

# Terms and Conditions – Newmatter

These are the terms and conditions of Newmatter B.V. ( **Newmatter** ). Newmatter is located at Prinses Margrietplantsoen 33 2595 AM Den Haag, registered with the Chamber of Commerce ( *Kamer van Koophandel* ) under number: 72740914.

If you have any questions, you can contact us via [newmatter@newmatter.eu](mailto:newmatter@newmatter.eu), +31 85 06 03 303 or by mail: Prinses Margrietplantsoen 33.

Newmatter reserves the right to change these terms and conditions. You agree that the most recent version of these terms and conditions apply. Parties may deviate from these Terms and Conditions in writing.

## Article 1 - General

These terms and conditions apply to every offer, proposal and assignment between Newmatter and you ( **Client** ). On request, Newmatter shall send these terms and conditions to you, free of charge. They are also available on <https://newmatter.eu>.

## Article 2 - Establishment of the Assignment

The assignment shall be deemed established when Contractor receives a confirmation in writing from Client.

## Article 3 - Proposals and Offers

1. All offers and proposals from Newmatter are non-binding, unless agreed otherwise in writing. An offer or proposal only applies to the assignment specified therein (and not to possible future assignments).
2. If the Client provides Newmatter with certain information, Newmatter may assume that the provided information is correct and will base the proposal on that information.

## Article 4 - Pricing

1. Newmatter can raise the price in the interim in the case of unforeseen and cost price increasing circumstances, if these circumstances occur after the establishment of the assignment.
2. An offered price does not include expenses for Newmatter and does not include taxes or levies by the authorities.

## Article 5 - Payment and Collection Charges

1. Client must pay within fourteen days after the invoice date. Newmatter shall send an invoice monthly.
2. If the payment by Client is due, he will automatically be in default ( *verzuim* ), without a notice of default ( *ingebrekestelling* ) being required. In case of default, Client owes Newmatter the statutory commercial interest. The interest on the payable amount is calculated from the moment that the payment is due, until the moment that the payable amount has been paid by Client in full.

3. Any outstanding amounts by the Client are immediately payable in the following cases:
  - a. Client fails to pay within the payment term;
  - b. Client is bankrupt or applied for a suspension of payment or any other insolvency procedure;
  - c. Client (company) is dissolved or liquidated;
  - d. Client (private individual) is placed under guardianship or deceased.
4. If Client does not pay in time, he shall immediately be in default. He will then be due to the Supplier all extrajudicial costs. In case of an invoice amount to € 267, these costs will be € 40. In case of a higher invoice amount, the maximum collection fees are as follows:
  - a. 15% on the first € 2,500;
  - b. 10% on the part that remains thereafter, up to € 5,000;
  - c. 5% on the part that remains thereafter, up to € 10,000;
  - d. 1% on the part that remains thereafter, to € 200,000;
  - e. 0.5% on the remaining part.

## **Article 6 - Execution Time**

1. If Client owes Newmatter a prepayment or if Newmatter needs Client to provide certain information or materials, the term within which Newmatter shall execute the activities (the execution time), shall not begin to run until the prepayment, information or material is received by Newmatter.
2. If parties, before execution, have agreed on a term for the fulfillment of the services, the final date shall never be regarded as a deadline. When the term is due, Client shall send a notice of default to Newmatter.
3. Client cannot terminate the agreement if Newmatter exceeds a term. This does not apply when execution of the activities is permanently impossible or if Newmatter does not execute the activities within a new term for execution. Such new term should be given in writing.

## **Article 7 - Third Parties**

Newmatter may involve third parties to (partially) perform the activities. The following articles of the Dutch Civil Act (*Burgerlijk Wetboek*) do not apply:

- 7:404 (execution by a certain person);
- 7:407 sub 2 (joint and several liability);
- 7:409 (death of a certain person).

## **Article 8 - Execution of the Assignment**

1. Newmatter shall execute the assignment at the best of its knowledge and abilities and according to the requirements of professional practice.
2. Newmatter may execute the assignments in different phases and send separate invoices on the different phases.
3. If Newmatter performs the assignment in different phases, Newmatter may suspend any activities on the next phase until Client approved the execution of the last phase in writing.
4. Client shall timely provide Newmatter with all information or material, required for the execution of the assignment.
5. If Client does not provide the material or information in time, Newmatter may suspend the execution of the assignment and charge the additional costs, resulting from the delay. Newmatter is not liable for any damages, resulting from incorrect or incomplete information, provided by Client.

## **Article 9 - Changes of the Assignment**

1. If it proves to be necessary to change the assignment during the activities in order to guarantee a decent execution of the assignment, parties shall negotiate the required changes and agree on them in writing.
2. If parties agree on altering the assignment, Newmatter may raise or lower the price. If possible, Newmatter shall provide a quotation to Client in advance. The execution time may change with a change of the assignment. Client agrees on the possibility to change the assignment, the pricing and the execution time.
3. Newmatter may refuse a request, made by Client, to change the assignment if such changes could affect the quality or quantity of the activities.

#### **Article 10 - Suspension, Dissolution**

1. Newmatter may temporarily suspend the execution of the activities if he cannot comply because of *force majeure*.
2. If the execution of the assignment is permanently impossible parties may cancel the assignment for the part that has not been fulfilled.
3. Newmatter may suspend or cancel the assignment if Client fails to meet its obligations, partially, completely or in time. In such cases, Client shall compensate Newmatter for damages.

#### **Article 11 - Termination in the Interim**

1. If Newmatter cancels the assignment in the interim, Newmatter shall ensure a handover of the work yet to be performed to a third party, unless the termination is imputable to Client. If the handover of the activities leads to additional costs for Newmatter, these costs shall be borne by Client.
2. Newmatter may immediately cancel the assignment (and is not liable for any damages doing so) in one of the following events:
  - a. Client fails to pay within the payment term;
  - b. Client is declared bankrupt or applied for suspension of payments, or applied or becomes subject to any other insolvency procedure;
  - c. Client (the company) is dissolved or liquidated;
  - d. The occurrence of circumstances in which Client can no longer freely dispose of his capital.

#### **Article 12 - Force Majeure**

1. Newmatter is not obliged to comply in the event of *force majeure*.
2. Newmatter may suspend the obligations, coming from the assignment, for as long as the force majeure continues.
3. If Newmatter complied with a part of its obligations, and that part has an independent value, Newmatter may charge that part to Client.

#### **Article 13 - Retention of title**

1. Everything supplied by Newmatter shall remain the property of Newmatter until Client has fully fulfilled all its obligations.
2. Client must do everything he can reasonably do to secure the properties of Newmatter.
3. If Newmatter wishes to exercise its property rights, Client gives unconditional and irrevocable consent to Newmatter to enter all places where the properties are located, so that Newmatter can take them back.

#### **Article 14 - Complaints**

1. Client shall notify Newmatter in writing of any complaints within one month days after detection (or –on invisible shortcomings– after he could have detected it).
2. A timely notified complaint does not suspend or cancel any payment obligation resting on Client.

3. If Client does not notify Newmatter timely, Client is not entitled to any recovery, replacement or compensation.
4. If it is established that the complaint is justified and the notification by Client thereof was timely delivered, Newmatter shall recover, replace or compensate its work within a reasonable term after notification of the shortcoming, in writing from the Client.
5. If it is established that a complaint is not justified, Client shall compensate Newmatter for made expenses (like research costs).

#### **Article 15 - Liability**

1. Newmatter is only liable for direct damages suffered by Client as a direct consequence of a shortcoming by Newmatter.
2. Newmatter is not liable for any damages resulting from Newmatter relying on incorrect or incomplete information provided by Client.
3. The liability of Newmatter shall never exceed the amount paid by its insurer.
4. If Newmatter's professional liability insurer does not cover the damages, Newmatter's liability is limited to the amount paid by Client. Under no circumstances can this liability exceed the amount of €100000,00.
5. The limitations set out in this article do not apply if the damages are the result of a deliberate act or gross negligence.

#### **Article 16 - Limitation Period**

The limitation period on all claims and defences against Newmatter is one year.

#### **Article 17 - Indemnification**

1. Client indemnifies Newmatter from any claims by third parties, who suffer damages, resulting from the execution of the assignment but cannot be attributed to Newmatter.
2. If third parties address Newmatter to be liable for damages resulting from the execution of the assignment, Client shall support Newmatter both judicial and extrajudicial and Client shall do what may be expected from him.
3. If Client does not provide the support described in paragraph 2, Newmatter may take the actions it deems required. All expenses and damages made by Newmatter in this respect shall be borne by Client.

#### **Article 18 - Non-Disclosure**

1. Newmatter shall not disclose any of Client's information to third parties, unless Newmatter is required by a statutory or professional obligation to disclose the information.
2. Newmatter shall not use any information, obtained from Client, in a different manner than originally intended, except that the information may be used in a legal procedure that involves Newmatter and the information can be of importance.
3. Client shall not disclose the contents of agreements, confirmations, offers, reports, advices or other expressions from Newmatter, whether they are in writing or not.

#### **Article 19 - Nullity**

If any part of these conditions is void or voidable, this does not alter the validity of the remainder of these conditions. The invalid or unenforceable part shall be replaced by a provision that most closely follows the content of the invalid provision.

## **Article 20 - Conflicting Provisions**

If any of the provisions from these terms and conditions are in conflict with a provision from an agreement, the agreement prevails.

## **Article 21 - Applicable Law**

Dutch law.

## **Article 22 - Competent Court**

The Court of Den Haag.