

General Terms and Conditions for the execution of interim management assignments by Kruger Interim Management B.V. for principals

Article 1. General

1. Kruger Interim Management, hereinafter referred to as 'Kruger', is a private limited company based in Rotterdam, registered with the Chamber of Commerce in Rotterdam under number 24446914.
2. In these General Conditions the following terms have the following meaning:
 - Assignment: a contract of assignment as referred to in Article 7:400 et seq. Dutch Civil Code whereby the one party, Kruger, undertakes with regard to the other party, the Principal, to execute an Interim Management Assignment.
 - Principal: the (legal) person who has given Kruger the Assignment and within whose company or organisation the Worker executes the interim management assignment.
 - Interim Manager: the (natural) person who executes the Assignment with the organisation of the Principal.
 - Parties: the Principal and Kruger.
 - Contract Period: the agreed duration of the Assignment.
 - Plan of Approach: the intended work activities and the conditions subject to which they are to be executed, the realisation or adjustment of the Assignment, as well as the planning of the execution of the Assignment.
 - Interim Reporting: reporting by the Worker regarding the course of the Assignment and any changes to the Plan of Approach.
 - Loss: any form of damage, financial loss and other disadvantage, such as but not exclusively loss suffered, lost profit, direct loss, indirect loss, (in) tangible loss and (additional) costs.
3. Companies affiliated with Kruger will only be bound by the Assignment if and insofar as this has been explicitly agreed in writing with the Principal, Kruger and the company in question.

Article 2. Applicability of these conditions and making of the contract

1. These General Conditions apply to all offers of and Assignments granted to Kruger.
2. Assignments are effected in writing by signing of the relevant contract of Assignment by the Parties before the start of the execution thereof, setting out at least: a description of the work activities to be carried out, the expected duration of those work activities work and the rates per time unit. The expected duration of the work activities set out in the Assignment encompasses an estimate based on insights at the time the Assignment was made which does not entail a limitation of the amount owing with regard to the work activities.
3. Assignments are furthermore effected by the physical start of the work activities by the Worker for Principal.
4. The Assignment is not entered into because of a specific person who works together with Kruger or practices a profession in the employ of Kruger. Application of Article 7:404 and 407(2) Dutch Civil Code is therefore excluded.

Article 3: Execution of the Assignment

1. The Assignment will be executed to the best knowledge and ability and due skill by Kruger and/or the Worker and/or third parties engaged by them. The Principal will see to it that the work environment of the Worker meets the statutory requirements for working conditions.
2. The Worker will be replaced if Kruger deems such in the interest of the execution of the Assignment. In this case there will be prior consultation by Kruger with the Principal and the Worker.
3. If and insofar as proper execution of the Assignment requires such, Kruger has the right to have certain work activities carried out by third parties in consultation with the Principal. Kruger is in no way liable for Loss arising due to an act or an omission of the third parties engaged by it or by the Worker.
4. The Principal is bound to make all information and documents which the Worker in his opinion needs for the proper execution of the assignment available to the Worker or to cooperate in seeing to it that the Worker can obtain the information he deems necessary.
5. Kruger is not liable for Loss of any nature whatsoever, arising because Kruger or the Worker has acted on the basis of inaccurate and/or incomplete information furnished by the Contractor.
6. The Worker will only be entitled to represent his Principal, after written agreement has been reached between the Principal and Kruger regarding the limits and other modalities of the authorisation, the work activities to be carried out in this respect and the fee owed therefore to Kruger.
7. Upon the termination of the Assignment, the Principal must terminate the powers (of representation) granted to the Worker.
8. In a tripartite consultation at the request of one of the parties whereby the Principal, Kruger and the Worker are always present or represented, the Worker will report on the progress of the Assignment.
9. The Worker, the Principal and Kruger will on the request of Kruger or the Principal consult in the following situations:
 - if there is an essential change in the character, the nature, the contents or the scope of the Assignment;
 - if a difference of opinion is noted regarding the method of executing the Assignment.
10. The Principal is aware that in the cases below the Worker will immediately inform Kruger:
 - if it is determined or suspected that fraud is being or has been committed;
 - funds for illegal cash payments are found and/or salary payments and the like are effected outside of the payroll administration and/or expenses are paid out without there being any actual costs;
 - if elementary control instruments are lacking in automated systems;
 - if the Worker is forced to act contrary to applicable law, the articles of association of the Principal or the professional ethics applicable to him;
 - if there is breach of other statutory obligations;
 - if there are (important) developments which can essentially influence the business activities of the Principal;
 - if within or by the Principal there is deviation from the generally accepted standards of a financial, legal, fiscal and/or socio-economic nature which apply to normal businesses which are properly managed.
11. Kruger is available as a sounding board for the Principal and the Worker and where necessary ensures the availability of know-how for the quality of the execution of the Assignment.
12. The Principal does not impose actions on the Worker which are contrary to the applicable law, the articles of association of the Principal or Kruger, the decisions and guidelines of the bodies of the Principal or Kruger and/or the professional ethics applicable to the Worker.

Article 4: Extension, termination and cancellation

1. The Assignment legally ends upon the end of the agreed term, unless the Parties decide to extend the Assignment no later than two weeks before the end of the term. The extended Assignment will be continued on the same conditions during the period agreed between the Parties, unless the Parties deviate therefrom in writing.

Each of the Parties is entitled to prior termination of the Assignment during the Contract Period for reasons of his own, subject to a notice period of five working days. Working days means Monday through Friday of every week with the exception of official holidays. During the notice period the agreed fee remains owed by the Principal. Only if grounds arise which would justify at its discretion (Dutch civil code Book 7 677-679) had there been a contract between the Principal and Kruger, will the Principal be entitled to observe a shorter notice period. In such case the fee to be paid by the Principal can reasonably be determined by Kruger with a maximum of five days' fee.
2. In deviation from the provisions of the preceding paragraphs each of the Parties can, for reasons of its own and without observing a notice period, prematurely terminate the Assignment in the period between the starting date of the Assignment and 30 days thereafter.
3. In deviation from the previous articles each of the Parties can prematurely terminate the Assignment with immediate effect, if:

- the other party is declared bankrupt, is granted a moratorium on payment or the statutory debt rescheduling scheme is declared to apply to him/it or the other party is in liquidation;
 - there is prejudgment or enforced attachment of a substantial part of the personal and/or real estate or other property of the other party.
4. Kruger has the right to prematurely terminate the Assignment with immediate effect in case of one the circumstances set out in Article 3.10 and/or in the event the Principal acts contrary to Article 3.12.
 5. Each of the Parties has the right to cancel the Assignment with immediate effect and without judicial intervention if the other party essentially fails in the performance of its obligations and, after having received a written demand in this respect, does not perform these obligations within five working days after this reminder is sent.
 6. If one of the Parties terminates or cancels the Assignment, on the basis of Article 4 of these General Conditions, this party is not bound to pay any compensation to the non-terminating party.
 7. Termination or cancellation as referred to in Article 4 of these General Conditions must always be effected in writing.

Article 5: Fees

1. The fee which the Principal owes Kruger for the work and costs made will be recorded in the Assignment. Kruger will see to it that a time record is kept, which serves as the basis for the calculation of the fee owing by the Principal in this respect. The administration of Kruger will provide evidence with regard to the determination of the fee owed for the Assignment.
2. Kruger invoices per week. Payment of the invoice amount must be made within 10 working days after sending the invoice. If the Principal does not pay the invoice within the aforementioned term, he will be legally in default and he is bound to pay the statutory commercial interest pursuant to Article 6:119A Dutch Civil Code over the outstanding amount.
3. Kruger is entitled during the execution of the Assignment to invoice on the basis of advance invoices, and/or demand additional security of the Principal.
4. In the case of liquidation, bankruptcy, applicability of the statutory debt rescheduling scheme or moratorium on payment of the Principal, the obligations of the Principal will be immediately due.
5. Payments made by the Principal will in the first place always be allocated payment of all interest and costs owed, in the second place to due invoices which are outstanding the longest. The Principal will not be entitled to claim suspension of his obligations or discount or set-off of his debt to Kruger in respect of any claim on Kruger.
6. All judicial and extrajudicial (collection) costs reasonably made, which Kruger makes as a result of the non-performance by the Principal of service payment obligations, will be charged to the Principal, with a minimum of 15% of the outstanding claim.
7. If the payment conduct of the Principal in the opinion of Kruger gives rise to such and/or the Principal refuses to give the security demanded by Kruger, the Principal will be in default without Kruger being bound to give the Principal notice of default in this respect and Kruger, without prejudice to its other rights, is entitled to suspend or cancel the further execution of the Assignment immediately and without prior warning. Everything the Principal owes Kruger under any heading whatsoever will be immediately due in such case.
8. The Principal and Kruger hereby agree with each other that Kruger will always be entitled to set off all debts which it owes to the Principal under whatever heading against claims which it or any company affiliated with it may at any time have on the Principal under whatever heading, regardless of whether these claims are due or (un)conditional. As a result of the set-off of these debts and claims, said debts or claims will be cancelled to their common amount. The companies affiliated with Kruger include Kruger Business Consultants, Kruger Executive Search and Kruger Corporate Finance and furthermore all companies which are connected with Kruger in a group as referred to in Article 2:24b Dutch Civil Code.

Article 6: Liability

1. Kruger is bound to take reasonable effort to ensure that the Worker will do everything that can be expected of him as a reasonably acting and reasonably skilled interim-manager to perform the Assignment.
2. Only obligations of endeavour ensue from the Assignment for Kruger. Kruger therefore does not give any guarantee with regard to the results of the Assignment.
3. Kruger is not liable to the Principal for Loss suffered by the Principal and/or third parties as a result of or in connection with any shortcoming in the performance of Kruger obligations under the Assignment or any activity or action or any omission by the Worker, regardless of whether the claim for compensation is based on the Assignment, wrongful act or any other basis. The limitation of liability laid down in this paragraph does not apply if the Loss is attributable to intent or wilful misconduct of Kruger.
4. Notwithstanding the provisions in the preceding paragraph of this article and without prejudice to the liability in the case of intent or wilful misconduct of Kruger, should any liability exist, this liability of Kruger in any event extends no further than the amount that is charged as a fee to the Principal over the last six months that the Assignment lasted. If the Assignment's term is less than six months, when calculating the maximum amount said shorter term will be the basis of the calculation.
5. The Principal is bound to indemnify Kruger and the Worker with regard to all claims of third parties connected with the Assignment which they wish to enforce in respect of Kruger and/or the Worker and all costs which Kruger and/or the Worker make in connection with the defence against such claim, including the reasonable costs of legal assistance (both judicially and extrajudicially). The obligation laid down in this paragraph does not apply if the Loss is due to intent or wilful misconduct of Kruger or insofar as the claim relates to him, the Worker.
6. The Principal indemnifies Kruger and the Worker against all claims for compensation arising due to actions of persons who (if the Worker has a seat on a managerial body) hold a seat on the same administrative bodies of the Principal next to the Worker.
7. Notwithstanding the other provisions of this Article 6, Kruger, if when performing the Assignment it makes use of the services of a Worker who does not possess a VAR statement, is liable for the Loss which the Principal suffers in such case, but only insofar as it is comprised of employee insurance premiums owed by the Worker, and salary tax on behalf of the Worker and insofar as the relevant premiums and taxes have actually been paid by the Principal to the Receiver of Taxes.
8. Intent or wilful misconduct as referred to in these conditions only means the intent or wilful misconduct of the bodies or managerial staff of Kruger (including supervising subordinates), not those of the Worker.

Article 7: Force majeure

1. Force majeure on the part of Kruger means circumstances which hinder or delay the performance of an obligation of Kruger under the heading of the Assignment and which arise beyond the reasonable control of Kruger, such as but not exclusively work stoppage, strikes, illness and any delay on the part of the Worker, regardless of whether or not these arose outside of his reasonable control.
2. The Principal will at all times, including in the event of force majeure with regard to the work carried out under the Assignment pay fees which have become owing to Kruger. If Kruger has already partly performed its obligations upon the arising of the force majeure, or can only perform its obligations in part, it is entitled to separately invoice the part already executed or which can be executed and the Principal is bound to pay this invoice – without any right of discount, suspension or set-off – as if it were an individual contract.

Article 8: Confidentiality, non-competition and personal data

1. Each of the Parties shall be obliged to uphold the confidentiality of the confidential information of the other Party to which it may have access in any way, during the term of the Assignment and a period of five years after the term of the Assignment. This confidentiality obligation shall not apply if (1) the information was already in the public domain at the time when the party to which the confidentiality obligation applies became aware of it, without there being any breach of any confidentiality obligation imposed on a third party in this respect, and (2) if a party is bound by legal obligations to disclose the confidential information known to it. Confidential information includes all information of one of the parties to the Order insofar as it relates to the company of that party, such as, but not limited to,

company data, know-how, commercial information concerning customers, strategies and pricing. Confidential information regarding the Service Provider is deemed to be confidential information of Kruger for the purposes of this article.

2. Without prior written permission from Kruger, the Principal - in the context of this clause, the Principal is also understood to mean the persons, legal entities and enterprises affiliated with the Principal - is not permitted, during the term of the Assignment as well as for a period of eighteen months after the end thereof, to enter into a direct or indirect contractual relationship, by whatever name, with the Worker, his replacement, or with the persons and/or third parties engaged by the Worker in the context of the Assignment in question.
3. If, after completion of the Assignment, the Principal or one of its affiliated persons, legal entities or enterprises wishes to enter into a direct contractual relationship with the Worker, his replacement or with the persons and/or third parties engaged by the Worker in the context of the Assignment in question before the eighteen-month period mentioned in paragraph 2 of this article has lapsed, the Principal shall inform Kruger thereof in writing and declare its willingness to pay a recruitment and selection fee to Kruger. Principal and Kruger shall then consult with each other about the amount and conditions of the recruitment and selection fee to be paid by Principal to Kruger. If the parties reach agreement in this regard, this agreement will be recorded in an agreement to be signed by Client and Kruger. Only after this agreement has been signed and the agreed recruitment and selection fee has been received by Kruger, is the Principal entitled to enter into a direct contractual relationship with the Worker.
4. Kruger shall provide the necessary personal data of the Worker to the Principal if and insofar as this is required for entering into and/or executing the Assignment. In this context, the Worker can also supply personal data to the Principal itself. The Principal shall receive and process these personal data as the party responsible for processing as referred to in the General Data Protection Regulation (AVG). The Principal guarantees that it will process the personal data in accordance with the AVG. This means, among other things, that if necessary the Principal shall request permission from the Worker to process the personal data for purposes other than the conclusion and/or execution of the Assignment. Principal indemnify and hold Kruger harmless against costs, damage and claims by third parties in connection with a breach of the GDPR and/or other applicable privacy laws and regulations relating to personal data.

Article 9: Fine

If Principal fails to comply with the obligations resulting from Article 8.2, he shall be in default towards Kruger without any notice of default being required, and shall forfeit to Kruger an immediately payable fine of € 15,000.00 for each failure to comply, plus € 500.00 for each day or part thereof that the failure continues, without prejudice to Kruger's right to claim compensation and/or fulfilment and/or to terminate or dissolve the Order.

Article 10: Final provisions of these General Conditions

1. Deviation from these General Conditions is only possible by written agreement.
2. Every Assignment between the Principal and Kruger is governed by Dutch law.
3. The Parties agree with regard to all disputes that they will at first instance be submitted to the competent court in Rotterdam.