

GENERAL TERMS AND CONDITIONS OF PAYMENT AND DELIVERY OF HARVEST CREATIVE SERVICES V.O.F.

with its registered office in Rotterdam, filed at the Trade Register in Rotterdam on 23 March 1990 under file reference no. 24173833

Section 1. Definitions

1. Client is taken to mean the party giving the order; contractor is taken to mean the party accepting the order.
2. Instruction is taken to mean the client's request to the contractor to carry out work against payment. If no reply is received to the client's confirmation of instruction within 24 hours, this confirmation of instruction is deemed accepted and approved.
3. Work is taken to mean anything the contractor makes and/or undertakes for the client within the framework of the instructions given by the client with a view to its communication interests.
4. Offer is taken to mean the, to a more or lesser extent, specified work and budget (general or otherwise) for the costs attached to that work.

Section 2. Deviating terms and conditions

1. These terms and conditions apply to all offers, agreements and deliveries from and by the contractor, unless they are explicitly declared not applicable in full or in part in writing, or unless they have been declared applicable only to the extent that they do not conflict with the written agreements between the client and the contractor.
2. In the case of conflict between the purchase conditions applied by the client and these terms and conditions, the latter will prevail, unless the contractor has declared in writing that the purchase conditions applied by the client are applicable in full or in part.

Section 3. Offers

1. All offers are free of obligation, unless stated otherwise in the offer or agreed otherwise by the parties.
2. A compound quotation does not constitute an obligation to execute part of the instruction at a proportional part of the quoted price for the entire instruction.
3. When no instruction is given after the requested offer, calculation costs can only be charged when this was agreed.
4. The client will accept offers being overrun by up to 10% as a budgeting risk, and this will therefore not have to be stated as such.
5. Offers being overrun as a result of the sales conditions of suppliers and other third parties engaged by the contractor is not regarded as an overrun, even when those conditions are not included in an offer separately, as those conditions are not just deemed to be known to the client, but also to form part of these terms and conditions of delivery insofar as they are in keeping with them from the start.

Section 4. Nature and term of the agreement

1. The contractor looks after the client's communication interests within the limits of the instruction given. Without consulting with or the consent of the contracted party, the client is not entitled to have the agreed work carried out by a third party. Also, without consulting with or the consent of the client, the contractor is not entitled to provide similar services to other clients, insofar as they are competitors of the client in question.
2. Unless explicitly agreed otherwise in writing or ensuing from the nature of the instruction, the client's instruction to the contractor is valid for an indefinite period of time, on the understanding that both parties give notice of termination in a registered letter, subject to a notice period of six months.
3. During the six-month term referred to in the previous paragraph, the client is obliged to honour the applicable payment agreement with the contractor as if no termination has been given. Unless agreed otherwise at that time, the contractor's fee for that period extends to the full media commission based on the media plan approved by the client.

Section 5. Changes to the cancellation of instruction

1. Changes to the original instruction, of whatever nature, reported in writing or verbally by or on behalf of the client, which lead to costs that are higher than could have been anticipated upon quotation will be passed on to the client as additional costs.
2. The client must notify the contractor in a timely fashion and in writing of any changes to the execution of the instruction, required by the client after that instruction has been given. If these changes are disclosed verbally or by telephone, the risk for the execution of the changes is at the expense of the client.
3. Changes to an instruction already given may result in the contractor's delivery date agreed before that change being exceeded beyond his responsibility.

Section 6. Prices, deliveries

1. All prices are exclusive of VAT and any costs for shipment, transport, insurance and postal charges, unless explicitly agreed otherwise.
2. The contractor is entitled to pass price changes that occur after the offer is made on to the client.
3. All deliveries are deemed to have been made at the contractor's business address and all delivery dates must be regarded as target dates.
4. Unless agreed otherwise, payments must be made in the name of the contractor, into a bank account to be designated by him.

Section 7. Payment terms

1. Without prejudice to the provisions in the next paragraphs, payment must be made within the term stated on the invoice, and failing such term, within 30 days of the invoice date.
2. The contractor ensures invoices are sent in a timely fashion. Partial invoicing is optional at all times, unless explicitly excluded in writing. However, exclusion of the right to partial invoicing will never concern the costs referred to in the next paragraphs.
3. The client must pay the contractor for commercial production and (ether) media costs before the date on which the contractor is due to pay these costs.
4. The client must pay the contractor for postal charges and other distribution costs for postal advertising before posting/distribution.
5. Regardless of the agreed payment condition(s), the contractor is entitled to demand that the client furnishes a bank guarantee, approved by the contractor, as security for payment.
6. If the client fails to fulfil his payment obligation towards the contractor within the term stated on the invoice, the client - without any prior demand and notice of default being required - owes interest on the invoice amount from the day on which the invoice was due. Interest amounts to 1% of the principal sum for every month (or part thereof) that the payment term is exceeded.
7. All costs, both judicial and extrajudicial, in connection with collection of the overdue money owed by the client are payable by the client; submission of the relevant invoices by the contractor is sufficient to prove these costs are due: these costs are set at a minimum of 10% of the invoice amount in question and will be subject to a minimum of € 250.00,- per claim.

Section 8. Risk of the work carried out

1. The haulier accepting the goods, without making a note on the waybill or receipt, serves as proof that the packaging was in a good condition.
2. Stoppages or delays are not payable by the contractor, unless they are the result of his actions.
3. The goods travel at the risk of the client, both in the case of deliveries free domicile and deliveries non-free domicile, unless agreed otherwise in writing.
4. Deliveries are made ex address of the contractor.

Section 9. Property of the client

1. The contractor must observe the same care for safekeeping and use, processing and treating of items of property entrusted to him by or on behalf of the client as he would for his own items of property.
2. Without prejudice to the provisions in the previous paragraph and elsewhere in these terms and conditions of delivery, the client bears the risk for said items of property. If he wants that risk covered, he must take out insurance at his own expense.

Section 10. Customer relationship management

1. When so required by the client, the contractor will keep a contact log of all contacts with the client.
2. In the case of contact by telephone, such contact log only needs to be kept when the contents of the conversation necessitate this in the opinion of the contractor.
3. If the client has not responded to a contact log within four working days of it being sent, the contents of the log are deemed to be correct and complete, and the client and contractor are bound by its contents.
4. If the contractor must take action within four days of the contact, the client will be asked, preferably in writing, for his consent.
5. The contractor sends the contact log to a person appropriately appointed by the client.

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Section 11. Engaging third parties

1. If deemed reasonably necessary by the contractor for the proper performance of an instruction, or if this ensues from the nature of an instruction, the contractor is entitled to instruct third parties, on behalf and at the expense of the client, to deliver or make available goods and/or services. If the contractor carries out work for third parties, the purchased work is subject to a surcharge. In this case, the contractor is not responsible for disputes in connection with the performance. This is always the case for direct invoicing by third parties to the client.

Section 12. Copyright, intellectual property rights and reproduction right

1. By giving an instruction to publish or reproduce objects protected by copyrights or any other statutory regulations in the field of objects protected under intellectual property law, which objects have been made available by or on behalf of the client, the client declares that neither statutory provisions nor protected third-party rights are infringed and he indemnifies the contractor against all third-party claims in that respect and/or against the direct and indirect consequences thereof, financial and otherwise, ensuing from publication or reproduction.
2. Intellectual property rights and materials, ensuing from the work will be transferred to the client when the relevant relationship between the client and contractor ends, insofar as they belong to the contractor and they are transferable, after everything the client owes the contractor has been paid, including the redemption of any development costs and intellectual property rights. Insofar as third-party intellectual property rights are at stake, the contractor will, before engaging these third parties, at the request of the client consult with the latter whether full transfer is desirable or possible, also taken the corresponding costs into account.
3. Unless it concerns an instruction as referred to in paragraph one, the contractor will, in accordance with the exoneration obligations of these terms and conditions of delivery, indemnify the client against all third-party claims if and insofar as the client would infringe any industrial or intellectual property rights by using the delivered object. In the event of a third-party claim, the client will be obliged to inform the contractor in writing within 48 hours - and upon request - to provide all information and assistance needed for putting forward a defence and/or conducting settlement negotiations.
4. Until 1 year after termination of the relationship, the client is not entitled to any further or other use of the object manufactured under the instruction other than the use explicitly agreed in advance. If nothing was agreed on this matter, the first use is regarded as having been agreed on.
5. If concepts developed by the contractor are worked out in detail elsewhere without this having been made clear when the quotation was requested and/or the instruction announced, an additional invoice of 50% of the sum quoted will follow.
6. Copyrights ensuing from the contractor's work for the advertiser will, insofar as they are owned by the contractor, be transferred to the client by the contractor after everything the client owes the contractor has been paid. Insofar as it concerns copyrights owned by third parties who are engaged by the contractor, the contractor will consult with the advertiser about whether a full transfer is desirable or possible, before giving the instruction to these third parties.
7. For the duration of the relationship, the client is not entitled to change anything manufactured under the instruction without the explicit consent of the contractor.
8. The contractor is entitled to sign anything manufactured under the instruction.

Section 13. Right of retention

1. A contractor who is in the possession of goods of the client, is entitled to retain those goods until all costs he has incurred in the execution of instructions from the same client have been paid, regardless of the fact that these instructions relate to the aforementioned or other goods of the client, unless the client has furnished adequate security for those costs.

Section 14. Exoneration

1. If an objection regarding goods and/or services delivered is found justified and the contractor's liability in the matter is established, he will at his discretion either pay compensation for the delivered goods, or replace the delivered goods free of charge after the goods originally delivered have been returned to him. The contractor is never obliged to pay any other compensation.
2. The contractor's liability for any damage or loss that is the direct or indirect result of faults in the services or goods delivered by him is at all times limited to the sum of his fee, minus the out-of-pocket costs with regard to the goods delivered. The client waives his right to demand dissolution of the agreement for breach of contract.
3. The contractor will not be liable for damage to, loss or destruction of objects, materials or data that were made available to him for, by or on behalf of the client. Again, goods are transported at the client's risk.

Section 15. Termination of relationship and provision of archived material

1. All (with the exception of digital files) objects, reproduction materials, texts, descriptions, artistic performances, films and other publicity materials held by the contractor at the end of the relationship as a result of that relationship will, on demand, be transferred to the client by courier (the courier costs are payable by the client), after everything the client owes the contractor, for whatever reason, has been paid. At the request of the client, digital files will be provided on CD within a reasonable period at all times. The costs for burning digital files to CD - € 125.00 per CD of 600MB - will be charged to the client. The CD(s) is/are delivered after the relevant invoice has been paid. In that case, the contractor will instruct the media in writing, without delay, to transfer the rest of the contracted media space/time to the client or a third party to be appointed by him.
2. In all cases where the relationship between the client and contractor comes to an end, pursuant to any provision of these conditions or through intervention by the courts, these terms and conditions will continue to govern the legal relationship between the parties insofar as necessary for the termination of the relationship.

Section 16. Force majeure

1. In the event that force majeure stops the contractor from being able to carry out the agreed work in full or in part, he is entitled, without legal intervention, to suspend performance of the agreement or to regard the agreement as having been fully or partially dissolved, such at his discretion, without him being obliged to pay any compensation or furnish any guarantee.
2. Force majeure is taken to mean: strikes, lockouts, fire, machine breakdowns and other operational breakdowns, either at the contractor's or the suppliers of goods and services, transport disruptions and other events beyond his control, such as war, blockades, uprising, epidemics, devaluation, floods and storms, delayed deliveries or non-delivery by suppliers, failure to obtain the necessary permits and other governmental measures.

Section 17. Objections, complaints and proof

1. Slight deviations in colour, printing and/or typesetting do not constitute a reason for rejection.
2. In the case of visible faults, the client must complain in writing to the contractor immediately after the contractor has delivered or submitted his work to the client, or within 8 days of the advertising medium being published.
3. In the case of invisible faults, the client must complain in writing within 8 days after the faults could have reasonably been discovered.
4. Under no circumstance will the client be able to exercise any claim against the contractor after the client has taken part of the delivered goods into use, has treated or processed them or has delivered them to third parties.
5. The contractor's liability by virtue of any agreed delivery or service is limited to the invoice amount and, failing that, the graphic value of the agreed performance or part thereof.
6. Faults in part of the delivered goods do not constitute a reason to reject the delivered batch and do not give the client the right to suspend payment of partial invoices or to claim compensation.
7. Furthermore, all our transactions are subject to the terms and conditions of delivery for the graphics industry, filed at the Registry of the District Court of Amsterdam.

Section 18. Applicable law/competent court/choice of address for service

1. All agreements concluded under these general terms and conditions and any agreements ensuing from that are governed solely by Dutch law. All disputes ensuing from agreements concluded under these terms and conditions and the agreements ensuing from that will be settled by the competent court in the court district of Rotterdam, with the inclusion of obtaining injunctive relief.

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