

General Terms and Conditions

Article 1. Definitions

1. Contractor: e-franchise.com, also trading under the name European Franchise Consultants, with statutory domicil Franklin Rooseveltlaan 89, 4818 KB Breda, registered with the Chamber of Commerce in Breda, the Netherlands, under number 57155488 and VAT number NL852460922B01.
2. Contracting party: the natural or legal person by whose assignment services are provided and/or activities are carried out and/or goods are delivered.
3. Agreement: the agreement between Contractor and Contracting party in the matter of the provision of services and/or the performance of activities and/or the delivery of goods.

Article 2. General

1. The Agreement shall come into effect by the General Terms and Conditions in question together with the confirmation of assignment signed by Contractor and Contracting party.
2. These General Terms and Conditions shall be applicable to any and all offers, quotations and the Agreement between Contractor and Contracting party, insofar as the parties do not explicitly deviate from these General Terms and Conditions.
3. The applicability of any purchasing terms and conditions and/or any other terms and conditions of Contracting party is expressly denied.
4. Should one or more conditions of these General Terms and Conditions be entirely or partially annulled or declared void by the court at any time, this shall not affect the validity of any other conditions.

Article 3. Quotations and offers

1. All quotations and offers by Contractor shall be without obligation, unless the offer or quotation states an acceptance term. If no acceptance term is stated, no right can be derived from the quotation or offer in any manner whatsoever.
2. Quotations by Contractor shall be based on the information supplied by Contracting party. Contracting party warrants that he/she has timely and truthfully supplied Contractor all information that is essential for the planning, execution and completion of the assignment.
3. Contractor cannot be held to a quotation or offer if Contracting party may reasonably understand that (a part of) the quotation and offer contains an obvious mistake or error in writing.
4. A composite quotation and offer shall not obligate Contractor to carry out a part of the quotation and offer against a corresponding part of the stated price.
5. Offers and quotations shall not automatically apply to future orders.

Article 4. Prices

1. All prices shall be in euro exclusive of VAT and other government levies as well as any other costs that may be incurred within the framework of the Agreement such as travel and other expenses and costs including but not limited to invoices by engaged third parties. Aforementioned costs shall be to the account of Contracting party.
2. If Contractor agrees a fixed price with Contracting party, Contractor shall be entitled to increase that price without Contracting party having the right to terminate the Agreement for that reason, if the price increase is the result of a right or obligation by virtue of law or regulations or is caused by an increase of cost price determining factors such as the price of raw materials, wages, etc. or on other grounds that could not reasonably be foreseen at the time that the Agreement was entered into.
3. If a price increase other than as a result of an amendment of the Agreement, amounts to more than 10% (ten percent), Contracting party shall have the right to cancel the Agreement provided this is done in writing within 14 (fourteen) days of receipt of the altered price, unless Contractor is prepared to execute the Agreement on the basis of what was originally agreed, the price increase is the result of a right or obligation of Contractor by virtue of law and/or if it was stipulated that the delivery will take place more than 3 (three) months after the Agreement.
4. A cancellation as referred to in the previous paragraph of this article shall not entitle Contracting party to compensation for any damages. In the event that Contracting party cancels the Agreement, Contractor shall have the right to charge Contracting party for costs already incurred by Contractor.

Article 5. Agreement

1. The Agreement shall come into effect as per the day of signing by Contracting party, the day of sending the written confirmation of assignment by Contractor to Contracting party respectively.
2. The Agreement shall be entered for an indefinite period, unless the content, nature or purpose of the Agreement determines that it has been entered into for a fixed period.

Article 6. Execution of the Agreement

1. Contractor shall observe the care of a good Contractor in the execution of his/her activities.
2. By force of the Agreement, Contractor undertakes a best efforts obligation and therefore does not provide any guarantees concerning the results of the assignment, unless explicitly determined otherwise.
3. Contractor shall have the right, insofar as this is required for a proper execution of the Agreement, to have the Agreement partly carried out by third parties. Contractor shall only proceed thereto after consultations with Contracting party.
4. The applicability of the articles 7:404, 7:407 paragraph 2 and 7:409 Dutch Civil Code is hereby expressly excluded.
5. If within the duration of the assignment, a term has been agreed for the completion of certain activities, this term shall never be final to Contractor. When the performance time is exceeded, Contracting party shall declare Contractor to be in default in writing.

Article 7. Alteration of the assignment

1. Changes in the Agreement by Contracting party that could not have been foreseen by Contractor and that entail additional work, shall be charged by Contractor to Contracting party pursuant the rate agreed in the Agreement. Additional work shall furthermore be the rescheduling of planned activities by Contractor if this is required as a result of supplying incorrect or incomplete data by Contracting party. Contractor shall have the right to invoice the costs for additional work to Contracting party on the basis of actual costs.

General Terms and Conditions

2. Contracting party shall timely inform Contractor in writing of any changes in the execution of the Agreement requested at a later time by Contracting party after granting the assignment. Any amendment of and/or addition to the Agreement shall only be valid if accepted by both Contractor and Contracting party (preferably in writing).
3. Changes made in an assignment that has already come into effect, may result in the fact that the originally agreed delivery time shall be exceeded by Contractor.

Article 8. Cooperation Contracting party

1. Contracting party shall at all times, thereto requested and at his/her own initiative, supply all relevant information to Contractor that is required for a correct performance of the assignment granted to him/her.
2. If information required for the performance of the agreed assignment, is not made available or not timely or not in agreement with the arrangements entered into by Contracting party, or if Contracting party has not met his/her (information) obligations in any other manner, Contractor shall have the right to suspend the execution of the Agreement.
3. In order to let the performance of the assignment proceed orderly and as far as possible according to the time schedule, Contracting party shall timely make staff from his/her own organisation available, unless the nature of the assignment determines otherwise. Contracting party shall ensure that his/her staff has the proper skills and experience to carry out the activities.
4. If and insofar as Contractor requests thereto, Contracting party shall supply Contractor at his/her premises and free of charge a private workspace with telephone and, if so desired, a fax and/or data net connection, unless the nature of the assignment determines otherwise.
5. If there are ensuing costs to Contractor as a result of the fact that Contracting party has not, not timely or not properly made staff, requested data, documents and facilities available, such costs shall be to the account of Contracting party.

Article 9. Delivery/completion

1. Contracting party shall be obligated to take delivery of the goods at the time that these are made available to him/her. If Contracting party refuses to take delivery or is negligent in supplying information or instructions that are required for delivery, Contractor shall have the right to store the goods to the account and risk of Contracting party.
2. Contractor shall be entitled to carry out the Agreement in various parts and to separately invoice the thus executed part.
3. Contracting party is held to inspect the delivery or have the delivery inspected immediately after the goods were made available to him/her.
4. The risk of loss, damage or value decrease shall transfer to Contracting party at the time when goods are delivered to Contracting party and/or to any third parties engaged by him/her.

Article 10. Retention of title

1. All goods supplied by Contractor shall remain in the possession of Contractor until Contracting party has fulfilled his/her (payment) obligations towards Contractor.
2. Goods under retention of title may not be resold and may not be used as means of payment. Nor is Contracting party authorized to pledge goods in which Contractor retains title or to encumber these in any other manner.

Article 11. Termination

1. Both parties may prematurely terminate the Agreement at all times in writing with due observance of a term of notice of 30 (thirty) days unless the parties have agreed otherwise.
2. If Contracting party prematurely terminates the Agreement, Contractor shall be entitled to compensation in view of the resulting occupancy loss which has to be made plausible, whereby the average monthly invoice amount to date is taken as starting point, unless the termination is based on facts and circumstances that may be attributed to Contractor. The preliminary results of the activities carried out up to that time, shall conditionally be made available to Contracting party.
3. In the event that one of the parties becomes bankrupt, requests suspension of payment or ceases its activities, the other party shall have the right to prematurely terminate the Agreement without any requirement to observe a term of notice.
4. In the event of premature termination by Contractor, Contracting party shall be entitled to the cooperation of Contractor concerning the transfer of activities to be carried out, to any third parties. When the transfer of the activities incurs additional costs to Contractor, Contracting party shall be charged for any such costs.

Article 12. Power to terminate and/or to suspend

1. Contractor shall be authorized to suspend the fulfilment of his/her obligations or to terminate the Agreement, if:
 - a. Contracting party does not, not completely or not timely fulfil the obligations from the Agreement and/or if Contractor has good grounds to fear that Contracting party will fail in the fulfilment of such obligations;
 - b. Contracting party, on entering into the Agreement, was requested to put up security for the fulfilment of his/her obligations from the Agreement and security is not forthcoming or insufficient;
 - c. in the event that Contracting party is liquidated (or a request thereto has been filed), suspension of payment is granted to Contracting party, Contracting party is declared bankrupt, the Debt Repayment Natural Persons Act ("WSNP") has been declared applicable to Contracting party or Contracting party is placed under guardianship, Contracting party loses the partial or full disposal of his/her capital or revenues, Contracting party sells his/her business and/or if attachment is imposed against Contracting party and this attachment is not lifted within 3 (three) months.
2. Contractor shall furthermore be authorized to terminate the Agreement if such circumstances occur that execution of the Agreement is impossible or if circumstances occur which are such that according to criteria of reasonableness unaltered maintenance the Agreement cannot be required of Contractor.
3. If Contractor proceeds to suspension or termination, Contractor shall in no manner whatsoever be held to compensation for any ensuing damages and or costs.
4. In the event that Contractor proceeds to terminate the Agreement, the receivables of Contractor from Contracting party shall become immediately payable.
5. In the event that termination is attributable to Contracting party or that Contractor has to suspend execution of the Agreement as referred to in this Article 8.2 of these General Terms and Conditions, Contracting party shall be obligated to reimburse Contractor for any direct and indirect damages and costs.

General Terms and Conditions

6. Contractor may at all times require further security, in the absence whereof Contractor may suspend the execution of the Agreement. If this requirement is not met to the satisfaction of Contractor, Contractor shall have the right to suspend the execution of, or to refuse all Agreements with Contracting party, without being held to any compensation for damages and without prejudice to any other of his/her rights under this Agreement or by law.

Article 13. Terms of payment

1. Payment shall be effected within fourteen days from invoice date in a manner to be indicated by Contractor in euro unless expressly agreed otherwise.
2. If Contracting party fails to timely pay an invoice, he/she shall legally be in default and the legal (commercial) interest is due by Contracting party. In such a case, Contracting party shall pay interest on each month or any part thereof, whereby any part of a month is considered an entire month. The interest on the amount due shall be calculated from the time that Contracting party is in default until the time of payment of the entire amount that is due.
3. As from the time that Contracting party is in default, Contracting party shall also be held to reimburse all (extra)judicial costs and enforcement costs to be made relating to the collection of the amounts invoiced. The extrajudicial costs are set at 15% (fifteen percent) of the principal with a minimum of 40 euro (forty euro) excluding vat, unless stipulated otherwise by law.
4. Payments shall in the first place serve to reduce the costs, secondly to reduce the outstanding interest and finally to reduce the principal and the accrued interest.
5. Contractor shall have the right to refuse an offer to pay, and this shall not constitute an omission on his/her part, if Contractor assigns a different order for the attribution of the payment, Contractor may refuse full payment of the principal, if this payment does not include the arrear and accrued interest and collection costs.
6. Complaints concerning the height of the invoice must be lodged in writing within 8 (eight) days of invoice date. After that time, complaints shall no longer be taken into consideration and Contracting party's right to complain shall cease. Contracting party shall never be entitled to settlement of what he/she is due to Contractor.

Article 14. Complaints and investigations

1. If Contracting party does not lodge a written complaint with Contractor after he/she has discovered or should have discovered a fault in the performance of Contractor, Contracting party shall no longer be able to claim this fault.
2. Contracting party shall not have the right to suspend his/her (payment) obligations if Contracting party believes he/she has a right of complaint.
3. Contracting party must enable Contractor to investigate a complaint or to have it investigated.
4. In the event of founded and timely complaints, Contractor shall to his sole discretion, either repair the supplied goods or replace them against returning the originally supplied goods, or pay Contracting party an alternative compensation or credit a proportional part of the invoice.
5. If it is established that a complaint is unfounded, the costs relating thereto incurred by Contractor shall fully be to the account of Contracting party.

Article 15. Force Majeure

1. If Contractor cannot, not timely or properly fulfil his/her obligations under the Agreement as a result of a cause that cannot be attributed to him/her, such obligations shall be suspended until the time that Contractor is able to fulfil these in the agreed manner. Illness on the side of Contractor will in each case be considered as force majeure.
2. If the period in which fulfilment of the obligations of Contractor is not possible, is longer than two months, parties are authorized to terminate the Agreement without any right of Contracting party to compensation for damages. The performance already effected under the Agreement, shall then be settled proportionately.

Article 16. Liability

1. Contractor shall not be liable for any damages of whatever nature that have arisen from the fact that Contractor has based himself on incorrect and/or incomplete data supplied by Contracting party.
2. Should Contractor be liable for any damages whatsoever, the liability of Contractor shall be limited to the invoice amount, at least to that part of the amount to which the liability is related.
3. The liability of Contractor shall in each case be limited to maximally one time the invoice value of the order, at least to that part of the order to which the liability relates, this with a maximum of 250,000 euro (two hundred and fifty thousand euro).
4. Contractor shall exclusively be liable for direct damages.
5. Direct damages shall exclusively be the reasonable costs to establish the cause and the scope of the damage, insofar as the establishment relates to damages in the sense of these General Terms and Conditions, any reasonable costs incurred to bring the faulty performance by Contractor in line with this Agreement, insofar as these may be attributed to Contractor and reasonable costs incurred to prevent or limit the damage insofar as Contracting party proves that these costs have resulted in a limitation of the direct damages as referred to in these General Terms and Conditions.
6. Contractor shall never be liable for indirect damages, including consequential damage, loss of profit, missed savings and damage through work stagnation.
7. Any claims of Contracting party to Contractor shall lapse after a period of 1 (one) year after completing the assignment.
8. The limitations of the liability included in this article, shall not apply when the damage is due to intent or wilful recklessness of Contractor or his/her executive staff at management level.

Article 17. Secrecy clause

1. Contracting party and Contractor shall be held to secrecy of all confidential information that they have acquired from each other within the framework of the Agreement or from any other source. Information shall be considered as confidential when this has been indicated as such by the other party or when this ensues from the nature of the information.
2. If Contractor, on the grounds of legal condition or a court order, is held to supply confidential information to a third party appointed thereto by law or the competent court and Contractor cannot appeal to any entitlement to refuse to give evidence, Contractor shall not be

General Terms and Conditions

held to any compensation or redress for damages and Contracting party shall not have the right to annul the assignment on the grounds of any resulting damages.

3. Contracting party and Contractor shall impose their obligations on the grounds of this article to any other third parties to be commissioned by them.

Article 18. Intellectual property

1. All models, works and/or inventions developed by Contractor on behalf of Contracting party are and shall remain the property of Contractor. This shall include all intellectual property rights including but not limited thereto any copyrights, model rights and or patent rights.
2. All documents, such as reports, computer programmes, system designs, methods, advice and contracts issued by Contractor on behalf of Contracting party, may be used by Contracting party and may be multiplied by Contracting party for his own use within the own organisation. The documents supplied by Contractor may not be made public, multiplied and/or exploited or made known to any third parties by Contracting party unless the nature of the supplied documents determines otherwise.

Article 19. Indemnification of third parties

1. Contracting party indemnifies Contractor against any possible claims by third parties that incur losses in relation to the execution of the Agreement and the cause of which cannot be attributed to Contractor.
2. Contracting party shall be held to support Contractor in and out of court in the event that Contractor is addressed on the grounds of the first paragraph of this article and to immediately take all actions that may be expected from him/her in such a case. When Contracting party is in default with respect to taking adequate measures, Contractor, without any requirement for a notice of default, shall be entitled to proceed thereto himself. All costs and damages on the side of Contractor and third parties resulting thereof, shall fully be to the account and risk of Contracting party.

Article 20. Time limit

1. In deviation of the legal time limits, the time limit of all claims and defences with respect to Contracting party shall be 1 (one) year.

Article 21. Contract takeover

1. Contracting party shall not have the right to transfer any obligation from the Agreement to third parties without the written consent of Contractor. Insofar as Contractor may have given written permission for a contract takeover, Contracting party shall at all times be jointly liable with such third party for the obligations from the Agreement of which these General Terms and Conditions constitute a part.
2. Furthermore, insofar as Contractor may have given written permission for a contract takeover, Contracting party shall inform Contractor in advance thereof and Contractor shall have the right to terminate the Agreement as per the date on which the transfer comes into effect. Contractor shall not be held to pay any compensation for damages in such an event.

Article 22. Applicable law

1. All Agreements between Contractor and Contracting party shall exclusively be governed by the law of the Netherlands.
2. The applicability of the Vienna Sales Convention (CISG) is excluded.
3. Without prejudice to the right of Contractor to submit a dispute to the competent court by law, disputes between the parties shall in first instance be submitted to the competent court in Breda, unless prescribed as mandatory according to the law.