

# General terms and conditions Behaav B.V.

Behaav, established in Utrecht and registered in the Trade Register under number 76005127.

- A. These General Terms and Conditions apply to all orders, quotations and legal relationships between a customer ('Client') and Behaav ('Service Provider') in which the Service Provider performs (or has performed) work ('Order') for the Client.
- B. Any deviations from these General Terms and Conditions shall only be valid provided they have been explicitly agreed upon in writing.
- C. Any instance where a (part of a) provision in these General Terms and Conditions might not be applicable is without prejudice to the applicability of the remainder of the provisions. In that case, the parties will consult to agree on alternative provisions, whereby the starting point will as far as possible be the purpose and scope of the original provision.
- D. In the event of conflicting provisions, the specific provisions of the agreement and/or quotation in which reference is made to these General Terms and Conditions prevail.
- E. The general terms and conditions of the Client shall in no case apply to the agreements and/or quotations concluded between the Service Provider and the Client. In derogation of the provisions of Article 6:225 (3) of the Dutch Civil Code, the Service Provider is not bound by deviations that occur in the (partial) acceptance by the Client of the agreements and/or quotation of the Service Provider, unless the Service Provider expressly states otherwise in writing.
- F. These General Terms and Conditions were last amended on October 19, 2020. The Service Provider reserves the right to change or amend the General Terms and Conditions in the future.
- G. If you have any questions or comments about these General Terms and Conditions, feel free to contact us at: [legal@behaav.com](mailto:legal@behaav.com).

## Artikel 1 – Offers and quotations

1.1. All offers made by the Service Provider shall be valid for 14 days unless the offer contains an alternative period of acceptance. If the offer is not accepted within that period, the offer will lapse. The Client accepts an offer in writing and/or digitally.

1.2. The Service Provider reserves the right to withdraw an offer that is accepted by the Client within the period of validity of 14 days within 5 business days after receipt.

1.3. Delivery periods in quotations are indicative and do not give the Client any right to dissolve the agreement or to damage compensation if they are exceeded by the Service Provider, unless the parties have explicitly agreed otherwise in writing.

1.4. All offers made by the Service Provider shall be free of obligation, even if they contain a term for acceptance. The Client cannot derive any rights from this. The Service Provider is not liable for deviations. Obvious printing, language and/or math errors, or other uncertainties in the quotations and/or the agreements do not bind the Service Provider.

1.5. The offers made in an agreement and/or quotation are not automatically applicable to repeat orders. Parties must agree to this explicitly and in writing.

1.6. The prices ('Order Amount') stated in offers, quotations and invoices from the Service Provider exclude VAT and any other government levies, unless expressly stated otherwise.

## Artikel 2 – Creation

2.1. An agreement between the Service Provider and the Client is created after the signing of the quotation and/or agreement by both Parties.

2.2. The Service Provider is always entitled to refuse an Order or to attach special conditions to the delivery.

2.3 The Service Provider is entitled to demand from the Client, upon or after entering into an agreement and before performance, that both the payment and the other obligations under the agreement and/or quotation must be met.

2.4 Changes to the Order, Agreement and/or quotation can only be made if the parties agree to this in writing.

## Artikel 3 – Fulfilment of the order

3.1. The fulfilment of the Order takes place in mutual consultation and after signing the agreement and/or quotation in which any payment of an advance on the Order Amount can be agreed.

3.2. If, during the execution of the agreement, it should appear that proper fulfilment of the Order requires changes or additions to the work that is to be done, the parties shall amend the agreement accordingly in mutual consultation and in a timely manner. If the interim

change to the Order arises at the request of or through the action of the Client, the Service Provider will make reasonable efforts to take the requested changes into account. If this leads to additional work compared to the original Order Amount, these costs will be charged to the Client in addition, without a separate written Order being required. By changing the Order, the Client has declared full agreement in advance with the possible financial consequences thereof.

3.3. If the parties agree to change or add to the Order, this may affect the timing of the completion of the fulfilment of the Order or have financial and/or qualitative consequences. In such case, the Service Provider will notify the Client in writing as soon as possible and the Service Provider shall not be bound to prior agreed dates of completion of the fulfilment of the Order.

3.4. If the parties have agreed a fixed fee, the Service Provider shall also specify to what extent a change or supplement of the agreement would result in the fee being exceeded.

3.5. The goods and components supplied by the Service Provider may only be used by the Client if all payment obligations have been met.

3.6. If (i) personal data are processed for the performance of the Assignment, (ii) the Service Provider qualifies as a processor within the meaning of Article 4(8) of the General Data Protection Regulation ('GDPR') and (iii) the Client qualifies as a controller within the meaning of Article 4(7) of the GDPR, then Annex 1 of these General Terms and Conditions shall apply.

#### Artikel 4 – Effort obligation

4.1. The Service Provider shall fulfil the Order to the best of its understanding and capacity and in accordance with the requirements of professionalism. The agreement concluded between the parties always includes an effort obligation for the Service Provider and no results obligations.

#### Artikel 5 – Obligations of the Client

5.1. The Client warrants that all data, resources and other documents ('Information Provided') provided to the Service Provider are correct, complete and current. If the Information Provided turns out to have been incorrect and/or incomplete at any time, the Service Provider reserves the right to unilaterally modify the Order agreed with the Client and/or to modify it in the interim as well as the Order Amount charged for it.

5.2. Het inschakelen of betrekken van derden bij de Opdracht op verzoek van Opdrachtgever kan slechts indien Dienstverlener hiervoor voorafgaande schriftelijk toestemming geeft.

5.3. The Client undertakes to adequately insure and keep insured goods delivered that are necessary for the execution of the underlying agreement, as well as goods of the Service Provider that are present at the Client's location and goods that have been delivered under retention of title. The Client will submit the policy for these insurances for inspection at the first request.

5.4. The Client grants the Service Provider the right to use the logo or other non-confidential information of the Client related to the Order on the Service Provider's channels and to show these to third parties and potential clients as an example case.

## Artikel 6 – Pricing and payments

6.1. The rates and costs for the Order are stated in the Service Provider's Quotation. The Order Amount stated herein excludes VAT and any other government levies, unless explicitly stated otherwise.

6.2. The prices of any goods or services delivered via third parties are based on the cost prices known at that time. Increases to these that could not reasonably have been foreseen by the Service Provider at the time of the offer or the conclusion of the agreement may give rise to price increases.

6.3. With regard to the Order, the Parties may, when concluding the agreement and/or quotation:

- a) Agree to a fixed Order Amount. If no fixed Order Amount has been agreed, then
- b) the Order Amount may be determined based on the hours actually worked. This rate is calculated according to the usual hourly rates of the Service Provider, valid for the period in which the work is performed, unless a different hourly rate has been agreed with the Client.
- c) If no Order Amount has been agreed on the basis of the hours actually spent, a target price is agreed for the Order. The Client is aware and accepts that the Service Provider has the right to deviate, at its own discretion, up to a maximum of 10% of the target price given. If this occurs, the Service Provider will justify the increase.

6.4. If the Service Provider foresees during the fulfilment of the Order that the target price referred to in point c) of Article 6.3 will be exceeded by more than 10%, the Service Provider will notify the Client as soon as possible. During these consultations, the Parties will discuss the possible consequences of this planned increase and an appropriate solution will be sought in all reasonableness.

6.5. The payment terms used by the Service Provider are stated in the quotation and/or agreement.

6.6. If the Order Amount owed for the Order is not satisfied or is not satisfied in a timely manner, the Service Provider has:

- a) The right not to commence the Order; or
- b) The right to suspend it, and this also applies to the delivery of products until the outstanding amounts have been paid.

6.7. A late delivery in the aforementioned cases of Article 6.6 cannot be held against the Service Provider.

6.8. If, during the execution of the agreement, the Order has been delayed due to an attributable shortcoming of the Client, the Service Provider nevertheless reserves the right to charge the agreed management costs, as specified in the quotation, after 90 days.

## Artikel 7 – Force majeure

7.1. The Service Provider cannot be held liable for any form of damage suffered by the Client if the obligations under the agreement and/or quotation cannot be fulfilled or cannot be fulfilled in a timely manner or properly due to force majeure.

7.2. In addition to the provisions of Article 6:75 of the Dutch Civil Code, force majeure is understood to mean a failure of the Service Provider to fulfil any obligation towards the Client that cannot be attributed to the Service Provider in the event of a circumstance that is independent of the will of the Service Provider, as a result of which the fulfilment of its obligations towards the Client is prevented in whole or in part or as a result of which the fulfilment of its obligations cannot reasonably be expected of the Service Provider. These circumstances include, but are not limited to, failure by suppliers or other third parties, pandemics and quarantine measures, power outages, wars, strikes, transport problems, computer viruses, extreme weather conditions and/or work interruptions.

7.3. If the situation referred to in this article has lasted 30 calendar days, the parties have the right to dissolve the Order in whole or in part in writing. The Service Provider always reserves the right to payment for the work already performed and the associated costs.

7.4. The Service Provider is under no circumstances obliged to compensate for any damage or to pay a fine to the Client, even if the Service Provider enjoys any advantage as a result of the state of force majeure.

## Artikel 8 – Suspension, transfer of rights and retention of title

8.1. The Client waives the right to suspend the fulfilment of any obligation arising from the agreement and/or quotation.

8.2. The rights of the Client under the agreement and/or quotation cannot be transferred without the prior written consent of the Service Provider.

8.3. All claims' rights and powers on any grounds whatsoever against the Service Provider in connection with the Order fulfilled by the Service Provider lapse in any case one year after the time when the party in question (Client or third party) was aware or could reasonably have been aware of the existence of these rights and/or powers.

8.4. As long as the Client has not paid the Service Provider in full, including but not limited to payment of all invoices, including previous and later deliveries and services provided, reimbursements of all costs and interest, as well as claims for damages due to shortcoming in the fulfilment by the Client, the Service Provider retains ownership of the products it delivers to the Client.

8.5. The Client is not free to encumber, let, exchange with third parties, sell or deliver the delivered products (whether or not delivered via third parties) without express written permission from the Service Provider.

8.6. If the Client does not fulfil its obligations or if the Service Provider has a well-founded fear that the Client will not do so, the Service Provider is entitled to take back the delivered products. The Client is obliged to fully cooperate in this regard. All resulting costs are at the expense and risk of the Client.

8.7. The Client is obliged to inform the Service Provider immediately in writing if third parties assert rights to goods and/or products on which a retention of title by the Service Provider rests.

## Artikel 9 – Limitation of liability and indemnifications

9.1. Unless there is intent or gross negligence attributable to the Service Provider, the Service Provider is not liable for any form of damage to the Client. In no event will indirect damage be compensated, including consequential damage, business and/or turnover damage, loss of goodwill and loss and/or mutilation of data.

9.2. The Client indemnifies the Service Provider against a claim by third parties based on a violation of patents and/or copyrights due to the use of drawings, data, models, materials or parts, or by applications of working methods, which are provided or prescribed to the Service Provider by or at the behest of the Client for the fulfilment of the Order.

9.3. If the Service Provider proves to be liable for any reason whatsoever, then any liability of the Service Provider is limited to compensation for direct damage up to the amount that is paid in the relevant case under its professional liability insurance, increased by the amount of the Service Provider's deductible.

9.4. If, for whatever reason, no payment is made by the insurer, each liability of the Service Provider is limited to the amounts paid to the Service Provider in the calendar year preceding the liability, up to a maximum of €10,000.00.

9.5. The Service Provider will not invoke this limitation of liability if damage is a result of intent or deliberate recklessness on the part of the Service Provider.

9.6. If the Client wishes to hold the Service Provider liable for an attributable shortcoming in the fulfilment of the Order, the Client must first provide the Service Provider with notice of default and grant a reasonable period to remedy the shortcoming.

9.7. Any liability for damage or otherwise towards natural persons, employees, directors, or companies (including the associated persons) employed by the Service Provider or with whom the Service Provider has concluded agreements in connection with its business operations, and who can (partly) be held responsible for the occurrence of the damage, is excluded. These natural persons or legal persons may invoke these General Terms and Conditions as third-party clauses vis-à-vis the Client.

9.8. The Service Provider accepts no liability for any form of damage that arises directly or indirectly from the non- or improper functioning of the equipment, software, data files, registers or other items used by the Service Provider or third parties engaged by it in the fulfilment of the Order. The general terms and conditions of these parties apply to all services or products used by the Service Provider via third parties.

9.9. During the term of the agreement, the Service Provider undertakes to ensure adequate insurance with an insurer that is customary within the branch in which the Service Provider operates. A copy of the professional liability insurance taken out by the Service Provider will be provided on request.

## **Artikel 10 – Third-party Products and services**

10.1. The Service Provider is entitled to use Products or Services of third parties ('Supporting Resources') in the fulfilment of the Order. If Supporting Resources are used, this will be stated in the quotation and/or the agreement.

10.2. If the Service Provider supplies Supporting Resources to the Client, then in addition to these General Terms and Conditions, the general terms and conditions of the Supporting Resources also apply to the quotation and/or agreement.

10.3. With regard to the Supporting Resources, the Service Provider will provide any service, management, and support under a maximum of the same terms and conditions as those stated in the general terms and conditions of the Supporting Resources.

10.4. Deviations or additions to that stated in Article 10.3 will be recorded between the Parties in the Quotation and/or agreement.

10.5. The Service Provider accepts no liability for the Supporting Resources it uses.

## **Artikel 11 – General terms and conditions for Supporting Resources**

11.1. The general terms and conditions of Supporting Resources can be provided to the Client by the Service Provider at the request of the Client, if available.

11.2. Unless stated otherwise, these General Terms and Conditions take precedence over the general terms and conditions of third parties. In the event of a conflict between these General Terms and Conditions and the general terms and conditions of third parties, the Service Provider may declare the relevant conflicting provisions in the general terms and conditions of the Supporting Resources inapplicable or declare them to be applicable.

## **Artikel 12 – Applicable Law and Competent Court**

11.1. All agreements and/or quotations between the parties are governed exclusively by Dutch law.

11.1. The Dutch court in the district of Rotterdam has exclusive jurisdiction to take cognizance of any disputes between the parties, unless the law prescribes otherwise.