

## **1. Agreement, Quotation and Confirmation**

### **1.1**

These general terms and conditions (hereinafter: *General Terms and Conditions*) apply to all quotations and to the formation, content and performance of all agreements entered into between the client and the contractor (hereinafter: *the Designer*). Deviations from these General Terms and Conditions shall only be valid if expressly agreed in writing between the client and the Designer.

### **1.2**

All quotations are without obligation and are valid for a period of two (2) months. Price quotations may be subject to change due to unforeseen changes in the scope of work. All prices are exclusive of VAT. Quoted rates and offers do not automatically apply to future assignments. The client guarantees the accuracy and completeness of the information and data provided to the Designer, or on the client's behalf, on which the Designer bases the quotation.

### **1.3**

Assignments shall be confirmed in writing by the client. If the client fails to do so but nevertheless agrees that the Designer commences the execution of the assignment, the contents of the quotation shall be deemed agreed and these General Terms and Conditions shall apply. Any additional oral agreements or arrangements shall only bind the Designer after they have been confirmed in writing by the Designer.

## **2. Performance of the Agreement**

### **2.1**

The Designer shall use reasonable skill and care to perform the assignment independently, to safeguard the interests of the client to the best of his/her ability, and to strive for a result that is usable for the client, as may be expected of a reasonably competent and professional designer. Where necessary, the Designer shall keep the client informed of the progress of the work.

### **2.2**

The client shall do everything that is reasonably necessary or desirable to enable timely and proper performance by the Designer, including the timely provision of complete, sound and clear information or materials, which the Designer has indicated, or which the client reasonably should understand, to be necessary for the performance of the agreement.

### **2.3**

Any term specified by the Designer for the completion of the assignment shall be indicative only, unless expressly agreed otherwise in writing.

## **2.4**

Unless otherwise agreed, the assignment of the Designer does not include:

- a. conducting tests, applying for permits, or assessing whether instructions from the client comply with legal or quality standards;
- b. investigating the existence of rights, including patent rights, trademark rights, design rights, copyrights or portrait rights of third parties;
- c. investigating the possibilities of protection as referred to under subparagraph b for the client.

## **2.5**

Before proceeding to execution, production, reproduction or publication, the parties shall be given the opportunity to inspect and approve the final models, prototypes or proofs of the result.

## **2.6**

Deviations in the (final) result compared to what has been agreed shall not constitute grounds for rejection, price reduction, compensation or termination of the agreement, provided that such deviations, taking all circumstances into account, are of minor significance.

## **2.7**

Complaints shall be submitted to the Designer in writing as soon as possible, but in any event within ten (10) working days after completion of the assignment, failing which the client shall be deemed to have fully accepted the result of the assignment.

# **3. Engagement of Third Parties**

## **3.1**

Unless otherwise agreed, assignments to third parties in the context of the execution of the assignment shall be issued by or on behalf of the client. At the request of the client, the Designer may act as an authorised agent at the client's expense and risk. The parties may agree on a separate fee for this purpose.

## **3.2**

If the Designer, at the request of the client, prepares a cost estimate for third-party services, such estimate shall be indicative only. If desired, the Designer may request quotations from third parties on behalf of the client.

## **3.3**

If, by express agreement, the Designer procures goods or services from third parties at his/her own expense and risk for the purpose of executing the assignment and subsequently passes these on to the client, the provisions of the general terms and conditions of and/or separate agreements with the supplier regarding warranty and liability shall also apply vis-à-vis the client.

## **3.4**

Where the Designer, whether or not in the name of the client, issues assignments or instructions

to production companies or other third parties, the client shall, at the request of the Designer, confirm in writing the approval referred to in Article 2.5 of these General Terms and Conditions.

### **3.5**

The client shall not engage third parties without prior consultation with the Designer if this may affect the execution of the assignment as agreed with the Designer. In such cases, the parties shall consult on which other contractors will be engaged and which activities will be assigned to them.

### **3.6**

The Designer shall not be liable for errors or defects in products or services supplied by third parties engaged by or on behalf of the client, regardless of whether such parties were introduced by the Designer. The client shall address such parties directly. The Designer may provide assistance if requested.

## **4. Intellectual Property Rights and Ownership**

### **4.1**

All intellectual property rights arising from the assignment — including patent rights, trademark rights, design rights and copyrights — in the results of the assignment shall vest in the Designer. To the extent that such rights can only be obtained through registration or filing, only the Designer shall be authorised to do so, unless otherwise agreed.

### **4.2**

The parties may agree that the rights referred to in the preceding paragraph are transferred in whole or in part to the client. Such transfer and any conditions thereto shall always be laid down in writing. Until such transfer has taken place, a right of use shall be granted in accordance with Article 5 of these General Terms and Conditions.

### **4.3**

The Designer shall at all times have the right to have his/her name mentioned or removed on, with or in publicity surrounding the result of the assignment — in the customary manner for that result. The client is not permitted to make the result public or reproduce it without mentioning the Designer's name, unless prior permission has been obtained from the Designer.

### **4.4**

Unless otherwise agreed, all (originals of) results produced by the Designer in the context of the assignment (such as designs, sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, models, moulds, (partial) products, films, (audio and video) presentations, source codes and other materials or (electronic) files) shall remain the property of the Designer, regardless of whether these have been made available to the client or third parties.

#### **4.5**

After completion of the assignment, neither the client nor the Designer shall have any obligation towards each other to retain materials or data used, unless otherwise agreed.

### **5. Use of the Result**

#### **5.1**

Once the client has fully complied with all obligations under the agreement with the Designer, the client shall acquire the right to use the result of the assignment in accordance with the agreed purpose. If no agreements have been made regarding the purpose, the right of use shall be limited to the use for which the assignment was evidently commissioned. The right of use shall be exclusive, unless otherwise arising from the nature of the agreement or expressly agreed otherwise.

#### **5.2**

If the result also relates to works to which third-party rights apply, the parties shall make additional arrangements regarding the use of such works.

#### **5.3**

Without the Designer's prior written consent, the client shall not be entitled to modify the result of the assignment, to use or re-use it in a broader or different manner than agreed, or to have this done by third parties. The Designer may attach conditions to such consent, including the payment of reasonable compensation.

#### **5.4**

In the event of unauthorised broader or other use, including modification, distortion or impairment of the preliminary or final result, the Designer shall be entitled to compensation for infringement of his/her rights of at least three (3) times the agreed fee, or such compensation as is reasonable and equitable in relation to the infringement, without prejudice to any other rights.

#### **5.5**

The client shall no longer be permitted to use the results made available, and any right of use granted in the context of the assignment shall lapse, unless such consequences would be contrary to principles of reasonableness and fairness:

- a. from the moment the client fails to fulfil its (payment) obligations under the agreement, in whole or in part, or is otherwise in default;
- b. if the assignment is terminated prematurely for reasons referred to in Article 8.1 of these General Terms and Conditions;
- c. in the event of the client's bankruptcy, unless the relevant rights have been transferred to the client in accordance with Article 4.2.

#### **5.6**

With due regard for the interests of the client, the Designer shall be free to use the results for

his/her own publicity, acquisition of assignments and promotion, including competitions and exhibitions, and to lend them where physical results are concerned.

## **6. Fees and Costs**

### **6.1**

The Designer shall be entitled to a fee for the execution of the assignment. This may consist of an hourly rate, a consultancy fee, a fixed fee, whether or not related to the project value, or any other remuneration agreed between the parties.

### **6.2**

In addition to the agreed fee, the costs incurred by the Designer in connection with the execution of the assignment — such as office overheads, travel and accommodation expenses, costs for prints, copies, proofs, prototypes, and costs of third parties for advice, production and supervision — shall also be reimbursed. Such costs shall be specified in advance as much as possible, unless a surcharge percentage has been agreed.

### **6.3**

If the Designer is required to perform additional or different work due to the client's failure to provide complete, sound and clear information/materials in a timely manner, due to a changed or incorrect assignment or briefing, or due to external circumstances, such work shall be charged separately at the Designer's customary rates. The Designer shall inform the client thereof in advance, unless circumstances make this impossible or the nature of the work does not permit delay.

### **6.4**

If the execution of the assignment is delayed or interrupted due to circumstances not attributable to the Designer, the client shall be obliged to compensate any resulting costs. The Designer shall make reasonable efforts to limit such costs.

## **7. Payment and Suspension**

### **7.1**

All payments shall be made without deduction, set-off or suspension, within thirty (30) days of the invoice date, unless otherwise agreed in writing or stated on the invoice.

### **7.2**

All items delivered to the client shall remain the property of the Designer until all amounts owed by the client to the Designer under the agreement have been paid in full.

### **7.3**

If the client is in default of full or partial payment, the client shall owe statutory interest and extrajudicial collection costs, amounting to at least ten percent (10%) of the invoice amount, with a minimum of EUR 150 (excluding VAT).

### **7.4**

The Designer shall ensure timely invoicing. In consultation with the client, the Designer may invoice the agreed fee and costs as an advance, interim or periodic payment.

### **7.5**

The Designer may suspend the execution of the assignment if, after expiry of the payment term and following a written demand granting an additional fourteen (14) days for payment, the client fails to pay, or if the Designer must reasonably understand from a statement or conduct of the client that payment will not be made.

## **8. Termination and Dissolution of the Agreement**

### **8.1**

If the client terminates the agreement without there being attributable failure on the part of the Designer, or if the Designer dissolves the agreement due to attributable failure by the client, the client shall owe compensation in addition to the fee and costs incurred for the work performed up to that point. Conduct by the client as a result of which the Designer can no longer reasonably be expected to complete the assignment shall also be regarded as attributable failure.

### **8.2**

The compensation referred to in the preceding paragraph shall include at least the costs arising from obligations entered into by the Designer in his/her own name with third parties for the execution of the assignment, as well as at least thirty percent (30%) of the remaining part of the fee that would have been payable upon full performance of the assignment.

### **8.3**

Both the Designer and the client shall be entitled to dissolve the agreement in whole or in part with immediate effect, and all amounts due shall become immediately payable, if an application for bankruptcy, (provisional) suspension of payments or debt restructuring is filed with respect to the other party.

### **8.4**

Where the Designer's activities consist of repeatedly performing similar work, this shall constitute a continuing performance agreement, unless otherwise agreed in writing. Such agreement may only be terminated by written notice observing a reasonable notice period of at least three (3) months, during which the client shall continue to purchase the customary volume of work from the Designer or compensate financially.

## **9. Warranties and Indemnities**

### **9.1**

The Designer warrants that the delivered work has been designed by or on behalf of him/her and that, where copyright subsists in the result, he/she qualifies as the author within the meaning of the Dutch Copyright Act and is entitled to dispose of the copyright. The Designer further warrants that, to the best of his/her knowledge or what he/she reasonably ought to know at the time of creation, the result does not infringe any third-party rights or otherwise constitute unlawful conduct.

### **9.2**

If the client uses the results of the assignment, the client shall indemnify the Designer and any third parties engaged by the Designer against all claims by third parties arising from the application or use of the result. This shall not prejudice the Designer's liability towards the client for breach of the warranties referred to above or any other liability as set out in Article 10.

### **9.3**

The client shall indemnify the Designer against claims relating to intellectual property rights in all materials and/or data supplied by the client and used in the execution of the assignment.

## **10. Liability**

### **10.1**

In the event of an attributable failure, the Designer must first be given written notice of default, allowing a reasonable period to fulfil his/her obligations, remedy errors, or limit or eliminate damage.

### **10.2**

The Designer shall only be liable to the client for direct damage attributable to the Designer. Liability for indirect damage, including consequential damage, loss of profit, missed savings, corrupted or lost data or materials, or damage due to business interruption, is excluded.

### **10.3**

Except in cases of intent or deliberate recklessness, the Designer's liability shall be limited to the fee payable for the assignment, or that part of the assignment to which the liability relates, with a maximum of EUR 75,000, and in any event limited to the amount paid out by the Designer's insurer. Any amount for which the client is insured shall be deducted from the Designer's liability.

#### **10.4**

Any liability shall lapse two (2) years after the assignment has ended through completion, termination or dissolution.

### **11. Miscellaneous Provisions**

#### **11.1**

If the client intends to assign the same assignment simultaneously to others or has previously assigned it to another party, the client shall inform the Designer thereof, stating the names of such parties.

#### **11.2**

The client shall not be entitled to transfer any right under an agreement with the Designer to third parties, except in the case of a transfer of the entire business or with the Designer's prior written consent.

#### **11.3**

The parties shall maintain confidentiality with respect to all confidential information, facts and circumstances that come to their knowledge in the context of the assignment, whether originating from the other party or from another source, and of which it may reasonably be understood that disclosure could cause harm. Third parties involved in the execution of the assignment shall be bound to the same obligation of confidentiality.

#### **11.4**

If any provision of these General Terms and Conditions is null and void or annulled, the remaining provisions shall remain in full force and effect. In such case, the parties shall consult to agree on new provisions replacing the invalid or annulled provisions, observing as far as possible the purpose and intent of the original provisions.

#### **11.5**

Headings in these General Terms and Conditions are included for convenience only and do not form part of these General Terms and Conditions.

#### **11.6**

Dutch law shall apply to the agreement between the Designer and the client. The parties shall first attempt to resolve any dispute by mutual consultation. Unless arbitration has been expressly agreed in writing, disputes shall be submitted, at the option of the Designer, to the court having jurisdiction under the law or to the court in the district where the Designer is established.