

# WINTERTALING

## GENERAL TERMS & CONDITIONS WINTERTALING 2020

1. Wintertaling coöperatie U.A., referred to below as “Wintertaling” is a cooperative association with excluded liability, established under the laws of the Netherlands, registered in the Commercial Register of the Chamber of Commerce under number 34387389.

### Scope

2. These general terms and conditions are applicable to any form of services and / or activities performed by or on behalf of persons connected to Wintertaling and to all legal relationships arising therefrom or connected therewith. Unless and to the extent otherwise agreed upon, these general terms and conditions also apply to possible follow-up assignments performed by persons connected to Wintertaling. All service assignments and / or the performance of activities issued to persons connected to Wintertaling, are accepted and performed exclusively by Wintertaling. By “persons connected to Wintertaling” shall be understood to mean:
  - (i) the attorneys and / or the civil-law notaries or junior civil-law notaries;
  - (ii) every business or management company of the attorneys and / or civil-law notaries, or junior civil-law notaries, or any collaborations between these;
  - (iii) the legal assistants and / or other employees (whether or not by virtue of an employment contract) working for Wintertaling; or every legal entity or person that is working or has worked for or on behalf of Wintertaling and / or one of its members / sections, whether or not in an employment relationship; or
  - (iv) any third parties engaged for the performance of the task.
3. The applicability of any general terms and conditions used by other parties that deviate from these terms and conditions is rejected. Section 7, clauses 404, 407 (2) and 409 of the Dutch Civil Code are not applicable.
4. These general terms and conditions shall apply without prejudice on behalf of all the persons connected to Wintertaling and on behalf of all third parties engaged for the performance of any task by Wintertaling or who are or may be liable in connection therewith. Wintertaling is not liable for shortcomings of third parties who are engaged for the performance of the task. Any extended liability is excluded. All that is stipulated in these general terms and conditions on behalf of Wintertaling, is considered to be an irrevocable and free of charge third-party clause as defined by clause 6:253 Dutch Civil Code in their favour.
5. Wintertaling is authorized to engage third parties for the performance of an assignment. If Wintertaling engages a third party, Wintertaling is not liable towards the client for any error on the part of this third party. Wintertaling is authorized to accept clauses limiting the liability of these third parties also on behalf of the client.
6. The client indemnifies Wintertaling and all persons affiliated with Wintertaling against the consequences of claims of third parties arising from or in connection with the execution of an assignment, including possible costs

of legal assistance, unless the claim is a result of a professional error made by Wintertaling.

### Fees and costs

7. All charging rates stated are exclusive of VAT and exclusive of other costs, including but not limited to office costs, travel and accommodation expenses, court registry fee, bailiff costs and land registry fees. The charging rates may be adjusted periodically. The hourly rates of (associate) lawyers and civil notaries increase as their experience and competences increase. Wintertaling may require an initial and additional advance payments for the activities to be performed. The activities by Wintertaling will usually be invoiced on a monthly basis based on the applicable hourly charging rate. Wintertaling is entitled to suspend its activities if the client is in breach of any payment obligation, including the failure to pay an initial or additional advance payment.

### Payment

8. The invoices sent by Wintertaling must be paid within fourteen days of the invoice date, a failure to do so may result in a default interest of ½ % per month being claimed on the outstanding amount including interest. Part of a month shall be considered and thus charged as a whole month. Collection costs are at the expense of the client. Extrajudicial collection costs will be charged in advance in the amount of a lump sum of 15% of the principal sum, whereby Wintertaling reserves the right to claim the costs actually incurred.

### Liability

9. Any liability of Wintertaling and of all persons working for or on behalf of Wintertaling shall be limited per claim awarded (whereby several claims relating to all services provided in connection with the same case, file or related files shall be regarded as one claim) in total to the amount paid out under the liability insurance(s) of Wintertaling in the case concerned, up to a maximum of twice this amount per insurance year.
10. Wintertaling is entitled to unilaterally change the amount for which it is insured for liability. If such a change is insufficient for the client, further arrangements will have to be made: the costs of a possibly higher coverage will then be charged to the client.
11. Further details about the insurance(s) are available upon request.
12. If no payment is made on the basis of an insurance, any liability is limited to twice the amount declared and received by Wintertaling in the case in question with a maximum of EUR 50,000.
13. Any claim against Wintertaling, other than any claim it has acknowledged, expires twelve months following the date on which the claim has arisen.

### WWFT and other obligations to report

14. The Dutch Money Laundering and Financing of Terrorism (Prevention) Act (“WWFT”) is applicable to the services and / or activities performed by or on behalf of Wintertaling. This Act requires attorneys, civil-law

notaries, and junior civil-law notaries to identify their clients and to report any unusual transactions performed or proposed within the context of their services to a competent body: the Netherlands Financial Intelligence Unit (FIU-Nederland). In that context, attorneys, civil-law notaries, and junior civil-law notaries are required to verify, with regard to every transaction and proposed transaction, whether there is an unusual transaction such as whether or not there is reason to believe the transaction is related to money laundering or acts of terrorism. This Act provides indicators to distinguish situations of an unusual nature. In such situations, attorneys, civil-law notaries, and junior civil-law notaries cannot invoke client confidentiality. Reporting an unusual transaction or proposed unusual transaction is mandatory and the client may not be informed of such a report. The client confirms by accepting the applicability of these general terms and conditions to acknowledge and agree to this and to provide all necessary information.

15. In accordance with applicable regulations, it is mandatory for Wintertaling to notify the Chamber of Commerce of every discrepancy it finds between the information regarding the ultimate beneficial owner (within the meaning of WWFT) which it obtains from the trade register, and the information about who is the ultimate beneficial owner available to it on other grounds, in which case it may not invoke its duty of confidentiality.
16. Regulations may require Wintertaling to report certain cross-border constructions to the relevant authorities. Under certain circumstances, this obligation to report may be imposed on the client.

#### **Data processing and archiving**

17. If Wintertaling processes personal data, whether or not in connection with the performance of a contract, this processing will be done in accordance with Wintertaling's privacy policy. This policy can be consulted at [www.wintertaling.nl](http://www.wintertaling.nl).
18. After the closure of a case, the files will be archived physically or digitally for 10 years by and under the responsibility of the lawyer or civil-law notary responsible for the case, unless privacy legislation forces earlier destruction. Where available, original documents or copies thereof from a file can be archived by the client or his legal successor (which capacity that legal successor must prove to Wintertaling's satisfaction) when requested, but provided and to the extent that the costs thereof are reimbursed and the general data protection regulation does not preclude this. Without prejudice to the foregoing, original documents made available by the client will generally be sent to the client prior to archiving the file. As a rule, the lawyer/notary concerned will destroy the file(s) (or have them destroyed) without further notice or notification after 10 years. After destruction or after 10 years, a client or his legal successor(s) will no longer be able to invoke facts and circumstances that could or should appear from a file against the attorney at law or civil-law notary in question and/or Wintertaling, and with regard to the existence of file documents, the presence of the documents in the (former) file, as well as with regard to the content of the

file or file documents, a reverse burden of proof will apply in the sense that the burden of proof thereof will rest on the other party (other than the attorney at law or civil-law notary in question and/or Wintertaling).

#### **Jurisdiction, complaints, and disputes**

19. The legal relationship between Wintertaling and the client is governed by the laws of the Netherlands. Wintertaling administers an internal complaints procedure that is set out in Wintertaling's Complaints Regulations which bind attorneys, civil-law notaries, junior civil-law notaries, and such persons engaged to act under their responsibility. The Complaints Regulations are available on the website [www.wintertaling.nl](http://www.wintertaling.nl). Any complaint must be notified within two months following the date on which the client knew, or should reasonably have known, of the act or omission that is alleged to give rise to the complaint.
20. If a complaint is not resolved after treatment, any disputes regarding the legal relationship with and/or the services provided by a Wintertaling lawyer will be settled by the competent court in Amsterdam. Any dispute regarding the legal relationship with and/or the service provided by civil-law notary or junior civil-law notary of Wintertaling is governed by the Complaints and Dispute Settlement Scheme for Notaries. See also '[www.knb.nl](http://www.knb.nl)' or '[www.degeschillencommissie.nl](http://www.degeschillencommissie.nl)'. If the client does not make use of the notarial complaints and disputes procedure, disputes concerning the legal relationship with and the services provided by a civil-law notary will be settled exclusively by the competent court in Amsterdam.
21. These general terms and conditions are available in Dutch and English and can be consulted at [www.wintertaling.nl](http://www.wintertaling.nl). In the event of a dispute about the content or scope of these general terms and conditions, only the Dutch text is binding.