

## **Article 1. General**

1. These General Conditions are applicable to each assignment between sole proprietorship "van den Berg, Industriële Automatisering" (hereafter named the 'Contractor') and its client (hereafter named "Client") except insofar the parties have explicitly agreed to deviate from these General Conditions in writing.
2. The General Conditions may also be invoked by the individuals and legal entities that are directly or indirectly connected to Contractor and are in any way involved with the services provided by Contractor.
3. The person who is directly or indirectly a shareholder of Contractor and who carries out professional work on behalf of Contractor may be referred to by Contractor as "partner", in accordance with general professional practice. When performing his professional work, such person will be acting solely for the risk and account of Contractor.
4. The applicability of any purchase or other conditions of the Client is explicitly rejected.
5. If one or more clauses which form a part of these General Conditions are, at any time, in whole or partially, invalid or declared void, then all other clauses of these General Conditions shall remain to apply in full. In such case, Contractor and the Client will consult to agree on new clauses to replace such clauses that are considered invalid or void, whereby the meaning and purpose of the original clauses will be observed as much as possible.
6. If uncertainty exists regarding the interpretation of any terms of these General Conditions, the explanation must be found "in the spirit of these terms".
7. If a situation arises between parties, that is not covered in these provisions then this situation should be assessed "in the spirit of the General Conditions".
8. If the Contractor in some cases does not require strict compliance with these conditions, this does not mean that the Contractor should in any degree lose the right for strict compliance in other cases, where the strict compliance with the terms of the General Conditions is demanded.

## **Article 2. Offers and proposals**

1. All offers and proposals of Contractor are non-binding, unless an offer contains a term for acceptance. If no term for acceptance is prescribed, no entitlement on the offer or proposal can be made if the product or service to which the offer or proposal relates is no longer available in the meantime, or if the conditions described in the offer or proposal are no longer valid.
2. Contractor is not bound to its offers or proposals if the Client could reasonably have expected that the relevant offer or proposal, or part thereof, contains an apparent mistake or clerical error.
3. In offers and proposals prices are exclusive of VAT and other government taxes, costs related to the agreement, including travel and accommodation , shipping and handling , unless otherwise specified.
4. If the agreement acceptance-terms differ from as stated in the offer or proposal, then the Contractor is not bound to the agreement, unless the Contractor indicates otherwise.
5. A fee quote or compound quotation shall not oblige the Contractor to carry out a part of the assignment against a corresponding part of the price.  
Offers or quotations do not automatically apply for future orders.

### **Article 3. Contracting term, performance and amendment assignment**

1. The agreement between Contractor and the Client is entered into for an indefinite period unless the nature of the agreement provides otherwise or if parties explicitly agree otherwise in writing.
2. If for the delivery of certain activities or products a period is agreed or specified, then this period is never a fatal deadline. When crossing a term, the Client will report this to the Contractor in writing. Contractor is thereby given a reasonable period to deliver the activities or products as specified in the agreement.
3. Contractor shall carry out the agreement to the best of its ability and as a professional advisor acting with due care, on the basis of the legislation and the professional standards that are valid at that time.
4. Contractor shall be entitled to engage third parties ("Subcontractors") to carry out certain activities. Each Assignment accepted by or on behalf of Contractor includes the authorization of Contractor to accept on behalf of the Client general conditions and / or limitations of liability that are used by the Subcontractors. Solely Contractor shall operate as contracting agent vis-à-vis the Client. Articles 7:404 (that contains a rule in the case an Assignment should be carried out by a particular person) and 7:407(2) (that provides for joint liability if an Assignment is granted to two or more persons) of the Dutch Civil Code shall not apply.
5. The Client shall provide full cooperation at all times with the obligations that arise for Contractor on this basis. The Client shall provide, free of charge, the reasonably required facilities as requested by the Contractor.
6. Delivery is ex-works of the Contractor. The Client is obliged to accept goods at the time they are made available to him. If the Client refuses or fails to provide information or instructions necessary for delivery, the Contractor is entitled to store the goods at the expense of the Client. The risk of loss, damage or depreciation is transferred to the Client at the moment the goods are available to the Client.
7. Contractor is entitled to carry out the Assignment in different phases, with due observance of the activities to be performed by Contractor, and issue invoices for those parts that have been carried out separately.
8. If the contract is performed in phases, the execution of the next phase can be postponed by the Contractor until the Client has approved the current or previous phase in writing.
9. The Client shall ensure that all data which the Contractor indicates to be necessary or of which the Client can reasonably understand that this necessary for the execution of the agreement, is made available to the Contractor. If the data required for the execution of the agreement is not made available in time, the Contractor is entitled to postpone the execution of the agreement. Additional costs resulting from the delay under the then applicable rates will be charged to the Client. The execution period shall not commence until the requested data is made available to the Contractor. Contractor is not liable for damage of any kind resulting from invalid, incorrect or incomplete data provided by the Client.
10. If during the execution of the agreement it turns out, that for a proper execution of the agreement it is necessary to change or supplement this, the parties will in time and in mutual consultation change or supplement the agreement. If the nature scope or content of the agreement, whether or not at the request or on direction of the Contractor the authorities etcetera, is changed and the contract would be qualitatively and / or quantitatively changed, this may have implications for what originally was agreed upon. This may also affect the price originally agreed upon. The Contractor will indicate the price-consequences as much as possible in advance. A change or supplement in the

agreement may affect the initial agreed period of execution. The Client accepts the possibility of changes or supplements to the agreement, including the change in price and time of execution.

11. If the agreement is changed, including supplements, then the Contractor is entitled to only proceed with the execution of the agreement after an authorized person of the Client has agreed on the price and other conditions, including the time on which the changes or supplements will have to be executed.

If execution of the changed or supplemented agreement will not start immediately, this will not lead to the Contractor being in default and it will not be a valid reason for the Client to terminate or cancel the agreement.

12. Without being in default, the Contractor may refuse a request for a change of the agreement if this could affect the work or product delivered in a qualitatively and / or quantitatively way.

13. If the Client is failing in the proper performance of which he is held against by the Contractor, the Client is liable for all damage to the Contractor, directly or indirectly.

14. If the Contractor agreed upon a fixed fee or fixed price with the Client then the Contractor shall nevertheless be entitled at any time to increase this fee or price without the Client being entitled to terminate the agreement for that reason, if the price increase results from obligations by law or regulations or an increase in the price of raw materials, wages etc. that could not be foreseen at the moment that the agreement was concluded.

15. If the price other than as a result of a change in the agreement exceeds more than 10% and occurs within three months after the conclusion of the agreement, then the Client can request a written rescind of the contract unless:

- the Contractor is still willing carry out the original agreement.
- the price increase results from an obligation by law by the Contractor.
- it is stipulated that the delivery takes place longer than three months after the conclusion of the agreement.
- in the delivery of an item, it is stipulated that the delivery takes place longer than three months after the sale.

#### **Article 4. Suspension, termination and discontinuement**

1. Contractor is authorized to suspend or dissolve the fulfillment of the obligations if the Client's obligations under the agreement are not fulfilled on time or if reasonably can be expected that the fulfillment of obligations of the Client will not be fulfilled.
2. Contractor is entitled to terminate the agreement if there are circumstances that are of such nature that it is impossible for Contractor to complete the agreement or if there are other circumstances that are of such nature that Contractor cannot reasonably be expected to continue its work under the agreement in unaltered form.
3. Upon termination of the agreement, any amount receivable by Contractor from the Client will become immediately due and payable. If Contractor suspends the fulfillment of its obligations, Contractor will retain its claims and rights under the law and each agreement between Contractor and the Client.
4. If the Contractor suspends or dissolves the agreement, he shall in no way be liable for damages and costs resulting from the suspension or dissolution in any way .
5. If the suspension or dissolution is liable to the Client, the Contractor is entitled to compensation for damages and costs, directly as well as indirectly.
6. If the Client fails in the fulfillment of obligations resulting from the agreement and this failure justifies termination of the agreement, then the Contractor may dissolve the agreement immediately without any obligation to pay for damages or compensation while the Client, being in default, is obliged to pay and / or compensate for damages on the Contractor side.
7. If the agreement is terminated by the Contractor and the termination is not accountable to the Client, the Contractor will in consultation with the Client cooperate in the transfer of the pending work to third parties.  
If this entails additional costs these will be charged to the Client. The Client shall pay such costs within the terms agreed upon, unless the Contractor indicates otherwise.
8. In the case of liquidation, (request for) suspension of payment or bankruptcy, of the attachment or seizure of assets on account of the Client – if and insofar the attachment or seizure is not lifted within three months – , of the refinancing of debts (*schuldsanering*) or of another circumstance as a result of which the Client can no longer freely dispose of its assets, Contractor is allowed to terminate the agreement with immediate effect or to annul the assignment or the agreement, without Contractor having any obligation to pay for any compensation or reimbursement of damages.  
In such situation, the claims and receivables of Contractor on the Client will become immediately due and payable.
9. If the Client partially or in whole annuls an Assignment, the activities that have already been carried out by Contractor in connection with the agreement will be charged to the Client in full.

## **Article 5. Force majeure**

1. Contractor cannot be held to fulfill any obligation towards the Client if Contractor is hindered in doing so as a result of a circumstance that is not the result of a fault or negligence of Contractor and that neither under the law nor pursuant generally accepted principles can be considered to be for the account of Contractor.
2. Force majeure in these General Conditions includes all causes that come from outside, foreseen or unforeseen, on which Contractor does not have any influence, but as a result of which Contractor is not able to meet its obligations.
3. Contractor may during the period of force majeure suspend the obligations of the agreement . If this period lasts longer than two months , then each party is entitled to terminate the agreement without any obligation to pay or compensate for damages to the other party .
4. Insofar Contractor at the time of the force majeure has partially met its obligations under the agreement, Contractor will be entitled to invoice this part separately. The Client is obliged to pay such invoice as if such partial fulfillment has been performed pursuant to a separate agreement.

## **Article 6. Payment and collection fees**

1. Payment must take place within 30 days after the invoice date, in the manner as indicated by Contractor and in the currency of the invoice, unless otherwise indicated by Contractor in writing. Contractor is entitled to issue invoices periodically.
  
2. If the Client is in default in the timely payment of an invoice, then the Client is charged an interest of 1 % per month, unless the rightful interest rate is higher in which case the rightful interest rate is charged.  
The interest on the amount due will be calculated from the moment the Client is in default until the moment of payment of the full amount owed .
  
3. Contractor is entitled to have the payments made by the Client stretched, first in reduction of costs, subsequently in reduction of interest still due and finally in reduction of the main contract-sum. Contractor may, without coming in default, refuse an offer for payment, if the Client follows a different order for the calculation of the payments. Contractor can refuse a complete redemption of the main contract-sum, if this does not include the outstanding interests and repossession costs.
  
4. The Client is never entitled to deduct costs that the Contractor owns him.  
Objections to the amount of the invoice will not dismiss the Client from his payment obligation.  
The Client that cannot appeal on section 6.5.3 (Articles 231 to 247 book 6) is not entitled postpone the payment of an invoice for any other reason.
  
5. If the Client is in default to (timely) fulfill its obligations, all reasonably incurred costs for an out-of-court settlement will be for the account of the Client. In the case of a jointly granted Assignment, insofar as the Assignment is performed on behalf of the joint Clients, the Clients are jointly and severally liable for the payment of the invoiced amount and interest and costs due.  
Any juridical and execution costs will also be for account of the Client, as well as repossession costs and interest .

## **Article 7. Reservation of ownership**

1. Everything that Contractor delivers in the context of the agreement will remain the property of Contractor until the Client has adequately fulfilled all obligations under the agreement(s) concluded with Contractor.
2. Property of the Contractor, either regular property or property as meant in paragraph 1 cannot be resold and can never be used as payment by the Client. Neither can this property be used as a pledge in any possible way by the Client.
3. The Client must always do everything that can reasonably be expected of him to protect the property of the Contractor. If third parties claim the property of the Contractor (either regular property or property as meant in paragraph 1), then the Client is obliged to inform the Contractor immediately. Furthermore, the Client undertakes anything reasonably possible to insure the property of the Contractor against damage, fire, explosion, water damage and theft, and make this insurance policy available for inspection to the Contractor upon request.  
Contractor is entitled for the insurance money if the insurance of the Client pays out.
4. In the event the Contractor requests access to its property (either regular property or property as meant in paragraph 1) the Client will give unconditional and irrevocable access to the property to the Contractor and third parties appointed by the Contractor.



## **Article 8. Warrantees, research and advertising**

1. The goods to be delivered by the Contractor will meet the usual requirements and standards that conditions may imply at the time of delivery, and as can be expected regarding their intended use. The warranty as mentioned in this article shall apply to items intended for use within the Netherlands.

For use outside the Netherlands the Client has to verify whether they are suitable for use over there and satisfy the conditions valid over there. In this case the Contractor can alter his warranty and other conditions for goods and / or activities delivered.

2. The warranty referred to in paragraph 1 of this Article shall apply for a period of one year after delivery, unless the nature of the provided states otherwise or if the parties involved have agreed otherwise.

If the warranty provided by the Contractor concerns an activity or product that was provided by a third party, then the guarantee is limited to the warranty provided by the third party, unless stated otherwise.

3. Any form of warranty is void if the defect has arisen as a result of:

- improper or inappropriate use
- use after the expiration date
- improper storage or maintenance by the Client and / or third parties
- if without written permission of the Contractor, the Client or third parties have made changes or attempted to make changes to the product
- connection to other object in an unintended way
- processing in another way as prescribed

The Client is not entitled to warranty if the defect is caused by or arising from circumstances where the Contractor does not have any influence on, including weather conditions (such as but not exclusively , extreme temperatures or rainfall ) etcetera.

4. The Client has the obligation to investigate the delivered the goods or activities when they are made available to him or when the activities are performed. The Client should examine if the quality and / or quantity of the delivered goods or activities correspond to what was agreed upon and meets the requirements the parties have agreed on.

Any visible defects must be reported in writing within seven days after delivery.

Any non-visible or hidden defects must be reported in writing as soon as they are discovered, but always within fourteen days after discovery. The reporting has to include a detailed description of the defect, so that the Contractor is able to respond adequately. The Client must make it possible for the Contractor to investigate the defect.

5. If the client reports a defect within the required term, this will not allow him to suspend his payment obligation. The Client has in that case also the obligation to accept and pay for other ordered products and / or activities and that to which he has ordered the Contractor.

6. If a defect is reported later as mentioned in paragraph 4, then the Client is not entitled to repair, replacement or compensation of the defect.

7. If it is determined that a product and / or activity is having a defect, and the defect was reported within the period as mentioned in paragraph 4, then Contractor has the obligation to:

- fix the defect or
- replace (part of) the goods with the defect
- compensate for the defect in another way (pay back),

within a reasonable time after the reporting of the defect.

In the case of a replacement, the Client is obliged to handover the product to the Contractor and return the ownership of the product to the Contractor unless the Contractor indicates otherwise .

8. If it is established that a complaint is unfounded, the costs involved in the handling of the complaint, including the research costs, are for the account of the Client.
9. After the warranty period, all costs for repair or replacement, including administration-, shipping-, transportation-, and hotel-costs are charged to the Client.
10. Notwithstanding the legal limitation periods , the limitation period for all claims and defenses against the Contractor and the with Contractor involved third parties is one year .

## Article 9. Liability

1. If the Contractor is held liable, then this liability is limited to as stated in these General Conditions.
2. Contractor shall not be liable for damages of any kind, caused by invalid or incomplete data provided by the Client or provided by third parties on the order of the Client.
3. If the Contractor is liable for any damage, then the Contractor's liability is limited to twice the invoice value of the order, at least to that part of the order to which the liability relates.
4. The Contractor's liability is always limited to the amount paid by his insurer.
5. Contractor shall be liable only for direct damages.
6. Direct damage is exclusively defined as:
  - the reasonable costs for establishing the cause and extent of damage
  - any reasonable costs for fixing the poor performance of the Contractor as far as the Contractor is liable for this poor performance
  - reasonable costs for measure preventing or limiting further damage for as far as the Client can prove that these measures have indeed prevented or limited further damage.

Contractor shall never be liable for indirect damages including consequential damage, lost profits, lost savings and damage due to business stagnation.

7. The limitations of liability as stated in this article shall not apply if the damage is due to intentional misbehaviour or gross negligence of the Contractor or his principal employees.

**Article 10. Disclaimer**

1. The Client shall protect the Contractor against any claims of third parties that suffer damage related to the execution of the agreement, and for which the cause is accountable to other than the Contractor.

If the Contractor is held responsible by those third parties, then it's the Clients obligation to take all necessary steps (juridical and non-juridical) to protect Contractor from third party claims.

If Client fails to do so, then Contractor is allowed to proceed with these steps himself.

All costs and damage to the Contractor and third parties, are for expense and risk of the Client .

**Article 11. Intellectual property**

1. Contractor reserves the rights and powers which he is entitled to under the Copyright and other intellectual property laws and regulations. Contractor has the right to apply the knowledge obtained by the execution of the agreement elsewhere, but only if no confidential information of the Client is transferred to third parties.

**Article 12. Applicable law and disputes**

1. On all juridical issues in which the Contractor is a party, only Dutch law is applicable, even if a contract is wholly or partially executed abroad or if the party involved in the legal issue is domiciled there. The applicability of the Vienna Sales Convention is excluded.
2. The juridical court in the domicile of the Contractor exclusively decides over disputes unless the law requires otherwise . Nevertheless, the Contractor is entitled to submit to any legally competent juridical court.
3. The parties will first appeal to the court if they have made the utmost effort to settle a dispute in mutual agreement.

**Article 13. Location and change policy**

1. The General Conditions can be downloaded from the website of 'van den Berg Industriële Automatisering' ( [www.berg-automatisering.nl](http://www.berg-automatisering.nl) ) and are included with all offers and quotations of 'van den Berg Industriële Automatisering'.
2. Applicable is the version that is on the website of 'van den Berg Industriële Automatisering' ( [www.berg-automatisering.nl](http://www.berg-automatisering.nl) ) and can be downloaded, or the version valid at the time of the conclusion of the agreement with the Contractor.
3. The Dutch text of the General Conditions is decisive for the interpretation thereof.