

### **1 Applicability general conditions, quotation and order confirmation**

1.1 Intended by the contractor is the one-man business Joop van den Heuvel, listed in the trade register of the Chamber of Commerce under number 14121974. Intended by the client is every natural and/or legal person who wishes to conclude or has concluded a (sales) agreement with contractor. These general conditions are applicable to all issued quotations, agreements (whether or not concluded verbally) and all activities which are to be carried out by or on behalf of the contractor.

1.2 Quotations are valid for a maximum of one month, counted from the moment of its issue. All prices are in Euros and exclusive of VAT, unless expressly indicated otherwise. Rates and offers listed do not automatically apply to future assignments. The client guarantees the accuracy and completeness of the information provided by or on behalf of him on to the contractor on which the contractor bases the quotation. Price quotations can undergo changes due to modifications to the requested activities and/or materials i.e. raw material. The contractor is entitled to a compensation of the costs incurred by him upon preparation of the quotation, if no agreement is concluded between the contractor and the client.

1.3 Assignments are confirmed in writing (whether or not through electronic channels) between the client and the contractor. On behalf of contractor, exclusively Mr J.P.M. van den Heuvel or a person authorised by him in writing has the right to issue quotations and to accept orders. In case the client fails to confirm an order, but nevertheless accepts that the contractor starts with the implementation of the order, then the content of the quotation applies as established and these General conditions apply. Further verbal arrangements and clauses only bind the contractor after they have been confirmed by the contractor in writing.

### **2 Implementation of the agreement**

2.1 The contractor exerts himself to carry out the assignment diligently and independently (it regards, therefore, a best-effort obligation), to defend 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 may be expected from a reasonable and professionally acting contractor. To the extent necessary, the contractor will keep the client informed of the progress of the activities.

2.2 The client does all those things which are reasonably necessary or desirable to enable the timely and correct delivery of the design by the contractor, such as (letting) supply complete, sound, and clear information or material, for which contractor indicates or of which the client understands or should reasonably understand, that they are necessary for the implementation of the agreement.

2.3 A term indicated by the contractor for the implementation of the assignment is indicative, unless established otherwise in writing. Modifications to the assignment must at all times be established in writing, under the proviso that contractor always reserves himself the creative liberty regarding the drawing and/or designs on which the assignment is based, meaning that contractor has the right upon the implementation of the assignment to improve and/or modify and/or adjust it as he sees fit, with the objective of obtaining the final result which is optimal according to the ideas of the contractor.

2.4 Unless established otherwise in writing, not included in the assignment of the contractor and/or designer is:

- a the carrying out of tests, and the assessment whether instructions of the client are compliant with legal or (technical) quality standards;
  - b investigating the existence of rights, including patent rights, brand rights, drawing- or model-rights, copyrights, or portrait rights of third parties;
  - c investigating the possibility of the potential forms of protection intended sub b. for the client;
  - d the controlling of technical data which is supplied by third parties;
  - e the controlling of the suitability of the planned location where the product which the assignment regards will be placed;
  - f the application for the required licenses and/or permissions for placement;
  - g the instruction of third parties regarding the product which the agreement regards, with the exception of the third parties which are explicitly deployed by contractor pursuant to article 3.1.
- 2.5 Before the execution, production, multiplication, or disclosure is proceeded with, parties enable each other to control and approve the latest models, prototypes, or trials of the result.
- 2.6 Deviations in the (final) result relative to what was established do not constitute grounds for client for rejection, discounts, set-offs, compensation, or rescission of the agreement, if these deviations, taking into account all circumstances, are of minor importance to all reasonable effect.

### **3 Deployment of third parties**

3.1 The contractor has the right to deploy third parties for the benefit of the execution of his assignment. Upon granting the assignment, client gives permission to the contractor to provide the required information and documentation under the same conditions as those which apply for contractor to third parties.

3.2 In case the contractor – whether or not upon request of the client – prepares a budget for the costs of third parties deployed for the assignment – then this budget will be indicative.

3.3 In case upon the implementation of the assignment the contractor pursuant to express arrangement engages goods or services from third parties at his own expense and risk, after which these goods or services are passed on to the client, then the provisions from the general conditions of and/or separate arrangements with the supplier, regarding warranty and liability, will also apply vis-à-vis the client.

3.4 In case the contractor, whether or not on behalf of the client, grants assignments or instructions to production companies or other third parties, upon request of the contractor the client will confirm the approval intended in article 2.5 of these General conditions to contractor in writing.

3.5 The client informs the contractor in writing regarding the third parties deployed by client as well as on the nature of the activities assigned to those third parties, to the extent this is of importance for the implementation of the assignment as established with the contractor.

3.6 The contractor is not liable for errors or defects in products or services of third parties deployed by or on behalf of the client, regardless of whether these were introduced by the contractor. The client must address these parties himself in such case as may occur.

### **4 Rights of (intellectual) property**

4.1 All rights of intellectual property resulting from the assignment – including patent rights, brand rights, drawing- or model-rights, and copyrights – to the results of the assignment fall to the maker on grounds of Netherlands legislation ('Auteurswet'). To the extent such a right can only be acquired through filing or registration, the contractor is exclusively authorised thereto, unless explicitly established otherwise.

4.2 Parties can establish that the rights referred to in the first section are completely or partially transferred to the client. This transfer and the possible conditions under which the transfer takes place are always established in writing through a separate agreement. Until the moment of transfer, a user right is granted as arranged for in article 5 of these General conditions.

4.3 The contractor has the right at all times to (let) state or remove his name on, at, or in publicity around the result of the assignment, in the manner customary for that result. It is not permitted to the client, without the prior written consent of the contractor, to render public or multiply the name of the contractor.

4.4 Unless established otherwise, the (original copies of the) results realised in the context of the assignment by the contractor (such as designs, design sketches, concepts, advice, reports, budgets, estimates, specifications, work drawings, illustrations, photos, prototypes, models, moulds, (partial) products, films, (audio- and video) presentations, source codes and other material or (electronic) files, etc.) remain the property of the contractor, regardless of whether they have been made available to the client or to third parties.

4.5 After completion of the assignment, neither the client nor the contractor has an obligation to retain information with regard to the material and data used, unless established otherwise.

#### **5 Use of the result**

5.1 In case the client is fully compliant with his (financial) obligations pursuant to the agreement with the contractor, he acquires the right to use the result of the assignment in accordance with the established end-use. If no arrangements have been made regarding the end-use, the user right remains limited to the usage for which the assignment was (apparently) granted. The right to use is non-exclusive, unless it flows differently from the nature of the agreement or it has been established otherwise.

5.2 In case the result also regards works which are subject to third-party rights, parties make additional arrangements for how the usage of these works will be provided for.

5.3 Without written permission, client does not have the right to modify, multiply, more widely or otherwise (re)use or implement the result of the assignment than how was established, nor to let third parties do so. The contractor can subject this permission to conditions, including the payment of a compensation.

5.4 In case of wider or different use not agreed on, also including the modification, maiming, or impairing of the preliminary or definitive result, the contractor is entitled to compensation on account of violation of his rights in the amount of at least three times the established fee, or at least a compensation which is proportional to the breach committed, without otherwise forfeiting any other right.

5.5 It is not permitted to the (any longer) to use the results which are made available and every right of use granted to the client in the context of the assignment, lapses with immediate effect:

a. From the moment that the client does not or does not fully comply with his (payment) obligations on account of the agreement or is otherwise in default;

b. If the assignment is prematurely ended for reasons mentioned in article 10.1 of these General conditions;

c. In case of the bankruptcy of the client, unless the relevant rights are transferred to the client in conformity with the second section.

5.6 The contractor is at liberty, with due regard for the interests of the client, to use the results for his own publicity, for the acquisition of assignments, portfolio, promotion, including matches and exhibits etc., and to obtain the usufruct of these, in case it regards physical results.

#### **6 Transport**

6.1. If the order confirmation determines that the goods created are transported, the contractor commits himself towards the client to adequately package the goods (unless the nature of the goods opposes this) and to secure them in such a way that they reach their destination in proper conditions in case of regular transport. The contractor takes care of transport insurance as is customary.

6.2. The goods will be delivered by the contractor at, or sent for delivery to, the established location or locations in the manners as determined in the order or as is established afterwards.

6.3. In case the contractor has made available pallets, packaging cases, crates, containers, etc. for packing and transport or has had them provided by a third party whether or not against payment of a deposit or a security sum, the client is obligated (unless it regards single-use packaging) to send back these pallets etc. to the address indicated by the contractor, failing which the client owes the contractor compensation of damages in an amount equal to the damage incurred by contractor as a result.

#### **7 Storage**

7.1. If for whatever reason the client is not able to receive the goods at the established time and they are ready for shipment, the contractor will, if his storage possibilities permit this – whether or not upon request of the client – keep and secure the goods at the expense and risk of client, and take all reasonable measures to prevent deterioration of quality until they have been delivered to the client.

7.2. The client is obligated to compensate to the contractor the storage costs according to the rate customary at the contractor and, failing this, compensate according to the rate customary in the sector, from the moment that the goods are ready for shipment, or otherwise, if this is at a later time, from the delivery date established in the agreement.

#### **8 Fees and costs**

8.1 The contractor is entitled to a fee for implementing the assignment. It may consist of an hourly rate, a fixed amount, whether or not related to the project sum or of any other compensation to be established between parties in writing.

8.2 Besides the established fee, also the costs which the contractor incurs for the execution of the assignment, such as office, travel and accommodation costs, costs for prints, copies, (printing) tests, prototypes, and third-party costs for advice, production, and assistance and the likes are eligible for compensation. These costs are specified beforehand as much as possible, except in case a fixed surcharge rate is established.

8.3 In case the contractor is forced, by the failure to provide or to timely provide complete, sound, and clear information/material, by a modified or incorrect assignment or briefing, or by external circumstances, to carry out more or different activities, then these activities are compensated separately, based on the fees which are customarily applied by the contractor. The contractor will inform the client beforehand accordingly, unless this is not possible due to circumstances or the nature of the activities does not permit postponement.

8.4 If the execution of the assignment is delayed or interrupted by circumstances which cannot be attributed to the contractor, the client is obligated to compensate any possible expenses this may entail. The contractor will try to limit the costs as much as possible.

#### **9 Payment and suspension**

9.1 All payments must be made without deductions, set-offs, or suspensions, within 14 days after invoice date, unless established otherwise in writing or the invoice indicates differently.

The contractor can stipulate that the client is obligated to settle the price by advance payment in accordance with the payment schedule as included in the order confirmation. Client is not authorised to deduct any sums from this price on account of a counter-claim presented by him.

9.2 All matters delivered to the client remain the property of the contractor until all amounts which the client owes to the contractor pursuant to the agreement concluded between parties are paid in full to the contractor.

9.3 In case the client is in default with regard to the entire or partial payment of the amounts owed, the client owes 2% interest per month and extrajudicial collection costs, which amount to a minimum of 15% of the invoice amount at a minimum of € 150 excl. VAT.

9.4 The contractor takes care of timely invoicing. Through consultation with the client, the contractor may bill the established fee and costs in advance, intermediately, or periodically.

9.5 The contractor may suspend the execution of the assignment – without thereby being liable for any damage which may possibly result from it – after the payment term has expired and the client, after having been warned in writing to provide settlement within 14 days still, fails to pay, or alternatively in case the contractor must understand due to an announcement or behaviour on the part of the client that payment will fail to materialize.

## **10 Cancellation and rescission**

10.1 In case the client cancels the agreement without a culpable shortcoming on the part of the contractor pertaining, or in case the contractor rescinds the agreement on account of an attributable shortcoming in compliance with the agreement by the client, then the client owes, besides the fee and the costs incurred with regard to the activities conducted up to that time, a compensation for damages. Behaviour of the client on grounds of which it can no longer reasonably be demanded from the contractor that the assignment will be completed, is in this context also considered an attributable shortcoming.

10.2 The compensation of damages intended in the previous section comprises in any case the costs resulting from the contracts engaged in with third parties by the contractor under his own name for the fulfilment of the assignment, as well as at least 30% of the remainder of the fee which the client would owe upon total fulfilment of the assignment.

10.3 Both the contractor and the client have the right to immediately rescind the agreement completely or partially, and all due amounts become instantly exigible if with regard to the other party an application for bankruptcy, the (temporary) suspension of payment, or debt restructuring is filed.

10.4 In case the activities of the contractor consist of the repeated carrying out of similar activities, then a continuing performance agreement pertains, unless established otherwise in writing. This agreement can only be terminated by client by written cancellation with due regard for a notice period of at least six months, during which term the client continues to purchase the usual quantity of activities from the contractor, or he will financially compensate contractor accordingly.

## **11 Guarantees and safeguards**

11.1 The contractor guarantees that the design, the composition, and the quality of the goods which are delivered pursuant to the order, are compliant with all applicable requirements as stipulated in the order confirmation. Contractor declares that the result of the assignment as delivered by him at the time of its realisation, to the extent he knows or should know, does not violate third-party rights nor is otherwise illegitimate.

The contractor grants client warranty for up to 2 years (the definitive warranty term is definitively established and confirmed in the order confirmation) for the products delivered by him, whereby is excluded damage as a result of wrong usage, theft, vandalism, fire/smoke, frost, storm, hail, precipitation, and water damage.

11.2 In case the client uses the results of the assignment, the client safeguards the contractor or the third parties deployed by the contractor upon the assignment against all third-party claims resulting from the applications or the use of the result of the assignment. This leaves unaffected the liability of contractor towards client for non-compliance with the guarantees as intended in the preceding section and other liability as intended in article 12 of these General conditions.

11.3 The client safeguards the contractor against claims regarding rights of intellectual property to all material and/or information provided by the client which are used upon the execution of the assignment.

## **12 Liability**

12.1 In case of an attributable shortcoming, contractor must first be declared in default in writing, with a reasonable term of at least one month, whereby – if applicable – any possible vacation periods and/or company closings on the part of contractor must be added up to the aforementioned month, to still fulfil his obligations, or otherwise to correct any possible errors or to limit damage or undo it.

12.2 Contractor is exclusively liable towards the client for direct damage which is attributable to the contractor. Liability of the contractor for indirect damage, also including consequential damage, loss of profit, missed savings, maimed or lost data or material, or damage due to operational stagnation, is excluded.

12.3 The liability of the contractor is always limited to the fee of the contractor for the assignment, or at least for that part of the assignment which the liability is in regard to. This amount is limited at all times to a maximum of the amount which the insurer disburses in such case. The amount for which the contractor is liable in such case is reduced by such sums as are insured by the client.

12.4 Any liability lapses through the expiry of two years from the moment that the assignment, through completion, cancellation, or rescission, has ended or been concluded.

## **13 Other provisions**

13.1 In case the client wishes to grant a similar assignment simultaneously to others than the contractor or has already granted the assignment to someone else, he will accordingly inform the contractor in writing, including statement of the names of these others.

13.2 It is not permitted to the client to transfer any right from an agreement concluded with the contractor to third parties, otherwise than through the transfer of his entire enterprise or with the written consent of the contractor.

13.3 Parties are obligated to maintain the secrecy of all confidential information, facts, and circumstances which, in the context of the assignment, come to the knowledge of the other party from each other or from a different source, and of which it can reasonably be understood that the disclosure or communication thereof to third parties could cause damage to the contractor or the client. Third parties which are involved in the implementation of the assignment, will be bound by the same confidential handling with regard to these facts and circumstances deriving from the other party.

13.4 If applicable, contractor will do everything which can reasonably be expected from contractor to observe compliance with binding instructions in the context of GDPR/AVG. If applicable, contractor will also impose similar obligations on such third parties as are deployed

by him upon the implementation of the assignment.

13.5 If any provision of these General conditions is void or annulled, the other provisions of these General conditions will remain fully effective. Parties will in such case enter into consultation with the objective of establishing new provisions to replace the void or annulled provisions, whereby the purpose and tenor of the void or annulled provisions is observed as much as possible.

13.6 The headings in these General conditions only serve to improve readability and are not a part of these General conditions.

13.7 To the agreement between the contractor and client, Netherlands legislation is applicable. Parties will try at the first instance to resolve a dispute which has arisen through mutual consultation. Except for the event that parties have expressly agreed on arbitration, the court competent pursuant to the law, or the court in the district where the contractor is established – such at the discretion of the contractor – will hear disputes between the contractor and client.