

General Terms and Conditions of Breda University of Applied Sciences, version of 22 January 2019¹

Article 1 Definitions

In these General Terms and Conditions, the following terms shall have the following meanings:

- a **Client:** the natural person or legal entity instructing the contractor to execute an assignment;
- b **Contractor:** Breda University of Applied Sciences, ran under the auspices of Stichting Breda University of Applied Sciences, registered in the trade register under number 41104616, abbreviated to: 'Buas';
- c **Written:** both e-mail messaging and written documents.
- d **Offer:** the written offer by BUAs to provide specific services at a certain fee.
- e **Services:** providing advice, conducting research and providing training and other research activities tailored to the client's specific requirements.
- f **Order:** acceptance of BUAs' offer by the client and/or the awarding of the assignment to BUAs without prior offer by BUAs, provided that BUAs accepts this assignment.
- g **Agreement:** a written record of the understanding reached between the client and BUAs regarding the content and execution of the assignment.
- h **Delivery:** the performance of the agreement.

Article 2 Applicability

- 2.1 These General Terms and Conditions apply to all offers made by BUAs and to all its agreements with a client.
- 2.2 The client's General Terms and Conditions do not apply unless explicitly agreed otherwise in writing.
- 2.3 Stipulations varying from these General Terms and Conditions shall have legal effect only if agreed upon in writing between the client and BUAs. Any deviations from these General Terms and Conditions are subject to prior written permission of the Executive Board of BUAs.
- 2.4 The Dutch version of these General Terms and Conditions shall prevail over any translations thereof.

Article 3 Offers, formation and amendment of the agreement

- 3.1 BUAs shall issue all offers in writing. Offers must be dated and, unless otherwise stated, shall be irrevocable for a period of thirty (30) days from postmark.
- 3.2 The fee specified in the offer shall be fixed during the period as mentioned in 3.1 and expressed in euros and shall be deemed to include all costs that must be incurred to provide the services to the client, excluding VAT. These costs include, without limitation, any charges, taxes, excise duties and levies relative to production, transport, insurance and import/export.
- 3.3 Fees are based on the prices, exchange rates, wage levels and taxes (cost factors) applicable to BUAs at the time of its offer. If one or more cost factors are increased prior to delivery, BUAs shall have the right to raise the agreed fees accordingly. If this fee increase is more than 10%, the client shall be entitled to terminate the agreement within a period of eight (8) days subsequent to BUAs giving notice of the increase. After this period has expired, the agreement will be continued under the applicability of the increased fees.
- 3.4 The agreement is considered to have been effected when the client has accepted a written or electronic offer from BUAs.
- 3.5 If BUAs has made no offer or has made an oral offer, the agreement shall be effected upon BUAs accepting in writing a written order from the client within fourteen (14) days after the date of said written order.

Article 4 Performance of the agreement and delivery

- 4.1 The delivery period and/or time agreed between the client and BUAs shall never count as a strict deadline. In the case of overdue performance, the provisions of article 6.2 will apply.
- 4.2 The client is obliged to purchase the agreed services at the time they are made available (electronically) to the client or offered to the client. The services shall be deemed to have been provided at the time they

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- have been performed by BUAs and/or have been offered or made available to the client and the client has these services at its disposal.
- 4.3 BUAs shall be obliged to observe the due care of a good contractor in the execution of the assignment. The Dutch Code of Conduct on Academic Integrity (2018) applies to the execution of the assignment by BUAs.
- 4.4 BUAs shall perform the services to the best of its knowledge and ability, in accordance with the requirements of good professional practice. BUAs will make every effort to achieve the best possible result, but explicitly cannot guarantee that a certain result will be achieved. BUAs shall not be liable for the client's failure to achieve any explicit or implicit objective or result, except if and insofar as BUAs has given explicit and written guarantees in this respect.
- 4.5 The client is obliged to make all information, documents and facilities that BUAs deems necessary for the correct execution of the assignment available on time and in the desired form and in the desired manner.
- 4.6 The client guarantees the accuracy, completeness and reliability of the information, documents and facilities made available to BUAs, even if these originate from third parties, insofar as the nature of the assignment does not dictate otherwise.
- 4.7 BUAs shall not be liable for any damage, of whatever nature, to the client due to the fact that BUAs has taken as a starting point incorrect or incomplete information, documents and facilities provided by the client, unless BUAs should have been aware of this incorrectness or incompleteness.
- 4.8 The client shall be obliged to inform BUAs immediately of facts and circumstances that may be relevant in connection with the execution of the assignment.
- 4.9 BUAs shall be entitled to perform more work for and to charge more work to the client if BUAs is of the opinion that this is necessary. BUAs shall inform the client, if possible, about the additional work before carrying out the additional work. If BUAs does not inform the client in advance about the additional work, the client shall remain obliged to pay for the additional work performed, unless this cannot reasonably be demanded of the client.

Article 5 Amendment of the agreement

- 5.1 If at any point during performance of the agreement it becomes clear that the agreement must be amended or supplemented to ensure proper performance, the client and BUAs will make such adjustments on a timely basis and in reasonable consultation and confirm the adjustments in writing. The amendments and supplements to the agreement shall only apply if and insofar they have been laid down in writing.
- 5.2 If the client and BUAs amend or supplement an agreement made between them, BUAs shall if so required inform the client of the consequences thereof for the performance of the agreement.
- 5.3 If an amendment of or supplement to the agreement has financial and/or qualitative consequences, BUAs will notify the client accordingly in advance. If a fixed fee has been agreed, BUAs will indicate to what extent the amendment or supplement will necessitate an adjustment of that fee.

Article 6 Cancellation before commencement, termination and force majeure

- 6.1 If the agreement is cancelled by the client more than one month before the start of the performance of the agreement, the client shall be obliged to pay to BUAs 25% of the agreed fee by way of compensation. If the agreement is cancelled precisely one month or less than one month before the start of the performance of the agreement, the client shall be obliged to pay to BUAs 50% of the agreed fee by way of compensation. If the client cancels the agreement during the performance of the agreement, it shall pay to BUAs the full amount of the fee agreed. Any cancellation shall be subject to BUAs' approval. BUAs shall be entitled to charge a higher amount of compensation if it can sufficiently demonstrate that it has suffered or will suffer more damage.
- 6.2 If the client or BUAs fails to comply with an obligation arising from the agreement, the party in default shall be given proper notice of default by the other party in writing, stating a reasonable term of thirty (30) days for later performance of the agreement, unless compliance with the obligation has already become permanently or temporarily impossible or if the failure to comply has been acknowledged. As soon as the other party is in default or if compliance with the agreement has become permanently or temporarily impossible, the other party shall be entitled to terminate the agreement by registered letter, without prejudice to its right to claim compensation.
- 6.3 In the event of non-attributable failure (force majeure) of any of the parties, neither party shall be bound to compliance under the agreement as long as the situation of force majeure continues.
- 6.4 Force majeure on the part of BUAs shall include, without limitation, situations in which it is unable to comply with its obligations due to strike, lockout, fire, storm, weather influences, non-attributable lack of resources, spare parts or labour (due to illness, among other causes), disrupted transport, power failure, government measures and generally any other cause beyond its power or control.
- 6.5 If a case of force majeure should lead to the agreed final date of delivery being exceeded by more than a reasonable period in view of the performance to be delivered, either party shall be entitled to terminate the agreement by registered letter. The client is obliged to pay for any services already provided by BUAs.

- 6.6 Without being obliged to pay compensation, BUAs may with immediate effect and by registered letter terminate the agreement with the client entirely or in part and/or demand that the client pay all that it is due and/or suspend its obligation to perform towards the client and/or claim compensation if:
- a the client is declared bankrupt
 - b a petition has been filed for the client's bankruptcy or the client has filed for its own bankruptcy,
 - c the client has been granted a moratorium or a provisional moratorium;
 - d a settlement has been reached with the client's creditors;
 - e the client loses the power to dispose of a substantial part of his capital, for instance as a result of attachment or seizure;
 - f the client discontinues all or a significant part of its business operations, which is understood to include the liquidation of the company or the transfer of the company to a company to be founded or an existing company;
 - g a decision has been taken to dissolve the client as a legal entity;
 - h the client assigns its estate or assets;
 - i third parties, not being group or subsidiary companies within the meaning of the Dutch Civil Code, Book 2, Section 24 under b and a, respectively, acquire direct or indirect control of the client's operations;
 - j the client fails to comply, whether fully or partially, with any legal or contractual obligation.

Article 7 Premature termination

- 7.1 Parties may terminate the agreement in writing subject to a reasonable notice period. If the client terminates the agreement prematurely, BUAs shall be entitled to compensation for work already performed and costs it reasonably had to incur as a result of the premature termination of the agreement, unless the termination is based on facts and circumstances that can be attributed to BUAs. If BUAs has proceeded to premature termination, the client shall be entitled to cooperation in the transfer of work to third parties, unless the termination is based on facts and circumstances that can be attributed to the client.
- 7.2 In the event of premature termination of the agreement by the client on the basis of compelling reasons, the client shall owe BUAs a part of the agreed fee and the costs incurred, to be reasonably determined in accordance with the provisions of the Dutch Civil Code, Book 7, Section 411.

Article 8 Fee and payment

- 8.1 The fee agreed is exclusive of VAT, unless otherwise agreed.
- 8.2 Unless otherwise agreed, the fee shall remain unchanged throughout the contract period, without prejudice to the stipulations of article 3.3. Any changes in the VAT rate will be passed on.
- 8.3 If no other payment term has been agreed, the client must pay within thirty (30) days after invoice date, without the possibility of claiming any discount, offset or suspension. Complaints or objections to the amount of the submitted invoices do not suspend the client's payment obligation.
- 8.4 The client shall be in default by the mere expiry of the payment term, without a demand or notice of default and/or court intervention being required. A default interest of one (1) per cent of the relevant invoice amount shall be payable to BUAs for each month or part of a month in which the client is in default of payment, without prejudice to the contractor's right to demand payment of the full amount outstanding if the default concerns an instalment.
- 8.5 If the client fails to meet all or part of its obligations towards BUAs and if BUAs has passed on its claim for collection to a third party, the client shall be obliged to pay all costs arising from such collection, whether incurred in court or out of court. These costs shall be equal to the fee charged by the third party engaged by BUAs, possibly per time unit, increased by the costs reasonably paid and payable by that third party. The Dutch Extrajudicial Collection Costs (Fees) Decree, which contains further rules regarding the compensation of extrajudicial costs, is declared inapplicable by the parties.
- 8.6 Without prejudice to the client's obligation to pay, BUAs shall reserve the right to suspend or discontinue the delivery of its services if and as long as the client fails to fulfil any of his due and payable obligations, without BUAs being obliged to pay compensation.
- 8.7 BUAs shall be entitled, if it deems this necessary, to demand security or advance payment from the client.

Article 9 Retention of title

If BUAs is required under the agreement to provide movable property to the client – and if the parties agree, tacitly or otherwise, that the client will acquire the ownership thereof – BUAs will retain its title to the goods until the client:

- a. has paid the full price of said property, plus interest and expenses;
- b. has paid all amounts owed in connection with work BUAs has performed or will perform for the client under the agreement; and
- c. has paid all amounts it owes to BUAs as a result of any failure to meet the obligations referred to above.

The client may in no way whatsoever use the property subject to retention of title as security for claims to other parties than BUAs.

Article 10 Intellectual property

- 10.1 Unless otherwise agreed in writing, all intellectual property rights, including copyright and patent right, arisen from work performed by BUAs under the agreement shall accrue to BUAs. The client shall therefore not acquire any intellectual property rights to the results of the services.
- 10.2 If any intellectual property rights should arise from work performed by the client under the agreement, BUAs shall also become directly entitled thereto. If it should be established in law that the rights accrue to the client, the client is obliged to transfer these rights to BUAs free of charge in such manner as is prescribed by law, the costs of the transfer to be borne by BUAs. The client irrevocably authorises BUAs to carry out such a transfer and to have the appurtenant right registered in the appropriate register.
- 10.3 To the extent that the services are (partly) realised using the existing intellectual property rights of the client, the client shall grant BUAs a non-exclusive, non-transferable right of use for this purpose during the term of the agreement. The client indemnifies BUAs against claims by third parties of alleged infringement of the intellectual property rights of these third parties.
- 10.4 BUAs shall at all times be entitled to utilise the knowledge and experience acquired in the performance of the agreement at its own discretion without having to pay compensation to the client. BUAs' right in this respect includes the right to share this knowledge and experience with any associated institutes of higher education or any other educational institutions for the purpose of providing education and performing market-oriented tasks.
- 10.5 No part of BUAs' publications or information products – of which BUAs holds the intellectual property rights – may be reproduced or disclosed to third parties in any form whatsoever without prior written permission. BUAs is entitled to demand restitution of such products at any time, unless these products must remain with the client for the purpose of performing the agreement.
- 10.6 The client is prohibited from reproducing, disclosing or exploiting the services, including computer programs, course programmes, presentations, designs, working methods, advice, (model) contracts, brands and logos, and other intellectual products of BUAs, whether or not with the involvement of third parties. Reproduction and/or publication and/or exploitation shall only be permitted with the prior written consent of BUAs. The client only acquires a right of use on the services and the right to reproduce the written documents for its own internal use, insofar as this is in keeping with the purpose of the agreement.

Article 11 Complaints

- 11.1 The client shall be obliged to examine the performance by BUAs, whether or not in part, for soundness as soon as possible after delivery of the performance. The client shall report any defects discovered by him to BUAs as soon as possible – but in any case within fourteen (14) days after delivery of the performance – with an as accurate as possible description of those defects. The client shall furthermore be obliged to limit any damage to be suffered as much as possible and give BUAs the opportunity to remedy the defect.
- 11.2 If the client complains in a timely, correct and justified manner about defects in the performance and is not in default, BUAs shall agree with the client a period within which any shortcomings in the services will be remedied by the contractor free of charge.
- 11.3 As long as the complaint has not been accepted by BUAs, the client shall remain liable to pay.

Article 12 Liability

- 12.1 BUAs shall only be liable for direct damage that is the direct and immediate result of a shortcoming in the performance of the agreement that is attributable to BUAs. This liability is limited to the invoiced amount that the client owes for the specific work to perform the part of the agreement from which the liability has arisen. BUAs shall not be able to invoke this limitation of liability in the event of intent or wilful recklessness on the part of its management or the persons in charge of the execution of the assignment. BUAs shall always be liable; neither the persons engaged by BUAs, nor any person as referred to in Book 7, Section 404 of the Dutch Civil Code shall be liable towards the client.
- 12.2 The client holds BUAs harmless in respect of all claims from third parties arising from loss sustained by third parties as part of the (performance of the) agreement between the client and BUAs, unless and insofar as circumstances are attributable to BUAs.
- 12.3 BUAs shall not be liable for any indirect, consequential or trading loss or loss of profits.
- 12.4 The limitations of liability laid down in this article shall also be stipulated for the benefit of third parties engaged by BUAs for the performance of the agreement, who as a result may directly invoke these limitations of liability. It is therefore a third-party clause as referred to in Book 6, Section 253 of the Dutch Civil Code and is made against any third party free of charge. The client cannot revoke the clause.

Article 13 Confidentiality

- 13.1 During the term of the agreement and during a period of two (2) years after the term of the agreement, parties are bound by confidentiality in respect of all matters arising from the agreement which have come to their knowledge or which could have come to their knowledge and/or whose nature is evidently confidential, unless the performance of the agreement requires otherwise.
- 13.2 The parties shall impose on their staff a duty of confidentiality with regard to the agreement.
- 13.3 The parties shall indemnify each other in respect of any breach of the duty of confidentiality by their staff.
- 13.4 The client is not permitted to make the results of the services available to third parties or provide information about them to third parties, unless BUAs has given its written consent to this.

Article 14 Non-takeover of personnel

During the term of the agreement and during a period of twenty-four (24) months after full or partial performance of the agreement, the client shall not employ any staff from BUAs nor involve them in its activities in any other way than for the performance of the agreement, on penalty of a fine of fifty thousand euros (EUR50,000) for each violation, payable with immediate effect, without prejudice to the right of BUAs to demand full compensation - insofar as the loss sustained exceeds the above-mentioned amount - and compliance.

Article 15 Privacy

- 15.1 In the performance of the agreement, parties shall act in accordance with the General Data Protection Regulation (GDPR).
- 15.2 If necessary, parties shall conclude a processing agreement as referred to in article 28(3) of the GDPR. Unless the parties agree otherwise in writing, the client shall act as the controller and BUAs shall act as the processor within the meaning of the GDPR.
- 15.3 BUAs shall take appropriate technical and organisational measures tailored to the security risk of the processing of personal data.

Article 16 Disputes

- 16.1 All agreements entered into by BUAs shall be subject to the laws of the Netherlands.
- 16.2 Any disputes that cannot be resolved by the parties by mutual agreement will be settled in the first instance by the court of Zeeland-West-Brabant, location of Breda.