

# JING LAW FIRM

## 荷兰景舜律师事务所

### 荷兰景舜律师事务所格式条款

2019年8月版

#### 1. 定义

- 1.1. “**律所**”系指荷兰景舜律师事务所，系依荷兰法成立并由荷兰注册律师郭景博士全资所有并运营的个人独资企业，荷兰工商登记注册号为74985655。
- 1.2. “**客户**”系指根据服务合同聘请律所提供服务的自然人、法人或组织。
- 1.3. “**关联人**”系指基于劳动合同或其他依据为律所工作或曾经为律所工作的人，或可能因向客户提供服务而承担赔偿责任的人。
- 1.4. “**本格式条款**”系指本套格式条款。

#### 2. 适用范围

- 2.1. 本格式条款适用于律所与任何客户之间的所有法律关系，包括所有补充、后续和关联委托事项。任何与本格式条款不一致的约定必须由律所和客户书面达成一致。如本格式条款与具体商定的书面约定之间存在差异，则以后者为准。
- 2.2. 关联人也可向客户主张本格式条款的规定。本格式条款中所有维护律所利益的规定也适用于关联人，这些规定构成《荷兰民法典》6:253条所指的不可撤销无偿第三方条款（onherroepelijk derdenbeding om niet）。

#### 3. 与客户订立的合同及其履行

- 3.1. 即使客户意在由律所某一名或多名特定工作人员来处理委托事项，律所始终是客户的唯一合同方。《荷兰民法典》7:404条、7:407条第2款和7:409条不适用。
- 3.2. 律所服务仅为客户提供。第三方不得依赖或从这些服务中获得任何权利。第三方包括与客户同属一个集团的公司或实体、客户的股东、董事或监事、为客户工作的任何人以及客户的家庭成员等。
- 3.3. 客户同意律所使用自有或第三方提供的数字通讯方式和电子数据存储服务。客户认识到虽然律所在合理范围内尽了各种努力，但仍无法绝对保证这些数字通讯方式和电子数据存储服务的使用安全。客户不要求律所对因使用上述数字通讯方式或服务而造成的损害承担责任。
- 3.4. 如某事项系由两名或两名以上客户委托律所办理，则各客户对基于委托事项产生的义务向律所承担连带责任。

#### 4. 服务费、其它费用及税款

- 4.1. 除另有约定外，律所将按办理客户委托事项所耗时间（包括差旅和等待时间）乘以相应小时费率的方式收取服务费（以下简称“**服务费**”）。最小计时单位为六分钟。
- 4.2. 客户和律所也可就某特定委托事项约定固定服务费，即不论实际耗时多少，客户均支付约定的固定金额作为完成委托事项的服务报酬。不论客户以任何原因单方终止合同或不拟再使用律所

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服务，约定的固定服务费仍需全额支付，客户预付的金额不予退还。上述规定在律所根据下文第 8.1 条第二句终止服务合同时同样适用。如律所根据下文第 8.1 条第一句终止服务合同，则适用下文第 8.2 条的规定。在这种情况下，服务费将按上述第 4.1 条计算，并以约定的固定服务费作为绝对上限。

4.3. 除服务费外，以下款项也将由客户支付：

- a. 因办理客户委托事项而由律所向第三方垫付的各种费用，如挂号信邮费、快递费、法院案件受理费和翻译费等；
- b. 办公设施费，按服务费的 5% 收取（包括复印、打印和电话费等一般办公费用）；
- c. 因办理客户委托事项而产生的差旅费；及
- d. 增值税（只有根据相关税法规定必须收取时才适用）。

4.4. 律所可在开始办理业务前或办理业务过程中要求客户交纳预付款。除本格式条款另有规定外，客户交纳的预付款将从相应委托事项的最终应付金额中扣除。如客户不按时交纳预付款，律所可暂停或终止其服务，且不对由此产生的任何后果承担责任。

4.5. 律所可能不时调整小时费率和差旅费补偿标准。如上调额度超过 10% 或在与客户达成合同关系后三个月内上调，则律所应在费率上调七天内以书面形式告知客户，客户有权书面通知律所终止（opzeggen）合同。客户或客户代表人在收到或应被视为收到费率上调通知后十天内未终止合同的，上述合同终止权失效。

### 5. 账单及付款

5.1. 除另有约定外，律所将按月寄送账单。客户应在账单出具日后十五天内（以下简称“**付款期限**”）全额支付，不得抵消或中止支付。如付款期限内未全额付款，客户将立即处于违约状态。自违约时起，律所可暂停或终止服务，且不对由此产生的任何后果承担责任。

5.2. 自客户违约时起，律所所有权收取 20 欧元的滞纳金，并可就未付额度收取最低金额为 20 欧元的法定利息（如客户是消费者）或法定商业利息（如客户是商事主体）。客户还应向律所偿付因追讨未付金额而产生的所有费用（不论是法院诉讼、庭外追讨还是仲裁相关费用），上述费用至少为未付金额的 15%。如客户在法院诉讼或仲裁中完全或大体败诉，则应全额偿付诉讼和仲裁相关费用，而不仅限于法院或仲裁机构判定的诉讼或仲裁费用。

5.3. 客户可在付款期限内就账单向律所提出书面异议，提出异议时须同时提供合理依据。付款期限届满之刻起，对律所账单提出异议的权利归于消灭，账单的准确及有效性不可再通过法院诉讼或其它方式推翻。

### 6. 责任

6.1. 根据有关规定，律所购买了符合相关法律要求的律师执业责任保险（以下简称“**律师责任险**”）。如为客户提供服务导致任何责任，则仅由律所而非任何关联人承担责任。在任何情况下，律所的责任仅限于保险公司基于律师责任险就该事项实际赔付的金额并加上律所基于上述保险就该事项应承担的自付额（eigen risico）。

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6.2. 在不影响《荷兰民法典》6:89条的前提下，客户索赔或寻求任何其他法律救济的权利行使期限为客户知悉或应当合理知悉其所受损害及律所对损害应付责任之日起一年，但最长不超过致损原因发生后三年。

6.3. 第三方就律所履行客户委托事项而向律所提出索赔的后果由客户向律所偿付，但偿付额度仅为超出保险公司基于律师责任险就该事项赔付的金额（如有）以及律所基于上述保险就该事项应承担的自付额（eigen risico）之外的金额。上述偿付金额还包括相关费用和开支。“第三方”一词与上文第3.2条中所述含义相同。

### 7. 聘用第三方

7.1. 为办理客户委托的事项，律所可聘用翻译、快递公司或某些领域的专家等第三方。客户同意律所可以自身名义或作为授权代表以客户名义聘用此类第三方。

7.2. 客户同意律所与按上述7.1条聘用的第三方之间商定的条件（包括责任限制条款）对客户有约束力。律所对第三方造成的损害不承担责任。

### 8. 终止合同

8.1. 客户或律所均可终止（opzeggen）服务合同，但必须提前十四天书面通知对方。如客户未在付款期限内支付账单中标明的应付款项，或未按预付款账单规定的期限交纳预付款，则律所可通过书面通知方式立即终止（opzeggen）服务合同，且不对由此产生的任何后果承担责任。

8.2. 如果服务合同终止，客户应就律所至合同结束时为止履行的工作以及律所为将委托事项转交给客户或第三方而需进行的后续工作按上述第4和第5条的规定向律所支付报酬和费用。

### 9. 法律适用、投诉及争议解决

9.1. 客户与律所之间的一切法律关系（不论是否为合同性质）均只适用荷兰法律。

9.2. 律所的客户投诉处理规定适用于律所为客户提供的所有服务，该投诉处理规定公布于律所网站。

9.3. 除荷兰律师执业争议解决委员会（Geschillencommissie Advocatuur）根据律所投诉处理规定有管辖权外，其它所有由客户与律所之间的服务合同而导致的争议均仅由阿姆斯特丹地方法院（Rechtbank Amsterdam）进行初审。但如果客户的住所（woonplaats）或活动中心在荷兰境外，律所可选择将上句所述争议按荷兰仲裁院（Netherlands Arbitration Institute，简称NAI）仲裁规则或其后继机构适用的仲裁规则提交荷兰仲裁院或其后继机构进行仲裁。仲裁庭由一名仲裁员组成。仲裁地点为阿姆斯特丹。仲裁语言为英语。

### 10. 其它规定

10.1. 根据《荷兰反洗钱及防止恐怖主义融资法》等法律法规的相关规定，律所有核实客户身份（某些情况下还须核实客户最终受益所有人身份）、并在不通知客户的情况下向有关政府机构报告异常交易或跨境税务构架的法定义务。客户同意律所履行上述义务，且不要求律所或任何关联人对因遵守上述法律规定而产生的后果承担责任。

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- 10.2. 为提供最佳服务并履行相关法定义务，律所需处理客户及客户工作人员的个人数据。有关详情载于律所网站上公布的隐私声明。
- 10.3. 客户委托事项终结后（无论终结原因如何），律所将通过挂号邮件将所有重要文件的原件（如判决和公证书等）退还至客户最后告知的地址，相关费用由客户承担。因此律所档案中将不保存任何重要文件的原件。此类文件的保存由客户负责。客户委托事项终结后七年内，律所将保存相关电子文档，并在必要范围内保留纸质文档。如法律规定更长保存期限，则档案保存期将为法定保存期。上述保存期限届满后，律所可在不通知客户的情况下销毁此类文件。为履行在承接新业务前进行利益冲突调查的法定义务，对于客户及客户相对方姓名及出生日期等基本信息，律所将在案件结束后保存二十年。
- 10.4. 电子邮件视为书面形式。
- 10.5. 律所没有托管银行账户（*derdengeldenrekening*），因此不得为客户或其他方托管任何资金。
- 10.6. 《荷兰民法典》6:230a 至 6:230e 条、《荷兰律师执业条例》（*Verordening op de advocatuur*）第 4.7 条及《荷兰律师执业细则》（*Regeling op de advocatuur*）第 35a 条规定应披露的信息已在律所网站上公布。
- 10.7. 本格式条款以英文撰写，可由律所翻译成其他语言以供参考。如不同语言版本之间存在差异，则以英文版本为准。

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### Jing Law Firm General Terms and Conditions

Version of August 2019

#### 1. Definitions

- 1.1. “**The Firm**” means Jing Law Firm, registered with the Dutch Chamber of Commerce under number 74985655 in the form of a sole proprietorship under Dutch law (*eenmanszaak*). The Firm is owned and operated by Dr Jing Guo, attorney of law (*advocaat*) admitted to the Dutch Bar Association (*Nederlandse Orde van Advocaten*).
- 1.2. “**Client**” means the natural person, legal entity or organisation that engages the Firm pursuant to an agreement for services.
- 1.3. “**Affiliated Person**” means any person working for or having previously worked for the Firm, whether pursuant to an employment agreement or on any other basis as well as any person that may be held liable due to provision of services to the Client.
- 1.4. “**The Conditions**” means this set of general terms and conditions.

#### 2. Scope of application

- 2.1. The Conditions apply to all legal relationships between the Firm and any Client, including *inter alia* all supplemental, follow-up and related assignments. Any deviation from the Conditions must be agreed upon between the Firm and the Client in writing. In case of discrepancies between the Conditions on the one hand and specifically agreed arrangements in writing on the other hand, the latter shall prevail.
- 2.2. Affiliated Persons may also rely on the Conditions vis-à-vis the Client. All that is stipulated in the Conditions for the benefit of the Firm also applies to the Affiliated Persons as an irrevocable and gratuitously made third-party clause within the meaning of article 6:253 of the Dutch Civil Code (*onherroepelijk derdenbeding om niet*).

#### 3. Contract with the Client and the performance thereof

- 3.1. The Firm shall be the sole contracting party of the Client, even if the Client’s intention is for instructions to be performed by one or more specific persons working at the Firm. Article 7:404, article 7:407 paragraph 2 and article 7:409 of the Dutch Civil Code are not applicable.
- 3.2. Services rendered by the Firm are solely for the benefit of the Client. Third parties may not rely on or derive any rights from such services. A third party includes *inter alia* every group company or entity, shareholder as well as managing or supervisory director of the Client, any person working for the Client and any family member of the Client.
- 3.3. The Client agrees that the Firm may use digital means of communication and electronic data storage services, whether or not offered by third parties. The Client is aware that despite all the reasonable efforts made by the Firm, no absolute guarantee can be provided regarding

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the security of using such digital means of communication and electronic data storage services. The Client shall not hold the Firm liable for damage ensuing from the use of the aforementioned digital means or services.

- 3.4. If an assignment is provided by more than one Client, all Clients bear joint and several liability for the obligations arising from the assignment.

#### **4. Fees, other charges and tax**

- 4.1. Unless otherwise agreed, the Firm charges service fees on the basis of time spent (including travel and waiting time), multiplied by the applicable hourly rates (the “**Service Fees**”). The smallest unit of time registration is six minutes.
- 4.2. The Client and the Firm may also agree a fixed fee for a specific assignment, being a fixed amount as consideration for the performance of the whole assignment, irrespective of the actual time spent. Such fixed fee will be payable in full and no refund will be made in case any amount has been paid in advance, if the Client for whatever reason terminates the service agreement unilaterally or no longer wishes to receive further assistance. The same applies if the Firm terminates the service agreement in accordance with the second sentence of clause 8.1 below. Clause 8.2 below will apply if the Firm terminates the service agreement in accordance with the first sentence of clause 8.1 below, it being understood that the Service Fees will then be calculated in accordance with clause 4.1 above with the agreed fixed fee as an absolute cap.
- 4.3. In addition to the Service Fees, the following will also be charged to the Client:
- a. all third-party costs charged to the Firm in connection with the provision of services entrusted by the Client such as registered mail costs, courier costs, court registration fees and translation fees etc.;
  - b. general office costs, being a lump sum amounting to 5% of the Service Fees (covering general office costs such as copy, printing and telephone costs etc.);
  - c. travel and accommodation expenses in connection with the provision of services entrusted by the Client; and
  - d. value added tax (if applicable).
- 4.4. The Firm may at all times request an immediately payable advance payment. Advance payments will be deducted from the final invoice amount in the corresponding matter entrusted by the Client, unless otherwise stipulated in these Conditions. If the Client does not pay an advance payment on time, the Firm may suspend or end its services and will not be liable for any consequences resulting therefrom.
- 4.5. The Firm may amend its hourly rates and travel/accommodation expenses compensation rates from time to time. In case of an increase exceeding 10% or an increase within three

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months after commencement of the contractual relation with the Client, the Firm shall inform the Client in writing within seven days after the increase, in which case the Client will be entitled to terminate (*opzeggen*) the agreement with the Firm by written notice. The Client's right to terminate the agreement lapses after ten days from the moment the Client or the Client's representative(s) receive(s) or should be deemed to have received the notification.

### 5. Invoice and payment

- 5.1. Unless agreed otherwise, the Firm shall send invoices on a monthly basis. The Client shall pay the invoice in full without set-off or suspension within fifteen days after the invoice date (the "**Payment Term**"). In case of no full payment within the Payment Term, the Client shall be automatically in default. As from the moment of default, the Firm may suspend or end the services and will not be liable for any consequences resulting therefrom.
- 5.2. From the moment the Client is in default, the Firm will be entitled to charge EUR 20 delayed payment collection administration fees as well as statutory interest (if the Client is a consumer) or statutory commercial interest (if the Client is a commercial party) over the outstanding amounts with a minimum of EUR 20. The Client shall also reimburse the Firm all costs (whether judicial, extra judicial or arbitration related costs) in relation to the collection of outstanding invoice amounts, with a minimum of 15% of the outstanding invoice amounts. Judicial and arbitration related costs shall be reimbursed by the Client in full instead of being limited to the litigation or arbitration costs awarded by the court or the arbitration institute, if the Client completely or largely loses the lawsuit or the arbitration proceedings.
- 5.3. The Client may notify the Firm in writing of any objections to an invoice within the Payment Term by providing reasonable details to support the objections. Upon expiration of the Payment Term, the right to raise objections to an invoice shall be extinguished, in which case the accuracy and validity of the invoice can no longer be challenged in or out of court.

### 6. Liability

- 6.1. In accordance with the relevant regulations, the Firm has taken out professional indemnity insurance that meets the applicable legal requirements (the "**Insurance**"). If provision of services to the Client gives rise to any liability, only the Firm and not any Affiliated Person can be held liable. The liability of the Firm shall in all events be limited to the amount that is paid out for the relevant claim under the Insurance, plus the amount of the Firm's deductible (*eigen risico*) thereunder.
- 6.2. Without prejudice to article 6:89 of the Dutch Civil Code, the Client's right to claim damages or to seek any other legal remedies will expire one year after the date on which the Client becomes or should have reasonably become aware of the damage and the Firm's liability for such damage, and will in any event lapse after three years from the occurrence of the cause of the damage.

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6.3. The Client indemnifies the Firm and Affiliated Persons for the consequences of claims by third parties in connection with the performance of the Client's assignments, to the extent such claim exceeds - if any - the amount that is paid out under the Insurance plus the amount of the Firm's deductible (*eigen risico*) thereunder. The indemnity also covers related costs and expenses. The term "third party" has the same meaning as mentioned in clause 3.2 above.

### **7. Engaging third parties**

7.1. For performing the assignment(s) entrusted by the Client, the Firm may engage third parties such as translators, couriers or experts in certain areas etc. The Client agrees that the Firm may engage such third parties in its own name or, as an authorised representative, in the Client's name.

7.2. The Client agrees to be bound by the conditions (including liability limitation clauses) agreed between the Firm and third parties engaged in accordance with clause 7.1 above. The Firm is not liable for any damage caused by any third party.

### **8. Termination**

8.1. Either the Client or the Firm may terminate (*opzeggen*) the service agreement by giving fourteen days' prior written notice. However, if the Client does not pay an invoice within the Payment Term or a prepayment invoice within the term specified therein, the Firm may terminate (*opzeggen*) the service agreement by giving immediate written notice without being liable for any consequences resulting therefrom.

8.2. If the service agreement is terminated, the Client shall pay for the work performed by the Firm up to the end of the agreement and for any subsequent work that the Firm may need to perform in order to transfer the matter to the Client or a third party, all in accordance with clauses 4 and 5 above.

### **9. Governing law, complaints and dispute resolution**

9.1. All legal relationships (whether contractual or otherwise) between the Client and the Firm are exclusively governed by Dutch law.

9.2. The Firm's complaints procedure, which is published on the Firm's website, applies to all services performed by the Firm for any Client.

9.3. All disputes arising in connection with the service agreement between the Client and the Firm will in the first instance be exclusively submitted to the District Court of Amsterdam (*Rechtbank Amsterdam*), unless the Dispute Committee for the Legal Profession (*Geschillencommissie Advocatuur*) is competent according to the Firm's complaints procedure. However, if the Client's domicile (*woonplaats*) or centre of activities is outside the Netherlands, the Firm may opt to submit the dispute as mentioned in the previous sentence to the Netherlands Arbitration Institute (NAI) or its successor in accordance with the Arbitration Rules of the NAI or



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the applicable arbitration rules of the NAI's successor. The arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be Amsterdam. The arbitration language shall be English.

### **10. Miscellaneous**

- 10.1. Pursuant to *inter alia* the Anti-Money Laundering and Anti-Terrorist Financing Act, the Firm is obliged by law to verify the identity of its Clients (and under certain circumstances also to verify the identity of the Client's ultimate beneficiary owners) and to report unusual transactions or cross-border tax structures to the relevant authorities without informing the Client. The Client consents to the foregoing and shall never hold the Firm or any Affiliated Person liable for any consequences resulting from compliance with the aforementioned legal requirements.
- 10.2. The Firm processes personal data of its Clients and persons working for its Clients in order to provide the best possible services and to comply with statutory obligations. Further information in this regard can be found in the privacy statement published on the website of the Firm.
- 10.3. Upon completion of a matter entrusted by the Client (irrespective of the reason), the Firm will return the originals of all important documents (such as judgments and notarial deeds etc.) by registered mail to the most recent known address of the Client at the Client's expense. Accordingly, no important original documents will be stored in the archive of the Firm. Conservation of such documents is the Client's responsibility. The firm retains the relevant electronic and - to the extent necessary - hardcopy files on record for seven years upon completion of a matter, or for a longer period if prescribed by law. After expiry of the aforementioned period, the Firm may destroy such files without informing the Client. In order to comply with the legal obligation of verifying possible conflict of interest before accepting new assignments, the Firm will retain certain basic data regarding the Clients and their counterparties such as name and date of birth for twenty years after completion of a matter.
- 10.4. Communication through e-mails shall be deemed to be in writing.
- 10.5. The Firm does not have a trust bank account (*derdengeldenrekening*). Accordingly, the Firm shall not administer any money in trust for the Client or any other party.
- 10.6. The information to be disclosed pursuant to article 6:230a through article 6:230e of the Dutch Civil Code, article 7.4 of the Legal Profession Bye-law (*Verordening op de advocatuur*) and article 35a of the Legal Profession Regulations (*Regeling op de advocatuur*) is published on the website of the Firm.
- 10.7. The Conditions are drafted in English and may be translated by the Firm into other languages for reference purposes. In case of discrepancies between different language versions, the English version prevails.