The New Rules 2011

Legal relationship client – architect, engineer and consultant DNR 2011

BNA NL INGENIEURS

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First revision July 2013

BNA
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The New Rules 2011 are a revised version of The New Rules 2005.
The New Rules 2011 therefore replace The New Rules 2005.
Explanatory notes and a Standard form of Basic contract accompany
The New Rules. These can be obtained separately.

In this first revision (July 2013) article 56 has been adapted.

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1 Definitions

Article 1
Definitions

Hereunder follows what is to be understood under:

advice
the result of the activities of the consultant;

architect
within the framework of these rules to be called consultant;

client
the party which grants the commission;

commission
the agreement between the client and the consultant;

consultant
the party which accepts the commission;

consultancy costs
the fee and the costs, with the word exclusion of the turnover tax;

consumer
a natural person who, within this context, does not act in the pursuance of his or her profession or business;

costs
the costs of supervision and expenses, with the exclusion of the turnover tax;

culpable fault
a shortcoming accountable to guilt, or by virtue of the law, legal action or according to generally accepted opinions comes at the expense of the debtor. Under generally accepted opinions is to be understood: a shortcoming which a well and conscientiously operating consultant or client under the relevant circumstances and with regard to a normal attentiveness – and with respect to the consultant: equipped with the professional knowledge and means required for the commission – should have been able and ought to have avoided;

documents
information carriers in whatsoever form;

engineer
within the framework of these rules to be called consultant;

execution costs
the costs of execution of the object by the executing parties, with the exclusion of the turnover tax;

fee
the remuneration which the consultant is entitled to for his activities, with the exclusion of the turnover tax;

object
within the framework of the project the product of material nature to be executed;

participant
each participant to the project, among whom the client, the consultant, third-party-consultants and those who execute the object;

project
the whole of activities, under which the activities commissioned to the consultant, directed at bringing about that which the client has in mind;

rights of the consultant
rights of the consultant to which he is entitled by virtue of the law and/or the contract

stage
a clear-cut phase with a defined and verifiable result;

these rules
the Legal relationship client-architect, engineer and consultant DNR 2011;

third-party-consultants
consultants who are not a party in the commission granted to the consultant;

to second
to provide one or more natural persons at the disposal of a client in order to perform activities under his guidance and supervision;

work
designs, sketches, plastic works, inventions and the like within the meaning of the Author Act 1912 and/or Statute law with regulations with regard to patents.

2 General provisions with respect to the commission

Article 2
The commission

1
The commission includes everything that has been agreed upon between the client and the consultant.
2
The consultant provides the potential client with these rules as soon as possible, but does this at the latest when notifying him of the written concept of the commission.
3
Prior to the coming about of the commission, parties shall confer, as far as possible at that moment and as far as relevant, about:
3a
the content and scope of the activities to be carried out by the consultant;
3b
the provision of data, including a brief, by or on behalf of the client to the consultant and, if data are provided by the client, the nature of these data and at which time they will be provided;
3c
which third-party-consultants will be appointed by the client and which activities they will have to carry out;
3d
the timetable within which the consultant will have to carry out (parts of) the commission;
3e
the eventual phasing of the execution of the commission;
3f
the eventual acting as agent of the client by the consultant and during which period, as well as the scope of his competence as agent;
3g
the designation of a natural person who will represent the client with respect to the commission;
3h
the question with which special public or private legislation consideration should be taken and which obligations the consultant should assume in this respect;
3i
the way in which quality assurance will eventually be organized;
3j
the amount of the execution costs which may approximately be involved in the execution of the object;
3k
the way in which the consultancy costs of the consultant will be determined and which part thereof will be allocated to separate stages and a payment schedule;
3l
an estimate of the consultancy costs split up according to the different stages;
3m
whether, and if so in which way, rate alterations and indexations with respect to the consultancy costs will be applied;
3n
the nature and scope of expenses;
3o
the manner in which, and if necessary in what frequency, the transfer of information and consultation between the consultant and the client as well as between the consultant and third-party-consultants will take place;
3p
the form and the number in which documents will be delivered to the client and eventual third parties and under which conditions this will take place;

3q
the activities for which the professional indemnity insurance is concluded;
3r
the scope of the compensation for damages;
3s
which legal interest, as meant in article 6:119/article 6:119a Civil Code, is to be agreed upon;
3t
the manner in which they will handle with respect to subjects which at the time of the coming about of the commission could not yet be settled.

Article 3
Preliminary investigation

1
The consultant advises the client to commission him with carrying out a preliminary investigation:
1a
if the client cannot provide a brief which can act as a sufficient point of departure for the consultant to start his activities;
1b
if it is not clear enough for the consultant whether the fulfilment of the commission is possible, also with regard to the provisions of article 2, clauses 1 up to and including 3;
1c
in all other cases in which the consultant deems it desirable with a view to the proper fulilment of the commission.
2
If the client goes along with the advice to carry out a preliminary investigation, then the consultant draws up in consultation with the client a written concept of the commission for a preliminary investigation, in which the provisions of article 2 are applied in a similar way.
3
If the client does not go along with advice to carry out a preliminary investigation, then the parties will enter in consultation with each other. In this consultation the parties will observe each other's legitimate interests.

Article 4
Laying down the commission

1
If the consultant, with a view to what has been agreed according to article 2 clause 3 or article 3 clause 2, deems fulfilment of the commission possible, he then draws up a written concept of the commission in consultation with the client, from which emerges what has been agreed upon as well as the applicability of these rules.
2
The commission is concluded when the consultant has confirmed in writing that the provisions have been laid down according to clause 1 of this article, or when for that purpose a written offer by the consultant has been accepted by the client within the period of validity of that offer, or when that which has been laid down is agreed upon in another way in writing by the parties.
3
The provision in clause 2 leaves unaffected that the existence and the contents of the commission can be proven by all possible means.

3 Special provisions with respect to the commission

Article 5
Activities by other parties

The consultant is entitled to let others execute activities under his guidance, and with regard to certain parts also leave the guidance to others, and such without prejudice to his responsibility for the sound fulfilment of the commission.

Article 6
Appointing more than one consultant

1
If the proper realization of the project requires the appointment of one or more third-party-consultants, then the client shall not proceed to such action without prior consultation with the consultant.
2
The consultancy costs of the third-party-consultants mentioned in clause 1 shall be paid by the client to these consultants, unless otherwise agreed.
3
If the consultant is to work together with third-party-consultants, then the client determines which participant is responsible for the tuning in of the activities of the different consultants and which participant is responsible for steering the process of the activities of the different consultants.
4
If the client prescribes a person whose services are to be used by the consultant in the execution of his obligations, then the consultant shall submit the conditions which he and that person intend to agree upon to the client for his approval and/or acceptance.

Article 7
The consultant as agent of the client

1
The consultant acts as agent of the client if and insofar as the client has assigned the consultant in writing for that purpose. The lack of a written authorization cannot be brought in against the consultant, if and insofar as the consultant proves that the client has otherwise explicitly given permission, or if and insofar as acting as an agent follows from the given circumstances or the nature of the commission.
2
If and insofar as the consultant has assigned the consultant as his agent, he shall not give orders or instructions without the consultant to third parties who are executing the object referred to in the commission, or are carrying out deliveries for that purpose, or are supervising that execution. If in an urgent case the client has nevertheless given orders or instructions as mentioned here, then he shall immediately inform the consultant thereabout.

Article 8
Aesthetic value

When judging whether the commission has been properly carried out, the aesthetic value is left out of consideration , thereby leaving unaffected the requirement that reasonable standards should be met.

Article 9
Adjustments to the commission

1
Parties consult with each other with respect to an adjustment of the commission if:
1a
alterations arise in the points of departure or other circumstances which underlie the commission;
1b
the proper fulfilment of the commission requires extra activities. Within this consultation, parties observe due regard to each other's justified interests.
2
The following circumstances give cause anyway for an adjustment of the commission:
- relevant alterations of (government) regulations or decrees;
- relevant alterations in the brief or the original commission;
- alterations or variants required by the client of activities which have already been approved or form a part of a stage that has already been approved;
- extra activities which in the course of the fulfilment of the commission prove to be necessary.

3
If the consultation referred to in clause 1 leads to an adjustment of the commission, then parties will act according to the provisions of Chapter 2 and the consultancy costs shall be adapted accordingly.

Article 10
Unforeseen circumstances

At the request of one of the parties, the consequences following from the commission can be altered or partially or completely dissolved on the basis of unforeseen circumstances of such a nature that the other party, with regard to standards of reasonableness and fairness, may not be expected to accept unaltered maintenance of the commission. The alteration or dissolution can come about with retroactive effect.

5 General obligations of the parties

Article 11
General obligations of the consultant

1
The consultant:
1a
makes certain when accepting a commission that he disposes or can dispose of the necessary knowledge and capacity for the proper fulfilment of the commission;
1b
is bound to keep all data of a client as confidential, insofar as these data are known to him as confidential or insofar as the consultant can reasonably know or should know that these data are confidential.
2
The consultant should carry out the commission in a proper and careful manner, assist the client independently in a position of trust and conduct his services to the best of his knowledge and capacity. The consultant should avoid everything that can prejudice the independence of his advice.
3
The consultant concludes a professional indemnity insurance, which policy offers at least the same cover as the skeleton policy lastly and jointly decreed and published by the Royal Institute of Dutch Architects BNA and the Branch association of consultancy and management firms and firms of consulting engineers NLingenieurs. At the request of the client, the consultant shall hand over the documents showing that he has complied with this insurance obligation.
4
The consultant takes into consideration the public and private legislation which is relevant for the commission, the existence of which may be considered as common knowledge among consultants.
5
The consultant keeps the client informed about the execution of the commission. The consultant provides to the best of his capacity and in time, on request, all pieces of information, including information about the progress of the execution of the commission, alterations of legislation, or alterations with respect to the financial aspects of the commission, the financial consequences of alterations thereof whether necessary or not, as well as information about agreements which the consultant has concluded with third parties for the fulfilment of the commission.
6
The commission is carried out according to the agreed time schedule. Unless otherwise explicitly agreed between parties, the terms in the agreed time schedule are not fatal terms.
7
The consultant only starts with a next stage after the client has granted him permission to do so in writing. In this permission the approval of activities executed in the former stages is deemed to be included, except for parts of the activities for which the client has explicitly withheld his approval.
8
The consultant informs in writing the client about the natural person or persons who are authorized to represent the consultant, if necessary mentioning the limitations of his or their authority.
9
At the termination of the commission about the realization of an object, the consultant shall provide the client with the documents he has drawn up which are relevant for the management and use of that object.

10
The consultant has an obligation to warn the client if information and/or data provided by or on behalf of the client or decisions taken by or on behalf of the client manifestly contain such shortcomings or show such deficiencies that he would act in defiance of standards of reasonableness and fairness should he proceed thereupon with the fulfilment of the commission.
11
The consultant keeps the data concerning the commission and of which the interest, in view of the nature of the commission and other circumstances, obviously requires such keeping in a way to be decide by him for a period of five years from the day upon which the commission is terminated. The provisions of the clauses 5 up to and including 7 of article 16 (liability period) are of similar applicability.
12
If requested, the consultant shall provide the client, against reimbursement of the costs, with duplicates of the data kept by him with respect to the commission.
13
The consultant is discharged of the keeping duty mentioned in clause 11 if he offers the data kept by him to the client and hands these over to the client if so requested.

Article 12
General obligations of the client

1
The client behaves towards the consultant as a good and careful client. The client is bound to keep all data of a consultant as confidential, insofar as these data are known to him as confidential or insofar as the client can reasonably know or should know that these data are confidential.
2
The client is responsible for the timely supply as well as the correctness of the information, data and decisions, necessary for the proper fulfilment of the commission, as delivered by him or on his behalf to the consultant. The client indemnifies the consultant against claims by third parties with respect to these pieces of information, data and decisions.
3
The client shall evaluate on time the documents which the consultant prepares in the course of fulfilling the commission, and if so requested authenticate them after approval.
4
The client has an obligation to warn the consultant in due time if he has actually noticed a shortcoming in the advices of the consultant or should have been aware of such a shortcoming.
5
The client informs in writing the consultant which natural person or persons is or are qualified to represent the client, if necessary with the mention of the limitations of his or their qualification.
6
In the case of secondment the client abstains from taking the seconded person in his service or engaging him in another way during the period of secondment and a same period directly after the termination of the secondment with a minimum of three months and a maximum of one year.
7
The client does not hand over his position as client, whether partially or completely, to someone else without permission of the consultant.

8
The client indemnifies the consultant against claims by third parties, which are related to the consultancy activities executed on account of the commission for the consultant. This leaves unaffected the liability of the consultant towards the client.
9
The client fulfils in time his payment obligations.

6 Liability of the consultant

Article 13
Liability of the consultant for culpable shortcomings

1
The consultant is liable towards the client for his culpable fault. Insofar as compliance is not already permanently impossible, this clause is only applicable while taking into consideration the legal regulations with respect to neglect by the debtor.
2
If the consultant makes use of another person in the fulfilment of the commission, then the consultant is likewise liable as for his own shortcomings, taking into consideration the provisions of article 14 clause 5.

Article 14
Compensation

1
In the case of culpable fault, the consultant is only liable for compensation of the direct damages.
2
In no case will pertain to the direct damages: business damage, loss of production, loss of turnover and/or profit, depreciation of products nor the costs pertaining to the realization of the object should the commission have been rightly executed from the beginning.
3
The client is obliged, unless the circumstances are such that this could not be demanded from him, to give, in good consultation and within a reasonable delay and at his own expense, the consultant the opportunity to make good shortcomings for which he is liable or to limit or remove the damage caused by these shortcomings. This leaves unaffected the liability of the consultant for damages due to the shortcomings.
4
When settling a compensation as a result of an excess of competence, account shall be taken, next to the other relevant facts and circumstances, of the degree in which the client has profited from the consequences of this excess of competence,
5
If bringing in a certain person is prescribed by or on behalf of the client, then the consultant cannot be held towards the client, with regard to the work of that person, to do more than what he can hold that person to under the conditions agreed between him and the prescribed person and as they have been accepted or approved by the client. If the prescribed person fails in his duty and the consultant has taken the reasonably necessary measures to obtain fulfilment and/or compensation, then the client shall reimburse the consultant with the extra costs incurred by him, insofar as these have not been reimbursed by the prescribed person. On the other hand, the consultant shall, at first request by the client, cede to him his claim on the prescribed person up to the amount refunded to him by the client.
6
A compensation settled on the basis of the preceding rules is not applicable insofar as this compensation, in the given circumstances and according to norms of reasonability and fairness, is unacceptable.
7
Without prejudice to the provisions of the preceding clauses, in the case of commissions for the realization of an object, the consultant is only liable for damages which would not be covered by a customary CAR-insurance or a similar insurance.

Article 15
Extent of the compensation

1
The damage to be compensated by the consultant is, at the choice of the parties, limited per commission to a sum equal to the consultancy costs with a maximum of € 1,000,000 or limited to a sum equal to three times the consultancy costs with a maximum of € 2,500,000.
2
If the parties did not make a choice about the scope of the damages to be refunded by the consultant, then this shall be limited per commission to a sum equal to the consultancy costs with a maximum of € 1,000,000.
3
In addition to the preceding two clauses, if the client is a consumer the limitations mentioned in those two clauses shall not be lower than € 75,000.

Article 16
Liability period and expiration terms

1
The liability of the consultant expires after five years from the day upon which the commission is terminated either by completion or cancellation.
2
The legal claim on account of a culpable shortcoming expires and is not admissible if the client has not with due diligence, after he has discovered the shortcoming or reasonably should have discovered it, protested in writing and with good reasons against the consultant about this shortcoming.
3
The legal claim on account of a culpable shortcoming expires and is not admissible after two years after the written and motivated protest. If the client has settled a period within which the consultant must remove the shortcoming, the expiration term begins to tick at the end of that period, or so much earlier as the consultant has indicated that the shortcoming will not be made good.
4
The legal claim on account of a culpable shortcoming expires anyway after five years from the day upon which the commission is terminated either by completion or cancellation. The legal claim which is established after that time is not admissible.
5
If the final bill is sent on an earlier day than the day on which the commission is terminated either by completion or cancellation. then the earlier day is regarded as the day on which the commission is terminated.
6
For the application of the provisions of the clauses 1 and 4 and in the case of a commission for an object, the day on which the object is completed or is deemed to be completed is regarded as the day on which the commission is terminated, provided that this completion takes place before the day mentioned in clause 5.
7
For the application of the provisions of the clauses 1 and 4 in the case that the commission is cancelled by a consumer, the day on which the cancellation took place is regarded as the day on which the commission is terminated.
8
Should the legal claim on account of the preceding provisions expire between the moment on which the consultant has informed the client that he will investigate or make good the shortcoming, and the moment on which the investigation or the attempts to make good are considered to be terminated, then the expiration term is prolonged to six months after the last mentioned moment.

Article 17

Other provisions with respect to compensation

1
The right of the client to compensation does not diminish his obligations to pay according to the contract.
2
In the case that a person in the service of the consultant is seconded to the client, the consultant, in compliance with the other provisions in this chapter, is only responsible for the availability of this person with the agreed qualifications for the agreed period.
3
Except for the provision of the preceding clause, the consultant is not liable for the compensation of damage suffered by the client or third parties (also) caused by the seconded person or persons.
4
The client is liable for and indemnifies the consultant with respect to claims for compensation of damage to third parties caused by the person or persons seconded to the client.
5
For the compensation of other damages than mentioned in this chapter, the consultant is only liable if and insofar the shortcoming is due to evil intent or gross negligence.

Article 18

The client is a consumer

If the client is a consumer, the provisions of this chapter are similarly applicable, unless a provision can be deemed to be unreasonably onerous.

7 Delay, interruption and the consequences thereof

Article 19
Delay and interruption of the commission

1
The consultant informs the client in writing and in due time after the setting in of a delay, while mentioning the cause of that delay, at which date the delay began.
2
The client may order the consultant to interrupt the commission. The client has an obligation to do so in writing and to mention the reasons.

Article 20
Consequences of the delay or interruption of the commission

1
After the communication described in article 19 clauses 1 and 2, parties shall deliberate in consultation with each other and in due time with respect to the consequences of the delay or interruption, while paying attention to their mutual and justified interests.
2
If the fulfilment of the commission is delayed or interrupted and this is not to be ascribed to the consultant, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the time of the communication mentioned in article 19 clauses 1 and 2:
2a
the fee;
2b
the expenses;
2c
the supervision costs;
2d
all costs reasonably made and yet to make, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
3
The client has also an obligation to compensate the damage suffered by the consultant as a consequence of the delay and/or the interruption, leaving unaffected the obligation of the consultant to limit as much as possible this damage.
4
The provision of article 55 clause 3 is of similar applicability.

8 Provisions applicable to cancellation of the commission

Article 21
Mode of cancellation

1
The commission is cancelled by means of a written communication addressed to the other party, in which at least are mentioned the reasons for the cancellation as well as the date upon which the cancellation takes effect.
2
If the communication does not mention any reason, then the commission is considered to be cancelled according to the provisions of article 24.

Article 22
Limitative regulation of the grounds for cancellation

Dissolution of the commission concluded between the parties is impossible outside the reasons for cancellation as stipulated in these rules, unless the client is a consumer.

Article 23
General obligations of the parties after the cancellation of the commission

After the cancellation of the commission, each party has an obligation to do everything possible, or to abstain from any action or to tolerate actions, whatever may be demanded with a view to the reasonable interests of the other party.

9 Cancellation of the commission

Article 24
Cancellation of the commission without reason

Each party has the right to cancel the commission without reason.

Article 25
Reasons for the cancellation of the commission

Reasons for the cancellation of the commission are:
- delay and interruption;
- culpable shortcomings;
- force majeure;
- insolvency;
- modification of the legal form or the collaboration form;
- decease;
- incapacity for work of a particular person.

Article 26
Delay and interruption

If, with a view on all relevant circumstances, the delay or interruption of the fulfilment of the commission is of such a nature and/or duration that observance of the commission in unaltered form may not reasonably be demanded, then each of the parties has the right to cancel the commission on this ground.

Article 27
Culpable shortcomings

1
If a culpable shortcoming comes up, then the opposing party to the party on whose side the culpable shortcoming occurs, is entitled to cancel the commission on this ground.
2
The same legal consequences follow from reprehensible action by a party as follow from a culpable shortcoming by this party.
3
The right of cancellation leaves unaffected the provisions of chapter 6.

Article 28
Force majeure

1
By force majeure as meant in these rules is to be understood a shortcoming which cannot be ascribed to one of the parties. A shortcoming cannot be ascribed to a party if it cannot be attributed to its guilt, and also cannot be at its expense by virtue of law, legal action or generally accepted opinions.
2
By force majeure is also to be understood the situation in which, due to facts or circumstances which cannot be attributed to a party, continuation of the commission may not, in all reasonableness, be demanded from that party.

Article 29
Insolvency

If a party is in a state of financial insolvency, or other good grounds exist to expect that it will fail in the observance of its obligations, then the other party is entitled to summon in writing with a specification of the grounds this party, its receiver or trustee to declare within a reasonable term in writing whether it is in state and willing to proceed with the commission. The other party is entitled to demand sufficient security if the commission is to be continued. If the demanded declaration or the demanded security are not provided within the specified term, then the other party has the right to cancel the commission on this ground.

Article 30
Modification of the legal form or the collaboration form

Under modification of the legal or collaboration form is to be understood: the decision to dissolve a legal person or the loss of legal personality, including legal merger and the decision to dissolve a commercial partnership, a limited partnership or a partnership.
2
If a circumstance as mentioned in clause 1 arises with regard to one of the parties, then the other party is entitled to cancel the commission on that ground if a reasonable interest can be derived from that circumstance for this other party.

Article 31
Decease

1
The commission does not end through the decease of one of the parties.
2
The heirs or assignees of the deceased assign at the request of the other party within a reasonable term one of them or a third party to represent them in all matters with respect to the commission.
3
The provision of article 29 clause 2 is of similar applicability.
4
The death of one of the parties gives the other party and the heirs or assignees of the deceased the right to cancel the commission.

Article 32
Incapacity for work of a particular person

If the client has stipulated that the fulfilment of the commission should be entrusted to a particular person and the circumstance mentioned in article 31 arises with respect to that person or if this person becomes disabled, then the provisions of article 31 are of similar applicability.

10 Consequences of the cancellation of the commission

Article 33

Payment obligation after the cancellation without reason by the client

1
If the client has cancelled the commission without reason, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the moment that cancellation under article 21 comes into effect:
1a
the fee;
1b
the expenses;
1c
the supervision costs;
1d
all costs reasonably made and yet to be made, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
2
The client is moreover bound, unless he is a consumer, to pay 10% of the remaining part of the consultancy costs, which the client would have been indebted should the commission have been completely fulfilled.
3
Should the provision in clause 2 lead to manifestly unacceptable consequences according to standards of reasonableness and fairness, then one may depart from this provision.

Article 34

Rights on the advice after the cancellation without reason by the client

1
If the client has cancelled the commission without reason, then the client is only entitled to use the advice of the consultant (or have it used) after previous permission in writing by the consultant.
2
The consultant may attach conditions to his permission, such as the payment of a financial compensation and the right to control whether the advice is used according to his intention.
3
The client has the right to use the advice (or have it used) without the permission of the consultant, if at the time of cancellation a start has been made with the execution of the object. The provision of clause 2 is of similar applicability.
4
Insofar as the provisions of this article do not infringe thereupon, the rights of the consultant on the advice remains otherwise unaffected.

Article 35

Payment obligation after the cancellation without reason by the consultant

1
If the consultant has cancelled the commission without reason, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the moment that cancellation under article 21 comes into effect:
1a
the fee;
1b
the expenses;
1c
the supervision costs;

1d
all costs reasonably made and yet to make, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
2
The payment obligation of the client according to clause 1 does not go farther than insofar as the activities are of avail to the client.
3
The client is entitled to deduct 10% from the sum that he has to pay to the consultant on the ground of the provision in clause 2.
4
Should the provision in clause 3 lead to manifestly unacceptable consequences according to standards of reasonableness and fairness, then one may depart from this provision.

Article 36
Rights on the advice after the cancellation without reason by the consultant

1
If the consultant has cancelled the commission without reason, then the client is entitled to use the advice of the consultant (or have it used) without intervention or permission of the consultant, unless reasonable interests of the consultant preclude such action.
2
The client is not indebted for any compensation for rights of the consultant on the advice with regard to that use.
3
Insofar as the provisions of this article do not infringe thereupon, the rights of the consultant on the advice remain otherwise unaffected.

Article 37
Payment obligation after cancellation by the client on a ground accountable to the consultant

1
If the client has cancelled the commission on a ground accountable to the consultant, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the moment that cancellation under article 21 comes into effect:
1a
the fee;
1b
the expenses;
1c
the supervision costs;
1d
all costs reasonably made and yet to be made, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
2
The payment obligation of the client according to clause 1 does not go farther than insofar as the activities are of avail to the client.
3
The client is entitled to deduct 10% from the sum that he has to pay to the consultant on the ground of the provision in clause 2.
4
The provision of clause 3 is not applicable if the cancellation takes place on the ground of article 30 or 31.
5
Should the provision in clause 3 lead to unacceptable consequences according to standards of reasonableness and fairness, then one may depart from this provision.

Article 38

Rights on the advice after cancellation by the client on a ground accountable to the consultant

1
If the client has cancelled the commission on a ground accountable to the consultant, then the client is entitled to use the advice of the consultant (or have it used) without intervention or permission of the consultant, unless reasonable interests of the consultant preclude such action.
2
With respect to that use, the client is not indebted for any compensation for the rights of the consultant on the advice.
3
Insofar as the provisions of this article do not infringe thereupon, the rights of the consultant on the advice remain otherwise unaffected.

Article 39

Payment obligation after cancellation by the client on a ground accountable to the client

1
If the client has cancelled the commission on a ground accountable to himself, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the moment that cancellation under article 21 comes into effect:
1a
the fee;
1b
the expenses;
1c
the supervision costs;
1d
all costs reasonably made and yet to be made, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
2
The client is moreover bound, unless he is a consumer, to pay 10% of the remaining part of the consultancy costs, which the client would have been indebted should the commission have been completely fulfilled.
3
The provision of clause 2 is not applicable if the cancellation takes place on the ground of article 28 or 31.
4
Should the provision in clause 2 lead to unacceptable consequences according to standards of reasonableness and fairness, then one may depart from this provision.

Article 40

Rights on the advice after cancellation by the client on a ground accountable to the client

1
If the client has cancelled the commission on a ground accountable to himself, then the client is only entitled to use the advice of the consultant (or have it used) after previous permission in writing by the consultant.
2
The consultant may attach conditions to his permission, such as the payment of a financial compensation and the right to control whether the advice is used according to his intention.
3
The client has the right to use the advice (or have it used) without permission of the consultant if at the time of cancellation a start has been made with the execution of the object. The provision of clause 2 is of similar applicability.
4
Insofar as the provisions of this article do not infringe thereupon, the rights of the consultant on the advice remain otherwise unaffected.

Article 41

Payment obligation after cancellation by the consultant on a ground accountable to the client

1
If the consultant has cancelled the commission on a ground accountable to the client, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the moment that cancellation under article 21 comes into effect:
1a
the fee;
1b
the expenses;
1c
the supervision costs;
1d
all costs reasonably made and yet to be made, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
2
The client is moreover bound, unless he is a consumer, to pay 10% of the remaining part of the consultancy costs, which the client would have been indebted should the commission have been completely fulfilled.
3
The provision of clause 2 is not applicable if the cancellation takes place on the ground of article 30 or 31.
4
Should the provision in clause 2 lead to unacceptable consequences according to standards of reasonableness and fairness, then one may depart from this provision.

Article 42

Rights on the advice after cancellation by the consultant on a ground accountable to the client

1
If the consultant has cancelled the commission on a ground accountable to the client, then the client is only entitled to use the advice of the consultant (or have it used) after previous permission in writing by the consultant.
2
The consultant may attach conditions to his permission, such as the payment of a financial compensation and the right to control whether the advice is used according to his intention.
3
The client has the right to use the advice (or have it used) without permission of the consultant if at the time of cancellation a start has been made with the execution of the object. The provision of clause 2 is of similar applicability.
4
Insofar as the provisions of this article do not infringe thereupon, the rights of the consultant on the advice remain otherwise unaffected.

Article 43

Payment obligation after cancellation by the consultant on a ground accountable to the consultant

1
If the consultant has cancelled the commission on a ground accountable to himself, then the client is bound to refund to the consultant, according to his bill, calculated according to the state of the activities at the moment that cancellation under article 21 comes into effect:
1a
the fee;
1b
the expenses;

1c
the supervision costs;
1d
all costs reasonably made and yet to be made, following from obligations which the consultant has already taken upon him with a view to the further fulfilment of the commission.
2
The payment obligation of the client according to clause 1 does not go farther than insofar as the activities are of avail to the client.
3
The client is entitled to deduct 10% from the sum that he has to pay to the consultant on the ground of the provision in clause 2.
4
The provisions of clauses 2 and 3 are not applicable if the cancellation takes place on the ground of article 28 or 31.
5
Should the provision in clause 3 lead to unacceptable consequences according to standards of reasonableness and fairness, then one may depart from this provision.

Article 44

Rights on the advice after cancellation by the consultant on ground accountable to the consultant

1
If the client has cancelled the commission on a ground accountable to himself, then the client is entitled to use the advice of the consultant (or have it used) without intervention or permission of the consultant, unless reasonable interests of the consultant preclude such action.
2
With respect to that use, the client is not indebted for any compensation for the rights of the consultant on the advice.
3
Insofar as the provisions of this article do not infringe thereupon, the rights of the consultant on the advice remain otherwise unaffected.

11 Ownership and use of rights on documents of the consultant with respect to the advice

Article 45
Ownership of documents

The documents delivered by the consultant to the client become the property of the client and may be used by him for this project with due regard for the rights which follow from the legislation in the field of intellectual property, after the client has fulfilled his financial duties towards the consultant.

Article 46
Rights of the consultant on the advice

1
The consultant, or his assignee(s), has the exclusive right of publication, realization and multiplication of his designs, drawings, sketches, photographs and all other representations of his design, of his models as well as all other objects or information carriers, which give a picture or representation of his design, or which are referred to in the Copyright Act 1912 or in the Benelux Convention with respect to the intellectual property of trademarks, drawings and models.
2
The consultant retains, also after he has given permission for realization, publication or multiplication of his work, the following rights:
2a
the right to oppose publication of the work without mention of his name or other indication as maker, unless the opposition would be in defiance of reasonableness;
2b
the right to oppose publication of the work under another name than his own, as well as against bringing about any alteration in the name of the work or in the indication of the maker, insofar as these appear on or in the work, or are made public in relation therewith;
2c
the right to oppose any other alteration in the work, unless this alteration is of such a nature that the opposition would be in defiance of reasonableness;
2d
the right to oppose every deformation, mutilation or other encroachment of the work, which could harm the honour or the good name of the maker or his value in this quality.
3
Without prejudice to the relevant provisions of the Copyright Act 1912, the consultant is the only one who has the right to make photographs or other representations of the interior and the exterior of an object realized according to his design and to reproduce and disclose them, but he needs the permission of the client for publishing photographs or other illustrations which show the interior of the object after its occupation. The client can attach conditions to his permission.
4
Within the meaning of the Benelux Convention with respect to the intellectual property of trademarks, drawings and models, the consultant is regarded as the designer of the drawings and models which he has made as part of the commission. The consultant has the exclusive right to deposit these drawings and models at the Office mentioned in this law. The provisions with respect to the rights of the consultant on the advice are as much as possible of similar applicability on the rights to be derived from this deposit.
4a
The consultant has an obligation to bring immediately under the attention of the client inventions which came into being during and through the carrying out of the commission and which in his opinion are liable for the granting of patents.

4b
If such an invention comes about through exchange of knowledge between the client and the consultant, the client has the right to apply for a patent for this invention under his name and at his expense. The client informs without delay the consultant about his decision on this matter. If required, the consultant has an obligation to assist the client in the handling of the application. The activities of the consultant following from this assistance will be remunerated by mutual agreement.
4c
If the client obtains a patent as mentioned in this clause, he grants the consultant for nothing a licence on this invention. In principle, this licence is not transferable. For the concrete application of the licence the consultant shall ask permission from the client, which can only be refused if the client can show conflicting interests with his firm.
4d
If the client makes no use of his right as mentioned under b in this clause, then the consultant has the right to apply for a patent on this invention under his name and at his expense. The consultant informs without delay the client about his decision on this matter.
4e
If the consultant obtains a patent as mentioned in the provision sub d, he grants the client for nothing a licence to apply this invention in the present business of the client. In principle, this licence is not transferable.

Article 47
The execution of the object

1
The client has an obligation to execute the object, or have it executed, according to the advice and the intention of the consultant. The client gives the consultant the opportunity to ascertain himself that the execution of the object is carried out in accordance with his advice and intention. The client does not deviate from the advice without consultation with the consultant.
2
If the parties have not agreed anything with respect to the activities of the consultant with regard to the consultation mentioned in clause 1, then the client is indebted, should the occasion arise, to the consultant for separate consultancy costs, to be settled in mutual agreement.

Article 48
Right of repetition of the advice

1
The consultant has the right to repeat his advice, insofar as this does not conflict with reasonable interests of a former client and only after the consultant has consulted with the former client.
2
The client is not allowed to use the advice, whether completely or partially, once again without the explicit written permission of the consultant.
3
In the case of a complete or partial reuse of the advice by the client, the parties shall agree on the remuneration in mutual consultation, taking into account the compensation for the rights on the advice to which the consultant is entitled.

Article 49
General provisions

1
The accounting of the commission by the consultant is set up in such a way that the consultancy costs to be declared can be determined on the basis of the data derived from this accounting.
2
The client is authorized to subject, at his own expense, the accounting of the commission by the consultant to an investigation by an external auditor, and such solely insofar as this investigation is intended to establish the correctness of the consultancy costs. The costs of this investigation shall be borne by the party which is proven to be wrong as a result of this investigation.
3
The turnover tax is not included in the sums as agreed by the parties nor in the sums mentioned in these rules. The client reimburses the consultant for the turnover tax due by the consultant with respect to the commission.

Article 50
Consultancy costs

1
The consultancy costs include the fee, the supervision costs and the expenses.
2
The fee is the remuneration which the consultant is entitled to for his activities.
3
Supervision costs are the costs which the consultant makes for supervising the execution of the object.
4
The expenses include among other things:
4a
the travel and accommodation expenses incurred for the benefit of the commission;
4b
the expenses connected with the testing of materials, constructions and installations, as well as the expenses connected with other simple tests and analyses;
4c
the expenses for the use of instruments provided by the consultant for measurements and tests;
4d
the costs of multiplication of contracts, specifications, drawings, calculations, reports and the like by means of collotyping, photocopying, plotting, printing or otherwise;
4e
the costs related to the making of photographs, scale-models, perspectives and other presentations, if required by the client or a public body;
4f
the costs of telecommunication, postal traffic and announcements by advertisement;
4g
registration and cadastral costs and other out-of-pocket expenses;
4h
costs incurred with tendering or a pre-tender meeting;
4i
costs incurred with the conclusion of contracts and the serving of writs, costs of dues, translation costs and the like.

Article 51

Determination of the consultancy costs

1

The fee as desired by the parties is determined in writing prior to the coming about of the commission in one of the following ways or a combination thereof:

1a

as a percentage of the execution costs;

1b

on the basis of the time spent on the fulfilment of the commission;

1c

as a fixed sum agreed upon between the parties;

1d

according to any other criterion agreed upon between the parties.

2

The supervision costs as desired by the parties are determined in writing prior to the coming about of the commission in one of the following ways or a combination thereof:

2a

as a percentage of the execution costs;

2b

on the basis of the time spent on supervision;

2c

as a fixed sum agreed upon between the parties;

2d

according to any other criterion agreed upon between the parties.

3

The expenses are determined in writing as desired by the parties prior to the coming about of the commission in one of the following ways or a combination thereof:

3a

as a percentage of the execution costs;

3b

according to the actual costs;

3c

as a fixed sum agreed upon between the parties;

3d

as a percentage of the fee;

3e

according to any other criterion agreed upon between the parties.

Article 52

Calculation as a percentage of the execution costs

1

The percentage of the execution costs from which the consultancy costs are to be deduced must be agreed upon prior to the coming about of the commission.

2

In the stages prior to the stage of price-making and contracting, use is made for the calculation of the consultancy costs of the estimate of the execution costs belonging to these stages as drawn up by the consultant, or – if the estimate is drawn up by another party – of that estimate, on the condition that that estimate has been accepted, after checking, by the consultant. The definitive consultancy costs are determined as soon as the budget belonging to the stage of technical design has been drawn up and has been approved by the client.

3
When the object is executed and from the stage of price-making and contracting on, use is made for the calculation of the consultancy costs of the definitive execution costs, drawn up on the basis of the costs of the execution activities commissioned to the executing parties and augmented with the balance of variations.
4
With a view to the correct calculation of the consultancy costs, the client provides the consultant with the necessary data with respect to the execution costs.
5
Also included in the execution costs are the value of the materials and parts of the works to be supplied or made available by or on behalf of the client, as well as the other costs incurred with the supplying or making available thereof.
6
Also included in the execution costs as a basis for the consultancy costs are the balance of the settlement of fluctuations in wages and national insurance contributions and of fluctuations of prices, rents and freight rates, or, if this settlement has been precluded by the payment of a compensation, this compensation.
7
If the object is not executed, or if the commission has been terminated previously by cancellation, then, with regard to the provision of clause 1, the execution costs as a basis for the consultancy costs are settled definitively on the basis of the execution costs as agreed upon by the parties at the conclusion of the commission, or, in the absence thereof, on the basis of the last estimate or budget drawn up by the consultant, or – if the estimate or budget is drawn up by another party – of that estimate or budget, on the condition that that estimate or budget has been accepted after checking by the consultant.

Article 53
Calculation on the basis of spent time

1
Prior to the coming about of the commission, the parties agree in writing about the rate per time unit to be charged for the functional groups or collaborators involved in the project. If it is determined that the rate will apply for a particular period, then the consultant will consult with the client in time about a change of the rate after this period.
2
Under spent time is to be understood the total of all hours spent on the fulfilment of the commission and the travelling hours which are necessary for the fulfilment of the commission.

Article 54
Determination of a fixed sum

1
Consultancy costs as a fixed sum are agreed upon in writing at the coming about of the commission.
2
The fixed sum for consultancy costs is regarded as serving exclusively for the remuneration of activities of which the scope and duration are accurately mentioned in the commission.

Article 55
Consultancy costs in the case of adjustments and alterations

1
The client is indebted separate consultancy costs for alterations which the consultant has to carry out, insofar as these are not the consequence of a culpable shortcoming by the consultant.

2
If the alterations are the consequence of a culpable shortcoming by the consultant, the client is still indebted for consultancy costs, insofar as activities lying at the basis of these consultancy costs would also have been necessary for the correct fulfilment of the commission.
3
If alterations occur in relation to the coming about of the commission as mentioned in article 9 and article 20, leading to a change in the activities of the consultant, then the consultancy costs will be revised in mutual consultation.

Article 56
Payment of consultancy costs

1
The client pays the consultancy costs upon receipt of the bill of the consultant. The client and the consultant agree upon a payment schedule in instalments at the coming about of the commission. The consultant declares the consultancy costs according to the agreed payment schedule, or in the absence thereof, in monthly instalments in proportion with the progress of the activities.
2
The consultant is entitled to send his final bill as soon as he has completed his activities, or on the day on which the commission has been cancelled in accordance with the provisions of article 21.
3
The bill of the consultant is specified and at the request of the client accompanied by the necessary pieces of evidence.
4
The client pays the declared sum, insofar as not otherwise agreed upon, within 30 days of the date of the corresponding bill.
5
If the client challenges the correctness of a bill – or a part thereof – he is nonetheless bound to pay on time the unchallenged part. The challenging of a bill has to be done in writing and within the payment term. If it turns out that the client has yet to pay the challenged bill – or the challenged part – then the legal interest indebted by the client is calculated as from the day on which the payment should have been settled at the very latest.
6
If the client does not settle on time the payment due by virtue of the commission and the delay is not the result of a circumstance accountable to the consultant, then the client is in default without further proof and the consultant is entitled to claim compensation of interest on the basis of the legal percentage as from the day following the day which has been agreed upon as the ultimate settling day up to and including the day on which the client has settled the bill.
7
If the payment is not settled within one month after the day on which the payment should have been settled at the very latest, then the consultant is entitled to claim compensation of interest on the basis of the legal percentage increased with three percent as from the day on which this month has expired, without reminder or summons by the consultant.
8
No interest shall be calculated on the interest due to the consultant.
9
All actual costs incurred by the consultant to obtain the settlement of the bill, both the judicial and the extrajudicial costs, are at the expense of the client.
10
Contrary to the provision of clause 9, with regard to commissions where the client is a consumer, the legal rules for collection charges are to be applied.

13 Applicable law, disputes and enactment

Article 57
Applicable law

The Dutch Law applies to the commission.

Article 58
Disputes

1
Differences of opinion between client and consultant are to be settled as much as possible amicably, under which is also to be understood mediation.
2
If the parties have agreed in the commission that the settlement of disputes will take place by means of arbitration, then all disputes – including those regarded as such by only one of the parties – which arise between the client and the consultant or their legal successors or assignees as a result of the commission, shall be settled by arbitration, according to the regulations of the Court of Arbitration for the Building Industry, such as these are in force on the day on which the dispute has been brought up, and such with the exclusion of the civil court.
3
If due to a final judicial judgement a verdict by the arbitration board is declared null and void entirely or partially, each of the parties is entitled, insofar as the dispute has therefore remained unsettled, to have the dispute settled again in accordance with this article. The claim expires if it is brought up later than three months after the final judicial judgement has been pronounced. The person who has contributed to the nullified settlement as an arbiter or as secretary, may not contribute to the new handling of the dispute.
4
Contrary to the provision of clause 2 the claimant is free to bring up a dispute which falls within the competence of a court of justice, section cantonal court, before this court.

Article 59
Enactment and deposit

This first revision of the Legal relationship client–architect, engineer and consultant DNR 2011, which is quoted in short as 'DNR 2011', has been filed at the registry of the Court of Justice in Amsterdam on 3 July 2013 under number 56/2013.

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