

# General Terms and Conditions

March 9 2018

Version AV090318/IT-E

Operator Groep Delft B.V.

# Table of Contents

<b>Definitions</b>	<b>4</b>
<b>Applicability</b>	<b>4</b>
<b>Amendments with reference to the previous version</b>	<b>4</b>
Article 1 <b>Precedence</b>	5
Article 2 <b>Price and payment</b>	5
Article 3 <b>Security and confidentiality</b>	5
Article 4 <b>Title of retention</b>	6
Article 5 <b>Rights of intellectual property and waivers</b>	6
Article 6 <b>Obligations to cooperate</b>	7
Article 7 <b>Termination</b>	7
Article 9 <b>Force majeure</b>	9
Article 10 <b>Non-compete clause</b>	9
Article 11 <b>Null and void provisions</b>	9
Article 12 <b>Applicable law and disputes</b>	10
Article 13 <b>Execution of services</b>	10
Article 14 <b>Changes and additional work</b>	10
<b>Additional Terms and Conditions with regard to Secondment Services</b>	<b>12</b>
Article 15 <b>Secondment Services</b>	12
Article 16 <b>Waiver of duties and taxes</b>	13

## Headquarters Delft

Rotterdamseweg 380  
2629 HG Delft  
Tel. 088 650 0000

## Location Eindhoven

Jan van Lieshoutstraat 23  
5611 EE Eindhoven  
Tel. 040 246 4055

## Location Amsterdam

Prinsengracht 739-741  
1017 JX Amsterdam  
Tel. 020 428 7126

## Location Utrecht

Euclideslaan 151-191  
3584 BS Utrecht  
Tel. 030 239 2090

## Location Enschede

Nijverheidstraat 15  
7511 JM Enschede  
Tel. 053 432 7750

## Definitions

- **Agreement:** a written Agreement between OGD and Customer regarding the delivery of goods and/or services by OGD.
- **Customer:** the Party with whom OGD entered into an Agreement to which these General Terms and Conditions apply.
- **General Terms and Conditions:** these General Terms and Conditions dated 16 March 2018 version AV160318/IT.
- **IP:** Intellectual Property
- **OGD:** Operator Groep Delft B.V.
- **OGD ict-diensten:** Operator Groep Delft B.V.
- **Party:** OGD or Customer.
- **Parties:** Customer and OGD.
- **Secondment Services:** deployment of an OGD employee on the basis of an Agreement whereby invoicing takes place by multiplying the amount of hours worked with the applicable hourly rate and the work is carried out for the purpose of and under the direction of Customer.
- **Time and Materials:** multiplying the amount of working hours with the applicable hourly rate and/or the sum of the materials used.

## Applicability

These General Terms and Conditions apply to all offers and contracts pursuant to which OGD delivers goods and/or provides services to Customer. All offers, made orally or in writing, are revocable until an offer has been accepted in writing by authorized persons. Deviations from and additions to these General Terms and Conditions are only valid if OGD has expressly agreed to this in writing.

## Amendments with reference to the previous version

Previous version **Algemene Verkoopvoorwaarden** 9 maart 2018  
Versie AV090318/IT Operator Groep Delft B.V.

This is a complete revision.

## Article 1 Precedence

- 1.1 If and inasmuch as any contradictions exist between provisions of the Agreement and these General Terms and Conditions, the provisions in the Agreement will take precedence.
- 1.2 These General Terms and Conditions are a translation of the document Algemene Voorwaarden versie 090318/IT of OGD. If there is any difference between the meaning of a provision and/or an article between this document and the document Algemene Voorwaarden versie 090318/IT, the meaning of the provision and/or article from the document Algemene Voorwaarden versie 090318/IT prevails.

## Article 2 Price and payment

- 2.1 All prices are exclusive of turnover tax (VAT) and other levies imposed by the government.
- 2.2 All invoices will be paid by Customer based on the payment conditions as stated on the invoice. Payment will be made within 21 days from the date of invoice.
- 2.3 If the invoice is not paid by Customer in accordance with article 2.2, OGD is entitled to charge Customer an additional interest of 1,5 percent per month.
- 2.4 If there is a reasonable concern with regard to the creditworthiness of Customer, OGD is entitled to suspend the execution of the Agreement.
- 2.5 OGD is entitled to increase its price rates annually with the percentage with which the CBS- index figure M-N Zakelijke dienstverlening, Cao-lonen per hour including special benefits, Cao-sector particuliere bedrijven in the month of October of the current calendar year is adjusted relative to the month October of the previous year (the yearly mutation rate of the month October). The indexed rates apply from the first of January of the new calendar year.
- 2.6 Article 2.5 cannot be applied retroactively.

## Article 3 Security and confidentiality

- 3.1 Customer and OGD take all reasonable precautions to ensure that all information, of which the receiving Party knows or should reasonably know is confidential, received from the other Party is kept secret.
- 3.2 Customer is responsible for the security of its data and systems.

## Article 4 Title of retention

- 4.1 All items delivered to Customer shall remain the property of OGD until all amounts owed by Customer to OGD under the contract concluded between the Parties have been paid to OGD in full.

## Article 5 Rights of intellectual property and waivers

- 5.1 With regard to IP, the following applies:
- In principle, each Party or its licensor will retain the IP rights that already existed before the Agreement.
  - In a situation whereby OGD is the right holder, Customer will obtain the rights of use provided that OGD and Customer have expressly agreed upon in writing.
  - In a situation whereby software is being developed, such as (web) apps or applications and existing IP of which OGD is the rights holder are being used, the newly created IP shall always belong to OGD. In such a situation, Customer will obtain the rights of use provided that OGD and Customer have expressly agreed upon in writing.
  - Customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to Products, or have any such indication removed or changed.
  - Any IP rights created through usage of Secondment Services shall belong to Customer.

If there is any conflict between the provisions above, the order of the bullets determines which provision takes precedence (the former above the latter).

- 5.2 OGD indemnifies Customer against any claim of a third party based on the allegation that software developed by OGD itself infringe an intellectual property right of that third party, subject to the condition that Customer immediately informs the supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to OGD. This is without prejudice to Article 9. OGD is entitled to replace or make any modification to the products if deemed appropriate in case any legal action has been taken or if such a possibility exists. This indemnity expires if Customer makes any modification by itself or through any third parties.

## Article 6 Obligations to cooperate

- 6.1 Considering the necessity for Customer to provide cooperation as required for the execution of the Agreement, Customer shall always provide, in a timely manner, all useful and necessary data and information.
- 6.2 Customer is responsible for the correct use of products and services delivered by OGD.
- 6.3 If Parties have agreed that Customer will provide equipment, materials or data on information carriers, this will meet the necessary specifications to perform tasks. Customer guarantees that making equipment, software, materials or data files available does not infringe any rights of third parties and Customer indemnifies OGD against any claim of a third party based on the allegation that such making available or usage infringes a right of that third party.
- 6.4 In case the necessary information has not been provided or has not been provided in a timely manner or is not in accordance with the Agreements made available to OGD or if Customer fails to fulfil its obligations in any other way, OGD is entitled to suspend the execution of Agreement and OGD holds the right to charge additional costs in accordance with the usual rates of OGD.
- 6.5 Customer is responsible for facilitating a safe and Arboconforme workplace at locations of Customer or at locations where OGD performs services for Customer. This provision is not applicable for locations of OGD itself.

## Article 7 Termination

- 7.1 The Agreement may – unless Parties have agreed otherwise – only be terminated if the other Party is attributable failing to fulfil essential obligations under the Agreement after the other Party has without delay provided the Party in default a written notice of default, providing as many details as possible and setting a reasonable term to remedy the default with its obligations. Notwithstanding the above the Party may only terminate the Agreement after the set reasonable term to remedy the default has expired and the default has not been remedied. Termination of the Agreement shall take place by issuing a written notice to the other Party.
- 7.2 If Customer at the time of termination, has already received goods or services in the performance of the Agreement, partial termination of an Agreement is only possible and merely for that part that has not been performed yet. Any amount invoiced by OGD prior to termination in connection with services that have already been performed or goods that have already been delivered in the performance of the Agreement will remain payable in full and will become due with immediate effect.

## Article 7 Termination

- 7.3** In deviation from Article 8.1, a Party may rescind the Agreement in writing, with immediate effect and without judicial intervention, if the other Party;
- is declared bankrupt;
  - is granted suspension of payment, whether or not provisional;
  - is otherwise unable to fulfil its payment obligations or the company is liquidated or dissolved, other than for the restructuring or a merger of companies.

The Party that rescinds the Agreement based on this article is never obliged to pay any damages.

## Article 8 Liability

- 8.1** If a Party due to an attributable failure does not fulfil its obligations under the Agreement, this Party will compensate for any direct damage which may be suffered by the other Party. Any liability for Parties for any other form of damage is excluded, including additional damage in whatever form possible, such as compensation of indirect damage, consequential damages or lost profit.
- 8.2** The liability for direct damage as mentioned in the first paragraph of this article is limited to an amount of one time the annual contract value (turnover from this contract per calendar year) per occurrence, with a maximum of three times the annual contract value (turnover from this contract per calendar year), per calendar year. Notwithstanding the foregoing, the total liability of OGD based on this article will however never exceed the amount of € 250,000 per calendar year.

Direct damage means:

- damage to materials (such as material damage, defects or non-functioning, decreased trustworthiness or malfunctions, including software, databases, documentation and information.
- costs of workaround solutions, such as diverting to other computer systems and costs, including personnel costs and the forced longer use of old systems and related facilities.
- reasonable costs made to prevent or limit direct damage
- reasonable costs made to determine the cause of the damage, the liability, the direct damage and the method of recovery.

## Article 8 Liability

- 8.3** The limitations on liability as mentioned in paragraph two of this article lapses if:
- in the event of claims by third parties for compensation of damages due to death or bodily injury;
  - if there is intent or gross negligence by the Party giving rise to the damage;
  - in the event a Party has to indemnify the other Party, as referred to in article 5.2.

## Article 9 Force majeure

- 9.1** None of the Parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure.

## Article 10 Non-compete clause

- 10.1** Parties will not hire nor make an attempt to hire each other's employees if those employees are involved in the execution of the Agreement and Parties will also not hire nor make an attempt to do so for at least six months after the involvement of such an employee in the execution of the Agreement has ceased. This stipulation expires when bankruptcy is declared or if suspension of payment is granted to one of the Parties.
- 10.2** In the event of violation of article 10.1, the breaching Party will pay an agreed amount of € 45.000,- (forty-five thousand euro's) in compensation to the other Party.

## Article 11 Null and void provisions

- 11.1** If any provision of these General Terms and Conditions is null and void or is voided, the other provision of these General Terms and Conditions shall remain fully in effect and OGD and Customer shall in this case consult each other for the purpose of creating a new provision to replace the null and void or voided provision, while the purpose and intention of the null and void or voided provision is taken into account as much as possible.

## Article 12 **Applicable law and disputes**

- 12.1 The Agreement between OGD and Customer is governed by Dutch law.
- 12.2 Disputes that arise by reason of the contract concluded between OGD and Customer and/or by reason of any further contracts deriving from it shall be resolved by the competent court in the Hague, or at the discretion of OGD by the competent court where Customer is domiciled.

## Article 13 **Execution of services**

- 13.1 OGD shall perform its services with care, if applicable in accordance with the Agreements and procedures agreed in writing with Customer.
- 13.2 If it has been agreed that the service will be performed in phases, OGD may postpone the commencement of activities belonging to the next phase until Customer has agreed to the previous phase in writing.
- 13.3 All (delivery) terms mentioned by OGD are determined to the best of knowledge based on information known to OGD and will be taken into account as much as possible. OGD is not bound by the (delivery) terms that cannot be complied with due to circumstances that have occurred after concluding the Agreement. In case a delivery term is at risk of being exceeded, OGD and Customer will consult each other as soon as possible regarding the consequences. Excessively exceeding delivery terms may constitute a ground to terminate the Agreement, in accordance with Articles 7 and 8.

## Article 14 **Changes and additional work**

- 14.1 Customer accepts that, if the Parties have agreed that the services to be delivered will be extended or adjusted, this will probably affect the amount of time needed to deliver the service. OGD shall inform Customer as soon as possible if this is so.

**Additional Terms and Conditions**  
with regard to Secondment Services



# Additional Terms and Conditions with regard to Secondment Services

Article 15 and 16 are additionally applicable if Secondment Services are being used.

## Article 15 Secondment Services

- 15.1 An employee will be deployed by OGD according to the principle of Time and Materials. The employee will be working a pre-determined amount of hours per week in a pre-described position. The working hours of the employee shall be determined through consultation between Customer and OGD.
- 15.2 When Secondment Services are being used, the hourly billing rate - based on the chart below - will be calculated by multiplying the basic hourly rate with the applicable percentage (calculation: percentage multiplied by the basic hourly rate).

Starting time	End time	Duration work	Weekdays	Saturday and Sunday
06:00	24:00	Until 9 working hours	100%	150%
		From 9 until 12 working hours	125%	150%
		From 12 working hours	150%	150%
00:00	06:00		200%	200%

Official Dutch public holidays will count as a Sunday. Working hours that are multiplied by more than 100 % will be mentioned separately on the timesheet.

- 15.3 With regard to Secondment Services, OGD is entitled to alter the hourly rate of employees every six months. An adjustment is only possible in a situation where there is a demonstrable growth in the knowledge and skills of the concerned employee.
- 15.4 If Parties fail to reach a consensus regarding the application of Article 15.3, OGD is allowed to replace an employee after nine months with another employee who meets the initially requested profile
- 15.5 Article 15.4 cannot be applied retroactively.
- 15.6 OGD shall replace an employee in the event of illness or absence where reasonably possible with another employee of OGD with a similar profile.

- 15.7 If OGD within its circle of employees is unable to find a skilled employee willing and available for replacement, OGD shall, for the duration of the illness or absence of an employee, be relieved from its obligation to provide for another employee and therefore cannot be held responsible for any damage caused to Customer and/or her relations resulting from the absence of an employee.
- 15.8 OGD is not responsible for damage and loss caused by an employee - whether or not this has occurred during the performance of its tasks - to Customer or third parties, except in the case of intent or gross negligence.
- 15.9 An employee cannot make any commitments for OGD or for Customer. OGD shall not be responsible for any commitments that the employee has nevertheless entered into or that arose in any other manner whatsoever for the employee himself, Customer or a third party, including employees working for Customer.
- 15.10 Unless explicitly agreed otherwise in writing, Customer must make available to the deployed employee all (business) resources necessary for the performance of the tasks.
- 15.11 Customer will commit itself to cooperate periodically with the evaluation of employees assigned by OGD. OGD shall take the initiative of such an evaluation.

## Article 16 Waiver of duties and taxes

- 16.1 OGD indemnifies Customer from any levy on the grounds of wage tax and social security contributions insofar as it holds connection with Secondment Services and are in principal for the account of OGD. Before the start of the next calendar year, at least on the earliest possible date, OGD will, at the request of Customer, provide a statement stating that in the previous calendar year the aforementioned payment obligations have been fulfilled by OGD.

