

## General Terms And Conditions Of Berculo Advocaten and its associated attorneys

Version 2021

The partnership Berculo Advocaten, organised under the laws of the Netherlands, has its offices in (3581BD) Utrecht, the Netherlands at Maliesingel no. 17 and is registered with the trade register of the Dutch Chamber of Commerce under number 30276104. The VAT-number is NL 8063.837.68.B.01.

You can reach us by e-mail at [secretariaat@berculo.nl](mailto:secretariaat@berculo.nl). Our phone number is +31(0)30-231 80 60 and our fax number is +31(0)30-231 24 92.

These General Terms and Conditions are also available at <https://berculo.nl/en/general-terms-and-conditions/>.

### Art. 1. Definitions

The following definitions apply:

- 1.1 Berculo Advocaten: the partnership (in Dutch: ‘*Maatschap*’) Berculo Advocaten based in Utrecht, The Netherlands.
- 1.2 Client: the counterparty to the Engagement Agreement (“you”).
- 1.3 Contractor: one of the members of the partnership Berculo Advocaten, being a law firm organised as either a sole proprietorship or a private company.
- 1.4 Conditions: these General Terms and Conditions.
- 1.5 DCC: The Dutch Civil code (in Dutch: ‘*Burgerlijk Wetboek*’)
- 1.6 Engagement agreement: any agreement between the Client and the Contractor for the provision of legal services, all acts required for the conclusion thereof, all acts for the execution thereof, all legal obligations arising therefrom and including any later change or addition thereto.

### Art. 2. Berculo Advocaten

- 2.1 Berculo Advocaten is a partnership (in Dutch: ‘*Maatschap*’) and is a co-operative structure as meant in chapter 5.2 of the Legal Profession Bye-law (in Dutch: ‘*Verordening op de Advocatuur*’). The members of Berculo Advocaten work together under this common name.
- 2.2 A list of all attorneys connected to Berculo Advocaten is available at <https://berculo.nl/en/lawyers/>. The list of registered legal practice areas as meant in article 6.32, second paragraph of the Legal Profession Bye-law is available at <https://berculo.nl/en/general-terms-and-conditions/>. The attorneys associated with Berculo Advocaten are all registered with the Netherlands Bar, Prinses Beatrixlaan 5, 2595 AK Den Haag, tel. +31(0)70- 335 35 35, [info@advocatenorde.nl](mailto:info@advocatenorde.nl).
- 2.3 A list of all members of the partnership Berculo Advocaten is available for consultation at the offices of Berculo Advocaten and will be sent free of charge at first request. The list can also be found at <https://berculo.nl/en/general-terms-and-conditions/>.
- 2.3 If you enter into an Engagement Agreement, it is not entered into with the partnership Berculo Advocaten, but only with a Contractor (who is a member of the partnership Berculo Advocaten, who provides you with legal services and who enters into the Engagement agreement with you).

### Art. 3. Applicability of the Conditions

- 3.1 These Conditions apply to all legal relationships between the Client and the Contractor, whether on the basis of the Engagement Agreement or otherwise.
- 3.2 These conditions also apply to all legal relationships between the Client and third parties (including the attorney / the natural person who performs the services) who are directly or indirectly involved in any way with the performance of the Assignment. This is a third party clause as meant in art. 6:253 DCC.
- 3.3 Deviations from or additions to these Conditions are only valid if and insofar the Contractor has accepted these in writing.

Deviations and additions are only valid for a specific Engagement Agreement.

### Art. 4. Engagement agreement

- 4.1 The Engagement Agreement is only entered into with a Contractor as the party to provide legal services. Berculo Advocaten nor the members of the partnership are not bound by the Engagement Agreement, with the exception of the (contracting) Contractor.
- 4.2 The Client hereby agrees that third parties may be used for the performance of the Assignment, regardless of whether these third parties are associated with Berculo Advocaten. The Contractor is not liable for any act or omission by these third parties, except in the event of intent or gross negligence. The authority to use third parties includes consenting on behalf on the Client to limitations of liability by these third parties.
- 4.3 Art. 7:404 and art. 7:407, par. 2 DCC do not apply to the Engagement agreement.
- 4.4 The performance of the Assignment will be solely for the benefit of the Client. Third parties cannot derive any rights or claims from the contents or results of the services provided by the Contractor. The client indemnifies the Contractor and all or the Contractor’s subordinates from all claims from third parties with regards to the Engagement Agreement, except in the event of intent or gross negligence of the Contractor.
- 4.5 If the Engagement Agreement is entered into by more than one Client, all Clients are jointly liable for all obligations arising from the Assignment.
- 4.6 A term given to the Contractor (and/or a delivery date stated by the Contractor) is not a deadline. The Contractor only first defaults on his obligations after receiving a notice with a term of at least 14 days in writing and the performance of the obligations is not completed within this term.
- 4.7 Personal data is processed in accordance with the Privacy policy of Berculo Advocaten, which can be found at <https://berculo.nl/en/privacy-policy/>.
- 4.8 Any legal services which fall under the Anti-Money Laundering and Anti-Terrorist Financing Act (in Dutch: ‘*de Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft)*’) legally requires the Contractor to - without your knowledge - collect data and, when required by law, to report any unusual transactions with the competent authorities.

### Art. 5. Office complaints procedure

- 5.1 Berculo Advocaten has a complaints procedure which has been published on <https://berculo.nl/en/complaints-procedure/> (Dutch only). The Regulations for Complaints and Disputes for the Legal Profession (‘*de Klachten- en Geschillenregeling Advocatuur*’) apply to the complaints procedure. In accordance with these procedures, complaints regarding invoices and/or the performance of the Contractor must be submitted within three months after the act or omission which has led to the complaint was discovered or could have reasonably been discovered.
- 5.2 The Contractor will provide the Client who has a complaint with the text of the applicable Office Complaints Procedure and the Regulations for the Complaints Boards for the Legal Profession at first request. The text is also available through the website [www.berculo.nl](http://www.berculo.nl).
- 5.3 Submitting a complaint is without prejudice to article 5.1 of these Conditions and does not absolve the Client of the obligations to pay invoices in a timely manner.

### Art. 6. Remuneration, office costs, disbursements and VAT

- 6.1 The Client must pay remuneration, office costs, travel costs, disbursements and VAT for provision of legal services under the Engagement Agreement. Office costs (including shipping costs, phone costs, secretarial costs, etc.) are calculated at a flat rate of 6% of the remuneration.

6.2 Unless explicitly agreed upon otherwise, the remuneration is based on the agreed upon hourly rate – and in absence thereof a fair hourly rate – and the time spent on the Assignment. The Contractor has the right to increase the hourly rate periodically, for instance in connection with a correction for inflation or if the nature of the legal services changes. Such an increase may take place during the performance of the Assignment. 6.3 If the hourly rate is increased by more than 5% at one time or within three months after the performance of the Assignment has stated, the Client may set aside the agreement for the Assignment as meant in article 6:265 DCC. This right is forfeited after the expiration of the payment term for the first invoice after the increase.

6.4 Travel costs are calculated on the basis of the number of kilometres travelled and the time travelled.

6.5 The remaining disbursements consist of the costs incurred in connection with the Assignment such as court fees, bailiff costs, courier costs, charges for extracts from public registers, travel expenses, etc.

6.6 All amounts will be increased by the applicable VAT, with the exception of untaxed costs, such as court fees.

6.7 The Contractor has the right to request an advance payment for the performance of the Assignment. Advance payments will be set off against the final invoice.

6.8 In the event of a court case you may be ordered by the court to pay the litigation costs (including costs of any witnesses and/or experts). These costs will be billed by the counter party to that case separately.

#### **Art. 7. Payment**

7.1 The Client shall pay invoices within 14 days after the invoice date without suspending payment and/or setting off payments.

7.2 When a payment period for an invoice has expired, the Client has defaulted on his obligations. From then on, the Client shall pay the interest as meant in article 6:119a DCC. If the client defaults on his obligations, he shall also pay the extrajudicial costs as defined by the Act on the standardisation of extra judicial costs (*‘Wet normering buitengerechtelijke incassokosten’*) and the corresponding Decree. If the Client defaults on his obligations, all claims are directly due and the Contractor may suspend the performance of the Assignment. 7.3 If there are grounds to assume the Client will not meet his obligations, the Client shall at first request provide (additional) security in any form the Contractor chooses for all claims the Contractor may or will have. The Contractor may suspend the performance of the Assignment as long as adequate security has not been provided.

7.4 Payment by or for the Client serves to settle in the following order (a) extrajudicial costs, (b) court costs, (c) due interest, (d) future interest, (e) disbursements and finally, (f) the remuneration.

#### **Art. 8. Liability**

8.1 The Contractor will endeavour to perform the services related to the Assignment with due care in the best possible manner.

8.2 The Client knows and accepts that the electronical exchange of data and information with the Contractor may have the result that it cannot be excluded with absolute certainty that unauthorised persons may have access to the electronically exchanged data and information.

8.3 The Contractor is not liable for any damages which are the result of suspending the performance of the Assignment.

8.4 Any liability of the Contractor and/or the third parties mentioned in article 3.2 towards the Client which is the result of – or is related to – (1) the performance of the Assignment; and/or (2) the practise of the profession of attorney; is limited to the amount that in the relevant case is paid by the professional liability insurance, including the deductible excess. The insurance has been taken out with Amlin Insurance SE, Van Heuven Goedhartlaan 939, 1181 LD, Amstelveen, The Netherlands and is for the amount per claim for a maximum of € 5,000,000 and covers the geographical area of the European Economic Area and

Switzerland. A copy of the insurance policy will be sent to the Client at first request. If for any reason the professional liability insurance does not provide coverage, the liability is limited to the amount received under the agreement for the Assignment in the relevant calendar year, excluding disbursements and VAT and up to a maximum of € 25.000,-.

#### **Art. 9. Archiving**

The Contractor will archive and save the documentation related to closed cases for a period of 5 years. This period starts on the date on which the Contractor has informed the Client in writing that the case will be closed, or (if this occurs first) one year after the date on the final invoice of the Contractor with regards to the Assignment. After the period of 5 years has ended, the Contractor may destroy all documents related to the case.

#### **Art. 10. Miscellaneous**

10.1 The Client who acts in a professional capacity of any sort, does not have the right to (extrajudicially) set aside (*‘ontbinden’*, as meant in article 6:265 DCC) or terminate (*‘vernietigen’* as meant in article 3:49 DCC) these Conditions.

10.2 Dutch law applies to all legal relationship with the Client, whether these relationships are the result of the Assignment or otherwise.

10.3 All disputes (including disputes regarding invoices) with regards to the conclusion of the agreement for the Assignment and/or the performance of our services up to € 10.000,- including VAT are adjudicated in accordance with the Complaints Boards for the Legal Profession Procedure (*‘Reglement Geschillencommissie Advocatuur’*). The Regulations have been published at <https://www.degeschillencommissie.nl/wp-content/uploads/adv-reglement.pdf> (Dutch only). At first request, the Contractor will provide a copy of these Regulations to the Client. If the dispute is related to an Assignment by a Client acting within their trade, business, craft or profession, the Regulations determines the dispute will be settled by arbitration. If the dispute is related to an Assignment by a Client acting outside their trade, business, craft or profession, the Regulation determines (1) the disputed will be settled by binding advice, unless the Client starts legal procedures at the competent court within one month after the complaint has been settled; and (2) that in the event of the collection of a claim on the Client, only a binding advice will be given if the Client deposits the contested amount on the checking account of the Complaints Board. If the amount is not deposited, the arbitration for the collection of claims applies.

10.4 All disputes where the Complaints Board for the Legal Profession does not have jurisdiction and which are the result of legal relationships with the Client, will be adjudicated by the competent court of Midden- Nederland, location Utrecht.