

# General terms of the Association for Policy Research

## 1 Applicability

- 1.1 These general terms shall apply to all offers, proposals and agreements between, on the one hand, the commissionee and, on the other, the commissioning authority irrespective of any contrary provision in the commissioning authority's general terms, unless explicitly agreed otherwise in writing.
- 1.2 The provisions set out in these general terms shall also apply in full to any offer, assignment or confirmation of assignment, which should follow on or arise under an agreement concluded at an earlier date with respect to which these general conditions were declared applicable.

## 2 Agreement and offer

- 2.1 Each agreement is based on a research proposal or offer, whatever the case may be, of which these General Conditions form an integral part.
- 2.2 Any and all offers shall be valid for a period of two months, unless the offer should state otherwise, provided that performance of the assignment may take place within the time schedule planned for the work as set out in the offer. After this period of two months, the commissionee has the right to deploy the research capacity elsewhere.
- 2.3 Acceptance of the offer and of alterations and additions shall be effected by a written or other confirmation that is to be deemed reliable provided by the commissioning authority or which might appear from the fact that the commissioning authority performs the agreement.
- 2.4 The commissioning authority shall only be permitted to disclose the contents of the offer to third parties after having obtained the commissionee's prior written consent.
- 2.5 Commissionee and commissioning authority shall be obliged to fulfil the obligations that arise under the privacy laws applicable in the Netherlands, particularly the "Wet Bescherming Persoonsgegevens" (WBP) (Personal Data Protection Act) and the obligations arising under the code of conduct as meant in Article 25 of the WBP that is applicable between the members of the Association for Policy Research.

## 3 Performance of the agreement

- 3.1 The commissionee shall perform the services to be provided by it to the best of its knowledge and ability, and in accordance with good professional practice.
- 3.2 In respect of all agreements, the commissionee shall be obliged to perform to the best of its ability, unless it explicitly appears that it concerns an obligation to produce results.
- 3.3 The commissioning authority assumes the obligation to provide all documents, data, information and other goods required for the performance of the agreement in due time and in full. Where the commissioning authority provided incorrect and/or incomplete information or failed to cooperate in due time, the commissioning authority shall be fully responsible. Further, the commissioning authority shall be obliged to do all such things that are, within reason, of interest to the proper and timely performance of the agreement.
- 3.4 To the extent possible the assignment shall be completed within the period of time stated in the agreement, unless it should appear that this cannot reasonably be required. Where the period of time threatens to be exceeded, the commissionee shall notify the commissioning authority thereof as soon as possible. The mere exceeding of a period does not constitute a failure on the commissionee's part.

## 4 Conditions of payment

- 4.1 All amounts mentioned in the offer, agreements, confirmations of assignment etc. shall be in euros and exclusive of VAT, unless otherwise stated.
- 4.2 Performance of the agreement shall either be effected on the basis of actual costs or on the basis of a fixed amount.
- 4.3 If the agreement is performed against payment on the basis of actual costs the commissionee shall be entitled to effect interim adjustment of the rates on the basis of the CBS price index for the professional service sector. Payment of the rate increase is made in addition to an agreed maximum, if any.
- 4.4 Invoices of the contract price will be made out in three instalments: 40% when the contract is awarded, 40% halfway the planned term of the work, and the balance upon completion of the assignment. Other invoicing schedules may be applicable in

the case of short-term assignments, long-term contracts covering several years or assignments involving a lot of contracted work, for example.

- 4.5 The commissioning authority shall be under the obligation to pay the invoices within 30 days after the date of the invoice. Without notice of default being required, the commissionee may charge the commissioning authority for all costs, whether at law or otherwise and possible interest incurred by the commissionee, for the collection of the amounts receivable from the commissioning authority. The amount of the extra-judicial collecting costs is fixed at a minimum of 5% of the amount outstanding with a minimum of EUR 250.
- 4.6 In the event that the commissioning authority fails to pay on the due date, the commissionee shall be entitled to suspend the performance of work.

## 5 Alterations

- 5.1 The agreement is based on the specified work plan. Alterations in this plan, *inter alia*, in relation to the scope, phasing, analysis and reports made in consultation with the commissioning authority may lead to an adjustment of the costs payable. If, as a result of the commissioning authority's acts, adjustments would be required for the proper performance of the work, such adjustments may lead to additional work and/or additional costs. The commissionee shall notify the commissioning authority hereof without delay.
- 5.2 The adjustments referred to above will be invoiced on the basis of the commissionee's then current daily rates. The commissioning authority accepts that the time schedule of the assignment may be affected, if the method or scope of the assignment and/or the work resulting therefrom should be extended or altered.

## 6 Composition of performance team

- 6.1 The commissionee shall be responsible for the composition of the team that is to perform the assignment and shall have the right to alter the composition of such team as far as staff is concerned. The commissionee shall ensure that the performance team shall always avail of the necessary training and experience qualifications required for the proper performance of the assignment.

6.2 The commissionee has the right to involve third parties in the performance of the assignment. The commissionee shall in such case remain fully responsible for the performance of the assignment.

6.3 On the commissioning authority's involving and sub-contracting third parties in the performance of the assignment, the commissionee shall not be responsible for the proper and timely performance of the work by such third parties and neither for the consequences, if any, thereof for the performance of the work by the commissionee.

## 7 Premature termination

7.1 Parties may terminate the agreement prematurely if one of the parties should be of the opinion that the agreement can no longer be performed in compliance with the agreement. The latter must be notified to the other party in writing whilst giving reasons for such opinion, with due observance of a 30-day notice period. The commissionee and the commissioning authority may use such power only if performance of the agreement cannot reasonably be required due to facts and circumstances.

7.2 Where the commissioning authority should effect such premature termination, the commissionee shall be entitled to reimbursement of the costs incurred and to compensation of capacity loss, if any, up to at most two months.

7.3 Where either of the parties has been adjudicated bankrupt or been granted suspension of payments or discontinues its business, the other party has the right to set aside the agreement with immediate effect by means of a written notification.

7.4 Without prejudice to its rights, the commissionee shall, if it is prevented from performing the agreement or to perform in due time because of force majeure, have the right to suspend performance by means of a written notification or to set aside the agreement in full or in part by means of a statement, without the commissionee being liable to pay any damages or otherwise.

## 8 Liability

8.1 The commissionee shall be responsible for the performance of the agreement and it shall be liable for any failures in the performance, to the extent that they are the consequence of the commissionee's non-observance of due care, expertise and skill, that may be relied upon with respect to the performance of the work under the agreement. If the offer, the confirmation of assignment or the agreement shows that the work is performed by the

commissionee and one or more subcontractors, the commissionee and such subcontractors shall not be jointly and severally liable, but the documents should show which party is responsible for which part of the work and, consequently, also liable for it.

8.2 The commissionee shall not be liable if he fails to fulfil or to fulfil in due time its obligations vis-à-vis the commissioning authority as a result of force majeure.

8.3 If the commissioning authority or commissionee fails to fulfil or to fulfil properly or in due time any obligation under this agreement, the other party shall set the defaulting party a reasonable time in writing within which the defaulting party must fulfil its obligations as yet. If the defaulting party remains in default after expiry of such time, the other party shall have the right either to demand performance or to set aside the agreement in whole or in part, without prejudicing its right to damages. The commissionee's total liability on account of imputable failure in the performance of the agreement shall be limited to the amount received by the commissionee within the scope of the work, with the maximum liability being the value of the invoices for the relevant year, unless it is a matter of intent and/or gross negligence on the commissionee's part.

8.4 If damage is inflicted on persons or property by or in connection the performance of an assignment or otherwise, for which the commissionee is liable, the commissionee's total liability for bodily injury causing death or bodily injury or damage to property shall under no circumstance be in excess of EUR 1,000,000.- per event, whereby a series of connected events shall count as one event. Liability for indirect damage, including consequential damage, loss of profit, non-realized savings and damage resulting from operational standstill is excluded.

8.5 If the commissioning authority should be in default, all reasonable costs for obtaining payment shall be at the commissioning authority's expense, both at law and otherwise.

## 9 Intellectual property rights and public disclosure

9.1 All intellectual property rights to any documents developed or made available under the agreement such as reports, analyses, designs and their preparatory material shall vest exclusively in the commissionee. The commissioning authority shall only obtain the user rights and the powers explicitly granted by these terms or otherwise. Publication shall be

permitted only after the commissionee's consent has been obtained.

9.2 The things laid down above shall also apply to the tools developed and data gathered within the scope of the agreement.

9.3 The commissioning authority shall have the right to multiply the documents referred to above for internal use. The commissioning authority shall, however, not change the documents.

9.4 The commissionee is and shall remain the party entitled to the data gathered. The parties may make further arrangements relating to the user's right.

9.5 Reports and other products may be published externally by the commissioning authority only in verbatim form and in their entirety whilst stating the name of the commissionee and the staff involved, unless the commissionee's permission for another form of publication has been obtained in advance.

9.6 The commissionee supports, in principle, the publication of reports. Upon the acceptance of an assignment, the commissioning authority must be informed whether and to what extent the report will be available for public inspection.

## 10 Confidentiality

10.1 The commissionee undertakes to do anything reasonably possible to safeguard the confidentiality of all the commissioning authority's information and data, to the extent that they may be regarded as confidential.

## 11 Applicable law and disputes

11.1 Any disputes that may arise as a result of the performance of an agreement in respect of which these general terms have been declared applicable, shall be settled in accordance with the Rules of the Netherlands Arbitration Institute in Rotterdam.

11.2 The Netherlands law shall govern any and all agreements between the commissioning authority and the commissionee.

## 12 Effective date

12.1 These general terms shall take effect on May 16, 2002.

12.2 These general terms were amended in respect of article 4.4 and article 9.6 on April 14, 2005.

12.3 These general terms were amended on 17 November 2015. The amendments concern art. 8.3 and the addition of art. 13.1.

### **13 Retention periods**

- 13.1 Commissionee will keep research-related documents and files for at least five years, with the exception of documents and files to which, in accordance with legislation, other requirements apply or for which specific agreements have been made with the commissioning authority.

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