

## 1. General

- 1.1 These general terms and conditions are applicable to every instruction to Berenschot Groep B.V., Berenschot B.V. and Berenschot International B.V., hereinafter referred to as 'Berenschot'.
- 1.2 Berenschot is certified in accordance with the ISO 9001-2015 and ISO 27001 standards.

## 2. Definitions

- 2.1 Agreement: the written agreement between the client and contractor which these conditions have been declared applicable to within the meaning of Article 7:400 et seq. of the Netherlands Civil Code. The effect of Article 7:407, paragraph 2, Article 7:404 and Article 7:408, paragraph 2 is excluded, with one party, Berenschot (the contractor), undertaking towards the other (the client) to provide consultancy services for the organisation of the client (or arrange for this to be provided).
- 2.2 Instruction: the provision of organisational advice in the broadest sense of the word in order to establish, analyse and solve issues.
- 2.3 Client: the legal entity or natural person who, in its capacity of the other party towards Berenschot, has entered into an agreement to execute an instruction (or to arrange for this to be executed).
- 2.4 Contractor: Berenschot, the party accepting the instruction and executing this under its responsibility.
- 2.5 Staff executing the instruction: Berenschot employees and/or the natural person or legal entity charged with the execution of the instruction on behalf of Berenschot.
- 2.6 Parties: the client and the contractor.

## 3. Applicability of these terms and conditions

- 4.1 The provisions laid down in these general terms and conditions are applicable to all proposals, offers and work within the framework of an instruction received by Berenschot and to all agreements pertaining to the performance of work within the framework of an instruction from the client, including all agreements ensuing from or in relation to this between the parties or their successors in title.
- 4.2 All work performed by staff executing the instruction within the framework of an instruction are deemed to be actions by or on behalf of Berenschot. Berenschot is entitled to engage other persons, legal entities or third parties in the execution of the instruction. Where possible and reasonably appropriate, the choice of other persons, legal entities or third parties, to be engaged by Berenschot, will be made in consultation with the client and with due observance of the necessary care. Berenschot cannot be held liable for any failures on the part of these third parties, except in the event of intention or gross negligence on the part of Berenschot.
- 4.3 These general terms and conditions can only be deviated from subject to a written agreement.
- 4.4 If any provision in these general terms and conditions or in the contract for services is void, the remaining part of the agreement remains in force and the relevant provision will be replaced with a stipulation in mutual consultation between the parties, which stipulation will reflect the purport of the original stipulation as closely as possible.
- 4.5 Berenschot is entitled to change these general terms and conditions. Changed terms and conditions are deemed to have been accepted if the client has not objected to the change in terms and conditions within 14 days of these changed terms and conditions having been sent to the client or having become known to the client.

## 4. Departure points

- 4.1 Staff executing the instruction must comply with the internal rules of conduct applicable at Berenschot and the departure points set out in the employment contract, additional internal regulations or the stipulations of a collaboration agreement or contract for services.
- 4.2 The client must act in accordance with the agreement and honour any agreements made.

## 5. Formation of the instruction

- 5.1 The contract for services is formed the moment it is signed by the parties or the moment the order confirmation (sent in writing, by e-mail or verbally) has been received by Berenschot. If the instruction signed by the client has not been received back (yet), the instruction is deemed to have been issued subject to the application of these general terms and conditions the moment Berenschot, at the request of the client, has started the execution thereof.

## 6. Information, employees and workspace made available by the client

- 6.1 The client must ensure that Berenschot will be able to perform its work adequately. To that end, the client will provide staff executing the instruction with the necessary information, facts, resources and facilities for the execution of the instruction.
- 6.2 If staff executing the instruction have not been provided with the data and information, facts, resources or facilities, etc. required for the execution of the instruction, or if these have not been provided in time or in full, Berenschot will be entitled to suspend the execution of the agreement or charge the client the costs incurred as a result of the delay, in accordance with the usual rates.
- 6.3 The client must timely notify Berenschot of intentions, facts and circumstances that can be relevant for the execution of the instruction.

## 7. Secrecy

- 7.1 Staff executing the instruction are bound by a duty of confidentiality as laid down in the employment contract, collaboration agreement or other agreement. This obliges them to observe secrecy with regard to all data of the client towards third parties and to treat this data with due care. Berenschot will make an effort to protect the interests of the client.
- 7.2 Berenschot obliges all staff executing the instruction to comply with this duty of confidentiality and makes an effort to ensure that staff executing the instruction act in accordance with it.
- 7.3 The client, without the approval from Berenschot, is not permitted to disclose to third parties information, reports or documents that have been made available by Berenschot within the framework of the instruction, other than by virtue of a statutory or professional obligation to do so.

## 8. Intellectual property

- 8.1 Models, instruments, methodologies, software and other products the contractor uses and/or develops or has developed and/or which form part of the execution of the instruction and which have been included in the advisory report or other research results remain the property of Berenschot. Further disclosure and distribution by the client is subject to approval by Berenschot, without prejudice to the provisions of article 7.3.

## 9. Execution of the instruction

- 9.1 The instruction will be executed by or on behalf of Berenschot according to best insight and ability and in accordance with the requirements of professional and good contracting practices.
- 9.2 The execution of the instruction has the character of an obligation to use best endeavours, as the realisation of the intended result cannot be guaranteed outright, unless parties have entered into explicit agreements on the result to be achieved.
- 9.3 The result to be achieved can be laid down for the parties objectively and is open to a single interpretation only. The obligation of result has been laid down in the contract for services, proposal, offer or (framework) agreement.
- 9.4 Berenschot can replace one or more staff executing the instruction, in consultation with the client. Berenschot guarantees the continuity.
- 9.5 The time schedule and costs of the instruction can be changed in the event of interim adjustments in the scope of the instruction, approach or method of operation, subject to agreement between the parties.
- 9.6 Changes in (the execution of) the instruction leading to an adjustment in the agreed lead time, costs and/or quality must be confirmed by the client.
- 9.7 Berenschot will confirm these changes in the contract for services and the client needs to confirm its approval with this change.
- 9.8 If the client fails to confirm its approval with this change within a reasonable term, Berenschot will be entitled to terminate the agreement without being obliged to pay any compensation to the client.

## 10. Duration and completion of the instruction

- 10.1 Circumstances may be in play as a result of which it is impossible to say what the exact lead time of the execution of the instruction will be. The lead time partly depends on the quality of the information, facts and resources, as well as the cooperation Berenschot receives from the client. Terms within which the work must have been completed will therefore only be deemed final deadlines if such terms have been agreed.
- 10.1 The instruction will have been completed financially as soon as the final statement of account has been settled by the client. If Berenschot does not receive a reply from the client within 20 days from the date on the final statement of account, the final statement of account is deemed to have been approved.

**11. Premature termination of the instruction**

- 11.1 The parties are permitted to unilaterally and prematurely terminate the agreement with due observance of a reasonable notice period, if one of them believes that the instruction can no longer be executed in accordance with the contract for services and any subsequent supplementary agreements. The wish to terminate must be communicated to the other party in writing, by e-mail or verbally, supported by reasons. Parties may only use their authority to terminate, if completion of the instruction cannot reasonably be expected as a result of facts and circumstances which are beyond the influence of the terminating party or which cannot be attributed to it. The work performed to that date may be invoiced by Berenschot to the client, as part of which the provisional results of the work performed to date will be made available to the client, if possible and with reservation. Berenschot is entitled to charge the client any additional costs incurred as a result.
- 11.2 If either party goes into liquidation, files for a moratorium or ceases its business operations, the other party will be entitled to terminate the instruction without observing a notice period, all this without prejudice to any other rights.

**12. Fees and costs**

- 12.1 In the agreement with the client, Berenschot must include how the fees are calculated. Alternatively, a fixed fee amount can be agreed on.
- 12.2 The agreement must list the rates and explicitly state what project-related costs are included (such as costs for the secretariat, travel time, travel and subsistence expenses, rental costs for accommodation and equipment). These costs can be charged separately insofar as they are not included, subject to agreements having been made in this respect. Berenschot is entitled to pass on any interim changes in rates and project-related expenses, subject to consultation with and approval from the client. Unless otherwise agreed, no interest may be charged on top of the fees.
- 12.3 The fees, possibly increased by project-related costs, such as those referred to in 12.2, and any third-party expense claims, are charged to the client per agreed period or after completion of the instruction, unless the parties have entered into varying agreements in this respect. Turnover tax on all amounts owed by the client to Berenschot will be charged separately, insofar as the work is subject to VAT.
- 12.4 If the client wishes for a chartered accountant to audit the invoice of Berenschot, the latter will fully cooperate in this. The costs thereof will be at the expense of the client.

**13. Payment**

- 13.1 The client must at all times pay the invoice within the agreed payment terms, yet within 20 days of the invoice date, without deduction, discount or set-off, by means of transfer into a bank account as designated by Berenschot to that end.
- 13.2 In the event the payment term is exceeded, Berenschot, after having officially demanded payment from the client at least once, without further notice of default and without prejudice to its other rights, will be entitled to charge the client statutory interest from the due date until the date on which payment is made in full.
- 13.3 All judicial and extrajudicial (collection) costs, insofar as reasonable, which Berenschot has to incur as a result of the client failing to fulfil its payment obligations, are payable by the client.
- 13.4 If, in the opinion of Berenschot, the financial position or the payment record of the client gives rise to this, Berenschot will be entitled to immediately demand (additional) security in a form to be designated by Berenschot. In the event of the client failing to fulfil any (additional) security demands imposed on it, Berenschot, without prejudice to its other rights, will be entitled to immediately suspend its work and all the client owes Berenschot, for any reason whatsoever, becomes immediately due and payable.
- 13.5 Any amounts budgeted by Berenschot will not be exceeded, other than in consultation with and after the explicit approval of the client.
- 13.6 Berenschot will only charge the client the agreed fees.
- 13.7 Contract extras will be invoiced by Berenschot in consultation with and subject to acceptance by the client. The nature and scope of any contract extras performed must be explicitly specified in the invoices.

**14. Complaints**

- 14.1 In the event the client has a complaint about any work performed within the framework of the instruction or about the invoice amount, the client must submit the complaint to Berenschot in writing (by email), within 30 days.
- 14.2 If the client demonstrates that it was unable to reasonably establish the alleged failure earlier, the client can still notify Berenschot of the alleged failure in writing (by email), within 30 days of establishing the failure.
- 14.3 Submitting a complaint does not release the client from its obligation to pay, unless and insofar as Berenschot has notified the client that the complaint has been upheld and that a change in the payment obligation is agreed.
- 14.4 If, in the opinion of Berenschot, the complaint is justified, Berenschot can opt to have the invoice amount adjusted, improve or redo the relevant work, free of charge, or decide to cancel the instruction or execute only part of it.

**15. Liability**

- 15.1 Berenschot will be liable for any failures in the execution of the instruction, insofar as these are the result of Berenschot failing to apply the meticulousness and expertise the client may expect within the framework of the instruction.
- 15.2 This liability for the damage or loss will be limited to the amount of the fee agreed by Berenschot within the framework of the instruction of the client, payable in proportion to the work performed to date.
- 15.3 In the event of instructions with lead times of more than 6 months, the liability referred to here will be further limited to the maximum amount invoiced over the last 6 months. Any claims of the client must have been submitted within 1 year of discovering the damage or loss.
- 15.4 Berenschot cannot be held liable for the consequences for third parties arising from the contractor's advices implemented by the client. The instruction given is executed for the benefit of the client only. No rights can be derived from this by third parties.

**16. Disputes**

- 16.1 In the event of a dispute arising between the parties within the framework of the instruction, the parties must try and solve this dispute amicably.
- 16.2 If no agreement can be reached, the dispute may be submitted to an independent advisor/mediator to be appointed in mutual consultation. If still unsuccessful in reaching agreement, the dispute will be submitted to the competent judicial body.
- 16.3 A dispute as referred to in 16.1 exists if either party notifies the other thereof, by means of a registered letter.

**17. Applicable law**

- 17.1 All agreements between the parties are governed by Dutch law.
- 17.2 All disputes between the parties will in the first instance be submitted to the competent District Court in Utrecht.

**18. Insurance**

- 18.1 Berenschot, in accordance with the appropriate and usual criteria, has taken out insurance to cover the following risks:
- Professional liability (risks arising from professional errors).
  - Business liability (including liability for injury inflicted to persons or damage to goods that are the property of the client).

**19. Bribery and conflict of interest**

- 19.1 The parties will refrain from offering, requesting, accepting and promising any gifts, rewards, compensation or benefits of any kind, either to or from each other or third parties, which can be explained as an unlawful practice.
- 19.2 Berenschot will ensure that no conflict of interest will exist, in any way, shape or form, during the negotiations on the formation of the agreement, nor during the execution of the instruction.
- 19.3 Any possible appearances of conflicts of interest and/or conflicting interests must be reported and discussed between the parties prior to entering into the agreement.
- 19.4 Berenschot must make sure that this serves the interest of the client and that its own independence remains guaranteed.

**20. Information disclosed by Berenschot in public statements**

- 20.1 Berenschot, in its public statements, will refrain from implicitly or explicitly disclosing any data of the client, unless the client has granted its approval to do so.
- 20.2 In its public statements, Berenschot is entitled to use information about the instruction that has been executed as a reference, unless the client has objected to this.