

Terms and Conditions of the Association of Dutch Designers (BNO)

1. Agreement, quotation and confirmation

- 1.1 These general terms and conditions (hereinafter: General Terms and Conditions) apply to all offers and the establishment, content and fulfillment of all between the client (hereinafter: Client) and the contractor (hereinafter: Designer) concluded agreements. Deviations from these General Terms and Conditions can only be agreed in writing between the Client and the Designer.
- 1.2 Quotations are without obligation and are valid for 2 (two) months. Quotes can undergo changes due to an unforeseen change in the work. Prices are exclusive of VAT. The rates stated in the quotation or other quotations and offers do not automatically apply to future orders. The contractor guarantees the correctness and completeness of the information provided by or on behalf of him/her The Designer provided data on which the Designer bases the quotation.
- 1.3 Orders are confirmed in writing by the Client. When the Client fails to do so, but nevertheless agrees that the Designer starts with the execution of the assignment, then the content of the offer is deemed to have been agreed and these Terms and Conditions apply. Further oral agreements and stipulations only bind the Designer after they have been agreed in writing by the Designer confirmed.

2. The execution of the agreement

- 2.1 The Designer makes every effort to carry out the assignment carefully and independently to represent and strive for the interests of the Client to the best of its knowledge to a result usable for the Client, such as a reasonable and Professionally acting Designer can and may be expected. To the extent that necessary, the Designer will keep the Client informed of the progress of the work.
- 2.2 The Client will do all that is reasonably necessary and/or desirable to enable timely and correct delivery by the Designer, such as the timely supply of complete, sound and clear data and/or materials.
- 2.3 A term specified by the Designer for the execution of the assignment is indicative, unless otherwise agreed in writing.
- 2.4 Unless otherwise agreed, the Designer's assignment does not include:
 - a. performing tests, applying for permits and assessing whether instructions from the Client comply with legal or quality standards;
 - b. conducting research into the existence of rights, including patent rights, trademark rights, drawing or design rights, copyrights or portrait rights of third parties;
 - c. conducting research into the possibility of the in sub b. intended possible forms of protection for the Client.
- 2.5 Before execution, production, duplication or publication transferred, the parties will give each other the opportunity to present the latest models, prototypes or to check and approve samples of the result.
- 2.6 Deviations in the (final) result from what has been agreed are not reason for rejection, discount, compensation or dissolution of the agreement, when these deviations, taking all circumstances into account, are reasonable are of minor importance.
- 2.7 Complaints are addressed as soon as possible, but in any event within 10 (ten) working days after completion of the assignment, notified in writing to the Designer, in the absence of which the Client is deemed to have fully complied with the result of the assignment have accepted.

3. Enabling third parties

- 3.1 Unless otherwise agreed, assignments to third parties in the context of the execution of the assignment, provided by or on behalf of the Client. At the request of the Client may use the Designer, at the expense and risk of the Client, as authorized representative. Parties can agree on a further agree on compensation.

- 3.2 When the Designer, at the request of the Client, provides a budget for costs of third parties, this budget is indicative. If desired, the Designer can request quotes on behalf of the Client.
- 3.3 When, in the execution of the assignment, the Designer, in accordance with express agreement, with the Client for its own account and risk goods or services of third parties after which these goods or services are (re)delivered or resold to the Client, then the provisions of the general terms and conditions of and/or separate agreements with the supplier also vis-à-vis the Client. The designer enables the Client to take cognizance of the general terms and conditions of and/or separate agreements with the supplier.
- 3.4 When the Designer, whether or not in the name of the Client, receives orders or directions to production companies or other third parties, the Client shall provide the information referred to in Article 2.5 of these General Terms and Conditions Confirm the intended approval in writing.
- 3.5 The Client does not engage third parties without consultation with the Designer when that may affect the performance of the assignment as agreed with the Designer. If the occasion arises, the parties will discuss which third parties will be engaged and what work is assigned to them.
- 3.6 The Designer is not liable for errors or defects in products or services of third parties engaged by or on behalf of the Client, regardless of whether these are Designer have been introduced. The Client must address these parties itself. The Designer can provide assistance with this if desired.

4. Intellectual Property Rights and Proprietary Rights

- 4.1 All intellectual property rights to the results arising from the assignment belong to the Designer. To the extent that such a right can only be obtained by a deposit or registration, only the Designer is authorized to do so, unless otherwise agreed. Under "intellectual property rights" expressly means: copyrights, database rights, neighboring rights, trademark rights, design rights, patents, domain name rights, know-how, commercial knowledge, trade secrets and all similar rights, wherever arising in the world, whether or not subject to registration and including applications to do so.
- 4.2 The parties may agree that the rights referred to in the first paragraph are wholly or partially transferred to the Client. This transfer and the any conditions under which the transfer takes place are always in writing fixed. Until the moment of transfer and payment of the agreed fee, a right of use is granted as regulated in Article 5 of these Terms and Conditions.
- 4.3 The Designer has the right at all times to put his/her name on, with, or in publicity around the result of the assignment – in the manner customary for that result – (have) mentioned or removed. The Client is not permitted without the prior consent of the Designer, the result without mentioning the publish or reproduce the Designer's name.
- 4.4 Unless otherwise agreed, the items supplied by the within the framework of the assignment Designer-created (originals of the) results (such as designs, draft sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photos, prototypes, models, moulds, (partial) products, films, (audio and video) presentations, source codes, source files and other materials or (electronic) files, etc.) property of the Designer, regardless of whether they belong to the made available to the Client or to third parties. For the transfer of the aforementioned results a fee to be agreed upon to agree.
- 4.5 After completing the assignment, the Client and the Designer owe no obligation to retain each other with regard to the products created by the Designer (originals of the) results as mentioned in 4.4, unless otherwise agreed.

5. Using the result

- 5.1 When the Client fully complies with his/her obligations arising from the agreement with the Designer, he/she acquires the right to use (license) of the result of the assignment according to the destination. Are there about the destination, the right of use will be limited to that use for which the order was (apparently) given. The right of use is exclusive, unless the nature of the agreement dictates otherwise or otherwise agreed.

- 5.2 If the result also relates to works to which third-party rights rest, the parties will make additional agreements about how the use of these works will be arranged.
- 5.3 The client is not entitled to change the result of adapt, use or perform the assignment more broadly or in any other way than has been agreed, or to have this done by third parties. The Designer can handle attach conditions to this permission, including the payment of an additional fee compensation.
- 5.4 In the event of wider or other use not agreed, including alteration, mutilation or impairment of the provisional or final result, the Designer is entitled to compensation for infringement of his/her rights of at least three times the agreed fee, or at least a fee that is proportionate responsible for the infringement committed, without losing any other rights.
- 5.5 The Client is not (any longer) without the prior consent of the Designer allowed to use or further develop the result of the assignment work and any right granted to the Client in the context of the assignment to use (license) will lapse, unless the consequences thereof conflict with the reasonableness and fairness:
- from the moment that the Client has fulfilled his (payment) obligations under does not or does not fully comply with the agreement or is otherwise in default;
 - if the assignment is terminated prematurely for reasons referred to in Article 8.1 of these Terms and Conditions;
 - in the event of bankruptcy of the Client, unless the relevant rights in accordance with article 4.2 of these General Terms and Conditions to the Client have been transferred.
- 5.6 With due observance of the interests of the Client, the Designer has freedom to use the results for own publicity, procurement, promotion, including use on the internet, websites and social media, competitions and exhibitions, etc., and to get them on loan, when it about physical results.

6. Fee and costs

- 6.1 The Designer is entitled to a fee for the execution of the assignment. This can consist of an hourly rate, a consultancy fee, a fixed amount or another intermediate compensation agreed upon by the parties.
- 6.2 In addition to the agreed fee, the costs incurred by the Designer for the execution of the assignment, such as office, travel and accommodation costs, costs for prints, copies, (printing) proofs, prototypes, and costs of third parties for advice, production and guidance, etc., are eligible for reimbursement. These costs become so much may be specified in advance, except when a surcharge percentage is specified agreed to meet.
- 6.3 If the Designer, due to the late or non-delivery of complete, proper and clear data/materials, due to an altered or incorrect order or briefing, or due to external circumstances more or other activities, then these activities will be paid separately, on the basis of based on the usual fee rates charged by the Designer. The Designer will inform the Client about this in advance, unless this is circumstances is not possible or the nature of the work does not permit postponement.

7. Payment and Suspension

- 7.1 The Designer is responsible for timely invoicing. In consultation with the Client, the fee and costs agreed upon by the Designer as an advance, interim or charged periodically.
- 7.2 All payments must be made without deduction, set-off or suspension, within 30 days of the invoice date, unless otherwise agreed in writing or the invoice states otherwise.
- 7.3 All goods delivered to the Client remain the property of the Designer until all amounts that the Client pays to the Designer on the basis of the agreements between the parties is due in full to the Designer.
- 7.4 If the Client is in default with the full or partial payment of the amounts owed, the Client is entitled to statutory interest and extrajudicial collection costs owed, which are at least 10% of the invoice amount with a minimum of € 150 excl. VAT amounts.

7.5 The Designer may suspend the execution of the assignment after the payment term has expired and the Client after receiving a written demand for payment within 14 days, fails to do so, or if the Designer by means of a notification or behavior of the Client must understand that payment will not be made.

8. Attributable shortcoming, termination and dissolution of the agreement

8.1 In the event of an attributable shortcoming, the parties will first notify each other in writing default, and, subject to a reasonable period of time, enable the other party to still fulfill his/her obligations, or to correct any errors repair or limit or eliminate damage. The notice of default must contain a detailed possible description of the shortcoming.

8.2 If the Client terminates the agreement (prematurely) without of an attributable shortcoming by the Designer, or when the Designer terminate the agreement due to an attributable shortcoming in the fulfillment of the agreement by the Client, then the Client, in addition to the fee and the costs incurred with regard to the work performed until then, a compensation owed. Conduct of the Client on the basis of which can no longer reasonably be expected of the Designer that the order is completed, are in this context also regarded as an attributable shortcoming.

8.3 The compensation referred to in the previous paragraph includes at least the costs arising from the contract entered into by the Designer in his own name for the fulfillment of the assignment commitments with third parties, as well as 30 (thirty) % of the remaining part of the fee that the Client owes upon complete fulfillment of the assignment would be.

8.4 Both the Designer and the Client have the right to terminate the agreement immediately in whole or in part, and all amounts due will be immediately due and payable, when a request for bankruptcy, (provisional) suspension of payments, or debt restructuring is filed, or the other party dies.

8.5 When the Designer's work consists of repeatedly performing of similar work, then there is a continuing performance agreement, unless otherwise agreed in writing. This agreement can only be terminated by written notice with due observance of a reasonable notice period of at least 3 (three) months, during which period the Client usual amount of work by the Designer continues to decrease, or the Designer will compensate financially for lost sales and costs incurred.

9. Warranties and Disclaimers

9.1 The Designer guarantees that the delivered items have been designed by or on behalf of him/her and that, if the result is subject to copyright, he/she is regarded as the creator within the meaning of the Copyright law and as the copyright owner can dispose of the work. Designer guarantees that the result of the assignment at the time of its realization, insofar as he/she knows or should reasonably know, does not infringe any rights from third parties or is otherwise unlawful.

9.2 The Client indemnifies the Designer, or by the Designer with the assignment engaged third parties, for all claims by third parties arising from the applications or using the results of the command. This does not affect the liability of the Designer towards the Client for non-compliance with the guarantees as referred to in the preceding paragraph and other liability as referred to in article 10 of these General Terms and Conditions.

9.3 The Client indemnifies the Designer against claims with regard to rights intellectual property on all materials provided by the Client and/or data used in the execution of the order.

10. Liability

10.1 The Designer is only liable for direct damage suffered by the Client which is the direct and exclusive result of an attributable to the Designer shortcoming in the execution of the assignment. Liability of the Designer for consequential and indirect damages, including but not limited to lost profits, lost savings, image damage, mutilated or lost data or materials, or damage due to business interruption is excluded.

10.2 Except in the case of intent or deliberate recklessness on the part of the Designer, the total amount The Designer's liability is limited to the Designer's fee for

the assignment, at least that part of the assignment to which the liability relates has. This amount does not exceed € 75,000 and is in any case limited at all times to: a maximum of the amount that the insurer pays to the Designer, where appropriate pays out. The amount for which the Designer is liable in the relevant case, is reduced by any sums that have been paid by the Client insured.

10.3 Any liability expires after two years from the moment the assignment has ended by completion, cancellation or dissolution.

11. Privacy

When the Designer in the context of the services to be provided personal data of (customers of) the Client must process, then the Designer is “processor” and the Client as “responsible” within the meaning of the General Data Protection Regulation (GDPR) and becomes a processing agreement concluded.

12. Force Majeure

12.1 If one of the parties fails to fulfill its obligations, but this

cannot be attributed to him/her (force majeure), that party is not liable and fulfillment of that obligation is suspended for the duration of the force majeure.

12.2 Force majeure includes (but is not limited to)

weather conditions, fire, strike, disease, pandemic, epidemic, (war) violence, hacks, cyber-attacks or other technical failures and circumstances that consequences of this, such as government interventions including quarantine measures, which reasonably prevent one of the parties from performing and which delays as well as delays or shortcomings at suppliers and/or other third parties engaged in the execution of the agreement.

12.3 If one of the parties invokes force majeure, he/she must as soon as possible notify the other party in writing, with reference to the necessary evidence/reasons.

12.4 If the force majeure situation has lasted 60 (sixty) days, both parties the right to terminate the agreement in whole or in part, insofar as the force majeure justifies it.

12.5 In the event of force majeure, the Designer is entitled to that part of the fee for the work performed by him/her and on payment of the costs that the Designer has already incurred or that are unavoidable, for example in connection with orders already placed and assignments to third parties that are no longer without obligation to cancel.

13. Other provisions

13.1 If the Client simultaneously gives the same assignment to parties other than the Designer wishes to provide whether the assignment has already been given to another person before provided, he/she will inform the Designer of this in advance.

13.2 The Client is not permitted to exercise any right from a contract concluded with the Designer to transfer the agreement to third parties, other than by transferring his/her entire company or with the prior written consent of the Designer.

13.3 Parties are obliged to maintain confidentiality of all confidential information, facts and circumstances, which in the context of the assignment, from each other or from another source, to the come to the knowledge of another party, of which it is reasonably understandable that disclosure or communication to third parties damages the Designer or the Client could cause. The parties will inform their employees, or third parties, who work for the execution of the assignment are involved, with regard to these facts and circumstances originating from the other party to the same confidentiality obligation tie.

13.4 If any provision of these Terms and Conditions is void or voided, the other provisions of these General Terms and Conditions will remain in full force stay. In that case, the parties will consult with the aim of introducing new provisions to agree on the replacement of the void or nullified provisions, whereby as much may observe the purpose and intent of the void or voided provisions is taken.

13.5 The headings in these General Terms and Conditions only serve to improve legibility promote and form no part of these Terms and Conditions.

13.6 These General Terms and Conditions may be changed at any time. The Designer will inform the Client about this.

13.7 The agreement between the Designer and the Client is governed by Dutch law application. The parties will initially try to resolve a dispute in mutual consultation to solve. Except when the parties expressly agree in writing to arbitrate agreed upon, the court having jurisdiction under the law, or the court in the district where the Designer is located, this at the Designer's discretion, knowledge of disputes between the Designer and the Client.

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