

Article 1. Agreement, offer and confirmation

1.1 Applicability of General Terms and Conditions

These General Terms and Conditions shall apply to the making, the content and the performance of all agreements between the client and the contractor.

1.2 Offers

All offers shall be valid for two months. Prices quoted may be subject to change owing to unforeseen changes in the work.

1.3 Written confirmation

Commissions are to be confirmed by the client in writing. If the client fails to do so, yet does assent to the contractor commencing the work commissioned, the terms of the offer shall be deemed to have been agreed. Any subsequent oral agreements and stipulations shall not be binding on the contractor until after they have been confirmed by him in writing.

1.4 Several contractors

If the client wishes to commission a particular work from the contractor and other persons or bodies concurrently, he shall so inform the contractor and state the names of those other persons or bodies.

1.5 Identical work previously commissioned from another

If the client has previously commissioned an identical work from another person or body he shall so inform the contractor, stating the name of that other person or body.

Article 2. Performance of the agreement

2.1 Execution of work commissioned

The contractor shall make every effort to carry out the work commissioned carefully and independently, to promote the client's interests to the best of his ability and to achieve a result fit for the purpose for which the client intends to use it. To such extent as necessary the contractor shall keep the client advised of the progress of the work.

2.2 Supply of data

The client shall be required to do all such acts and things as are reasonably needed or desirable to enable the contractor to effectuate punctual and proper delivery, in particular by supplying (or causing to be supplied) in good time complete, sound and clear data or materials.

2.3 Requests for other suppliers' quotations

If at the client's request the contractor provides an estimate of costs of third parties such estimate shall be an approximation only. If wished the contractor may on the client's behalf obtain quotations from third parties.

2.4 Use of other suppliers

Unless otherwise agreed, instructions to third parties to be given in the context of executing the work commissioned shall be given by or on behalf of the client. At the client's request the contractor may act as agent at the client's expense and risk. The parties may agree a specific fee for such services. If for the purposes of executing the work commissioned the contractor, by expressly agreed arrangement, shall at his own expense and risk procure goods or services from third parties for the client's benefit, the terms in such third parties' general conditions relating to the quality, quantum, properties and delivery of such goods or services shall also apply to the client.

2.5 Publication and reproduction

Prior to production, reproduction or publication each party shall give the other the opportunity to check and approve the final draft, prototype

or galley proofs of the design. If the contractor is to place orders with or give instructions to manufacturing companies or other third parties, whether or not in the client's name, then when so requested by the contractor the client shall confirm his aforesaid approval in writing.

2.6 Term of delivery

Any term stated by the contractor for completing the design shall be an approximation, unless the nature or provisions of the agreement show otherwise. Even if a specific term for completion of the design has been stated, the contractor shall not be in default unless and until by letter sent by recorded delivery the client has given him notice of default and the contractor has failed to remedy his default within the reasonable term for specific performance set in that notice of default.

2.7 Tests, licences and statutory requirements

Unless otherwise agreed, the work which the contractor is commissioned to do shall not include running tests, applying for licences and assessing whether the client's instructions meet applicable statutory or quality requirements.

2.8 Any complaints to the contractor are to be made in writing at the earliest possible time but no later than within ten working days after completion of the work commissioned.

Article 3. Intellectual and other property rights

3.1 Copyright and industrial property

Unless otherwise agreed, all intellectual and industrial property rights arising from the work commissioned - including copyright, design rights and patent rights - shall vest in the contractor. If any of such rights as aforesaid can be acquired only by registration, the contractor shall have the sole and exclusive power to effectuate such registration.

3.2 Search for the existence of rights

Unless otherwise agreed, the work commissioned shall not include conducting searches for the existence of patent rights, trademark rights, drawing or design protection rights, copyrights and portrait rights of third parties. The same applies to any investigation into the possibility of such forms of protection for the client.

3.3 Reference to contractor's name

Unless the work is not suitable for that purpose, the contractor shall at all times be entitled to imprint his name on or in or to remove it from the work (or to have his name imprinted on or in or removed from the work) and without the contractor's prior authorization the client shall not be permitted to publish or reproduce the work without identifying the contractor by name.

3.4 Property vested in contractor

Unless otherwise agreed, all working drawings, illustrations, prototypes, scale models, templates, drafts, design sketches, films and other materials or (electronic) data files made by the contractor in the course of executing the design shall remain the property of the contractor, irrespective of whether the same have been released to the client or to third parties.

Article 4. Use and licence

4.1 Use

When and provided that the client fulfils all his obligations under the agreement with the contractor he shall acquire an exclusive licence to use the design solely for purposes of publication and reproduction as such purposes were agreed when the work was commissioned. If no specific purposes as aforesaid have been agreed the licence shall be limited to that manner of use of the design on which firm intentions existed on the date when the work was commissioned. Such intentions must have been verifiably stated to the contractor prior to the making of the agreement.

4.2 Broader use

Without the approval of the contractor previously obtained in writing the client shall not be entitled to any broader use of the design than as agreed.

4.3 Alterations

Unless otherwise agreed, without the approval of the contractor previously obtained in writing the client shall not be permitted to make (or have or allow others to make) any alterations in the provisional or final design.

4.4 Own promotion

The contractor shall be at liberty to use the design for his own publicity or promotion, provided that in doing so he shall duly observe the client's interests.

Article 5. Fee

5.1 Fee and additional costs

In addition to payment of the agreed fee, the contractor shall also be entitled to be reimbursed for the costs incurred by him in the execution of the work commissioned.

5.2 Fee for additional work

If as a result of complete, sound and clear data and/or materials not having been supplied on time or not having been supplied at all, or as a result of altered or incorrect instructions or briefing, the contractor is required to do more or other work, payment for such additional work shall be charged separately on the basis of the scale of fees customarily applied by the contractor.

5.3 Audit

If the remuneration to be paid is in any way contingent upon events or conditions which are to appear from the client's records of account, upon receiving a statement of account from the client the contractor shall be entitled to have the client's records of account audited by a chartered accountant. If such audit shows that the client's statement is inconsistent with the actual facts and figures the client shall be required to pay the costs of the audit.

Article 6. Payment

6.1 Obligation of payment

Payments are to be made within 30 days of the date of invoice. If upon the expiry of this term the contractor has not received payment (in full), the client shall be in default and shall be charged interest at the statutory rate. All costs incurred by the contractor in connection with overdue payments, such as costs of litigation and judicial and extrajudicial costs, including the cost of legal assistance, bailiffs and debt collection agencies, shall be for the client's account. The extrajudicial costs shall be not less than 10% of the invoice amount, with a minimum of EUR 150.

6.2 Periodic payments

The contractor shall have the right to bill the client at monthly intervals for labour performed and costs incurred in the course of executing the work commissioned.

6.3 No reduction or set-off

The payments due to the contractor shall be made by the client without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the client may have made to the contractor.

6.4 Cessation of licence

In the event that the client fails to honour his debts (in full) or is otherwise in default of fulfilling his obligations under the agreement, then as from the moment of such default the client shall no longer be permitted to use the design supplied to him and each or any licence given to the client under the agreement shall cease to operate, unless in the light of the entire work commissioned by him the client's shortcoming is of minor significance.

Article 7. Cancellation and termination of agreement

7.1 Cancellation of agreement by client

If the client cancels the agreement he shall be required to pay, in addition to compensation, the contractor's fee and the costs incurred in connection with the work carried out until the date of cancellation.

7.2 Termination of agreement by contractor

If the agreement is terminated by the contractor by reason of the client's culpable failure to perform the agreement, the client shall be required to pay, in addition to compensation, the contractor's fee and the costs incurred in connection with the work carried out until the date of termination. In this context any conduct by the client on the grounds of which the contractor cannot reasonably be required to complete the work commissioned shall also be considered a culpable failure to perform the agreement.

7.3 Compensation

The compensation referred to in the preceding two paragraphs of this article shall comprise at least the costs arising from obligations which the contractor has in his own name contracted with third parties for the purposes of executing the work commissioned, as well as 30% of the balance of the fee which the client would owe to the contractor if the work commissioned were fully completed.

7.4 Insolvency

The contractor as well as the client shall have the right to terminate the agreement, in whole or in part, with immediate effect in the event that the other party is adjudged bankrupt or, if a body corporate, goes into compulsory liquidation, or by court order is granted suspension of payments.

7.5 Use of designs after premature termination

If for any reason whatsoever the agreement is terminated prematurely the client shall not be permitted to use (or continue to use) the designs supplied to him and each or any licence given to the client under the agreement shall cease to operate.

7.6 Continuing contracts

If the contractor's work consists of recurrently performing work of a similar nature, then unless otherwise agreed in writing the agreement concerned shall be for an indefinite period of time. Such agreement may be terminated only by written notice given with due observance of a reasonable term of notice of not less than three months.

Article 8. Warranties and indemnity

8.1 Copyright owner

The contractor warrants that the design supplied to the client has been made by him or on his behalf and that if the design is protected by copyright the contractor is the author thereof in the terms of the Auteurswet (Copyright Act) and as copyright owner has the power of disposition of the work.

8.2 Indemnity for claims relating to use of design

The client shall indemnify the contractor or persons employed by the contractor in the execution of the work commissioned against any claim or action by third parties arising from the application or use of the design created by the contractor or persons as aforesaid.

8.3 Materials and information supplied by client

The client shall indemnify the contractor against any claim or action relating to intellectual property rights in materials or information supplied by the client and used in the execution of the work commissioned.

Article 9. Liability

9.1 Liability

The contractor cannot be held liable for:

a. faults in materials which the client

has supplied;

b. misunderstandings or errors in respect of the performance of the agreement if the cause of such misunderstandings or errors lies in acts or omissions of the client, such as in a case where complete, sound and clear information and/or materials have not been supplied on time or not at all;

c. errors by third parties employed by or on behalf of the client;

d. faults in offers made by suppliers, or prices quoted by suppliers being exceeded;

e. faults in the design or errors in the text/data if in accordance with the provisions of article 2.5 the client has given his approval or has had the opportunity to carry out a check and has declined to make such check;

f. faults in the design or errors in the text/data if the client has omitted to have a particular model or prototype made or a particular test carried out and the faults would have been apparent in such model, prototype or test.

9.2 Limitation of liability

Save in the event of wilful acts or gross negligence by the contractor or the contractor's management the liability of the contractor for damage or loss arising from an agreement or any wrongful act committed against the client shall be limited to an amount reasonably proportionate to the quantum of the work commissioned, provided that such amount shall not exceed NLG 100,000 or the agreed amount of the fee, whichever is the higher.

9.3 Cessation of liability

Any and all liability shall cease upon the expiry of twelve months from the date of completion of the work commissioned

9.4 Copies of materials

Where reasonably possible the client shall be required to retain copies of materials and data he has supplied until the work commissioned has been completed. If the client fails to do so the contractor cannot be held liable for any damage or loss which would not have occurred if such copies had existed.

9.5 No obligation to retain materials and data

After completion of the work commissioned the client and the contractor shall have no obligation to each other to retain any of the materials and data used.

Article 10. Other terms

10.1 Transfer or assignment to third parties

The client shall not be permitted to transfer or assign to third parties any of the rights under an agreement made with the contractor, save in the event and as part of a transfer of the whole of the client's business.

10.2 Confidentiality

Both parties shall be required to treat as strictly confidential all facts and circumstances relating to the other party of which they gain knowledge within the context of the work commissioned.

The same duty of confidentiality in respect of such facts and circumstances shall be imposed on third parties who may be employed in the execution of the work commissioned.

10.3 Headings

The headings in these General Terms and Conditions serve for orientation purposes only and do not constitute part of these Terms and Conditions.

10.4 Netherlands law

The agreement between the contractor and the client shall be governed by the law of the Netherlands. The court which has the power to hear and decide on any dispute between the contractor and the client shall be the court having jurisdiction in the district where the contractor has his office.