

General Terms and Conditions At Home Curaçao Intermediair b.v.:

These General Terms and Conditions are applicable as of **15th of Januari 2020**.

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PART 1: GENERAL

Article 1: Scope

These General Terms and Conditions will apply to the conclusion and performance of a contract for services entered into between an Independent Intermediary and a Client in respect of real estate in Curaçao.

Article 2: Definitions and Terms

Terms used in these General Terms and Conditions are defined as follows:

- a) Client: a natural or legal person giving a Contract to an Independent Intermediary.
- b) Independent Intermediary: a natural or legal person affiliated with At Home Curaçao offering a Client services in respect of real estate using the name At Home Curaçao and the supporting services of At Home Curaçao, however, fully for its own account and risk.
- c) Contract: the contract for services between an Independent Intermediary and a Client. Services are defined as: the intermediary services with regard to the purchase, sale, lease or rental of real estate (article 11 ff.) and other services to be performed by the Independent Intermediary;
- d) Real Estate: real estate will include the restricted rights in real estate, such as rights of leasehold and superficies;
- e) Fee: the price for the services performed by the Independent Intermediary, including the commission set out under f;
- f) Commission: the amount owed for intermediary services with regard to the purchase, sale, lease or rental of real estate;
- g) Residential Accommodation: real estate intended for occupation.

Article 3: General and Personal Offer

1. The general offer made by the Independent Intermediary to the Client will contain a clear description of the services the Client in question is reasonably entitled to expect. The general offer will also set out the fee for the services and the other conditions on which the services are performed.
2. After the Client has taken note of the general offer, the Independent Intermediary will offer the Client the opportunity to enter into negotiations in order to come to a personal offer.
3. The Independent Intermediary will ensure that the final personal offer is laid down in writing or electronically in an order form, with reference to the applicability of these General Terms and Conditions and stating that these General Terms and Conditions are attached to the order form and form an integral part of the contract for services.
4. A copy of these General Terms and Conditions will be attached to the personal offer or the general offer.

Article 4: Conclusion of the Contract

The Contract will be concluded by acceptance of the general and/or the personal offer by the Client.

Article 5: Term of the Contract

Unless the parties agree otherwise the Contract is entered into for an indefinite period of time.

Article 6: Termination of the Contract

1. The Contract will terminate if:
 - a. the Contract is fulfilled by the Independent Intermediary, unless the Contract is continuous by its nature;
 - b. the Client withdraws the Contract;
 - c. the Independent Intermediary cancels the Contract;
 - d. either party terminates the Contract;
 - e. the Client dies.
2. The Independent Intermediary has fulfilled the Contract as soon as the agreed services are performed or – in the event of intermediary services provided by the Independent Intermediary – as soon as the intended agreement between the relevant parties has been concluded as a result of (among other things) the services provided by the Independent Intermediary. In the event of purchase of a Residential Accommodation by a Client there will only be a purchase agreement if the purchase is laid down in a purchase agreement signed by both the buyer and the seller. The buyer has a statutory reflection period of three (3) days, within which the buyer is entitled to terminate the purchase agreement. Fulfillment of the Contract does not affect the obligation arising from the Contract for the Independent Intermediary to assist the Client in the finalization of the agreement.

In the event of an agreement of which the definitive conclusion or performance obligation is subject to a suspensive or resolutive condition under the agreement, the fulfillment of the Contract will also be subject to such condition.
3. The Client is at all times entitled to withdraw a Contract, without having to observe a notice period. The Client will never be liable to pay compensation because of a withdrawal. However, if the Client withdraws the Contract the Independent Intermediary will be entitled to reimbursement of costs already incurred as referred to in article 17 and, if and insofar as agreed when the Contract was given, to a percentage of the fee. Withdrawal of a Contract will preferably take place in writing or electronically.
4. The Independent Intermediary is entitled to cancel the Contract for serious cause. In any case the following is considered serious cause: the situation described in article 12 paragraph 1 or a severely damaged relationship between the Independent Intermediary and the Client. Cancellation of the Contract by the Independent Intermediary must be in writing or electronically.
5. A Contract may be terminated in or out of court in the event of failure to comply with the obligations on the part of the other party. The termination notification must be in writing or electronically.
6. The date of termination of the Contract will be the date on which the Independent Intermediary, respectively the Client receives the written or electronic notification with regard to the withdrawal, cancellation, termination or death, or the later date of termination of the Contract set out in the notification.

Article 7: Turnover Tax, Due and Payable

1. The agreed fee and additional costs are exclusive of the turnover tax (VAT) payable by law, unless explicitly agreed otherwise.
2. Unless agreed otherwise all amounts owed for fees, commissions and/or costs are immediately payable as soon as the purchase or lease agreement is concluded or the Contract is fulfilled, or when the Contract is terminated for other reasons. All this without prejudice to the provisions of article 14 paragraph 2.

Article 8: General Obligations of the Independent Intermediary

1. The Independent Intermediary will perform the accepted Contract to the best of its knowledge and ability, taking into account the interests of the Client. Unless agreed otherwise the Independent Intermediary may have the work required for the performance of the Contract carried out by others, under responsibility of the Independent Intermediary.
2. The Independent Intermediary will keep the Client informed on the progress.
3. The Independent Intermediary is obliged to take out and maintain adequate insurance against any and all liability for losses arising from an attributable failure or an unlawful act.

Article 9: General Obligations of the Client

1. The Client will furnish the Independent Intermediary with the information and documents required by the Independent Intermediary for the performance of the Contract. The Client guarantees the correctness and completeness of the information and documents furnished by the Client to the Independent Intermediary.
2. The Client is not permitted to carry out activities without the involvement of the Independent Intermediary which may hinder the Independent Intermediary in the performance of its Contract or interfere with its activities.

Article 10: Payment

1. The Client will pay the Independent Intermediary for its services in accordance with the arrangements made.
2. The Independent Intermediary will send the Client a properly itemized invoice stating a reasonable payment term.
3. In the event of sale of a Residential Accommodation the notary effecting the transfer will be authorized to pay the invoice directly to the Independent Intermediary from the funds received by the notary for the Client. By accepting these General Terms and Conditions the Client irrevocably and without limitation authorizes and directs the notary to effect this payment to the Independent Intermediary on behalf of the Client.
4. If the Client fails to pay the invoice within the stated term, the Independent Intermediary will send the Client a payment reminder offering the Client another opportunity to pay the invoice within two (2) weeks of receipt of the reminder.
5. If the Client fails to comply with the payment reminder referred to in paragraph 4, the Client will be in default without any further notice of default being required and the Independent Intermediary will be entitled to add statutory interest.
6. After lapse of the period of two (2) weeks referred to in paragraph 4 the Independent Intermediary will be entitled to collect the amount owed without any further notice of default being required. The connected court costs and out-of-court costs reasonably incurred will be for the account of the Client. The Independent Intermediary may charge the Client for the actual collection costs incurred or a fixed amount of 15% of the principal claim.
7. If the Contract is given by more than one person, each of them will be jointly and severally liable for the fulfillment of all obligations towards the Independent Intermediary and for payment of all amounts owed, on whatever basis, with a mutual right of recourse.

PART 2: INTERMEDIARY SERVICES

Article 11: Contract for Intermediary Services, Partial Services

The essence of a Contract for intermediary services is to give advice and to conduct negotiations.

The Contract for intermediary services may be extended with one or more of the following services:

- discussion of and advice on the possibilities to come to the intended agreement;
- assessment of the value of the real estate in question;
- overseeing legal, fiscal, constructional and other relevant aspects;
- assistance with the finalization of the intended agreement.

At the request of the Client the Independent Intermediary can assist in the drawing up or completing of an agreement. However, the Independent Intermediary will never be liable or responsible for the content or consequences of such agreement.

As far as the Contract for intermediary services is concerned, the Independent Intermediary must inspect the real estate at least once during or immediately prior to the Contract.

Instead of a Contract for intermediary services the Client may also give a Contract for partial services. Partial services to be provided to the Client may also include:

- drawing up of a purchase agreement without providing any intermediary services;
- drawing up of a lease agreement without providing any intermediary services;
- entering data with regard to real estate in electronic systems, including via internet;
- designing and placing advertisements;
- investigating real estate;
- carrying out searches for real estate;
- applying for a housing permit, mortgage, etc.

These General Terms and Conditions will apply to partial services to the extent that the nature of the provisions does not dictate otherwise.

It is pointed out that in accordance with National Ordinance Purchase of Real Estate and Contracting of Work a purchase agreement for real estate can only be entered into in writing. If the buyer of a Residential Accommodation is a natural person not acting in the exercise of a profession or business, this buyer must be handed a copy of the signed purchase contract, and for three (3) days after the buyer has been handed this copy the buyer will be entitled to terminate the purchase agreement, unless delivery has already taken place. Please refer to the National Ordinance for the complete regulation and any other relevant rules.

Article 12: Obligations of the Independent Intermediary

1. The Independent Intermediary is not permitted to take on more than one Contract for intermediary services relating to one and the same real estate. If the Independent Intermediary has been given a Contract for intermediary services regarding a certain real estate, the Independent Intermediary may only take on a new Contract after the prior Contract has been demonstrably terminated.
If the Independent Intermediary has to provide services regarding one and the same real estate under two or more current Contracts for intermediary services, and if providing the service to one Client contradicts the interests of the other Client, then the Independent Intermediary will inform the Clients thereof in writing or electronically. In that case the Independent Intermediary will be obliged to consult with its Clients, at the latest before the negotiations with both Clients or the other Client start. This consultation must result in one of the Contracts being suspended or terminated. So the Independent Intermediary is not permitted to provide services to more than one Client regarding one and the same real estate if providing the service to the one Client contradicts the interests of the other Client, irrespective of the wishes of the parties concerned.
2. The Client whose Contract for intermediary services is terminated based on the provisions of the previous paragraph will not owe the Independent Intermediary any payment, under whatever name, with the exception of any costs as referred to in article 17 which the Independent Intermediary has already incurred on the instructions of the Client.
3. The Independent Intermediary is not entitled to enter into agreements on behalf of the Client, unless the Client has authorized the Independent Intermediary in writing or electronically to do so.
4. In the performance of the Contract the Independent Intermediary will comply with the laws and regulations applicable in Curaçao, as well as rules of the government of Curaçao and the Office for the Disclosure of Unusual Transactions of Curaçao, which may involve a duty to report.

Article 13: Obligations of the Client

1. Unless agreed otherwise, the Client is not permitted to conclude agreements, conduct negotiations, make use of similar services of others and/or carry out activities without the involvement of the Independent Intermediary, which may hinder the Independent Intermediary in the performance of its Contract or interfere with its activities.
2. The Client will render its cooperation in order for the Independent Intermediary to comply with the obligations (for example identification of the Client) it has or may have in the context of the disclosure of unusual transactions as well as other laws and regulations.
3. The Client will furnish the Independent Intermediary with all information and documents required by or useful for the Independent Intermediary for the performance of the Contract.
4. The Client must inform a potential contracting party of all important information on the property and of any and all defects. The latter has an obligation to investigate to satisfy itself that it does not enter into an agreement in respect of the property, with the Client, based on misrepresentation.

Article 14: Commission

1. The Client will owe the Independent Intermediary a commission if during the term of the Contract for intermediary services an agreement is concluded in respect of real estate. This will also apply if the agreement is not the result of services provided by the Independent Intermediary. An agreement will also be deemed to be concluded if the Client cooperates in an act resulting in the real estate being sold, leased or assigned in whole or partially to the Client and/or a third party, as a result of which the performance of the Contract is discontinued.
2. Unless agreed otherwise commission relating to intermediary services for the purchase or sale of real estate will be payable upon the transfer of ownership of the real estate at the notary, without the Client owing interest to the Independent Intermediary for the period between the commission being due and the commission being payable. If it is established that a concluded agreement will not result in a transfer of ownership of real estate at the notary and the Independent Intermediary is entitled to a commission, the commission will become payable immediately.
3. After termination of the Contract for intermediary services as referred to in article 6 paragraph 1 sub b through e the Client will not owe commission if an agreement is concluded in respect of real estate, unless:
 - the Client has acted in breach of the provisions of article 13;
 - the Independent Intermediary provides satisfactory proof that the conclusion of the agreement in respect of the real estate is the result of services provided by the Independent Intermediary to the Client during the term of the Contract.
4. In the event of an agreement of which the definitive conclusion or performance obligation is subject to a suspensive or resolutive condition under the agreement, the entitlement to commission will also be subject to such condition, unless agreed otherwise.
5. If a commission obligation in accordance with the provisions of paragraph 3 of this article arises, the Independent Intermediary will be entitled to a part of the commission, to be determined reasonably. For determination of the commission account will be taken of the work already carried out by the Independent Intermediary, the benefits enjoyed by the Client and the grounds for termination of the agreement.
6. In the event that a concluded agreement is not performed, the Independent Intermediary retains right to the full commission, unless the Client makes it plausible that the non-performance is the result of breach of contract on the part of the Independent Intermediary.

Article 15: Calculation of the Commission on Purchase and Sale

1. The commission is calculated on the basis of what the parties have agreed on this. If the parties have not agreed on a basis for the calculation of the commission, the following paragraphs of this article will apply.
2. The commission will be calculated on the purchase price of the real estate and any and all movable property together.
3. The purchase price is defined as the amount owed by the buyer to the seller, excluding the charges and fees due on the transfer, such as transfer tax, notarial charges and land registry fees.
4. If turnover tax (VAT) is due on the purchase price, or if this is included in the purchase price, then the commission will also be calculated on the amount inclusive of this tax.
5. For real estate under construction or to be constructed the commission is calculated on the purchase and contract price together, or on the expected construction sum or all-in construction costs, as evidenced by the agreement, inclusive of VAT.
6. For purchase and sale of a right of leasehold or a building on leasehold land the commission is calculated on the amount agreed between the buyer and seller, plus an amount equal to ten times the periodical payment on an annual basis.

7. For purchase and sale of an apartment right the commission is calculated on the purchase price of the apartment right.
8. For purchase and sale of a membership of a cooperative association for the exploitation of real estate or shares in joint ownership the commission is calculated on the purchase price of the relevant membership right or share, without deduction of the share in any mortgage loan or other form of financing or in other costs and/or charges.
9. The following are considered equivalent to purchase and sale agreements for the calculation of commission:
 - property exchange;
 - hire-purchase;
 - purchase and sale on installment;
 - purchase and sale that does not automatically entail an obligation to transfer (transfer of beneficial ownership);
 - creation of a right of leasehold or superficies.
10. If material movable property and/or property rights (for example goodwill) are purchased or sold and/or damages, registrations, contributions and similar claims towards each other are agreed by the parties, the commission will also be calculated on the purchase price of this property and these rights.

Article 16: Calculation of the Commission on Leasing and Renting

1. The commission is calculated on the basis of what the parties have agreed on this. If the parties have not agreed on a basis for the calculation of the commission, the following paragraphs of this article will apply.
2. For lease and rental agreements regarding real estate the commission is calculated on the rent, with due observance of the provisions below.
3. The rent is defined as the amount agreed by the lessee and the lessor as payment for the sole enjoyment of the real estate for the first rental year.
4. The commission is calculated on the rent inclusive of VAT, if VAT is applicable.
5. If, pursuant to the agreement, a different amount of rent is due in any year after the first year and this amount is already known upon conclusion of the agreement, and if this amount has a different purpose than to keep pace with the change in value of the Netherlands Antilles Guilder or the American Dollar, then the commission will be calculated on the total of these amounts, divided by the relevant number of years.
6. Part of a rental year will be counted as a whole rental year.
7. The following are considered equivalent to lease and rental agreements for the calculation of commission:
 - tenancy agreements;
 - exchange agreements;
 - agreements for use;
 - agreements regarding a real right of use and occupation;
 - other similar agreements, such as financial or operational lease.
8. If material movable property and/or property rights (for example goodwill) are also leased or rented, the rent will include the rent agreed upon for this property and these rights. If the property and/or property rights are also purchased or sold and/or damages, registrations, contributions and similar claims towards each other are agreed by the parties, the commission will also be calculated on the purchase price of this property and these rights.

Article 17: Costs

1. Unless agreed otherwise, if a Contract for intermediary services is concluded the Client will reimburse the costs incurred by the Independent Intermediary for the Client. As regards the incurring of these costs and the extent of these costs the Independent Intermediary must consult with the Client in advance and lay down relevant arrangements and/or estimates in writing or electronically. This will also apply if the Contract is suspended or terminated because it is withdrawn or otherwise.

2. The Client will never be liable to pay compensation because of a withdrawal. However, the Independent Intermediary will be entitled to reimbursement of costs already incurred as referred to in the previous paragraph and, if and insofar as agreed when the Contract was given, to a percentage of the fee.

Article 18: Applicable Law, Competent Court and Other

1. All Contracts, agreements and services of the Independent Intermediary will be governed exclusively by Curaçao law.
2. Disputes arising from or in connection with any Contract, agreement or service of the Independent Intermediary, including disputes only considered as such by one of the parties, will be exclusively submitted to the Court of First Instance of Curaçao, unless the parties have agreed on another form of dispute settlement.
3. If any provision of the present General Terms and Conditions proves to be void or invalid or must be excluded, the remainder of these General Terms and Conditions will remain in full force. The parties will mutually agree on a replacement provision which is binding and matches the void, invalid or excluded provision as closely as possible.

Article 19: Liability

1. In case the Independent Intermediary is liable, its liability will at all times be limited as provided for in this article.
2. The Independent Intermediary will not be liable for any losses whatsoever arising from the Independent Intermediary using incorrect and/or incomplete information furnished to the Independent Intermediary by or on behalf of the Client.
3. If the Independent Intermediary is liable for any losses, then the liability of the Independent Intermediary will at all times be limited to a maximum of the amount of the commission on the sale price stated in the listing agreement.
4. In any case the liability of the Independent Intermediary will at all times be limited to the amount its insurance company pays out on the claim.
5. The Independent Intermediary can only be held liable for direct losses.
Direct losses are limited to: (1) the reasonable costs for establishing the cause and extent of the losses, insofar as this relates to the losses within the meaning of these General Terms and Conditions, (2) any reasonable costs incurred to ensure that the defective (insufficient or inadequate) performance of the Independent Intermediary complies with the agreement, insofar as these costs can be attributed to Independent Intermediary and are reasonable, and (3) reasonable costs incurred to avoid or limit losses, insofar as the Client demonstrates that these costs have led to a limitation of the direct losses.
6. The Independent Intermediary can never be held liable for indirect losses, including but not limited to: consequential loss, loss of profits, lost savings and loss due to business interruption.
7. If the Independent Intermediary at the request or with the consent of the Client uses items of the Client and these items are damaged, then the Independent Intermediary will not be liable for this damage.
8. The Client will compensate the Independent Intermediary for all losses and costs caused by the Client or by any third party designated by the Client.

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