



Additional Conditions regarding software -design and -implementation

In addition to and deviation of the general terms and conditions of KPMG Advisory N.V. the following terms and conditions apply:

1. General

Materials: Software, websites, data files, equipment, analyses, designs, documentation, reports, quotations, as well as preparatory materials to be developed, made available or supplied by KPMG.

Software: immaterial information in object code form, which constitutes one or more computer programs or operating programs, the content of these programs and the (technical) documentation that is provided in connection with these programs, including programs which are part of a system or an installation.

2. Obligations of the Client

The Client will at all times ensure that a duplicate is retained of information provided to KPMG. The Client will also be responsible for making frequent back-ups of electronic information so that no information can be lost.

3. Intellectual property

1. All rights to the intellectual property of all Materials developed, made available or supplied by virtue of the Agreement, or other products of the mind of KPMG will be retained exclusively by KPMG or its licensors, with the exception of occurrences stated in writing that explicitly deviate from this with regard to Materials which are specifically referred to. The Client will only obtain the rights of use and authority that are granted by these Additional Conditions or otherwise granted explicitly in writing. In all other cases, the Client will not reproduce, disclose or exploit Materials or other products of the mind, and will only use them for the purpose for which they were made available to the Client. Rights granted to the Client are non-transferable and may not be sublicensed.
2. The transfer and granting of intellectual property rights with regard to Materials specifically developed for the Client does not prejudice the right of KPMG to employ, exploit and further develop, whether on its own behalf or for third parties, or to exchange with another KPMG Member Firm/other KPMG Member Firms, without any restriction to use for other purposes, components, general principles, ideas, designs, documentation, work, programming languages and such like upon which this development is based. The abovementioned transfer will furthermore not affect the rights of KPMG to undertake developments, for its own purposes or for third parties, which are similar to those which are or will be done for the requirement of the Client.
3. KPMG grants the Client the non-exclusive right to use the Materials developed, made available or supplied by virtue of the Agreement within the scope of the normal business operations of its company or organisation, in so far as is necessary for the purpose intended with the Materials, including the right to make one or more spare copies. The Client will strictly observe the restrictions on use agreed to by the parties.
4. If and to the extent that KPMG provides the Client with Materials of which third parties are title holders, the Client will be responsible for the observance of the conditions attached to this. The Client indemnifies KPMG against claims from third parties in relation to this.
5. The source code of Software developed by KPMG on the instruction of the Client will only be made available to the Client if this has been explicitly agreed to in writing.
6. The Client is not entitled to delete or amend any references with regard to author's rights, brand names, trade names or other intellectual property rights from Materials, including references concerning the confidential nature of the Materials.
7. If Software made available or developed by KPMG has been safeguarded from unauthorised use by technical protection, the Client is not entitled to remove or evade this protection.



8. KPMG will indemnify the Client against third party claims based on allegations that Materials developed by KPMG infringe upon an intellectual property right applicable in the Netherlands, on the condition that the Client immediately notifies KPMG in writing about the existence and the content of such legal action and leaves the handling of the case, including the arrangement of any settlement, solely in the hands of KPMG. For this purpose, the Client will provide KPMG with the necessary powers of attorney, information and cooperation so that KPMG is able, if necessary on behalf of the Client, to defend itself against the legal action. This indemnification will not apply if the claimed infringement is related to the use of developed Materials contrary to the conditions of use or if there are amendments to the Materials referred to which were not carried out by KPMG.
9. If it is established in court as an indisputable fact that the Materials developed by KPMG infringe upon any intellectual property rights belonging to third parties or if, in the opinion of KPMG, there is a great risk that such an infringement could occur, KPMG will ensure that the Client can keep using the Materials concerned and retaining the functionality as far as possible, for example by making adjustments to the infringing components or by the acquisition of user rights for the Client, or by replacing the Materials referred to by materials that have the same functionality.
10. Any other or additional liability or obligation on the part of KPMG to indemnify against the violation of intellectual property rights belonging to third parties is ruled out.
11. The Client warrants that no rights belonging to third parties are incompatible with it providing KPMG with equipment, software, websites, data files or materials in order to perform the Agreement, and the Client will indemnify KPMG against all claims, costs and damages based on the allegation that such provision, use or processing infringes on any rights belonging to third parties.

4. Planning

If an advance payment is owed by the Client or if it is required to provide information and/or materials which are essential to the performance of the Work, the period allowed for the completion of the Work will not commence until the full payment has been received or the information and/or materials have been supplied, as the case may be. Client accepts that by not timely, not completely or not at all providing for (i) the owed advance payment or (ii) the required information and/or materials the expected time of completion of the Work and the responsibilities of both Client and KPMG can be influenced.

5. Delivery, notification and approval

1. KPMG will deliver the Materials to the Client in accordance with the specifications set down in writing and in the format agreed to. If it has been agreed to in writing, KPMG will install the Software supplied.
2. The Client should notify KPMG as soon as possible and in as much detail as possible about any defects in the Materials supplied.
3. Materials supplied are considered to be approved by the Client, unless the Client has made notification of the defect in accordance with paragraph 2 above, within fourteen (14) days following the delivery or – if an installation to be carried out by KPMG has been agreed in writing – following completion of the installation, in which case the Materials will be deemed to be approved from the time KPMG has repaired the defects.

6. Retention of ownership and rights

1. All Materials supplied to the Client will remain the property of KPMG until all amounts owed by the Client by virtue of the Agreement have been paid in full to KPMG. If the Client generates a new item (*zaak*) (partly) using materials supplied by KPMG, the Client will only generate the new item on behalf of KPMG and will hold the new item for KPMG until all amounts owed pursuant to the Agreement have been paid; in such a case KPMG will hold all rights as owner of the newly generated item until the time of full payment by the Client.
2. In any occurrence rights will be granted or transferred on the condition that the Client has paid the amounts agreed to in full and in good time.



7. Risk

The risk of loss, theft or damage of Materials provided to the Client, whether temporarily or otherwise, lies with the Client from the moment they are at the Client's actual disposal or at the disposal of an associate (*hulppersoon*) of the Client.

8. Acceptance of Software

1. If it has been agreed in writing to carry out an acceptance test on Software, the Client will carry out the acceptance test in the manner agreed to in writing between the parties, within fourteen (14) days following delivery or – if an installation by KPMG has been agreed to in writing – following completion of the installation. During the test period the Client is not permitted to use the Software for production or operational purposes.
2. If an acceptance test on Software has been agreed to, then the Software can be deemed to have been accepted in each of the following cases: (a) on receipt by KPMG of a written confirmation of acceptance on the last day of the test period at the latest; (b) if KPMG receives a test report as referred to in paragraph 4 before the end of the test period, once the errors stated in that test report have been repaired, notwithstanding the presence of small errors that, according to paragraph 5, do not stand in the way of an acceptance; (c) if the test period has passed without any communication from the Client; or (d) following the operational use of the Software prior to acceptance being given.
3. If, when the acceptance test is being run, the Software appears to contain errors that could hinder the progress of the acceptance test, the Client will provide KPMG with a detailed written notification of this, in which case the test period will be disrupted until the Software has been adjusted to the extent that the hindrance is removed.
4. If the Software appears to contain errors when the acceptance test is run, the Client will notify KPMG about the errors in a detailed written test report on the last day of the test period at the latest. KPMG will to the best of its ability make effort to repair the reported errors within a reasonable period of time.
5. Acceptance of the Software supplied may not be withheld on grounds other than those which are related to the specifications explicitly agreed to between the parties, nor due to the presence of small errors that cannot reasonably be considered to stand in the way of operational or production implementation, notwithstanding KPMG's obligation to correct these small errors within the scope of the guarantee regulations contained in Article 9.
6. If the Software is delivered and tested in stages and/or per component, then non-acceptance of a certain stage and/or component will not affect the acceptance of a prior stage and/or component.

9. Software guarantee

1. KPMG does not guarantee that Software supplied will be free of errors and will work without interruption.
2. During a three (3) month period following delivery or, if an acceptance test has been agreed to, three (3) months after acceptance pursuant to paragraph 2 of Article 8, KPMG will correct any errors in the supplied Software to the best of its ability, in so far as these are related to specifications explicitly agreed to in writing between the parties and do not concern small errors that cannot reasonably be considered to stand in the way of the operational or production implementation, if KPMG has been given detailed written notification of these errors within this period.
3. Repairs will be carried out at no cost, unless the Software was developed on the instruction of the Client for a non-fixed price, in which case KPMG will charge its customary rates and costs for the repairs. The obligations under the guarantee will lapse if the Client makes changes to the Software supplied or has these performed without written permission from KPMG.
4. Following the expiry of the guarantee period KPMG will no longer be obliged to repair any errors, unless a maintenance agreement has been entered into by the parties which provides for such repairs.

10. Software maintenance

1. If the parties have agreed that KPMG will provide maintenance on the Software supplied, KPMG will maintain the Software according to KPMG's customary procedures and the procedures agreed to with the



Client.

2. The Client will provide KPMG with detailed notification of errors detected in accordance with KPMG's customary procedures. Upon receipt of the notification, KPMG will endeavour to correct the errors to the best of its ability. KPMG will correct the errors in a manner determined by KPMG in accordance with KPMG's customary procedures, unless agreed otherwise with the Client in writing.
3. KPMG may, in addition to the agreed maintenance fee, charge its customary rates and costs for repairs if such repairs are a result of errors in use or improper use or other causes that cannot be attributed to KPMG or if the Software has been altered by persons other than KPMG.

11. Instruction and training courses

1. In so far as KPMG's Work includes the provision of education, courses or training, KPMG is entitled to request that payment for such Work be made before its commencement. The consequences of cancellations of participation in education, courses or training will be in accordance with KPMG's customary regulations.
2. If KPMG decides that the number of registered participants is reason to do so, KPMG will be entitled to combine the education, courses or training with one or more other education, courses or training or to arrange it to be held at a different time or on a different date or to be cancelled.

12. Early termination of the Agreement

Rights of use on Materials granted by virtue of the Agreement will cease on the expiry of the Agreement or any sub-agreement, unless it has been agreed in writing that the rights of use are perpetual. The Client will immediately return to KPMG all Materials on which no perpetual rights of use were granted, following the expiry of the Agreement or sub-agreement. In so far as the Materials referred to are saved on computer systems, the Client will remove them permanently from the computers and destroy them.

13. Force majeure

1. Neither party will be obliged to fulfil any obligations if it is impeded by conditions beyond its control. Conditions beyond KPMG's control include default due to failures of suppliers to KPMG, breakdowns in telecommunication equipment and connections or faulty materials or property belonging to third parties that are required by the Client to be used by KPMG.
2. If a situation of force majeure continues for more than ninety (90) days, the parties will be entitled to terminate the Agreement by written notification of dissolution (*ontbinding*). Article 12 of these Additional Conditions and article 13 of the Terms and Conditions of KPMG Advisory N.V. will apply *mutatis mutandis* in such a case. KPMG shall remain its right to payment of invoices relating to Work already performed. Payment of these invoices relating to Work already performed shall be directly and fully due by Client at the time of termination of the Agreement.

1 January 2012