



## General Delivery Conditions Derks & Derks B.V.

This version of the General Delivery Conditions of Derks & Derks B.V. is a translation for the benefit of English speaking readers. In the event of a dispute or lack of clarity concerning its provisions, the Dutch version as deposited with the Chamber of Commerce will prevail.

### **Article 1. General**

1. These General Delivery Conditions, hereinafter referred to as "general conditions", are used by Derks & Derks B.V., hereinafter referred to as "Derks & Derks" and are applicable to all proposals, offers and contracts entered into between Derks & Derks and a Client.
2. The applicability of any purchase conditions or other provisions on the part of the Client is hereby explicitly excluded.

### **Article 2. Offers, proposals and execution of contract**

1. All offers and proposals of Derks & Derks B.V. are valid for 30 days after being submitted.
2. A contract between Derks & Derks and a Client resulting from an offer or proposal is formed when the order confirmation in question submitted by Derks & Derks has been signed and returned by the Client.
3. A contract between Derks & Derks and a Client comprises an order confirmation, these general conditions and any possible additional written agreements, jointly representing all rights and obligations of the parties involved and replacing all prior written and oral offers, notifications and possible correspondence.
4. The Client is obliged to provide Derks & Derks with all the essential information and data it requires to carry out the assignment/activities.
5. After the Client has validly signed and returned an order confirmation, Derks & Derks will undertake to use all information and data as may reasonably be expected to be provided by the client to the best of its knowledge and ability and in accordance with high standards in delivering its performance. Derks & Derks does not warrant the outcome envisaged by the Client.
6. The Client is obliged to provide all the information and data deemed necessary by Derks & Derks. In addition, the Client will be obliged to inform Derks & Derks of all other facts and circumstances which may be of significance to the correct execution of the contract.

### **Article 3. Confidentiality and exclusivity**

1. Derks & Derks within the framework of an assignment is obliged to treat all information Derks & Derks has received on the Client's organisation and of which it may be expected to understand its confidential nature, with the utmost confidentiality. The Client will refrain from making announcements or statements of whatever kind to a third party concerning the working methods of Derks & Derks without their written approval, nor may it give any documents or other items drafted or provided by Derks & Derks (among which models, technology, reports, instruments, software) to third parties.
2. If a contract between the Client and Derks & Derks involves a recruitment and selection assignment, then that contract is considered to have been entered into on an exclusive basis on the part of the Client. This implies that the recruitment and selection assignment in question and/or filling in the position or vacancy in question have been awarded to no other party than Derks & Derks. If a candidate is introduced by the Client or a third party, the Client will be obliged to inform Derks & Derks about that candidate.

**Article 4. Amendment of a contract**

1. Derks & Derks are entitled to amend a contract in the sense that it may alter the composition of the consultants or that a third party will be involved or engaged in the execution of a contract. Derks & Derks will only effect such an amendment if it considers such an action to be necessary for the execution of the contract.

**Article 5. Remuneration/payments**

1. If a candidate who has been introduced by Derks & Derks enters the employment of the Client or any of its associated companies within a year of being introduced, or commits himself following that year towards the Client or any of its associated companies to perform certain activities for any limited or unlimited period of time, or commits himself following that year to carry out work and/or assignments of any kind, the Client will be obliged to pay Derks & Derks the remuneration on which they have agreed. The agreed remuneration only applies to the position referred to in the contract in question.
2. The remuneration for a recruitment and selection assignment is equal to a percentage that is calculated over the income which in entering into the employment contract has, converted into an annual income, been offered to and accepted by that candidate. This income - for the purpose of calculating the remuneration - includes all that on an annual basis has been agreed on in salary, holiday allowances, fixed thirteenth month's salary, bonuses and/or fees as well as any fixed commissions and profit distributions. The remuneration will equally be charged on the basis of a full-time income in the event of temporary employment.
3. If the Client enters or intends to enter into a contract with one or more of the candidates from the selection procedure in question, he will be obliged to pay the full remuneration for each individual candidate.
4. The Client is obliged to immediately inform Derks & Derks of each employment contract he has entered into with either one or more candidates by submitting a copy, duly signed by both Client and the candidate(s) in question, of the relevant employment contract or letter of employment. This obligation also applies to each (employment) contract entered into between the Client and one or more candidates known to him from a selection procedure, regardless of the position for which that candidate has been approached.
5. Additional activities requested by the Client other than those described in advance in an assignment/contract will only be carried out on the basis of actual costs. Any costs incurred for supplementing and/or amending the contract will be for the Client's account.
6. Invoices will be sent to the Client in arrears on a monthly basis, with the exception of the initial (advance payment) invoice, which is sent in advance, unless otherwise agreed on in writing by the parties. All amounts that are specified on the invoices are excluding turnover tax.
7. An objection concerning the correctness of an invoice, stating the reasons for that objection, must be submitted to Derks & Derks in writing within 14 days after the invoice date, failing which the Client will be considered to have agreed to the full invoice. Objections submitted after this term will not be taken into consideration.
8. At no point will the Client be entitled to a settlement of the amounts owed by him to Derks & Derks.

**Article 6. Guarantee**

1. If a candidate who has been introduced by Derks & Derks to the Client terminates his or her employment contract within three months of that contract being effected, Derks & Derks will execute the same selection assignment once again at its own expense, based on the same function assessment and criteria. Any ensuing external costs (such as advertising costs and travel and hotel expenses on the part of candidates) will be for the expense of the Client.



2. If and to the extent that the Client enters into an employment contract with a candidate for whom Derks & Derks has issued a negative recommendation, than the provisions of paragraph 1 of this article will cease to have effect. This equally applies in the event of a negative recommendation being issued following a candidate's assessment after a positive selection interview recommendation.

#### **Article 7. Premature termination of an assignment**

1. The parties are entitled to unilaterally terminate a contract prematurely in the event that one of them believes that the assignment can no longer be executed in accordance with the signed order confirmation or possible assignment specifications that have been added at a later date. Derks & Derks must be informed of such a termination of contract in writing, stating the reasons for that termination.
2. In the event that the Client has proceeded to prematurely terminate a contract, than Derks & Derks will be entitled to compensation due to subsequent, albeit demonstrable, loss of capacity.
3. Derks & Derks will only exercise its entitlement to premature termination of contract if, due to facts and circumstances beyond its control or not attributable to it, completion of the assignment cannot reasonably be requested.
4. Derks & Derks in that case retains the right to demand payment of the invoices it has submitted for activities carried out up to then, in which case the interim results of the work carried out up to then will be made available to the Client, subject to certain restrictions. Any ensuing additional costs will be charged to the Client.
5. In the event that one of the parties is declared bankrupt or applies for a moratorium or ceases his business operations, the other party will be entitled to terminate the assignment, subject to all rights.
6. The (premature) termination of a recruitment and selection assignment by Derks & Derks is permissible in the event that:
  - the job description is altered by the Client to such an extent as to require the essential adjustment of the function analysis and/or assessment criteria;
  - Derks & Derks is not able to introduce a candidate it considers suitable for the position.
7. The (premature) termination of a recruitment and selection assignment by the Client is permissible in the event that:
  - the vacancy respectively available position has meanwhile been filled;
  - the vacancy no longer exists;
  - Derks & Derks has not been able to complete the assignment within the framework of agreements.
8. The (premature) termination of a suitability and competence assessment or career guidance/coaching assignment by Derks & Derks is permissible in the event that:
  - a candidate withdraws from the procedure;
  - a candidate withdraws his or her cooperation from the procedure.

#### **Article 8. Payment and collection charges**

1. All payments must be made within 14 days after the invoice date in a manner specified by Derks & Derks and in the same currency as the invoice, unless otherwise indicated by Derks & Derks. Derks & Derks is entitled to periodical invoicing.
2. If the Client fails in the timely payment of an invoice, he will be considered to be in default by operation of law and will be obliged to pay the then prevailing statutory interest on the amount outstanding. This interest will be calculated as from the moment at which the Client is in default up to the moment at which the amount outstanding has been paid.
3. If the Client is in default or fails in the (timely) fulfilment of his obligations, all reasonable costs for reaching a settlement out of court will be at the expense of that Client. These extra judicial costs will be calculated on the basis of what is considered common practice in Dutch collection proceedings. If,



however, Derks & Derks has incurred higher collection costs than reasonably necessary, the actual costs incurred will qualify for reimbursement. Any legal and/or enforcement costs will equally be recovered from the Client.

The Client will also be obliged to pay the statutory interest on the outstanding collection costs.

#### **Article 9. Term and termination of the contract**

1. A time schedule provided by Derks & Derks is an estimate, albeit as accurate as possible, based on prevailing specifications of the time needed for the execution/completion of a contract. The Client cannot derive any rights from such a time schedule, as the execution of a contract by Derks & Derks can be affected by various, unforeseeable, circumstances.
2. A recruitment and selection assignment ends - save for premature termination as meant by article 7 - if and as soon as a candidate for the position for which the Client has granted the assignment either enters the employment of that Client or one of its associated companies (in the position for which the Client has granted the assignment) or commits himself to undertake certain activities for a specified/limited period of time, or commits himself to undertake certain activities and/or commissions in the position for which that Client has granted the assignment, regardless of whether the candidate in question has emerged from the Derks & Derks recruitment and selection procedure or has otherwise been approached by the Client.

#### **Article 10. Amendment of the assignment or additional work**

1. All Clients acknowledge that the time schedule of an assignment may be affected due to the approach, method of working or scope of the assignment and/or the activities arising from this assignment being prematurely extended or amended by any of the parties. If the remuneration and/or expense allowance agreed on are affected by such a premature extension or amendment, than Derks & Derks will be obliged to inform the Client without further delay.
2. If a premature amendment to the assignment or to the execution of the assignment can be attributed to the Client, than Derks & Derks will undertake to implement the necessary amendments in the execution if doing so is required for the quality of service provided. If such an amendment leads to additional work, than this will be confirmed to the Client as an additional assignment.

#### **Article 11. Cancellation fees**

1. The Client is entitled to cancel an assignment up to 5 working days before commencement of a personal suitability or competence assessment or an assessment for career counselling/coaching. In that case Derks & Derks will be entitled to € 350 in administration fees.
2. If a personal suitability or competence assessment or an assignment for career counselling/coaching is cancelled by the Client or candidate within 5 days of commencement of the assessment, Derks & Derks will be entitled to 50% of the agreed remuneration.
3. If a personal suitability or competence assessment or an assignment for career counselling/coaching is cancelled within 2 days of commencement of the assessment, Derks & Derks will be entitled to the full remuneration agreed upon.

#### **Article 12. Intellectual property rights**

1. Derks & Derks retains all intellectual property rights both during and following the term of the assignment. All documents drawn up and items delivered by Derks & Derks (such as analyses, reports, advertisement texts, questionnaires and software) in executing an assignment and/or included in an advice or assessment outcome are and remain the property of Derks & Derks. None of the foregoing documents or items may therefore be made public without the written approval of Derks & Derks.



2. The Client is entitled to reproduce documents for use within its own organisation to the extent that this is done in accordance with the object of the assignment.
3. The Client is prohibited to encumber any information it has on a candidate whom he has not employed or to disclose such information to any third party or to seek contact with such a third party without the approval of Derks & Derks.

#### **Article 13. Liability**

1. Derks & Derks cannot be held liable for any other damages than direct damages, including consequential damages, loss due to delay, etcetera, insofar as not caused by deliberate intent or gross negligence on the part of Derks & Derks and/or personnel (in charge). Any liability will in each case be limited to the maximum amount of the remuneration received by Derks & Derks for the activities it has carried out for the benefit of the assignment in question.
2. Clients indemnify Derks & Derks for any third party claim. In the event that Derks & Derks is held liable by a third party and Derks & Derks in that case has had to pay for damages, Derks & Derks will have the right of recourse against the Client for the full amount it will have paid in damages and costs incurred.
3. Any right on the part of the Client to compensation for damages is subject to the condition that the Client informs Derks & Derks of the relevant failure in performance by submitting a notice stating the reasons for that complaint in writing as soon as possible, however no later than 3 months after having established or reasonably having been able to establish the failure in question. Any liability on the part of Derks & Derks lapses after one year of a failure in performance being established, and in any case not later than one year after the assignment awarded to Derks & Derks has ended.
4. Clients are responsible for the final decision regarding a candidate. Derks & Derks therefore excludes all liability arising from acts or negligence on the part of a candidate (as well as any consequential damages) who in part as a result of the execution of a contract has been employed by the Client.
5. Derks & Derks furthermore cannot be held liable for damages incurred by the Client due to the use of electronic means of communication, including but not restricted to damages arising from a failure or delay in the delivery of electronic communications, interception or manipulation of electronic communications by a third party or programs/equipment, computer virus infections or the improper functioning of the communications network or any other means of electronic communication, save for damages arising from deliberate intent or gross negligence on the part of Derks & Derks.

#### **Article 14. Force Majeure**

1. Derks & Derks is not in any way bound to fulfil any obligation towards the Client if it is prevented from doing so by circumstances not attributable to negligence and for which Derks & Derks nor by virtue of law and legal action nor according to prevailing opinion is accountable.
2. In addition to the relevant statutory provisions, a situation of Force Majeure in these general conditions is considered to be any external cause, whether foreseeable or not, over which Derks & Derks has no control, but due to which it is not able to fulfil its obligations.
3. Derks & Derks is entitled to suspend all obligations arising from a contract for the duration of a circumstance of Force Majeure. If that period exceeds a period of two months, each of the parties will be entitled to terminate the contract without being obliged to compensate the other party for loss or damages.
4. To the extent that Derks & Derks in a circumstance of Force Majeure has partly fulfilled its obligations or will be able to do so, it will be entitled to invoice the fulfilled respectively unfulfilled part separately. The client in that case will be obliged to pay that invoice as if it concerned a separate agreement.



**Article 15. Governing law and disputes**

1. All legal relationships to which Derks & Derks is a party are exclusively governed by Dutch law, even in the event that an assignment is carried out abroad or that a party involved in the legal relationship has domicile there. Any applicability of the Vienna Sales Convention is excluded.
2. All disputes arising from the execution of this contract or any other consequential agreements will be settled by the competent judge of the district court of Utrecht in the Netherlands.