
TERMS & CONDITIONS

- WORK ON ASSIGNMENT/COMMISSION-



1 Agreement, offer and confirmation

1.1 These general terms and conditions (hereafter: General Terms and Conditions) apply to all offers and the formation, content and fulfillment of all agreements concluded between the client and the contractor (hereafter: designer). Deviations from these General Terms and Conditions can only be agreed in writing between client and designer.

1.2 Offers are without obligation and are valid for 2 months. Quotations can undergo changes due to unforeseen changes in the work. Prices are exclusive of VAT. Mentioned rates and offers do not automatically apply to future assignments. The client guarantees the correctness and completeness of the data provided to the designer by or on behalf of the client on which the designer bases the quotation.

1.3 Orders are confirmed by the client in writing. If the client fails to do so, but nevertheless agrees that the designer starts with the execution of the assignment, then the content of the quotation shall be deemed to have been agreed upon and these General Terms and Conditions shall apply. Further verbal agreements and stipulations are binding on the designer only after they have been confirmed in writing by the designer.

2 The implementation of the agreement

2.1 The designer makes every effort to execute the assignment carefully and independently, to represent the interests of the client to the best of his knowledge and to strive for a result which is useful to the client, as can and should be expected by a reasonable and professional designer. As far as necessary, the designer will keep the client informed of the progress of the work.

2.2 The client does all that is reasonably necessary or desirable to enable a timely and correct delivery by the designer, such as the timely delivery of complete, sound and clear data or materials, of which the designer indicates or of which the client

understands or must reasonably understand that these are necessary for the execution of the agreement.

2.3 A period specified by the designer for the execution of the assignment is indicative, unless otherwise agreed in writing.

2.4 Unless otherwise agreed, the assignment of the designer is not:

a. performing tests, applying for permits and assessing whether instructions from the client meet legal or quality standards;

b. conducting research into the existence of rights, including patent rights, trademark rights, drawing or design rights, copyrights or portrait rights of third parties;

c. conducting research into the possibility of the in sub b. intended possible forms of protection for the client.

2.5 Before implementation, production, reproduction or publication, the parties will give each other the opportunity to check and approve the latest models, prototypes or tests of the result.

2.6 Deviations from the (final) result with respect to what has been agreed are no grounds for rejection, discount, compensation or dissolution of the agreement, if these deviations, taking into account all circumstances, are of minor importance.

2.7 Complaints shall be communicated to the designer in writing as soon as possible, but in any event within ten working days after completion of the assignment, failing which the client shall be deemed to have fully accepted the result of the assignment.

3 Use of third parties

3.1 Unless otherwise agreed, assignments are given to third parties in the context of the execution of the assignment, by or on behalf of the client. At the request of the client, the designer can act as authorized agent at the expense and risk of the client. Parties can agree on a further compensation to be agreed upon.

3.2 If the designer draws up a budget for the costs of third parties at the request of the client, then this budget is indicative. If desired, the designer can request quotations on behalf of the client.

3.3 If in the execution of the assignment the designer, according to explicit agreement, purchases goods or services from third parties for his own account and risk, after which these goods or services are passed on to the client, then the provisions of the general conditions of and / or separate agreements with the supplier with regard to guarantees and liability also apply towards the client.

3.4 If the designer, whether or not in the name of the client, provides instructions or directions to production companies or other third parties, the client shall confirm the approval referred to in article 2.5 of these General Terms and Conditions at the request of the designer.

3.5 The client does not engage third parties without consulting the designer when this may affect the execution of the assignment as agreed with the designer. The parties consult in the case in question which other contractors are called in and which activities are assigned to them.

3.6 The designer is not liable for errors or defects in products or services of third parties engaged by or on behalf of the client, regardless of whether these have been introduced by the designer. The client must address these parties themselves. The designer can provide assistance if required.

4 Intellectual property rights and property rights

4.1 All intellectual property rights arising from the assignment - including patent rights, trademark rights, drawing or design rights and copyright - on the results of the assignment belong to the designer. Insofar as such a right can only be obtained through a deposit or registration, only the designer is authorized to do so, unless otherwise agreed.

4.2 The parties may agree that the rights referred to in the first paragraph are transferred wholly or partially to the client. This transfer and any conditions under which the transfer takes place are always 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.

4.3 The designer has the right at any time to (have) mentioned or deleted his / her name on, at, or in publicity about the result of the assignment - in the manner usual for that result. The client is not allowed to publish or reproduce the result without mentioning the designer's name without the prior consent of the designer.

4.4 Unless otherwise agreed, the (originals of the) results produced by the designer in the context of the assignment (such as designs, draft sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, models, molds, prototypes, (sub-) products, films, (audio and video) presentations, source codes and other materials or (electronic) files, etc.) are the property of the designer, regardless of whether these have been made available to the client or to third parties.

4.5 After completing the assignment, neither the client nor the designer have a data retention obligation towards each other with regard to the materials and data used, unless otherwise agreed.

5 Rights of use

5.1 When the client fully complies with his obligations under the agreement with the designer, he obtains the right to use the result of the assignment in accordance with the agreed destination. If no agreements have been made about the destination, the right of use will be limited to that use, for which the assignment has (apparently) been provided. The right to use is exclusive, unless otherwise ensues from the nature of the agreement or agreed otherwise.

5.2 When the result also relates to works that are subject to third-party rights, the parties make additional agreements as to how the use of these works will be arranged.

5.3 The client shall not be entitled to adjust the result of the assignment, to use it in a broader or different manner or to perform it in any other way than has been agreed, or to have it done by the third parties without written permission. The designer can attach conditions to this permission, including paying a fair compensation.

5.4 In case of non-agreed broader or other use, including modification, mutilation or damage to the preliminary or final result, the designer is entitled to compensation for infringement of his / her rights of at least three times the agreed fee, at least a compensation that in reasonableness and fairness is in proportion to the committed infringement, without otherwise losing any other right.

5.5 The client is not (any longer) allowed to use the results made available and any right granted to the client within the context of the assignment will lapse, unless the consequences thereof are contrary to reasonableness and fairness:

- a) from the moment that the client does not fulfill his (payment) obligations under the agreement or does not fully comply with them or is otherwise in default;
- b) if the assignment is terminated prematurely for reasons mentioned in article 8.1 of these General Terms and Conditions;
- c) in the event of bankruptcy of the client, unless the rights in question have been transferred to the client in accordance with Article 4.2 of these General Terms and Conditions.

5.6 With due regard for the interests of the client, the designer has the freedom to use the results for his own publicity, acquisition of assignments, promotion, including competitions and exhibitions, etc., and to receive these on loan, when it concerns physical results.

6 Honorarium and costs

6.1 The designer is entitled to a fee for the execution of the assignment. This may consist of an hourly rate, a consultancy fee, a fixed amount, whether or not related to the project sum or any other compensation to be agreed between the parties.

6.2 In addition to the agreed fee, the costs incurred by the designer for the execution of the assignment, such as office, travel and accommodation costs, costs for prints, copies, (printing) tests, prototypes and costs of third parties for advice, production and guidance, etc., qualify for reimbursement. These costs are specified in advance as much as possible, except when a service percentage is agreed.

6.3 If the designer is obliged to perform more or other work due to the non-timely or non-delivery of complete, sound and clear data / materials, due to an amended or incorrect assignment or briefing, or due to external circumstances, these activities will be honored separately, on the basis of the fees charged by the designer. The designer will inform the client of this in advance, unless this is not possible due to circumstances or the nature of the work does not allow for postponement.

6.4 When the execution of the order is delayed or interrupted due to circumstances that cannot be attributed to the designer, the client is obliged to compensate any costs that this entails. The designer will try to limit the costs as much as possible.

7 Payment and suspension

7.1 All payments must be made without deduction, settlement or suspension, within 30 days after the invoice date, unless otherwise agreed in writing or the invoice states otherwise.

7.2 All goods delivered to the client remain the property of the designer until all amounts owed by the client to the designer on the basis of the agreement concluded between the parties have been paid in full to the designer.

7.3 When the client is in default with the full or partial payment of the amounts owed, the client owes statutory interest and extrajudicial collection costs, which amount to at least 10% of the invoice amount with a minimum of € 150, - excl. VAT.

7.4 The designer ensures timely invoicing. In consultation with the client, the designer may charge the agreed fee and costs as an advance, interim or periodic fee.

7.5 The designer may suspend the execution of the order after the payment term has expired and the client, after having been summoned in writing to pay within 14 days, fails to do so, or when the designer must understand by means of an announcement or conduct of the client that payment will not happen.

8 Cancellation and dissolution of the agreement

8.1 When the client terminates the contract without any failing on the part of the designer, or if the designer terminates the contract due to an attributable shortcoming in the fulfillment of the agreement by the client, then the client owes the designer compensation, in addition to the fee and the made costs related to the work done up to that time. Conduct on the part of the client on the basis of which the designer can no longer reasonably be expected to conclude the assignment, is also regarded in this connection as an attributable shortcoming.

8.2 The compensation referred to in the previous paragraph shall at least include the costs arising from the commitments entered into by the designer in his own name for the fulfillment of the assignment with third parties, as well as at least 30% of the remaining part of the fee that the client would be due upon full completion of the assignment.

8.3 Both the designer and the client have the right to dissolve the agreement immediately in whole or in part, and all amounts due become immediately due when a request for bankruptcy, (provisional) moratorium or debt repayment is filed with respect to the other party.

8.4 If the activities of the designer consist of the repetitive performance of similar activities, then there is a continuing performance contract, unless otherwise agreed in writing. This agreement can only be terminated by written cancellation with due observance of a reasonable notice period of at least three months, during which period the client will continue to make use of the usual amount of work from the designer or will compensate financially.

9 Guarantees and indemnities

9.1 The designer guarantees that the goods supplied are designed by or on behalf of him / her and that, when there is copyright on the result, he / she is considered to be the maker in the sense of the Copyright Act and as copyright owner can have the work. Designer guarantees that the result of the assignment at the time of realization thereof, insofar as he / she knows or should reasonably know, does not infringe the rights of third parties or is otherwise unlawful.

9.2 When the client uses the results of the assignment, the client indemnifies the designer (or third parties engaged by the designer for the assignment) for all third-party claims arising from the applications or the use of the result of the assignment. This does not affect the designer's liability to the client for non-compliance with the guarantees as referred to in the previous paragraph and other liability as referred to in Article 10 of these General Terms and Conditions.

9.3 The client indemnifies the designer against claims with respect to intellectual property rights on all materials and / or data provided by the client, which are used in the execution of the assignment.

10 Liability

10.1 In case of an attributable shortcoming, the Designer must first be given notice of default in writing, with a reasonable term to still fulfill his / her obligations, or to rectify any errors or limit or eliminate the damage.

10.2 Designer is solely liable to the client for damage to the designer. Liability of the designer for indirect damage, including consequential damage, loss of profit, lost savings, mutilated or lost data or materials, or damage due to business interruption, is excluded.

10.3 Except in case of intent or deliberate recklessness on the part of the designer, the designer's liability is limited to the designer's fee for the assignment, at least that part of the assignment to which the liability relates. The amount for which the designer is liable in the specific case is reduced by any sums insured by the client.

10.4 Any liability is canceled by the expiration of two years from the moment the assignment is terminated by completion, termination or dissolution.

11 Other provisions

11.1 If the client wishes to provide the same assignment to others than the designer at the same time or has already given the assignment to another party, he will inform the designer, stating the names of these others.

11.2 The client is not permitted to transfer any right from an agreement concluded with the designer to third parties, other than for the transfer of his entire company or with the written consent of the designer.

11.3 The parties are obliged to maintain confidentiality of all confidential information, facts and circumstances that come to the attention of the other party within the framework of the assignment, from each other or from another source, of which it is reasonably understandable that disclosure or communication to third parties could cause damage to the designer or the client. Third parties, who are involved in the execution of the assignment, will be bound to the same confidential treatment with regard to these facts and circumstances originating from the other party.

11.4 If any provision of these General Terms and Conditions is void or is nullified, the other provisions of these General Terms and Conditions will remain in full force. In that case, the parties will consult with the aim of agreeing upon new provisions to replace the void or voided provisions, whereby the purpose and intent of the void or voided provisions will be taken into account as far as possible.

11.5 The headings in these General Terms and Conditions are only intended to promote readability and are not part of these General Terms and Conditions.

11.6 Dutch law applies to the agreement between the designer and the client. First, the parties will attempt to resolve a dispute that has arisen in mutual consultation. Unless the parties have expressly agreed in writing to arbitration, the court competent according to

the law, or the judge in the district where the designer is located, will, at the designer's choice, take cognizance of disputes between the designer and the client.