

Krypton Consulting – General Terms & Conditions

Version 22nd November 2018

Definitions

1. “Contractor” means Krypton Consulting.
2. “Client” means the customer of Contractor.
3. “Parties” means Contractor and Client. “Party” may mean Contractor or Client.
4. “Contract” means any explicit or implicit agreement to carry out Services by Contractor for Client, in the form of, for example but not limited to a Purchase Order, written, electronic or verbal approval of a proposal for Services or products by Contractor.
5. “Writing” means a form of communication that is traceable to both Parties, e.g. e-mail, online services, letters.
6. “Services” means the work as described in the Contract.
7. “Confidential Information” means information, data, knowledge and materials regardless of form, transmitted to either party, that the disclosing party has identified as confidential or which, by the nature of the circumstances surrounding the disclosure, should be treated as confidential.
8. “Receiving Party” means the Party that receives Confidential Information from Divulging Party.
9. “Divulging Party” means the Party that releases Confidential Information to Receiving Party.

General

10. These General Terms and Conditions are applicable to all Services by Contractor for Client, unless otherwise agreed in writing. They shall be considered an integral part of the Contract.
11. Each party warrants that (i) it has the full right and power to conduct its business; (ii) that the Contract has been duly authorized, 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 bylaw, order, law, rule or regulation.

Proposals

12. Proposals by Contractor are valid for 30 days and are free of obligations to both Parties.
13. Prices in proposals are excluding of VAT and other government levies, as well as expenses (travel, lodging and other), unless indicated otherwise.
14. Obvious errors in proposals or Contracts are not binding to any of the Parties.
15. On acceptance of a proposal by Client, and confirmation in writing by Contractor, a Contract is established.
16. Contractor is not obliged to execute Services against proposed conditions if Customer’s acceptance deviates from the original proposal, or if Customer only accepts a part of a compound proposal.
17. Changes in Services, scope, conditions, planning etc. with respect to the Contract shall be agreed between Parties and mutually confirmed in Writing before effectuation.
18. Prices and conditions in existing or past proposals are not necessarily valid for future proposals or contracts.

Relationship between Contractor and Client

19. Both Parties acknowledge that Contractor is an independent entity and shall not be regarded as Client’s

agent, partner or employee. There shall be no authority relationship between Client and Contractor.

20. Contractor may, after agreement with Client, hire a third party to execute the whole or a part of the Services.

Services and Products

21. Contractor shall execute the Services to Client as agreed in the Contract, in a professional and ethical manner.
22. Personnel of Contractor has all required qualifications, competency and experience to carry out the Services as agreed in the Contract.
23. Client shall provide the necessary resources required by Contractor to carry out the Services, as stipulated in the proposal, such as, but not limited to, documentation, people and expertise, logistics (access, specific transport, specific trainings, working/meeting rooms, computers and software, network access).
24. It is Clients’ responsibility that the delivered Services and products are suitable for Client’s purposes.

Invoicing and Payments

25. Contractor invoices Client at the end of each month, or at the completion of the Services, whichever comes first.
26. Invoices are due to be paid within 30 days after issue, unless otherwise agreed in the Contract. Contestation of the invoice shall not suspend the payment obligation.
27. Invoices for reimbursable contracts can, if requested by Client, be supported by timesheets and proof of expenses.
28. If Client does not pay the invoice within the period agreed in the Contract, Contractor is entitled to charge 1% interest per month over the invoice amount, unless the statutory interest rate is higher, in which case the latter shall apply.
29. Contractor is entitled to suspend the contractual Services and withhold work products from Client, starting 15 days after the invoice due date until the invoice is paid.

Limitation of Liability

30. The liability of Contractor 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 price for the services paid by the Client in the calendar year to which the claim relates, with a maximum of € 1.000.000,00 (1 million euro) per occurrence or € 2.000.000,00 (2 million euro) per insurance year;
31. In no event shall Contractor 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 Contractor had been made aware of the possibility of the Client incurring such a loss.
32. No liability is accepted for claims based on the law applicable in the United States of America and/or Canada, as well as claims that are tried, settled or arranged by or under any judicial, arbitral or intermediary body in the United States of America and/or Canada.

Indemnification

33. Client shall indemnify and hold harmless Contractor from, and shall defend Contractor against any costs, liabilities, damages or expenses (including reasonable solicitor’s fees) arising out of or relating to any third-party claim relating to the execution of the Contract;

Krypton Consulting – General Terms & Conditions
Version 22nd November 2018

Termination

34. The Contract commences from the date of signature and terminates upon the completion of the Services and/or delivery of the Products and the payment of all due fees and expenses.
35. The Contract may be terminated by either Party in Writing, if the other Party is in material breach of any of the terms in the Contract. In this case, the terminating Party shall inform the other Party by written notice specifying the breach and allow the other Party to rectify this breach within 21 days. If the breach is rectified within 21 days, the Contract shall not be terminated.
36. The Contract may be terminated by either Party if the other Party becomes insolvent or has a receiver or administrator appointed over the whole or any part of its assets or enters into liquidation (whether compulsory or voluntarily) except bona fide for the purposes of reconstruction or amalgamation.
37. Upon termination of the Contract by Client under Clauses 35 and 36, Contractor will invoice Client for the Services executed by Contractor and will hand over all work products “as-is” on the date of Termination.
38. Upon termination of the Contract by Client under Clauses 35 and 36, any Party is not entitled to claim costs or damage to the other Party, caused by termination of the Contract.

Confidentiality

39. Receiving Party shall file Confidential Information obtained from Divulging Party in a secure manner. This includes restricting computer access and file encryption in accordance with normal industry practice.
40. Receiving Party shall only use Confidential Information provided by Divulging Party for providing services set out in the Contract.
41. The obligations of Receiving Party under this header shall not apply to any information, which: (i) is already known to or possessed by Receiving Party or is subsequently independently developed by Receiving Party without access to the Confidential Information; or (ii) is or becomes generally known in the trade or business to which it pertains or otherwise becomes publicly known, through no wrongful act of Receiving Party; or (iii) is rightfully received from a third party; or (iv) is approved for release by authorization in Writing by the Divulging Party.
42. Parties recognize that unencrypted email and internet information transfer is not secure. Parties shall mutually agree on a secure communications channel for transfer of confidential information. If a secure communications channel cannot be established or is not used, Parties shall not hold each other responsible for unintentional leakage of Confidential Information.
43. The Receiving Party shall destroy or return to Divulging Party any Confidential Information after termination of the Contract if Divulging Party requests such.
44. Notwithstanding Clause 43, Contractor is entitled to keep one copy of the product of the Services for his own files.
45. Contractor is entitled to disclose the existence of the Contract, including the name and residence of the Customer and a general description of the Services, for marketing or reference purposes by Contractor.

Force Majeure

46. Neither Party shall be liable for any delay or failure to perform its obligations if these result from Force Majeure, i.e. events or circumstances beyond Party’s reasonable control, such as social conflicts (indicated by e.g. negative travel advices from authorities), accidents, natural disasters, government actions, delay or failure in supply by third parties, or severe personal circumstances.
47. Contractor shall not invoice Client for services not delivered due to Force Majeure on Contractors’ side.

Waiver

48. 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

49. 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.

Governing Law and Jurisdiction

50. 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.

Registered Office

Krypton Consulting
Oostvierdeparten 36
8391 XR Noordwolde
The Netherlands
Chamber of Commerce: 62211269
VAT: NL024995137B03
IBAN: NL37 TRIO 0198 0488 31
BIC: TRIONL2U