



**General Terms and Conditions of MarktOnderzoekAssociatie
(MOA), adopted by the Board on 19 June 2020**

This English translation is provided for convenience only. In the event of any inconsistency or conflict between the original Dutch version and this translation, the Dutch version will prevail.

1. General

- 11 These General Terms and Conditions apply to all offers, quotes, assignments and contracts, hereinafter referred to as 'Assignment', with respect to statistical, data analytics and market research to be carried out and respondent selections to be made, in the broadest sense of the word, hereinafter referred to as 'Research', agreed between (i) a statistical, market research and/or selection agency, hereinafter referred to as 'the Agency', that is an affiliated member of MarktOnderzoekAssociatie.nl an association with full legal capacity, and (ii) a (prospective) client, hereinafter referred to as 'the Client'.
- 12 Derogations from these Terms and Conditions are valid only if agreed in writing and apply only to the Assignment to which they have been explicitly declared applicable by the Agency and the Client. The Agency rejects the applicability of any general terms and conditions of the Client, unless the parties agree in writing that those general terms and conditions, or parts thereof, apply in addition to these General Terms and Conditions.
- 13 If one or more of the provisions of these General Terms and Conditions are invalid, illegal or otherwise unenforceable, this will not affect the validity of the remaining provisions. The Parties will negotiate in good faith to agree upon a new provision to replace the invalid or unenforceable provision, which new provision serves the purpose of the invalid or unenforceable provision to the furthest possible extent.
- 14 Each Assignment is carried out in accordance with the self-regulation code which is binding upon the members of MOA under the law of associations and which is published on www.moaweb.nl. Moreover, Assignments may never be carried out in violation of the mandatory provisions of the international framework for self-regulation embodied in the ICC/ESOMAR Code.

2. Research briefing

- 21 The Agency must gain a sufficient understanding of the Client's objectives to be achieved by the Assignment.
- 22 Research proposals submitted by the Agency are based on the information provided by the Client. The Client warrants that it has, to the best of its knowledge, provided all essential information required for the design and execution of the Assignment. The Client also warrants that it is authorized to use all the information provided to the Agency, including address details, for Research purposes.
- 23 All information provided to the Agency by the Client in the context of the Assignment, including the information provided during the Research briefing, is strictly confidential and the Agency is obliged to preserve the confidentiality of that information. This confidentiality obligation also applies to the Client if the Client has received information from the Agency – including, without limitation, Research proposals and quotes – and the Assignment is not given to the Agency.

3. Research proposals and quotes

- 31 All Research proposals and quotes from the Agency are without obligation. An Assignment is deemed to have been awarded and accepted once the Agency, after agreement has been reached about the Research proposal, has confirmed the Assignment in writing or has started carrying out the Research with the Client's knowledge.
- 32 The Agency may charge a fee for submitting a Research proposal, provided that this has been agreed with the Client in advance.
- 33 If the Client has requested more than one Agency to submit a Research proposal, the Client is obliged to notify all Agencies of the number of Research proposals requested. If the Client fails to meet this obligation and no Assignment is awarded to an Agency, the Client is obliged to compensate the Agency for all costs incurred by the Agency in connection with the preparation of the Research proposal.
- 34 Rates and fees quoted by the Agency may not be increased for a period of four months from the date of the quote, unless the Research cannot be carried out within the period specified in the Research proposal due to fault on the part of the Client, or unless the Agency has reserved the right to increase its rates and fees.
- 35 All amounts mentioned in quotes are exclusive of VAT and any other government levies.

4. Liability

- 4.1 The Agency will carry out the Assignment to the best of its knowledge and ability. This obligation has the character of a best-efforts obligation, except as otherwise agreed in writing.
- 4.2 The Agency is liable for any shortcomings in the execution of the Assignment to the extent that these are due to failure on the part of the Agency to exercise the care and use the expertise that may be expected of the Agency in this regard. The liability for any resulting loss or damage is limited to the amount of the payment received by the Agency for the work carried out in the context of the Assignment.
- 4.3 Any claims by the Client must be submitted within one year of the date on which the loss or damage is discovered, failing which the Client will forfeit its rights. Any liability on the part of the Agency for any consequential loss or damage suffered by the Client is excluded. Consequential loss or damage includes any loss or damage resulting from any form of use of Research results by the Client or third parties, and the Client indemnifies, defends and holds the Agency harmless from and against any claims by third parties with respect thereto.

5. Delivery times and scheduling

- 5.1 Agreed delivery times are not binding in the event of delays caused by unforeseen circumstances related to interim changes to the Assignment or other circumstances that the Agency and the Client were not reasonably required to allow for at the time of conclusion of the contract. If the Agency anticipates a delay, the Agency will immediately notify the Client accordingly.
- 5.2 If the Client wishes to change the agreed time schedule, the Agency will cooperate with this, provided that the Client discusses the change with the Agency in a timely manner and on condition that the Agency may reasonably be expected to cooperate, depending on the circumstances of the case in question. If the Client derogates from the scheduled field work dates, the Agency is entitled to charge the Client for the costs incurred as a result of the change to the agreed time schedule required by the Client. Unless a different term is agreed in writing, the Client must always notify the Agency of any changes to the agreed time schedule at least ten (10) working days prior to the scheduled fieldwork start date. If the Client fails to observe this notice period, the Agency will be entitled to payment of the full fee agreed for the fieldwork. Any replacement revenue will be deducted from such fee.

6. Changes, additional work

- 6.1 If the Client wishes to make changes to the design and/or content of the Research, the Client will discuss the matter with the Agency in a timely manner. The Agency will cooperate in making the desired changes, on condition that the Agency can reasonably be required to do so and agreement is reached about this and about the costs that may reasonably be charged in addition to or deducted from the agreed fee.
- 6.2 Under no circumstances will the Agency be permitted to make changes to the agreed design and/or content of a Research project without the Client's consent.
- 6.3 If the Agency is required to perform more work than anticipated in the Research proposal underlying the Assignment, the Agency will discuss the matter with the Client. The Client will be charged for any additional work to be undertaken by the Agency, unless the additional work is necessary due to negligence on the part of the Agency, or because the Agency made an incorrect assessment of the work to be undertaken or ought reasonably to have anticipated the work in question. The parties will determine the amount of the fee for the additional work in question by mutual agreement.

7. Termination, premature termination, suspension and cancellation of the Assignment

- 7.1 If the Assignment is not carried out in accordance with the underlying Research proposal due to a cause attributable to the Agency, the Client will serve written notice of default upon the Agency and give the Agency the opportunity to carry out the Assignment as agreed within seven (7) days. The Client is not obliged to give the Agency the opportunity to carry out the Assignment as agreed only if the Client cannot reasonably be required to do so. Any additional costs incurred by the Agency after it has received notice of default do not qualify for reimbursement. The Client may cancel the Assignment only if the Agency remains in breach of its obligations after it has received notice of default.
- 7.2 If the Agency has been unable to carry out the Assignment or to carry out the Assignment in accordance with the underlying Research proposal due to a cause attributable to the Client, the Agency will serve written notice of default upon the Client within seven (7) days and offer the Client to carry out the Assignment as agreed, unless the Agency cannot reasonably be required to do so. Any additional costs incurred by the Agency in this connection are payable by the Client. If the Client chooses not to accept the said offer, the Client will be obliged to compensate the Agency for any loss or damage suffered as a result of non-completion of the Assignment. The Agency may cancel the Assignment and/or suspend execution of the Assignment without serving notice of default if the Client otherwise fails to meet its obligations to the Agency in full, on time or at all.

- 73 If the Agency or the Client is placed into liquidation, applies for provisional or final court protection from creditors (moratorium) or ceases its business operations, the other party will have the right to terminate the Assignment with immediate effect.

8. Terms of payment

- 81 The rates specified in a Research proposal and/or quote are inclusive of travel and subsistence expenses, except as otherwise stated. Upon request, the Agency must specify in outline any costs it may charge to the Client.
- 82 Payment must be made within fourteen (14) days of the date of the invoice, except as otherwise agreed. After this due date, statutory interest will be charged. If the Client fails to fulfil one or more of its obligations to the Agency, all costs reasonably incurred in enforcing those obligations out of court are payable by the Client, subject to a minimum of 15% of the amount due. The Client is not entitled to suspend obligations to the Agency and/or to set off amounts owed to the Agency.

9. Intellectual property rights

- 91 All rights (including copyrights) in the following Research and other materials remain vested in the Client/will be transferred to the Client:
- a. questionnaires, instructions, specifications, data files and any other information provided by the Client;
 - b. the results of the Research – in the form of reports, recommendations, etc. – if the Assignment involves custom Research, on condition that the Client has paid all amounts due with respect to the Assignment to the Agency. For the purposes hereof, custom Research means all Research activities, both qualitative and quantitative, that are performed specifically or only for the Client.
- 92 The Agency is not permitted to disclose the materials referred to in Article 9.1, or any part thereof, to third parties without the Client's consent.
- 93 All intellectual property rights, including copyrights, in the following Research materials are and remain vested in the Agency:
- a. Research proposals, statements of costs, quotes, etc.;
 - b. all Research materials produced by the Agency, such as models, technologies, questionnaires, tools, instruments and software;
 - c. the results of the Research in the form of reports, recommendations, etc. if the Assignment involves multi-client Research. For the purposes hereof, multi-client Research means all activities, both qualitative and quantitative, performed in the context of Research to the extent that the available data originates from and/or is intended for more than one Client.

- 94 The Client is not permitted to disclose the materials referred to in Article 9.3, or any part thereof, to third parties without the Agency's consent. The Client may reproduce and otherwise use the materials referred to in Article 9.3(c) for internal purposes.

10. Damage to test materials, loss or damage caused by test materials

- 101 The Agency will be liable for any damage caused to test materials made available to the Agency by the Client, unless such damage is due to factors beyond the Agency's control.
- 102 The Client will be liable for any loss or damage caused by test materials, or by the use of test materials, made available to the Agency by the Client, unless such loss or damage is due to wilful intent or gross negligence on the part of the Agency or its staff. The Client indemnifies, defends and holds the Agency and the Agency's staff harmless from and against any claims by third parties with respect thereto.

11. Force majeure

- 111 If the Agency is prevented from meeting its obligations due to force majeure, the Agency will notify the Client accordingly without delay and discuss the matter with the Client. The Client will cooperate in extending the period as required, on condition that the Client can reasonably be required to do so and agreement is reached about this and about the costs that may reasonably be charged in addition to or that should reasonably be deducted from the agreed fee.
- 112 If the execution of the Assignment is delayed by more than three (3) months due to force majeure, both the Agency and the Client are entitled to consider the Assignment terminated. In that case the Agency will only be entitled to reimbursement of the costs it has incurred.

12. Confidentiality and exclusivity

- 121 The parties are bound by a duty of confidentiality not to disclose any confidential information they receive from each other or from other sources in the context of the Assignment to third parties that are not involved in the execution of the Assignment. Information is considered confidential if it is designated as confidential by the other party or if this follows from the nature of the information, with the proviso that the information referred to in Article 2.3 of the General Terms and Conditions is always considered confidential.
- 122 The Client is obliged to respect the privacy of respondents. The Client may use the Research results obtained after the Research for statistical or comparative purposes only if those results are anonymous. The Client may request the Agency to derogate from the provisions of the first and

second sentences of this Paragraph during the Research and to agree appropriate alternative arrangements with the individual respondents.

- 123 If these General Terms and Conditions apply to an Assignment awarded by the Client to a selection agency, the Client is not permitted to include the respondents made available by the selection agency in its own files or to approach the respondents, for whatever purpose, in any other way than through the selection agency.
- 124 If the Client breaches the provisions of this Article, the Client will be liable to pay the Agency a penalty equal to ten (10) times the fee agreed for the Assignment, which penalty will be immediately due and payable, without prejudice to the Agency's right to claim compensation for loss or damage.

13. Assignment of rights and obligations

The Client is not entitled to assign all or part of its rights and obligations under the Assignment to third parties, except with the prior written consent of the Agency.

14. Miscellaneous provisions

- 141 Under no circumstances is the Client entitled to set off any amounts it owes to the Agency, whether due and payable or not, against amounts owed by the Agency to the Client.
- 142 Any legal claims which the Client has against the Agency on the basis of an Assignment or pursuant to the law are time-barred after the lapse of one year from the start of the statutory limitation period.
- 143 These General Terms and Conditions have been filed with the Registry of the District Court of Amsterdam and can also be accessed on [MOAweb](#). The applicable version of these General Terms and Conditions is the most recently filed version.
- 144 The Agency has the right to amend the General Terms and Conditions. Such amendments will take effect on the announced effective date, but will not apply to Assignments agreed prior to that date. The Agency will send a copy of the amended General Terms and Conditions to the Client in a timely manner. If no effective date has been announced, amendments become effective for the Client as soon as the Client is advised of or becomes aware of the amendments, but such amendments will not apply to Assignments agreed prior to that date.

15. Protection of personal data

The Agency treats personal data with due care and observes and complies with the applicable European Regulation/s and other rules and legislation, including self-regulation codes, with respect to personal data protection when processing personal data.

If a Client qualifies as controller, the parties will enter into a data processing agreement. In derogation of the provisions of Article 4 of these General Terms and Conditions, the parties' liability for the processing of personal data will be governed by the data processing agreement.

16. Governing law and disputes

All Assignments awarded by the Client to the Agency are governed exclusively by the laws of the Netherlands. Any disputes in respect of which MOA has published a dispute resolution procedure will be settled in accordance with the relevant dispute resolution procedure, except as otherwise agreed between the parties. In that case, or in the event of other disputes in respect of which MOA has not published a dispute resolution procedure, disputes between the parties will be submitted to the competent court.