

ARTICLE 1 AGREEMENT, OFFER AND CONFIRMATION

1.1 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.

1.2 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.

1.3 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 she has confirmed them in writing.

ARTICLE 2 PERFORMANCE OF THE AGREEMENT

2.1 The Designer must make every effort to perform the work commissioned carefully and independently, to promote the Client’s interests to the best of 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.

2.2 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.

2.3 Terms stated by the Designer for the performance of the work commissioned are approximations only, unless otherwise agreed in writing.

2.4 Unless otherwise agreed, the following do not form part of the work commissioned to the Designer: a. performing tests, applying for permits and assessing whether the Client’s instructions comply with statutory or quality standards; b. investigating any existing rights, including patents, trademarks, drawing or design rights or portrait rights of third parties; and c. investigating the possibility of the forms of protection referred to in (b) for the Client.

2.5 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.

2.6 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.

2.7 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.

ARTICLE 3 INTELLECTUAL AND OTHER PROPERTY RIGHTS

3.1 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 affect that application or registration, unless otherwise agreed.

3.2 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 4 of these General Terms and Conditions.

3.3 The Designer is entitled at any time to imprint her name on or in, or to remove it from, the result of the work commissioned (or publicity related thereto) or to have her 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.

3.4 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.

3.5 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.

ARTICLE 4 USE AND LICENCE

4.1 The Designer and the Client will draw up a separate agreement regarding the intellectual property and/or licence on the use of the design or result of the assignment.

4.2 If, in deviation of subsection 1, the parties have not concluded a separate agreement, the Client will only obtain an exclusive non-transferrable licence for the use of the design the moment he has complied with all its payment obligations which form part of the assignment, insofar as this involves the right to publish and use pursuant to the intended use agreed in the assignment. If the parties have not agreed on the intended use, then the licence will be limited to the use for which the assignment is given. The licence has a duration of six (6) months, calculated from the moment of the full payment, and the licence is limited to the use in one (1) country and one (1) medium (for example, Internet, print or television).

4.3 Without prior permission - by email or in writing, of the Designer, the Client is not permitted to:

a transfer the design and/or licence to a third party;

b to change, expand the design or to have it (re) used in any way that deviates from the agreement;

c the Client is not permitted to issue sub-licences.

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.

4.4 In the event of a wider or other use, amendment or transfer of the design that has not been agreed, the Designer is entitled to a payment for the violation of its rights amounting to at least three times the agreed fee, notwithstanding the right of the Designer to demand full payment of damages.

4.5 The Client is not, or is no longer, permitted to use the results made available and any licence issued in respect of the assignment to the Client:

a from the moment the Client does not, or does not fully, comply with its (payment) obligations as part of the assignment, or is in default in any other way;

b if the assignment is terminated for whatever reason;

c if the Client changes the design, broadens it or has it used in a way other than the way agreed upon.

4.6 With due observance of the Client's interests, the Designer may use the results at her discretion for her own publicity, to secure commissions, for promotional purposes, including competitions and exhibitions, etc., and to obtain them on loan, if physical results are involved.

ARTICLE 5 FEES AND ADDITIONAL COSTS

5.1 The fee as well as the costs the Designer incurs for the performance of the assignment, provided the Client has given its approval in advance, are payable by the Client.

5.2 If the Designer is forced to perform more activities due to the late or non-delivery of full, accurate and clear information/materials or due to the intermediate change of the assignment, then these additional activities are regarded as additional work and invoiced separately.

5.3 Intermediate changes as referred to in the previous subsection refers to any changes made to a draft approved by the Client at an earlier time.

ARTICLE 6 PAYMENT AND SUSPENSION

6.1 Unless otherwise has been agreed, the Client will make an advance payment of 30% of the quoted amount before commencement of the assignment.

6.2 The payments must be made within 28 days of the date of invoice. If, after the lapse of this period, the designer has not received (full) payment, then the Client is in default without requiring a prior notice of default, and he must pay the statutory interest of 2% on the (remainder of) the payable amount from that moment on. Furthermore, the costs incurred by the designer, such as the process costs and (extra) judicial costs, including for legal aid and debt collection, are payable by the Client. Extra judicial or judicial debt collection costs amount to at least 15% of the quoted amount, with a minimum of EUR 500.00.

ARTICLE 7 NOTICE OF TERMINATION & DISSOLUTION OF AGREEMENT

7.1 The Client can terminate the assignment intermediately by giving notice, provided the notice is given in writing or by email and provided the Client pays damages, consisting of the fee and any other costs incurred by the Designer.

7.2 The damages referred to in the preceding paragraph of this Article include at least the costs arising from obligations undertaken by the Designer in her own name with third parties for the performance of the work commissioned, as well as 100% of the balance of the fee that the Client would owe the Designer if the work commissioned were completed in full.

7.3 This agreement is immediately terminated, without prior notification, if one of the parties goes bankrupt, dies, becomes disabled or loses free control of its assets.

7.4 In the event of a dissolution by the Client due to an attributable shortcoming in the compliance of the obligations by the Designer, the performances already completed, and the accompanying payment obligation will not form part of the dissolution.

ARTICLE 8 WARRANTIES AND INDEMNITIES

8.1 The Designer warrants that the result has been designed by her or on 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 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.

8.2 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.

8.3 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.

ARTICLE 9 LIABILITY

9.1 The liability of the Designer is limited to direct damage, with the exception of consequential damage, and up to a maximum of the insured sum which is covered by the insurance company of the Designer, or if the insurance company does not pay the Designer, to the amount of the fee.

9.2 If the result of the assignment deviates in colour, composition or material in respect of the quote, proposals, drafts and visualisations, then the Designer is not liable for this, provided this is normal within the standards of the sector.

9.3 In no event is the Designer liable for:

a errors or shortcomings in the material made available by the Client;

b misunderstandings, errors or shortcomings with regard to the performance of the agreement if their cause lies in the acts of the Clients, such as the late or non-delivery of accurate, complete and clear information and/or materials;

c errors or shortcomings of third parties engaged by or on behalf of the Client;

d errors or shortcomings in drafts and/or the result, if the Client has agreed them before they were discovered.

9.4 Each shortcoming of the Designer in the compliance of the agreement as a result of a force majeure, which includes but is not limited to war, strikes, natural disasters, hindrance and interruption transport means, labour disability, cannot be attributed to the designer.

ARTICLE 10 OTHER PROVISIONS

10.1 Third parties cannot derive any rights from this agreement.

10.2 Each of the parties will make all the information they are aware of and which is relevant in respect of the assignment available to the other party.

10.3 If the general terms and conditions or the agreement of the assignment turn out to be (partially) invalid or non-binding, the parties remain bound to the remaining part of the agreement. The parties will then replace the invalid or non-binding part by provisions that are valid and binding and the legal consequences of which, in view of the content and nature of the assignment, are in accordance with those of the invalid or unbinding part to the furthest extent possible.

ARTICLE 11 CHOICE OF LAW AND SETTLEMENT OF DISPUTES

11.1 This agreement is exclusively governed by Dutch law.

11.2 Any disputes arising between the parties in respect of this agreement are first settled amicably.

11.3 If a dispute cannot be settled amicably, then the dispute will be brought before the competent court.