

# BDO General Terms and Conditions for Assurance Services

## Article 1 - Definitions

- 1.1 In these General Terms and Conditions, the following terms have the following meanings:
- (a) BDO Group: the group of affiliated entities operating in the Netherlands and trading under the 'BDO' brand name.
  - (b) BDO Member Firm: an independent business that is a member of BDO International Ltd.
  - (c) Client: the party that awarded the engagement for Services.
  - (d) Contractor: the limited liability company that is a member of the BDO Group and a party to the Engagement/Agreement.
  - (e) Engagement/Agreement: all arrangements in place between the Client and the Contractor under which the Contractor has undertaken towards the Client to perform Services subject to the General Terms and Conditions.
  - (f) General Terms and Conditions: the provisions contained in this document.
  - (g) Services: all activities performed under the Engagement/Agreement concluded between the Client and the Contractor.
  - (h) Wta: Audit Firms (Supervision) Act (Wet toezicht accountantsorganisaties).

## Article 2 - Applicability

- 2.1 These General Terms and Conditions apply to all legal relationships between the Contractor and the Client concerning Services provided or to be provided by the Contractor to the Client.
- 2.2 Any derogations from these General Terms and Conditions will only be valid if and to the extent expressly agreed between the parties in writing.
- 2.3 Notwithstanding the provisions of Article 2.2, the Contractor will be authorised to unilaterally amend the Agreement based on laws and regulations.

## Article 3 - Formation and term of the Agreement

- 3.1 The Agreement will be formed at the moment when the Contractor is again in possession of the engagement letter sent to the Client and signed for approval by the latter.
- 3.2 The Agreement referred to in Article 3.1 will be based on the information the Client has provided to the Contractor and will be deemed to be an accurate and complete representation of the Agreement.
- 3.3 The Agreement will apply for the term agreed by the parties. The Agreement will end in any case upon termination and/or completion of the Services.
- 3.4 The parties will be permitted to sign the Agreement and any and all adjustments to it electronically. In addition, each party will be permitted to sign a different copy of the same document. Any amendments to the Agreement must be agreed by both parties in writing.

## Article 4 - Provision of information by the Client

- 4.1 The Client will be required to promptly provide the Contractor with, or arrange the provision of, all information, resources, materials and assistance (including access to documents, systems, buildings and persons) which the Contractor believes it needs for the correct performance of the Engagement or is obliged to obtain pursuant to the law. The information must be provided in the format and manner requested by the Contractor. If the information is not provided, or is not provided in good time, the Contractor will be authorised to immediately suspend the performance (or further performance) of the Engagement.
- 4.2 The Client will furthermore be required, on its own initiative, to provide the Contractor in good time with all information which the Client knows or should reasonably know to be important or useful for the proper performance of the Engagement.

- 4.3 The Contractor may rely on the accuracy, completeness and reliability of the information provided to the Contractor, even if this information originates from third parties.
- 4.4 If the performance of the Engagement is delayed because the Client fails to fulfil its obligations specified in Articles 4.1 and 4.2, or because the information provided by the Client turns out to be inaccurate, incomplete or unreliable, the additional costs resulting from this delay will be at the Client's expense, and the Contractor will be authorised to charge an additional fee for the additional Services required as a result, and the Contractor will also be authorised to immediately suspend the further performance of the Engagement.

## Article 5 - Performance of the Engagement

- 5.1 The Contractor will perform the Engagement, with due observance of what has been agreed between the parties, to the best of its knowledge and ability and with due care. However, the Contractor does not guarantee that a particular result will be achieved. The Contractor will perform the Engagement as an independent Contractor rather than as an employee, agent or partner of the Client or in the form of a joint venture. The parties are not entitled, empowered or authorised in any way to bind the other party, unless agreed otherwise in writing.
- 5.2 The Contractor will decide which person or persons working for it or associated with it will perform the Engagement, in which context the provisions of Articles 7:403(2), 7:404, 7:407(2) and 7:409 of the Dutch Civil Code (Burgerlijk Wetboek) will not apply. The Contractor will also decide on the methods and resources that will be used to perform the Engagement.
- 5.3 The Contractor will perform the Engagement with due observance of the laws and regulations applicable to the professionals involved in the performance of the Engagement, including the relevant rules of conduct and professional practice.  
The Contractor and/or the professional involved will never be required to act or refrain from acting in a way that is contrary to or incompatible with the laws and regulations referred to above.
- 5.4 The Services to be performed by the Contractor will be limited to what has been agreed between the parties and will not be specifically aimed at detecting fraud, unless the parties have expressly agreed otherwise. If, in the Contractor's opinion, the Services reveal indications of fraud, the Contractor will promptly notify the Client of this, in which respect the Contractor will be required to comply with the regulations on reporting fraud arising from the rules of conduct and professional practice applicable to the professionals involved in the performance of the Engagement. The Client is aware that if the Engagement concerns the performance of a statutory audit as referred to in the Wta and the Contractor obtains data or information in the performance of that statutory audit

which justifies the reasonable suspicion of material fraud as referred to in the Wta, the Contractor will be required by law to report this to an investigating officer, unless the Client takes measures in good time to undo the consequences of that fraud or to prevent a repetition of such fraud, and the Contractor considers those measures to be adequate.

- 5.5 The Contractor will be permitted to outsource parts of the Services in the context of the Engagement, either to other BDO Member Firms or to other Contractors. However, only the Contractor will be responsible towards the Client for the performance of the Services and the other obligations under the Engagement.
- 5.6 The periods specified by the Contractor for the performance of the Engagement will always be approximate periods, unless the parties have expressly agreed otherwise or it follows from the nature, substance or purport of the Engagement that these periods are final deadlines.
- 5.7 If any Services were carried out during the performance of the Engagement for the Client which are additional to or different from the instruction, the notes relating to those Services in the Contractor's records will justify the presumption that those Services were carried out pursuant to a supplementary instruction, provided that those notes relate (among other things) to consultations held between the Contractor and the Client (wholly or partly) in relation to the Services referred to. If the Services referred to above were provided in fulfilment of the Contractor's obligations ensuing from Article 5.3, the Contractor will be authorised to invoice the Client for those Services, even if there are no such notes.

## Article 6 - Confidentiality

- 6.1 The parties are not permitted to disclose the substance and existence of the Agreement to third parties. The parties are obliged to observe confidentiality in respect of all data obtained in connection with the performance of the Engagement which they know or should reasonably know to be confidential.
- 6.2 In derogation from Article 6.1, however, each party will be permitted to disclose such information if this information:
  - a. Is or becomes generally known due to causes other than non-compliance with the Agreement.
  - b. Is subsequently received by one of the parties from a third party which, insofar as the recipient is aware, does not have a duty of confidentiality towards the disclosing party in respect of that information.
  - c. Was already known to the recipient at the time of its disclosure or was subsequently created independently.
  - d. Is disclosed to enforce the recipient's rights ensuing from the Agreement, where necessary.
  - e. Must be disclosed pursuant to the applicable legislation, the rule of law or professional regulations.
  - f. Is relevant in legal or other proceedings in which one of the parties acts on its own behalf.

- 6.3 The Contractor is required to impose the obligations arising for the Contractor from Articles 6.1 and 6.2 on the third parties it has involved in the performance of the Engagement pursuant to Article 5.5. The duty of confidentiality under this article does not apply towards the third parties which the Contractor has involved in the performance of the Engagement pursuant to Article 5.5.
- 6.4 The Contractor is permitted, with due observance of the applicable legislation, to provide information from or about the Client to, obtain such information from, and share such information with, the BDO Group, BDO Member Firms and other Contractors, which may subsequently, like the Contractor, collect, use, transfer, store or otherwise process this information for purposes relating to:
- (i) Performance of the Engagement.
  - (ii) Compliance with the supervision requirements and/or statutory obligations applicable to the Contractor.
  - (iii) Prevention of conflicts of interest.
  - (iv) Risk management and quality assessments of and by the Contractor.
  - (v) Internal accounting and administrative purposes of the Contractor.
  - (vi) Improvement of existing services and development of new services by the Contractor.
  - (vii) IT purposes, including untraceable and anonymised use in the context of the preparation, pursuit or maintenance of best practices, statistics, research and/or benchmark studies.

## Article 7 - Intellectual property

- 7.1 The performance of the Engagement by the Contractor will not also entail a transfer of intellectual property rights held by the Contractor. Any intellectual property rights arising during, or resulting from, the performance of the Engagement will be vested in the Contractor insofar as these rights are not also vested in third parties. Any intellectual property rights already vested in the Client prior to the Engagement will remain vested in the Client.
- 7.2 The Contractor grants the Client a right of use with a view to the copyrights, database rights and/or other intellectual property rights that may be exercised - at any location and time - in relation to the deliverables of the Services performed. This right of use comprises all use of the deliverables of the Services within the limits of the purpose for which and the persons for whom these deliverables were prepared. The use of the deliverables for a purpose other than that of the Agreement, and their disclosure to persons other than those for whom these deliverables were prepared according to the Agreement, will only be permitted with the Contractor's written consent. The Contractor will grant the Client the right of use under the Agreement free of charge at the moment when this right arises, which grant the Client already accepts at the present stage.

## Article 8 - Fee

- 8.1 The fee for the Services to be provided pursuant to the Engagement will be calculated on the basis of the time spent on those Services multiplied by the hourly rate applied by the Contractor, or on the basis of what the parties have agreed on this point, and will be exclusive of VAT. Unless the parties have expressly agreed otherwise, costs incurred in the context of the Engagement – including overheads, travel and subsistence expenses and other out-of-pocket expenses, as well as the costs of any third parties involved in the performance of the Engagement pursuant to Article 5.5 – will not be included in the fee and will be charged to the Client separately. The fee will be due by reference to the stage of completion of the Engagement. The liability to pay the fee will not depend on the deliverables of the Services provided pursuant to the Engagement.
- 8.2 If there is a change in wages and/or costs after formation of the Agreement but prior to completion of the Engagement, the Contractor will be authorised to adjust the fee accordingly.
- 8.3 The fee, increased where applicable by expenses and invoices from third parties involved in the performance of the Engagement pursuant to Article 5.5, will be charged to the Client periodically.
- 8.4 If the Agreement is terminated early, the Client will be required to pay the fee owed up to the termination of the Services in full, increased where applicable by the costs referred to in Article 8.1.
- 8.5 If the Contractor is obliged, pursuant to the applicable legislation, legal proceedings or a government measure, to disclose information in respect of the Services or the performance of the Engagement or have (current or former) partners/employees appear as witnesses, the Client will have to reimburse the Contractor for all professional hours and expenses (including reasonable external and internal costs of legal assistance) which were spent or incurred in order to comply with the request, unless and insofar as the Contractor is itself a party to the proceedings or the subject of the investigation.

## Article 9 - Payment and security

- 9.1 The Client must effect payment in Dutch currency within fourteen (14) days of the invoice date, without any deduction, discount or set-off, through payment into or transfer to a bank account to be specified by the Contractor.
- 9.2 If the Client fails to pay within the period stated in Article 9.1, the Contractor will be authorised, without notice of default and without prejudice to the Contractor's other rights, to charge the Client interest at the statutory commercial rate over the period from the payment deadline referred to in Article 9.1 until the date on which payment is made in full.
- 9.3 All judicial and extrajudicial costs, including collection

costs, incurred by the Contractor in connection with the Client's failure to fulfil its payment obligations, or to do so in time, will be at the Client's expense.

- 9.4 The Contractor will be authorised at all times to request a reasonable advance payment or additional security from the Client for the fulfilment of the latter's payment obligations. If the Client fails to comply with this request, or fails to do so in good time, the Contractor will be authorised, without prejudice to its other rights, to immediately suspend the further performance of the Engagement, in which respect all amounts owed by the Client to the Contractor on whatever grounds will become immediately due and payable.
- 9.5 If the Engagement is awarded by multiple Clients jointly, they will be jointly and severally liable for meeting the payment obligations arising from the Agreement if and insofar as the Services are performed for them jointly.
- 9.6 The Contractor will be authorised to hold back documents or records produced or modified for the benefit of the Client until the Client has paid all the amounts owed to the Contractor in connection with the performance of the Engagement or the termination of the Agreement, except if and insofar as the Client's interest outweighs that of the Contractor.

## Article 10 - Objections

- 10.1 The Client is required to notify the Contractor in writing of any objections regarding the invoice amount within thirty (30) days from the invoice date. If the Client fails to object within the period specified to that end, all its rights and claims on whatever grounds in respect of the matter to which it could have objected within that period will lapse.
- 10.2 The Client will not be authorised to suspend its payment obligations on account of any objections as referred to in Article 10.1.
- 10.3 If and insofar as the Client's objection is justified in the Contractor's opinion, the Contractor will be authorised to adjust the invoice amount.

## Article 11 - Liability

- 11.1 The Contractor will only be liable for losses sustained by the Client (and any parties affiliated with the Client for whose benefit Services are performed) that are the direct result of an imputable failure in the performance of the Agreement (breach of contract) or an unlawful act, or otherwise pursuant to the law. The Contractor's aforesaid liability will be limited to a maximum of three (3) times the amount of the fee charged by the Contractor to the Client for the provision of the Services which caused the loss, in which respect only the fee relating to the last twelve (12) months in which those Services were provided will be taken into account.

- 11.2 The Contractor will not be liable for losses sustained because (i) the Client failed to fulfil its obligation to provide information under Articles 4.1 and 4.2, or because (ii) the information provided by the Client turned out to be inaccurate, incomplete or unreliable.
- 11.3 The Contractor will not be required to fulfil any obligation towards the Client if it is prevented from doing so by a circumstance which is not its fault or a circumstance which should not be at its expense pursuant to the law or common opinion. For the purposes of these General Terms and Conditions, force majeure, as well as having the meanings assigned to it by statutory law and case law, is understood to mean all external causes, whether foreseen or unforeseen, which are beyond the Contractor's control but which prevent the Contractor from fulfilling its obligations. These include work strikes at the Contractor's business or that of third parties. The Contractor will also have the right to invoke force majeure if the circumstance preventing performance or further performance of the Agreement commences after the Contractor should have fulfilled its obligation.
- 11.4 The Contractor will always be authorised to limit or undo the Client's losses as much as possible, to which end the Client will fully cooperate.
- 11.5 The Client indemnifies the Contractor against third-party claims regarding losses sustained by those third parties which relate to or arise from the Engagement performed by the Contractor, unless the Contractor is liable for such losses towards the Client under the provisions of this article.
- 11.6 The limitations of liability laid down in the previous paragraphs of this Article 11 are stipulated in part for the benefit of the BDO Member Firms and other Contractors, members and their directors, shareholders, directors, officers, partners or employees of the Contractor who are involved by the Contractor in the performance of the Engagement and can therefore invoke those limitations of liability directly.
- 11.7 The Client will no longer be able to invoke a defect in the performance if it has not protested to the Contractor in writing within one (1) year after it detected or could reasonably have detected the defect.
- 11.8 The limitations laid down in paragraph 1 of this Article 11 do not apply to losses caused by wilful misconduct or deliberate recklessness on the Contractor's part.
- 11.9 The Client will exercise its rights of claim and recourse (if any) relating to the Services or otherwise arising from the Agreement only against the Contractor and not against another BDO Member Firm or against other Contractors, members or their directors, shareholders, directors, officers, partners or employees.

## Article 12 - Termination of the Agreement

- 12.1 Either party is authorised at all times to terminate all or part of the Agreement by giving notice, subject to a reasonable notice period, unless the parties have agreed otherwise. In addition, the Contractor will be permitted to terminate all or part of the Agreement in writing with immediate effect, if (i) the Contractor establishes in reasonableness and fairness that it is no longer able to provide the Services in accordance with either the applicable legislation, or the applicable rules of conduct and professional practice, or independence rules, or if (ii) information comes to light after the acceptance or continuation of the Engagement which, had it been known to the Contractor at the time of the acceptance or continuation of the Engagement, would have caused the Contractor not to accept or continue the Engagement, or to accept or continue it in amended form, unless the Contractor is able to adjust the Agreement with the Client in an adequate manner. Notice must be given in writing.
- 12.2 In the event that the Client is wound up, declared bankrupt or granted a moratorium, the amounts owed by the Client will be immediately due and payable.
- 12.3 If the Agreement is terminated by the Contractor, the Contractor will be required to inform the Client of the reason for termination and, furthermore, to do all that the Client's manifest interest requires in connection with the termination of the Agreement.
- 12.4 Any provisions of the Agreement and these General Terms and Conditions that are expressly or inherently intended to remain in force even after the Agreement has ended or has been terminated will remain in full force after the Agreement has ended or has been terminated.

## Article 13 - Complaints

- 13.1 The Contractor has a complaints procedure that offers the option of submitting a complaint about the professional conduct of professionals affiliated with the Contractor and about alleged irregularities relating to the Contractor's performance of the Engagement. The Client has the option of submitting a complaint regarding the performance of the Engagement with the Contractor's Complaint Handling Committee (Commissie Klachtbehandeling). The conditions can be read on the website: <https://www.bdo.nl/en-gb/about/complaints-procedure>. The complaint must be sent by post to the address stated below, or sent by email to [cls@bdo.nl](mailto:cls@bdo.nl). The Contractor will investigate the complaint as soon as reasonably possible and inform the Client as soon as reasonably possible of the outcome of its investigation.
- Commissie Klachtbehandeling BDO  
c/o BDO Holding B.V.  
Corporate Litigation & Support  
P.O. Box 182  
5600 AD Eindhoven  
The Netherlands

## Article 14 - Protection of Personal Data

- 14.1 Insofar as the Contractor processes personal data within the meaning of the General Data Protection Regulation ('GDPR') in the context of the Engagement ('Personal Data'), the Contractor will determine the purpose and means of processing, thus acting as the controller within the meaning of the GDPR.
- 14.2 The Contractor may process Personal Data relating to and/or provided by the Client, for example, (i) in the context of the Engagement, (ii) in the context of compliance with statutory obligations applicable to the Contractor, (iii) for the purpose of supporting the provision of services by the Contractor to the Client, (iv) for the purpose of bringing a legal claim or offering a defence against a legal claim, (v) for the purpose of approaching the Client and/or persons working at/for the Client with information about and services provided by the Contractor and third parties, including BDO Member Firms of the Contractor.
- 14.3 Personal Data processing by the Contractor in the context of activities as referred to in Article 14.2 above will take place in accordance with the applicable laws and regulations on personal data protection ('Privacy Legislation'), such as the GDPR and the General Data Protection Regulation (Implementation) Act (*Uitvoeringswet Algemene verordening gegevensbescherming* ('UAVG')). The Contractor may share Personal Data with BDO Member Firms and/or third parties that the Contractor has involved in the provision of Services to the Client and for supporting services in that respect. The transfer of Personal Data among BDO Member Firms is subject to the BDO Binding Corporate Rules. Personal Data will only be shared insofar as this is necessary in the context of the aforementioned activities and insofar as this is in accordance with Privacy Legislation. The Contractor has appointed a Privacy Officer ([privacy@bdo.nl](mailto:privacy@bdo.nl)).
- 14.4 The Client has an independent duty to comply with Privacy Legislation. The Client guarantees the lawfulness of the provision of the Personal Data to the Contractor and will in this context observe all statutory obligations applicable to the Client under Privacy Legislation, such as the obligation to inform data subjects of the provision of their Personal Data to the Contractor and the processing of this data by the Contractor in the context of the Engagement. Information on BDO's processing of Personal Data can be found in the privacy statement (<https://www.bdo.nl/en-gb/about/quality/privacy-statement>).
- 14.5 The Contractor will take appropriate technical and organisational measures to protect the Personal Data from destruction, loss, alteration, unauthorised disclosure and unauthorised access, taking into account the risks attached to the processing of the Personal Data, also in view of the nature of this data.
- 14.6 With regard to Personal Data provided by the Client, the Contractor will inform the Client if (i) a request is received from a data subject seeking to exercise his or



her rights, (ii) a complaint or claim is received in relation to the processing of the Personal Data, and (iii) the Contractor makes a notification pursuant to Article 33 or 34 of the GDPR.

- 14.7 If the Contractor so requests, the Client will, without unreasonable delay, lend all cooperation and provide all information required to comply with Privacy Legislation, including but not limited to information and cooperation relating to the exercise of a data subject's rights and any infringements in connection with Personal Data.

## **Article 15 - Applicable law and disputes**

- 15.1 All legal relationships (both contractual and non-contractual) between the Contractor and the Client arising from the Agreement to which these General Terms and Conditions apply will be governed by Dutch law.
- 15.2 All disputes relating to the legal relationship between the Contractor and the Client to which these General Terms and Conditions apply will be referred exclusively to the competent court in the District of Oost-Brabant, unless provisions of mandatory law dictate otherwise.

## **Article 16 - Other provisions**

- 16.1 The titles of the articles in these General Terms and Conditions are intended only to increase readability. No rights can be derived from these titles.
- 16.2 The Client will not hire employees of the Contractor involved in the performance of the Services or try to persuade them to enter the Client's employment either directly or indirectly on a temporary or permanent basis, or to perform services either directly or indirectly for the benefit of the Client, through employment or otherwise, during the term of the Agreement or any extension of that term and during a subsequent period of twelve (12) months.
- 16.3 If any provision of the Agreement turns out to be wholly or partly unlawful, invalid or otherwise unenforceable, the other provisions will remain in full force.
- 16.4 Neither party is permitted to use or refer to the other party's name, logos or trade mark in public without the other party's prior consent, it being understood that the Contractor will be permitted to use the Client's name in order to identify it as one of its clients.
- 16.5 If the Contractor and/or its employees provide Services on location at the Client's premises, the Client will provide a suitable workspace that meets the requirements of the Working Conditions Act (Arbowet) and the policy rules of the Ministry of Social Affairs and Employment regarding Offices and Computer Work Stations.