

# General Terms and Conditions

General Terms and Conditions TwynstraGudde as per 1 January 2020

## 0 General

- 0.1 These general terms and conditions are applicable to all assignments issued to TwynstraGudde Holding B.V. and its subsidiaries (with the exception of OpMorgen), hereinafter to be referred to as 'TwynstraGudde'.
- 0.2 TwynstraGudde is certified in accordance with the ISO 9001-2015 standard.

## 1 Definitions

In these general terms and conditions, the following terms have the following meanings:

- 1.1 Agreement: a written agreement in the sense of Article 7:400 et seq. of the Dutch Civil Code, whereby the one party, TwynstraGudde (the contractor), undertakes towards the other party (the client) to provide consultancy services (or have such services provided) for the organisation of the client, and which these general terms and conditions have been declared applicable to. The application of Articles 7:407, paragraph 2, 7:404, and 7:408, paragraph 2, is excluded.
- 1.2 Assignment: the provision of organisational consultancy in the broadest sense of the word for the purpose of identifying, analysing, and resolving problems and issues.
- 1.3 Client: the legal person or the natural person that has concluded, or wants to conclude, an agreement as the opposite contract party of TwynstraGudde for the performance of an assignment.
- 1.4 Contractor: TwynstraGudde, which has accepted the assignment that will be executed under its responsibility.
- 1.5 Assignment executor: TwynstraGudde employee(s) and/or the natural person or legal person that has been charged with the execution of the assignment on behalf of TwynstraGudde.
- 1.6 Parties: the client and the contractor.

## 2 Applicability of these terms and conditions

- 2.1 All activities that are carried out by assignment executors in connection with an assignment shall be deemed to be activities carried out by or on behalf of TwynstraGudde. TwynstraGudde has the right to engage other persons, legal persons, or third parties for the execution of the assignment. The selection of the other persons, legal persons, or third parties to be engaged by TwynstraGudde, shall take place, insofar as possible and considered reasonable, in consultation with the client and while exercising the appropriate due care. TwynstraGudde is not liable for any shortcomings of these third parties, except in the event of wilful misconduct or gross negligence on the part of TwynstraGudde.
- 2.2 All the provisions in these general terms and conditions are applicable to all proposals, offers, and activities in connection with an assignment of TwynstraGudde and to all agreements relating to the performance of activities for the client, such to include all agreements arising out of or associated with such between the parties or their legal successors.
- 2.3 Notwithstanding that which is provided for in article 2.5, these general terms and conditions can only be deviated from by way of a written agreement.
- 2.4 If any provision in these general terms and conditions or in the agreement is null and void, the rest of the agreement shall remain in force, and the relevant provision shall be



replaced in mutual consultation between the parties by a provision that is as close as possible to the purport of the original provision.

- 2.5 TwynstraGudde has the right to amend these general terms and conditions. Amended terms and conditions shall become effective on the date that TwynstraGudde deems such desirable. Amended terms and conditions shall be deemed to have been accepted if the client has not made an objection to the amended terms and conditions within 14 days after the amended terms and conditions have been sent or notified to it.

### 3 Starting points

- 3.1 TwynstraGudde warrants the integrity of its actions, it has to act in a skilled and expert way vis-à-vis the assignment and the client, it has to assure its professional and relational independence, it has to avoid any other interests playing a role in the assignment than those of the assignment itself, and it obligates itself to hold the client accountable for its actions if it is not behaving as a good client.
- 3.2 The client shall be open and transparent in the preliminary discussions with TwynstraGudde about the competition from other (organisational) consultancies, the criteria that apply for selection, and the period within which the selection will be made.
- 3.3 The client shall guarantee the implementation of a responsible assignment policy.
- 3.4 The client shall act with the appropriate due care when issuing requested or unsolicited information which is necessary in order to carry out the assignment properly and effectively.
- 3.5 The client shall act as a reliable partner by fulfilling agreements on time and in full, including the payment of the invoices.

### 4 Conclusion of the agreement for the assignment

- 4.1 The agreement shall be concluded as of the moment when the agreement signed by the parties

and/or the assignment confirmation has been received by TwynstraGudde (in writing, by e-mail, or verbally). If the agreement signed by the client or the assignment confirmation has not (yet) been received back, the assignment shall be deemed to have been concluded subject to the applicability of these general terms and conditions as of the moment when TwynstraGudde has started with the execution of the assignment at the request of the client.

- 4.2 All offers of TwynstraGudde are without obligation, and unless stated otherwise, they shall be valid for thirty (30) calendar days after the date on which the offer has been issued. If an offer contains a no-obligation offer, and this is accepted, TwynstraGudde has the right to withdraw the offer in any event within two working days after receipt of the acceptance.
- 4.3 Offers are based on the information that has been issued by the client to TwynstraGudde up to the date of the offer. The client warrants that all information that is essential for the planning and execution of the assignment shall be provided to TwynstraGudde. TwynstraGudde is not liable for the accuracy and the completeness of the information issued by the client and the use of such.

### 5 Provision of information, employees, and workspace by the client

- 5.1 The client has to ensure that TwynstraGudde can carry out its activities in an adequate way. To this end, the client shall provide the assignment executors with, amongst other things, the details and information, facts, resources, and facilities that are necessary for the execution of the assignment.
- 5.2 The client is obligated to inform TwynstraGudde in a timely fashion about any plans, facts, and circumstances that might be relevant for the execution of the assignment.
- 5.3 The client guarantees the accuracy, the completeness, and the reliability of the details and information issued to TwynstraGudde by or on behalf of it.
- 5.4 If TwynstraGudde makes a request for such, the client shall make employees of the internal organisation of the client available, who are (or will be) involved in the activities carried out by TwynstraGudde, free of charge.
- 5.5 If TwynstraGudde makes a request for such, the client will provide TwynstraGudde with its own workspace and the (office) facilities that are necessary in order to be able to carry out an assignment on location, free of charge.



- 5.6 If the details and information, facts, resources, or facilities necessary for the execution of the agreement are not provided, or not in a timely fashion, or not completely to the assignment executors, TwynstraGudde shall have the right to suspend the execution of the agreement or to charge the client for the additional costs resulting from any delay at the usual rates.

## 6 Confidentiality

- 6.1 Assignment executors are bound by an obligation of confidentiality as laid down in the employment contract, cooperation agreement, or some other agreement. They are therefore obligated to maintain confidentiality and to handle all information of the client with the appropriate due care vis-à-vis third parties. TwynstraGudde will do its utmost to protect the interests of the client.
- 6.2 TwynstraGudde obligates all assignment executors to abide by this obligation of confidentiality, and shall do its utmost to ensure that assignment executors comply with the obligations.
- 6.3 Without the permission of TwynstraGudde, the client is not allowed to make any disclosure to third parties concerning the information, reports, or documents that have been made available by TwynstraGudde in connection with the assignment, other than as a consequence of a statutory or professional duty.

## 7 Intellectual and industrial property rights and indemnification

- 7.1 All intellectual and industrial property rights, including, but not limited to, copyrights, trademark rights, patent rights, database rights, design rights, trade name rights, as well as the rights on know-how, shall be vested in TwynstraGudde.
- 7.2 Models, instruments, methods, software, and other products that the assignment executors use and/or develop, or have developed, and/or which are a part of the execution of the assignment, and which are included in the advisory report or in other results of research, shall remain

the property of TwynstraGudde.

- 7.3 Further publication and dissemination by the client are only allowed with the permission of TwynstraGudde, notwithstanding that provided for in article 6.3.
- 7.4 If the client issues data carriers, digital files, or software, etc., to TwynstraGudde, the client guarantees that this will not lead to any infringement of the intellectual property rights of third parties, as well as that the data carriers, digital files, or software will be free of any viruses or defects.

## 8 Execution of the assignment

- 8.1 The assignment will be carried out by or on behalf of TwynstraGudde to the best of its knowledge and ability, as well as in accordance with the standards of professionalism and good contracting practices.
- 8.2 The obligation referred to in article 8.1 has the character of an obligation to perform, because the achievement of the envisaged result cannot be guaranteed, unless the parties have made explicit agreements about the result to be achieved.
- 8.3 The result to be achieved can be determined objectively by the parties and only one interpretation of such is possible. The result obligation shall be specified in the agreement, the proposal, the offer, or the (framework) agreement.
- 8.4 In connection with the recruitment and selection activities, TwynstraGudde will do everything that can be reasonably required of it in order to find a suitable candidate. TwynstraGudde shall do its utmost to propose one or more suitable candidates to the client based on the competencies that are laid down in the job profile / job description.
- 8.5 TwynstraGudde can replace one or more of the assignment executors after consultation with the client. Any such change must not have an adverse effect on the quality of the activities that are carried out in connection with the assignment or on the continuity of the assignment. A change of assignment executors can also take place at the request of the client in consultation with TwynstraGudde.
- 8.6 The involvement or hiring of third parties by the client or by TwynstraGudde in connection with the execution of the assignment shall exclusively take place through mutual consultation.
- 8.7 The client accepts that the planning schedule and the



costs of the assignment can be changed if the parties agree to expand or change the scope of the assignment, the approach, or the working method in the interim.

- 8.8 Changes to the assignment or assignment execution that lead to an adjustment of the agreed lead time, costs, and/or quality, must be confirmed by the client.
- 8.9 TwynstraGudde shall confirm these changes in the agreement, and the client shall confirm its consent for these changes.
- 8.10 If the client does not confirm its consent for these changes within a reasonable period, TwynstraGudde shall have the right to terminate the agreement without being liable to pay any compensation to the client.
- 8.11 TwynstraGudde shall ensure that its employees and third parties, who are deployed via TwynstraGudde at the client location for the performance of activities, shall conduct themselves within the business of the client in accordance with the work rules and company rules in force at the client location, insofar as such do not unnecessarily impede the progress of the activities.
- 8.12 TwynstraGudde and the client shall hold regular consultation meetings during the performance of the assignment to discuss the state of affairs and the way in which the assignment is being carried out.
- 8.13 If facts or circumstances arise after the acceptance and during the execution of the assignment, which (could) have an adverse effect on the progress of the assignment or the result of such, TwynstraGudde and the client shall inform each other about such as quickly as possible.

## 9 Duration and completion of the assignment

- 9.1 There might be circumstances which mean it is not possible to specify exactly how long the lead time of the execution of the assignment will be in advance. The lead time will partly depend on the quality of the information, facts and resources, and the cooperation that TwynstraGudde receives from the client.

The deadlines within which the work has to be completed shall therefore only apply as fixed and final deadlines if these deadlines have expressly been agreed.

- 9.2 The assignment will have been completed in a financial sense as soon as the final account has been paid by the client. If the client does not object to the final account within 30 calendar days after the date of the final account, then the final account shall be deemed to have been approved.

## 10 Early termination of the assignment

- 10.1 The parties can unilaterally terminate the agreement before the end of the agreed term, taking into account a period of notice of thirty (30) calendar days, if one of the parties is of the opinion that the assignment can no longer be executed in accordance with the agreement and any subsequent additional agreements. Notice of the intention to terminate must be given to the other party in writing or by e-mail, together with the reasons for such. The parties are only allowed to exercise the right to terminate if there are facts or circumstances that are beyond the control of the terminating party, or which are not attributable to it, or which mean that the completion of the assignment cannot be reasonably required of it. The activities carried out up to that time may be charged to the client by TwynstraGudde, whereby, insofar as possible and reserving all rights, the provisional results of the activities that have been carried out up to then will be made available to the client. TwynstraGudde will be entitled to charge the client for any costs that have been incurred in this connection.
- 10.2 In the event of the ending of the assignment, for any reason whatsoever, the client shall owe at least two-thirds of the fee specified in the offer / assignment confirmation. All invoices that have already been sent to the client will still have to be paid in full, and shall become immediately due and payable at the moment of termination.
- 10.3 If one of the parties is declared bankrupt, applies for a suspension of payments, or ceases its business operations, the other party shall have the right to terminate the assignment, without the observance of any period of notice, and with the reservation of all rights.



## 11 Fees and costs

- 11.1 TwynstraGudde has to specify the method that will be used to calculate the fees in the agreement with the client. It is also possible to agree a fixed amount for the fees.
- 11.2 The rates will be specified in the agreement, and any project-related costs that are included in the fees will be explicitly specified (e.g., the cost of administrative support, travel time, travel and accommodation expenses, the cost of hiring locations and equipment, and any other assignment-related costs). Insofar as these costs are not included in the fees, they can be charged for separately on the condition that agreements have been made about this.
- 11.3 TwynstraGudde may charge on interim adjustments to the rates and project-related reimbursements of costs after consultation with, and the permission of, the client.
- 11.4 Unless agreed otherwise, no interest may be charged on the fees.
- 11.5 The fees, where relevant increased by project-related costs as described in article 11.2 and the expense claims of any relevant third parties, will be invoiced to the client for each agreed period or after the completion of the assignment, unless the parties have made other agreements about this.
- 11.6 Turnover tax (VAT) will be charged for separately, insofar as the activities are subject to VAT, on all the amounts owed by the client to TwynstraGudde.
- 11.7 If the client wants to have an audit of the invoice of TwynstraGudde carried out by a registered accountant, then TwynstraGudde will provide its cooperation with such. The costs of such an audit shall be for the account of the client.
- 11.8 Unless stated otherwise, all price quotations will be subject to changes in prices. TwynstraGudde has in any case the right to adjust the hourly rates twice per year in line with the indexation of the direct costs.
- 11.9 The hourly rates will be fixed per work assignment.

## 12 Payment conditions

- 12.1 The client has to pay the amount of the invoice, without deduction, discount, or set-off of debts, within the agreed periods, but in any event no later than 30 calendar days after the invoice date, into a bank account designated for that purpose by TwynstraGudde.
- 12.2 If the client has not paid within 30 calendar days after the invoice date, TwynstraGudde shall have the right, after it has issued the client with a demand for payment at least once, without any further notice of default being required, and without prejudice to the other rights of TwynstraGudde, to charge the client statutory (commercial) interest as of the final payment date up until the date of payment in full.
- 12.3 All judicial and extrajudicial (debt collection) costs, insofar as reasonable, that TwynstraGudde has to incur as a result of the non-fulfilment of the payment obligation by the client, shall be for the account of the client.
- 12.4 If the financial position or the payment history of the client gives cause for such in the opinion of TwynstraGudde, TwynstraGudde will have the right to demand that the client immediately provides (additional) security in a form to be determined by TwynstraGudde. If the client fails to provide the requested security, TwynstraGudde will have the right, without prejudice to its other rights, to immediately suspend the further performance of the agreement, and all that which the client owes to TwynstraGudde on any grounds whatsoever will become immediately due and payable.
- 12.5 In the event of an assignment given by joint clients, and insofar as the activities are carried out by TwynstraGudde for all the clients collectively, the clients shall be jointly and severally liable for the payment of the invoice amount, regardless of in whose name the invoice is made out to.
- 12.6 The amounts estimated by TwynstraGudde shall not be exceeded other than in consultation with, and after the express permission of, the client.
- 12.7 TwynstraGudde shall only invoice the client for the agreed fees.
- 12.8 Contract extras shall be invoiced for by TwynstraGudde after consultation with, and the acceptance of, the client. The nature and scope of any contract extras that have been carried out will be explicitly detailed on the invoices.



## 13 The recruitment or employment of each other's personnel

13.1 During the performance of the assignment, and during a period of one year after the ending of the assignment, neither of the parties may employ, or otherwise engage to work for it or a third party, personnel of the other party that are (or have been) involved in the execution of the assignment, except after consultation with the other party.

## 14 Complaints

14.1 If the client has a complaint about the activities carried out in connection with the assignment, about the behaviour of an employee, or about an invoice, the complaint has to be notified in writing to TwynstraGudde within thirty (30) calendar days after the materialisation of such. The submission and handling of complaints will take place subject to the complaints procedure of TwynstraGudde.

14.2 If the client is able to prove that it was not able to reasonably discover a deficiency in the execution of the assignment at an earlier date, it can still make a written notification of the alleged deficiency to TwynstraGudde within thirty (30) calendar days after the discovery of such. The exceedance of this period will lead to the lapsing of all claims.

14.3 The submission of a complaint shall not relieve the client of the payment obligation, unless and insofar as TwynstraGudde has notified the client that TwynstraGudde considers the complaint to be well-founded, and an agreement has been reached about a modified payment obligation.

14.4 If TwynstraGudde is of the opinion that the complaint is justified, TwynstraGudde can choose to either modify the invoice amount, to improve or carry out the relevant activities again free of charge, or to decide not to, or to only partially, carry out the assignment any further.

## 15 Aansprakelijkheid

15.1 TwynstraGudde is liable for attributable short-

comings in the execution of the assignment insofar as these are the result of a failure by TwynstraGudde to exercise the appropriate due care, the expertise, skill, or professionalism which is to be expected in connection with the relevant assignment.

15.2 The liability for the damages shall be limited to the amount of the fees that TwynstraGudde has agreed in connection with the assignment for the activities that have been carried out up until that point.

15.3 In the case of assignments that have a longer lead time than 6 months, a further limitation of the liability referred to here will apply up to a maximum of the amount that has been invoiced for during the preceding 6 months.

15.4 Any claims of the client in the sense referred to here must be submitted within one year after the discovery of the damages, in the absence of which the client shall forfeit all its rights in relation to such.

15.5 TwynstraGudde shall not be liable for the consequences for third parties that arise due to the implementation by the client of the advice of TwynstraGudde. The execution of the issued assignment shall take place exclusively for the benefit of the client. Third parties cannot derive any rights to such.

## 16 Applicable law

16.1 All disputes associated with and/or arising out of these general terms and conditions, and/or assignments or agreements which these general terms and conditions have been declared applicable to, shall be governed by Dutch law.

16.2 All disputes shall in the first instance be put before the District Court of Central Netherlands, Utrecht location.

## 17 Dispute settlement rules

17.1 In a situation where a dispute arises between the parties in connection with the assignment, the parties shall try to settle this dispute through mutual consultation.

17.2 If a settlement cannot be reached, the dispute can be submitted to an independent adviser/mediator to be appointed through mutual consultation.

17.3 If a settlement still cannot be reached, the dispute shall be put before the competent judicial authority.

17.4 A dispute as referred to in article 17.1 shall be said to exist if one of the parties notifies the other party about such in a registered letter.



## 18 Insurance

- 18.1 TwynstraGudde has taken out insurance in a suitable and customary way for the following risks:
- A. Professional liability (risks ensuing from professional errors).
  - B. Commercial liability (such to include liability for personal injury or damage to property of the client).

## 19 Bribery and conflicts of interest

- 19.1 The parties shall not offer to each other, nor to third parties, nor demand, accept, or receive promises from each other or from third parties in relation to themselves or any other party, any gift, reward, compensation, or benefit of any nature whatsoever which can be construed as an illegal practice.
- 19.2 TwynstraGudde shall ensure that there will not be any conflicts of interest, of any form whatsoever, during the negotiations about the conclusion of the agreement or during the execution of the assignment.
- 19.3 In the event of a possible, or the appearance of, a conflict of interests and/or conflicting interests, this shall be notified and discussed between the parties before the conclusion of the agreement.
- 19.4 TwynstraGudde has to verify for itself that the interests of the client have thus been served, and that its own independence will still be assured.

## 20 References in external communications of TwynstraGudde

- 20.1 TwynstraGudde will not make any implicit or explicit statement about the details of clients unless permission has been given for such by the client.

- 20.2 TwynstraGudde may use information about the assignment that has been carried out as a reference in external communications, unless the client has notified an objection to such.

## 21 Obligations under the General Data Protection Regulation (GDPR)

- 21.1 The parties are obligated to provide each other with the necessary cooperation so that the other party is able to fulfil its obligations under the General Data Protection Regulation (GDPR). This means, amongst other things, that the client shall inform TwynstraGudde in a timely and proper fashion if any data processing in connection with an agreement falls under the scope of the GDPR, and/or if this data processing has been reported to the Dutch Data Protection Authority or to the data protection officer of the client. Insofar as the obligation referred to in this article entails any activities and/or costs for TwynstraGudde, the client shall pay for such.
- 21.2 The client shall ensure that the data controller in the sense of the GDPR shall comply with all the obligations under the GDPR. The client shall indemnify TwynstraGudde against all claims of third parties that may be instituted against TwynstraGudde on the grounds of the GDPR.

## 22 Final provision

- 22.1 These general terms and conditions have been filed with the Chamber of Commerce.