



# GENERAL TERMS AND CONDITIONS TWA

## **General Terms and Conditions of Troostwijk Waardering en Advies B.V.**

*Filed with the Chamber of Commerce in Amsterdam on 25 March 2020.*

### **GENERAL**

1. These general terms and conditions apply to all offers, quotations and agreements of Troostwijk Waardering en Advies B.V., having its registered place of business in Amsterdam and with its principal place of business at Overschiestraat 59 (1062 XD) and registered with the Trade Register of the Chamber of Commerce under number 33191886, hereinafter referred to as "TWA", to and with a third party, hereinafter referred to as "the Other Party", as well as to all work performed by or on behalf of TWA in relation to the Other Party, unless TWA and the Other Party explicitly agree otherwise in writing.
2. These general terms and conditions also apply to all offers, quotations and agreements of TWA in the event that TWA has engaged or involved third parties with regard to the execution of work.
3. The agreements to be concluded between TWA and the Other Party are agreements for services as referred to in Book 7, article 400 et seq. of the Dutch Civil Code. All services and goods delivered and to be delivered by TWA and work performed and to be performed shall be deemed to be delivered and performed under the terms of said agreement for professional services.
4. The Other Party declares to agree with the provisions of these general terms and conditions, which have been taken note of and accepted by the Other Party. If TWA and the Other Party have concluded a contract under the applicability of these general terms and conditions once, these terms and conditions also apply to any subsequent offers and/or agreements, unless expressly agreed otherwise by the parties in writing.
5. Any general terms and conditions used by the Other Party are hereby expressly rejected and are consequently not applicable.
6. If one or more provisions of these terms and conditions are null and void, are nullified or otherwise declared inapplicable, the other provisions of these general terms and conditions shall continue to be fully applicable. In that case, TWA and the Other Party shall consult with each other in order to agree on new provisions to replace the original provision(s), whereby the purpose and purport of the original provision(s) are observed by the parties as much as possible.

### **OFFERS**

1. All of TWA's offers, in whatever form, are at all times without obligation, unless explicitly stated otherwise.
2. If an offer is accompanied by budgets, plans, catalogues or other documents, these shall at all times be TWA's property and must be returned to TWA at its first request. Without TWA's consent, they may neither be made public or reproduced, nor be given to third parties for inspection or be used by the Other Party itself (other than under the terms of the agreement), unless TWA has given its prior consent in writing.
3. Submission of offers and (other) documentation does not oblige TWA to accept an order.
4. Offers or quotations from TWA do not automatically apply to future assignments, but apply only to the case described in the relevant offer or quotation.

### **AGREEMENT**

1. Subject to the provisions set out below, an agreement shall only be binding on TWA after TWA has accepted it in writing or has confirmed it in writing, whereby the date of the confirmation is decisive. The order confirmation is deemed to represent the agreement correctly and completely, unless the Other Party has lodged an objection in writing upon receipt.
2. TWA is at any time entitled to refuse an order without stating reasons and is not liable for any costs or damage that arises or may arise directly or indirectly from its refusal.
3. Any supplementary agreements or changes made

- subsequently will bind TWA only if confirmed in writing.
4. With respect to transactions for which no quotation or order confirmation is submitted due to their nature and scope, the description of the order stated on the invoice shall be deemed to correctly and completely represent the agreement, subject to complaints within three (3) workdays.
5. Each agreement is concluded by TWA under the suspensory condition that the Other Party - at TWA's sole discretion - is sufficiently creditworthy with regard to the full and correct performance of the agreement.
6. Upon or after conclusion of the agreement, while suspending its activities, TWA is entitled to request a security from the Other Party for the fulfilment of its obligations under the agreement with TWA.
7. Where TWA considers it necessary or desirable for the correct execution of the order and in consultation with the Other Party, TWA is entitled to engage third parties in the execution of the agreement, the costs of which will be charged to the Other Party.

### **PERFORMANCE OF THE AGREEMENT**

1. TWA shall make an effort to perform the (i) activities agreed in writing, (ii) carry out orders, and (iii) deliver services, within the time agreed between TWA and the Other Party where a time has been agreed.
2. If during the term of the agreement a time limit has been agreed for the completion of certain work, this shall not at any time be considered a deadline.
3. In the event that, for whatever reason, the agreed time is exceeded, this shall not give the Other Party the right to dissolve the agreement in whole or in part or to suspend payments, nor a right to compensation of costs and/or damage from TWA.
4. Where required for the proper execution of the agreement, TWA has the right to have certain activities performed by third parties.
5. The Other Party shall ensure that all information of which TWA indicates that such information is necessary or of which the Other Party should reasonably understand that such information is necessary for the performance of the agreement is provided to TWA on time and in the form required by TWA. If, for the execution of the agreement, such necessary information is not provided to TWA on time or not in the correct form, TWA has the right to suspend the execution of the agreement and/or to charge the additional costs resulting from the delay and/or the damage suffered to the Other Party in accordance with the usual rates applied by TWA.
6. TWA is not liable for any costs incurred or damage suffered, of whatever nature, in case TWA has based itself on inaccurate and/or incomplete information provided by the Other Party, unless TWA should have been aware of the fact that the information is incorrect or incomplete and the incorrectness or incompleteness was not noticed by TWA owing to serious fault or gross negligence on the part of TWA.
7. The Other Party and TWA will timely amend the relevant parts of the agreement in mutual consultation if, before the execution of the order, it appears that certain circumstances impede or are about to impede the proper performance of the agreement by TWA and in the event the Other Party fails to fulfil its obligations under the agreement or the Other Party is unlikely to (be able to) meet its obligations.
8. Both TWA and the Other Party are obliged to cooperate in an amendment to the agreement if, during the performance of the order, it appears that an amendment or addition is necessary for a satisfactory fulfilment of the order. The additional costs associated with an amendment or addition are for the account of the Other Party.

### **PRICES**

1. Unless otherwise stated, all prices of TWA are:
  - exclusive of VAT and other taxes, levies and government charges;
  - stated in euros;
  - any adjustments to exchange rates will be charged.
2. In the event of an increase of one or more cost-price factors, TWA is entitled to increase the agreed price



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accordingly with due observance of any existing statutory regulations, on the proviso that any future price increases which TWA is aware of must be stated in the order confirmation.

### FORCE MAJEURE

1. In addition to the relevant provisions set out in the law and in case law, 'force majeure' means in these general terms and conditions: any circumstance that is beyond the parties' control and is unforeseeable, as a result of which performance of the agreement by one party can no longer reasonably be required by the other party.
2. If in the opinion of TWA the force majeure situation will be temporary, TWA has the right to suspend the performance of the agreement until the circumstance causing the force majeure situation no longer occurs.
3. If, in the opinion of TWA, the force majeure situation will continue, the parties will make arrangements about the dissolution of the agreement and any consequences resulting therefrom.
4. TWA shall at all times be entitled to payment of the services performed in the execution of the relevant agreement, even before the circumstances causing the force majeure situation have occurred.
5. The party who believes that it is in a force majeure situation shall inform the other party accordingly in writing as soon as possible.
6. In the event that at the time of the occurrence of force majeure TWA has partially fulfilled its obligations under the agreement or will still be able to perform the agreement, irrespective of whether the part fulfilled or to be fulfilled has independent value, TWA is entitled to separately invoice the part fulfilled or to be fulfilled.

### INTELLECTUAL PROPERTY AND THIRD-PARTY RIGHTS

1. TWA has and retains the ownership of and the right to use all drawings, calculations, designs, sketches, models and the like, produced by or on behalf of TWA in the execution of the agreement.
2. The Other Party guarantees that the possession and/or use of the data provided by it and/or the order placed and/or the work to be performed by TWA, is not in conflict with statutory regulations or unlawfully infringes the (intellectual property) rights of third parties.
3. The Other Party fully indemnifies TWA against all direct and indirect damage and/or claims of third parties that they may assert against TWA on account of violation of the guarantee mentioned in paragraph 2 of this article.

### LIABILITY

1. If TWA should be liable in relation to the acceptance or performance of an agreement with the Other Party, such liability shall be limited to the provisions of this article.
2. TWA is only liable for direct damage. If TWA is liable for direct damage (including costs incurred), such liability is at all times limited to the amount that can be claimed by TWA from its liability insurer in the relevant case. In case TWA's liability insurer does not pay out, TWA's liability shall be limited to a maximum of € 5,000.
3. Direct damage exclusively means:
  - reasonable costs incurred to determine the cause and extent of the damage, to the extent the determination is related to damage within the meaning of these terms and conditions;
  - any reasonable costs incurred to have TWA's faulty performance comply with the agreement, unless these cannot be attributed to TWA;
  - reasonable costs incurred to prevent or limit damage, if and where the Other Party demonstrates that these costs have resulted in limitation of direct damage as referred to in these general terms and conditions.
4. TWA shall never be liable for indirect damage, including consequential damage, lost profit, missed savings, pure accounting losses and damage due to business interruption, including any related costs.

### COMPLAINTS

1. Any complaints will only be processed by TWA if they are in writing and if TWA has received them directly and within a period of fourteen (14) days, with an accurate specification of the nature and foundation of the complaints and the relevant service(s) that has/have been performed by TWA.
2. Complaints about invoices must also be submitted to TWA in writing and within a period of fourteen (14) days after the invoice date.
3. After expiry of this period, the Other Party is deemed to have approved the performed service(s) or the invoice. In that case, complaints are no longer handled by TWA.
4. If the complaint is found to be justified by TWA, TWA shall only be obliged to still perform the agreed service(s) or, at TWA's option, to offer replacement compensation.
5. Only if and insofar as the complaint is found to be justified, the Other Party's payment obligation will be suspended until the complaint has been settled.

### PAYMENT

1. Unless agreed otherwise in writing, payment must be made without any discount, or through payment or transfer to a bank account designated by TWA within a period of fourteen (14) days after the invoice date. The entry date indicated on TWA's bank statements is decisive and is therefore regarded as the payment date.
2. All payments made by the Other Party primarily serve to settle any interest and collection costs incurred by TWA and subsequently to settle the longest outstanding invoices.
3. In case the Other Party:
  - a. is declared in a state of liquidation or is declared bankrupt, has an attachment made against it or submits a request for suspension of payment;
  - b. dies or is placed under receivership;
  - c. fails to pay an invoice amount or part thereof within the stipulated period; or
  - d. fails to fulfil the obligations under the agreement or fails to fulfil these obligations in full or in a timely manner, TWA has the right to either terminate the agreement, or to terminate the agreement with immediate effect and to immediately claim any amount due by the Other Party pursuant to the services it has provided, in its entirety and without any notice of default being required, and without prejudice to TWA's right to claim compensation.

### INTEREST AND COSTS

1. If payment has not been made within the period specified in the previous article, the Other Party is in default by operation of law and from the due date, the Other Party shall owe an interest of 1% per (part of a) month on the outstanding amount, unless the statutory interest is higher, in which case the statutory interest applies. The statutory interest as referred to in Book 6, article 119a of the Dutch Civil Code (commercial interest) applies. The interest on the due and payable amount will be calculated from the moment the Other Party is in default up to the moment of payment of the full amount.
2. Any judicial, extrajudicial and execution costs incurred will be borne by the Other Party. The extrajudicial collection costs amount to at least 15% of the amount owed by the Other Party, including the aforementioned interest.

### PRIVACY

TWA collects and processes personal data from the Other Party in accordance with its privacy statement and in accordance with the General Data Protection Regulation and other applicable privacy legislation. The aforementioned privacy statement is available via: [www.twa.nl](http://www.twa.nl).

### APPLICABLE LAW

Each agreement or further agreements to which these general terms and conditions are wholly or partly applicable between TWA and the Other Party is/are exclusively governed by Dutch law.



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### DISPUTES

1. All disputes, including those which are only acknowledged by one party as such, arising from or in relation to the agreement to which these terms and conditions apply, will be settled by the competent court in Amsterdam. This court is at all times entitled to take precautionary measures and/or to grant an injunctive relief.

2. TWA nonetheless has the right to have the dispute settled by binding advice in accordance with the Binding Advice Regulations of the Netherlands Arbitration Institute (NAI), in

which case TWA will notify the Other Party in writing by registered letter. For one month after the date of the registered letter, the Other Party has the opportunity to have the case heard by the civil court for settlement.

3. In case the dispute is handled by the NAI, the binding advice will be given by one binding advisor. The procedure will be conducted in the Dutch language. The binding advisor decides according to the rules of the law.

4. The other party's general terms and conditions are explicitly rejected and are therefore not applicable.