

GENERAL TERMS AND CONDITIONS OF BERCULO ADVOCATEN

Version December 2015

Art. 1. Definitions

In these General Terms and Conditions the following definitions apply.

- 1.1 Attorney: one of the attorneys who practices law at Berculo Advocaten either through sole proprietorship or through a practice company with limited liability.
- 1.2 Berculo Advocaten: the partnership ('*Maatschap*') Berculo Advocaten based in Utrecht, The Netherlands.
- 1.3 Assignment: any assignment for the performance of services given by the Client to the Attorney, including any change or addition thereto, any (legal) acts to prepare and/or execute the assignment and/or any legal relationships resulting therefrom.
- 1.4 Client: the counterparty to the Attorney for the Assignment.
- 1.5 Conditions: these General Terms and Conditions.
- 1.6 DCC: The Dutch Civil code ('*Burgerlijk Wetboek*')

Art. 2. Berculo Advocaten

Berculo Advocaten is a partnership ('*Maatschap*') between independently operating Attorneys who provide legal services for their own account and at their own risk. A list of all Attorneys is available for consultation at the offices of Berculo Advocaten and will be sent free of charge at first request.

Art. 3. Applicability of the Conditions

- 3.1 These Conditions apply to all legal relationships between the Client and the Attorney, whether on the basis of an Assignment or otherwise.
- 3.2 These conditions also apply to all legal relationships between the Client and third parties (including the attorney who performs the services / the natural person) who are directly or indirectly involved in any way with the performance of the Assignment.
- 3.3 Deviations from or additions to these Conditions are only valid if and insofar the Attorney has accepted these in writing. Deviations and additions are only valid and can only be agreed upon for a specific Assignment.

Art. 4. Assignment agreement

- 4.1 An agreement for the Assignment is only entered into with the Attorney (or his practice company) as the provider of services. Berculo Advocaten and her partners are not bound by the agreement, with the exception of the Attorney who will provide the services.
- 4.2 The Client hereby agrees that third parties may be used for the performance of the Assignment, whether these third parties are associated with Berculo Advocaten or not. The Attorney is not liable for any act or omission by these third parties, except in the event of intent or gross negligence. The authority to use third parties includes consenting to limitations of liability by these third parties on behalf on the Client.
- 4.3 The performance of the Assignment will be solely for the benefit of the Client. Third parties cannot derive any rights or claims from the contents or result of the performed services. The client indemnifies the Attorney and his assistants from all claims from third parties on the basis of the Assignment, except in the event of intent or gross negligence of the Attorney.
- 4.4 If the Assignment is given by more than one Client, all Clients are jointly liable for all obligations arising from the Assignment.
- 4.5 A term given to the Attorney (and/or a delivery date stated by the Attorney) is not a deadline. The Attorney only defaults on his obligations after receiving a notice with a term of at least 14 days in writing and the performance of the obligations is not completed within this term.

Art. 5. Office complaints procedure

- 5.1 Berculo Advocaten has a complaints procedure which has been published on www.berculo.nl. In this complaint procedure the Regulations for Complaints and Disputes for the Legal Profession has been made applicable. In accordance with these procedures, complaints regarding invoices and/or the performance of the Attorney must be submitted within three months after the act or omission which has led to the complaint was discovered or could have reasonably been discovered.
- 5.2 The Attorney will provide the Client who has a complaint with the text of the applicable Office Complaints Procedure and the Regulations for the Complaints Boards for the Legal Profession at first request. The text is also available through the website www.berculo.nl.
- 5.3 Submitting a complaint is without prejudice to article 5.1. and does not absolve the Client who has a complaint of his obligations to pay invoices in a timely manner.

Art. 6. Remuneration, office costs, disbursements and VAT

- 6.1 The Client must pay remuneration, office costs, travel costs, disbursements and VAT for the performance of the Assignment. Office costs (including shipping costs, phone costs, secretarial costs, etc.) are calculated at a flat rate of 6% of the remuneration.
- 6.2 Unless explicitly agreed upon otherwise, the remuneration is based on the agreed upon hourly rate – and in absence thereof a fair hourly rate – and the time spent on the Assignment. The Attorney has the right to increase the hourly rate periodically, for instance in connection with a correction for inflation. Such an increase may take place during the performance of the Assignment.
- 6.3 If the hourly rate is increased by more than 5% at one time or within three months after the performance of the Assignment has stated, the Client may set aside the agreement for the Assignment as meant in article 6:265 DCC. This right is forfeited after the expiration of the payment term for the first invoice after the increase.
- 6.4 Travel costs are calculated on the basis of the number of kilometres travelled and the time travelled.
- 6.5 The remaining disbursements consist of the costs incurred in connection with the Assignment such as court fees, bailiff costs, charges for extracts from public registers, travel expenses, etc

6.6 All amounts will be increased by the applicable VAT.

- 6.7 The Attorney has the right to request an advance payment for the performance of the Assignment. Advance payments will be set off against the final invoice.
- 6.8 In the event of a court case you may be ordered by the court to pay the litigation costs (including costs of any witnesses and/or experts). These costs will be billed by the counter party to that case separately.

Art. 7. Payment

- 7.1 The Client shall pay invoices within 14 days after the invoice date without suspending payment and/or setting off payments.
- 7.2 When a payment period for an invoice has expired, the Client has defaulted on his obligations. From then on, the Client shall pay the interest as meant in article 6:119a DCC. If the client defaults on his obligations, he shall also pay the extrajudicial costs as defined by the Act on the standardisation of extra judicial costs ('*Wet normering buitengerechtelijke incassokosten*') and the corresponding Decree. If the Client defaults on his obligations, all claims are directly due and the Attorney may suspend the performance of the Assignment.
- 7.3 If there are grounds to assume the Client will not meet his obligations, the Client shall at first request provide (additional) security in any form the Attorney chooses for all claims the Attorney may or will have. The Attorney may suspend the performance of the Assignment as long as adequate security has not been provided.
- 7.4 Payment by or for the Client serves to settle in the following order (a) extrajudicial costs, (b) court costs, (c) due interest, (d) future interest, (e) disbursements and finally, (f) the remuneration.

Art. 8. Liability

- 8.1 The Attorney will endeavour to perform the services related to the Assignment with due care in the best possible manner.
- 8.2 The Client knows and accepts that the electronic exchange of data and information with the Attorney may have the result that it cannot be excluded with absolute certainty that unauthorised persons may have access to the electronically exchanged data and information.
- 8.3 The Attorney is not liable for any damages which are the result of suspending the performance of the Assignment.
- 8.4 Any liability of the Attorney and/or the third parties mentioned in article 3.2 towards the Client which is the result of – or is related to – (1) the performance of the Assignment; and/or (2) the practise of the profession of attorney; is limited to the amount that in the relevant case is paid by the professional liability insurance, including the deductible excess. A copy of the insurance policy will be sent to the Client at first request. If for any reason the professional liability insurance does not pay, the liability is limited to the amount received under the agreement for the Assignment in the relevant calendar year, excluding disbursements and VAT and up to a maximum of € 25.000,-.

Art. 9. Archiving

The Attorney will archive and save the documentation related to closed cases for a period of 5 years. This period start on the date on which the Attorney has informed the Client in writing that the case will be closed, or (if this occurs first) one year after the date on the final invoice of the Attorney with regards to the Assignment. After the period of 5 years has ended, the Attorney may destroy all documents related to the case.

Art. 10. Miscellaneous

- 10.1 The Client, acting outside their trade, business, craft or profession, does not have the right to (extra judicially) set aside (as meant in article 6:265 DCC) or terminate (as meant in article 3:49 DCC) these Conditions.
- 10.2 Dutch law applies to all legal relationship with the Client, whether these relationships are the result of the Assignment or otherwise.
- 10.3 All disputes with regards to the conclusion of the agreement for the Assignment and/or the performance of our services (including disputes regarding invoices) are adjudicated in accordance with the Complaints Boards for the Legal Profession Procedure. The Regulations have been published at <https://www.advocatenorde.nl/3295/advocaten/klachtenregeling> (Dutch only). At first request, the Attorney will provide a copy of the Regulations to the Client. If the dispute is related to an Assignment by a Client acting within their trade, business, craft or profession, the Regulations determines the dispute will be settled by arbitration. If the dispute is related to an Assignment by a Client acting outside their trade, business, craft or profession, the Regulation determines (1) the disputed will be settled by binding advice, unless the Client starts legal procedures at the competent court within one month after the complaint has been settled; and (2) that in the event of the collection of a claim on the Client, only a binding advice will be given if the Client deposits the contested amount on the checking account of the Complaints Board. If the amount is not deposited, the arbitration for the collection of claims applies.
- 10.4 All disputes where the Complaints Board for the Legal Profession does not have jurisdiction and which are the result of legal relationships with the Client, will be adjudicated by the competent court of Midden-Nederland, location Utrecht.