

# GENERAL AND SPECIAL TERMS AND CONDITIONS

## ARTICLE 1 APPLICABILITY

- A. The provisions of these general terms and conditions apply to all offers, quotations and agreements between Brandology B.V. (with its registered office in Amsterdam, Dutch Chamber of Commerce no. 70307822, hereinafter referred to as the “agency”), unless expressly determined otherwise in writing.
- B. These terms and conditions also apply to all agreements with the agency for the performance of which the services of third parties are used by the agency.
- C. The general terms and conditions of the client and third parties engaged, by whatever name and whether amended or not, are not applicable unless the parties agree otherwise. Costs involved in the amendment of such conditions are at the expense of the client or the third parties engaged.
- D. If the agency enters into multiple agreements with the client, these general terms and conditions will always apply to all successive agreements, irrespective of whether or not they are declared explicitly applicable.
- E. If any provision of these terms and conditions is void or nullified, the other provisions will remain in full force. The void or nullified provision will be replaced in such a case by a valid provision that conforms to the purport of the void provision as much as possible.

## ARTICLE 2 AMENDMENTS

Amendments to any of the agreements and to these general terms and conditions will only be effective if they are agreed between the parties in writing.

## ARTICLE 3 FORMATION OF THE AGREEMENT

- 3.1. All the agency’s offers are without obligation, unless they include a deadline for acceptance. Offers will never remain valid longer than 30 days, unless expressly determined otherwise in writing. An offer can only be accepted in writing (signed by a person authorised to represent), except in the case of an ‘urgent project’, where a statement of agreement by phone or a statement by means of electronic message is sufficient for acceptance prior to written confirmation. If an offer from the agency contains an offer without obligation and this is accepted, the agency reserves the right to withdraw the offer within two working days after receipt of the acceptance.

- 3.2. The client will only be able to withdraw a written assignment that the agency has not yet accepted if all costs or registrations made for the assessment of the assignment and the preparation of the acceptance are reimbursed or paid to the agency.
- 3.3. An assignment is accepted by the agency either by confirming acceptance in writing to the client or by commencing the performance of the work.
- 3.4. In the case of transactions for which no quotation or confirmation of assignment is sent due to their nature and scope, the invoice is deemed to be a complete and accurate representation of the agreement, unless objected to within 10 days after the invoice date.
- 3.5. If a natural person enters into an agreement on behalf of or for the account of another natural person and/or legal entity then he declares - by signing the contract - that he is authorised to do so. This person is jointly and severally liable, in addition to the natural person or legal entity, for all obligations arising from the agreement.
- 3.6. A combined quotation does not oblige the agency to deliver part of the products or services included in the offer or quotation for a corresponding part of the stated price.
- 3.7. Each agreement is entered into by the agency under the suspensive condition that the client - at the agency's sole discretion - appears to be sufficiently creditworthy for the financial fulfilment of the agreement.
- 3.8. When or after entering into the agreement or before starting to or before continuing to perform, the Agency is entitled to require security from the client that fulfils both the payment obligations and the other obligations.
- 3.9. Furthermore, if the agency deems this necessary or desirable for the proper performance of the assignment it has been given then - and after consulting with the client - it is authorised to engage other parties for the performance of the agreement, the costs of which will be charged on to the client.

#### **ARTICLE 4 REPORTING**

- 4.1. The agency will draw up contact reports with the client for all eligible contacts, which will be sent for approval to the client.
- 4.2. If the client has not responded in writing within five working days after dispatch, the report concerned will be deemed to be correct and both parties will be bound by it.
- 4.3. The agency will send the contact reports to a person/persons designated by the client.

## **ARTICLE 5 BUDGET**

- 5.1. Upon request, the agency can draw up a budget for an assignment in which the proposed working method will be specified in brief and a price estimated.
- 5.2. The budget will contain a specification - by work, fee and end result - of (or based on) the (hourly) rates applied by the agency and all additional costs.
- 5.3. If some costs or cost items cannot be determined accurately at the time the budget is drawn up, because they depend on the project's progress or on price quotations from third parties or because they cannot be predicted accurately, these will be included as a memorandum item. These costs will be charged on retrospectively and in accordance with the requirements of reasonableness.
- 5.4. The budget can be amended by the agency as long as this amendment is based on circumstances or facts that have subsequently changed.
- 5.5. The agency is entitled to exceed the submitted budget after prior consultation by a maximum of 10%.
- 5.6. The client will sign the agency's budget as approved and return it to the agency within five working days after it has been sent. If the client gives his approval verbally or by electronic means, the agency will confirm this approval in writing. Budgets that are not returned on time and about which there has been no contact will be deemed to have been approved. The agency may, in any case, commence its work once the above approval has been given. Work that is carried out under an approved budget will be charged.
- 5.7. If the agency performs work at the client's request before the above approval procedure for the budget has been completed, the agency is entitled to charge on its fee and costs in accordance with the requirements of reasonableness, even if these are not included in the budget or if a budget is not approved at all. The same applies to costs involved in a (possible) presentation by the agency to the client in order to obtain an assignment.

## **ARTICLE 6 PRICES**

- 6.1 Unless agreed otherwise, all prices are excluding VAT, transport costs and postage charges. Work will be charged based on the relevant stipulations in the budget, unless agreed otherwise.
- 6.2 The agency is entitled to charge on price increases of third parties, insofar as they became known after the quotation, to the client.
- 6.3 The agency charges a standard mark-up percentage of 17.65% on all third-party costs.

## **ARTICLE 7 PERFORMANCE AND DELIVERY**

- 7.1. The agency will perform the assignment to the best of its ability based on its professional insight.
- 7.2. If the client's briefing gives cause to do so and if the agency must explore various options before it can submit a definitive offer, this work will be included in the offer ultimately submitted.
- 7.3. If and insofar as required for the proper performance of an agreement, the agency is entitled to have certain work carried out by third parties.
- 7.4. The client will ensure that all information that the agency states is necessary or which the client reasonably ought to understand is necessary for the performance of the agreement will be provided to the agency in good time. If the information necessary for the performance of the agreement is not provided to the agency in good time, the agency is entitled to suspend performance of the agreement and/or to charge the client the additional costs resulting from the delay in accordance with the customary rates.
- 7.5. The services and accompanying goods will be delivered at the place where the agency has its registered office. If the client wishes to receive a delivery online, this will be dispatched at its own risk. If the agency or third parties engaged by the agency carry out work at the client's location - or at a location designated by the client - within the context of the assignment, the client will provide the facilities that these employees reasonably request free of charge.
- 7.6. Transfer of ownership of any goods delivered will take place through delivery and full payment. The risk of loss, damage or other injury rests with the client from the moment of delivery.

## **ARTICLE 8 CONFIDENTIALITY**

The agency will treat all information in the broadest sense of the word that relates to the client, its strategies and its products in strict confidence, and will only make it available to its employees, subcontractors or the media if and insofar as this is necessary for the performance of the assignment. However, the agency is not responsible for protecting information that: (i) is publicly obtainable or (ii) is obtained by the other party from third parties without restriction of disclosure or (iii) that has to be disclosed by virtue of a court ruling or a decision by a public authority .

The Agency will never disclose this information, allow third parties to inspect or use it, or use it for third parties, without the client's consent during the term of this agreement or for a period of three years following its termination. This obligation applies vice versa to the client.

## **ARTICLE 9 TIME SCHEDULE**

- 9.1 The delivery times stated are approximations. Unless expressly agreed otherwise, the Agency provides no guarantee whatsoever with regard to the agreed delivery times. If the deadline is exceeded, the client must accordingly give the agency written notice of default.
- 9.2 If a delivery is late, the client is not entitled to compensation, or to terminate or suspend any obligation in respect of the agency, unless the client provided written notice beforehand of the specific importance of a particular deadline and this was accepted by the agency.

## **ARTICLE 10 MULTIPLE ASSIGNMENTS FOR THE SAME PROJECT**

If the client wishes to award the same assignment simultaneously to multiple designers/design agencies, it must inform the agency of this beforehand. The client is also obliged to do so if it previously awarded the same assignment to a different designer/design agency.

## **ARTICLE 11 CORRECTNESS OF INFORMATION**

The agency may proceed on the basis that the information provided by the client in its assignment/briefing is correct and complete. The client is liable for any detrimental consequences arising from inaccurate or incomplete information.

## **ARTICLE 12 PRODUCTION SUPPORT**

- 12.1 If agreed, the agency will supervise the performance of assignments awarded to graphic design or other (production) companies on the client's behalf.
- 12.2 Unless expressly agreed otherwise in writing, the agency will never be an independent party to such an agreement with a production company. The agency may represent the client in respect of a production company in so far as this is appropriate for a reasonable performance of the assignment and this is confirmed in writing.
- 12.3 Before the definitive permission for production is given, the client must have approved the final printing proof, screen proposal or most recent prototype in writing.
- 12.4 Even if the agency's budget does not include precise individual specifications of the support work, these will be reimbursed by the client.

## **ARTICLE 13 COPYRIGHTS**

- 13.1 The copyright, the drawing right or design right or any other intellectual property right relating to any design (preliminary or definitive), any working drawing or other drawing, software source code, model or other design is vested in the agency (or in third parties that the agency has engaged), unless agreed otherwise in writing.
- 13.2 If not agreed otherwise in writing then without prejudice to the provisions of the next subclause, the client is only entitled to one-off use for the purpose and within the scope that the parties have expressly agreed in writing. If such a written specification is missing, the permitted use is the use that the parties specifically envisaged at the time that the assignment was concluded.
- 13.3 The client will only be entitled to use any item, for which intellectual property rights as referred to in the first subclause of this article, are vested in the agency or third parties, once full payment of all that which is due to the agency has taken place. If a payment term has not yet elapsed, each use will be automatically deemed to take place under the resolutive condition that if payment is late then the agency or third parties are still entitled to stop any use.
- 13.4 The client is not permitted to make changes (or have changes made) to a design produced by the agency or third parties without the prior written consent of the agency or third parties. The agency will not refuse this permission on unreasonable grounds, but must be given the opportunity to make such changes itself (or have such changes made) under the conditions usual for it to do so.
- 13.5 In those cases where it is agreed in writing that the intellectual property rights are vested in the client, the client arranges directly with any third parties engaged or to be engaged that they too, insofar as possible, will transfer any intellectual property rights they have to the client. The client will enter into an agreement directly with these third parties to this end.

## **ARTICLE 14 COMPLAINTS**

- 14.1 The client must submit any written complaint about any demonstrable defects as soon as the agency has delivered or presented the work it has performed to the client.
- 14.2 Any hidden defects must be complained about in writing within eight days after they could have been reasonably discovered.
- 14.3 Complaints about invoices must be submitted in writing to the agency within eight days after the date on which the invoices were sent. The payment term will not be suspended as a result of such a complaint.
- 14.4 After the aforementioned periods of time have elapsed, complaints will no longer be dealt with and the client will have then forfeited its rights in this regard, unless the term must be reasonably extended in a particular case.
- 14.5 If the agency finds that a complaint is justified and this complaint is the result of an attributable failure on the agency's part, the agency will still perform the services as agreed (or arrange for this to be done), unless this has now become demonstrably pointless for the client. The client must state this last point in writing.
- 14.6 If the performance of the agreed work or delivery is now no longer possible or useful then the agency will only be liable within the limits of the provisions of the article 'Liability'.

## **ARTICLE 15 FORCE MAJEURE**

- 15.1 The party who finds that it has been affected by force majeure is obliged to inform the other party of this immediately.
- 15.2 The parties are not obliged to fulfil any obligation if they are prevented for doing so by a circumstance which is not their fault and for which they are not accountable by virtue of the law, a legal act or according to generally accepted practice.
- 15.3 Force majeure under these general terms and conditions is understood to mean - in addition to that which is laid down in law and case law - all external causes, foreseen or unforeseen, over which the agency cannot exercise any control, such as illness of its staff, power and computer failures, viruses, fire or theft, and as a result of which the agency is unable to fulfil its obligations. This includes work strikes within the agency's company.
- 15.4 The agency is also entitled to invoke force majeure if the circumstance that hinders performance or further performance occurs after the agency should have performed its obligations.
- 15.5 If the agency has partially fulfilled or will be able to partially fulfil its obligations under the agreement at the time force majeure occurs, and that portion of the obligations that has been or will be fulfilled has some independent value, the agency will be entitled to invoice separately for the portion that has been or will be fulfilled. The client is obliged to pay this invoice as if it were a separate agreement.

## **ARTICLE 16 SUSPENSION AND TERMINATION**

- 16.1 The agency is authorised to suspend the fulfilment of the obligations or to terminate the agreement, if:
  - the client fails to fulfil its obligations under the agreement or does not do so in full or on time;
  - after entering into the agreement, the agency becomes aware of circumstances that give it good grounds for fearing that the client will not fulfil its obligations or else will not do so completely or on time; If there are good grounds for fearing that the client will only fulfil its obligations in part or inadequately then suspension is only permitted in so far as the failure justifies this;
  - the client was asked at the time the agreement was entered into to provide security for the fulfilment of his obligations under the agreement and this security has not been forthcoming or is inadequate; As soon as the security is provided, the authority to suspend ends, unless this fulfilment has been unreasonably delayed by this.

- 16.2 Furthermore, the agency is authorised to terminate the agreement (or have it terminated) if circumstances occur that are of such a nature that the performance of the agreement is impossible or if in accordance with the requirements or reasonableness and fairness this can no longer be required or if circumstances otherwise occur that are of such a nature that the unaltered maintenance of the agreement cannot reasonably be required.
- 16.3 If the agreement is terminated, the agency's claims against the client become immediately due and payable. If the agency suspends fulfilment of the obligations then it retains its claims under the operation of law and under the agreement.
- 16.4 The agency is always entitled to demand compensation.

#### **ARTICLE 17 RETENTION OF TITLE**

All movable property - which may include any budgets, reports etc. - delivered by the agency remain the agency's property until the client has fulfilled all obligations that follow from all agreements entered into with the agency. The delivered items may not therefore be sold, encumbered or given as security until the date of payment.

#### **ARTICLE 18 DIGITAL COMMUNICATIONS**

- 18.1 In the context of these general terms and conditions, a message sent by electronic means will be considered equivalent to a written statement in all agreements.
- 18.2 If there is a dispute about whether the client received or sent particular e-mail messages, the agency's log file data will provide conclusive proof.
- 18.3 E-mail messages will be considered to have been received if they are accessible to the other party, including in any case the time when they have reached the receiving party's mailbox.
- 18.4 If the use of telecommunications facilities leads to corruption of the data or delayed data transmission, the party using them is only liable for the resulting loss to the extent that this loss can be recovered from the telecoms operator in question.

#### **ARTICLE 19 ATTRIBUTION**

- 19.1 Unless this is ruled out in writing, the agency is entitled to sign its designs or to state its name (or cause it to be stated) in the rolling credits or other credits, on a website or otherwise, provided that this is done in the usual way.
- 19.2 If the agency desires this then the work to be reproduced will if applicable be provided with the '©' or (D) symbol respectively, stating the agency's name and the year of initial publication or the year and/or registration number of an international filing/application.



## **ARTICLE 20 - PROMOTIONAL USE**

Without prejudice to that agreed regarding the rights, the Agency will be entitled to use its design for its own promotion and/or publicity. It will only require the client's permission to this end if the latter has not yet started using the design itself, which permission will not be unreasonably refused.

## **ARTICLE 21 TERMINATION**

- 21.1 An assignment may be terminated by any of the parties with immediate effect by means of a registered letter, without judicial intervention and without being obliged to pay compensation, if:
- A. the other party applies for bankruptcy or is declared bankrupt;
  - B. the other party applies for suspension of payments or is granted provisional or permanent suspension;
  - C. the other party goes into liquidation or decides to liquidate or to discontinue its current business activities;
  - D. a significant part of the assets of the other party is attached and this attachment is not lifted within four weeks;
  - E. the other party defaults on material obligations in respect of the other party and fails to rectify this default within 30 days of being given written notice of default.
- 21.2 Without prejudice to the provisions of the previous subclause, the client is entitled to cancel an assignment but only under the following conditions:
- A. all costs reasonably incurred by the agency (including fees) until the cancellation date will be paid by the client immediately, and
  - B. the client will immediately reimburse the agency the profit margin that the agency can reasonably expect for the assignment, which for this purpose is set at 25% of the total amount involved in this assignment (including budgeted third-party costs).

## **ARTICLE 22 PAYMENT**

- 22.1 The agency shall invoice on a 'per assignment' basis, or, if the assignment is carried out in various phases, on a 'per phase' basis. If possible, invoicing will be carried out within 30 days after the month in which the work was completed by the agency and/or subcontractors, unless a different invoicing method was agreed for the assignment. The agency is entitled to use partial invoicing and advance billing, if and in so far as this can be judged to be reasonable and fair given the scope and nature of the work and has been discussed with the client.
- 22.2 All payments must be received within thirty days after invoice date, unless agreed otherwise in writing. In the event of late payment, the agency is entitled to charge the client interest from the final day of the payment term, in the amount of the statutory (commercial or other) interest rate plus 2%.
- 22.3 All extrajudicial costs that the agency incurs in collecting outstanding monies will be charged to the client. The extrajudicial costs will be calculated in accordance with the graduated scale for extrajudicial costs, with a minimum of € 350.00.
- 22.4 Payments must be made to the bank account specified by the agency.
- 22.5 Irrespective of the agreed payment terms, the agency can require the client to provide security for the payment.
- 22.6 All rights are granted under the resolutive condition that the client pays on time and in full all amounts due.

## **ARTICLE 23 MATERIALS**

- 23.1 If the agency has provided the client with items for the performance of an agreement then the client is obliged to return the supplied items within 14 days in their original and complete state and free of defects. If the client fails to fulfil this obligation then all resulting costs are for his account.
- 23.2 If the client for whatever reason, after a demand to this end, still remains in default in respect of the obligation referred to under 1. then the agency is entitled to recover the resulting losses, including the costs of replacement, from the client.
- 23.3 All materials developed by the agency in connection with the assignment that at the end of and as the result of the relationship are located at the Agency will be handed over to the client free of charge at the latter's initial request once the client has paid the agency all that it owes it for whatever reason.
- 23.4 The client is obliged to ensure that copies/shadow files of the relevant data carriers are made before data, records, materials and/or products are delivered. The client must retain these in case this data is lost at the agency during its retention period or else becomes unusable through damage. In that case, the client must provide the data again at the agency's request.

## **ARTICLE 24 LIABILITY AND GUARANTEE**

- 24.1 The client indemnifies the Agency against any liability in respect of third parties for the defectiveness of any product that is produced on the basis of the agency's design, apart from where there was a defect in its design that was reasonably apparent to the agency at the time it was being designed.
- 24.2 The client warrants to the agency the correctness of the information that he has provided to the agency in writing regarding itself and its products and/or services.
- 24.3 The Agency's liability in respect of the client is limited to reimbursement of the loss suffered by the client as a direct result of a culpable fault on the part of the agency, up to a maximum of the total fees paid for the assignment(s) and/or offer(s); in the case of partial assignments and/or follow-up assignments, this amount is limited to the amount involved in that partial and/or follow-up assignment. The agency is never liable for purely financial loss that the client suffers, unless this loss is the result of deliberate acts by the agency aimed at causing this loss or that result from the agency's recklessness. Any liability will never exceed the amount to be paid out by the insurer.
- 24.4 The agency is never liable for indirect loss, including consequential loss, lost turnover and lost profits, lost savings and losses due to business interruption.
- 24.5 The agency is never liable for losses arising from advice given. Advice is always given based on the facts and circumstances known to the agency and in joint consultation, with the agency always taking the client's intentions as a guide and starting point.

## **ARTICLE 25 TRANSFER**

Neither of the parties is permitted to transfer the rights and obligations in respect of the other party to third parties in whole or part, unless with the prior written consent of the other party.

## **ARTICLE 26 APPLICABLE LAW AND COMPETENCE**

- 26.1 This agreement is governed by Dutch law to the exclusion of any other law.
- 26.2 All disputes arising from any agreement between the agency and the client will be subject to the judgment of the competent court in Amsterdam, the Netherlands. Despite this, the agency has the right to submit the dispute to the court that the law determines to be competent.

## **ARTICLE 27 LOCATION OF THE TERMS AND CONDITIONS**

These terms and conditions have been filed with the Dutch Chamber of Commerce and Industry for Amsterdam under number 70307822.