

# Wizenoze TERMS & CONDITIONS

## 1 Wizenoze Structure

- 1.1 **Wizenoze Holding B.V.** – holding company
- 1.2 **Wizenoze Benelux B.V.** – operational entity for the Benelux (Belgium, Luxembourg, Netherlands) region
- 1.3 **Wizenoze Limited** – operational entity for the United Kingdom region
- 1.4 **Wizenoze India Private Limited** – operational entity for the India region

## 2 Applicability

- 2.1 The terms and conditions are applicable to all special offers, quotes, activities and (additional) agreements entered into by one of the private limited companies outlined in Article 1 (hereinafter referred to as: Wizenoze) and a Client (hereinafter referred to as: the “Client”) to the extent that the parties decide not to deviate from these terms and conditions in writing.
- 2.2 For the purpose of these terms and conditions, the Client will be understood to mean: every (legal) person who enters into an agreement with Wizenoze or wishes to do so and their legal successors.
- 2.3 Wizenoze will perform any activities related to the execution of a contract independently. The Client will never be deemed an employer.

## 3 Quotes

- 3.1 All quotes submitted by Wizenoze, regardless of their form, are non-committal unless stated otherwise. A quote will remain valid for a period of 30 days unless otherwise specified in the quote. Quotes may be retracted for a period of 5 working days following the receipt of acceptance by the Client.
- 3.2 Quotes submitted by Wizenoze are based on information received from the Client. The Client is responsible for the correctness and completeness of this information and guarantees that, to the best of their knowledge, all essential information necessary for the creation and execution of the activities has been made available.
- 3.3 The agreement for an assignment is created by means of the Client accepting the quote submitted by Wizenoze in writing.
- 3.4 The scope of the assignment is limited to that which has been listed on the quote.

## 4 The provision of information, staff, equipment and workspace by the Client

- 4.1 The Client will provide Wizenoze with all the pertinent documentation and information necessary for the purpose of the correct and timely execution of the assignment. This information will be made available in a timely fashion.
- 4.2 The above also applies to making staff from the Client’s organisation available to Wizenoze for the purpose of

executing the assignment.

- 4.3 The Client will also make a workspace available to Wizenoze free of charge if Wizenoze requests this. This area should feature a phone connection and, if desired, a fax and/or Internet connection. The Client is responsible for the use and the application of the equipment, software and/or the services provided by Wizenoze at their location.

- 4.4 All software, materials or data on storage devices which will be made available by the Client, if this has been agreed to, need to meet the specifications required for the execution of the activities.

- 4.5 Wizenoze retains the right to suspend the execution of the agreement and to submit a claim for expenses incurred, in accordance with her usual tariffs, if data necessary for the execution of the assignment is not made available in a timely fashion or in accordance with the agreement reached.

## 5 The execution of the assignment

- 5.1 Wizenoze is obliged to execute the agreed assignment to the best of their ability and using their best judgement. An agreement has not been reached regarding a result which will be achieved.
- 5.2 Wizenoze will execute the activities at the place and the time agreed to in the quote. Wizenoze will determine this time in accordance with the nature of the activities to be performed if the time and place have not been agreed to in writing.
- 5.3 Time in performance of the assignment shall not be of the essence. A timeframe for the execution of the activities which is presented to the Client by Wizenoze should be deemed to be an estimate and may vary from time to time. The agreement cannot be terminated by the Client due to this date not being met. The parties shall use their reasonable endeavours to consult with each other about extending the timeframe during which the activities will be executed if it becomes clear that Wizenoze will not be able to complete the assignment within the estimated timeframe. The Client is not entitled to damages for the estimated timeframe not being met.
- 5.4 Wizenoze shall use its sole discretion to employ any third party to assist it in performance of the assignment and this agreement.

## 6 Staff

In order to protect the confidential information and business connections of Wizenoze to which the Client has access, the Client covenants with Wizenoze that it shall not, for a period of one year from the date of termination of this agreement, whether directly or indirectly on their own behalf or on behalf of, or in conjunction with, any firm, company or person, offer to employ or engage or otherwise solicit or entice away any employee of Wizenoze.

## 7 Prices

- 7.1 All prices and/or tariffs quoted by Wizenoze are excluding VAT unless explicitly stated otherwise.

- 7.2 The tariffs and cost projections which are based on them are listed in the written confirmation of the assignment. This confirmation also states what is included in the price and what will be subject to a surcharge.
- 7.3 Costs resulting from the use of a third party and costs resulting from creation, use and/or purchase of items for the purpose of executing the assignment will never be included in the quote submitted by Wizenoze unless explicitly agreed to otherwise.
- 7.4 Wizenoze retains the right to change tariffs and to raise the price they charge the Client during the execution of the agreement in the event that these costs are related to a wage increase or increases in other costs. We may notify the Client of such increases in writing.

## **8 Invoicing and payment**

- 8.1 All invoices should be paid in clear funds within a period of 14 days from the date of each relevant invoice, unless agreed to otherwise in writing.
- 8.2 The due date which is listed on Wizenoze's bank statements is leading and will be viewed as the date payment was received.
- 8.3 Wizenoze retains the right to suspend the execution of the agreement in the event that payments are not received in a timely fashion in accordance with clause 7.1 above.
- 8.4 Please note that all Clients are severally liable for meeting the obligations dealt with in this agreement regardless of proprietary rights if the assignment has been awarded by more than one Client.

## **8 Interest and costs**

- 8.1 The Client will be deemed to be in default by operation of law in the event that the Client fails to pay the invoice in a timely manner. Interest of 1.5% per (part of a) month will become due over the amount owed starting with the date the Client is deemed to be in default.
- 8.2 If the Client fails to make a payment due to Wizenoze under this agreement by the due date, then, without limiting the Wizenoze's remedies under this agreement, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.2 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

## **9 Changes to the assignment and/or supplemental activities**

- 9.1 The Client hereby accepts that the timeframe planned for the execution of the assignment may be influenced by the parties agreeing to changing and/or increasing the scope of the assignment or resulting activities.
- 9.2 Wizenoze will, as soon as reasonably practical, inform the Client in writing if any interim changes will result in changes to the agreed fee, prices or compensation.
- 9.3 Any interim changes to the assignment or the execution of the assignment which are the result of the Client's actions, like the failure to provide documents, information or employees available – as referred to in

clause 3, necessary for the execution of the assignment – in a timely fashion will result in Wizenoze making any necessary adjustments as long as this does not affect the quality of the services provided. Any changes which result in supplemental activities will be viewed as an additional assignment and will be presented to the Client for confirmation. In the event of any material changes to the assignment under this clause 9.3, Wizenoze retains the right to terminate the agreement with immediate effect.

## **10 Duration and termination of the agreement**

- 10.1 Notwithstanding clause 9.3 above, each party retains the right to terminate the agreement with immediate effect if:

- the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
- the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified in writing to do so;
- 
- the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 
- the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- the counterparty has been informed they are in default in writing and continues to remain so for one or more obligations;
- 
- any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 10.1; and
- the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 10.2 Please note that Wizenoze retains the right to claim payment for invoices submitted for any work executed and that the Client will receive conditional access to any results for work performed in the event the parties decide to terminate the agreement early. Any additional costs resulting from these actions shall be borne by the Client.

10.3 The parties' rights and obligations as set out in clause 12 (Confidentiality) and clause 14 (Liability) shall remain in full force and effect following the termination of the agreement.

## **11 Intellectual property rights**

11.1 Wizenoze will retain all ownership of intellectual property rights, copy rights as well as all other intellectual or industrial property rights to any designs, sketches, images, drawings, models and software which are used in a quote or which are used for the execution of and realisation of the assignment(s) and/or those used for the provision of advice, in a report or which are the result of research unless explicitly agreed to otherwise in writing.

11.2 Wizenoze and its licensors shall retain ownership of all intellectual property rights in the deliverables produced for the Client except for the materials provided by the Client.

11.3 The Client will only gain access to the user rights and the authority resulting from these terms and conditions or explicitly awarded to them in another way and will not copy software, materials and reports.

11.4 The Client is prohibited from removing or changing any indications pertaining to the intellectual property rights, branding, trade names or other rights related to intellectual or industrial property rights from software, equipment or materials. This includes information related to the confidential nature of the software.

11.5 The Client warrants that the use of designs, drawings or other types of branding made available by them will not result in a breach of third-party intellectual property rights.

11.6 The Client shall indemnify Wizenoze in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Wizenoze arising out of, or in connection with, the receipt, use or supply of the services under this agreement.

## **12 Confidentiality**

12.1 Subject to clause 12.3 below, Wizenoze and the Client will do everything in their power to ensure that all confidential information concerning the business, affairs, customers, clients or suppliers of the other party, received from another party which is known to be or which can be deemed to be confidential in nature will remain that way. The party receiving confidential information will only use it for the purpose for which it is intended.

12.2 The Client will not inform a third party of Wizenoze's methods or approach without the receipt of explicit written consent. The above is also applicable to the way in which Wizenoze issues reports as well as other information related to the agreement.

12.3 Each party may disclose the other party's confidential information:

- to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.4 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

## **13 Complaints**

13.1 Any complaints which arise during the execution of the assignment will only be dealt with by Wizenoze if they are immediately brought to Wizenoze's attention in writing.

13.2 Complaints which are related to the results of an assignment should be submitted to Wizenoze in writing within thirty days of completion on penalty of a loss of rights.

13.3 Complaints related to invoicing should be submitted to Wizenoze within fourteen days of the receipt of the invoice. The Client will be deemed to have accepted the invoice following this period of time.

## **14 Liability**

14.1 Wizenoze can only be held liable for shortcoming related to the execution of and the realisation of the assignment to the extent that these are the result of Wizenoze's deliberate actions or gross negligence on their part or if they are the result of deliberate actions or gross negligence by a third party working on behalf of Wizenoze.

14.2 Damages which are the result of circumstances dealt with in clause 13.1 will result in Wizenoze being deemed liable for the maximum fee which Wizenoze has received for the activities carried out within the framework of the assignment. Assignments which span a period longer than six months and which result in a claim will have that claim limited to an amount calculated over a period spanning six months before the date that Wizenoze was deemed in default.

14.3 Please note that Wizenoze can only be held liable for damages which Wizenoze has taken out insurance for or for damages which are deemed covered by the branch in question or which should have been insured. The following limitations should be taken into consideration:

- a loss of profits, regardless of their nature, will not be due compensation. Please note that the Client may take out insurance to cover these losses if desired.

- Wizenoze cannot be held liable for damages (regardless of their nature) to items (this includes movable and immovable property) which occur during the execution of the assignment. This is also true for damages to people employed by the Client or by a third party.

14.4 The Client hereby indemnifies Wizenoze for any claims submitted by a third party which are the result of errors made by the Client or by someone employed by the Client.

14.5 The Client is obliged to submit any claims which are related to this clause to Wizenoze within a period of six months of their occurrence.

14.6 Nothing in this Agreement shall limit or exclude either Party's liability for any matter in respect of which it would be unlawful to exclude or restrict liability.

## **15 Force Majeure**

15.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement thus made if such delay or failure result from events, circumstances or causes beyond its reasonable control.

15.2 Any cases of force majeure which span a period of more than 90 days will result in both the Client and Wizenoze being able to terminate the agreement in writing with immediate effect. A settlement will take place which is based on that which has been achieved within the framework of the agreement and without either party being deemed liable for any costs other than the charges for the assignment, whether performed fully or partially, due to Wizenoze from the Client.

## **16 Transfer**

Wizenoze may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that it gives prior written notice of such dealing to the Client.

## **17 The consequences of nullity and/or voidability**

17.1 Any clauses in this agreement which are declared null and void will not affect the validity of the other clauses which make up this agreement. Please note that the parties will come together to discuss new clauses to replace the one or ones which are deemed null and void. The scope of the clauses which will be replaced will be reflected, to the extent possible, in the new ones.

## **18 Applicable law and disputes**

18.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

18.3 This agreement has been entered into on the date stated at the beginning of it.

18.4 In performing its obligations under this agreement, each party shall comply with all applicable laws as may be applicable from time to time.

## **19 Notices**

19.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business (in any other case); or
- b) sent by email to the address as may be notified to either party from time to time.

19.2 Any notice or communication shall be deemed to have been received:

- c) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- d) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and
- e) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **20 Changes to and the location of these terms and conditions**

20.1 These terms and conditions are available at <https://www.wizenoze.com/language/en/terms-and-conditions/>

20.2 Wizenoze shall have the right to make changes to these terms and conditions at its sole discretion. Any changes will come into effect at the time which has been notified to the Client in writing. Wizenoze shall present the Client with a copy of the new terms and conditions. In the event the Client does not agree to the new terms and conditions, it should promptly notify Wizenoze in writing.

## **21 Waiver**

21.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

22.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**22 Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**23 Severance**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

**24 Entire Agreement**

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**25 No Partnership or Agency**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**26 Third Party Rights**

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.