



## **GENERAL STANDARD TERMS AND CONDITIONS DAVACI BV**

As per July 1<sup>st</sup> 2006:

### **Section 1 Applicability**

- 1.1** These terms apply to all of DAVACI's quotations and agreements with a third party or person (to be called 'principal' hereafter) and for all activities/assignments to be performed by DAVACI (including for instance: projects, programs, trainings, organizational advice, project management and interim management).
- 1.2** Deviation from these terms is only permitted by means of written agreement.
- 1.3** The principal's general terms or deviant conditions only apply if and as far as they have been accepted by DAVACI in writing. Such an acceptance can not and may not be derived from the fact that DAVACI does not challenge the fact that the principal does not accept DAVACI's terms and conditions and/or declares that deviant terms are applicable.

### **Section 2 Execution of the Agreement**

- 2.1** DAVACI assures proper execution of the assignments as established in the written acknowledgement of the assignment.
- 2.2** DAVACI is not responsible for the accuracy of the information provided by the principal. Damage as a result of the use of incorrect information as provided by the principal is for expense of the principal.
- 2.3** The principal takes care of making all information necessary for the execution of the assignment available within a reasonable period of time. If delay, caused by the unavailability of information on the account of the principal, leads to extra expenses for DAVACI, these expenses will be passed on to the principal.
- 2.4** The principal is not permitted to change activities/objectives set by DAVACI employees and/or third parties employed by DAVACI, without prior consulting DAVACI. If an agreement about a change in the assignment is reached, it will be laid down in writing.
- 2.5** DAVACI has the right to have certain activities performed by third parties, if this is considered beneficiary to the proper execution of the assignment.
- 2.6** DAVACI has the right to replace personnel staffed for the execution of the assignment. The principal will be notified of the replacement by DAVACI .



### **Section 3 Quotations**

- 3.1 All quotations are free of obligation, unless it carries a specific term of acceptance. The character of the quotation is binding only when the quotation is written and mentions a time limit for acceptance.
- 3.2 Acceptance of any assignments made by phone, conference call, letter or email from the side of the principle establishes a binding assignment for the principle. After the establishment of the binding assignment, DAVACI will have the right to invoice the agreed fees as from the first day of rendering their services to the principal.
- 3.3 (Oral) agreements are binding for DAVACI after a written acknowledgement by DAVACI.
- 3.4 Changes to running assignments are established at the moment DAVACI has accepted the changes in writing through sending a confirmation in the form of a “memorandum of understanding” of the changes.

### **Section 4 Termination of the Assignment**

- 4.1 Assignments are entered for a fixed or variable remuneration term.
- 4.2 Assignments for a fixed term legally end when the term that was agreed upon has expired, when an agreed-upon future event comes to pass or when a specific agreed-upon goal has been reached.
- 4.3 Premature cancellation of assignments for a fixed remuneration term is at any time possible upon serving DAVACI with one clear calendar week’s written notice to commence on the Monday following the week in which the notice is served, without having to give any justification to DAVACI for such termination. In serving or receiving such termination notice the principal agrees and undertakes to pay DAVACI any fees due up to and including the date of termination.

Termination of an assignment before the assignment has been completed will release DAVACI from any and all liability to the principal under this agreement.

Termination of this assignment before the assignment has been completed will release the principal from any and all liability to DAVACI under this agreement, excluding that for any fees due and payable up to and including the date of termination.

- 4.4 Premature cancellation of assignments initiated by the principle for a variable remuneration term is only possible if both parties (DAVACI and the principal) have reached a written agreement to this extent, this with a notice of minimally 4 weeks. Premature cancellation of the



assignments initiated by the principle is only possible if this written agreement states a justified valid reason that proves a default which justifies the premature cancelation.

In case of a premature cancellation of assignments initiated by the principle without a written agreement which states a justified valid reason that proves a default, Davaci has the right to claim all its expenses and the full amount of the fees as stated in the agreed payment schedule to the agreement.

**4.5** Assignments/agreements between DAVACI and a principal can only be terminated without legal intervention and without proof of default when:

- the principal is declared bankrupt;
- in DAVACI's opinion, collection of existing or future debts can not be guaranteed;
- the principal is in neglect in regard to observance of any liability resulting from the assignment and/or these general conditions;
- the principal applies for suspension of payment;
- the principal loses the power of decision over its assets or parts of its assets as a result of attachment of property, legal restraint, or otherwise.

The foregoing leaves DAVACI's right of full compensation by the principal intact.

**4.6** DAVACI is entitled to terminate the agreement in case of circumstances that, in all reasonability and fairness, obstruct the ability to comply with the agreement. DAVACI may terminate this agreement forthwith and without prior notice if DAVACI reasonably determines that the principle does not offer sufficient cooperation to ensure the success of the project agreement. Provided always that DAVACI has brought the situation(s) to the attention of the principal and the principal has failed, on reasonable notice, to rectify the situation to the reasonable satisfaction of DAVACI, where the situation can be remedied.

**4.7** In case of the termination of the agreement, all claims towards the principal are immediately due. If DAVACI postpones compliance to its obligations, she retains her lawful and contractual claims.

## **Section 5 Working Conditions, Holidays and Company Close Down.**

**5.1** Regarding DAVACI's employees and all third parties employed by DAVACI, the principal must comply with all obligations stemmed from the Labour Law.

**5.2** The principal is obliged to take measures and issue instructions reasonably necessary to prevent DAVACI employees or third parties employed by DAVACI to come to harm and is familiar with liability as put down in the Dutch civil code (Burgerlijk Wetboek).

**5.3** The principal will protect DAVACI from possible claims (by employees or third parties employed by DAVACI) as laid down in the Dutch civil code (Industrial Incidents).



- 5.4 The principal protects DAVACI from possible claims or damage by third parties, that result from the execution of the assignment and are the principal's responsibility.
- 5.5 Prior to the execution of the assignment, the principal is obligated to notify DAVACI of possible company close-downs for the duration of the assignment in writing. During the assignment, the principal will inform DAVACI, immediately after announcing the close-down, but at least 4 weeks prior to the close-down. In case of neglect, the principal is responsible for (in)direct damages as a result of the neglect.
- 5.6 The contractor will make an effort to attune the scheduling of leave of absence of DAVACI- or third party employees (holiday, special leave) with activities with the principal. The principal accepts the fact that leave of DAVACI or third party employees can be taken during the assignment. During the leave of employees, as mentioned above, DAVACI can employ other persons if this is beneficial to the assignment.

#### **Section 6 Entering into a Labour Relation**

- 6.1 During the assignment and within a period of twelve months after completion or termination of the assignment, the principal and all its affiliates are not allowed to enter into a labour relationship, with any of DAVACI's employees or any of the third parties employed by DAVACI, directly and/or through third parties, without prior written permission.
- 6.2 If a third party is introduced to the principal by DAVACI for execution of an assignment, the principal and all its affiliates are not allowed to directly engage this third party for a period of 12 months after the introduction.
- 6.3 Violation of paragraphs 1 and 2 will result in a directly payable fine owed to DAVACI to the amount of € 25.000,- (in words: twenty five thousand Euros).

#### **Section 7 Honorarium**

- 7.1 The honorarium can be calculated in a number of ways, depending on the character of the assignment. DAVACI works for a fixed agreed on rate per hour, per day, per week or per assignment. In every assignment acknowledgement, the method of calculation of the rate for the specific assignment will be laid down.
- 7.2 The principal owes the honorarium for the agreed working hours or the duration of the agreement.



## **Section 8 Method of Invoicing and Payment**

- 8.1** DAVACI knows two methods of invoicing. The first method is through a prior agreed on rate per invoice period, the second method is based on working hour declarations as submitted by DAVACI employees or third parties employed by DAVACI, that are binding to the principal, unless the principal can prove the incorrectness of the worked hours.
- 8.2** If the principal explicitly requests that working hour declarations and/or invoices should be signed for billing, the principal is obliged to do so within three working days after presentation of the working hour declarations and invoices. If the principal is in neglect, DAVACI is entitled to determine a binding invoice amount.
- 8.3** The principal is obliged to pay the amount of the invoice within 10 days from the date of invoice, unless the assignment acknowledgement states otherwise. The invoice must be paid by transfer of the complete invoice amount to the bank account stated on the invoice. Payments to third parties employed by DAVACI are prohibited and result in the fact that DAVACI will not be paid.
- 8.4** If the principal does not pay the invoice within the given period, the principal is legally in neglect starting from the due date, without obligation to DAVACI for injunction or to serving notice. In such a case the principal owes due interest over the unpaid amount of 1% per calendar month, where a part of a month will be considered a full month.
- 8.5** If the principal should stay in neglect even after written demand by DAVACI, DAVACI is entitled to consider the agreement to be dissolved without legal intervention. In this case the principal is liable for DAVACI's loss of profit and all expenses, including judicial and extrajudicial expenses as a result of measures to be taken by DAVACI.
- 8.6** Objections concerning an invoice have to be lodged in writing and should be received by DAVACI within 10 days from the day of shipping. The burden of proof concerning the date of submission of the objection lies with the principal. After this time, claims can not be honoured anymore and the principal has forfeited the right of objection. An objection does not postpone the obligation to pay.
- 8.7** In case of a valid objection, DAVACI will yet perform or repeat all activities the invoice is based on, or, if the performance of the activities evidently are no longer of added value, will adjust the invoice amount.

## **Section 9 Confidentiality**

- 9.1** DAVACI and the principal commit themselves to strict confidentiality towards third parties, in regard to all they learn about the opposing party of which they know or reasonably could have known that publishing this information is or can be harmful to the opposing party.



- 9.2 DAVACI reserves the right to use data, gathered during an assignment with the principal, for (case) studies and other assignments, this in an anonymous form.
- 9.3 DAVACI reserves the right to offer its services to other clients/principals, as far as this is in accordance with the confidentiality that needs to be observed by DAVACI.
- 9.4 DAVACI will limit distribution of principal confidential data and information strictly to members of its personnel who need such knowledge for the purposes of the agreement. DAVACI will not distribute such data and or information or use them to the advantage of any third party.
- 9.5 Third parties, employed by DAVACI, will be obliged to observe confidentiality in regard to all they learn or experience during the performance of activities. DAVACI can never be held liable for any damages as a result of a violation of this obligation by this third party.
- 9.6 The confidentiality and the non-use obligations, described herein, will remain valid for a period of five years from the date of termination of this agreement regardless of the manner in which the agreement has been terminated.
- 9.7 Confidential information for the purposes of this clause shall be all information of the principal which is not in the public domain otherwise than through undue public disclosure by DAVACI.

## **Section 10 Protection of Provided Services**

- 10.1 DAVACI will, if necessary and possible, assist to realize or promote transfer of all rights of intellectual and industrial ownership of results of activities, including surveys, reports, drawings, drafts and other documents, models and computer files developed by DAVACI within the scope of the assignment for the principal.
- 10.2 All aforesaid matters provided by DAVACI to the principal, remain property of DAVACI until the principal has complied with the obligations as mentioned in the agreement.
- 10.3 DAVACI reserves all copyright on models, computer files, methodologies, processes and tools supportive to its services and as used during an assignment for the principal.
- 10.4 DAVACI reserves the right to use models, computer files, methodologies and processes, developed by DAVACI during an assignment, in an anonymous form, without the principal's prior permission. The DAVACI models, computer files, methodologies and processes are copyrighted and exclusive to DAVACI. Under no circumstances will the principal breach the copyright or intellectual property rights of DAVACI.



## **Section 11 Liability and Exclusion of Liability**

- 11.1** If DAVACI is liable, than liability is restricted to that which is regulated in this section.
- 11.2** DAVACI will perform all activities to the best of her abilities. Towards the principal, a typical DAVACI project, unless otherwise specified in the project agreement, offers the following commitment regarding the improvements expected during the course of the project agreement: The weekly improvements, if annualised, will at least equal the total project cost. In turn, the projected amount is equal to the total fee the principal / client will have paid to DAVACI during the project, only by the conclusion of the agreement .
- 11.3** If at the end of the project the level of reported weekly improvements as stated in section 11.2 above have not been achieved because of a shortcoming on the part of DAVACI, DAVACI, at its option, will either:
- (a) assess what level of ongoing personnel presence within the principle / client's organisation is required until such results have been realised and the costs of such ongoing presence will be borne exclusively by DAVACI; or
  - (b) refund the principal the difference between the fee paid and the maximum projected annualised improvements recorded during the assignment.
- 11.4** The improvements commitment will be considered to have been achieved when the reported weekly realised and identified improvements, annualised (i.e. weekly improvement multiplied by 52) equal the value of the total invoiced and paid amounts until that moment for the project.
- 11.5** During the project, the improvements commitment will be considered achieved when the reported weekly realised and identified improvements, annualised (i.e. weekly improvement multiplied by 52) equal the worth of total invoiced and paid amounts until that moment for the project.
- 11.6** Either party shall have the right to re-discuss the terms of a project should serious discrepancies be found in the data or the methods used to calculate the improvements commitment as stipulated in clause 11.1 A serious discrepancy shall be deemed to be present when the actual data deviates plus or minus 5% from the data used for the purpose of clause 11.1.

For the avoidance of doubt, should the actual data be materially above or below the data used for calculating the improvements commitment at the time DAVACI commenced the diagnostic work, such variation shall be duly taken into account by the principal when measuring the improvements.

Also, in case of so-called 'Force Majeure', either party shall have the right to re-discuss the terms of this agreement.



- 11.7** The improvements will be measured on a weekly basis in relation to a base reference that will be recommended by DAVACI having regard to its assessments of the principal's business and management and administrative systems.

Such reference bases will be agreed with the principal in light of such recommendations and, if necessary, from time to time during the project.

- 11.8** Either party shall have the right to revise the terms of a reference base should serious discrepancies be found in the base data or the methods used to develop the reference base. A serious discrepancy shall be when a reference base deviates plus or minus 5% from the data used. As provided in this agreement, the parties shall co-operate in the establishment of mutually acceptable measurement indices for reporting improvements.

For the avoidance of doubt improvements, for the purposes of this agreement, mean the reported realised or identified improvements in any costs or margin compared to the base reference.

- 11.9** If DAVACI is liable for immediate damages, then the liability is restricted and can maximally be the invoiced amount of the part of the project the liability refers to at the moment the damage is established to a maximum of € 25.000,- (in words: twenty five thousand Euro).
- 11.10** Without prejudice to the provisions in Section 11 Paragraph 3 (11.3), DAVACI's liability, at any time, is restricted to the amount DAVACI's insurer is prepared to compensate for.
- 11.11** DAVACI can only be held liable for immediate damages. Liability for consequential damages like the loss of profits or turnover, missed savings, delays and other consequential losses is excluded.
- 11.12** The principal protects DAVACI of any liability for damages and/or losses to the principal and/or others, inflicted by third parties employed by DAVACI.

## **Section 12 Appropriate Law and Place of Jurisdiction**

- 12.1** These general conditions and all quotations and assignments they refer to are subject to Dutch Law.
- 12.2** All disputes as a result of or related to the assignment can only be submitted for settlement to the authorized judge in Amsterdam.