

**General Terms and Conditions of ESJ Holding B.V., having its registered office in Roosendaal (the Netherlands), determined November 2017, which Terms and Conditions also apply to its subsidiaries ESJ Accounting & Belastingen B.V. (also trading as ESJ Accountants & Belastingadviseurs, ESJ Financial Engineering and ESJ Salarisadviesbureau), ESJ Audit & Assurance B.V., ESJ Pensioenadvies B.V., ESJ Corporate Finance B.V., VAT Business B.V. and AccountAnders B.V. (also trading as Fact4Fysio, Fact4Exquise and Fact4V&S)**

#### **A DEFINITIONS**

The following terms are used in these general terms and conditions:

1. Principal: the natural person or legal entity which gave the Contractor instructions to perform Work.
2. Contractor: the company which concludes the Agreement and uses these general terms and conditions. All instructions are deemed to be given exclusively to the company and not to any individual associated with the company. All Agreements are therefore established with the Contractor. That also applies if it is the Principal's intention that the instructions are to be performed by a specific individual or specific individuals associated with the company. Sections 7:404, 7:407 (2) and 7:409 of the Dutch Civil Code explicitly do not apply.
3. Work: all work for which the Contractor has received instructions or which the Contractor performs on another account. The above applies in the broadest sense of the word and in any event comprises the work as specified in the confirmation of the instructions.
4. Documents: all goods, including documents or data media, which the Principal has made available to the Contractor, as well as all goods, including documents or data media, which have been produced or compiled by the Contractor in the scope of fulfilling the instructions.
5. Agreement/Instructions: every agreement between the Principal and the Contractor to perform Work by the Contractor for the Principal in conformance with the stipulations specified in the confirmation of the instructions.

#### **B APPLICABILITY**

1. These general terms and conditions apply to: all offers, quotations, instructions, legal relationships and agreements, under whatever name, in which the Contractor undertakes/will undertake to perform Work for the Principal, as well as to all Work resulting from the same for the Contractor.
2. Departures from and additions to these general terms and conditions are only valid if these have been agreed upon explicitly and in writing, for example in a (written) agreement or (a further) confirmation of the instructions.
3. In the event that these general terms and conditions and the confirmation of the instructions contain conflicting conditions, the conditions included in the confirmation of the instructions will apply as regards the conflict.
4. The Contractor explicitly rejects any applicability of the Principal's general terms and conditions.
5. The underlying Instructions/Agreement – together with these general terms and conditions – represent the full agreements between the Principal and the Contractor regarding the Work for which the Agreement is concluded. It replaces all prior agreements made between the parties or proposals made in this respect.
6. The Principal with whom an Agreement is once concluded under these general terms and conditions accepts the applicability of these general terms and conditions to all later quotations of the Contractor and Agreements between the Principal and Contractor.
7. Should one or more provisions from these general terms and conditions be invalid or be nullified, the other provisions of these general terms and conditions remain fully applicable. Should any of these general terms and conditions or the Agreement not be legally valid, parties shall negotiate the content of a new provision, which shall come as close as possible to the original provision.
8. Provisions in the Agreement or these general conditions that must expressly or by their nature also remain in force after the expiry or termination of the Agreement shall remain in force after expiry or termination, including Articles G, I, J, L, P and R paragraph 2.

#### **C COMMENCEMENT AND DURATION OF THE AGREEMENT**

1. Each Agreement is only established and commences at the time the confirmation of the instructions signed by the Principal has been returned to and signed by the Contractor. The confirmation is based on the information which the Principal supplied to the Contractor at the time of the confirmation or as soon as the Contractor has expressed its explicit approval, verbally or otherwise, with the confirmation of instructions or the quotation. The confirmation is deemed to correctly and fully represent the Agreement.

2. The parties are free to prove the establishment of the Agreement by other means.
3. Each Agreement is entered into for an indefinite period of time, unless the nature, contents or purpose of the instructions given show that the Agreement was entered into for a fixed period of time.

#### **D INFORMATION OF THE PRINCIPAL**

1. The Principal is required to make all information and Documents which the Contractor believes are necessary to correctly fulfil the Agreement available to the Contractor in time, in the requested form and in the desired manner. This should also be understood to mean the documents that the Contractor says he needs for the purposes of determining the identity of the Principal. The Principal must provide the required information to determine his identity to the Contractor prior to the fulfilment of the Agreement.
2. The Contractor is entitled to suspend the fulfilment of the Agreement until the Principal has complied with the obligation mentioned in the previous paragraph.
3. The Principal is required to notify the Contractor at once regarding facts and circumstances which may be relevant in connection with the fulfilment of the Agreement.
4. The Principal guarantees that the information and documents which are made available to the Contractor by or on behalf of the Principal are correct, complete and reliable, even if the information and documents originate from third parties. The Principal is not liable for damage, of any kind, that is the result of the information provided by the Principal to the Contractor being incorrect and/or not complete.
5. The extra costs resulting from delays in the fulfilment of the Agreement and the extra fee resulting from any failure to make the desired information available or to do so in time or properly will be borne by the Principal.
6. If and to the extent that the Principal so requests, the documents made available will be returned to the Principal, subject to the stipulations under O. The Principal bears the costs for returning these documents.

#### **E FULFILMENT OF THE AGREEMENT**

1. The Contractor determines the manner in which and by what person(s) the Agreement will be fulfilled. If possible, the Contractor will take any directions from the Principal regarding the fulfilment of the Agreement into account, provided these instructions are sound and are given in a timely fashion.
2. The Contractor will perform the Work to the best of his ability and in a manner to be expected of a careful professional. However, the Contractor cannot guarantee that any envisaged result will be realised.
3. The Contractor is entitled to have a person or third party to be designated by the Contractor perform specific Work without notification to and explicit consent from the Principal if the Contractor believes that this is advisable. The costs of this person to be designated are charged to the Principal.
4. The Contractor will fulfil the Agreement in accordance with the rules of conduct and the professional rules that apply to him, which are part of the Agreement, and in accordance with the statutory requirements. Upon request, a copy of the rules of conduct and the professional rules applying to the Contractor will be sent to the Principal. The Principal will respect the Contractor's obligations and the obligations for parties working at or for the Contractor, respectively, that arise from these rules of conduct and professional rules and from the law.
5. In the event that Work is performed for the profession or business of the Principal during the duration of the Agreement which is not covered by the Work to which the Agreement relates, this Work will be deemed to have been performed based on separate Agreements.
6. Any terms specified in the Agreement for performing the Work will be approximate terms rather than deadlines. Thus, in the event that such a term is exceeded this does not constitute a culpable failure on the part of the Contractor; consequently this is not a ground for dissolving the Agreement. Terms set for completing the Work can only be considered as deadlines if the Principal and the Contractor have explicitly agreed on this in so many words.

7. Unless stipulated otherwise in writing, the fulfilment of the Agreement is not specifically aimed at detecting fraud. In the event that the work results in indications of fraud, the Contractor will report this to the Principal. In so doing, the Contractor is required to observe applicable statutory and other rules as well as the regulations and guidelines issued by the various professional organisations.

#### **F CONFIDENTIALITY AND EXCLUSIVITY**

1. The Contractor is required to maintain confidentiality with respect to third parties who are not involved in the fulfilment of the Agreement. This confidentiality involves all confidential information which the Principal made available to the Contractor and the results obtained by processing this information. This confidentiality does not apply to the extent that statutory or professional rules, including but not limited to the notification duty resulting from the Dutch Act on Measures to Prevent Money Laundering and the Financing of Terrorism and other national or international rules with a similar purpose, impose a duty of disclosure on the Contractor, or in as far as the Principal has released the Contractor from the confidentiality obligation. This stipulation does not prevent confidential consultations between colleagues within the Contractor's organisation to the extent that the Contractor deems this necessary for careful fulfilment of the Agreement or the due observance of statutory or professional rules.
2. The Contractor is entitled to use the figures obtained after processing for statistical or comparative purposes, provided these figures cannot be traced back to individual Principals.
3. The Contractor is not entitled to use the information which the Principal makes available to the Contractor for any purpose other than the purpose for which the information was obtained, except as stipulated in paragraph 2, and in the event that the Contractor is acting on his own behalf in disciplinary, civil, administrative or criminal proceedings in which these documents may be relevant. In the event that the Contractor is accused of (complicity in) an offence or felony, the Contractor is entitled to disclose Documents from the Principal to the Tax Inspector or to the judge, if disclosure is required in the scope of conducting a defence by the Contractor.
4. Except with the Contractor's explicit prior written consent, the Principal is not permitted to disclose the contents of recommendations, opinions or other (written) statements from the Contractor or to make these contents available to third parties in any other way, except to the extent that this results directly from the Agreement, is done to obtain an expert opinion regarding the Contractor's Work in question, the Principal is under a statutory or professional duty of disclosure, or the Principal acts on his own behalf in disciplinary, civil or criminal proceedings.
5. In the event of infringement of the prohibition set out in the previous paragraph the Principal shall owe to the Contractor an immediately payable penalty in the amount of € 25,000, notwithstanding the right of the Contractor to seek compensation.

#### **G INTELLECTUAL PROPERTY**

1. The intellectual property rights to everything which the Contractor uses and/or makes available within the scope of the fulfilment of the Agreement rest with the Contractor or its licensors. Nothing in the Agreement or these terms and conditions can lead to transfer of intellectual property rights unless otherwise expressly provided in writing.
2. The Principal is explicitly prohibited from providing everything on which the intellectual property of Contractor rests, including but not limited to computer programs, system designs, work methods, advice, (model) contracts and other products of the mind, all this in the broadest sense of the word – whether or not by using third parties – to third parties, or to reproduce, publish or exploit those products.
3. Contractor may provide to Principal a right of use on software etc. This right of use always ends at the time when the Agreements ends, unless otherwise agreed. After the end of the right of use Principal must cease and desist from using the software etc. Principal must delete any software from his systems.
4. Contractor is entitled to take technical measures to protect its rights (of intellectual property) or those of its licensors. Principal is expressly prohibited from removing or evading these measures.
5. The Principal is not permitted to provide (resources of) those products to third parties other than for the purpose of obtaining an expert opinion regarding the Contractor's Work. In that case, the Principal will impose his obligations under this article upon the third parties he calls in.

6. In the event of infringement of the provisions set out in paragraphs 2, 3, 4 and/or 5 the Principal owes to the Contractor an immediately payable penalty in the amount of € 25,000, notwithstanding the right of the Contractor to seek compensation.

#### **H FORCE MAJEURE**

1. In the event that the Contractor is unable to fulfil his obligations under the Agreement or is unable to fulfil these obligations in time or properly as a result of a cause that cannot be attributed to him, including but not limited to employee sickness, breakdowns in the computer network and other interruptions of the normal conduct of business within his enterprise, these obligations will be suspended until the time the Contractor can still fulfil these obligations in the manner agreed upon.
2. In the event that the situation referred to in the first paragraph occurs, the Principal is entitled to cancel all or part of the Agreement in writing, without this giving rise to any right to damages.
3. Where at the time of the occurrence of force majeure the Contractor has by then partially fulfilled his obligations under the Agreement or will be able to fulfil them, the Contractor shall be entitled to charge separately for the part already fulfilled or to be fulfilled. The Principal is obliged to pay this invoice as if it were a separate Agreement.

#### **I FEE**

1. The Contractor is entitled to suspend the performance of his Work before the start of the Work and in the interim until the Principal pays an advance for the work to be performed, to be reasonably fixed by the Contractor, or has furnished security for this. Initially, an advance paid by the Principal will be set off against the final invoice.
2. The Contractor's fee does not depend on the outcome of the Work performed, unless otherwise agreed in writing.
3. The Contractor's fee may comprise a pre-determined amount per Agreement and/or may be calculated based on rates per time unit worked by the Contractor or on the basis of rates per unit of quantity and is payable as and when the Contractor has performed Work for the Principal. Travel and accommodation costs are charged separately.
4. In the event that an amount fixed per Agreement is agreed upon, the Contractor is entitled to charge a rate per time unit worked on top of this, if and to the extent that the scope of the Work exceeds the scope of the Work provided for in the Agreement, in which case the Principal must also pay this additional amount.
5. In the event that wages and/or prices change after the establishment of the Agreement but before the instructions have been fully carried out, the Contractor is entitled to adjust the rate agreed on accordingly, unless the Principal and the Contractor have made other agreements in this regard.
6. The Contractor's fee, if necessary plus disbursements and invoices from third parties called in, including the value added tax due, if any, will be charged to the Principal on a monthly, quarterly or annual basis or after completion of the Work.

#### **J PAYMENT**

1. The Principal must pay the invoice amount within the terms agreed upon, but in no event later than 20 days after the invoice date, in Euros, at the office of the Contractor or by means of payments into a bank account to be designated by the Contractor and in as far as the payment regards work, the Principal has no right to a discount or setoff.
2. In the event that the Principal fails to pay within the term mentioned in paragraph 1 or within the term further agreed upon, the Principal will be legally in default and the Contractor is entitled to charge the statutory (commercial) interest from the due date until the day of payment in full, without any further summons or notice of default being required, all this without prejudice to the Contractor's further rights.
3. All costs arising as a result of collection of the claim in or out of court will be borne by the Principal, including to the extent that these costs exceed the court order to pay the costs of the proceedings. This involves as a minimum the costs over and above the principal sum in accordance with the Extrajudicial collection costs Decree of 1 July 2012 (Official Gazette 2012/141), with a minimum of € 40.
4. The Contractor is entitled to deduct the payments made by the Principal in the first place from the costs referred to in paragraph 3, then from the interest due and finally from the principal sums that have been payable the longest and the accrued interest.
5. In the event that the Contractor is of the opinion that the Principal's financial position or payment record gives rise to this, the Contractor is entitled to demand that the Principal furnish (additional) security in a form

to be specified by the Contractor. In the event that the Principal fails to furnish the requested security, the Contractor is entitled –without prejudice to any other rights he may have to immediately suspend the further fulfilment of the Agreement and everything that the Principal owes the Contractor on any account whatsoever will be due and payable at once.

6. In the event of liquidation, bankruptcy or suspension of payment of the Principal the claims against the Principal shall become due immediately.
7. In the event of instructions issued jointly, the Principals are jointly and severally liable for the payment of the invoice amount, the interest due and costs, to the extent that the Work has been performed for the collective Principals.

#### **K COMPLAINTS**

1. Complaints regarding the work performed and/or the invoice amount must be notified to the Contractor in writing within 20 days after the documents or information about which the Principal complains have been sent or within 20 days after the defect is discovered, in the event that the Principal demonstrates that he reasonably was unable to discover the defect earlier, specifying the exact nature and grounds for the complaints.
2. Complaints as referred to in the first paragraph do not suspend the Principal's payment obligation, except to the extent that the Contractor indicates that he believes the complaint is valid.
3. The Contractor must be given the opportunity to investigate the Principal's complaint.
4. In the event of a valid complaint, the Contractor can either adjust the fee charged, rectify or redo the rejected Work at no cost or not (or no longer) perform all or part of the instructions in exchange for restitution in proportion to the fee which the Principal already paid.
5. In the event that the complaint is filed too late, all rights of the Principal in connection with the complaint become null and void.

#### **L LIABILITY AND INDEMNIFICATION**

1. The Contractor is only liable to the Principal for damage which directly results from a (related series of) culpable failure(s) in fulfilling the Agreement. This liability is limited to the amount paid for the event in question according to the Contractor's liability insurer, plus the excess to be paid by the Contractor under the insurance policy, if any. If the liability insurer does not pay for any reason whatsoever, the Contractor's liability is limited to the amount of the fee charged for fulfilling the Agreement. In the event that the Agreement is a continuing performance contract with a term of more than one year, the amount mentioned in the previous sentence will be set at twice the amount of the fee charged to the Principal in the twelve months preceding the occurrence of the damage. In no event will the total compensation of the damage by virtue of this article amount to more than € 300,000 per event, in which a series of related events is deemed to be a single event, unless – in view of the scope of the instructions or the risks related to the instructions – the parties at the time the Agreement is entered into feel that there is reason to deviate from this maximum.
2. Except in the event of intent or gross negligence on his part the Contractor is not liable for:
  - damage occurring at the Principal or third parties which is the result of the provision of incorrect, incomplete or late delivery of Documents, data or information by the Principal to the Contractor or which is the result of some other act or omission on the part of the Principal, including the situation where the Contractor is not able to file the annual accounts with the Chamber of Commerce within the statutory period as a result of an act or omission (on the part) of the Principal;
  - damage occurring at the Principal or third parties which is the result of acts or omissions on the part of agents called in by the Contractor (not including employees of the Contractor), also if these work for an organisation which is affiliated with the Contractor;
  - consequential damage or loss of profits occurring at the Principal, including but not – limited to interruptions in the orderly conduct of events in the Principal's business.
3. The condition for liability is also that the Principal notifies the Contractor immediately and in writing after discovering a defect. The Contractor will at all times be entitled to remedy or limit the Principal's damage by rectifying or correcting the defective product if and to the extent possible.
4. The Contractor is not liable for any damage to or the loss of documents during transport or dispatch, regardless of whether the transport or dispatch takes place by or on behalf of the Principal, the Contractor or third parties. During the fulfilment of the Instructions, the Principal and the Contractor may communicate by electronic means at the Principal's

request. The Principal and the Contractor are not liable towards each other for damage possibly occurring for either of them as a result of the use of electronic means of communication, including – but not limited to – damage resulting from failures or delays in the delivery of electronic communication by third parties or by software/equipment used to send, receive or process electronic communications, the transmission of viruses and the failure of the telecommunication network or other means required for electronic communication to function (properly), except to the extent that the damage is the result of wilful misconduct or gross negligence. Both the Principal and the Contractor will do everything they reasonably may be expected to do or refrain from doing to prevent the risks mentioned above from occurring. The data extracts from the sender's computer systems serve as conclusive proof of (the contents of) the electronic communication sent by the sender until the recipient has furnished proof to the contrary.

5. The Principal indemnifies the Contractor against all claims from third parties, including shareholders, directors, supervisory directors and employees of the Principal, as well as affiliated legal entities and enterprises and others involved in the Principal's organisation and directly or indirectly related to the fulfilment of the Agreement. The Principal specifically indemnifies the Contractor against claims from third parties on account of damaged caused because the Principal provided incorrect or incomplete information to the Contractor, unless the Principal demonstrates that the damage is not related to any culpable act or omission on his part, or has been caused by wilful misconduct or gross negligence on the part of the Contractor. The above stipulations do not apply to instructions to audit the financial statements as referred to in Section 393 of Book 2 of the Dutch Civil Code.
6. The Principal indemnifies the Contractor against all possible claims from third parties in the event that the Contractor is forced by law and/or his professional rules to return the instructions and/or is forced to render his assistance to government agencies which are entitled to receive information –both when asked and at their own initiative– which the Contractor received from the Principal or third parties in the course of fulfilling the instructions.
7. All restrictions relating to the Contractor's liability, included in this article, apply in full for the actual executive(s) performing Work for Principal. Actual executives may also invoke these provisions against Principal.

#### **M EXPIRY PERIOD**

Unless otherwise stipulated in these general terms and conditions, rights of action and other powers of the Principal on any account whatsoever towards the Contractor in connection with the performance of Work by the Contractor will in any case become null and void one year after the time at which the Principal learned or reasonably could have learned of the existence of these rights and powers. This term does not regard the possibility to file a complaint with the appropriate body (bodies) for complaint handling and/or the Raad voor Geschillen (Dispute Review Board).

#### **N CANCELLATION**

1. The Principal and the Contractor can terminate the Agreement at any time with immediate effect by giving notice. In the event that the Agreement ends before the instructions are completed, the stipulations of I. paragraphs 2 and 3 apply and in any case the fee for the work performed and the costs incurred by Contractor must be reimbursed.
2. The other party must be informed of the cancellation in writing.
3. If and to the extent that the Contractor terminates the Agreement by giving notice, he must inform the Principal of his reasons for the cancellation and do everything the circumstances demand in the interest of the Principal.

#### **O RIGHT OF SUSPENSION**

The Contractor is entitled to suspend fulfilment of all his obligations, including the surrender of documents or other matters to the Principal or third parties, until all payable claims against the Principal are paid in full. The Contractor may only refuse to surrender Documents after making a careful consideration of interests.

#### **P APPLICABLE LAW AND JURISDICTION CLAUSE**

1. All Agreements between the Principal and the Contractor to which these general terms and conditions apply are governed by Dutch law.
2. All disputes in connection with Agreements between the Principal and the Contractor to which these general terms and conditions apply will be

settled by the competent court in the district where the Contractor is domiciled.

3. Contrary to the stipulation in paragraph 2, the Principal and the Contractor may opt for another dispute resolution manner.

**Q ELECTRONIC COMMUNICATION AND ELECTRONIC FILING OF ANNUAL ACCOUNTS**

1. During the execution of the Instructions Principal and Contractor may communicate with one another by electronic means and/or use electronic storage (such as cloud applications). Except where otherwise agreed in writing, parties may assume that the sending of correctly addressed fax messages, e-mails (including e-mails that are sent via the Internet) and voicemail messages irrespective of whether these contain confidential information or documents that relate to the Instructions, are mutually accepted. The same applies for other means of communication used or accepted by the other party.
2. Principal and Contractor are not liable to one another for damage that may arise for one or each of them as a result of the use of electronic means of communication, networks, applications, electronic storage, or other systems including – but not limited to – damage resulting from the non-delivery or late delivery of electronic communication, omissions, distortion, interception or manipulation of electronic communication by third parties or by software/hardware used for sending, receipt or processing of electronic communication, transmission of viruses and the non- or incorrect functioning of the telecommunications network or other means required for electronic communication, except where the damage is the result of intent or gross negligence. The above also applies for the use that Contractor makes of this in its contact with third parties.
3. In addition to the above paragraph Contractor does not accept any liability for any damage arising due to or relating to the electronic sending of (electronic) annual accounts and the digital filing of these with the Chamber of Commerce.
4. Both Principal and Contractor shall do or desist from everything that may reasonably be expected of each of them to prevent the occurrence of the aforementioned risks.
5. The data extracts from the computer systems of sender provide compelling proof of (the content of) electronic communication sent by sender until such time as the recipient provides evidence to the contrary.
6. The provisions of Article L apply accordingly.

**R OTHER PROVISIONS**

1. If Contractor performs work on Principal’s site, Principal will provide a suitable work station that complies with the statutory Health and Safety requirements and other applicable regulations relating to working conditions. Principal shall ensure that Contractor is in that case provided with office space and other facilities that in the opinion of Contractor are necessary or useful for fulfilling the Agreement and which meet the (statutory) requirements laid down for this. With regard to (computer) facilities made available Principal is obliged to ensure continuity among other things by means of adequate back-up, security and virus control procedures.
2. Principal shall not recruit or approach any employees of Contractor who are involved in the execution of the Work to be employed by Principal, whether or not temporarily, directly or indirectly or to perform work, whether or not on an employment basis, directly or indirectly for Principal during the term of the Agreement or any extension thereof and for 12 months thereafter. If the Principal violates his prohibition, it will owe the Contractor a penalty that equals the gross salary of the employee concerned over the most recent 6-month period.

This document is a translation. In the event of any dispute to the interpretation of any of these conditions, the official Dutch language version shall prevail.

Client	:	.....
Name	:	.....
Date	:	.....
Signature	:	.....