

**GENERAL TERMS AND CONDITIONS**

**mth accountants & consultants**

*version: 01-05-2018*

**A. GENERAL**

Within the context of these General Terms and Conditions, the following terms will be understood to mean:

1. *Client:*  
The natural person or legal entity who has entered into or wishes to enter into an Agreement with the Contractor.
2. *Contractor:*  
The legal entity that enters into an Agreement with the Client pursuant to these General Terms and Conditions. The legal entity can be mth holding b.v., mth accountants & adviseurs b.v., Moni b.v., Moore Stephens MTH b.v., Credion MTH Amsterdam b.v., MTH Participaties b.v.
3. *Activities:*  
All activities ordered or that result from or are connected with the order that are performed or should be performed, all in the broadest sense, and in any case including activities as specified in the Agreement.  
Furthermore, the Client and Contractor may also agree that the Contractor is to second one or more of the Contractor's employees to the Client to perform activities at the Client's place of business.
4. *Documents:*  
All information or data made available to the Contractor by the Client, including papers or information media, as well as all items produced by the Contractor in the course of completing the order, including papers or information media.
5. *Agreement:*  
Any agreement between the Client and Contractor for the Contractor to perform Activities for the Client's benefit, in accordance with the specifications of the order confirmation.
6. *Written:*  
*Any reproducible textual communication.*

**B. APPLICABILITY**

1. These General Terms and Conditions are applicable to and comprise an integral part of all the Contractor's offers, tenders and activities, in the broadest sense, as well as to all Agreements and supplements thereto between the Contractor and Client.
2. Deviations from or supplements to the General Terms and Conditions shall apply only if they have been expressly agreed upon in writing by and between the Contractor and the Client, and shall apply solely to the offers, tenders, activities and agreements and supplements thereto to which they apply.
3. The applicability of the Client's terms and conditions is hereby expressly rejected.
4. The Contractor will be completely independent in the performance of the order. There will not, under any circumstances, be an employer/employee relationship with the Client.
5. At the Client's request, the Contractor shall provide the Client with an (unofficial) translation of these General Terms and Conditions into English or German, free of charge. If a disagreement should arise concerning the interpretation of the content of these General Terms and Conditions, the Dutch version will prevail.

**C. TENDERS**

1. The tenders issued by the Contractor, in any form whatsoever, will be free of commitment, unless expressly specified otherwise. A tender will be valid for thirty (30) days, unless otherwise specified in the tender. Tenders can be revoked within no more than five (5) working days after receipt of the acceptance by the Client.
2. The tenders will contain a cost specification that corresponds to the activities in the tender.

3. Tenders by the Contractor will be based on the information provided by the Client. The Client will be liable for the accuracy and completeness of such information and for providing all the information necessary for preparation and execution of the order, to the best of its knowledge.

**D. COMMENCEMENT AND DURATION OF THE AGREEMENT**

1. The Agreement will become effective when the Client and the Contractor sign the order confirmation containing the Agreement. Pursuant to this provision, a tender which has been signed by the Client and received in return by the Contractor and which has not been revoked by the Client within five (5) working days of receipt by Contractor, shall be deemed an order confirmation signed by the Contractor and the Client, even if a separate order confirmation is drawn up at a later point in time.
2. If the order has been issued verbally, or if the tender or the order confirmation has not yet been signed for approval by the Client, the Agreement will be deemed to have taken effect under these General Terms and Conditions when the Contractor has started to perform the Activities at the Client's request.
3. Every Agreement will be entered into for an unspecified time unless otherwise agreed or if the nature or purport of the awarded order is such that the Agreement is entered into for a specified time.
4. The content of the Agreement does not extend further than the activities expressly stated in the tender and/or order confirmation, with the specification in the order confirmation prevailing.
5. Supplemental agreements or changes with respect to the Agreement will only be binding upon the Contractor if and in so far as the Contractor has accepted them in writing. Once the Agreement has taken effect, the Client and the Contractor will no longer be able to derive any rights from preceding written or verbal proposals, tenders, correspondence, agreements and other communications regarding the content and formation of the Agreement.

**E. CLIENT'S COOPERATION**

1. The Client shall provide all Documents in a timely fashion that the Contractor has indicated are necessary or that the Client should in all fairness understand to be necessary for the proper performance of the Activities so that the performance of the order can go well and stay on schedule as much as possible.
2. The Client will be obliged to inform the Contractor without delay of facts and circumstances or changes that may have significance to the timely, proper completion of the Activities.
3. Unless the nature of the Agreement does not permit, the Client shall guarantee the accuracy, completeness and reliability of the Documents provided to the Contractor, also in the event that these originate from or were received through third parties.
4. Unless the nature of the order requires otherwise, the Client shall deploy the staff deemed necessary by the Contractor, or have them deployed so the Contractor is rendered able to perform the activities. If specific personnel is necessary, this will be agreed upon and specified in the Agreement. The Client must guarantee that its staff possess the proper skills to be able to perform the activities.
5. If the Contractor so requests, the Client must make office space available to the Contractor, as well as other facilities that the Contractor deems necessary or useful for the execution of the Agreement and that satisfy all requirements to be set for them, including legal requirements. This will include the use of computer, telephone and fax facilities. The facilities made available by the Client must satisfy the specifications required for the performance of the activities. With respect to facilities, particularly computers, the Client will be responsible for continuity, including sufficient back-up, safety and antivirus procedures.

6. The Contractor will be entitled to discontinue the execution of the Agreement until the Client has satisfied the obligations stated above under 1, 4 and 5. The Contractor will be entitled to charge the Client for any expenses incurred as a result of this delay according to its normal rates.

#### F. EXECUTION OF AGREEMENT

1. The Contractor shall determine how and by which employees the Activities are to be performed, yet shall take the Client's wishes into consideration as much as possible. The Client shall waive any invocation of the stipulations of Article 7:404 of the Dutch Civil Code. The Contractor undertakes to perform the agreed order to the best of its ability and expertise in accordance with the requirements of good craftsmanship. An obligation will not, under any circumstances, be deemed to constitute a realisable outcome. The Activities will not, under any circumstances, constitute an agency agreement as referred to in Article 7:425 of the Dutch Civil Code.
2. The Client will be entitled to have certain activities performed by third parties, without notifying or receiving express permission from the Client.
3. The Client accepts that, in the performance of the Activities, the Contractor is bound to adhere to the laws and regulations applicable to the Client, including the Code of Conduct and Professional Rules and the Accountant Organisations (Supervision) Act (*Wet Toezicht Accountantsorganisaties*). The Contractor shall execute the Agreement in observance of the laws and regulations applicable to the Client and to the execution of the Activities.
4. If, during the term of the Agreement and by virtue of its legal duties, the Contractor has performed activities on behalf of the profession or company of the Client which do not fall under the Activities to which the Agreement pertains, the Contractor will be entitled to charge the Client for these activities, even if the Client has not explicitly granted advance permission to perform said activities.
5. If the Client and Contractor have agreed to the secondment of the Contractor's employees at the offices of the Client, the Client will be responsible for the duration of said secondment for complying with the obligations of Article 7:658 of the Dutch Civil Code, the Employment Conditions Act, and regulations pertaining to that in the area of safety in the workplace and good working conditions in general. The Client shall indemnify the Contractor against all damage that the Contractor's seconded employee(s) should incur in the course of performing their activities, if and in so far as the Contractor and/or Client are liable therefore by virtue of Article 7:658 of the Dutch Civil Code.
6. During the execution of the Agreement and within two years after termination of the Agreement, the Client is prohibited from employing the Contractor's employee(s), from entering into negotiations regarding employment, or otherwise having employee(s) work for the Client directly or indirectly.
7. Because the Contractor relies in part on the cooperation and quality of the information it receives from the Client for the performance of its work, any times by which Activities are to be completed that may be included in the Agreement will only be provided as approximations and never as binding deadlines. Missing such a deadline will thus not be deemed an attributable shortcoming on the part of the Contractor and will thus not be grounds for dissolving the Agreement. If it should prove impossible for the Contractor to perform the Activities by such a deadline, the parties will confer about extending the time for which the Agreement has been entered into. Missing a newly agreed, reasonable deadline will on the other hand constitute grounds for the Client to dissolve the Agreement, except in cases of *force majeure*. The Client will not be entitled to claim damages because of a missed deadline.
8. Unless expressly specified otherwise in writing, the performance of the Activities is not specifically aimed at uncovering fraud. If the Activities yield indications of fraud, the Contractor shall report this to the Client. The Contractor will be bound by the fraud guidelines issued by professional organisations, and by the Accountant Organisations (Supervision) Act.

9. The Contractor shall keep a working file on the performance of the activities that includes copies of all relevant documents. This working file will be the property of the Contractor.
10. If and in so far as the Client so requests, the Documents made available will be returned to the Client after the Activities have been completed.

#### G. CONFIDENTIALITY AND EXCLUSIVITY

1. Except for disclosure requirements imposed by the law or by competent government bodies, the Contractor will be required to observe confidentiality towards third parties not involved in the execution of the Agreement regarding all information of a confidential nature that the Client has made available and regarding the results obtained from processing said information.
2. The Contractor will be entitled to conduct confidential consultations within its organisation to the extent that these are deemed necessary by the Contractor for the proper execution of the Agreement or in order to comply with legal or professional requirements.
3. After processing obtained numeric outcomes, the Contractor will be entitled to use such outcomes for statistical or comparable purposes, provided these outcomes cannot be traced back to individual clients. The Contractor will also be entitled to state in general terms the activities performed to the Contractor's clients or prospects as an indication of the Contractor's experience.
4. Unless the Client has provided written permission and except for the provision in the preceding subsections, the Contractor will not be entitled to use the information made available by the Client for any purpose other than the one for which it was obtained. An exception will be made to this in the event the Contractor testifies for itself in a disciplinary, civil, administrative or criminal case in which this can be of importance. By entering into an Agreement, the Client permits the Contractor to use the information for the purpose of credit assessments and judicial or extrajudicial debt collection procedures.

#### H. PROTECTION OF PERSONAL DATA

1. The Contractor processes personal data within the meaning of the Dutch Personal Data Protection Act (WPB) and the General Data Protection Regulation (GDPR) which takes effect on 25 May 2018.
2. When processing personal data, the Contractor will comply with the national and international legislation and regulations, and the rules of professional practice, applying to personal data protection.
3. The Client agrees that the Contractor can and may process confidential information and personal data regarding the Client and/or individuals currently or formerly employed by, contracted by, or related to the Client and/or its clients or third parties (i) in relation to an order issued by the Client to the Contractor, (ii) in order to comply with legal requirements, (iii) in order to optimise its services, and (iv) for internal operational purposes. In this context, processing also includes sharing said data with legal entities and companies affiliated to the Contractor and with third parties involved in the execution of the order, as well as processing said data by processors working for the Contractor.
4. The Client shall warrant that any personal data made available by or originating from the Client can be processed by the Contractor and shall indemnify the Contractor for any loss incurred in relation to claims made by the parties involved or third parties regarding non-compliance with the laws and regulations applying to personal data protection.
5. Subject to the state of technology and the cost of implementation, the Contractor will take appropriate measures aimed at the protection of personal data originating from the Client.

#### I. INTELLECTUAL PROPERTY RIGHTS

6. The Contractor reserves all rights with respect to intellectual products it uses or has used and/or developed while executing the

Agreement with the Client if and in so far as those rights can exist in a legal sense or be established.

7. The Client is expressly prohibited from providing those products, which will be deemed to include but not be limited to computer programs, system designs, working methods, recommendations, contracts, sample contracts and other intellectual products, whether or not with the aid of third parties, to third parties, from reproducing them, disclosing them or commercialising them. The Contractor grants the Client a non-exclusive, non-transferable license to reproduce and disclose documents obtained in the course of performing the Agreement for use in its own organisation, in so far as this corresponds with the aim for which the order is granted.

#### J. FORCE MAJEURE

1. If, due to *force majeure* or other extraordinary circumstances, the Contractor is unable to meet its obligations by virtue of the Agreement in a timely fashion, the Contractor is entitled to discontinue meeting its obligations under the Agreement until such time that the Contractor is in fact able to meet these obligations without the Contractor being in default in respect of meeting its obligations and without the Contractor being able to be required to pay any damages.
2. If fulfilment is not possible within a reasonable period, the Contractor will be entitled to dissolve the Agreement in full or in part with immediate effect. It is up to the sole discretion of the Contractor whether fulfilment of the Agreement can still take place. In the aforementioned instance, the Contractor reserves the claim for payment for Activities performed to that point, and the Contractor undertakes to make the provisional results of the Activities performed thus far available to the Client. In so far as this entails extra expenses, those expenses will be charged.
3. Force majeure or other extraordinary circumstances which can impede the Contractor's fulfilment (at least temporarily) will be deemed to include illness or absence of staff of the Contractor, technical malfunctions in the telephone system or connections, or technical malfunctions of computer equipment.

#### K. FEE

1. The Contractor's fee will not be contingent upon the results of the activities performed. If factors that determine rates such as wages and/or prices should change after the Agreement has been entered into but before the order has been completed entirely, the Contractor will be entitled to adjust the previously agreed rate accordingly.
2. If a fixed fee is agreed upon in the Agreement and the activities go beyond the Activities specified in the Agreement, the Contractor will be entitled to charge an additional rate for each time unit worked, after consulting with the Client. If the Client and Contractor cannot manage to reach an agreement on the performance of unforeseen (and unbudgeted) activities and the payment of related costs, the Contractor will be entitled to dissolve the Agreement.
3. The Contractor's fee will not include the Contractor's expenses or expense statements of third parties engaged by the Contractor. All rates will be exclusive of turnover tax and other levies that are or may be imposed by the government.

#### L. PAYMENT

1. Payment of the amount invoiced to the Client must be made without deduction, discount or debt set-off within fourteen (14) days after the invoice date, in the currency indicated on the invoice, by means of deposits payable to a bank account to be specified by the Contractor.
2. If the Client has not made payment within the period specified in the above subsection or, in deviation therefrom within a period agreed upon in writing between parties, the Client will be immediately deemed in default upon expiration of that period. In that case, the Client shall owe legal interest in the sense of Article

6:119 of the Dutch Civil Code from the date when the owed amount fell due until the time of payment of the amount owed, or subject to Article 6:119 a of the Dutch Civil Code if the agreement is a trade agreement, without a more specific summons or notice of default being required.

3. All costs of extrajudicial and judicial collection of the claim will be for the Client's expense. The extrajudicial costs will be calculated on the basis of the Extrajudicial Collection Costs (Fees) Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*), without prejudice to the Contractor's right to demand the extrajudicial costs actually incurred if they exceed the amount calculated as specified above.
4. If the Client enters into an Agreement with two or more persons/legal entities and/or companies, each of these persons/entities and/or companies will be severally liable for the full fulfilment of all commitments that ensue from the Agreement for them.
5. If the Contractor so requests, the Client will be required to pay the Client an advance to be determined reasonably. If the Client has requested a reasonable advance, the Client will be entitled to discontinue its activities until the Client has paid the Contractor the requested advance, or has provided a deposit therefore.
6. The Contractor will be entitled to demand that the Client provide this deposit or supplemental deposit for payment in a form to be determined by the Contractor. If the Client fails to provide the requested deposit, the Contractor will be entitled, without prejudice to its other rights, to discontinue immediately the further performance of the order and everything the Client owes the Contractor by any virtue whatsoever will become immediately payable.
7. If the Client cancels an Agreement in full or in part after it has been entered into, fifteen percent (15%) of the price stated in the tender will be charged as cancellation fees, without prejudice to the Contractor's right to demand payment of full damages from the Client.

#### M. COMPLAINTS

1. Complaints with respect to the performed activities and/or an invoice sent must be submitted to the Contractor in writing within fourteen (14) days after the sending date of the documents and/or invoice to which the complaint pertains. If the Client proves that it could not have reasonably discovered the deficiency sooner, a complaint must be submitted in writing to the Contractor within fourteen (14) days of discovery of the deficiency. If the Client has not complained within the aforementioned periods, the Client will lose any rights regarding deficiencies in activities and/or invoice not reported in a timely fashion.
2. A complaint as referred to in the previous subsection will not release the Client from its payment obligations. In that case, the Client will not be entitled either to suspend or refuse payment for other services provided by the Contractor.
3. In the event of a justified complaint submitted, the Contractor will be able to choose between adjusting the fee charged, improving or redoing the rejected activities at no charge, or discontinuing the completion of all or part of the Agreement in exchange for restitution proportionate to the fee already paid by the Client.

#### N. LIABILITY

1. The Contractor will never be liable for damage caused by:
  - the Client incorrectly and/or incompletely informing the Contractor;
  - activities that have been delegated to third parties in consultation with the Client not being performed or being performed improperly or late;
  - non-receipt, damage or late receipt by the Contractor of documents handed over for delivery;

- the Client not allowing the Contractor to rectify the activities performed, if possible in the Contractor's reasonable judgement;
- the Contractor ceasing to perform the order and/or providing information to third parties on the grounds of legal regulations and/or professional regulations to which the Contractor is subject.

2. The Contractor will be solely liable for deficiencies in the performance of the Agreement in so far as these are the result of a conscious act or gross negligence in the performance by the Contractor and/or by third parties engaged by the Contractor. Liability for indirect damage, consequential damage, intangible damage and corporate and environmental damage is also expressly excluded.

3. For damage that arises as a result of a circumstance referred to in the previous subsection, the Contractor will be liable at most for the amount of the fee that the Contractor has charged for its work as part of the Agreement. Orders that have a longer duration than six months will be subject to a restriction on the liability referred to here, to a maximum of the amount claimed for the last six (6) months counting back from the time that the Contractor was held liable. In any case, the Contractor's liability will be restricted to a maximum amount of € 1,000,000 (in words: "one million euros") per instance of damage. A series of events giving rise to loss will be deemed to constitute a single event/instance of damage for the purposes of applying this article.

4. Neither the Contractor nor third parties engaged by the Contractor will be liable for damage that the Client should incur during application of or use of the results of the Activities, unless there is a conscious act or gross negligence on the part of the Contractor.

5. The Client shall indemnify the Contractor against third-party claims in connection with the performance of the Agreement and/or an obligation to which the Contractor is subject by virtue of law and/or its professional rules to discontinue the order and/or to provide information to third parties. This provision is not applicable to orders to audit the annual accounts as referred to in Article 2:393 of the Dutch Civil Code.

#### **O. CANCELLATION/TERMINATION**

1. The Client and the Contractor can cancel the Agreement by registered letter at any time (prematurely) with due observance of a period of notice of thirty (30) days.

2. The Client and the Contractor both have the right to cancel the order with immediate effect by registered letter if the other party, after having being sent written notice of default, remains in default of satisfying one or more of its obligations for a period of fifteen (15) days, if the other party is declared bankrupt or if the other party is granted a moratorium on payments, is permitted debt rescheduling, discontinues its activities for any reason whatsoever, or any other circumstance that justifies immediate termination in the interest of the cancelling party. The foregoing is without prejudice to the possibility of rescinding the Agreement as permitted by law.

3. In the event of premature termination of the Agreement, the Contractor shall reserve the claim for payment for activities performed to that point, and the Contractor shall make the provisional results of the activities performed thus far available to the Client, subject to reservations. In so far as this entails extra expenses, these expenses will be charged to the Client.

4. Upon termination of the Agreement, each of the parties will return to the other party all goods, items and documents in its possession that belong to the other party without delay.

#### **P. TRANSFER OF CONTRACT**

The Contractor is permitted to transfer the Agreement wholly or partially to a company or legal entity affiliated with the Contractor. The Contractor does not require the Client's permission to do so.

#### **Q. AUTONOMY**

The Client accepts that the Contractor is obligated to abide by the relevant autonomy requirements of national and international regulatory bodies. To enable the Contractor to meet this obligation, the Client shall inform the Contractor in a timely, correct and complete fashion of the legal structure and relationships of authority in the Client's group or organisation, of all financial and other interests and holdings of the Client, and all other joint ventures of a financial or other nature with which the Client's enterprise is involved, all in the broadest sense.

#### **R. CONVERSION**

1. If and in so far as any provision of these General Terms and Conditions is or should prove to be nullified or voidable, the parties shall confer with each other to replace the nullified or voidable provision with a provision that is acceptable to both parties. The purport and scope of the nullified or voidable provision should be taken into consideration as much as possible. The nullity or voidability of any provisions in these General Terms and Conditions will be without prejudice to the other provisions of the terms and conditions.

#### **S. VALIDITY AFTER TERMINATION/AMENDMENTS**

1. If and in so far as it follows from the nature or purport of the provisions of these General Terms and Conditions that these will remain valid after termination of an Agreement, including the confidentiality obligations, liabilities and provisions regarding intellectual property, these will remain in effect also after termination of the Agreement.

2. The Contractor is authorised to make amendments to these General Terms and Conditions. These amendments will become effective on the specified effective date, but they will not apply to agreements entered into before that date. The Contractor shall send the amended terms and conditions to the Client in a timely fashion or shall inform the Client of the amendments in some other manner. If no effective date is specified, the amendments will apply to the Client as soon as it is informed or becomes aware of the amendments, although they will not apply to agreements entered into before that date.

#### **T. APPLICABLE LAW AND CHOICE OF FORUM**

1. Dutch law will apply to all offers, tenders, activities and agreements, including supplements thereto, between the Client and Contractor, and the execution thereof and to these General Terms and Conditions themselves.

2. All disputes ensuing from or connected with an agreement with a Client to whom these General Terms and Conditions apply, or the relevant terms and conditions and their interpretation or execution, both in a factual and legal sense, will be subject to the decision of the competent court of the Court of Zwolle-Lelystad.

3. In so far as such disputes arise from an Agreement with a Client with business offices outside of the European Union, they will be decided by arbitration in accordance with the arbitration rules of the "International Chamber of Commerce" ("ICC") in Paris (France). The city of arbitration is Emmeloord and the arbitration will take place in the English language. The chairman of the ICC shall appoint one (1) or three (3) arbiters, on the understanding that the chairman will consider the arbitration costs to be incurred in relation to the importance of the case.

#### **U. LOCATION**

These terms and conditions have been filed with the Trade Register at the Chamber of Commerce under numbers 39095983, 39095951, 39095985, 39095988, 09098392, 60637501, 60711299, and can be downloaded at [www.mth.nl](http://www.mth.nl). The version most recently filed will apply.