

**GENERAL TERMS AND CONDITIONS OF LODDER / DALES / AFFILIATED ENTITIES****I. Definitions; Applicability****Article 1. Definitions**

The following definitions shall be used in the present general terms and conditions:

- a. **Contractor**: the partnership Lodder & Co 's-Gravenhage in 's-Gravenhage (The Hague), the partnership Lodder & Co Nieuwegein in Nieuwegein, the partnership Lodder & Co Zevenaar in Zevenaar or one of the legal persons affiliated with them and other legal entities, such as, but not limited to: BNA Buro Notariële Accountants BV in Bussum, Advieskantoor Van der Vlist Administraties en Bedrijfsadvies BV in 's-Gravenhage (The Hague), Lodder-Dales Doetinchem Adviseurs BV in Doetinchem, Lodder-Dales PersoneelAdvies BV (DPA) in Doetinchem and Lodder-Dales Zevenaar Adviseurs BV in Zevenaar. The legal entity by which or in whose name the assignment is accepted, must be deemed to be the contractor.
- b. **Other party / customer**: the (legal) person who has accepted the validity of the present general terms and conditions in writing or otherwise.
- c. **Parties**: contractor and other party / customers jointly.
- d. **Services (provision of services) / performance**: all kinds of provision of services ordered or which are provided or have to be provided by the contractor by any other virtue, including but not limited to activities by virtue of the professional practice of tax consultants, management consultants, interim managers, company law advisers, legal advisers, financial planners and all the other people (also referred to as: "professional") who work at, for or on behalf of the contractor or who work at, for or on behalf of entities affiliated with the contractor as referred to under a.
- e. **Agreement**: the order placed by the other party and accepted by the contractor to provide certain services, all this with the exclusion of articles 7:404 and 7:407 section 2 of the "Burgerlijk Wetboek"(The Netherlands Civil Code).

**Article 2. Applicability**

1. The present general terms and conditions shall apply to all legal relationships between parties, subject to deviations explicitly confirmed in writing by both parties. However, the general terms and conditions can be extended with or they can be deviated from by supplementary terms and conditions for the provision of specific services. Supplementary / specific terms and conditions shall apply when the contractor has notified the customer accordingly. The general terms and conditions of other parties shall not apply to any (order) agreement as referred to hereinabove.
2. The rules of conduct and the professional code governing the professional's actions who is working within the contractor's organisation that apply to the execution of the order concerned, shall form a part of the agreement. The contractor shall declare that the shall at all times fully comply with the obligations resulting for him from said rules of conduct and professional code.
3. The other party shall declare that it shall always honour the obligations resulting for the contractor from the rules of conduct and the professional code. The text of the rules of conduct and the professional code concerned can be obtained from the contractor upon request.
4. All stipulations in the present general terms and conditions shall also have been included for the partners of the partnerships as referred to under article 1a as well as for the managing directors of the legal persons affiliated with them and other legal entities and for all people who work or worked for them.

**Article 3. Transfer of Rights and Obligations**

1. The other party shall not, either wholly or partially, transfer the rights and obligations resulting for it from the present agreement (including the applicability of the present general terms and conditions and any applicable arrangements) to any third party (parties) without prior consent in writing of the contractor.
2. In the event his company is (partially) taken over and/or changed, and said takeover and/or change concerns the services provided by the contractor, the other party shall be under the obligation to impose the present general terms and conditions on his (legal) successors and/or partners, failing which it shall remain liable vis á vis the contractor for any default on their part.

**Article 4. Several Parties – Joint and Several Liability**

If the contractor concludes an agreement with two or more other parties (for instance companies affiliated with each other in a group), said other parties shall be jointly and severally liable. The contractor shall then be entitled vis á vis each and every one of them to compliance with the whole of the assignment.

**Article 5. Change to the Enterprise of the Contractor**

The present general terms and conditions shall remain in effect in the event the name, the legal form or the owner of the contractor's company changes wholly or partially.

**II. Offer and Confirmation; Conclusion of the Agreement****Article 6. Offer; Confirmation**

1. Offers submitted by the contractor shall at all times be free of obligation and revocable, unless explicitly stated to the contrary.
2. A power of attorney granted by the other party to the contractor to enter into a juristic act shall be irrevocable and shall not end through the death, the bankruptcy of or a guardianship order in respect of the other party.
3. The contractor shall establish in consultation with the other party what parties expect from each other with respect to the activities and what the responsibilities of each of them are in this respect. The confirmation of this consultation shall contain an indication as to the activities to be carried out and the way they have to be reported on, the arrangements in terms of the fee and the settlement of costs, the responsibilities of the contractor and the other party as well as arrangements on the provision of services.
4. The other party shall receive the confirmation referred to in the previous section in writing in duplicate and shall return a signed copy to the contractor. Unless the other party makes known in writing within eight days from the day of receipt of the confirmation that it disputes the correctness of the contents of said confirmation, the other party shall be bound by the contents of the confirmation in writing.

**Article 7. Agreement; Conclusion; Termination**

1. The contractor shall only carry out the activities on the basis of an agreement on the order (referred to in the present general terms and conditions as: "agreement" or "order" and/or "assignment"). Assignments shall only be accepted with the exclusion of articles 7:404 and 7:407 section 2 of the "Burgerlijk Wetboek" (The Netherlands Civil Code). The agreement shall be entered into for an indefinite period of time unless it follows from the contents, nature and tenor of the order given, that the agreement was entered into for a definite period of time.
2. The activities to be carried out under section 1 shall only be carried out when the customer has identified himself in accordance with the "Wet identificatie dienstverlening" (Identification Services Act). The customer shall have to identify himself beforehand on his own initiative.
3. The agreement shall be concluded when the contractor has received back the order confirmation signed by the customer that the contractor had sent the customer. The confirmation shall be based on the information provided by the customer to the contractor at the time. The confirmation shall be deemed to be the complete and correct reflection of the agreement. With regard to the conclusion of the agreement, the contractor can only be represented by members of the partnership and the people within the contractor's organisation holding a power of attorney to that effect.
4. Parties shall be at liberty to prove that the agreement was otherwise concluded. The fact that activities have been carried out for the other party serves as proof that an agreement exists between parties, unless the other party has made known in writing to the contractor within eight days from the day of receipt of any written document relating to said activities, that he does not agree to the provision of services.

**Article 8. The Provision of Information by the Customer**

1. The customer shall be under the obligation to make all data and documents available to the contractor that are necessary in the opinion of the contractor to carry out the activities in the proper manner, in the desired form and in the desired manner.

2. The customer shall vouch for the correctness, completeness and reliability of the data and documents made available to the contractor, including in the event they were obtained from a third party, to the extent nothing to the contrary results from the nature of the assignment.
3. If and in so far as the customer so requests, the documents made available shall be returned to him.
4. The extra costs and extra fee resulting from the delay in the execution of the activities caused by the fact that the required data and documents were not, not in a timely manner or not properly made available, shall be for the customer's account.

### **III. Execution**

#### **Article 9. Execution of the Order**

1. The contractor shall determine how the order given shall be executed.
2. The contractor shall have the right to call in third parties to carry out certain activities, without notifying the other party. The contractor shall exercise due care when he selects the third parties to be called in. The contractor shall not be liable for any shortcomings on the part of said third parties and shall be entitled to accept (also) on behalf of the customer without any prior consultation with the latter, a possible limitation of liability on the part of the third parties called in by the contractor.  
If the contractor wishes to call in third parties for the execution of the order, he shall only do so following agreement to that effect with the customer.
3. The contractor shall execute the order in accordance with the rules of conduct and the professional code applying to the professional concerned.
4. If activities are carried out during an assignment for the professional practice or the business operations of the other party that do not fall under the provision of services agreed upon in the order confirmation, the entries in the administration of the customer relating to such activities shall give rise to the assumption that said activities were carried out on the incidental instructions of the other party. Said entries must relate to the interim consultations between the other party and the contractor.

#### **Article 10. Secrecy and Exclusivity**

1. The contractor shall be under the obligation to keep the data and information provided by the customer secret from third parties that are not involved in the execution of the order. The present obligation shall not apply to the extent the contractor is under a professional or legal duty to disclose said data and information, including the obligation to report by virtue of the "Wet melding ongebruikelijke transacties" (Disclosure of Unusual Transactions (Financial Services) Act) and other national and international regulations of a similar tenor, or to the extent the customer has relieved the contractor from the latter's obligation of secrecy. The present obligation does not preclude any confidential consultations among colleagues within the contractor's organisation aiming to ensure the proper execution of the order or for the proper compliance with legal or professional obligations deemed necessary.
2. The contractor shall not be entitled to use the information made available to him by the customer for any purpose other than the one it was given to him. An exception to this rule shall, however, be made in the event the contractor appears on his own behalf in disciplinary, civil or criminal proceedings to which said documents may be relevant. The contractor shall be entitled to use the results in figures obtained following processing, for statistical or similar purposes, provided said results cannot be traced back to individual customers.
3. Barring the stipulations of the previous section, the contractor shall not be entitled to use the information made available to him by the customer for any purpose other than the one it was given to him. The contractor shall impose the obligations pursuant to the present article on the third parties called in by him.
4. Unless the contractor has given his prior consent to that effect in writing, the customer shall not disclose the contents of any reports, advice or any other statements of the contractor – in writing or not – which have not been drawn up or made with the intent to provide the information contained therein to third parties. The customer shall also see to it that third parties cannot take cognisance of the contents referred to in the previous sentence.

**Article 11. Storing Goods**

All goods left in the custody of the contractor by or on behalf of the other party, shall be stored by the contractor at the other party's risk.

**Article 12. Intellectual Property Rights**

1. The contractor shall reserve all rights to the intellectual products he uses or has used within the framework of the execution of the customer's order, to the extent said legal rights to said products may exist or rights can be established to them.
2. It shall be explicitly forbidden for the customer to duplicate, disclose or exploit aforementioned products of the contractor, with the help of third parties called in or not, including computer programmes, system designs, work methods, advice, (model) contracts and other intellectual products, all this in the broadest sense of the word.
3. The other party shall be forbidden to make (supporting means for) those products available to third parties for any other purpose than to obtain an expert opinion on the activities carried out by the contractor.

**IV. Performance Terms, Prices and Rates****Article 13. Performance Terms**

1. The performance terms stated by the contractor are only to be considered as terms to be observed on penalty of forfeiture of rights if such has been agreed upon explicitly. Unless the execution of the order is and shall unquestionably continue to be definitely impossible, the agreement cannot be dissolved by the customer on the grounds of exceeding the term, unless the contractor also fails to fully or partially execute the agreement within a reasonable term he was notified of in writing after expiry of the period of delivery agreed upon. Dissolution of the agreement shall then be allowed in conformity with article 265 Volume 6 of the "Burgerlijk Wetboek" (The Netherlands Civil Code).
2. If the customer owes an advance payment or if he has to make the required information and/or materials available for the execution, the term within which the activities have to be finished shall not commence prior to the moment the advance payment has been received in full and/or when the information and/or the materials have been made available.
3. The exceeding of a performance term stated shall not entitle the other party to any damages or to any right to suspend performance.

**Article 14. Prices**

1. The other party shall owe the contractor a fee for the execution of the activities, increased by costs (including the costs of down payments to and expense notes of third parties called in, which are charged on to the customer, unless the customer and the contractor have made other arrangements in this respect) plus turnover tax.
2. Unless otherwise explicitly agreed upon in writing, the contractor shall charge the other party a fee for his services in conformity with the current (hourly) rate applying to the provider of the services concerned. These rates shall be established by the contractor every year, January 1<sup>st</sup>, being the date of commencement. If one or more cost price factors show an increase after the conclusion of the agreement (due to foreseeable circumstances or not), the contractor shall be entitled to adjust the rate and/or other prices accordingly.
3. Office costs (including secretarial costs), out-of-pocket expenses, travelling hours, travel and accommodation costs and other costs relating to the assignment, shall not be included in the rates and shall be charged separately to the other party. In addition, they shall be increased by the potential costs paid to third parties by the contractor incurred by said third parties for the execution of the assignment, and by turnover tax.

## **V. Invoicing and Payment; Complaints**

### **Article 15. Invoicing**

The fee, increased by the costs referred to above in article 14, statements of expenses of third parties and the turnover tax due, shall be invoiced to the other party once every two months. The contractor shall always be entitled to ask the other party for an advance. The advance payments received shall be deducted from the latest invoice.

### **Article 16. Payment**

1. The customer shall have to pay the invoice without any deduction, discount or set-off within thirty days from the date of invoice. Payments shall have to be made in Dutch currency by means of transfer into a bank account to be indicated by the contractor.
2. If the other party fails to pay within the term referred to in the previous section or within the specified term agreed upon, he shall be in default by operation of law and the contractor shall have the right without any further demand for payment or notice of default being required, to charge the interest as referred to in the next section from the day of expiry up to the day of payment in full.
3. The interest to be charged by the contractor in the event the customer defaults on his obligation to pay, shall equal the statutory interest as referred to in articles 6:119 and 6:120 of the "Burgerlijk Wetboek" (The Netherlands Civil Code) in the event an agreement is concerned with an other party who is a natural person and who does not act within the framework of the execution of his profession or within the framework of the conduct of business.

In the event an agreement is concerned with an other party who is a natural person or a partnership who acts within the framework of the execution of his profession or within the framework of the conduct of business or who is a legal person, the interest referred to here shall equal the refinancing interest established by the European Central Bank whereby the reference date shall be the first calendar day of the six months concerned, increased by seven percent, on the understanding that the interest to be charged by the contractor to the latter other parties, shall never be less than twelve percent.

### **Article 17. Collection and Security**

1. All judicial and extrajudicial (collection) costs relating to the collection of any amount the customer owes the contractor, shall be for the other party's account. The extrajudicial costs shall be established at fifteen percent of the amount owed by the customer, with a minimum of € 150 (one hundred and fifty euro).
2. If the customer's financial position and/or payment record give rise to such a measure in the contractor's opinion, the contractor shall be entitled to demand that the customer forthwith furnish (additional) security in a manner to be specified by the contractor. If the customer fails to provide the required security, the contractor shall be entitled without prejudice to his other rights, to forthwith suspend the further execution of the activities and each and every amount the customer may owe the contractor by any virtue whatsoever, shall be immediately due and payable.

### **Article 18. Complaints**

1. All complaints regarding the activities carried out by the contractor and/or the amount of the invoice, shall have to be made known in writing to the contractor within thirty days from the date of dispatch of the activities, the invoice or the information the other party complains about, or within thirty days from the day the defect was detected if the other party can demonstrate that he could not have detected the defect any sooner in reason, failing which the other party shall be deemed to have accepted the performance.
2. If the other party has wholly or partially processed and/or used the performance, it shall be deemed to have approved it.
3. Complaints as referred to in the present article, shall not suspend the other party's obligation to pay.
4. The mere fact that a complaint is handled shall not mean that it can be deemed to have been filed in due time and/or that it is justified.

## **VI. Liability and Force Majeure**

### **Article 19. Liability**

1. The contractor shall carry out the activities to the best of his ability and exercise the due care one can expect from a service provider in his capacity concerned (which may be a tax consultant, management consultant, financial planner, lawyer or in another capacity).
2. The customer shall indemnify the contractor against any claim lodged by third parties due to damage caused by the fact that the customer has provided the contractor with incomplete or incorrect information, unless the customer demonstrates that the damage does not relate to any imputable acts or omissions on his part or is caused by gross negligence or intention on the part of the contractor.
3. Subject to gross negligence or intention on the part of the contractor, the contractor's liability shall be limited to the amount that is paid in the case concerned under his professional liability insurance. The contractor shall not accept any liability for the amount equalling the excess under his professional liability insurance. If the contractor does not receive any insurance payment under his professional liability insurance for any reason whatsoever, the contractor's liability shall be limited to an amount equalling twice the amount of the fee for the assignment concerned (over the last calendar year). The contractor shall only be liable if the total damage (i.e. the damage resulting from one or several defects) exceeds an amount of € 10,000.

Gross negligence and/or intention on the part of employees or non-employees whose services were called in by the contractor during the execution of the activities, cannot be deemed to be gross negligence and/or intention on the part of the contractor in the sense meant here.

4. The contractor shall not accept any liability for any indirect damage, including any stagnation in the normal conduct of business by the customer's company, relating in any way to or caused by a fault on the contractor's part in the execution of the activities.
5. The contractor shall not be liable for any damage to or loss of documents during transport or their forwarding by mail, regardless whether or not said documents were transported or forwarded by mail by or on behalf of the other party, third parties or the contractor himself.

### **Article 20. Force Majeure**

1. In the present general terms and conditions, force majeure shall be understood to be each and every separate circumstance beyond the contractor's will and control (even though the circumstance concerned could already be foreseen at the time the agreement came into being), which temporarily or permanently precludes the execution of the agreements, as well as – to the extent not already included in said circumstance – war, threat of war, danger of war, civil war, riots, industrial action, lock-out, transport problems, fire and other serious disturbances at the contractor's company or at the companies of the latter's suppliers.
2. In the event the agreement cannot be executed due to circumstances of force majeure, the contractor shall be entitled, without any judicial intervention, to either suspend the execution of the agreement for a maximum period of six months, or to wholly or partially dissolve the agreement without being held to pay any damages.
3. In the event of suspension as well as in the event of dissolution, the contractor shall be entitled to forthwith demand payment of the activities already carried out by the contractor at the time the circumstances of force majeure arose. The other party shall then be held to comply with the obligations resulting therefrom as if a separate transaction were concerned.

## **VII. Applicable Law, Term of Forfeiture and Disputes**

### **Article 21. Applicable Law**

All agreements, including in the event services are provided to foreign parties, to which the present general terms and conditions apply, shall be governed by Dutch Law.

### **Article 22. Term of Forfeiture**

To the extent not otherwise provided for in the present general terms and conditions, rights to action and other powers of the customer by any virtue whatsoever vis á vis the contractor in connection with the execution of activities by the contractor, shall in any case extinguish one year after the moment the customer became aware or could in reason have become aware of the existence of said rights and powers.

### **Article 23. Disputes**

All disputes in connection with or resulting from agreements between the customer and the contractor to which the present general terms and conditions apply, shall be settled by the competent Court in the court district within which the contractor's company is established (as, among others, referred to in article 1a). If and in so far as the rules of conduct and the professional code of the professional concerned provide for the settlement of disputes, aforementioned disputes shall be arbitrated via the arrangement for the settlement of disputes set out in said rules of conduct and professional code if and in so far both the customer and the contractor agree to the latter settlement of disputes.

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The general terms and conditions of Lodder/Dales and its affiliated entities have been deposited at the court registry of the Court in Zutphen under file number 5/2007.

Upon request, copies of said general terms and conditions as well as of the specific terms and conditions for service providers of Lodder/Dales and its affiliated entities shall be made available free of charge. Copies of the applicable rules of conduct and professional code of our service providers can also be obtained at our offices. Applications can be sent to one of the secretariats of our organisation in your vicinity, or can be addressed to the company secretariat of Lodder & Co, Postbus (P.O. Box) 13, 6900 AA Zevenaar (tel.: 0316-582600; fax: 0316-582601) or by e-mail: [info@lodder.com](mailto:info@lodder.com)

Our general terms and conditions as well as detailed information about our provision of services can be consulted at the Lodder & Co web site: [www.lodder.com](http://www.lodder.com)