
Algemene voorwaarden

Per 1 januari 2011

1. Definitions

1.1 Client: any (legal) person who has agreed with the contractor and its representative(s), agent(s), successor(s) and heirs;

1.2 Debtor: the person with whom the Client has concluded an agreement and who owes monies to the Client according to that agreement;

1.3 Invorderingsbedrijf: Invorderingsbedrijf, having its registered office in The Hague; 1.

1.4 Agreement: any agreement concluded between Invorderingsbedrijf and the Client, any amendment or supplement to that, as well as all legal and other acts in preparation for and in execution of that agreement;

1.5 Products and services: all performances and deliveries which are the subject of an agreement, as well as the work associated addition to that;

1.6 Claim: the amount outstanding in full at any given time, including all costs and interest;

1.7 Principal: the Client's amount has been offered to the Contractor for collection.

2. General

2.1 These terms and conditions apply to all offers, legal relationships and agreements of Invorderingsbedrijf, whereby Invorderingsbedrijf supplies products and services to the Client. These terms and conditions shall also apply to additional orders and follow-up orders from Client(s).

2.2 Variations from these terms and conditions or any contract provision are valid only if they have been expressly accepted in writing and apply only to the contract.

2.3 Agreements with or undertakings given by (an employee of) Invorderingsbedrijf or by third parties engaged by Invorderingsbedrijf in the performance of the agreement are not binding on Invorderingsbedrijf unless such agreements or undertakings have been confirmed by it in writing.

2.4 Invorderingsbedrijf is entitled to refuse assignments without giving reasons.

2.5 Invorderingsbedrijf is entitled to transfer a current contract to a third party, including all rights and obligations.

2.6 All assignments, whether directly to Invorderingsbedrijf or individual members of

the firm, shall be accepted by or on behalf of Invorderingsbedrijf only, even if it is the explicit or tacit intention that a particular person shall carry out an assignment. Therefore, article 7:404 of the Dutch Civil Code, which provides for the latter case, and article 7:407 paragraph 2 of the Dutch Civil Code, establishes a joint and several liabilities in cases where instruction is given to two or more persons, are not applicable.

2.7 If a Client is a legal entity and is affiliated with another legal entity in a group within the meaning of article 2:24b of the Dutch Civil Code, it shall be jointly and severally liable towards Invorderingsbedrijf for the payment of all present and future claims of Invorderingsbedrijf against the other legal entities with which it is affiliated in a group.

2.8 These General Terms and Conditions shall apply to all contracts between the Client and its principal unless otherwise agreed in writing. The Client waives the applicability of its general terms and conditions.

2.9 Should any provision of these terms and conditions be or become wholly or partially inconsistent with any provision of mandatory law, such provision shall cease to have an effect. Instead, it shall be replaced by a new comparable provision, according to law, determined by Invorderingsbedrijf.

Invorderingsbedrijf shall not pay interest on any amounts which are in its possession for any reason whatsoever.

3. Offers and conclusion of agreement

3.1 All offers are without obligation unless the offer expressly indicates otherwise in writing.

3.2 A contract shall only be concluded if and to the extent that Invorderingsbedrijf accepts an assignment from the Client in writing or Invorderingsbedrijf carries out the project. A quotation shall be deemed to be taken if, in response to the reference, the Client

3.3 If the Client places an order, it is bound by it. The Client cannot derive any rights from obvious clerical errors in an offer.

3.4 If an offer does not lead to a contract, the Client shall return that offer and all other documentation provided by Invorderingsbedrijf to Invorderingsbedrijf at first request.

3.5 All offers and quotations are subject to suspensive conditions and agreed-upon rates. The tenders made by Invorderingsbedrijf shall be valid for 30 days unless otherwise indicated.

4. Duration of the agreement

4.1 Invorderingsbedrijf offers cooperation based on an individual assignment or the basis of a subscription. Unless otherwise agreed in writing, a subscription is initially entered into for twelve months with tacit renewal for the same period each time, unless one of the parties has given written -and registered- notice of termination three months before the expiry of any period. In the absence of timely termination, the agreement will continue under the current conditions and rates for an equal period.

5. Products and services

5.1 Invorderingsbedrijf issues information sheets explaining the products and services it offers. In addition, Invorderingsbedrijf issues rate lists. These information sheets and rate lists, which may be amended from time to time, form part of the current and future contract(s) relating to these products and services. In case of any inconsistency between the information sheets or rate lists and these conditions, the provisions of these conditions shall prevail.

5.2 The rates charged by Invorderingsbedrijf are exclusive of VAT, disbursements and – if agreed – office expenses, unless otherwise indicated.

5.3 Where the amount of a bill is disputed, the Client must notify Invorderingsbedrijf of this in writing within 30 days of the date of the bill, failing which the Client may no longer rely on this in or out of court.

6. Obligations of Invorderingsbedrijf

6.1 The obligations of Invorderingsbedrijf are of the nature of a best efforts obligation and Invorderingsbedrijf in no event guarantees a result to be achieved. All products and services are provided by or on behalf of Invorderingsbedrijf for the account and risk of the Client.

6.2 The times indicated by Invorderingsbedrijf are indicative. Failure to meet any deadline shall not entitle the Client to claim damages or the right to cancel an order or rescind the agreement unless in the event of wilful misconduct or deliberate recklessness on the part of Invorderingsbedrijf or its executive staff.

7. Client's obligations

7.1 The Client shall always provide the Invorderingsbedrijf with all information which Invorderingsbedrijf, in its opinion, requires for the proper performance of the agreement, in a timely manner, accurately and in the desired form, including but not limited to its correct address and details of its legal form. The Client warrants the accuracy, completeness and reliability of such information at all times. Invorderingsbedrijf shall not be obliged to return to the Client any documents made available in the context of an agreement.

7.2 The Client shall immediately inform the Contractor of all payments, correspondence or other contacts between it and the Debtor

7.3 After the assignment has been given, the Client shall, as far as possible, limit contacts with the Debtor and shall in all cases refer them directly to the Contractor. In any event, the Client shall not make any arrangements with the Debtor regarding the claim offered for collection until after consultation with the Contractor.

8. Work

8.1 If the Client gives an order for collection, the Client shall provide all relevant information and documents about the debtor in question. In particular, the Client shall promptly make available to Invorderingsbedrijf the general or other terms and conditions it uses vis-à-vis the debtor.

8.2 If the Client instructs Invorderingsbedrijf to collect a debt, the Client authorises Invorderingsbedrijf to carry out, in the Client's name, all necessary collection and legal acts which, in the opinion of Invorderingsbedrijf, are required. This authorisation includes, among other things: a) approaching the debtor in any way whatsoever; b) charging the Debtor interest and costs; c) receiving funds from the debtor; d) agreeing on a payment schedule with the debtor; e) initiating (or having initiated) legal proceedings against the debtor; f) applying for a (temporary) moratorium on the debtor's payments; g) applying for the debtor's bankruptcy.

8.3 The principal sum, i.e. the total amount of the claim offered including V.A.T., shall be increased by collection and administration costs and interest. The principal sum shall belong to the Client.

8.4 Each payment made by a Debtor shall first serve to settle collection costs, interest and commission, and the principal sum.

8.5 There shall be no interim remittance of amounts collected by Invorderingsbedrijf unless otherwise agreed in writing.

8.6 Commission shall be payable on all payments made, irrespective of to whom and after Invorderingsbedrijf has dealt with the order.

8.7 Invorderingsbedrijf shall be entitled to assign its rights and obligations under a contract to a third party. However, the Client shall not be entitled to transfer its rights and obligations under an agreement to a third party without the prior written consent of Invorderingsbedrijf.

9. Termination

9.1 The debt collection assignment shall end if there is full payment by the debtor or if the collecting agency decides to terminate the assignment. Payment by

the Debtor is deemed to have taken place when the debtor has paid the claim to Invorderingsbedrijf or directly to the Client. Payment shall be considered to be any consideration assumed by the debtor towards the Client, any amounts collected by the Client or otherwise, any set-off of the claim, any credit, set-off, or return of any goods delivered by the Client to the debtor, the value of such goods being determined by objective standards. The Client must notify Invorderingsbedrijf in writing by returning the debtor's payment if payment has been made directly to the Client. The commission shall be charged on payments.

9.2 Invorderingsbedrijf is entitled to terminate its collection activities prematurely if, in its opinion, it cannot reasonably be expected that payment can be obtained without (extra)judicial proceedings and the debtor disputes the claim on legal grounds.

9.3 If the Client withdraws a debt collection assignment, makes a payment arrangement with the debtor without the involvement of Invorderingsbedrijf, reaches a settlement with the debtor, leaves Invorderingsbedrijf without any notification, arranges the payment itself, or stands in the way of further collection processing, Invorderingsbedrijf shall nevertheless be entitled to charge a 15% commission on the entire debt referred to it for collection, an amount of €25 (exclusive of VAT) for registration costs and other costs – including, among other things, all third-party charges owed, such as fieldwork, dues, procedural fees and enforcement costs.

9.4 Invorderingsbedrijf shall be entitled to terminate an accepted assignment in whole or in part, without giving reasons.

9.5 If the execution costs incurred have not been recovered from the debtor, these costs will be charged to the Client based on the applicable debtor rates unless this has been departed from in writing.

10. Rates

10.1 The rates are mentioned in the agreement and the applicable rate lists.

10.2 Invorderingsbedrijf is entitled to change the rates by issuing a new list of rates. The new rates shall then also apply to current agreements. Invorderingsbedrijf shall provide the new list of rates to the Client one month before its effective date. If the change involves an increase of 10% or more, the Client may dissolve the agreement. The right to dissolve the agreement shall lapse if the Client does not dissolve the agreement in writing – and by registered letter – within one month after the new list of rates has been issued.

10.3 Commission is due on all payments made, irrespective of to whom, after the Client has taken up the assignment. The date of confirmation of the assignment shall be deemed to be the date on which the assignment was processed.

10.4 The costs of third parties engaged by Invorderingsbedrijf in and out of court shall be borne by the Client. The same shall apply to unrecoverable court costs and enforcement costs as well as all costs incurred as a result of Debtors of the Client commencing (any) proceedings. Where a fee is charged, it shall be increased by 6% office expenses on that fee, VAT and disbursements.

10.5 Invorderingsbedrijf is entitled to charge additional costs (also incurred by third parties) to the Client, to the extent that these cannot be recovered from the Debtor.

11. Third-party account

11.1 Collected amounts will be received by Stichting Derdengelden Invorderingsbedrijf, a bank account managed by a separate legal entity into which Debtors must deposit their payments.

11.2 Third-party monies are understood to mean: the funds received by the contractor for the principal after deduction of the contractor contractually agreed to the contractor and after removal of the costs incurred by the contractor.

11.3 Monies received by Invorderingsbedrijf on behalf of the Client shall be held in escrow until full payment of the claim has been made or until the monies received are remitted in the interim, after settlement of the contractor's fee and the costs incurred or to be incurred.

11.4 No interest shall ever be paid on funds held by Invorderingsbedrijf.

11.5 Each payment, whether to the principal or the contractor, shall be applied in the first instance to settle the commission due to the contractor and any costs and interest incurred. Unrecovered costs of payment, out-of-pocket expenses, and the costs of legal proceedings incurred by third parties, including that part of the court costs awarded, which is treated as attorney's fees, will not be recovered.

12. Additional Work

12.1 Where the Client requires additions to or modifications of the products or services supplied by Invorderingsbedrijf under an agreement and Invorderingsbedrijf considers that its obligations will be increased or extended. Thereby, there shall be contract extras even where the parties had previously agreed upon a fixed price.

12.2 Where Invorderingsbedrijf believes that additional work is involved, it shall notify the Client as soon as possible and inform the Client of the effect thereof on the price and on the time within which Invorderingsbedrijf can deliver the products or services. The Client shall be deemed to have agreed to the performance of the additional work and the costs and other consequences connected in addition to that unless it objects in writing immediately after the said notification by Invorderingsbedrijf.

13. Payment

13.1 The term of payment is 14 days after the invoice date. The Client shall pay invoices following the payment conditions stated on the invoice. The Client shall not be entitled to set off, deduct or suspend payment.

13.2 Invorderingsbedrijf shall be entitled to set off outstanding invoices against monies which it holds and administers, for or on behalf of the Client, for whatever reason, including third-party funds.

13.3. If the Client is in default, i.e. after the due date has been exceeded, Invorderingsbedrijf shall be entitled, without any reminder or notice of default being required, to charge interest equal to 2% per month from the due date of the invoice.

13.4 If the Client is in default, it shall owe all judicial and extrajudicial costs from the date of bankruptcy without any further notice of default being required. The extrajudicial collection costs shall be 15% of the outstanding claim with a minimum of € 75 (excluding VAT), to be increased by an amount of €10 (excluding VAT) per summons for administration costs, as well as an amount of €35 (excluding VAT) for registration costs and interest as referred to in the previous paragraph.

13.5 If the Client defaults on timely payment of one or more outstanding claims, Invorderingsbedrijf shall be entitled to suspend its operations immediately and retain all documents. The contractor shall not be liable for any loss resulting from a suspension.

13.6 Invorderingsbedrijf shall at all times be entitled to demand from the Client a deposit or security to cover the costs incurred and to be incurred by it in the performance of the assignment. However, suppose no such guarantee or protection is made. In that case, Invorderingsbedrijf shall be entitled to suspend or terminate the project without prejudice to its other rights. All sums from the principal to the contractor shall become immediately due and payable on any account.

13.7 The collecting agency is entitled to demand an advance payment, which must be made immediately and settled in an interim or final statement of account.

13.8 Exchange rate or conversion differences arising in dealing with a claim shall be for the account and risk of the Client.

14. Liability and indemnification

14.1 If, after having been given proper notice of default, the Group fails repeatedly or substantially to meet its obligations under the contract concerning due care, expertise and professionalism, and this should result in liability, that liability shall in all cases be limited to the total amount, exclusive of VAT (fee), paid by the Client to the Group under the contract in question in respect of its work under that contract. In the case of

assignments with more than six months, the liability referred to here shall be further limited to a maximum of the amount invoiced for the last six months. An extract of the current professional liability policy will be sent to you on request. Suppose no payment is made under the insurance mentioned above policy. In that case, any liability shall be limited to the amount of the fee or charge levied by Invorderingsbedrijf in connection with the assignment or the file concerned in the preceding six months, exclusive of other costs. Any action must be brought by the Client no later than one year after the event in question, failing which the Client shall have exhausted its rights.

14.2 Any further liability of Invorderingsbedrijf for any damage other than that referred to in the previous paragraph, suffered by the Client, his staff or other persons involved in the performance of the agreement, is expressly excluded, including consequential damage, loss of profit, lost savings, disappointed expectations, loss of business, damage resulting from the violation of rights of third parties, loss of data, environmental damage and (other) immaterial damage. Neither shall Invorderingsbedrijf be liable for any incorrect or delayed transmission of data, notices or deliveries due to the use of the internet or any other communication medium between the Client and Invorderingsbedrijf or between Invorderingsbedrijf and third parties in connection with the relationship between the Client and Invorderingsbedrijf.

14.3 The limitations of liability referred to in the previous two paragraphs shall cease to apply in cases of intent or wilful recklessness on the part of Invorderingsbedrijf or its managerial staff.

14.4 The Client shall indemnify Invorderingsbedrijf against any third party claims resulting from any failure of Invorderingsbedrijf to perform the agreement or any violation of laws or regulations, including the Dutch Data Protection Act and/or other regulations concerning the processing of personal data, for which Invorderingsbedrijf is not responsible.

14.5 The execution of the assignment given shall be done exclusively for the Client's benefit. Therefore, third parties cannot derive rights from the work's contents.

14.6 Invorderingsbedrijf shall exercise due care in engaging third parties. Invorderingsbedrijf assumes, and if necessary, as a result of this stipulates, that all instructions given to it by Clients imply the authority to accept any limitations of liability of third parties also on behalf of those Clients.

14.7 Its Clients shall indemnify Invorderingsbedrijf against all third party claims, including the reasonable costs of legal assistance, which are in any way connected with or arising out of work carried out by Invorderingsbedrijf for its Clients, save in the event of wilful misconduct or gross negligence on the part of Invorderingsbedrijf.

14.8 Not only Invorderingsbedrijf but also all persons

involved in performing an assignment of a Client may rely on these General Terms and Conditions. The same applies to persons who have worked for Invorderingsbedrijf, including heirs, if such persons are held liable after leaving the office of Invorderingsbedrijf.

14.9 Invorderingsbedrijf shall never be liable for damage arising from any incorrect or incomplete information supplied by the Client.

15. Overmacht

15.1 Without prejudice to its other rights, in the event of force majeure, Invorderingsbedrijf shall be entitled, at its discretion, to suspend the performance of an agreement or to dissolve the agreement in whole or in part without judicial intervention by notifying the Client of this in writing and without Invorderingsbedrijf being liable for any compensation.

15.2 Force majeure shall mean any circumstance beyond the control of Invorderingsbedrijf as a result of which the performance of its obligations towards the Client is wholly or partly impeded or as a result of which the performance of its duties cannot reasonably be required from Invorderingsbedrijf, irrespective of whether such circumstance was foreseeable at the time of the conclusion of the agreement. Such events shall include strikes and lock-outs, blockades, riots, fire, breakdowns in or affecting the business of Invorderingsbedrijf, stagnation or other problems in the supply of services by Invorderingsbedrijf or its suppliers and its own or third-party transport or devaluation, increases in import duties and excise duties or taxes and measures taken by any government authority as well as the absence of any government permit to be obtained and illness of employees.

16. Default and termination

16.1 If the Client fails to fulfil, or fails to fulfil on time, any obligation arising for it under any agreement or these conditions, the Client shall be in default. Invorderingsbedrijf shall be entitled, without any notice of default or judicial intervention being required: (i) to suspend the performance of such agreement until payment has been adequately secured; or (ii) to dissolve such agreement in whole or in part with immediate effect, without Invorderingsbedrijf being liable to pay any compensation whatsoever.

16.2 The preceding paragraph shall also apply if, after the conclusion of the agreement, circumstances come to the attention of the collecting agency which gives it reasonable grounds for fearing that the principal will not (be able to) fulfil its obligations or that the collecting agency will suffer damage of any kind, such as damage to its reputation.

16.3 In case of (provisional) suspension of payments, bankruptcy, cessation or liquidation of (the company of) the Client, all agreements shall be dissolved with immediate effect in whole or in part by operation of law, unless the Client, its receiver or trustee declares

to Invorderingsbedrijf on written request within a reasonable period that he is prepared to execute the agreement(s). In the latter case, Invorderingsbedrijf shall be entitled to suspend the performance of the contract(s) until sufficient security has been furnished for the version of the agreement.

16.4 The provisions of the foregoing two paragraphs shall not affect the other rights of Invorderingsbedrijf under the law and the agreement.

16.5 In the event of an occurrence as referred to in paragraphs 1 or 2, all claims of Invorderingsbedrijf against the Client under the relevant agreement(s) shall be immediately due and payable in full. Invorderingsbedrijf shall, in that case, not be required to refund, in whole or in part, any amounts retained by the Client under the relevant agreement(s).

17. Intellectual property

17.1 All intellectual property rights regarding (results of) products and services made available are held exclusively by Invorderingsbedrijf, its licensors or suppliers. The Client shall not acquire any intellectual property rights regarding the products and services or the results.

17.2 The Client shall not be permitted to alter or remove any trademark or other identifying marks affixed to the products or modify or imitate the products or any part thereof.

17.3 If, in the opinion of Invorderingsbedrijf, the Client has made it sufficiently plausible that the products infringe any intellectual property right of a third party, Invorderingsbedrijf shall be entitled, at its option, to acquire such right as will enable the Client to continue to use the products, or in the reasonable opinion of Invorderingsbedrijf provide equivalent products, or modify the products so that the infringement is remedied, or rescind the agreement in whole or in part, refunding the price paid by Client (for the amount in question), less a reasonable charge for the use of the products up to the time of rescission.

17.4 The Client shall immediately inform Invorderingsbedrijf of any claim by a third party regarding an infringement of intellectual property rights relating to the products. In such a claim, only Invorderingsbedrijf shall be entitled to defend itself on behalf of the Client or take legal action against such a third party or reach an amicable settlement with such a third party. The Client shall refrain from taking any such action as this may reasonably be required of it. The Client shall, in all cases, cooperate with Invorderingsbedrijf.

17.5 The Client shall indemnify Invorderingsbedrijf against all loss or damage (including legal counsel fees) which Invorderingsbedrijf may suffer as a result of any alleged infringement of intellectual property rights of a third party where Invorderingsbedrijf is alleged to have infringed such rights by using any

data, writings or items or otherwise supplied by the Client to Invorderingsbedrijf for the performance of the agreement.

17.6 Invorderingsbedrijf also retains the right to use the knowledge obtained by the performance of the collection services for other purposes.

18. Secrecy

18.1 The Client shall keep confidential all information and data it obtains in connection with the performance of the agreement and shall not disclose it to any third party without the written consent of Invorderingsbedrijf.

18.2 In the event of a breach of the preceding paragraph, the Client shall forfeit an immediately payable penalty of EUR 25,000 per event, which penalty shall not affect the Client's obligation to pay damages if any. Invorderingsbedrijf shall be free to claim the performance of the agreement in addition to the penalty.

19. Personal Data

19.1 Personal data within the meaning of the Personal Data Protection Act (Wbp) shall be processed following the statutory provisions and the provisions of the Privacy Statement.

19.2 In executing the agreement, the Collecting Agency is to be regarded as the data controller within the meaning of the Wbp concerning the processing of the personal data of the Debtors and the Client.

19.3 In so far as the Client itself determines the purposes and means of the data processing of the personal data of its Debtors, the Client shall be deemed the data controller of such personal data. If this has been agreed in writing, Invorderingsbedrijf shall, in that case, process this personal data on behalf of the Client as the processor. As the processor, Invorderingsbedrijf shall, to the best of its ability, ensure that appropriate technical and organisational measures are taken to secure the personal data against loss or any form of unlawful processing. After prior consultation, the Client may monitor compliance in addition to that.

19.4 In its capacity as the responsible party, the Client warrants that all statutory regulations regarding the processing of personal data are strictly observed. All prescribed notifications have been made, and all required consents to process personal data has been obtained. The Client shall promptly provide Invorderingsbedrijf with all information requested in this regard in writing.

20. Judicial and execution process

20.1 The judicial and execution process is always entirely at the expense and risk of the Client. The No Cure No Pay procedure shall not apply during this process.

20.2 The collection costs, interest and salary awarded in a court judgment, in whatever form, or any other compensation other than the principal sum, are immediately due and payable from the Client and accrue to Invorderingsbedrijf. This applies whether or not such costs are recoverable from the debtor.

20.3 In the judicial and enforcement process, Invorderingsbedrijf uses the services of third parties, such as bailiffs and lawyers. Therefore, third-party costs will be charged one-to-one to the Client, irrespective of whether they can be recovered from the debtor.

20.4 If a case is closed, a final statement will be drawn up. The Client will be charged for the collection costs awarded, interest, attorney's fees, third-party fees, and any other allowances granted and expenses incurred.

21. Legal work

21.1 If the handling of a debt collection case requires the performance of legal activities, including the conducting of legal proceedings, whether or not out of court, the costs involved may be charged to the Client on an advance basis. As long as any advance payment has not been received, Invorderingsbedrijf shall not be required to undertake any further work.

22. Applicable law and disputes

22.1 These terms and conditions, as well as the contracts, are exclusively governed by Dutch law.

22.2 Disputes shall be referred exclusively to the competent court in The Hague. These terms and conditions, filed with the Chamber of Commerce in The Hague, apply to all offers, agreements, contracts, service level agreements, etc.

23. Debt collection outside the Netherlands

23.1 An instruction to carry out debt collection outside the Netherlands exists if the debtor has its place of residence or establishment outside the Netherlands.

23.2 In the case of an international debt collection assignment, the following applies. Suppose Invorderingsbedrijf or the person it engages in the context of a collection abroad collects additional costs from the debtor over and above the principal and interest. In that case, these costs shall accrue to Invorderingsbedrijf or the aforementioned third party. The collected costs shall not be deducted from the agreed rates following the most recent list of rates.

23.3 In the case of collecting debts in foreign currency, Invorderingsbedrijf is not liable for any exchange rate loss.