

# BDB General Terms and Conditions

## 1. General provisions

### 1.1 Applicability

- a. These General Terms and Conditions are applicable to all offers, quotes and contracts with BDB.
- b. These General Terms and Conditions consist of general provisions and the following special conditions:
  - Subscription Terms and Conditions
  - Terms and Conditions for business-specific, project-specific or ad hoc questions
- c. The general provisions are not applicable insofar as they are deviated from in the specific conditions.
- d. By entering into a contract with BDB the other party waives any general terms and conditions and other terms and conditions used by the other party. All of our contracts are therefore subject exclusively to the terms and conditions used by BDB.
- e. If any provisions contained in these Terms and Conditions are invalid or void, the other provisions of these Terms and Conditions shall remain in full force. The parties shall enter into dialogue about the invalid or void provisions in order to implement a replacement provision that shall not affect the meaning of these Terms and Conditions.

### 1.2 Offers and quotes

- a. Unless explicitly stated otherwise, all offers and quotes are without obligation and remain valid for 30 days.
- b. Unless explicitly stated otherwise, all prices exclude VAT. BDB has the right to pass on all changes to the VAT rate to the other party.

### 1.3 Contract formation

- a. The contract shall be formed by the written acceptance by the other party of the offer and/or quote or by written confirmation by BDB of an order issued by the other party provided the aforementioned offer and/or quote is accepted in full and without any form of reservation or change.

- b. A different order issued to BDB by the other party shall only be binding on BDB after this order has been confirmed in writing to the other party by BDB. If the other party does not object to the order confirmation from BDB by written letter to BDB's correspondence address within eight days, this order confirmation shall be deemed to accurately represent the substance of the contract.
  - c. BDB may regard as its other party, the party that has issued the order to BDB, unless this party has explicitly notified with the order that it does not hold any authorisations.
  - d. Unless explicitly agreed otherwise, the agreed delivery times shall never be regarded as a strict deadline. In the event of later performance, BDB must therefore be given notice of default in writing before BDB is deemed to be in breach.
  - e. Any changes to the contract, irrespective of their nature, shall only come into force if they are agreed in writing between BDB and the other party.
- 1.4 Rates, prices and fees
- a. BDB has the right at all times to change the agreed rates, prices and/or fees. If BDB's other party is a consumer (being a natural person not practicing their profession or running their business) that consumer is entitled to terminate the contract if the price increase occurs within three months after concluding the contract.
  - b. The aforementioned rates, prices and fees are based on the cost level of 1 January (most recent) and are valid for the current year. The job changes, wages and price increases for services that are provided after 31 December shall be passed on. Establishment of the annual indexation shall be undertaken on the basis of 50% Statistics Netherlands (CBS) derived CPI during the last year and 50% Statistics Netherlands (CBS) index for the wage sum per market sector labour year for the coming year. BDB applies 3% as the lower percentage limit for the annual indexation.
  - c. The stated rates, prices and fees exclude the following:
    - Travel and accommodation expenses;
    - Parking charges;
    - Copying and binding costs.
- 1.5 Invoicing and payment
- a. Unless explicitly agreed otherwise, BDB invoices must be paid within 30 days after the date of the invoice. Any right of offset is excluded.

- b. The other party shall be in breach, without the need for notification of breach, if it fails to pay on time. Without prejudice to its other obligations, from the due date of the invoice up to the day of payment in full, the other party shall pay interest on the outstanding amount at an annual interest rate which each time shall be equivalent to the applicable statutory interest rate plus 3%.
- c. In the event of failure to pay or late payment, all legal and enforcement costs as well as the administrative costs and extrajudicial collection costs shall be charged to the other party. The extrajudicial collection costs shall amount to at least 10% of the invoice value, subject to a minimum of € 150. This provision shall not be valid if the other party is a consumer. In such a case, the Netherlands Extrajudicial Collection Costs (Fees) Decree [*Besluit vergoeding voor buitengerechtelijke incassokosten*] shall be applicable.
- d. BDB always has the right to demand security for payment or payment in advance both before as well as after the formation of the contract and BDB has the right to suspend performance of the contract until the security is provided and/or the advance payment has been received by BDB.

#### 1.6 Termination

- a. Without being held liable for any compensation, BDB can terminate the contract with the other party in full or in part by registered letter, such being with immediate effect and without the need for legal intervention, if:
  - the other party applies for a suspension of payments or bankruptcy or is declared bankrupt or offers an agreement outside of bankruptcy, or if an attachment is placed on any part of its assets;
  - the other party ceases its activities, ceases to pursue its statutory purpose, makes a decision to liquidate its business, otherwise loses its legal personality, or transfers or merges its business;
  - the other party fails to meet one or more of its obligations under the relevant contract, or fails to do so in a timely manner or properly, and this breach has not been resolved within seven calendar days after a written demand for compliance from BDB;
  - BDB stops publication of the relevant product or stops providing the relevant service.

#### 1.7 Right of use

- a. If and insofar as a database is made available to the other party by BDB, BDB grants the other party a right to use the database under the terms and conditions to be specified by BDB. The right of use being vested in the other party is a non-exclusive, non-transferrable right for which no sub-licence may be granted. The right of use contains no transfer by BDB to the other party of data rights or any other rights relating to intellectual property in relation to the relevant database.
- b. Unless agreed otherwise in writing, the other party may only use the database in and for the benefit of its own business or organisation and only for its intended use. The other party is not permitted to sell, hire out or dispose of or in any way or for whatever purpose make the database and the data carrier available to third parties.

- c. The other party shall all times comply strictly with the agreed restrictions regarding the right of use of the database.
- d. BDB shall deliver the database to the other party in a format determined by BDB or shall use (online) telecommunication facilities to make the database available to the other party. BDB shall determine the method of delivery.

1.8 Integrity and confidentiality

- a. BDB and the persons undertaking the work are bound by the internal BDB Integrity Rules.
- b. BDB is obliged to provide its service to the best of its knowledge and ability and with due care.
- c. BDB shall confidentially handle all information it receives from the other party and shall only make this available to third parties insofar as it is necessary for the performance of the contract concluded with the other party. BDB shall oblige the persons undertaking the work to maintain confidentiality.

1.9 Intellectual property rights

- a. The intellectual property rights and similar rights, including copyrights, brand rights, patent rights, related rights, rights protecting performance including database rights on all services from BDB are vested in BDB and/or its licence providers.
- b. Without the explicit prior written permission of BDB, nothing relating to the BDB services may be duplicated and/or disclosed by means of print, photocopy, microfilm, video disc, magnetic disc or tape or stored in a retrieval system accessible by third parties, or in any form whatsoever, electronically, mechanically or otherwise.
- c. The other party indemnifies BDB against claims from third parties resulting from alleged infringement of intellectual property rights and similar rights relating to the performance of the contract.
- d. The other party may only consult and use the content of the BDB service for its own use. This own use is limited to the relevant place of work or business location of the contact person.

1.10 Personal data

- a. BDB records the data of natural persons for the performance of contracts and when those persons contact BDB within the framework of the service provision. This data is used for performing a contract and for informing persons about products and services from BDB that are relevant for them. Unless permission is granted for further use, the e-mail address of these natural persons is only used for informing them about similar products and services from BDB. If the natural person does not appreciate receiving this information, this person can notify BDB of this in writing (by post or by e-mail).

- b. The responsibility for the personal data that is processed within the framework of contract performance by BDB rests entirely with the other party. The other party guarantees to BDB that the content, the use and/or the processing of the data is not illegal and does not infringe any rights of third parties. The other party indemnifies BDB against all legal claims by third parties, irrespective of their nature, relating to this data and the performance of the contract.
- c. If, on the basis of the contract, BDB is responsible for ensuring data security then BDB shall implement appropriate technical and organisational security measures which, with due regard for the prevailing technology and costs for its implementation, shall provide an appropriate level of security with due regard for the sensitivity of the data and the risks associated with the processing of that data.

#### 1.11 Force majeure

- a. If in BDB's reasonable opinion it is not or will not be possible as a result of force majeure, including a situation over which it has no control, for BDB to meet its obligations without causing a breach of contract, it shall have the right to terminate the contract in full or in part or to temporarily suspend the performance of the contract without being held liable for any form of compensation.
- b. Force majeure includes but is not limited to, the danger of war, war, uprising, wilful damage, strikes, boycott, illness, business interruption, interruptions for traffic and transport, faults in (data) networks, government-imposed measures, scarcity of raw materials, natural disasters, fire, nuclear reactions, machinery breakage and all other situations as a result of which full or partial compliance with the contract by BDB cannot be reasonably and fairly demanded.
- c. If BDB has already met its obligations in part or is only able to meet its obligations in part at the time the force majeure situation commences, it shall be entitled to invoice separately for the element already provided or to be provided and the other party shall be liable for paying this invoice as if it concerned a separate contract.

1.12 Liability

- a. The liability of BDB, BDB's employees and that of persons for whom BDB is responsible and/or liable for direct losses that are attributable to it, is in all cases limited to a maximum of the value of the invoice for the element of the contract under which the liability arises. The liability of BDB for indirect losses and consequential losses, including business losses, production losses and loss of sales and/or profit is excluded.
- b. The other party indemnifies BDB against all forms of liability towards third parties arising from its order, as well as against all liability towards third parties relating to the use or the inability to use the service provided to the other party by BDB.

1.13 Miscellaneous

- a. BDB has the right to amend these Terms and Conditions. Amendments shall also apply with regard to existing contracts that have been concluded. BDB shall notify such amendments in a timely manner. The other party has the right to terminate the contract with effect from the date on which the amended Terms and Conditions come into effect if it does not wish to accept the amended Terms and Conditions.
- b. If and insofar as a provision in these Terms and Conditions is deemed in law to be unreasonably onerous on the other party who is a consumer (being a natural person not practicing their profession or running their business) and that other party declares that provision void, that void provision shall be replaced by a provision that is not unreasonably onerous but which protects the interests of BDB in the best way possible.

1.14 Contact person

- a. The other party shall appoint a contact person who shall act as a contact person for BDB during the performance of the activities.

1.15 Provision of information

- a. On issuing the order, the other party shall notify in advance all persons involved about the tasks and authorities of BDB. To ensure efficient fulfilment of the services to be provided, the BDB employees will then be able to enter into direct dialogue with those persons including outside of official meetings.
- b. All information and data required for the service provision shall be made available in a timely manner by the other party. Unless agreed otherwise with the other party, BDB may store, process and (re)use the information received for the performance of the contract without restriction.

1.16 Engaging servants or agents

- a. BDB has the right at all times to engage a third party or third parties of its choosing for the performance of the contract concluded with the other party. The engagement of one or more servants or agents shall have no impact on BDB's responsibility to meet its obligations towards the other party.

1.17 Use as reference

- a. The other party herewith agrees that its name and project details may be used for marketing and communication purposes. The other party accepts the addition of its name to our lists of references, the distribution of press releases on conclusion of contracts and on the completion of projects, and the inclusion of this information in all forms of printed, digital and online channels, unless explicitly agreed otherwise.

1.18 Disputes and governing law

- a. All disputes relating to contracts concluded by BDB shall be resolved as far as possible amicably, including through mediation.
- b. All disputes relating to contracts concluded by BDB shall be brought before the competent court in Arnhem. BDB also has the right, in respect of a dispute with the other party who is a consumer (being a natural person not practising their profession or running their business) to bring the dispute before a court which under law has territorial jurisdiction. If that is a different court to the court in Arnhem, and BDB brings the dispute before the court in Arnhem, that consumer shall have the right, within a period of six weeks after BDB has invoked this clause in writing, to opt for the dispute to be settled by the court that has jurisdiction under law.
- c. All contracts concluded with BDB are subject to Dutch law. The Vienna Sales Convention is excluded.

## 2. Subscription Terms and Conditions

### 2.1 Definition

- a. A subscription is a contract whereby BDB undertakes to provide data on a data carrier to the other party, the subscriber, until notice of termination by the subscriber.

### 2.2 Applicability

- a. These Subscription Terms and Conditions are applicable, in addition to the general provisions, to all contracts, offers and/or quotes from BDB relating to subscriptions.

### 2.3 Duration

- a. Unless explicitly stated otherwise, the subscriptions shall have a duration of 12 months counting from 1 January of the relevant year.
- b. The subscriptions shall each time be extended automatically at the subscription price prevailing at that time for the same period as the current subscription, unless one of the parties has terminated the subscription in writing with due regard for the notice period for the relevant subscription, though with due regard for a minimum notice period of at least two months.
- c. Each termination can only be undertaken in writing (by post, by e-mail or via our website) at the end of the current subscription period. There shall be no refund of the subscription fee.
- d. If the subscription has been taken out by a natural person, the subscription shall end at the moment at which the death of this person is notified to BDB. A refund of the subscription fee for the remainder of the subscription period can only be undertaken if it concerns an amount exceeding € 15.

### 2.4 Prices and rates

- a. Unless explicitly agreed or stated otherwise, all prices and rates quoted by BDB are only applicable for subscribers in the Netherlands.
- b. The amounts owed by the subscribers as a result of a subscription must be paid in full prior to provision of the service.
- c. If, in the event of a change of address, the new address is outside of the Netherlands, from the moment of change, BDB shall charge the extra subscription fee for the relevant country.



### 3. Terms and Conditions for business-specific, project-specific or ad hoc requirements

#### 3.1 Definition

- a. A business-specific, project-specific or ad hoc requirement is a contract whereby BDB undertakes to provide a business-specific, project specific or ad hoc service to the other party on a data carrier.

#### 3.2 Applicability

- a. These Terms and Conditions for business-specific, project-specific or ad hoc requirements are applicable, in addition to the general provisions, to all contracts, offers and/or quotes from BDB relating to business-specific, project-specific or ad hoc requirements.
- b. Insofar as not explicitly deviated from in the offer and/or quote, the New Rules for the legal relationship client-architect, engineer or consultant (DNR-2011) are applicable to this contract. DNR-2011 can be downloaded for free at [www.nlingenieurs.nl](http://www.nlingenieurs.nl).

#### 3.3 Invoicing and payment

- a. BDB applies the following basic principles with regard to invoicing and payment. The applicable method of fee charging is stated in the offers and/or quote.
  - Management:  
Invoicing is monthly in arrears based on actual time spent.
  - Management with advance payment:  
Invoicing is monthly in arrears based on actual time spent. We shall raise an invoice for an advance payment on commencement of the project.
  - Management with ceiling:  
Invoicing is monthly in arrears based on actual time spent, whereby the budget stated in the offer and/or quote letter is regarded as a maximum.
  - Lump sum with fixed instalments:  
Invoicing is undertaken monthly in instalments.
  - Lump sum based on work progress:  
Invoicing is undertaken monthly on the basis of the work undertaken during that period.

#### 3.4 Additional work

- a. If the instruction to BDB changes as a result of circumstances unforeseeable by BDB or which cannot be blamed on BDB (for example: delay in the supply of data by or on behalf of the other party, change to the investment scope and size of construction projects, change to the duration of construction projects or requests by or on behalf of the other party for additional work to be undertaken), this shall be notified to the other party in a timely manner.
- b. Any additional work shall only be undertaken after written approval has been received from the other party. Adjustment is undertaken on the basis of the rates applicable and actual time spent at that moment.

- 3.5 Contract conclusion
  - a. As soon as BDB considers that the work has been completed within the framework of a (part) order, BDB shall notify the other party of this in writing.
  
- 3.6 Safety and liability
  - a. BDB assumes that for the benefit of the performance of the work, adequate safety measures have/will be implemented in accordance with the law at and for the other party for those persons undertaking the work. BDB also assumes that on commencement of the work, the other party notifies the persons undertaking this work about the potential risks that they can face and the safety measures to be taken to protect themselves, such as the wearing of personal protective equipment. BDB thus excludes any potential liability on its part with regard to the safety within the other party's organisation. BDB has informed the persons undertaking the work of their personal responsibility with regard to this, as well as about the correct use of safety instructions and procedures. The persons undertaking this work are obliged to notify both BDB and the other party about problem areas, dangerous situations and accidents.
  
- 3.7 Intellectual property rights
  - a. Unless explicitly agreed otherwise, the content of the business-specific, project-specific or ad hoc requirements shall only be made available by BDB to the relevant company, relevant project and relevant other party respectively.