

General Consumer Terms & Conditions NVM

These General Consumer Terms & Conditions of the Dutch Association of Real Estate Brokers and Real Estate Valuers (NVM) were developed by the Consumers' Association and the Association of Homeowners (VEH) within the framework of the Co-ordination Group Self-Regulation Consultation (CZ) of the Social and Economic Council (SER) and will take effect as of 1 February 2010.

Information about the NVM is available from the NVM office. If you have any questions regarding the Terms & Conditions, membership (is someone a member of the NVM?) etc, you can also contact this office.

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Part 1. General

Article 1 – Applicability

These General Terms apply to the conclusion and fulfilment of an agreement regarding the instruction to provide services, which is concluded between a Consumer and an Estate Agent and which relates to immovable property situated in the Netherlands.

Article 2 – Definitions and Concepts

In these General Terms, the following words will have the following meanings:

- a. Consumer: Client: natural person, who does not act in a professional or business capacity;
- b. Estate Agent: an Estate Agent affiliated to the NVM or the company of an Estate Agent affiliated to the NVM;
- c. Instruction: the agreement regarding the instruction to provide services. Providing services is understood to mean: intermediary services regarding the selling, buying, renting or leasing of immovable property (Article 11 ff.); the appraisal of immovable property (Article 18); real estate management of immovable property (Article 19) and other services to be provided by the Estate Agent.
- d. Immovable property: Immovable property also includes restricted rights on immovable property, such as ground leases and superficies;
- e. Fee: the price for the services of the Estate Agent, including the commission referred to under e;
- f. Commission: the fee that is due for the intermediary services regarding the purchase, sale, renting or leasing of immovable property;
- g. NVM: Dutch Association of Real Estate Brokers and Real Estate Valuers NVM;
- h. Disputes Committee: the Real Estate Disputes Committee of the Foundation

for Disputes Committees for Consumer Affairs (Stichting Geschillencommissies voor consumentenzaken).

- i. Dwelling: Immovable property intended for occupation.

Article 3 – General and Personal Offers

1. The general offer by the Estate Agent to the Consumer contains a clear description of the services that the Consumer in question may expect. The general offer also contains the fee for these services and the other conditions under which they are provided.
2. After the Consumer has taken cognisance of the general offer, the Estate Agent offers the Consumer the opportunity to consult with him or her in order to establish a personal offer.
3. The Estate Agent ensures that the eventual personal offer is set out in writing or electronically on an order form; this will include a reference to the applicability of these General Terms.
4. The personal offer and/or the general offer will be accompanied by a copy of these General Terms.

5. In the absence of a written instruction signed by the Consumer or an electronic instruction originating from the Consumer, the Estate Agent is not entitled to the payment of any fees or costs, unless he/she can prove the existence of the disputed instruction.

Article 4 – Conclusion of the Instruction

The agreement is concluded when the Consumer accepts the personal or general offer.

Article 5 – Duration of the Instruction

Unless agreed otherwise between the parties, the instruction runs for an indefinite period of time.

Article 6 – End of the Instruction

1. The instruction ends by means of:
 - a. the fulfilment of the instruction by the Estate Agent, unless it involves a contract of a continuous nature (Article 19);

- b. withdrawal of the instruction by the Consumer;
- c. return of the instruction by the Estate Agent;
- d. dissolution by either party;
- e. death of the Consumer.

2. The Estate Agent has fulfilled his/her instruction as soon as the agreed performance has been delivered or – in case of intermediary services by the Estate Agent - the intended agreement was concluded between the parties in question as a result of the intermediary services rendered. In the case of the purchase of a dwelling by a consumer, there will only be an agreement if the purchase has been set out in a purchase agreement signed by both parties.

Fulfilment of the

instruction does not prejudice the obligation arising from the instruction to assist the Consumer with the finalisation.

In case of agreements where the final fulfilment or obligation to perform depends – pursuant to a clause that is part of the agreement – on a suspensive or resolutive condition, the fulfilment of the instruction will also depend on this condition.

3. An instruction can be withdrawn at all times and without being subject to any term of notice. The Consumer will never owe damages regarding such a withdrawal. However, the Estate Agent is entitled to the reimbursement of costs already incurred, as referred to in Article 17 and if, and insofar as, it was agreed upon when granting the instruction, a percentage of the fee.

Withdrawing an instruction should preferably take place in writing or electronically.

4. The Estate Agent can return the instruction because of serious reasons. Serious reasons will, in any case, be understood to mean: the situation referred to in Article 12, paragraph 1 and/or a serious strain in the relationship between the Estate Agent and the Consumer. The Estate Agent must return the instruction in writing or electronically.

5. An instruction can be dissolved if there is a shortcoming in the fulfilment of the obligations on the side of the other party. The declaration to

dissolve should preferably take place in writing or electronically.

6. The termination date of the instruction will be the date on which the Estate Agent and Consumer respectively receive the (written or electronic) notice of withdrawal, return, dissolution or death, or the later date as stated in the said notice.

Article 7 – Turnover Tax, Exigibility

1. The agreed fee and the corresponding costs are, unless explicitly agreed otherwise, inclusive of the due turnover tax (BTW).
2. Without prejudice to the provisions set out in Article 14, paragraph 2, all claims for fees, commission or costs are immediately due to be paid when the rental or purchase agreement is concluded or the instruction has been carried out, or ends because of different reasons. All this applies unless otherwise agreed upon.

Article 8 – General Obligations upon the Estate Agent

1. The Estate Agent will carry out the instruction he/she has accepted to the best of his/her abilities and in consideration of the Consumer's interests. Unless otherwise agreed, the Estate Agent may have others carry out the activities required for the fulfilment of the instruction, under his/her responsibility.
2. The Estate Agent will regularly inform the Consumer of the progress made.
3. The Estate Agent is obliged to take out and maintain adequate insurance against liability for damages resulting from an imputable shortcoming and/or a wrongful act.

Article 9 – General Obligations upon the Consumer

1. The Consumer will provide the Estate Agent, to the best of his/her ability and knowledge, with the information that the Estate Agent requires for the fulfilment of the instruction.
2. The Consumer is not permitted, without consulting the Estate Agent, to engage in any activities which could hinder the Estate Agent in the fulfilment of the instruction or interfere with his or her activities.

Article 10 - Payment

1. The Consumer will pay the Estate Agent for the services provided, in accordance with the agreed arrangements.
2. The Estate Agent will send the Consumer a properly detailed invoice, stating a reasonable term of payment.
3. If the Consumer fails to pay within the period of time specified in the invoice, the Estate Agent will send him or her a reminder, offering the Consumer the possibility of settling the invoice within two weeks of receiving the reminder.
4. If the Consumer also fails to comply with the payment reminder which is referred to in paragraph 3, then he or she is in default and the Estate Agent will be authorised to charge the statutory interest.
5. After expiry of the two-week term referred to in paragraph 3, the Estate Agent is authorised to commence the collection of the sum due to him/her without further notice of default being required. The (extra) judicial costs reasonably incurred in this context, will be at the expense of the Consumer, unless the Court or the Disputes Committee decides otherwise.
6. If an instruction is granted by more than one person, every one of them is jointly and severally liable for payment of all that which is due for any reason.

Part 2. Intermediary Services

Article 11 – Instruction for Intermediary Services, Partial Services

The core of an instruction for intermediary services is offering advice on – and conducting – negotiations. The instruction can be extended with, amongst other things, the following services:

- discussing and advising on the possibilities of achieving the intended agreement;
- organising and supervising inspections;
- assessment of the value of the immovable property in question;
- overseeing legal, tax, constructional and other relevant aspects;
- assistance during finalisation.

As regards the instruction for intermediary services, the Estate Agent must have inspected the immovable property at least once during, or immediately prior to, the

instruction.

Instead of an instruction for intermediary services, it is also possible to grant a separate instruction for partial services. These partial services which are provided to the Consumer may include:

- drawing up a purchase contract without offering intermediary services
- drawing up a tenancy agreement without offering intermediary services;
- entering particulars regarding immovable property in electronic systems, including via the Internet;
- drawing up and effecting the publication of advertisements;
- ‘researching’ immovable property objects;
- carrying out an instruction to find a particular immovably property objects;
- handling the application for a housing permit, the National Mortgage Guarantee, (the transfer of) subsidies, etc.

These partial services are governed by these terms and conditions, unless the provisions included herein dictate otherwise.

Article 12 – Obligations upon the Estate Agent

1. The Estate Agent is not permitted to accept more than one instruction for intermediary services regarding one and the same piece of immovable property. If he/she has previously received an instruction for intermediary services regarding a particular piece of immovable property, he/she can only accept a new instruction when the first instruction has demonstrably ended. If an Estate Agent has to carry out two or more current instructions for intermediary services regarding one and the same piece of immovable property and providing the services to one consumer is contrary to the interests of the other consumer, the Estate Agent must notify his/her consumers thereof in writing or electronically. The Estate Agent is, in that case, obliged to consult about this with his/her clients no later than the time that the negotiations

between both consumers commence. This consultation must result in either the suspension or termination of one of the instructions. The Estate Agent is, therefore, not allowed to provide services to more than one client regarding one and the same piece of immovable property, if providing the services to one client is contrary to the interests of the other, regardless of the wishes of the parties involved.

2. The Consumer whose instruction for intermediary services is terminated pursuant to the provisions set out in the previous paragraph, does not owe the Estate Agent any compensation, of whatever nature, with the exception of any

possible costs, as referred to Article 16, already incurred by the Estate Agent on the instruction of the Consumer.

3. The Estate Agent is not authorised to conclude agreements on behalf of the Consumer, unless the latter has granted a written or electronic power of attorney to that end.

4. When carrying out the instruction, the Estate Agent will observe the Personal Data Protection Act (WBP) and the Money Laundering and Terrorist Financing (Prevention) Act (WWFT)..

Article 13 – Obligations upon the Consumer

1. Unless there are arrangements to the contrary, the Consumer is not allowed to conclude any agreements or carry out any negotiations outside the purview of the Estate Agent, or to use similar services as the other parties and/or to engage in activities that may hinder the Estate Agent or interfere with his/her activities when fulfilling his/her instruction for intermediary services.

2. The Consumer must lend his or her co-operation to the Estate Agent's fulfilment of any obligations under the WWFT (e.g. identification of the client).

Article 14 – Commission

1. The Consumer owes the Estate Agent commission if an agreement is concluded regarding a piece of immovable property during the term of the instruction for intermediary services. This also applies if the agreement is not concluded as a result of services provided by the Estate Agent, unless it involves an instruction from a consumer/buyer or consumer/lessee and the

latter buys or leases outside the territory to which the instruction relates.

Concluding an agreement is also understood to mean the consumer's cooperation with an action that results in the complete or partial selling, letting, rendering available or assignment of the immovable property to the client and/or a third party, as a result of which the instruction does not continue further.

2. Unless otherwise agreed, commission regarding intermediary services for the purchase or sale of immovable property does not become due and payable until the moment of the legal transfer of the immovable property at the office of the civil-law notary, without the Consumer owing interest to the Estate Agent over the period between the indebtedness of the commission and the exigibility thereof.

As soon as it has been established that a concluded agreement will not result in a legal transfer before a civil-law notary and the Estate Agent is nevertheless entitled to a commission, then this commission will be owed from this point in time onwards.

3. After termination of the instruction for intermediary services, as referred to in Article 6, paragraph 1, under b – e, the Consumer does not owe commission if an agreement regarding immovable property is concluded, unless:

- the Consumer acted in breach of the provisions set out in Article 13;
- the Estate Agent offers sufficient evidence that the conclusion of the agreement regarding the immovable property is the result of the services rendered by the Estate Agent to the Consumer during the term of the instruction.

4. In case of agreements where the final fulfilment or obligation to perform depends – pursuant to a clause that is part of the agreement – on a suspensive or resolute condition, the right to commission will also depend on this,

unless either party or both parties do not use the condition in question according to its purport.

5. If a buyer terminates a concluded agreement by invoking his/her statutory reconsideration period (Article 7:2 Netherlands Civil Code), the right to commission lapses with regard to this agreement.

6. If there is a commission obligation in accordance with the provisions set out in

paragraph 3 of this Article, the Estate Agent is entitled to a proportion of the commission to be reasonably established. When establishing this proportion, allowance will be made for the activities already carried out by the Estate Agent, the benefit the Consumer has had thereof, and the reason for terminating the agreement.

7. If a concluded agreement is not fulfilled, the Estate Agent retains his/her right to full commission, unless the Consumer argues convincingly that the non-fulfilment is the result of an imputable shortcoming (breach of contract) of the Estate Agent.

Article 15 – Calculating the Commission on Sales and Purchases

1. Commission is calculated, based on what the parties have agreed upon. If the parties have not agreed on a basis for calculating the commission, the following paragraphs of this Article apply.

2. The commission is calculated over the purchase price of the immovable property.

3. The purchase price is understood to mean the sum that the buyer owes the seller, excluding the costs and rights relating to the transfer, such as the transfer tax, notary's costs and land registry fees.

4. If VAT is due over the purchase price, or is included in the purchase price, commission is also calculated over the sum including the aforementioned tax, unless the buyer is authorised to deduct the VAT.

5. In case of immovable property under construction or to be built, the commission is calculated over the purchase and contract price combined, or over the expected construction sum or all-in construction costs as shown from the agreement, including VAT, unless the buyer is authorised to deduct the VAT.

6. In case of buying and selling a right to a ground lease and/or a structure on ground lease ground, commission is charged over the sum that the buyer and seller agree on, to be increased by a sum equalling ten times the periodical payment on a annual basis.

7. In case of buying and selling an apartment right, commission is charged over the purchase price of the apartment right.

8. In case of buying and selling a membership right of a Co-operative

Association for the exploitation of immovable property or of shares in undivided properties, the commission is charged over the purchase price of the membership right or share in question, without deducting the part regarding any possible mortgage loan.

9. When calculating the commission, the following is equated with buying and selling agreements:

– property exchange;

– hire-purchase;

– buying and selling in instalments;

– purchases and sales that do not automatically contain an obligation to deliver (transfer of beneficial ownership);

– creating a right of ground lease or superficies.

10. If moveable property in the material sense and/or property rights (for example goodwill) are bought or sold, and/or damages, registrations, contributions and similar claims are also mutually agreed on by the parties, then commission will also be calculated over the purchase price of these goods and rights.

Article 16 – Calculating the Commission on Leasing and Renting

1. Commission is calculated based on what the parties have agreed upon. If the parties have not agreed on a basis for calculating the commission, the following paragraphs of this Article apply.

2. In case of rent and lease agreements regarding immovable property, the commission is calculated over the rent, subject to the other provisions stated below.

3. Rent is understood to mean the sum that the lessee and lessor agree as payment for the sole enjoyment of the immovable property for the first year of rent.

4. The commission is calculated over the rent + VAT – if applicable – unless the lessee is authorised to deduct the VAT.

5. If, pursuant to the agreement, a different amount of rent is due in any year after the first year and this sum is already known when concluding the agreement – and if this sum has a different purpose than to keep pace with the changes in the value of the Euro - then commission will be charged over the total of these

sums, divided by the number of years to which they relate.

6. Part of a rent year will count as a whole rent year.

7. When calculating the commission, the following is equated with renting and leasing agreements:

- leases;
- tenancy-exchange contracts;
- agreements for use;
- agreements regarding a real right of use and occupation;
- other similar agreements, such as a financial or operational lease.

8. If moveable property in the material sense and/or property rights (for example, goodwill) are also rented or leased, the rent also includes the rent agreed upon for these goods. If the goods are also bought or sold, and/or compensations, registrations, contributions and similar claims are also mutually agreed upon by the parties, the commission will also be calculated over the purchase price of these goods and rights.

Article 17 – Costs

1. Unless otherwise agreed, the Consumer will refund – in case of an instruction for intermediary services – the costs incurred

by the Estate Agent on behalf of the Consumer. As regards these costs to be incurred and the extent thereof, the Estate Agent must consult with the Consumer in advance and set these arrangements out in writing or electronically. This also applies when the instruction is suspended or ends because of a cancellation or otherwise.

2. The Consumer will never be liable for damages because of a cancellation. However, the Estate Agent is entitled to a reimbursement of costs already incurred, as referred to in the previous paragraph and if, and insofar as, it was agreed upon when granting the instruction, a percentage of the fee.

Part 3. Appraisal

Article 18 – Appraisals

1. Appraisal of immovable property entails giving a value judgement to the

Consumer based on the nature, position, location and condition of the immovable property, and providing a simple report thereof. Unless otherwise agreed, the appraisal will take place according to the current version of the *Appraisal Report for Financing Residential Accommodation*, as adopted by the representative organisations in the industry. An appraisal must be personally carried out by an Estate Agent.

2. The appraisal report must include: the name of the Consumer, the purpose of the appraisal, a short, business-like description of the appraised object, the land registry information, an opinion regarding the value, stating the type thereof, any special circumstances to be taken into consideration, the date on which the appraisal was carried out and the particulars of the appraiser. The appraisal report is not a structural survey.

3. Unless agreed otherwise, the report is issued to the Consumer. The Estate Agent will not render the report available to third parties without prior permission from the Consumer.

4. The Estate Agent only accepts liability vis-à-vis the Consumer regarding the contents of the report, and thus not vis-à-vis third parties.

5. Unless otherwise agreed, the Consumer – in case of an instruction for an appraisal – will owe the fee as soon as the report is issued.

6. If the Consumer withdraws the instruction for an appraisal before it has been completed, the Consumer owes a fee for the activities already carried out. If no arrangements have been made as to the sum of this fee, this must be reasonably established.

7. The costs reasonably incurred by the Estate Agent within the framework of the appraisal instruction regarding travelling and accommodation, administrative charges and searches in the land registry, will be at the expense of the Consumer.

8. In case of an appraisal pursuant to an instruction granted to more than one Estate Agent, each Estate Agent will charge his/her own rate separately.

9. In case of an instruction jointly granted to several Estate Agents, they will jointly issue a report. This report will express their joint findings. If the Estate

Agents fail to reach a joint conclusion, they will consult with the Consumer as

to issuing a report in which their differing conclusions are represented.

10. The fee is calculated based on what the parties have agreed upon.

if the rate depends on the appraisal value, the appraisal value will be understood to mean:

a. In case of an appraisal of the value of a share in an immovable property: The appraised value of the entire immovable property;

b. In case of an appraisal of the value of an apartment right or a membership right of a co-operation: The appraised value of that apartment right or membership right.

c. In case of an appraisal of the value of structures on ground lease ground or the right to a ground lease (including or excluding the leaseholders right to the structures): The appraised sum, to be increased by a sum that equals ten times the applicable ground rent on an annual basis;

d. If the instruction relates to more than one type of value or, if giving the requested value judgement also requires assessing different types of values and these judgements must be stated in the report: The value for which the agreed corresponding rate calculation gives the highest result;

e. In case of an appraisal on behalf of a mortgage loan: The value when sold by private treaty (**also referred to as the market value**), unless this value falls below the forced-sale value.

Part 4. Real Estate Management

Article 19 – Real Estate Management

1. Real Estate Management means providing services to the Consumer regarding one or more pieces of immovable property, which benefits the maintenance and exploitation thereof and contributes to a maximum return on the invested financial means. The Consumer who grants the instruction for Real Estate Management can either be the owner or any other person who has the immovable property in his/her possession or under his/her control in any other way.

2. The services to be provided can be both of a commercial and a technical or administrative nature.

The services below can, amongst other things, be part of a real estate

manager's package of services:

- supervising rent collection;
- involvement in additional deliveries and services (administrative processing, settlement with tenants, monitoring the quality of deliveries and services);
- supervising the payment of costs and charges;
- activities in connection with periodical rent changes;

- supervising maintenance (handling, assessing and solving complaints, periodical inspection, long-range planning, supervising the verification and payment of bills);
- supervising the re-letting of vacant parts and other activities regarding letting permutations;□
- offering advice.

3. Withdrawal of an instruction for Real Estate Management must preferably take place in writing or electronically. Withdrawal is subject to a term of notice of at least three months.

4. The instruction may also include carrying out duties on the Board of an Association for Apartment Right Holders or the position of a Secretary-Treasurer of a Co-operative Association for the Exploitation of Immovable Property.

Part 5. Arbitration Rules and Trade Guarantee

Article 20 – Arbitration Rules

1. Disputes between the Consumer and the Estate Agent regarding the conclusion or fulfilment of agreements relating to services rendered or to be rendered by the Estate Agent, can be brought by either the Consumer or the Estate Agent before the Real Estate Disputes Committee, Bordewijklaan 46, 2591 XR The Hague (www.degeschillencommissie.nl)

2. As regards disputes relating to any liability for damages, the Disputes Committee is only competent if such disputes do not exceed a financial interest of 10,000 Euros.

3. A dispute will only be heard by the Disputes Committee if the Consumer has

first filed a complete and clearly specified complaint with the Estate Agent.

4. If the complaint doesn't result in a solution then the dispute should no later than twelve months after the date on which the Consumer first filed the complaint with the Estate Agent, be submitted to the Disputes Committee in writing or in any other by the Disputes Committee designated form.

5. When the Consumer brings a dispute before the Disputes Committee, the Estate Agent is bound by this choice. If the Estate Agent wishes to bring a dispute before the Disputes Committee, he/she must first ask the Consumer to grant his/her approval of this within five weeks. In doing so, the Estate Agent must inform the Consumer that the Estate Agent will consider him/herself at liberty – after the expiry of the aforementioned term – to bring the dispute before the Court.

6. The Disputes Committee will render judgement in accordance with the provisions of the regulations that apply to the Committee. The regulations of the Disputes Committee are available upon request. The decisions of the Disputes Committee are given as binding advice. A fee is due for hearing the dispute.

7. The Court or the above-mentioned Disputes Committee are exclusively authorised to take cognisance of disputes.

Article 21 – Trade Guarantee regarding Compliance with Binding Advice

1. The NVM guarantees compliance with the binding advice given by the Disputes Committee vis-à-vis the Consumer **up to 10,000 Euros; in respect of any sum exceeding this maximum amount the NVM will have an obligation to do its utmost to ensure that the Estate Agent will comply with the binding advice**, unless the binding advice is submitted for judicial review by the Court within two months and the judgement in which the binding advice is declared non-binding becomes final and conclusive.

2. Situations in which there is a moratorium on payments and/or bankruptcy are excluded from the compliance guarantee as long as the dispute has not yet been to the judicial hearing. Situations in which the business is discontinued are excluded as long as the dispute has not yet been brought before the Committee.

3. The Consumer may invoke the compliance guarantee in writing after it has

become clear that the Estate Agent is not complying with the binding advice him/herself or has not submitted the binding advice for judicial review before the Court within two months after it has been given. Payment of the sum takes place within one calendar month after the letter invoking the guarantee was received, provided that the Consumer has assigned his/her claim on the Estate Agent to the NVM.

Part 6. Deviations and Changes

Article 22 – Deviations

Individual deviations must be set out in writing or electronically between the Estate Agent and the Consumer.

Article 23 – Changes

The NVM will only change these General Terms in consultation with the Consumers' Association and the Association of Home Owners.