

GENERAL TERMS AND CONDITIONS OF SUGATO



This is a translation of the official Dutch language General Terms and Conditions of Sugato. In the event of a conflict, the Dutch language version shall prevail.

General Conditions of Sugato



1. General

1. In these General Terms and Conditions the following definitions apply:

- **General Terms and Conditions:** these general terms and conditions.
- **Sugato:** Sugato Coaching & Consultancy
- **Engagement Letter:** a Sugato document declaring the General Terms and Conditions to apply and describing the Work.
- **Client:** the party awarding Sugato an engagement.
- **Engagement Team:** the natural persons within Sugato, both individually and jointly, who are involved in performing the Work, and also third parties (being natural persons from outside Sugato) who have been called in by Sugato for the purposes of performing the Work.
- **Agreement:** the General Terms and Conditions and the Engagement Letter together with any other documents and conditions which are applicable to the Work in the relationship between Sugato and the Client ('Additional Conditions') and to which the Engagement Letter expressly refers.
- **Work:** the work to be performed by Sugato for a Client pursuant to the Engagement Letter, including supplying of, inter alia, goods and/or services.

2. Replacing sections 7:404 and 7:407(2) of the Dutch Civil Code, all engagements are accepted exclusively by Sugato.

2. APPLICABILITY OF THE GENERAL TERMS AND CONDITIONS

1. These General Terms and Conditions apply to the Work to be performed by Sugato for a Client.
2. The applicability of any of the Client's purchasing conditions or other conditions is expressly excluded

3. FORMATION AND DURATION OF THE AGREEMENT

1. The Agreement will come into being at the moment when the Client confirms the Engagement Letter (orally or in writing or electronically or tacitly) or at the moment when the Work is commenced.
2. The Agreement is concluded for a fixed term, unless it follows from the content, nature or tenor of the engagement given by the Client that it has been concluded for an indefinite period.

4. CONTENT OF THE AGREEMENT / PRIORITY IN CASE OF CONFLICT

1. The Agreement constitutes the basis for all arrangements between Sugato

and the Client with respect to the Work.

2. Any amendments or changes to the Agreement must be recorded in writing and must be signed by an authorised representative of Sugato and an authorised representative of the Client.
3. In the event of conflict between the Engagement Letter and other elements of the Agreement, the Engagement Letter will prevail. In the event of conflict between the General Terms

5. THE WORK AND ITS PERFORMANCE

1. the Engagement Letter contains a description of the Work to be performed by Sugato
2. Sugato will exert itself to the best of its abilities to perform the Work in accordance with the arrangements and procedures agreed in writing with the Client.
3. Sugato determines how and by which person or persons the Work will be performed. If the Engagement Letter states specific persons who will perform the Work, Sugato will make reasonable efforts to ensure that these persons perform the Work. Sugato has the right to replace the persons named in the Engagement Letter by persons of equal or comparable expertise.
4. If a phased performance of the Work has been agreed, Sugato may postpone commencing Work relating to a subsequent phase until the Client has accepted the results of the preceding phase in writing and has paid all sums due.
5. Time-limits within which the Work must be completed will not be considered as strict deadlines, unless this has been expressly agreed. Under no circumstances may the Client dissolve the Agreement on account of a failure to meet a time-limit. Furthermore, Sugato will never be liable for compensation on account of any failure to meet a time-limit.
6. If, at the request or with the prior consent of the Client, Sugato carries out work or produces deliverables that fall outside the content or scope of the Work, the Client will pay Sugato for such work or performance on the basis of Sugato's customary rates.
7. The Client agrees that work or deliverables as referred to in Article 5.6 may affect the agreed or anticipated time of completion of the Work and the mutual responsibilities of the Client and Sugato.

8. In the interest of the performance of the Work, including so as to support the rendering of services, Sugato can call in third parties in the performance of the Work. If the Client wishes to call in third parties in the performance of the Work, it will solely proceed to do so after having reached an agreement to that end with Sugato.
9. Upon completion of the Work Sugato may provide written advice, confirm an oral advice in writing, provide a (final) written report or give an oral presentation. Prior to completing the Work, Sugato may provide oral, draft or interim advice, reports or presentations. In this case, Sugato's written advice or (final) written report will prevail. The Client is not entitled to invoke draft or interim advice, reports or presentations. If the Client wishes to rely on an advice given orally or on an oral presentation given by way of completion of the Work, the Client must inform Sugato of this intention, following which Sugato will supply written confirmation of the advice concerned.

10. Sugato is not bound to update oral or written advice, reports or results of the Work in response to events occurring after the final version of the advice, report or results has been issued.

11. Any advice, opinion, statement of expectation, forecasts and recommendations given by Sugato as part of the Work will under no condition or circumstance whatsoever be construed as a guarantee with respect to future events or circumstances

6. OBLIGATIONS OF THE CLIENT

1. Both of its own accord and at the request of Sugato, the Client will give its full cooperation and will in good time and in the desired form and manner make available all relevant documents which Sugato may reasonably deem necessary to receive from the Client for the proper performance of the Work. If Sugato works at the Client's premises or makes use of the Client's computer systems and telephone networks, the Client will (at its own expense) provide the necessary access, security procedures, virus controls, facilities, licences and permissions. If any part of the Work is not performed at Sugato's own premises, the Client will also ensure that the employees of Sugato are provided with adequate working space and other facilities necessary for the performance of the Work, which should meet all the applicable statutory or other requirements.
2. The Client will ensure that Sugato is informed without delay of facts and circumstances which may be relevant in connection with the proper performance of the Work.

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3. The Client warrants the accuracy, completeness, reliability and legitimacy of the data and documents made available to Sugato, including those originating from third parties, except where the nature of the Work dictates otherwise.
4. Sugato will not be liable for any loss suffered by the Client as a result of the fact that the Client or any third party (i) did not inform in good time of, or withheld, facts and circumstances which may be relevant in connection with the proper performance of the Work and (ii) misrepresented the facts.
5. The Client will bear the extra costs and additional fees arising from any delay in the performance of the Work caused by the fact that the required data, documents mentioned in Article 6.1 were not made available or were not made available properly or in good time, or by the failure to cooperate, to cooperate in good time or to cooperate properly, including failure to make available employees

7. THE CLIENT'S RESPONSIBILITIES

Without prejudice to the obligations and responsibilities of Sugato in performing the Work, the Client will remain responsible and liable inter alia for the following

- the management and day-to-day conduct of its business, the performance of its business activities and dealing with its own business matters;
- decisions taken by the Client about the extent to which it wishes to rely on the advice, recommendations or other results of the Work, and about using and implementing them;
- the Client agrees to designate an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the Client's decisions and to provide oversight of the Work and evaluate the adequacy of the results of the Work performed for the Client's purpose, and accept

8. CONFIDENTIALITY

1. Sugato will keep secret any confidential information furnished by or on behalf of the Client towards third parties, other than the parties involved in the performance of the Work. This obligation does not apply to information which Sugato is required to disclose by law, by any rule of a supervisory body of Sugato, or pursuant to a professional duty resting on Sugato or on persons employed by or for or attached to Sugato, or pursuant to a binding decision of a court or a public authority.
2. The obligation of paragraph 1 of this Article does not apply if the information

referred to in that paragraph is already publicly known or becomes publicly known other than as a result of a wrongful publication. Furthermore, this obligation is without prejudice to the right of Sugato to submit information referred to in paragraph 1 of this Article to its insurers and/ or advisers in connection with the professional liability of Sugato or a third party, if this is necessary for the performance of the Work, including so as to support the rendering of services.

3. Sugato is not authorised to use the information which the Client has placed at its disposal for another purpose than that for which it was obtained, unless Sugato acts for itself, or persons employed by or for or attached to Sugato act for themselves, in disciplinary, criminal or civil proceedings in which this information may be relevant.
4. Unless the Client has obtained prior written permission from Sugato, the Client will not disclose the content of the Engagement Letter, reports, advice or other statements made by Sugato, whether or not in writing, which were not prepared or made for the purpose of providing the information contained therein to third parties. The Client will, moreover, ensure that third parties cannot take note of the content referred to in the preceding sentence.
5. Except with prior written permission from Sugato, the Client will not make any statements about the approach and working procedures used by Sugato.
6. The Client may exclusively use the quotation made by Sugato and the knowledge and ideas of Sugato contained in this quotation for the purposes of evaluating its interest in awarding the engagement.
7. Sugato and the Client will impose their obligations pursuant to Article 8 on third parties engaged by them.
8. Sugato reserves the right to use the Client's name and to mention the kind of work it performed for the Client for publicity and reference purposes, and to mention all particulars which have already been made publicly known in the media

9. INTELLECTUAL PROPERTY

1. Sugato reserves all rights in respect of products of the mind that Sugato uses or has used, or develops or has developed, in performing the Work.
2. The Client is expressly prohibited from reproducing, disclosing or exploiting the products referred to in Article 9.1, including system designs, processes, advice, master or other contracts and other products of the mind of Sugato.

3. Sugato may use and continue to develop the knowledge, experience, and general skills acquired by Sugato as a result of performing the Work for the purposes of performing work for the Client and/or for clients of Sugato

10. KNOWLEDGE AND CONFLICTS

1. Sugato will be free at any time to render services to another party with an interest that competes or conflicts with the interests of the Client (hereinafter: a 'Conflicting Party'), unless the interests of the Conflicting Party compete or conflict specifically and directly with the Client's interests in relation to the underlying interest. In the event that the interests of the Conflicting Party compete or conflict specifically and directly with the Client's interests in relation to the underlying interest, the Engagement Team will not perform work for the Conflicting Party. Persons within Sugato other than those forming part of the Engagement Team may only render services to a Conflicting Party under the condition that appropriate security measures have been put in place.
2. If the Client is or has become aware of the fact and/or the circumstance that Sugato is advising or intends to advise a Conflicting Party in respect of an interest which competes or conflicts specifically and directly with the Client's interests, the Client will inform Sugato of the matter without delay

11. FEE / PAYMENT/ RECOVERY OF COSTS

1. Sugato will invoice the Work on the basis of its fee, costs (including costs of third parties that have been engaged) and any taxes owing with respect to them. These items will be charged to the Client on a monthly or quarterly basis, or upon completion of the Work, unless Sugato and the Client agreed otherwise.
2. Sugato's fee does not depend on the result of the Work; Sugato's fee is based on the degree of responsibility of the persons in the Engagement Team, on their seniority, on their expert knowledge, on the time they spent on the Work and on the nature and complexity of the Work.
3. For the purposes of Article 11.1 costs means direct costs plus a mark-up to cover expenses not directly allocated to the Work.
4. The amount invoiced by Sugato may differ from earlier estimates or quotations.

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- Invoices will be paid by the Client, without any deduction, discount or setoff, within fifteen (15) days of the invoice date. If the Client fails to pay an invoice within this payment period, Sugato will be entitled, without further notice of default and without prejudice to the other rights of Sugato, to charge the Client legal commercial interest (referred to in section 6:119a of the Dutch Civil Code) from the due date until the date of payment in full.
- All judicial and extrajudicial collection and other costs reasonably incurred by Sugato as a result of the Client's failure to discharge its payment obligations will be borne by the Client.
- If, in the opinion of Sugato, the Client's financial position or payment record gives reason to do so, Sugato may require the Client to make a full or partial advance payment and/or to provide (additional) security in a form to be determined by Sugato. If the Client fails to provide the required security, Sugato may, without prejudice to its other rights, immediately suspend the further performance of the Agreement and any amounts owing by the Client to Sugato on any account whatsoever will be immediately due and payable.
- If several Clients have jointly awarded an engagement, the Clients will be jointly and severally liable for payment of the invoice amount to the extent that the Work was performed for the Clients jointly.
- Where Sugato is required or requested to provide information in respect of the Client pursuant to a regulatory request, requirement or through any form of legal proceedings, Client agrees to reimburse Sugato for the costs incurred in relation to such requirement, request or proceeding, where Sugato actions were not also the subject of such requirement, request or proceeding

12. COMPLAINTS

- Complaints about the Work performed and/ or the invoice amount must be made known to Sugato in writing within sixty (60) days of the date of dispatch of the documents or information about which the Client has a complaint, or within sixty (60) days of the discovery of the defect if the Client proves that it could not reasonably have discovered the defect at an earlier date.
- Complaints referred to in Article 12.1 will not suspend the Client's obligation to pay.

- In the event of a well-founded complaint Sugato will have the choice between adjusting the fee charged, correcting the rejected Work or doing it again, or not or no longer performing the engagement or part of the engagement while repaying a proportionate amount of the fee already paid by the Client

13. EARLY TERMINATION OF THE ENGAGEMENT

- Both Sugato and the Client may terminate (opzeggen) the Agreement by thirty (30) days' written notice of termination. In the event of the Client terminating the Agreement as referred to in the preceding sentence, the Client is obliged to reimburse all the losses and costs suffered and incurred by Sugato. These losses and costs at least, but not exclusively, include all the costs incurred and investments made and capacity lost by Sugato, in respect of the Agreement and (future) Work.
- Sugato may furthermore terminate (opzeggen) the Agreement by written notice with immediate effect in the event of unforeseen circumstances (within the meaning of section 6:258 of the Dutch Civil Code).
- Both Sugato and the Client may only dissolve (ontbinden) the Agreement if the other party fails imputably to perform an essential obligation under the Agreement and if the other party is in default in the matter (within the meaning of section 6:81 of the Dutch Civil Code).
- Upon termination pursuant to paragraph 1, 2 or 3 of Article 13, Sugato will continue to be entitled to payment of invoices for Work already performed or any Work still to be performed by mutual agreement. The Client's obligation to pay invoices for Work already performed will become immediately due and payable as soon as the Agreement is terminated

14. LIABILITY

- Sugato will perform the Work (and any additional work) to the best of its abilities and, in doing so, will exercise the required due care. Sugato will only be liable if the Client can demonstrate that it has suffered loss as a result of a material error on the part of Sugato.
- Sugato's liability will be limited to an amount equal to one (1) time the fee payable to Sugato pursuant to the provisions of the Engagement Letter, except in the case of intent or wilful recklessness on the part of Sugato's executive staff. This limitation of liability will apply in full in the event of

liability to a number of Clients; in that case the amount paid by Sugato to all Clients jointly will not exceed one (1) time the fee payable to Sugato pursuant to the provisions of the Engagement Letter.

- Sugato will not be liable in any way whatsoever for consequential loss (including but not limited to lost profit, lost savings, loss due to business interruption), except in the case of intent or wilful recklessness on the part of Sugato's executive staff.
- Except for the cases mentioned in Articles 14.1 to 14.3, Sugato will not be liable for damages on any account whatsoever.
- Sugato will exercise due care when engaging third parties. Sugato will not be liable for any errors and/or failures of such third parties. This does not apply to third parties which act as subcontractors and which act under the responsibility of Sugato.
- The limitations on liability laid down in Article 14 operate both on behalf of Sugato (itself) and of the persons, individually as well as jointly, within the Engagement Team.

15. INDEMNITY

- The Client will indemnify Sugato against any and all claims of third parties arising from or connected to the Work performed or to be performed for the Client, unless such claims result from intent or wilful recklessness on the part of Sugato's executive staff. The indemnity will include all loss suffered and legal and other costs incurred by Sugato in connection with claims.
- The indemnity under paragraph 1 of this Article is also stipulated on behalf of the persons, both individually and jointly, forming the Engagement Team.

16. PERSONAL DATA PROTECTION

- In performing the Work or in complying with its statutory obligations, Sugato may process personal data concerning the Client and/or persons employed by/for or associated with the Client
- Sugato may process personal data for the purposes of supporting Sugato's services to the Client, to enable Sugato to approach the Client and/or persons employed by or working for the benefit of Client with information and with services provided by Sugato and third parties.

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3. Sugato will process personal data in carrying out the activities mentioned in paragraphs 1 and 2 in accordance with the applicable legislation and regulations regarding personal data protection. Client informs the data subjects of the provisioning of their personal data to Sugato and the processing thereof by Sugato in accordance with the Agreement.
4. To the extent that Sugato processes personal data for Client pursuant to the Agreement and Client determines the purpose and means of this data processing, Client will act as the controller for this processing and Sugato as processor within the meaning of the Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens) (PDPA). In this respect the following applies: paragraphs 1 and 2 of this article 16 apply, if and to the extent that it concerns the Work performed by Sugato as processor and also the paragraphs 4, 5, and 7 of this article 16 apply, which will qualify as a data processor agreement between Sugato and Client within the meaning of the PDPA.
5. If and to the extent that Sugato acts as processor as referred to in paragraph 4 of this article 16, the following applies:
 - a) Sugato will take appropriate technical and organisational security measures (or have them taken) to protect the personal data against any loss or unlawful processing. These measures shall include at least the following:
 - measures to ensure that only authorised personnel have access to the personal data;
 - measures to protect the personal data against accidental or unlawful destruction, accidental loss or alteration, unauthorised or unlawful storage, access or disclosure.
 - b) Sugato is obliged to keep secret the personal data which Client makes available or accessible to Sugato. If Sugato engages third parties for (support relating to) the performance of the Work, Sugato shall enter into contractual arrangements with these third parties to safeguard proper processing of the personal data by these third parties in accordance with paragraphs 4 and 5 of this article 16.
 - c) To enable Client to comply with its obligations pursuant to section 34a of the PDPA, Sugato shall notify Client of any actual breach regarding the security of the personal data encountered by Sugato, if as a result of such a breach it reasonably cannot be excluded that the personal data have been lost or are or could be processed unlawfully. Sugato shall notify Client

immediately, which means within 48 hours after Sugato became aware of the breach or a subcontractor engaged by Sugato has informed Sugato of the breach. Sugato shall make the aforementioned assessment - regarding lost or unlawful processing of the personal data which reasonably cannot be excluded and which is a result of a breach to the security encountered by Sugato - on the basis of information available to Sugato. Client informs Sugato in writing of an email address via which Sugato can provide Client with a notification mentioned herein.

- d) Sugato is entitled to process (or have processed) the personal data outside the Netherlands, if necessary for (support relating to) the performance of the Work. If the execution of the Agreement involves the transfer of personal data by Sugato - for which Client is the controller within the meaning of the PDPA - to a party that is located in a country outside the European Economic Area (EEA), without adequate protection for processing of personal data, the following applies: Client hereby grants the power of attorney to Sugato to enter into the EU Model Clauses to comply with the transfer requirements of the PDPA. To the extent that it appears that the abovementioned granted power of attorney is not sufficient or not valid, Client will without delay fully cooperate with Sugato to ensure that such a transfer meets the requirements of the PDPA, including granting a sufficient and/or valid power of attorney to Sugato pursuant where to Sugato can enter into the EU Model Clauses on behalf of Client.
6. To the extent that Sugato determines the purpose and the means of the processing of the personal data in the context of performing the Work, Sugato will act as controller within the meaning of the PDPA and in this context paragraphs 4 and 5 of this section 16 are not applicable.
 7. The Client has an independent duty to comply with the applicable legislation and regulations regarding personal data protection. The Client shall indemnify Sugato against any and all claims of third parties relating to non-compliance by the Client with the applicable legislation and regulations. This indemnification includes all loss suffered and any and all costs incurred by Sugato in connection with any such claim

17. EMAIL AND USE OF THE INTERNET

The Client and Sugato may communicate with each other by means of electronic mail (email). The use of email and the internet entails risks, however, for example (but not limited to), distortion, delay, interception, manipulation and viruses. Sugato will not be liable for any loss arising from the use of email and/or the internet. In case of doubt about the content or transmission of email the extracts from Sugato's computer systems will be decisive.

18. CONFIDENTIALITY, SAFEKEEPING AND OWNERSHIP OF THE FILE

Sugato will keep a file on the Client's engagement. Sugato will take appropriate measures to safeguard the confidentiality and safekeeping of the file and to retain the files for a period which is acceptable by the professional practice standards and which is in accordance with the statutory regulations and professional rules on retention periods. The files are the property of Sugato.

19. EXPIRATION

Unless otherwise provided in the General Terms and Conditions, any right of action and other powers of the Client vis-à-vis Sugato on any account whatsoever will end upon the lapse of one (1) year after the moment when the Client became aware or could reasonably be aware of the existence of the right or powers in question.

20. INDEPENDENCE

Sugato shall comply with the independence regulations of domestic and international regulatory bodies. To enable Sugato to comply with the relevant independence regulations, the Client shall timely, accurately and completely inform Sugato about the legal and the control structure of the Client or the group to which the Client belongs, all financial and other interests and participations of the Client, as well as about all other (financial) alliances its company or organisation has entered into, in the broadest sense of the word.

21. CONTINUED EFFECT

All rights and obligations arising from the Agreement that by their purport are intended to continue in force after termination of the Agreement will remain in full force between Sugato and the Client after the Agreement has ended.

24. TRANSFER

Neither of the parties to the Agreement may transfer the rights and obligations arising from or related to the Agreement to a third party without the other party's express written permission.

25. APPLICABLE LAW AND CHOICE OF FORUM

The Agreement is governed by Dutch law. All disputes arising from or connected to the Agreement will fall under the exclusive jurisdiction of the competent court in the district in which Sugato has its seat. The United Nations Convention on Contracts for the International Sale of Goods with regard to Movable Property (the 'Vienna Sales Convention') does not apply.

1 March 2017