

# General terms and conditions of the Netherlands Standardisation Institute (NEN)

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## Article 1: Definitions

**1.1 NEN:** The Netherlands Standardisation Institute, established and having its offices at Vlinderweg 6, (2623 AX ) Delft, the Netherlands.

**1.2 Client:** The Client to which NEN submits an offer or with which it concludes the Agreement.

**1.3 Standards products:** The standards offered by NEN, such as but not confined to the Dutch standards (in Dutch: NENs), European standards (in Dutch: ENs), international standards (in Dutch: ISOs), Dutch practical guidelines (in Dutch: NPRs), Dutch Technical Agreements (in Dutch: NTAs), Dutch preliminary standards (in Dutch: NVRs), and other publications developed for standardisation purposes (in Dutch: NIPs).

**1.4 Standards consultancy:** The issuing of advice and/or guidance on the development or application of standards.

**1.5 Services:** the services to be provided and/or performed by NEN on behalf of the Client under the Agreement, as laid down in the Agreement. Services shall be understood to include Standards Consultancy.

**1.6 Agreement(s):** an agreement between the Client and NEN to which these General Terms and Conditions apply.

**1.7 Subscription:** Agreement on the basis of which the Client subscribes to Standards Products for a period of at least one (1) year.

## Article 2: Applicability

**2.1** These General Terms and Conditions apply to all Agreements and offers by NEN. Deviations from the General Terms and Conditions are valid only if expressly agreed in writing between the parties.

**2.2** Unless agreed otherwise in the Agreement, other general terms and conditions do not apply to the Agreement.

**2.3** If one or more provisions in these General Terms and Conditions are invalid or annulled, the remaining provisions shall continue to apply in full. NEN and the Client will then consult in order to agree new provisions to replace the invalid or annulled provisions, whereby the aim and purport of the original provision will be taken into consideration insofar as possible.

## Article 3: Formation of the Agreement

**3.1** The Agreement shall be concluded by means of the order placed by the Client on the NEN website, by telephone or in writing. With regards to Clients acting in the exercise of their profession or business the applicability of Articles 6:227b and 6:227c of the Dutch Civil Code is expressly excluded.

**3.2** Contrary to Article 3.1 Agreements concerning Standards Consultancy shall only come into effect by means of written confirmation by NEN or at such earlier point as NEN first proceeds to implementation.

**3.3** All offers by NEN are without obligation and, unless expressly agreed otherwise in writing, are valid for a period of 30 days.

**3.4** All agreements, amendments and/or commitments made after the formation of the Agreement shall be binding on NEN only if confirmed in writing by NEN.

**3.5** Upon and after entering into the Agreement NEN is authorised to seek security from the Client in order to secure compliance with its obligations under the Agreement in the form of a bank guarantee or reasonably equivalent security. NEN is authorised, until such security has been provided, to suspend its obligations vis-à-vis the Client.

**3.6** NEN is authorised to contract out all or part of its obligations vis-à-vis the Client.

**3.7** A composite quotation will not oblige NEN to perform a part of the Agreement at the corresponding share of the quoted price.

## Article 4: Amendment of Standards Consultancy Agreement

**4.1.** If during the implementation of any Standards Consultancy Agreement it becomes evident that it is necessary for its proper implementation, that the conditions under which the Agreement was concluded shall be wholly or partially amended or supplemented, the parties will enter into relevant negotiations in good time and seek to amend the Agreement correspondingly in mutual consultation.

**4.2.** In so far as the parties fail to reach agreement despite the negotiations referred to in the previous clause, NEN is authorised to amend the Agreement unilaterally if it has such an interest in that amendment that the Client's interest adversely affected by that amendment must yield.

**4.3.** If the parties agree that the Agreement should be amended or supplemented, this may affect the date by which implementation is to be completed. NEN will inform the Client about this.

## Article 5: Prices

**5.1** Any prices quoted by NEN are exclusive of VAT, other government levies and any carriage and administration expenses, unless expressly indicated otherwise by NEN in writing.

**5.2** The Parties may upon the formation of the Agreement agree a fixed fee in relation to the provision of Services. If no fixed fee is agreed, the fee will be determined on the basis of the hours actually spent. The fee will be calculated according to the normal NEN hourly rates applying during the period in which the activities are performed, unless a different hourly rate is agreed.

**5.3** Upon the expiry of a period of three (3) months from the formation of the Agreement NEN shall be authorised to pass on to the Client any price increases resulting in a higher cost price, such as (but not limited to) any increase in wages and social security charges,

where such price increases occur between the offer date and the completion of the Services.

**5.4** Any additional work will be advised in writing to the Client at the earliest possible stage, and at any event before such work is carried out. The Client will be deemed to agree to the performance of the additional work and the cost thereof, if it has not notified NEN to the contrary in writing within seven (7) working days of the aforementioned notification.

#### **Article 6: Delivery**

**6.1** The Standards Products shown in the NEN catalogue and on the NEN website will normally be available from stock. Upon receipt of the order or (where applicable) prepayment the delivery time for these publications in hardcopy will, barring special circumstances, be two to four working days.

**6.2** Foreign Standards Products will not be available from stock. Depending on the organisation from which they have to be ordered, allowance should be made for a delivery period for hardcopy versions of between one and four weeks.

**6.3** The delivery times as referred to in Articles 6.1 and 6.2 are purely indicative and are not therefore firm deadlines.

**6.4** If the performance of the Services involves the performance activities by NEN or third parties engaged by NEN at the Client's premises or another location designated by the Client (other than NEN's own location), the Client shall be responsible at its own account and risk for the facilities reasonably required for those employees.

#### **Article 7: Complaints**

**7.1** Complaints concerning deficiencies in the Standards Products and/or Services provided must be submitted to NEN within ten (10) working days from delivery by registered letter to the address specified in Article 1.1 (the notification should contain a detailed description of the shortcoming(s), so that NEN is able to respond properly), in the absence of which any right on the part of the Client shall lapse.

**7.2** Delivered Standards Products cannot be returned if delivery has been in accordance with the order.

**7.3** If a complaint that has been submitted in accordance with Article 7.1 is considered by NEN to be well-founded, NEN will be given the opportunity to rectify or redeliver the rejected Standards Products or to perform the Services in accordance with the Agreement, unless this has by that stage become demonstrably meaningless for the Client. The latter needs to be notified by the Client in writing. If the subsequent performance of the agreed Services is no longer possible or appropriate NEN shall be liable within the limits of Article 11 only.

**7.4** Any complaints within the meaning of Article 7.1 shall be without prejudice to the Client's payment obligations.

#### **Article 8: Payment**

**8.1** Unless agreed otherwise, NEN shall invoice monthly in arrears.

**8.2** Payment shall be made in the currency in which the price was agreed and/or invoiced, unless agreed otherwise in writing. Any exchange differences shall be for the account of the Client. If invoices are drawn up in another currency, NEN will state the exchange rate on the invoice (this for administrative purposes).

**8.3** If the amount claimable by NEN from the Client on the basis of each invoice is not paid promptly and in full to NEN within 15 days of invoice date by or on behalf of the Client, the Client shall be liable to pay interest of 1% a month on the outstanding amount commencing on the invoice date in question, whereby a part of a month shall be counted as a full month, all this without requiring any warning, summons or notice of default to the Client from NEN.

**8.4** The Client shall not be permitted to set off an amount owing to NEN against any claim on NEN.

**8.5** The Client shall be deemed to have recognised the invoice as correct if it has not objected to it in writing within ten (10) working days from invoice date.

#### **Article 9: Collection costs**

Without prejudice to the provisions in Article 8.3, the Client shall bear any costs arising from or relating to the effectuation of NEN's rights arising from or in relation to the Agreement(s) concluded with the Client (including any costs arising from or related to the legal and/or extra legal collection of any invoiced amount not paid on time or in full or arising on other grounds), without requirement for any warning, summons or notice of default by NEN. This also applies to the costs of any warnings, summonses or notices of default that are not charged to the Client as the losing party in the event of any legal proceedings, subject to a minimum of EUR 250 per time.

#### **Article 10: Intellectual property rights**

**10.1** NEN is and remains the holder of any intellectual property rights bearing on the Standards Products. The Client shall not be permitted to duplicate and/or publish the Standards Products without the prior written consent of NEN.

**10.2** NEN is and remains the holder of intellectual property rights that are the result of Standards Consultancy. The Client has the right to use the results obtained under the relevant Agreement for its own use and within the intended purpose of the Agreement.

**10.3** The total or partial inclusion of Standards Products in a book, publication, catalogue, website, printed advertising matter, computer software, microfilm material or any other type of information carrier shall, with the exception of any categories laid down by law, require the prior written consent of NEN. NEN shall be justified in demanding any reasonable compensation to be determined by NEN in this regard.

**10.4** ISO, IEC, ITU, CEN, CENELEC, ETSI and other national standardisation institutes have granted NEN the right to promote and/or exploit the intellectual property rights bearing on the Standards Products of the aforementioned parties.

**10.5** NEN guarantees that the Standards Products delivered by it will as such not infringe Dutch copyright, model rights or other industrial or intellectual property rights of third parties. If nevertheless it is determined by a Dutch court under a ruling not open to further appeal that any part of that which has been delivered by NEN does infringe the rights of a third party as referred to above, NEN will after consultation with the Client choose to either (i) replace the Standards Products in question by Standards Products that do not infringe the right concerned or (ii) acquire a relevant licence right or (iii) take back the Standards Products in question in return for repayment of the price paid, without being liable to any further compensation.

The Client shall however lose the right to the recovery measures as defined in the previous sentence if it has failed to advise NEN fully and in time of any third-party claims as referred to above in this article, as a result of which NEN is or was not or not sufficiently in a position to defend its rights properly and/or to limit its loss.

#### **Article 11: Liability**

**11.1** Liability on the part of NEN on account of any breach of an Agreement arises only if the Client has served notice of default on NEN timely in accordance with the provisions in Article 7.1, giving NEN the opportunity to rectify the shortcoming within a reasonable period of time and NEN has remained in breach of its obligations upon the expiry of that period. NEN will at all times have the remedy to undo the loss sustained by the Client in a manner suitable to itself.

**11.2** NEN's total liability on account of a failure to comply with the Agreement is limited per loss-causing event to compensation of

- a) for Standards Consultancy: the amount charged by NEN to the Client (excl. VAT) under the Agreement in the 12 months prior to the loss-causing event;
- b) for Standards Products and other Services: the amount charged by NEN to the Client for the Standards Product or Service in question (excl. VAT);

whereby a series of events is regarded as a single event, but in any case up to a maximum of the amount payable in the case in question under NEN's (professional) indemnity insurance.

**11.3** NEN shall in no circumstances be liable for indirect loss on the part of the Client related in any way to or caused by an error in the performance of the Services by NEN, whereby indirect loss shall include but not be limited to consequential loss, lost earnings, lost savings and loss due to business interruption.

**11.4** The Client holds NEN harmless against any and all claims by third parties relating either directly or indirectly to the performance of the Agreement.

**11.5** NEN is unable to guarantee the Client that Standards Products supplied to NEN by third parties are free of printing or other errors. NEN is accordingly not liable towards the Client for any loss as a result of errors within the meaning of the previous sentence.

**11.6** The dispatch of orders of Standards Products will be handled by NEN with the greatest possible care and will take place after careful inspection. After dispatch NEN is not however liable for any loss because orders have gone astray or have been damaged.

#### **Article 12: Contract term**

**12.1** Unless determined otherwise by the nature of the Agreement or expressly agreed otherwise in writing, Agreements are concluded for an indefinite period.

**12.2** Unless agreed otherwise in writing, agreements for an indefinite period may be cancelled at any time by the Parties subject to a period of notice of three (3) months. If however the Agreement has been entered into for a limited period or the Parties intend the Agreement to end upon completion of an order, the Agreement cannot be

prematurely terminated, unless agreed otherwise in writing.

**12.3** Subscriptions are valid for (at least) one year (the "Initial period"). Upon expiry of the Initial period the Agreements within the meaning of the previous sentence will be tacitly renewed for periods of one (1) year at a time, unless cancelled by either of the Parties towards the end of the term subject to a notice period of three (3) months.

**12.4** Cancellation must be announced to the other Party by registered letter.

**12.5** The applicability of Articles 7:408 and 7:411 of the Dutch Civil Code is expressly excluded.

#### **Article 13: Termination**

**13.1** NEN is authorised to terminate the Agreement with immediate effect, in whole or in part, without legal intervention if the Client is declared bankrupt, applies for a (provisional) moratorium of payment, or loses disposal over its assets or parts thereof as a result of attachment, is being placed in curatorship or some other reason, or proceeds to the cessation or transfer of its business or a substantial element thereof (including the transfer of its company into a prospective already existing company) and if the Client decides to amend the objects of its business.

**13.2** In addition NEN is authorised to terminate the Agreement with immediate effect without being liable to pay compensation if circumstances occur of such a nature that compliance with the Agreement is impossible or could no longer be demanded on the basis of reasonableness and fairness or if other circumstances arise of such a nature that unmodified maintenance of the Agreement cannot reasonably be demanded of NEN.

#### **Article 14: Disputes**

**14.1** Any disputes arising from the Agreement(s) to which these General Terms and Conditions apply or in response to other, related Agreements will in the first instance exclusively be submitted to the District Court in The Hague. [Disputes with consumers within the meaning of Article 7:5 of the Dutch Civil Code will be submitted to the competent court of the district where the consumer is resident.]

**14.2** The parties will not turn to the courts until they have made very effort to resolve a dispute in constructive consultation.

#### **Article 15: Applicable law**

Each Agreement between NEN and the Client shall be solely subject to Dutch law.

