

## ICTRECHT General Terms and Conditions

Version: 7 April 2010

These General Terms and Conditions form part of every agreement for the provision of services by ICTRecht legal services (referred to below as the 'Agreement'). In these General Terms and Conditions a party that enters into an Agreement with ICTRecht will be referred to as the 'Client'. The services that the Client wishes to receive will be referred to as the 'Assignment'.

### Article 1 Offers and introductory discussions

- 1.1 ICTRecht will draw up an offer in which it will indicate what service(s) and/or information will be provided (referred to below as the 'Assignment') and what amount will be due in that context. Only the description of the Assignment contained in the offer will be binding.
- 1.2 An offer and introductory communications with respect to the Assignment are without engagement and will not obligate the Client in any way.
- 1.3 ICTRecht will be entitled to charge a reasonable rate if the introductory communications require more than three hours. This provision will also apply if an introductory communication leads to the concrete provision of legal advice, but only if ICTRecht notifies the Client in a timely manner in that regard.
- 1.4 An offer will no longer be valid 31 days after the date on which ICTRecht sends it.
- 1.5 The prices indicated in offers may be changed as a result of unexpected changes to the work. ICTRecht will notify the Client in this respect as quickly as possible.
- 1.6 In case the offer specifies a date of delivery, then this date will only be binding if Client accepts the offer within one working day after the offer was sent. In case the offer is accepted on a later date, the deadline will shift accordingly.
- 1.7 These General Terms and Conditions form part of the Agreement at all times. Provisions or conditions stipulated by the Client that deviate from or are not contained in these General Terms and Conditions will be binding on ICTRecht only if and insofar as ICTRecht has expressly accepted them in writing.

### Article 2 Acceptance of the Assignment

- 2.1 The Client must explicitly accept the offer. If the Client fails to do so but nonetheless agrees, or in any event creates that impression, that ICTRecht may perform work in the context of the Agreement, the offer will be deemed to have been accepted.
- 2.2 ICTRecht reserves the right to refuse to accept an Assignment if new information becomes available after acceptance that makes performance unacceptable for ICTRecht.

- 2.3 After the Assignment has been accepted it may be changed only by mutual consent, in which case ICTRecht will be entitled to adjust the amount due.

### **Article 3 Execution of the assignment**

- 3.1 ICTRecht will execute the assignment to the best of its ability and in accordance with good professional standards.
- 3.2 ICTRecht will be entitled to have certain work performed by third parties if and insofar as the proper execution of the Assignment so requires. Any additional costs that result will be paid by the Client unless the parties agree otherwise.
- 3.3 The Client is required to do and refrain from doing everything that is reasonably necessary and desirable so that the Assignment can be executed in a timely and proper manner. In particular the Client must provide ICTRecht in a timely manner with any and all information that ICTRecht indicates is necessary or that the Client reasonably should know is necessary in order to execute the assignment.
- 3.4 The Client may use the information provided by ICTRecht only for the agreed purpose. In particular the Client may use the texts drawn up by ICTRecht, such as user agreements, privacy statements and disclaimers, only for the purposes indicated in connection with the Assignment. If the Client violates this provision ICTRecht will be entitled to charge a surcharge equal to 50% of the standard rate that it charges for the use of the information in question in connection with the Client's unauthorised use of the information.
- 3.5 The copyright and any other intellectual property rights in respect of all the materials developed or made available in the context of the Assignment, such as agreements, licences, privacy statements, disclaimers, analyses, designs, documentation, recommendations, reports, offers and any related preparatory materials, will vest in ICTRecht, with the exception of rights (including copyrights) in respect of materials provided by the Client. The Client will receive only the user rights and powers that ensue from the purport of the Agreement or that are further granted in writing. If the Client is permitted to publish materials ICTRecht will waive any right to have its name mentioned in the publication in question.
- 3.6 Complaints regarding the performance of the agreement and/or objections to fee statements must be submitted to the board of ICTRecht in writing within three weeks of the payment date. Complaints or objections submitted will not suspend the payment obligation(s).

### **Article 4 Duty of confidentiality**

- 4.1 Each party will treat in confidence any information provided by the other party before, during or after the execution of the Assignment if that information is marked as confidential or if the recipient knows or reasonably should suspect that the information was intended to be confidential. The Client will in any event treat the content of the offer in confidence.

- 4.2 If in executing the Assignment ICTRecht must take note of confidential information (stored and/or distributed via the Client's systems) ICTRecht will make every effort to limit its taking note of such information to every extent possible.
- 4.3 The obligations referred to in this Article will continue to apply after the Agreement has been terminated for any reason whatsoever for as long as the party that provided the information is reasonably entitled to claim that the information in question is confidential.

## **Article 5 Payment conditions**

- 5.1 All the amounts to which ICTRecht refers are exclusive of VAT unless the Client is a natural person who is not acting in the context of conducting a business or practising a profession, in which case the amounts are inclusive of VAT.
- 5.2 ICTRecht will send the Client an electronic invoice for the amount owed by the Client, unless the parties agree otherwise in writing.
- 5.3 The term for payment of the invoices sent by ICTRecht is 14 days from the invoice date.
- 5.4 If the Client makes advance payment for the provision of services on an hourly basis, in which context the Assignment is variable, the right to claim hours to be worked will lapse one year after the Agreement in respect of such work has been concluded.
- 5.5 The payment obligation will also apply if the Client does not wish to use the information provided in the context of the agreement.
- 5.6 If an invoice is not paid within the term for payment statutory interest will be due on the outstanding invoice amount, without ICTRecht being obliged to give any notice of default.
- 5.7 If payment is not made in a timely manner, in addition to the amount due and the interest due on that amount the Client will owe any and all judicial and extrajudicial collection costs, including the fees charged by lawyers, bailiffs and collection agencies.
- 5.8 The claim for payment will be due and payable immediately if the Client is declared bankrupt, applies for a suspension of payment or a full attachment is levied on the Client's assets, if the Client dies or if the Client is liquidated or wound up.

## **Article 6 Subscription services**

- 6.1 The supplemental conditions contained in this Article apply if the Assignment pertains to the provision of advice in the context of a subscription.
- 6.2 A subscription will be taken out for a term of 12 months, commencing on the date on which the agreement is accepted. The subscription will be tacitly extended for a period of 12 months at the end of each term unless the client cancels the

subscription in writing by giving notice one month before the subscription term lapses.

- 6.3 The Client will pay ICTRecht the subscription fee in advance on a quarterly basis, or on the basis of another term to be agreed in writing. Article 5 will apply accordingly.
- 6.4 ICTRecht will be entitled to refuse to provide advice if the Client submits an unreasonable number of requests for advice within the subscription period, at the discretion of ICTRecht.
- 6.5 ICTRecht will be entitled to terminate the provision of advice effective immediately if it appears that the Client has given third parties an opportunity to submit requests for advice to ICTRecht in the context of the subscription.
- 6.6 ICTRecht will be entitled to change the subscription rate during the term of the subscription. ICTRecht will notify the Client of such a change at least two months in advance. If the Client does not wish to accept the price increase that has been announced, the Client will be obliged to cancel the subscription in a timely manner before the price change enters into effect.

## **Article 7 Courses and training**

- 7.1 The supplemental conditions contained in this Article apply if the Assignment pertains in whole or in part to the provision of courses, workshops, training sessions, lectures or other types of training courses (referred to below as a 'Course') by ICTRecht. There are two possible forms for a Course: a Course can be provided at the Client's request, exclusively for the Client (referred to below as an 'Internal Course') or at the initiative of ICTRecht for numerous parties (referred to below as a 'General Course').
- 7.2 For Internal Courses, the Client will be responsible for providing the facilities required (such as a location, computers, overhead projectors, food and drinks) for the Course and for handling registrations. ICTRecht will have those responsibilities for General Courses.
- 7.3 For Internal Courses, the Client will be entitled to cancel or reschedule the course up to 14 days before the (first) date of the Course. The Client will be obliged to pay any cancellation costs or costs for changes for facilities that have already been booked (including travel costs or hotel accommodation for ICTRecht).
- 7.4 For General Courses, participation will be possible in the order in which the registrations are received. ICTRecht will confirm the registration by e-mail or reject it, stating the reasons. If ICTRecht receives the Client's registration after the maximum number of participants has been reached, ICTRecht will retain the registration and accept it if another participant cancels. ICTRecht will give notice in that respect in a timely manner.
- 7.5 ICTRecht will be entitled to change the content, location and dates/times of General Courses. The participants will be notified in this respect within two weeks before the Course is to commence.

- 7.6 For General Courses the Client will be entitled to cancel the participation within a term of two working days before the (first) date of the Course, in which case the participation costs will be waived. The costs will be due if the participation is cancelled within two working days. The Client will be entitled to register a replacement participant until the (first) date of the Course; that will not be deemed to be a cancellation.

## **Article 8 ICTRecht Quality Mark**

- 8.1 The supplemental conditions contained in this Article apply if the Assignment pertains in whole or in part to the assessment of the Client's website or application (referred to below as the 'Certification Object') on the basis of requirements applied by ICTRecht (referred to below as the 'Assessment Criteria').
- 8.2 ICTRecht will assess the Certification Object on the basis of the Assessment Criteria and will make a description of the results of that assessment available to the Client in the form of a report. If an aspect of the assessment is negative the report will also contain recommendations for improvement. The Client will be obliged to implement those instructions within 30 days and to notify ICTRecht in writing specifically how that was done. ICTRecht will then assess the object again.
- 8.3 If ICTRecht determines on the basis of the assessment that the Client has met all the Assessment Criteria and the Client has paid the fee due for the assessment, the Client will receive the non-exclusive and non-transferrable right to display the ICTRecht Quality Mark on the Certification Object, subject to the conditions referred to below. In that context ICTRecht will be entitled to give instructions regarding the form, colour, size, etc. of the ICTRecht Quality Mark, and the Client must strictly comply with those instructions.
- 8.4 If the Client changes the Certification Object in respect of relevant aspects after the ICTRecht Quality Mark has been granted, the Client will be obliged to request a re-evaluation immediately after the change has been made. The Client must make any resulting changes within five working days. Additional costs may be charged for such a re-evaluation.
- 8.5 If at any time ICTRecht discovers that the Client's Certification Object is not in accordance with the Assessment Criteria, ICTRecht will be entitled to revoke the ICTRecht Quality Mark effective immediately, without its being obliged to reimburse any costs or pay any other compensation.
- 8.6 During the term of the Agreement ICTRecht will be entitled to change the Assessment Criteria or other aspects of the ICTRecht Quality Mark. ICTRecht will notify the Client of an intended change at least thirty (30) days in advance.
- 8.7 After a change as referred to in the preceding subsection has entered into effect, the Client must ensure that the Certification Object is in accordance with the change within a term of thirty (30) days after the change has entered into effect.

- 8.8 The Client will be obliged to cease any use of the ICTRecht Quality Mark as from the time at which the Agreement in respect of the ICTRecht Quality mark has been terminated.

## Article 9 Liability

- 9.1 ICTRecht will accept statutory obligations to pay compensation for damage only insofar as provided for in this Article.
- 9.2 ICTRecht will be liable towards the Client only (a) in the event that it commits a breach in connection with the performance of the Agreement, and in that case only for compensation of the value of the defective performance; or (b) in the event that ICTRecht commits an attributable, wrongful act that has caused damage or bodily injury to persons.
- 9.3 Any liability on the part of ICTRecht for any form of damage is excluded, including additional compensation in any form whatsoever and compensation for indirect damage or consequential damage or damage caused by loss of turnover or profit, losses due to delays, losses due to loss of data, losses due to terms being exceeded as a result of changed circumstances, theft or loss of or damage to goods during a Course and damage caused by information or recommendations given by ICTRecht whose content does not expressly form part of the Assignment.
- 9.4 The maximum amount of any compensation that ICTRecht owes and pays pursuant to the preceding Articles will be equal to the amount that ICTRecht's professional liability insurer pays out in that respect plus its own policy excess. If in any given case the insurer does not make payment the liability for the total damage that ensues from or is in relation to the agreed work will be limited to the amount that the Client paid ICTRecht for the work in connection with which the damage arose.
- 9.5 ICTRecht's liability due to a breach in connection with the performance of the agreement will arise only if the Client immediately gives ICTRecht proper notice of default in writing, stipulating a reasonable term in which the breach may be remedied and ICTRecht has continued to fail to comply with its obligations after that term has expired. The notice of default must contain a description of the breach that is as detailed as possible so that ICTRecht is able to respond adequately.
- 9.6 The Client indemnifies ICTRecht against any claims brought by third parties in connection with the execution of the Assignment.
- 9.7 In the event of a situation involving force majeure, which in any event includes a breakdown or disruption of the Internet or the telecommunications infrastructure, power cuts, domestic riots, mobilisation, war, traffic jams, strikes, lockouts, business interruptions, illness of staff members, supply stagnation, fire, flood, or import and export impediments as a result of which ICTRecht cannot reasonably be expected to execute the Assignment, the execution of the Assignment will be suspended or the Agreement will be terminated if the situation involving force majeure has continued longer than 90 days, all the foregoing without either party being obliged to pay any compensation.

## **Article 10 Suspension and termination of the agreement**

- 10.1 If a fee statement has not been paid within the term for payment ICTRecht will be entitled to suspend the work for the Client's benefit, after it has notified the Client in that respect, until the amount of the fee statement has been paid.
- 10.2 The Client will be entitled to dissolve the agreement in writing if the results are not in accordance with its expectations, in which case ICTRecht will be entitled to charge for the hours worked in connection with the agreement at the standard rate that it applies, with a surcharge of 50% an hour. After the Client has dissolved the agreement ICTRecht will not be obliged to provide the materials or recommendations (including drafts) that have been prepared until that time to any party whatsoever.
- 10.3 If the information that is required to execute the assignment has not been provided in a timely manner, ICTRecht will be entitled to suspend the execution of the assignment until that information has been provided.
- 10.4 In the event that the agreement is suspended in accordance with this Article ICTRecht will not be liable for any damage that ensues from the suspension.
- 10.5 If from the information that the Client provides after acceptance it appears that it is not reasonably possible to execute the assignment or that that information leads to the assignment having a substantively different character than that which has been laid down in the offer, ICTRecht will be entitled to dissolve the agreement or charge additional costs for the work that deviates from the work offered, in which case Article 10.2 will apply accordingly.
- 10.6 ICTRecht will be entitled to terminate the provision of any services in writing, effective immediately, if the Client is in default in respect of its compliance with its obligations, is in the course of being wound up, applies for a suspension of payments, a bankruptcy petition has been filed in respect of the Client or if the Client closes down or dissolves his/her company.

## **Article 11 Amendments to these General Terms and Conditions**

- 11.1 ICTRecht reserves the right to amend or supplement these General Terms and Conditions.
- 11.2 Amendments will also apply in respect of any Agreements that have already been concluded, with due observance of a term of 30 days after notification has been given to the Client, however only if the agreements in question pertain to the provision of services during a period of 12 months or longer.
- 11.3 If the Client does not wish to accept a proposed amendment it will be entitled to terminate the agreement up to and effective from the date on which the new General Terms and Conditions enter into effect.

## Article 12 Miscellaneous provisions

- 12.1 All the legal relationships between ICTRecht and the Client are governed by Dutch law.
- 12.2 Any disputes that arise further to the agreement that cannot be resolved amicably will be submitted to the competent court of Amsterdam, the Netherlands.
- 12.3 Notwithstanding Article 6:225(2) of the Dutch Civil Code (Burgerlijk Wetboek), ICTRecht will not be bound by any amendments to the agreement that the Client makes upon acceptance, even if such amendments deviate from the agreement offered by ICTRecht only in respect of minor matters.
- 12.4 In these General Terms and Conditions 'written' and 'in writing' include the use of electronic communication such as e-mail and fax, provided that the identity of the sender and the authenticity of the communication are sufficiently clear. The Client will bear burden of proof with respect to the receipt of electronic communications at all times.
- 12.5 If any provision contained in the agreement and/or the General Terms and Conditions is null and void, that will not affect the validity of the agreement and/or the General Terms and Conditions as a whole. In such cases ICTRecht and the Client will lay down a new provision or provisions to replace the null and void provision(s), in which context the purport of the original agreement and/or the General Terms and Conditions will be maintained to every extent possible under the law.
- 12.6 The Client gives ICTRecht permission to use its name and logo in the context of ICTRecht's promotional activities unless the parties have explicitly agreed otherwise in the agreement or the Client can put forward a weighty interest that outweighs such use.
- 12.7 The Client must notify ICTRecht as quickly as possible of any relevant changes to its details, such as a change of address.
- 12.8 The version of any communication that ICTRecht receives or saves will be deemed to be authentic unless the Client produces evidence to the contrary.
- 12.9 Either party will be entitled to transfer its rights and obligations under the Agreement to a third party only after the other party has given prior written permission to do so.