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1. Agreement, offer and confirmation

1. These General Terms and Conditions (“General Terms and Conditions”) govern all offers and the preparation, content and performance of all agreements concluded between the client and the contractor (the “Designer”). Deviations from these General Terms and Conditions may be agreed on between the client and the Designer only in writing.
2. All offers are without commitment and are valid for two months. Prices quoted may be subject to change due to unforeseen changes in the work. Prices are exclusive of VAT. The rates and offers quoted do not automatically apply to future commissions. The client warrants that the information provided to the Designer by it or on its behalf and on which the Designer bases the offer is correct and complete.
3. Commissions are confirmed in writing by the client. If the client fails to do so but consents to the Designer commencing the work commissioned, the terms of the offer are deemed to have been agreed on and these General Terms and Conditions apply. Any subsequent oral agreements and stipulations are not binding on the Designer until he has confirmed them in writing.

2. Performance of the agreement

1. The Designer must make every effort to perform the work commissioned carefully and independently, to promote the client’s interests to the best of his or her ability and to aim to achieve a result that is useful to the client, as can and may be expected of a reasonably and professionally acting designer. To the extent necessary the Designer must keep the client informed of the progress of the work.
2. The client must do any and all things that are reasonably necessary or required to enable the Designer to deliver punctually and properly, such as supplying (or causing the supply of) complete, sound and clear data or materials in a timely manner of which the Designer states or of which the client understands or should reasonably understand that they are necessary for the performance of the agreement.
3. Terms stated by the Designer for the performance of the work commissioned are approximations only, unless otherwise agreed in writing.
4. Unless otherwise agreed, the following do not form part of the work commissioned to the Designer:
    a. a. performing tests, applying for permits and assessing whether the client’s instructions comply with statutory or quality standards;
    b. b. investigating any existing rights, including patents, trademarks, drawing or design rights or portrait rights of third parties; and
    c. c. investigating the possibility of the forms of protection referred to in (b) for the Client.

5. Prior to performance, production, reproduction or publication, the parties must give each other the opportunity to check and approve the final draft, prototypes or galley proofs of the result.
6. Differences between the (final) result and the agreements made cannot serve as grounds for rejection, discount, damages or dissolution of the agreement if those differences are reasonably of minor importance, taking all the circumstances into account.
7. Any complaints must be filed with the Designer in writing at the earliest possible time but no later than ten business days after completion of the work commissioned, failing which the client is deemed to have accepted the result of the work commissioned in its entirety.

3. Engagement of third parties

1. Unless otherwise agreed, instructions to third parties in the context of the performance of the work commissioned are given by or on behalf of the client. At the client's request the Designer may act as an agent for the client's account and risk. The parties may agree on a fee for such agency.
2. If the Designer provides an estimate of third-party costs at the client's request, that estimate is an approximation only. If required, the Designer may apply for quotations at third parties on the client's behalf.
3. If the Designer procures goods or services from third parties in the performance of the work commissioned, for the Designer's own account and risk and on the basis of an express agreement, whereby those goods or services are passed on to the client, these general conditions of and/or any separate agreements made with that supplier with regard to warranties and liability also apply to the client.
4. If the Designer gives commissions or instructions to production companies or other third parties in the client's name or otherwise, the client will confirm in writing at the Designer's request the approval referred to in Article 2.5 of these General Terms and Conditions.
5. The client may not engage any third parties without consultation with the Designer if that may influence the performance of the work commissioned as agreed on with the Designer. The Parties will consult, if necessary, as to which other contractors will be engaged and which work will be assigned to them.
6. The Designer is not liable for any errors or defects of products or services of third parties engaged by or on behalf of the client, irrespective of whether they have been introduced by the Designer. The client itself must hold those parties accountable. The Designer may assist in that regard if necessary.

4. Intellectual and other property rights

1. All intellectual property rights arising from the work commissioned – including patents, trademarks, drawing or design rights and copyrights – in respect of the results of the work commissioned are vested in the Designer. Insofar as any of such rights can be

acquired only by means of an application or registration, the Designer will have the sole and exclusive power to effect that application or registration, unless otherwise agreed.

2. The parties may agree that the rights referred to in paragraph 1 are transferred in whole or in part to the client. Such transfer and the conditions, if any, on which the transfer takes place must always be recorded in writing. Until the moment of transfer, a right of use is granted as regulated in Article 5 of these General Terms and Conditions.
3. The Designer is entitled at any time to imprint his name on or in, or to remove it from, the result of the work commissioned (or publicity related thereto) or to have his name imprinted on or in, or removed from, the result of the work commissioned, in a manner that is customary for that result. Without the Designer's prior consent the client may not publish or reproduce the result without identifying the Designer by name.
4. Unless otherwise agreed, the (original) results (such as designs, design sketches, drafts, advice, reports, budgets, estimates, specifications, design drawings, illustrations, photographs, prototypes, scale models, templates, prototypes, products and partial products, films audio and video or other presentations, source codes and other materials or (electronic) data files etc.) made by the Designer as part of the work commissioned remain the Designer's property, irrespective of whether they have been made available to the client or to third parties.
5. On completion of the work commissioned, neither the client nor the Designer will be under any custodian duty in respect of any of the materials and data used, unless otherwise agreed.

5. Use of the result

1. Once the client has fulfilled all his obligations under the agreement with the Designer, he acquires the right to use the result of the work commissioned in accordance with the agreed purpose. If no such specific purpose has been agreed on, the right of use is limited to that use of the design for which the commission was (manifestly) given. The right of use is exclusive, unless otherwise apparent from the nature of the agreement or otherwise agreed.
2. If the result also relates to works that are subject to third-party rights, the parties will make additional agreements on how the use of those works will be regulated.
3. Without the Designer's prior written consent, the client is not entitled to change the result of the work commissioned, or to use or reuse it in a broader or different manner than agreed, or to allow third parties to do so. The Designer may make that consent subject to conditions, including payment of a reasonable fee.
4. In the event of broader or different use on which no agreement was reached, including any modification, mutilation or infringement on the provisional or final result, the Designer is entitled to compensation on the grounds of infringement of his/her rights of at least three times the agreed fee, or a fee that is reasonably proportional to the infringement committed, without losing any other rights.

5. The client is not (or no longer) permitted to use the results made available, and any right of use granted to the client in the context of the work commissioned will lapse, unless the consequences conflict with the rules of reasonableness and fairness:
    a. the moment that the client fails to perform or to fully perform his payment or other obligations under the agreement, or is otherwise in default;
    b. if the work commissioned is terminated prematurely for the reasons referred to in Article 8.1 of these General Terms and Conditions; or
    c. if the client is declared bankrupt, unless the rights in question have been transferred to the client in accordance with Article 4.2 of These General Terms and Conditions.
6. With due observance of the client's interests, the Designer may use the results at his discretion for his own publicity, to secure commissions, for promotional purposes, including competitions and exhibitions, etc., and to obtain them on loan, if physical results are involved.

6. Fees and additional costs

1. The Designer is entitled to a fee for the performance of the work commissioned. That fee may consist of an hourly rate, a consultancy fee, a fixed amount, whether or not related to the project sum, or any other fee agreed on between the parties.
2. In addition to payment of the agreed fee, the Designer is entitled to reimbursement of any costs incurred by him in the performance of the work commissioned, such as administrative overheads, travel and accommodation expenses, costs of prints, copies, (galley) proofs and prototypes, and costs of third parties related to advice, production, supervision, etc. Those costs must be itemised beforehand to the extent possible, unless a mark-up percentage is agreed on.
3. If the Designer is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear information and/or materials, any change or error in instructions or briefings, or any external circumstances, such additional work is charged separately on the basis of the Designer's usual fees. The Designer will then inform the client accordingly beforehand, unless that is impossible due to circumstances or the nature of the work does not allow any delay.
4. If the performance of the work commissioned is delayed or interrupted due to circumstances beyond the Designer's control, the costs involved, if any, are payable by the client. The Designer must attempt to limit those costs to the extent possible.

7. Payment and suspension

1. All payments must be made without any deduction, set-off or suspension within 30 days of the invoice date, unless otherwise agreed in writing or stated in the invoice
2. All goods delivered to the client remain the Designer's property until all the amounts that the client owes the Designer under the

agreement concluded between the parties have been paid to the Designer.

3. If the client fails to pay all or part of the amounts due, it owes statutory interest and out-of court costs of collection, amounting to at least 10% of the invoice amount, subject to a minimum of € 150, excluding VAT.
4. The Designer must arrange for timely invoicing. In consultation with the client the Designer may charge the agreed fee and costs as an advance, in the interim or periodically.
5. The Designer may suspend the performance of the work commissioned after the term for payment has expired and the client, after a written demand to make payment within 14 days, fails to make that payment, or if the Designer is forced to conclude on the grounds of a statement or act on the part of the client that payment will not be made.

8. Notice of termination and dissolution of the agreement

1. If the client gives notice of termination of the agreement, without any breach on the part of the Designer, or if the Designer dissolves the agreement on the grounds of breach by the client in the performance of the agreement, the client is liable for damages in addition to the Designer's fee and the costs incurred in connection with the work performed until that time. In this context any conduct by the client on the grounds of which the Designer cannot reasonably be required to complete the work commissioned is also regarded as breach.
2. The damages referred to in the preceding paragraph of this Article include at least the costs arising from obligations undertaken by the Designer in his own name with third parties for the performance of the work commissioned, as well as at least 30% of the balance of the fee that the client would owe the Designer if the work commissioned were completed in full.
3. Both the Designer and the client have the right to terminate the agreement in whole or in part with immediate effect, and all amounts due are payable immediately, if a petition in bankruptcy or a petition for a suspension or provisional suspension of payment or for application of the debt rescheduling arrangement is filed in respect of the other party.
4. If the Designer's work consists of recurrently performing work of a similar nature, a continuing performance agreement is involved, unless otherwise agreed in writing. Such an agreement may be terminated only by written notice given while observing a reasonable notice period of no less than three months, during which period the client must continue to purchase the customary amount of work from the Designer or must provide financial compensation.

9. Warranties and indemnities

1. The Designer warrants that the result has been designed by him or her or on his or her behalf and, if the result is copyright-protected,

that the Designer is the author within the meaning of the Auteurswet (Dutch Copyright Act) and as the copyright owner has power of disposition of the work. The Designer warrants that, as far as he/she knows or reasonably ought to know, the result of the work commissioned does not infringe any third-party rights and is not otherwise unlawful.

2. If the client uses the results of the work commissioned, it indemnifies the Designer or persons engaged by the Designer in the performance of the work commissioned against any third-party claims arising from the application or use of the result of the work commissioned. This is without prejudice to the Designer's liability towards the client for failure to comply with the warranties referred to in the preceding paragraph and any other liability as referred to in Article 10 of these General Terms and Conditions.
3. The client indemnifies the Designer against any claim or action relating to intellectual property rights in materials or information supplied by the client and used in the performance of the work commissioned.

10. Liability

1. In the event of breach, the Designer must first be given written notice of default, setting a reasonable term in which to perform his/her obligations, to correct any errors or to limit or reverse the loss.
2. The Designer is liable towards the client only for direct damage attributable to the Designer. The Designer's liability for indirect damage, including consequential damage, loss of profits, loss savings, mutilated or lost data or materials, or damage due to business interruption is excluded.
3. Except in the event of intent or wilful recklessness on the part of the Designer, the Designer's liability is limited to the fee that he or she charged for the work commissioned, or in any event the part of the work commissioned to which the liability relates. That amount may not exceed EUR 75,000 and may in no event be higher than the benefit paid to the Designer by the insurance company in the case in question. The amount for which the Designer is liable in the case in question is reduced by any sums insured by the client.
4. Any and all liability expires two years from the date on which the work commissioned has ended on the grounds of completion, termination or dissolution.

11. Other provisions

1. If the client wishes to commission the work at the same time to parties other than the Designer, or has previously already commissioned the work to another party, it must inform the Designer accordingly, stating the names of those third parties.
2. The client is not permitted to transfer or assign to third parties any of the rights under an agreement concluded with the Designer, except in the event of transfer of the client's entire business or with the Designer's written consent.

3. Both parties must keep confidential any and all confidential information, facts and circumstances that come to their knowledge in the context of the work commissioned, from each other or from any other source, of which they can reasonably understand that their publication or disclosure to third parties might damage the Designer or the client. The same duty of confidentiality in respect of such facts and circumstances must be imposed on any third parties engaged in the performance of the work commissioned.
4. If any provision of these General Terms and Conditions is void or voided, the other provisions of these General Terms of Conditions continue to apply in full. In that case the parties will consult in order to agree on new provisions to replace the void or voided provisions that are as closely as possible in keeping with the purpose and scope of the void or voided provisions.
5. The headings of these General Terms and Conditions have been included for easy reference only and do not form part of these General Terms and Conditions.
6. All agreements between the Designer and the client are governed by Dutch law. The parties will first attempt to settle any dispute that arises in consultation. Unless the parties have expressly agreed in writing on arbitration, the court that has jurisdiction by law or the court in the district in which the Designer has its registered office has jurisdiction to hear and decide on any disputes between the Designer and the client.