

Terms and Conditions Engineering Activities (EA22)

Article 1 Definitions

1. Van Halteren Technologies Boxtel BV is referred to as a service provider in these general terms and conditions.
2. The other party of the service provider is referred to as the client in these general terms and conditions.
3. Parties are service provider and client together.
4. The agreement means the agreement for services between the parties.

Article 2 Applicability of general terms and conditions

1. These terms and conditions apply to all quotations, offers, activities, agreements and deliveries of services or goods, including software, by or on behalf of the service provider.
2. Deviation from these terms and conditions is only possible if this has been expressly agreed in writing by the parties.
3. The agreement always contains best efforts obligations for the service provider, not obligations of result.

Article 3 Payment

1. Invoices must be paid within 30 days of the invoice date, unless the parties have made other agreements about this or a different payment term is stated on the invoice.
2. If the client does not pay on time, he is in default. If the client remains in default, the service provider is entitled to suspend the obligations until the client has fulfilled its payment obligation.
3. If the client remains in default, the service provider will proceed with collection. The costs related to that collection shall be borne by the client. If the client is in default, he owes statutory (commercial) interest, extrajudicial collection costs and other damage to the service provider. The collection costs are calculated on the basis of the "Dutch Decree on compensation for extrajudicial collection costs".
4. In the event of liquidation, bankruptcy, attachment or suspension of payment of the client, the claims of the service provider against the client are immediately due and payable.
5. If the client refuses to cooperate with the execution of the assignment by the service provider, he is still obliged to pay the agreed price to the service provider.

Article 4 Price indexation

1. The prices and hourly wages agreed upon, upon entering into this agreement are based on the price level applied at that time. The service provider has the right to adjust the fees to be charged to the client annually as of 1 January.
2. The client must in any case agree in writing to an increase in costs and hourly wages, insofar as that increase is determined on the basis of the following indexation clause: the new fees are determined by multiplying the existing prices by a fraction of which the numerator is the index that applies to the month of April prior to the increase and the denominator of which is the index that applies to the month of April of the preceding year. The indices are the price indices of household consumption (CPI), all households, published by Statistics Netherlands in The Hague.

Article 5 Offers, quotations and price

1. The offers are without obligation, unless a term of acceptance is stated in the offer. If the offer is not accepted within that term, the offer will lapse.
2. Delivery times in quotations are indicative and if they are exceeded, they do not entitle the client to dissolution or compensation, unless the parties have expressly agreed otherwise in writing.
3. Offers and quotations do not automatically apply to repeat orders. The parties must agree to this expressly and in writing.
4. The price stated on offers, quotations and invoices consists of the purchase price excluding the VAT owed and any other government levies.

Article 6 Service provider's commission fee

1. The parties can agree on a fixed price when the agreement is concluded.
2. If no fixed price has been agreed, the fee will be determined on the basis of the hours actually spent. The fee is calculated in accordance with the service provider's usual hourly rates, applicable for the period in which he performs the work, unless a deviating hourly rate has been agreed. The hours spent by the service provider and progress are reported to the client in periods as agreed in advance in writing between the parties.

Article 7 Provision of information by the client

1. The client makes all information relevant to the execution of the assignment available to the service provider.
2. The client is obliged to make available all data and documents that the service provider believes it needs for the correct execution of the assignment, in a timely manner and in the desired form and manner.
3. The client guarantees the correctness, completeness and reliability of the data and documents made available to the service provider, even if they originate from third parties, insofar as the nature of the assignment does not dictate otherwise.
4. The client indemnifies the service provider against any damage in whatever form resulting from failure to comply with the provisions of the first paragraph of this article.
5. If and insofar as the client requests this, the service provider will return the relevant documents.
6. If the client does not make the data and documents required by the service provider available, not timely or properly, and the execution of the assignment is delayed as a result, the resulting additional costs and additional fees will be borne by the client.

Article 8 Withdrawal of assignment

1. The client is free to terminate the assignment to the service provider at any time.
2. When the client withdraws the order, the client is obliged to pay the wages owed and the expenses incurred by the service provider.

3. The service provider will draw up a final invoice within 14 days.

Article 9 Performance of the agreement

1. The service provider performs the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. The service provider shall use its standard engineering software packages, document templates and document numbering systems, unless otherwise agreed in writing.

2. Service provider has the right to have work performed by third parties.

3. The execution takes place in mutual consultation and after written agreement and payment of any agreed advance.

4. It is the responsibility of the client that the service provider can start the assignment on time.

5. The service provider carries out the work in accordance with the legislation, regulations, the industry standards and standards of the relevant country (target market) as agreed in advance in writing between the parties.

Article 10 Contract duration for the assignment

1. The agreement between the client and the service provider is entered into for an indefinite period of time, unless the nature of the agreement dictates otherwise or the parties have expressly agreed otherwise in writing.

2. If the parties have agreed on a term for the completion of certain work within the term of the agreement, this is never a strict deadline. If this term is exceeded, the client must give the service provider written notice of default.

Article 11 Amendment of the agreement

1. If during the execution of the agreement it appears that it is necessary for the proper execution of the assignment to change or supplement the work to be performed, the parties will adjust the agreement accordingly in a timely manner and in mutual consultation.

2. If the parties agree that the agreement will be amended or supplemented, the time of completion of the execution may be affected as a result. The service provider will inform the client of this as soon as possible.

3. If the amendment or addition to the agreement has financial and/or qualitative consequences, the service provider will inform the client in writing in advance.

4. If the parties have agreed on a fixed fee, the service provider will indicate to what extent the amendment or supplement to the agreement will result in this fee being exceeded.

5. Contrary to the provisions of the third paragraph of this article, the service provider cannot charge additional costs if the change or addition is the result of circumstances that can be attributed to the service provider.

Article 12 Force majeure

1. In addition to the provisions of Article 6:75 of the Dutch Civil Code, a failure by the service provider in the fulfillment of any obligation towards the client cannot be attributed to the service provider in the event of a circumstance independent of the will of the service provider, as a result of which the fulfillment of its obligations towards the client is wholly or partially prevented or as a result of which the fulfillment of its obligations cannot reasonably be expected of the service provider. These circumstances also include non-performance by suppliers or other third parties, power failures, computer viruses, pandemics, governmental measures, war, war-like situations, strikes and work stoppages.

2. If a situation as referred to above arises as a result of which the service provider cannot fulfill its obligations towards the client, those obligations will be suspended as long as the service provider cannot meet its obligations. If the situation referred to in the previous sentence has lasted for 30 calendar days, the parties have the right to terminate or dissolve the agreement in writing in whole or in part.

3. In the case as referred to in the second paragraph of this article, the service provider is not obliged to pay compensation for any damage, not even if the service provider enjoys any advantage as a result of the force majeure situation.

Article 13 Settlement

1. The client waives its right to set off a debt owed to the service provider against a claim against the service provider.

Article 14 Suspension

1. The client waives the right to suspend the fulfillment of any obligation arising from this agreement.

Article 15 Transfer of rights

1. Rights of either party under this Agreement may not be transferred without the prior written consent of the other party. This provision applies as a stipulation with property law effect as referred to in Section 3:83(2) of the Dutch Civil Code.

Article 16 Forfeiture of the claim

1. Any right to compensation by the service provider lapses in any case 12 months after the event from which the liability directly or indirectly arises. This does not exclude the provisions of Article 6:89 of the Dutch Civil Code.

Article 17 Insurance

1. The client undertakes to adequately insure and keep insured the delivered goods against, among other things, fire, explosion and water damage as well as theft.

2. The client makes the policy of these insurances available for inspection on first request.

Article 18 Liability for damage

1. The service provider is not liable for damage (including consequential loss and indirect damages) arising from this agreement, unless the service provider has caused the damage intentionally or with gross negligence.

2. In the event that the service provider owes compensation to the client, the compensation for damage will not exceed the fee.

3. Any liability for damage arising from or in connection with the execution of an agreement is always limited to the amount that is paid out in the relevant case by the (professional) liability insurance(s) taken out. This amount is increased by the amount of the deductible according to the relevant policy.

4. The limitation of liability also applies if the service provider is held liable for damage resulting directly or indirectly from the improper functioning of the equipment, software, data files, registers or other items used by the service provider in the performance of the assignment.

5 . The liability of the service provider is not excluded for damage that is the result of intent or willful recklessness on the part of the service provider or its managerial subordinates.

Article 19 Liability client

1. If an assignment is given by more than one person, each of them is jointly and severally liable for the amounts owed to the service provider under that assignment.
2. If an assignment is given directly or indirectly by a natural person on behalf of a legal person, this natural person can also be a private client. This requires that this natural person can be regarded as the (co-)policymaker of the legal person. In the event of non-payment by the legal person, the natural person is therefore personally liable for the payment of the invoice, irrespective of whether it has been made, whether or not at the request of the client, in the name of a legal person or in the name of the client as a natural person or both of them.

Article 20 Indemnification

1. The service provider indemnifies the client against all claims and other claims from third parties and the resulting damage as a result of a shortcoming by the other party in this agreement or any other act or omission of the service provider. This indemnification applies without prejudice to what is stated in article (fill in) about liability.
2. This indemnification does not apply insofar as the service provider was not known and should not have been aware of the rights on which such a claim is based.

Article 21 Complaint obligation

1. The client is obliged to immediately report complaints about the work performed to the service provider. The complaint contains as detailed a description as possible of the shortcoming, so that the service provider is able to respond adequately.
2. If a complaint is well-founded, the service provider is only obliged to perform the work as agreed between the parties.

Article 22 Retention of title and right of retention

1. The goods present at the service provider and the goods and parts delivered remain the property of the service provider until the client has paid the entire agreed price. Until that time, the service provider can invoke its retention of title and take back the goods.
2. If the agreed amounts to be paid in advance are not paid or are not paid on time, the service provider has the right to suspend the work until the agreed part has been paid. Then there is creditor default. In that case, a late delivery cannot be invoked against the service provider.
3. The service provider is not authorized to pledge or in any other way encumber the items falling under its retention of title.
4. The service provider undertakes to insure the goods delivered to the client subject to retention of title and to keep them insured against fire, explosion and water damage as well as against theft and to make the policy available for inspection on first request.
5. If goods have not yet been delivered, but the agreed advance payment or price has not been paid in accordance with the agreement, the service provider has the right of retention. In that case, the item will not be delivered until the client has paid in full and in accordance with the agreement.

6. In the event of liquidation, insolvency or suspension of payment of the client, the client's obligations are immediately due and payable.

Article 23 Applicable law

1. This agreement between service provider and client is exclusively governed by Dutch law. The United Nations Convention on the International Sale of Goods (CISG) does not apply. The Dutch court has jurisdiction

Article 24 Dispute resolution

1. Dutch law applies to these general terms and conditions.

2. All disputes arising from these general terms and conditions will be submitted exclusively to the competent judge of the Court of Rotterdam, the Netherlands.