

General Terms and Conditions

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Version:
4.4

General Terms and Conditions

Definitions

'Client'	the Party seeking Services from Ortec
'Agreement'	the written agreement between Ortec and the Client of which these Terms are an integral part
'Ortec'	Ortec Finance B.V. and each affiliated Ortec Finance holding company.
'Parties'	Ortec and Client together
'Party'	Ortec or Client separately
'Service(s)'	the service or services provided to Client by Ortec. This could include Consultancy or Training
'Terms'	these general terms and conditions

1. General

- 1.1. These Terms apply to each verbal or written Offer and Agreement between Ortec and the Client for which Ortec has declared the Terms applicable.
- 1.2. In case the Service includes Consultancy, Part A of these Terms shall apply. In case the Service includes Training, Part B of these Terms shall apply.
- 1.3. Any deviations from these Terms are only valid when explicitly agreed upon in writing by both Parties and only apply to the agreement concerned.
- 1.4. In case of conflict between the Agreement and these Terms, the Agreement will prevail. In case of conflict between the Dutch and English version of these terms, the English version will prevail.
- 1.5. If one or more conditions in these Terms are invalid or have been declared null and void, then the remaining conditions in these Terms are still in full force. In such situation Ortec and the Client will confer to reach an agreement on new condition(s) to replace those that are invalid, or have been declared null and void, if possible, by considering the objective and intention of the original conditions.
- 1.6. Ortec hereby expressly rejects the applicability of any general terms and/or conditions of Client to the Agreement.
- 1.7. This Agreement constitutes the entire and exclusive agreement between the Parties with respect to its subject matter and supersedes all prior written and oral agreements, proposals, presentations, marketing materials, arrangements, and commitments relating to the subject matter of the Agreement. Each Party waives any right of recourse or claims regarding any statement, representation, commitment, or warranty (whether provided unintentionally or negligently) that is not explicitly set forth in the Agreement.

2. Execution of Agreement

- 2.1. Ortec will execute the Agreement and the Services to their best insight and ability and according to the requirements of good professional skill.
- 2.2. If the successful execution of the Agreement demands it, Ortec reserves the right to have certain tasks performed by third parties in consultation with the Client.
- 2.3. The Client will make sure that all data, which are indicated by Ortec to be necessary, or which the Client should reasonably expect to be necessary, for the proper execution of the Agreement, is provided to Ortec in a timely manner. If the required data is not received by Ortec in a timely and orderly manner, Ortec reserves the right to suspend the execution of the Agreement and/or charge the Client for the additional expenses arising from the delay, according to the usual rates.
- 2.4. If it has been agreed upon that the Agreement will be executed in stages, Ortec can suspend the execution of those parts belonging to the next stage until the Client has approved in writing the results from the already conducted previous stage.

- 2.5. If any Agreement related activities by either Ortec or by third parties contracted by Ortec, are performed at the location of the Client or at a location designated by such Client, Client will make available facilities that may be reasonably desired by the employees involved free of charge.

3. Change of Agreement

- 3.1. If during the execution of the Agreement it becomes clear that in order to come to a proper execution of the Agreement an alteration or supplementation of the planned activities is necessary, Parties will promptly and in mutual agreement change the Agreement accordingly.
- 3.2. If Parties agree that the Agreement will either be changed or supplemented, the contractually scheduled end date can be impacted. Ortec will notify such Client as soon as possible whether this is indeed the case.
- 3.3. If changing or supplementing the Agreement has financial or qualitative consequences, Ortec will inform such Client of such consequences in advance.
- 3.4. Ortec will not charge for extra costs if the change or supplementation is caused by events for which Ortec can be held (solely) responsible.

4. Duration of Agreement; execution period

- 4.1. The Agreement between Ortec and the Client is valid for the duration that follows the nature of the Agreement, and which is explicitly agreed upon in writing by both Parties.
- 4.2. If in the Agreement a term for the execution of specific activities has been agreed upon, it never functions as a final deadline. If the execution period is exceeded, it is the responsibility of the Client to declare in writing that Ortec has failed to comply.

5. Fees

- 5.1. Ortec shall invoice the amounts owed by Client in accordance with this article.
On a fixed price basis:
Ortec shall invoice the fixed price activities in accordance with the invoice schedule agreed upon between Ortec and Client in the Agreement, or
On time material basis:
Ortec shall invoice Client monthly for work agreed upon and attach specifications with the actual number of hours spent.
- 5.2. The charges payable under an Agreement exclude any applicable value-added tax ('VAT'), goods and services tax ('GST'), sales tax, and any other taxes, levies, and (sur-)charges (together '**Indirect Taxes**'). The charges shall be payable by the Client at the rate and in the manner prescribed by law against submission by Ortec of a valid invoice. For the purpose of clarification, any applicable Indirect Taxes that must be added to invoices will be quoted on a per-country basis and will appear on the invoice. Applicable tax rates may vary over the course of this Agreement, and Client agrees to pay any mandatory taxes at the then-current rate, which may be dependent on the specific country. Unless otherwise stated, all charges and other amounts stated under the Agreement are expressed to be exclusive of Indirect Taxes.
- 5.3. If the Agreement is valid for more than one (1) year, Ortec is authorised to adjust fees and other charges due to Ortec under the Agreement, provided that the increase can only be done once a year and in accordance with the Dutch consumer price index published by the Dutch governmental statistical office (*Centraal Bureau voor de Statistiek, CBS*).
- 5.4. If Client does not agree to the price increase, for a period of seven (7) working days after the notification, Client will have the right to terminate the Agreement in writing.

6. Payment

- 6.1. Client shall pay to Ortec the amounts due under the Agreement within thirty (30) days of invoice date. Any objections against the amount shown on the invoice do not suspend the Client from its payment obligation.
- 6.2. In case of liquidation, bankruptcy, seizure, or moratorium of payment of the Client, the entire amount that is owed to Ortec becomes claimable on demand.
- 6.3. If an invoice has not been paid or paid in full within the term of payment, the default shall take effect as from the time Client fails to pay, within a reasonable term of payment stipulated by Ortec in a collection letter, the outstanding amount. After this reasonable term of payment stipulated by Ortec, which shall be a final deadline, has expired, Ortec is entitled to suspend the rights flowing from the Agreement, while the obligations of Client to effect payment shall continue in full force and effect. In the event the amount(s) due remain unpaid following expiry of said term, Client shall owe the applicable Dutch statutory interest for commercial contracts on the outstanding amount without further demand for payment or a notice of default being required.
- 6.4. Client shall pay Ortec the reasonable costs that Ortec has to incur for the extrajudicial collection of outstanding amounts. A payment shall first be apportioned to these collection costs, then to the interest payable and only then to the principal. If Client has failed to pay several invoices, a payment shall always be apportioned to the oldest outstanding invoice, subject to the provisions of the previous sentence.

7. Retention of title and rights

- 7.1. All materials delivered by Ortec to the Client, up to and including course materials, designs, outlines, models, drawings, software, (electronic) documents, etc., will remain the sole property of Ortec.
- 7.2. Without prior written permission of Ortec the client is not allowed to copy, distribute, sell or use in any other way the in 7.1 mentioned materials.
- 7.3. If third parties lay claim to any of the materials delivered by Ortec or have the intention to do so, the Client will be obligated to inform Ortec regarding this development as soon as may reasonably be expected.

8. Complaints

- 8.1. The Client must notify Ortec officially in writing about any complaints regarding the performed Services within eight (8) days of their detection and at the latest within fourteen (14) days after completion of said Services. The notification of default must contain a detailed description of the shortcoming, thereby enabling Ortec to respond in an adequate manner.
- 8.2. If a complaint is deemed legitimate, Ortec will perform the relevant activities as previously agreed upon, unless this has in the meantime become indisputable useless to the Client. The Client will have to notify this latest development in writing.

9. Suspension and termination

- 9.1. Both Parties reserve the right to suspend the fulfilment of their obligations or to terminate the Agreement, if:
 - 9.1.1. the other Party does not or only insufficiently comply with the contractual obligations;
 - 9.1.2. after closing the Agreement new information presents itself that provides sufficient grounds to fear that the other Party will not comply with the obligations; in case there is sufficient grounds to fear that the other Party will only partially or unduly comply with said obligations, the suspension is only allowed to the extent that the shortcoming justifies it.

- 9.2. In addition, Parties are authorized to terminate the Agreement if special circumstances occur that make honouring the Agreement impossible or no longer fair and reasonable, or if in some other way special circumstances occur that suggest the unaltered continuation of the Agreement can in all fairness not be expected.
- 9.3. If the Agreement is terminated, Ortec can demand the outstanding payments of the Client without further delay. If Ortec suspends the fulfilment of the contractual obligations, it still retains its legal and contractual claims.
- 9.4. Ortec reserves the right to claim compensation on reasonable grounds.

10. Return of materials put at the disposal of the Client

If Ortec has put materials at the disposal of the Client during and necessary for the execution of the Agreement, the Client is obligated to return said materials, in their original state, complete and without defects, within fourteen (14) days of the termination of the Agreement. If the Client does not comply with this obligation, he or she will be held accountable for all resulting expenses.

11. Liability

- 11.1. Ortec's liability because of an imputable failure in the performance of its obligations under the Agreement shall in all cases only arise if Client provides Ortec with an immediate and proper written notice of default including a reasonable time period within which the failure should be remedied by Ortec. The notice of default must contain a description of the failure, which is as complete and specific as possible, so that Ortec can respond adequately.
- 11.2. If Ortec remains in default and liable after (a) proper notice of default has been given and (b) the reasonable time period within which the failure had to be remedied by Ortec has lapsed.
- 11.3. Ortec's liability is limited to direct damages. Any liability for consequential damage, including but not limited to, consequential loss, lost profits, lost savings, loss of goodwill, and damage ensuing from claims by Client's relations or customers, is expressly excluded. In case a jurisdiction does not allow the exclusion or limitation of indirect, incidental or consequential damages, the liability of Ortec is limited to the maximum extent possible by law.
- 11.4. Ortec's total liability and indemnification obligation under an Agreement is always limited to an amount equal to the total annual fees (excluding VAT) that Client has paid to Ortec under the Agreement in the twelve (12) months before the date on which the event giving rise to the liability took place, unless the damage or injury is the result of wilful intent or gross negligence by Ortec.
- 11.5. Ortec shall not be liable if (i) Client has failed to notify Ortec within at least six (6) months after Client could have become aware of the damage as well as the liability of Ortec for the damage, or (ii) the damage is not covered under Ortec's insurance coverage.

12. Indemnity

- 12.1. Parties shall indemnify each other against claims by third parties regarding intellectual property rights on materials or data provided by the other Party, to be used in the execution of the Agreement.
- 12.2. If the Client provides Ortec with data carriers, electronic documents or software, etc., said Client guarantees that these data carriers, electronic documents, and software are clear of any viruses and defects based on the most recent antivirus protection software available.
- 12.3. Client shall indemnify and hold Ortec harmless against all (legal) costs, expenses, damages and other liabilities associated with any demand, claim, action, suit or proceeding from customer(s) of Client.

13. Force majeure

- 13.1. Parties are not bound to fulfil any obligation in the event of force majeure, that is if they are hindered as a result of a condition that is not due to their fault, and for which they cannot be held accountable according to the law, a legal action, or any generally accepted customs.
- 13.2. Under force majeure in these Terms shall be understood, besides what is commonly defined in law and jurisprudence, all outside causes, whether foreseen or unforeseen, which Parties cannot influence or control, yet which prevent Parties from fulfilling the obligations. Strikes are included among said causes.
- 13.3. Parties moreover reserve the right to invoke force majeure, in case the condition that prevents (further) fulfilment emerges only after Parties were expected to fulfil their obligations.
- 13.4. Parties can suspend the obligations stemming from the Agreement for the time that force majeure will endure. If this period last longer than two (2) months, each of the Parties reserves the right to annul the Agreement, without the obligation to compensate the other Party for damages incurred.
- 13.5. Insofar Ortec at the time of the inception of force majeure has already partially fulfilled its obligations stemming from the Agreement or is able to fulfil these, and both the fulfilled and/or to be fulfilled portion merit independent value, Ortec is authorized to invoice both the already fulfilled portion as well as the soon to be fulfilled portion separately. The Client is bound to pay this invoice as if it were an entirely separate contract.

14. Data

- 14.1. Both Parties are compelled to confidentiality concerning all confidential information which they have, within the scope of the Agreement, received from each other or from a third-party source. Information is considered confidential if designated as such, either verbally or in writing, by the other Party or when this logically follows from the nature of the information. For clarity, if Ortec is the disclosing Party, the confidential information includes, without limitation, information contained or embodied in the Services and/or software, documentation and any Agreement.
- 14.2. When, based on a legal clause or a judicial verdict, Ortec is compelled to furnish confidential information to a by law or qualified judge designated third party, and Ortec cannot appeal to either a legally or by qualified judge recognized or permissible right of excuse, then Ortec is not committed to provide compensation or indemnity and the other Party is not entitled to dissolution of the Agreement on the grounds of any damages thereby incurred.
- 14.3. Each of the Parties will duly observe all their respective obligations under the applicable data protection laws, such as the EU General Data Protection Regulation (EU) 2016/679.
- 14.4. Client is explicitly not allowed to upload, or in any other manner share, Ortec data with any machine learning or artificial intelligence tool/model and Client hold harmless Ortec from and against all reasonable losses, damages, expenses and costs incurred by Ortec as a result of non-compliance with this clause 14.4.

15. Intellectual property rights

- 15.1. Regardless of what has already been defined in these Terms, Ortec reserves the rights and licenses that belong to Ortec based on established intellectual property law.
- 15.2. Without the explicit permission by Ortec no finished Offers, ideas, models, advice, course material and other intellectual products produced by Ortec may be multiplied in any shape or form and shown to third parties.

15.3. Client is not entitled to use Ortec's company name, trademark or logo in advertising, written sales promotion, oral references, press releases, or other publicity matters relating to the Agreement without having obtained Ortec's prior written consent.

16. Non-takeover personnel

The Client shall for the term of the Agreement and one year after the termination thereof, in no manner whatsoever, hire or otherwise employ, either directly or indirectly, employees of Ortec or of companies that, at the request of Ortec, are or have been involved in the execution of the Agreement, unless good business-like consultation has previously been undertaken with Ortec.

17. Governing law and disputes

These Terms shall be governed by, and is construed in accordance with, the laws of the Netherlands. Parties irrevocably submit to the exclusive jurisdiction of the competent courts in Rotterdam with respect to any legal action, suit or proceedings against it with respect to any matter arising out of or in connection with an Agreement.

Part A: Additional Consultancy Terms

Definitions

- 'Consultancy'** the act of delivering consultancy services or other services, including but not restricted to, offering expert opinion and making recommendations
- 'Offer'** any offer for Consultancy from Ortec to the Client

1. General

This Part A shall apply, in addition to the Terms, when Ortec shall provide Client with Consultancy.

2. Offers

- 2.1. Offers made by Ortec are free of obligations; they are valid for the duration of thirty (30) days, unless otherwise stated. Ortec is only bound to such Offers when the Client, within thirty (30) days of receiving the Offer has officially confirmed in writing.
- 2.2. The price quotes in Offers are always excluding value added tax (VAT), other possible government charges and levies and contingent expenses related to the execution of the Agreement, including travel expenses and shipping and administration fees, unless stated otherwise.
- 2.3. In case the acceptance deviates from the Offer, Ortec is not bound to honour it. Consequently, the Agreement will not be established according to the deviating acceptance, unless Ortec decides otherwise.
- 2.4. A combined price quotation does not require Ortec to perform part of the Agreement for a corresponding part of the given price quotation.
- 2.5. Offers made in the past do not automatically apply for future assignments.

3. Cancellation

- 3.1. Both Parties reserve the right to cancel the Agreement at any time in writing with a three (3) months' notice period.
- 3.2. If the Agreement is terminated prematurely by the Client, Ortec has the right to demand compensation for the occupational loss that is plausibly caused, unless the cancellation is based on certain facts and conditions for which Ortec can be held accountable. The Client will furthermore be held responsible for the payment of declarations for activities already performed. The preliminary results of the performed activities will therefore be made available to the Client under reservation.
- 3.3. If the Agreement is terminated prematurely by Ortec, then Ortec will – in consultation with the Client – take care of the transfer of the activities that still need to be performed, to third parties, unless the cancellation is based on certain facts and conditions for which the Client can be held accountable.

4. Intellectual property rights

Ortec reserves the right to use the increased knowledge and expertise originating from the performance of contractual tasks for other purposes, insofar as this use does not result in revealing confidential information onto third parties. This right does not apply to the details of the Consultancy assignment.

Part B: Additional Training Terms

Definitions

'Training' Ortec giving training to Client and other participants

1. General

This Part B shall apply, in addition to the Terms, when Ortec shall provide Client or participants with Training.

2. Fees

All fees are excluding tax, unless specifically mentioned. Training given by Ortec is not tax exempt. Standard included in the rates are the course material, the use of hardware and software, coffee, tea and lunch. Any accommodation expenses of the participants are not included. For Training at the location of the Client travel and accommodation expenses of the instructor are not included. The invoice will be sent after the Training has taken place.

3. Cancellation by Ortec

3.1. For Training with an open registration Ortec reserves the right to cancel the Training session in case of insufficient participation, without it leading to indemnification.

3.2. Participants of the Training who have registered will be informed in writing about said cancellation at least one (1) week prior to the planned date of the Training.

4. Cancellation by Client

4.1. Cancellation by the Client must always occur in writing.

4.2. In case of cancellation by the Client, the following payments are immediately due:

4.2.1. Cancellation can occur free of charge up until ten (10) days before the start of the Training.

4.2.2. In case of cancellation up to one (1) working day before the start of the Training, the Client is required to pay 25% of the agreed upon rate.

4.2.3. In case of cancellation within 24 hours before the start of the Training, the Client is required to pay 50% of the agreed upon rate.

4.3. Clients have the option to designate a replacement for the initially registered participants up to one (1) working day before the start of the Training.

5. Liability

All course material has been compiled by Ortec in a careful manner. Any liability of Ortec for damages suffered by the Client is excluded, regardless of the reason why a potential case is brought forward. Ortec is not liable for damages to the (personal) property of the participant or the Client.

6. Online Training

Some Training sessions might be given over the internet. Ortec strives to avoid technical issues. In case of technical issues on the side of Ortec, Ortec shall, in agreement with the participants, offer a suitable alternative. In case of technical issues on the side of a participant, Ortec shall strive to offer the participant a suitable alternative.

7. Complaints

In case Client or a participant has a complaint about the Training, the Complaints procedure should be followed. This procedure is available at: [Terms & Conditions | Ortec Finance](#).