

# Standard Terms and Conditions

These Standard Terms and Conditions have been filed under number 242/2007 at the district court registry in Utrecht on 24 September 2007 and apply to all contracts signed or renewed with Arbo Unie after 1 October 2007.

## Article 1, Definitions

Arbo Unie:

Arbo Unie B.V., domiciled in Utrecht, as well as any of its affiliated companies or other legal entities.

Services:

All services performed by Arbo Unie on the Client's instructions for the Client or for any third party designated by the Client.

Client:

The party contracting with Arbo Unie.

Agreement:

The agreement between Arbo Unie and the Client for the performance of Services, as set forth in a document agreed by both Parties, and in any other documents declared applicable in the Agreement, such as the offer.

Party/parties:

Arbo Unie and/or the Client.

## Article 2, Scope

These Standard Terms and Conditions apply to all offers and agreements for which Arbo Unie provides Services to, and/or performs activities for, the Client. Any deviation from these Standard Terms and Conditions shall not be valid until confirmed by Arbo Unie in writing. In the event that any of the provisions of these Standard Terms and Conditions are deviated from, all other provisions will remain in full force. These Standard Terms and Conditions are also applicable to any third party called in by Arbo Unie to execute the Agreement. In the context of their relationship with the Client, any such third party can directly invoke these Standard Terms and Conditions.

## Article 3, Realisation of the Agreement

Arbo Unie offers are valid for a period of three months unless a different acceptance period is specifically included in the offer. An Agreement will not have been formed until an Agreement or order confirmation is duly signed by both parties.

## Article 4, Arbo Unie's Rights and Obligations

- 1 Subject to any requirements set (or to be set) by law, Arbo Unie shall perform its activities to high standards and in conformity with commonly-accepted scientific and technical methods

and knowledge. Arbo Unie shall do its utmost to comply with any quality standards and performance indicators agreed to in an Agreement.

- 2 Arbo Unie shall carry out its activities from any of its locations. All, or part, of the Services may also be provided on the Client's site if, and insofar as, this is agreed in writing. If Services are provided at the Client's site, the Client shall provide Arbo Unie employees with a suitable working space (consulting or research room including the necessary facilities and Internet and telephone connections) free of charge, as well as ensure that working conditions meet the requirements set out in Book 7, Section 658 of the Dutch Civil Code ("Burgerlijk Wetboek"). The Client shall also indemnify Arbo Unie against any claims based on, or relating to, non-fulfilment of that duty of care.
- 3 Arbo Unie is entitled to use third parties to fulfil any of its obligations under the Agreement if Arbo Unie thinks this is necessary or advisable. Outsourcing will only take place so long as Arbo Unie's quality standards are not compromised and it will not affect Arbo Unie's liability for fulfilling any of its obligations under the Agreement.
- 4 Arbo Unie may perform, or have performed, any additional activities, including, without limitation to, retrieving medical information or calling in experts as per the original conditions of the Agreement, provided that:
  - a) these activities are, in Arbo Unie's opinion, essential for implementation of the Agreement
  - b) the necessity thereof arose after the Agreement was signed. Arbo Unie also will promptly notify the Client of the nature of, and the remuneration for, such activities.

## Article 5, Legal Amendments

In the event that any amendments to laws and/or regulations otherwise imposed by the government lead to changes in the services, the Parties will amend the Agreement accordingly by mutual agreement (if necessary with retroactive effect back to the date on which the changes become effective). In these situations, Arbo Unie will be entitled to charge the Client, either directly or indirectly, for any

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additional costs arising from the changes imposed.

#### Article 6, The Client's Obligations

- 1 The Client shall ensure that all the information needed for the performance of the agreed Services is provided to Arbo Unie in the agreed manner, and the Client shall also follow all reasonable instructions given by Arbo Unie.
- 2 If such information is not provided in a timely manner, or instructions have not been followed, or if any required assistance has not been given by (employees of) the Client, the Parties will enter into consultation. If this consultation does not appear to be producing the desired result, Arbo Unie will be entitled to suspend the execution of the relevant Agreement and/or to charge any additional costs caused by the delay at the usual rates.

#### Article 7, Deadlines

Unless expressly agreed otherwise in the Agreement, all (delivery) deadlines stated by Arbo Unie are estimated to the best of its knowledge, based on the information known to Arbo Unie when entering into the Agreement or when preparing the offer. If Arbo Unie imputably fails to perform the Agreement, Arbo Unie will not be in default until it has been given notice of default in writing, in which a reasonable time period will be given to remedy the non-performance, and Arbo Unie then fails to rectify the defect within that timeframe. Arbo Unie will not be bound by any (delivery) deadline that cannot be met due to circumstances beyond its control which arise after signing the Agreement. If any deadline threatens to be exceeded, Arbo Unie and the Client will consult as soon as possible.

#### Article 8, Rates and Payment

- 1 If the number of the Client's employees is relevant for the determination of the remuneration payable by the Client to Arbo Unie, the Client will provide recent summary payroll information to Arbo Unie prior to the effective date of the Agreement, for which part-time employees will be considered full-time employees in determining the number of the Client's employees. After that, the Client will periodically provide such information to Arbo Unie if Arbo Unie so requests. Arbo Unie is entitled to verify the information provided by the Client.
- 2 Arbo Unie will charge the Client for the activities to be performed by Arbo Unie according to the rate schedule to be adopted by Arbo Unie each year. This schedule will have the first day of January as effective date for each calendar year unless a different price arrangement is expressly included in the Agreement. Arbo Unie reserves the right to review the rate schedule annually based on the CBS index

'CLA (Collective Labour Agreement) hourly wages including special remuneration' with the reference period from July of the previous calendar year to July of the ongoing contract year, provided that the rates are annually increased by at least the increase in the cost of wages arising from the CLA which applies to Arbo Unie.

- 3 The rate schedule will always be communicated to the Client in advance and in writing. Only if rates increase by more than 10% in relation to the rates charged before, will the Client be entitled to terminate the Agreement by registered letter, giving at least 1 month's notice, either by the end of the current contract year or by the end of the first subsequent month if the notice of a rate increase was not received until the last month of the current contract year.
- 4 If, as a result of circumstances attributable to the Client, any scheduled activities cannot be performed by Arbo Unie, the Client shall owe Arbo Unie the agreed remuneration as well as any related costs. The agreed remuneration will not be owed in the event of written and incidental cancellation of:
  - a) courses and training sessions up to two months before their start date (the Client also has the right to substitution within its organisation)
  - b) projects up to two months before their start date
  - c) individual Client-based orders excluding omission up to seven days before their start date
  - d) individual Client-based orders including omission and medical examinations up to 48 hours before their start.
- 5 If a budget agreement or project agreement has been signed by Arbo Unie and the Client, the following applies: Arbo Unie shall, at all times, keep available 80% of the capacity required for the service in question of a budget agreed with Client. If it has been established that the Client has bought fewer services over a twelve-month period than provided for in the budget or project agreement, the Client is entitled to repayment of the established difference between the quantity of services actually bought and the quantity of services agreed upon, the latter expressly with a maximum of 20% of the agreed budget. The right to demand repayment expires 30 days after expiry of the contract year in question, or after dispatch of the final invoice for the project in question, respectively.
- 6 If a project agreement has been signed by Arbo Unie and the Client, the following applies: The services agreed will be invoiced to the Client at a fixed price. In case of orders up

to € 2,000 (in words, two thousand euros) (exclusive of VAT), the entire amount will be payable in advance by the Client. In the case of orders of more than

€ 2,000 (in words, two thousand euros), 50% of the fixed price will be payable by the Client in advance, and then 50% after completion of the project.

7. If the service is performed at the Client's location, the Client shall reimburse travelling time, starting from the nearest Arbo Unie office, at the agreed rates.
8. If, upon termination of an Agreement, and subject to Article 12, any medical files are to be handed over to any third party, Arbo Unie will be entitled to charge the Client the corresponding reasonable costs. In the event that medical files are handed over, Arbo Unie shall no longer be liable for any acts and/or omissions following the relevant handing over of the medical files.
9. Any rates and costs offered and agreed by Arbo Unie are always denominated in euros and are exclusive of value added tax (VAT) and any other levies imposed by the government specifically on activities relating to the Services.
10. Unless a different invoicing schedule is included in the Agreement, (annual) invoicing will take place in advance. Payment must be made by the Client within fourteen days of invoice date, unless a different payment term is expressly stated in the Agreement. The payment term is a strict deadline. As of the moment the Client is in default, the Client shall owe Arbo Unie default interest on the amount due at the rate of the statutory commercial interest, as well as compensation for extrajudicial collection costs. In such cases, Arbo Unie will also be entitled to suspend its obligations under the Agreement.
11. If the Client contests the correctness of any item on an invoice, the Client will nevertheless be required to pay all uncontested items. If, and to the extent that, a contested item turns out to be payable after all, the original invoice date shall apply.

#### Article 9, Liability

1. Arbo Unie shall be liable for any loss or damage caused by any intentional act or omission or gross negligence on the part of Arbo Unie.
2. In all other cases, Arbo Unie will only be liable for:
  - a) loss due to death or physical injury of the Client's employees, caused directly by professional errors (including mistakes, negligence or other careless behaviour), up to

a maximum amount of € 2,000,000 (in words, two million euros) per year and per event

b) direct loss that the Client may suffer as a result of either any wrongful act committed against the Client or because any obligation under the Agreement was imputably not fulfilled, or only fulfilled in part or not fulfilled in a timely manner. Arbo Unie's maximum liability is limited to the maximum remuneration(s) (excluding VAT) invoiced for the relevant Agreement per year (in the event of continuing performance contracts, it shall be equal to the aggregate of the remunerations invoiced for the preceding 12 months), with a maximum of € 50,000 (in words, fifty thousand euros) per event. Arbo Unie shall not be liable for any indirect loss such as consequential loss, loss of income or profits, missed savings or loss due to business stagnation. A series of related events is considered to be a single event.

3. Any claim by the Client against Arbo Unie will lapse if the Client does not submit such claim to Arbo Unie in writing, giving reasons, within 12 calendar months after the Client established, or could reasonably have established, the facts on which the claim is based. Arbo Unie shall not be liable for any attributable breach until the Client has given Arbo Unie notice of default giving Arbo Unie a reasonable timeframe to remedy the breach, and if Arbo Unie fails to remedy the default within that timeframe.

#### Article 10, Non-attributable Breach

1. If an event of force majeure affects Arbo Unie, its obligations under the Agreement to which such force majeure relates will be suspended for as long as the force majeure situation persists. Force majeure means any situation beyond Arbo Unie's control which presents a permanent or temporary impediment to the performance of the Agreement and which cannot reasonably be attributed to Arbo Unie.
2. If the force majeure situation has lasted three months, or as soon as it is established that the force majeure situation will last longer than three months, either of the Parties will be entitled to terminate the Agreement early without having to give any notice. The Client shall then owe such part of the agreed remuneration as corresponds to the activities that have been carried out until that point.

#### Article 11, Intellectual Property

In so far as any handbook, manual, protocol, procedure or any other document prepared by Arbo Unie is protected by any intellectual property rights, such rights remain vested in Arbo Unie. If, during the term of an Agreement, the Parties make any changes to any handbook, manual, protocol, procedure or any other document prepared by Arbo Unie, or if they prepare a new handbook, manual, protocol,

procedure or any other new document, the intellectual property rights therein shall also remain vested in Arbo Unie. Where necessary, the Client shall cooperate in the transfer of any intellectual property rights it may obtain in materials developed within the scope of an Agreement, without demanding any compensation for this.

#### **Article 12, Privacy, Confidentiality and Secrecy**

- 1 Either Party shall offer the other Party all reasonable cooperation in enabling the latter to fulfil its obligations under any applicable privacy law. Arbo Unie's Services are governed by the "Reglement Bescherming Persoonsgegevens" (Personal Data Protection Regulations), as amended, a copy of which will be provided free of charge upon the Client's request.
- 2 The Parties shall treat all information, know-how, (patient) data or specifications relating to the execution of this Agreement and/or the operations of the other Party as confidential and shall not disclose the same to any third party, unless the Party from which the information originates has given written consent for this. The same goes for the content of the Agreement.
- 3 This obligation of confidentiality does not apply to any information that emerges in the public domain without violation of a secrecy clause, nor to any information already known to its recipient at the time of the receipt of the information under the Agreement, nor to any information provided by any third party without such third party violating any secrecy clause in the process. The obligation of confidentiality does not apply either if, and to the extent that, disclosure is required by law or by a binding ruling of a court or other government body or under a professional obligation. Prior to any such disclosure, however, the disclosing Party shall, to the extent this is possible, consult with the other about the form and content of the disclosure.
- 4 The Parties shall also impose the obligation of confidentiality on their employees and to all others who carry out work for them.
- 5 Upon expiration or termination of the Agreement, the obligation of confidentiality, as referred to in this Article, shall remain in force and in effect for a period of three years.

#### **Article 13, Non-acquisition of Employees**

- 1 The Client shall, during the term of the Agreement and for a period of 1 year following termination of the Agreement, not be allowed to deploy, either directly or indirectly, nor hire nor negotiate the hire of any Arbo Unie employees or any third parties deployed by Arbo Unie who are involved,

or have been involved, in the execution of the activities, except with Arbo Unie's permission.

- 2 A fine amounting to one year's gross salary prior to the violation for each employee involved, due immediately and payable by the Client to Arbo Unie, shall be imposed for each violation of Article 13 paragraph 1.

#### **Article 14, Duration and Termination of Agreement**

- 1 Agreements are entered into for the term stated in the Agreement and are, in any case, deemed to have ended upon Arbo Unie completing its Services. As for Agreements entered into for an indefinite period of time, the Parties shall be entitled to terminate these before the end of each contract year by registered letter, giving six months' notice, unless otherwise agreed in writing.
- 2 An Agreement can be dissolved by either Party by registered letter, with immediate effect and without court intervention if:
  - a) the other Party goes into voluntary or compulsory liquidation, applies for a moratorium or bankruptcy, goes bankrupt or ends up in a reasonably similar situation, including situations in which it loses control over a substantial part of its assets or ceases its activities
  - b) the other Party imputably fails to fulfil any of its obligations under the Agreement and fails to fulfil this obligation within a reasonable time period granted for it to do so
  - c) the other Party's reputation is harmed such that the other Party cannot be required to continue the relationship
- 3 Transfer of the company or a merger entered into by one of the Parties does not constitute a reason for early termination of the Agreement.

#### **Article 15, Final Provisions**

- 1 The Client is not allowed to transfer any rights and obligations arising from an Agreement to any third party, except with Arbo Unie's permission in writing; such permission is not to be unreasonably withheld by Arbo Unie.
- 2 These Standard Terms and Conditions and the provisions of the Agreement supersede any earlier agreements between the Parties. The provisions of an Agreement cannot be deviated from unless agreed in writing.
- 3 If any provision of these Standard Terms and Conditions, or of an Agreement, is invalid or declared void, the other provisions of these Standard Terms and Conditions, or of such Agreement, shall remain in full force and effect and Arbo Unie shall formulate new provisions to replace the invalid provision or the provision declared void, whereby

the purpose and intent of the invalid provision, or of the provision declared void, shall be adhered to as much as possible.

- 4 The Dutch text of these Standard Terms and Conditions shall prevail over any of its translations, either certified or otherwise.

#### **Article 16, Applicable Law and Competent Court**

- 1 Any legal relationship between Arbo Unie and the Client is governed exclusively by Dutch law.
- 2 Any disputes that may arise in connection with an Agreement, including any disputes relating to its existence or validity shall, in the first instance, be referred exclusively to the competent court in Utrecht.