

# General terms & conditions of GMBS Business Support



GMBS Business Support, together with proprietary trade names GMBS Environmental Projects™ and GMBS Trade Services™, hereinafter collectively represented and referred to as “GMBS”, and registered with the Chamber of Commerce bearing registration number 09221544, is a Dutch advisory firm with its principal place of business in Arnhem, 6835 AJ, Sleggeplantsoen 28, which has its postal address at PO Box 4096, 6803 EB Arnhem, The Netherlands.

GMBS is an Asia oriented Business Development Agency, which aims at initiating and supporting international strategic marketing and organisational alignment trajectories with and for governments and private sector companies.

As GMBS attaches much importance to good advice and guidance, GMBS is of the opinion that it is important to have clear “rules of the game”; both for GMBS and for its Clients/Principals. These rules of the game are stated below in the General Terms and Conditions of GMBS as filed with the Chamber of Commerce of Central Gelderland Province in Arnhem, The Netherlands.

## 1. General

- a. These terms and conditions apply to all offers and quotations and all agreements concluded with GMBS with respect to services, like for example advice, information, research and sale of movable property by GMBS.
- b. Stipulations deviating from these terms and conditions are only valid if these have explicitly been agreed upon in writing by all parties.
- c. The activities to be carried out by GMBS's engineers are governed by the *Regeling van de Verhouding tussen Opdrachtgever en adviserend Ingenieursbureau 2001* (RVOI) (Dutch Regulation regarding the Relationship between Principal and Firm of Consulting Engineers of 2001) in addition to these general terms and conditions. In the event that the GMBS conditions deviate from those of the RVOI, the GMBS conditions shall always prevail.
- d. Where uncertainty exists regarding the interpretation of one or more provisions of these terms and conditions, then the explanation must be found in 'the spirit' of these provisions.
- e. Where a conflict between the parties occurs, that is not regulated within these terms and conditions, this situation should be read and judged by 'the spirit' of these terms and conditions.
- f. In case GMBS does not require strict compliance with these terms and conditions at any time, this does not mean that its provisions do not apply, or that GMBS would, in any degree, lose the right in other cases to strict observance of the provisions of these terms and conditions.
- g. Where one or more provisions of these terms at any time become wholly or partially invalid or void, then the remainder of these terms remains fully applicable. GMBS and the Principal will then engage in dialogue to develop and agree to new rules to replace the invalid or void provisions, whereby the purpose and intent of the original provisions are observed as much as possible.

## 2. Offer/order

- a. All offers and/or quotations are without engagement, unless it has been stipulated explicitly that they are irrevocable, and they are valid for fourteen (14) days, counted from the date of the offer and/or quotation.
- b. Agreements can only be concluded by written acceptance by GMBS of an order, or by execution of the order by GMBS.
- c. The number of activities covered by an agreement is determined by the offer, including the changes that are inserted later on by mutual agreement.

- d. GMBS cannot be held responsible for strict observance of its quotations or offers where a Principal can reasonably understand that these quotations or offers, or any part thereof, manifest a clear mistake or slip.

## 3. Prices

- a. The prices given by GMBS are exclusive of value added tax (VAT) and other government levies.
- b. The prices published by GMBS in catalogues or in any other form, are not binding GMBS. After concluding the agreement, GMBS is entitled to raise the agreed prices in case of among other things interim price increases and/or surcharges on freight, customs tariffs, prices of goods and/or raw materials, taxes, wages or social security charges, depreciation of the Dutch currency and/or appreciation of foreign currency, and in case of those government measures that make prices rise.
- c. In case of increased net prices, the Principal is entitled to cancel the agreement, provided that he shall give notice in writing to GMBS within fourteen days (14) after having been informed about the increase of net prices. In case of cancellation of the agreement, the Principal has no right to compensation.

## 4. Execution of the agreement

- a. The agreement shall be executed within the (estimated) period that has been determined in consultation with the Principal and that is mentioned in the offer, unless this turns out not to be reasonably feasible. If the deadline threatens to be exceeded, GMBS shall discuss this as soon as possible with the Principal. However, GMBS shall never be in default de jure by just exceeding the deadline.
- b. By concluding an agreement GMBS only binds itself to carry out the ordered activities, seeking to achieve a useful result for the Principal.
- c. GMBS has towards the Principal only an obligation of best intents and not an obligation of result.
- d. GMBS advises its Principals to the best of its ability and applies today's relevant know how, which also implies that GMBS cannot vouch for the unknown harmful consequences of the advised use at the time that advice was given.
- e. In the event of GMBS selling movable property, GMBS will not provide any guarantee other than described in the offer, without prejudice to any guarantee given by the manufacturer that can solely be claimed against the manufacturer. GMBS will solely carry out additional work following approval of the Principal, after which the costs of additional work may be charged to the Principal.

- f. With respect to confidential information of the Principal provided to GMBS in the framework of execution of the agreement, GMBS shall observe secrecy, in that sense that GMBS shall never publish these data in a way that they can be directly traced to the Principal. A further obligation to observe secrecy shall expressly apply if this has been explicitly agreed upon in writing.
- g. Research results shall be disclosed anonymously, unless upon written request of the Principal secrecy has been agreed, the period of secrecy not exceeding one year counted from delivery date/invoice date.
- h. An obligation to observe secrecy, if any, of GMBS does not apply as far as GMBS would then act contrary to its legal tasks and obligations.
- i. In case GMBS or GMBS assigned third parties under the contract, perform works at the location of the Principal or a location designated by the Principal, the Principal shall provide free of charge all reasonably required facilities as requested by GMBS assigned personnel.
- j. GMBS has the right to implement by its Principal assigned projects in different phases and as such send invoices to its Principals for these phases separately.
- k. Where the agreement is implemented in phases, GMBS is entitled to suspend the implementation of the subsequent phase(s) until such time Principal approves the preceding stage in writing to GMBS.

## 5. Obligations and responsibility of the Principal

- a. In case of interpretation of data, the Principal is responsible for the selection and representativeness of the data as well as for timely delivery of these data to GMBS.
- b. The Principal accepts that there is a real possibility of misinterpretation of the questions or advice in case of telephone advice, and that the risk of misinterpretation of the question or misinterpretation of the advice shall be borne by him.

## 6. Delivery, risk and ownership

- a. Movables will be delivered from the business address of the GMBS branch with which a contract is concluded and at the moment of delivery the risk of these goods passes to the Principal.
- b. In case of delivery of movables GMBS remains the owner of all goods delivered to the Principal until the purchase price and any additional requirements, such as, but not limited to interest and collection costs of all goods has been paid in full.
- c. Copyright and all other intellectual or industrial property rights of given advice and information remain exclusively vested in GMBS.

## 7. Force Majeure

- a. GMBS is not obliged to perform any obligation to the Principal if it is being hampered due to a circumstance that is not due to negligence, nor by virtue of law, accounted for a legal action or generally accepted practice.

- b. Force majeure in these terms mean, apart from what is understood by the law and jurisprudence, all external causes, foreseen or unforeseen, which GMBS cannot influence, but which prevents GMBS from fulfilling its obligations, strikes in the company of GMBS or third parties included. GMBS has the right to invoke force majeure if the circumstance obstructs rendering (further) performance of the contract occurs after GMBS should have honoured its commitment.
- c. GMBS can during the period of force majeure postpone the obligations under the agreement. Where this period lasts longer than two months, then each of the parties is entitled to terminate the agreement, without any obligation to pay for damages to the other party.
- d. In case GMBS at the time of the force majeure has partially fulfilled or will fulfil its obligations under the Agreement, and the to fulfil or to be fulfilled is of independent value, then GMBS is entitled to separately bill for already performed or to be performed services in a separate bill. The Principal shall pay such invoice as if it were a separate agreement.

## 8. Payment

- a. Payment shall be made within fourteen (14) days of the date of invoice, unless otherwise explicitly agreed upon. GMBS will send an itemised invoice to the Principal.
- b. If no fixed price has been mentioned in the order confirmation or agreement, then it has been admitted between the parties that the amount payable will be determined by GMBS on basis of subsequent calculation according to GMBS's usual rates and methods.
- c. GMBS is entitled to send invoices at regular intervals. GMBS may at all times require payments in advance, even if this is not included in the order confirmation or agreement.
- d. In case the Principal fails in the timely payment of an invoice, then the Principal is legally in default. The Principal shall owe an interest of 1% per month, unless the statutory interest is higher, in which case the statutory interest is owed. The interest on the amount due will be calculated from the time the Principal is in default until the moment of payment of the full amount owed.
- e. In case the Principal is in default or negligent in the (timely) fulfilment of its obligations, all reasonable costs incurred to obtain payment are without rights to, and for the account of, the Principal. The out-of-court costs are based on common Dutch recovery and collection practice. In case GMBS incurred higher costs for collection as where reasonably necessary, then the actual costs for reimbursement are considered. Any judicial and execution costs will also be recovered from the Principal. The Principal is due to pay for any and all cost of interest associated with the collection costs.
- f. In case of payment, the other party does not have recourse to compensation, deduction or deferment.
- g. In the event of the Principal cancelling an appointment for a paid company visit and suchlike, which had been agreed between GMBS and the Principal, and in the event that this cancellation is made less than 24 hours in advance of the time of appointment, the Principal shall pay 50% of the hourly rate. The Principal will receive an invoice for this. All this does not affect the right to full compensation in full of GMBS.

## 9. Liability

- a. In case GMBS is deemed liable, such liability is limited to what is covered by the provisions of these terms and conditions.
  - b. GMBS is not liable for any damage of whatever nature created by GMBS, where GMBS partly or in whole based its assumptions, suggestions or advisory on incorrect, inaccurate or incomplete data provided by or on behalf of the Principal.
  - c. GMBS is only liable for the damages that are directly caused by a failure in the execution of its obligations imputable to GMBS. If GMBS is liable for direct damage to the Principal in virtue of the contractual liability referred to in the previous sentence and/or in virtue of any other matter, it is liable to a maximum amount of € 5,000 or to at most the amount that the Principal is obliged to pay in virtue of the agreement if this amount is higher. This direct damage also includes the damage that the Principal sustains due to application or use of the result of the activities of GMBS.
  - d. GMBS is at no time liable for indirect damages, including any consequential damages, lost profits, lost savings and damage due to business stagnation.
  - e. Under no circumstance the liability of GMBS shall exceed the amount that is paid in virtue of the business liability insurance taken out by GMBS.
  - f. The Principal indemnifies GMBS and/or the persons employed for the execution of the agreement against all claims from third parties in virtue of the damage sustained by these third parties due to the application or use of the activities of GMBS by the Principal or another person whom the Principal has provided with the results of the activities.
- c. All disputes will in the first instance be settled by the competent court in Arnhem (The Netherlands), unless GMBS gives preference to the court in the place where the Principal has his registered office or domicile, or unless imperative law prescribes otherwise.
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## 10. Complaints

- a. The Principal cannot appeal against the fact that the deliverable does not comply with the agreement if he/she has not given notice in writing to GMBS within the reasonable period after he/she has discovered or reasonably should have discovered that the deliverable is not in accordance with the agreement.
- b. Complaints with respect to invoices, externally visible defects of the deliverable and reasonably detectable inaccuracies in case of advice or deviations from the assignment, should be submitted with GMBS detailed and in writing within four weeks of the date of invoice, in default whereof any appeal against these shortcomings and/or inaccuracies becomes extinguished.

## 11. Dissolution

- a. GMBS shall be entitled to dissolve the agreement and shall have the right to claim damages from the Principal, if the Principal fails imputably, if he/she applies for a moratorium on payments, if he/she is declared bankrupt, if the Principal dies, or - in case of a legal person - if this legal person is dissolved, or if the company of the Principal is wound up.

## 12. Applicable law and competent court

- a. Only Dutch law applies to the agreements concluded with GMBS.
- b. Parties shall first call on the court to intervene after they have made every effort to reconcile a dispute in mutual consultations.