

# TERMS & CONDITIONS

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## Article 1 Definitions

1. *Service provider*: **Brenda Waldekker Web Design**, a Brenda Works company, established at Roelantlaan 321, 5665PK Geldrop, The Netherlands, registered under Chamber of Commerce number 61079472, is referred to in these general terms and conditions as service provider.
2. *Client*: The counterparty of service provider is referred to as client in these general terms and conditions.
3. *Parties*: Service provider and client together.
4. *Agreement*: The agreement means the agreement for services between the parties.

## Article 2 Applicability of general conditions

1. These conditions apply to all quotations, offers, activities, agreements and deliveries of services or goods by or on behalf of service provider.
2. Deviating from these terms and conditions is only possible if this has been agreed

explicitly and in writing by the parties.

3. The agreement always contains obligations for service provider on a best effort basis, not on a result basis.

### **Article 3 Payment**

1. Declarations must be paid within 14 days after the invoice date, unless the parties have agreed otherwise in writing or a different payment term is stated on the invoice.

2. Payments shall be made without any recourse to suspension or set-off, by transfer of the amount owed to the bank account number specified by the service provider.

3. If the client does not pay within the agreed period, he is in default by operation of law, without any notice being required. From that moment on, the service provider is entitled to suspend the obligations until the client has met his payment obligations.

4. If the client remains in default, the service provider will proceed to collection. The costs related to this collection are at the expense of the client. When the client is in default, in addition to the principal sum, he is also liable to pay legal (trade) interest, extrajudicial collection costs and other damage to the service provider. The collection costs are calculated on the basis of the Dutch 'Reimbursement for extrajudicial collection costs'.

5. In the event of liquidation, bankruptcy, confiscation or moratorium of the client, the claims of service provider on the client are immediately due and payable.

6. If the client refuses to cooperate with the execution of the order by the service provider, he is still obliged to pay the agreed price to the service provider.

### **Article 4 Offers and tenders**

1. The offers of service provider are valid for a maximum of 1 month, unless a different term of acceptance is mentioned in the offer. If the offer is not accepted within that period, the offer will lapse.

2. Delivery times in quotations are indicative and do not entitle the client to dissolution or compensation if this is exceeded, unless the parties have expressly agreed otherwise in writing.

3. Offers and quotations do not automatically apply to repeat orders. The parties must expressly agree this in writing.

### **Article 5 Prices**

1. The prices quoted on offers, quotes and invoices from service provider are exclusive of VAT and any other government levies, unless expressly stated otherwise.

2. The prices of goods are based on the cost prices known at that time. Increases, which could not be foreseen by the service provider at the time of making the offer or the conclusion of the agreement, may give rise to price increases.

3. With regard to the service provision, the parties can agree on a fixed price for the conclusion of the agreement.

4. If no fixed price has been agreed, the rate with regard to the service may be determined on the basis of the hours actually spent. The rate is calculated according to the usual hourly rates of service provider, applicable to the period in which he performs the work, unless a deviating hourly rate has been agreed upon.

5. If no rate has been agreed on the basis of the actual hours worked, a target price will be agreed for the service, whereby the service provider is entitled to deviate from this up to 10%. If the target price exceeds 10%, the service provider must timely inform the client why a higher price is justified. In that case, the client is entitled to have part of the order canceled, which exceeds the target price plus 10%.

#### **Article 6 Price indexing**

1. The prices and hourly wages agreed upon at the conclusion of the agreement are based on the price level used at that time. Service provider has the right to adjust the fees charged to the client annually as of 1 January.

2. Adjusted prices, rates and hourly wages are communicated to the client as soon as possible.

#### **Article 7 Provision of information by the client**

1. The client makes all information relevant to the execution of the assignment available to the service provider.

2. The client is obliged to make available in a timely manner, all data and documents that the service provider considers necessary for the correct execution of the assignment in the desired form and manner.

3. The client guarantees the correctness, completeness and reliability of the data and documents made available to the service provider, even if these originate from third parties, in so far as the nature of the assignment does not dictate otherwise.

4. Client indemnifies service provider for any damages in any form that results from failure to comply with the provisions of the first paragraph of this article.

5. If and insofar as the client requests this, the service provider will return the relevant documents.

6. If the client does not timely or not properly supply the data and documents required by the service provider and the execution of the order is delayed because of this, the resulting additional costs and extra fees will be charged to the client.

#### **Article 8 Withdrawal of the assignment**

1. The client is free to withdraw the assignment from the service provider at any time.

2. When the client withdraws the assignment, the client is obliged to pay the wages owed and the expenses incurred by the service provider.

#### **Article 9 Execution of the agreement**

1. Service provider performs the contract to the best of its knowledge and ability and in accordance with the requirements of good workmanship.

2. Service provider has the right to outsource work to third parties.

3. The execution will take place in mutual consultation and after written agreement and payment of any agreed advance.

4. It is the client's responsibility to make sure the service provider can start the assignment on time.

#### **Article 10 Contract duration assignment**

1. The agreement between the client and the service provider concerns an indefinite period of time, unless the nature of the agreement dictates otherwise or the parties have expressly agreed otherwise in writing.
2. If the parties have agreed a term within the term of the agreement for the completion of certain activities, this is never a strict deadline. In the event that this term is exceeded, the client must provide the service provider with a written notice of default.

#### **Article 11 Amendment of the agreement**

1. If it becomes apparent during the execution of the agreement that it is necessary for the proper performance of the assignment to change or supplement the work to be performed, the parties shall adjust the agreement accordingly in due time and in mutual consultation.
2. If the parties agree that the agreement will be amended or supplemented, the time of completion of the execution may be affected. Service provider will inform client of this as soon as possible.
3. If the change or supplement to the agreement has financial and/or qualitative consequences, the service provider informs the client of this in writing as soon as possible.
4. If the parties have agreed on a fixed fee, the service provider will indicate to what extent the change or supplement to the agreement will result in an exceeding of this fee.

#### **Article 12 Force majeure**

1. In addition to the provisions of Section 6:75 of the Dutch Civil Code, a failure of the service provider to perform an obligation towards the client can not be attributed to the service provider in the event of a circumstance that is independent of the will of the service provider, whereby the fulfillment of his obligations to the client are prevented in whole or in part or as a result of which the fulfillment of obligations can not reasonably be expected from the service provider. These circumstances include, among others, failures of suppliers or other third parties, power failures, computer viruses, strikes, bad weather conditions and work interruptions.
2. If a situation as referred to above occurs, and as a result of which the service provider can not fulfill its obligations towards the client, then these obligations will be suspended as long as the service provider is unable to meet his obligations. If the situation referred to in the previous sentence has lasted 30 calendar days, the parties have the right to dissolve the agreement in writing in whole or in part.
3. In the case referred to in the second paragraph of this article, the service provider is not obliged to pay compensation for any damages, not even if the service provider has any advantage as a result of the force majeure situation.

#### **Article 13 Settlement**

1. The client waives his right to set off a debt to the service provider against a claim on the service provider.

#### **Article 14 Suspension**

1. The Client waives the right to suspend the fulfillment of any obligation arising from this agreement.

#### **Article 15 Transfer of rights**

1. Rights of a party to this agreement can not be transferred without the prior written consent of the other party. This provision applies as a working clause concerning the law of property as referred to in Section 3:83 (2) of the Dutch Civil Code.

#### **Article 16 Expiry of the claim**

1. Every right to compensation by service provider expires in any case 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions of article 6:89 of the Dutch Civil Code.

#### **Article 17 Insurance**

1. The client undertakes actions to adequately insure and keep insured against fire, explosion, water damage and theft, all goods which are necessary for the execution of the underlying agreement, as well as goods of the service provider that are in the hands of the client and goods that have been delivered under retention of title.
2. The client will provide the insurance policy for inspection at first request.

#### **Article 18 Damage liability**

1. Service provider is not liable for damages resulting from this agreement, unless service provider has caused the damage deliberately or with gross negligence.
2. In the event that service provider owes compensation to the client, the damages shall not exceed the fee.
3. Any liability for damages arising from or connected with the execution of an agreement is always limited to the amount that is paid by the (professional) liability insurance(s) in the relevant case. This amount is increased by the amount of the excess according to the relevant policy.
4. The limitation of liability also applies if the service provider is held liable for damages that arises directly or indirectly from the improper functioning of the equipment, software, data files, registers or other items used by the service provider in the execution of the assignment.
5. The liability of service provider for damages resulting from intent or deliberate recklessness on the part of the service provider or his managerial subordinates is not excluded.

#### **Article 19 Liability of the client**

1. In the event that an assignment is given by more than one person, each of them shall be jointly and severally liable for the amounts owed to the service provider pursuant to that order.
2. If an assignment is provided indirectly or immediately by a natural person on behalf of a legal entity, this natural person may also be a private client. This requires that this natural person can be considered as the (co-)policymaker of the legal person. In the

event of default by the legal person, the natural person is therefore personally liable for the payment of the invoice, irrespective of whether or not this has been made in the name of a legal person or in the name of the client as natural person or both of them at the request of the client.

#### **Article 20 Indemnity**

1. The client indemnifies service provider against all third-party claims that are related to the goods and/or services supplied by the service provider.

#### **Article 21 Complaint obligation**

1. The client is obliged to immediately report complaints in writing about the work performed to the service provider. The complaint contains as detailed a description as possible of the shortcoming, so that the service provider is able to respond adequately.

2. In any case, a complaint can not lead to the service provider being obliged to perform other work than has been agreed.

#### **Article 22 Retention of title, right of suspension and right of retention**

1. The goods and parts and items supplied by the client remain the property of the service provider until the client has paid the entire agreed price. Until then, the service provider can invoke his retention of title and take back the goods.

2. If the agreed advance amounts are not paid or not paid on time, the service provider is entitled to suspend the work until the agreed part has been paid. At that time there is a creditor's default and as such there can be no question of invoking any rights due to late delivery by service provider.

3. The service provider is not entitled to pawn the goods falling under his retention of title or encumber them in any other way.

4. If items have not yet been delivered, but the agreed payment or price has not been paid in accordance with the agreement, the service provider has the right of retention. The goods or services will not be delivered until the client has paid in full and in accordance with the agreement.

5. In the event of liquidation, insolvency or suspension of payment of the client, the obligations of the client are immediately due and payable.

#### **Article 23 Intellectual property**

1. Unless the parties have agreed otherwise and in writing, the service provider retains all intellectual absolute rights (including copyright, patent rights, trademark rights, design and design rights, etc.) on all designs, drawings, writings, etc. carriers with data or other information, quotes, images, sketches, models, scale models, etc.

2. The intellectual absolute rights referred to above may not be copied, shown to third parties and/or made available or used in any other way without written permission from the service provider.

3. The client undertakes to maintain confidentiality with regard to the confidential information made available to him by the service provider. Confidential information in any case means all that to which this article relates, as well as any company data. The

client agrees to obtain a written duty of confidentiality from his staff and/or third parties involved in the execution of this agreement.

#### **Article 24 Confidentiality**

1. Each party shall keep confidential any information it receives (in any form whatsoever) from the other party and any other information concerning the other party that he knows or may reasonably suspect is confidential or confidential, or information that he can expect that its distribution may harm the other party, and will take all necessary measures to ensure its personnel will do the same.

2. The confidentiality obligation mentioned in the first paragraph of this article does not apply to information:

1. which, at the time when the recipient received this information, was already public or subsequently made public without a breach of confidentiality by the receiving party;
2. of which the receiving party can prove was already in its possession at the time of the delivery by the other party;
3. which has come to the receiving party from a third party which was legally entitled to provide this information to the receiving party;
4. which is made public by the receiving party on the basis of a statutory obligation.

3. The duty of secrecy described in this article applies for the duration of this agreement and for a period of three years after its termination.

#### **Article 25 Penalty on violation of duty of confidentiality**

1. If the client breaches the article of these general terms and conditions on confidentiality, the client forfeits an immediately due and payable fine of € 5,000 for each violation and also an amount of € 500 for each day that this violation continues. This is irrespective of whether the violation can be attributed to the client. Moreover, no prior notice of default or legal proceedings are required for the forfeiture of this fine. No proof of actual damages is required from service provider.

2. The forfeiture of the fine referred to in the first paragraph of this article shall not affect the other rights of the service provider, including his right to claim compensation in addition to the fine.

#### **Article 26 Dispute resolution**

1. Dutch law applies to these general terms and conditions.