

Consultancy Terms and Conditions

PRé Consultants B.V.

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Article 1. Definitions

The definitions, used in these terms & conditions will have the following meaning:

Agreement	the agreement between PRé and the Customer on the basis of which PRé provides the Services, and products, including the Annexes
Annex	an annex to the Agreement
Confidential Information	information of a confidential nature of a Party, including but not limited to the Customer Materials and PRé Materials
Consultancy Terms	these Consultancy Terms and Conditions
Customer	the legal entity that enters into the Agreement with PRé, as specified in the Proposal
Customer Materials	all works, data and materials supplied by or on behalf of the Customer to PRé for use in connection with the Services
Deliverables	the outcome of a project, such as a report, and/or a model and/or a method, as specified in the Proposal
Effective Date	the date of signature of the Proposal
Force Majeure Event	an event as referred to in Article 6:75 BW (Dutch Civil Code)

Intellectual Property Rights	the intellectual property rights, wherever in the world, whether registrable or unregistrable, registered or unregistered, including but not limited to copyrights and data base rights
Proposal	the document (whether named offer, proposal, quote or otherwise) that states the specific arrangements of the Agreement such as a description of the project, the Deliverables and fees
Party, Parties	the Customer and/or PRé
PRé	PRé Consultants B.V.
PRé Materials	all works and tools used by PRé to provide the Services including but not limited to software, data libraries and all related preparatory designs and materials, specifications, interfaces and documentation
Services	providing the Deliverables and related consultancy services by PRé to the Customer, in the context of a project, as described in the Proposal
Term	the term of the Agreement from the Effective Date until the termination of the Services
Workdays	the days of the week with the exclusion of Saturdays, Sundays and public holidays in the Netherlands

Article 2. Applicability

- 2.1 These Consultancy Terms apply to the Agreement.
- 2.2 The applicability of any (general) terms and conditions of the Customer, including (general) purchase terms and conditions, is explicitly excluded.
- 2.3 PRé has the right to amend these Consultancy Terms at any time, provided that it has notified the Customer of the amended terms at least thirty (30) days before the effective date of the amended version.
- 2.4 In the event of a conflict between the provisions of the Proposal and these Consultancy Terms, the provisions of the Proposal will prevail.

Article 3. Services

- 3.1 PRé will perform the Services on a best efforts basis, with reasonable skill and care. PRé does not guarantee any results of the Services. Use of the Deliverables and other Services is at the sole risk of the Customer.
- 3.2 PRé will deliver the Deliverables timely, in accordance with the timetable specified in the Proposal and/or as agreed with the Customer during the course of the project. Exceeding an agreed delivery period does not constitute a situation of default without a notice of default being required (Dutch: "verzuim"). PRé will deliver all Deliverables in electronic format unless the Parties have agreed otherwise.

- 3.3 PRé appoints the person(s) that perform(s) the Services for the Customer. PRé has the right to replace such person(s), provided that such replacement does not negatively affect the Services. The Customer has the right to a replacement of the person(s), appointed by PRé, limited to one (1) time during the Term and upon written request to PRé, stating the reasons for the request.

Article 4. Obligations of the Customer

- 4.1 The Customer will provide PRé timely with all information and data that PRé reasonably requests in the context of the provision of the Services. The Customer guarantees the correctness and completeness of such information and data. For the sake of continuity, the Customer will appoint a contact person for the duration of the provision of the Services to whom PRé will report. This contact person and all other employees and co-workers of the Customer that cooperate with PRé will dispose of the necessary experience, knowledge and skills for this cooperation.
- 4.2 Prior to the start of the Services, the Customer will inform PRé in writing of all circumstances that are relevant for PRé in the context of the Services, such as specific questions, purposes, priorities and availability of information and personnel.

Article 5. Term and termination

- 5.1 The Agreement will come into force on the Effective Date and will stay in effect during the Term. Either Party is entitled to terminate (Dutch: “opzeggen”) this Agreement by prior written notice to the other Party. In the event that a Party terminates the Agreement, the Customer may apply or (if PRé terminates) may request PRé (in writing, within 1 (one) week from the date of the termination notice) to apply a notice period of one (1) month during which PRé will continue to provide the Services during the hours, reserved in accordance with the timetable, specified in the Proposal. .
- 5.2 Termination of the Agreement by the Customer will not release the Customer of its obligation to pay the fee, referred to in Article 8 of these Consultancy Terms in full, unless the Agreement is terminated by the Customer on the basis of clause 5.3 or 5.4 of these Consultancy Terms.
- 5.3 Either Party is entitled to terminate (Dutch: “ontbinden”, Article 6:266 BW (Dutch Civil Code)) this Agreement immediately without incurring any liability by giving written notice of termination in the event that the other Party causes a material breach (such as a failure to pay by the Customer) and such breach is not capable of remedy or, if the breach is capable of remedy, the procedure in Article 9.2 of these Consultancy Terms is followed without the breach being remedied.
- 5.4 In addition to Article 5.3 of these Consultancy Terms, either Party may terminate (Dutch: “ontbinden”, Article 6:266 BW (Dutch Civil Code)) this Agreement immediately without incurring any liability by giving written notice of termination (e-mail included) to the other Party in the event that the (company of the) other Party:
- (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is unable to pay its outstanding debts;
 - (iv) is declared insolvent; or voluntary or involuntary proceedings are instituted by or against such other Party under any applicable insolvency laws;
 - (v) has been convicted of an offence concerning its professional conduct;
 - (vi) caused damages as a result of gross negligence or wilful intent;

(vii) makes or proposes to make any arrangement or composition with its creditors.

5.5 Termination as referred to in Article 5.3 or 5.4 of these Consultancy Terms will not affect the (execution of) the obligations that are completed before the date of the termination notice.

Article 6. Intellectual Property

6.1 PRé and/or its licensors hold all Intellectual Property Rights in the PRé Materials and Deliverables. The Agreement will not constitute a transfer of the Intellectual Property Rights in the PRé Materials and Deliverables.

6.2 Subject to clause 6.3, PRé hereby grants to the Customer a worldwide, non-transferrable, perpetual license to use (all or part of) the Deliverables, if such license is explicitly mentioned in the Proposal provided:

- a) that such Deliverable(s) is/are disclosed within the Customer's enterprise only;
- b) that such Deliverable(s) is/are used for the Customer's own business purposes only;
- c) that the use of such Deliverable(s) is/are non-exclusive;

unless the Parties have explicitly agreed otherwise.

6.3 The license, as referred to in Article 6.2 of these Consultancy Terms will not apply to any document, data (library), model, method or other work that is subject to a third party (intellectual property) right. If the Customer wishes to obtain a license to use such document, data, model, method or other work PRé will send the Customer an offer, stipulating the (financial) conditions under which the Customer may obtain such license, which will not be granted before such offer is accepted as prescribed by PRé.

6.4 The Customer holds all Intellectual Property Rights in the Customer Materials. Upon the Customer's explicit written consent, the customer grants PRé a worldwide, non-transferrable, perpetual, unlimited and irrevocable license to use (parts of) the Customer Materials for other projects of PRé.

6.5 No provision in the Agreement will prevent PRé from using the PRé Materials, experience and knowhow, whether existing prior to the Agreement or acquired in the context of the provision of the Services in other projects and such use will not be deemed to be a breach of this Article 6 or Article 7 of these Consultancy Terms.

Article 7. Confidentiality

The Parties agree to keep the Confidential Information strictly confidential and take all reasonable measures to prevent third parties from accessing the Confidential Information. This obligation does not apply to information that was available in the public domain before disclosure of that information, to be demonstrated by the disclosing Party.

Article 8. Fee and payment

8.1 Subject to Article 8.2 of these Consultancy Terms, the fee that PRé is entitled to charge to the Customer in relation to the Services is stipulated in the Proposal. The fee is exclusive of VAT but is inclusive of all other taxes and levies. PRé may charge traveling and accommodation expenses as stipulated in the Proposal.

- 8.2 If PRé foresees that a situation may arise that leads to an additional fee (as described under Article 8.3 of these Consultancy Terms), it will, if reasonably possible, notify the Customer of the (expected) additional fee. If no amount for the additional fee is agreed, the additional fee will be based on an hourly tariff of the project members involved.
- 8.3 PRé will be entitled to an additional fee if:
- a) the Customer has made additional requests that are executed by PRé;
 - b) the Customer has not timely or not completely provided the necessary information or cooperation in accordance with Article 4 of these Consultancy Terms and such default of the Customer has caused additional costs;
 - c) unforeseen circumstances (beyond the control of PRé) have occurred that have led to additional costs for PRé.
- 8.4 Payment of the fee will be made in two installments: 50% upon acceptance of the Proposal and before the start of the Effective Date and 50% upon delivery of the Deliverables (unless agreed otherwise).
- 8.5 The Customer is obliged to pay the invoices in relation to the Service within thirty (30) days from the date of the invoice, in accordance with the details stated on the invoice. If the Customer fails to pay any invoices within the payment term, PRé is entitled to statutory commercial interest as referred to in Article 6:119a BW (Dutch Civil Code) and the extrajudicial and judicial costs actually incurred by PRé.
- 8.6 Payment of the invoice will be made without any suspension or set-off, unless the invoice is evidently incorrect. If the invoice is evidently incorrect, the Customer will notify PRé in writing within two (2) weeks from the date of the invoice, specifying why the invoice is, in the opinion of the Customer, incorrect. The Parties will then deliberate on the part of the fee that is, according to the Customer, incorrect and the Customer will pay the part of the invoice that is not disputed within the payment term. If the Customer does not dispute the correctness of the invoice within such two (2) month period, its right to dispute the invoice lapses.

Article 9. Liability

- 9.1 Subject to Articles 9.2, 9.3 and 9.4 of these Consultancy Terms, each Party that breaches (Dutch: “toerekenbaar tekortschieten”) the Agreement or acts unlawfully towards the other Party is liable for the damages that the other Party suffers as a result of such breach or act.
- 9.2 If a breach as referred to in Article 9.1 of these Consultancy Terms is capable of remedy, liability will not arise until the other Party notifies the defaulting Party of the breach in writing stating the details of the breach and requiring such breach to be remedied and such breach is not remedied within thirty (30) calendar days from receipt of the notice.
- 9.3 The burden of proof that PRé has breached the Agreement or acted unlawfully as referred to in Article 9.1 of these Consultancy Terms is borne solely by the Customer.
- 9.4 The liability of PRé for damages, referred to in Article 9.1 of these Consultancy Terms is limited (per event or series of related events and per year) to direct damages, to the amount:
- i) that is paid out under its professional liability insurance in relation to the relevant claim; or, if no such payment is made
 - ii) of the fee that the Customer has paid to PRé in relation to the Services.

- 9.5 The liability of PRé for indirect or consequential damages (including but not limited to loss of profits, missed savings, loss due to business stagnation and third party damages) is excluded.
- 9.6 The Customer will indemnify PRé and hold PRé harmless for any damages that a third party claims from PRé in relation to a breach or act of the Customer as referred to in Article 9.1 of these Consultancy Terms.

Article 10. Force majeure

- 10.1 If a Force Majeure Event occurs, the affected Party shall not be liable to the other Party and shall be released from its affected obligations for the period of the Force Majeure Event.
- 10.2 The Party invoking this Article 10 will notify the other Party in writing upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event and shall use reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 10.3 If a Party is prevented from performing its obligations under the Agreement due to a Force Majeure Event for more than one (1) calendar month, then the other Party will be entitled to terminate the Agreement in respect of the Services that are affected by the Force Majeure Event, without a right to any compensation for possible damages suffered as a result from the Force Majeure Event. The Agreement will stay in force with regard to the Services that are not affected by the Force Majeure Event.

Article 11. Personal data

In the context of the Agreement, PRé processes personal data (such as business contact details of contact persons and employees of the Customer). For information on the processing by PRé, PRé refers to its Privacy- and Cookie statement that is published at <https://www.pre-sustainability.com/>. The Parties agree that the Services do not include the processing of personal data.

Article 12. Effects of termination

- 12.1 After termination of the Agreement for whichever reason PRé will keep the Deliverables, including the Customer Materials, in archive for at least five (5) years unless the Parties explicitly agree otherwise.
- 12.2 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, with the exception of the provisions that, by their nature, are deemed to survive termination, including but not limited to Articles 6, 7, 9, 12.1, 12.2, 14.

Article 13. Notices

Any notice from one Party to the other Party under this Agreement must be given in writing, which means by registered mail or e-mail, to the contact person stated in the Proposal. If the notice is sent by email the receiving Party will confirm receipt as soon as possible. The notice will be deemed received on the date of delivery at the postal address or to the receiving Party's email server, to be demonstrated by the sending Party. If the date of delivery is not between 9 AM and 5 PM CET on Workdays, then the notice shall be deemed received on the date of the next Workday.

Article 14. General

- 14.1 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue to be in full force and effect. The Parties will negotiate to replace the unlawful and/or unenforceable provision by a provision that is lawful and enforceable and meets the purpose of the original provision as closely as possible.
- 14.2 Neither Party may, without the prior written consent of the other Party, assign, transfer, charge, (sub)license any contractual right or obligation under this Agreement to a third party.
- 14.3 This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party.
- 14.4 This Agreement shall constitute the entire agreement between the Parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the Parties, whether made in writing or oral, in respect of that subject matter.
- 14.5 The Agreement shall qualify as an assignment agreement within the meaning of Article 7:400 BW (Dutch Civil Code) and the Agreement is not intended to and shall not render (the person, appointed by) PRé an employee, agent or partner of PRé.
- 14.6 This Agreement shall be governed by and construed in accordance with the laws of the Netherlands. Any and all disputes that may arise from the Agreement between PRé and the Customer shall be exclusively submitted to the competent court in Utrecht, the Netherlands. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.