

## GENERAL TERMS AND CONDITIONS FOR CONSULTANCY

Of

### Ortec Finance

Ortec Finance Holding B.V. is a private limited liability company, registered with the Dutch Chamber of Commerce in Rotterdam in The Netherlands, under file number: 24421135.

Version: 2010-2

#### **Article 1** Definitions

1. In these general terms and conditions the subsequent terms are used in their following definitions, unless it is explicitly indicated otherwise:

*Consultancy*: the act of delivering consulting or other services, including but not restricted to, offering expert opinion and making recommendations;

*Ortec Finance*: the party offering Consultancy, also referred to as the Consultant, being Ortec Finance Holding B.V. or any legally affiliated company of Ortec Finance Holding B.V.;

*Client*: the party seeking Consultancy from Ortec Finance;

*Contract*: the written agreement between Ortec Finance and the Client.

#### **Article 2** General

1. The general terms and conditions set out in this document apply to all legally affiliated companies of Ortec Finance Holding B.V.
2. Such general terms and conditions apply to each verbal or written offer, proposal, and contract between Ortec Finance and the Client regarding the Consultancy for which Ortec Finance has declared such terms and conditions applicable.
3. Furthermore such general terms and conditions apply to all Contracts with Ortec Finance for which the proper execution of said contracts demands the involvement of third parties.
4. Any possible deviations from these general terms and conditions are only then valid if they are explicitly agreed upon in writing by both parties.
5. If one or more conditions in these general terms and conditions are invalid or have been declared null (and void), then the remaining conditions in these terms and conditions are still in full force. In such situation Ortec Finance and the Client will confer in order to reach an agreement on new condition(s) to replace those that are invalid, or have been declared null and void, if possible by taking into account the objective and intention of the original condition(s).

#### **Article 3** Offers and Proposals

1. Proposals made by Ortec Finance are free of obligations; they are valid for the duration of thirty (30) days, unless otherwise stated. Ortec Finance is only bound to such Proposals when the Client, within thirty (30) days of receiving the Proposal, unless it is stated otherwise, has officially confirmed in writing the acceptance of such Proposals.
2. The price quotes in the aforementioned offers and proposals are all excluding value added tax (VAT), other possible government charges and levies, and contingent expenses related to the execution of the Contract, including travel expenses and shipping and administration fees, unless stated otherwise.
3. In case the acceptance deviates (on subsidiary points) from the offer included in the Proposal, Ortec Finance is not bound to honour it. Consequently, the contract

will not be established according to the deviating acceptance, unless Ortec Finance decides otherwise.

4. A combined price quotation does not compel Ortec Finance to perform only one part of the assignment for a corresponding part of the given price quotation.
5. Offers and Proposals made are not automatically valid for future assignments.

#### **Article 4** Execution of contract

1. Ortec Finance will execute the contract to their best insight and ability and according to the requirements of good professional skill; all of this based on the current state of science.
2. If the successful execution of a contract demands it, Ortec Finance reserves the right to have certain tasks performed by third parties in consultation with the Client.
3. The Client will make sure that all Data, which are indicated by Ortec Finance to be necessary, or which the Client should reasonably expect to be necessary, for the proper execution of the contract, are provided to Ortec Finance in a timely manner. If the required Data for the proper execution of the contract are not received by Ortec Finance in a timely and orderly manner, Ortec Finance reserves the right to suspend the execution of the contract and/or charge the Client for the additional expenses arising from the delay, according to the usual rates.
4. If it has been agreed upon that the Contract will be executed in stages, Ortec Finance 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.
5. If any assignment related activities by either Ortec Finance or by third parties contracted by Ortec Finance, are performed at the location of the Client or at a location designated by such Client, said Client will make available facilities that may be reasonably desired by the employees involved and such Client will do so free of charge.

#### **Article 5** Change of Contract

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

#### **Article 6** Duration of Contract; execution period

1. The Contract between Ortec Finance and the Client is valid for the duration that follows the nature of the Contract and which is explicitly agreed upon in writing by both parties.
2. If in the Contract a term for the execution of specific activities has been agreed upon, it never functions as a final period. If the execution period is exceeded, it is

therefore the responsibility of the Client to declare in writing that Ortec Finance has failed to comply.

**Article 7****Fees**

1. For Proposals and Contracts in which a fixed fee is offered or agreed upon, Article 7, paragraphs 2 and 4 apply; if there is no agreement on a fixed fee, Article 7, paragraphs 3 up to 8 apply.
2. In establishing the Contract, the parties may reach agreement on a fixed fee basis.
3. If no fixed fee has been agreed, the fee shall be determined based on hours actually spent on Consultancy. The fee will be calculated according to the current hourly rates of Ortec Finance, unless an alternative hourly rate has been agreed upon by parties beforehand.
4. In case assignments extend to a duration of two months or more the fees that are owed will be billed either periodically or in stages.
5. Ortec Finance reserves the right to charge on price increases for assignments of one year or longer if Ortec Finance can demonstrate that the rates between the moment of the initial offer, delivery and the execution of the assignment are no longer corresponding to the current market rates.
6. Ortec Finance reserves the right to increase the fee, if during the performance of the activities it becomes clear that the originally agreed upon and/or expected amount of work has been insufficiently estimated, insofar that it cannot be reasonably expected from Ortec Finance that the agreed upon activities can be performed at the determined original fee. However this does not apply to assignments in which a fixed fee has been agreed upon.
7. Ortec Finance will inform the Client in writing of its intentions to increase the current fee or rates. In this communication, Ortec Finance will specifically mention the extent of the increase and the date on which this increase will become effective.
8. If the Client is not willing to accept the fee or rate increases revealed by Ortec Finance, said Client has, for a period of seven (7) days after receiving the notification, the right to cancel the Contract in writing or to annul the assignment per the date mentioned in the notification by Ortec Finance on which the price or rate adjustment would become effective.

**Article 8****Payment**

1. Client shall pay to Ortec Finance the amounts due under the Contract within thirty days of invoice date, into the bank account stated on the invoice and in the currency listed on the invoice. Any objections against the amount shown on the invoice do not suspend the Client from his or her payment obligation.
2. If the Client fails to pay the amount listed on the invoice within the term of thirty (30) days, said Client is legally considered in default. The Client will accordingly be charged a monthly interest rate equal to Euribor (3months) + 1% on overdue amounts.
3. In case of liquidation, bankruptcy, seizure, or moratorium of payment of the Client, the entire amount that is owed to Ortec Finance becomes claimable on demand.
4. 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 Licensee fails to pay, within a reasonable term of payment stipulated by Ortec Finance in a collection letter, the outstanding amount. After this reasonable term of payment stipulated by Ortec Finance, which shall be a final deadline, has expired, Ortec Finance is entitled to suspend the rights flowing from the Contract, while the obligations of Client to effect payment shall continue in full force and effect.

5. Client shall pay Ortec Finance the reasonable costs that Ortec Finance 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.

**Article 9**      **Retention of title and rights**

1. All materials delivered by Ortec Finance to the Client, up to and including designs, outlines, models, drawings, software, (electronic) documents, etc., will remain the sole property of Ortec Finance until the Client has complied with all the contractual obligations vis-à-vis Ortec Finance as agreed upon in the Contract.
2. The Client is not authorized to pledge or otherwise encumber said materials as long as Ortec Finance retains legal title and rights to them.
3. If third parties lay claim to any of the aforementioned materials delivered by Ortec Finance or have the intention to do so, the Client will be obligated to inform Ortec Finance regarding this development as soon as may reasonably be expected.

**Article 10**      **Complaints**

1. The Client must notify Ortec Finance officially in writing about any complaints regarding the performed activities within eight (8) days of their detection, and at the latest within fourteen (14) days after completion of said activities. The notification of default must contain a detailed description of the shortcoming, thereby enabling Ortec Finance to respond in an adequate manner.
2. If a complaint is deemed legitimate, Ortec Finance 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.
3. If the agreed upon activities that still have to be performed are no longer possible or useful, Ortec Finance can only be held liable within the limits of article 14.

**Article 11**      **Cancellation**

1. Both parties reserve the right to cancel the Contract at any time in writing, unless it is decided otherwise in the Contract.
2. If the Contract is terminated prematurely by the Client, Ortec Finance 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 Finance 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. If the Contract is terminated prematurely by Ortec Finance, then Ortec Finance 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.

**Article 12**      **Suspension and termination**

1. Both parties reserve the right to suspend the fulfilment of their obligations or to terminate the Contract, if:
  - the other party does not or only insufficiently comply with the contractual obligations;

- after closing the contract 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 aforementioned shortcoming justifies it.
2. In addition, parties are authorized to terminate the contract if special circumstances occur that make honouring the Contract impossible or no longer fair and reasonable, or if in some other way special circumstances occur that suggest the unaltered continuation of the contract can in all fairness not be expected.
  3. If the Contract is terminated, Ortec Finance can demand the outstanding payments of the Client without further delay. If Ortec Finance suspends the fulfilment of the contractual obligations, it still retains its legal and contractual claims.
  4. Ortec Finance reserves the right to claim compensation on reasonable grounds.

**Article 13** **Return of materials put at the disposal of the Client**

1. If Ortec Finance has put materials at the disposal of the Client during and necessary for the execution of the Contract, 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 Contract. If the Client does not comply with this obligation, he or she will be held accountable for all resulting expenses.
2. If the Client, for whatever reason, and after clear warning to that end, still fails to comply with the obligation mentioned in the preceding paragraph, Ortec Finance is authorized to charge the resulting damages and expenses, including any possible replacement costs, onto the Client.

**Article 14** **Liability**

1. If Ortec Finance is held liable, then such liability is restricted to what is regulated in this article.
2. The liability of Ortec Finance is limited to direct damages to the extent Ortec Finance has imputable failed to perform the Contract and breached a material contractual obligation (cardinal obligation). Direct damages shall solely mean:
  - Reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these general terms and conditions;
  - Reasonable expenses incurred to prevent or mitigate damage, insofar as the Client demonstrates that these expenses resulted in mitigation of direct damages within the meaning of these general terms and conditions;
  - Reasonable expenses which the Client would have to incur to make the performance of Ortec Finance conform to the Contract; these expenses shall not be compensated if the Contract is rescinded by or at the suit of the Client;
  - (bodily) Injury;
  - Material damages.
3. The liability resulting from direct damages is limited to an amount equal to the total Fees paid by the Client under the Contract.
4. In the case of late delivery Ortec Finance is not liable to compensate for any direct damages unless the delay is more than one month and the delay is caused by events for which Ortec Finance can be held (solely) accountable.
5. The liability of Ortec Finance is limited to the amount, the liability insurance of Ortec Finance give claim to.

6. In the case of loss of Data, Ortec Finance shall be liable only for that expenditure which is required to restore Data with proper data security by the Client. In the case of slight negligence, this liability shall arise only if the Client took proper data security actions immediately prior to the action that led to the loss of Data.
7. Ortec Finance overall liability for material damage to objects and for injury or damage through death or bodily injury shall not exceed € 1,000,000 (one million Euro), in any case.
8. The limitations mentioned in this article shall not apply if and insofar as the damage or injury is the result of will full intent or gross negligence by Ortec Finance or its managers.
9. Any liability of Ortec Finance for loss of profits, consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage ensuing from claims by Clients' customers or any other indirect damage is expressly excluded.
10. Ortec Finance's liability because of an imputable failure to perform the Contract shall in all cases only arise if the Client immediately and properly provides a written notice of default to Ortec Finance, with a reasonable time period for remedying the failure being given and Ortec Finance still imputable failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that Ortec Finance can respond adequately.

**Article 15**      **Indemnity**

1. Parties protect 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 contract.
2. If the Client provides Ortec Finance 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.

**Article 16**      **Risk transferal**

1. The risk of loss of, or damage to Materials that are object of the Contract, is transferred to the Client at the very moment when said Materials are legally and/or effectively delivered to the Client and as a result are under the control of the Client or of a third party designated by said Client.

**Article 17**      **Force majeure**

1. Parties are not bound to fulfil any obligation in the event of force majeure; meaning 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.
2. Under force majeure in these general terms and conditions 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 these parties from fulfilling the obligations. Strikes are included among said causes.
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.
4. Parties can suspend the obligations stemming from the Contract for the time that force majeure will endure. If this period last longer than two months, each of the

parties reserves the right to annul the contract, without the obligation to compensate the other party for damages incurred.

5. Insofar Ortec Finance at the time of the inception of force majeure has already partially fulfilled its obligations stemming from the contract or is able to fulfil these, and both the fulfilled and/or to be fulfilled portion merit independent value, Ortec Finance 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.

#### **Article 18**      **Privacy**

1. Both parties are compelled to confidentiality concerning all confidential information which they have, within the scope of the contract, 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.
2. When, based on a legal clause or a judicial verdict, Ortec Finance is compelled to furnish confidential information to a by law or qualified judge designated third party, and Ortec Finance cannot appeal to either a legally or by qualified judge recognized or permissible right of excuse, then Ortec Finance is not committed to provide compensation or indemnity and the other party is not entitled to dissolution of the contract on the grounds of any damages thereby incurred.

#### **Article 19**      **Intellectual property rights and copyrights**

1. Regardless of what has already been defined in these general terms and conditions, Ortec Finance reserves the rights and licenses that belong to Ortec Finance based on established copyright law.
2. All Materials provided by Ortec Finance, such as reports, consults, agreements, drafts, software et cetera, are exclusively destined for use by the Client.
3. Ortec Finance 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. It is explicitly agreed upon that this right does not apply to the detailed information of the assignment.
4. Without the explicit permission by Ortec Finance no finished proposals, ideas, models, advice, course material and other intellectual products produced by Ortec Finance may be multiplied in any shape or form and shown to third parties.

#### **Article 20**      **Non-takeover personnel**

1. 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 Finance or of companies that, at the request of Ortec Finance, are or have been involved in the execution of the contract, unless good business-like consultation has previously been undertaken with Ortec Finance.

#### **Article 21**      **Disputes**

1. The court in the locality of Ortec Finance is exclusively qualified to be heard in the case of disputes, unless the sub-district court is qualified to do so. Even so Ortec Finance may present the dispute to a legally qualified judge.
2. Parties will only then appeal to a judge after they have given their best efforts in an attempt to settle the dispute to mutual agreement.

**Article 22**      **Applicable law**

1. Each contract between Ortec Finance and its Clients shall be governed by Dutch law.

**Article 23**      **Change and location of the general terms and conditions**

1. These general terms and conditions are deposited at the Chamber of Commerce of Rotterdam. Only the latest deposited version is applicable or the version that was valid during the initial establishment of the contract.