



General Terms and Conditions for Childcare – Day Nurseries and Nurseries providing Out-of-School Care 2005

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The General Terms and Conditions of the Social Entrepreneurs Group and the Sector Association for Entrepreneurs in Childcare were drawn up in consultation with the Consumer Association and BOinK within the framework of the Coordination Group for Self-Regulation Consultation (CZ) of the Social-Economic Board. They will come into effect in September 2005. The CZ would appreciate it if this was referred to whenever a quotation from these General Terms and Conditions is used.

Preamble

Childcare in the Netherlands has obtained an important social position. This is in part a result of the changing distribution of work and care responsibilities between partners who have children and of the increased participation in the workforce of women. The childcare sector is developing from a semi-public service into a market-oriented social-services sector.

Childcare is a dynamic sector in which there is an ever greater provision of services. Consumers and providers of childcare have therefore concluded sector agreements

governing the provision of services. These are set out in General Terms and Conditions, which aim to allocate the rights and responsibilities of the parties in a fair and even manner. For consumers this means greater clarity and legal certainty. For entrepreneurs the General Terms and Conditions provide an equal legal basis. General Terms and Conditions can to some extent prevent improper competition and provide the entrepreneur with an opportunity to present him/herself in terms of price, quality and type of service offered. The starting point for the development of the General Terms and Conditions is that childcare in The Netherlands should be generally accessible and that good conditions can ensure good-quality childcare. This is in the interests of all the parties involved: parents, children and entrepreneurs.

Central in all this is that childcare involves a vulnerable group of young children.

ARTICLE 1 - Definitions

The following definitions are used in these General Terms and Conditions:

- Childcare: the professional or otherwise commercial care and education of children (not including unpaid care) until the first day of the month in which the secondary education of these children starts. The childcare does not include: the supervision of children of school age that is limited to supervision during the lunch break; care and education whether in a playgroup or within the framework of the Youth Care Act or at a location in which the child has its main residence other than host-parent care and professional care at home.
- The consumer: The parent/carer who, as a natural person not acting within the context of his/her practice of a profession or a business, concludes an agreement regarding the purchase of the childcare service for a child who is a member of his or her household and who to a large extent is maintained by him or her or for whom he or she receives foster benefits within the framework of the Youth Care Act.
- The entrepreneur (childcare provider): Natural or legal persons who conclude an agreement with the consumer regarding the provision of a childcare service in a childcare centre.
- Parental involvement: Involvement of the parents and carers of the enrolled children regarding matters that are directly related to (policy concerning) the childcare of their children and to the establishment of or modification to an arrangement regarding the handling of complaints.
- Parents' Committee: Advisory and consultation body set up by the entrepreneur and consisting of representatives of the parents and carers of the enrolled children.

ARTICLE 2 - Application

1. These General Terms and Conditions shall apply to the childcare of children in the childcare centres aged from zero up to the age of the beginning of secondary education.
2. The childcare agreement shall be concluded between the entrepreneur in childcare and the consumer.
3. With the exception of the concluding of the childcare agreement referred to in section 2, each of the parties shall be entitled to transfer rights and obligations arising from

this agreement to third parties. In the latter case the agreement of the other party shall be required.

4. In derogation of section 3 of this article, the entrepreneur shall not require the permission of the consumer for calling in third parties for the collection of payments; nor shall the consumer require permission from the entrepreneur for calling in third parties for making payments.

ARTICLE 3 - Introduction

1. The entrepreneur shall provide introductory information either in writing or electronically, which shall be detailed enough to enable the consumer to make an in-depth choice between childcare providers in his or her familiarisation with the market.
2. The information shall contain at least the following details:
 - the nature and scope of the childcare to be provided in or via the location, as well as additional services; type of childcare, the services provided at what cost and for what duration, possibly with a minimum; any opportunities for flexible childcare; enrolment procedure; nature and length of the introductory period;
 - (a summary of) the educational policy plan drawn up by the childcare provider, which describes the method of interaction with children and parents that is characteristic of this childcare provider; the information that the detailed version of the educational policy plan is available on request;
 - the form and frequency of information exchange, including the number of meetings with parents that are in principle held each year;
 - the hygiene policy, safety policy, medical treatment, illness policy and privacy;
 - the way in which the childcare provider has given shape to the Parents' Committee or another form of Parental Involvement;
 - the currently valid price of all the regular and any additional services, including the cancellation costs and the conditions under which cancellation is possible; the method of payment. If there are additional costs linked to a certain method of payment, information shall be provided about the additional price to be paid;
 - the complaints procedure;
 - the termination notice period and the day of the month on which the agreement can be terminated;
 - the ratio of group leaders to number of children per age category;
 - information regarding the group and the available space;
 - the opening times and days of the centre providing childcare, as well as the times at which the children can arrive at the childcare centre and leave the childcare centre. This includes, if applicable, information about the way in which the distance between school and the childcare centre is bridged (method of transport and whether or not the child is accompanied) and agreements about whether or not the children may go home independently. It shall also include, if applicable, information about childcare during holidays and additional days on which the school is closed;
 - whether or not any meals or other food are supplied by the childcare provider and, if so, any possibilities for concluding specific agreements about feeding and care.
3. The consumer shall be entitled to register, on an enrolment form in writing or electronically, their interest in the childcare provider for a certain type of childcare for a certain child for a certain duration.

ARTICLE 4 – Offer

1. The offer made to the consumer shall be complete and accurate in order to enable the consumer to make a definitive choice of childcare provider.
2. The offer made shall contain at least the same information details as referred to in article 3 as well as:
 - the name and age of the child;
 - the available start date for enrolment as well as the duration;
 - the start and duration of the introductory period;
 - other specific agreements between the entrepreneur and the consumer about the feeding and care of the child;
 - the medical treatment on offer (see article 11 section 2), if the consumer has asked for this and the entrepreneur has the facilities to provide this;
 - the statement that the entrepreneur will treat the data received confidentially and will not make these available to third parties, except in the case of exceptions set out in law.
3. The consumer shall let the entrepreneur know within the reasonable time period set by the entrepreneur whether he or she does or does not accept the offer.
4. The offer made shall refer to the application of the General Terms and Conditions and shall be accompanied by a copy of these conditions.
5. The offer shall be given a date and shall be irrevocable before the closure date for acceptance. If the closure date has passed, the offer shall be regarded as having lapsed.

ARTICLE 5 - The agreement

1. The agreement shall come into effect in writing or electronically at the moment that the consumer returns a copy of the offer of services to the childcare provider with his or her written or electronic signature and the entrepreneur has received this. The childcare provider shall confirm the agreement with the consumer. This shall bring with it obligations for the consumer as well, unlike the act of sending in the enrolment form (see article 3 section 3).
2. Occasional modifications to the childcare shall leave the agreement intact.

ARTICLE 6 – The enrolment meeting

1. In good time before the start of the actual enrolment the entrepreneur shall invite the consumer to an enrolment meeting. This meeting shall cover the specific details needed for the childcare that relate to the consumer and his or her child. The childcare provider and the consumer shall agree to inform each other on a regular basis, if necessary, about general or temporary points of attention and particular details for the specific care of the child (daily routine, food, illness, etc.).
2. The entrepreneur shall state in the enrolment meeting that:
 - the entrepreneur shall be obliged to watch over the health of the child and to communicate with the parent about this;
 - the consumer as a parent or guardian shall be legally liable for any damage caused by his or her child.

3. The entrepreneur and the consumer shall confirm the agreements concluded during the enrolment meeting in writing or electronically.

ARTICLE 7 – Duration of, modification to and termination of the agreement

1. The agreement relating to day nurseries for 0-4-year-olds shall be valid until the child's fourth birthday. The agreement relating to childcare centres providing out-of-school care shall be valid until the first day of the month in which the secondary education of these children starts. All this shall apply unless otherwise agreed in writing or electronically.
2. If the parties agree to an extension of the agreement, this shall be confirmed by both parties in writing or electronically. The present General Terms and Conditions shall in that case continue to apply.
3. If the child dies, the agreement shall be legally terminated with immediate effect. In the case of new permanent invalidity that could affect the functioning at the childcare centre, the consumer and the childcare provider shall be entitled to terminate the agreement with immediate effect.
4. An agreement shall be concluded for the maximum duration referred to in section 1 or an agreed shorter duration (for example one year). Neither of the parties shall be entitled to terminate an agreement of shorter duration, unless continuation in the given circumstances would be unacceptable according to the standards of reasonableness and fairness. In the case of an agreement concluded for the maximum duration as referred to in section 1, each of the parties shall be entitled to terminate the agreement or a part of the agreed duration via a written or electronic statement sent to the other party giving reasons. This shall take into account a notice period of a maximum of two months. Termination shall in any case be possible as of the first or the sixteenth of the month. None of this shall affect his or her other rights on the basis of these General Terms and Conditions.
5. The entrepreneur shall be entitled to immediately terminate the agreement with a consumer whose child has enjoyed two months of childcare without any payment having been made, unless the parent pays immediately. If the parent does not pay immediately, the entrepreneur shall be entitled to terminate the child's care immediately without this absolving the consumer of his or her obligation to pay for the two months. The immediate termination shall not apply if the consumer proves that he or she was not able to meet his or her payment obligations during the entire period referred to because of a case of force majeure.

ARTICLE 8 - Accessibility

1. In principle the provision of childcare shall be accessible to all children as long as there is an agreement regarding this between the entrepreneur and the consumer.
2. The entrepreneur shall retain the right to refuse childcare to an enrolled child for the duration of the period that the child requires additional care because of illness or any other reason or because the child constitutes a health risk to the other people present at the childcare centre and normal care of the child and the other children cannot be reasonably expected of him or her.
3. If the consumer does not agree with the refused access by the entrepreneur on the basis of section 2, he or she can take this to the Arbitration Board with the request that the dispute be handled in accordance with the Accelerated Procedure (Verkorte

Procedure). A decision about this by the Arbitration Board shall be binding for the parties. While this Accelerated Procedure is underway, the entrepreneur shall not be entitled to cancel the placement and the obligation shall remain for the consumer to pay in agreement with article 13 of these General Terms and Conditions.

4. If, after his or her parents have been warned about this, an enrolled child continues to demonstrate behaviour that poses a threat to the mental and/or physical health of the other enrolled children, or the child cannot be cared for in the usual way, the entrepreneur shall be entitled on reasonable grounds and with a reasonable notice period to refuse the child access to the childcare centre and to terminate the agreement. The entrepreneur shall then be entitled to the best of his or her ability to refer the child to an organisation better suited for the care of this child.
5. If the child is absent from the childcare centre for a long time, the entrepreneur and the consumer shall be obliged to consult about keeping the childcare placement open.

ARTICLE 9 – Price and price changes

1. The price that the consumer has to pay shall be agreed in advance.
2. Price changes shall be announced well in advance by the childcare provider, with a notice period at least equal to the agreed termination notice period (see article 7 section 4).

ARTICLE 10 - Cancellation

From the time that the agreement is signed until the start date of the agreement the consumer shall have the opportunity to cancel the agreement. In such case, cancellation costs shall then be due. The amount of the cancellation costs shall never be greater than the payment owed for two months. The entrepreneur shall, when making an offer, inform the consumer about the procedure to be followed and the amount of the cancellation costs.

ARTICLE 11 - The service

1. The entrepreneur shall ensure that the work carried out by him or her concerning the provision of childcare shall comply with the agreement in accordance with the legal requirements.
2. The entrepreneur shall take such personal and material measures to ensure that the childcare centre is optimally suited to the care of children and shall ensure that the children are cared for in a responsible manner at the childcare centre.
3. The entrepreneur shall be entitled to opt to provide an additional service in the form of medical treatment. The employees responsible for this shall meet the requirements set out in the Individual Healthcare Professions Act (Wet op de Beroepen in de Individuele Gezondheidszorg). If the entrepreneur opts for this, the medical treatment shall be subject to the legal stipulations derived for this from the Dutch Civil Code such as a duty of care and information, and a duty of confidentiality.
4. The consumer shall be responsible, when bringing the child to a day nursery, for his or her child up to the moment that the parties can reasonably assume that the transfer of responsibility has actually taken place. The entrepreneur shall then be responsible for the child up to the moment that the parties can reasonable assume that the transfer of responsibility has again actually taken place.

5. In the case of a centre providing out-of-school care, the moment at which the responsibility for the child transfers from the consumer or another adult to the childcare entrepreneur, and the moment at which the responsibility for the child again transfers from the entrepreneur to the consumer or another adult, depends on the way in which the child arrives at and leaves the centre providing out-of-school care. Clear agreements shall be concluded about this between the entrepreneur and the consumer in writing or electronically.
6. The entrepreneur shall be entitled to demand that the consumer sets out, in writing or electronically, any delegation of authority to a third party with respect to collecting his or her child.
7. The entrepreneur and the consumer shall jointly ensure an adequate information exchange concerning the child.
8. The entrepreneur shall take the individual wishes of the consumer into account in as much as this is reasonable, including those concerning contacts with the other children.
9. The entrepreneur shall be entitled to draw the attention of the consumer to the legal consequences of systematically failing to bring or collect his or her child on time. This is in fact an example of non-compliance with the agreement.

ARTICLE 12 – Expertise and material care

1. The entrepreneur shall ensure that work he or she carries out for the provision of childcare at the centre is carried out in accordance with the requirements of sound expertise and using sound equipment. The centre for the provision of childcare shall at least meet the statutory requirements as regards quality and safety.
2. Persons who are employed at the childcare centre shall have a certificate of good behaviour, issued in compliance with the Judicial Data Act (Wet Justitiële Gegevens). Employees shall submit such a certificate to the entrepreneur before the start of their work; the certificate shall not be more than two months old at the time that it is submitted to the entrepreneur. If the entrepreneur should reasonably suspect that an employee no longer meets the requirements for the issuing of this certificate, the entrepreneur shall demand that the employee provide - within a period to be set by the entrepreneur - a new certificate of good behaviour that is no more than two months old,.

ARTICLE 13 - Payment / Overdue payment

1. The consumer shall be responsible for timely payment to the childcare provider.
2. Payment on the basis of an invoice shall be made not more frequently than once a month and not more than a month before the childcare is provided. Any requested security shall equate to payment in this matter. The invoice shall be sent out free of charge.
3. If a consumer pays a third party called in by the entrepreneur in accordance with article 2 section 4, this shall serve for the consumer as a release settlement. If the consumer calls in a third party to make the payments, this shall not absolve the consumer of his or her obligation to pay.
4. The consumer shall be in default once the payment deadline has expired. The entrepreneur shall, after the expiry of the deadline, send a payment reminder in writing and shall give the consumer the opportunity to pay within 14 days of receipt of

this payment reminder. In addition, the entrepreneur shall warn the consumer in this payment reminder that on the basis of article 7 section 5 of these General Terms and Conditions the enrolment can be terminated with immediate effect if two months' childcare has been received for which no payment has been made. This payment reminder shall be sent at least 14 days before the date on which this situation occurs.

5. If the payment is still not made after the expiry of the deadline as referred to in the payment reminder, the entrepreneur shall charge interest from the expiry of the payment date. This interest shall be equal to the statutory interest.
6. Without prejudice to the stipulations in section 4 of this article, the entrepreneur shall be entitled to choose to offer a payment arrangement.

ARTICLE 14 – Liability of entrepreneur and consumer

The parties shall be liable in as much as this arises from the law or the agreement.

ARTICLE 15 – Complaints procedure

1. Complaints about the implementation of the agreement shall be submitted, described fully and clearly, to the entrepreneur in good time after the moment that the consumer has noticed the defects or has been able to notice the defects. Complaints submitted within two months of this point in time shall, in any case, count as 'in good time'. The consequence of not submitting a complaint in good time may be that the consumer loses his or her rights in this matter.
2. The childcare provider shall handle the complaint in accordance with his or her internal complaints procedure. During the drawing-up or modifying of this procedure there shall be Parental Involvement in the sense of article 1 of these General Terms and Conditions.
3. If the complaint cannot be solved amicably, a dispute shall arise that shall be subject to the dispute resolution of article 16.

ARTICLE 16 - Dispute Resolution and the Complaints Act

1. Disputes between consumer and entrepreneur about the realisation or the implementation of agreements relating to services and goods supplied or to be supplied by this entrepreneur can be brought before the Childcare Arbitration Board, Bordewijklaan 46, P.O. Box 90 600, 2509 LP The Hague, (www.sgc.nl) by both the consumer and the entrepreneur.
2. Disputes relating to death, physical injury or illness shall not be dealt with by the Arbitration Board. If bodily injury or illness can be demonstrated as being result of the actions or negligence of the entrepreneur, a dispute about the consequences of this in relation to these General Terms and Conditions (for example, a duty to continue to pay) shall be admissible; the bodily injury itself shall not be. For the bodily injury itself legal proceedings shall of course be possible.
3. A dispute shall be handled by the Arbitration Board only if the consumer has first of all submitted his/her complaint to the entrepreneur.
4. After the complaint has been submitted to the entrepreneur, the dispute shall be brought before the Arbitration Board at the latest three months after it has arisen (see article 15 section 3).
5. If the consumer brings a dispute before the Arbitration Board, the entrepreneur shall be bound by this choice. If the entrepreneur wants to bring a dispute before the

Arbitration Board, he or she shall ask the consumer in writing to state within five weeks whether he or she agrees to this. The entrepreneur shall state that he or she shall be free to bring the dispute before the court after this deadline has expired.

6. The Arbitration Board shall make a decision taking into account the stipulations of the regulations that apply to it. The regulations of the Arbitration Board shall be sent on request. A fee is required for the handling of a dispute. The decisions of the Arbitration Board shall be made in the form of binding advice. The option of going to court for a marginal test of this binding advice shall be open.
7. Only the judge or the above-mentioned Arbitration Board shall be authorised to try disputes.
8. If the consumer so desires, he or she can submit a complaint to a complaints committee in accordance with the Act on the Right of Complaint for Clients of the Care Sector. In this case it is not necessary, contrary to article 15 of these General Terms and Conditions, for the complaint to be first of all submitted to the entrepreneur.

ARTICLE 17 - Compliance guarantee

The MOgroep or the Sector Association shall act as a guarantor for compliance with the binding advice of the Childcare Arbitration Board that relate to disputes with an entrepreneur affiliated with it, unless he or she submits the binding advice to the judge for testing within two months of its being given, and the judgement - whereby the judge declares the binding advice non-binding - is absolute. More detailed regulations relating to this compliance guarantee are set out in the appendix. This appendix shall form an integrated part of these General Terms and Conditions. For entrepreneurs affiliated to the MOgroep this guarantee shall be carried out by the MOgroep Foundation for Childcare Compliance.

Note: this compliance guarantee of the MOgroep and the Sector Association shall apply only to judgements relating to their members.

ARTICLE 18 – Derogations to agreements

Individual derogations, including additions to or extensions of these General Terms and Conditions, shall be set out between the entrepreneur and the consumer in writing.

ARTICLE 19 - Modifications

The MOgroep and the Sector Association shall modify these General Terms and Conditions only in consultation with the Consumer Association and BOinK.

APPENDIX

Further regulations relating to the compliance guarantee of article 17 of the General Terms and Conditions for Childcare – Day nurseries and childcare centres providing out-of-school care 2005

The consultation parties MOgroep, the Sector Association, the Consumer Association and BOinK wanted to realise a dispute resolution with a compliance guarantee that, on the one hand, states what securities the consumer can expect from this regulation, and on the other hand, does not threaten the continuity of the sector organisations. In order to combine the two, they agreed the following. The starting point is that the consumer

can appeal to the compliance guarantee of the MOgroep or the Sector Association (depending on the group of which the entrepreneur is a member), if a judgement of the Arbitration Board rules against the entrepreneur and the entrepreneur has to make a payment to the consumer but does not do this for whatever reason.

1. A maximum amount of EUR 10,000 is set for compliance per judgement. A maximum amount is also set for compliance for a total of several judgements relating to the same dispute prompted by the same event in the case of one entrepreneur. These are thus individual disputes resulting from the same event in the case of the same entrepreneur. The maximum financial compliance in this situation is EUR 50,000 per entrepreneur.
2. If the judgement of the Arbitration Board allocates a higher amount than the maximum amount of the compliance guarantee, the Foundation for Childcare Compliance (SNK) of the MOgroep or the Sector Association shall take action to launch a collection or legal procedure as part of the compliance guarantee for the remaining part of the amount (the majority) on behalf of the consumer. The collection project that is carried out on behalf of the consumer and any subsequent legal steps shall be for the account of SNK MOgroep or the Sector Association. The collections costs and other legal costs shall be recovered by SNK MOgroep or the Sector Association from the entrepreneur.
3. At the start of the Arbitration Board the compliance guarantee shall apply to all the disputes within the two conditions referred to above (maximum amount and guarantee of a collection guarantee at a higher amount). In these cases SNK MOgroep of the Sector Association shall retain a claim regarding the member in question. It is up to SNK MOgroep or the Sector Association to collect this claim. The collection project linked to this and any subsequent legal steps shall be for the account of SNK MOgroep or the Sector Association. The collection costs and other legal costs shall be recovered by SNK MOgroep or the Sector Association from the entrepreneur.
4. If bankruptcy, suspension of payment and/or termination of business activities occurs, the compliance guarantee shall not come into force if the dispute has not yet been handled in a session. So if one of these situations occurs before the submission of the dispute or before the session, the Arbitration Board shall not make a judgement. If one of these situations occurs after the dispute has been handled in a session, the compliance guarantee shall apply as set out under 1 and 2.
5. If it is demonstrated that that the entrepreneur is not complying with the binding advice him/herself, or does not submit the binding advice to the court for testing within two months of its being given, the consumer shall be entitled to appeal to the compliance guarantee. The payment by SNK MOgroep or the Sector Association up to the maximum amount to be paid (see point 1) shall be made within a period of one calendar month. The recovery action for any remaining amount shall be launched within the same period of one calendar month and shall be completed as soon as possible.