

## **De Gier Business Law: General Terms and Conditions**

### **1. General**

- 1.1. Any letter of engagement shall only be consented to and implemented by the private company with limited liability, De Gier Business Law Advocatuur B.V. (DGB), and the provisions of Sections 404 and 407(2) of Vol. 7 and Section 1680 of Vol. 7a of the Civil Code shall not apply.
- 1.2. These general terms and conditions shall apply to and shall constitute part of any agreement entered into DGB and a client, as well as any other agreement entered into with or some other action (legal or otherwise) taken by DGB with, for or on behalf of a client pursuant to it. Once these general terms and conditions are applicable, they shall also govern any new agreement entered into by the parties as well as all non-contractual relations between them especially in relation to tort, without the need for any further notice stipulating that they apply. For the purposes of this article an agreement is deemed to include any work which DGB carries out for a client.

### **2. Parties' obligations**

- 2.1. DGB shall endeavour to exercise due care and employ the requisite level of expertise when implementing an agreement with a client but it does not warrant that any envisaged outcome will be achieved.
- 2.2. A client shall ensure the timely communication to DGB of all of the facts and circumstances which may be important to ensure the proper implementation of an agreement, as well as any other information and details which DGB may require. A client shall warrant that any information and other details supplied to DGB are complete and correct.

### **3. Liability**

- 3.1. As soon as a client discovers potential grounds for a reliable claim against DGB or may reasonably be expected to have discovered same, that client shall be required to notify DGB of the existence of this alleged claim against it in writing immediately, and shall also supply proper substantiation and supporting evidence on pain of the expiry of that right. Subject to the provisions of Section 89 of the Civil Code, Vol. 6, entitlement to compensation from DGB shall lapse one (1) year after the occurrence pursuant to which such entitlement arises and based on which DGB is liable. An occurrence referred to in the foregoing sentence shall be deemed to include an omission.
- 3.2. Any liability on the part of DGB shall always be limited to the equivalent of the sum that is paid out in the relevant case pursuant to any liability (professional or otherwise) insurance policy or policies in so far as DGB is required to arrange same in accordance with any mandatory

regulations issued by the Nederlandse Orde van Advocaten [Netherlands Bar Association], plus the amount of any excess which is not borne by an insurer under the terms of the relevant policy. In the event that no payout is forthcoming from the relevant insurance company for any reason whatsoever, any liability shall be confined to the equivalent of the amount actually paid by the client concerned to DGB during the relevant calendar year subject to a maximum of EUR 10,000.00 (including VAT).

- 3.3. Under no circumstances shall DGB be liable for indirect or consequential loss, or loss of earnings. DGB's liability shall never extend beyond what is stipulated in these general terms and conditions irrespective of whether or not any amount is payable pursuant to an agreement or on any other grounds, especially tort.
- 3.4. DGB shall be at liberty to engage other parties (staff, other organisations and/or firms) even doing so by means of a subsidiary letter of engagement. In the event that such a person or other organisation is engaged and wishes to limit or has limited his or its liability in this respect, any letter of engagement agreed to by DGB and the client in question shall be deemed to authorise DGB to accept such a limitation of liability partly on behalf of that client. In the absence of any special arrangements this limitation shall also always apply in the event that it is accepted by DGB partly on behalf of a client.

#### **4. Fees and duty to effect payment**

- 4.1. DGB shall charge a fee for the work which it performs, which shall in principle be based on an hourly rate, any costs payable to other parties and a fixed rate of 5% over all costs to cover office expenses (plus VAT). DGB shall at all times be entitled to require a client to pay an advance on its fee. Its fees shall be adjusted annually to accommodate price rises.
- 4.2. DGB's invoices shall be paid within fourteen (14) days after the relevant invoice date. In the event that a client disputes the accuracy of an invoice, he shall be required to give written notice of this by registered mail within fourteen (14) days, in the absence of which the relevant invoice shall be deemed to have been accepted and it shall no longer be permissible to dispute it.
- 4.3. In the event that a client fails to effect payment by the relevant deadline, he shall be in default by operation of the law and the relevant default interest shall be equal to the then applicable interest stipulated pursuant to Section 119 of the Civil Code, Vol. 6. Contrary to the foregoing, where a client acts for the purposes of practising a trade or profession, conducting a business or operating a legal entity, he shall be liable for the commercial interest stipulated pursuant to Section 119a of the Civil Code, Vol. 6. A client shall not be entitled to set off or suspend payment. All judicial and extrajudicial expenses incurred by DGB for the purposes of collecting its receivables shall be borne by the client concerned subject to a minimum equivalent to 10% of the outstanding invoices.
- 4.4. DGB shall also be entitled to set off any amount which is conditionally payable to it by a client and/or which may reasonably be foreseen to be payable by the latter, against what it owes that

client or may reasonably be expected to owe him. For the purposes of this clause a client is also deemed to include a client's group company or majority interest. In the event that timely payment of any invoice does not occur, DGB shall be entitled to suspend its work pursuant to the relevant letter of engagement.

## 5. Other

- 5.1. DGB and a client shall at all times be entitled to cancel their letter of engagement.
- 5.2. DGB may not invoke these general terms and conditions in so far as this is not permitted (partly or entirely) by its professional association. In so far as this is prescribed, DGB shall only exercise its rights pursuant to these general terms and conditions as the case may be after receiving permission to do so from the dean of the appropriate supervisory board of the Nederlandse Orde van Advocaten.
- 5.3. In the event that one or more provisions of this agreement appear to be fully or partly void or unenforceable, they are hereby replaced – now in lieu of then – by those in respect of which this does not apply and which as far as possible stipulate the same as the void or unenforceable ones. In so far as it may be necessary to do so, the parties shall consult each other in good faith about the precise wording of the replacement provisions.
- 5.4. These general terms and conditions, and any letter or engagement shall be solely governed by and construed in accordance with the law of the Netherlands and the provisions a client's own procurement terms and conditions shall not apply. Any dispute concerning the agreement to or implementation of a letter of engagement between a client and DGB shall be adjudicated by the Geschillencommissie Advocatuur [Dispute Resolution Committee for the Legal Profession]. In the event that a dispute between the parties does not lend itself to be dealt with by the aforementioned committee or if it arises pursuant to its treatment by the aforementioned committee or the latter's ruling, that dispute shall be adjudicated by a competent court of law in whose jurisdiction DGB also practises. Nonetheless, in the latter case DGB shall also be entitled to bring a dispute before a competent court of law in whose jurisdiction the relevant client resides or has his registered office.
- 5.5. In the event of a difference of opinion between the parties concerning the substance and/or meaning of these general terms and conditions, the Dutch version of these general terms and conditions shall prevail and shall be binding. These general terms and conditions may be consulted on the DGB website at [www.dgb.nl](http://www.dgb.nl).