

# General Terms & Conditions



## Article 1 Definitions

In the context of these General Terms & Conditions the capitalized words shall have the following meaning:

### a. Baker Tilly Dutch Caribbean:

The legal entities having accountancy and tax consultancy practices in Curaçao (Baker Tilly Curaçao B.V.), St. Maarten (Baker Tilly St. Maarten B.V.), Bonaire (Baker Tilly Bonaire B.V.) and Aruba (Baker Tilly Aruba N.V.), and who apply these general terms and conditions;

### b. Contractor:

The Baker Tilly Dutch Caribbean entity which enters into and carries out the Contract exclusively for and through its accountancy and/or tax consultancy practices, and not for or through any individual Employee, regardless of whether the Client explicitly or implicitly granted the Work with a view to the performance thereof by a certain Employee or certain Employees. The applicability of articles 7:404, 7:407, paragraph 2, and 7:409 of the Civil Code is expressly excluded;

### c. Client:

The natural or legal person, or other entity which gave an instruction to Contractor to perform the commissioned work;

### d. Work:

All work to be performed by Contractor for Client, which was commissioned by Client and was accepted by Contractor as well as all the work issuing from same for Contractor.

### e. Contract:

The agreement by which Contractor commits to perform the specified Work for Client;

### f. Documents:

All the information and/or data made available by Client to Contractor, whether contained or transmitted by tangible or intangible carriers, which include, but are not limited to: paper, CD-ROMs, hard disks, e-mail and digital environments, which may or may not be managed by third parties, as well as all information produced or collected in the scope of the performance of the Contract by Contractor, which includes but is not limited to: paper, CD-ROMs, hard disks, e-mail and digital environments, which may or may not be managed by third parties, together with all other information relevant for the performance or completion of the Contract, whether contained or transmitted by tangible or intangible carriers;

### g. Employee:

A natural person employed by or associated with Contractor, or another entity, which is part of Baker Tilly Dutch Caribbean who may or may not be hired on the basis of an employment agreement.

## Article 2 Applicability

- These General Terms & Conditions are applicable to: all offers, fee quotes, commissions, legal relationships and agreements, by any name whatsoever, as a consequence whereof Contractor undertakes/shall undertake to perform Work for Client, as well as any Work resulting therefrom for Contractor.
- Deviations from and additions to these General Terms & Conditions shall only be valid when same have been agreed to expressly and in writing, for example in a written agreement or confirmation of instruction.
- In the event that these General Terms & Conditions and the confirmation of the instruction contain mutually contradictory conditions, the conditions contained in the confirmation of the instruction shall prevail.
- The applicability of the General Terms & Conditions of Client is explicitly rejected by Contractor.
- The underlying Contract – and these General Terms & Conditions – constitute the entire agreement between Client and Contractor relating to the Work for which this Contract has been entered into. All prior agreements or proposals between parties shall become null and void.
- Contractor is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International does not provide professional services to clients. Each member firm is a separate and independent legal entity and presents itself as such. Contractor is not an agent of Baker Tilly International and is not authorized to bind Baker Tilly International nor to act on behalf of Baker Tilly International. Neither Baker Tilly International, nor Contractor, nor any one of the other independent member firms of Baker Tilly International shall accept any liability for each other's acts or omissions.

## Article 3 Client's Information

- Client shall provide all Documents, which Contractor, in its opinion, needs, to properly execute the Contract: a) in the desired format, b) in the manner requested and c) in time to Contractor. Contractor shall determine what is to be understood by the words desired format, the manner requested and in time.
- Client certifies the accuracy and trustworthiness of the Documents provided, even if same were supplied by third parties, unless the nature of the Contract requires otherwise.
- Contractor has the right to suspend the performance of the Contract until Client meets the requirements mentioned in the first and second paragraphs.
- Client shall indemnify Contractor against damages suffered because the Documents are inaccurate or incomplete.
- The additional costs borne, and extra hours worked, as well as the additional damages suffered by Contractor as a result of the Client not providing or not providing in time or in the requested format and manner the Documents required to properly carry out the Work, are for the account and risk of Client.
- At first request of Client, Contractor shall return the original Documents provided by Client to the Client.

## Article 4 Execution of the Contract

- Contractor shall carry out the Contract to the best of his ability and in compliance with the relevant legislation and (professional) regulations. However, Contractor cannot guarantee the achievement of any intended result.
- Contractor shall determine the way in which the Contract will be carried out and by which Employee(s) the Work will be performed. Contractor, if possible, shall take into account Client's instructions with reference to the performance of the Work if same are provided in a timely and responsible manner.
- Contractor is entitled to have the Work performed by a third party appointed by him, including another Baker Tilly entity, without notification to and explicit consent from Client, if, in the opinion of Contractor, same is desirable. The cost of this third party to be appointed, will be charged to Client.
- If, within the duration of the Contract, Work is performed for the benefit of the profession or company of Client, which is not covered by the Work, as defined pursuant to the Contract, this Work shall be considered to have been performed pursuant to separate Contracts.

- When a deadline/date has been agreed to between Client and Contractor by which the Contract shall be completed and the Client fails to: a) provide an advance – if agreed to – or b) fully put at Contractor's disposal the necessary Documents in a timely manner and in the requested format and manner, Client and Contractor will consult each other regarding a new deadline/date by which the Contract shall be completed.
- Deadlines by which the Work will be performed set at or during the carrying out of the Contract will only count as approximations and shall not be regarded as firm dates. When exceeded, such a deadline will therefore not constitute a failure attributable to Contractor and therefore cannot constitute grounds for dissolution of the Contract. Deadlines are to be considered firm dates only when agreed upon explicitly and expressly between Client and Contractor.
- The performance of the Contract is not specifically aimed at detecting fraud – unless otherwise expressly stated in writing. In the event the Work reveals indications of fraud, Contractor will report same to Client. In this regard Contractor is bound by the applicable rules and legislation and by the several regulations and directives issued by professional associations.

## Article 5 (Professional) Regulations

- Client shall at all times provide full cooperation with Contractor's fulfilling the obligations which arise from the relevant (professional) regulations applicable to him.
- Client is aware that Contractor – among others, but not limited to the following:
  - under applicable legislation and regulations may be required to report certain transactions, described in the laws and regulations and which have come to light during the performance of the Work, to the authorities organized by the Government for this purpose;
  - pursuant to applicable legislation and regulations, in certain situations may be required to report an instance of fraud;
  - under the applicable legislation and regulations may be required to investigate (the identity of) Client.
- Contractor excludes every liability for damage suffered by Client as a result of compliance by the Contractor with the legislation and (professional) regulations applicable to him.

## Article 6 Confidentiality and Exclusivity

- Contractor is required to maintain confidentiality towards third parties, which are not involved in carrying out the Contract. This confidentiality relates to all information of a confidential nature, which has been provided to Contractor by Client and the results obtained from the processing thereof. This confidentiality does not apply to statutory or professional rules, including but not limited to the reporting obligations resulting from legislation to prevent money laundering and financing of terrorism and other national or international legislation of a similar tenor, which impose on Contractor an obligation to provide information, or insofar as Client has released Contractor from the obligation of confidentiality. This stipulation also does not prevent confidential consultations among colleagues within the organization of Contractor, insofar as Contractor considers same necessary for the meticulous carrying out of the Contract or the careful fulfilment of the statutory or professional obligations.
- Contractor is not authorized to use the information provided to it by Client for any other purpose than that for which it was obtained, except in case the Contractor acts in his own defense in disciplinary, civil law, administrative or criminal proceedings, in which case these documents may be relevant. If Contractor is accused of having committed or participated in an offence or a crime, he is entitled to disclose Documents of Client to the Tax Inspectorate or the Court if such disclosure is necessary in the context of conducting a defense by Contractor.
- Except with the express written advance permission of Contractor, Client is not permitted to publicly divulge the contents of any advice, opinion or other statement, whether or not written, issued by Contractor or in any other way to provide same to third parties, other than for the purpose of obtaining an expert opinion on the Work of Contractor. Client will impose its obligations on the basis of this article on the third parties so consulted.
- In the event of any violation of the prohibition contained in the previous paragraph, Client shall pay an immediately payable penalty, in the amount of ANG 25,000, which is not open to judicial moderation, to Contractor, without prejudice to Contractor's right to demand compensation of damages.
- Contractor has the right to – confidentially – share information about Client, including information with regard to the Client's personnel, Contractor's relationship with Client and the Work, including confidential information and personal data, with other Baker Tilly Dutch Caribbean entities to improve and complement the provision of services.

## Article 7 Intellectual Property

- Performance of the Contract by Contractor does not imply transfer of intellectual property rights owned by Contractor. All intellectual property rights that arise during, or result from, the carrying out of the Contract accrue to Contractor.
- Client is explicitly prohibited from reproducing, divulging or exploiting the products containing intellectual property rights owned by Contractor, or products in which intellectual property rights are vested and with regard to the use of which Contractor has acquired rights of use – including for this purpose in any case, but not limited to: computer programs, system designs, working methods, advice, (model)contracts, templates, macros and other intellectual products.
- Client is not permitted to provide (auxiliary materials of) the products mentioned in the second paragraph to third parties without prior written authorization from Contractor other than for the purpose of obtaining an expert opinion on the Work of Contractor. In that case, Client will impose its obligations pursuant to this article on the third parties consulted.
- In the event of violation of the prohibition in paragraphs 2 and/or 3, Client shall pay an immediately payable penalty not open to any judicial moderation, amounting to ANG 25,000 to Contractor, without prejudice to Contractor's right to demand compensation of damages.
- Regarding the performance of Work for Client and/or clients of Contractor and/or clients of another Baker Tilly Dutch Caribbean entity, Contractor is entitled to use, develop and exchange the knowledge, experience and general skills, which Contractor has acquired as a result of the performance of the Work, with (an)other Baker Tilly Dutch Caribbean entity (entities).

#### Article 8 Force Majeure

1. If the parties cannot at all, cannot in time or cannot properly comply with their obligations as per the Contract as a result of force majeure within the meaning of art. 6:75 of the Civil Code, those obligations will be suspended up to the moment that the parties will be able to fulfil their obligations in the agreed manner.
2. In the event that the situation referred to in the first paragraph occurs, the parties shall have the right to terminate the Contract in writing, wholly or partially and with immediate effect, however, without being entitled to any compensation for damages.

#### Article 9 Fee

1. Contractor will bill Client for Work carried out on the basis of time spent and costs incurred.
2. In addition to the fee, the costs incurred by Contractor and any expenses charged to Contractor by third parties, which were hired by Contractor, will also be charged to Client.
3. Contractor reserves the right to request an advance from Client.
4. If, after the conclusion of the Contract, but before the Work has been entirely completed, fees or prices change, Contractor will be authorized to modify the agreed rate accordingly.
5. The fee, where necessary increased by advances to and invoices and bills from third parties which were hired, and expenses incurred, will be billed monthly, unless otherwise agreed in writing. All the amounts owed by Client to Contractor shall be increased by turnover tax, to be charged separately, if required by law.

#### Article 10 Payment

1. Payment of the amounts owed by Client to Contractor shall take place within 14 days from the invoice date without Client being entitled to any deduction, discount or compensation, unless otherwise agreed to in writing. The day of payment is the day on which the amount due is credited to Contractor's bank account.
2. If Client has not paid within the period stipulated in the first paragraph or another period agreed to between the parties, Client shall be in default by operation of law and Contractor shall be entitled to charge Client the statutory (commercial) interest from that day on.
3. If Client has not paid within the period stipulated in the first paragraph, Client is bound to compensate Contractor for all judicial and extra-judicial (collection) costs incurred. The compensation of the costs incurred is not limited to any amount established by a judge's verdict regarding compensation of costs.
4. In the event of a multiple party Contract, Clients shall be jointly and severally liable for the payment of the invoice amount and the interest and costs owed, insofar as the Work was performed on behalf of the joint Clients.
5. If the financial position or the payment history of Client, in the opinion of Contractor, gives rise thereto, or if Client fails to pay an advance or invoice within the stipulated payment period, Contractor is entitled to require that Client provide immediate (additional) security in a form to be determined by Contractor. In the event Client fails to provide the desired security, Contractor, without prejudice to his other rights, shall be entitled to terminate or immediately suspend any further performance of the Contract and all amounts due by Client to Contractor, regardless of their provenance, shall be immediately payable.

#### Article 11 Complaints

1. Complaints related to the performed Work and/or the invoice amount shall be notified to Contractor in writing within 30 days from the dispatch of the documents or information to which the complaint relates, or within 30 days from the date of discovering the defect, if Client can substantiate his inability to reasonably detect the defect sooner, with an accurate description of the nature and cause of the complaint.
2. Complaints as referred to in the first paragraph, shall not suspend Client's payment obligations, except insofar as Contractor has made known that the complaint is to be considered justified.
3. Contractor must be allowed to examine Client's complaint.
4. In the event that a justified complaint has been made, Contractor will have a choice between reasonably adjusting the fee charged, correcting or performing the rejected Work again, free of charge, or not carrying out (the balance of) the Contract in part or in full against a proportionate refund of the fees already paid by Client.
5. If the complaint is not instituted in a timely manner, all Client's rights in respect of lodging a complaint shall be forfeited.

#### Article 12 Liability and indemnities

1. Contractor is only liable towards Client for direct damages resulting directly from (a series of related) attributable failure(s) in carrying out the Contract. This liability is limited to the amount owed and to be paid, according to Contractor's liability insurer, in the relevant case, plus any excess to be borne by Contractor under the insurance coverage. Should, for whatever reason, the liability insurer fail to pay out, Contractor's liability shall be limited to the amount of the fee charged for carrying out the Contract. In case the period to carry out the Contract spans a period of more than 12 months, the amount referred to above shall be set at three times the amount of the fee charged to Client in the twelve months preceding the occurrence of the damage. The total compensation for the damage pursuant to this article shall in no case exceed ANG 500,000 per incident, with a series of connected incidents being regarded as one incident, unless the parties - in view of the scope of the Contract or the risks associated with it - see a reason to deviate from this maximum in writing when concluding the Contract.
2. Except in the event of willful misconduct or gross negligence on the part of Contractor, Contractor shall not be liable for
  - a. any damages sustained by Client or any third party that result from Client supplying incorrect or incomplete Documents to Contractor, or otherwise result from Client's acts or omissions;
  - b. any damages sustained by Client or any third party that result from acts or omissions committed by persons engaged by Contractor (excluding Employees) to assist, even if such persons are employed by an organization affiliated with Contractor;
  - c. any business losses, indirect or consequential damages, suffered by Client or third parties, including, but not limited to loss of profits, missed savings, damage by stagnation of Client's business operations.
3. A further condition for liability is that Client inform Contractor of the shortcoming in writing immediately after the discovery thereof or as soon as he reasonably should have been aware thereof and Contractor shall at all times be entitled, insofar as possible, to remedy or limit Client's damage by rectifying or improving the defective Work.
4. Client is obliged to take the necessary actions to mitigate the damage.
5. Contractor shall not be liable for any damage or destruction of Documents during transportation or as a result of mailing same, irrespective of whether the transportation or mailing occurred by or on behalf of Client, Contractor or a third party.
6. Client shall indemnify Contractor against all possible third-party claims, which are directly or indirectly related to the carrying out of the Contract, including from Client's shareholders, directors, supervisory board members and employees, as well as related legal entities and companies and other parties that are involved in Client's organization. Client indemnifies Contractor in particular against all claims from third parties for damages incurred due to the fact that Client did not provide or provided inaccurate or incomplete Documents to Contractor.

7. Client shall indemnify Contractor against all possible claims from Contractor's Employees and third parties appointed by Contractor who, in connection with the carrying out of the Contract suffer damages, which result from an act or omission by Client or from the unsafe working conditions within Client's company or organization.
8. Client shall indemnify Contractor against all possible third party claims, in the event that Contractor, by virtue of the law and/or professional rules applicable to Contractor, shall be compelled to return the Contract and/or shall be compelled to cooperate with government entities that are entitled to obtain information which Contractor obtained from Client or third parties in the course of carrying out the Work, whether or not upon request.
9. No other Baker Tilly Dutch Caribbean entity (regardless of whether they are involved in the Assignment), or other third party hired by Contractor to carry out the Contract shall be held liable for any damages suffered by Client in connection with the Contract. The limitation of liability and safeguards stipulated in these General Terms & Conditions shall in any case apply *mutatis mutandis* and are expressly also stipulated for the benefit of other Baker Tilly Dutch Caribbean entities (regardless of whether they are involved in the Work).
10. All demands for compensation of damages brought against employees of Baker Tilly Dutch Caribbean entities, (legal) persons participating in joint ventures or directors of the companies through which certain professionals carry out their work shall be excluded. Employees, (legal) persons participating in joint ventures and the directors of the professional companies meant before may at all times invoke this third-party clause, which is stipulated on their behalf, as well as every other provision stipulated in these General Terms & Conditions by Contractor.

#### Article 13 Termination

1. Client may terminate the Contract (prematurely) at all times, observing a reasonable period of notice of at least two months or so much longer as Contractor's justified interests require.
2. In case the Contract is terminated before the Work has been completed, Client shall owe a fee as calculated for the hours already spent on carrying out the Work for Client and which, by mutual agreement will be spent additionally.
3. In deviation from the provision in paragraph 2 of this article, Client shall pay a fee, which is equal to the fee which Contractor would have earned in case of full completion of the Contract, if Client does not give a reasonable period of notice as stipulated in paragraph 1.
4. In all cases where the Contract is terminated by cancellation (i) invoices sent to Client in connection with carrying out the Contract shall become immediately payable and (ii) Client shall be obliged to pay all of Contractor's damages and costs resulting from cancellation of the Contract, including (but not limited to), costs and damages resulting from expenses made in light of (future) Work, investments made (including the increase of the necessary labor force) and costs which might result from possibly having to cancel third parties' assistance (such as - among others - the possible cost of sub-contractors).
5. If Contractor decides to terminate the Contract prematurely, Client has the right to Contractor's assistance in the transfer of Work to third parties, unless Contractor was forced to terminate the Contract because of Client's willful acts or gross negligence. The right to assistance as meant in this paragraph is premised on Client's having paid all advances and invoices.

#### Article 14 Right of suspension

1. If Contractor's interests so justify, Contractor is entitled to suspend fulfilment of his obligations, including the issuing of Documents or other items to Client or third parties, until all due and payable claims against and obligations of Client have been satisfied.
2. The first paragraph does not apply to Documents provided by Client that have not yet been processed by Contractor.

#### Article 15 Time limit

1. Insofar as these General Terms & Conditions do not stipulate otherwise, the rights of action and other powers of Client of whatever nature and for whatever reason against Contractor in connection with the Work performed by Contractor, shall in any case expire after one year from the moment Client became aware or could reasonably have become aware of the existence of these rights and powers. This deadline does not relate to the possibility to submit a complaint to the body/bodies designated to handle complaints and/or to the Dispute Adjudication Board.

#### Article 16 Electronic Communication

1. During the carrying out of the Contract at the request of Client, Client and Contractor can communicate with each other through electronic means.
2. Client and Contractor shall not be liable for compensation of damages to each other for any damages incurred by either or both parties that follow from the use of electronic means of communication, including, but not limited to, damages arising from failure to deliver or delay in delivery of electronic communication by third parties or by software equipment used for the transmission, delivery, receipt or processing of electronic communication, transmission of viruses and total or partial failure of the telecommunications network or other tools used for electronic communication, except insofar as the damages result from an intentional act or gross negligence.
3. Client and Contractor will both do or omit to do everything that may reasonably be expected of each of them to prevent the risks referred to above from occurring.
4. The data extracts from the computer systems of Contractor shall constitute compelling proof (of the content of) the electronic communications sent and received by Contractor until such time as Client provides evidence to the contrary.

#### Article 17 Other provisions

1. If Contractor performs Work on Client's premises, Client must provide a suitable workplace that meets the statutory occupational health and safety requirements and all other relevant regulations that apply to working conditions. In that case, Client shall ensure that Contractor is provided with office space and other facilities that Contractor deems necessary or desirable to carry out the Contract, which meet all the applicable (statutory) requirements. With respect to the provided (computer) facilities, Client is obliged to ensure continuity, among others, by means of sufficient back-up, safety and virus control procedures. Contractor will carry out the virus control procedures when Contractor makes use of the facilities of Client.
2. During the term of the Contract or any extension thereof and during the 12 months thereafter, Client will refrain from employing or approaching Employees - or causing same to be employed or approached on his behalf - who are involved in the performance of the Work, to enter directly or indirectly into Client's service, whether or not temporarily, or to directly or indirectly perform work for the benefit of Client, whether as employee or self-employed.

#### Article 18 Applicable law and choice of forum

1. The Contract is covered by the law of the jurisdiction where the Contractor has its registered office.
2. All disputes related to the Contract shall be heard by the competent court in the jurisdiction where the Contractor has its registered office.