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DutchProbate.com
Dutch Probate Lawyer — Protecting Your Inheritance

GENERAL TERMS AND CONDITIONS

Article 1
DEFINITIONS

In these general terms and conditions, the following terms shall have the meanings stated below:

LAWYER:
the legal entity Luminis Executele & Vereffening B.V., trading under the name DutchProbate.com, with its registered office in Alphen aan den Rijn, P.O. Box 506, 2400 AM Alphen aan den Rijn, the Netherlands.

CLIENT:
the natural or legal person who instructs the Lawyer to perform the Activities referred to below.

ACTIVITIES:
including but not limited to the performance of services relating to estate planning, (lifetime) executorship and estate administration, administration under guardianship or protective measures (pursuant to Book 1 as well as Book 4 of the Dutch Civil Code), estate management and settlement, as well as the provision of legal and tax advice, and (legal) representation.

ENGAGEMENT:
the agreement for services as referred to in Section 7.7.1 of the Dutch Civil Code, entered into between the Client and the Lawyer regarding the performance of the Activities.

CONSUMER:
a Client who is a natural person and who enters into the Engagement for purposes outside their trade or professional activity.

BUSINESS CLIENT:
a Client acting in the course of its trade or profession, including legal entities and natural persons acting for business or professional purposes.

DECEDENT:
the deceased individual to whom the Engagement relates.

PARTIES:
the Lawyer on the one hand and the Client on the other hand.

COLLEAGUE:
a professional Third Party in the Netherlands or abroad who is engaged by the Lawyer to perform (part of) the Engagement and who in principle operates under the branding of the Lawyer.

THIRD PARTY:
any natural or legal person other than the Client, the Lawyer and the Decedent, who is directly or indirectly involved in an Engagement.

LIQUIDATOR:
a natural or legal person appointed by a court who is responsible for administering the estate and satisfying the debts of the estate.

ESTATE ADMINISTRATOR (Beheersexecuteur):
an executor as referred to in Section 4.5.6 of the Dutch Civil Code, who is primarily responsible for managing the assets of the estate and paying the debts of the estate that must be settled from such assets during the term of the administration.

SETTLEMENT ADMINISTRATOR (Afwikkelingsbewindvoerder):
an Estate Administrator whose duties and powers have been extended by the Decedent pursuant to Section 4.5.7 of the Dutch Civil Code (testamentary administration).

FEE:
the monetary compensation charged by the Lawyer to the Client arising from the Engagement.

GDPR:
the General Data Protection Regulation.

RECOFA GUIDELINES:
Recofa is a national consultative body of supervisory judges in bankruptcies, suspensions of payment and estate liquidations. The liquidation practice aligns itself with these guidelines.

PERSONAL DATA:
any information relating to an identified or identifiable natural person.

PRIVACY STATEMENT:
the Privacy Statement of Executeur.nl, available for download via this link.

Where these terms and conditions refer to the singular, the plural shall be deemed included, and vice versa.

Article 2
Scope

These general terms and conditions apply to all Engagements and other legal relationships concluded between the Lawyer and the Client, unless explicitly agreed otherwise in writing beforehand.

Article 3
Offer and acceptance

1. Quotations and any other offers made by the Lawyer are non-binding and valid for 14 days from the date of issue, unless stated otherwise.
2. The Engagement may be entered into orally or in writing, by signing a quotation, contract, or by granting a power of attorney, as well as by appointment as Liquidator, Estate Administrator or Settlement Administrator by a court. The Engagement shall be deemed accepted by the Lawyer unless indicated otherwise in a statement issued by the Lawyer. The application of Articles 7:404 and 7:402 paragraph 2 of the Dutch Civil Code is excluded.
3. The Engagement shall take effect retroactively as of the moment of the first contact between the Client and the Lawyer, or as of the acceptance of the appointment of the Lawyer as Estate Administrator, Settlement Administrator, or Liquidator, if that moment precedes the first contact.
4. The Client must demonstrate to the Lawyer that the Client has a legitimate interest in the performance of the Engagement and that the Client is authorized to grant the Engagement to the Lawyer.
5. If the Client acts on behalf of a Third Party, documents must be submitted to the Lawyer demonstrating the Client's power of representation.

Article 4
Performance

1. Unless expressly agreed otherwise in writing, acceptance of the Engagement by the Lawyer constitutes an obligation to perform to the best of its ability. The Lawyer shall make every reasonable effort to ensure that the Engagement is carried out with due care and professional skill, either by the Lawyer or on behalf of the Lawyer.
2. The Client's powers in relation to the Engagement shall transfer to the Lawyer mutatis mutandis.

3. Within the framework agreed between the Parties, the Lawyer shall determine the manner in which the Engagement is performed.
4. If during the performance of the Engagement it becomes apparent that modification or expansion of the Engagement is reasonably necessary for proper performance of the Activities, the Parties shall consult with each other and amend or expand the Engagement accordingly, in which case the Lawyer shall discuss any financial and/or qualitative consequences with the Client in advance.
5. The Client hereby grants the Lawyer an irrevocable power of attorney to engage a Colleague at the Client's expense if, in the opinion of the Lawyer, such engagement is necessary or desirable. The Lawyer will exercise due care in selecting such Colleague and will take appropriate measures to ensure the secure processing of personal data provided in connection with the Engagement. This power of attorney includes the power of substitution.
6. The Lawyer shall not be liable for shortcomings of Third Parties engaged by the Lawyer, except in the event of intent or gross negligence on the part of the Lawyer in the selection or supervision of such Third Parties. The Lawyer is entitled to accept a limitation of liability imposed by such Third Parties, provided such limitation is reasonable.
7. The Client shall indemnify the Lawyer against all claims brought by Third Parties engaged by the Lawyer as well as other Third Parties, including costs to be incurred by the Lawyer in connection with such claims and in any way related to the Engagement, except in cases of intent or gross negligence on the part of the Lawyer.
8. After conclusion of the Engagement, the Client shall refrain from undertaking any actions that may interfere with the performance of the Activities by the Lawyer without prior consultation with the Lawyer.

Article 5
(Electronic) Information Provision

1. The Client is obliged to provide the Lawyer with all information regarding facts and circumstances, as well as all relevant documents, that may be important for the proper performance of the Engagement. The Client warrants the accuracy and completeness of such information and documents.
2. If the authority of the Client or its authorised agents or representatives changes, the Client shall notify the Lawyer of such change without delay. Such change shall only take effect vis-à-vis the Lawyer after the Lawyer has been notified thereof in writing.
3. If communication between the Client and the Lawyer takes place electronically — for example via e-mail, online portals or a data transferring service — the risk of viruses, malware and other digital interferences shall, in principle, be borne by the Client, unless demonstrably caused by insufficient security measures on the part of the Lawyer. Likewise, the Client bears the risk that a message is not received, or is received incorrectly or incompletely, except insofar as this is attributable to the Lawyer.
4. A message shall be deemed to have reached the Lawyer only from the moment the Lawyer has actually taken notice of it. The Client is responsible for verifying whether important messages have indeed been received. The Lawyer shall not be liable for unauthorized access to electronic correspondence by Third Parties, unless such access is the result of negligence on the part of the Lawyer.

Article 6
Confidentiality and Duty to Inform

1. The Lawyer shall maintain confidentiality towards Third Parties not involved in the performance of the Engagement regarding any information of which the Lawyer knows or reasonably should know that it is confidential, except where disclosure is required pursuant to any statutory provision.
2. This duty of confidentiality shall continue after completion of the Engagement and likewise applies to any results derived from the processing of information or documents provided by the Client.
3. The processing of Personal Data shall only take place in accordance with the legal grounds for processing provided under the GDPR.
4. Pursuant to the GDPR, the Lawyer is required to inform data subjects of the processing of their Personal Data if such Personal Data has not been obtained directly from the data subject, except where and insofar as the data subject is already aware of such processing.
5. The duty to inform referred to in paragraph 4 must be fulfilled within one month after obtaining the Personal Data, or earlier if the Lawyer processes the Personal Data for the purpose of contacting the data subject or discloses such data to a Third Party.
6. This duty to inform may be shifted to the Client insofar as the Lawyer supervises compliance therewith.

For more information, reference is made to the Privacy Statement.

Article 7
Retention Periods

The Lawyer applies different retention periods.
For a complete overview, reference is made to the Privacy Statement.
In brief and simplified:

1. information and documents forming part of the financial administration shall be retained by the Lawyer for seven (7) years;
2. the general retention period applied by the Lawyer is five (5) years, during which it is assessed whether retention remains necessary for the purpose of processing;
3. the period referred to in paragraph 2 may be extended if a legitimate interest requires this, or if a statutory provision otherwise mandates it.

Files are retained in a manner and at a location determined by the Lawyer. The Lawyer exercises the utmost care in storing such files, both during the performance of the Engagement and after its completion.

In the event of a dispute arising after expiry of the retention period, the burden of proof shall lie with the party relying on the existence or absence of the relevant information.

Article 8
Business Interests

The Lawyer is not obliged to share documents, correspondence or notes with the Client that contain the personal thoughts of the Lawyer and its employees and are intended for internal consultation and deliberation. This article applies to both physical and digital files.

Article 9
Liability

1. Any liability of the Lawyer arising from an attributable failure shall be limited to the maximum amount paid out under the professional liability insurance taken out by the Lawyer.
2. Without prejudice to paragraph 1, if and insofar as the professional liability insurer of the Lawyer makes a payment, the liability of the Lawyer shall be:
    a. towards a Client acting in the capacity of Consumer: limited to the amount paid out by the insurer plus the applicable deductible, up to an absolute maximum of €25,000.00 (twenty-five thousand euros), unless the insurer pays a higher amount;
    b. towards a Client not acting as a Consumer: limited to the amount paid out by the insurer plus the applicable deductible, up to an absolute maximum of €10,000.00, unless the insurer pays a higher amount.

3. If and insofar as, for any reason whatsoever, no payment is made under the insurance referred to in paragraph 1, the liability of the Lawyer shall be:
    a. towards a Client acting in the capacity of Consumer: limited to the fee (excluding VAT) charged by the Lawyer for the relevant Engagement during the six months preceding the event causing the damage, up to an absolute maximum of €25,000.00, unless the damage is the result of intent or gross negligence on the part of the Lawyer;
    b. towards a Client not acting as a Consumer: limited to the fee (excluding VAT) charged for the relevant Engagement, up to an absolute maximum of €10,000.00, unless the damage is the result of intent or gross negligence on the part of the Lawyer.
4. All claims (rights of action, powers, etc.) against the Lawyer shall lapse if they are not submitted in writing and substantiated:
    a. within two (2) years from the moment the Client acting as a Consumer became, or could reasonably have become, aware of the existence of such claims;
    b. within one (1) year from the moment the Client not acting as a Consumer became, or could reasonably have become, aware of the existence of such claims.
5. All claims against the Lawyer shall likewise lapse if, after completion of the Engagement by the Lawyer and after the Lawyer has rendered account and justification to the Client, discharge has been granted by signing a statement to that effect.
6. The Lawyer shall only be liable for direct damage. Direct damage shall exclusively include the reasonable costs incurred to establish the cause and scope of the damage, insofar as such establishment relates to damage within the meaning of these general terms and conditions, the reasonable costs incurred to remedy the defective performance of the Lawyer under the agreement, insofar as such costs can be attributed to the Lawyer, and reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that such costs have led to the limitation of direct damage as referred to in these general terms and conditions.

The limitation of liability shall also apply if the Lawyer has refused to continue an Engagement and damage has thereby arisen that is a direct result of actions by the Lawyer.

Article 10
Force Majeure

1. The Lawyer shall not be obliged to compensate any damage suffered by the Client as a result of a failure to perform an obligation, if such failure cannot be attributed to the Lawyer (Article 6:74 paragraph 1 of the Dutch Civil Code).
2. A failure cannot be attributed to the Lawyer if it is not due to its fault, nor for its account under the law, a legal act or generally accepted principles (Article 6:75 of the Dutch Civil Code).
3. In these general terms and conditions, “force majeure” shall include, in addition to what is understood by law and case law, all external causes, whether foreseen or unforeseen, beyond the control of the Lawyer, as a result of which the Lawyer is unable to fulfil its obligations.
4. The Lawyer shall be entitled to suspend its Activities during the period in which the force majeure situation continues.
5. If the force majeure situation continues for longer than one (1) month, either Party may terminate the Engagement in writing, without either Party being obliged to compensate any damage suffered by the other. Force majeure shall not release the Client from the obligation to pay for Activities already performed.

Activities performed by the Lawyer up to the moment the Engagement ends shall be reimbursed by the Client as if such reimbursement were the result of a separate agreement.

Article 11
Fees and Invoicing

1. For the performance of the Engagement, the Lawyer shall charge the Client a Fee which, unless otherwise agreed, shall include but not be limited to:
    a. an hourly rate customary for its professional field, recorded in units of six (6) minutes;
    b. travel time charged at the applicable hourly rate;
    c. travel expenses of €0.35 excl. VAT per kilometre for travel by car or public transport;
    d. other travel expenses (for example, international travel and overnight stays);
    e. office expenses of 6% calculated over the total hourly fee;
    f. costs of clearance and delivery;
    g. storage costs of €6.25 excl. VAT per day;
    h. costs of obtaining copies or excerpts of civil status documents, personal records, wills, prenuptial agreements, etc.;
    i. estate agency fees, valuation costs, registry fees, and land registry charges;
    j. research expenses such as genealogical tracing of heirs, structural surveys, or environmental investigations;
    k. costs of engaging tax advisers and accountants;
    l. telephone, fax, and postage costs;
    m. costs of (certified) translations;
    n. notarial fees and court registry fees;
    o. legal fees and bailiff costs.

The Lawyer may engage Colleagues located outside Alphen aan den Rijn. If a Colleague works on the Engagement, the place of business or residence of such Colleague shall be used as the basis for reimbursement of costs referred to in items b and c above.
This list is non-exhaustive and may not be relied upon to exclude other costs.

2. The same rates shall apply to all Activities, regardless of nature or scope, and regardless of whether performed by the Lawyer or by a Colleague.
3. The previous paragraph does not apply to other Third Parties (other than Colleagues) whose engagement gives rise to costs as referred to in paragraph 1 of this article.
4. If the Lawyer performs Activities in the capacity of Liquidator, the hourly rate referred to in paragraph 1(a) shall be determined by the subdistrict court in accordance with the Recofa Guidelines.
5. If Stichting Beheer Vreemd Vermogen is engaged for the financial management of funds relating to executorship, estate administration or liquidation, such management shall take place in accordance with the internal regulations of the foundation. A copy of these regulations shall be provided upon request.
6. Invoicing shall take place prior to the performance of the Engagement (advance invoice), during the Engagement (interim invoices), and after completion of the Engagement (final invoice). As a rule, interim invoicing shall occur monthly where possible.
7. Payment of invoices shall primarily be made from a bank account held in the name of the Decedent or from third-party funds managed on behalf of the Lawyer by Stichting Beheer Vreemd Vermogen (Chamber of Commerce no. 65367634). The Lawyer is also authorised to arrange payment by transferring estate funds held by Third Parties.
8. If payment as referred to in paragraph 7 is not made for any reason, the invoices may be charged to each of the heirs individually, who hereby in advance accept joint and several liability for such payment.
9. Invoices must be paid within 14 days of the invoice date, unless otherwise agreed in writing. The Lawyer is entitled to satisfy its own invoices within this period, in principle from a bank account as referred to in paragraph 7.
10. The Lawyer reserves the right to suspend (further) Activities until payment of outstanding invoices has been made, provided the Client has been given prior written notice and a reasonable payment period has expired.
11. The Lawyer accepts no liability for any damage the Client may suffer as a result of suspension, unless such damage is the result of intent or gross negligence on the part of the Lawyer.

12. The Lawyer shall comply with the statutory rules on default as set out in Articles 6:81 through 6:83 of the Dutch Civil Code in the dunning process.
13. In the event of default, statutory interest shall be charged. At the date of this document, such interest amounts to 8.0% for commercial transactions and 2.0% for non-commercial transactions.
14. If collection measures must be taken to obtain payment, the associated costs shall be borne by the Client (Article 6:96 paragraph 2(c) of the Dutch Civil Code).
15. If the Engagement constitutes a commercial agreement, the collection costs referred to in paragraph 14 shall amount to 15% of the principal sum (pursuant to Article 6:96 paragraph 5 of the Dutch Civil Code) and shall be immediately due.

If the Client is a consumer, the Lawyer shall comply with Article 6:96 paragraph 6 of the Dutch Civil Code by first sending a 14-day notice before charging collection costs. In that case, the collection costs shall be calculated in accordance with the Dutch Decree on Compensation for Extrajudicial Collection Costs.

Article 12
Termination

Either Party may terminate the Engagement, taking into account a notice period and manner of termination that aim to protect the Client's interests as much as possible. Termination shall only be valid if made in writing. Upon termination, a final invoice will be issued.

Article 13
AML / CTF Legislation

The services of the Lawyer are subject to the rules of the Dutch Anti-Money Laundering and Anti-Terrorist Financing Act (Wet ter voorkoming van witwassen en financieren van terrorisme, "WWFT"). Comparable legislation or legislation replacing the aforementioned Act shall equally apply.

These rules entail, among other things, that the Lawyer is required to conduct customer due diligence, which conditionally includes:

1. identifying, verifying and recording the identity of the Client;
2. identifying, verifying and recording the identity of the ultimate beneficial owner (UBO);
3. verifying whether the Client is acting on its own behalf or on behalf of another;
4. identifying, verifying and recording the identity of the natural person on whose behalf the Client is acting as representative, and establishing the representative's authority to act;
5. establishing and recording the purpose and nature of the Engagement or transaction.

The Lawyer may also be required to assess country-related risks and conduct a basic online background screening. Compliance with these obligations is not subject to contractual negotiation.

Article 14
Disputes

The Lawyer's complaints procedure applies to the services provided by the Lawyer. This procedure is available upon request and can also be consulted via the Lawyer's website at Executeur.nl. The aforementioned complaints procedure forms part of these general terms and conditions and shall be deemed incorporated herein.

Article 15
Final Provisions

1. The legal relationship between the Lawyer and the Client shall be governed exclusively by Dutch law.
2. Any null or voidable provisions in these general terms and conditions shall not affect the validity of the remaining provisions. Such nullity or voidability is limited to the provision concerned.
3. All provisions contained in these general terms and conditions are also stipulated for the benefit of any persons engaged by the Lawyer in the performance of the Engagement.
4. These general terms and conditions can be downloaded here. They will be provided by post or by e-mail upon request and are also available free of charge at the Lawyer's office.
5. Where these terms and conditions distinguish between Consumers and Business Clients, a Consumer is understood to be a Client as defined in Article 1 of these terms and conditions. In case of doubt as to the status of the Client, the burden of proof rests with the Client to demonstrate that they are acting in the capacity they claim.

Other trade names of Luminis Executele & Vereffening B.V. include:

Zondervan Rechtskundig Advies, Zondervan Probate Lawyers, Zondervan Legal, and Executeur.nl.

These general terms and conditions are filed with the Dutch Chamber of Commerce under number 657704, and will be provided free of charge upon request.