

**General Terms and Conditions for Childcare,  
Day Nursery and Out-of-School Care 2014**

**Effective as from 1 March 2014**

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## **ARTICLE 1 – Definitions**

In these General Terms and Conditions the following is understood as:

<b>Agreement:</b>	The childcare agreement between the parent and the proprietor.
<b>Childcare:</b>	The commercial or otherwise other than without consideration caring for, bringing up and contributing to the development of children up to the first day of the month when the children start secondary education.
<b>Child Centre:</b>	A facility that provides childcare (other than a child-minder service).
<b>Commencement Date:</b>	The stipulated date when the childcare commences.
<b>Day Nursery:</b>	Childcare provided by a child centre for children up to the age of primary education.
<b>Disputes Committee:</b>	The disputes committee childcare.
<b>Out-of-School Care:</b>	Childcare provided by a child centre for children in the age of primary education in the course of which care is offered before or after the daily school time as also during days or afternoons off and during school holidays.
<b>Parent:</b>	The relation by blood or affinity in the ascending line or foster parent of the child that the childcare is related to.
<b>Parent Committee:</b>	Advisory and consultative body established by the proprietor consisting of a representation of parents whose children are cared for in the child centre.
<b>Parties:</b>	The proprietor and the parent.
<b>Proprietor:</b>	Natural or legal person that operates a child centre.
<b>Start Date:</b>	The date when the agreement takes effect.
<b>Written (In Writing):</b>	Written is also understood as ‘electronically’, unless the law opposes the same.

## **ARTICLE 2 – Applicability**

1. These General Terms and Conditions are applicable to the conclusion and implementation of the Agreement.
2. The Agreement is concluded between the Proprietor and the Parent.

## **ARTICLE 3 – Supply of information**

1. If a Parent is interested in the possible placement of his/her child in a Child Centre the Proprietor shall provide the Parent with an information package in which the Proprietor provides a description of the services in the Child Centre, which is sufficiently detailed in order to enable the Parent in his/her orientation on the market to make a further choice between the various Child Centres.
2. The information package is provided In Writing and contains at least the elements outlined in schedule 1 to these General Terms and Conditions or a reference to the location where the documents are available for inspection.

3. After having taken note of the information package the Parent has the possibility of registering with the Proprietor as a party interested in Childcare.

#### **ARTICLE 4 – Registration**

1. The Parent registers with the Proprietor as a party interested in Day Nursery or Out-of-School Care for his/her child (children) for a specific period of time by means of a registration form.
2. On the registration form the Parent indicates whether he/she agrees that the offer as intended in article 5 and/or the General Terms and Conditions may be provided to him/her electronically.
3. The Proprietor confirms the receipt of the registration In Writing.
4. The registration terms and conditions of the Proprietor are applicable to the registration.
5. The registration compels neither the Parent nor the Proprietor to conclude an Agreement. The registration should only be qualified as a request of the Parent to the Proprietor to make an offer related to an agreement for the provision of Childcare.
6. After receipt of the registration the Proprietor can immediately make the Parent an offer. It is also possible that the Proprietor places the Parent on a waiting list.
7. When placed on a waiting list the Proprietor informs the Parent accordingly In Writing. As soon as a Parent qualifies for the same based on his/her ranking on the waiting list the Proprietor shall yet make an offer as intended in article 5.

#### **ARTICLE 5 – Offer**

1. Following the registration the Proprietor can make the Parent an offer.
2. The offer contains data about the Proprietor, a description of its services, all elements as intended in schedule 1 to these General Terms and Conditions or a reference to the location where the documents are available for inspection, as well as:
  - the (proposed) name and (proposed) date of birth of the child;
  - the available Commencement Date;
  - the available type of care and the available location;
  - the offered services in the area of the individual healthcare provided that the Parent requested this with the registration and the Proprietor disposes of the relevant possibilities;
  - the price pertaining to the offer;
  - the payment method and possible additional costs of different payment methods;
  - the cancellation terms and conditions, including the cancellation costs;
  - the term of the Agreement;
  - the applicable notice periods;
  - the reply period with regard to the offer;
  - a reference to the applicability of these General Terms and Conditions;
  - a date.
3. The offer takes place In Writing and is accompanied by the General Terms and Conditions.
4. The offer, for the acceptance of which the Proprietor offers the Parent a reasonable reply period, is irrevocable during the reply period. After lapse of the reply period the offer expires.

#### **ARTICLE 6 – The Agreement**

1. The Agreement is concluded following acceptance by the Parent of the offer made by the Proprietor.
2. The Parent accepts the offer In Writing. The date when the Proprietor receives the acceptance is the Start Date of the Agreement.
3. The Proprietor confirms the receipt of the acceptance In Writing.
4. Within the framework of the Agreement the Proprietor shall be free to give substance to the Childcare at its own discretion.

#### **ARTICLE 7 – Cancellation**

1. The Parent is entitled to cancel the Agreement as from the Start Date up to the Commencement Date.
2. The Parent is liable to pay cancellation costs.
3. The level of the cancellation costs shall never exceed the payment due over the notice period applicable to the Parent as intended in article 10 paragraph 4 under a.

#### **ARTICLE 8 – Placement interview**

1. The Proprietor invites the Parent for an interview in a timely fashion prior to the Commencement Date.
2. The following is discussed during this interview:
  - a. the specific data of the Parent and his/her child required for the Childcare, including the necessary Civil Service Number(s);
  - b. the commencement and duration of the settling in period;
  - c. the general or temporary points for attention and particularities for the specific care of the child (daily rhythm, food, sickness, medication, development, and the like);
  - d. the individual wishes of the Parent and that these are, where reasonably possible, taken into account;
  - e. the manner of communication;
  - f. the participation in excursions;
  - g. taking pictures and/or videos of the child;
  - h. the statutory liability of the Parent for damages caused by his/her child. And in addition, in case of Out-of-School Care:
  - i. the elements as intended in schedule 1 to these General Terms and Conditions, paragraph 5 under h.
3. The Proprietor confirms the arrangements agreed on during the placement interview to the Parent In Writing.

#### **ARTICLE 9 – Term and renewal of the Agreement**

1. The Agreement is concluded for the maximum term of the stipulated type of Childcare.
2. The maximum term for Day Nursery runs up to the age that the child starts participating in primary education.
3. The maximum term for Out-of-School Care runs as from the age that the child starts participating in primary education up to the day that the child starts participating in secondary education.
4. In derogation from the provisions set forth in paragraph 1 the Parties can agree on a shorter term of at most one year.
5. After expiry of the Agreement concluded in pursuance of paragraph 4 for a shorter term than the maximum term the Parties can renew the Agreement. Renewal does not take place automatically.
6. A renewal of the Agreement is agreed on In Writing.

#### **ARTICLE 10 – End of the Agreement**

1. The Agreement comes to an end by operation of law after lapse of the term included in the Agreement.
2. In addition the Agreement comes to an end following termination (before the end of the term) by one of the Parties.
3. The Proprietor is only authorised to terminate the Agreement on a compelling ground. The following are, in any case, qualified as a compelling ground:

- a. the situation where the Parent has failed to comply with his/her payment obligation for a period of one month;
  - b. continuation of situations as intended in article 11 paragraph 2 under a and c;
  - c. the situation as intended in article 11 paragraph 2 under b;
  - d. the circumstance that the Proprietor is, due to a cause that cannot be attributed to the same, lengthily or permanently unable to implement the Agreement;
  - e. a commercial necessity that jeopardises the continuity of the location where the child has been placed.
4. Termination takes place by means of a motivated Written notice of the one to the other Party and
    - a. in consideration of a notice period of one month in case of termination by the Parent;
    - b. in consideration of a reasonable notice period, which shall at least amount to one month, in case of termination by the Proprietor;
    - c. with immediate effect in case of termination by the Proprietor in pursuance of article 10 paragraph 3 under a.
  5. During the notice period the payment obligation of the Parent continues. The notice period takes effect on the date when the Parent or the Proprietor receives the notice of termination. The notice is deemed to have been received on the date of the postmark on the envelop, on the date of the email with which the notice was sent or on the date when the electronic notice was sent, unless the notice contains a different date.
  6. Other than as a result of expiry of the stipulated term and other than as a result of notice of termination the Agreement comes to an end with immediate effect in case of the death of the child.

#### **ARTICLE 11- Accessibility**

1. The location where the child has been placed is basically accessible to the child as long as agreement is in place between the Proprietor and the Parent.
2. The Proprietor is entitled to deny the child and/or the Parent access to the location for the duration of the period that normal care of the child can within reason not be expected of the Proprietor and the child cannot be cared for in the usual manner. For instance on account of the fact that:
  - a. the child requires additional care due to sickness or otherwise;
  - b. the child and/or the Parent represent a risk or threat to the mental and/or physical health or safety of others after having been warned, unless a warning can within reason not be expected of the Proprietor;
  - c. the care of the child disproportionately encumbers or hinders normal care of the other children.
3. If the Proprietor denies the child and/or the Parent access to the location then the Proprietor shall enter into discussions with the Parent in order to arrive at a solution for the situation acceptable to all Parties.
4. If the Parent does not agree with the decision of article 11 paragraph 2 to deny access and the discussions with the Proprietor did not result in a solution then he/she can bring this decision to the cognisance of the Disputes Committee with the request to handle the dispute according to the abbreviated procedure within the meaning of the Regulations of the Dispute Committee Childcare.
5. During the abbreviated procedure the Proprietor cannot terminate the place.

#### **ARTICLE 12 – Mutual obligations**

1. The Parties jointly provide for adequate exchange of information about the child.
2. The Parties transfer the responsibility for the child to each other in the following manner:
  - a. In case of Day Nursery: when dropping off the child the Parent is responsible and when picking up the Child the Proprietor until the Parties can within reason assume that the transfer of responsibility took place.

- b. In case of Out-of-School Care: the way that the child comes to and leaves the Out-of-School Care determines the transfer of responsibility for the child. The Parties agree on Written arrangements about this.

#### **ARTICLE 13 – Obligations of the Proprietor**

1. In pursuance of the Agreement the Proprietor is held to provide Childcare on the basis of the stipulated terms and conditions.
2. The Proprietor warrants that:
  - a. The Childcare that falls under its responsibility:
    - corresponds with the applicable legislation and regulations;
    - is performed in accordance with good practices and whilst making use of solid material;
  - b. A Child Centre that falls under its responsibility is suitable for responsible care of children both in terms of personnel and in terms of material facilities. A further regulation of the manner that the Proprietor complies with its obligations as intended in article 13 paragraph 1 is included in schedule 1. This schedule forms an integral part of these General Terms and Conditions.
3. The Proprietor takes the individual wishes of the Parent into account to the extent that this is reasonably possible.

#### **ARTICLE 14 – Obligations of the Parent**

1. The Parent already reports particulars of a medical nature or in the development of the child with the registration.
2. The Parent sees to it that the Proprietor disposes of all data that are important to the availability of the Parent.
3. The Parent observes the rules that are applicable in the Child Centre.
4. The Parent refrains from each and every act that encumbers the implementation of the Agreement on the part of the Proprietor and sees to it that his/her child also refrains from the same.
5. The Parent drops off and picks up the child in a timely fashion and provides for compliance with this obligation by those who drop off and pick up the child on his/her behalf.
6. The Proprietor establishes the authority of others than the Parents to pick up the child from the Childcare In Writing, if so requested by the Parent.
7. The Parent pays the Proprietor in conformity with the relevant stipulated arrangements and within the payment term, at least bears responsibility for the same.

#### **ARTICLE 15 – Change of the Agreement**

1. The Proprietor is entitled to unilaterally change the Agreement for compelling reasons. Compelling reasons are, in any case, changes in legislation and regulations or commercial circumstances that jeopardise the continuity of the location where the child has been placed.
2. Changes of the Agreement are announced by the Proprietor in a timely fashion with a notice that amounts to at least one month.
3. If the change of the Agreement results in an essential change in the Childcare to be provided then the Parent shall be authorised to dissolve the Agreement as from the day that the change takes effect.

#### **ARTICLE 16 – The price and change of the price**

1. The price that the Parent needs to pay for the Childcare is stipulated in advance.
2. The Proprietor is authorised to change the stipulated price three months after the Start Date, including an increase. The Proprietor announces this kind of price change in advance. The price change cannot take effect earlier than one calendar month plus one week after the announcement.

#### **ARTICLE 17 – The payment / Late payment**

1. The Parent pays on the basis of a Written invoice and at the latest on the payment date specified on the invoice. Possible reliance on a provided security deposit equals payment. The invoice is provided without charge.
2. If a Parent pays to a third party designated by the Proprietor then the Parent shall consequently be released from his/her payment obligation. The designation by the Parent of a third party that must provide for payments shall not affect the liability of the Parent for (timely) payment. Possible payment by a third party on behalf of the Parent shall however release the Parent from his/her payment obligation.
3. Failing complete and timely payment the Parent shall be in default by operation of law.
4. After the expiry of the payment date the Proprietor sends a Written payment reminder and gives the Parent the opportunity to yet pay within 14 days after receipt of this payment reminder. Moreover, the Proprietor warns the Parent in this payment reminder for the cancellation authority of the Proprietor in pursuance of article 10 paragraph 3 under a. This payment reminder must be sent at least 14 days before there is question of said authority.
5. If after the expiry of the time limit specified in the payment reminder payment still did not take place the Proprietor charges interest as from the expiry of the final due date specified in the invoice. The interest equals the statutory interest.
6. Extrajudicial costs incurred by the Proprietor in order to force payment of a debt of the Parent can be charged to the Parent. The level of the extrajudicial collection costs is subject to statutory limitations.
7. A payment shall first be applied to the satisfaction of the payable costs and interest and then to the satisfaction of the oldest outstanding debts.

#### **ARTICLE 18 – Applicable law and competent court**

1. Dutch law is applicable to the Agreement.
2. The competent Dutch court is authorised to rule on the Agreement notwithstanding the authority of the Disputes Committee, as intended in article 20, to take cognisance of a dispute as intended in said article.

#### **ARTICLE 19 – Complaints procedure**

1. Complaints about the implementation of the Agreement must be submitted to the Proprietor In Writing and in a complete and clearly described manner and in a timely fashion, however at the latest within two months after the Parent has observed or could within reason have observed the shortcomings. The Parent must submit the complaint within a reasonable time limit after he/she has observed or should within reason have observed the shortcoming in the performance, in the course of which a complaint within a time limit of two months after discovery is deemed to have been submitted in a timely fashion.
2. The Proprietor handles the complaint in accordance with the internal complaints procedure. When preparing or changing this procedure the Parent Committee is entitled to issue its opinion in conformity with the provisions set forth in the Dutch Childcare Act.
3. If the complaint cannot be solved amicably then a dispute occurs that is susceptible to the dispute settlement rules of article 20.

#### **ARTICLE 20 – Dispute settlement rules and statutory complaints regulations for Childcare**

1. Disputes between the Parent and the Proprietor about the conclusion or the implementation of the Agreement can be brought to the cognisance of the Disputes Committee Childcare, Bordewijklaan 46, PO Box 90 600, 2509 LP The Hague ([www.sgc.nl](http://www.sgc.nl)), either by the Parent or by the Proprietor.



2. Disputes that are related to death, bodily harm or sickness are excluded from deliberation by the Disputes Committee. If bodily harm or sickness is demonstrably the result of the mode of action or the negligence of the Proprietor then a dispute about the consequences thereof in relation to these General Terms and Conditions (e.g. an obligation to continue payment) shall be admissible; the bodily harm shall not. With regard to bodily harm the route to the court is available.
3. A dispute is only handled by the Disputes Committee if the Parent has first submitted his/her complaint to the Proprietor.
4. At the latest three months after a complaint has turned into a dispute (reference is made to article 19 paragraph 3) the dispute needs to be brought to the cognisance to the Disputes Committee.
5. If a Parent brings a dispute to the cognisance of the Disputes Committee the Proprietor shall be bound by this choice. If the Proprietor intends to bring a dispute to the cognisance of the Disputes Committee, it must first request the Parent In Writing to express him-/herself within five weeks as to whether he/she agrees with the same. In this respect the Proprietor must announce that after the expiry of the aforementioned time limit it shall be free to bring the dispute to the cognisance of the court.
6. The Disputes Committee rules in consideration of the provisions set forth in the regulations applicable to the same. The regulations of the Disputes Committee are, if so requested, forwarded. A fee is payable for the handling of a dispute. The decisions of the Disputes Committee are given by binding third-party ruling. The route to the court is available for marginal assessment of this binding third-party ruling.
7. Only the court or the aforementioned Disputes Committee is authorised to take cognisance of disputes.
8. If so desired by the Parent, he/she can submit a complaint to a complaints committee in accordance with the statutory complaints regulations for childcare. In that case it is not required, in derogation from article 20 paragraph 3, that the complaint is first submitted to the Proprietor.

#### **ARTICLE 21 – Compliance warranty**

1. The Association for the Childcare Sector in the Netherlands warrants, according to the further regulation compliance warranty (schedule 2), the compliance with the binding third-party rulings of the Disputes Committee Childcare that are related to disputes with a Proprietor affiliated with the same, unless the latter brings said third-party ruling to the cognisance of the court within two months after despatch of the same and the ruling, in pursuance of which the court declares the binding third-party ruling, to be non-binding, has become final and conclusive.
2. This compliance warranty of the Association for the Childcare Sector in the Netherlands is only applicable to rulings vis-à-vis its members.

#### **ARTICLE 22 – Supplements**

Individual supplements to or expansions of these General Terms and Conditions must be stipulated In Writing between the Proprietor and the Parent.

## Schedule 1

Further regulation of the obligations of the Proprietor pursuant to article 13 of the General Terms and Conditions for Childcare, Day Nursery and Out-of-School Care 2014.

The Proprietor complies with its obligations outlined in article 13 paragraph 2 by, inter alia, seeing to it that the undertaking disposes of:

1. a pedagogic policy plan that outlines the typical manner of handling children and their parents;
2. regulations / documents that reflect the policy with regard to hygiene, safety, child abuse, medical actions, sickness and privacy;
3. regulations that regulate the functioning of the Parent Committee;
4. regulations that regulate the complaints procedure;
5. an overview of, or information about, the following elements of the Childcare:
  - a. type of care, possibilities of flexible care and possible additional services;
  - b. information about the group, the ratio between group leaders and the number of children per age category, and the available space;
  - c. exchange of information, form and frequency, including the number of parent meetings that basically take place per year;
  - d. the food to be provided;
  - e. possibilities of agreeing on specific arrangements about development, care and food;
  - f. opening hours and days and possible compulsory minimum purchase;
  - g. the hours when the children are received and leave the centre;
  - h. in case of Out-of-School Care:
    - the possibilities of participating in external activities, e.g. in the area of sports or music;
    - the possibilities of bridging the distance between school and Child Centre or school and external activity, e.g. the type of transport, whether or not under supervision;
    - the possibilities of bridging the distance between Child Centre and home, or external activity and home, e.g. whether or not going home independently;
    - the care during holidays and additional school days off;
  - i. the placement procedure;
  - j. the nature and scope of the settling in period;
  - k. possible regulations in which the standing orders of the Child Centre are established;
  - l. the applicable price;
  - m. the payment method and possible additional costs in case of different payment methods;
  - n. the cancellation terms and conditions, including the cancellation costs;
  - o. the registration terms and conditions, including the registration costs;
  - p. the applicable notice periods.

## Schedule 2

Further regulation of the compliance warranty pursuant to article 21 of the General Terms and Conditions for Childcare, Day Nursery and Out-of-School Care 2014. Effective up to 1 July 2015.

The Association for the Childcare Sector in the Netherlands intended to accomplish disputes settlement rules with a compliance warranty that, on the one hand, indicate what certainties the consumer can expect of the rules and that, on the other hand, do not jeopardise the continuity of the Association for the Childcare Sector in the Netherlands. Guiding principle is that the consumer can rely on the compliance warranty of the Association for the Childcare Sector in the Netherlands if the Proprietor is put in the wrong following a ruling of the Disputes Committee and must proceed with payment to the consumer but fails, for reasons of its own, to do so. This compliance warranty of the Association for the Childcare Sector in the Netherlands is only applicable to its members.

1. A maximum amount for the compliance per ruling is set at EUR 10,000.00. A maximum amount for the compliance is also set for a total of multiple rulings at one Proprietor that are related to the same substantive dispute following the same event. This therefore regards individual disputes resulting from the same event at the same Proprietor. The maximum financial compliance in that case amounts to EUR 50,000.00 per Proprietor.
2. If the ruling of the Disputes Committee allocates an amount higher than the maximum amount of the compliance warranty then the Association for the Childcare Sector in the Netherlands shall take action in order to, within the framework of the compliance warranty, initiate a collection procedure and/or legal proceedings for the benefit of the consumer for the remaining part of the amount (the surplus). The collection route that is carried out for the benefit of the consumer and the possible legal steps following the same are at the expense of the Association for the Childcare Sector in the Netherlands. The collection costs and other judicial costs shall be recovered from the Proprietor by the Association for the Childcare Sector in the Netherlands.
3. At the start of the Disputes Committee the compliance warranty applies to any and all disputes subject to the two aforementioned conditions (maximum amount and warranty of a collection obligation in case of a higher amount). In those instances the Association for the Childcare Sector in the Netherlands shall retain a claim vis-à-vis the relevant member. It is up to the Association for the Childcare Sector in the Netherlands to collect this claim. The relevant collection route and the possible legal steps following the same are at the expense of the Association for the Childcare Sector in the Netherlands. The collection costs and the other judicial costs shall be recovered from the Proprietor by the Association for the Childcare Sector in the Netherlands.
4. If a situation of insolvency, suspension of payment and/or discontinuation of the business occurs then the compliance warranty is not applicable as long as the dispute has not been handled at a hearing yet. Hence: if one of these situations occurs before submission of the dispute or before the hearing then the Disputes Committee shall not issue a ruling. If this situation occurs after the dispute has been handled at a hearing then the compliance warranty as intended under 1 and 2 remains applicable.
5. If it has demonstrably been established that the Proprietor does not comply with the binding third-party ruling and did not within two months after despatch thereof submit the binding third-party ruling to the court for assessment then the consumer can rely on the compliance warranty. The payment by the Association for the Childcare Sector in the Netherlands up to the maximum of the amount payable by the same (see point 1) takes place within a time limit of one calendar month. The

recovery route for the possibly remaining amount is started within the same time limit of one calendar month and is finalised as soon as possible.