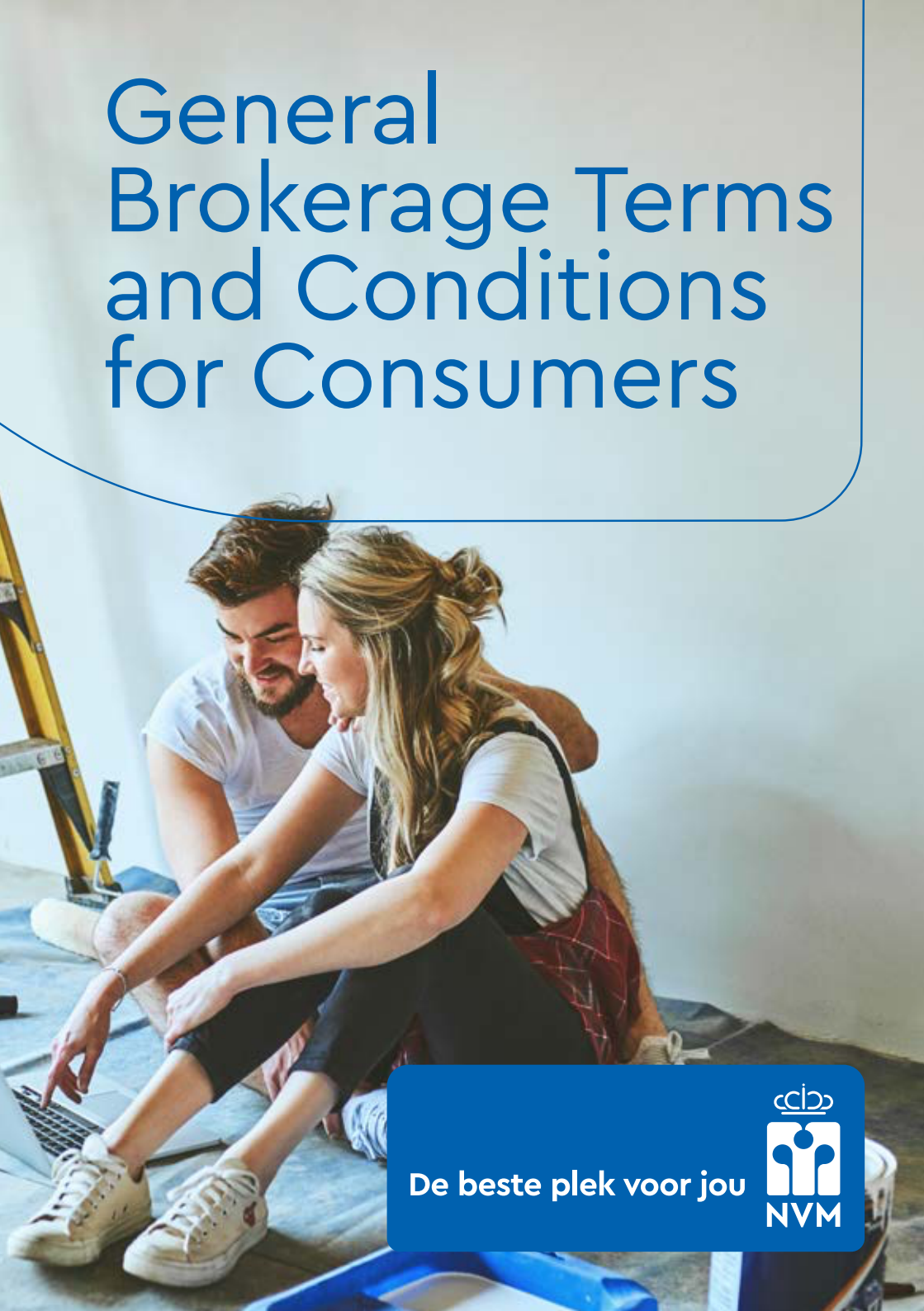
General Brokerage Terms and Conditions for Consumers



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General Brokerage Terms and Conditions for Consumers

General Brokerage Terms and Conditions for Consumers
These are the general consumer terms and conditions of the Royal Dutch Cooperative Association of Real Estate Brokers and Real Estate Valuers NVM (NVM). It sets out the rights and obligations of your broker and yourself. They have taken effect on 1 September 2018.

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04

Article 1
When do these terms and conditions apply?

These general terms and conditions apply to each contract for services granted by a private customer to a broker.

Article 2
What do certain terms mean?

In these general terms and conditions, the following terms have the meanings given:

a. **Private customer:** a client, natural person, not acting in the course of a profession or business (consumer).
b. **Broker:** a broker or valuer who is a member of NVM or the company of a broker or valuer who is a member of NVM. A valuer does not do the same work as a broker. A broker represents the interests of his client. A valuer is impartial. His work is estimating the value of real estate and reporting this in writing. Because valuers must also comply with these terms and conditions, the term 'broker' also refers to 'valuer' insofar the nature of the provisions does not preclude this.
c. **Remuneration:** the fee paid by the consumer to the broker for his services, excluding additional costs. In practice, 'remuneration' is often referred to as 'commission' or 'fee'.
d. **In writing:** including by e-mail..

Article 3

How do you and the broker arrange the contract?

1. The broker sets out the contract in writing. He indicates in this contract that these general terms and conditions apply.
2. The contract contains at least a clear description of the services, the remuneration and the costs. What if you later instruct the broker to carry out other or additional services? The broker will then confirm this in writing, including the price agreements for these services. The broker can use a price list with an overview of his remunerations and third-party costs.
3. The remuneration and the costs in the contract include VAT.
4. If you accept the offer of the broker, a contract will have been concluded. The broker must demonstrate that you have accepted the offer in case of a conflict of opinions. If he is unable to do so, you do not need to pay the broker anything.
5. You will receive these general terms and conditions with the offer of the broker.

Article 4

Do you have a reflection period?

1. You may have a statutory reflection period of fourteen days during which you may cancel the contract. The contract will indicate whether you have a reflection period.
2. Are you legally entitled to a reflection period and has the broker not informed you of this? The reflection period will then be extended to a maximum of one year after you have awarded the contract. What if you receive the information at a later date? You will have a reflection period of fourteen days from that date.
3. Do you want to dissolve the contract within the reflection period? You must inform the broker of this in writing within the reflection period. You can use the form provided by the broker for this purpose.

Article 5

What obligations does the broker have?

1. The broker will carry out the contract with due care and expertise. He represents your interests in this respect.
2. The broker will regularly keep you informed of the progress.
3. The broker is required to adequately insure his liability for damage and loss and to maintain this insurance.
4. The broker will comply with the statutory provisions on the processing of personal data.
5. The broker may not represent both the seller and the buyer of the same object. Nor may the broker represent both the tenant and the landlord of the same object. If this is the case, the broker must consult his clients as soon as possible and suspend or terminate one of the contracts (refer to Article 15).
6. The broker may not conclude an agreement on your behalf if you have not given a written mandate for this.

Article 6

What are your obligations?

1. You will give the broker all information he needs to carry out the contract.
2. Unless you agree otherwise in writing, you may not carry out any activities that may interfere with the implementation of the contract by the broker. For example, you may not make use of another broker.
3. You must enable the broker to carry out his obligations under the Dutch Money Laundering and Terrorist Financing (Prevention) Act and any other statutory obligations.
4. If your property or plot has been sold and the buyer invokes a resolutive or suspensive condition in the purchase agreement or dissolves it within the statutory reflection period, you must immediately inform the broker in writing.

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Article 7

What work will the broker carry out?

1. The broker will carry out the work needed to implement the contract for the agreed remuneration. The contract concerns brokerage activities, valuation or the provision of other services.
2. All work agreed for the remuneration will be captured in writing as clear, comprehensible and specific as reasonably possible.
3. A brokerage contract will always include the following activities:
   - assessing the value of the immovable property;
   - giving advice on the (conduct of) negotiations;
   - conducting negotiations.
4. Unless expressly agreed otherwise in writing, the brokerage contract also at least includes the following activities:
   - carrying out the necessary promotional activities and providing the necessary promotional materials;
   - collecting and requesting information on legal, tax, structural and other relevant aspects concerning the immovable property and giving advice on this if necessary;
   - helping to obtain an energy label or energy performance certificate;
   - arranging and supervising visits;
   - giving advice on and drawing up the purchase or rental agreement;
   - supervising the completion of sale/purchase and rental transactions.

Article 8
What special rules apply to a valuation?

1. A valuation of immovable property concerns estimating the market value and capturing this value in a standard model report. You may need a valuation to apply for a mortgage, for example.
2. A valuation will be carried out in person by a registered valuer. In social and economic life, one must be able to rely on a valuation report. A valuation is therefore significantly different from a value estimate provided by a broker as referred to in Article 7.
3. The valuation report will contain the purpose for which the contract is awarded. The valuation report is not intended to be used for other purposes.
4. If multiple valuers are involved in a contract, they will draw up a valuation report together. If they cannot agree on the contents of the valuation report, they will discuss this with you. Depending on the agreements, they may hire an additional valuer to draw up a valuation report or issue a valuation report which sets out their own findings.
5. If multiple valuers have carried out the contract, you will receive an invoice for their remuneration and costs from each of them, unless you have agreed otherwise.

Article 9

When has the broker completed the contract?

1. Unless you have agreed otherwise, the following applies:

- The broker has completed the contract once the agreed performance has been delivered.
- A brokerage contract will have been completed once the purchase or rental agreement has been signed by both parties. The broker must still assist you with the completion of the agreement.
- A brokerage contract will also have been completed if during the term of the contract a purchase or rental agreement has been concluded which is not the result of the services provided by the broker. The contract will not have been completed if you, as a buyer or tenant, buy or rent something outside of the scope of the contract.

2. Contracts concerning purchase or rental agreements that contain suspensive or resolutive conditions (including the statutory reflection period) will only be completed once the suspensive conditions have been met and the parties can no longer invoke a resolutive condition.

Article 10

How is the remuneration calculated?

1. You discuss the way to calculate the remuneration with the broker in advance. Is it a percentage of the purchase price, a fixed total amount, or an hourly rate? You capture this in the contract.
2. Unless agreed otherwise, the purchase price is the amount the buyer must pay to the seller. This amount does not include the costs of the transfer, such as transfer taxes, notarial fees and cadastral duties.
3. Additional agreements are often needed in special cases. Unless otherwise agreed, the purchase price will consist of:
   If VAT is due on the purchase price: the amount including VAT. In case of new construction: the purchase and contract price jointly, including VAT. In case of a long-term ground lease and/or building and planting rights: the amount agreed on by the buyer and the seller, plus an amount equal to ten times the periodic annual payment.

4. If the remuneration is based on the rent, the rent means: the monthly rent paid by the tenant (including any movable properties included in the rent). You will then pay the remuneration based on an amount of 12 times the monthly rent. Any discounts on the rent are not included in the rent calculation. This applies unless you have agreed otherwise.
5. The remuneration for a valuation may not depend on the amount of the determined (market) value.

Article 11
What costs will the broker charge?

Besides the remuneration, the broker may also charge costs, for example, for advertisements. He will only charge these costs if you have accepted this in advance. Any agreements made will be captured in writing.

Article 12
When will the broker be entitled to the remuneration and the costs incurred?

1. Unless agreed otherwise:
    a. the broker will only be entitled to the remuneration once the contract has been completed. You will pay the costs after they have been incurred by the broker.
    b. you will only pay the remuneration for a brokerage contract concerning purchase or sale upon transfer of title before the civil-law notary.
    c. you need not pay any interest over the period between the completion of the contract and the transfer of title.
2. The broker will send you a specified invoice with a reasonable payment period before you are required to make the payment.
3. Has the contract been awarded by more than one person? Each of you will be jointly and severally liable to pay the remuneration and the costs.

Article 13
What will the broker do if you do not pay in time?

1. If you do not pay in time, the broker will send you a payment reminder. You will be given the opportunity to pay the amount within two weeks after receipt of the reminder.
2. What if you fail to pay within these two weeks? You will be in default and the broker may charge statutory interest.
3. After these two weeks, the broker may collect the outstanding amount, or outsource this collection. The related costs (e.g. collection costs) will be at your expense, unless the court or disputes committee decides otherwise. These costs are, however, subject to statutory limits.

Article 14
Are you allowed to cancel the contract?

1. You may always cancel the contract, preferably in writing. No notice period applies in this respect.
2. Has the contract been awarded by two or more persons? The contract can then only be cancelled jointly by these clients.
3. If the contract is cancelled, the broker is entitled to reimbursement of the agreed costs insofar as they have been incurred. The broker is not entitled to part of the remuneration, unless it has been agreed otherwise in the contract or if it is set out otherwise in Article 19.
4. You will not be required to compensate for any loss suffered by the broker due to the cancellation.

Article 15
Is the broker allowed to cancel the contract?

1. The broker may only cancel the contract if he has important reasons for doing so. An important reason will at least be:
   - If the broker would otherwise work for both the buyer and the seller (or both the tenant and the landlord) (refer to Article 5(5)); or
   - A serious disruption of the relationship between the broker and yourself. The broker will inform you in writing if he cancels the contract.
2. You will not need to pay any remuneration to the broker if he cancels the contract. This may not be the case if Article 19 applies. You must, however, pay any costs incurred (if agreed), unless this is unreasonable.

Article 16
What will happen if a concluded purchase or rental agreement is not executed?

The brokerage contract may have been completed, the purchase or rental agreement may have been signed, and the resolutive and suspensive conditions (including the statutory reflection period) may have expired. But if one of the parties does not cooperate with the execution, the purchase or rental agreement will not result in an actual transfer or, in case of rental, occupancy of the rented property. In this case, the broker is entitled to the agreed remuneration, unless you can demonstrate that the broker has failed in his performance and the purchase or rental agreement has not been executed as a result.

Article 17

What will happen if the immovable property is assigned to one of the owners, the partner or a third party?

In some cases, a property (or other object) will be assigned to one of the owners, the spouse or partner while the brokerage contract concerning a sale is still in force. The contract will end as a result. If it has been agreed that the remuneration of the broker depends on the sale of the property, the remuneration will be calculated based on the value of the allocation. For example, if in case of a divorce (both partners own 50% of the house) one of the partners assigns his or her share to the other party, the fee will be calculated on 50% of the value of the house. This principle also applies if the owner donates part of the house to a third party. The broker and yourself can make other agreements about how the remuneration will be calculated in case of allocation.

Article 18

What happens if you pass away?

1. If you are the only client, the contract will end once you pass away, unless your heirs want to maintain the contract.
2. If there are multiple clients, the contract will end once one of you passes away, unless the other clients wishes to maintain the contract.
3. If the contract ends due to the death of the client or one of the clients, Articles 14(3-4) will apply.

Article 19

Do you still need to pay the remuneration to the broker after the termination of the contract?

If a purchase or rental agreement is concluded after the termination of the brokerage contract, the following applies. You must pay the broker his remuneration if he demonstrates that this agreement has been concluded because of his services or that an agreement was not concluded because you have acted in violation of Article 6(2). The broker will then be entitled to the agreed remuneration or a reasonable part thereof, unless you have made other agreements.

Article 20

What will happen if you have a dispute with your broker?

1. If you have a complaint about the conclusion or implementation of the contract, you must immediately report this complaint in writing to the broker.
2. Does the complaint not lead to a solution? In that case, you can submit the dispute to the Dutch Disputes Committee for Brokers (see www.degeschillencommissie.nl). You will have 12 months to do so (from the moment on which you have submitted your complaint to the broker). Does it concern a dispute on liability for damage or loss? In that case, the disputes committee will only be competent for damage or loss up to 10,000 euros.
3. A dispute will only be handled by the Disputes Committee if the consumer has first submitted his complaint to the broker with a complete and clear description.
4. The broker will be bound by the decision of the Disputes Committee.
5. You can also submit the dispute to the court instead of to the Disputes Committee. But you will not be able to rely on the industry guarantee in that case (refer to Article 21).
6. If the broker wishes to submit a dispute, he will let you choose between the Disputes Committee and the court. Are you unable to make a choice within five weeks? The broker may then submit the dispute to the court.
7. The Disputes Committee for Brokers Regulations apply to any handling by the Disputes Committee.
8. A fee will be charged for the handling of a dispute.

Article 21

What does the industry guarantee entail?

1. NVM guarantees compliance with the binding advice of the Disputes Committee up to a maximum of 10,000 euros. Does it concern a higher amount? NVM will then have a best effort obligation for the excess amount to ensure the broker complies with this advice. This does not apply if this binding advice is submitted to the court for a review within two months after having been issued, the court declares this advice to be non-binding and it is no longer possible to appeal against this court order.
2. Suspension of payment and bankruptcy are excluded from the compliance guarantee as long as the dispute has not yet been handled at the hearing. Termination of business operations is excluded from the compliance guarantee unless the dispute has already been submitted at that time.
3. You can invoke the industry guarantee in writing once it has become clear that the broker does not comply with the binding advice of the Disputes Committee and this advice has not been submitted to the court for a review within two months after it was issued.
4. NVM will pay you the amount within one calendar month after receiving notice of the fact that you invoke the industry guarantee. In that case, however, you must have transferred your claim against the broker to NVM.

Article 22

How are deviating agreements laid down?

The broker must capture any deviating agreements between you and the broker in writing.

Dutch Association of Real Estate Brokers and Real Estate Valuers NVM.

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