

# General Terms of Sale and Service of Stichting Hogeschool van Arnhem en Nijmegen

*governing sales and services in the private (i.e. not publicly funded) domain*

Subject	General HAN Terms of Sale and Service
Executive Board decision no.	Executive Board decision 2020/1654
Adopted on	7 April 2020

## 1. Scope of application

1. The present General Terms govern all offers and contracts for the provision of goods and/or services to customers by Stichting Hogeschool van Arnhem en Nijmegen (hereafter: 'HAN').
2. Derogations from and additions to these General Terms are valid only if the parties have so agreed in writing.
3. Where the provisions of the General Terms and the terms of a contract formed between HAN and the customer are incompatible, the terms of the contract will prevail.
4. These General Terms were originally drafted in Dutch. In the event of any disputes concerning the substance of these General Terms or how they should be construed, the Dutch text is binding.

## 2. Offers

1. All offers and other communications from HAN are non-binding, and are based on information, documents, and drawings etc. supplied by or on behalf of the customer, except where the written offer states otherwise. The customer warrants that the information provided is accurate and complete, and will indemnify HAN if that information infringes on rights of third parties.
2. Without prejudice to the provisions set out in paragraph 1, all offers made by HAN remain valid for 30 days, except where the written offer expressly states otherwise.
3. If HAN quotes a price composed of multiple elements, this does not carry any obligation for HAN to perform part of the contract for a corresponding portion of the price quoted.
4. All models, images, drawings and measurements accompanying, shown with, or communicated with an offer are approximations only. They are non-binding, except where HAN provides an express and written guarantee.

## 3. Price and payment

1. All prices are denominated in euros, and are stated net of Dutch value added tax (VAT) and other charges that are or will be imposed on behalf of government authorities.
2. The customer cannot derive any rights or expectations from any precalculation or budget provided by the customer, except where the written contract between the parties states otherwise. Where the customer has notified HAN of an available budget, the parties will only be considered to have agreed on that budget as a fixed price for the goods or services to be provided by HAN if this has been expressly agreed in writing.
3. The customer must pay all amounts that are owed in accordance with the contractual payment terms, or the payment terms described on the invoice.

## 4. Confidentiality

1. The parties will ensure confidential treatment of all data and information that they receive from each other and that have been designated in writing as confidential or that, by their nature, must be assumed to be confidential (hereafter: 'Confidential Information').
2. This obligation does not apply if a party can demonstrate that it was already in possession of the Confidential Information before the date on which it was shared, that the Confidential Information has become public knowledge, that the party obtained the information from its own research without drawing on



the Confidential Information, or lastly that it obtained information in a lawful manner independently or from a third party.

3. The provisions set out in paragraph 1 also do not apply where one of the parties is required to disclose some or all of the data or information based on an order from a competent authority or under a statutory duty.
4. The duty of confidentiality ends two years after the end of the contract under which the information was obtained.

#### **5. Staff hirings**

Both while the contract is in place and for a period of one year after it ends, each party must obtain the other party's prior written consent before forming an employment contract with, or otherwise directly or indirectly engaging for work, any employee of the other party who is or was involved in the contract's performance. That consent may be made subject to conditions, including the condition that the customer must pay HAN a reasonable amount in compensation.

#### **6. Digital communications**

1. Where data are shared in digital form, for example by email, both parties will arrange protection using standard antivirus tools. Neither party will be liable toward the other party for loss or damage resulting from the transmission of viruses and/or other irregularities in the digital communications, nor for any instance where messages are not received or are damaged on receipt.
2. The customer gives HAN the right to communicate by email with the customer and with third parties, and is fully aware that it is impossible to guarantee the confidentiality of information shared by email. All email communications are for the customer's risk.

#### **7. Retention of title**

1. After goods have been delivered, HAN will retain the title to those goods until the customer has paid HAN all amounts that the customer owes to HAN for contractual deliveries of goods that have been or will be made.
2. The customer may not, except in the normal course of business, dispose of or encumber those goods while they are subject to a retention of title.
3. If the customer is in breach of its obligations or has or might develop payment difficulties, HAN is entitled to retrieve any goods that have been delivered subject to a retention of title and that are still in the customer's possession. The customer will grant HAN free access, at all times, to the customer's sites and/or buildings for the purpose of inspecting the goods and/or enforcing its rights.

#### **8. Passing of risk**

1. The risk of loss, theft or embezzlement of or damage to goods, data (including user names, passwords, and codes), software, data files, or documents that are delivered under the contract will pass to the customer as soon as HAN has delivered them to the customer or an agent of the customer.
2. Without prejudice to the provisions set out in paragraph 1, the customer and HAN may agree that HAN will arrange for transportation. In that event, the customer will similarly bear the risks associated with storage, loading, and transportation and unloading. The customer may take out insurance to cover these risks.

#### **9. Deadlines and deliveries**

1. Deadlines quoted by HAN or agreed between the parties, including but not limited to delivery times, are targets only, have no binding effect on HAN, and are in all instances indications only.
2. When establishing a delivery time, HAN assumes that it will be able to perform the contract under the circumstances of which it is aware at that time. The delivery time does not commence until the parties are in agreement on all the commercial and technical details, HAN is in possession of all the necessary data, finalized drawings, etc., HAN has received the contractual payment or installment (where appropriate), and all necessary conditions for performing the contract have been met.
3. HAN is entitled to extend or suspend the contractual delivery time in the following situations:
  - a. where the contract will be performed in phases, HAN may extend the delivery time by as much time as the customer needs to give its written approval of the results of the previous phase;

- b. where the circumstances are not as they were known to HAN when it established the delivery time, HAN may extend the delivery time by as much time as it needs to perform the contract under the new circumstances;
- c. in the event of contract variations or extras, the delivery time will be extended by as much as HAN needs to deliver or commission the materials and parts and to perform the extra work. In all instances where HAN extends or suspends its performance of the contract, any work that HAN cannot schedule will be carried out as soon as HAN's schedule permits.

#### **10. Intellectual property**

1. If HAN agrees to transfer an intellectual property right, that transfer must be recorded explicitly and in writing. Where the parties agree in writing that such an intellectual property right to goods, data, software, data files, or documents developed specifically for the customer will pass to the customer, this will not prejudice HAN's right or possibilities to utilize and/or commercially use the components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards, etc. underlying that development, whether for its own use or for the benefit of third parties. Nor will such a transfer prejudice HAN's right to carry out developments for its own use or for the benefit of a third party that are similar or that derive from the developments that have been or will be carried out for the customer.
2. Except where the written contract between the parties expressly states otherwise, all intellectual property rights that HAN delivers to the customer under the contract remain exclusively with HAN, HAN's licensors or HAN's vendors.
3. Except where the written contract between the parties expressly states otherwise, the customer's right of use is non-exclusive and may not be transferred, given in pledge, or sublicensed.

#### **11. Liability**

1. Except in situations as described in Article 6(1), HAN's liability is in all instances limited to the amount that is paid out under HAN's liability insurance policies for that specific claim, plus the excess under the insurance, where applicable. The policies are available for inspection at HAN's offices, and will be made available for inspection on request. If the liability insurance does not pay out, for whatever reason, HAN's liability is in all instances limited to the amount paid for the contract in question, subject to a maximum of €25,000. In all other situations, HAN's liability is limited to a maximum of €25,000. The limitation of HAN's liability described in this Article 11 extends to situations where loss or damage was caused by HAN's wrongful refusal of a contract.
2. HAN is not in any instance liable for indirect loss or damage (i.e., loss or damage that is not caused directly by a harmful event), nor for consequential loss or damage or loss of business (including but not limited to loss of revenue/income or lost savings).
3. To become entitled to claim compensation for loss or damage, the customer must in all instances notify the loss or damage to HAN as soon as possible after it occurs. All claims on HAN for compensation for loss or damage will lapse as soon as twenty-four months have passed since the claim arose, unless the customer has brought legal action to claim damages before that deadline has expired.
4. Wherever possible, HAN will first consult the customer before engaging the services of third parties. However, HAN is not under any obligation to do so. The customer authorizes HAN to accept terms and conditions of third parties, even where they include a limitation of liability. HAN is not in any instance liable for errors made by third parties whose services have been engaged, even where those errors result from willful intent or deliberate recklessness on the part of those third parties.
5. The customer will indemnify HAN for all claims from third parties, and for the costs that HAN incurs in connection with such claims, including reasonable costs of legal assistance, that are in any way related to HAN's work for the customer.
6. The limitations of liability described above do not apply in cases involving willful intent or deliberate recklessness on the part of either party or of the executive staff making up their management.

#### **12. Variations and contract extras**

1. Where HAN, acting on the customer's instructions or with the customer's prior approval, has carried out work or provided other goods or services that fall beyond the substance or scope of the contractual work and/or goods and services, that work or those goods and services will be payable by the customer at the contractual rates. If no contractual rates have been agreed, HAN will charge its usual rates. HAN is not obliged to fulfill requests for contract extras, and may require a separate written contract for such extra work.

2. Where the parties have agreed on a fixed price for the services, HAN will inform the customer, on request, about the financial implications of the extra work or goods and services within the meaning of this Article 12.

### **13. Rescission, suspension and cancellation**

1. Either party may cancel or suspend the contract, in part or in its entirety, with immediate effect by giving written notice, without being required to first give notice of breach and without requiring judicial intervention, if:
  - a. one of the parties is declared bankrupt or is granted suspension of payment; or
  - b. decisive control of one of the parties or its business is transferred to a third party, whether directly or indirectly; or
  - c. the business of one of the parties is shut down or wound up.In no instance will the parties be obliged to refund money that has been received, nor to make any compensation for loss or damage, in connection with the termination or suspension as described in this paragraph.
2. HAN may rescind or suspend the contract, whether in part or in its entirety, with immediate effect by giving written notice, without being required to first give notice of breach and without requiring judicial intervention, if the customer fails in the fulfillment of any of its obligations under the contract and/or the General Terms. HAN will then not be obliged to refund money that it has received, nor to make any compensation for loss or damage.
3. Where the parties have formed an open-ended or fixed-term contract, either party may cancel that contract by giving written notice, accompanied by an explanation of the reasons for cancellation, and preferably after the parties have consulted on that cancellation. Where the parties have not agreed on a particular notice period, a reasonable notice period must be observed for cancellation. The parties are not in any instance obliged to make any compensation for loss or damage in connection with cancellation.

### **14. Force majeure**

1. HAN cannot be held responsible for any failure to fulfill its obligations where that failure is caused by force majeure.
2. Force majeure on HAN's part may include: (i) situations where third parties whose services HAN has engaged, for example vendors, subcontractors and other parties on which HAN depends, do not fulfill their obligations, or do not fulfill them on time, (ii) weather conditions, forces of nature, (iii) terrorism, war, insurgency, and similar events, (iv) cybercrime, disruptions of the digital infrastructure, (v) fire, power outages, loss, theft, or destruction of tools, materials, or information, (vi) strikes or work stoppages, (vii) above-standard levels of sick leave among HAN's workforce, and (viii) restrictions on imports or trade, and other government measures.
3. HAN is entitled to suspend fulfillment of its obligations if it is prevented temporarily by a force majeure situation from fulfilling its obligations toward the customer. Once the force majeure situation has ended, HAN will fulfill its obligations as soon as its schedule permits.
4. In the event of a force majeure situation where fulfillment is or becomes permanently impossible, or if a temporary force majeure situation has lasted for longer than six months, HAN is entitled to rescind the contract with immediate effect, whether in part or in its entirety. In such situations, the customer is entitled to rescind the contract with immediate effect; however, this extends only to those contractual obligations that the customer has not yet fulfilled.
5. Neither party is entitled to claim compensation for past or future loss or damage incurred as a result of force majeure, suspension or rescission within the meaning of this Article 14.

### **15. Non-transferability**

Claims under a contract formed between the parties cannot be transferred or given in pledge within the meaning of property law.

### **16. Governing law and jurisdiction**

1. All legal relationships between the parties are governed by, and will be construed in accordance with, Dutch law.
2. Any and all disputes that arise in connection with the performance of a contract between the parties, and/or how that contract is construed, will be referred exclusively to the competent court in Arnhem, the Netherlands.

### **17. Alternatives for invalid provisions**

Where one or more of the provisions of this contract is found to lack legal validity, the remaining provisions of the contract will retain their force and effect. The parties will consult with one another about the provisions that are invalid, in order to agree on an alternative arrangement that has legal validity and that reflects the intent of the original arrangement as closely as possible.



**18. Specific terms for contracts for services**

1. HAN will endeavor to the best of its ability to perform its contracts with due care. Where applicable, it will do so in accordance with the written contractual arrangements made with the customer. All contracts performed by HAN will be carried out under a best-endeavors obligation, except where the contract expressly states an outcome and describes that outcome in sufficient specific detail.
2. All contracts are accepted and performed exclusively by HAN, including where it is the express or implicit understanding that the contract will be carried out by a particular individual. The applicability of Article 404 of Book 7 of the Dutch Civil Code, containing rules for such situations, and Article 407(2) of Book 7 of Dutch Civil Code, establishing joint and several liability for all instances where a single contract is given to two or more persons, is explicitly excluded.
3. All work will be performed by HAN acting in complete independence. Final responsibility for the outcome lies with HAN. The customer has no control over the outcome, nor is the customer entitled to give instructions or orders. However, the customer is entitled to terminate the contract before its contractual completion.

**19. Premature termination of contracts for advisory services and/or research**

1. Either party may unilaterally terminate the contract before its contractual completion, if that party is of the opinion that performance of the contract on the contractual terms has become impossible.
2. Termination must be effected by giving notice of cancellation. Where the parties have not agreed on a particular notice period, a reasonable notice period must be observed for cancellation. Reasons must be provided for the cancellation, which must be notified to the customer by registered post.
3. Where the customer terminates the contract before its contractual completion, HAN is entitled to compensation for the actual and plausibly substantiated loss of manpower and other costs already incurred. That compensation will be based on the contractual price.
4. HAN may exercise its right to terminate the contract before its contractual completion only if it cannot, within reason, be expected to complete the contract as a result of facts and circumstances that are beyond HAN's influence or that cannot be attributed to HAN. HAN will then remain entitled to payment for any work performed up to that point. The provisional results of the work performed up to that point will be made conditionally available to the customer. Insofar as this carries additional costs, those costs will be charged to the customer.

**20. Premature termination of contracts for courses**

1. The customer is entitled to cancel a course in writing before it starts; this is determined by the date on which HAN receives notice of the cancellation.
2. The customer will then owe the following cancellation fee:
  - No fee if the customer cancels at any moment until 6 weeks before the course starts;
  - 75% of the total cost if the customer cancels at any moment between 6 weeks and 4 weeks before the course starts;
  - 100% if the customer cancels at any moment beyond 4 weeks before the course starts.