

## **General Terms and Conditions of Sale for the benefit of (Educational) Services (professional clients)**

### **Article 1 – Applicability of the general terms and conditions of sale**

- 1.1 These general terms and conditions of sale apply to all agreements between University of Applied Sciences Foundation (Stichting Hogeschool van Amsterdam), established at Spui 21 in (1012 WX) Amsterdam, (hereinafter referred to as: AUAS) and a client, and to tenders submitted by AUAS. These general terms and conditions of sale apply to all services provided by AUAS, including but not limited to educational services. Even after they have come to be part of any agreement between AUAS and a client, these general terms and conditions of sale will be part of any further agreements that AUAS and the relevant client enter into after that, even if, upon entry into those further agreements, the applicability of these terms and conditions is not specifically referred to. Derogations from these terms and conditions are only valid if these have been expressly agreed upon in writing.
- 1.2 If one or more of the provisions of these terms and conditions are void or declared void, the other provisions will continue to apply in full.

### **Article 2 – Offers**

- 2.1 All offers of AUAS are free of obligation and, unless expressly indicated otherwise in writing, are valid for 30 days.
- 2.2 An agreement with AUAS is formed after AUAS has sent a written confirmation to the client or after AUAS has proceeded to perform the agreement without reservation. If no assignment confirmation is sent, the invoice will be considered to represent the assignment confirmation. Any further arrangements, changes and/or commitments made after that only bind AUAS if AUAS has confirmed these to the client in writing.
- 2.3 AUAS may require the client to provide security for compliance with the client's obligations in the form of a bank guarantee or similar security and may suspend compliance with its obligations until such security is provided.
- 2.4 In the event of conflicts between the various documents, the following ranking applies: the assignment, these general terms and conditions of sale, the Research Plan, in which ranking a document named first ranks above one named last.

### **Article 3 – Cancellation or amendment in the event of educational services**

- 3.1 The client can only cancel or amend agreements with regard to educational services in writing:
  - if it concerns assignments for which no teaching date has been laid down, subject to payment of 25% of the agreed fee by way of cancellation charges;
  - up to six weeks before the first teaching date, subject to payment of 25% of the agreed fee by way of cancellation charges;
  - between six and three weeks before the first teaching date, subject to payment of 50% of the agreed fee by way of cancellation charges;
  - between three weeks and one week before the first teaching date, subject to payment of 75% of the agreed fee by way of cancellation charges.
- 3.2 If the assignment is cancelled less than one week before, on or after the first teaching date, 100% of the agreed fee will be charged, plus the VAT owed in respect thereof by way of administration fee.

### **Article 4 – Payment**

- 4.1 Payment must be made within 30 days of the invoice date. Objections against the amount of invoices and/or complaints regarding the services provided do not entitle the client to suspend its payment obligation. If payment has not taken place within the indicated term, the client will be in default and will, from the invoice date onwards, owe the statutory interest per month or part thereof on the outstanding amount.
- 4.2 In the event that the client:
  - a. is put in liquidation, applies for a moratorium or a substantial part of its assets are seized;
  - b. dies or is placed under guardianship;
  - c. fails to comply with any obligation towards AUAS;
  - d. proceeds to discontinue or transfer its business operations or a substantial part thereof, which includes incorporating its business operations into a company to be established or an existing company, or proceeds to amend the objective of its company, any amounts still owed will immediately become due and payable and AUAS will have the right to

terminate the agreements with the client in full or in part without judicial intervention being required.

4.3 All the legal and extrajudicial expenses incurred will be at the expense of the client. The extrajudicial collection costs amount to 15% of the principal owed, subject to a minimum of €75.

#### **Article 5 – Retention of title**

Any goods supplied by AUAS, such as designs, sketches, drawings, films, software data carriers and (electronic) files, etc., will continue to be the property of AUAS until the client has complied with all its obligations. Goods supplied by AUAS that are subject to a retention of title may only be resold in the context of normal business operations and may under no circumstances be used as a payment instrument.

#### **Article 6 – Investigation, complaints**

The client must submit any complaints concerning the services to AUAS, in writing, within 8 days of their being discovered, though no later than within 14 days of completion of the relevant services. Complaints concerning invoices must also be submitted in writing, within 8 days of the date the invoice is sent.

#### **Article 7 – Cancellation**

7.1 Either party can terminate agreements that are entered into for an indefinite period of time and do not end upon completion of a certain performance, by means of a written notice, subject to a notice period of three (3) months.

7.2 All agreements can be terminated early, in writing, if, based on changed circumstances that the terminating party cannot reasonably be expected to have foreseen at the time the relevant agreement was entered into and that are not at its own risk according to these terms and conditions, the law or generally accepted standards, it cannot reasonably be expected to maintain such agreement. In the event that the client terminates an agreement early pursuant to this article, AUAS will be entitled to proportionate payment of the services already provided, as well as to compensation of its expenses (such as, without limitation, loss resulting from lower capacity utilisation) and lost profits insofar as this is not factored into the abovementioned proportionate payment.

#### **Article 8 – Suspension and discharge**

8.1 AUAS is authorised to terminate the agreement if circumstances arise that render performance of the agreement impossible or as a result of which performance of the agreement cannot reasonably be expected in accordance with the principles of reasonableness and fairness, or if other circumstances arise that are such that it cannot reasonably be expected to maintain the agreement unchanged.

8.2 Any claims of AUAS against the client will become immediately due and payable upon termination of the agreement. AUAS suspending compliance with its obligations towards the client does not affect its statutory rights or any entitlements under the agreement. Termination of the agreement will not result in a cancellation obligation.

#### **Article 9 – Liability**

9.1 AUAS's liability for unlawful acts and indirect or consequential loss as a result of an attributable failure is excluded.

9.2 AUAS is only liable for direct loss suffered by the client as a result of an attributable failure on the part of AUAS insofar as the client can prove that such loss is the direct result of the attributable failure and, in addition, per event of series of events with a common cause, only up to the value as agreed between the parties of the obligation or obligations that AUAS has attributably failed to comply with, to a maximum of €25,000, excluding VAT.

9.3 Any further conditions that limit or exclude liability that third parties (such as, expressly without limitation, suppliers) can invoke against AUAS can be invoked against the client by AUAS as well.

9.4 The limitations of AUAS's liability as referred to in the preceding paragraphs do not apply if the loss is due to intent or wilful recklessness on the part of executive subordinates of AUAS.

9.5 Any claim of the client against AUAS under these conditions will lapse by the mere expiry of a period of six months after the claim arises, unless, prior to that, legal proceedings are instituted against AUAS in respect thereof.

9.6 The client indemnifies AUAS, its employees and any third parties engaged by AUAS within the framework of compliance with its obligations under this agreement against any third-party claims

to compensation of any loss suffered by the relevant third parties, caused by or otherwise related to performances delivered by AUAS under these terms and conditions, unless, if the relevant loss were suffered by the client, AUAS would not be able to rely on the limitation of its liability pursuant to this article.

#### **Article 10 – Data carriers of the client/copies/obligation to retain**

- 10.1 If the client provides AUAS with data carriers, electronic files or software, etc., the client guarantees that these are free from viruses and defects.
- 10.2 Insofar as this is reasonably possible, the client is obliged to retain copies of the materials and details it has provided to AUAS within the framework of the services to be provided by AUAS until the services have been provided. If the client fails to do so, AUAS will not be liable for any loss that would not have arisen if these copies had been retained, without prejudice to the provisions of Article 12.
- 10.3 Following completion of the assignment, AUAS will no longer be obliged towards the client to retain any materials and information used within the framework of the services.
- 10.4 The risk of loss of or damage to goods that the client has made available to AUAS within the framework of the provision of the services will continue to be borne by the client unless the damage or loss is due to intent or wilful recklessness on the part of AUAS.

#### **Article 11 – Force majeure**

- 11.1 The parties are not obliged to comply with any of their mutual obligations if they are prevented from doing so due to a circumstance for which they cannot be blamed nor held accountable pursuant to the law, a legal act or generally accepted standards, including but not limited to: strikes and/or cessation of work (whether organised or unorganised), government measures that hinder the provision of the services, illness or unforeseen dismissal of employees that would have been deployed within the framework of the provision of the services and for whom, in AUAS's reasonable opinion, no replacements can be found, as well as failure on the part of suppliers (whether attributable or not), as a result of which AUAS cannot comply with some or any of its obligations towards the client. AUAS can rely on force majeure even if it is in default.
- 11.2 The parties may suspend compliance with the obligations under the agreement for as long as the force majeure continues. If this period exceeds two months, either party is authorised to terminate the agreement without being obliged to compensate the other party for any loss suffered.
- 11.3 Insofar as AUAS has complied with a portion of its obligations under the agreement or will be able to do so at the time force majeure arises, and the portion complied with or to be complied with represents independent value, AUAS is authorised to submit a separate invoice for the portion that has already been complied with or has yet to be complied with. The client is obliged to pay such invoice as if it were a separate agreement.

#### **Article 12 – Confidentiality clause**

Both parties are obliged to keep confidential any information that they receive from each other within the framework of the provision of the services and of which they are aware or may reasonably be expected to be aware that it is confidential in nature.

#### **Article 13 – Intellectual property rights**

- 13.1 Any and all intellectual property rights resulting from services to be provided by AUAS for the benefit of the client will be vested in AUAS. All documents issued by AUAS, including but not limited to: reports, opinions, agreements, designs, sketches/drafts, drawings, software, etc. are designated for the exclusive use of the client and may not be reproduced, published or brought to the attention of third parties by the client without the prior written permission of AUAS, unless the nature of the documents issued provides otherwise.
- 13.2 The client indemnifies AUAS against all (legal) claims in respect of any actual or alleged infringement of any industrial or intellectual property right in the event that goods made available to AUAS by or on the instruction of the client are used, copied, modified or processed.
- 13.3 The client will only acquire a non-transferable licence to use any computer programs supplied, in accordance with the objective of such programmes.
- 13.4 AUAS reserves the right to use any knowledge acquired through the provision of the services for other purposes as well, insofar as this does not cause any confidential information to be disclosed to third parties. AUAS is authorised to sign the goods it is instructed to create. AUAS is authorised to use the goods it is instructed to create for its own publication and/or promotional

purposes with due regard for the interests of the clients. AUAS is authorised to publish the Results (for example in the form of research data and/or an academic article) or otherwise make these public in accordance with the 'Open Access' policy of the AUAS.

**Article 14 – No takeover of staff**

For the duration of the assignment, as well as for one year after termination thereof, the client will refrain from hiring AUAS employees or employees of any third parties that AUAS engaged in the performance of this agreement who are or have been involved in the provision of the services in any way, or otherwise have such employees work for it, directly or indirectly, except if and insofar as it concerns students who are enrolled at AUAS.

**Article 15 – Applicable law and settlement of disputes**

Any and all agreements between AUAS and the client are subject to Dutch law. Any disputes will be settled by the competent court of Amsterdam, unless AUAS prefers to submit the dispute to the competent court in the client's place of residence/place of business.

Adopted by the Executive Board on 16 May 2017.