

1 Definitions

- 1.1 The term 'Client' is understood to mean: the person or business that gives the Assignment for the Activities.
- 1.2 The term 'Contractor' is understood to mean: the person or business that accepts the Assignment.
- 1.3 The term 'Parties' is understood to mean: the Client and the Contractor jointly.
- 1.4 The term 'Assignment' is understood to mean: the request by the Client to the Contractor to perform the Activities in exchange for payment.
- 1.5 The term 'Activities' is understood to mean: everything that the Contractor produces and/or undertakes or arranges for the production and/or undertaking of for the Client within the context of the Assignment(s) given by the Client with a view to the latter's communication needs.
- 1.6 The term 'Quote(s)' is understood to mean: the description of the Activities and the budget for the costs connected with those Activities.

2 Terms and Conditions

- 2.1 These terms and conditions apply to all Quotes by the Contractor and to all agreements concluded between the Parties.
- 2.2 Any provisions that deviate from these standard terms and conditions, including those which are incorporated in the standard terms and conditions or purchasing terms and conditions used by the Client or by any hired third parties, are not binding on the Contractor unless agreed otherwise in writing.

3 Quotes

- 3.1 All Quotes by the Contractor are free of obligation, unless explicitly agreed otherwise in writing.
- 3.2 Upon request, the Contractor will give a written description or further specification of the Activities prior to their commencement.
- 3.3 If the Contractor's Activities commence without first having been specified in writing, the content of the Quote together with the content of the present standard terms and conditions will determine the content of the Assignment. The Contractor will keep the Client informed of the amount of the costs incurred and will notify the Client if there is any danger of the quoted sum being exceeded.
- 3.4 Sums stated in a Quote will not be treated as having been exceeded if this happens as a result of the sales conditions of suppliers and other hired third parties, even if the aforesaid conditions have not been included separately in a Quote. The Client will be deemed to be familiar with any such aforesaid sales conditions, which will be deemed to form an integral part of the present terms and conditions from the outset. In the event of any inconsistency between such sales conditions and the present terms and conditions, the present terms and conditions will prevail.

4 Prices, Deliveries and Payments

- 4.1 All prices charged by the Contractor are exclusive of VAT and any dispatch, transportation and postage costs.
- 4.2 The Contractor is entitled to pass on to the Client any price changes that occur after the Quote is prepared.
- 4.3 All payments shall be made into a bank account designated by the Contractor.

5 Assignments and Changes

- 5.1 An Assignment will be deemed to have been accepted by the Contractor and given by the Client either by means of a written confirmation of the Assignment to the Client or by means of the Contractor commencing with the performance of the Activities.
- 5.2 Changes to the Assignment shall be notified to the Contractor by the Client in writing in a timely fashion. If the Client fails to do so, any incorrect performance of the changes will be for the Client's account and risk.
- 5.3 Changes to the Assignment will take effect by means of – and from the moment of – acceptance of the changes by the Contractor. Such acceptance may be evident from, for example, the implementation of the desired changes.
- 5.4 Any increase or reduction in costs resulting from changes in the Assignment will be for the account or benefit of the Client.
- 5.5 Changes to the Assignment may lead to failure to adhere to the periods originally indicated by the Contractor.
- 5.6 If for any reason whatsoever the Client decides to cancel an Assignment that has been given and/or to decline further performance thereof before its completion, the Client will be obliged to reimburse the Contractor for all costs already reasonably incurred by the Contractor, including hours already worked and all costs due by the Contractor to third parties as a result, as well as loss of profit on the Contractor's part, all of this without prejudice to the Contractor's other rights according to law.

6 Relationship Management

- 6.1 The Contractor will produce a contact report of all contact with the Client, unless explicitly agreed otherwise in writing.
- 6.2 In the case of contact by telephone, a contact report will be produced only if the Contractor believes that the content of the conversation gives cause to do so.
- 6.3 If the Client does not reply without delay after receiving a contact report then the content of the report will be deemed to be full and accurate and the Parties will be bound by it, unless the schedule for the Assignment permits adherence to a waiting period of one working day and unqualified approval can only be expected to be granted thereafter.
- 6.4 If Activities must be performed by the Contractor within a period of four days after contact has taken place between the Parties, the Contractor will request prior written approval from the Client by fax or email.
- 6.5 The Contractor will send the contact reports to a person designated on the Client's behalf.

7 Hiring of Third Parties

- 7.1 If the hiring of third parties takes place at the request of the Client or in the opinion of the Contractor would be useful or is essential for the performance of an Assignment, or where implied by the nature of the Assignment, the Contractor will be entitled to give Assignments to third parties on behalf of and for the account of the Client. The hired third party shall then be paid directly by the Client.
- 7.2 If the Contractor hires third parties in its own name during the performance of the Assignment, the costs of the goods and/or services supplied by the third party will be charged to the Client, possibly supplemented by an agreed agency mark-up.

7.3 If and insofar as conditions used by a third party apply and/or this third party is bound by conditions or regulations that apply to the legal relationship between that third party and the Contractor, the conditions and/or regulations in question will also apply in the legal relationship between the Parties. Notwithstanding the foregoing, the present standard terms and conditions will otherwise remain fully applicable to the legal relationship between the Parties.

8 Payment

- 8.1 Payment shall be made within thirty days after the invoice date unless explicitly agreed otherwise in writing.
- 8.2 The Client will be in default immediately upon failing to comply with its payment obligation in a timely fashion, without a prior demand for payment or notice of default being necessary. As of the time of default the Client will be required to pay interest on the principal sum at the statutory commercial interest rate plus 2%.
- 8.3 The Contractor is entitled at any time to charge particular costs to the Client by means of partial and/or advance invoices, which must be paid before the Contractor commences or continues its Activities, or to stipulate that such costs will be charged directly to the Client. Such costs shall in any case include the costs of production, exposure and distribution activities.
- 8.4 Irrespective of the payment conditions that have been agreed, the Contractor may require security from the Client for payment.
- 8.5 All costs, including but not limited to legal costs, court costs and out-of-court costs incurred by the Contractor in connection with collecting sums due, will be for the account of the Client. The out-of-court costs will be at least 10% of the sum due, subject to a minimum of €250 (excluding VAT).

9 Suspension, Termination and Dissolution

- 9.1 The Contractor is entitled to suspend or to halt the performance of the Assignment if the Client does not comply with the payment conditions and/or fails to provide the requested security.
- 9.2 The Contractor will be entitled to end the agreement(s) between the Parties without judicial intervention, by means of dissolution or by giving notice of termination, if the Client does not comply with its contractual obligations or do so in a timely or proper fashion. The Client will then be obliged to reimburse the Contractor for the costs incurred up until then, any advance payments made and the fee due at that time, without prejudice to the Contractor's entitlement to compensation. The losses to be compensated by the Client will include the loss of revenue from the agreement. The provisions of article 16 paragraphs 4 and 5 will be taken as guidelines in calculating the loss of revenue from the agreement.
- 9.3 In the event of the agreement being ended, by dissolution or by notice of termination, on account of an attributable breach on the part of the Contractor, there will be no reversal of that which the Contractor has already supplied and/or performed. The sums due at the time of dissolution will be payable immediately and cannot be set off against any sum that the Contractor may owe to the Client.
- 9.4 A Party will be entitled to dissolve the agreement(s) in part or in full in the event of the other Party's bankruptcy or suspension of payments, as well as in the event of the other Party's business ceasing its operations or being liquidated.

10 Delivery Periods

- 10.1 Periods specified by the Contractor are of an indicative nature only and not strict deadlines, unless explicitly agreed otherwise in writing. A failure to adhere to such a period will not relieve the Client of its obligations to the Contractor.
- 10.2 In the event of failure to adhere to any period the Client shall give written notice of default to the Contractor.

11 Duty of Care

- 11.1 The Contractor will perform the Activities with due care taking into account the interests of the Client.
- 11.2 The Contractor will inform the Client if any possible conflicts arise, for instance with regard to provisions of the law, regulations and self-regulatory codes, as well as intellectual property rights and other rights of third parties. Any such warnings will not detract from the fact that the Client is liable for the use of the results of the Activities.
- 11.3 The Parties have a mutual duty of confidentiality regarding the data and information made available by them, the Activities and the Work (including ideas, advice, concepts and other proposals originating from the Contractor) insofar as they are by their nature confidential and/or are deemed to be protected by any intellectual property rights. This shall apply except to the extent provided otherwise by these terms and conditions and/or agreed otherwise by the Parties in writing.

12 Complaints and Evidence

- 12.1 Complaints of any nature whatsoever regarding the fulfilment of any obligation under the agreement concluded between the Parties shall be notified by the Client to the Contractor in writing – described clearly and properly reasoned – as quickly as possible and in all cases within 10 (ten) working days after receipt of the invoice or partial invoice, after termination of the Assignment or partial Assignment or after discovery. Failure to do so will cause any claims to lapse.
- 12.2 Following the expiry of the periods specified above, complaints will no longer be accepted for consideration and the Client will have forfeited its rights, unless the period is unreasonably onerous in the case in question.
- 12.3 Notwithstanding evidence to the contrary, the data in the records of the Contractor will be decisive.
- 12.4 Any complaints regarding the Contractor's invoices will not suspend the Client's payment obligations.

13 Exoneration

- 13.1 The Contractor is not liable for errors and/or breaches in the performance of the Assignment that are caused by the behaviour and actions of the Client and/or of third parties hired by or on behalf of the Client, including but not limited to the following cases:
- failure to supply material, accurate data or information or to do so in a timely manner;
 - shortcomings in designs that were approved by the Client prior to the completion of the Assignment or for which the Client failed (when asked) to give approval prior to the completion of the Assignment;
 - the transportation of works and/or goods;
 - failures in respect of obligations/payment obligations, including failure to pay sums due to third parties on time and/or in full;
 - errors in and/or errors made upon the placing of advertisements, printed materials or other media.



- 13.2 All claims based on the Contractor's liability will expire after a period of 12 months following the ending of the Activities or completion of the Assignment. The Contractor is never liable for any indirect loss, except in cases of intent and/or gross negligence. Indirect loss includes amongst other things consequential loss, loss of profit, missed opportunities to make savings, and losses due to business stoppages.
- 13.3 The Contractor's liability will never exceed the amount charged by the Contractor to the Client for the Activities performed by the Contractor minus out-of-pocket expenses, costs paid/paid in advance and sums to pay hired third parties or otherwise. If the Contractor has relevant insurance, its liability will be limited to a maximum of the sum paid out by the insurer in the case in question.

14 Force Majeure

- 14.1 In the event that the Contractor is obstructed by force majeure from performing the agreed Activities in a full and/or timely fashion, the Contractor will at its own discretion be entitled either to suspend the performance of the agreement in question or to fully or partially dissolve the agreement by means of a written declaration without being obliged to pay compensation or being bound by any guarantee.
- 14.2 Force majeure includes but is not limited to: strikes, fire, mechanical breakdowns and other disruptions to business, transport disruption and other events beyond the control of the Contractor or its suppliers, as well as any sudden increase in import levies, duties and/or taxes, a delay in deliveries from suppliers or their failure to deliver, permits not being granted and any other government measures.

15 Intellectual Property, Licence and Use

- 15.1 If and insofar as any materials etc are made available to the Contractor by the Client for the purpose of the performance of an Assignment, the Client guarantees that they are not subject to the property rights, intellectual property rights or other rights of third parties or that the Client has obtained permission from those third parties for the use of those materials etc, including use by the Contractor. The Client also guarantees that the use of those materials etc does not infringe any laws, regulations, rules and/or directives.
- 15.2 The intellectual property rights to the works developed by the Contractor during the performance of the Assignment for the Client will vest in the Contractor. To acquire and enforce its legal status the Contractor will be entitled to establish any intellectual property rights or associated rights.
- 15.3 After any transfer of rights within the meaning of the previous paragraph the Contractor will remain entitled – with due observance of the rights of third parties – to use the results of the Assignment for submissions to competitive festivals, for courses, for museum-related or editorial purposes, for commercial/non-commercial internal use and for self promotion/historical self-promotion. The Contractor's entitlement will also apply to the Client and to others who have made an essential creative or technical contribution.
- 15.4 If and insofar as the Client complies with all of its contractual obligations, the Contractor grants the Client an exclusive licence to use the work and/or that which is supplied in accordance with the purpose agreed, and for the period, territory and media agreed by the Parties. If the Parties have made no further agreement, the licence will be limited to the first use of the work.

- 15.5 The Client is not entitled to alter the work produced under the Assignment without the prior written permission of the Contractor.
- 15.6 If the Client breaches its contractual obligations the Contractor will be entitled to temporarily suspend or terminate the exclusive licence for use of the work as described in article 15.4.
- 15.7 The Parties may at any time agree further terms regarding the transfer or partial transfer of the intellectual property rights to the work produced by the Contractor. This may (where applicable) also include the source codes to software and websites developed for the Client.

16 Nature and Duration of the Agreement

- 16.1 The Contractor will fulfil the Client's communication needs within the framework of the Assignment that is given. In doing so the Contractor will make its best efforts to perform the Activities in accordance with the Client's wishes. Unless explicitly agreed otherwise the Contractor will at all times remain free to perform and organise the Activities in the manner that it sees fit.
- 16.2 Without the Contractor's prior consent the Client will not be entitled to arrange for the agreed Activities to be performed by a third party as well.
- 16.3 The agreement between the Parties is entered into for an indefinite period or for the duration of the Assignment and/or until the Activities are completed, at the choice of the Parties.
- 16.4 If no duration is agreed for the co-operation and that co-operation has lasted for more than six months, a notice period of at least six months shall be observed for termination. Notice of termination shall be given by means of a registered letter. During the notice period the Client will be obliged to comply with its payment and other obligations to the Contractor as if termination had not taken place.
- 16.5 The Contractor's monthly fee during the notice period described in the previous paragraph will be at least one-twelfth of the amount that the Contractor has invoiced to the Client in the preceding continuous period of twelve months. If the period of co-operation has been shorter, the monthly fee will be the average monthly amount invoiced during that period.
- 16.6 The Client is always obliged to notify the Contractor in a timely fashion of any circumstances that may in a financial sense have a substantial negative effect on the Activities (or the volume thereof) to be performed by the Contractor for the Client, including for instance a reduction in the Client's budget for its communication needs. This will give the Contractor the opportunity to act in a timely fashion to overcome the loss or partial loss of agency revenue while the costs associated with that revenue continue to accrue. In the event of the Client's failure to do so the Client will become liable to make a payment to the Contractor in accordance with the provisions of the previous two paragraphs, without prejudice to the Client's obligation to compensate the Contractor for any losses actually incurred.

17 Winding-up of Relationship

- 17.1 All materials including designs, reproductions, text, descriptions, artistic work, source codes and publicity material that is in the custody of the Contractor at the end of the agreement or the Assignment will be made available to the Client by the Contractor free of charge upon the first such request once all sums owed by the Client to the Contractor on any basis whatsoever have been paid.



17.2 The Contractor will retain the materials referred to in the previous paragraph for a maximum period of four weeks after the end of the agreement or Assignment. Within this period the Client shall indicate whether it wishes to receive the aforementioned materials. If the Client wishes the Contractor to retain these materials for a longer period the Parties will agree further terms (financial and otherwise) on this matter. In any other case the Contractor will be free to dispose of the materials in question.

17.3 At the end of the relationship the Contractor will, where applicable, without delay issue an assignment to any media to transfer any remaining unused contracted media space/time to the Client or to a third party designated by the latter.

17.4 If the relationship between the Parties ends for any reason whatsoever, these terms and conditions will continue to govern the legal relationship between the Parties insofar as is necessary for the winding-up of the relationship. Such provisions include, but are not restricted to, those in Article 15.

18 Transfer and Obligations

18.1 Neither of the Parties is entitled fully or partially to transfer to third parties the rights and obligations arising from agreements and Assignments to which these standard terms and conditions apply, except with the prior written permission of the other party.

18.2 If the relevant operations of the Client's business are merged with or continued by another business, for any reason and in any manner or form whatsoever, the original and successor businesses will be jointly and severally liable for compliance with the Client's obligations as referred to in article 18.1.

19 Competent Court/Vienna Sales Convention

19.1 All agreements to which these terms and conditions apply and any agreements resulting therefrom shall be governed exclusively by Dutch law.

19.2 Any disputes arising either from or connected with any agreements concluded under these standard terms and conditions or any agreements resulting therefrom can be submitted only to the competent court in the district in which the Contractor is based.

19.3 Insofar as the agreement(s) concluded between the Parties partly relate to international purchase agreements for items of movable property, the applicability of the Vienna Sales Convention is explicitly excluded.

These terms and conditions have been filed with the Chamber of Commerce and Industry in Amsterdam.

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