



General Term and Conditions Caribbean Payroll Company (CPC)

Article 1 Definitions

- 1.1** In these General Terms and Conditions the following words shall have the following meanings:
- a.** Client: the (legal) person who has commissioned Contractor to perform activities;
 - b.** Contractor: the private company with limited liability **Caribbean Payroll Company B.V.**, having its registered office at Philipsburg, St. Maarten;
 - c.** Assignment/Agreement: the contract between Client and Contractor, by which Contractor undertakes towards Client to perform activities.
- 1.2** In these General Terms and Conditions each sub-Assignment or additional Assignment is considered a separate Assignment to perform activities. In these General Terms and Conditions 'Assignment' should consequently be understood to mean 'sub-Assignment' or 'additional Assignment' where appropriate.

Article 2 Applicability

- 2.1** These General Terms and Conditions shall apply to all legal relations between Contractor and Client concerning activities performed or to be performed by Contractor for Client.
- 2.2** Deviations from these General Terms and Conditions shall only be valid, in case and insofar as they have been agreed on explicitly and in writing between parties. Insofar as such deviations did not take place the provisions in these General Terms and Conditions shall continue to apply unimpaired.

Article 3 Offer and conclusion agreement

- 3.1** The Agreement shall be concluded in one of the following ways and on one of the following dates:
- a.** either, in case an engagement letter is sent, the moment at which Contractor has received back the engagement letter sent to Client and signed by latter as correct;
 - b.** or, in case no engagement letter is sent, the moment at which an offer made by Contractor is explicitly accepted by Client verbally or in writing and unaltered;
 - c.** or, in case the Assignment granted by Client is not preceded by an offer from Contractor, the moment at which Contractor has commenced execution of that Assignment.

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Nonetheless it is open to each party to prove that the agreement has been concluded in a different way and/or at a different time.

- 3.2 The engagement letter referred to in article 3.1 under (a) shall be based on the information provided thereto by Client and shall be regarded to represent the Agreement accurately and completely.
- 3.3 The Agreement shall be entered into for an indefinite period of time, unless parties have agreed explicitly otherwise or that it follows from the contents, nature or purport of the Assignment that the Agreement has been entered into for a definite period of time.

Article 4 Required information

- 4.1 Client is obliged to provide Contractor in time with all information that Contractor in its judgment requires for a correct execution of the Assignment or that Contractor is obliged to obtain in accordance with the law. The information is to be provided in the form and manner as requested by Contractor. In case the information is not provided or not provided in time, Contractor shall be authorized to immediately suspend the (further) execution of the Assignment.
- 4.2 Client is furthermore obliged to provide Contractor of his own accord with all information, of which Client knows or should reasonably know this to be necessary or useful for a proper execution of the assignment.
- 4.3 Client shall vouch for the accuracy, completeness and reliability of the information provided to Contractor, even if it originates from third parties.
- 4.4 In case the execution of the Assignment is delayed owing to the fact that Client does not fulfill his obligations referred to in articles 4.1 and 4.2 or because the information provided by Client does not meet the provisions in article 4.3, the (additional) costs arising therefrom shall be for Client's account and Contractor shall be authorized to charge Client with (additional) fees for the (extra) activities that have become necessary because of that.
- 4.5 The information provided by Client shall be retained by Contractor no longer than will be necessary or useful in view of the execution of the Assignment, but in no case longer than the legal period for retaining books, records and other data carriers (ten years), unless parties have explicitly agreed otherwise.

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Article 5 Execution of the Assignment

- 5.1** Contractor shall carry out the Assignment, with due observance of what has been agreed on in respect thereto between parties, to the best of his knowledge and ability and with the due care of a good contractor. Contractor does, however, not guarantee the attainment of a specific result.
- 5.2** Contractor determines by which person or persons from its organization the Assignment will be carried out, such to the exclusion of the provisions in article 404 of Book 7 of the Civil Code of St. Maarten. Furthermore Contractor determines in what way and by which means the Assignment will be carried out. For that purpose the reasonable wishes and instructions of Client will be considered as much as possible, provided this is beneficial in Contractor's judgment to the timely and proper execution of the Assignment.
- 5.3** The Assignment shall be carried out by Contractor with due observance of the rules of conduct and professional practice applicable to the professionals involved. Contractor is never obliged to any acts or omissions that are contrary to or irreconcilable with the rules referred to above.
- 5.4** The activities to be carried out under the Assignment are not aimed at detecting fraud (also), unless parties have explicitly agreed otherwise. In case the activities in Contractor's judgment result in indications of fraud, Contractor shall report this to Client forthwith, whereby Contractor is obliged to comply with the regulations regarding fraud reporting arising from the rules of conduct and professional practice applicable to the professionals involved.
- 5.5** Insofar as the activities to be carried out by Contractor consist of (tax) advisory services, the result of those activities shall be based on the state of the legislation and the jurisdiction in the St. Maarten as it may reasonably be considered known to Contractor at the moment of delivering the (tax) advice. Consequently, possible future changes in the aforementioned legislation and jurisdiction shall not be regarded when delivering the (tax) advice, unless parties have explicitly agreed otherwise.
- 5.6** Contractor is only authorized to call in third parties for the execution of the Assignment, in case agreement in respect thereto exists between parties, unless it follows from the contents, nature or purport of the Assignment that Contractor is also authorized thereto without said agreement or that calling in third parties is necessary in Contractor's judgment for a timely and correct execution of the Assignment.
- 5.7** In case Client wishes to involve third parties in the execution of the Assignment, he shall only be authorized in that respect after agreement has been reached between parties in respect thereto.

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- 5.8** Periods within which the activities should be completed are always indicative periods, unless parties have explicitly agreed otherwise or that it flows from the contents, nature or purport of the Assignment that those periods are definite in character.
- 5.9** In case during the execution of the Assignment more or other activities were carried out for Client than were commissioned, the suspicion shall be derived from notes related thereto in the administration of Contractor that those activities were carried out under (incidental) Assignment, provided those notes relate to (among other things) consultations held between Contractor and Client (also) in connection with said activities. In case the aforementioned activities were carried out to meet Contractor's obligations under article 5.1, Contractor is authorized to charge Client for those activities, although the aforementioned notes are missing.

Article 6 **Secrecy**

- 6.1** Contractor is obliged to secrecy of the information provided by Client as well as of the results of the activities carried out by Contractor pursuant to the Assignment. The duty of secrecy shall not apply, in case and insofar as said information and/or results are destined for publication or Contractor is obliged to disclosure or publication pursuant to legal provisions or rules of conduct and professional practice. Furthermore the obligation to observe secrecy shall not apply towards the third parties called in the execution of the Assignment as referred to in the articles 5.5 and 5.6.
- 6.2** Without prior written consent from Client Contractor shall not be authorized to use the information provided by Client nor the results of its activities for any other purpose than for which they are destined pursuant to the contents, nature or purport of the Assignment. The above suffers exception in case Contractor acts for herself in arbitral, disciplinary or judicial proceedings, in which provision of said data may be of importance to outcome of the proceedings.
- 6.3** Contractor is obliged to also impose her obligations arising from articles 6.1 and 6.2 on her employees and on third parties called in by her in the execution of the Assignment.

Article 7 **Intellectual Property**

- 7.1** The rights with regard to all (intellectual) products, used by Contractor within the scope of the Assignment - including analyses, models, surveys, software, techniques and the like - or that are the result of the activities performed by Contractor under the terms of the Assignment - including advice, reports, accounts, plans and the like - shall exclusively rest with Contractor, insofar as those do not (also) accrue to third parties.

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- 7.2** Without prior written consent from Contractor Client is not authorized to publication or multiplication of the products referred to in article 7.1 nor to use thereof for any other purpose or provision thereof to other persons, than for which or for whom said products are destined. This prohibition also comprises the explicit or tacit consent of said actions.
- 7.3** In deviation from the provisions in article 7.2 Client is authorized to place the products referred to in article 7.1 at the disposal of a third party, insofar as such is required in obtainment of his expert judgment on the activities performed by Contractor and/or the results thereof, or a part thereof, provided that:
- a. the provision is done within the scope of an existing dispute between Client and Contractor on the execution of said activities or on the results thereof, with reference to which despite reasonable consultations between parties no solution has been reached within a reasonable period of time;
 - b. the third party is a member of a professional body that has been set up for the discipline to which the activities in question belong and which as such is considered sufficiently representative by Contractor;
 - c. Client informs Contractor in advance of the identity of the third party to be called in, the nature of the Assignment to be granted to latter and indicates what products will be placed at his disposal.

Article 8 Fee

- 8.1** The fee for the activities to be carried out under the Assignment shall be calculated on the basis of the time spent on those activities multiplied by the hourly rate used by Contractor or on the basis of what has been agreed on in respect thereto between parties, and is exclusive of turnover tax (TOT). Unless parties have explicitly agreed otherwise, the costs incurred within the scope of the Assignment - including travelling expenses and accommodation and other 'out-of-pocket' expenses as well as the costs of third parties called in the execution of the Assignment - are not included in the fee and shall be charged to Client separately. The fee falls due to the extent the activities have been carried. The indebtedness of the fee does not depend on the results of the activities performed under the terms of the Assignment.
- 8.2** In case after the conclusion of the Agreement, but preceding the completion of the Assignment wages and/or costs undergo a change, Contractor is authorized to adjust the fee accordingly.
- 8.3** The fee, in the occurring case increased by expenses and declarations of third parties called in for the execution of the Assignment, will - depending on the nature of the Assignment and at Contractor's discretion - be charged to Client periodically or after full execution of the Assignment, insofar as parties have not agreed otherwise.

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- 8.4** On premature termination of the agreement Client is obliged to full payment of the fee due until termination of the activities, in the occurring case increased by expenses and declarations of third parties called in for the execution of the Assignment.

Article 9 Payment and security

- 9.1** Payment by Client should be made not later than fourteen (14) days after date of invoice, without deduction, discount or settlement in Netherlands Antillean or American Dollar currency by transfer to or deposit into a bank account to be designated by Contractor.
- 9.2** In case Client has not paid within the term referred to in article 9.1 and Client remains in default after having been warned, Contractor shall be authorized, without any demand or notice of default being required thereto and without prejudice to Contractor's other rights, to charge Client the legal interest over the amount not paid or not paid in time, accrued from the expiry date referred to in article 9.1 until the date on which payment is made in full.
- 9.3** All judicial and extrajudicial (collection-) costs incurred in reasonableness by Contractor as a result of the non-fulfillment or late fulfillment by Client of his obligations to pay shall be for Client's account.
- 9.4** Contractor is at all times authorized to require from Client a reasonable advance payment. Furthermore, Contractor is authorized to require from Client (additional) security for the fulfillment of his obligations to pay, in case the financial position or the payment record of Client gives reason to that in Contractor's judgment. Client is obliged to meet such a requirement. In case Client fails to meet said requirement, Contractor shall be authorized, without prejudice to Contractor's other rights, to immediately suspend the (further) execution of the Assignment and all that Client is owing to Contractor for whatever reason, shall be immediately due and payable.
- 9.5** In case the Assignment was given by several Clients jointly, they are, in case and insofar as the activities have been carried out for them jointly, jointly and severally liable for the fulfillment of the obligations to pay arising from this agreement.
- 9.6** Contractor is authorized to exercise the right of retention in respect of documents or records prepared or adapted by Contractor until Client has paid all amounts due to Contractor in connection with the execution of the Assignment or the (premature) termination of the Agreement, except in case and insofar as the Client's interest dictates otherwise.

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Article 10 Complaints

- 10.1** Client is obliged to inform Contractor of complaints with regard to the activities performed by Contractor and/or the invoice amount in writing within fourteen (14) days after the date of dispatch of the matters in connection with which he wishes to complain, or forthwith after he has discovered what he wishes to complain about. In the latter instance Client should prove that what he wishes to complain about could not reasonably have been discovered sooner.
- 10.2** Client is not authorized to suspension of his obligations to pay on account of complaints as referred to in article 10.1.
- 10.3** In case and insofar as Client complains rightly in Contractor's judgment, Contractor shall be authorized at his own option to either adjust the invoice amount, or improve the activities in question for his own account or perform these again, or to refund part of the fee already paid without further executing the Assignment.
- 10.4** In case Client has not complained within the period stipulated by article 10.1, all his rights and claims for whatever reason shall lapse in respect of what he has complained about or could have complained about within that period.

Article 11 Liability

- 11.1** Contractor is only liable for damage to Client, which is the direct consequence of an attributable failure of Contractor to fulfill his obligations under article 5.1, such to the exclusion of the provisions in article 407, subclause 2, of Book 7 of the Civil Code of the St. Maarten. Contractor's liability is limited to a maximum of three (3) times the amount of the fee, charged by Contractor to Client for carrying out the activities in which lies the cause of the damage, on the understanding that only the fee shall be considered related to the last twelve (12) months during which those activities were carried out. The above suffers exception in the event of intention or gross negligence by Contractor.
- 11.2** Contractor shall not be liable for damage, which has been caused owing to the fact that Client has not fulfilled his obligation to provide information arising from articles 4.1 and 4.2 or because of the fact that the information provided by Client does not meet what he guarantees under article 4.3, unless this damage has also been caused by Contractor's intention or gross negligence.
- 11.3** Furthermore Contractor shall not be liable for damage, which has been caused by acts or omissions of third parties involved by Client in the execution of the Assignment, unless that damage has also been caused by Contractor's intention or gross negligence.

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- 11.4** Nor shall Contractor be liable for damage, which could only have been prevented by acts or omissions that would have been conflicting or incompatible with the rules of conduct and professional practice applicable to the professionals involved, unless this damage has been caused by Contractor's intention or gross negligence.
- 11.5** Contractor, for that matter, shall always be authorized to limit or undo Client's damage as much as possible, to which Client shall grant every cooperation.
- 11.6** Client shall indemnify Contractor against claims by third parties in respect of damage, which relates to or flows from the Assignment carried out by Contractor, in case and insofar as Contractor is not liable for that towards Client pursuant to the provisions in this article.
- 11.7** The limitations of liability laid down in the previous provisions of this article are also stipulated in favor of third parties called in by Contractor for the execution of the Assignment, who may therefore directly invoke those limitations of liability.

Article 12 Electronic mail and electronic data transfer

- 12.1** Unless parties have agreed otherwise, the communication (sending and receiving of messages with or without attachments) between Client and Contractor shall (also) be possible by means of electronic mail. The communication shall take place under the following conditions:
- a.** the sending and receiving of messages by means of electronic mail is only meant to exchange information and not to exchange declarations of intentions addressed to the other party, unless parties have explicitly agreed otherwise;
 - b.** a message sent by means of electronic mail is considered to be received by addressee, in case the sender has received (by means of electronic mail) a confirmation of receipt by addressee or if it appears otherwise to sender that the message has been received by addressee;
 - c.** in case of doubt as regards the correctness or the completeness of a message received by means of electronic mail, the contents of the message sent by sender shall be decisive.
- 12.2** Contractor does not guarantee the correct, complete or timely transmission of a message sent by means of electronic mail.
- 12.3** Contractor shall take measures, which may reasonably be required from him, to prevent third parties from taking note of the contents of messages (including possible attachments thereto) sent by means of electronic mail, but cannot guarantee that third parties cannot take note thereof, so that Contractor shall not accept liability for damage

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as a consequence of taking note of the contents of those messages (including possible attachments thereto) by third parties.

- 12.4** In case the execution of the Assignment takes place by means of electronic data transfer, either because parties have agreed so or Contractor is obliged by law thereto, Contractor shall take measures, which may reasonably be required from him, to prevent that the sending or receiving from data, both in the relation to Client as in the relation to third parties, is disrupted or delayed or that the data, while sending or receiving them, are mutilated or changed. Contractor, however, has no influence on the means of data communication or the computer systems by means of which the electronic data transfer takes place, so that Contractor shall not accept liability for damage as a consequence of the use of electronic data transfer within the scope of (carrying out) the Assignment.

Article 13 Term of forfeiture

Without prejudice to the provisions in article 10 Client is obliged, in case he is or remains of the opinion that Contractor has not carried out the Assignment properly or with due care, to inform Contractor forthwith of this in writing - unless this has already taken place on the basis of the provisions in article 10.1 - and to make legally valid the claims based thereupon within one (1) year after date of the above notification, or within one (1) year after that notification should have been given, in the absence of which all his rights and claims on that account shall lapse by the expiry of said term.

Article 14 Termination of agreement

- 14.1** Each party is at all times authorized to end the Agreement with due observance of a period reasonable under the circumstances by giving notice by the end of a calendar month, unless parties have agreed otherwise. Notice of termination must be given in writing.
- 14.2** In case the Agreement is terminated by Contractor, he is obliged to inform Client of the reasons of termination and furthermore to do everything that is claimed by Client's obvious interest in connection with the termination of the Agreement.

Article 15 Modification General Terms and Conditions

- 15.1** Contractor is authorized to modify these General Terms and Conditions. The General Terms and Conditions modified by Contractor shall apply towards Client as from thirty (30) days after latter has been informed of the change in writing, unless Client indicates to Contractor in writing its objections to the change within that period.

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In the latter case Client is authorized to terminate the Agreement by the time at which the modified General Terms and Conditions would become applicable to the Agreement, yet only in case the modification implies an essential increase of the obligations arising from the Agreement for Client. Notice of termination must be given in writing.

- 15.2** In case Client has timely indicated his objections to the change, without having terminated the Agreement in accordance with the provisions of article 15.1, the unmodified General Terms and Conditions continue to apply between parties until the Assignment has been completed or until the Agreement has been terminated, yet not longer than six (6) months as from the end of the abovementioned thirty (30) days' period. Should the Agreement continue after that, the modified General Terms and Conditions shall apply thereupon as from that time.

Article 16 Applicable law and disputes

- 16.1** All legal relations between Contractor and Client, to which these General Terms and Conditions apply, are governed by St. Maarten law.
- 16.2** All disputes relating to the legal relationship between Contractor and Client to which these General Terms and Conditions apply, shall only be submitted to the competent court in Philipsburg, St. Maarten, unless provisions of mandatory law prescribe otherwise.

Article 17 Translation and authentic text

These General Terms and Conditions have been drawn up in the Dutch language and translated into the English language. Therefore the Dutch text of these General Terms and Conditions shall apply as the authentic text thereof.

Philipsburg, St. Maarten, February 2013

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