

# General Terms and Conditions of De Breed & Partners B.V.

## Clause 1 General

- 1.1 In these General Terms and Conditions the following definitions apply:
- with regard to (the) offer(s) and/or quotation(s) to be issued by De Breed & Partners B.V. (further herein referred to as 'De Breed') for providing services and performing assignments
- Client: the natural person or legal entity who has given De Breed an assignment to carry out activities.
- Activities: all Activities commissioned by the Client or which are carried out by De Breed in connection with the agreement with the Client.
- Innovation Financing: any contribution provided by third parties for a project, product, service or process. This contribution may consist of a subsidy, a monetary contribution, tax allowance or deduction, a credit/financing or non-financial support.
- "No Cure No Pay": the Activities based on "No Cure No Pay" means that the payment obligation of the Client arises at the moment of "Cure". "Cure" is the moment of the first written granting of Innovation Financing whether or not conditional, such as a research and development ('S&O') statement, an RDA ruling, a settlement agreement or a document of similar purport.
- 1.2. The subsidy concept and the subsidy provisions in the Dutch General Administrative Law Act (*Algemene Wet Bestuursrecht*) do not apply to the relationship between De Breed and the Client, but exclusively the concept of Innovation Financing as defined herein.

## Clause 2 Applicability

- 2.1 These General Terms and Conditions apply to all offers and order confirmations to as well as agreements with De Breed as well as to all other legal relationships with De Breed, even if there is no specific reference to these General Terms and Conditions.
- 2.2 These General Terms and Conditions exclude general or specific conditions or stipulations of the Client unless otherwise agreed in writing.
- 2.3 These conditions apply also to anybody who works for De Breed (as a director or as an employee), anybody engaged by De Breed and anybody for whose acts or omissions De Breed is or could be liable.

## Clause 3 Offers

- 3.1 All offers made by De Breed are without obligation, which means that after acceptance of the offer De Breed will have the option to revoke the offer forthwith.
- 3.2 Any information and communications about expected results and/or performances provided by De Breed in the offer are non-binding on De Breed.
- 3.3 Offers are made by De Breed to the best of its knowledge and with due care but De Breed does not accept any liability for faulty information or for expected results or performances that have not materialised.

## Clause 4 Commencement and term of the agreement

- 4.1 The agreement is formed and commences at the moment that the agreement or offer signed by the Client has been received in return by De Breed and has been confirmed in writing by De Breed or from the moment that De Breed commences its Activities on the basis of the Client's assignment.
- 4.2 Assignments are exclusively accepted by De Breed. This also applies if it is the explicit or tacit intention of the Client that the assignment is to be carried out by a certain person. The applicability of Sections 7:404 of the Dutch Civil Code ('BW'), 7:407 BW and 7:409 BW are explicitly excluded herein.
- 4.3 In the event of Activities under the Dutch Research and Development Promotion Act ('WBSO') the agreement will be entered into with De Breed for an initial period of 2 years and will be tacitly extended each time by one year unless a written notice of termination has been submitted 3 months before expiry. This agreement is exclusively with De Breed if it relates to the provision of services for the WBSO and related Innovation Financing such as the Research & Development Deduction (RDA) as part of the Dutch Research and Development Promotion Act (*Wet Bevordering Speur- en Ontwikkelingswerk: WBSO*). Different terms of the agreement are possible if this has been agreed in writing between De Breed and the Client.

- 4.4 During the term of the agreement the Client will owe the fee for the Activities arising from the agreement. With regard to the WBSO or related Innovation Financing, a fee will also be payable to De Breed during the term of the agreement if this financing has been requested and enjoyed without De Breed having been engaged for this. Only in the case that De Breed explicitly advised negatively against the application for a subsidy under the WBSO and related Innovation Financing or has otherwise expressly refrained from Activities in this connection, will the client not owe a fee for the Innovation Financing otherwise applied for.

## Clause 5 Cooperation of the Client

- 5.1 The Client must provide all the cooperation that De Breed considers necessary in order to be able to carry out the assigned Activities properly. Within good time and at the latest within 10 working days after a request for information the Client must provide De Breed with all the administrative, technical and other information which De Breed considers it might need in order to carry out the agreed Activities. Where urgent action with regard to the assigned Activities is required, De Breed will be entitled to request information from the Client within a reasonable shorter period. The Client warrants the accuracy and completeness of the information it provides.
- 5.2 De Breed is entitled to suspend the performance of the Activities until the moment the Client has fulfilled the obligation set out in Clause 5.1, notwithstanding the right of De Breed to a fee.
- 5.3 If after repeated requests by De Breed the Client has not or not within good time provided information or has provided incorrect information so that De Breed is not reasonably able to carry out its Activities stipulated in the assignment, De Breed will be entitled to charge the Client for the time spent by De Breed on the Activities at an indexed hourly rate of €290 plus any costs of third parties engaged. If it becomes apparent that the Innovation Financing can still be obtained, the payment for the time spent will be considered as an advance payment on the fee and offset against it in the final settlement.

## Clause 6 Performance of the assignment

- 6.1 De Breed will determine the way in which the Activities are carried out and will, if possible, take into account the directions of the Client for the performance. Unless it has been agreed with the Client that the Activities are to be carried out by a certain person, De Breed will be free to determine which of its directors or members of staff will be engaged in carrying out the Activities.
- 6.2 De Breed is entitled to have certain Activities carried out by a third party if this is necessary or desirable for the performance. If this would mean extra costs for the Client, the Client will be asked for his consent to this end.

## Clause 7 Secrecy

- 7.1 De Breed is obliged to observe secrecy towards third parties not involved in the performance of the Activities. This obligation to observe secrecy does not cover third parties to whom De Breed must provide information in connection with the performance of the Activities. This secrecy only relates to all information of a confidential nature which has been provided by the Client to De Breed and must be observed by De Breed during a period of 7 years from the moment of information transfer. The secrecy obligation is not applicable insofar as legal rules impose a duty of disclosure on De Breed.

## Clause 8 Force majeure

- 8.1 If De Breed is not, not within good time or not properly able to fulfil its obligations under the agreement and/or the assignment as a result of a cause for which it is not to blame, including - but not limited to - stagnation in the ordinary course of affairs at De Breed, these obligations will be suspended until the moment that De Breed is again able to fulfil them in the agreed way without De Breed being obliged to pay compensation to the Client.
- 8.2 If due to force majeure the performance of the Activities is delayed by De Breed for more than 60 days, De Breed as well as the Client will be entitled to dissolve the agreement with immediate effect.

## Clause 9 Intellectual property

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9.1 The intellectual property rights such as - but not limited to - copyrights of the data, proposals, advice and/or reports issued and other intellectual products provided or made available by De Breed will at all times remain the property of De Breed and/or the suppliers of De Breed, unless otherwise agreed in writing.

9.2 Without the prior written consent of De Breed the Client is not allowed to publish and duplicate them or to make them available to third parties. This provision remains also effective after dissolution of the agreement between De Breed and the Client.

## **Clause 10 Fee**

10.1 De Breed will invoice the Activities either on the basis of time spent, a fixed price, "no Cure No Pay" or a combination of these.

10.2 On the basis of time spent, the actual time spent will be multiplied by the agreed rates (hours x rate) regardless of the outcome of the assignment given by the Client.

10.3 If a fixed price is agreed, De Breed cannot be held to it, if this fixed price has been agreed on the basis of incorrect and/or incomplete information from the Client. De Breed will then be entitled to charge the Client for the extra Activities which appear necessary at the usual hourly rates of De Breed.

10.4 With "No Cure No Pay" the agreed percentage is used for the calculation of the fee owed by the Client at the time of a "Cure".

10.5 All prices are exclusive of value added tax (VAT) and other levies imposed by the authorities or otherwise.

10.6 Disbursements of third parties and costs of third parties engaged are not included in De Breed's rates and the Client is charged separately for them unless explicitly stated otherwise.

10.7 De Breed is entitled to adjust the specified hourly rates every year on the basis of the price index as published by Statistics Netherlands ('CBS').

## **Clause 11 Payment**

11.1 Payment of the invoice amount must take place by the Client without any change to the invoice amount and without suspension or setoff, within 30 days after the invoice date by means of payment into a bank account indicated by De Breed.

11.2 For Activities based on "No Cure No Pay" the payment conditions as included in the agreement will apply.

11.3 The Client will be in default by operation of law without any demand or notice of default being required, at the moment that the payment does not take place within the stipulated payment period. In the event of a default the Client will be obliged to pay the statutory interest as meant in Section 6:119a BW.

11.4 All (extra)judicial costs in connection with the collection by De Breed of the invoice amount including collection costs according to the applicable hourly rate - with a minimum of 15% of the amount to be collected and at least €120 - will be at the expense of the Client. The judicial costs are not limited to costs of the proceedings to be reimbursed but will be fully at the expense of the Client, if he is found to be (predominantly) at fault.

11.5 The Client is obliged when requested to provide sufficient security for the fulfilment of his payment obligations to De Breed. If a furnished security has become insufficient, the Client will be obliged to supplement or replace the security when requested.

## **Clause 12 Complaints**

12.1 A complaint with regard to the performance(s) carried out and/or the invoice amount must be notified to De Breed in writing within 30 days after the despatch date of the documents or information to which the Client's complaint relates.

12.2 The Client shall not invoke a defect in the performance or the inaccuracy of the invoice amount if a complaint has not been submitted within the period specified in paragraph 1.

12.3 Any rights of action arising from the complaints by the Client will lapse after the period referred to in paragraph 1 has expired.

12.4 A complaint as referred to in paragraph 1 does not suspend the payment obligation of the Client.

## **Clause 13 Liability**

13.1 If De Breed (including its directors, employees and auxiliaries engaged by De Breed in performing the Activities) is held liable, the liability will at all times be limited to not more than the amount equal to the Client's fee received by De Breed in the most recent calendar year. De Breed will never be liable for any consequential or indirect loss of any nature whatsoever, any immaterial damage and trading loss or environmental damage.

13.2 The Client shall indemnify De Breed and its auxiliaries against claims by third parties alleging to have suffered losses by or in connection with Activities performed by De Breed for the Client as well as for the costs of De Breed in connection with putting up a defence against such claims.

13.3 The performance of the assignment given and the Activities carried out will be exclusively for the benefit of the Client. Third parties cannot derive any rights from them.

13.4 Claims for payment of compensation will lapse one year after the day on which the Client became aware of the damage and a possible liability of De Breed for that damage.

13.5 The Client is fully liable for any fines, damage or reduction of the Innovation Financing arising from the Client's negligence and/or the Client acting contrary to the law or as a result of giving an incorrect and incomplete picture to De Breed and/or to the Innovation Financing authority with regard to the activities, revenues and or costs which the Client has provided to De Breed as information and/or basis for granting the respective Innovation Financing.

## **Clause 14 Dissolution**

14.1 The agreement may be terminated by giving notice of termination with due observance of the provisions in Clause 4.

14.2 The agreement may be terminated with immediate effect without any judicial intervention in the event of Force Majeure according to Clause 8 or if there has been an application for bankruptcy or submission of an application for a moratorium of the Client or - in the event of the Client being a natural person - an application for a debt rescheduling. All claims which De Breed has on the Client will then immediately become fully due and payable.

## **Clause 15 Miscellaneous**

15.1 In the event of a discrepancy between these General Terms and Conditions and the agreement(s), order confirmations and offers in which these General Terms and Conditions have been declared applicable, the provisions in this/these agreement(s), order confirmations and offers between De Breed and the Client will prevail in the indicated order.

## **Clause 16 Applicable law and disputes**

16.1 Dutch law shall be applicable to all agreements between the Client and De Breed.

16.2 All disputes which might arise between the parties will exclusively be settled by the competent court in Breda.