

General terms and conditions of SMT Procesrecht B.V.

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1. These general terms and conditions apply to all engagements issued to SMT Procesrecht B.V. ('**SMT Procesrecht**'), including every follow up, amended or supplementary engagement as well as to the legal relationships resulting from or relating to such engagements as well as engagements that were not accepted by SMT Procesrecht.
2. These general terms and conditions have been drawn up in Dutch and have been translated to English. The Dutch text is binding in the event of any difference in content and/or purport.
3. Deviations from these general terms and conditions can only be made in writing.
4. Not only SMT Procesrecht, but also all natural and legal persons affiliated in any way to SMT Procesrecht and third parties taken on for performing any engagement for a client, can invoke these general terms and conditions. Such persons may invoke this irrevocable third-party clause agreed on their behalf at any time.
5. The applicability of any general or other terms and conditions of the client is explicitly excluded.
6. An assignment is only concluded after SMT Procesrecht has accepted the assignment in writing or otherwise when it is evident that there is mutual agreement between SMT Procesrecht and the client regarding the acceptance of the assignment by SMT Procesrecht.
7. All assignments are deemed to have been given to and accepted by SMT Procesrecht exclusively, even if it is the explicit or tacit intention that an assignment will be carried out by a specific person. The provisions of article 7:404, 7:407 (2) and 7:409 Dutch Civil Code are excluded.
8. The responsibility for the execution of the assignment and the related tasks rests solely with SMT Procesrecht and not with its lawyers, employees, and/or advisors personally, nor with their professional entities.
9. SMT Procesrecht performs the assignments exclusively for the benefit of the client. Third parties cannot derive any rights from the content of the performed work.
10. SMT Procesrecht is authorised to hire one or more third parties in connection with the performance of an assignment, and may do so in its own name or as holder of power of attorney of the client. SMT Procesrecht is not liable for any damage or loss due to an act or failure to act of a third party.
11. If an assignment is given by more than one client, all clients are jointly and severally liable to SMT Procesrecht for the resulting obligations.
12. SMT Procesrecht may terminate the assignment at any time by giving notice, with – depending on the circumstances of the case – due observance of a reasonable notice period. This reasonable notice period shall never exceed 4 weeks. The provisions of Article 7:408 (2) of the Dutch Civil Code are excluded.
13. Any liability is limited to the amount(s) paid out by SMT Procesrecht's professional liability insurance ('BAV') in the instance in question increased by the amount of the deductible that is not for the account of the insurers under the policy terms and conditions.
14. If, for any reason whatsoever, no payment is made under the BAV, all liability is limited to the fee charged by SMT Procesrecht to the client for the specific engagement that directly resulted in the liability, excluding VAT.
15. If, for any reason whatsoever, no payment is made under the BAV, the total liability never exceeds an amount of € 30.000,- (thirty thousand euro).
16. The client is not entitled to claim compensation for any damage from (legal) persons other than SMT Procesrecht.
17. The client waives any possible (future) claims for damages (including those based on tort 'onrechtmatige daad') against, among others, (former) employees, (former) lawyers, and (former) (directors of) shareholders of SMT Procesrecht as well as against third parties engaged by SMT Procesrecht in the performance of the engagement.
18. SMT Procesrecht makes use of, among other things, software, hardware, digital communication, data storage, cloud computing, and data files. The client agrees to this. SMT Procesrecht is not liable for any damage arising in any way from the use thereof.
19. The limitations of liability in these general terms and conditions do not apply insofar as the damage is caused by intent or gross negligence on the part of SMT Procesrecht and/or its executives.
20. The client may no longer invoke a defect in the performance if it has not submitted a written complaint regarding such defect to SMT Procesrecht within thirty days after the earlier of the following two dates: (i) the date on which the client discovered the defect; (ii) the date on which the client ought to have discovered the defect.
21. Any claim for compensation is time-barred thirteen months after the earlier of the following two dates: (i) the date on which the client became aware of both the existence of the damage and the (legal) person liable for it; or (ii) the date on which the client should have reasonably become aware of both the existence of the damage and the (legal) person liable for it.
22. Any claim for compensation goes extinct eighteen months after the earlier of the following two dates: (i) the date on which the client became aware of both the existence of the damage and the (legal) person liable for it; or (ii) the date on which the client should have reasonably become aware of both the existence of the damage and the (legal) person liable for it.
23. Without the prior written consent of SMT Procesrecht, the client is not able to assign and/or pledge their claims, other than a monetary claim as referred to in article 3:83 (3) of the Dutch Civil Code. This provision has the effect as meant in article 3:83 (2) of the Dutch Civil Code.
24. The client indemnifies SMT Procesrecht against any third-party claim, including costs of defence, that in any way connects with the assignment or its performance, without prejudice to SMT Procesrecht's liability against the client.
25. SMT Procesrecht invoices the services it has provided based on the time spent according to the agreed hourly rates, increased by 6% office costs, any other expenses, and VAT.
26. Unless otherwise agreed in writing, payment is due within 14 days of the invoice date, failing which the client will automatically be in default. The client can't suspend its performance, nor can it set-off any amount due.
27. If the client believes that the invoice is incorrect, it must inform SMT Procesrecht in writing within 14 days of receiving the relevant invoice, under penalty of forfeiting the right to dispute the accuracy of the invoice.
28. If an invoice or advance payment is not paid within the payment term, SMT Procesrecht may suspend its activities. SMT Procesrecht shall not be liable for any damage arising from the suspension of activities.
29. The rates of SMT Procesrecht apply for the duration of the calendar year in which they were agreed, and they may be increased annually starting from January 1st by SMT Procesrecht.
30. SMT Procesrecht may require an advance payment from the client both prior to and during the assignment, before the assigned work is commenced or continued. An advance payment is not an indication of the total costs. The advance payment will, in general, be offset against the final invoice. SMT Procesrecht is entitled to use the advance payment to settle invoices or as an (additional) advance for other cases that it is handling or will handle for the client or for any legal entities affiliated with the client.
31. Pursuant to laws and regulations (including the Dutch Prevention of Money Laundering and Terrorist Financing Act), SMT Procesrecht is obliged to ascertain the identities of clients, their directors and beneficial owner(s) and, in certain circumstances, to report unusual transactions to the authorities without informing them of this.
32. SMT Procesrecht's complaints procedure applies to the work carried out by or assigned to SMT Procesrecht's lawyers.
33. The legal relationship between SMT Procesrecht and the client is governed exclusively by Dutch law.
34. The Court of Overijssel, location Zwolle will have exclusive jurisdiction in first instance regarding any dispute. Nevertheless, SMT Procesrecht always has the right to submit the dispute to the competent court according to the law.