

## GENERAL TERMS AND CONDITIONS OF FISCONTI TAX CONSULTING BV

January 2005

### Article 1 - General

1.1 The terms set forth here under shall have the following meanings:

Client: the opposite party of Contractor with regard to a contract within the meaning of Article 2.1;

Contractor: Fisconti Tax Consulting BV, having its registered office at President Kennedylaan 19, The Hague;

1.2 Fisconti Tax Consulting BV is a private limited liability company also acting under the names Fisconti Tax Consulting and Fisconti Belastingadvies;

1.3 All assignments shall be accepted and performed exclusively by Contractor, subject to the exclusion of Sections 404 and 407 (2), Book 7, of the Netherlands Civil Code;

1.4 The clauses in these general terms and conditions have also been stipulated on behalf of all persons employed by or working for Contractor including the company's directors.

### Article 2 - Applicability

2.1 These general terms and conditions shall apply to (i) all contracts of assignment under which Contractor is obliged to perform activities; (ii) all contracts arising therefrom and/or relating thereto between Client and Contractor or their respective legal successors; and (iii) all offers and/or proposals made by Contractor.

2.2 Clauses which depart from these terms and conditions shall only apply if and to the extent expressly confirmed in writing by Contractor to Client.

2.3 If any clause in these general terms and conditions or in the contract is or is held to be invalid, the remainder of the contract shall remain in force to the extent possible and the invalid clause shall be replaced forthwith in consultation between the parties by a clause which reflects the object of the original clause as close as possible.

### Article 3 - Data and information

3.1 Contractor shall only be obliged to perform or continue to perform the assignment after Client has supplied Contractor with all requested data and information in the indicated form and manner. Any additional costs incurred due to the failure of Client to supply the requested data or information promptly and properly shall be borne by Client.

3.2 Client shall inform Contractor forthwith of any facts and circumstances which may be of importance with regard to the performance of the assignment.

3.3 Client warrants the accuracy, completeness and reliability of the data and information supplied by it or on its behalf to Contractor.

### Article 4 - Performance of the assignment

4.1 Contractor shall determine how and by which person(s) the assignment shall be performed, taking into account any wishes expressed by Client as much as possible.

4.2 Contractor shall carry out the work to the best of its ability and with due professional care. Contractor does not however guarantee the achievement of any intended results.

4.3 The assignment shall be performed subject to the rules of professional conduct ('Reglement Beroepsuitoefening') of the Dutch Association of Tax Advisers ('Nederlandse Orde van Belastingadviseurs'). A copy of these rules will be sent to Client on request. Client shall respect any and all obligations arising out of such rules for Contractor and all persons employed by or working with Contractor.

4.4 Dates by which work must be completed shall only be regarded as deadlines whose non-observance constitutes a default ('fatale termijnen') if expressly agreed in writing.

4.5 Client shall not be entitled to rescind the contract if and when an agreed deadline is exceeded, unless (i) Contractor also fails to perform its contractual obligations within a reasonable period notified to it in writing after the original date of completion; (ii) it is evident that the performance of the contract will be permanently impossible.

### Article 5 - Intellectual property rights

5.1 Contractor shall be entitled to any and all intellectual property rights developed or used by it during the performance of the assignment, including advice, opinions, working methods, (model) contracts, systems, system designs and computer programs, save insofar as third parties are entitled to such intellectual property rights.

5.2 Without prior written permission by Contractor, Client shall not reproduce, disclose or exploit such intellectual property or a recording thereof on any data carrier, either alone or in conjunction with or through third parties, without prejudice to the provisions of Article 6.3.

### Article 6 - Confidentiality

6.1 Contractor is obliged to observe secrecy with regard to details and information provided by or on behalf of Client towards third parties that are not involved in the realisation of the assignment. This obligation does not apply insofar as Contractor has a legal or professional duty of disclosure, including the obligation to report arising from the Disclosure of Unusual Transactions Act (Wet melding ongebruikelijke transacties) and other Dutch or international legislation with a comparable purport, or insofar as Client has released Contractor from the

obligation of confidentiality. This provision does not prevent confidential consultation between colleagues within the organisation of Contractor, insofar as Contractor deems such consultation necessary for the meticulous realisation of the assignment or to precisely satisfy legal or professional obligations.

6.2 In the event Contractor is acting on behalf of itself in disciplinary, civil or criminal proceedings, it shall be entitled to use the data and information supplied by or on behalf of Client as well as other data and information which have come to Contractor's notice in the course of the assignment, provided such use may be of interest according to the reasonable judgment of Contractor.

6.3 Without prior written permission by Contractor, Client shall not disclose or make available to third parties in any other way advice, opinions or other statements made by Contractor, whether or not in writing, unless (i) such action arises directly from the contract or is effected to obtain an expert opinion on the work performed by Contractor, (ii) Client has a legal or professional obligation to disclose the data concerned or is acting on behalf of itself in disciplinary, civil or criminal proceedings.

#### **Article 7 - Fee**

Client shall pay to Contractor a fee and reimburse costs incurred in accordance with Contractor's usual rates, methods of calculation and working processes.

#### **Article 8 - Payment**

8.1 Payment shall be made in euro by deposit or transfer to the bank or giro account stated on the fee note, without any deduction, discount or set-off, within fourteen (14) days of the fee note date, failing which Client shall be in default.

8.2 All extrajudicial costs incurred by Contractor in connection with the collection of any amounts owed by Client shall be borne by Client.

8.3 All costs incurred by Contractor in connection with legal proceedings against Client shall be borne by Client, including any and all costs exceeding the legal costs awarded, unless Contractor is ordered to pay the legal costs as losing party.

8.4 Contractor reserves the right to request Client to provide for full or partial payment in advance and/or to provide security -even during the performance of an assignment, if the financial position or the payment behaviour of Client in the opinion of Contractor so warrants-failing which Contractor shall be entitled to suspend the performance of its obligations.

#### **Article 9 - Complaints**

9.1 Contractor must be informed in writing of any complaints concerning work performed or fees charged within thirty (30) days of the date of dispatch of the documents or information on which such complaints are based or, in case Client shall prove that it could not reasonably have discovered the shortcoming earlier, within thirty (30) days after discovery thereof, failing which Client shall forfeit any and all claims relating thereto.

9.2 A complaint shall not entitle Client to suspend its payment obligations, unless Contractor has informed Client that it considers the complaint to be justified.

9.3 In the event of a justified complaint Contractor shall have the right, at its own discretion, either to adapt the fees charged, rectify the shortcoming free of charge, repeat the assignment concerned, or cancel the performance of the assignment partly or in full against a proportional refund of fees paid by Client.

#### **Article 10 - Liability**

10.1 Contractor shall be liable to Client for any shortcoming in the performance of the assignment insofar as such shortcoming implies a failure to exercise the due care and expertise which may be expected with regard to the performance of the assignment. However, Contractor shall in no event be liable for:

- damage suffered by Client or third parties resulting from inaccurate or incomplete data or information supplied by Client to Contractor or from other act or omission by Client;
- damage suffered by Client or third parties as a result of acts or omissions of auxiliary persons ('hulpverleners') engaged by Contractor (not including Contractor's employees), even if such persons are employed by any organisation affiliated with Contractor;
- indirect, special or consequential damages suffered by Client or third parties.

10.2 The liability exemptions set forth in Article 10.1 shall not apply to the extent the damage is caused by gross negligence or wilful misconduct on the part of Contractor.

10.3 Contractor's liability for a shortcoming in the performance of the assignment or for torts committed shall be limited to three times the fees (exclusive of VAT) paid and/or owed by Client to Contractor pursuant to Article 7 in respect of the work to which the loss-causing occurrence relates or is connected, subject to a maximum of fifty thousand Euro (€ 50,000).

10.4 Any and all claims relating to compensation of damages suffered shall be submitted to Contractor no later than six months after Client has discovered or could reasonably have discovered such damage, failing which the right to claim compensation shall lapse.

10.5 Client shall hold harmless and indemnify Contractor against all claims from third parties - including but not limited to shareholders, directors, supervisory directors and employees of Client as well as affiliated legal entities and companies and third parties involved in the organisation of Client- arising from or in connection with the work performed by Contractor for Client, unless such claims are due to gross negligence or wilful misconduct on the part of Contractor.

#### **Article 11 - Limitation period**

Unless these general terms and conditions provide otherwise, any and all claims of Client against Contractor in connection with the performance of the assignment by it, regardless of their nature, shall expire one year after the date Client has become aware or could reasonably have been aware of the existence of such claim.

#### **Article 12 - Choice of law, disputes**

12.1 All contracts between Client and Contractor shall be governed exclusively by Dutch law.

12.2 Disputes which do not fall within the jurisdiction of the subdistrict court ('Kantongerecht') shall be submitted to the competent court in the place in which the registered office of Contractor is situated.

12.3 Notwithstanding the provisions of Article 12.2, Client and Contractor may choose a different manner of dispute settlement.