

1. GENERAL

1. In these General Terms and Conditions the following definitions shall apply:

**General Terms and Conditions:** these general terms and conditions (this document).

**Tidal:** Tidal Control B.V., with its registered office in 's-Hertogenbosch and with Chamber of Commerce number 90964101.

**Contract:** a document provided by Tidal which declares the General Terms and Conditions to apply, and which describes the Work.

**Client:** the party awarding Tidal an engagement.

**Team:** the natural persons employed with Tidal, both individually and jointly, who are involved in performed the Work, and third parties (being natural persons from outside Tidal) who have been called in by Tidal for the purposes of performing the Work.

**Agreement:** The General Terms and Conditions and the Contract together with any other documents and conditions and conditions which are applicable to the Work in the relationship between Tidal and the Client ('additional conditions') and to which the Contract expressly refers.

**Work:** the work to be performed by Tidal for a Client pursuant to the Contract, including supplying of, inter alia, goods and/or services.

2. Replacing sections 7:404 and 7:407(2) of the Dutch Civil Code, all engagements are accepted exclusively by Tidal.

2. APPLICABILITY OF THE GENERAL TERMS AND CONDITIONS

1. These General Terms and Conditions apply to the Work to be performed by Tidal for a Client. These General Terms and Conditions also apply to additional and continued Work.
2. The applicability of any of the Client's purchasing conditions or other conditions is expressly excluded.

3. FORMATION AND DURATION OF THE AGREEMENT

1. The Agreement will come into being at the moment when the Client confirms the Contract (orally or in writing or electronically or tacitly) or at the moment when the Work is commenced.
2. The Agreement is concluded for a fixed term, unless it follows from the content, nature or tenor of the engagement given by the Client that it has been concluded for an indefinite period.

4. CONTENT OF THE AGREEMENT / PRIORITY IN CASE OF CONFLICT

1. The Agreement constitutes the basis for all arrangements between Tidal and the Client with respect to the Work.
2. Any amendments or changes to the Agreement must be recorded in writing and must be signed by an authorised representative of Tidal and an authorised representative of the Client.
3. In the event of conflict between the Contract and other elements of the Agreement, the Contract will prevail. In the event of conflict between the General Terms and Conditions and any Additional Conditions, the Additional Conditions will prevail.

5. THE WORK AND ITS PERFORMANCE

1. The Contract contains a description of the Work to be performed by Tidal.
2. Tidal will exert itself to the best of its abilities to perform the Work in accordance with the arrangements and procedures agreed in writing with the Client.
3. Tidal will determine how and by which person or persons the Work will be performed. If the Contract provides that specifically named persons will perform the Work, Tidal will make reasonable efforts to ensure that these persons perform the Work. Tidal has the right to replace the persons named in the Contract by persons of equal or comparable expertise.
4. If a phased performance of the Work has been agreed, Tidal may postpone commencing Work relating to a subsequent phase until the Client has accepted the results of the preceding phase in writing and has paid all sums due.
5. Time-limits within which the Work must be completed will not be considered as strict deadlines, unless this has been expressly agreed. Under no circumstances may the Client dissolve (ontbinden) the Agreement on account of a failure to meet a time-limit. Furthermore, Tidal will never be liable for compensation on account of any failure to meet a time-limit.

6. If, at the request or with the prior consent of the Client, Tidal carries out work or performs outside the content or scope of the Work, the Client will pay Tidal for such work or performance based on Tidal's customary rates.
7. The Client agrees that work or performance as referred to in Article 5.6 may affect the agreed or anticipated time of completion of the Work and the mutual responsibilities of the Client and Tidal.
8. In the interest of the performance of the Work, including so as to support the rendering of services, Tidal can call in third parties (also in other jurisdictions) in the performance of the Work. If the Client wishes to call in third parties in the performance of the Work, it will solely proceed to do so after having reached an agreement to that end with Tidal.
9. In performing the Work, Tidal may provide Client (or a third party appointed by Client) with a supporting tool(s) which is intended and may only be used for the benefit of the Work. Client (or a third party appointed by Client) is responsible for a controlled roll-out and execution of such tool(s).
10. Upon completion of the Work Tidal may provide written advice, confirm an oral advice in writing, provide a (final) written report or give an oral presentation. Prior to completing the Work, Tidal may provide oral, draft or interim advice, reports or presentations. In this case, Tidal's written advice or (final) written report will prevail. The Client is not entitled to invoke draft or interim advice, reports or presentations. If the Client wishes to rely on an advice given orally or on an oral presentation given by way of completion of the Work, the Client must inform Tidal of this intention, following which Tidal will supply written confirmation of the advice concerned.
11. Tidal is not bound to update oral or written advice, reports or results of the Work in response to events occurring after the final version of the advice, report or results is issued.
12. Any advice, opinion, statement of expectation, forecasts and recommendations given by Tidal as part of the Work will under no condition or circumstance whatsoever be construed as a guarantee with respect to future events or circumstances.

6. OBLIGATIONS OF THE CLIENT

1. Both of its own accord and at the request of Tidal, the Client will give its full cooperation and will in good time and in the desired form and manner make available all relevant documents which Tidal may reasonably deem necessary to receive from the Client for the proper performance of the Work. If Tidal works at the Client's premises or makes use of the Client's computer systems and telephone networks, the Client will (at its own expense) provide the necessary access, security procedures, virus controls, facilities, licences and permissions. If any part of the Work is not performed at Tidal's own premises, the Client will also ensure that the employees of Tidal are provided with adequate working space and other facilities necessary for the performance of the Work, which should meet all the applicable statutory or other requirements.
2. The Client will ensure that Tidal is informed without delay of facts and circumstances which may be relevant in connection with the proper performance of the Work.
3. The Client warrants the accuracy, completeness, reliability and legitimacy of the data and documents made available to Tidal, including those originating from third parties, except where the nature of the Work dictates otherwise.
4. Tidal will not be liable for any loss suffered by the Client as a result of the fact that the Client or any third party (i) did not inform in good time of, or withheld, facts and circumstances which may be relevant in connection with the proper performance of the Work and (ii) misrepresented the facts.
5. The Client will bear the extra costs and additional fees arising from any delay in the performance of the Work caused by the fact that the required data, documents mentioned in article 6.1 were not made available or were not made available properly or in good time, or by the failure to cooperate, to cooperate in good time or to cooperate properly, including failure to make available employees.
6. Tidal has the right to suspend the performance of the Work until the moment the Client has fully complied with the obligations in article 6 (1) and (2).

7. THE CLIENT'S RESPONSIBILITIES

Without prejudice to the obligations and responsibilities of Tidal in performing the Work, the Client will remain responsible and liable inter alia for the following:

- the management and day-to-day conduct of its business, the performance of its business activities and dealing with its own business matters.
- decisions taken by the Client about the extent to which it wishes to rely on the advice, recommendations or other results of the Work, and about using and implementing them.
- the Client agrees to designate an individual who possesses suitable skill, knowledge and experience to be always responsible for the Client's decisions and evaluate the adequacy of the results of the Work performed for the Client's purpose, and accept responsibility for the actions, if any, to be taken arising from the results of the Work.

## **8. CONFIDENTIALITY**

1. Tidal will keep secret any confidential information furnished by or on behalf of the Client towards third parties, other than the parties involved in the performance of the Work. This obligation does not apply to information which Tidal is required to disclose by law, by any rule of a supervisory body of Tidal, or pursuant to a professional duty resting on Tidal or on persons employed by or for or attached to Tidal, or pursuant to a binding decision of a court or a public authority.
2. The obligation of paragraph 1 of this article does not apply if the information referred to in that paragraph is already publicly known or becomes publicly known other than as a result of a wrongful publication. Furthermore, this obligation is without prejudice to the right of Tidal to submit information referred to in paragraph 1 of this article to its insurers and/or advisers in connection with the professional liability of Tidal or a third party, if this is necessary for the performance of the Work, including to support the rendering of services.
3. Tidal is authorised to use the information which the Client has placed at its disposal when Tidal acts for itself, or persons employed by or for or attached to Tidal act for themselves, in disciplinary, criminal or civil proceedings in which this information may be relevant.
4. Unless the Client has obtained prior written permission from Tidal, the Client will not disclose the content of the Contract, reports, advice or other statements made by Tidal, whether or not in writing, which were not prepared or made for the purpose of providing the information contained therein to third parties. The Client will, moreover, ensure that third parties cannot take note of the content referred to in the preceding sentence.
5. Except with prior written permission from Tidal, the Client will not make any statements about the approach and working procedures used by Tidal.
6. The Client may exclusively use the quotation made by Tidal and the knowledge and ideas of Tidal contained in this quotation for the purposes of evaluating its interest in awarding the engagement.
7. Tidal and the Client will impose their obligations pursuant to article 8 on third parties engaged by them.
8. Tidal reserves the right to use the Client's name and to mention the kind of work it performed for the Client for publicity and reference purposes, and to mention all particulars which have already been made publicly known in the media.
9. Tidal is entitled to share in confidence information relating to the Client, to Tidal's relationship with the Client, and to the Work, including confidential information in order to create and maintain a consolidated repository of best practice and knowledge, where in each case Tidal is required to implement safeguards to protect confidentiality.
10. Tidal is permitted to use and distribute data from / about the Client as it sees fit, as long as this data cannot be traced back to the Client and/or natural persons.
11. The obligation contained in article 8.1 does not apply and Tidal is entitled to use Client's confidential information and to provide such information to other parties who facilitate the administration of Tidal's business or support its infrastructure in both cases.

## **9. INTELLECTUAL PROPERTY**

1. Tidal reserves all rights in respect of products of the mind that Tidal uses or has used, or develops or has developed, in performing the Work.
2. The Client is expressly prohibited from reproducing, disclosing or exploiting the products referred to in Article 9.1, including computer programmes, system designs, processes, advice, master or other contracts and other products of the mind of Tidal.

## **10. KNOWLEDGE AND CONFLICTS**

1. The Team will not be required, expected or assumed to have knowledge of facts and circumstances known to other persons within Tidal. Consequently, Tidal cannot be held accountable by the Client for such facts and circumstances.
2. Tidal will be free at any time to render services to another party with an interest that competes or conflicts with the interests of the Client (hereinafter: a 'Conflicting Party'), also if the interests of the Conflicting Party compete or conflict specifically and directly with the Client's interests in relation to the underlying interest.
3. If the Client is or has become aware of the fact and/or the circumstance that Tidal is advising or intends to advise a Conflicting Party in respect of an interest which competes or conflicts specifically and directly with the Client's interests, the Client will inform Tidal of the matter without delay.

## **11. FEE / PAYMENT / RECOVERY OF COSTS**

1. Tidal will invoice the Work on the basis of its fee, costs (including costs of third parties that have been engaged) and any taxes owing with respect to them. These items will be charged to the Client on a monthly, quarterly or annual basis, or upon completion of the Work, unless Tidal and the Client agreed otherwise.
2. Tidal's fee does not depend on the result of the Work.
3. The amount invoiced by Tidal may differ from earlier estimates or quotations.
4. Invoices will be paid by the Client, without any deduction, discount or setoff, within fifteen (15) days of the invoice date. If the Client fails to pay an invoice within this payment period, Tidal will be entitled, without further notice of default and without prejudice to the other rights of Tidal, to charge the Client legal commercial interest (referred to in section 6:119a of the Dutch Civil Code) from the due date until the date of payment in full.
5. All judicial and extrajudicial collection and other costs reasonably incurred by Tidal as a result of the Client's failure to discharge its payment obligations will be borne by the Client.
6. If, in the opinion of Tidal, the Client's financial position or payment record gives reason to do so, Tidal may require the Client to make a full or partial advance payment and/or to provide (additional) security in a form to be determined by Tidal. If the Client fails to provide the required security, Tidal may, without prejudice to its other rights, immediately suspend the further performance of the Agreement and any amounts owing by the Client to Tidal on any account whatsoever will be immediately due and payable.
7. If several Clients have jointly awarded an engagement, the Clients will be jointly and severally liable for payment of the invoice amount to the extent that the Work was performed for the Clients jointly.
8. Where Tidal is required or requested to provide information in respect of the Client pursuant to a regulatory request, requirement or through any form of legal proceedings, Client agrees to reimburse Tidal for the costs Tidal and its personnel incurred in relation to such requirement, request or proceeding, where Tidal actions were not also the subject of such requirement, request or proceeding.
9. Tidal can perform additional Work and charge additional fees to the Client for the performed additional Work, if the Work is a consequence of (inter)national laws and regulations applicable to the Agreement or the Work.

## **12. COMPLAINTS**

1. Complaints about the Work performed and/or the invoice amount must be made known to Tidal in writing within sixty (60) days of the date of dispatch of the documents or information about which the Client has a complaint, or within sixty (60) days of the discovery of the defect if the Client proves that it could not reasonably have discovered the defect at an earlier date.
2. Complaints referred to in article 12.1 will not suspend the Client's obligation to pay.
3. In the event of a well-founded complaint Tidal will have the choice between adjusting the fee charged, correcting the rejected Work or doing it again, or not or no longer performing the engagement or part of the engagement while repaying a proportionate amount of the fee already paid by the Client.

## **13. EARLY TERMINATION OF THE ENGAGEMENT**

1. Both Tidal and the Client may terminate (opzeggen) the Agreement by thirty (30) days' written notice of termination. In the event of the Client terminating the Agreement as referred to in the preceding sentence, the Client is obliged to reimburse all the losses and costs suffered and incurred by Tidal. These losses

- and costs at least, but not exclusively, include all the costs incurred and investments made, and capacity lost by Tidal, in respect of the Agreement and (future) Work.
2. Tidal may furthermore terminate (opzeggen) the Agreement by written notice with immediate effect in the event of unforeseen circumstances (within the meaning of section 6:258 of the Dutch Civil Code).
  3. Both Tidal and the Client may only dissolve (ontbinden) the Agreement if (i) the other party fails imputably to perform an essential obligation under the Agreement and if the other party is in default in the matter (within the meaning of section 6:81 of the Dutch Civil Code) ii) if the other party is not able to pay its debts, (iii) if a receiver, administrator or liquidator is appointed, (iv) if the other party reschedules its debts.
  4. Upon termination pursuant to paragraph 1, 2 or 3 of Article 13, Tidal will continue to be entitled to payment of invoices for Work already performed or any Work still to be performed by mutual agreement. The Client's obligation to pay invoices for Work already performed will become immediately due and payable as soon as the Agreement is terminated.
- 14. LIABILITY**
1. Tidal will perform the Work (and any additional work) to the best of its abilities and, in doing so, will exercise the required due care. Tidal will only be liable if the Client can demonstrate that it has suffered loss as a result of a material error on the part of Tidal.
  2. Tidal's liability will be limited to an amount equal to one (1) time the fee payable to Tidal pursuant to the provisions of the Contract, except in the case of intent or wilful recklessness on the part of Tidal's executive staff. This limitation of liability will apply in full in the event of liability to a number of Clients; in that case the amount paid by Tidal to all Clients jointly will not exceed one (1) time the fee payable to Tidal pursuant to the provisions of the Contract.
  3. Tidal will not be liable in any way whatsoever for consequential loss (including but not limited to lost profit, lost savings, loss due to business interruption), except in the case of intent or wilful recklessness on the part of Tidal's executive staff.
  4. Except for the cases mentioned in articles 14.1 to 14.3, Tidal will not be liable for damages on any account whatsoever.
  5. Tidal will exercise due care when engaging third parties. Tidal will not be liable for any errors and/or failures of such third parties. This does not apply to third parties which act as subcontractors, and which act under the responsibility of Tidal.
  6. The limitations on liability laid down in article 14 operate both on behalf of Tidal (itself) and of the persons, individually as well as jointly, within the Team.
  7. The provisions of this article 14 relate to both contractual and non-contractual liability of Tidal towards the Client.
- 15. INDEMNITY**
1. The Client will indemnify Tidal against any and all claims of third parties arising from or connected to the Work performed or to be performed for the Client, unless such claims result from intent or wilful recklessness on the part of Tidal's executive staff. The indemnity will include all loss suffered and legal and other costs incurred by Tidal in connection with claims.
  2. The indemnity under paragraph 1 of this Article is also stipulated on behalf of the persons, both individually and jointly, forming the Team, and whether or not engaged by Tidal for the performance of the Work.
- 16. PROTECTION OF PERSONAL DATA**
1. Tidal may process personal data concerning and/or obtained from the Client (i) in performing the Work, (ii) in complying with statutory obligations, (iii) for the purposes of supporting Tidal's services to the Client, (iv) in relation to the exercise of or defence against a legal claim and (v) to approach the Client and/or persons employed by or working for the benefit of Client with information and with services provided by Tidal and third parties.
  2. Tidal will process personal data in carrying out the activities mentioned in paragraph 1 in accordance with the applicable legislation and regulations regarding personal data protection ("Applicable Legislation"), including inter alia the General Data Protection Regulation ("GDPR") and the Dutch GDPR Implementation Act. Tidal may share personal data with other third parties engaged by Tidal for (support relating to) the performance of the Work. Personal data will only be shared to the extent necessary regarding the aforementioned activities and to the extent it is in compliance with the Applicable Legislation. Tidal

has designated a data protection officer (e-mail: [privacy@tidalcontrol.com](mailto:privacy@tidalcontrol.com)).

3. To the extent that Tidal processes personal data pursuant to the Agreement, Client determines the purpose and means of this data processing, and thus Tidal acts as Processor within the meaning of the GDPR.
  4. The Client has an independent duty to comply with the Applicable Legislation. The Client warrants the legitimacy of the provisioning of the personal data to Tidal and will comply with all legal requirements regarding the Client in conformity with the Applicable Legislation, including the requirement to inform the data subjects of the provisioning of their personal data to Tidal and the processing thereof by Tidal in accordance with the Agreement. Information regarding the processing of personal data by Tidal is available in the Privacy Statement via <https://tidalcontrol.com/privacy>.
  5. Tidal will implement appropriate technical and organisational measures to safeguard the personal data against destruction, loss, alteration or unauthorised disclosure of, or access thereto.
  6. To the extent it concerns personal data provisioned by the Client, Tidal will inform the Client of (i) a request from a data subject wishing to exercise its rights is received, (ii) a complaint or claim relating to the processing of the personal data is received, and (iii) if Tidal makes a notification pursuant to article 33 or 34 of the GDPR.
  7. Upon Tidal's request, the Client will, without undue delay, fully cooperate and provide all information in order to comply with the Applicable Legislation, including, but not limited to information and cooperation in relation to data subjects exercising their rights and possible personal data.
  8. The Client shall indemnify Tidal against any and all claims from third parties relating to non-compliance by the Client with the Applicable Legislation. This indemnification includes all loss suffered and any and all (legal) costs that Tidal incurs or suffers in connection with any such claim.
- 17. EMAIL AND USE OF THE INTERNET**
1. The Client and Tidal may communicate with each other by means of electronic mail (email), electronic storage (including cloud applications) and the use of internet. There are risks associated with the use of email, electronic storage and the internet, such as, but not limited to distortion, delay, interception, manipulation and viruses. Tidal will not be liable for any loss that may ensue from the use of email, electronic storage and/or the internet. Should there be any doubt about the content or transmission of email and/or electronic storage, data extracts from computer systems of Tidal will be decisive.
  2. In case of electronic transmission of information – including (but not limited to) tax filing, financial statements, reports – of (and commissioned of) Client by Tidal to third parties, the Client will be considered as the party which performed the electronic transmission of information and the signing thereof.
  3. Tidal is not liable for damages which could possibly result from the use of the electronic means of communication, networks, applications, electronic storage or other systems including – but not limited to – damages as a result of non-delivery or delay of the delivery of electronic communication, omissions, distortion, interception or manipulation of electronic communication by third parties or by software/equipment used for transmission, receiving or processing of electronic communication, transfer of viruses and not or not normal functioning of the telecom network or other for the electronic communication necessary means, except insofar the damages are the result of intent or wilful recklessness. The foregoing also applies for the use thereof by Tidal in relation to third parties.

**18. EXPIRATION**

Unless otherwise determined these General Terms and Conditions, the Client's right of action and other powers to make any claim towards Tidal on any account whatsoever will end ultimately upon the lapse of one (1) year after the moment when the Client became aware or could reasonably be aware of the existence of the right or powers in question.

**19. MONEY LAUNDERING AND TERRORIST FINANCING (PREVENTION) ACT**

Pursuant to the Money Laundering and Terrorist Financing (Prevention) Act (WWFT), Tidal is held to report to the Office for unusual transactions (Meldpunt ongebruikelijke transacties) any unusual intended or performed transaction in so far as it is signalled in the context of our regular work. In addition, pursuant to the Money Laundering and

Terrorist Financing (Prevention) Act, Tidal is held to carry out client investigations regarding potential clients. This means, inter alia, the identification of the potential client and verification of the Client's identity prior to the Work. Tidal can request assistance of the Client regarding the client investigation.

**20. CONTINUED EFFECT**

All rights and obligations arising from the Agreement that by their purport are intended to continue in force after termination of the Agreement will remain in full force after the Agreement has ended.

**21. TRANSFER**

Neither of the parties to the Agreement may transfer the rights and obligations arising from or related to the Agreement to a third party without the other party's express written permission.

**22. APPLICABLE LAW AND CHOICE OF FORUM**

The Agreement is governed by Dutch law. All disputes arising from or connected to the Agreement will fall under the exclusive jurisdiction of the competent court in the district in which Tidal has its seat.