

Terms and Conditions Been Management Consulting



1. Definitions

In these general conditions the following terms have the following meaning:

Client: the party that gives the order

BEEN: Been Management Consulting B.V.

Order: every order given by the Client and accepted by been to have (employees of) BEEN perform the activities described in the confirmation of order.

2. Applicability

2.1 These general conditions are applicable to all (quotations and/or offers for) services performed by BEEN on behalf of the Client, unless if and to the extent parties have expressly deviated from these conditions in the confirmation of order.

2.2 The Rules of Conduct (“Gedrags- en Beroepsregels”), which are applicable to BEEN, form an integral part of the Order. The Client shall at all times respect any and all obligations laid upon BEEN in such Rules of Conduct.

2.3 Any and all general or specific conditions or terms of the Supplier are not applicable.

3. Conclusion of an Order

3.1 An Order shall be concluded if and when BEEN receives a confirmation of order signed by the Client. The confirmation of an order is based upon the information supplied by the Client to BEEN and is regarded to accurately and completely reflect the Order

3.2 BEEN does not assume any responsibility for the description by the Client of the activities to be performed by BEEN and/or the effectiveness hereof.

3.3 If an order is given orally without any written confirmation, the Order shall be concluded if and when

BEEN accepts such oral order in writing.

3.4 The Order replaces and sets aside any previous (oral or written) offers, agreements and or other communications.

3.5 The Order shall remain in force for an indefinite period of time, unless parties have agreed otherwise.

4. Co-operation by the Client

4.1 The Client shall, timely and in the requested form, provide BEEN with all information and documents BEEN shall deem to require for the adequate performance of the Order.

4.2 The Client shall inform BEEN promptly of facts and circumstances that reasonably could be of relevance for the performance of the Order.

4.3 The Client guarantees the correctness, completeness and reliability of the information and documents supplied to BEEN, even when these have been obtained from third parties.

4.4 The Client provides BEEN with office space and other facilities that BEEN deems necessary or desirable for the performance of the Order, including the use of computer-, telephone-, and fax facilities. The Client shall procure that the computer facilities are equipped with sufficient back-up-, safety-, and virus control procedures.

4.5 The Client shall provide qualified personnel to enable BEEN to perform the Order. If specific personnel is required, this shall be specified in the confirmation of order. The Client shall procure that his (own or hired) personnel is sufficiently qualified and experienced for the activities to be performed.

4.6 The costs and additional fees involved with a delay in the Order, which results from the fact that the Client has not, not timely or not correctly supplied

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the requested information, documents and/or personnel shall be for the account of the Client.

4.7 The Client shall direct all communications and instructions regarding the Order to the project manager designated by BEEN. The Client is not entitled to directly give instructions and/or orders to personnel of BEEN, without BEEN's prior written consent, except if and to the extent necessary for the safety of Client and/or his personnel or properties.

5. Performance of the Order

5.1 BEEN shall perform the Order to the best of its insight and ability.

5.2 BEEN determines the manner in which, and the personnel by which the Order will be performed, however BEEN shall as much as possible take into account the wishes made known by the Client.

5.3 The Client shall only involve third parties that are not affiliated to BEEN in the performance of an Order after prior agreement with BEEN.

5.4 BEEN shall at all times be entitled to involve third parties in the performance of an Order.

6. Non-disclosure

6.1 BEEN and the Client undertake to hold in strictest confidence all information received in the performance of an Order (including, but not limited to computer programs, systems, working methods, advises, (model) contracts and other (intellectual-) products of BEEN, and all information regarding the business of the other party, all in the broadest sense) and they shall only use such information for the purpose of which it has been supplied. These obligations do not exist if and to the extent a party is legally bound to disclose such information.

The parties shall lay such nondisclosure obligation upon their personnel and/or third parties involved in the Order.

6.2 In deviation of article 6.1, BEEN shall be entitled to disclose the activities performed on behalf of the Client to (potential) clients of BEEN (however, only for the purpose of giving an indication of BEEN's experience), unless parties have agreed otherwise in writing.

7. Intellectual Property

7.1 BEEN retains and acquires all (intellectual property-) rights with regard to information, results and/or other data carriers resulting from the performance of an Order.

7.2 The Client is not entitled to multiply, disclose or exploit the information, results and/or other data carriers without BEEN's prior written consent. BEEN is entitled to multiply documents for internal use within the purpose of an Order.

7.3 If in the course of an Order regarding 'management consultancy' (an intellectual) product is labelled as 'Client material' in the confirmation of an order, the Client acquires the copy rights on such product. The Client hereby grants BEEN, free of charge, a non-exclusive and ongoing right to use, copy, revise, alter, sublicense, and market such product.

8. Fees and Payment

8.1 If after the conclusion of an Order wages and/or prices are changed, BEEN shall be entitled to adjust the agreed fees accordingly.

8.2 BEEN's fees are exclusive of VAT, expenses and fees of third parties, unless otherwise stipulated.

8.3 BEEN's fees, eventually increased with expenses

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and fees of third parties, are charged to the Client monthly, quarterly, yearly or when the agreed activities have come to an end.

- 8.4** Changes in the requested activities to be performed by BEEN may result in changes in the agreed time period and/or costs.
- 8.5** BEEN shall only charge the Client for additional activities after the prior written consent of the Client. Such consent is not required if the activities fall within the scope of BEEN's general duty of care.
- 8.6** The Client shall receive weekly or monthly time sheets of BEEN's employees, stating the hours spent. The time sheets shall be promptly returned by the Client to BEEN's employees, whereby the Client shall state whether it approves of these time sheets or not, in which last event such disapproval shall be motivated.
- 8.7** BEEN's administration is regarded to be complete and binding, unless the Client proves otherwise.
- 8.8** BEEN shall base its invoices upon the time sheets meant in article 8.6 and will send the invoice to the Client.
- 8.9** The Client shall pay each invoice in euros, within 14 days after its date of dispatch by transferring the invoiced amount to the bank account number designated by BEEN. Payment shall be made without any deduction, set-off or debt settlement. If payment is not made within this term, BEEN shall charge the Client with a monthly interest of 1 % on top of the legal interest.
- 8.10** If payment is not made within the term stipulated in article 8.9, the Client shall reimburse BEEN for all collection costs, including the costs of internal and external advisors, which costs shall be at least 15 % of the total amount due.

8.11 If the financial position or the conduct of payment of Client gives cause hereto, BEEN shall be entitled to require prompt (additional) security of the Client in a form to be designated by BEEN, and/or a retainer. If the Client does not give such security, BEEN shall be entitled to suspend further execution of the Order and all amounts due by Client to BEEN, regardless where these arise from, shall be immediately payable.

8.12 In the event of a mutual Order, the Clients shall be severally liable for payment of the invoices, if and to the extent the activities were performed on behalf of both Clients.

9. Complaints

- 9.1** Complaints regarding the activities performed and/or about an invoice shall be submitted in writing to BEEN within 60 days after the date of dispatch of the invoice, the date of performing the activities or the date of delivery of documents, services and/or products that the Client complains about. After expiry of the abovementioned term, the Client loses his right to submit such complaint.
- 9.2** Complaints as meant in article 9.1 do not suspend the payment obligation of the Client.
- 9.3** In the event the complaint appears to be correct the Client has the right to choose between adjustment of the paid fees, improvement or re-performance of the activities the Client disapproves of, or discontinuation (in part) of the Order and pro rata restitution of the fees paid by the Client. The Client shall take into account the reasonable interests of BEEN.

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10. (Term of) Delivery

- 10.1** If a prepayment is due by the Client or if he is obliged to supply information and/or material to BEEN, the term of delivery shall commence as soon as the Client has performed such obligations.
- 10.2** All (delivery) terms mentioned by BEEN are mentioned to the best of BEEN's knowledge and are based upon the data known to BEEN at the conclusion of the Order. The non-observance of a (delivery) term by BEEN cannot be invoked at law by the Client. If non-observance of any term is expected, BEEN shall notify the Client hereof and the parties shall consult each other at shortest notice.

11. Termination

- 11.1** The Client and BEEN shall at all times be entitled to terminate an Order in writing, with the observance of a notice period of 30 days.
- 11.2** If the Client terminates the Order, BEEN shall be entitled to reimbursement of costs reasonably incurred or to be incurred as a result of the premature termination of the Order, such as - but not limited to- costs of loss of occupancy ("bezettingsverlies") (which costs for the scope of these conditions are fixed at the agreed fee for a period of three months after the termination), and costs of subcontracting, all unless the termination is based on facts or circumstances caused by BEEN.
- 11.3** BEEN retains its entitlement to payment of invoices regarding activities performed until the date of termination, in which regard BEEN shall provide the Client with all results from such activities.

11.4 An Order can be terminated, without a prior notice being required, in the event the other party is declared bankrupt, is liquidated, has requested a suspension of payment, or discontinues its activities for any other reason, or if a party reasonably deems such event to be highly likely to happen to the other party.

11.5 Upon termination of the Order each party shall immediately return all goods and documents of the other party to such other party; however, BEEN shall be entitled to retain copies of documents regarding the Order for its administration.

11.6 The provisions of the general conditions that -expressly or implied- are meant to survive the termination of the Order, shall continue to bind the parties after termination.

12. Force Majeure

12.1 If BEEN is unable to (continue to) perform the Order as a result of temporary or permanent force majeure ("overmacht"), BEEN shall notify the Client immediately. BEEN shall in consultation with the Client seek a solution. If such solution cannot be found, BEEN shall be entitled to terminate the Order, or suspend the performance of the Order (without any obligation to pay damages and notwithstanding its other rights).

12.2 If such force majeure (and the suspension) continues for more than 6 months, or if it appears that it will continue for more than 6 months, each party shall be entitled to terminate the Order by written notice.

13. Liability and Indemnification

13.1 BEEN assumes no liability whatsoever for any damages resulting from a default in the performance of an Order, which is caused by the supply of false or incomplete information by the Client to BEEN.

13.2 If the Client proves that it has incurred damages as a result of culpable default (“toerekenbare tekortkoming”) of BEEN, BEEN's liability shall be limited to the following maximum amounts:

- If the Order regards interim management, BEEN's liability shall be limited to the total amount of fees regarding the Order over the previous 3 months;
- If the Order regards management consultancy or advise, BEEN's liability shall be limited to the total fee that BEEN has received from the Client in respect of the activities performed (to a maximum amount of € 75,000.00).
- If the duration of the Order exceeds a period of 6 months, BEEN's liability shall be limited to the total amounts of invoices sent in the previous 6 months to a maximum amount of € 75,000.00. The foregoing does not apply in the event of intent or gross negligence (“opzet of grove schuld”) of BEEN.

13.3 In the event of intent or gross negligence of BEEN in the performance of an Order, the liability of BEEN shall at all times be limited to a maximum amount of € 75,000.00, regardless of the number of times such event occurs and regardless of the actual damages suffered by the Client.

13.4 BEEN shall never be liable for any other damages than direct damages. Direct damages shall mean in this context: reasonable costs to be incurred by the Client to acquire the envisaged results of the

Order. reasonable costs to be incurred by Client in determining the cause and height of the direct damages; reasonable costs incurred in avoiding or limiting direct damages, to the extent the Client proves that these costs have actually resulted in a limitation of the direct damages.

13.5 Preconditions for the existence of any right to damages resulting from BEEN's culpable default in the performance of an Order are (i) that the Client notifies BEEN immediately and in writing of the event creating such right, whereby such notification contains a reasonable period in which BEEN should mend such default and (ii) that BEEN has not mended the default within such reasonable period. The notification should contain a detailed description of the default, in order for BEEN to be able to respond adequately.

13.6 All claims, from whatever nature, of the Client towards BEEN lapse in any event by the mere expiry of one year after they became known to the Client, or reasonably could have been known.

13.7 The Client shall indemnify and save BEEN harmless from and against any claim or action by third parties (including -but not limited to- employees of parties) for damages suffered or yet to suffer caused by the performance of an Order, except in the event such damages result from intent or gross negligence of BEEN.

14. Conversion

14.1 If any provision of these general conditions shall be determined to be invalid, unlawful or unenforceable to any extent, the remainder of these general conditions shall continue to be valid and may be enforced to the fullest extent permitted by law and

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the parties agree in such event to substitute forthwith the invalid, unlawful or unenforceable provision by such effective provision as will most closely correspond with the purpose and context of the provision(s) so voided.

14.2 If these general conditions and the confirmation of an Order contain contradictory provisions, the provisions in the confirmation of the Order shall apply.

15. Personnel

15.1 Neither party shall attempt to hire, employ or in any way retain the services of the other party's employees at any time during the term of an Order and during one year after termination of the Order, without the other party's prior written consent.

16 Disputes

16.1 Any and all Orders and these general conditions shall be governed by and construed and interpreted in accordance with the laws of The Netherlands.

16.2 Any dispute that should arise between the parties in connection with an Order or these general conditions shall be submitted to the competent Court of The Hague.