



# **Terms and Conditions**

Dyami B.V.

2023

# Terms and Conditions Dyami B.V.

## Article 1 - Definitions

1. Dyami B.V., established in Utrecht, Chamber of Commerce number 76991377, is referred to in these general terms and conditions as a service provider.
2. The counterparty of the service provider is referred to as the client in these general terms and conditions.
3. Parties are service provider and client together.
4. The agreement means the service agreement between the parties.

## Article 2 - Applicability of general terms and conditions

1. These terms and conditions apply to all quotations, offers, activities, agreements and deliveries of services by or on behalf of the service provider.
2. Deviation from these terms and conditions is only possible if agreed upon in writing by the parties involved.
3. The agreement always contains a best-efforts obligation for the service provider, and not a result-based obligation. In this context, the service provider is obliged to satisfy its commitments in such a way, according to standards of due care and professionalism based on the criteria at the time of compliance, that can be required from the service provider.
4. Insofar as the service provider, for the proper performance of its commitments, is dependent on information from, or the cooperation by the client, or a course participant, the service provider is released from its commitments if this information or cooperation is not provided in a timely manner.

## Article 3 - Payment

1. Invoices must be paid within 14 days of the invoice date, unless the parties have made other arrangements or agreed to a different payment term than is stated on the invoice, in writing.
2. Payments are made without any appeal to suspension or set-off by transfer of the amount due on the bank account number specified by the service provider.
3. If the client does not pay within the agreed upon terms, then they are legally, without any notice being required, in default. From that moment on, the service provider is entitled to suspend obligations until the client has fulfilled its payment obligations.
4. If the client remains in default, the service provider will proceed to collection. The costs pertaining to that collection shall be borne by the client. When the client is in default, they are responsible for the principal sum which also includes statutory (commercial) interest, extrajudicial collection costs and other damage to the service provider. The collection costs are calculated on the basis of the Decree Compensation for extrajudicial collection costs.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment of the client, the progress of the service provider to the client is immediately due and payable.
6. If the client refuses to cooperate with the performance of the assignment by the service provider, then they are still obliged to pay the agreed upon price to the service provider.

### Article 3.1 – Payments for Trainings

1. Payment period is 14 days from the date of issue on the invoice.
2. The agreement has a period of reflection for individual private subscriptions of 14 days. For a period of 14 days after signing of the agreement, the agreement can be dissolved without charge. If the agreement is first made within a month of the training/course start date, the agreement cannot be dissolved without charge and section 3.1.3. is applied.
3. In the case of cancellation of the application within a month before the start of the course, the full price of the course will be owed. The enrolled participant may have someone replace him or her in the course.
4. The service provider is not responsible for fees occurring outside the training days and therefore will not reimburse flight travel, additional hotel nights and meals, and transportation to/from the airport.

### Article 4 – Offers and quotations

1. The offers of the service provider are valid for a maximum of 1 month, unless a different term of acceptance is included in the offer. If the offer is not accepted within that period, then the offer expires.
2. Delivery times in quotations are indicative and do not entitle the client to compensation if they are exceeded or dissolved, unless the parties have expressly agreed otherwise in writing.
3. Offers and quotations do not automatically apply to repeat orders. Parties must do this agreed expressly and in writing.

### Article 4.1 – Open Registration for Trainings

1. The service provider offers open registration trainings, meaning clients can sign up for scheduled courses. The following terms and conditions apply:
  - a. Training/education/courses offered by Dyami B.V. shall only take place in the case of sufficient enrollment. Dyami B.V. reserves the right to cancel a program up to 10 working days before a course starts due to unforeseen circumstances, including but not limited to too few participants. In such a case, program fees will be reimbursed. However, Dyami B.V. cannot accept responsibility for any travel, accommodation, or other costs incurred for a canceled program.

### Article 5 – Prices

1. The prices stated on offers, quotations and invoices from the service provider are exclusive of VAT and any other government levies, unless expressly stated otherwise.
2. The prices of goods are based on the cost prices known at that time. Inflation which could not have been foreseen by the service provider at the time of making the offer or the conclusion of the agreement may give rise to price increases.
3. With regard to the provision of services, the parties may, when the agreement is concluded, make a fixed price agreement.
4. If no fixed price has been agreed upon between the parties, the rate with regard to the service is determined on the basis of the hours actually spent on the service. The rate is calculated according to the usual hourly rates of the service provider, applicable for the period in which they performed the work, unless a deviating hourly rate has been agreed upon.
5. If no rate has been agreed upon on the basis of the hours actually spent, a target price has to be agreed upon for the service, whereby the service provider is entitled to charge up to 10% to deviate from. If the target price is more than 10% higher, the service provider is obligated to inform the client in good time why a higher price is justified. In that case, the client has the right to cancel the part of the order, which increases the target price by more than 10%.

## Article 6 – Price indexation

1. The prices and hourly wages agreed upon when entering into the agreement are based on the price level prevailing at that time. The service provider has the right to charge the client fees reflecting the annual adjustment of wages that occur on 1 January.
2. Adjusted prices, rates and hourly wages will be communicated as soon as possible to the client.

## Article 7 – Provision of information by the client

1. The client makes all information relevant to the execution of the assignment available to the service provider.
2. The client is obliged to provide the service provider with all data and documents deemed necessary for the correct execution of the assignment in a timely and desired format and manner.
3. The client is responsible for the accuracy, completeness, and reliability of the data and documents provided to the service provider, even if they are from third parties, unless the nature of the assignment dictates otherwise.
4. The client indemnifies the service provider for any damage in any form resulting from failure to comply with the provisions of the first paragraph of this article.
5. If and to the extent that the client requests, the service provider returns the relevant documents.
6. If the client does not provide the data and documents requested by the service provider in a timely or proper manner, causing delays in the execution of the assignment, any resulting extra costs and additional fees will be charged to the client.

## Article 8 – Withdrawal of order

1. The client is free to terminate the assignment to the service provider at any time.
2. When the client withdraws the assignment, the client is obliged to pay the wages and to pay expenses incurred by the service provider.
3. The termination of the assignment must be communicated in writing to all involved parties.

### Article 8.1- Withdrawal of order for trainings

1. For the withdrawal of bespoke trainings, the condition under Article 8 paragraph 2 applies.
2. If the enrollment of a client on the service provider's training is withdrawn, the payment conditions laid out under Article 3.1.3. apply.
3. Any withdrawal of order must take place in writing.

## Article 9 – Execution of the agreement

1. The Service Provider performs the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. The Service Provider has the right to have work carried out by third parties.
3. The implementation takes place in mutual consultation and after a written agreement has been made and the payment of any agreed advance.
4. It is the responsibility of the client to ensure that the service provider can start the job on time.

## Article 10 – Contract term assignment

1. The agreement between client and service provider is entered into for an indefinite period, unless the nature of the agreement dictates otherwise or the parties explicitly and in writing agree otherwise.
2. If parties within the term of the agreement agree upon the time frame for the completion of certain work, then this is never a strict deadline. If the deadline is expected to be or is already exceeded, the service provider bears responsibility to communicate with the client if this is due to shortcomings on their end. If this is a result of the client failing to comply with Article 7, the conditions laid out there apply.

## Article 11 – Amendment of the agreement

1. If during the execution of the agreement it appears that it is necessary for the proper execution of the assignment to change or supplement the work in order for it to be performed, the parties will adapt the agreement accordingly in a timely manner and in mutual consultation.
2. If the parties agree that the agreement will be amended or supplemented, and the time frame for the completion of the work is thereby affected, the service provider must inform the client accordingly as soon as possible.
3. If the change or supplementation to the agreement has financial and/or qualitative consequences, the service provider will inform the client about this in writing as soon as possible.
4. If the parties have agreed on a fixed fee, the service provider will indicate to what extent the change or supplementation to the agreement affects this fee.

## Article 12 – Force majeure

1. In addition to the provisions of Article 6:75 of the Dutch Civil Code, a shortcoming of the service provider in the fulfillment of any obligation towards the client cannot be attributed to the service provider in the event of a circumstance independent of the will of the service provider, as a result of which the fulfillment of its obligations towards the client becomes wholly or partly prevented or of which as a result the fulfillment of its obligations cannot reasonably be expected of the service provider. These circumstances also include non-performance by suppliers or other third parties, power failures, computer viruses, strikes, bad weather conditions and work interruptions.
2. If a situation as referred to above occurs as a result of which the service provider cannot fulfill its obligations towards the client, then those obligations will be suspended for as long as the service provider cannot meet its obligations. If the situation referred to in the previous sentence exceeds 30 calendar days, the parties have the right to cancel the agreement in full or to partially dissolve it in writing.
3. In the case referred to in the second paragraph of this article, the service provider is not obliged to pay compensation of any damage, not even if the service provider is advantaged as a result of the force majeure situation.

## Article 13 – Settlement

The Client waives its right to set off a debt to the service provider against a claim against the service provider.

## Article 14 – Suspension

The Client waives the right to suspend the fulfillment of any obligation arising from this agreement.

### **Article 15 – Transfer of rights**

Rights of either party under this Agreement are not transferable without the foregoing written consent of the other party. This provision applies as a property law clause operation as referred to in Section 3:83(2) of the Civil Code.

### **Article 16 – Forfeiture of the claim**

Any right to compensation for damage caused by the service provider expires in any case 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions of Section 6:89 of the Dutch Civil Code.

### **Article 17 – Insurance**

1. The Client undertakes to adequately insure and keep insured, among other things, goods delivered that are necessary for the execution of the underlying agreement, as well as goods belonging to the service provider that are present at the client's premises, and goods delivered under retention of title, against fire, explosion, water damage, as well as theft.
2. The Client shall make these insurance policies available for inspection upon first request.

### **Article 18 – Liability for damage**

1. The service provider is not liable for damage resulting from this agreement, unless the service provider has caused the damage intentionally or with gross negligence.
2. In the event that the service provider owes compensation to the client, the damage may not exceed the fee.
3. Any liability for damage arising from or related to the execution of an agreement, is always limited to the amount that has been concluded in the relevant case (professional liability insurance(s) will be paid out). This amount will be increased by the amount of the deductible according to the relevant policy.
4. The limitation of liability also applies if the service provider is held liable for damage which arises directly or indirectly from the improper functioning of the service provider of the equipment, software, data files, registers or other systems used for the execution of the assignment.
5. Not excluded is the liability of the service provider for damage resulting from intent or willful recklessness of the service provider, its manager or subordinates.

## **Article 18.1- Liability for Trainings**

1. Insofar as sports, physical activities or training simulations and comparable activities are part of the agreement concluded with the service provider, the participants of such activities must independently assess whether they are mentally and physically in the proper condition to responsibly take part in such activities. The service provider reserves the right to cancel a participant's participation if it is discovered, and agreed upon after external consultation, that the participant is unable to complete the training due to pre-existing mental and/or physical conditions. In the case of an assessment that the participant cannot complete the training due to pre-existing health conditions, the service provider is not required to refund the payment. The participant will also not receive their certification in this case.
2. Participants or the client themselves should obtain information about the training/educational courses to determine whether such courses align with the future duties/activities of the participants. The service provider shall provide this information upon request and advise participants or the client without obligation. However, participants or the client cannot derive any rights on this basis.
3. With signing the contract and these terms, the client who sends staff/ volunteers to the course confirms that the registered participants are properly insured by the client. Independent persons who enroll for the course privately must also confirm that they are properly insured privately.

## **Article 19 - Client's liability**

1. If an assignment is given by more than one person, each of them is jointly liable for the amounts due to the service provider under that assignment.
2. If an assignment is given directly or indirectly by a natural person on behalf of a legal entity, that natural person can also be the client in a personal capacity. This requires that this natural person can be regarded as the (co-)policy maker of the legal entity. In case of default by the legal entity, the natural person is therefore personally liable for the payment of the invoice, regardless of whether it is made out in the name of a legal entity or in the name of the client as a natural person or both, whether or not at the request of the client.

## **Article 20 - Indemnification**

The client indemnifies the service provider against all third-party claims related to the goods and/or services supplied by the service provider.

## **Article 21 - Complaint obligation**

1. The Client is obliged to immediately report complaints about the work performed in writing to the service provider. The complaint must contain as detailed a description as possible of the shortcoming, so that the service provider is able to respond adequately to this.
2. A complaint cannot in any case lead to the service provider being held to other work than has been agreed.

## **Article 22 – Retention of title, right of suspension and right of retention**

1. The goods and parts delivered by the client remain the property of the service provider until the client has paid the entire price agreed upon. Until then the service provider can invoke their retention of title and take back the goods.
2. If the agreed amount to be paid in advance is not paid or not paid on time, the service provider has the right to suspend the work until the agreed upon part has been paid. In that case, there is a creditor default. In that case, a delayed delivery of the service is possible by the service provider.
3. The Service Provider is not authorized to pledge the goods subject to its retention of title objection in any other way.
4. If the product or service has not yet been delivered, but the agreed advance payment or price is not in accordance with the agreement, the service provider has the right of retention. The work will then not be delivered until the client has paid in full and in accordance with the agreement.
5. In the event of liquidation, insolvency or suspension of payment of the client, the obligations are immediately payable by the client.

## **Article 23 – Intellectual property**

1. Unless the parties have agreed otherwise in writing, the service provider retains all intellectual rights (including copyright, patent law, trademark law, design and design law, etc.) on all designs, drawings, writings, carriers with data or other information, quotations, images, sketches, models, etc.
2. The said intellectual rights may not be used, shown to third parties and/or made available or otherwise used without written permission from the service provider.
3. The client undertakes to maintain the confidentiality of the information stated as confidential information which has been made available to them by the service provider. In any case, confidential information is understood to mean that to which this article relates, as well as the company details. Client commits its staff and/or third parties involved in the implementation of this agreement, and imposes a written duty of confidentiality of the purport of this provision.

## **Article 24 – Confidentiality**

1. Each of the parties will keep the information it receives (in whatever form) from the other party and any other information concerning the other party that it knows or may reasonably suspect as secret or confidential, as well as information which either party can expect to be disseminated which could harm the other party, is confidential and therefore must take all necessary measures to ensure that its personnel also keep said information confidential.
2. The confidentiality obligation referred to in the first paragraph of this article does not apply to information:
  - a. i. which was already public at the time the recipient received this information or is subsequently public without a breach by the receiving party or any incumbent by its duty of confidentiality;
  - b. ii. of which the receiving party can prove that this information was already in its possession at the time provided by the other party;
  - c. iii. which the receiving party has received from a third party who was entitled to the information
  - d. iv. which is disclosed by the receiving party pursuant to a legal obligation.
3. The duty of confidentiality described in this article applies for the duration of this agreement and for a period of three years after its termination.



### **Article 25 – Penalty for violation of confidentiality**

1. If the client violates the article of these general terms and conditions on confidentiality, then the client forfeits an immediately payable fine of € 5,000 on behalf of the service provider for each violation and in addition an amount of € 500 for each day that violation continues. This is regardless of whether the violation can be attributed to the client. Moreover, there is for forfeiture of this penalty, no prior notice of default or legal proceedings are required. Also no damage of any kind is required.
2. The forfeiture of the fine referred to in the first paragraph of this article does not affect the other rights of the service provider, including its right to claim compensation in addition to the fine.

### **Article 26 – Non-admission of personnel**

The client does not hire employees of the service provider (or of companies on which the service provider has made an appeal for the implementation of this agreement and who are involved or (were) employed during the performance of the agreement). Nor does the client otherwise allow them to directly or indirectly work for themselves. This prohibition applies during the term of the agreement until one year after termination thereof. There is one exception to this prohibition: the parties may, in good business consultation, make other arrangements. These agreements apply insofar as they have been laid down in writing.

### **Article 27 – Applicable law and competent court**

1. Dutch law applies exclusively to every agreement between the parties.
2. The Dutch court in the district where Dyami B.V. is established/has a practice/office is exclusively authorized to take cognizance of any disputes between the parties, unless the law imperatively dictates otherwise.