

GENERAL TERMS AND CONDITIONS

OF:
PHARMO Institute N.V.
Van Deventerlaan 30-40
3528 AE Utrecht
The Netherlands

hereinafter to be referred to as: user

Article 1 Definitions

1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

PHARMO: the user of the general terms and conditions.

Client: user's opposite party.

Agreement: the agreement concerning the provision of services.

Article 2 General

1. The present terms and conditions shall apply to each and every offer, tender and agreement between user and a client, to which user has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.
2. The present terms and conditions shall also apply to all agreements with user, the execution of which calls for the services of third parties.
3. Possible deviations from the present general terms and conditions shall only be valid provided they have been explicitly agreed upon in writing.
4. The applicability of client's possible purchase or other conditions is explicitly rejected.
5. If one or more stipulations in the present general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, user and client shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.

Article 3 Offers and Tenders

1. All offers shall be free of obligation unless the offer contains an acceptance term.
2. The offers made by user shall be free of obligation; they shall be valid for a period of 30 days, unless indicated otherwise. User 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.
3. 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 and administration costs, unless user indicates otherwise.
4. Offers and tenders shall not apply automatically to future assignments.

Article 4 Execution of the Agreement

1. User shall execute the agreement to the best of his knowledge and ability.
2. If and in so far required for the proper execution of the agreement, user shall have the right to have certain work done by third parties.
3. If parties have agreed that the agreement will be executed in stages, user can suspend the execution of the parts belonging to a following stage until the client has approved in writing the results of the stage prior to it.
4. If user or third parties engaged by user within the scope of the assignment do work at client's site or at a site designated by client, client shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.
5. Client shall safeguard user against possible claims filed by third parties who may sustain damage attributable to client in connection with the execution of the agreement.

Article 5 Changes to the agreement

1. If it is shown during the execution of the agreement that the work to be done needs to be changed and supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations.
2. If parties agree that the agreement needs to be changed or supplemented, this decision may influence the time of completion of the execution. User shall inform the client thereof as soon as possible.
3. Should the change or supplement to the agreement have any financial and / or qualitative consequences, user shall inform client thereof in advance.
4. If a fixed fee has been agreed upon then user shall indicate the degree to which the change or supplement to the agreement will result in an increase of said fee.

Article 6 Fee

1. Parties can agree upon a fixed fee the moment the agreement is concluded.
2. If no fixed fee has been agreed upon, the fee shall be determined on the basis of the number of hours actually spent on the work. The fee shall be calculated in accordance with user's usual hourly rates, valid for the period in which the work is being done, unless a deviating hourly rate has been agreed upon.
3. The fee and a possible cost estimate shall be exclusive of VAT.
4. With respect to assignments with a duration of more than three months, the costs owed shall be charged periodically.
5. User shall furthermore be able to increase the fee when it is shown during the execution of the work that the volume of work initially agreed upon or expected when the contract was concluded, was underestimated to such a degree, and this through no fault of the user, that user cannot be expected in reasonableness to do the work agreed upon for the fee initially agreed upon. In that case user shall notify the client of his intention to increase the fee or the hourly rate, whereby user shall communicate the volume of said increase and the date on which it shall take effect.

Article 7 Authority to represent

During execution of the assignment user (PHARMO) will act as an independent commissionee to the client, whereby the user, user's employees, as well as assistants hired user, will have no relationship of authority with the client, or any authority to represent the client legally or otherwise.

Article 8 Sub-contracting

Unless otherwise stipulated in writing in the agreement, user (PHARMO) is permitted to sub-contract third parties to carry out the work agreed upon in the agreement without prior consent of the client.

Article 9 Payment

1. Payment must be made within 30 days from the date of invoice, in a way to be indicated by user 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 fulfilment of the payment obligation.
2. If client fails to fulfil 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 10% 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.
3. User's claims against client shall become due on demand in the event that client's company is wound up, attached, declared bankrupt, or if a suspension of payment is granted.
4. User shall be entitled to have the payments made by the client go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. User shall have the right, without this leading user to be in default, to refuse an offer for payment, if the client designates a different sequence of attribution. User shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.

Article 10 Retention of Title

All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property until client has fulfilled all of his obligations under all agreements concluded with user.

Article 11 Cancellation

1. User (PHARMO) may terminate the agreement by giving 30 (thirty) days written notice, or within a shorter period if agreed upon by both parties, if for any reason it has become impossible or is foreseen to be impossible for user (PHARMO) to execute or complete the work. The client may terminate the agreement if user's (PHARMO's) conduct is not in accordance with the terms of the working agreement and when user cannot reasonably be expected to comply with the terms and conditions of the agreement, except when otherwise determined in the following paragraphs.
2. If the agreement is terminated prematurely by client, user shall be entitled to compensation of the loss of capacity utilisation to be demonstrated caused by said premature termination, unless the termination is based on facts and circumstances which can be attributed to user (as mentioned under 1 of this article). Client shall furthermore be held in that event to pay the statement of expenses for the work done up till that moment. The preliminary results of the work done up till that moment shall therefore be put at client's disposal subject to approval.
3. If the agreement is terminated prematurely by user, user shall see to it in conjunction with client that the work still to be done be transferred to third parties, unless the termination is based on facts and circumstances which can be attributed to client.
4. If the transfer of the work still to be done entails extra costs for user, said costs shall be charged to client.

Article 12 Suspension and Dissolution

- 1 User shall be authorised to suspend the fulfilment of the obligations under the agreement or to dissolve the agreement, in the event that:
 - client does not fulfil or does not fully fulfil his obligations resulting from the agreement
 - after the agreement has been concluded, user learns of circumstances giving good ground to fear that the client will not fulfil his obligations. If good ground exists to fear that the client will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far the shortcoming justifies such action.
 - client was asked to furnish security to guarantee the fulfilment of his obligations resulting from the agreement when the contract was concluded and that this security is not provided or insufficient.
- 2 User shall furthermore be authorised to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.
- 3 If the agreement is dissolved, the user's claims against the client shall be forthwith due and payable. If user suspends fulfilment of his obligations, he shall retain his rights under the law and the agreement.
- 4 User shall always retain the right to claim damages.

Article 13 Liability

1. Should user be liable, then said liability shall be limited to the stipulations of the present condition.
2. If user is liable for direct damage, then said liability shall be limited to a maximum of twice the amount of the statement of expenses, at any rate that part of the assignment to which the liability relates, at any rate to a maximum of €25,000.00 (in words: euro twentyfivethousand). User's liability shall at all times be limited to a maximum equalling the amount of the payment to be made by user's insurer in the occurring event.
3. In the event of an assignment with a duration of more than 6 months, the liability shall, contrary to the stipulations under 2. of the present article, furthermore be limited to the part of the fee still due for the last six months.
4. Direct damage shall be understood to be exclusively:
 - the reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment relates to damage in the sense of the present terms and conditions
 - the reasonable costs possibly incurred to have user's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to user;
 - the reasonable costs incurred to prevent or limit the damage, in so far client demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.
5. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.
6. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user or his subordinates

Article 14 Safeguarding

The client shall safeguard user against claims filed by third parties concerning intellectual property rights on material or data provided by the client, which shall be used for and during the execution of the agreement.

Article 15 Force Majeure

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which user cannot have any influence but which prevents user from fulfilling his obligations. Industrial action at user's company shall also be understood to be a circumstance of force majeure.
3. User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.
4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.
5. Insofar user has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, user shall be entitled to submit a separate statement of expenses of the part already fulfilled or still to be fulfilled respectively. The client shall be held to pay this statement of expenses as if it were a separate agreement.

Article 16 Secrecy

1. Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.
2. If a statutory provision or a judicial decision compels user to convey confidential information to third parties designated by law or by the court and user cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, user shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.
3. Any information, material or data (hereinafter referred to as "information") provided to user (PHARMO) by the client during the execution of an assignment will be considered by user (PHARMO) to be confidential information and the exclusive property of the client, in so far as this information does not include the following:
 - Information considered to be within the public domain or public information, which user (PHARMO) automatically has a right to use
 - Information provided to user (PHARMO) by a third party authorised to use and disclose this information.
 - Information user (PHARMO) is bound by law to provide to third parties in accordance with legal regulations.
 - Information already in user's (PHARMO's) possession prior to disclosure by the client.
4. The results of the work as compiled by user (PHARMO) shall be considered as confidential information by both parties, whereby the client has the right to freely publicise the results.

Article 17 Intellectual Property and Copyrights

1. Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Copyright Act.
2. User (PHARMO) shall retain the (intellectual) property rights to his information in so far as these are used in the framework of an assignment. Client has the right to use this information, or results based on this information, in other studies, but is expected to respect this information and the consequences of such use and/or publication by seeking prior permission from user (PHARMO) in compliance with the conditions of *article 16*.
3. All documents, such as reports, advice, agreements, designs, sketches, drawings, software, etc., provided by user, shall be destined to be used by client exclusively and must not be reproduced, made public or brought to the notice of third parties by client without prior consent from user, unless the nature of the documents provided dictates otherwise.
4. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall be brought to the notice of third parties when doing so.

Article 18 Publications

1. User (PHARMO) will be entitled to publish and/or publicise the results obtained as a result of the work performed under this agreement, provided that he observes a period of 3 (three) months after delivery of the final results to client.
2. Client shall approach user within 30 (thirty) days of the delivery referred to in the previous paragraph with suggestions for adjustments and/or changes in the results and/or formulation of such, which are necessary to ensure that no confidential and /or technical information relating to the client becomes public.
3. Parties shall not disclose and/or publicise each other's name with respect to the results obtained from this agreement, unless prior written permission has been granted.

Article 19 Disputes

1. The Court in user's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. User shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

Article 20 Applicable Law

Dutch law shall apply to each and every agreement between user and the client.

Article 21 Changes to the Terms and Conditions, interpretation and their Location

The present terms and conditions have been filed at the office of the Chamber of Commerce in Utrecht.

The Dutch version of these general terms and conditions prevails at all times in case of disputes with regard to the interpretation and purpose of these terms and conditions.

The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.