

General Terms and Conditions Contract Research by Leiden University of Applied Sciences

Article 1. Definitions

For the purposes of these General Terms and Conditions, the following capitalised definitions have the following meaning:

- a. **Agreement:** each and every agreement that governs the legal relationship between Leiden University of Applied Sciences and the Client with regard to the delivery of a Performance by Leiden University of Applied Sciences to the Client, as well as any and all (legal) acts required for the conclusion or the implementation of the said agreement. For this purpose, agreement is also understood as an Offer signed and thus accepted by the Client.
- b. **Background Knowledge:** any and all technical information, including data, materials, instruments, software, algorithms, know-how, models, methods, working methods, and techniques (including any intellectual property rights to the same) of which the Client or Leiden University of Applied Sciences was the rightful owner prior to the start of the agreement as well as any information that was generated thereafter by the Client or Leiden University of Applied Sciences beyond the objective of the Performance.
- c. **Client:** the party for whom Leiden University of Applied Sciences delivers the stipulated Performance or the party with whom Leiden University of Applied Sciences considers concluding a relevant Agreement. A Client is, for instance, a legal entity or a cooperative venture without legal personality, but cannot be a natural person.
- d. **Hired Parties:** Businesses or persons hired by Leiden University of Applied Sciences for the delivery of the Performance.
- e. **Indirect Damages:** indirect damages are, in any case, understood as lost profit, lost savings, losses due to business interruptions, and other consequential damages or indirect damages resulting from the failing, late, or improper Performance.
- f. **Offer:** the written or oral proposal of Leiden University of Applied Sciences to deliver a certain Performance to the Client at a certain price, including research proposals.
- g. **Parties:** Leiden University of Applied Sciences and the Client.
- h. **Performance:** the services to be supplied and the activities to be performed by Leiden University of Applied Sciences to the Client, as well as the realisation and delivery of a tangible work. The Performance is a best efforts obligation, unless the Agreement expressly stipulates that it involves a result obligation.
- i. **Results:** the data, materials, instruments, software, algorithms, know-how, models, working methods, and techniques, excluding Background Knowledge, deriving from the Performance.
- j. **Leiden University of Applied Sciences:** Foundation Leiden University of Applied Sciences, having its registered office in Leiden, and for the purpose hereof duly represented by the chair of the Executive Board and the party who delivers the Performance for the Client in the capacity of contractor.

Article 2. Applicability

1. These General Terms and Conditions are applicable to any and all proposals, Offers, and Agreements between the Client and Leiden University of Applied Sciences.

2. Deviations from and additions to the Agreement or these General Terms and Conditions are only valid if they were expressly stipulated in writing in, for instance, a (written) Agreement.
3. The applicability of any general terms and conditions of the Client is hereby expressly rejected by Leiden University of Applied Sciences.
4. Leiden University of Applied Sciences reserves the right to change these General Terms and Conditions. Changes and their entry into force are communicated to the Client in writing. In this regard, the requirements of reasonableness and fairness are observed. As the occasion arises, the Client is entitled to terminate the Agreement effective from the proposed start date of the change, provided that the Client does, in any case, notify Leiden University of Applied Sciences accordingly within thirty (30) days after notification of the change.
5. If one or more provisions of these General Terms and Conditions appear to be invalid or are annulled then the other provisions of these General Terms and Conditions shall retain their legal force.

Article 3. Conditions Offer

1. Any and all Offers and proposals of Leiden University of Applied Sciences are subject to contract, unless the Offer includes a period for acceptance.
2. Offers of Leiden University of Applied Sciences are based on information supplied by the Client. The Client guarantees to the best of its knowledge that it made any and all essential information for the structure and implementation of the Performance available. The Client also guarantees that it is entitled to use any and all data made available to Leiden University of Applied Sciences for the delivery of the Performance.
3. Leiden University of Applied Sciences may charge costs for the issue of an Offer, also if ultimately the Agreement is not concluded, provided that this was stipulated with the Client in advance.
4. The amounts specified in the Offer are always exclusive of VAT.

Article 4. Term and implementation

1. The Agreement between the Client and Leiden University of Applied Sciences is concluded for an open-ended term, unless the nature of the Agreement indicates otherwise or if the Parties expressly stipulate otherwise in writing.
2. If a time limit is stipulated or indicated for the performance of certain activities then this can never be qualified as a fatal deadline. In the event of an overstepping of a time limit, the Client must therefore give Leiden University of Applied Sciences written notice of default. Leiden University of Applied Sciences is then offered a reasonable period to yet comply with the Agreement.
3. Leiden University of Applied Sciences shall implement the Agreement to the best of its knowledge and ability in accordance with the requirements of professional practice. All on the basis of the then known state of the science.
4. Leiden University of Applied Sciences can have Hired Parties perform activities, the Client is informed accordingly if it involves activities other than those in the course of the regular business operations.
5. Leiden University of Applied Sciences is entitled to implement the Agreement in various phases and to invoice the thus implemented part separately.

6. If the Client wants to make changes in the structure or content of the Performance then the Client shall enter into corresponding discussions with Leiden University of Applied Sciences in a timely fashion. Leiden University of Applied Sciences lends cooperation in the required changes, provided that this can, within reason, be required and agreement is reached about the potential change in costs.
7. If it becomes apparent during the implementation of the Agreement that a proper implementation of the Agreement requires changing or supplementing it then the Parties shall proceed with adjustment of the Agreement in a timely fashion and in mutual consultation.
8. If Leiden University of Applied Sciences anticipates a delay then it shall immediately notify the Client accordingly.
9. Leiden University of Applied Sciences determines the manner that the Performance is delivered and by whom.

Article 5. Suspension, rescission, termination

1. In the event of an open-ended Agreement, the Parties are always authorised to terminate the Agreement early, provided that a notice period of at least three (3) months is observed. It is possible to agree on a different notice period in the Agreement.
2. If the Client proceeds with (early) termination then Leiden University of Applied Sciences is entitled to compensation for the unforeseen or additional costs arising and demonstrable on the part of the same, which have already been incurred, as well as compensation for costs that derive from any cancellation.
3. If Leiden University of Applied Sciences proceeds with (early) termination then the Client is entitled to cooperation of Leiden University of Applied Sciences in the transfer to the Performance to Hired Parties, unless there is question of intent or gross negligence on the part of the Client as a result of which Leiden University of Applied Sciences is compelled to proceed with termination. Condition for the right to cooperation referred to in this paragraph is that the Client paid all underlying outstanding advance as well as all invoices of Leiden University of Applied Sciences.
4. Leiden University of Applied Sciences is authorised to suspend compliance with the obligations or to terminate the Agreement if the Client does not comply with the obligations on account of the Agreement or not completely or not in a timely manner.
5. The Parties are authorised to (partly) terminate the Agreement, without judicial intervention and by registered letter, if circumstances occur that are of such nature that compliance with the Agreement has become permanently impossible or if circumstances otherwise occur that are of such nature that unchanged continuation of the Agreement can, within reason, not be required of the Parties.
6. In the following instances, the Parties are entitled, without any obligation to pay compensation and without prejudice to any further rights, to terminate the Agreement either in whole or in part, without notice of default or judicial intervention, by means of a mere written notice:
 - a. if one of the Parties applies for (provisional) suspension of payment or is granted (provisional) suspension of payment;
 - b. if one of the Parties files a winding-up petition or is declared to be insolvent;

- c. if one of the Parties transfers, liquidates or discontinues its business either in whole or in part or if any permits required for the business operations are revoked;
 - d. if there is question of discrimination, child labour, or inferior working conditions within the business operations of one of the Parties or their suppliers;
 - e. if a judicial or arbitration authority prohibits one of the Parties from (further) implementing the Agreement;
 - f. if an attachment is imposed on a considerable part of the assets of one of the Parties.
7. If the Agreement is (partly) terminated then the claims of Leiden University of Applied Sciences in respect of the Client immediately fall due.
 8. Obligations that are, based on their nature, meant to remain in full force and effect after termination of the Agreement shall remain in full force and effect after termination of the Agreement.

Article 6. Force majeure

1. If the Parties are not able to comply with the obligations pursuant to the Agreement or not in a timely fashion or not properly as a result of force majeure within the meaning of Section 75 of Book 6 of the Dutch Civil Code then discussions shall first take place between the Parties. The obligations pursuant to the Agreement are suspended up to the moment that the Parties are yet able to comply with them in the stipulated, or a revised, manner.
2. If the situation referred to in the first paragraph occurs then the Parties are entitled to terminate the Agreement, either in whole or in part, in writing and with immediate effect, without for that matter being entitled to any compensation.
3. If upon the occurrence of the situation of force majeure Leiden University of Applied Sciences has already partly complied with the stipulated obligations then Leiden University of Applied Sciences is entitled to invoice the delivered Performance separately and in the interim and the Client must pay this invoice as if it involved a separate transaction.

Article 7. Intellectual property

1. Leiden University of Applied Sciences and the Client each remain the rightful owner of their Background Knowledge. The Parties do not grant each other - except for the benefit of the delivery of the Performance - rights to use the Background Knowledge.
2. Leiden University of Applied Sciences is the rightful owner of any improvements or adjustments of Background Knowledge of Leiden University of Applied Sciences, unless this kind of improvement or adjustment is the express objective of the Performance.
3. Leiden University of Applied Sciences is the rightful owner of the Results and is exclusively authorised to (establish) intellectual property rights on these Results. The Client shall provide any necessary cooperation to Leiden University of Applied Sciences when submitting an application for an intellectual property right.
4. Within the scope of the Performance, as described in the Offer and/or the Agreement, the Client receives a non-transferable, non-sub-licensable, non-exclusive right to use the Results, as well as the right to duplicate reports and other documents in full and exclusively for internal use. Publication of Results by the Client does not take place other than after consent of Leiden University of Applied Sciences.
5. Leiden University of Applied Sciences always reserves the right to use the Results for research and education purposes.

6. In case such a cooperation exists between the Client and Leiden University of Applied Sciences that a joint intellectual property right originates from said cooperation then further arrangements concerning this joint intellectual property right will be stipulated in the Agreement.

Article 8. Costs, billing, and payment

1. The Performance delivered by Leiden University of Applied Sciences is charged to the Client on the basis of time spent and costs incurred, unless the Parties expressly stipulate otherwise, e.g. the payment of a fixed price. Payment of the stipulated amount does not depend on the result of the Performance.
2. If required by law then the VAT is charged separately on all amounts payable by the Client to Leiden University of Applied Sciences.
3. Payment by the Client of amounts payable to Leiden University of Applied Sciences must take place within thirty (30) days after the date of the invoice.
4. The Client shall never be entitled to set off the amounts payable to Leiden University of Applied Sciences. Objections to the level of an invoice do not suspend the payment obligation.

Article 9. Liability and indemnification

1. Leiden University of Applied Sciences shall not be liable for damages, of any nature whatsoever, occurring on account of the fact that Leiden University of Applied Sciences departed from incorrect or incomplete data made available by or on behalf of the Client.
2. If Leiden University of Applied Sciences imputably fails to comply and is liable for any damages then the liability of Leiden University of Applied Sciences shall be limited to at most the invoice value of the Agreement, at least to that part of the Agreement to which the liability is related.
3. The liability of Leiden University of Applied Sciences shall, in any case, always be limited to the amount of the payment of its insurer, as the occasion arises.
4. The Parties are exclusively liable for direct damages and the liability for Indirect Damages is excluded. Indirect Damages include, inter alia, any and all damages resulting from any form of use of the Performance by the Client and Hired Parties.
5. The Client indemnifies Leiden University of Applied Sciences against any claims of third parties who incur damages in connection with the implementation of the Agreement and of which the cause can be attributed to a party other than Leiden University of Applied Sciences. If Leiden University of Applied Sciences is consequently addressed by third parties then the Client shall be required to assist Leiden University of Applied Sciences both in and out of court and to forthwith do everything which in that case can be required of the Client. If the Client fails to take adequate measures then Leiden University of Applied Sciences shall, without notice of default, be authorised to proceed accordingly. Any and all costs and damages on the part of Leiden University of Applied Sciences and third parties arising from the circumstances referred to in this paragraph are entirely at the risk and expense of the Client.
6. The limitations of liability included in this article are not applicable if the damages are the result of intent or gross negligence of the Parties.
7. Leiden University of Applied Sciences is required to take measures to limit the damages. The Client is entitled to undo or limit the damages through remedy or improvement of the delivered Performance.

Article 10. Data Protection

1. The processing of personal data during the implementation of the Agreement takes place with due observance of the provisions set forth in the Agreement and applicable privacy legislation and regulations, including but not limited to the General Data Protection Regulation (GDPR) and the Dutch General Data Protection Regulation (Implementation) Act.
2. The Parties only process personal data during the implementation of the Agreement if this is required for the realisation of clear purposes established in advance.
3. Leiden University of Applied Sciences shall take appropriate technical and organisational measures in order to protect the personal data against loss or any form of unauthorised processing. These measures guarantee, in consideration of the state of technology and the costs of the implementation, an appropriate level of security having regard to the risks inherent to the processing and the nature of the personal data. The measures are also aimed at the prevention of unnecessary collection and further processing of the personal data.
4. The Parties forthwith notify each other and do in any case inform each other within twenty-four (24) hours of (a) a breach referred to in article 33 of the GDPR of the security of the personal data, and (b) requests of third parties, including official authorities, for the availability or inspection of personal data. The Parties shall, as the occasion arises, take further steps in joint consultation and shall not contact data subjects within the meaning of the GDPR, authorities, or third parties without consent.
5. Arrangements between the Client and Leiden University of Applied Sciences regarding the processing of personal data shall, where applicable, be established in a processing agreement, a joint processing agreement, or a data transfer agreement.

Article 11. Confidential information

1. Any and all information that is shared by the Parties prior to, including during the offer phase, and during the delivery of the Performance is strictly confidential and the Parties commit to confidentiality of the same. This confidentiality obligation is also applicable if the Agreement is not concluded.
2. The Parties are not allowed to disclose confidential information to third parties without consent of the other party.
3. Without prejudice to paragraphs 1 and 2 of this article, disclosure may be required by or pursuant to the law. The Parties comply with the said obligation and shall, as the occasion arises, inform the other party of the disclosure.

Article 12. Other provisions

1. If Leiden University of Applied Sciences delivers the Performance at the location of the Client then the Client guarantees an appropriate work location that complies with the statutorily imposed standards and with other applicable regulations in the area of working conditions. The Client must ensure that, as the occasion arises, Leiden University of Applied Sciences is provided with office space and other facilities that are, at the discretion of Leiden University of Applied Sciences, required or appropriate for the delivery of the Performance and that comply with any and all statutory) requirements imposed on the same.

The Client is required with regard to (computer) facilities that are made available to ensure continuity through, inter alia, sufficient back-up, security, and virus control procedures. Leiden University of Applied Sciences shall apply virus control procedures when Leiden University of Applied Sciences uses the facilities of the Client.

2. The Agreement is governed by Dutch law.
3. Any and all disputes are settled by the competent court in the district in which Leiden University of Applied Sciences holds its registered office.
4. In the event of inconsistency between the Dutch text of these General Terms and Conditions and translation of them, the Dutch text prevails.
