



RCEC B.V.

# General Terms and Conditions

*September 1, 2019  
version 1*

### **Article 1: Scope of application**

1. These RCEC B.V. General Terms and Conditions apply to all quotations, confirmations of assignment and agreements of RCEC B.V., Regentesselaan 5, 7316 AA Apeldoorn, The Netherlands, listed in the Commercial Register under number 74769871.
2. In all of RCEC's terms and conditions, the client is defined as the natural or legal person who has given the assignment to RCEC B.V. to supply products and/or services, hereinafter referred to as "the assignment", or who has concluded an agreement with RCEC B.V. The provisions of these RCEC B.V. General Terms and Conditions concerning the obligations and liability of RCEC B.V. also apply to any third parties deployed by or on behalf of RCEC B.V. in the implementation of the agreement with the client. In shielding themselves from liability in respect of the client, such third parties may directly invoke these terms and conditions. Limitations of liability relating to sums of money apply to RCEC B.V.'s liability in its entirety, together with that of any third parties engaged by RCEC B.V.

### **Article 2: General**

1. All offers and prices are without obligation, unless expressly indicated otherwise in the quotation. The agreement between the client and RCEC B.V. enters into force when RCEC B.V. has confirmed the client's assignment to the client in writing, or when RCEC B.V. has received back one copy of the agreement, signed by both parties. RCEC B.V. is not bound by verbal undertakings by and agreements with subordinates, except if and insofar as these have been confirmed by RCEC B.V. in writing.
2. In no circumstances can any purchasing conditions or other conditions on the part of the client be applied to the agreement.
3. If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions will remain fully in effect and RCEC B.V. and the client will consult with each other to agree new provisions to replace the void or voided ones, whereby the purpose and meaning of the void or voided provisions will as much as possible be taken into account.

### **Article 3: Price, invoicing and payment**

1. The amount payable by the client to RCEC B.V. is determined in the confirmation of the assignment or the agreement between the client and RCEC B.V. to which these general terms and conditions apply.
2. All prices and rates are excluding turnover tax (VAT) and other levies imposed by the government, unless otherwise stated. All prices and rates are always in euros, unless otherwise stated.
3. Invoicing by RCEC B.V. to the client takes place prior to delivery by RCEC B.V., or on by RCEC B.V.'s partial or full delivery, unless otherwise agreed.
4. Payment must take place within 15 days of the invoice date, unless otherwise agreed.
5. From the moment that the client exceeds the term of payment, he owes the statutory interest rate for every month or part thereof. Moreover, all extrajudicial and judicial costs related to the collection of any sums owed by the client are chargeable to the client. The extrajudicial costs may be set at 15% of the amount owed by the client, with a minimum of € 75, without prejudicing RCEC B.V.'s right – making use (or not, as the case may be) of the possibilities offered to it under the law in this regard – to claim full payment of costs, damage and/or fines from the client.

### **Article 4: Confidential information**

The parties undertake to guarantee confidentiality in respect of each other with regard to all of the data of the other party with which they and/or their employees become acquainted in the implementation of the agreement(s) and concerning which they have indicated, or concerning which the other party is or should be aware, that confidentiality is required.

### **Article 5: Liability**

1. RCEC B.V. only accepts liability in the cases referred to in this article.
2. RCEC B.V. has the right to engage third parties for the implementation of the assignment. RCEC B.V. is not liable for damage on the part of the client as a consequence of the acts or omissions of third parties who carry out work at their own risk and expense and who are engaged by RCEC B.V. in the implementation of the agreement. The assignment has the character of an obligation to use best endeavours. This means that the client may expect from RCEC B.V. that its service provision is of good quality, but that the use of RCEC B.V.'s recommendations is at the

client's own risk and expense. Subject to the provisions of paragraph 4 of this article, in the case of attributable failure to perform the agreement, RCEC B.V. is only liable for direct damage. This refers exclusively to:

- the reasonable costs of establishing the cause and extent of the damage, insofar as this finding relates to damage as defined in the agreement;
- any reasonable costs incurred in responding to RCEC B.V.'s defective performance of the agreement, insofar as these may be attributed to RCEC B.V.;
- reasonable costs, incurred in the prevention or limitation of damage, insofar as the client demonstrates that these costs have led to the limitation of damage as defined in the agreement.

Any liability on the part of RCEC B.V. for any other form of damage is excluded, including additional compensation in any form whatsoever, compensation for indirect loss, consequential damage or damage due to lost profit, lost savings, and loss due to business interruption.

3. In addition, RCEC B.V. is under no circumstances liable for loss due to delay, loss suffered due to loss of data, loss suffered due to exceeding of delivery periods as a consequence of altered circumstances, loss as a consequence of the provision of insufficient cooperation, information or materials by the client and loss due to information or recommendations provided by RCEC B.V. of which the content is not expressly part of a written agreement. RCEC B.V. is under no circumstances liable if the client, or a third party acting on its behalf, makes changes to the products and/or services supplied by RCEC B.V. This includes use for purposes other than those for which the products or services have been supplied.
4. The compensation payable by RCEC B.V. for attributable failure to perform an agreement will under no circumstances amount to more than the total of the sums invoiced on the basis of that agreement (excluding VAT) and the sums yet to be invoiced (excluding VAT) for products or services already supplied, which RCEC B.V. had already been entitled to invoice on the basis of that agreement. Furthermore, the compensation due to attributable breaches or default on the part of RCEC B.V. will under no circumstances amount to more than the price (excluding VAT) stipulated in the agreement concerned, for the performances of RCEC B.V. in the period of three (3) months prior to the date on which RCEC B.V. was in default. Any credits requested by the client and granted by RCEC B.V. are deducted from the sums and prices referred to in this paragraph 4.
5. In case of intent or gross negligence on the part of RCEC B.V., its employees or any subordinates for whom RCEC B.V. can be held liable by law, RCEC B.V. is only liable for the compensation of loss through death or bodily injury. In such cases, the compensation will under no circumstances amount to more than the sum insured by RCEC B.V. per damage-causing event, with a series of connected events counting as one event.
6. RCEC B.V.'s liability for damage arising from a wrongful act which occurs in the context of the implementation of the agreement is expressly excluded. If and insofar as this can successfully be relied on, the compensation will under no circumstances amount to more per event – with a series of connected events counting as one event – than the price (excluding VAT) stipulated in the agreement between the parties in the context of which the event has taken place, nor ever be more than the sum insured by RCEC B.V. A condition for the existence of any right to compensation is that, following the occurrence of the damage, the client reports this in writing to RCEC B.V. as soon as is reasonably possible.
7. The client indemnifies RCEC B.V. for all damage that RCEC B.V. may suffer as a consequence of third-party claims relating to the products and/or services supplied by RCEC B.V., including but not limited to:
  - the claims of third parties, including employees of the client, who suffer damage as a consequence of wrongful acts on the part of the employees of third parties provided to the client by RCEC B.V. and who work under RCEC B.V.'s supervision or according to its instructions;
  - the claims of third parties, including employees of RCEC B.V., who suffer damage in relation to the implementation of the agreement as a consequence of any acts or omissions of the client or of unsafe situations in its operations;
  - the claims of third parties, who suffer damage as a consequence of any defect in products or services supplied by RCEC B.V., which are used, altered or supplied on by the client with the addition of or in conjunction with client or third-party products and/or services, unless the client proves that the defect is not the consequence of such use, alteration or supplying on as is referred to here.
8. Subject to the provisions of paragraphs 1 up to and including 8 of this article, insofar as any liability can be established, any liability of the part of RCEC B.V. is to be limited in the case in question to the amount to be paid

under RCEC B.V.'s business liability insurance, should this sum be higher than the maximum amount for which RCEC B.V. is liable on the grounds of paragraph 3 of this article.

#### **Article 6: Intellectual and industrial property**

All intellectual and industrial property rights to all software, hardware, training materials or other materials such as analyses, designs, documentation, reports, quotations, as well as any material preparatory thereto, developed or made available pursuant to the assignment or agreement are exclusively vested in RCEC B.V., its suppliers or its licensors. In no way may the client base claims hereupon. The client acquires only the rights of use and entitlements expressly granted to it in these terms and conditions or elsewhere. The client will not reproduce or copy the software and/or other materials specified.

#### **Article 7: Obligations on the part of the client**

1. The client will ensure that sufficient facilities and support by client's employees are provided to RCEC B.V. in the implementation of the assignment. The client will always provide RCEC B.V. in a timely manner with all of the useful and necessary data or information required for the proper implementation of the agreement, and will cooperate fully in doing so.
2. If data which is necessary for the implementation of the assignment or agreement is not made available to RCEC B.V., or not made available in a timely fashion or in accordance with what was agreed, or if the client fails to meet its obligations in any other way, RCEC B.V. in any case has the right to suspend implementation of the assignment or agreement and the right to charge the costs arising as a result thereof in accordance with its customary rates.

#### **Article 8: Terms of delivery**

1. All terms (including delivery terms) referred to by RCEC B.V. have been determined to the best of its ability on the basis of the data known to RCEC B.V. on conclusion of the assignment or agreement. The terms of delivery referred to are observed to the greatest extent possible. Merely exceeding any term referred to (including any delivery term) does not entail default on the part of RCEC B.V.
2. RCEC B.V. is not bound to terms (including delivery terms) which, due to circumstances beyond its control, occurring after the conclusion of the agreement, can no longer be met. Should any term threaten to be exceeded, RCEC B.V. and the client will enter into consultation as soon as possible, with a view to trying to find a solution that is reasonable and acceptable to both parties.

#### **Article 9: Termination of the agreement**

1. The parties are entitled to fully or partially terminate the assignment or agreement with immediate effect when the other party fails to meet any obligation ensuing from this agreement which is of such a serious nature that the party giving notice of termination cannot reasonably be expected to continue the agreement and the failing party, having been notified by registered post of its default and having also been given a reasonable period for performance, continues to fail to meet its obligation or to take appropriate measures to remedy its failure.
2. RCEC B.V. may in any case fully or partially terminate the agreement in writing with immediate effect if the client is declared bankrupt, if the client applies for or is granted a moratorium, or if the client fails in any other way to meet its payment obligations. In respect of the termination referred to in the previous sentence, RCEC B.V. is never obliged to pay any compensation.
3. If, at the moment of termination, the client has already received products and/or services in the implementation of the agreement, the client may only partially terminate the agreement, and then only that part which has not yet been implemented by RCEC B.V. Sums which RCEC B.V. has invoiced before the termination in relation to that which it has previously carried out or provided in the implementation of the agreement remain payable, and become immediately due and payable at the moment of termination.
4. The agreement must be terminated by registered letter with acknowledgement of delivery from the other party.

#### **Article 10: Other provisions**

1. Changes or additions to these RCEC B.V. General Terms and Conditions or RCEC B.V.'s other terms and conditions only apply insofar as these have been agreed in writing.
2. Dutch law applies to assignments and/or agreements between RCEC B.V. and the client.
3. Use of the products and/or services supplied by RCEC B.V. is at the client's own risk and expense.

4. Notifications given by one party to another on the basis of this agreement will be given in writing. RCEC B.V. and the client will endeavour to set out any verbal undertakings or agreements in writing to the greatest extent possible.
5. In case of force majeure, RCEC B.V.'s obligations in respect of the implementation of the assignment or agreement will be suspended for the duration of such force majeure, without either party being obliged to pay the other any compensation in this regard. Force majeure is defined as any circumstance outside RCEC B.V.'s direct influence, or that it could not reasonably have foreseen, which makes performance of the obligations of RCEC B.V. with regard to sale and/or supply temporarily or permanently impossible. Such circumstances include the continued full or partial failure of third parties from whom goods and/or services are received to meet their obligations. Should the situation of force majeure continue for longer than three (3) months from the date of its announcement to the client, both RCEC B.V. and the client are entitled to terminate the agreement in writing.
6. RCEC B.V. is entitled to transfer to third parties all rights and obligations arising from the assignment or agreement to which these general terms and conditions apply, unless otherwise agreed between RCEC B.V. and the client.

**Article 11: Applicable law; disputes**

Dutch law applies to the agreement between the client and RCEC B.V. Any dispute concerning the conclusion, explanation or implementation of the assignment or agreement to which these terms and conditions apply or of assignments/agreements which may arise therefrom, as well as every other dispute relating to these general terms and conditions or other RCEC B.V. terms and conditions, whether legal or factual, will without exception be settled by the competent court in Zutphen.

**Article 12: Concluding provision**

These RCEC B.V. General Terms and Conditions are published on the website <http://www.rcec.nl>. The most recently published version always applies, or the version that applied at the time of conclusion of the agreement, as the case may be.