

Terms & Conditions

1. Definitions

- 1.1 Client means: the person or company granting the Commission to perform the Services.
- 1.2 Contractor means: the person or the company accepting the Commission.
- 1.3 Parties means: the Client and the Contractor jointly.
- 1.4 Commission means: the request by the Client to the Contractor to perform the Services for payment.
- 1.5 Services means: everything that the Contractor undertakes and/or creates for the Client, within the scope of the Commission granted by the Client for purposes of the Client's communication interests.
- 1.6 Proposal(s) means: a description of the Services with an estimation of the costs related to such Services.
- 1.7 Terms means: the general terms and conditions as set out hereinafter.

2. Terms

- 2.1 These Terms are applicable to all Proposals by the Contractor, as well as to all agreements entered into by and between Parties.
- 2.2 Any provisions that deviate from these Terms, including those in any general terms and conditions used by the Client and/or any third parties engaged by the Client, will not bind the Contractor, unless expressly agreed to the contrary in writing.

3. Proposals

- 3.1 All Proposals from the Contractor are subject to contract, unless expressly agreed to the contrary in writing.
- 3.2 The Contractor shall, if so requested, (further) describe the Services in writing prior to commencement of the Services.
- 3.3 If the Contractor has started the Services prior to any written description of the Services, the content of the Proposal shall, together with these Terms, constitute the content of the Commission.
- 3.4 The Contractor shall inform the Client of the costs incurred and shall inform the Client of any potential overrun of the amount quoted.
- 3.5 An overrun of any amount quoted in a Proposal, as a result of the overrun of the estimated costs of third party suppliers and/or any other third parties engaged, shall reduce the amount quoted by the Contractor for its Services.

4. Prices

- 4.1 All prices applied by the Contractor exclude VAT, any shipment, transport or postage costs, as well as any costs for portrayal rights, photography, media (purchase and handling), production and print.
- 4.2 The Contractor has the right to pass on to the Client any changes in prices that have occurred since the Proposal was issued.

5. Commissions and changes

- 5.1 A Commission shall be deemed to have been accepted by the Contractor and to have been issued by the Client by either a written confirmation of the Commission to the Client from the Contractor or by the Contractor starting the execution of the Services.
- 5.2 Changes to a Commission need to be confirmed to the Contractor on time and in writing. If the Client omits to do so, any incorrect performance of the changes to the Commission will be for the sole account and risk of the Client.
- 5.3 Changes to the Commission shall be effective as of the moment of and by virtue of the acceptance thereof by the Contractor, which acceptance can appear, amongst others, from the performance of the desired changes.
- 5.4 Any additional costs or any reduced costs as a consequence of changes to the Commission shall be for the risk and benefit, respectively, of the Client.
- 5.5 Changes to the Commission may cause the Contractor to exceed periods of time originally anticipated.
- 5.6 In the event the Client for any reason decides to cancel any issued Commission and/or to no longer desire the completion of the Commission, the Client shall be obliged to reimburse the Contractor for any costs reasonably incurred by the Contractor, including all time spent and all costs due by the Contractor to third parties, as well as the loss of profit by the Contractor, such without prejudice to any (other) rights granted to the Contractor by law.

6. Relationship management

- 6.1 The Contractor shall make contact reports of each contact with the Client, unless expressly agreed to the contrary in writing.
- 6.2 In the event of a contact by telephone, a contact report will be prepared if the content of the telephone call justifies such in the opinion of the Contractor.
- 6.3 In the event the Client does not respond upon the receipt of the contact report, the content thereof shall be deemed correct and complete and Parties shall be bound by the content thereof, unless the timing of the Commission allows for a delay of one business day and unqualified approval can only be deemed to be granted thereafter.
- 6.4 The Contractor shall send the contact reports to the attention of the person indicated by the Client.

7. Engagement of third parties

- 7.1 In the event third parties are engaged at the request of the Client or such engagement is deemed beneficial to or necessary for performance of the Commission by the Contractor, or this ensues from the nature of the Commission, the Contractor is authorised to issue commissions to third parties for the account of the Client. In such case the engaged third party will need to be paid directly by the Client.
- 7.2 In the event the Contractor engages third parties in its own name for the performance of the Commission, the costs charged by such third parties shall be charged to the Client, including any agreed overhead mark-up.

8. Payments

- 8.1 Payments shall be made within fourteen days of the date of the invoice, unless expressly agreed to the contrary in writing.
- 8.2 In the event the Client does not timely fulfil its payment obligation, the Client shall be in default (verzuim) without any dunning (aanmaning), summons (sommatie) or notice of default (ingebrekestelling) being sent or required. As of the moment of default the Client will be due the statutory commercial interest (wettelijke handelsrente), increased by 2%, over the principal amount.
- 8.3 The Contractor is authorised at all times to charge, by means of an partial or pre-invoice, certain costs to the Client, which invoices will need to be settled before the Contractor commences or continues the Services, as the case may be, or, alternatively, to stipulate that such costs shall be charged directly to the Client.

- 8.4 The Contractor can, notwithstanding agreed payment conditions, demand a guarantee from the Client for the payments.
- 8.5 All costs, including, but not limited to, legal costs, (extra) judicial costs, incurred by the Contractor for the purpose of collecting any amounts due will be for the account of the Client. The extra judicial costs shall amount to a minimum of at least 10% of the amount due, such with a minimum of EUR 250 (excluding VAT).
- 8.6 All payments need to be made to a bank account indicated by the Contractor.

9. Suspension, termination by notice and rescission

- 9.1 The Contractor is authorised to suspend (opschorten) or cease (staken) the execution of the Commission, in the event the Client fails to adhere to the payment conditions and/or is in default in providing the requested guarantee.
- 9.2 The Contractor is authorised to terminate the agreement between Parties outside of court proceedings, by rescission (ontbinding) or termination by notice (opzegging), in the event that the Client does not perform its contractual obligations, or does not perform these adequately or on time. In such event the Client shall be obliged to reimburse the Contractor for all costs incurred, all amounts advanced and the amount of the fees due at that time, without prejudice to the Contractor's right to claim damages. The damages to be paid by the Client shall include compensation for loss of agreement-related profits (the 'positive contract interest' (positief contractsbelang)).
- 9.3 In the event of termination of the agreement, by rescission or by notice, due to any breach attributable to the Contractor of its obligations, any works performed or delivered by the Contractor shall not be undone. The amounts due at the moment of rescission shall be immediately payable and cannot be set-off by the Client against any claims from the Client on the Contractor.
- 9.4 A Party is authorised to rescind the agreement(s) in whole or in part in the event of the bankruptcy (faillissement) or a suspension of payment (surséance van betaling) of the other Party, as well as in the event of the cessation (stillegging) or liquidation (liquidatie) of the business of the other Party.

10. Delivery times

- 10.1 The delivery times indicated by the Client shall be deemed indicative terms and shall not constitute fatal deadlines (fatale termijnen), unless expressly agreed to the contrary in writing. Failure to meet the delivery times will not release the Client from its obligations towards the Contractor.
- 10.2 In the event that a delivery time is exceeded, the Client needs to send a notice of default to the Contractor.

11. Duty of Care and confidentiality

- 11.1 The Contractor shall perform the Services with due care whilst bearing in mind the Client's interest.
- 11.2 When applicable the Contractor shall inform the Client of any potentially conflicting matters in respect of, for example, applicable statutory and/or (self) regulation provisions and/or (intellectual property) rights of third parties. Such notifications are without prejudice to the Client's responsibility for the use of the result of the Services.
- 11.3 The Parties are under the obligation to maintain strict confidentiality with respect to all data and information made available by a Party, the Services and any product (including any idea, advice, draft and other proposal from the Contractor) insofar these are to be considered confidential by their nature or insofar these are to be deemed protected by any intellectual property right, such to the extent not expressly stated to the contrary in these Terms or expressly agreed to the contrary in writing by Parties.

12. Complaints and evidence

- 12.1 Complaints, of whatever nature, relating to the performance of any obligation under the agreement entered into by and between the Parties, need to be notified by the Client to the Contractor, in writing, such notification containing a clear description and adequate reasons, as soon as possible and in any event ultimately within 10 business days of the receipt of the (interim) invoice, after the finalisation of the (partial) Commission, or, as the case may be, of discovery thereof, such on penalty of the lapse of any claim.
- 12.2 After expiration of the aforementioned time periods, no complaints shall be taken into consideration by the Contractor and the Client will have lost all its rights in respect of such matter, unless the specified time period is to be deemed unreasonable in the respective instance.
- 12.3 Notwithstanding proof to the contrary, any information available in the Contractor's books shall be conclusive.
- 12.4 Complaints in respect of invoices from the Contractor will not suspend the Client's payment obligations.

13. Exoneration

- 13.1 The Contractor is not liable for any errors and/or defaults in the performance of the Commission which are caused by any action of the Client and/or any third parties engaged by the Client, including but not limited to the following:
 - failure to provide, or provide on time, materials, correct data or information;
 - shortcomings in designs that have been approved by the Client prior to the completion of the Commission or which the Client neglected to approve (upon request thereto) prior to the completion of the Commission;
 - transportation of any product and/or goods;
 - shortcomings in (payment) obligations, including, but not limited to, failure to fulfil payment obligations to third parties fully or on time;
 - errors in and/or during placement of advertisements, printing or other media.
- 13.2 All claims resulting from the Contractor's liability will become invalid after the expiration of a period of 6 months from the moment the Client has become aware or can reasonably be deemed to be aware of the liability causing matter. The Contractor shall never be liable for any indirect damage except in the event of intention (opzet) and/or gross negligence (grove nalatigheid). Indirect damages includes amongst others consequential damages (gevolgschade), lost profit (gederfde winst), missed savings and damages through business interruption.
- 13.3 The Contractor's liability will never exceed the amount of the Contractor's invoice to the Client for the performed Services, with a maximum of EUR 7,500, reduced by any out-of-pocket expenses (advanced) costs and amounts, whether or not for the settlement of engaged third parties. In the event that the Contractor has insurance coverage, the liability is expressly limited to the maximum amount that will be paid out by the insurance for the event in question.

14. Force Majeure

- 14.1 In the event that the Contractor is prevented from performing the agreed Services completely and/or within the specified time due to force majeure (overmacht), the Contractor may, at its sole discretion, suspend the execution of the agreement or (partially) rescind the agreement, by means of a written notice, without the Contractor being obliged to compensate for any damages or grant any warranty.
- 14.2 Force majeure includes amongst others: strike, fire, machine failure and other business disorder, transport disorder and other circumstances that are outside the control of the Contractor or its suppliers, as well as sudden increases in import duties, consumer and/or other taxes, delay in shipments from suppliers or the failure to occur of any shipments, the refusal of any required permits or other governmental measures.

15. Intellectual property, license and use

- 15.1 In the event and to the extent required for the execution of the Commission, the Client provides materials and suchlike, the Client warrants that these are not subject to any intellectual property or other rights of third parties, or, that the Client has obtained approval from such third parties for the use of these materials and such by (amongst others) the Contractor, as the case may be. The Client furthermore warrants that the use of the materials and such does not constitute a breach of (statutory) regulations, rules or guidelines.
- 15.2 The intellectual property rights developed by the Contractor in the context of the Commission remain with the Contractor. The Contractor is authorised to establish (related) intellectual property rights and/or to commercially exploit such rights for the purpose of obtaining and maintaining its legal position.
- 15.3 The Contractor will remain authorised to use the products of the Commission for entry into concourses, for purposes relating to museums and cursory and editorial purposes, commercial or non-commercial internal use and (historic) self-promotion of the Contractor, even after transfer of the rights referred to in the previous paragraph. This entitlement equally applies to the Client and/or any other persons that have made a significant creative or technical contribution.
- 15.4 In the event and to the extent the Client has fulfilled all its contractual obligations, the Contractor will grant the Client a license to use the product of the Services in accordance with the purpose thereof and for the period, territory and media agreed between the Parties. In the event the Parties have not entered into any agreement in respect hereof, the license will be limited to the first-time usage of the product of the Services.
- 15.5 The Client is not permitted to make any alterations to the results from the Commission without the prior written consent of the Contractor.
- 15.6 In the event the Client acts in default of its contractual obligations, the Contractor is entitled to temporarily suspend or terminate the license for the use of the product of the Services, as described in article 15.4.
- 15.7 Parties can at all times enter into additional agreements in respect of the (partial) transfer of the intellectual property rights in respect of the products of the Services created by the Contractor. Such products include, where relevant, the source codes of the software and websites developed for the Client.

16. Nature and term of contract

- 16.1 The Contractor promotes the Client's communication interests within the boundaries of the Commission issued and the (framework/project) agreement entered into, if any. The Contractor endeavours to perform the Services in accordance with the Client's desires. Unless expressly agreed to the contrary, the Contractor will shape and perform the Services in a manner to be decided upon by the Contractor in its sole discretion.
- 16.2 The Client is not authorised, without the prior written consent of the Contractor, to (also) engage a third party to perform the agreed Services.
- 16.3 The agreement between the Parties is entered into for an indefinite period or for the duration of the Commission and/or the completion of the Services, such to be decided upon by the Parties.
- 16.4 Termination by notice can only be done by registered mail, taking into account the notice period agreed between the Parties, or, in the event no notice period is agreed between the Parties, termination by notice is permitted only when taking into account a reasonable period, with the understanding that a notice period of less than one month is deemed unreasonable. During the notice period the Client is obliged to meet its (payment) obligations towards the Contractor, as if the agreement was not terminated.
- 16.5 The Client is at all times obliged to inform the Contractor of any circumstances that may have a significant negative influence on the Commission.

17. Wrapping up the relationship

- 17.1 All materials, including designs, reproduction materials, texts, descriptions, artistic performances, films, source codes and publicity materials, held by the Contractor at the end of the agreement or Commission, will be sent free of charge by the Contractor to the Client upon the Client's first request, after the Client has fulfilled all its payment obligations (on whatever basis) towards to the Contractor.
- 17.2 The Contractor shall keep the materials described in the previous paragraph for a maximum period of four weeks after the end of the agreement or the Commission. The Client needs to inform the Contractor whether it desires to receive these materials within this period. In the event that the Client desires for the Contractor to keep these materials for a longer period, the Parties shall enter into additional (financial) agreements in relation to this. In any other event the Contractor shall be entitled to dispose of these materials.
- 17.3 At the end of the relationship the Contractor shall, where relevant, without delay instruct the media in writing to transfer any remaining contracted media space/time to the Client or any third party indicated by the Client.
- 17.4 In the event that the relationship between the Parties ends – for whatever reason – these Terms shall continue to govern the legal relationship between the Parties, insofar required for the wrapping up the relationship, whereby Parties acknowledge that, without prejudice to the aforementioned, the provisions of article 15 shall at all times remain in full force and effect.

18. Transfer and obligations

- 18.1 None of the Parties is entitled to transfer any rights and or obligations under agreements and Commissions in whole or in part, to which these Terms are applicable, except with the prior written approval from the other Party.

19. Governing law, forum, Vienna Sales Convention

- 19.1 All agreements governed by these Terms and to all agreements which result from such agreements shall be governed by and construed in accordance with the laws of the Netherlands.
- 19.2 Insofar any agreements entered into by and between the Parties (partially) encompass any international sales agreements relating to movables, the applicability of the Vienna Sales Convention is expressly excluded and such agreements shall be governed by and construed in accordance with the laws of the Netherlands.
- 19.3 Any disputes arising from or in connection with agreements governed by these Terms or agreements resulting from such agreements, as the case may be, shall in first instance be submitted exclusively to the competent courts of the district in which the Contractor has its seat.
- 19.4 These Terms are available in the Dutch and English language. In the event of any dispute about the contents or intention of these Terms, only the Dutch version and its meaning in the Dutch jurisdiction shall be binding.

These terms and conditions are based on a standard model contract provided by the VEA © 2009.