consultancy, travel and lodging, VAT and other levies that are or may be imposed by authorities.

11. Terms of payment

11.1. Payment shall be effected within fourteen days from invoice date in a manner to be indicated by Cushion consultancy denominated in euro. Any objections against invoice amounts do not suspend the payment obligation by Client;

11.2. Cushion consultancy is always entitled to demand an advance payment which will be deducted from the final invoice, before starting or continuing its work for Client;

11.3 If Client fails to make timely payment of an invoice, then the client is legally in default and the Client will owe statutory interest. Client will owe interest on each month or part of a month , whereby part of a month is considered an entire month. The interest on the amount due will be calculated from the day the client is in default until the moment of payment of the full amount owed;

11.4. In the event of liquidation, bankruptcy (filing), attachment or (preliminary) suspension of payment of Client or when the Debt Repayment Natural Persons Act ("WSNP) has been declared applicable to Client, the claims of Cushion consultancy on Client shall immediately become payable;

11.5. Payments shall in the first place serve to reduce the costs, secondly to reduce the arrear interest and finally to reduce Client amount and the accrued interest;

11.6. If Client assigns a different order for the attribution of the payment, Cushion consultancy shall have the right to refuse an offer to pay, and this shall not constitute an omission on his part. Cushion consultancy may refuse the full payment of Client amount, if this payment does not include the arrear and accrued interest and collection costs;

11.7. Client shall never be entitled to settlement of what he is due to Cushion consultancy;

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11.8. If Client is in default or fails to (timely) fulfil his obligations, all reasonable costs for the out of court collection shall be to the account of Client. The out of court costs shall be calculated on the basis of what is customary in the Dutch collection practice;

11.9. Cushion consultancy may at all times require further security, in the absence whereof Cushion consultancy may suspend the execution of the agreement. If this requirement is not met to the satisfaction of Cushion consultancy, Cushion consultancy shall have the right to suspend the execution of, or to refuse all agreements with Client, without being held to any compensation for damages and without prejudice to any other of his right in this agreement or by law.

12. Reservations

12.1. All goods delivered by Cushion consultancy, possibly including reports, designs, software, documents, et cetera, remain property of Cushion consultancy until Client has fulfilled all of his obligations under all agreements concluded with Cushion consultancy;

12.2. Client is not entitled to pledge goods falling under reservations made in paragraph 1 nor to otherwise encumber them;

12.3. If third parties seize the property or exercise rights delivered by Cushion consultancy, Client is obliged to notify Cushion consultancy as soon as reasonably may be expected.

13. Complaints and investigations

13.1. In deviation of the legal time limits, the time limit of all claims and defenses with respect to Cushion consultancy shall be one year;

13.2. Cushion consultancy has to be informed in writing of complaints with respect to activities carried out and/or with respect to the invoice amount within two weeks on completion of the activities at the latest date, in default of which any claim against Cushion consultancy shall become void;

13.3. Complaints as referred to in paragraph 2 of this article, do not suspend the payment obligations of Client;

13.4. If and insofar as a complaint is accepted, Client may choose between adjusting the invoiced fee or improving or once again carrying out the rejected activities free of charge. If carrying out the activities has verifiably become useless, Client is entitled to a pro rata restitution of the fee already paid by Client.

14. Execution deadline

14.1. If within the duration of the order a term has been agreed for the completion of certain activities, this term shall never be final. When the performance time is exceeded, Client shall declare Cushion consultancy in writing to be in default.

15. Annulment

15.1. Parties may prematurely terminate the agreement at all times in writing with due observance of a reasonable term;

15.2. If Client prematurely terminates the agreement, Cushion consultancy shall be entitled to compensation in view of the resulting occupancy loss which has to be made plausible, whereby the average monthly invoice amount to date is taken as the starting point, unless the termination is based on facts and circumstances that may be attributed to Cushion consultancy. The preliminary results of the activities carried out up to that time, shall conditionally be made available to Client;

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15.3. In the event that one of the parties becomes bankrupt, requests suspension of payment or ceases its activities, the other party shall have the right to prematurely terminate the agreement without any requirement to observe a term of notice;

15.4. In the event of premature termination by Cushion consultancy, Client shall be entitled to the cooperation of Cushion consultancy concerning the transfer of activities to be carried out to any third parties. When the transfer of the activities incurs additional costs to Cushion consultancy, Client shall be charged for any such costs.

16. Liability

16.1. Cushion consultancy shall not be liable for any damages of whatever nature that arise from the fact that Cushion consultancy has based himself on incorrect and/or incomplete data supplied by Client;

16.2. The liability of Cushion consultancy is limited to the amount stated by its professional liability insurance plus the deductible stated in the policy of this insurance. If and insofar as no payment is made under the professional liability insurance, liability is limited to the fee charged, but in any event to a maximum of € 25.000,-. In cases of intent or gross negligence on the part of Cushion consultancy these limitations do not hold;

16.3. Cushion consultancy shall exclusively be liable for direct damages;

16.4. Direct damages shall exclusively be the reasonable costs to establish the cause and the scope of the damage, insofar as the establishment relates to damages in the sense of these general terms and conditions, any reasonable costs incurred to bring the faulty performance by Cushion consultancy in line with this agreement, insofar as these may be attributed to Cushion consultancy, and reasonable costs, incurred to prevent or limit the damage insofar as Client proves that these costs have resulted in a limitation of the direct damages as referred to in these general terms and conditions;

16.5. Cushion consultancy shall never be liable for indirect damages, including consequential damage, loss of profit, missed savings and damage through stagnation of work.

17. Indemnification of third parties

17.1. Client indemnifies Cushion consultancy against any possible claims by third parties who incur losses in relation to the execution of the agreement and the cause of which cannot be attributed to Cushion consultancy;

17.2. Client shall be held to support Cushion consultancy in and out of court in the event that Cushion consultancy is addressed on the grounds of the first paragraph of this article and to immediately take all actions that may be expected from him in such a case. When Client is in default with respect to taking adequate measures, Cushion consultancy, without any requirement for a notice of default, shall be entitled to proceed thereto himself. All costs and damages on the side of Cushion consultancy and third parties resulting thereof, shall fully be to the account and risk of Client.

18. Contract transfer

18.1. Client shall not have the right to transfer any obligation from the agreement to third parties without the written consent of Cushion consultancy. Insofar as Cushion consultancy may have given written permission for a contract transfer, Client shall at all times be jointly liable with such third party for the obligations from the agreement of which these general terms and conditions constitute a part;

18.2. Furthermore, insofar as Cushion consultancy may have given written permission for a contract transfer, Client shall inform Cushion consultancy in advance thereof and Cushion consultancy shall have the

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right to terminate the agreement as per the date on which the transfer comes into effect. Cushion consultancy shall not be held to pay any compensation for damages in such an event.

19. Applicable law

19.1. This agreement shall be governed by the law of the Netherlands;

19.2. All disputes concern the agreement at hand and the execution thereof arising between the parties, shall exclusively be submitted to the competent court of the place of residence of Cushion consultancy.

20. Amendment, interpretation and location of the conditions

20.1. These conditions are filed with the Chamber of Commerce in Alkmaar;

20.2. In case of explanation of the content and scope of these general conditions, the Dutch text will prevail;

20.3. Applicable is the last registered version or the version valid at the time of the conclusion of the agreement.