

# General Conditions

*Note on translation:*

- *This is an English translation of a document drawn up in Dutch. Every effort has been made to render the source text as literally as possible without compromising continuity. In the event of any disparity between the Dutch original and this translation, the Dutch text will prevail.*
- *In this translation, Dutch legal concepts are expressed in English terms and may not be identical to the concepts described by those English terms as understood under the laws of other jurisdictions.*



### **Article 1 - General**

- 1.1. The terms below are defined as follows in these general conditions:
  - a) the Client: the party commissioning the assignment;
  - b) the Contractor: Blue Clue B.V., a limited liability company incorporated under Dutch law, also acting under the name: "Blue Clue Tax Solutions";
  - c) Assignment and/or Agreement: the agreement for the assignment, in which the Contractor undertakes to perform various activities vis-à-vis the Client;
- 1.2. All Assignments are exclusively accepted and performed by the Contractor, notwithstanding Articles 7:404 and 7:407, paragraph 2 of the Netherlands Civil code, regardless of whether the Client has expressly or tacitly granted the Assignment with the intention of having a certain person or persons perform the activities.
- 1.3. All clauses in these general conditions have also been drawn up on behalf of all the parties who are working for the Contractor in the context of the performance of the Assignment.

### **Article 2 - Applicability**

- 2.1. These general conditions apply to all Assignments and/or Agreements between the Client and the Contractor, and their respective legal successors. These general conditions also apply to all agreements arising on this basis and/or associated agreements, as well as all to offers and/or quotations provided by the Contractor.
- 2.2. The applicability of the Client's General Conditions is expressly rejected by the Contractor.
- 2.3. Clauses deviating from these conditions are only applicable if and insofar the Contractor has confirmed these expressly to the Client in writing.
- 2.4. If any clause, which forms a part of these general conditions or the agreement, is invalid or declared void, then the rest of this agreement shall continue to exist as far as possible, and the clause in question will immediately be replaced in consultation by the parties by a clause that corresponds as much as possible to the meaning of the original clause.
- 2.5. If - and to the extent permitted by the reasonableness and fairness or unreasonable onerous nature - any provision of these conditions cannot be invoked, the relevant provision has as far as possible a corresponding meaning regarding the content and scope, so that this can be invoked.

### **Article 3 - Establishment of the Agreement**

- 3.1 In case an engagement letter is used, the Agreement shall be established at the time that the engagement letter signed by the Contractor and the Client is received by the Contractor. The engagement letter is based on the information provided to the Contractor by the Client at that time. The engagement letter is deemed to accurately and fully represent the Agreement.
- 3.2 If the Assignment is granted verbally or by email, or if the assignment confirmation has not yet been received, the Assignment is deemed to be established under the applicability of these general conditions at the time that the Contractor commences the performance the Assignment at the request of the Client.

### **Article 4 - Data and information**

- 4.1. The Client is obligated to provide all the data and information requested by the Contractor, as well as the data and information that the Client can reasonably know that the Contractor needs for the correct performance of the Assignment, a) on time, b) in the form desired by the Contractor and c) in the way desired by the Contractor.



- 4.2. The Client guarantees the accuracy, completeness, reliability and legitimacy of the data and information provided to the Contractor by the Client or on the Client's behalf, also if this data and information have been provided through a third party or originate from a third party, unless the nature of the Assignment provides otherwise.
- 4.3. The Client is obliged to immediately inform the Contractor with respect to facts or circumstances that could be important in connection with the performance of the Assignment.
- 4.4. The Contractor has the right to suspend the performance of the Assignment until the time that the Client has fulfilled the obligations referred to in the first, second and third paragraphs.
- 4.5. Extra costs, extra hours, and other damages that arise for the Contractor because the Client has not fulfilled the obligations referred to in the first, second and third paragraphs, are for the expense and risk of the Client.
- 4.6. At the first request of the Client, the Contractor shall return the original documents provided by the Client.
- 4.7. The Client is responsible for correct compliance with the applicable legislation and regulations with regard to the protection of personal data, including the personal data provided and made available to the Contractor concerning the Client's staff members, clients or third parties, also if this data originates from third parties or is provided by third parties at the Client's request. The Contractor cannot be sued in connection with the non-compliance or incorrect compliance by the Client.

#### **Article 5 - Performance of the Assignment**

- 5.1. The Contractor shall determine the way and by which person(s) the Assignment is performed, yet he/she shall take into account as far as possible the wishes expressed by the Client. If, in the performance of the Assignment, the Contractor wishes to engage third parties at the expense of the Client, he/she may only do this with the Client's approval.
- 5.2. The Contractor shall perform the activities to the best of his/her ability and as a professional acting with due care; however, the Contractor also cannot guarantee that any desired result shall be achieved.
- 5.3. The Assignment will be performed with due observance of the applicable professional and other regulations required by or in accordance with the law. The Client shall provide full cooperation at all times with the obligations that arise for the Contractor on this basis.
- 5.4. The Client acknowledges, on the basis of the Act on Prevention of Money Laundering and Financing of Terrorism (*Wet ter voorkoming van witwassen en financieren van terrorisme – Wwft*) the Contractor:
  - a) may be required to conduct an investigation into the identity of the Client and/or the customer;
  - b) may be required to report certain transactions to the authorities appointed by the government for that purpose.
- 5.5. Professional and other regulations include, in any case, the Professional Practice Regulations and the Special Code of Conduct of the Dutch Association of Tax Advisers (*Reglement Beroepsuitoefening en de Bijzondere Gedragscode van De Nederlandse Orde van Belastingadviseurs – NOB*).
- 5.6. The Contractor excludes any liability whatsoever for damages arising as a result of the Contractor's compliance with legislation and professional and other regulations applicable to him/her.
- 5.7. For the Assignment, the Contractor shall maintain a work file containing copies of the relevant documents, which is the property of the Contractor.
- 5.8. During the performance of the Assignment, the Client and the Contractor, at the request of one of the parties, shall be able communicate with each other by electronic mail. The Client and the Contractor are vis-à-vis each



other not liable for any damages that arise from use of electronic mail. Both the Client and the Contractor shall do that which can reasonably be expected to prevent risks, such as spreading viruses and distortion.

- 5.9. In the case of doubt concerning the content and/or sending of electronic mail, the data extracts from the Contractor's computer systems shall prevail.

#### **Article 6 - Terms**

- 6.1. The terms during which activities must be completed are only considered final deadlines if this is agreed in writing.
- 6.2. If the Client owes an advance payment or if the Client must provide the necessary data and information for the performance of the Assignment, then the period during which the activities should be completed shall not commence before the payment in full has been received by Contractor, or before all of the data and information has been provided to the Contractor.
- 6.3. Unless it has been established that performance thereof remains impossible, the Agreement may not be terminated by the Client because the deadline is not met, before the Client, after the expiry of the agreed term, has given the Contractor notice of reasonable term to perform the Assignment (in full) as yet, and the Contractor still does not perform the Assignment at all or within the term provided.

#### **Article 7 - Force majeure**

- 7.1. In the event that the Contractor is unable to fulfil his obligations under the Agreement or is unable to fulfil these obligations in time or properly as a result of a cause that cannot be attributed to him, including but not limited to employee sickness, breakdowns in the computer network and other interruptions of the normal conduct of business within his enterprise, these obligations will be suspended until the time the Contractor can still fulfil these obligations in the manner agreed upon.
- 7.2. In the event that the situation referred to in the first paragraph occurs, the Client is entitled to cancel all or part of the Agreement in writing, without this giving rise to any right to damages.

#### **Article 8 - Termination**

- 8.1 The Agreement is concluded for an indefinite period, unless, due to the content, nature or purport of the Assignment granted, it is clear that the Assignment has been concluded for a fixed term.
- 8.2 The Client and the Contractor may terminate the Agreement at any time (in the interim) with due observance of a reasonable period of notice, unless the termination or the termination in such a period is contrary to the principles of reasonableness and fairness. The termination must be communicated to the other party in writing.
- 8.3 The Agreement may be terminated by either the Contractor or the Client (in the interim) in writing, without due observance of a period of notice, if the other party is not able to pay its debts or if an official receiver, administrator or liquidator is appointed; if the other party undergoes debt restructuring; if the other party ceases its activities for any other reason; if one party considers it reasonably plausible that one of the above mentioned circumstances will arise for the other party; or if a situation arises that justifies the immediate termination in the interest of the terminating party.
- 8.4 In all cases of interim or other termination, the Contractor retains the right to payment of the fee notes for all of the activities performed by the Contractor that point in time, which will be made available to the Client, subject to the provisional results of the activities performed until then.



- 8.5 If the Client decides on interim or other termination, the Contractor has a right to compensation for capacity utilisation loss, which has arisen for and which can be demonstrated by the Contractor, as well as for reasonable additional costs that were or will be incurred by the Contractor as a result of the early termination of the Agreement (such as costs relating to possible subcontracting), unless there are facts and circumstances that are the basis for the termination and which can be attributed to the Contractor.
- 8.6 If the Contractor decides on interim or other termination, the Client has a right to cooperation from the Contractor for the transfer of activities to third parties, unless there are facts and circumstances that are the basis for termination which can be attributed to the Client.
- 8.7 Insofar as the transfer of the activities for the Contractor is accompanied by extra costs, these will be charged to the Client.
- 8.8 Upon termination of the Agreement, each of the parties shall immediately return to the other party all goods, items and documents in their possession that belong to the other party.

#### **Article 9 - Intellectual property rights**

- 9.1. All rights concerning products of the mind that the Contractor develops or uses in the performance of the assignment, also including recommendations, working methods model or other contracts, systems, system designs and computer programs, belong to the Contractor, insofar as they do not already belong to third parties.
- 9.2. Except for with the express written advance permission of the Contractor, the Client is not permitted to reproduce, make public or exploit products of the mind or the recording thereof on data carriers, including together with or through the engagement of third parties, without prejudice to the provisions of Article 10.3.

#### **Article 10 - Confidentiality**

- 10.1. The Contractor is required to maintain confidentiality with respect to the data and information provided by or on behalf of the Client with respect to third parties that are not involved with the performance of the assignment. This obligation does not apply insofar the Contractor is subject to a statutory or professional duty that dictates disclosure of the information, including the obligations arising from the Act on Prevention of Money Laundering and Financing of Terrorism and other national or international regulations of a similar meaning, or insofar as the Client has released the Contractor from the duty of confidentiality.
- 10.2. The first paragraph does not prevent confidential consultation between colleagues within the Contractor's organisation, insofar as the Contractor considers this necessary for the proper performance of the assignment or for proper fulfilment of a statutory or professional duty of disclosure.
- 10.3. If the Contractor represents him/herself in a disciplinary, civil, arbitration, administrative or criminal procedure, he Contractor has the right to use the data and information which he/she came to know in the performance of the assignment insofar as this data and information could be of importance in his/her reasonable opinion.
- 10.4. Except for with the express advance written permission of the Contractor, the Client is not permitted to disclose the content of the recommendations, opinions or other written or unwritten communications of the Contractor or to make them available in any other way to third parties, except for if this arises directly from the Agreement, if this takes place to obtain an expert opinion concerning the relevant activities of the Contractor, if the Client is subject to a statutory or professional duty of disclosure, or if the Client represents him/herself in a disciplinary, civil, arbitration, administrative or criminal procedure.
- 10.5. The Contractor has the right to state the name of the Client and the main points of the activities performed to commercial and other business associates of the Contractor to indicate the Client's experience.



#### **Article 11 - Personal data**

- 11.1. In the context of an assignment granted by the Client to the Contractor or in the context of fulfilling statutory obligations that the Contractor is subject to, the Contractor may process the personal data concerning the Client and/or persons associated with or employed by/for the Client.
- 11.2. The Contractor may process personal data in connection with optimising the Contractor's services to the Client and in connection with the ability to approach the Client and/or persons employed by/for the Client with information and services of the Contractor and third parties.
- 11.3. The processing of personal data by the Contractor in the context of the activities as referred to in the first and second paragraphs shall take place in accordance with the applicable legislation and regulations concerning the protection of personal data.

#### **Article 12 - Fee**

- 12.1. The Client shall owe the Contractor a fee and an allowance for costs incurred in accordance with the Contractor's normal rates, calculation methods and working methods.
- 12.2. The Contractor has the right to request an advance payment from the Client.
- 12.3. If, after the establishment of the Agreement, but before the Assignment has been completed in full, factors affecting the rate such as wages and/or prices undergo a change, the Contractor has the right to adjust the rate agreed earlier in accordance with the situation.
- 12.4. The rates do not include VAT or other taxes imposed by the authorities.

#### **Article 13 - Payment**

- 13.1. Payment must take place without any deductions, discount or set-off, in Dutch currency, by means of deposit or transfer to the bank account indicated on the invoice, within 14 days after the invoice date. The day of payment is the day that the amount owed is credited to the Contractor's bank account. Objections to the level of the invoice do not suspend the Client's payment obligation.
- 13.2. If the Client has not paid within the term stated in the first paragraph, or within another term agreed by the parties, the Client is in default by operation of law and the Contractor has the right to charge statutory interest from that point in time.
- 13.3. If the Client has not paid within the term stated in the first paragraph, the Client is obliged to pay all the out-of-court and court collection and other costs incurred by the Contractor, also insofar as these costs surpass any court order for costs, unless the Contractor, as the losing party, is ordered to pay the costs.
- 13.4. In the case of a jointly granted Assignment, insofar as the Assignment is performed on behalf of the joint Clients, the Clients are jointly and severally liable for the payment of the invoice amount, the interest owed and the costs.
- 13.5. The Contractor reserves the right – also during the performance of an assignment, if the financial position or the payment behaviour of the Client gives reason for this in the Contractor's opinion – to demand a full or partial advance payment from the Client and/or to demand that security be provided, and in the absence of this, the Contractor has the right to suspend the fulfilment of his/her obligations.



#### **Article 14 - Complaints**

- 14.1. At the risk of forfeiting all rights, a complaint relating to the activities performed or to the invoice amount must be communicated to the Contractor in writing within 30 days after the sending date of the documents or information over which the Client is lodging a complaint, or, if the Client demonstrates that he/she was not reasonably able to discover the shortcoming earlier, within 30 days after the discovery of the shortcoming.
- 14.2. A complaint does not suspend the payment obligation of the Client, except insofar as the Contractor has indicated to the Client that Contractor believes the complaint is justified.
- 14.3. In the case of a rightfully lodged complaint, the Contractor may choose between adjusting the fee invoiced, improving the activities in question free of charge, performing them again free of charge, or ceasing to perform the Assignment in whole or in part, and repaying a pro rata amount of the fee already paid by the Client.

#### **Article 15 - Liability and indemnification**

- 15.1 The Contractor is liable vis-à-vis the Client only for any shortcoming in the performance of the assignment insofar as a shortcoming has arisen due to the non-observance of due care and expertise, as a result of which the performance of the assignment cannot be trusted.
- 15.2 The Contractor's liability is limited to the amount paid for the event in question according to the Contractor's liability insurer, plus the excess to be paid by the Contractor under the insurance policy, if any. If, for any reason whatsoever, the liability insurer does not pay, the Contractor's liability is limited to the amount that the Client, on the basis of the provision in Article 12, has paid as a fee (not including VAT) to the Contractor and/or still owes for the activities to which the loss-causing occurrence relates or is associated with. In the event that the Agreement is a continuing performance contract with a term of more than one year, the amount mentioned above will be set at three times the amount of the fee that the Client has paid and/or still owes to the Contractor in the twelve months preceding the occurrence of the damage. In no event will the total compensation of the damage by virtue of this article amount to more than € 300,000 per event, in which a series of related events is deemed to be a single event.
- 15.3. The Contractor is also not liable for the following:
  - any loss or damage arising for the Client or third parties that is the result of incorrect or incomplete data or information provided by the Client to the Contractor or which is otherwise the result of acts or omissions by the Client;
  - any loss or damage arising for the Client or third parties that is the result of acts or omissions by auxiliary persons who are engaged by the Client or the Contractor (not including employees of the Contractor), also if these persons are employed at an organisation affiliated with the Contractor;
  - loss of profits, indirect or consequential damage arising for the Client or third parties.
- 15.4. The Contractor will at all times be entitled to remedy or limit the Client's damage by rectifying or correcting the defective product if and to the extent possible.
- 15.5. The Contractor is not liable for any damage to or the loss of documents during transport or dispatch, regardless of whether the transport or dispatch takes place by or on behalf of the Client, the Contractor or third parties. During the fulfilment of the Instructions, the Client and the Contractor may communicate by electronic means. The Client and the Contractor are not liable towards each other for damage possibly occurring for either of them as a result of the use of electronic means of communication, including -but not limited to- damage resulting from failures or delays in the delivery of electronic communication by third parties or by software/equipment used to send, receive or process electronic communications, the transmission of viruses and the failure of the



telecommunication network or other means required for electronic communication to function (properly), except to the extent that the damage is the result of wilful misconduct or gross negligence. Both the Client and the Contractor will do everything they reasonably may be expected to do or refrain from doing to prevent the risks mentioned above from occurring. The data extracts from the sender's computer systems serve as conclusive proof of (the contents of) the electronic communication sent by the sender until the recipient has furnished proof to the contrary.

- 15.6. A claim for the reimbursement of loss or damage must be submitted the Contractor no later than twelve months after the Client has discovered or reasonably could have discovered the loss or damage. If this does not occur, the right to compensation for loss or damage shall be forfeited.
- 15.7. The Client is obligated to reimburse the Contractor and indemnify the Contractor against all claims from third parties – also including the shareholders, managing directors, supervising directors and staff of the Client, as well as affiliated legal entities and businesses and others involved with the Client's organisation – which arise from or are connected with the activities of the Contractor for the Client, except insofar as these claims are the result of wilful misconduct or gross negligence on the part of the Contractor. The Client specifically indemnifies the Contractor against claims from third parties on account of damaged caused because the Client provided incorrect or incomplete information to the Contractor, unless the Client demonstrates that the damage is not related to any culpable act or omission on his part, or has been caused by wilful misconduct or gross negligence on the part of the Contractor.
- 15.8. The Client indemnifies the Contractor against all possible claims from third parties in the event that the Contractor is forced by law and/or his professional rules to return the instructions and/or is forced to render his assistance to government agencies which are entitled to receive information -both when asked and at their own initiative- which the Contractor received from the Client or third parties in the course of fulfilling the instructions.

#### **Article 16 - Expiry period**

Insofar not determined otherwise in these general conditions, the Client's right of action, which also applies vis-à-vis the Contractor in connection with the performance of the activities by the Contractor, shall be forfeited in any case after one year after the time which the Client learned or could have reasonably learned of the existence of these rights.

#### **Article 17 - Choice of law and jurisdiction**

- 17.1. All agreements between the Client and the Contractor are subject exclusively to the law of the Netherlands.
- 17.2. Unless expressly agreed otherwise in writing by the parties, any disputes associated with Agreements between the Client and the Contractor shall be submitted to the competent court in the location where the Contractor is established.
- 17.3. Contrary to the previous paragraph, the Client and the Contractor may select another method of dispute resolution.

### General information

We refer to our website <http://www.blueclue.nl> for further general information about our office. If you have any questions please do not hesitate to contact us.

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