

# GENERAL TERMS AND CONDITIONS SCHÜTZ & SWART

## Article 1 Definitions

**Advice** or **Advise**: providing advice, in the broadest sense and in whichever form, including drafting written advices and providing written reports.

**Agreement**: any agreement between SCHÜTZ & SWART and a Client.

**Client**: the natural person or legal entity, not being an External, that enters into an Agreement with SCHÜTZ & SWART.

**External**: a third party (legal entity or natural person, not being an employee of SCHÜTZ & SWART) that has been temporarily hired by, seconded in by or that is committed to SCHÜTZ & SWART on any other contractual basis, to – amongst others – (provide assistance to) perform the Work.

**Location**: specific address, city, region or country where the Work shall be performed in accordance with the Order.

**Opposite Party**: a Client and/or Participant.

**Order**: the specific content or activity as specified in an Agreement.

**Participant**: a participant that has subscribed to a Training. Unless the nature or meaning of any provision to these General Terms and Conditions opposes thereto, the same provisions that are applicable to a Client are applicable to a Participant.

**Parties**: SCHÜTZ & SWART and an Opposite Party or parties jointly.

**SCHÜTZ & SWART**: Schütz & Swart Risk Management Services V.O.F. (general partnership), as registered at the Kamer van Koophandel voor Centraal Gelderland (Chamber of Commerce) under file number 20141095, as well as employees of SCHÜTZ & SWART.

**Support**: to execute tasks on behalf of Client at a Location as specified in an Agreement or Order.

**Training**: (individual) trainings, courses and other forms of education and coaching, including briefing meetings.

**Work**: Advise, Training, Support and any other tasks specified in an Order that will be executed by SCHÜTZ & SWART or (partly) executed by Externals in accordance with the Order as accepted by SCHÜTZ & SWART.

## Article 2 Applicability

2.1 These General Terms and Conditions are applicable to any and all offers by and orders to SCHÜTZ & SWART in connection with Advise, Support or Training, as well as to any and all Agreements concluded in connection therewith between SCHÜTZ & SWART and an Opposite Party. These General Terms and Conditions consist of general provisions, that apply to all aforementioned work, and a number of special provisions that apply to the work further specified therein.

Should there be a discrepancy between the general provisions and the special provisions the latter shall prevail. In case of mixed Agreements the respective special provisions in connection with the agreed upon work in each of these Agreements shall apply.

2.2 Deviations from these General Terms and Conditions shall only be binding if they were agreed to in writing or are confirmed in writing by SCHÜTZ & SWART.

2.3 These General Terms and Conditions are also applicable in case SCHÜTZ & SWART engages Externals in order to execute the Agreement.

2.4 The applicability of general (purchase) conditions from the Opposite Party is explicitly rejected.

2.5 Clients that have entered into an Agreement under these General Terms and Conditions once are deemed to accept the applicability thereof to all consecutive Agreements between themselves and SCHÜTZ & SWART.

2.6 If any provisions of these General Terms and Conditions, or of any Agreement, are or become invalid or annulled, the other provisions of these General Terms and Conditions or the concerning Agreement shall remain enforceable and applicable. The Opposite Party shall, in such case, enter into negotiations in order to agree to (a) new provision(s) that shall replace the invalid or annulled provision(s) and that shall, if possible, reflect the meaning and purpose of the original provisions – this exclusively to the final and sole discretion of SCHÜTZ & SWART.

### **Article 3 Duration of validity of offers, options and proposals**

3.1 Proposals by SCHÜTZ & SWART that are not made at the request of or in consultation with an Opposite Party are always non-committal.

3.2 Proposals and offers by SCHÜTZ & SWART that are made at the request of or in consultation with an Opposite Party are valid until two weeks after the dateline and shall expire automatically without further notice on the part of SCHÜTZ & SWART. The same applies to any option to participate in one or more Trainings on the part of a Client or Participant.

3.3 The rates mentioned in proposals and offers are excluding VAT and other charges by the government, unless otherwise stated.

3.4 A mixed offer, quotation or proposal does not oblige SCHÜTZ & SWART to execute a part of the Offer against a possible proportional part of the rate stated therein.

### **Article 4 Entering into, suspension of and termination of Agreements**

4.1 An Agreement between SCHÜTZ & SWART and the Opposite Party is entered into by signing and returning the sent offer(s), by signing written confirmation(s) by either SCHÜTZ & SWART or the Opposite Party, or by means of a written confirmation of telephonically or electronically agreed to arrangements by SCHÜTZ & SWART.

4.2 An Agreement terminates if both Parties have fulfilled their respective obligations under the concerning Agreement or if the date that has been stipulated by the Parties in the concerning Agreement as the termination date has arrived.

4.3 SCHÜTZ & SWART is entitled to terminate an Agreement unilaterally, without any judicial intervention and with immediate effect in the following situations:

- the Opposing Party fails to comply with one or more of its obligations towards SCHÜTZ & SWART after being served notice for said failure to comply;
- the Opposing Party is granted a suspension of payment or is declared bankrupt;
- the situation on a Location changes to such a degree compared to the situation at the moment the Agreement was entered into, that SCHÜTZ & SWART, or any Externals engaged by SCHÜTZ & SWART, cannot be reasonably expected to (fully) comply with the obligations under the Agreement, this exclusively to the final and sole discretion of SCHÜTZ & SWART.

4.4 SCHÜTZ & SWART is entitled to suspend its work if and when Client does not, not timely or not satisfactory comply with any obligation under this Agreement. In such case the costs incurred because of the suspension shall be borne by Client.

4.5 After (untimely) termination of an Agreement all provisions that should stay in force because of their nature or meaning shall remain in force, including, but not limited to article 18 (Intellectual Property), article 19 (Confidentiality) and article 21 (Liability).

## **CHAPTER II - TRAININGS**

### **Article 5 Replacement**

5.1 The Client is at all times entitled to replace Participants free of charge before a Training has started. In case a proper execution of a Training necessitates the provision of certain data concerning the Participants, Client shall make sure to provide SCHÜTZ & SWART timely with the data of any replaced Participant.

5.2 A Participant of Trainings with an open inscription is entitled, in case of absence, to give his/her place free of charge to a substitute, if SCHÜTZ & SWART has been timely notified of such change before the start date of the Training. The foregoing does not apply to Participants of individual coaching (trajectories), Participants of Trainings that require an exploratory interview or other individual evaluation, and neither to Participants of Trainings that have been custom-made nor Participants of Trainings that require certain basic qualifications on the part of the Participant that the replacement does not possess.

5.3 In cases as stated in the foregoing provision, the Agreement with the absent Participant remains in force until an Agreement between SCHÜTZ & SWART and the replacement proposed by the Participant has been entered into.

### **Article 6 Cancellation of Trainings by Clients and Participants**

6.1 Client or Participant is entitled to cancel the Trainings in writing until four weeks before the start date of the first day of Training. The cancellations costs shall amount to 20 percent of the total Training amount.

6.2 In case of cancellation by Client or Participant within four weeks before the start date of a Training or course the entire agreed upon rate or the rate usually applied by SCHÜTZ & SWART shall be due.

6.3 The cancellation of individual Trainings should take place at least four weeks before the first date of Training activity or meeting. Client then is obliged to pay 25 percent of the total Training amount.

6.4 When assessing if cancellations were made timely, the date of the postmark on the notice of cancellation shall count as cancellation date.

#### **Article 7 Cancellation of and modifications to Trainings by SCHÜTZ & SWART**

7.1 SCHÜTZ & SWART is entitled to cancel Trainings without explanation, in which case Client is entitled to full restitution of the amounts already paid to SCHÜTZ & SWART. SCHÜTZ & SWART is at all times and without explanation entitled to change the date, time and location of a Training. Should SCHÜTZ & SWART be of the opinion that Client cannot reasonably be expected to accept these changed circumstances, it may decide to retribute (in whole or in part) the amount Client has already paid.

7.2 SCHÜTZ & SWART is always entitled to change the content and intention of a Training and replace the trainers and training material, with no right on the part of Client to restitution of already paid amounts, nor any form of compensation. SCHÜTZ & SWART shall inform Client as soon as possible regarding any aforementioned modifications.

7.3 SCHÜTZ & SWART reserves the right to engage Externals to execute (parts of) Trainings.

#### **Article 8 Exclusion of participation**

8.1 SCHÜTZ & SWART reserves the right to exclude Participants at any time and without explanation from Trainings prior to their commencement. In case the foregoing concerns a Training with an open inscription, any excluded Participant is entitled to restitution of the entire amount paid to SCHÜTZ & SWART. In case the foregoing concerns a private Training SCHÜTZ & SWART could, for reasons of fairness, decide to retribute a proportional part of the amount due.

8.2 SCHÜTZ & SWART reserves the right to exclude Participants from Trainings in case they are more than one hour late. In such case SCHÜTZ & SWART has no obligation to retribute the amount already paid by Participant or Client or a proportional part thereof.

8.3 SCHÜTZ & SWART reserves the right to exclude Participants with immediate effect from further participation in Trainings in case Participants misbehave or demonstrate inappropriate or non-conformistic behaviour. In that case, SCHÜTZ & SWART is not obliged to restitution (in whole or in part) of any amounts paid by Participant or Client.

#### **Article 9 Obligation of best effort**

SCHÜTZ & SWART shall, to its best discretion and ability, organise Trainings according to all requirements of good workmanship. All Trainings organised by SCHÜTZ & SWART are and will remain based on obligation of best effort. Clients cannot claim to have earned any diplomas, certificates, marks or other qualifications by the sole act of following Trainings from SCHÜTZ & SWART.

### **CHAPTER III – ADVICE**

#### **Article 10 Form of provision**

10.1 SCHÜTZ & SWART will give Advice in accordance with the Agreement pertaining thereto (including specifications and financial provisions), which has been explicitly accepted by SCHÜTZ & SWART.

10.2 SCHÜTZ & SWART will provide a written Advice to Client in the form and scope as determined in the Agreement.

#### **Article 11 Substantiating**

11.1 SCHÜTZ & SWART shall base an Advice on the information the Client will, asked and unasked, provide to SCHÜTZ & SWART under the Order and, if necessary and possible, on information that SCHÜTZ & SWART has independently gathered in the public domain.

11.2 SCHÜTZ & SWART has no obligation to (partially) base an Advice on information which is in possession of SCHÜTZ & SWART, but which is not available in the public domain.

11.3 In light of the specific nature and purport of any Order accepted by SCHÜTZ & SWART, it shall exert itself to base an Advice on relevant current facts and circumstances, insofar as SCHÜTZ & SWART can be expected to have knowledge of such facts and circumstances as they are part of the public domain.

11.4 When drafting an Advice SCHÜTZ & SWART shall consider the international directives and standards applicable to and accepted for such Advice, which could demonstrate the state of the art, such as, for instance, expressed in the versions of:

- ISO 22399;
- BS 25999;
- HB 221;
- SI 24001;
- NFPA 1600.

that were applicable at the time of the Order to draft an Advice was accepted.

### **CHAPTER IV – SECONDMENT IN OF THIRD PARTIES**

#### **Article 12 Competence and obligations on the part of SCHÜTZ & SWART**

12.1 SCHÜTZ & SWART is entitled to second in (an) External(s) for the execution of the Work on the basis of an Agreement entered into with such External(s) without prior consultation with Client.

12.2 SCHÜTZ & SWART shall charge the costs of such use of (an) External(s) to Client, unless previously explicitly otherwise agreed to with Client.

#### **Article 13 Warranties of the External**

13.1 The External will warrant to SCHÜTZ & SWART that it possesses the professional qualities and qualifications that are required to be able to perform the agreed to Work.

#### **Article 14 Relationship External/Client**

14.1 SCHÜTZ & SWART and the External shall contractually determine that the External has to behave according to the applicable general or specific regulations expressed by the Client prior to the commencement of the Work, whilst performing the Work on the Location.

14.2 In light of the foregoing provision Client commits itself to instruct or inform the External as much as possible, in order to supplement the already existing knowledge on the part of the External.

14.3 SCHÜTZ & SWART and the External shall contractually determine that the External has to comply with the directives and house rules applicable to (the organisation of) the Client. The Client shall thereto instruct the External as fully and accurately as possible.

14.4 Should the instructions that the Client provides to an External be or seem incompatible with a correct performance of the agreed to Work (such to the sole discretion of the External or SCHÜTZ & SWART), SCHÜTZ & SWART shall be immediately notified of such incompatibility. The solution to be determined by SCHÜTZ & SWART shall be binding for both parties.

## **CHAPTER V SUPPORT**

### **Article 15 Support**

15.1 Unless explicitly otherwise agreed to in the concerning Order, the Work regarding Support shall take place under the guidance and supervision of Client. SCHÜTZ & SWART shall therefore not be responsible for the final result of the concerning Work.

15.2 Notwithstanding the foregoing provision 15.1 SCHÜTZ & SWART shall commit itself to perform the concerned Work regarding Support to its best effort.

15.3 SCHÜTZ & SWART is entitled to suspend its Work regarding Support for any length of time if the safety of the people working for or on behalf of SCHÜTZ & SWART cannot be guaranteed to the reasonable judgement of SCHÜTZ & SWART.

## **CHAPTER VI GENERAL PROVISIONS**

### **Article 16 Rates**

16.1 Rate indications provided to the Opposite Party are not generally applicable, unless SCHÜTZ & SWART has entered into a long term written agreement with binding rates with an Opposite Party.

16.2 Rate indications for Participants of Trainings with an open inscription shall be published at least once a year by means of price lists and/or websites and/or brochures and/or prospectuses, etc. These indications are not binding. Only the rate SCHÜTZ & SWART states in the confirmation of the Participant's participation shall be binding.

16.3 SCHÜTZ & SWART shall provide individual offers for each Order or partial Order to be separately charged, unless SCHÜTZ & SWART chooses to issue a specified offer for several partial Orders together.

16.4 SCHÜTZ & SWART is at all times entitled to alter the rates, provided that after confirmation to the Opposite Party the then agreed to rate shall remain applicable, unless the Order will be postponed and changed to a later date, in which case the rates that apply at the time of the new confirmation shall be applicable.

16.5 In case SCHÜTZ & SWART and the Opposite Party have not agreed to a rate, the rate SCHÜTZ & SWART generally charges at that time shall be applicable. In case such a general rate has not yet been fixed, SCHÜTZ & SWART shall, at its own discretion, charge a reasonable rate.

16.6 All mentioned rates are in Euros and are excluding VAT.

16.7 SCHÜTZ & SWART does not accept any responsibility for misprints, type errors or typographical errors in rate indications of whichever kind.

## **Article 17 Payment**

17.1 Payments to SCHÜTZ & SWART should be made within fourteen days after invoice date to the bank account indicated by SCHÜTZ & SWART. Payments should be made in Euros.

17.2 In case of non-timely payment the Opposite Party is in default without the need for any notice of default on the part of SCHÜTZ & SWART. The Opposite Party shall be liable for statutory trade interest (“wettelijke handelsrente”) in such case.

17.3 Travelling expenses, accommodation expenses and any other expenses Participants may incur are for their own account.

17.4 Any costs SCHÜTZ & SWART must reasonably make in connection with a culpable shortcoming on the part of the Opposite Party to comply with its payment obligations towards SCHÜTZ & SWART shall be borne by the Opposite Party, including, but not limited to costs of internal administrative handling and all (extra)judicial (collection) costs and costs in connection with external (legal) aid.

## **Article 18 Intellectual Property**

18.1 Exclusively on the part of SCHÜTZ & SWART and/or its licensors and/or third parties seconded in by SCHÜTZ & SWART, including Externals, lies all copyright, database rights, trademark rights, patent rights and all other intellectual property rights with regard to:

- Trainings and all materials in connection therewith or used on behalf thereof;
- Advices and reports, propositions and all other results or documents that derive from the Order or other work by SCHÜTZ & SWART or its representatives;
- Catalogues and brochures issued by SCHÜTZ & SWART.

18.2 All information or material provided to the Client and/or a Participant by or on behalf of SCHÜTZ & SWART in connection with the Work is exclusively for own use.

18.3 The Client and Participant are not allowed to duplicate and/or make public any obtained information or material, save for individual use or use within the own organisation and save prior written consent from SCHÜTZ & SWART.

## **Article 19 Confidentiality**

19.1 The Client and Participant shall treat all information, documentation and other materials, explicitly including Advices, other reports and Training materials, that have been provided by SCHÜTZ & SWART in connection with the Work as confidential information that may only be disclosed to third parties after prior written consent by SCHÜTZ & SWART. The obligation of confidentiality is in principle limitless.

19.2 The following is not deemed to be confidential information:

- Information that was part of the public domain at the time SCHÜTZ & SWART provided the receiving party (parties) therewith;

- Information that became, in a legal manner, part of the public domain, after provision by SCHÜTZ & SWART to the receiving party (parties);
- Information provided to the Client or Participant by third parties not being under an obligation of confidentiality.

## **Article 20      No transfer of rights**

No Agreement does in any way constitute the transfer or licensing of any intellectual property right regarding the provided information or materials, unless otherwise agreed to in writing with SCHÜTZ & SWART.

## **Article 21      Liability and force majeure**

21.1 In case SCHÜTZ & SWART is deemed to be liable, such liability shall be limited to what is stated in this article 21.

21.2 SCHÜTZ & SWART is not liable for indirect damages, including but not limited to: consequential damage, loss of profit from business or labour, missed savings, damages because of business stagnation and damages because of increased tax assessments.

21.3 In all cases that SCHÜTZ & SWART is, despite the foregoing, liable to pay damages, irrespectively the legal basis of such liability and in all cases per occurrence or series of occurrences with a common cause, its liability shall, at all times and without exception, be limited to compensation of direct damages to a maximum of two times the - to the Opposite Party - invoiced amount for the concerning Work, with a maximum of Euro 50.000 (fifty thousand Euro).

21.4 Participants to Trainings that include (dangerous) physical exercises shall be informed of the risks of such exercises. Client shall indemnify SCHÜTZ & SWART against possible claims of employees of Client, in so far as such claims result from participating by said employees of Trainings.

21.5 Liability limiting, excluding or determining conditions that Externals can impose on SCHÜTZ & SWART in connection with the Work, can also be imposed on the Opposite Party by SCHÜTZ & SWART.

21.6 In case of Participants that are employees of Client, Client is responsible for the (correct) compliance by Participants of the terms of these General terms and Conditions and any applicable Agreement and Client indemnifies SCHÜTZ & SWART against all claims, damages and costs that might arise as a result of said Participant not (correctly) complying with the terms of these General Terms and Conditions and any applicable Agreement.

21.7 The limitations of liability as stated in these conditions are not valid in case the damages are the consequence of intent or conscious recklessness on the part of SCHÜTZ & SWART and/or its executive subordinates. Every claim towards SCHÜTZ & SWART, except those accepted by SCHÜTZ & SWART, shall expire by the mere lapse of twelve months after the claim originated.

21.8 SCHÜTZ & SWART is entitled to invoke force majeure in case the execution of the Agreement in whole or in part is, whether or not temporarily, prevented or impeded by circumstances reasonably beyond its volition, including company blockades, strikes, selective and punctuality actions and exclusion, delayed delivery to SCHÜTZ & SWART of parts, goods or services ordered from third parties, illness of the people working for SCHÜTZ & SWART, accidents as well as external dangers that jeopardize the safety of the people working for SCHÜTZ & SWART.

## **Article 22 Complaint procedure**

22.1 Complaints about employees of SCHÜTZ & SWART or Externals should be reported by Client or Participant to SCHÜTZ & SWART within fourteen days after the date that the behaviour worthy of complaint occurred, by means of an as detailed as possible description of the shortcoming so that SCHÜTZ & SWART can react in an adequate manner.

22.2 In case a complaint is legitimate SCHÜTZ & SWART shall firstly try to perform the Work or have it performed as agreed to, unless this is demonstrably no longer appropriate. The latter needs to be expressed in writing by the Client or Participant.

22.3 In case the performance of the agreed to Work is no longer possible or appropriate SCHÜTZ & SWART shall only be liable to the extent as indicated in article 20.

## **Article 23 Disputes, applicable law and competent jurisdiction**

23.1 Disputes arising from any Agreement between SCHÜTZ & SWART and an Opposite Party shall exclusively be submitted to the court of competent jurisdiction in Arnhem, the Netherlands.

23.2 Before Parties shall start legal proceedings they will try their hardest to settle a dispute in mutual consultation.

23.3 Each Agreement between SCHÜTZ & SWART and an Opposite Party will be governed exclusively by the laws of The Netherlands, irrespective of the Location where (a part of) the Work is performed. Applicability of the 1980 Vienna Convention (United Nations Convention on contracts for the international sale of goods) is explicitly excluded.

## **Article 24 Alteration, explanation and site of the conditions**

24.1 These General Terms and Conditions have been deposited at the Chamber of Commerce (Kamer van Koophandel voor Centraal Gelderland) and can be consulted at [www.schutz-swart.com](http://www.schutz-swart.com).

24.2 For the explanation of the content and scope of these General Terms and Condition the Dutch text shall prevail over any translation thereof.

24.3 The titles above the articles serve merely as improvement to the readability and cannot be used to explain the provisions.

24.4 The latest deposited version of these General Terms and Conditions or the version that was deposited at the time an Agreement was concluded, is applicable to all Agreements between SCHÜTZ & SWART and its Clients and Participants.