

# GENERAL TERMS & CONDITIONS, EURYBIA

## 1. Definitions

'Eurybia' means Eurybia interim-management & advies, of Carel Willinkstraat 27, 5645 LH Eindhoven, The Netherlands.

'Work' means the performance of market-research activities; preparation and/or implementation of sales & marketing plans; business development activities; attending prospect/customer meetings to represent the interests of Client; negotiating commercial contracts; advising on strategy in relation to market potential; representation on behalf of Client in professional associations; coaching in sales skills; compensation-plan authoring; interim project or team management; copywriting, rewriting, authoring or translating documents; or any other services supplied by Eurybia.

'Assignment / Agreement' means the specification of duties/tasks in accordance with which Eurybia undertakes, in relation to the Client, to perform certain Work.

'Client' means any person, firm or company to whom Eurybia shall supply or contract to supply Work.

## 2. Applicability

2.1 These General Terms and Conditions apply to all offers, quotations, assignments, legal relationships and agreements, however they may be termed, in accordance with which Eurybia undertakes to perform Work for the Client, and to all ensuing Work.

2.2 Deviations from and additions to these General Terms and Conditions are only valid if explicitly agreed to beforehand in writing, in, for example, a (written) agreement or confirmation of assignment.

2.3 In the event that these General Terms and Conditions and the confirmation of assignment contain conflicting conditions, the conditions set out in the confirmation of assignment apply.

2.4 Eurybia explicitly rejects the applicability of any general terms and conditions imposed by the Client.

2.5 The Assignment / Agreement and these General Terms and Conditions document all agreements between the Client and Eurybia concerning the Work to which the Agreement pertains.

## 3. Conflict of Interests

Eurybia reserves the right to refuse Work in part or in full so as to avoid a conflict of interests. The Client will be informed promptly of any such refusal.

## 4. Confidentiality

Eurybia confirms that all material with a confidential nature handled by Eurybia will be held in strictest confidence.

## 5. Invoicing and Payment

5.1 Eurybia will bill the Client for work carried out on the basis of time spent and costs incurred, unless otherwise agreed in writing. In addition to the fee for Work carried out, Eurybia will also bill the Client for (travel) expenses incurred by Eurybia and fees charged by third parties appointed by Eurybia.

5.2 Payment for Work shall be made within 14 (fourteen) days from the date of invoicing. The Client does not have the right to apply any deduction, discount or setoff. Payment is considered to have been

made on the date on which the payment is credited to Eurybia's bank account.

5.3 Eurybia shall invoice Client on a fortnightly basis, with the exception of business trip expenses which shall be invoiced upon completion of the trip in question.

5.4 Eurybia reserves the right to request full or partial payment in advance for Work to be executed and/or for (expected) travel costs.

5.5 Eurybia reserves the right to immediately suspend performance of ongoing Work in the case of late payment of due invoices. This extends to cancellation of Eurybia's representing Client in third-party meetings, at conferences and the like. Under no circumstances shall Eurybia be liable for any consequential damages to Client resulting from such suspension/cancellation.

5.6 If an invoice for a Client is to be made out to a third party, Eurybia will either require written confirmation of acceptance from the third party, or a written undertaking from the Client to settle the invoice in accordance with these Terms & Conditions should the third party decline to do so for any reason.

5.7 If fees or prices change after the Agreement is signed but before the Assignment has been completed, Eurybia is entitled to revise the agreed rates accordingly.

## 6. Documentation

6.1 Eurybia's services are undertaken with the greatest of care, but are subject to the limitations that affect all advisory and documentary work. In the context of services generated using databases or other information sources, Eurybia's obligation is limited to one to take reasonable care.

6.2 Eurybia shall be under no obligation to indicate or correct errors or omissions in original material supplied by the Client.

6.3 Some of Eurybia's services may be based on the use of official publications or records, and Eurybia accepts no liability for the information contained in such official publications or records.

## 7. Sub-Contractors

The Client recognizes and agrees that, on a case-by-case basis, Eurybia may use approved associate sub-contractors (with relevant expertise) for some or all of the Work. All references to Eurybia in these Terms & Conditions are automatically extended to include such sub-contractors as appropriate.

## 8. Completion of Work

8.1 Agreed time frames within which the Work is to be completed are only treated as firm dates if there is an explicit agreement to this effect between the Client and Eurybia.

8.2 Should completion of Work be required sooner than the normal time requisite for its proper production, the Client will be advised of the course of action and every effort will be made to avoid any defects, but reasonable allowance must be made by the Client in such cases. Should such completion of Work necessitate overtime being worked or other additional costs being incurred, an additional charge may be made to cover such costs.

8.3 Eurybia accepts no liability for the consequences of any delay in completion of Work caused by the Client (including delays resulting

from the application of article 5.5) and, in such event, any agreed deadlines or delivery schedules will automatically cease to be valid and new dates must be negotiated.

## **9. Cancellation**

If the Client for any reason postpones for a period of 14 days or more, or cancels, Work that he has commissioned, charges will be payable for all completed Work up to the cancellation or postponement date, and for all other costs and expenses which may accrue as a result of such cancellation or postponement.

## **10. Liability and Indemnity**

10.1 Eurybia is not liable for consequential losses, loss of profits, or indirect losses incurred as a result of non-, late or defective performance by Eurybia.

10.2 The Client undertakes to notify Eurybia in writing of any complaint in respect of any Work within 28 days of the receipt of the Work by the Client. Compliance with this requirement shall be a condition precedent to Eurybia's liability.

10.3 Eurybia is only liable in relation to the Client for direct losses directly resulting from (a series of related) attributable failure(s) in the performance of the Work. A series of related attributable failure(s) counts as a single attributable failure.

10.4 Eurybia will not be liable for any damages resulting from the Work unless the Client can demonstrate that such damages result from malicious intent or gross negligence on behalf of Eurybia.

10.5 Any liability on behalf of Eurybia will be limited to the amount already paid by the Client for the Work concerned, but will in no case exceed € 10,000 (ten thousand euros).

10.6 Eurybia and Client agree that any disagreements about the quality of the Work shall be referred to an arbitrator to be appointed in accordance with the rules of the Netherlands Arbitration Institute (NAI), Rotterdam.

10.7 The Client is to indemnify Eurybia against claims made by third parties (including third parties appointed by Eurybia) for injury or losses sustained in connection with the performance of the Work due to actions or omissions by the Client or unsafe situations in the latter's company or organisation.

## **11. Illegal Matter**

Notwithstanding any other term of any contract, Eurybia shall not be required to undertake Work that in its opinion is or may be of an illegal, libelous or immoral nature.

## **12. Client's Property**

12.1 All documents, paper, electronic data or other property supplied to Eurybia by the Client will be held or dealt with by Eurybia at the Client's risk, and Eurybia will not be responsible for the consequence of any loss or damage thereto.

12.2 Eurybia reserves the right to destroy or otherwise dispose of any document, paper, electronic data or other property of the Client that has been in the custody of Eurybia for more than 3 months following completion of the Work to which it relates. Prior to such destruction or disposal, Eurybia will ask the Client if it wishes to have the document, paper, electronic data or other property in question returned. Any expenses associated with such return will be borne by the Client.

## **13. Force Majeure**

13.1 If the parties are unable to fulfil the obligations imposed by or ensuing from the Agreement (in a proper manner and without delay) due to force majeure, as defined in article 6:75 of the Dutch Civil Code, the obligations will be suspended until the parties are able to fulfil the obligations in the agreed manner.

13.2 In the event that the situation referred to in 13.1 above occurs, the parties have the right to give written notice of termination of (part of) the Agreement, which will apply with immediate effect, without there being any right to compensation.

## **14. Jurisdiction**

These conditions shall be interpreted in accordance with the laws of The Netherlands. Subject to the provisions of paragraph 10, Eurybia and the Client irrevocably submit to the non-exclusive jurisdiction of the Dutch Courts.

## **15. Rectification of invalidity**

15.1 If any of the provisions of these General Terms and Conditions or the Assignment / Agreement prove wholly or partially null and void and/or invalid and/or unenforceable as a result of any statutory regulation or court ruling or for any other reason, this shall not affect the validity of any of the other provisions of these General Terms and Conditions or the Assignment / Agreement.

15.2 If any of the provisions of these General Terms and Conditions or the Assignment / Agreement prove invalid for one of the reasons referred to in the previous clause, but would be valid were it more limited in its extent or effect, for the time being the provision in question will automatically apply to the greatest extent or effect possible within the limitations that render the provision valid.

15.3 Subject to the provisions set out in 15.2 above, if required, the parties can agree new provisions that are to replace the provisions that have been nullified or invalidated. The new provisions must come as close as possible to the purpose of the provisions that have been nullified or invalidated.

## **16. Termination**

16.1 The Client and Eurybia can terminate the Agreement (prematurely) with immediate effect at any time. If the Agreement is terminated before the Assignment has been completed, the Client is obliged to pay the fee owed for time spent performing Work for the Client as specified by Eurybia.

16.2 Notice of termination must be issued in writing.

16.3 If the Client terminates the Agreement (prematurely), Eurybia has the right to be reimbursed for additional costs already incurred and costs incurred in connection with the cancellation of contracts with third parties (such as subcontractors).

16.4 If Eurybia terminates the Agreement (prematurely), the Client has the right to assistance from Eurybia in transferring the work to a third party or parties, unless Eurybia was forced to terminate the Agreement because the Client was guilty of intent or deliberate recklessness. The right to assistance as defined in this clause applies on the condition that all outstanding advances and invoices have been paid.