

GENERAL CONDITIONS DB Asset Services; 1 November 2012

article 1. General

1. These conditions apply to each quotation and agreement between Doctor Bibber Asset Services, further named "DBAS" and client for which DBAS has declared these conditions as applicable, as far as parties do not expressly and in writing deviate from these conditions.
2. The present conditions also apply to agreements with DBAS, for which third parties need to be involved by DBAS.
3. These general conditions are also applicable to employees of DBAS and its management
4. The applicability of any purchase- or other conditions of the Client is explicitly rejected.
5. If one or more provisions of these general conditions are at any time wholly or partially invalid or void, the remains of these general terms and conditions shall still apply. DBAS and the Client will enter into consultations in that case to develop and agree on new rules to replace the invalid provisions, whereas, as much as possible, the purpose and intent of the original provisions are maintained.
6. If uncertainty exists regarding the interpretation of any provision of these general conditions, then the explanation must be found "in the spirit" of these provisions.
7. If there is a conflict between parties which is not described in these terms and conditions, then this situation should be assessed in the spirit of these general conditions.
8. If DBAS not always strictly compliances with these conditions, this does not mean that its provisions do not apply, or that DBAS in other cases would lose the right in any degree to require strict compliance with the provisions of these conditions.

article 2. Offers and quotations

1. All quotations and offers of DBAS are non-binding, unless the offer contains a deadline for acceptance. If no acceptance period is prescribed, no rights can be derived from the quotation and offer in case the product to which the quotation or offer relates is not available anymore.
2. It cannot be required from DBAS they commit themselves to their offer or quotations if the client can reasonably understand that the offer or quotation, or a part thereof, contains an obvious mistake or error.
3. The mentioned prices in an offer or quotation are excluding VAT and other government imposed levies and possible expenses to be incurred in the ambit of the agreement, including traveling-, lodging-, sending- and administration costs, unless otherwise stated.
4. If the order confirmation (whether or not on minor points) of the offer deviates from the offer mentioned in the offer or quotation, DBAS is not bound. The agreement is not settled according to this deviating order confirmation, unless otherwise stated by DBAS.
5. In case of a compound quotation DBAS is not obliged to execute part of the assignment against a corresponding part of the price. Offers and quotations shall not apply automatically to future orders.

article 3. Duration of the Contract; execution time frame, risk transfer, execution and modification agreement; increase of prices

1. The agreement between DBAS and the Client shall be concluded for an indefinite period, unless the nature of the agreement dictates otherwise or if the parties expressly agree otherwise in writing.
2. In case a time frame is agreed for performing certain work or supply of certain matters, this is never an absolute deadline. When this time frame has passed, the Client should put DBAS in default by writing. In this case a reasonable period should be offered to DBAS to still execute the scope as per the agreement.
3. DBAS shall execute the agreement to the best of its ability and in accordance with the requirements of good workmanship. This shall be pursuant to the state of the art situation at that moment.
4. DBAS has the right to have certain work done by third parties. The applicability of Article 7:404, 7:407 and 7:409 paragraph 2 of the Dutch Civil Code ("Burgelijk Wetboek" in Dutch) is explicitly excluded.
5. If by DBAS, or third parties hired by DBAS, work as per the scope of the agreement is performed at the location of the client or a location designated by the Client, the Client shall provide free of charge for those employees reasonably required facilities.
6. Delivery is ex works of DBAS. The client is obliged to accept the deliveries of the agreement at the time they are put available. If the client refuses or fails to provide information or instructions necessary for the delivery, then DBAS has the right to store the items at the expenses and risk of the Client. The risk of loss, damage or loss of value is transferred to the Client at the moment the items are put available for the Client.
7. DBAS has the right to perform the items of the agreement in different phases, and invoice the already executed part separately.
8. If the agreement is implemented in phases DBAS has the right to postpone the execution of parts belonging to a following stage until the client accepts results of the preceding stage in writing.
9. The Client shall ensure that all data which DBAS indicates is necessary, or for which the Client reasonably understands to be necessary for the execution of the agreement, shall be provided to DBAS in time. If the required data for the agreement is not supplied in time to DBAS, DBAS has the right to suspend execution of the agreement and / or charge the Client for the additional costs resulting from the delay according to the usual tariffs. The implementation period shall begin no earlier than after the Client made the data available for DBAS. DBAS is not liable for damages of any kind caused by using data, provided by the client, which is false and / or incomplete.
10. If during the execution of the agreement it appears that it is necessary for a proper implementation to amend or supplement the agreement, parties will change the agreement timely and in consultation with each other. If the nature, scope or content of the contract, whether or not at the request or direction of the Client, the competent authority's etcetera, is amended and the agreement would be subsequently qualitatively and / or quantitatively changed, this may have consequences for what was originally agreed. This may also lead to an increase or decrease of the initially agreed amount. DBAS will as much as possible quote this in advance. By amending the agreement also the initial period of implementing may change. The Client accepts the possibility of amending the agreement, including the change in price and time of execution.
11. If the agreement is amended, including a supplement, then DBAS is entitled to implement this only after it has been agreed by the competent person within DBAS and the client has agreed with specified price and other conditions for the implementation, including the time frame for the implementation. Failure or delay in instant implementation of the amended agreement does not breach of DBAS and does not entitle the Client to terminate or cancel the agreement.
12. Without being in default, DBAS may refuse a request to amend the agreement, if it could have consequences in qualitative and / or quantitative way, for example for the works or supplies which need to be done in this context.
13. If the Client is in default because of improper fulfillment of its obligations to DBAS, the Client shall be liable for all damages directly or indirectly caused on part of DBAS.
14. If DBAS and Client agree a fixed fee or price, then DBAS is nevertheless entitled to increase this fee or price without the Client being entitled to terminate the contract for that reason, if the increase of the price results from a power or obligation under the law or regulation or if it is caused by an increase in the price of raw materials, wages or on other grounds which were not reasonably foreseeable at the conclusion of the agreement.
15. If the price other than as a result of an amendment to the agreement exceeds 10% within three months after the conclusion of the contract, only the client that is entitled to appeal to Title 5 Section 3 of Book 6 Dutch Civil Code can dissolve the agreement by written notice, unless - DBAS is still willing at that time to perform the agreement based on the originally agreed;
- the price increase results from a power or a DBAS obligation under the law;
- it is stipulated that the delivery will take place more than three months after the conclusion of the agreement;
- or, in the delivery of an item, if it is stipulated that this will be done more than three months after the purchase;

article 4. Suspension, dissolution and interim termination of the agreement

1. DBAS is entitled to suspend or terminate the fulfillment of the obligations or the agreement if:
 - the Client's obligations under the agreement are not fulfilled at all, full or in time
 - after the conclusion of the agreement DBAS learns of circumstances that there is a good ground to fear that the client will not fulfill their obligations
 - if the client at the conclusion of the agreement is requested to provide security for the fulfillment of his obligations under the agreement and this security is not provided or is insufficient
 - or because of delay on the part of the client it can be no longer expected from DBAS to perform the contract against the originally agreed conditions.
2. Furthermore DBAS is entitled to terminate the agreement if circumstances arise of such a nature that fulfillment of the contract is impossible or if other circumstances arise of such a nature that unaltered maintaining of the agreement cannot reasonably be demanded of DBAS.
3. If the agreement is dissolved, the claims of DBAS on the client are immediately due and payable. If DBAS suspends fulfillment of the obligations, he shall retain his rights under the law and the agreement.
4. If DBAS is about to suspend or dissolution, he is in no way liable for damages and costs incurred in any way.
5. If the dissolution is attributable to the Client, DBAS is entitled to receive compensation for damages, including costs, thereby directly and indirectly arising.
6. If the Client fails to comply with obligations arising from the agreement, and this failure justifies termination, then DBAS is entitled to terminate the agreement with immediate effect without any obligation to pay any damages or compensation, while the Client, because of this default, is obliged to pay damages or compensation.
7. If the agreement is terminated intermediate by DBAS, DBAS will ensure, in consultation with the client, transfer of outstanding work to third parties, unless the termination is attributable to the Client. If the transfer of the work entails extra costs for DBAS, these costs will be charged to the Client. The Client shall pay such costs within the period specified unless indicated otherwise by DBAS.
8. In case of liquidation, (application of) suspension of payment or bankruptcy, or seizure - if and as far the seizure is not cancelled within three months - against the Client, or remediation of debt or any other circumstance causing the client no longer freely have its assets, DBAS is entitled to terminate direct and with immediate effect the agreement, or cancel the order or agreement, without any obligation to pay any damages or compensation. The claims of DBAS on the client are in that case immediately due and payable.
9. In case the Client cancels an issued order wholly or partially, then the work performed and the ordered and/or ready-made items, plus the potential supply costs, removal costs and delivery costs for this and the labour time reserved for execution of the agreed, will be charged integral to the Client.

article 5. Force majeure

1. DBAS is not obliged to perform any obligation to the Client if he is hindered due to a circumstance that is not due to negligence, and is neither under the law, a legal act or a general conception for the account of DBAS.
2. Force majeure refers in these terms and conditions, in addition to the provisions of the law and jurisprudence, to all external causes, unforeseen or unforeseen, which DBAS cannot influence but which causes DBAS is unable to fulfill its obligations. Strikes in the company of DBAS or third parties included. DBAS also has the right to invoke force majeure if the circumstance rendering (further) fulfillment of the contract occurs after DBAS should honour its commitment.
3. DBAS may, during the period that the Force Majeure continues suspend the obligations under the agreement. If this period lasts longer than two months, either party is entitled to terminate the agreement without any obligation to pay damages to the other party.

4. Insofar DBAS, at the time of the occurrence of force majeure, has partially fulfilled its obligations under the agreement or will be able to fulfill these, and a separate value can be awarded to the fulfilled part, or the part that will be still fulfilled, DBAS is entitled to invoice these parts separately. The Client is obliged to pay these invoices as if it were a separate agreement.

article 6. Payment and collection costs

1. Payment must be made within 14 days after the invoice date, in the way prescribed by DBAS, in the currency of the invoice, unless otherwise indicated in writing by DBAS. DBAS is entitled to periodic billing.
2. If the Client defaults in the timely payment of an invoice, the Client shall be in default by law. The Client shall owe an interest of 2% per month, unless the statutory interest is higher, in which case the statutory interest owes. The interest on the payable amount will be calculated from the time the Client is in default until the moment of payment of the full amount owed.
3. DBAS is entitled to firstly appropriate the payments made by the Client towards a reduction of the expenses, then in reduction of interest and finally in reduction of the principal amount and the current interest. DBAS may, without therefore being in breach, refuse an offer towards payment if the Client allocates another sequence for the deductions. DBAS may refuse a full settlement of the principal amount if this does not also cover the arrears and current interest as well as the expenses.
4. The client is never entitled to set off an amount owed to DBAS. Objections to the height of a bill do not suspend the payment. The Client that cannot rely on Section 6:5.3 (articles Z31 till 247 book 6 BW) is also not entitled to suspend the payment of an invoice for any other reason.
5. If the client is in default or omission in (early) complying with its obligations, all reasonable costs incurred in obtaining satisfaction out of court are on behalf of the client. The extra costs are calculated on the basis of common practice in the Dutch Collection, which is at the moment the calculation method according "Rapport Voorwerk II". If however, DBAS made higher costs for collection, which were reasonably necessary, the actual costs are recoverable. Any legal and enforcement costs incurred will also be recovered from the client. The Client shall also owe interest costs regarding the collection costs.

article 7. Retention of ownership

1. All supplies of DBAS as per the agreement, including possible designs, drawings, software, (electronic) files, etc., remain DBAS' property until the Client has complied with all consecutive commitments based on all agreements entered into with DBAS.
2. The DBAS deliveries, which pursuant to paragraph 1 fall under Retention of ownership, may not be sold and may never be used as payment. The Client is not entitled to sell items falling under the retention of ownership, or to pledge this or encumber it in any other way.
3. The client should always do everything that reasonably could be expected from him to secure the properties of DBAS. If third parties seize the DBAS deliveries pursuant to paragraph 1 falling under Retention of ownership, or want to establish or enforce rights on these deliveries, the Client shall inform DBAS immediately. Furthermore the Client shall insure and keep the goods supplied under retention of ownership insured against fire, explosion and water damage as well as against theft and the policy of this insurance shall be subscribed for inspection by DBAS upon first request. In case of a payment from the insurance, DBAS is entitled to receive these amounts. Insofar as necessary, the Client obliges himself in advance towards DBAS to cooperate on everything necessary or desirable to achieve this.
4. In case DBAS wants to enforce its rights of ownership indicated in this article, the Client already in advance gives his unconditional and irrevocable permission to DBAS or any external parties appointed by DBAS to enter all the locations where DBAS' property are located, and recover these properties.

article 8. Guarantee, research and advertising, limitation period

1. The supplies of DBAS will meet the usual requirements and standards which are reasonably applicable at the time of delivery, assuming they will be treated in a normal way, within the Netherlands. The guarantee in this Article shall apply to matters that are intended for use within the Netherlands. When outside the Netherlands the client should verify itself or its use is suitable for use there and meet the conditions as per the local requirements. DBAS can set other guarantee- and other conditions in respect of the goods to be delivered or works to be carried out.
2. The mentioned guarantee in paragraph one of this article is valid for a period of 1 year after delivery, unless the nature of the delivered logically requires otherwise, or if parties have agreed otherwise. If the guarantee provided by DBAS concerns an item which was produced by a third party, then the guarantee is limited to the guarantee provisions of the producer of this item, unless otherwise indicated.
3. Any form of warranty is void if a defect is caused by or resulting from improper or inappropriate use or after expiration date, improper storage or maintenance by the Client and / or third parties when, without written permission of DBAS, the Client or third parties (tried) to have made changes to the items in a way different than prescribed. The Client is also not entitled to claim warranty if the defect is caused by or arising from circumstances out of DBAS's control, including weather conditions (such as but not limited to, extreme temperatures or rainfall) etcetera
4. The Client is obliged to (let) investigate immediately the items at the moment that they are made available and/or the concerning agreed actions are performed by DBAS. Thereby, it belongs to the client to examine if the quality and / or quantity of the goods delivered correspond to what was agreed and meets the requirements of the parties thereto have agreed. Any visible defects have to be reported in writing to DBAS maximum within seven days after delivery. Any defects which are not visible immediately, have to be reported in writing to DBAS promptly or maximum within 14 days after discovery. The report needs to contain a detailed description of the defect, enabling DBAS to respond adequately. The Client must give DBAS the opportunity to (let) investigate a complaint.
5. If the Client timely mentions a complaint, it does not suspend his payment obligation. The client is in that case also entitled to accept and pay for the other items ordered and what he ordered with DBAS
6. If a defect is reported later, then the Client has no right to claim a repair, replacement or compensation.
7. If it is determined that an item shows defects and it has been reported by the customer in time, then DBAS will within a reasonable time after the return receipt, or if return is not reasonably practicable, after written notice by the client concerning the lack of the item, replace or to repair the item or a compensation will be paid to the Client at the discretion of DBAS. In case of replacement, the Client is obliged to return the replaced item and its ownership to DBAS, unless mentioned otherwise by DBAS.
8. If it transpires that a complaint is unfounded, the costs it incurred, including research costs, on the side of DBAS, will be integrally for the account of the Client.
9. After the guarantee period expires, all costs for repair or replacement, including administration, shipping costs and travel costs, will be charged to the Client
10. Notwithstanding the statutory limitation periods, the limitation period for all claims and defences against DBAS and third parties involved by DBAS for fulfillment of an agreement will be one year.

article 9. Liability

1. If DBAS is liable, this liability shall be limited to that which is specified in this stipulation.
2. DBAS is not liable for damage of any kind which is the result of providing of incorrect and / or incomplete information by or on behalf of the Client;
3. If DBAS is responsible for any damage, the liability shall be limited to a maximum of twice the order amount, at least of that part of the contract to which the liability relates to.
4. The liability is at all times limited to at most the amount of the disbursement paid by DBAS' insurer in the relevant case.
5. DBAS is only liable for direct damage.
6. Under direct damage it is only understood the reasonable expenses to determine the cause and the extent of the damage, for as far as the determination relates to damage in the sense of these conditions, the possible reasonable expenses incurred to bring DBAS imperfect performance in line with the agreement, as far as DBAS can be held responsible therefore, reasonable expenses incurred to prevent or limit damage, for as far as the Client can prove that these expenses have resulted in limiting direct damage as meant in these general conditions. DBAS shall never be liable for indirect damage including consequential damage, loss of profit, missed savings and loss due to business stagnation.
7. The limitations of the liability included in this article do not apply if the damage was a result of intent or gross misconduct by DBAS or its executive's subordinates.
8. DBAS cannot be held liable for a different than predicted result or an error in a given recommendation, conclusion, or report as a result of a measurement and / or analysis.

article 10. Indemnification

1. The Client indemnifies DBAS for any claims by third parties which in connection with the execution of the agreement suffer from damage caused by others than DBAS. If DBAS would be addressed accordingly by third parties, then the Client shall assist DBAS both outside and in law and do immediately all what can be expected in that case. Should the Client fail to take adequate measures, then DBAS, without default, entitles themselves to do so. All costs and damages caused in this way on the part of DBAS and third parties, are integrally for the account and risk of the Client

article 11. Intellectual property

1. DBAS reserves the rights and powers to which he is entitled under the Copyright and other intellectual property laws and regulations. DBAS is entitled to use the increased knowledge gained through the execution of the agreement for other purposes also, for as far as no confidential information of the client are thus disclosed to third parties.

article 12. Applicable Law & Disputes

1. The legal relationship between the Client and DBAS shall be governed by Dutch law, even if a contract comprises activities which wholly or partly will be executed abroad, or if the party involved in the legal relationship is domiciled there. The Vienna Sales Convention is expressly excluded.
2. The court in the place where DBAS is domiciled is exclusive authorized to take cognizance of disputes, unless the law requires otherwise. Nevertheless DBAS has the right to submit the dispute to the competent court according to law.
3. Parties will only appeal to the court after they turn to the utmost to solve a dispute by mutual agreement.

article 13. Location and amendment of the conditions

1. These conditions were deposited at the offices of the Chamber of Commerce 'Midden Nederland' in Utrecht.
2. The latest deposited version or the version applicable at the time of signing of the agreement is always applicable.
3. In case of explanation of the content and range of these general conditions, the Dutch text thereof is always deciding.