

Delivery conditions for assignments to NIVRE adjusters, surveyors and valuers

Clause 1 Definitions

- 1.1 General Conditions: these general delivery conditions for assignments to adjusters, surveyors and valuers, which may only be used by experts (natural persons/claims agencies) registered with the NIVRE.
- 1.2 Consumer: The other party of the loss adjusting agency, being a natural person, not acting in the exercise of a profession or business.
- 1.3 Loss Adjusting Agency: the user of these General Conditions, who is registered with the NIVRE as a natural person, partnership or legal entity, and who carries out activities in the field of damage assessment and related expertise.
- 1.4 NIVRE: the Stichting Nederlands Instituut van Register-Experts [Dutch Institute of Register Experts];
- 1.5 Principal: The other party of Loss Adjusting Agency, being a Consumer, a natural person acting in the exercise of a profession or business or legal entity in respect of a (potential) Contract.
- 1.6 Contract(s): contractual relationship(s), as part of which the Loss Adjusting Agency provides services or executes assignments for the Principal.

Clause 2 Applicability of General Conditions

2.1. Unless expressly otherwise agreed upon in writing, these General Conditions shall apply to all offers and acceptance thereof, inquiries, communications, contractual relationships, (to the performance of) Contracts by the loss adjusting agency, as well as to anything that might arise as a result of or in connection with the offers and/or Contracts, regardless of any (previous) reference by the Principal to his own or other general conditions.

2.2 If the Principal refers to his own general conditions at the conclusion of the Contract, or at an earlier stage, the Loss Adjusting Agency expressly rejects those conditions and shall never be deemed to have accepted such general conditions.

2.3 These General Conditions shall also apply to any further or follow-up contracts between the Parties, as well as to all Contracts arising from commitments and building on new Contracts of any kind, unless expressly agreed otherwise in writing.

2.4 If the Principal does not agree with the contents, or part of the contents, of these General Conditions, it must communicate this in a separate letter prior to the conclusion of the Contract. Any deviations proposed by the Principal shall only apply if the Loss Adjusting Agency expressly acknowledges this in writing. In such a case, the loss adjusting agency reserves the right to dissolve the Contract without being liable, directly or indirectly, on any account whatsoever.

Clause 3 Offer and Acceptance

3.1. All offers/price lists etc. are without obligation, unless they contain a period for acceptance specified by the Loss Adjusting Agency. If an offer contains a non-binding offer and this is accepted by the Principal, the Loss Adjusting Agency shall be entitled to revoke the offer within two (2) days after receipt of the acceptance by the Loss Adjusting Agency.

3.2 The Contract shall become binding by means of a written confirmation, including by e-mail, of the assignment by the Loss Adjusting Agency to the Principal, specifying the object or claim in question, unless the Principal has provided or confirmed the assignment, adequately described, in writing. Consequently, a Contract shall only be deemed to have been concluded after confirmation by the Loss Adjusting Agency.

3.3 If reservations or changes with respect to the offer are made in the acceptance, in derogation from the provisions of the previous paragraphs, the Contract shall only be concluded if the Loss Adjusting Agency has informed the Principal in writing that it agrees to these deviations from the offer.

3.4 If an acceptance by the Principal deviates from the offer of the Loss Adjusting Agency, this shall be deemed to be a new offer by the Principal and a rejection of the entire offer of the Loss Adjusting Agency, including if the Principal's offer deviates on minor points.

3.5 If the Principal presents an offer to the Loss Adjusting Agency, acceptance by the Loss Adjusting Agency shall only be deemed to have occurred when it is accepted in writing or if the Loss Adjusting Agency has commenced with the performance of the Contract.

3.6 All price lists, brochures and other data provided with an offer shall be described as accurately as possible, but cannot be regarded as any guarantee. They shall only be binding on the Loss Adjusting Agency if Loss Adjusting Agency has expressly confirmed this in writing.

3.7 Each Contract shall be entered into on the part of the Loss Adjusting Agency on the suspensive condition that the Principal - at the sole discretion of the Loss Adjusting Agency - proves to be sufficiently creditworthy for the financial compliance with the Contract upon commencement of the Contract.

3.8 With respect to work for which, due to their nature and scope, no offer or confirmation of assignment is sent, the invoice shall too be regarded as a confirmation of assignment, which shall also be deemed to accurately and fully represent the Contract.

Clause 4 Amendments

4.1 Any subsequent supplementary agreements or amendments to the Contract or to

these General Conditions, as well as (verbal) agreements and/or promises made by personnel of the Loss Adjusting Agency or on behalf of the Loss Adjusting Agency by representatives or other intermediaries of the Loss Adjusting Agency, shall only be binding on the Loss Adjusting Agency if confirmed by Loss Adjusting Agency in writing.

Clause 5 Obligations on the Part of the Loss Adjusting Agency

5.1 In performing its work, the loss adjusting agency shall observe the care of a good contractor (Section 7:401 of the Dutch Civil Code).

5.2 An assignment shall relate only to the purpose stated therein; no consequence for any other purpose may be attached to it.

5.3 Unless agreed otherwise in writing, the Loss Adjusting Agency shall perform the assignment as it sees fit. The Loss Adjusting Agency shall perform the assignment it has accepted to the best of its knowledge and ability, meticulously and without prejudice, as to be expected from an unbiased expert and intermediary.

5.4 The Loss Adjusting Agency shall, if and inasmuch as deemed necessary for the proper performance of the assignment, be entitled at all times to engage third parties in the performance of the assignment, who, however, must have the qualifications required for the performance of the assignment. The applicability of Section 7:404, 7:407 paragraph 2 of the Dutch Civil Code is excluded.

5.5 The Loss Adjusting Agency shall comply with the rules of conduct of NIVRE, unless this is explicitly deviated from in these General Conditions. The rules of conduct can be consulted at: <https://www.nivre.nl/over-het-nivre/klachten-tuchtrecht/>.

Clause 6 Obligations of the Principal

6.1 The Principal shall be obliged vis-à-vis the Loss Adjusting Agency to enable the performance of the assignment within the normal working hours of the Loss Adjusting Agency and under conditions that meet the (applicable) statutory safety requirements and other government regulations.

6.2 Upon granting the assignment, or as soon as possible after, the Principal shall provide the Loss Adjusting Agency with all the data and information required for the proper performance of the assignment. In particular, the Principal must, if the Loss Adjusting Agency so requires and in the manner specified by the Loss Adjusting Agency for that purpose, provide the loss adjusting agency with written information.

6.3 The Loss Adjusting Agency must be able to assume that such data is correct and complete. If the Loss Adjusting Agency and/or experts it has appointed/engaged, as referred to in clause 5, suffer damage as a result of inaccuracy and/or incompleteness of that data, the Principal shall be obliged to compensate the injured party or parties.

6.4 If commencement and progress of the assignment is delayed due to circumstances

attributable to the Principal, any resulting loss or damage suffered by the Loss Adjusting Agency shall be compensated by the Principal.

Clause 7 Experts

7.1 If and to the extent that the loss adjusting agency considers it necessary for the proper performance of the assignment, it may engage the assistance of one or more experts.

7.2 The Loss Adjusting Agency shall exercise due care when selecting third parties. The Loss Adjusting Agency shall not be liable for shortcomings of these third parties and shall be entitled, without prior consultation with the Principal, to accept (also) on behalf of the Principal any limitation of liability on the part of third parties it engages.

Clause 8 Confidentiality

8.1 The Parties shall be mutually obliged to keep confidential all information they have obtained within the scope of the assignment and of which they know or could have known that it concerns confidential information, unless a Party is obliged to disclose the said information to a third party pursuant to legislation and/or regulations or a judicial decision, and that party cannot invoke a right to refuse to provide evidence granted by a competent judge.

8.2 The Loss Adjusting Agency shall be obliged to observe secrecy concerning third parties with respect to anything that comes to its knowledge within the scope of the assignment, as well as the contents of its report to the Principal; all this except for the necessity, for the proper performance of the assignment, to appoint one or more experts by the Loss Adjusting Agency.

8.3 If the Loss Adjusting Agency has appointed one or more experts, it shall impose a duty of confidentiality on these expert(s) as referred to in paragraphs 1 and 2 of this clause.

8.4 The Principal shall treat all information, which he receives from the Loss Adjusting Agency in this respect, as strictly confidential and shall not use it for any purpose other than that for which it is intended.

Clause 9 Conditions for the Performance of the Assignment

9.1 The Principal must ensure that the assignment can be carried out under such conditions as the nature of the assignment reasonably requires.

Clause 10 Interim Termination

10.1 The Loss Adjusting Agency shall be entitled to terminate, for urgent reason of its own, the further execution of the already accepted assignment, without being bound to indemnify damage and/or loss possibly sustained by the Principal in consequence of it, and under production of a verbal or written – this at the option of the Loss Adjusting Agency – report to the Principal about the activities already carried out.

10.3 The Principal shall indemnify the Loss Adjusting Agency for the expenses already incurred and for the activities already carried out, with respect to which the stipulations of clause 14 shall apply.

Clause 11 Report

11.1 In conclusion of the execution of the assignment, the Loss Adjusting Agency shall submit a written report to the Principal describing its findings.

11.2 Whenever this is deemed necessary by the Loss Adjusting Agency or agreed between the Parties in writing - including by e-mail - the Loss Adjusting Agency shall submit an interim report to the Principal.

Clause 12 Termination and Retention Duty

12.1 The activities of the Loss Adjusting Agency shall end (except in case of premature termination as described in clause 16) with the submission of the final report relating to the assignment accepted by the Loss Adjusting Agency.

12.2 The Loss Adjusting Agency shall retain all data, correspondence, documents and suchlike records that have a bearing on the acceptance and the execution of the assignment for a period of five years after the submission of the report; other material objects relating to the subject of the assignment shall not need to be retained by the Loss Adjusting Agency for more than twelve months after the submission of the report.

Clause 13 Payment

13.1 Unless otherwise agreed in writing, payment shall be made, without any deductions, by deposit into or remittance to the (postal) bank account specified by the Loss Adjusting Agency within 30 days after the invoice date. The settlement date mentioned on the (postal) bank's statement of account is resolute and shall thus be deemed to be the date of payment.

13.2 In the absence of a separate agreement in this respect, payment shall be made in euros in the manner indicated by the Loss Adjusting Agency.

13.3 The Principal shall not be entitled to suspend its obligations (including its payment obligations) under the Contract. This paragraph does not apply if the Principal is a Consumer.

13.4 The Loss Adjusting Agency shall be entitled at all times to require advance payment, cash payment or security for payment.

13.5 If the Principal has not objected within 10 working days following the invoice date, the invoice will be considered to be accepted and acknowledged. This paragraph does not apply if the Principal is a Consumer.

13.6 Every payment made by the Principal shall primarily serve to pay the interest due by him, as well as the collecting charges and/or accounting costs incurred by the Loss

Adjusting Agency and shall then be deducted from the oldest outstanding debt.

13.7 If one of the circumstances specified in clause 16 paragraph 1 occurs, the Principal shall be legally in default by the mere occurrence of one of the aforementioned circumstances. In that case all debts due to the Loss Adjusting Agency by the Principal shall mature immediately. This paragraph does not apply if the Principal is a Consumer.

Clause 14 Interest and Costs

14.1 If the term of payment (as set out in clause 13 paragraph 1) is exceeded, the Principal shall be in default by operation of law and the Principal shall owe interest equal to the statutory commercial interest rate plus 2% on the amount due from the date of exceeding the term until the date of full payment. When calculating the interest due, a part of a month shall be considered a full month. In the event that the Principal is a Consumer, the Loss Adjusting Agency shall only be entitled to charge the statutory interest within the meaning of Section 6:119 of the Dutch Civil Code.

14.2 In case of non-payment or late payment or non-observance of any of the Principal's other obligations, all collecting charges resulting from the non-payment or non-observance, both judicial and extra-judicial, shall be payable by the Principal to the Loss Adjusting Agency, in addition to the invoice amount and the interest. The extrajudicial collecting charges shall amount to at least 15% of the amount due by the Principal, inclusive of the aforementioned interest, with a minimum of € 150.00 and they shall be due in all cases in which the Loss Adjusting Agency has engaged the services of a third party for the collection. The mere engagement of a third party is proof of the extent of and the Principal's liability to payment of the extrajudicial collecting charges, without the Loss Adjusting Agency being obliged to produce evidence that such costs have actually been incurred.

14.3 In the event that the Principal is a Consumer, the extrajudicial charges shall only be due after the term of payment referred to in clause 13.1 has expired and the Consumer has been sent a written notice of default by the Loss Adjusting Agency to pay the calculated extrajudicial charges fourteen (14) days from the day after this letter has been received by the Consumer. Moreover, in the event that the Principal is a Consumer, the extrajudicial charges, in derogation from clause 14.2 of the General Conditions, shall be calculated in accordance with the Dutch Extrajudicial Collection Costs Compensation Decree.

14.4 If the Principal has not fulfilled his obligations in time, the Loss Adjusting Agency shall be authorised to suspend the fulfilment of the obligations entered into towards the Principal for the execution of the assignment until full payment has been made or a security accepted by the Loss Adjusting Agency has been furnished. Furthermore, the Loss Adjusting Agency may require such security if it has reasonable grounds to suspect that there are reasons to doubt the creditworthiness of the Principal.

14.5 The Principal expressly waives his right to offset payments. This paragraph does not apply if the Principal is a Consumer.

Clause 15 Right of Withdrawal of the Consumer

15.1 The following shall only apply if the Principal is a Consumer and the Contract has been concluded remotely or outside the sales area:

- a. The Consumer has the right to rescind the Contract without giving reasons, within fourteen (14) days after the Contract has been concluded.
- b. If the Loss Adjusting Agency, in consultation with the Consumer, starts performing the Contract within the period referred to in clause 15.1.a or has already performed the Contract, the Consumer may not invoke his right of withdrawal.

15.2. If the Consumer wants to revoke the Contract, the Consumer must indicate this within the period referred to in clause 15.1.a. For this purpose, the Consumer can use the "Model withdrawal form." The Consumer may also invoke the right of withdrawal by means of an unequivocal statement.

15.3. If the Consumer has revoked the Contract in accordance with clause 15.2, the Loss Adjusting Agency shall issue instructions to return the amount already paid in respect of the Contract to the Consumer, within fourteen (14) days.

15.4. The risk and burden of proof for the correct and timely exercise of the right of withdrawal lies with the Consumer.

Clause 16 Termination and Annulment

16.1 The Loss Adjusting Agency shall be entitled to promptly terminate its activities and to annul the not yet executed part of the Contract by means of a written statement to the Principal, without any judicial interposition being required, and without prejudice to its right to compensation of expenses, damage, loss and interest:

- a. if the Principal is declared bankrupt, assigns his property to his creditors, applies for a moratorium or if his property is fully or partly placed under attachment or if he proceeds to the partial or complete liquidation of his business
- b. if the Principal dies or is put in ward or, should the principal be a legal entity, if a resolution for dissolution is taken;
- c. in case of attachment of whatever nature;
- d. if the Principal fails to meet any obligation incumbent on him by virtue of the law or of these conditions;
- e. if the Principal fails to pay an invoiced amount or part thereof within the prescribed time, or fails to meet one or more of his obligations towards the Loss Adjusting Agency;
- f. if the Principal proceeds to the cessation or conveyance of his business or an important part thereof, including the transfer of his business to a company to be formed, or if he changes the aims and objects of his business;
- g. generally in all those cases where, after the conclusion of the Contract, the

Loss Adjusting Agency learns of circumstances which give it good grounds to fear that the Principal will not meet his obligations.

16.2 If the Principal meets, after all, his obligations towards the Loss Adjusting Agency after the occurrence of one or more of the aforementioned cases, for which reason the Loss Adjusting Agency has terminated its activities, the Loss Adjusting Agency shall be obliged only to report verbally or in writing – this at the option of the Loss Adjusting Agency – about the activities already carried out.

16.3 In the cases mentioned in paragraph 1 the Loss Adjusting Agency also has the right, at its option, to postpone the compliance with its obligations until the sum due, inclusive of any interest and expenses, has been received in full.

Clause 17 Force Majeure

17.1 In the event of a non-attributable failure in the fulfilment of the Contract on the part of the Loss Adjusting Agency, and/or on the part of the third parties/suppliers engaged by the Loss Adjusting Agency for the performance of the Contract, the Loss Adjusting Agency shall be entitled to suspend the fulfilment of its obligations towards the Principal for a reasonable period to be determined by it, or to dissolve the Contract concluded between the Parties without being obliged to pay any compensation. If the situation referred to above arises when the Contract has been performed in part, the Principal shall be obliged to fulfil his (payment) obligations to the Loss Adjusting Agency in accordance with clause 13 of these General Conditions.

17.2 Circumstances resulting in non-attributable non-performance on the part of the Loss Adjusting Agency shall include, inter alia: war, riots, mobilisation, domestic and foreign civil commotion, government measures, strikes and lockouts by employees or the threat thereof; disruption of the exchange rates existing at the time of entering into the Contract; business interruptions due to fire, accident or other incidents; infectious diseases, epidemics, pandemics and their consequences; natural phenomena, all this irrespective of whether the non-performance or late performance occurs at the offices of the Loss Adjusting Agency, its principals or third parties it has engaged for the performance of the Contract.

Clause 18 Liability

18.1 The Loss Adjusting Agency shall not be liable for damage suffered by the Principal for any reason whatsoever, including all direct and indirect damage, such as consequential damage or trading loss, unless such damage was caused by intent or deliberate recklessness on the part of the Loss Adjusting Agency, its directors or de facto managers.

18.2 Only if it is established in court that the Loss Adjusting Agency, despite the provisions of clause 18.1. of these General Conditions and other than due to intent or wilful recklessness, the Loss Adjusting Agency is liable for any damage suffered by the Principal, the liability of the Loss Adjusting Agency shall be limited to compensation of direct damage only, with a maximum amount equal to the value of the Contract. If the Contract is (mainly) a continuing performance agreement with a

term of more than one year, the above amount shall be set at the total of the fees (excluding turnover tax) stipulated for one (1) year, i.e. the year in which the damage or defect occurred. Under no circumstances, however, shall the total compensation for direct damage amount to more than that paid out by the insurer of the Loss Adjusting Agency in this respect.

18.3 Subject to the provisions of the previous paragraphs, the Loss Adjusting Agency shall not be liable for indirect damages, such as (but not limited to) consequential damages, loss of data, pollution damage, loss of income or profit, lost savings and damage due to business interruption.

18.4 Except for liability on the part of the Loss Adjusting Agency by virtue of imperative legal stipulations and generally accepted rules of reasonableness and fairness, the adjuster/surveyor shall not be liable for, and thus never be bound to, indemnify mediate or immediate damage and/or loss of whatever nature, sustained directly or indirectly, including business interruption loss in respect of movable or immovable property, or by persons both at the Principal's and third parties' in consequence of:

- a. improper conditions, as referred to in clause 9, and incorrect and/or incomplete information, as referred to in clause 6;
- b. incorrect and/or incomplete information as referred to in clause 6, more specifically where information asked for by the Loss Adjusting Agency is concerned, inasmuch as it has reasonably not been possible for the Loss Adjusting Agency to witness the circumstances in order to obtain the information in question;
- c. activities not carried out by the Loss Adjusting Agency, inasmuch as it has in reason not been necessary for the Loss Adjusting Agency, by virtue of the provisions of clause 5, to carry out those activities;
- d. errors and/or delays resulting from the incorrect operation of equipment used by the Loss Adjusting Agency in the execution of its assignment, unless the Principal proves satisfactorily that the Loss Adjusting Agency has been negligent in the care of that equipment. This exclusion applies both if the incorrect operation referred to is due to the failure or malfunctioning of the power supply and/or other outside causes affecting the equipment, the prevention of which is not within the control of the Loss Adjusting Agency, and if it is due to defects to the equipment itself, including software;
- e. the non-completion or late completion of the report;
- f. the operations and activities of the experts appointed within the scope of clause 7 of these General Conditions.

18.5 Any liability of the Loss Adjusting Agency shall in all cases be limited to the amount paid out under the Professional Liability Insurance of the Loss Adjusting Agency in the relevant case. Any concurrence of assignments shall be considered as a single case in this context.

18.6 Any claim against the Loss Adjusting Agency shall lapse one year after the date

of submission of the report to the Principal. This paragraph does not apply if the Principal is a Consumer.

18.7 The Loss Adjusting Agency accepts no liability whatsoever for advice provided by the Loss Adjusting Agency without an express Contract/assignment to provide advice.

18.8 The Principal shall indemnify the Loss Adjusting Agency against all third-party claims, both in connection with the performance of the assignment and in connection with the report issued by the Loss Adjusting Agency. This clause does not apply if the Principal is a Consumer.

18.9 The Principal shall bear all costs arising from the indemnification referred to in this clause.

18.10 The limitations of liability referred to in this clause shall not apply in the event of death or bodily injury.

18.11 The exclusions or limitations regarding the legal liability of the Loss Adjusting Agency referred to in this clause shall not apply in the event that the Principal is a Consumer.

Clause 19 Personal Data

19.1 In the performance of the Contract, the Loss Adjusting Agency declares to comply with all applicable laws and regulations pertaining to personal data protection, including the GDPR. If and insofar as personal data is processed for and/or jointly with the Loss Adjusting Agency within the scope of the performance of the Contract, the Parties shall conclude the Contract(s) required for this purpose under the privacy laws and regulations.

Clause 20 Intellectual Property

20.1 The rights relating to all services used by the Loss Adjusting Agency within the scope of the Contract/assignment - including, but not limited to, analyses, models, overviews, software, techniques, etc. - or which are the result of the work carried out by the Loss Adjusting Agency under the assignment - including advice, reports, records, etc. - shall be exclusively vested in the Loss Adjusting Agency, to the extent that these rights are not (also) vested in third parties other than the Principal.

20.2 All intellectual property rights, including in particular, but explicitly not limited to, copyrights on advice given, reports, etc., relating to what has been produced (partly) as a result of the Contract, shall be vested in the Loss Adjusting Agency. The Contract does not in any way provide for the transfer of any right of intellectual property, nor for the granting of any licence.

20.3 Without the Loss Adjusting Agency's prior written permission, the Principal shall not be authorised to publish or reproduce the services referred to in paragraphs 2 and 3, nor to use them for any purpose or to make them available to persons other than

those for whom or for which the services in question are intended. This prohibition also includes the explicit or tacit authorisation of the aforementioned acts.

20.4 The Loss Adjusting Agency shall not be liable for claims and/or demands of third parties for infringement of their copyright, patent rights, licences, trademark rights, design rights and other rights by whatever name relating to the services provided by the Loss Adjusting Agency, if it has infringed those rights by using data or data carriers, documents or objects provided to the Loss Adjusting Agency by or on behalf of the Principal in compliance with the Contract.

The Principal shall indemnify the Loss Adjusting Agency in full against such claims.

Clause 21 Complaint Handling and Disciplinary Proceedings

21.1 In case of dissatisfaction, the Principal may file a complaint with the Loss Adjusting Agency.

21.2 Furthermore, the Principal has the option of submitting a complaint to the NIVRE Disciplinary Committee, which is hosted by The Disputes Committee, [NIVRE Complaints](#).

Clause 22 Applicable Law and Disputes

22.1 All offers, inquiries, assignments and Contracts of, and the execution of assignments by, the Loss Adjusting Agency shall be governed by Dutch law.

22.2 All disputes, including those regarded as such by only one of the Parties, arising from or related to the Contract to which these conditions apply, both of a factual and legal nature, shall be settled by arbitration, in accordance with the rules of the Netherlands Arbitration Institute.

22.3 This arbitration clause does not eliminate the right of the Parties to apply, in cases of urgency, to the president-judge of the district court for summary proceedings, in which connection the only competent president-judge is the one of the district court having jurisdiction over the area where the Loss Adjusting Agency in question is established, and to proceed to obtaining a garnishee order and the ways to maintain them.

22.4 This arbitration clause does not eliminate either the right of the Loss Adjusting Agency to apply to the competent civil judge demanding payment of an invoice and the interest and collecting charges related with it, in case the term of payment of an invoice in accordance with clauses 14 and 15 is exceeded, in which connection the only competent civil judge is the one of the court of civil judicature having jurisdiction over the area where the Loss Adjusting Agency in question is established, inasmuch as the legal provisions admit this.

22.5 The right of the Loss Adjusting Agency to bring the dispute before the president-judge of the district court of the civil judge who is competent in accordance with the normal competence regulations, is left intact by the provisions of paragraphs 4 and 5



of this clause.

22.6 In the event that the Principal is a Consumer, the court that has jurisdiction under the law shall be competent.