



## GENERAL TERMS AND CONDITIONS OF DE KUNSTENBOND

### 1. General

In these general terms and conditions, the following terms have the following meanings:

- 1.1 Contractor: the user of these general terms and conditions.
- 1.2 Client: the party that has requested an offer from the Contractor or that has instructed the Contractor to provide services or to create and/or deliver tangible or intangible works.
- 1.3 Assignment/contract: the contract for services and/or contract for work.
- 1.4 Parties: the client and the contractor.
- 1.5 Written/in writing: written, printed or by e-mail.

### 2. Applicability

- 2.1 These general terms and conditions apply to all offers made by the contractor, to all contracts between the parties and to all contracts resulting from them.
- 2.2 These general terms and conditions also apply to assignments with the contractor involving third parties.
- 2.3 Oral agreements, deviations from and additions to these general terms and conditions are only valid if they are confirmed in writing by the contractor.
- 2.4 The contractor expressly rejects the applicability of any general terms and conditions of the client, unless otherwise agreed.

### 3. Offers

- 3.1 An offer is any written form of offer made by or on behalf of the contractor, including offers, quotations and proposals.
- 3.2 All offers are non-binding and valid for two months, unless otherwise agreed.
- 3.3 Prices are exclusive of VAT and expenses for the execution of the work, unless otherwise agreed.
- 3.4 The contractor's offers are based on information provided by the client. The client guarantees the accuracy and completeness thereof.
- 3.5 Rates, fees and discounts stated in the offer or in the contract will only apply to the assignment for which they have been agreed.

### 4. Formation of the contract

- 4.1 A contract is formed when the client agrees to the contractor's offer, without modification or addition.
- 4.2 A contract is also formed when the contractor starts executing the assignment with the client's consent. The contents of the offer will be deemed to have been agreed in that case.

4.3 If the confirmation of the assignment conflicts with the general terms and conditions, the (deviating) condition included in the confirmation of the assignment will prevail. Otherwise, the general terms and conditions will continue to apply in full.

4.4 The contractor may revoke the offer up to and including two business days after the client has agreed to it. In that case, the contract will lapse without further mutual obligations.

### 5. Performance of the contract

- 5.1 The parties mutually undertake to act as a good contractor and a good client.
- 5.2 The contractor will carry out the assignment to the best of their knowledge, expertise and ability on the basis of a best-efforts obligation, unless otherwise agreed or unless the nature of the work results in an obligation of result.
- 5.3 Terms for execution and completion of the assignment are indicative, unless otherwise agreed.
- 5.4 The contractor determines the way in which the granted assignment is executed. The contractor will perform the work at its own discretion and without supervision or direction by the client. Instructions given by the client regarding the result of the assignment will be observed to the extent possible. To the extent required for a proper execution of the assignment, the contractor may have the work, or part of the work, performed by third parties.
- 5.5 The client will do all that is reasonably necessary to allow a timely and correct delivery by the contractor. In this context, the client will ensure the timely supply of correct, sound, usable and complete information and materials necessary for the execution of the assignment. The client guarantees the accuracy, completeness and reliability thereof.
- 5.6 If the client requires any additions or modifications with regard to the agreed assignment, the contractor can only claim an increase in the price if it has informed the client of the resulting price increase in time, unless the client should have understood a price increase by themselves.
- 5.7 If the assignment is not executed to the client's satisfaction, the client will inform the contractor of this in writing as soon as possible, but in any case within ten business days of completion of the assignment. Failing this, the client is deemed to have fully accepted the result of the assignment.

### 6. Term and termination

- 6.1 The contract is entered into for an indefinite period, unless otherwise agreed or the nature of the contract indicates otherwise.
- 6.2 Notice of termination of the contract can only be given in writing.
- 6.3 A fixed-term contract cannot be terminated by the parties before the end of the term, unless there are serious reasons for this and with the exclusion of what is stipulated in Clause 4.4.
- 6.4 The parties may terminate a permanent contract at any time without observing any notice period, subject to the provisions of Clause 6.5, 6.6 and 6.7.
- 6.5 If the contractor's work consists of the repeated performance of similar work, this constitutes a continuing performance contract. Notice of termination thereof by the client or the contractor may only be given subject to a reasonable notice period of at least three months. During the notice period, the client will purchase the usual amount of work from the contractor; alternatively, the client will provide financial compensation to the contractor. The average monthly fee paid to the contractor during the six months preceding the

termination date is deemed reasonable as financial compensation.

6.6 Upon notice of termination by the client of a permanent contract, the contractor will be entitled to full payment of the agreed fee for the work performed until then, to full reimbursement of the costs incurred and to compensation.

6.7 The compensation referred to in Clause 6.6 will at least consist of the costs of commitments that the contractor has entered into with third parties for the execution of the assignment, as well as at least 30% of the remaining fee that the client would owe to the contractor if the assignment were executed in full.

6.8 If the contract is dissolved by the contractor on account of an attributable failure in the performance of the contract by the client, the same applies as stipulated in Clause 6.5, 6.6 and 6.7. Of Clause 6.5, only the financial compensation mentioned in the last sentence applies.

6.9 In the event of bankruptcy, suspension of payments and/or application of the Dutch Natural Persons Debt Restructuring Act, the parties will be entitled to dissolve the contract in whole or in part with immediate effect.

6.10 If the client is placed under guardianship or their business is shut down or liquidated, the contractor will be entitled to dissolve the contract in whole or in part with immediate effect.

## **7. Fees and costs**

7.1 The contractor is entitled to a fee for executing the assignment and to a usage fee for the use of copyrighted work created by them. If no concrete amounts have been agreed, the contractor will charge the usual hourly rate and the usual usage fee.

7.2 The contractor's fee is exclusive of VAT and costs incurred in carrying out the work, such as material costs and travel and accommodation expenses.

7.3 The contractor is entitled to request an advance payment from the client.

7.4 Payment of the fee does not depend on the result of the work, unless otherwise agreed.

7.5 Contractor is entitled to increase an agreed hourly rate during the assignment if reasonably unforeseen cost-increasing circumstances arise. If the client is a natural person not acting in the course of their profession or business, the stipulated hourly rate will not be increased earlier than three months after entering into the contract. Increases the price by more than 6%, the parties will consult with each other.

7.6 In the event of a permanent contract, the contractor is entitled to increase the hourly rate once a year on the basis of general price increases, such as inflation.

7.7 Additional costs incurred as a result of the client's failure to comply with the provisions of Clause 5.5 of these general terms and conditions will be at the client's expense. The same applies to additional costs arising from delay or interruption of the assignment due to circumstances not attributable to the contractor.

## **8. Payment, suspension and retention of title**

8.1 Payments must be made within thirty days of the invoice date, unless the invoice states otherwise. The client is not entitled to suspension, deduction or set-off.

8.2 If the client fails to pay the invoice on time, the client will be in default by operation of law. As from the date the client is in default, they will owe the contractor extrajudicial collection costs

and statutory (commercial) interest without further notice of default being required. The following applies in this regard:

- In so far as the client is not acting in the course of their profession or business, the contractor will be entitled to the maximum permitted compensation of the extrajudicial collection costs in accordance with the Dutch Extrajudicial Collection Costs (Fees) Decree, in so far as the outstanding amount – after the occurrence of default – is not paid within fourteen days following a demand. If the extrajudicial collection costs actually incurred exceed the compensation, these will be borne by the client.
- In so far as the client is acting in the course of their profession or business, the contractor will be entitled to compensation of the extrajudicial collection costs, which, in deviation from Article 6:96(4) of the Dutch Civil Code and the Dutch Extrajudicial Collection Costs (Fees) Decree, are set at 15% of the total outstanding principal amount with a minimum of EUR 85 for each invoice left partially or fully unpaid.

8.3 All tangible or intangible items and designs made available or delivered to the client will remain the property of the contractor until the client has fulfilled their payment obligations to the contractor in full. The client is not allowed to use them until then.

8.4 The contractor is entitled to suspend the execution of the assignment if a term set on a payment by the client has expired and the client fails to fulfil their payment obligation within fourteen days after a written reminder to comply. The same applies when the contractor may infer from a communication or conduct on the part of the client that payment will not be made.

8.5 In the event of bankruptcy, attachment, suspension of payments, application of the Dutch Natural Persons Debt Restructuring Act, or if the client is placed under guardianship or their business is shut down or liquidated, the contractor's claims will be immediately due and payable and the contractor will be entitled to suspend the fulfilment of its obligations under the contract.

## **9. Intellectual property**

9.1 All intellectual property rights arising from the assignment, including copyrights, neighbouring rights, trademark rights, drawing or design rights and patent rights accrue to the contractor. In so far as such a right can only be obtained by filing an application or registration, only the contractor is authorised to do so, unless otherwise agreed.

9.2 Permission to use a work that is subject to an intellectual property right will only be granted in writing and in advance in the form of a licence of such nature and scope as described by the contractor in the offer and/or confirmation of the assignment. If nothing is stipulated about the scope of the licence, it will never include more than the manner of use that reasonably follows from the contract and the agreed fee.

9.3 The right to any use of a work or idea of the contractor that has come to the client's knowledge during the formation of or during the course of the contract, and which has not been agreed and/or is not covered by intellectual property rights, will accrue to the contractor.

9.4 The client is not authorised to grant sublicences to third parties, unless otherwise agreed.

9.5 The contractor will indemnify the client against infringement of intellectual property rights of third parties.

## **10. Liability**

- 10.1 The contractor is only liable for direct damage or loss suffered by the client as a result of a failure attributable to the contractor.
- 10.2 Liability only arises if the client gives the contractor written notice of default with a reasonable period of time to still fulfil the agreed obligations, and the contractor remains in default even after that period.
- 10.3 Liability for indirect loss, including consequential loss, loss of profits, lost savings and trading loss, is excluded.
- 10.4 The contractor's liability is limited to the amount to be paid out by the contractor's insurer.
- 10.5 If the insurer does not reimburse the costs or the contractor does not have insurance, liability will be limited to the fee received by the contractor for the assignment to which the liability relates, subject to a maximum of EUR 75,000. Any further compensation is expressly excluded by the contractor.
- 10.6 For assignments with a duration of more than one year, a limitation applies to the fee paid in one year, subject to a maximum of EUR 75,000. Any further compensation is expressly excluded by the contractor.
- 10.7 The contractor is not liable for damage or loss, of whatever nature, caused by incorrect, faulty or incomplete information and/or materials provided by or on behalf of the client or information and/or materials not provided in time. The client indemnifies the contractor in this regard.
- 10.8 Apart from the liability referred to in Clause 10.1, the contractor will not be liable in any way for damages in respect of the client and/or third parties, regardless of the (legal) ground on which this could be based.
- 10.9 The client indemnifies the contractor against claims by third parties in so far as they suffer damage or loss in connection with the execution of the assignment as a result of the client's acts or omissions.
- 10.10 The limitations of liability included in Clause 10 do not apply in the event of intent or deliberate recklessness on the part of the contractor.

## **11. Force majeure**

If the contractor is unable to perform its obligations under the contract, or cannot do so properly or in good time due to force majeure within the meaning of Article 6:75 of the Dutch Civil Code, then those obligations will be suspended until the time at which the contractor is able to perform these in the manner agreed.

## **12. Confidentiality**

- 12.1 Unless any statutory provision, regulation or other rule requires the contractor or the client to disclose information, the parties are obliged to maintain confidentiality vis-à-vis third parties not involved in the performance of the contract with regard to confidential information obtained from the other. Information is confidential if it has been designated as confidential to the other party in advance or its confidentiality is apparent from the nature of the information.
- 12.2 Drawings, sketches, designs and/or calculations made by the contractor will be considered confidential information subject to the confidentiality under Clause 12.1.
- 12.3 The contractor is free, with due regard for the client's reasonable interests, to use the results of the assignment for their own promotion and publicity.

## **13. Disputes**

- 13.1 All contracts are governed by Dutch law.
- 13.2 The parties will attempt to mutually resolve disputes relating to these general terms and conditions and the underlying contract(s) in the first instance.
- 13.4 If the parties fail to reach an agreement, the dispute will be settled by the competent court in the Netherlands. Disputes will, where possible, be submitted to the competent court of the contractor's domicile, unless the contractor, as claimant or applicant, chooses to submit the dispute to another court.

## **14. Other provisions**

- 14.1 If the contractor largely prevails in legal proceedings, all costs incurred in connection with these proceedings will be borne by the client. All actual extrajudicial costs of legal assistance reasonably incurred by the contractor for the performance of a contract concluded with the client will also be borne by the client.
- 14.2 In so far as not stated otherwise in this general terms and conditions, rights of action and other powers of the client, by any virtue whatsoever, in respect of the contractor in connection with the performance of work by the contractor will lapse in any event after one year from the time at which the client became aware or could reasonably have become aware of the existence of these rights and powers.
- 14.3 If any provision in these general terms and conditions or in the underlying contract is null and/or void and/or unenforceable, in full or in part, as a result of any statutory provision, judicial decision or otherwise, this will not affect the validity of any of the other provisions in these general terms and conditions or the underlying contract.