

Term Sheet

Regarding the proposed investment in [Start-up B.V.] (the “Company”)

This Term Sheet explains the main terms in the proposed investment in the Company. All sections of this Term Sheet are non-binding with the exception of the section “Binding conditions”. No legally binding obligations or rights are obtained until signing of the Shareholders Agreement (SHA).

Explanation: the term sheet is ‘non-binding’ i.e. not a binding legal agreement to execute the investment: all parties can cancel this agreement at any time and are not bound to the its conditions, except for the conditions described in the “Binding conditions” section (related costs, exclusivity and confidentiality of the transaction and applicable law of the agreement).

Investment

Arches Capital (Cooperative Arches Capital U.A.) is looking to invest € [●] in an equity deal with a post-money valuation of € [●] according to the capitalization table found in (attached) Schedule 1.

Explanation: the section above makes clear what Arches Capital is looking to invest. We only do equity deals, no convertibles, so that is explicitly stated. The post-money valuation is the pre-money valuation plus the investment amount. If the investment amount still varies we will present a pre-money valuation. In order to be crystal clear we describe the before and after situation in a capitalization table depicting the (economic) shareholder structure on a fully diluted basis.

Arches Capital rights

In return for the significant minority share interest Arches Capital expects to have the following rights attached to its shares:

1. **One-Tier Board:** the Company will establish an informal one-tier board. [Founder A], [Founder B] and [Arches Capital Lead investor] will reside on the board.

Explanation: the one-tier board is our preferred board structure. There are three common structures in the Netherlands for governance of entities: The first structure is the Board of Directors (Dutch: “Raad van Commissarissen” or “RvC”). This structure works well for large corporations, where there is a distance between the board and management. The structure is also defined in the Dutch Commercial Code. The second structure is an Advisory Board. Although it allows advisors to be close to the startup, it lacks the legal and formal framework in the Dutch Commercial Code, which can lead to unclear actions, responsibilities and (unexpected) liabilities of advisors for the company. That is why we prefer the third structure: the One-Tier Board. The one-tier board is clearly described in the Dutch Commercial Code, allows for close, valuable and efficient collaboration between the company and Arches Capital’s lead investor.

2. **Shareholders Agreement (SHA):** The shareholders agreement will contain standard venture capital clauses that needs to be signed by all shareholders, including, but not limited to:
 - The right of Arches Capital to participate for twice the pro-rata share in following financing rounds of the Company.

Explanation: we would like to participate in following rounds for (at least) twice the pro-rata share to not dilute our share and beyond this to provide confidence in the growth of the company by looking to do (rule of thumb: at least half of) the next financing round.

- A one-time (1x) non-participating liquidation preference.

*Explanation: this liquidation preference provides a 'down-side protection' for Arches Capital. In case of an exit (sale or liquidation), Arches Capital may chose to call its liquidation preference and receive from the proceeds of the event up to (max) 1x the initial investment before distributions to other shareholders are made. Any remainder of the proceeds is then divided amongst the other shareholders (not Arches Capital). If the liquidation preference is not called by Arches Capital all shareholders will receive their pro-rata share of the proceeds. Arches Capital choses **not** to use a 'participating preference' in which it would always first receive a multiple (commonly see are 1x-4x) of the initial investment before the remainder of the proceeds is distributed pro-rata to all shareholders (including Arches Capital), since we consider that too strict und unfair.*

- 'Broad-based weighted average' anti-dilution rights in case of a future down-round.

Explanation: anti-dilution provisions in venture capital transactions are protective clauses that prevent investors from unfairly losing ownership in case of down-rounds. There are two options in anti-dilution provisions: 'weighted average' (with two flavors: 'broad-based' and 'narrow-based') or 'full ratchet'. The latte, the least favorite for the entrepreneur, has become uncommon in venture capital. Broad-based weighted average is our preferred option because it is most entrepreneur-friendly provision and most commonly used.. For more information please read: <http://www.calstartuplawfirm.com/business-lawyer-blog/anti-dilution-provisions.php>.

- Tag along and drag along rights.

Explanation: these rights guarantee that other shareholders can 'tag along' or be 'dragged along' with a partial or whole sale of the company – important for companies to not let minority shareholders obstruct or blow up a good deal. Tag along rights can be viewed as co-sale rights. When one party sells X percentage of their shares for a certain price, the other party is also entitled to sell X percentage for the same price. Drag along rights are used to force a minority investor to accept a third party offer.

- Good leaver / Bad leaver including reverse-vesting for founders and key personnel.

Explanation: this mandatory clause for startup founders and key personnel is to safeguard continuity of the company, while still describing ways for founders (or key team members) to leave the company for any reason. This provision is one every well-organized company should and would have amongst their founders. The good leaver / bad leaver provision defines, when a founder leaves the company, what will happen to his shareholdings. As the severity of a leave will diminish over time, the clause has a 'reverse-vesting', meaning that a smaller amount is (mandated to be) transferable upon leaving.

- Approval from Arches Capital and/or Qualified Majority for certain decisions, including, but not limited to:
 - a. changes to rights attached to Arches Capital shares;
 - b. budget;
 - c. expenditure thresholds;
 - d. key personnel.

Explanation: we seek minority shareholdings (leaving a majority stake with the founder or key team members as long as practically possible) in companies and therefore we require some extra mandate on decisions concerning the company and our stake. Basically these come down to 4 points. The first is budget: if the budget is approved by the board, the entrepreneurs can execute their plans. Second, if any significant expense is done outside the budget, this will require approval. Thirdly, we would like to be involved and have a vote on key personnel that is hired. Finally, we would like to have approval on changes to our rights both financial and non-financial.

- The right to receive information.

Explanation: Arches Capital will appoint a lead investor (to be installed as board member), who should have access to all relevant information. We expect that the company does some form of monthly closing. On a regular basis Arches Capital will ask and be sent relevant information. We will require the entrepreneurs to provide quarterly updates through a small form and explanation.

- An Employee Stock Option Plan will be created for [X]% of the total equity (fully diluted). Reservations will be made for (future) key employees and non-executive board members e.g. [Arches Capital Lead investor].

Explanation: a percentage of shares coming from the entrepreneurs is set aside for stock options or appreciation rights for (future) key employees and board member(s), including our lead investor. The lead investor will receive an average amount of 1.5% which is vested.

3. **Representations and Warranties:** limited representations and warranties from the current shareholders of the Company will be given.

Explanation: we expect all information to be provided to us to be honest, clear and complete. A disclosure letter will be asked from the entrepreneurs to clarify any issues.

Conditions precedent

Before the investment is executed, agreements are signed and money is transferred, basic due diligence needs to be done on the company and also on you, the founders. Furthermore, we need to agree on the business and financial plan, that will be attached to this Term Sheet and further documentation for investment. Other prerequisites and topics that need to be discussed, confirmed and agreed upon for closing:

1. There are no (expected) material changes in market conditions.
2. Approval is given by the Investment Committee of Arches Capital.
3. Company and Arches Capital have agreement on Shareholders Agreement (SHA) and Investment Agreement (IA)
4. No debts other than the EUR debt to at terms documented in the attachment and with the exception of accounts payable in the ordinary course of business.
5. All IP related to the Company will be owned by (and if necessary, transferred to) the Company prior to closing.
6. Management agreements of founders and key personnel must contain clauses on IP transfer, non-solicitation and non-compete; unless agreed otherwise the founders will be fully dedicated to the Company only and allocate substantially of their time to the Company.

Timeline

We expect that within 4 weeks after signing this Term Sheet, we will share the results of the limited due diligence conducted and draft documents for the shareholders agreement, articles of association and other related documents.

We strive to close this transaction before [●].

Binding conditions

Costs

All reasonable third-party fees and expenses made by Arches Capital in the finalization of the Transaction will be borne by and invoiced directly to the Company:

- If the transaction does not materialize: a maximum of EUR 5.000.
- If the transaction does materialize: a maximum of EUR 15.000.

Explanation: to commit to the transaction we will need to perform due diligence on a number of areas (legal, technology, market/commercial and financial), the outcomes of which will strengthen the business plan and improve its success. Although done right, it is our goal to limit the cost of these activities to a minimum, by keeping a standard closing process (as you are experiencing by reading this document). We can provide a reliable break-down for expected costs for due diligence and closing. We do not expect the total amount, which includes due diligences, drafting, signing and notarize deeds for closing, to be higher than EUR 15.000. Anything above that number will be our cost.

We however do not want entrepreneurs to be able to walk away from their commitment without any consequences. Therefore the Company will bear a maximum of EUR 5.000 for costs already incurred, when the deal does not materialize. Of course the amount is based on actual costs made.

Any additional or non-standard work that has to be executed or contracted in favour of the company or other shareholders (such as setting up new holding companies, conversion of loans or shares, merging or splitting companies, advisory services), which may be prerequisite but not directly related to Arches Capital's acquisition of shares, will be contracted by the Company itself, treated separately and do not form part of the above mentioned due diligence and closing costs.

Neither the Company nor any person or entity acting on behalf of the Company has agreed to pay a commission, finder's fee or similar payment in connection with the Transaction or any matter related hereto to any person or entity.

Exclusivity

Arches Capital and Company are bound to an exclusivity period. The exclusivity period for this Term Sheet will last from the Company's signing date (see signature page) until the [●]. During this period, the Company will not seek other investment opportunities, refrain from meetings or entering negotiations with other investors, or share any documents (legal, financial, business, or otherwise) about the Company, Arches Capital or this current investment opportunity, without the explicit prior consent of Arches Capital.

If the Company receives any offers, solicitations, information requests, or otherwise, Arches Capital will be informed immediately and Company will forward any materials (such as emails, letters, or documents).

Confidentiality

This Term Sheet and the negotiation process with Arches Capital are confidential and may not be disclosed to any third party, without explicit prior consent from Arches Capital. An exception is made for the existing shareholders and the Company's directors, senior executive officers, advisors and legal counsel: in this case Arches Capital will be informed of the disclosure and these third parties will be informed and bound by the Company to full confidentiality and embargo.

No angel investors (members) of Arches Capital are to be contacted directly by the Company.

The confidentiality period will last for two years after date of signing by the Company.

Applicable Law

This Term Sheet is governed by Dutch law.

If you agree with this Term Sheet, please confirm by signing before [●]. If you do not sign this Term Sheet before that date, this offer is withdrawn, and the Term Sheet will be invalid.

Confirmed and agreed on behalf of the Company and its shareholders

Date: _____

Date: _____

Company

Arches Capital

Signature

Signature

Full Name

Full Name

Title

Title

Schedule 1: Capitalization Table
Schedule 2: Budget and Business Plan