

General Terms & Conditions

Version 09-05-2016

EX NIHILO

TRANSFER PRICING & BUSINESS ANALYSIS

TERMS AND CONDITIONS EX NIHILO

established in (6511 NS) Nijmegen, The Netherlands, at the Oranjesingel 2 registered in the Chamber of Commerce with number 57219427.

Article 1 General

In these conditions the following applies:

- Commissioning Party: The Party giving the order;
- Contractor: Ex Nihilo;
- Agreement: The Agreement and services related to the assignment as described in the Agreement.

Article 2 Scope

1. These Terms and Conditions apply to all legal relationships between the Commissioning Party and the Contractor, except for changes in these conditions explicitly confirmed in writing by both parties.
2. The conditions also apply to all Agreements with the Contractor for the implementation of which services of third parties have to be engaged.
3. The applicability of Terms and Conditions of the Commissioning Party is hereby expressly excluded.
4. Should one or more provisions of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. The Commissioning Party and the Contractor will consult to agree on a new provision to replace the void provision, whose purpose and purport should be approximated as much as possible.

Article 3 Special offers and quotations

1. The quotations made by the Contractor are non-binding; they are valid for 30 days, unless indicated otherwise.
2. The prices of these offers and quotations are exclusive of VAT and any other government levies, as well as any administration fees and third party costs, unless indicated otherwise.
3. The rates and delivery times in quotations are based on the information provided by the Commissioning Party when making the request. Should such information be amended later or appear to be different, this may have consequences for the offered or agreed rates and delivery times.
4. If the acceptance deviates from the offer in the quotation, the Contractor shall not be bound. In that case the Agreement will not be concluded in accordance with that, unless the Contractor indicates otherwise.
5. Any costs that were unforeseeable at the time of the quotation or order confirmation and that arise because the Commissioning Party makes amendments to the Assignment will be charged to the Commissioning Party.
6. A compound quotation shall not create any obligation to deliver part of the order against a corresponding part of the price quoted for the entire order.
7. Offers or quotations do not automatically apply to future assignments.

Article 4 Conclusion of the Agreement

1. The Agreement is established when the order confirmation signed by the Contractor and the Commissioning Party is received by the Contractor. The order confirmation is based on the information provided by the Commissioning Party to the Contractor at the time thereof. The confirmation is deemed to reflect the Agreement correctly and in full.
2. The parties are free to prove that the Agreement has been concluded in some other way.

Article 5 Provision of information

1. The Commissioning Party is obliged to provide in a timely manner all data and documents in the desired form and in the desired way necessary for the Contractor, in its opinion, to properly perform the Agreement.
2. The Commissioning Party is responsible for the correctness, security and reliability of the data and documents made available to the Contractor, even if they originate from third parties, to the extent that this reasonably follows the nature of the assignment.
3. If and insofar as the Commissioning Party requests, the documents made available will be returned to the Commissioning Party.
4. If the Commissioning Party provides information carriers, electronic files or software etc. to the Contractor, the Commissioning Party guarantees that the information carriers, electronic files or software are free of viruses and defects.
5. If the information required for the execution of the Agreement are not or not in a timely manner or not properly made available to the Contractor, the Contractor has the right to suspend the execution of the Agreement and/or to charge the additional costs resulting from the delay in accordance with the usual rates to the Commissioning Party.

Article 6 Implementation of the assignment

1. The Contractor shall execute the performance of its advisory services to the best of its ability. This has the character of a best efforts obligation.
2. The Contractor determines the manner and by which persons the granted assignment is performed.
3. If and to the extent that a proper implementation of the Agreement requires, the Contractor has the right to have certain work conducted by third parties.
4. If it is agreed that the Agreement will be performed in phases, the Contractor can suspend the implementation of those parts that belong to the next phase until the Commissioning Party has approved the results of the previous phase in writing.

Article 7 Period of implementation

1. If within the term of the Agreement for the completion of certain work a period has been agreed, this is never a final deadline. When exceeding the implementation period, the Commissioning Party Contractor must give written notice of default.
2. If the Commissioning Party owes an advance payment or if the Commissioning Party must provide information required for the implementation, then the period within which the work must be completed does not commence earlier than after the payment is received in full, or the information is made available in full.

Article 8 Amendments to the Agreement

1. If during the execution of the Agreement it appears that for the proper implementation it is necessary to amend or to supplement the work to be conducted, the parties will in a timely manner and by mutual Agreement amend the Agreement accordingly.
2. If the parties agree that the Agreement must be altered or supplemented, and as a result the time of completion of the implementation may be affected, the Contractor will inform the Commissioning Party as soon as possible.
3. If the amendment or addition of the Agreement will have financial and or qualitative consequences, the Contractor will notify the Commissioning Party thereof in advance.
4. If a fixed fee has been agreed the Contractor will indicate the extent to which the change or addition of the Agreement will result in an increase of the aforesaid fee.

5. Contract variations must be agreed verbally or in writing between the Contractor and the Commissioning Party and if necessary confirmed in writing.
6. Offsetting of contract variations in any event take place:
 - a. in the event of changes to the original assignment;
 - b. in the event of unforeseeable cost increases or reductions.
7. The costs of the additional work are calculated by the Contractor based on the usual rates of the Contractor as applied at the time of implementation of the additional work.
8. The costs of less work are calculated by the Contractor based on the usual rates of the Contractor as applied at the time of conclusion of the Agreement.
9. Offsetting of contract variations is takes place immediately upon settlement, unless the parties have expressly agreed otherwise in writing.

Article 9 Contract duration

1. The Agreement between the Contractor and the Commissioning Party is entered into for the time stated in the Agreement or until the issues or the identified arrangement in the Agreement is fulfilled.
2. The Parties may unilaterally terminate the Agreement prematurely, if one of them is of the opinion that the assignment can no longer be executed in accordance with the confirmed quotation/order confirmation and any later additional assignment specifications. This must be substantiated in writing and communicated to the Other Party.
3. The Contractor is authorised to suspend or to terminate the performance of the obligations Agreement, if:
 - a. The Commissioning Party does not or not fully comply to the obligations under the Agreement;
 - b. the other Party is declared bankrupt, (provisional) moratorium is granted to him, a similar scheme has become applicable to the other Party or the other Party has otherwise lost control or free disposal of its assets, irrespective of whether it is revocable or irrevocable;
 - c. the other Party has ceased to exist or has been dissolved.
4. In case of premature termination, the Contractor remains to be entitled to payment of the claims for the work conducted so far whereby subject to the preliminary results of the work conducted so far will be made available to the Commissioning Party. To the extent this entails additional costs, these will be charged.

Article 10 Fee

1. At the conclusion of the Agreement the Parties can agree a fixed fee. The fee is excluding VAT.
2. If the Contractor agrees a fixed fee with the Commissioning Party, the Contractor shall nevertheless be entitled to increase this fee.
3. If no fixed fee has been agreed, the fee will be determined based on actual hours spent. The fee is calculated in accordance with the usual hourly rates of the Contractor applicable to the period in which the work is carried out, unless a deviating hourly rate has been agreed. The fee and any cost estimates are exclusive of VAT.
4. If the Contractor agrees a fixed hourly rate with the Commissioning Party, the Contractor shall nevertheless be entitled to increase this hourly rate.
5. If a no cure no pay fee has been agreed, the fee will be determined based on the percentage of the amount agreed in the quotation. The fee is calculated in accordance with the granted amount. The fee and any cost estimates are exclusive of VAT.

6. With regard to the rates and the cost estimates based thereon, the quotation indicates or includes the office costs, travelling hours, trip and accommodation costs and other assignment-related costs. To the extent that these costs are not included, they can be charged separately.

Article 11 Change of the fee

1. If after the conclusion of the Agreement, but before the assignment is fully completed, wages of employees of the Contractor or prices of purchased goods or services change, the Contractor shall be entitled to amend the agreed rate or fee accordingly, unless the Commissioning Party and the Contractor have made other arrangements.
2. Moreover, the Contractor may increase the fee if, during the execution of the work it appears that the originally agreed or expected amount of work was insufficiently estimated to such a degree at the conclusion of the Agreement, and this is not attributable to the Contractor, the Contractor cannot reasonably be expected to conduct the agreed work against the originally agreed fee.
3. In the event of an amendment as referred to in Paragraph 1, the Commissioning Party shall be entitled to terminate the Agreement if the fee or rate has increased within three months after entering the Agreement. After the expiry of this period the Commissioning Party shall be entitled to terminate the Agreement if the increase is more than 10%. The Commissioning Party is not entitled to terminate if the increase of the fee or rate arises on the basis of statutory provision.
4. The Contractor will inform the Commissioning Party of the intention to increase the fee or rate in writing. The Contractor will indicate the amount of the increase and the date of commencement.
5. If the Commissioning Party does not wish to accept the increase of the fee or rate notified by the Contractor, the Commissioning Party shall be entitled to terminate the Agreement in writing within seven weekdays after the intended notification, or to cancel the assignment on the date stated in the notification of the Contractor on which the price or rate adjustment would take effect.
6. In financial terms the assignment is concluded once the final invoice has been approved by the Commissioning Party. The Commissioning Party must inform the Contractor on this within a period of 30 days from the date thereof. If the Commissioning Party does not respond within this period, the final invoice is deemed to have been approved.

Article 12 Payment

1. The fee of the Contractor, if necessary supplemented by advances and claims of third parties engaged, is charged monthly, quarterly, annually or after completion of the work to the Commissioning Party, unless the Commissioning Party and the Contractor have made other arrangements.
2. Payment by the Commissioning Party must be made without deduction or setoff within the agreed periods, but in no case later than fourteen days after the invoice date. Payment must be made in Euros by transfer to a bank account designated by the Contractor.
3. If the Commissioning Party has not paid within period stipulated under 2., the Contractor shall be entitled to charge the Commissioning Party the statutory commercial interest until the date of full payment from the due date without further notice of default and without prejudice to other rights of the Contractor.
4. All reasonably judicial and extrajudicial made (collection) costs that the Contractor incurs as a consequence of non-compliance by the Commissioning Party of its payment obligations, shall be borne by the Commissioning Party. The extrajudicial costs amount to at least 15% of the principal sum with a minimum of € 250 plus VAT.
5. If the financial position or the payment behaviour of the Commissioning Party at the discretion of the Contractor give reasons to do so, the Contractor is entitled to require from the Commissioning Party that it provides this immediate (additional) security in a form to be determined by the Contractor. If the Commissioning Party fails to provide the required security the Contractor shall

be entitled, without prejudice to any other rights, to immediately suspend the further implementation of the Agreement and all that the Commissioning Party owes to the Contractor on any ground whatsoever shall be immediately due and payable.

6. In the event of a jointly given assignment the Commissioning Parties, insofar as the work conducted for the joint Commissioning Parties is, are jointly and severally liable for the payment of the invoice amount regardless of the name of the invoice.

Article 13 Complaints

1. Complaints concerning the work performed and/or the invoice amount must be communicated in writing to the Contractor within 60 days after the dispatch date of the documents or information that the Commissioning Party is complaining about, or within 60 days after discovering the defect if the Commissioning Party demonstrates that he could not reasonably have discovered the defect earlier.
2. Complaints as referred to in the first paragraph do not suspend the payment obligation of the Commissioning Party.
3. If a complaint is justified, the Contractor can choose to adjust the charged fee, to improve or re-conduct of the rejected work free of charge or to no (longer) conduct the assignment in whole or in part against a refund in proportion to fees already paid by the Commissioning Party.

Article 14 Liability

1. The Contractor shall conduct the work to the best of its abilities while exercising the due care of a prudent consultant. If a mistake is made because the Commissioning Party has provided incorrect or incomplete information, the Contractor is not liable for any resulting damage.
2. If the Commissioning Party demonstrates that he has suffered damages due to an error the Contractor would have prevented if due care was exercised, the Contractor shall only be liable for the damage up to a maximum of the amount of the fee for the respective assignment or if the assignment has a duration of more than six months up to a maximum of the claim amount over the last six months, unless there is intent or gross negligence on the part of the Contractor.
3. If and to the extent that the Contractor has taken out an insurance for this purpose, the liability of the Contractor towards the Commissioning Party, in lieu of the foregoing provisions of this Article, will be governed by and limited to the conditions in the respective amounts specified in the policy, under the suspensive condition that, the coverage is granted to the Contractor by the insurer(s).
4. The Commissioning Party shall indemnify the Contractor against third-party claims for damages caused by the Contractor having provided incorrect or incomplete information to the Commissioning Party, unless the Commissioning Party demonstrates that the damage is caused by culpable conduct or by intent or gross negligence on the part of the Contractor.
5. The Contractor is never liable for indirect damage, including consequential damage, loss of profit, lost savings or damage caused by business interruption.
6. The hours and cost administration of the Contractor as well as the extracts to be provided therefrom serve as full proof of the scope of the work conducted and costs made for the Commissioning Party under the assignment. The Commissioning Party has the authority to give documentary evidence against that administration and the extracts obtained therefrom.
7. If the Contractor has received an assignment from the Commissioning Party together with one or more other Contractors, each of the Contractors is liable for any shortcomings in the (partial) work conducted by him.
8. If the assignment is granted to the Contractor in view of a certain person, upon his death the assignment shall be completed by another advisor affiliated to the Contractor or, if at that point in time the bureau of the Contractor does not have a suitable advisor available, by a third party in

consultation with the Commissioning Party. Upon death of the Commissioning Party-natural person the rights transfer to his successors.

9. A legal claim against the Contractor to issue the documents which Contractor has obtained in respect of the assignment becomes void one year after termination of the assignment.

Article 15 Expiry period

Insofar as these Terms and Conditions do not provide otherwise, any rights of action and other powers of the Commissioning Party on any ground whatsoever towards the Contractor in connection with the performance of work by the Contractor expire in any case one year after the moment when the Commissioning Party knew or could reasonably be aware of the existence of these rights and powers.

Article 16 Intellectual property

Without the written consent from the Contractor, any advice prepared by the Contractor and other documents may not be copied and/or made public by means of print, photocopy, microfilm, electronic imaging or by any other means whatsoever, except in cases authorised by law. The same applies to full or partial processing of advice and other documents.

Article 17 Confidentiality

1. The Contractor and/or persons employed at/for or affiliated to the Contractor are bound by confidentiality with regards to confidential information concerning the Commissioning Party provided by or on behalf of the Commissioning Party to third parties, including third parties engaged in the implementation of the assignment. This obligation does not apply if there is a legal obligation, professional duty or a binding statement of a court or a public body to disclose the information or if the Commissioning Party has relieved the Contractor of its duty of confidentiality. This confidentiality obligation does not apply in the event that the confidential information is or becomes a matter of public knowledge, other than as a result of an unlawful disclosure, is already owned by the Contractor before this information is disclosed to the Contractor or has been developed independently by the Contractor.
2. The Contractor shall only be entitled to use the information that is made available to him by the Commissioning Party as well as other data and information provided, and which the Contractor has taken note of in the implementation of his assignment, for the purpose for which it has been obtained as well as for the normal business activities of the Contractor, including by the Contractor or persons affiliated to or employed by/for the Contractor acting on their own behalf in disciplinary, criminal, civil or administrative proceedings whereby this information may be of interest, as well as to prevent aforesaid procedures, and to submit aforesaid information to its insurers and/or in connection with the professional liability of the Contractor.
3. Without the express written consent from the Contractor the Commissioning Party is not permitted to disclose the contents of reports, advice, opinions or other expressions of the Contractor, either in writing or not, or otherwise provide this to third parties, unless arising directly from the Agreement in order to obtain an expert opinion regarding the relevant work of the Contractor, or if the Commissioning Party has a legal obligation or professional duty to disclose, or if the Commissioning Party or one of its directors or employees act on their own behalf in disciplinary, civil or criminal proceedings.

Article 18 Applicable law; competent Court

1. All orders and Agreements between the Commissioning Party and the Contractor to which these Terms and Conditions apply shall be governed by Dutch law.
2. All disputes related to Agreements between the Commissioning Party and the Contractor to which these conditions apply will be submitted to the competent Court in Arnhem.

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