

AMS Advocaten N.V. — General Terms and Conditions

- 1 AMS Advocaten N.V. (“AMS”) is a public limited liability company under Dutch law, registered in the Commercial Register under number 53039734.
- 2 All services provided by AMS are subject to these terms and conditions. They apply to every instruction, including every follow-up instruction or supplementary instruction, given to AMS or persons associated with AMS by the client, being the legal or natural person that instructs AMS (the “client”).
- 3 “Persons associated with AMS” is understood to mean any person involved in carrying out an instruction for or on behalf of AMS, including but not limited to (i) persons working for AMS or a subsidiary of AMS (whether that is based on an employment contract or otherwise), (ii) to the extent that they do not fall under category i, persons working for AMS as independents, whether that is through a legal entity (which in that case is also covered by this definition) or otherwise, (iii) shareholders of AMS, their professional companies and the director-major shareholders of those professional companies, (iv) persons who have previously been associated with AMS and their legal successors, (v) third parties as described in paragraph 6 and (vi) advisers of AMS.
- 4 Unless agreed otherwise in writing, AMS is the sole provider of services to the client. Instructions given to persons associated with AMS are considered to have been given exclusively to AMS, even where it is intended that an instruction will be carried out by a specific person. The applicability of Articles 7:404 and 7:407(2) of the Dutch Civil Code (DCC) is excluded.
- 5 Any liability of AMS and persons associated with AMS is limited to the amount that the insurer pays out to AMS in the matter in question, plus the deductible applicable to AMS under the conditions of the policy. Where the insurer does not make payment to AMS, for whatever reason, the liability of AMS is limited to the fee charged in the matter in question, up to a maximum of EUR 25,000. Without prejudice to the provisions of Article 6:89 DCC, any claim the client has against AMS (on whatever grounds) is extinguished one year after discovery by the client of an event or circumstance that may give rise to the liability of AMS, if the client fails to notify AMS in writing of the potential claim within the year; where such notification is given, a one-year limitation period, calculated from the date of notification, applies.
- 6 Whilst carrying out an instruction AMS may engage the services of third parties that are not associated with AMS as it deems necessary. These general terms and conditions, including the limitation of liability set out in paragraph 5, are also stipulated on behalf of those third parties.
- 7 The client indemnifies AMS and persons associated with AMS against all third-party claims in connection with the instruction, with the exception of claims arising from wilful misconduct or gross negligence on the part of AMS.
- 8 Unless agreed otherwise, AMS calculates its fee on the basis of an hourly rate established by AMS, plus VAT and a 6% surcharge to cover office costs. AMS may adjust its hourly rates and the surcharge for office costs periodically. Adjustments may also be made during the course of agreements with private clients, if the agreements were concluded with AMS more than three months before the adjustment.
- 9 AMS may bill the client on an ongoing basis. In principle, AMS charges the client the payable fee and any costs incurred that are not incorporated in its rates (such as court fees and the costs of bailiffs, couriers, delivery services, translators and interpreters) as disbursements without surcharge.
- 10 AMS has a bank account for third party funds within the definition of the Legal Profession Bylaw [Verordening op de Advocatuur] (the “Client Account” [Derdengeldenrekening]), that is held by the Stichting Beheer Derdengelden AMS Advocaten (“the Foundation”). These general terms and conditions are also agreed for the Foundation in regard to the management of client funds. In its management of client funds, the Foundation (where Foundation is also understood to include AMS or lawyers working for AMS) is entitled to (i) pass on to the client any negative interest on managed funds, as well as banking and transaction costs to be borne by client, charging them against the Foundation, (ii) apply a waiting period for payment of positive interest, and charge a management fee in accordance with the agreement applicable between the Foundation and AMS, which will be provided upon first request, and (iii) offset client funds that are at the client’s disposal against a fee note from AMS that has fallen due, unless the fee note has been disputed with adequate reasoning within a reasonable period (and in any event within two months after the fee note date). Neither AMS nor the Foundation is obliged to invest managed funds on an interest-bearing basis. Any liability of the Foundation to the client or any other interested party is limited in accordance with the limitation of liability of AMS under these terms and conditions, i.e. up to the amount that AMS’ insurer pays out in the matter in question, plus the deductible applicable to AMS under the conditions of the policy. Furthermore, any claim the client or a third party has against the Foundation is extinguished one year after its inception, or after the discovery of an event or circumstance that could give rise to such a liability claim for the entitled party.
- 11 AMS applies a standard term of payment of fourteen days, but may specify immediate payment in specific cases/circumstances. If a client fails to pay fee notes within the standard term of payment and/or for as long as a client fails to pay this or any subsequent fee notes, AMS is entitled to suspend its work immediately without incurring liability to compensate for any resulting damage.
- 12 Unless the client submits written notice of its objection to the fee charged or to the amount of the fee note in general within thirty days of the fee note date, the fee note becomes irrevocable.
- 13 A client acting in a professional commercial capacity that fails to pay the fee notes in a timely manner will owe statutory commercial interest with effect from the due date as provided for in Article 6:119a DCC and AMS is entitled to charge extrajudicial collection costs of 15% of the principal sum.
- 14 These terms and conditions may also be invoked by persons associated with AMS, in whatever capacity, and their legal successors.
- 15 AMS is entitled to retain case documents in digital or scan format and to destroy the original documents. AMS may without further notification destroy a case file five years after the case is closed or, in the event that it was not formally closed, five years after the last fee note. Should a client wish to retain the original of the document given to AMS, this should be indicated in writing upon delivery of the document. The document in question must be requested upon closure of the case file, and in any event no more than three months after that date.
- 16 AMS is entitled to use and process the client’s personal data for professional purposes whilst carrying out an instruction. These data will also be used in new cases to check for possible conflicts of interests (with the client). AMS’ privacy notice is available online at: www.amsadvocaten.com/privacy-policy/.
- 17 Deviations from these general terms and conditions are valid only insofar as they are agreed in writing between AMS and the client.
- 18 AMS has the right to amend these terms and conditions unilaterally without the agreement or approval of the client. Such amendments may also be made during the course of agreements with persons who are not acting a professional or business capacity; in the event of substantial changes, the client will be able to terminate the agreement. AMS will give the client notice of the amended terms and conditions in good time and in any event at least one month before they come into effect.
- 19 The legal relationship between the client and AMS is governed by the law of the Netherlands. Furthermore, AMS’ Complaints Procedure applies to all agreements that AMS concludes as service provider with third parties. This Complaints Procedure will be sent free of charge upon request and is available online at www.amsadvocaten.com/app/uploads/2023/02/20230220-Office-complaints-procedure-EN-5784-1139771463-3408.pdf.
- 20 Any disputes will be heard exclusively by the competent court in Amsterdam, unless a different Dutch court with territorial jurisdiction is designated by law. Where a different Court is competent under the law (in terms of territorial or subject matter jurisdiction) the Court of Amsterdam is nevertheless competent if the client has not opted, within one month of receiving notice from AMS of its wish to apply to that court, for adjudication by the court that is competent under the law.
- 21 In the event of a discrepancy between the Dutch text of these terms and conditions and a foreign language version, the Dutch text is binding.