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## General conditions:

### Article 1: Definitions

1. The following terms will have the following meaning for the purpose of these General Conditions, unless expressly mentioned otherwise.

Commissionee: Assistance Office SWAN

Client: *the commissionee's other party.*

Assignment: *the activities to be determined by mutual agreement between the Commissionee and Client that need to be carried out by the Commissionee and the conditions pursuant to which they are to be carried out.*

### Article 2: General

1. The General Conditions apply to all offers, tenders, activities, assignments and agreements between Commissionee and clients, viz. their legal successors, provided the parties did not deviate from these conditions expressly and in writing. Any standard conditions of the client will only apply when they have been accepted by Commissionee and confirmed in writing.

2. These conditions also apply to all client assignments for whose performance third parties need to be involved.

3. If one or multiple provisions of these general conditions are invalid or may be set aside, the other provisions of the general conditions will continue to apply fully. Commissionee and Client will then enter into negotiations so as to agree new provisions to replace those provisions that are void or as the case may be, set aside, where, if and to the extent possible, the purpose and tenor of the original provision is taken into account.

### Article 3: Tenders

1. Commissionee's tenders are based on the information that is provided by the Client. The Client will ensure that, to the best of its knowledge, all of the essential information regarding the type, performance and completion of the assignment has been provided.

2. All tenders provided by the Commissionee are non-binding. Tenders will be valid during 30 days, unless otherwise indicated. Commissionee is only bound by tenders if acceptance thereof is confirmed in writing by the other party, within 30 days, unless otherwise indicated

3. Prices mentioned in the tenders in question are exclusive of VAT and any other government levies, as well as of the costs to be incurred as part of the assignment, including shipment and administration costs, unless otherwise indicated.

4. If the acceptance differs (for material points) from the offer included in the tender, Commissionee is not bound by it. The assignment will then not have been entered into pursuant to this different acceptance, unless otherwise indicated by the Commissionee.

5. A combined tender does not require Commissionee to carry out part of the assignment at a proportionate part of the price mentioned.

6. Tenders do not automatically apply to future assignments.

### Article 4: Making available of information and co-operation

The client will, in a timely fashion, provide Commissionee with all documents, information and contacts necessary for a proper performance of the assignment.

**Article 5: Performance of the assignment and involvement of third parties**

1. Commissionee will always draw up an agreement with the client regarding the activities to be performed and the applicable conditions.
2. Commissionee will carry out the activities as part of the assignment to the best of its insight, expertise and ability.
3. In as much this is required for a proper execution of this assignment Commissionee is entitled to have (parts of) the work performed by third parties. Commissionee will do so in consultation with the client.  
Commissionee undertakes to expend his very best efforts to ensure the agreed obligations and quality are achieved.
4. Commissionee does not accept any liability for activities performed by third parties, if they entered into a separate agreement with the client about these activities.
5. Commissionee is not liable for damage, of any type, resulting from the Commissionee relying on incorrect or incomplete data from the client, unless this incorrectness or incompleteness should have been known to the Commissionee.
6. If it is agreed that the assignment is carried out in stages, Commissionee may suspend performance of elements belonging to the next stage until such time the client approves the results of the preceding stage in writing. Commissionee shall provide client with reasonable advance notice in writing in order to allow the client to respond and prevent the suspension.
7. If activities by the Commissionee or third parties enlisted by the Commissionee as part of the assignment are performed at the clients location or a location designated by the Client, the Client will provide the facilities reasonably desired by those employees, free of charge.

**Article 6: Change to the assignment, additional works**

1. The client accepts that the planned timing of the assignment is subject to change, if parties decide on a change of approach, method of scope of the assignment and the resulting activities during the performance thereof.  
If, as a result of the client's actions, changes to the performance occur during the performance of the assignment, Commissionee will carry out the necessary adjustments in consultation with the client. If this creates additional work, this will be invoiced to the client as an additional assignment. Commissionee is entitled to charge the client for the extra costs resulting from changes to the assignment.
2. In derogation of paragraph 1, Commissionee will not charge additional costs if the changes or supplement to the assignment are the result of circumstances that can be attributed to Commissionee.

**Article 7: Contract duration; performance period**

1. The assignment between Commissionee and a clients is entered into for an indefinite period, unless shown otherwise from the nature of the assignment or parties expressly agree otherwise in writing.
2. If, for the duration of the assignment, a time period is agreed within which certain activities have to be completed, this is never a firm deadline. When this time period is exceeded, the client will need to serve a written notice of default upon Commissionee.

**Article 8: Rates**

1. Unless agreed differently in writing between the Parties, Commissionee's rate is determined on the basis of an hourly rate.
2. All amounts are exclusive of Dutch VAT.
3. If Commissionee agrees on an hourly rate with the client, the Commissionee is still entitled to increase this rate.
4. Commissionee is entitled without prior written notification - as of the 1st of January of each calendar year, to increase the rate agreed on in the tender, by no more than the percentage of inflation over the previous year, as provided by the Dutch Central Bureau of Statistics.
5. Commissionee is entitled to increase prices in case of a price increase, regardless of inflation. The client is entitled to dissolve the assignment if the increase amounts, considered on an annual basis, amounts to more than 10%. The client is not entitled to dissolve if the authority to increase the rates is the result of a statutory authority.
6. Commissionee will inform the client of its intention to increase the rates under paragraph 5 in

writing. This communication will mention the amount of the increase and date as of which the increase will become effective.

7. If the client does not want to accept the rate increase announced by Commissionee, the client is entitled, within two weeks after the notification in question, to cancel the assignment in writing or to cancel the assignment by the date mentioned in Commissionee's notification as of which the rate adjustment is to enter into force.

#### **Article 9: Payment conditions**

1. Payment is to occur within two weeks of the invoice date, unless otherwise agreed between Commissionee and the client. Objections against the amounts invoiced are no reason to defer payment.
2. After the due date, the client will be considered to be in default of payment and Commissionee is entitled to apply the statutory interest rate. The amount owed will accrue interest, as of the time the client is in default of payment until such time the full amount is settled, where any part of a month will be considered a full month. The costs of sending a reminder, dunning letter and demand for payment related to the client's failure to payment will amount to € 100.000 each, to be borne by the client. The costs will cover the administrative impact on the Commissionee.
3. If the payment is withheld for more than 1 month, Commissionee is allowed to suspend performance of the assignment until payment has occurred.
4. In case of winding-up, bankruptcy, attachment or suspension of payments of the client, all claims of the Commissionee against the client will be immediately owed and payable.
5. Commissionee is entitled to use the payments made by the client, firstly, as payment toward the costs, secondly, as payment toward the interest accrued and, lastly, as payment toward the principal amount and accruing interest. Commissionee is entitled, without this constituting a default, to refuse a payment offer. If the client indicates a difference priority in the use of payments, Commissionee is entitled to refuse full settlement of the principal amount, if the interest accrued and accruing interest as well as the costs are not also covered.
6. In case the client fails to comply with his obligations, all costs incurred for the recovery will be borne by the client, including both the judicial and extra-judicial costs.

#### **Article 10: Closure of the assignment**

The assignment is closed, in a financial sense, if the amount to be invoiced is approved by the client. The client is to provide notice about this approval within 30 days of the invoice date. If the client does not respond within this time period, the amount is considered to have been approved. All items delivered to the client remain property of the Commissionee, until such time payment by the client has occurred.

#### **Article 11: Enquiry, advertising and complaints**

1. Any complaints about the activities performed will need to be reported to Commissionee in writing by the client, within two weeks of the date of invoice and certainly no later than within three weeks of the completion of the works in question. The notice of default will need to provide the most detailed description of the failure possible, allowing Commissionee to respond adequately.
2. If a complaint is founded, Commissionee will, at that stage, carry out the activities as agreed, unless the client is able to demonstrate that this has become pointless by that time. The client will need to provide written notification of the same.
3. If performance of the agreed on activities has become impossible or pointless by that time, Commissionee will only be liable subject to the limitations of Article 16.

#### **Article 12: Termination**

1. It is assumed that the contract is tacitly renewed, each time for a one year period, unless otherwise agreed.
2. Both parties will observe a notice period of at least six months, before the end of a contract.
3. Immediate termination by either party before that time is authorised if the party other than the terminating party
  - is in a state of bankruptcy or suspension of payment or has filed for bankruptcy

- or suspension of payment
  - has been issued with a notice of default for failing to comply with this Agreement and has not rectified the situation within a set, reasonable time period
4. Upon termination of the agreement, each party will bear its own costs and neither party owes any damages to the other, unless the termination is the result of an attributable breach of this agreement.

**Article 13: Returning items that were made available**

If either party made items available to the other party, the receiving party is required to return the items delivered in their original condition, fully and undamaged, at the other party's written request within 14 days. If a party fails to comply with this obligation, any costs resulting from this will be borne by the defaulting party.

If a party, for any reason, even after a reminder to that effect, continues to fail to comply with the obligation under 1., the other party is entitled to recover all related damage and costs, including the replacement costs, from the defaulting party.

**Article 14: Liability**

Under no circumstance may compensation be claimed for damage caused by loss of income by the client or Commissionee (regardless of how it occurred) or for indirect and consequential damage.

**Article 15: Indemnification**

1. The client will hold Commissionee harmless for any third-party claims regarding intellectual property rights governing materials or data made available by the client, which are used in the performance of the assignment.

2. Commissionee shall indemnify and hold client harmless from and against any damages, losses, actions or other claims ("Losses") incurred by the client arising from (i) any breach by Commissionee of its representations hereunder, (ii) the performance or non-performance of Commissionee's obligations hereunder or (iii) any third-party claims regarding intellectual property rights governing the deliverables provided by Commissionee to the client.

**Article 16: Transfer of risks**

The risk of loss or damage of the items that are the subject of the assignment will pass to the client once legal and/or factual delivery to the client takes place and the items are thus placed under the authority of the client or of third parties to be appointed by the client.

**Article 17: Force Majeure**

1. Neither Party shall be liable to the other for any delay or failure in performance of any part of this agreement if such delay or failure is caused by a Force Majeure. The Party prevented from performing due to Force Majeure shall promptly notify the other Party of the cause and the anticipated duration thereof and shall use its reasonable efforts to remove such cause and to resume performance of this agreement as soon as such cause is removed. The term "**Force Majeure**", as used in this agreement shall include, without limitation, earthquakes, fires, floods, strikes or labour controversies (but not any strike, slowdown or similar controversy arising exclusively between either of the Parties and its respective personnel), epidemics, acts of war, whether declared or undeclared, blockades, insurrections or riots, or any other similar unforeseeable cause beyond the control of either of the Parties.

2. The Parties may suspend the obligations under the assignment for the duration of the Force Majeure. If this period lasts longer than two months, each of the parties is entitled to terminate the assignment, without any obligation to compensate the other party's damage.

**Article 18: Confidentiality**

1. Both parties are required to observe confidentiality with regard to all confidential information they received from the other party as well as confidential information received from a different source as part of their assignment. Information will be considered confidential if this is communicated as such by the other party or which by its nature or the circumstances of its disclosure should reasonably be presumed to be intended to be proprietary and held in confidence ("Confidential Information"). Confidential Information shall not include publicly available information.

2. All Confidential Information acquired by either party from the other shall be and shall remain

the exclusive property of the disclosing party.

3. Neither of the parties shall use Confidential Information for any purpose other than performing their obligations under this Agreement.

4. The Confidential Information shall not be disclosed to anyone except to their authorized employees who have a need to know the Confidential Information in order for such party to perform its obligations under this Agreement and who have been informed of the confidential and proprietary nature of the Confidential Information.

5. If, on the basis of a legal provision or court decision, either party is required to provide Confidential Information to statutory or court-appointed third parties, and such cannot invoke legal grounds to refuse to do so, or any other grounds acknowledged or accepted by the competent court, it shall (i) notify the disclosing party of the existence and terms of such request, (ii) cooperate with the disclosing party in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure, if requested to do so by the disclosing party, and (iii) if disclosure is required, use its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be afforded to such portion of the Confidential Information as is required to be disclosed.

6. Upon request of the disclosing party, the other party shall immediately return all Confidential Information to such party and shall not maintain any copies thereof.

#### **Article 19: Intellectual property rights and copyrights**

1. Without prejudice to the other provisions of these general conditions, each of the parties reserves the rights and powers inuring to it on the basis of the Dutch Copyright Act.

2. Any models, methods and instruments that are developed and/or applied by the Commissionee for the performance of the assignment will remain the property of Commissionee. Any publication or other type of disclosure thereof is only authorised subject to Commissionee's prior written authorisation.

3. All records, results and deliverables such as reports, recommendations, assignments, designs, drafts, drawings, software etc. provided by the Commissionee for the benefit of the client ("Deliverables") shall be the exclusive property of the client and Commissionee hereby irrevocably assigns and transfers to the client all rights in the Deliverables including without limitation all intellectual property rights related thereto, which assignment and transfer is made from the moment of the creation of such rights. In jurisdictions where moral rights may not be assigned, Commissionee irrevocably and expressly waives in favour of the client any and all moral rights that it may have in the Deliverables. Consultant undertakes to obtain from any of its employees, subcontractors or other representatives acting on its behalf in the performance of the assignments under this Agreement, a similar written assignment and waiver and to deliver a copy of such to the client.

4. Commissionee agrees to perform such acts and sign such documents as may be reasonably required by the client for the purpose of ensuring that all rights in the Deliverables vest with the client, including without limitation, executing and delivering instruments of assignment.

#### **Article 22: Miscellaneous provisions**

For the duration of the assignment and up to two years after termination of an assignment, the client is not authorised to offer paid activities (in the form of an employment contract or otherwise) to professionals who were involved in the performance on behalf of or through Commissionee.

#### **Article 23: Disputes**

1. In case of disputes resulting from this agreement or agreements following on from this agreement, parties will first attempt to resolve these disputes through Mediation in accordance with the applicable regulations from the Stichting Nederlands Mediation Instituut of Rotterdam, as they apply on the starting date of the Mediation.

2 If it has appeared impossible to resolve the dispute as described above by means of Mediation, this dispute will be settled by the competent court.

#### **Article 24: Applicable law**

Any assignment between Commissionee and the client is subject to the law of the Netherlands even if the client resides or has its offices abroad.