

# Terms and conditions

by Strakzat

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**Contractor**

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## **Article 1: Definitions**

- A. Client: the natural or legal person who instructed the contractor to manufacture goods or to carry out work.
- B. Contractor: the natural or legal person who has accepted the assignment as referred to in Article 1A or has submitted an offer or quotation preceding a possible assignment.

## **Article 2: General**

These conditions apply to the offers and agreements, the resulting deliveries and services of any kind between the contractor and the client. Deviations and additions are only binding if and insofar as these have been agreed in writing between the parties.

## **Article 3: Agreement, quotation and confirmation**

- A. These general terms and conditions apply to the conclusion, content and fulfilment of all agreements concluded between the client and the contractor, with the exclusion of purchase or other conditions from the client.
- B. Quotations are without obligation and are valid for two months. Quotations can undergo changes due to unforeseen changes in the work. Prices are exclusive of VAT and other government levies. Mentioned rates and offers do not automatically apply to future assignments.
- C. Orders must be confirmed in writing by the client. If the client fails to do so, but nevertheless agrees that the contractor commences the execution of the assignment, then the content of the quotation will be deemed to have been agreed. Further verbal agreements and stipulations are only binding on the contractor after they have been confirmed in writing by the design agency.

## **Article 4: Execution of the agreement**

- A. The contractor will endeavour to carry out the assignment carefully and independently, to represent the interests of the client to the best of its knowledge and to strive for a result that is in line with the client, as agreed in principle between both parties. Insofar as necessary, the contractor will keep the client informed of the progress of the work.
- B. The client is obliged to do all that is reasonably necessary or desirable to enable a timely and correct delivery by the contractor, in particular by timely delivery of complete, sound and clear data or materials.
- C. If the contractor draws up a budget for the costs of third parties at the request of the client, this budget will only be indicative. If desired, the contractor can request quotations on behalf of the client.



- D. Unless otherwise agreed, assignments to third parties, in the context of the realisation of the product, are provided by or on behalf of the client. At the request of the client, the contractor can act as authorised representative at the expense and risk of the client. The parties can agree a fee to be agreed upon. If, in the performance of the assignment, the contractor, in accordance with an explicit agreement, purchases goods or services from third parties for its own account and risk, after which these goods or services are passed on to the client, the provisions of the supplier's general terms and conditions with regard to the quality, quantity, quality and delivery of these goods or services also apply to the client.
- E. Before proceeding with production, reproduction or publication, parties must give each other the opportunity to check and approve the latest models, prototypes or proofs of the design. If the contractor, whether or not in the name of the client, will give orders or directions to production companies or other third parties, the client must confirm his approval in writing at the request of the contractor.
- F. A term specified by the contractor for completing the work is indicative, unless the nature or content of the agreement proves otherwise. The contractor is, even at a specified period for completion of the work, in default only after the client has given notice of default by registered mail and performance within the reasonable terms mentioned in the notice of default is not forthcoming.
- G. Unless otherwise agreed, performing tests, applying for permits and assessing whether the client's instructions comply with legal or quality standards are not part of the assignment of the contractor.
- H. Complaints must be communicated to the contractor in writing as soon as possible, but in any event within ten working days after completion of the assignment.
- I. Any given delivery times, or those to be given at any moment by the contractor, will always be approximate and can never be considered as final times. Therefore the indications of delivery times can in no way become an attributable shortcoming of the contractor, nor can the client in any instance claim the right to any compensation.

#### **Article 5: Shortcoming**

The contractor is not obliged to fulfil any obligation towards the client if it is prevented from doing so as a result of a circumstance which is not due to fault, and which is not at the expense of the law, a legal act or generally accepted beliefs.

#### **Article 6: Cancellation**

- A. If the assignment, for whatever reason, is terminated prematurely, the client is obliged to compensate the damage incurred for the contractor. This damage includes the losses incurred by the contractor and lost profits and in any case the costs incurred by the contractor, including those of reserved production capacity, purchased materials, services called for and storage.



- B. If there are circumstances independent of its will, as a result of which the contractor can not reasonably be expected to continue to fulfil the assignment, the contractor is entitled to rescind this assignment, without it being obliged to pay any compensation or guarantee. In this case, the contractor is entitled to a fee for the work done up to that point and for compensation of the costs incurred up to that point and it is obliged to make the results achieved available to the client. If the behaviour or actions on the part of the client are the cause that the contractor cannot reasonably be expected to fulfil the assignment further, then the contractor, in addition to the right to resign the assignment, is entitled to the full fee related to the assignment.
- C. The client is entitled to cancel an agreement before the contractor has commenced execution of the agreement, provided that the client compensates the damage incurred for the contractor as described in article 6A.

### **Article 7: Payment**

- A. Payments must be made within 14 days of the invoice date. If after the expiry of this period no (full) payment has yet been received by the contractor, the client is in default and is due interest equal to the statutory interest. All costs incurred by the client, such as litigation costs and extrajudicial and judicial costs, including costs for legal assistance, bailiffs and collection agencies, made in connection with late payments, are at the expense of the client. The extrajudicial costs are set at at least 10% of the invoice amount per month.
- B. For agreements - not continuing performance agreements - that represent a value of more than € 2.500 (twenty five hundred Euros) exclusive of VAT and other governmental levies, 50% (fifty percent) must be paid upfront by the client. Only after payment of this advance may the client expect fulfillment of the agreement. Any possible given (indicated) times will only commence from the moment this advance has been paid. 40% (forty percent) will be invoiced by contractor upon completion and the remaining 10% (ten percent) will be invoiced by contractor upon acceptance by client, or in the absence thereof, upon working order delivery by contractor. For agreements that represent a value lower than the aforementioned in this clause, the complete amount will be invoiced upfront by contractor in mutual agreement with the client. Deviation from this invoicing practice can only occur explicitly and in writing.
- C. The client shall pay the payments due to the contractor without discount or setoff. The client is not entitled to suspend the payment of invoices for work already carried out.

### **Article 8: Property rights**

- A. All intellectual property rights that rest on software, websites, databases, hardware or other materials such as analysis, design, documentation, reports, quotations, including preparatory work thereof that have been developed on the grounds of the agreement or that have been made available to client, lie



exclusively with contractor, his licensors or subcontractors. Client will exclusively receive a license that is immediately revocable, non-exclusive, non-transferable to third parties and non-sublicensable which means that the licensed subject may be used for the purpose for which it was made available to client by contractor.

- B. The intellectual property rights that rest on the software developed for client by contractor will remain with contractor. Client will receive a license as stated in article 8A, where the license will involve no more than that the software may be used for the purpose for which the order was given.
- C. Unless otherwise agreed, the assignment does not include carrying out research into the existence of patent rights, copyrights and portrait rights of third parties. The same applies to any investigation into the possibility of such forms of protection for the client.
- D. The contractor can not be held liable for the use, duplication or redistribution of material on which patent rights, trademark rights, drawings or design rights, copyrights or portrait rights are vested that the client has provided without informing the contractor of the existence of the right or rights in question.
- E. Unless the work does not lend itself to it, the contractor is entitled at all times to have his / her name mentioned or removed from the work.
- F. Unless otherwise agreed, the working drawings, illustrations, prototypes, designs, design sketches, films and other materials or electronic files created by the contractor within the scope of the assignment remain the property of the contractor, regardless of whether they are delivered to the client or provided to third parties.
- G. Contractor reserves the right to use any results that were obtained on the basis of the order for personal use or third parties, as long as this does not interfere with the interest of the client.

#### **Article 9: Liability**

- A. The contractor can not be held responsible for:
  - Errors or shortcomings in the material provided by the client.
  - Misunderstandings or errors with regard to the execution of the agreement if they find their cause or cause in actions of the client, such as late or not delivering complete, sound and clear data / materials or software.
  - Errors of third parties engaged by or on behalf of the client.
  - Defects in tenders from suppliers or for exceeding quotations from suppliers.
  - Errors in the design, the product or the text / data, if the client has given his approval to such a check, in accordance with the provisions of article 4E.



- Errors in the design, the product or the copy / data, if the client has omitted the execution or commissioning of a particular model, prototype or proof, and these errors in such a model, prototype or test would have been perceptible.
  - Results of implementation and export of advice provided by the design agency.
  - In so far as the contractor is dependent on the cooperation, services and deliveries of third parties in its activities, the contractor can not be held liable in any way whatsoever for any damage resulting from these relationships with the contractor or the breaking of it, irrespective of whether this damage occurred, arises or becomes visible during the relationship with the contractor.
- B. Except in the event of intent or gross negligence on the part of the contractor, the liability of the contractor for damage arising from an agreement or of a wrongful act committed against the client is limited to an amount that is reasonable in relation to the size of the assignment.
- C. Any liability expires by the lapse of one year from the moment the assignment is completed.
- D. After the completion of the assignment, neither the client nor the contractor have a retention obligation with respect to the materials and data used.
- E. In addition to all that is meant by law and jurisprudence under insurmountable shortcomings, the inadequate employability of the executing persons concerned, for example as a result of illness, incapacity for work or personal indispensability, also leads to insurmountable shortcomings of the contractor.

#### **Article 10: Warranties**

- A. The contractor will make every effort to rectify faults in the product within a reasonable period if they are reported in detail and written to the contractor within a period of fourteen days after delivery. The contractor has no obligation to rectify any errors reported after the end of the warranty period.
- B. The contractor does not guarantee that the product will operate without interruption, errors or other defects or that all errors and other defects will be corrected. The repair will be carried out free of charge, unless the product has been developed other than for a fixed price on the instructions of the client, in which case the contractor will charge the costs of repair according to its usual fee.
- C. In accordance with his usual fee, the contractor may charge the costs of repair if there are errors of use or improper use by the client or other causes that can not be attributed to the contractor. Recovery of corrupted or lost data is not covered by the warranty. The warranty obligation lapses if the client makes changes to the product without the written permission of the contractor, or arranges for such changes to be made, which permission will not be withheld on unreasonable grounds.



- D. The contractor guarantees that the items supplied by or on behalf of him / her are designed and that, if there is copyright on the design, he / she is considered to be a maker in the sense of the Copyright Act and as copyright owner can have the work.
- E. The client indemnifies the contractor or persons engaged by the contractor with the assignment for all claims of third parties arising from the applications or the use of the result of the assignment.
- F. The client indemnifies the contractor for claims relating to intellectual property rights on materials or data provided by the client, which are used in the execution of the assignment.

#### **Article 11: Other provisions**

- A. The parties shall observe confidentiality with regard to all data of which the relevant party has been informed in a relationship governed by the present condition and of which it must be clear that the other party wishes to maintain its secrecy,
- B. The contractor reserves the right to use the executed assignment for promotional purposes, unless otherwise agreed.
- C. The parties are bound to treat confidentially the facts and circumstances that come to the attention of the other party in the context of the assignment. Third parties, who are involved in the execution of the assignment, will be bound to the same confidential treatment with regard to these facts and circumstances originating from the other party.
- D. The contractor reserves the right to change these conditions. Changes also apply to agreements that have already been concluded with due observance of a period of thirty days after written notification of changes. If the client does not want to accept a change in these conditions, he can terminate the existing agreement with effect from the start date of the new conditions.
- E. Dutch law applies to the agreement between the contractor and the client. The court to take cognisance of disputes between the contractor and the client is the competent court in the district where the contractor is located.

