

VOC-Consultancy – General Terms and Conditions

VOC-Consultancy – General Terms and Conditions:

Definitions

1. In these terms and conditions the following expressions shall have the following meanings:
2. The “Client” means a customer of VOC-Consultancy B.V.;
3. VOC-Consultancy means VOC-Consultancy B.V. registered in the Netherlands;
4. The “Contract” means the contract for the sale and purchase of products or services to which these terms and conditions are applicable;
5. “Price” means the price for products or services stated in the Contract;
6. “Confidential Information” means information, data, knowledge and materials regardless of origin or form, transmitted to either party that the disclosing party has identified as being confidential or which, by the nature of the circumstances surrounding the disclosure, should be treated as confidential;
7. “Products or Services” means the products or services detailed in the Contract.

Offers and Tenders

8. All offers shall be free of obligation unless the offer contains an acceptance term.
9. The offers made by VOC-Consultancy shall be free of obligation; they shall be valid for a period of 30 days, unless indicated otherwise. VOC-Consultancy shall only be bound by the offers if the acceptance thereof is confirmed in writing by the opposite party within 30 days, unless indicated otherwise.
10. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within the scope of the agreement, including shipment, travel, hotel and administration costs, unless VOC-Consultancy indicates otherwise.
11. If the acceptance deviates (on secondary items) from the offer given, VOC-Consultancy shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless VOC-Consultancy indicates otherwise.
12. A compound quotation shall not oblige VOC-Consultancy to execute part of the assignment against a corresponding part of the given quotation.
13. Offers and tenders shall not apply automatically to future assignments.

Products and Services

14. VOC-Consultancy agrees to provide the Client with products or services as set out in the Contract;
15. The quantity, quality and format of the products or services shall be those set out in the Contract;
16. The Client is responsible for ensuring the products or services are suitable for its requirements;
17. These Terms and Conditions apply to all Contracts for the supply of products or services by VOC-Consultancy to the Client;
18. Services will commence at a time to be agreed with the Client. On-site investigations will be conducted onsite at the Client premises and information collation and storage of reports will be conducted from VOC-Consultancy’s offices;
19. Any network vulnerability assessment service will be restricted to identifying potential vulnerabilities in the system that could be exploited and making practical cost effective recommendations for vulnerabilities resolution, and will not include such techniques as social engineering or physical access attempts and no attempts

shall be made by VOC-Consultancy to copy corrupt or damage the Client’s data or the Client’s networks;

20. The review and investigation will culminate in a final report, which VOC-Consultancy will present to the Client team on completion. However, if any serious vulnerability or other significant issue is identified this will be reported immediately to the nominated contact of the Client and a course of action will be agreed;
21. Both parties acknowledge and agree that in providing the products or services, VOC-Consultancy is an independent contractor and shall not be considered the Client’s agent, partner or employee;
22. Any changes to the Contract shall be agreed in advance between the parties in writing.

Conditions of Payments

23. Unless otherwise agreed in writing between VOC-Consultancy and the Client, VOC-Consultancy will invoice the Client the Price on delivery of the products or services and for the charges at the times stated in the Contract;
24. Payment must be made within 30 days from the date of invoice, in a way to be indicated by VOC-Consultancy and in the currency in which the statement of expenses was drawn up. Contestation of the amount of the statements of expenses shall not suspend the fulfillment of the payment obligation;
25. If client fails to fulfill his payment obligation within the term of 30 days, then client shall be in default by operation of law. In that event, client shall owe an interest of 1% per month, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply. The interest on the amount due and payable shall be calculated as from the day the client is in default until the moment he has paid the amount in full;
26. If the Client fails to pay VOC-Consultancy any sum due by the date set on the Contract, VOC-Consultancy shall be entitled to terminate the Contract and suspend provision of any products or services supplied to the Client;
27. In the event that the Client’s procedures require that an invoice be submitted against a purchase order to payment, the Client shall be responsible for issuing such purchase order before the products or services are rendered;
28. VOC-Consultancy has the possibility to charge a credit limitation surcharge of 2%. This surcharge will not be charged if payment is made within 7 days from date of invoice.

Warranty

29. VOC-Consultancy represents and warrants that it will use its reasonable endeavours to ensure that any work carried out for the Client will be carried out with reasonable skill and care and diligence in a professional manner and that all of VOC-Consultancy’s personnel engaged in fulfilling its obligations under this Contract have sufficient qualifications and professional competency and experience to carry out the services under this Contract in accordance with the standards and practices normal for the industry;
30. Each party warrants that (i) it has the full right and power to conduct its business; (ii) that this Contract has been duly authorised, executed and delivered, and constitutes a valid and binding Contract in accordance with the terms herein; and (iii) neither the execution nor consummation of the services contemplated shall result in the breach or default of any other agreement, charter provision or bylaw, order, law, rule or regulation;
31. All materials and information obtained during the course of the services, together with anything derived from this information and material will be considered confidential and the sole property of the Client or a third party.

VOC-Consultancy – General Terms and Conditions

VOC-Consultancy undertakes:

32. To use all information received during the review solely in connection with the project;
33. To preserve the secrecy of confidential information;
34. Not to disclose confidential information to any third party without the Client's prior consent in writing;
35. To return to the Client or destroy (at the Client's option) all confidential information obtained or derived on completion of the services or at the Client's request (whichever is earlier); and to advise all relevant employees, agents and sub-contractors of their obligations of trust and confidence (including the signing of individual NDA agreements) with respect to any confidential information and to take reasonable steps to ensure compliance by such employees, agents and sub-contractors with the provisions of this undertaking;
36. VOC-Consultancy shall not disclose the making of this Contract with the Client in any journal, magazine or publication or otherwise without the prior written consent of the Client. Both parties' obligations of confidentiality shall survive termination of this Contract for whatever reason;
37. VOC-Consultancy will indemnify the Client for direct physical injury or death caused solely by the negligence of VOC-Consultancy's employees acting within the course of their employment and the scope of their authority under these terms and conditions.

Proprietary Rights

38. Client acknowledges and agrees that, as between VOC-Consultancy and Client, all right, title and interest in and to the VOC-Consultancy Portal services and its contents, the scanning solution and any part thereof, including, without limitation, all patents, copyrights, trade secrets and all other intellectual property rights therein and thereto, and all copies thereof, in whatever form, including any written documentation shall at all times be and remain solely with VOC-Consultancy. Client shall not be an owner or licensee of the VOC-Consultancy portal and related software;
39. Any and all intellectual property rights that are created, developed, or acquired by VOC-Consultancy or its employees or contractors as a result of carrying out this service will be the Client's intellectual property;
40. Any tools, processes, procedures or intellectual property associated with the performance of the service itself are and will remain the property of VOC-Consultancy.

Limitation of Liability

41. Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of VOC-Consultancy to the Client in respect of any claim whatsoever or breach of these terms and conditions, whether or not arising out of negligence, shall be limited to the fees paid by the Client to which the claim relates;
42. In the event of an assignment with the duration of more than six months, the liability shall, contrary to the (previous) clause 41, of the present clause, furthermore limited to the part of the fee still due for the last six months.
43. In no event shall VOC-Consultancy be liable to the Client for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or VOC-Consultancy had been made aware of the possibility of the Client incurring such a loss;
44. Nothing in these Terms and Conditions shall exclude or limit VOC-Consultancy's liability for death or personal injury resulting from the VOC-Consultancy's negligence or that of its employees, agents or sub-contractors.

Indemnification

45. Each party shall indemnify and hold harmless the other party and its Affiliates and their respective officers, directors, employees, partners, agents, successors and assigns from, and shall defend the other against any costs, liabilities, damages or expenses (including reasonable solicitors' fees) arising out of or relating to any third party claim that the services, software, or any work performed by either party, or their agents, consultants or contractors under this Contract infringes the proprietary rights of any third party;
46. A party seeking indemnification shall:- (i) give the other prompt written notice upon becoming aware of the possibility of a claim; (ii) not make any admission which may be prejudicial to the defence of the claim without the indemnifying party's prior written consent; (iii) allow the indemnifying party exclusive control of the defence or settlement of the claim; (iv) reasonably co-operate, at the expense of the indemnifying party, in the defence of settlement of the claim. If a claim for infringement occurs or is reasonably likely to occur, VOC-Consultancy will (i) procure for the other party the right to use the item in question; or (ii) replace or modify the item so that it becomes non-infringing. If neither option is reasonably available to VOC-Consultancy, VOC-Consultancy may terminate this Contract.

Termination

This Contract may be terminated by either party forthwith on written notice should:

47. The other be in material breach of any of the terms of this Contract and not have rectified the same within 21 days of receiving written notice from the other, specifying such breach and the action considered appropriate to remedy the same;
48. The other convene a meeting of creditors or pass a resolution for winding up (except in the case of a winding up purely for the purposes of a solvent amalgamation or reconstruction), or have a petition for winding up presented (except as aforesaid) or shall have a receiver, administrative receiver, administrator or similar officer appointed over all or any part of its assets and the same is not discharged within 60 days of such appointment;
49. The Contract commences from the date of signature and terminates upon the completion of the services and the payment of all due fees and expenses;
50. The termination of aforementioned Contract shall, at all times, be without prejudice to the accrued rights of the parties hereunder including their rights and remedies in respect of breach of Contract and clauses 47 & 48 shall survive any termination of the Contract.

Confidentiality

51. All parties involved shall retain in confidence and enforce that its employees, agents and contractors, retain in confidence all confidential information;
52. The Client shall retain confidential information in as secure a manner as is reasonably possible, and at all times in accordance with the standards and practices normal for the industry;
53. Confidential information shall remain the sole property of the disclosing party and shall not be disclosed to any third party, except by written agreement between VOC-Consultancy and the Client;
54. This clause remains in effect after termination of the Contract.

Payment Card Industry

55. Client acknowledge and agrees that use of VOC-Consultancy services and products does not guarantee any PCI compliance or that systems are secure from unauthorised access. Client is responsible for PCI compliance and notification of any suspected

VOC-Consultancy – General Terms and Conditions

breach of Client's systems. Client is solely responsible for any fines, penalties or registration fee imposed by any payment card association and bank or for any damages payable to any third party.

Force Majeure

56. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services;
57. The party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

Procedures

58. VOC-Consultancy's consultants shall conform to the Client's normal codes of staff and security practice.

Assignments

59. Neither party may assign, delegate nor otherwise transfer the rights or obligations associated with this Contract, in whole or in part, without the prior written consent of the other party; provided however, no written consent shall be required to assign this Contract to any parent or the wholly owned subsidiary of the party. Subject to the foregoing, this Contract will bind and inure to the benefit of the parties, their respective successors and permitted assigns. VOC-Consultancy may sub-contract the performance of part of the VOC-Consultancy services to other companies within its corporate group including VOC-Holding B.V.

Waiver

60. The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions herein.

Severability

61. If any provision of these terms and conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if these terms and conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

Limitation of Third Party Rights

62. Nothing in these terms and conditions is intended to, nor shall it confer any rights on a third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

Non-Solicitation

63. Under no circumstances for the duration of this Contract, and for a period of one year after its termination, will one party recruit and/or offer any employment or consultancy agreement to any of the other party's employees or individual sub-contractors.

Governing Law and Jurisdiction

64. Dutch Law shall be the applicable law of these terms and conditions and all parties agree to submit to the exclusive jurisdiction of the Dutch courts.

Notice

65. Except as otherwise provided in this Contract, all notices,

consents, or approvals required by this Contract shall be (i) in writing sent by certified or registered mail, postage prepaid, or by facsimile or electronic mail (confirmed by certified or registered mail) to the registered office or (ii) in any other manner mutually agreed upon by the Parties. Notices shall be deemed effective on the date of mailings.

Registered Office: **VOC-Consultancy BV**
Schroeder van der Kolklaan 14
3734 VG DEN DOLDER
The Netherlands
Registration: 30237444
VAT: NL8190.97.627.B01
IBAN: NL29RABO0141328436
BIC/SWIFT: RABONL2U

27-02-2008 Version 1.0

