

# STANDARD TERMS AND CONDITIONS OF EIFFEL BV WITH REGISTERED OFFICE IN ARNHEM

The Dutch version of these Standard Terms and Conditions has been filed with the Registry of the Arnhem District Court under number 2010/6.

## 1. GENERAL

1. In these terms and conditions, the term 'Client' refers to any person or legal entity who has entered or wishes to enter into a contract with our company for the provision of services by us and/or for the engagement of our services, as well as to the representatives, attorneys, legal successors and heirs of such persons or legal entities. The term 'Contractor' refers to EIFFEL BV, hereinafter also referred to as 'EIFFEL'.
2. All offers made by EIFFEL, all contracts and the performance thereof shall be governed exclusively by these terms and conditions. Any variations must be expressly agreed in writing with EIFFEL.
3. Any standard terms and conditions of the Client shall not apply unless expressly accepted in writing by EIFFEL.
4. If EIFFEL and the Client have entered into a contract in which these terms and conditions are declared applicable, these terms and conditions shall also apply to any subsequent requests for services from the Client made orally, by telephone, in writing, by fax, e-mail or in any other form, irrespective of any written confirmation by EIFFEL.
5. In the event of a conflict between the

provisions of the contract, the standard terms and conditions or appendices, the following order of priority shall apply:

1. the contract
2. the appendices
3. the Standard Terms and Conditions.

## 2. QUOTES

1. All quotes issued by EIFFEL are without obligation, unless a term for acceptance has been set. If a quote includes a no-obligation offer which is accepted, EIFFEL is entitled to withdraw the offer in any case within two working days of receipt of the acceptance.
2. Quotes issued by EIFFEL shall be valid for the period stated in the quote. If no period is stated, the quote shall be valid for a period of fourteen [14] days from the date of the quote.

## 3. CONTRACT

1. EIFFEL shall be bound only if and to the extent that EIFFEL has accepted a contract for services in writing or if it is evident from the performance of the contract that EIFFEL has accepted it orally. Any additional arrangements or confirmations made subsequently that vary from the written acceptance referred

to above shall be valid only if accepted or confirmed by EIFFEL in writing.

2. A contract with a Client shall be entered into for an indefinite period, except as expressly otherwise agreed in writing.
3. The Client may from time to time make a request for legal, financial and process-oriented services by means of a request for service form.
4. Written requests for services from the Client must be accompanied by a detailed specification of the services to be provided. EIFFEL shall be entitled to suspend the performance of its services until the Client has met this obligation.
5. EIFFEL may engage the services of third parties for the performance of its own services, if EIFFEL deems this necessary or appropriate.

## 4. RETAINER, PROVISION OF SECURITY

1. EIFFEL shall be entitled at all times to request payment of a retainer or the provision of security before providing or continuing to provide its services. If the Client fails to pay the requested retainer or to provide the requested security, EIFFEL's performance obligation shall cease, without prejudice to

EIFFEL's right to seek compensation from the Client for loss or damage, costs and interest.

## 5. RATES

1. All prices quoted shall be subject to variation, unless otherwise stated. EIFFEL shall be entitled to review its hourly rates in any case twice a year in line with the indexation of direct costs.
2. The Client shall pay for the services to be performed by EIFFEL on a time-spent basis, except as expressly otherwise agreed in writing.
3. The hourly rates shall be determined per assignment.
4. EIFFEL's rates/fees are quoted exclusive of VAT and parking fees, unless otherwise stated.
5. Agreements with respect to rate increases and/or decreases shall be binding only with the written permission of EIFFEL.

## 6. INVOICING

1. Overtime worked at the Client's request shall be invoiced as follows:
  - the first hour: 100% of the basic rate
  - the second hour: 125% of the basic rate

- subsequent hours: 150% of the basic rate
  - Saturdays: 150% of the basic rate
  - Sundays and public holidays: 200% of the basic rate.
2. If the Client disputes the invoice, the Client must notify EIFFEL accordingly in writing within eight [8] working days of receipt of the invoice. After this period EIFFEL will assume that the invoices have been accepted and will be paid.
  3. EIFFEL shall be free to issue interim invoices for hours worked and costs incurred, unless the parties have agreed an invoicing schedule.

## 7. PAYMENT

1. The Client shall pay invoices within fourteen [14] days of the invoice date. The Client shall not be entitled to make any deduction or set-off.
2. If the Client fails to pay an invoice by the due date, the Client shall be liable to pay in full all judicial and extrajudicial collection costs, including the costs of lawyers, bailiffs and debt collection agencies, in addition to the amount due and the interest accrued thereon. The extrajudicial costs shall be equal to at least 15% of the amount payable by the Client to EIFFEL.
3. The amount outstanding shall be due and payable on demand if the Client is declared bankrupt, placed into

liquidation or applies for court protection from creditors (moratorium), if all the Client's assets are seized or attached, if the Client dies and, furthermore, if the Client is wound up or dissolved.

4. If the client fails to make timely payment within thirty [30] days of the invoice date, he shall be in default by operation of law without any notice of default being required.
5. If any invoice amount or any advance invoice has remained unpaid, EIFFEL shall have the right to suspend performance of its services.
6. Payments made by the Client shall be applied first to the collection costs and/or administrative expenses incurred by EIFFEL, then to the interest payable by the Client and finally to the longest outstanding invoices.
7. Where two or more Clients have entered into a contract for services, they shall be jointly and severally liable for the payment of the invoice amount to the extent that the services have been performed for the Clients jointly.
8. As soon as the Client is in default he shall be liable to pay interest on the amount outstanding at the statutory interest rate, subject to a minimum of 2% per month, from the due date to the date on which payment is made in full, a part of a month being treated as a full month for the purpose of calculating the interest.

## 8. PERFORMANCE OF THE CONTRACT

1. The Client is obliged to furnish EIFFEL in good time with all the information and documents required by EIFFEL for the proper performance of the contract, in the requested format and manner.
2. EIFFEL will determine the manner in which the contract must be performed. EIFFEL shall be required to inform the Client in advance, upon request, of the manner in which the contract will be performed.
3. EIFFEL will second staff to work either on the Client's premises or elsewhere. During their secondment, staff shall provide services on a best efforts basis.
4. The contract shall specify, inter alia, the secondment period, the nature of the services to be provided and the location where they will be provided, as well as each party's designated contact person for all communications with the other party. If the terms and conditions have not been laid down, the Client will accept the terms and conditions set by EIFFEL.
5. The advice and services provided by EIFFEL will be based on information obtained and to be obtained from the Client. EIFFEL does not warrant the accuracy of the information provided by the Client to EIFFEL and does not accept any liability for any loss or damage whatsoever if EIFFEL has based itself on incorrect or incomplete

information provided by the Client, even if it has been provided in good faith.

## 9. CONTRACT VARIATIONS

1. EIFFEL shall only be obliged to perform those services that are expressly specified in the order confirmation/contract or that have been separately confirmed by EIFFEL.
2. Any variations to the services specified in the contract or request for service form, either separately requested by the Client or resulting from discrepancies between the information provided and the actual performance of the contract or otherwise, shall be treated as additional work if they result in extra costs and as omitted work if they result in lower costs.
3. The value of additional work shall be calculated on the basis of the price-determining factors applicable at the time of execution of the extra work. The value of omitted work shall be settled on the basis of the price-determining factors applicable at the time of signature of the contract.
4. If the total value of the omitted work exceeds the total value of the additional work, EIFFEL shall be entitled to an amount equal to 10% of the difference between such total values by way of compensation for costs incurred and loss of profit.
5. The Online time recording tool ('On line uren') on the EIFFEL

portal must always be used to record the time implications of contract variations. The invoices in question shall be issued to the Client after prior approval by EIFFEL. The Client shall ensure that these times are recorded correctly.

## 10. FORCE MAJEURE

1. In case of force majeure – which shall in any case include failure or non-availability of internet connections, telecommunications infrastructure, power failures, domestic civil commotion, mobilization, war, transport difficulties, strikes, lockouts, business interruptions, delays in supplies, fire, flooding and import and export barriers – as a result of which EIFFEL cannot reasonably be required to perform the contract, the performance of the contract shall be suspended or, if the force majeure event has continued for more than ninety [90] days, the contract shall be terminated, without any liability to pay compensation.
2. EIFFEL shall be entitled to demand payment for the services provided in performance of the contract in question before the force majeure event arose.

## 11. LIABILITY

1. Liability on the part of EIFFEL for direct loss or damage on account of material

breach of contract shall arise only if the Client immediately serves proper written notice of default upon EIFFEL, allowing EIFFEL a reasonable period of time to remedy the default, and if EIFFEL continues to be in material breach of its obligations after that period. The notice of default must describe the breach in as much detail as possible to allow EIFFEL to respond in an appropriate manner.

2. Direct loss or damage means:
  - damage to property of the Client and/or third parties;
  - costs of alterations and/or changes to machinery, hardware, software, specifications, materials, documentation etc. necessary to limit or undo the damage;
  - costs of emergency facilities such as the use of other machinery, (computer) systems or the hiring of third parties;
  - costs, including staff costs, incurred as a result of the necessity to keep old (computer) systems and other facilities operational for longer;
  - reasonable costs incurred to prevent or limit direct loss or damage that is expected to occur as a result of the event giving rise to the liability;
  - reasonable costs incurred to determine the cause of the loss or damage, the liability,

the direct loss or damage and the remedy.

3. The compensation to be paid by EIFFEL shall be reduced if this is warranted by the ratio between the Client's performance and the scope of the loss or damage suffered by the Client.
4. EIFFEL's liability for direct loss or damage shall be limited to an amount equal to the net invoice value of the amount charged by EIFFEL for the specific services giving rise to the loss or damage.
5. EIFFEL shall be liable for failures in the performance of the services only to the extent that these are the result of failure by EIFFEL's staff member or by the individual performing services for the Client under the responsibility of EIFFEL to observe the due care and the standards of craftsmanship and professionalism that may be expected with respect to the performance of the services, subject to a maximum of € 25,000 per event, a series of connected events being considered a single event.
6. EIFFEL does not accept any liability for the results of services performed under the management and supervision of the Client.
7. EIFFEL shall never be liable for any indirect loss or damage, including consequential loss or damage, loss of profits, unrealized savings, loss of data, and loss or damage due to interruption

of business operations and idle time.

8. Any entitlement to compensation shall be conditional upon the Client notifying EIFFEL in writing of the loss or damage as soon as possible (within one year) after it is caused.

## 12. INDEMNITY

1. The Client indemnifies EIFFEL from and against any property damage or bodily injury suffered by EIFFEL's staff on the Client's premises (i.e. the Client's business location or any other agreed location).
2. EIFFEL indemnifies the Client from and against any assessments and supplementary assessments in respect of social charges, wage tax and national insurance contributions payable by EIFFEL in connection with the performance of services by EIFFEL's staff for the Client.

## 13. INTELLECTUAL PROPERTY RIGHTS

1. Copyrights in reports, proposals and other documents resulting from the services shall belong to EIFFEL without exception. Modules, designs, processes and tools, including software, used to perform the services, are and remain the property of EIFFEL, unless otherwise agreed. Disclosure shall be permitted only with EIFFEL's prior permission. The Client shall be entitled to reproduce documents for use in his

own organization only to the extent that this falls within the scope of the contract.

2. The Client indemnifies EIFFEL from and against any claims by third parties alleging infringement of the intellectual property rights and/or database rights of a third party as a result of or in connection with the performance of the contract, to the extent that such infringement relates to designs, property or software provided by the Client to EIFFEL.

#### **14. COMPLAINTS**

1. Complaints will be considered by EIFFEL only if the Client notifies EIFFEL thereof in writing immediately, but within eight [8] days of the date on which the failure in the services is discovered or within eight [8] days of the date on which the Client should have reasonably discovered the failure in the services, specifying the nature of, and grounds for, the complaint, as well as when and how the failure in the services was discovered.
2. Lodging a complaint shall not release the Client from his payment obligations to EIFFEL.

#### **15. TERM AND TERMINATION OF THE CONTRACT**

1. The term of a contract shall be for the duration of the services requested by the Client, unless otherwise agreed in the contract.
2. If the contract specifies a secondment term, the contract shall terminate automatically on expiry of that term, without any notice being required, unless the Client instructs the staff member in question to perform services after that term. In that case, the contract shall be deemed to be renewed for a further term equal to the initial term, except as otherwise agreed in writing by the parties.
3. The term of the contract may be extended on condition that a written request to that effect is submitted to EIFFEL at least four [4] weeks before the expiry date. If EIFFEL declares in writing within four [4] weeks of the date of the said request that it wishes to regard the extension as a once-only extension, a further extension shall not be possible.
4. Either party may cancel the contract in full or in part only if the other party is in material breach of material obligations under the contract, after having been served with a proper written notice of default which is as detailed as possible, allowing the defaulting party a reasonable period of time to remedy the default.

5. The parties may give written notice to terminate the contract, without any notice of default or court intervention being required, in the following circumstances:
  - if a party is declared bankrupt or placed into liquidation, obtains provisional court protection from creditors (moratorium) or is placed under guardianship;
  - if a party ceases its business or transfers its activities or any part thereof;
  - if the business is wound up;
  - if a party's assets are seized or attached.EIFFEL may also terminate the contract if control over the Client or the Client's business changes. The parties shall never be liable to pay any compensation on account of a termination as referred to in paragraph [translator's note: no paragraph number is mentioned].

#### **16. NON-SOLICITATION CLAUSE**

1. During the term of the contract and for a period of one [1] year after its termination, the Client shall not be permitted, without EIFFEL's prior permission in writing, to employ or otherwise seek the services (whether directly or indirectly) of staff members of EIFFEL who were involved in the performance of the contract. Failure to comply with this provision shall render the Client liable to a penalty of € 100,000,

which shall be immediately due and payable to EIFFEL, without prejudice to the obligation to compensate EIFFEL for the loss or damage in fact suffered to the extent that it exceeds the penalty.

#### **17. NON-DISCLOSURE**

1. The parties undertake to maintain the confidentiality of any confidential information which is disclosed by the parties to each other. The parties also impose this obligation on their staff members, as well as on any third parties engaged by them and their staff members for the purpose of performance of the contract between the parties.

#### **18. AMENDMENTS TO THE STANDARD TERMS AND CONDITIONS**

1. EIFFEL reserves the right to amend or supplement these terms and conditions.
2. Amendments shall also apply to contracts already entered into, with effect from thirty [30] days from the date of publication of the amendments on EIFFEL's website or by electronic communication. Minor amendments may be made at all times.
3. If the Client refuses to accept any amendment to these terms and conditions, the Client may cancel the contract with effect from the effective date of the new terms and conditions, provided he does so before that date.

## **19. OBLIGATIONS UNDER THE DUTCH PERSONAL DATA PROTECTION ACT**

1. Either party shall be obliged to give every assistance to enable the other party to discharge its obligations under the Dutch Personal Data Protection Act (Wbp). This includes the Client's obligation to inform EIFFEL properly and in a timely manner if any data processing in the context of a contract falls under the Personal Data Protection Act and whether the Dutch Data Protection Authority (College bescherming persoonsgegevens) or the Client's data protection officer has been notified of such data processing. To the extent that the obligation referred to in this article involves extra work and/or costs on the part of EIFFEL, the Client shall compensate EIFFEL therefor.
2. The Client shall ensure that the [person] responsible within the meaning of the Personal Data Protection Act shall discharge all obligations under that Act. The Client indemnifies EIFFEL from and against any claims made by third parties against EIFFEL under the Personal Data Protection Act.

## **20. GOVERNING LAW**

1. The legal relationship between the parties shall be governed by the laws of the Netherlands.
2. Any disputes between EIFFEL and the Client arising out of an offer made by EIFFEL, a contract entered into between EIFFEL and the Client or any subsequent contracts resulting therefrom, shall be submitted to the jurisdiction of the competent courts in Arnhem, the Netherlands.

## **21. TRANSLATION**

1. In the event of any inconsistency between the Dutch text of these standard terms and conditions and any translation thereof, the Dutch text shall prevail.

## **22. FINAL PROVISION**

1. These terms and conditions took effect on 29 January 2010.