

# General Terms and Conditions of Bright Spark BV

## 1. Definitions

- 1.1. The term “client” is understood to mean the party giving the assignment for the performance of work or the delivery of goods or the provision of services.
- 1.2. The term “contractor” is understood to mean the party accepting the assignment for the performance of work or the delivery of goods, also being the user of these general terms and conditions, hereinafter also referred to as “Bright Spark BV”.
- 1.3. The term “assignment” is understood to mean the contract between the client and Bright Spark BV for the performance of work or the delivery of goods or the provision of services.
- 1.4. The term “work” is understood to mean all which is made and/or undertaken by Bright Spark BV for the benefit of the client within the context of the assignment given.
- 1.5. The term “quotation” is understood to mean the specified work and any estimate of the costs attached to this work.

## 2. Applicability of these general terms and conditions

- 2.1 The terms and conditions apply to any contract in which Bright Spark BV acts as a contractor and are deemed to form an integral part of this. Departure from these terms and conditions is allowed only if this is agreed upon between the client and Bright Spark BV in writing.
- 2.2 The applicability of all other general terms and conditions, including the client’s general terms and conditions in particular, is hereby expressly excluded.

## 3. Quotations

- 3.1 All quotations are without any obligation, unless otherwise expressly agreed.
- 3.2 Quotations remain valid for the period mentioned in the quotation or for no longer than a period of four weeks.

## 4. Formation of a contract

- 4.1 A contract is formed only after the quotation has been confirmed to Bright Spark BV by the client in writing. If the client gives an assignment verbally/ by telephone, Bright Spark BV will, before performing the work or proceeding to the delivery of goods or the provision of services, confirm the assignment to the client, which will constitute a formation of the contract.
- 4.2 If the client makes a change to the contract or if the client gives a further assignment, such further contract(s) will be deemed to form an inextricable part of the previous contract and will be fully subject to these terms and conditions. If the change of the assignment or the further assignment results in a cost increase, these costs will be passed on to the client. The granting of a further assignment or the change of an assignment may result in a change of the delivery times agreed upon, for which Bright Spark BV may never be held liable by the client.
- 4.3 The client is obliged to provide all information – whether or not requested by Bright Spark BV and necessary for Bright Spark BV to have its work performed in a safe, correct and economically sound way – to Bright Spark BV in good time. The client is liable for any damage or loss suffered by Bright Spark BV in connection with the client not having informed Bright Spark BV of any information which can reasonably be assumed by the client to be relevant to Bright Spark BV.

## 5. Claims becoming due and payable / suspension of work and deliveries

All claims of Bright Spark BV against the client are immediately due and payable in the following cases:

- if Bright Spark BV has good grounds for fearing that the client will not meet its obligations;
- if, at the time of concluding the contract, Bright Spark BV asked the client to provide security for performance and this security is not provided or is insufficient. In the cases stated above, Bright Spark BV has the right to suspend the execution of the contract, or to proceed to termination of the contract, without prejudice to the right of Bright Spark BV to claim compensation;
- in case of (an application for) the winding-up or moratorium of the client, the client's obligations will be immediately due and payable.

## 6. Delivery and delivery times

- 6.1 Unless otherwise agreed, the client is obliged to take receipt of the assignment carried out immediately after the assignment of Bright Spark BV has been carried out.
- 6.2 The periods specified by Bright Spark BV within which work has to be performed are approximate only and are never final deadlines. Failure to meet such a deadline for delivery therefore does not constitute an attributable failure on the part of Bright Spark BV.
- 6.3 Bright Spark BV may never be held liable for any failure to meet the specified deadline for delivery, unless otherwise expressly agreed upon with Bright Spark BV in writing.
- 6.4 If it is agreed that a contract will be performed, goods will be delivered or services will be provided through several partial deliveries and a partial delivery is not immediately accepted by the client, Bright Spark BV has the right and the choice to either deliver the remainder and invoice it in the usual way or terminate the remaining

assignment if it still has to be carried out, without prejudice to its right to claim compensation as stipulated in Article 15.

## **7. Price and price changes**

7.1 The prices specified by Bright Spark BV are exclusive of VAT and administrative/dispatch costs and suchlike, unless otherwise expressly stated or agreed in writing.

7.2 All prices are based on the domestic and foreign exchange rates, import duties, wages, raw materials, semi-finished products, packaging materials or taxes and levies affecting the cost price and applicable at the time of the formation of the contract. If there is a change in one or more of these factors before the delivery has taken place according to the delivery period agreed upon, the price will be adjusted in such a way that the change occurred is fairly taken into account.

7.3 If the price increase is more than 10%, the contracting party will have the right to terminate the contract, unless this price increase is the result of a change in the contract or arises from a power to do so pursuant to the law.

## **8. Transport (costs/risk)**

The goods delivered by Bright Spark BV are always transported at the risk and expense of the client, even if it is agreed that Bright Spark BV takes care of the transport. It is up to the client to take out insurance in order to cover this risk, if desired.

## **9. Complaints**

9.1 Any complaints must be made in writing within eight days after delivery. If the client has not checked that the delivery is in good order within eight days after receipt, the client is deemed to have accepted the delivery.

9.2 Complaints must be lodged with Bright Spark BV, stating the reason for the complaint.

9.3 Lodging a complaint, irrespective of whether it is lodged with good reason, does not entitle the client to defer any payment to Bright Spark BV.

9.4 If a complaint is accepted by Bright Spark BV in writing, the relevant goods may be returned within eight days after the complaint has been accepted by Bright Spark BV in writing. After the eight-day period mentioned, returned goods will not be credited. Returned goods are only accepted by Bright Spark BV if they are in a new condition, which is entirely at the discretion of Bright Spark BV.

9.5 If a complaint is accepted by Bright Spark BV, Bright Spark BV will have the choice to either remedy the complaint, or replace the goods delivered or credit the invoice. Bright Spark BV has complete freedom of choice regarding this.

9.6 If the goods delivered do not meet the specifications agreed upon, this will, if the complaint is handled in the manner as described in this article, not entitle the client to claim any compensation.

## **10. Warranty**

10.1 Bright Spark BV warrants that the goods to be delivered meet the usual requirements and standards which may be set hereon and that they are free of any defects. This warranty applies for a period of twelve months after delivery.

10.2 This warranty does not apply if the defect was created as a result of improper use.

10.3 If the goods delivered have been produced by a third party, the warranty will be limited to the warranty provided by this producer.

10.4 Goods delivered may only be returned with the written permission of Bright Spark BV and will be payable by the client.

## **11. Reservation of ownership**

Bright Spark BV reserves the right of ownership of all goods delivered to the client until all outstanding invoices have been paid to Bright Spark BV. In the event that any property of Bright Spark BV is attached, the client will be obliged to inform the attaching party of this immediately.

## **12. Liability**

12.1 Bright Spark BV is not liable for any damage or loss suffered by the client as a result of an attributable failure on the part of Bright Spark BV in the performance of the assignment, unless the damage or loss is the result of wilful misconduct or gross negligence on the part of Bright Spark BV.

12.2 In all cases in which Bright Spark BV is liable for damage or loss suffered by the client or third parties, the damage or loss will be limited to the amount of the direct damage or loss not exceeding the net invoice amount, with a maximum of € 10,000 for each assignment.

12.3 Bright Spark BV is not liable for any damage or loss suffered by the client or any third party engaged by the client resulting from the improper and/or incompetent use of the goods delivered or services provided by Bright Spark BV.

12.4 The client indemnifies Bright Spark BV against all claims made by third parties to compensate any damage or loss resulting from or connected to the delivery of goods/provision of services by Bright Spark BV to the client.

## **13. Industrial/intellectual property**

13.1 By giving an assignment for the manufacture of a product or service or the performance of work, the client declares that it does not infringe any copyright or other intellectual property right or industrial property right of third parties and indemnifies Bright Spark BV, at law and otherwise, against both financial and any other consequences.

13.2 The intellectual property rights to the designs, images, drawings, sketches and suchlike which are provided within the context of the work are expressly reserved by Bright Spark BV. These items remain the inalienable property of Bright Spark BV and may not be copied or multiplied or made available to third parties or used in any other way without prior permission in writing.

#### **14. Payment term/ interest and collection costs**

14.1 Unless otherwise expressly agreed, invoices of Bright Spark BV must be settled within 30 days after the invoice date. The client is not allowed to offset invoices of Bright Spark BV against the client's claims against Bright Spark BV nor is the client allowed to defer the payment of invoices of Bright Spark BV.

14.2 If the payment term is exceeded, Bright Spark BV is entitled to postpone the work involved in the carrying out of an assignment until the amount owed has been paid or to terminate the contract. This postponement does not affect the right of Bright Spark BV to compensation of costs, loss and interest.

14.3 If the payment term is exceeded, the client is in default *de jure*. During the period of default, the client owes an interest of 1.5% per month on the outstanding invoice amounts.

14.4 In the event that invoices are not paid by the client in time, the extrajudicial collection costs incurred by Bright Spark BV will be charged to the client in full. Bright Spark BV will pass on the aforementioned costs to the client. The extrajudicial collection costs amount to 15% of the outstanding amount with a minimum of € 500.00.

14.5 If, in the opinion of Bright Spark BV, the client's financial position gives cause, Bright Spark BV has the right and the choice to deliver only on payment of cash, to continue the delivery or to postpone the delivery until, to its satisfaction, sufficient security has been provided for the prompt payment of all claims which Bright Spark BV has or will have against the client pursuant to the contract.

#### **15. Force majeure**

15.1 Force majeure is understood to mean any circumstance which Bright Spark BV cannot or cannot reasonably control and which makes it impossible or unreasonably difficult to deliver the goods and/or perform the services. Force majeure particularly includes, but is not limited to, war, threat of war, riot, flood, strike, transport difficulties, operational failures, government measures including, in any case, import and export prohibitions and quota restrictions.

15.2 In the event of force majeure, the client may not claim compensation for any damage or loss suffered by it if this results in Bright Spark BV being unable to carry out the assignment.

15.3 If a temporary situation of majeure exists which does not last longer than three months, Bright Spark BV will be entitled to postpone the carrying out of the assignment. If the situation of force majeure lasts longer than three months, both parties will be entitled to cancel the assignment. Article 15 applies to this cancellation.

#### **16. Cancellation**

Each party has the right to cancel the contract. Cancellation must be made in writing. In that case, Bright Spark BV is entitled to charge all costs incurred, plus any loss of profits sustained by Bright Spark BV and all other loss suffered by Bright Spark BV. In addition, Bright Spark BV is entitled to charge 25% of the amount of the quotation to the client. Article 13 applies to that which is described in this article with respect to amounts owed by the client.

#### **17. Expiry period**

Insofar as these general terms and conditions do not provide otherwise, the client's rights of claim and other powers for whatever reason with respect to Bright Spark BV in connection with the carrying out of the assignment will lapse, if no proceedings are instituted against Bright Spark BV within one year after the moment in which the client has become aware or could reasonably have been aware of the existence of these rights and powers.

#### **18. Amendment clause**

18.1 If any provision of the contract concluded between the parties, including these terms and conditions, are in conflict with mandatory legal provisions, or are declared void by the court on any other ground, the parties are deemed, instead of the provision being in conflict with mandatory law or declared void by the court, to have agreed to that which comes closest to the relevant provision without being in conflict with the law or being void. If any provision is in conflict with mandatory law or declared void by the court, this will never concern the entire contract, but only the relevant provision.

18.2 Bright Spark BV is entitled to make amendments to these terms and conditions. These amendments will enter into force on the announced date of entry into force. Bright Spark BV will send the amended terms and conditions to the client in due time. If no date of entry into force has been communicated, an amendment will enter into force with respect to the client as soon as Bright Spark BV has communicated the amendment to the client.

**19. Governing law and disputes**

19.1 All contracts between Bright Spark BV and the client are governed exclusively by Dutch law, with the exclusion of the Vienna Sales Convention.

19.2 Disputes arising between Bright Spark BV and the client about assignments subject to these terms and conditions are settled by the competent court in Leeuwarden, the Netherlands.