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## GENERAL TERMS AND CONDITIONS PROPTIMIZE (AND ITS AFFILIATES)

(March 2019 | version 1.0)

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### 1. Definitions

1.1 In these General Terms and Conditions, the terms listed below have the following meaning:

Assignment:

a) An agreement pursuant to which Contractor either alone or together with one or more Contractors, undertakes towards one or more Clients, against payment of a commission, to engage in effecting agreements in respect of real estate in the broadest sense of the words and/or related rights between the Client(s) and a third party or parties.

b) An agreement pursuant to which Contractor either alone or together with one or more Contractors, undertakes towards one or more Clients, against payment of a commission, to provide any other services that are directly or indirectly related to real estate in the broadest sense of the words.

Contractor: Proptimize (and its affiliates), registered with the Chamber of Commerce, having its registered office in Vught (the Netherlands), and companies that are affiliated with it in a group within the meaning of Article 2:24b of the Dutch Civil Code.

Client: Contractors other contractual party in respect of an Assignment.

Commission: The commission to which Contractor is entitled in connection with an Assignment.

### 2. Applicability

2.1 These General Terms and Conditions govern all oral and written assignments, bids, offers, legal relationships and agreements including any related legal acts that are issued or accepted by Contractor or one of its employees who is authorised to do so and who performs the work in question on behalf of Contractor. These General Terms and Conditions form part of all agreements between Contractor and the Client.

2.2 Client accepts the applicability of these General Terms and Conditions at any new and / or additional agreements between the Contractor and the Client and to any related legal actions, even if these General Terms and Conditions are not handed over again to the Client.

2.3 Any General Terms and Conditions, specific (purchase) Terms and Conditions of Client shall not be applicable and will be rejected by the Contractor expressly.

2.4 Deviation from these General Terms and Conditions will be valid only if they are confirmed in writing by Contractor. Insofar as no such deviations apply, the provisions contained in these General Terms and Conditions will continue to apply in full.

- 2.5 These General Terms and Conditions can be obtained at [www.proptimize.nl](http://www.proptimize.nl)  
These General Terms and Conditions have been drawn up in Dutch and in English. In the event of any dispute with regard to the content and purport of these General Terms and Conditions, only the Dutch text and its meaning within the jurisdiction of the Netherlands will be binding.

### **3 Assignment**

- 3.1 An Assignment is concluded when Contractor has confirmed the content of the Assignment to the Client in writing or when Contractor commences work on an Assignment.
- 3.2 Changes to an Assignment can be implemented only by written confirmation by Contractor.
- 3.3 Notwithstanding Article 7:404 and Article 7:407(2) of the Dutch Civil Code, all Assignments are accepted and performed exclusively by Contractor even if it is explicitly or tacitly intended that the Assignment will be performed by a particular person.

### **4. Information and confidentiality**

- 4.1 Client shall make available in the form and manner and in the time required by Contractor, all information and documentation which Contractor deems necessary for the proper performance of the engagement.
- 4.2 Client warrants the accuracy, completeness and reliability of the information and documentation made available to Contractor, including information and documentation originating from third parties, except where precluded by the nature of the assignment.
- 4.3 Client shall ensure that Contractor is immediately informed of facts and circumstances that may be important in connection with the correct performance of the engagement.
- 4.4 Client shall indemnify Contractor against claims by third parties relating to loss arising as a consequence of Client providing Contractor with inaccurate or incomplete information, unless Client is able to demonstrate that such loss is not a consequence of or related to culpable acts or omissions on the part of Client, or that such loss is the result of intent or gross negligence on the part of Contractor.
- 4.5 Except where disclosure is required by law or professional duty, Contractor shall maintain confidentiality towards third parties. This does not apply to information required to conclude an agreement, nor does this apply to information for which Client has indicated that it can be disclosed to third parties.

## **5. Term and termination of the assignment**

- 5.1 An Assignment can run for a fixed term or for an indefinite period of time.
- 5.2 An Assignment for an indefinite period of time ends by termination. Either party may terminate an Assignment by giving notice with due observance of a notice period of two months. Termination must be effected in writing.
- 5.3 An Assignment for a fixed term ends when the Assignment's term has lapsed or when the Assignment has been completed.
- 5.4 Notwithstanding the provisions contained in the foregoing paragraphs of this Article, either party is authorized to terminate the Assignment effectively immediately, by giving notice in writing, for weighty reasons including a breach by the other party in the performance of its obligations arising from the Assignment, a serious disturbance in the parties' relations, or if the other party is granted a suspension of payments or is declared bankrupt.
- 5.5 In the event that an Assignment ends due to termination within the meaning of Article 5.2, 5.3 or 5.4 of these General Terms and Conditions, because the Assignment has been completed or due to the expiry of the term for which the Assignment was entered into, the Client will be obliged to pay Contractor the Commission due. That Commission will be paid in accordance with the provisions contained in the Assignment confirmation and in Article 7 of these General Terms and Conditions; in addition, Contractor will be reimbursed for the costs it incurred in performing or in connection with the Assignment.

## **6. Performance of the assignment**

- 6.1 Contractor will perform the Assignment properly and carefully and will represent the Client's interests to the best of its knowledge and ability with due observance of the justified interests of the Client.
- 6.2 During the term of the Assignment the Client will refrain from performing activities that could hinder or impede Contractor in the performance of the Assignment. The Client will not conclude any agreements with respect to the Assignment without involving Contractor and will not conduct any negotiations in that respect.
- 6.3 In performing the Assignment Contractor may engage the services of other legal entities or natural persons, such as assistants. Contractor will exercise due care when engaging third parties. In the legal relationship with the Client, these General Terms and Conditions apply accordingly to the services provided or to be provided by that other legal entity or natural person on the instructions of Contractor. If the liability of Contractor is based on an error that is attributable to a third party or parties or an assistant engaged by Contractor the liability of Contractor will be limited to the amount that Contractor can recover and actually collect from the third party or parties or assistant in question. Upon receipt of that amount Contractor will pay it to the Client.
- 6.4 Unless the parties have made other written agreements, during the term of the Assignment the Client is not permitted to give similar assignments to third parties in respect of the real estate to which the Assignment relates.

## **7 Commission and Costs**

- 7.1 Unless the parties agree otherwise, the Commission and additional costs are exclusive of the turnover tax legally due.
- 7.2 Contractor will lay down the amount of the Commission, or the bases for calculating the Commission if the Commission depends on the performance of the Assignment, in the Assignment confirmation.
- 7.3 If it is not possible to determine the Commission in accordance with the provisions contained in the Assignment confirmation, Contractor will determine the Commission due from the Client on the basis of generally accepted standards.
- 7.4 If the type and content of the agreement concluded differs from the Assignment and no further agreements have been made in advance in respect of the amount of the Commission, the Client will owe a Commission calculated in the customary manner. If that is not possible the Client will owe a Commission to be determined by Contractor on the basis of generally accepted standards.
- 7.5 The Client will owe Contractor the advances and advertising costs due as well as all costs that Contractor reasonable incurs for the benefit of the Client in the performance of or in connection with the Assignment.

## **8 Payments**

- 8.1 Unless these General Terms and Conditions provide otherwise or the Client and Contractor have agreed otherwise, claims against the Client for Commission due are payable if and as soon as the Assignment has been performed or ends for any other reason. Costs and disbursements are periodically charged to the Client.
- 8.2 The Client must make payment not later than 14 days after the invoice date, without any deduction, discount, settlement, suspension or withholding, in Dutch currency (EURO), by means of transfer to a bank account to be indicated by Contractor.
- 8.3 If the Assignment has been given by more than one Client jointly, each of them is jointly and severally liable for all of the obligations towards Contractor arising from or in connection with the Assignment.
- 8.4 In the event that Contractor is not paid in a timely manner, the Client will be in default without any further demand or notice of default on the part of Contractor being required.
- 8.5 In the event that the Client is in default, the Client will owe interest on the outstanding amount, equal to 2% per calendar month. A portion of a calendar month will be deemed a full calendar month. The Client will also be obliged to reimburse the out-of-court and collection costs to be incurred by Contractor equal to at least 15% of the outstanding amount with a minimum amount of EUR 250.
- 8.6 Payments by the Client will first serve to pay the collection costs due, will then serve to pay the interest due and will finally serve to pay the outstanding invoices.

## **9 Power of Attorney**

- 9.1 The Assignment does not also comprise a duty or power of attorney to conclude agreements with one or more third parties in respect of real estate on behalf of the Client or to perform any legal acts for the Client's account.
- 9.2 Powers of attorney or mandates can be attached to the Assignment. If such powers of attorney or mandates are attached to an Assignment they will be valid only after they have been confirmed in writing by Contractor.

## **10 Liability and indemnification**

- 10.1 Liability of Contractor and/or any legal entity or natural person engaged by Contractor for any damage that the Client suffers during or in connection with the performance of the Assignment is excluded unless the damage was caused by an intentional act or gross negligence. Any liability on the part of Contractor is limited to the amount paid out under the professional liability insurance policy in respect of the event in question. If no payment is made under the aforementioned professional liability insurance for any reason whatsoever, the above-mentioned liability will be limited to the amount of the Commission that Contractor charged or could have charged for the performance of the Assignment in question.
- 10.2 The Client will indemnify Contractor and/or legal entities or natural persons engaged by Contractor against all liability of third parties, on any basis whatsoever, in connection with or arising from the Assignment.

## **11 Applicable law and disputes**

- 11.1 The Agreement between the Client and Contractor is governed by Dutch law.
- 11.2 All disputes between the Client and Contractor arising from the agreements they conclude, including disputes relating to the Commission, costs and the fulfilment of the Client's payment obligations towards Contractor will be submitted exclusively to the Court of Amsterdam, unless provisions of mandatory law provide otherwise.

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