

# General Terms and Conditions D4T Systems BV (2014)

## 1 GENERAL

In these general terms and conditions the following definitions apply:

- 1.1 Client: the party that issues an Contract;
- 1.2 Contractor: D4T Systems BV, established in Son, the Netherlands, in this case the party who actually accepted the Contract (hereinafter: 'D4T Systems').
- 1.3 Contract: the agreement under which D4T Systems undertakes to carry out the work for the Client.
- 1.4 Professional Activities: All the activities to be carried out by D4T Systems that have been commissioned by the Client and accepted by D4T Systems, including any resulting activities that are to be carried out by D4T Systems.

## 2 APPLICABILITY

- 2.1 These General Terms and Conditions govern: all offers, quotations, commissions, legal relationships and agreements of any nature, in which D4T Systems undertakes/will undertake to carry out Professional Activities on behalf of the Client, including any Professional Activities resulting therefrom.
- 2.2 Any derogations from, and additions to, these General Terms and Conditions are only valid if explicitly agreed upon in writing in, for example, a (written) agreement or order confirmation.
- 2.3 If these General Terms and Conditions and the order confirmation contain any mutually conflicting terms, then the terms included in the order confirmation will take priority. D4T Systems explicitly excludes the applicability of the Client's general terms & conditions.
- 2.4 The Dutch language general terms and conditions prevail over the general terms and conditions drawn up in English or any other language.

## 3 CONCLUSION OF THE CONTRACT

- 3.1 The Agreement is concluded when D4T Systems has received an order confirmation that has been signed by both the Client and D4T Systems. The confirmation will be based on the information that was provided by the Client to D4T Systems at the time. The confirmation is considered to offer a full and correct representation of the Agreement.
- 3.2 If the Commission has been granted verbally, or if the order confirmation has not been signed and returned (yet), then the Commission will be considered to have been concluded subject to these General Terms and Conditions at the point in time that D4T Systems has commenced the fulfilment of the Professional Activities on the Client's request.
3. The parties are free to show that the Agreement has been concluded in a different manner. All arrangements and proposals previously made between the parties in this regard will be cancelled.
4. The Agreement will be entered into for an indefinite period of time unless it follows from the contents, nature or purport of the granted Commission that it has been entered into for a definite period.

## 4 PROVISION OF INFORMATION BY THE CLIENT

- 4.1 The Client is obliged to provide, in due time, in the required form and in the required manner all information and documentation which D4T Systems considers necessary for the correct performance of the Contract.
- 4.2 The Client will inform D4T Systems about all information which is relevant to the performance of the Contract.
- 4.3 The Client guarantees the accuracy, completeness and reliability of the information and documentation provided to D4T Systems, including information and documentation originating from third parties, except where such a guarantee is precluded by the nature of the Contract.
- 4.4 If D4T Systems carries out Professional Activities at the Client's location, then the Client must arrange for a suitable work area that meets the statutory occupational health and safety (ARBO) requirements and other applicable regulations with regard to working conditions. The Client must, in any case, see to it that D4T Systems is provided with office space and any other facilities that D4T Systems deems necessary or useful for the fulfilment of the Agreement. Said office space and facilities must also meet the relevant (statutory) requirements. As regards the (computer) facilities that are to be provided, the Client is required to guarantee continuity by offering, amongst other things, adequate back-up, safety and virus-scanning procedures.
- 4.5 Unless the nature of the Contract dictates otherwise, the Client will deploy the staff deemed required by D4T Systems or have this staff deployed in order to allow D4T Systems to carry out the Contract. If specific staff are required, this will be agreed upon and laid down in the Contract Outline. The Client undertakes to ensure that its staff is sufficiently skilled and experienced at the work to be carried out under the Contract.

## 5 FULFILMENT OF THE COMMISSION

- 5.1 D4T Systems will fulfil the Commission to the best of its abilities and in accordance with the applicable laws and (professional) regulations.

5.2 D4T Systems will fulfil the Professional Activities to the best of its abilities and with due professional care. However, D4T Systems cannot guarantee any intended result, unless explicitly agreed upon otherwise in the order confirmation.

5.3 D4T Systems will determine the manner in which and by whom the Contract will be performed.

5.4 After consultation with the Client, D4T Systems may also involve or replace one or more individuals or in the performance of the Contract who are not directly or indirectly affiliated with D4T Systems.

5.5 A failure by an individual as referred to in the fourth paragraph of this article can only be attributed to D4T Systems if the Client demonstrates that D4T Systems choice for this individual was made without due care.

5.6 The Client cannot involve third parties in the execution of the Contract unless it has reached agreement with D4T Systems about such involvement. This provision applies as outside involvement in a Contract, whether directly or indirectly, may significantly affect D4T Systems's opportunities for the proper execution of the Contract. This provision applies to D4T Systems mutatis mutandis.

5.7 D4T Systems keeps working papers in relation to the Contract. This file, which contains copies of relevant files, is the property of D4T Systems.

## 6 CONFIDENTIALITY

- 6.1 Except where disclosure is required by law or professional duty, D4T Systems is obliged to maintain confidentiality toward third parties.
- 6.2 D4T Systems is not entitled to use the information received from the Client for any purpose other than that for which it is provided, except where D4T Systems is acting on its own behalf in disciplinary, civil or criminal proceedings to which those documents could be relevant.
- 6.3 D4T Systems will impose its obligations in this article on third parties employed by D4T Systems.
- 6.4 The Client will not, without D4T Systems prior written consent, disclose the contents of reports or recommendations or other observations of D4T Systems, written or otherwise, which were not formulated or made with a view to providing the information contained therein to third parties. The Client will also ensure that third parties are not able to become aware of the contents referred to in the preceding sentence.
- 6.5 D4T Systems has the right to refer its clients and potential clients in general terms to the activities performed, provided that this only serves as a description of D4T Systems experience. This is not deemed contrary to the provisions of paragraphs 1 and 2 above.

## 7 INTELLECTUAL PROPERTY

- 7.1 D4T Systems fulfilment of the Commission does not include the transfer of intellectual property rights held by D4T Systems. All intellectual property rights that have been created during, or which result from, the fulfilment of the Commission will belong to D4T Systems.
- 7.2 The Client is explicitly forbidden from multiplying, publishing or commercially exploiting products that include D4T Systems intellectual rights or products which are subject to intellectual property rights for which D4T Systems has acquired user rights. This includes but without limitation: computer programs, system designs, working methods, advice, (model) contracts, templates, macros, and other mental products.
3. The Client is not permitted to provide the products referred to in the second paragraph to third parties without D4T Systems prior written permission, other than for the purpose of obtaining an expert opinion with regard to D4T Systems fulfilment of the Professional Activities. The Client must, in that event, impose its obligations under this article on any third party that is to be engaged by the Client.

## 8 FEES

- 8.1 If the fees or prices are changed after the Agreement's conclusion, but prior to the Commission's full completion, then D4T Systems will be authorised to modify the agreed rate accordingly.
- 8.2 The Professional Activities carried out by D4T Systems will be charged to the Client based on the time spent and the expenses that have been incurred.
- 8.2 In addition to the fee, the costs incurred by D4T Systems and any expenses charged to D4T Systems by third parties will also be charged to the Client.
- 8.3 If required by law, turnover tax will be charged separately over all the amounts that the Client owes to D4T Systems.

## 9 PAYMENT

- 9.1 Payment will be made by the Client, without deduction, discount or compensation, within the agreed periods, but in no event later than twenty-one days after the invoice date. Payment will be made in euro's (€) by transfer to a bank account to be designated by D4T Systems.
- 9.2 If the Client fails to pay within the period referred to in the first paragraph of this article, D4T Systems will be entitled, having reminded the Client at least once, without further notice of default or prejudice to D4T Systems other rights, to charge the Client interest at the statutory rate until the date of payment in full.
- 9.3 The Client will be liable for all judicial and extra-judicial collection costs reasonably incurred by D4T Systems as a consequence of the Client's non-performance of his obligation to pay.
- 9.4 If, in the opinion of D4T Systems, the Client's financial position or payment history gives rise to this, or if the Client fails to settle an advance payment or bill within the set term, then D4T Systems will be authorised to ask the Client to promptly furnish (additional) security in a manner to be decided by the former. If

the Client fails to provide the requested security, then D4T Systems will be authorised to suspend the further fulfilment of the Agreement with immediate effect and without prejudice to its other rights. Everything owed by the Client to D4T Systems under the Agreement will become due on demand in that event.

9.5 If it involves a jointly granted Commission, then the Client will be jointly and severally liable for the payment of the invoiced sum and the due interest and costs insofar as the Professional Activities have been carried out on behalf of the joint Clients.

## 10 PERIODS FOR COMPLETION

10.1 If the Client is required to make an advance payment or to provide information and/or materials which are essential to the performance of the Contract, the period allowed for completion of the work will not commence until payment in full has been received or all the information and/or materials are supplied as the case may be.

10.2 Dates by which the work is to be completed will only be considered to be of the essence if this has been expressly agreed or is a consequence of the character of the Contract.

10.3 Except in cases where it is beyond doubt that the performance of the contract is no longer possible the contract cannot be cancelled by the Client on grounds of failure to perform the contract on time, unless D4T Systems fails to perform the contract or fails to perform it in full within a reasonable period of time of which D4T Systems has been notified in writing after expiration of the originally agreed completion period.

## 11 TERMINATION

11.1 The Client and D4T Systems are invariably authorised to terminate the Agreement (prematurely) without giving notice. If the Agreement ends prior to the Commission's completion, then the Client will owe a fee based on the hours spent by D4T Systems on the Professional Activities on behalf of the Client.

11.2 Notice of termination must take place in writing.

11.3 If the Client decides to terminate the contract (pre-maturely) then D4T Systems will be entitled to compensation for (plausible) loss of complement suffered by D4T Systems, compensation for additional costs already incurred by D4T Systems, and for costs incurred for the cancellation of services provided by third parties which had already been engaged (including, amongst other things, costs possibly incurred for subcontracting).

11.4 If D4T Systems terminates the Agreement (prematurely), then it must lend its assistance to the transfer of the activities to third parties, unless D4T Systems was forced to terminate the Agreement because of intentional acts and omissions or gross negligence on the part of the Client. Any entitlement to such assistance is subject to the condition that the Client has settled all outstanding advances and bills in this regard.

11.5 D4T Systems will, upon the Client's first request, return the original Documents that have been provided by the latter.

## 12 ASSIGNMENT/INDEMNIFICATION

12.1 Unless D4T Systems has given its express consent, the Client is not permitted to assign any obligation laid down in this Contract to third parties. D4T Systems is entitled to attach conditions to its consent. The Client undertakes in any case to impose all relevant payment obligations laid down in the Contract on the third party. Unless Client and D4T Systems explicitly agree otherwise, the Client, in addition to the third party, will continue to be liable for the obligation laid down in the Contract and the General Terms and Conditions.

12.2 The Client indemnifies D4T Systems against all third-party claims arising from the Client's non-performance or incorrect performance of any obligation laid down in the Contract and/or the General Terms and Conditions.

## 13 LIABILITY

13.1 D4T Systems will fulfil the Professional Activities to the best of its abilities and with due professional care. D4T Systems will not be liable for damages arising from any error due to the Client providing incorrect or incomplete information. If the Client is able to demonstrate that he has suffered damages as a result of an error by D4T Systems which would have been avoided if D4T Systems had exercised due care, D4T Systems will be liable for such damages only up to a maximum as defined in 13.2, except in cases of intent or gross negligence by D4T Systems. The total amount for which D4T Systems can be liable on the basis of the foregoing sentence will never exceed the amount that is paid under the professional liability insurance of D4T Systems, except in cases of intent or gross negligence by D4T Systems.

13.2 If it involves a consultancy Contract, then D4T Systems liability will be restricted to a maximum which equals the fee which D4T Systems has received for the Contract in question. If it involves a consultancy Contract with a duration that exceeds a 6-month period, then the aforementioned liability will be restricted to a maximum amount that equals the fee received by D4T Systems for this particular Contract over the last six months.

13.3 The Client indemnifies D4T Systems against third-party claims for losses incurred as a result of the Client supplying incorrect or incomplete information to D4T Systems, unless the Client proves that the loss does not relate to imputable faults or negligence on its part or was caused by an intentional act or omission, or similar intentional recklessness on the part of D4T Systems.

## 14 INTERNET COMMUNICATION

The Client and D4T Systems recognise the risks associated with the use of electronic mail, such as among other risks, distortion, delays and virus transmission. The Client and D4T Systems will do or not do all that can be reasonably expected from them to avoid such risks. The Client and D4T Systems will not hold each other liable for any damages as a result of the use of electronic mail. Both the Client and D4T Systems will make every reasonable effort to prevent the above-mentioned risks from occurring.

## 15 EXPIRY PERIOD

Unless otherwise determined in these general terms and conditions, the Client's rights of claim and other powers towards D4T Systems in whatever regard in connection with D4T Systems performance of the work will in any event expire one year after the date on which the Client became aware or may reasonably be expected to have become aware of the existence of such rights and powers.

## 16 RENUNCIATION OF RIGHTS

The rights or powers enjoyed by D4T Systems under this Contract will not be affected or limited by D4T Systems's failure to directly enforce any rights or powers. Any right or authority laid down in or ensuing from any provision or condition of this Contract can only be renounced in writing.

## 17 CONVERSION

If and to the extent that, in all reasonableness and fairness or by virtue of its unreasonable onerous nature, any of the provisions of the Contract cannot be invoked, the provision in question will in any event be accorded a meaning corresponding as closely as possible to the original contents and tenor so that this provision can nevertheless be invoked.

## 18 SUBSEQUENT EFFECT

The provisions of this Contract, which are intended, either expressly or tacitly, to remain in effect even after termination of this Contract, will remain in effect after the Contract has been terminated and continue to bind both parties.

## 19 CONTRADICTING CLAUSES

If these General Terms and Conditions and the order confirmation contain any mutually conflicting terms, then the terms included in the order conformation will take priority.

## 20 APPLICABLE LAW AND CHOICE OF FORUM

20.1 The legal relationship between the Client and D4T Systems is governed by the laws of the Netherlands.

20.2 All disputes between the Client and D4T Systems will be adjudicated by the competent court in the location where D4T Systems is established.

20.3 Contrary to the provisions of paragraph 2, the Client and D4T Systems are entitled to submit disputes to an arbitration tribunal.

## 21 REPAIR CLAUSE IN THE EVENT OF NULLITY

If any provision set out in these General Terms and Conditions and/or the underlying Commission/Agreement, proves to be entirely or partially void and/or invalid and/or not enforceable because of any statutory regulation, judicial decision or any other reason, then this will not affect the validity of the other provisions set out in these General Terms and Conditions or the underlying Commission/Agreement. The parties are authorised to consult on new provisions that will replace the null and/or voided provisions. In doing so, the objective and purport of the null and/or voided provisions must be approximated as closely as possible.