

GENERAL TERMS AND CONDITIONS

ARTICLE 1: DEFINITIONS AND TERMS

1. The agency: the natural person or legal entity which is instructed by the client to perform services or supply goods.
2. The client: the natural person or legal entity which has requested a quotation from the agency, or has instructed the agency to perform services or supply goods.
3. The agreement: the agreement between the agency and the client as has been, or is to be, concluded subject to the applicability of these general terms and conditions.
4. If a reference is made to 'in writing', this may mean either a confirmation or an objection on paper (physical/'ink'), received digitally via a scan or otherwise, or a confirmation via email (online).

ARTIKEL 2: APPLICATION AND VALIDITY

1. These general terms and conditions are applicable to the formation, content and fulfilment of all agreements concluded between the agency and the client.
2. Departures from these general terms and conditions are only valid if and insofar as these departures have been agreed between the parties.
3. The client's (purchasing) conditions only apply if it has been agreed explicitly and in writing that these will be applicable, to the exclusion of these general terms and conditions.

ARTICLE 3: QUOTATIONS, OFFERS

1. These general terms and conditions are applicable to the formation, content and fulfilment of all agreements concluded between the agency and the client.
2. Departures from these general terms and conditions are only valid if and insofar as these departures have been agreed between the parties.

ARTICLE 4: AGREEMENT

1. Except insofar as the agreement also includes the supply of goods, the cooperation between the client and the agency is a commission contract.

ARTICLE 5: GENERAL OBLIGATIONS

1. The agency undertakes to execute the agreement to the best of its insight and capacity and in accordance with the requirements of good workmanship. The agreement with the client is a duty to perform.

2. Both parties will collaborate on the agreements made (schedule / procedures) and will provide each other with the information necessary for the proper execution of the work as soon as possible after it has been requested. Objects, materials or data which have been made available to the agency for, by, or on behalf of the client are to be kept for the client's account and risk.
3. The parties will mutually conduct themselves with care and will not unnecessarily damage each other's interests, either within the framework of this agreement or otherwise.
4. The agency undertakes to keep secret anything which comes to its knowledge during the execution of its work and which is confidential in nature, or which the agency can be expected to recognise is confidential in nature. The agency can only breach that confidentiality if such is necessary in order to fulfil a legal obligation.
5. If the agency does not perform the work to the client's satisfaction, the latter can ask the agency to consider carrying out the work in a different way. If the agency is not prepared to fulfil this request – which the agency is free to do – the client will be authorised to cancel the assignment. The provisions of Article 6 of these terms and conditions will be applicable to this cancellation.

ARTICLE 6: TERM AND TERMINATION

1. Unless otherwise agreed explicitly in writing, the agreement will be regarded as having been concluded for an indefinite period of time. An agreement concluded for an indefinite period of time can always be cancelled with due regard for the notice period laid down in the agreement or, in the absence of this, with due regard for a notice period of three months.
2. An agreement concluded for a definite period of time, or for the time which is necessary in order to complete the assignment, can be cancelled prematurely by one of the parties, but exclusively in writing, with due regard for a notice period of three months, unless explicitly determined otherwise in the agreement.
3. If the client cancels an assignment that has already been issued to the agency, even before the agency has started its execution, the client will owe the agency a payment due to expenses incurred and lost profit, amounting to 70% of the invoice value, such without prejudice to the agency's entitlement to full compensation if the damage suffered by the agency is actually greater.
4. In the event of premature termination of the agreement by the client, within the meaning of the previous paragraph of this article, the latter will owe a payment to the agency during the notice period. This payment will be at least equal to the average of the fee as claimed by the agency over the twelve months prior to the notice period (or however shorter the agreement has lasted). The above applies without prejudice to the client's obligation to pay the invoices for work which the client had the agency carry out during the notice period, insofar as these are greater than the aforementioned average.
5. In the event of premature termination of the agreement by the agency, the agency will not be able to claim any form of compensation, other than for the work which the agency performs during the notice period. The agency is obliged to complete ongoing work normally and satisfactorily until the end of the notice period, unless the client decides otherwise. If the client requests such, the agency is obliged to ensure an adequate transfer of the work.

6. The agency is entitled to terminate the agreement without judicial intervention and without observing a notice period in the event that the client is declared bankrupt, applies for a suspension of payments, or is trying to reach agreement with creditors outside of bankruptcy or suspension, such without prejudice to the agency's right to compensation due to premature termination.
7. The agreement will end, without prejudice to the provisions in Article 408-410, book 7 of the Netherlands Civil Code and without prejudice to the provisions of the previous paragraphs of this article:
 1. through completion of the assignment;
 2. if completion of the assignment has become impossible due to force majeure.

ARTICLE 7: FEES, COSTS AND INVOICES

1. Unless a different method of payment has been agreed, the agency will be remunerated on the basis of hourly rates. Other remunerations can be a fixed fee per unit of time (retainer fee), or a fixed price (per project or assignment).
2. The agency is entitled to use indexation to change its hourly rates and/or fees, which may be determined on a different basis pursuant to the agreement. Indexation can take place no more than once a year and no earlier than three months after the formation of the agreement. Indexation will take place on the basis of the Services producer price index for advertising and market research, as published by Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS). Indexation will take place on the basis of the CBS Services producer price index, series 2015=100 (DPI), of January in relation to January of the previous year.
3. If pre-agreed budgets are used based on the hourly rates, the agency may not deviate from these budgets except for indexation as described in the previous paragraph of this article, or in the event of interim changes to the agreement by the client. If the client reduces the scope of the agreement in between times, the client must continue to pay the original fee for the period of time provided for in Article 6, which deals with cancellation of an assignment. If it can be foreseen that a mutually approved budget is going to be exceeded, the agency is obliged to inform the client to that effect immediately and, as necessary, submit a new budget for approval.
4. In addition to the fee, the agency costs and the costs of third parties engaged by the agency within the framework of the agreement will also be payable. In budgets and on invoices the costs are to be separated out into the agency's fee, agency costs and, if applicable, costs of third parties. Agency costs include, among other things, courier, photographic, copying, cutting and travel and accommodation costs.
5. In principle the client will pay the costs of third parties directly. If third parties are paid via the agency, the agency will be entitled to calculate a surcharge for interest and administration costs and risk cover. The agency will then be entitled to request an advance on the costs. It is usual for all discounts on third-party supplies to be passed on to the client.
6. Unless agreed otherwise, the agency will invoice retrospectively every month for the fee payable for a calendar month and the agency costs. Costs of third parties can be charged on immediately after receipt of the corresponding invoices. The payment deadline for agency invoices is 30 days, while setting off debts is not permitted. If that deadline is exceeded, the client will owe interest of 1% per calendar month or part of a month from the due date onwards.

7. In the event of late payment the client will not only owe the payable amount and the interest, but also the judicial and extrajudicial collection costs, including the costs for lawyers, bailiffs and collection agencies. The extrajudicial collection costs are to be set at a minimum of 15% of the principal sum plus interest, with a minimum applying of €375.00.
8. If the parties have agreed an hourly rate, the hours worked must be sufficiently specified on the invoice.
9. Unless explicitly stated otherwise, all prices exclude VAT.

ARTICLE 8: PREPARATORY WORK

1. If, before an agreement is concluded, the client asks the agency to familiarise itself with know-how which is specifically tailored to the client regarding public relations / communication and/or know-how regarding the specific issues faced by the client, the agency can claim a reasonable remuneration in return.
2. Before the agency carries out this preparatory work, the agency will inform the client in writing that the work in question will be charged, even if the agreement is not concluded.

ARTICLE 9: CONFLICTING INTERESTS

1. Unless the client gives written permission to do so, the agency will not accept any assignments with regard to which the agency knows or should understand that their execution will conflict with the interests of existing clients.

ARTIKEL 10: AUTEURSRECHT

1. The client will obtain from the agency a licence which is unlimited in terms of time for the use of copyright-protected works which the agency makes during the execution of the agreement on behalf of the client, unless stated and agreed otherwise elsewhere, and on the understanding that the licence is only applicable as soon as and for as long as the client fulfils the financial obligations relating to the provision of the copyright-protected work.
2. The licence referred to above applies exclusively for the use of the work in question by the client itself. Consequently, use by third parties is only permitted after written permission from the agency.

ARTICLE 11: COMMUNICATIONS AND NOTIFICATIONS

1. Communications and notifications, in whatever form, which take place within the framework of the execution of the agreement by the agency on behalf of the client, will be submitted in advance to the client for approval.
2. Communications and notifications made by the agency on behalf of the client within the framework of the execution of the agreement will take place exclusively for the client's account and risk. If a complaint is submitted against the client in relation to said communications/ notifications, or if an action in law is instituted against the client, the client will decide regarding the type of defence in consultation with the agency.

3. If, in relation to the communications / notifications referred to in the previous paragraph, legal proceedings are instituted against the agency, or a complaint is submitted against the agency in that respect, the agency will inform the client immediately. A decision will be taken in consultation between the parties as to whether the agency should conduct its own independent defence, or whether the client will conduct proceedings in the name of the agency. In both instances all the costs of dealing with the complaint and/or the costs of the proceedings will be for the client's account, including any court order to pay the costs of proceedings, or contribute to the costs on behalf of the opposing party.
4. The client indemnifies the agency against all third-party claims based on the (in) correctness and the actual content of communications and notifications made by the agency on behalf of the client within the framework of the execution of the agreement.

ARTICLE 12: LIABILITY

1. In the context of consultancy work the agency is liable for damage caused by attributable failures in the fulfilment of the commitments resulting from the agreement. Failures are attributable in the event of conduct or negligence on the part of the agency which should not be expected of a duly competent and proficient public relations / communications consultant.
2. Except in the event of intent or deliberate recklessness, the liability for the damage caused by the failure when carrying out consultancy work is limited to the amount of the fee that the agency received for its work within the framework of the agreement. In addition, in the case of agreements which have a term that is longer than six months, a restriction applies to the liability referred to here up to a maximum of the invoice amount over the last six months prior to the failure.
3. In the event of liability on the part of the agency for the supply of goods, the agency will, at its discretion, either pay an amount up to a maximum of the invoice value of the goods supplied, or replace the goods supplied free of charge.
4. The agency is not liable for attributable failures by third parties which the agency has engaged with the client's permission. Insofar as the agency can enforce compensation claims against a third party which it has engaged with the client's permission, which claims will not accrue directly to the client, the agency will do all it can, or enable the client wherever possible, to enforce said claims. The related costs are for the client's account.
5. The agency is not obliged to compensate more or other damage, including consequential damage, than provided for in the previous paragraphs of this article.
6. Any claims on the part of the client as referred to in this article must have been submitted in writing to the agency within six months after the failure has been discovered, or reasonably could have been discovered, with failure to do so leading to a lapsing of the claims.

ARTICLE 13: DISPUTES

1. Disputes between the client and the agency as a result of the agreement or its execution are to be decided by the court which has jurisdiction for the agency's business location.
2. These general terms and conditions and the agreement are subject to Dutch law.
3. In the case of any discrepancies between the English and the Dutch text, the latter will prevail.