

1. Definitions

1.1. The Client means the person or company that has issued the Assignment for the Work.

1.2. Contractor shall mean: the person or company that has accepted the Assignment.

1.3. Parties shall mean: the Client and the Contractor jointly.

1.4. Assignment means: the request from the Client to the M&A to perform certain Work, whether or not for payment.

1.5. Documents: all materials, information or data made available to M&A by the Client.

1.6. Work means: everything the Contracted Party undertakes or causes to be undertaken on behalf of the Client, within the scope of the Assignment(s) issued by the Client with a view to the Client's communication interests.

1.7. Quotation means: a document prepared by the Contracted Party describing the Activities and estimating the costs associated with those Activities.

2. Application

2.1. These general terms and conditions apply to all Quotes of the Contractor and all Assignments, as well as to all agreements concluded between the Parties, by whatever name, and to all Work arising from these for the Contractor.

2.2. Any stipulations varying from these general terms and conditions, including those included in the general (purchase) conditions applied by the Client or any third parties engaged by the Client, will not be binding on the Contracted Party, unless otherwise agreed in writing.

3. Details of the Client

3.1. The Client is obliged to make all Documents which the Contracted Party believes it needs for the correct execution of the Order available to the Contracted Party in the desired form, in the desired manner and in good time.

3.2. The Client guarantees the accuracy, completeness and reliability of the Documents provided by it, even if they originate from third parties.

3.3. The Client shall indemnify the Contractor against any damage resulting from incorrect or incomplete Documents.

3.4. The extra costs and extra hours incurred by the Contracted Party, as well as any other damage suffered by the Contracted Party, due to the Client's failure to provide Records required for the performance of the Work, or to do so properly or in good time, shall be at the expense and risk of the Client.

3.5. At the Client's first request, the Contractor will return the original Documents provided by the Client to the Client.

4. Offers

4.1. All Quotes from the Contracted Party are always without obligation, unless expressly agreed otherwise in writing.

4.2. If requested, the Contracted Party shall, prior to commencement of the Work, record the Work (in more detail) in writing.

4.3. An agreement is concluded by the Contractor sending a written confirmation of the Client's order or assignment.

4.4. If the Contracted Party's Work has commenced without prior written confirmation, the content of the Offer together with the content of these general terms and conditions will determine the content of the Assignment. The Contracted Party shall keep the Client informed of the progress of the costs incurred and shall notify the Client of any impending overrun of the quoted amount.

4.5. Exceedances of amounts stated in an Offer as a result of sales conditions of suppliers and other third parties engaged, shall not count as an overrun, even if such conditions are not included separately in an Offer. The aforementioned conditions of sale shall be deemed to be known to the Client and shall also form part of these terms and conditions from the outset. In case of conflict between such conditions of sale and the present conditions, the present conditions shall prevail.

5. Prices and payments

5.1. All prices charged by the Contractor are exclusive of VAT and exclusive of any travel and postage costs.

5.2. The Contractor is entitled to request an advance payment from the Client.

5.3. The Contracted Party shall be entitled to pass on to the Client any price changes that have occurred after the Quotation has been issued.

5.4. M&A shall be entitled to index the rates for its services and activities as from 1 January of each calendar year - retrospectively if necessary - in accordance with the Service Price Index figure for the 4th quarter of the previous calendar year published by Statistics Netherlands. The base year for the Services Price Index is 2015 (2015 = 100). The increase will be at least 3%.

If during the calendar year the indexation exceeds 3%, it can also be applied on an interim basis based on the quarterly indices of the said price index.

5.5. All payments shall be made into an account to be designated by the Contractor.

6. Assignments and amendments

6.1. An Assignment shall be deemed to have been accepted by the Contracted Party and granted by the Client either by a written confirmation of the Assignment to the Client or by the Contracted Party commencing the performance of the Work.

6.2. The Client must notify M&A of any changes to the Order in good time and in writing. If the Client fails to do so, any incorrect implementation of the changes will be at the Client's expense and risk.

6.3. Amendments to the Order shall be effective by and from M&A's acceptance thereof, which acceptance may be evidenced, inter alia, by the execution of the desired amendments.

6.4. Additional costs resulting from amendments to the Order shall be borne by the Client.

6.5. Changes to the Order may result in M&A exceeding the initially indicated time limits. The Contracted Party shall not be liable for this.

6.6. If, for any reason whatsoever, the Client decides to cancel an Order that has been granted and/or to refrain from further execution thereof before the Order has been completed, the Client shall be obliged to pay M&A all reasonable costs already incurred by M&A, including hours already spent and all costs payable by M&A to third parties as a result, as well as M&A's lost profit, all this without prejudice to M&A's other rights under the law.

7. Relationship management

7.1. The Contracted Party shall make a record of contacts with the Client, unless expressly agreed otherwise in writing.

7.2. In case of telephone contact, a report will only be made if the content of the conversation gives cause for this in the opinion of the Contracted Party.

7.3. If the Client does not respond by return receipt of a report, the contents of the report shall be deemed to be correct and complete and the Parties shall be bound by its contents. Only if the planning of the Assignment allows for a waiting period of one working day, the contents of the report shall only be deemed correct and complete after the lapse of one working day.

7.4. The Contractor shall send the reports to a person or persons designated for this purpose at the Client.

8. Engagement of third parties

8.1. If M&A engages third parties at the Client's request or if, in M&A's opinion, this is useful or necessary for the execution of an Order, or if it arises from the nature of the Order, M&A shall be entitled to engage third parties on behalf of and for the account of the Client. The third party engaged shall then be paid directly by the Client, unless explicitly agreed otherwise in writing.

8.2. If M&A engages third parties in the performance of the Order in its own name, the costs of the goods and/or services provided by the third party shall be charged by M&A to the Client, possibly increased by an agreed agency mark-up.

8.3. If and to the extent that conditions used by a third party engaged in the performance of an Order are applicable and/or such third party is bound by conditions or regulations applicable to the legal relationship between such third party and M&A, M&A may invoke the conditions and/or regulations in question against the Client. In all other respects, the present general terms and conditions will continue to apply in full to the legal relationship between the Parties.

9. Payments

9.1. Payment must be made, without the Client being entitled to any deduction, discount or set-off, within thirty days of the invoice date, unless expressly agreed otherwise in writing. The day of payment is the day on which the amount due is credited to Contractor's account.

9.2. If the Client fails to fulfil its payment obligation on time, the Client shall be immediately in default, without notice of default being required. From the moment of default, the Client shall owe statutory commercial interest on the principal sum plus 2%.

9.3. The Contracted Party will at all times be entitled to charge the Client for certain costs by means of partial invoicing and/or pre-invoicing, which invoices must be paid before the Contracted Party commences or continues its Work, or to stipulate that these costs are charged directly to the Client. Such costs will in any case include the costs of production, exposure and distribution activities.

9.4. Regardless of the agreed payment conditions, the Contracted Party may require the Client to provide security for payments.

9.5. All costs, including but not limited to legal costs and (extra)judicial costs, incurred by the Contracted Party in relation to the collection of amounts due shall be borne by the Client. The extrajudicial costs amount to at least 10% of the amount due, with a minimum of €250 (excluding VAT).

10. Suspension, termination and dissolution

10.1. M&A shall be entitled, without observing a notice period, to suspend or discontinue the performance of the Order, if the Client fails to comply with the payment conditions and/or fails to provide the required security.

10.2. If the Client does not, does not timely or does not properly fulfil its contractual obligations towards M&A, the Client shall be in default from the moment of non-fulfilment, late fulfilment or improper fulfilment without notice of default being required. The Contractor shall then be entitled, inter alia, to terminate the Agreement(s) concluded between the Parties without judicial intervention, by dissolution or termination. In that case, the Client shall be obliged to reimburse the costs incurred, sums advanced and fees due by the Contractor up to that moment, without prejudice to the Contractor's right to compensation. The damage to be compensated by the Client shall include the positive contract interest. In determining the positive contract interest, the provisions of Article 17 paragraphs 4 and 5 shall apply as a guideline.

10.3. After careful consideration of interests, the Contractor is entitled to suspend the fulfilment of all its obligations, including the surrender of Documents or other items to the Principal or third parties, until such time as all due and payable claims against the Principal have been settled in full. This does not apply to Documents of the Client that have not (yet) been processed by the Contractor.

10.4. In the event of termination, by dissolution or by notice of termination, of the Agreement on account of an attributable breach on the part of the Contracted Party, there will be no reversal of that which the Contracted Party has already delivered and/or performed or that which the Client has already paid. The amounts payable at the time of dissolution shall be immediately due and payable and cannot be used to set off any claim the Client has against the Contracted Party.

10.5. A Party has the right to dissolve the Agreement(s) in whole or in part in the event of bankruptcy or suspension of payments of the other Party, as well as in the event of shutdown or liquidation of the business of the other Party.

11. Delivery times

11.1. Deadlines specified by the Contractor shall be indicative only and not strict deadlines, unless expressly agreed otherwise in writing. Exceeding the deadlines shall not release the Client from its obligations towards the Contractor.

11.2. If a term/date has been agreed between the Client and the Contracted Party within which the Order must be performed and the Client fails to: (a) make an advance payment - if agreed - or (b) make the necessary Documents available on time, in full, in the desired form and in the desired manner, then the Client and the Contracted Party will consult on a new term/date within which the Order must be executed.

11.3. If any term is exceeded, the Client must give the Contractor written notice of default.

12. Duty of care

12.1. The Contracted Party shall perform the Work with due care, taking into account the interests of the Client communicated by the Client.

12.2. Where appropriate, the Contracted Party shall make every effort to inform the Client of possible legal risks of the (intended) use of the results of an Assignment (e.g. in case of conflict with applicable statutory and self-regulatory regulations or violation of (intellectual property) rights of third parties). The Client remains at all times responsible for the use of the results of the Work. The Contractor shall not be liable for this and any other form of consequential, trading or indirect damage.

12.3. The Parties will mutually owe secrecy with regard to the data, information, the Work and the work made available by them (including ideas, advice, concepts and other proposals originating from the Contracted Party) in so far as these are confidential by nature, all this in so far as not provided otherwise in these terms and conditions and/or not agreed otherwise by the Parties in writing.

13. Complaints and evidence

13.1. Complaints, of whatever nature, relating to the performance of any obligation under the Agreement concluded between the Parties must be made known to the Contracted Party in writing, clearly described and well motivated, as soon as possible, but in any event within 10 (ten) working days after receipt of the (partial) invoice, after termination of the (partial) Order or after the Client has ascertained that the (partial) Order has been performed, respectively, on penalty of forfeiture of any claim.

13.2. After expiry of the aforementioned periods, complaints shall no longer be considered and the Client shall have processed its rights in this respect, unless the period is unreasonably onerous in the case in question.

13.3. Barring evidence to the contrary, the data from the records of the Contractor shall be decisive.

13.4. Complaints relating to invoices of the Contracted Party shall not suspend the payment obligations of the Client.

14. Liability

14.1. M&A shall not be liable for errors and/or shortcomings in the performance of the Order that are caused by the behaviour and actions of the Client and/or third parties engaged by or on behalf of the Client, including but not limited to the following cases:

- failure to deliver Documents or to deliver them on time;
- shortcomings in designs that have already been approved by the Client before completion of the Assignment or which the Client has failed to approve (upon request) before completion of the Assignment;
- transport of works and/or goods;
- shortcomings regarding (payment) obligations, including failure to pay amounts due to third parties on time and/or in full;
- errors in and/or in the placement of communications in all possible media.

14.2. All claims on account of the Contracted Party's liability shall lapse after the expiry of a period of 12 months after termination of the Work or completion of the Assignment respectively. The Contracted Party shall never be liable for indirect damage, except in the event of intent and/or gross negligence. Indirect damage includes, inter alia, consequential damage, loss of profit, missed savings and damage due to business interruption.

14.3. The liability of the Contracted Party shall never exceed the amount charged by the Contracted Party to the Client for the Work performed by the Contracted Party in the context of the Assignment in question, less out-of-pocket expenses, (advanced) costs and amounts, whether or not in payment of third parties called in. If the Contracted Party is insured in this respect, the liability is explicitly limited to a maximum of the amount paid out by the insurer in the relevant case.

14.4. The Client is obliged to take damage control measures. The Contractor shall have the right to undo or limit the damage by repairing or improving the Work performed.

15. Force majeure

15.1. In the event that the Contracted Party is prevented by force majeure from performing the agreed Work in full and/or in good time, the Contracted Party will, at its discretion, have the right to suspend the performance of the Agreement in question or to terminate the Agreement in full or in part by means of a written statement, without the Contracted Party being obliged to pay any compensation or guarantee.

15.2. Force majeure includes, inter alia: strike, fire, absenteeism, weather conditions at shoots, and other business disturbances, transport disruptions and other events beyond the control of the Contractor or its suppliers, as well as sudden increases in import duties and excise duties and/or taxes, delay or failure to deliver by suppliers, failure to obtain necessary permits and other government measures.

16. Intellectual property, licence and use

16.1. If and to the extent that the Client makes Documents, etc. available to M&A in connection with the performance of an Order, the Client warrants that no (intellectual) property rights or other rights of third parties are vested in these, or that the Client has obtained permission from these third parties, also for the benefit of M&A, with regard to the use of these materials, etc. The Client further guarantees that the use of such materials etc. does not infringe any (statutory) regulations, rules and/or guidelines.

16.2. The intellectual property rights to the works developed by M&A in the context of an Order for the Client shall vest in M&A. To obtain and maintain its legal position, the Contracted Party shall be entitled to establish (related) intellectual property rights.

16.3. Even after any transfer of the rights referred to in the preceding paragraph, the Contractor shall remain entitled (with due observance of the rights of third parties) to use the result of the Order for submission to prize festivals, cursory, museum and editorial purposes, (non-) commercial internal use and (historical) self-promotion of the Contractor (e.g. via the Agency's website or other online channels such as YouTube).

16.4. If and to the extent that the Client fulfils all its contractual obligations, the Contractor grants the Client an exclusive licence to use the approved results of the Order in accordance with the agreements between the Parties regarding purpose of use, period, area and media as stated in the Order. If the Parties have not agreed anything further in this respect, the licence will be limited to the first use of the work provided by the Parties.

16.5. The Client is not entitled to adapt the work produced in Assignment without the prior written consent of the Contractor.

16.6. If the Client breaches its contractual obligations, M&A will be entitled to temporarily suspend or terminate the granted exclusive licence to use the work as described in Article 16.4.

16.7. The parties may at all times make further arrangements regarding any (partial) transfer, against payment, of the intellectual property rights to the works created by the Contracted Party for the Client.

17. Nature and duration of the Agreement

17.1. The Contracted Party shall represent the Client's communication interests within the limits of the Assignment issued and with due observance of the applicable laws and (professional) regulations. In doing so, the Contracted Party shall make every effort to perform the Work in accordance with the Client's wishes. Unless explicitly agreed otherwise, the Contracted Party shall at all times be free to perform and design the Work as it sees fit.

17.2. The Client will not have the right to have the agreed Work (also) performed by a third party without the M&A's prior permission.

17.3. The Agreement between the Parties is entered into for an indefinite period of time or for the duration of the Assignment and/or completion of the Work, at the Parties' discretion.

17.4. If no fixed term has been agreed with regard to the cooperation and it has lasted longer than six months, a notice period of at least six months must be observed. Notice must be given by registered letter. During this notice period the Client is obliged to fulfil its (payment) obligations towards the Contracted Party as if no notice of termination had been given.

17.5. M&A's fee during the notice period as described in the preceding paragraph is per month at least equal to 1/12 part of the amount M&A has invoiced to the Client in the preceding continuous period of twelve months. If the cooperation lasted for a shorter period, the fee per month is at least equal to the amount invoiced on average per month during that period.

17.6. The Client is obliged to inform the Contracted Party in good time at all times of circumstances which, in a financial sense, may have a substantial negative impact on the (quantity of) Work to be performed by the Contracted Party on behalf of the Client, including, for example, the reduction of the Client's budget for the Client's communication interests. If the Client fails to do so, it will forfeit a contractual penalty vis-à-vis the Contracted Party, the amount of which is in line with the arrangement laid down in the two preceding paragraphs, without prejudice to the Client's obligation to compensate the Contracted Party for any actual damage.

18. Settlement of relationship

18.1. All materials - including and not limited to - designs, reproduction materials, texts, descriptions, artistic performances, films, source codes and publicity materials that are in the M&A's possession at the end of the agreement or the Order shall not be made available by the M&A to the Client.

18.2. M&A shall retain the materials at the end of the Agreement or Order for a period of up to 26 weeks.

18.3. If the relationship between the Parties ends - for whatever reason - these terms and conditions shall continue to govern the legal relationship between the Parties to the extent necessary for the settlement of the relationship. This applies in any case to the provisions of Article 16.

19. Transfer and obligations

19.1. Neither Party is entitled to transfer the rights and obligations arising from agreements and Assignments to which these terms and conditions apply to third parties in whole or in part, except with the prior written consent of the other Party.

19.2. In the situation that the (relevant activities) of the Client's company are, for whatever reason, in whatever way and in whatever form, brought together with, or continued in, another company, a joint and several liability arises for the original and successor company with regard to the fulfilment of the Client's obligations referred to under 19.1.

20. Competent court/World Sales Convention

20.1. All agreements to which these terms and conditions apply and agreements resulting therefrom shall be governed exclusively by Dutch law.

20.2. All disputes arising from or connected with agreements concluded under these terms and conditions or agreements resulting therefrom shall be brought exclusively before the competent court in the district where the Contractor has its registered office.

Insofar as the agreement(s) concluded between the Parties also relate to international purchase agreements for movable goods, the applicability of the Vienna Sales Convention is explicitly excluded.