General Conditions

Article 1 - General

1.1 The terms set out below are defined as follows in these general conditions:
(a) The Client: the party commissioning the assignment;
(b) the Contractor: the Client's tax adviser, located in (Nijmegen); Pitman & Associates;
(c) Assignment and/or Agreement: the assignment for the assignment, in which the Contractor undertakes to perform various activities vis-à-vis the Client;

1.2 All Assignments, are exclusively accepted and performed by the Contractor, notwithstanding Articles 7:404 and 7:407, paragraph 2 of the Netherlands Civil code, regarding of whom the Client has had a mutual agreement with the Client and the Contractor with the intention of having a certain person or persons perform the activities.

1.3 All clauses in these general conditions have also been drawn up on behalf of all the parties who will act for the Contractor in the context of the performance of the Assignment. These parties can also invoke these clauses vis-à-vis the Client.

Article 2 - Applicability

2.1 These general conditions apply to all Assignments and/or Agreements between the Client and the Contractor, and their respective legal successors. These general conditions also apply to all agreements arising on this basis and/or associated agreements, as well as to offers and/or quotations provided by the Contractor.

2.2 The applicability of the Client’s General Conditions is expressly rejected by the Contractor.

2.3 Clauses deviating from these conditions are only applicable if and insofar as the Contractor has confirmed these expressly to the Client in writing.

2.4 If one or more provisions of a part of these general conditions or the agreement, is invalid or declared void, then the rest of this agreement shall continue to exist as far as possible, and the clause in question will immediately be replaced in consultation by the parties by a clause that corresponds as much as possible to the meaning of the original clause.

Article 3 - Establishment of the Agreement

3.1 The Assignment is established at the time that the assignment confirmation signed by the Contractor and the Client is received by the Contractor. The assignment confirmation is based on the information provided to the Contractor by the Client at that time. The assignment confirmation is deemed irrevocably final, as well as the agreement that is formed by the Contractor.

3.2 If the assignment is granted verbally, or if the assignment confirmation has not been received, the Assignment is deemed to be established under the applicability of these general conditions, at the time that the Contractor commences the performance of the assignment at the request of the Client.

Article 4 - Data and Information

4.1 The Client is obliged to provide all the data and information requested by the Contractor, as well as the data and information that the Client can reasonably know that the Contractor needs for the correct performance of the Assignment, a) on time, b) in the form desired by the Contractor, and c) in the way desired by the Contractor.

4.2 The Client guarantees the accuracy, completeness, reliability and legality of the data and information provided to the Contractor by the Client or on the Client’s behalf, also if this data and information have been provided through a third party or originate from a third party, unless the nature of the Assignment provides otherwise.

4.3 The Client is obliged to immediately inform the Contractor with respect to facts or circumstances that could have an impact on the performance of the Assignment.

4.4 The Contractor has the right to suspend the performance of the Assignment until the time that the Client has fulfilled the obligations referred to in the first, second and third paragraphs.

4.5 Extra costs, losses, and other damages that arise for the Contractor because the Client has not fulfilled the obligations referred to in the first, second and third paragraphs, are for the expense and risk of the Client.

4.6 At the first request of the Client, the Contractor shall return the original documents provided by the Client.

Article 5 - Performance of the Assignment

5.1 The assignment and/or assignment fee shall be paid in the way and by which person(s) the Assignment is performed, yet he/she shall take into account as far as possible the wishes expressed by the Client in the Assignment confirmation. The Contractor wishes to have the Client engage third parties at the expense of the Client, he/she may only do this with the Client’s agreement.

5.2 The Client shall perform the activities to the best of his/her ability and as a professional acting with due care; however, the Contractor also cannot guarantee that any desired result will be achieved.

5.3 The Assignment will be performed with due observance of the applicable professional and other regulations required by or in accordance with the law. The Client shall provide full cooperation at all times with the obligations that arise for the Contractor on this basis.

5.4 The Client acknowledges, on the basis of the Act on Prevention of Money Laundering and Financing of Terrorism (Wif, or wmo) of 2004 and the anti-money laundering and financial crime (Wmo) of 2008, that the Client warrants the Contractor from the duty of confidentiality.

5.5 Professional and other regulations include, in any case, the Professional Practice Regulations and the Special Code of Conduct of the Dutch Association of Tax Advisers (Reglement Beroepsuitoefening en de Bijzondere Gedragscode van De Nederlandse Belastingadviseurs (RBB)).

5.6 The Contractor excludes any liability whatsoever for damages arising as a result of the Contractor’s compliance with legislation and professional and other regulations applicable to him/her.

5.7 For the Assignment, the Contractor shall maintain a work file containing copies of the relevant documents, which is the property of the Contractor.

5.8 During the performance of the Assignment, the Client and the Contractor, at the request of the other party, shall consult any documents created by or for the Contractor by electronic mail. The Client and the Contractor are vis-à-vis each other not liable for any damages that arise from use of electronic mail. Both the Client and the Contractor shall do that which can be reasonably expected to prevent risks, such as spreading viruses and distortion.

5.9 In the event of doubt concerning the content and/or sending of electronic mail, the data extracts from the Contractor’s computer systems shall prevail.

Article 6 - Terms

6.1 The terms during which activities must be completed are only considered final deadlines if this is agreed in writing.

6.2 If the Client owes an advance payment or if the Client must provide the necessary data and information for the performance of the Assignment, the activities shall be completed shall not commence before the payment in full has been received by the Contractor, or before all of the data and information has been provided to the Contractor.

6.3 Unless it has been established that performance thereof remains impossible, the Agreement may not expire as a result of the Client not being in default, before the Client, after the expiry of the agreed term, has given the Contractor notice of reasonable terms, and/or that the Contractor still does not perform the Assignment at all or within the term provided.

Article 7 - Termination

7.1 The Agreement is concluded for an indefinite period, unless, due to the content, nature or purport of the Assignment granted, it is clear that the Assignment has been concluded for a fixed term.

7.2 The Client and the Contractor may terminate the Agreement at any time (in the interim) with due observance of a reasonable period of notice, unless the termination or the termination in such a period is contrary to the principles of reasonableness and fairness. The termination must be communicated to the other party in writing.

7.3 The Agreement may be terminated by either the Contractor or the Client (in the interim) by means of registered post, without due observance of a period of notice, if the other party is not able to pay its debts or if an official receiver, administrator or liquidator is appointed; if the other party undergoes debt restructuring; if the other party ceases its activities; or if the other party commits an act of bankruptcy or becomes legally incapable that one of the abovementioned circumstances will arise for the other party; or if a situation arises that fulfills the immediate termination in the interest of the terminating party.

7.4 In all cases of interim or other termination, the Contractor retains the right to perform the fee notes for all of the activities performed by the Contractor that point in time, which will be made available to the Client, subject to the provisional results of the activities performed until then.

7.5 If the Client decides on interim or other termination, the Contractor has a right to compensation for capacity utilisation loss, which has arisen for and which can be demonstrated by the Contractor. This is for an expressly stated period that was or will be incurred by the Contractor as a result of the early termination of the Agreement (such as costs relating to possible subcontracting), which are fact and circumstances that are the basis for the termination and which can be attributed to the Contractor.

7.6 If the Contractor decides on interim or other termination, the Client has a right to cooperation from the Contractor for the transfer of activities to third parties, unless there are facts and circumstances that are the basis for termination which can be attributed to the Client.

7.7 Insofar as the transfer of the activities for the Contractor is accomplished by extra costs, these will be charged to the Client.

7.8 Upon termination of the Agreement, each of the parties shall immediately return to the other party all goods, items and documents in their possession that belong to the other party.

Article 8 - Intellectual property rights

8.1 All rights concerning products of the mind that the Contractor develops or uses in the performance of the Assignment, also including recommendations, working methods, model or other contracts, systems, system designs and computer programs, belong to the Contractor, insofar as they do not already belong to third parties.

8.2 Except for with the express written advance permission of the Contractor, the Client is not permitted to reproduce, make public or exploit products of the mind or the recording thereof on data carriers, including together with or through the engagement of third parties, without prejudice to the provisions of Article 9.3.

Article 9 - Confidentiality

9.1 The Contractor is required to maintain confidentiality with respect to the data and information provided by or on behalf of the Client with respect to third parties that are not involved with the performance of the assignment. This also includes recommendations, working methods, model or other contracts, systems, system designs and computer programs, belonging to the Contractor, insofar as they do not already belong to third parties.

9.2 The Client acknowledges, on the basis of the Act on Prevention of Money Laundering and Financing of Terrorism (Wif, or wmo) of 2004 and the anti-money laundering and financial crime (Wmo) of 2008, that the Client warrants the Contractor from the duty of confidentiality.

9.3 The first paragraph does not prevent confidential consultation between colleagues within the Contractor’s organisation, ifso far as the Contractor considers this necessary for the proper performance of the assignment or for proper fulfillment of a statutory or professional duty of disclosure.

9.4 If the Contractor represents him/herself in a disciplinary, civil, arbitration, administrative or criminal procedure, the Contractor has the right to use the data and information which he/she came to know in the performance of the assignment insofar as this data and information could be of importance in his/her reasonable opinion.

9.5 Except for with the express advance written permission of the Contractor, the Client is not permitted to disclose the content of the recommendations, opinions or written or unwritten communications of the Contractor or to make them available in any other way to third parties, except for if this arises directly from the Agreement, or if this takes place to obtain an expert opinion concerning the relevant activities of the Contractor, if the Client is subject to a statutory or professional duty of disclosure, or if the Client represents him/herself in a disciplinary, civil, arbitration, administrative or criminal procedure.

9.6 The Contractor has the right to state the name of the Client and the main points of the activities performed to commercial and other business associates of the Contractor to indicate the Client’s experience.

Article 10 - Personal data and the General Data Protection Regulation

10.1 In providing the Contractor with personal data, the Client shall abide by the General Data Protection Regulation (Regeling Gegevensbescherming [GDPR]), and other applicable regulations and legislation concerning the protection of personal data.

10.2 In performing the activities on behalf of the Client, the Contractor shall comply with the provisions of the General Data Protection Regulation and other applicable regulations and legislation concerning the protection of personal data. The Contractor shall process the personal data exclusively for the purpose for which the personal data were obtained.

10.3 If necessary, the Client and Contractor shall conclude a processing agreement.

10.4 The Contractor shall take suitable technical and organisational measures to secure the personal data against destruction, loss and unauthorised access.

10.5 The Client agrees to the fact, that in order to provide and optimize the service, the Contractor will work with third parties such as ICT service providers and suppliers of administration tools, and will share personal data with third parties in this context.
Article 11 – Fee
11.1 The Client shall owe the Contractor a fee and an allowance for costs incurred in accordance with the Contractor’s normal rates, calculation methods and working methods.
11.2 The Contractor has the right to request an advance payment from the Client.
11.3 If, after the establishment of the Agreement, but before the Assignment has been completed in full, factors affecting the rate such as wages and/or prices undergo a change, the Contractor has the right to adjust the rate agreed earlier in accordance with the situation.
11.4 The rates do not include VAT or other taxes imposed by the authorities.

Article 12 – Payment
12.1 Payment must take place without any deductions, discount or set-off, in Dutch currency, by means of deposit or transfer to the bank account indicated on the invoice, within 14 days after the invoice date. The day of payment is the day that the amount owed is credited to the Contractor’s bank account. Objections to the level of the invoice do not suspend the Client’s payment obligation.
12.2 If the Client has not paid within the term stated in the first paragraph, or within another term agreed by the parties, the Client is in default by operation of law and the Contractor has the right to charge statutory interest from that point in time.
12.3 If the Client, acting in the course of a business or profession, has not paid within the term stated in the first paragraph, the Client is obliged to pay all the out-of-court and court collection and other costs incurred by the Contractor, also insofar as these costs surpass any court order for costs, unless the Contractor, as the losing party, is ordered to pay the costs.
12.4 If the Client is not acting in the course of a business or profession, the Client is obliged to pay extrajudicial collection costs amounting to the maximum amount in accordance with the Extrajudicial Collection Costs Decree (Besluit vergoeding van buitengerechtelijke incassokosten). These extrajudicial collection costs are payable by the Client if he fails to pay the amount due after receiving a demand for payment within fourteen days.
12.5 In the case of a jointly granted Assignment, insofar as the Assignment is performed on behalf of the joint Clients, the Clients are jointly and severally liable for the payment of the invoice amount, the interest owed and the costs.
12.6 The Contractor reserves the right – also during the performance of an assignment, if the financial position or the payment behaviour of the Client gives reason for this in the Contractor’s opinion – to demand a full or partial advance payment from the Client and/or to demand that security be provided, and in the absence of this, the Contractor has the right to suspend the fulfilment of his/her obligations.

Article 13 – Complaints
13.1 At the risk of forfeiting all rights, a complaint relating to the activities performed or to the invoice amount must be communicated to the Contractor in writing within 30 days after the sending date of the documents or information over which the Client is lodging a complaint, or, if the Client demonstrates that he/she was not reasonably able to discover the shortcoming earlier, within 30 days after the discovery of the shortcoming.
13.2 A complaint does not suspend the payment obligation of the Client, except insofar as the Contractor has indicated to the Client that Contractor believes the complaint is justified.
13.3 In the case of a rightfully lodged complaint, the Contractor may choose between adjusting the fee invoiced, improving the activities in question free of charge, performing them again free of charge, or ceasing to perform the Assignment in whole or in part, and repaying a pro rata amount of the fee already paid by the Client.

Article 14 – Liability
14.1 The Contractor is liable vis-à-vis the Client only for any shortcoming in the performance of the assignment insofar as a shortcoming has arisen due to the non-observance of due care and expertise, as a result of which the performance of the assignment cannot be trusted.
14.2 The Contractor’s liability for any shortcoming in the performance of the assignment and for any wrongful act caused by the Contractor is limited to three times the amount that the Client, on the basis of the provision in Article 10, has paid as a fee (not including VAT) to the Contractor and/or still owes for the activities to which the loss-causing occurrence relates or is associated with, up to a maximum of five hundred thousand euros (€ 500,000).
14.3 The limitation of the liability referred to in the previous paragraph does not apply insofar as the loss or damage is a result of wilful misconduct or gross negligence on the part of the Contractor.
14.4 The Contractor is also not liable for the following:
   - Any loss or damage arising for the Client or third parties that is the result of incorrect or incomplete data or information provided by the Client to the Contractor or which is otherwise the result of acts or omissions by the Client;
   - Any loss or damage arising for the Client or third parties that is the result of acts or omissions by auxiliary persons who are engaged by the Client or the Contractor (not including employees of the Contractor), also if these persons are employed at an organization affiliated with the Contractor;
   - Loss of profit, indirect or consequential damage arising for the Client or third parties.
14.5 A claim for the reimbursement of loss or damage must be submitted the Contractor no later than 12 months after the Client has discovered or reasonably could have discovered the loss or damage. If this does not occur, the right to compensation for loss or damage shall be forfeited.
14.6 The Client is obliged to reimburse the Contractor and indemnify the Contractor against all claims from third parties – also including the shareholders, managing directors, supervising directors and staff of the Client, as well as affiliated legal entities and businesses and others involved with the Client’s organisation – which arise from or are connected with the activities of the Contractor for the Client, except insofar as these claims are the result of wilful misconduct or gross negligence on the part of the Contractor.

Article 15 – Expiry period
Insofar not determined otherwise in these general conditions, the Client’s right of action, which also applies vis-à-vis the Contractor in connection with the performance of the activities by the Contractor, shall be forfeited in any case after one year after the time which the Client learned or could have reasonably learned of the existence of these rights.

Article 16 – Choice of law and jurisdiction
16.1 All agreements between the Client and the Contractor are subject exclusively to the law of the Netherlands.