

GENERAL TERMS AND CONDITIONS UP STRONG B.V.

1 Definitions

1. In these general terms and conditions the following terms shall have the meaning set out below.
 - (a) Assignment: an assignment consisting of a set of defined Services agreed between Up Strong B.V. and Client.
 - (b) Client: the private person or legal entity contracting Up Strong B.V. for its Services.
 - (c) Consultancy Agreement: the agreement concluded between Up Strong B.V. and Client regarding the rendering of the Services, of which agreement these General Conditions form an integral part.
 - (d) Deliverable: a report rendered by Up Strong B.V. in conclusion of the Services.
 - (e) Effective Date: the effective date indicated in the Consultancy Agreement.
 - (f) General Conditions: these general terms and conditions used by Up Strong B.V. in relation to Client, irrespective of the form in which they are presented.
 - (g) Information: any information necessary for the proper performance of the Assignment to be provided by the Client to Up Strong B.V..
 - (h) Privacy Statement: Up Strong B.V. privacy statement published at <https://www.up-strong.com/privacy-statement/> detailing how Up Strong B.V. deals with the processing of personal data, as referred to in the General Data Protection Regulation meaning Regulation (EU) 2016/679 of 27 April 2016.
 - (i) Results: outcome of the Services performed by Up Strong B.V. during the Assignment.
 - (j) Services: all activities defined in the Consultancy Agreement.
 - (k) Up Strong / Up Strong Management / Up Strong Consultancy / Up Strong Services / Up Strong Business Strategy & Management / Up Strong Training & Coaching / US Training & Coaching / US Business Strategy & Management / Lead2Achieve / Lead2Achieve Training & Coaching / Lead2Achieve Life Sciences (hereafter referred to as "Up Strong"): the trade names retained by the limited liability company Up Strong B.V., Zichtweg 1, 2151 WB Nieuw-Vennep (Dutch Chamber of Commerce #84816422) for rendering the Services.

2 Applicability

1. The General Conditions shall cover and form part of all offers, agreements and other acts, either made orally, in writing, electronically or in any other form, concerning the performing of Services by Up Strong.
2. The General Conditions also apply to Services partly or wholly performed by a third party commissioned by Up Strong, which are performed on behalf of the Client.
3. Deviations from the General Conditions shall only apply if and to the extent that they have been explicitly agreed upon in writing between Up Strong and Client.
4. Up Strong explicitly rejects the applicability of any general (purchase) conditions used by the Client.
5. If and to the extent that any provision contained in these General Conditions should prove not valid for whatever reason, the other provisions of these General Conditions shall remain in full force and effect.

3 Offer and agreement

1. All offers made by Up Strong shall be without any obligation, unless explicitly otherwise stated in writing.
2. All offers are valid for the period mentioned in the offer concerned. If no period is mentioned, the offer will be valid for fourteen (14) days after the date mentioned in the offer.
3. An agreement with respect to Services shall have been concluded as soon as the Client accepts Up Strong's offer in writing.
4. Any other party than Client cannot derive any rights from an order placed by Client with Up Strong.

4 Prices, fees and variations

1. All prices and fees mentioned in Up Strong's offers are in Euros, unless explicitly otherwise stated.
2. Furthermore, all prices and fees are excluding value-added tax (VAT), any other sales tax, unless explicitly otherwise stated.
3. Up Strong is at any time authorized to adjust its prices and fees with respect to new Assignments.
4. If in consultation with the Client deviations from the Consultancy Agreement will be made, the costs deriving from such deviations will be invoiced to the Client against the prices and fees that apply at such moment.

5 Payment

1. Unless otherwise agreed between Up Strong and Client, Up Strong's invoices must be paid within 14 (fourteen) days after the date of invoice.
2. All payments by Client to Up Strong shall first be applied against the oldest of any outstanding invoices, irrespective of any other indication by Client.
3. Client shall not be entitled to any postponement of payment of Up Strong's invoices, neither to any set-off or reduction outside the scope of its rights in this respect under mandatory law.
4. Up Strong is entitled to postpone further delivery of Services until payment of any invoice due has been received.
5. If the Client fails to pay an invoice within the payment term, Client is in default without a warning or notice of default being required.
6. From the day on which the Client shall be in default until the day of payment in full, interest shall accrue on the outstanding amount at the statutory rate.
7. If Client continues to be in default in his obligation to pay the outstanding invoice with accrued interest, Up Strong is at liberty to instruct a debt-collector agency and/or lawyer to collect Client's debt.
8. All collection costs incurred by Up Strong in respect of such collection, both in law (judicial costs) as well as out of law (extra judicial costs) shall be for the Client's sole account. The amount of the collection costs shall be determined at least 15% (fifteen percent) of the principal sum due by Client to Up Strong.

6 Performance of the Assignment, delivery, retention of title and Client obligations

1. Each Assignment will start as soon as possible after the Effective Date, after Up Strong has received the Information.
2. Up Strong shall perform the Services professionally and to the best of its abilities in accordance with the Consultancy Agreement and its Privacy Statement. However, Client acknowledges that Up Strong cannot guarantee any particular results.
3. Up Strong shall make its best endeavours to deliver the Services within the term set out in the Consultancy Agreement, but it shall not be liable for any damages suffered by Client in the event that the Assignment is not completed within the agreed term.
4. If at the election of Up Strong, it is necessary to subcontract a part of the Assignment, Up Strong shall be at liberty to do so without first obtaining Client's permission, provided that such subcontracting shall take place under the supervision and responsibility of Up Strong.
5. Any agreed Deliverables shall be provided to Client by regular mail and/or by electronic mail.
6. Up Strong retains title to the Deliverables, until payment has been received in full, including accrued interest and costs referred to in article 5 of these General Conditions.
7. Client will provide Up Strong in due time with information required by Up Strong for rendering the Services.
8. Client warrants that the Information is correct and complete, and that it is entitled to provide Up Strong with such information for the rendering of the Services, which Up Strong will exclusively use for rendering the Services and unless otherwise agreed, Up Strong will destroy all Information upon termination of the Project.

7 Complaints

1. If Client is of the opinion that (any part of) the Services delivered by Up Strong does/do not meet the agreed conditions, Client must notify Up Strong thereof in writing within seven (7) days of the alleged shortcoming, otherwise Client will be deemed to have acknowledged that the Services were supplied in conformity to the agreed conditions.
2. If and when any Services Up Strong supplied to Client caused damage, regarding which Client claims compensation, Client shall report any such damage to Up Strong within two (2) business days after which such damage occurred.
3. For any valid claim made regarding Deliverables and/or Services, Up Strong and the Client will discuss in good faith how such complaint could be best remedied.
4. All of Client's objections against any of Up Strong's invoices must be notified in writing to Up Strong within 7 (seven) days after the date of invoice, after which term the amount concerned is considered to be acknowledged for payment in due time.

8 Services warranty, limitation of liability and indemnification

1. Up Strong shall use reasonable efforts in performing the Services but does not make any warranties, express or implied, by operation of law or otherwise, with respect to the effect of the Services.
2. The liability of Up Strong due to an attributable failure to perform under any agreement concluded between Up Strong and Client will be limited to compensation of any direct damages.
3. Any liability of Up Strong for special, punitive, consequential or indirect damage, including but not limited to loss of profits, loss of turnover, loss of prospective profits or anticipated sales or goodwill is excluded.
4. Furthermore, Up Strong will not be liable for damages, including but not limited to the infringement of third party intellectual property rights, resulting from (i) the use of the Information by Up Strong and/or (ii) the use and/or processing of any Results by the Client, save for or gross negligence ("*bewuste roekeloosheid*") or malicious intent ("*opzet*") by Up Strong.
5. The liability of Up Strong shall, save for gross negligence or malicious intent, never exceed the sum stipulated for the Services to which the failure pertains (or, in the event of a long-term agreement, the total amount paid by Client to Up Strong in the 6 months preceding the failure).
6. Client agrees to indemnify, defend Up Strong from and hold Up Strong harmless against any and all claims and/or damages resulting from:
 - (a) the exercise of any and all rights granted by Up Strong to Client under these General Conditions and/or any related agreement;
 - (b) Client's breach of any provision of these General Conditions and/or any related agreement;
 - (c) any infringement of third-party intellectual property rights (i) by Up Strong when using the Information or (ii) by Client when using the Results.
7. This clause does not apply to death or personal injury to the extent that Up Strong cannot by law exclude or limit its liability for such damages.

9 Confidentiality

1. If and when the Client and Up Strong have concluded a confidentiality agreement prior to the start of the Services, the terms thereof remain in full force and effect. If no such agreement has been concluded, the following shall apply.
2. Both Up Strong and Client undertake to observe strict confidentiality with regard to all confidential information they receive from each other. They shall also impose this confidentiality obligation on their employees as well as to third parties who have been contracted by them in connection with any agreement between Up Strong and Client.
3. Information will in any event be regarded as confidential if either Up Strong or Client indicates such information as confidential.

4. The confidentiality obligations referred to in articles 9.1 and 9.2 above shall not apply or cease to apply to information regarding which the receiving party can prove by documentary evidence that:
 - (a) it was in the public domain prior to disclosure to the receiving party;
 - (b) it was in its possession prior to the disclosure to the receiving party, provided that it was not acquired directly or indirectly from the disclosing party;
 - (c) after disclosure to the receiving party, it became part of the public domain by publication or otherwise through no act or omission of the receiving party;
 - (d) after disclosure to the receiving party, it has been lawfully provided by a third party, meaning that this third party was not under any confidentiality obligation regarding the information supplied to the receiving party.

10 Term and termination

1. These General Conditions and any related agreement shall remain in force during the term set out in the Consultancy Agreement.
2. The provisions regarding Services warranty, limitation of liability and indemnification (8), confidentiality (9), and disputes (11) shall survive termination of these General Conditions and any related agreement.

11 Disputes

1. These General Conditions as well as any related agreement between Up Strong and Client concerning the the supply of Services are governed by the laws of the Netherlands.
2. Any disputes following from or arising in connection with these General Conditions and any related agreement between Up Strong and Client shall exclusively be submitted to the competent court in Amsterdam (“Rechtbank Amsterdam”), The Netherlands.

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