



## General Terms and Conditions

BVCM Collections B.V.

Filed with the Chamber of Commerce on October 15, 2019.

### **1. Definitions**

**BVCM:** In these General Terms and Conditions, BVCM should be taken to mean both BVCM Collections B.V. Amsterdam [NL] and BVCM Antilia N.V.,

Curacao, unless otherwise indicated in these General Terms and Conditions.

**Order:** The agreement between BVCM and the Client, whereby BVCM undertakes to provide specific services on behalf of the Client.

**Client:** The natural person or legal entity that has entered into an agreement (for the provision of services) with BVCM, and on whose behalf BVCM undertakes to carry out the Order.

### **2. General**

2.1 These General Terms and Conditions apply to all legal relationships, including offers, quotations and agreements entered into between BVCM and the Client.

2.2 Agreements deviating from these General Terms and Conditions shall only be binding upon BVCM if expressly confirmed in writing by BVCM.

2.3 BVCM is authorised to reject an Order, also without stating reasons.

2.4 BVCM provides a best-efforts obligation and, as a consequence, can under no circumstances be bound by or liable for the absence of a particular collection result.

2.5 All amounts referred to are excluding VAT (Turnover Tax in Curaçao), government levies and other costs, unless otherwise indicated.

2.6 If it is necessary to call in a third party for the correct implementation of the Order, BVCM is duly authorised and the Client is required to pay the related costs in accordance with article 3 of these General Terms and Conditions.

2.7 The Client is required to maintain confidentiality in respect of all information issued to the Client by BVCM in the framework of the collection order, and to not transfer or provide such information to third parties.

2.8 A client that has on one occasion entered into an agreement with BVCM subject to the present Terms and Conditions shall be considered as having tacitly agreed to the applicability of these Terms and Conditions with regard to any orders subsequently issued by the Client, verbally, in writing, by telephone, telegraph or in any other manner, irrespective of whether such an order is accepted in writing.

### **3. Payment obligations**

3.1 Payment of the amounts invoiced by BVCM must be made without any deduction or set-off, within 14 days following the invoice date.

3.2 If the Client has failed to ensure payment within 14 days following the invoice date, without further notice of default, the Client shall ipso jure be in default and from the due date shall owe contractual interest equivalent to 1.5% per month (or part of a month) on the amount payable.

3.3 If the Client has failed to ensure payment within 14 days following the invoice date, following the expiry date, the Client shall also be liable for all extrajudicial and judicial collection costs. The extrajudicial costs shall be considered as amounting to at least 15% of the principal amount, with a minimum of € 40 in the case of BVCM Collections B.V., Amsterdam, and a minimum of Naf. 250 in the case of BVCM Antilia N.V., Curaçao.

3.4 Payments by the Client shall initially serve to settle the interest payable as intended in section 2 of this article 3, and furthermore the judicial and extrajudicial costs as intended in section 3 of this article 3 and will thereafter be deducted from the oldest outstanding claim.

3.5 BVCM is at all times permitted to set off outstanding invoices or other claims which it is free to make against the Client with counterclaims from the Client against BVCM, on whatever grounds.

3.6 BVCM is authorised to request prepayment from the Client for the work to be undertaken by BVCM and thereafter will only be required to deliver (further) performance after the Client has made this advance payment.

#### **4. Provision of Evidence and Data**

4.1 The Client undertakes in respect of BVCM to provide BVCM with all necessary details and documentary evidence to undertake the collection.

4.2 The Client guarantees the correctness and completeness of these details and items of documentary evidence.

4.3 The costs for obtaining additional information will be passed on by BVCM to the Client at the agreed prices.

4.4 The Client will notify BVCM without delay with regard to all payments, correspondence or other contacts between the Client and the debtor or relevant third parties.

4.5 Only after having first consulted with BVCM may the Client make any agreements with the debtor regarding the claim offered for collection.

#### **5. Collected amounts**

5.1 If a (partial) payment of the outstanding claim is received within 24 hours following receipt of the order, BVCM shall be entitled to charge its commission. If it emerges within 24 hours that a cross-payment has occurred, the order will be withdrawn free of charge or at the discretion of BVCM.

5.2 The Client shall owe to BVCM the agreed collection commission on the collected amounts, irrespective of who has been paid and irrespective of the efforts made by BVCM. Collected amounts should be taken to include all payments to the Client, deductions and/or cancellations by the Client since the date of the collection order including credit notes, set-off amounts between the parties, payments in kind and returned goods.

5.3 Wherever possible, BVCM will also apply any interest and/or collection costs to the claim from the debtor.

5.4 Possibly following the set-off of any expired invoices and/or commission settlements, amounts collected by BVCM will in principle be made payable once a month to the Client, unless expressly otherwise agreed in writing.

5.5 With regard to BVCM, any partial payments to be received will be transferred monthly following deduction of the agreed commission percentage and other costs, unless otherwise expressly agreed in writing. BVCM is also entitled to deduct invoices and commission from part-payments as an advance on the final settlement.

5.6 Should the Client decide, for whatever reason, to prematurely terminate the Order, the Client will owe to BVCM the full agreed collection commission, as if the entire principal amount had been collected.

5.7 Payments by BVCM will be made in Dutch currency unless otherwise expressly agreed in writing.

5.8 For amounts received in foreign currency, upon settlement, BVCM will apply the exchange rate on the date of receipt.

## **6. Commission**

6.1 The Client shall owe to BVCM the charges (commission) according to the regular Collection Agreement of BVCM, taking account of the provisions in article 5 of the General Terms and Conditions, unless otherwise expressly agreed in writing.

6.2 Any turnover tax payable shall be charged on to the Client.

6.3 After BVCM has started to process the claim, if the Client cancels the order, arranges the payment itself or frustrates the processing of the claim in whatever manner, including the refusal to initiate judicial collection proceedings, the full agreed commission will be payable on the full amount of the claim, in addition to any additional (judicial) costs payable.

6.4 Commission will be payable if BVCM is unable to collect the extrajudicial costs from the debtor, due to failure by the Client to comply with statutory provisions.

6.5 BVCM reserves the right to amend its charges up to three months after entering into the Order, which shall also apply for current orders. BVCM will send the new list of charges to the Client in good time before the start date.

6.6 If BVCM Antilia B.V. Curaçao and/or its agents collects additional costs from the debtor over and above the principal amount and the interest, these costs shall accrue to BVCM and/or its agents and these collected costs shall not be deductible from the agreed charges according to the most recent list of charges.

## **7. Judicial Proceedings**

7.1 Unless expressly otherwise agreed in writing, a collection order to BVCM shall serve as the authority to take legal measures that appear useful to BVCM to ensure effective collection.

7.2 BVCM is entitled to request costs in advance for the taking of legal measures.

7.3 All costs relating to judicial proceedings (such as bailiff's fees, court fees and lawyers' fees, etc.) shall be for the account of the Client.

7.4 No legal measures will be taken before the debtor has been called upon to make payment by BVCM, in writing, on at least one occasion, unless exceptional circumstances make it necessary that judicial measures be taken immediately.

## **8. Suspension**

8.1 If the Client is in default in the correct and/or timely compliance with one or more of its obligations, BVCM shall be entitled to immediately suspend its own obligations, and BVCM shall reserve the right to claim compensation.

8.2 BVCM is not liable for any losses which may arise as a consequence of the suspension of its work, on this ground.

## **9. Dissolution**

9.1 If the Client is in default in the correct and/or timely compliance with one or more of its obligations, BVCM shall be entitled to dissolve the order, without being required to pay any compensation.

9.2 In the event of dissolution, the processing of all files of the Client will be halted and returned.

9.3 In the event of dissolution, the Client shall owe to BVCM the full agreed collection commission, as if the entire principal amount had been collected.

## **10. Non-collectability**

10.1 BVCM is at all times free to fully or partially return an Order due to noncollectability.

10.2 In that case, the Client will only owe commission on the collected amount.

## **11. Term for complaints**

11.1 The Client is required to notify any complaints regarding the work undertaken by BVCM and/or the invoice amount to BVCM, in writing, within 14 days following the date of sending of the matter in respect of which the Client wishes to complain, or immediately after it has discovered the matter about which it wishes to complain. In the latter case, the Client must demonstrate that it could not have reasonably discovered the matter about which it wishes to complain earlier.

11.2 The Client is not authorised to suspend its payment obligations on the basis of complaints as intended in article 11.1.

11.3 If and in as much as the Client's claim is justified in the judgement of BVCM, BVCM is authorised, at its own discretion, either to adjust the invoice amount, to correct the work in question for its own account or to carry out that work again, or to reimburse any commission already paid without undertaking the Order any further.

11.4 If the Client has not made its complaint within the term specified in article

11.5, all its rights and entitlements on whatever ground shall expire, with regard to the matter about which it complained, or could have complained within that term.

## **12. Liability**

12.1 Should BVCM be liable, the liability shall be limited to that which is laid down in this article.

12.2 The liability of BVCM for damages suffered by the Client, caused by the nontimely, incomplete or incorrect implementation of the Order shall be limited to the amount of commission that could have been charged to the Client in the case in question. Any compensation payable by BVCM to the Client shall however under no circumstances be higher than the amount for which the liability of BVCM is covered by insurance, in the case in question. An exemption to the above provision shall apply in the event of deliberate or equivalent gross negligence on the part of BVCM. In this and subsequent provisions of this article, BVCM shall also be taken to include its employees and any third parties called in by BVCM for the implementation of the Order.

12.3 BVCM shall under no circumstances be liable for indirect damages, including consequential losses, loss of profit, losses due to business interruption, etc.

12.4 BVCM shall not be liable for any damages caused by the fact that the Client failed to comply with its information obligation arising from article 4, or because information provided by the Client does not satisfy the conditions it (the Client) guarantees pursuant to article 4.2.

12.5 Moreover, BVCM shall at all times be authorised to limit or set aside the losses of the Client as far as possible, in which respect the Client will provide full cooperation.

12.6 BVCM accepts no liability for currency loss.

12.7 The Client shall indemnify BVCM for claims from third parties with regard to losses which relate to or arise from the order undertaken by BVCM and is required to reimburse BVCM for all reasonable costs of the defence against such claims.

12.8 In the event of system disruptions in the broadest sense of the word at BVCM or its suppliers or partners, BVCM shall not be liable for any resultant losses for the Client. Such disruptions are considered force majeure, subject to article 12.9.

12.9 In the event of force majeure affecting BVCM, including fire, strike or obstruction as a result of failure by third parties to comply with their obligations, BVCM shall be authorised to postpone its work for as long as the force majeure situation continues, or to cancel the agreement, without being required to pay any compensation.

**13. Expiry period**

13.1 Without prejudice to the provisions in article 11, if it is or remains of the opinion that BVCM has failed to carry out the order in time, completely or correctly - unless this has already taken place on the basis of the provisions in article 11.1 - the Client is required to immediately duly notify BVCM in writing, and to apply in law any claim based thereupon, within one year following the date of the notice as referred to hereinabove, or within one year after that notice should have been issued, in default of which its (the Client's) rights and entitlements in this matter shall expire due to the expiry of the term as intended hereinabove.

**14. Set-off**

14.1 Under no circumstances is the Client entitled to any set-off, unless BVCM has expressly duly granted its permission.

**15. Conversion**

15.1 If one or more provisions from these General Terms and Conditions are void or voidable, the remaining provisions shall remain fully applicable.

15.2 In that situation, the Parties will agree on new provisions in replacement of the void or voidable provisions, whereby as far as possible the aim and intention of the original provisions will be taken into account.

**16. Group clause**

16.1 The Client hereby grants irrevocable permission to BVCM to fully or partially transfer its rights and obligations arising from the Order to a subsidiary and/or group company of BVCM and/or a partner managed by BVCM.

**17. Applicable law and choice of law BVCM Collections B.V., Amsterdam**

17.1 All legal relationships, including offers, quotations and agreements entered into between BVCM Collections B.V. and the Client shall be subject to Dutch law.

17.2 Unless prevented by the rules of compelling law, the Court of Amsterdam is exclusively authorised to hear any disputes, including disputes considered as such by only one party.

**18. Applicable law and choice of law BVCM Antilia N.V., Curaçao**

18.1 All legal relationships, including offers, quotations and agreements entered into between BVCM Antilia N.V. and the Client shall be subject to the law of Curaçao.

18.2 Unless prevented by the rules of compelling law, the Court of First Instance of the Netherlands Antilles, established in Curaçao, is exclusively authorised to hear any disputes, including disputes considered as such by only one party.