

GENERAL TERMS BCCA

1. APPLICATION

- 1.1. Without prejudice to the application of any special terms and conditions set out in a separate written agreement, these general conditions apply to every tender, offer, invoice or agreement between BCCA VZW/ASBL (Rue d'Arlon 53, 1040 Brussels, BCE n° 0449.439.701) (hereinafter referred to as "BCCA") and the client (hereinafter referred to as "Client"). In case of contradiction between these general conditions and any separate written agreement, the stipulations of such separate written agreement shall prevail.
- 1.2. These general conditions are deemed to be accepted by the Client at the moment that the Client orders the task. The acceptance of these general conditions also implies that the Client completely renounces the application of his own general (purchase) conditions.
- 1.3. BCCA reserves the right to change these general conditions until the moment that BCCA has accepted the mission to be carried out (hereinafter referred to as "Mission").

2. TERMS OF IMPLEMENTATION

- 2.1. All tenders, offers and agreement proposals from BCCA are without commitment and thus not binding. Unless determined otherwise in the offer, a price offer is valid for three (3) months as from the date of the offer. Any deadlines mentioned in an offer or special agreement, are only indicative and not binding for BCCA. A delay in the realisation of the Mission, for any reason whatsoever, can under no circumstances give cause for the annulment of the Mission or for any form of compensation.
- 2.2. An agreement between BCCA and the Client is only concluded at the moment of the signing of the offer by the Client, the signing of a separate written agreement or the execution and invoicing of the performances. Any cancellation of a Mission must be done in writing and is only valid if accepted in writing by BCCA.
- 2.3. The Client shall, depending on the Mission to be carried out:
 - 2.3.1. put the documents, products, samples or systems necessary for the execution of the Mission on first request at the disposal of the representatives or employees of BCCA who carry out the Mission (hereinafter referred to as "Representative(s)");
 - 2.3.2. ensure the necessary access to the Client's company sites;
 - 2.3.3. communicate the necessary information and instructions concerning the Client's company site to the Representatives as to guarantee the safety, hygiene and health of the Representatives, and, if required, put the necessary safety equipment at their disposal; and
 - 2.3.4. ensure that one of the representatives of the Client is always present at the visits of a Representative of BCCA.
 The Client shall compensate BCCA and/or the Representative(s) for and hold them harmless against any damages they should incur if the Client does not comply with this article 2.3.
- 2.4. BCCA reserves the right to assign certain performances to third parties (such as other bodies or laboratories) which are appointed by BCCA, within the applicable legal boundaries and in accordance with the applicable recognition or accreditation rules.

3. DETERMINATION AND ADJUSTMENT OF THE PRICES

- 3.1. Each Mission is invoiced at the prices and conditions as mentioned in the offer or any special agreement or, if not included in the offer or any special agreement or when there is no offer or special agreement, as included in the tariff system applied by BCCA.
- 3.2. Additional costs and performances, such as additional testing, which were deemed necessary in addition to the Mission agreed upon, on the basis of findings done during the execution of the Mission, can be invoiced by BCCA.
- 3.3. The unit prices do not include any Belgian or foreign taxes (including, but not exclusively, the VAT). Unless explicitly agreed upon otherwise, the above-mentioned unit prices do not include any travelling or accommodation expenses of the Representatives.
- 3.4. Without prejudice to the application of a yearly indexation, the unit prices included in the offer or special agreement remain valid for the duration of the specific Mission, as determined in the offer or the specific agreement. Notwithstanding the foregoing, BCCA explicitly reserves the right to charge to the Client any additional duties or taxes applicable on the performances to be carried out as implemented or imposed from the conclusion of the agreement until the day the performances concerned are executed.
- 3.5. All unit prices can be changed by BCCA if the expenses of BCCA should change following new taxes and/or duties, or as a result of, among others (without limitation), a change in the legislation or rules, energy prices, labour and/or fuel costs, and/or exchange rates. New unit prices shall be notified to the Client in writing at least fourteen (14) calendar days before taking effect. After expiration of this period, BCCA is entitled to apply the new unit prices.

4. INVOICING

- 4.1. For every Mission an invoice is issued. The costs and expenses with relation to the Mission, as well as the additional performances and expenses (including the additional costs mentioned in article 3), are charged separately. Unless agreed upon otherwise in any offer or special agreement, the Mission is invoiced on the basis of the tariffs that apply at the moment of the realisation of the Mission.
- 4.2. Unless agreed upon otherwise in an offer, written agreement or on the invoice, the invoices are to be paid within thirty (30) calendar days following the issue date of the invoice in question. Any objection against an invoice, for any reason whatsoever, is to be notified to BCCA in writing within eight (8) days after receipt of the invoice.
- 4.3. In case of non-payment of a part or the whole of the invoice at the due date, an interest of 1% per month, and this for every month that has commenced, shall automatically and without prior notice, be due by the Client. Moreover, in case of non-payment of the invoice within a period of ten (10) days after formal notice by BCCA, the Client legally owes a fixed compensation equal to 15% of the unpaid amount of the invoice with a minimum of 250€, without prejudice to the right of BCCA to claim a higher compensation in case of proof of more important actual damages. All judicial (if legally permitted) and extrajudicial collection costs are charged to the Client. In case of non-payment at due date, BCCA is further authorised to postpone any other Mission for the Client until full payment of the invoice. All other claims on the Client which are not yet payable, shall automatically and without prior notice become due. Set-off by the Client is explicitly excluded. Payments are first credited to the costs due, then to the interests and finally to the principal amount of the oldest invoice that is still open.
- 4.4. If at any moment, BCCA has any doubt about the creditworthiness or solvency of the Client, BCCA explicitly reserves the right to ask for an advance payment or (other) security for the performances that remain to be executed, even if the performances have already been partially or completely executed. If the Client refuses to comply with BCCA's request, BCCA reserves the right to immediately annul the agreement without judicial intervention and without any compensation being due.

5. LIABILITY

- 5.1. All obligations of BCCA under these general conditions constitute a best efforts obligation.
- 5.2. Without prejudice to deviating mandatory legal provisions, BCCA (including representatives appointed by or employees of BCCA) is only liable for damages, if and to the extent that these damages were caused by BCCA as a result of wilful misconduct or fraud by BCCA. BCCA is not liable for other faults. If BCCA is held liable for any damages, the liability of BCCA is limited to the invoice amount of the Mission, more precisely its liability is limited to the part of the invoice to which the liability relates. BCCA is exclusively liable for direct damages. BCCA can never be held liable for indirect damages including, but not limited to, consequential losses, lost profits, missed savings or damages to a third party.
- 5.3. Any complaint with relation to alleged mistakes in the realisation of the Mission by BCCA, must be communicated to BCCA in writing within eight (8) days after the damages were discovered by the Client or should reasonably have been discovered by the Client, and in any event within a maximum period of one (1) year after the realisation of the performances, under penalty of forfeiture of the right to any remedy.
- 5.4. If a Mission concerns products, the Client confirms and guarantees that these products are manufactured and marketed (in Belgium and abroad) in accordance and compliance with all applicable legal and regulatory provisions (including, but not limited to, the law of 9 February 1994 with regard to the security of products and services or any new regulation replacing the law of 9 February 1994). The Client shall inform BCCA in writing about any circumstances which may endanger the above-mentioned guarantee. In general, the Client guarantees that he shall at all times comply with all applicable legal and regulatory provisions. The Client shall indemnify and hold BCCA harmless against any damages BCCA may suffer as a result of the Client's non-compliance with the aforementioned guarantee.

6. DURATION

The agreement between BCCA and the Client shall remain in full force and effect for a term as agreed upon in the specific agreement. In case no specific duration has been fixed, the agreement is concluded for an indefinite term. In default of an agreed definite term, the agreement can be ended by BCCA or the Client by registered mail subject to a notice period of three (3) months.

7. SUSPENSION/TERMINATION

- 7.1. In addition to any termination grounds as agreed upon in a written specific agreement, BCCA is entitled to terminate or suspend (at the sole discretion of BCCA) the agreement with the Client at any given moment, without court intervention, without prior notification and without being liable for compensation: (i) if the Client does not comply with one or more of its obligations and fails to remedy or end these breaches within seven (7) calendar days after receipt of a written notice of BCCA requesting to remedy or end such breach; (ii) if the Client has suspended payment, has gone bankrupt or has filed for bankruptcy or a reorganisation under the Belgian Law of 31 January 2009 (if required in compliance with article 35 of this law) or for a similar (foreign) procedure; (iii) in case of liquidation or discontinuation of the Client's activities; or (iv) if (a part of) the Client's assets are seized. In the event of termination, BCCA also reserves the right to compensation for all expenses and damages incurred. In addition, all the claims from BCCA against the Client will immediately become due.
- 7.2. In case of termination or suspension of the agreement, any right of use granted to the Client for any intellectual property right of BCCA shall expire or be suspended. In such a case, the Client shall refrain from any further use of the right of use granted to the Client. In case of a termination of the agreement, the Client shall immediately return to BCCA all documentation and information, which is the property of BCCA.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Without prejudice to any deviating written specific agreement and without prejudice to article 8.2, all intellectual property rights with regard to the performances of BCCA, remain the property of BCCA or any other existing entitled party and are under no circumstance assigned to the Client, nor is any right of use or license granted to the Client.
- 8.2. BCCA hereby grants the Client a non-transferable and non-exclusive right to use for its commercial activities any certificate, attestation, qualifications or other document that has been awarded to the Client on the basis of the Mission. Unless with a prior written approval from BCCA, the Client shall only use such certificate, attestation, qualifications or other document as a whole, without any changes or amendments (i.e. in the form the document is given by BCCA to the Client) and in relation to his commercial activities.

9. CONFIDENTIALITY

The parties shall keep all information with relation to the activities of the other party strictly confidential and shall not release such information to any third party, unless and to the extent that such information is or becomes general knowledge and is or becomes available for public use (not as a result of a mistake of this party) and unless (i) in the degree to which it is required to enable such Party to meet any legal or regulatory requirements, (ii) at the request of any authority or public body, or (iii) to allow such party to defend its rights in a legal or administrative procedure. The party that must communicate information on the basis of previous exception, shall inform the other party (unless the authority or public body concerned urges this party not to communicate to the other party).

10. MISCELLANEOUS

- 10.1. If (part of) a provision of these general conditions is invalid or unenforceable, this shall not affect the validity and the enforceability of the other provisions of these general conditions. In such case, the parties shall in common agreement replace such invalid or unenforceable provision by a valid or enforceable provision which reflects as much as possible the purpose and the scope of the original provision.
- 10.2. Any provision of these general conditions that, due its nature, is intended to survive the termination of the agreement, shall survive the termination of the agreement, including, but not limited to, the obligations set out in articles 8 (intellectual property rights) and 9 (confidentiality). The termination or annulment of the agreement shall not affect the rights of any party obtained prior to such a termination or annulment.

11. APPLICABLE LAW - COMPETENT COURT

- 11.1. All agreements to which these general conditions apply, as well as all other agreements resulting thereof, are governed solely by Belgian law.
- 11.2. The parties shall endeavour to resolve any dispute with respect to the validity, interpretation or implementation of the agreements to which these general conditions apply, including all other agreements resulting thereof, in an amicable manner. If a party is of the opinion that a dispute cannot be settled amicably, the parties agree that all disputes with respect to the agreements to which these general conditions apply, as well as all other agreements resulting thereof, shall be submitted to the exclusive jurisdiction of the courts of Brussels.



Belgian Construction Certification Association vzw/asbl