

General Terms and Conditions

Butterfly Works

Article 1 Definitions

- 1.1 General Terms and Conditions:** these General Terms and Conditions, irrespective of the form in which they are presented.
- 1.2 Services:** all activities in the field of the development and realisation/execution, or arranging for the realisation or execution, of Products, ((multi)media) concepts, communication, online Services or other concepts, which are the subject of any offer, quotation, agreement or other legal act in the relationship between the Contractor and the Client.
- 1.3 Normal Working Hours:** Monday to Friday (excluding public holidays) between 9.00 a.m. and 5.00 p.m.
- 1.4 Contractor:** Stichting Butterfly Works in Amsterdam, registered in the Commercial Register under Chamber of Commerce number: 34213609
- 1.5 Client:** the party to whom the Contractor's offer is directed, with whom the Contractor has concluded an agreement or for whom the legal act has been or is being performed, on the basis of which Services are supplied to this party.
- 1.6 Products:** (physical) objects that are the subject of an agreement between the Client and the Contractor, including but not limited to (media containing) software.

Article 2 Applicability

- 2.1** The General Terms and Conditions apply to and form part of all offers, quotations, agreements and other legal acts, irrespective of whether these have been made verbally, in writing, electronically or in any other form, regarding the supply of Services or Products by the Contractor to or for the Client.
- 2.2** The General Terms and Conditions also apply to Services or Products that the Contractor has obtained, in whole or in part, from third parties or for the (partial) execution of which it has engaged a third party.
- 2.3** The Contractor expressly rejects the applicability of any general terms and conditions (of purchase) of the Client.
- 2.4** Deviations from the General Terms and Conditions are only valid if they have been expressly agreed in writing by the Contractor and the Client.
- 2.5** If the Client makes available to third parties the content of the activities performed for it by the Contractor, the Client is obliged to inform this third party on behalf of the Contractor that the activities were performed subject to these General Terms and Conditions. If a third party makes use of the content of these activities in any way, that third party shall be bound by the content of these General Terms and Conditions.
- 2.6** If and insofar as any provision of the General Terms and Conditions should be declared invalid or become unenforceable, the remaining provisions of the General Terms and Conditions shall remain in full force. The Contractor and the Client shall consult with each other on a new provision to replace the invalid/unenforceable provision, taking into account as far as possible the purport of the invalid/unenforceable provision.

Article 3 Offers, Quotations and Agreements

- 3.1** All the Contractor's offers are without obligation, unless explicitly stated otherwise in writing.
- 3.2** The Contractor's offers are valid for the period specified in the offer. If no period is mentioned, the offer is valid for 14 (fourteen) days from the date on which the offer was issued.
- 3.3** The Contractor cannot be held to its quotation or offer if and insofar as the Client may reasonably be expected to understand that the quotation or offer, or a part thereof, contains an obvious mistake or error.
- 3.4** Agreements only come into force when the Contractor accepts the order issued by the Client by means of a confirmation, or at the moment when the Contractor starts work on the performance of an order. The Contractor reserves the right to refuse an order, without giving any reasons.

Article 4 Rates, Additional work

- 4.1** The rates charged by the Contractor are exclusive of value added tax (VAT) and any other government taxes. The rates are listed in Euros.
- 4.2** If an hourly rate is agreed between the Contractor and the Client for the performance of activities and/or the provision of services, these shall be invoiced on the basis of the actual hours spent thereon, rounded up to the nearest half hour and at the hourly rate charged by the Contractor for the service in question at that time. For a site visit, at least one full hour shall be charged. If a fixed fee has been quoted, this fixed fee shall include only those activities and costs which have been precisely described.
- 4.3** In the event of trips abroad for the purpose of the order, the costs, including but not limited to costs for travel documents, country-specific vaccinations or medications, additional insurance, accommodation expenses and costs for local intermediaries, shall be charged on the basis of the actual costs incurred. The relevant travelling time shall be charged at a previously agreed hourly rate.
- 4.4** If performance of the order becomes necessary outside Normal Working Hours, on account of circumstances for which the Contractor is not responsible, or if this is desired by the Client, a surcharge shall be applied. This surcharge amounts to:
 - 50% of the hourly rate: for weekday evenings until 11:00 p.m. and Saturdays until 5.00 p.m., and
 - 100% of the hourly rate: for weekday evenings after 11:00 p.m., Saturday evenings after 5.00 p.m. and all Sundays and public holidays.
- 4.5** The Contractor is at all times entitled to adjust its rates after a period of three months from the conclusion of the agreement. Unless it has been expressly agreed in writing that prices and rates shall be valid for a specific period, the announced price changes concerning the provision of Services shall take effect 1 (one) month from the announcement thereof.
- 4.6** If the Client does not agree with a change in rates – other than by means of indexation – announced by the Contractor, the Client is entitled to cancel the agreement with the Contractor in writing within 8 (eight) days of the announced change, with effect from the date on which the change enters into force.

Article 5 Payment

- 5.1** Payment of the invoice amount must be made to the account stated on the invoice in question within the payment term specified thereon. If no payment term is specified on the invoice, a payment term of 14 (fourteen) days from the invoice date shall apply.
- 5.2** All payments by the Client to the Contractor shall be deducted from the Client's oldest outstanding invoices, irrespective of any other indication by the Client.
- 5.3** The Client is not permitted to invoke any suspension, offsetting or deduction of payments insofar as this is presumed to be unreasonably onerous in the relationship between the parties. In the matter of the provision of Services, the Contractor shall at all times be entitled to require (partial) payment in advance and to suspend the provision of such Services until this payment in advance has been received.
- 5.4** The Contractor is entitled to suspend the performance of its obligations under the Agreement if and for as long as the Client fails to fulfil its payment obligation(s).
- 5.5** If the Client fails to pay any of the Contractor's invoices within the payment term, it is automatically considered to be in default, without any notice of default or warning being required. From that point onwards, the Client shall be liable, without any further notice from the Contractor, to pay interest on the invoice amount at the statutory commercial interest rate + 2%.
- 5.6** If, after a notice of default, the Client still fails to pay the amount owed, plus statutory interest + 2%, the Contractor may pass the debt to a collection agency. In that case, the Client shall be obliged, in addition to the principal and the statutory interest thereon, to reimburse all extrajudicial and, if applicable, judicial costs, expressly in addition to any costs ascertained by law. The extrajudicial costs shall amount to at least 15% of the principal, with a minimum of €250.00.

Article 6 Performance of Services and supply of Products

- 6.1 In the performance of the Services and the supply of the Products, the Contractor shall use its best endeavours and apply the diligence that reasonably can and may be expected of it. Given the nature of the Services and Products, however, it cannot give any guarantees that a particular result will be achieved.
- 6.2 The times specified for delivery by the Contractor are for guidance only and are therefore never absolute deadlines, unless expressly agreed otherwise in writing.
- 6.3 The Contractor is entitled to engage third parties for the performance of the Services and/or supply of Products. It will, if reasonably possible, coordinate this in advance with the Client. The Contractor is not liable for shortcomings on the part of third parties engaged by it.

Article 7 Reservation of Ownership

- 7.1 All the items supplied by the Contractor in the context of the agreement shall remain the property of the Contractor until the Client has correctly fulfilled all the obligations pursuant to the agreement(s) concluded with the Contractor, in particular the payment obligation arising from the agreement.
- 7.2 Items supplied by the Contractor, which are subject to reservation of ownership in accordance with paragraph 1 of this article, may not be sold on or used as a means of payment. The Client is not entitled to pledge the items that are subject to reservation of ownership, or encumber them in any other way.
- 7.3 The Client must at all times do everything that may be reasonably expected of it to safeguard the Contractor's property rights.
- 7.4 The Client is obliged to notify the Contractor immediately if third parties seize items supplied subject to reservation of ownership or wish to establish or exercise rights to them.
- 7.5 The Client undertakes to insure the items supplied subject to reservation of ownership, and to keep them insured, against fire, explosion or water damage and theft, and to immediately present this insurance policy to the Contractor for inspection on request. In the event of an insurance payout, the Contractor shall be entitled to these moneys. Insofar as is necessary, the Client undertakes in advance, with respect to the Contractor, to cooperate fully in everything that may (appear to) be necessary or desirable in that context.
- 7.6 In the event that the Contractor wishes to exercise its property rights as specified in this article, the Client gives in advance its unconditional and irrevocable consent to the Contractor and to third parties designated by the Contractor to enter any place in which the Contractor's property is located and to take the items back.

Article 8 Cooperation by the Client

- 8.1 In cases in which the results of the Services or supply of Products are dependent on the correct, complete and timely provision of data by the Client, the Client shall ensure that this takes place. The Client warrants that the data provided is correct, complete and consistent, and that the provision thereof does not violate any rights of third parties. The Client hereby indemnifies the Contractor against any claims made by third parties in this matter.
- 8.2 The Client shall use its best efforts to provide every cooperation and obtain all information that may reasonably be necessary for the performance of the Services or the supply of the Products.
- 8.3 If the Contractor will be performing its activities, in whole or in part, at the Client's offices or at another external location, the Client shall provide, free of charge, a suitable, secure room, furnished with all the necessary equipment. If specific company rules apply there, the Contractor shall adhere to them as far as is reasonably possible.

Article 9 Intellectual Property

- 9.1 All intellectual property rights relating to designs, software, documentation and all other materials which are developed and/or used for the preparation or performance of the Services or manufacture of the Products, or which arise therefrom, are the exclusive property of the Contractor. The supply of the Services or Products does not entail any transfer of the intellectual property rights.
- 9.2 The Client shall receive only a non-exclusive, non-sublicensable, non-transferable right to use the aforesaid materials and products, as well as the results of the Services, for the agreed objectives. During such usage, the Client shall strictly abide by the conditions outlined in these General Terms and Conditions or otherwise imposed on the Client.

- 9.3 The Client shall not, without the Contractor's prior written consent, in any way disclose, reproduce or make available to third parties the results of the services or products, in whole or in part.
- 9.4 The Client shall not delete or modify any indications by the Contractor or its suppliers with regard to copyrights, trademarks, trade names or other intellectual property rights.
- 9.5 The Contractor warrants that it is entitled to provide the Client with the right to use specified in Article 9.2 and indemnifies the Client against any claims by third parties in this matter. This provision shall not apply if and insofar as the Products or the results of the Services have been changed and/or if they were supplied in conjunction with items from third parties, unless in the latter case the Client can demonstrate that the claims by third parties relate exclusively to the Products supplied by the Contractor or the results of the Services.

Article 10 Confidentiality and Personal data

- 10.1 The parties undertake both during the term of this agreement and after its expiry to maintain strict secrecy with regard to all confidential information that it receives about the other party or the other party's company. Information is considered in all cases to be confidential if it has been designated as such by one of the parties. The parties shall also impose this obligation on their employees and on any third parties engaged by them for the performance of the agreement between the parties.
- 10.2 All items and property rights, including written documents and photocopies thereof, which one of the parties obtains for the benefit of the other party during the term of this agreement, shall remain the property of the other party. The first party is obliged to make these goods available to the other party again, in accordance with Article 13.3, on the day that the agreement ends.

Article 11 Liability and Indemnity of Contractor

- 11.1 The Contractor's liability on account of an attributable failure to perform the agreement shall be limited to compensation for the direct damage suffered by the Client, up to a maximum of the amount of the stipulated fee for the agreement in question. In the case of an agreement with a term of more than one year, the stipulated fee shall be the total of fees agreed for the year in which the failure occurs.
- 11.2 Direct damage is understood to mean exclusively the costs that the Client has reasonably incurred in order to repair or remove the failure by the Contractor, so that the Contractor's performance is in accordance with the agreement, as well as reasonable costs for preventing or limiting such damage and reasonable costs for determining the cause and extent thereof. If the Contractor and the Client have expressly agreed a binding delivery date in writing, the costs that the Client has reasonably incurred on account of being obliged to make provisions because the Contractor did not adhere to the binding delivery date, minus any savings, are also considered to be direct damage.
- 11.3 Any liability on the part of the Contractor for indirect damages, including but not limited to consequential damages, loss of profit and loss of turnover, is excluded.
- 11.4 The Client shall indemnify the Contractor against all claims by third parties, including shareholders, directors, members of the Supervisory Board and employees of the Client, as well as affiliated legal persons and companies and others involved in the Client's organisation, who are directly or indirectly associated with the performance of the agreement or have suffered damage in connection with the performance of the agreement, the cause of which is not attributable to the Contractor.

Article 12 Force Majeure

- 12.1 There is no question of an attributable failure to perform the agreement by the Contractor in the event of force majeure, including, but expressly not limited to, illness, industrial action, nonattributable failures by the Contractor's suppliers, or other matters causing the Contractor to be (temporarily) unable to perform its activities.
- 12.2 If the period of force majeure exceeds 60 (sixty) consecutive days, the parties are entitled to terminate the agreement out of court in writing, without the Contractor being liable to pay any compensation for the damages suffered by the Client as a result of that termination. The Contractor is entitled to payment from the Client for all Services that have been supplied to the Client up to the moment of termination.

Article 13 Termination

- 13.1** Each party is entitled to terminate the agreement out of court if the other party displays an attributable failure to perform essential obligations pursuant to this agreement and has not corrected such failures within a reasonable time, after receiving proper notice of default in writing. Termination does not relieve the Client of any payment obligation for Services already supplied by the Contractor, unless the Contractor is in default with respect to a particular service.
- 13.2** The Contractor is entitled to terminate the agreement with immediate effect, without any further notice of default being required and without the Contractor being thereby liable to pay damages to the Client, if the Client is granted a provisional or definitive suspension of payments, a petition is made for the Client's bankruptcy, an attachment order is served on (part of) the Client's goods or if the Client's company is liquidated or wound up, or the Client is otherwise in a situation in which it can reasonably be concluded that it is no longer able to meet its obligations.
- 13.3** Immediately following termination of the agreement, for whatsoever reason, the Client shall cease using the results of the Services that have been made available to it and shall return all copies of software, documentation and other materials that have been made available to the Client in the context of the agreement.

Article 14 Disputes

- 14.1** The offers, quotations, agreements and other legal acts concerning the supply of Services and Products by the Contractor shall be governed by Dutch law.
- 14.2** Disputes between the Contractor and the Client arising out of or relating to the offers, quotations, agreements and other legal acts concerning the supply of Services and Products by the Contractor shall be submitted exclusively to the competent court in the District of Amsterdam.

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