

# Terms and conditions Joeri Gosens

## Article 1 Definitions

1. **Documents:** all information or data made available to the contractor by the client; all data produced or collected by the contractor in the context of the execution of the assignment / agreement; and all other information of any relevance to the execution or completion of the assignment. The aforementioned information may or may not be stored on material or immaterial data carriers and may or may not be held by third parties.
2. **Assignment/work:** the assignment agreement, in which the contractor undertakes towards the client to perform certain work.
3. **Client:** the natural person or legal entity that has instructed the contracted party to perform work.
4. **Contractor:** the office that has accepted the assignment. All assignments shall be accepted and carried out exclusively by the firm, not by or on behalf of an individual employee, even if the principal has explicitly or implicitly granted the assignment with a view to its being carried out by a particular employee or particular employees.
5. **Work:** all work and activities to be performed by the contractor on behalf of the client for which the assignment was given and which have been accepted by the contractor, as well as all work and activities arising from this for the contractor.

## Article 2 Applicability terms and conditions

1. These terms and conditions apply to all offers and their creation, content and fulfilment of all agreements concluded between the client and the contractor. The agreement is concluded verbally, by telephone, by email, WhatsApp or other social media platforms. Any deviations from these terms and conditions can only be agreed upon in writing between the client and the contractor.
2. These terms and conditions also apply to any additional or follow-up orders.
3. The applicability of the client's terms and conditions is hereby expressly rejected by the contractor.
4. Orders shall be confirmed by the client. If the client fails to provide written confirmation and the contractor has started to carry out the order, after receiving clear and unambiguous confirmation (other than in writing), the client is bound by the terms and conditions.
5. Further verbal agreements and clauses shall bind the contractor after they have been confirmed in writing by the contractor.

## Article 3 Clients rights and obligations

1. The client is obliged to send all documents, which the contractor deems necessary for the proper performance regarding the assignment. The client is obliged to send all documents in the desired form, manner and within a decent timespan. The contractor determines what is to be understood by desired form manner and within a decent timespan.
2. The client guarantees the accuracy, completeness and reliability of the documents provided by the client, even if these documents came from third parties, insofar as the nature of the assignment does not require otherwise.
3. Client indemnifies the contractor for damages resulting from inaccurate or incomplete documents.
4. The extra costs and extra hours incurred by the contractor, as well as any other damage suffered by the contractor due to the client's failure to provide the documents necessary to do the work, or to do so in a timely manner or properly, shall be paid for by the client.

5. In the event of electronic transmission of information from (and on behalf of) the client by the contractor to third parties, the client shall be regarded to be the party signing and transmitting the information in question.
6. The contractor is entitled to suspend the work until the client has fulfilled the obligations referred to in the first paragraph.

**Article 4 Execution of work**

1. The contractor has the obligation to deliver results towards the client. In doing so, the contractor shall carry out the assignment with due care and independence, shall promote the interests of the client to the best of his ability and shall strive for a usable result for the client, as can and may be expected of a reasonable and professionally acting contractor.
2. A time limit specified by the contractor for the execution of the order is indicative, unless otherwise agreed in writing.
3. The contractor always retains the right not to process an order from the Client.
4. The assignment given by the client shall be deemed to be an assignment agreement as referred to in article 7:400 of the Dutch Civil Code.
5. Before proceeding to execution, production, reproduction or publication, the parties shall give each other the opportunity to check and approve the latest models, prototypes, or proofs of the result.

**Article 5 Third parties**

1. Unless otherwise agreed, work can be provided to third parties by or in name of the client. At the client's request the contractor may act as agent at the client's expense and risk. The parties may agree on a fee for such services.
2. When the client wishes to use the services stated in Article 5.1, the contractor will estimate the costs. These estimations are indicative. If required, the contractor may request quotations on behalf of the client.
3. Whenever the contractor, whether on behalf of the client or not, issues orders or instructions to production companies or other third parties, the client shall, at the contractor's request, confirm the approval referred to in Article 4.5 of these terms and conditions.
4. The client shall not, without consultation with the contractor, engage third parties where this may affect the work as agreed upon with the contractor. The parties shall consult, and record in writing, in which cases other contractors shall be engaged and what work shall be assigned to them.
5. The contractor shall not be liable for errors or defects in products or services of third parties engaged by or on behalf of the client, whether they were introduced by the contractor or not. The client must address these parties himself.

**Article 6 Intellectual property rights**

1. All intellectual property rights arising from the work, including patent rights, trademark rights, drawing or design rights and copyright, will accrue to the contractor. Insofar as such a right can be acquired only by registration, the contractor shall have the sole authority to do so, unless otherwise agreed with the client.
2. The client and the contractor may agree that the rights referred to in Article 6.1, in whole or in part, shall be transferred to the client. This transfer and any conditions under which it takes place will always be recorded in writing. Until the moment of transfer, a right of use will be granted to the client as mentioned in article "Usage of work" mentioned in these terms and conditions.

3. The contractor will always have the right to mention or remove his name on, at, or in publicity surrounding the work, in the manner customary for that result. The client may not, without the express prior consent of the contractor, publish or remove the result without mentioning the contractor's name.
4. Unless otherwise agreed, the results produced by the contractor in the course of the work commissioned (such as designs, draft sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, scale models, templates, prototypes, products or parts thereof, films, audio and video presentations, source codes and other materials or (electronic) files, etc.) will remain the contractor's property, irrespective of whether they were made available to the client or to third parties.
5. After completing the work, neither the client nor the contractor shall have any obligation to each other to retain any of the materials and data used, unless otherwise agreed.

**Article 7 Usage of work**

1. When the client fully meets his obligations under the agreement with the contractor, the client acquires the right to use the result of the order according to the agreed purpose. If no agreements have been made regarding the purpose, the right of use is limited to the use for which the order was given. There is an exclusive right of use.
2. If the result also relates to works and/or images that are subject to third-party rights, the client and the contractor shall make additional agreements as to how the use of these works shall be arranged. The client is responsible for protecting the rights of third parties when these are used in the final result.
3. Without the contractor's written consent, the client does not have the right to adapt the result of the assignment, to use or reuse it more extensively or in a different manner than agreed, or to have third parties do so. The contractor may attach conditions to this permission, which must be agreed with the client.
4. In the event of broader or different use not agreed upon, including the amendment, mutilation or impairment of the provisional or definitive result, the contractor will be entitled to compensation for the infringement of his rights of at least the agreed fee, or at least a fee that is reasonably and fairly proportional to the infringement committed, without losing any other rights.
5. The right(s) of use provided to the client in the context of the work commissioned will lapse, unless the consequences are contrary to the principles of reasonableness and fairness, if;
  - a. From the moment that the client fails to fulfil his payment or other obligations under the agreement or to do so in full, or is otherwise in default;
  - b. If the order is terminated prematurely for reasons stated in articles 13 to 16 of these terms and conditions;
  - c. In the event of the client's bankruptcy, unless the relevant rights have been transferred to the client pursuant to Article 6.2 of these terms and conditions.
6. With due observance of the client's interests, the contractor shall be free to use the results of his services for his own publicity, the acquisition of commissions, promotion, including competitions and exhibitions, etc., and to lend them to third parties where physical results are concerned.

**Article 8 Fees and expenses**

1. The contractor shall be entitled to a fee for the execution of the order. The fee consists of an hourly rate, a daily rate or a fixed amount agreed upon in writing or verbally by the client and the contractor prior to or at the end of the assignment

2. In addition to the agreed fee, the costs incurred by the contractor for the execution of the order, such as office costs, travel and accommodation expenses, costs of prints, copies, proofs, brushes, fonts, resources, textures, plug-in's, templates, prototypes, and costs of third parties for advice, production and supervision, etc. shall also be eligible for reimbursement. These costs will be specified as much as possible in advance.
3. If the contractor is compelled to perform more or other work due to late delivery or non-delivery of complete, sound and clear data/materials, due to an altered or incorrect order or briefing, or due to external circumstances, then this work will be charged together.
4. If the execution of the order is delayed or interrupted due to circumstances not attributable to the contractor, the client shall be obliged to reimburse any costs incurred as a result. The contractor will try to limit the costs as much as possible.
5. The contractor is entitled to request the payment of an advance from the client. Failure to pay the advance (on time) may be a reason for the contractor to (temporarily) suspend the work.
6. If fees or prices change after the conclusion of the work agreement, but before the work has been fully executed, the contractor shall be entitled to adjust the agreed rate, unless expressly agreed otherwise.

#### **Article 9 Payment**

1. Payment by the client of the amounts due to the contractor shall, without the client being entitled to any deduction, discount, suspension or set-off, be made within 14 days of the invoice date in the name of the contractor to the IBAN number as stated in the order confirmation unless otherwise agreed. The day of payment shall be the day on which the amount due is credited to the account of the contractor.
2. If the client has not paid within the period referred to in the Article 9.1 the client will automatically be in default by operation of the law. The client will be entitled to suspend the provision of services and to charge interest from that time.
3. If the client has not paid within the period referred to in the Article 9.1, the client is obliged to reimburse the contractor for all judicial and extrajudicial costs actually incurred by the contractor. Reimbursement of the costs incurred will not be limited to the costs awarded by the courts.
4. All items delivered to the client shall remain the property of the contractor until all amounts owed by the client to the contractor under the agreement concluded between the parties have been paid in full to the contractor.
5. In case of a jointly given order, clients are jointly and severally liable for the payment of the invoice amount, interest(s) and costs due.
6. The contractor shall ensure timely invoicing. In consultation with the client, the contractor may charge agreed fees and expenses as an advance, interim or periodic payment.
7. If, in the contractor's opinion, the client's financial position or payment record gives cause to do so, or if the client fails to pay an advance payment or invoice within the specified payment term, the contractor shall be entitled to demand that the client immediately furnish (additional) security in a form to be determined by the contractor. If the client fails to provide the required security, the contractor will be entitled, without prejudice to his other rights, to suspend further work with immediate effect and all amounts owed by the client to the contractor for whatever reason will become due and payable immediately.

#### **Article 10 Deadlines**

1. If a period/date is agreed upon between the client and the contractor within which the order must be carried out 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 required

form and in the required manner, the client and the contractor will consult on a new period/date within which the assignment must be carried out.

2. Deadlines by which the work must be completed will only be regarded as a strict deadline if this has been expressly agreed in writing between the client and the contractor.

#### **Article 11 Warranties and indemnities**

1. The contractor guarantees that the work delivered has been designed/created by him and that, if the result is subject to copyright, he or she is the creator within the meaning of the Auteurswet (Dutch Copyright Act) and as copyright owner has access to the work. The contractor guarantees that the result of the assignment at the time of its realization, as far as he knows or should reasonably know, does not infringe any third-party rights or is otherwise unlawful.
2. If the client uses the results of the work/assignment, the client shall indemnify the contractor, or third parties engaged by the contractor in the assignment against all claims of third parties arising from the applications or use of the result of the assignment. This shall not affect the liability of the contractor towards the client for non-compliance with the guarantees referred to in Article 11.1 and other liabilities as referred to in Article 12 of these general terms and conditions.
3. The client indemnifies the contractor against claims relating to intellectual property rights on all materials and/or data provided by the client, which are used in the execution of the assignment.

#### **Article 12 Liability**

1. The contractor shall not be liable for any loss or damage sustained by the client because the client did not provide the contractor with any, inaccurate or incomplete documents or due to the fact that these were not provided in good time.
2. In the event of an attributable breach of contract, the contractor must first be declared to be in default in writing, with a reasonable period to fulfil its obligations after all, or to rectify any errors or limit or remove any damage.
3. The contractor shall be liable to the client only for direct damage attributable to the contractor. The contractor's liability for indirect damage, including consequential damage, loss of profit, lost savings, mutilated or lost data or materials, or damage due to business interruption, is excluded.
4. The liability of the contractor is limited to the compensation of the direct damage which is the direct consequence of an (interconnected series of) imputable failure(s) in the execution of the work. This liability for direct loss shall be limited to the amount paid out in the relevant case by the contractor's liability insurer, increased by any excess to be borne by the contractor under the insurance policy. Direct damage is understood to mean - among other things - the reasonable costs incurred to determine the cause and scope of the damage, the reasonable costs incurred to have the contractor's performance satisfy the agreement, and the reasonable costs incurred to prevent or limit the damage. The limitations of liability included in this article will not apply if and insofar as intentional acts or omissions or deliberate recklessness on the part of the contractor or its executive management are involved.
5. If, for whatever reason, the liability insurer makes no payment as referred to in paragraph 3 of this article, the contractor's liability will be limited to the amount of the fee charged for the execution of the assignment.
6. The client is obliged to take measures to limit damage. The contractor is entitled to undo or limit the damage by repairing or improving the work performed.

*Article 13*      **Termination**

1. If the client terminates the agreement without any culpable shortcoming on the part of the contractor, or if the contractor terminates the agreement due to an attributable failure of the client to comply with the agreement, the client will owe compensation in addition to the fee and the costs incurred in respect of the work carried out up to that point. In this context, conduct by the client on the grounds of which the contractor can no longer reasonably be required to complete the work commissioned will also be regarded as an attributable failure.
2. The damages referred to in the preceding paragraph will comprise at least the costs arising from obligations undertaken by the contractor in his own name with third parties for the performance of the work commissioned, as well as at least 50% of the balance of the fee that the client would owe the contractor if the work commissioned were fully completed.
3. If the agreement ends before the assignment is completed, the client shall owe the fee in accordance with the rates agreed upon by the contractor for work performed for the client.

*Article 14*      **Suspension**

1. The contractor shall be entitled, after careful consideration of interests, to suspend the performance of all its obligations, including the handing over of documents or other items to the client or third parties, until all payable claims against the client have been settled in full.
2. The first paragraph shall not apply to documents of the client that have not (yet) been processed by the contractor.

*Article 15*      **Dissolution**

1. The Client has the right to dissolve the agreement if the contractor fails imputably in the fulfilment of its obligations unless this failure does not justify the dissolution in view of its special nature or minor importance.
2. If the fulfilment of the obligations by the contractor is permanently or temporarily impossible, dissolution can only take place after the contractor is in default.
3. The contractor shall be entitled to dissolve the agreement with the client if the client fails to fulfil his obligations in respect of the order given to the contractor in full or on time, or if the contractor becomes aware of circumstances giving him good reason to fear that the client will not fulfil his obligations properly.
4. Deviations in the final result from that which was agreed upon are no reason for rejection, discount, compensation or dissolution of the agreement, if these deviations, taking all circumstances into account, are reasonably of minor significance.

*Article 16*      **Force Majeure**

1. If the parties are unable to comply with the obligations arising from the agreement or are unable to do so on time or properly, as a result of force majeure within the meaning of Article 6:75 of the Dutch Civil Code, these obligations will be suspended until the parties are able to comply with them in the agreed manner.
2. If the situation referred to in the first paragraph arises, the parties shall have the right to terminate the agreement in whole or in part in writing with immediate effect, otherwise without any right to compensation.
3. If the contractor has already partially fulfilled the agreed obligations when the force majeure occurs, the contractor is entitled to invoice the work performed separately and in the interim, and the client must pay this invoice as if it were a separate transaction.

**Article 17      Limitation period.**

1. Insofar as not otherwise provided for in these general terms and conditions, rights of action and other powers of the client on any grounds whatsoever vis-à-vis the contractor in connection with the performance of work by the contractor will lapse in any event one year after the time at which the client became aware or could reasonably have become aware of the existence of these rights and powers.

**Article 18      Electronic communication**

1. During the execution of the work, the client and the contractor may communicate with each other by electronic means and/or make use of electronic storage (such as cloud applications). Unless otherwise agreed in writing. The parties may assume that the sending of correctly addressed fax messages, e-mails (including e-mails sent via the Internet), WhatsApp, social media, Facetime, telephone and voicemail messages are mutually accepted, regardless of whether they contain confidential information or documents relating to the work. The same applies to other means of communication used or accepted by the other party.
2. The client and the contractor shall not be liable to each other for any damage that may arise for one or both of them as a result of the use of electronic means of communication, networks, applications, electronic storage, or other systems including - but not limited to - damage as a result of non-delivery or delay in delivery of electronic communications, omissions, distortion, interception or manipulation of electronic communications by third parties or by software/hardware used for transmitting, receiving or processing of electronic communications, transmission of viruses and non-functioning or malfunctioning of the telecommunications network or other resources required for electronic communications, except in so far as the damage is the result of wilful misconduct or gross negligence. The foregoing also applies to the use made by the contractor in its contacts with third parties.
3. In addition to the previous paragraph, the contractor accepts no liability for any damage caused by or in connection with the electronic transmission of annual reports (electronic or otherwise) and their digital filing with the Kamer van Koophandel.
4. Both the client and the contractor shall do everything that may reasonably be expected of each of them to prevent the occurrence of the aforementioned risks.
5. The data extracts from the sender's computer systems provide conclusive evidence of (the contents of) the electronic communication sent by the sender until such time as counterevidence is produced by the recipient.
6. The provisions of Articles 11 and 12 apply.

**Article 19      Confidentiality**

1. The parties are bound to secrecy of all confidential information, facts and circumstances that come to the knowledge of the other party in the context of the work, from each other or from another source, and which can reasonably be understood to mean that disclosure or communication to third parties could harm the contractor or the client. Third parties involved in the execution of the order will be bound by the same confidentiality with respect to these facts and circumstances originating from the other party.
2. Violation of this provision is subject to a penalty of EUR 500 per violation. This provision does not affect other possibilities for holding the client liable that are regulated by law.

*Article 20*      **Privacy**

1. If the contractor must process personal data of the client or its customers in connection with the services to be provided, the contractor will be regarded as the "processor" and the client as the "responsible party" within the meaning of the General Data Protection Regulation (AVG).

*Article 21*      **Modification of agreement**

1. If, after creation of the contract has been concluded, it appears necessary for its implementation to amend or supplement its contents, the parties shall, in good time and in mutual consultation, amend the contract accordingly.
2. The contractor shall at all times be entitled to amend the agreement if the contractor has to comply with legal requirements/regulations.

*Article 22*      **Amending terms and conditions**

1. The contractor is entitled to amend or supplement these terms and conditions.
2. Amendments of minor importance may be made at any time.
3. Major changes to the content will be discussed by the contractor with the client in advance as much as possible.
4. The client is entitled to terminate the agreement in the event of a substantial change to the terms and conditions.

*Article 23*      **Transferring rights**

1. Rights of the client from an agreed order between the parties cannot be transferred to third parties without the prior written consent of the contractor.
2. This provision shall be deemed to be a clause with property law effect as referred to in Article 3:83 paragraph 2 of the Dutch Civil Code.

*Article 24*      **Other provision**

1. Provisions in the commission which explicitly or by their nature should also remain in force after expiration or termination of the contract will remain in force after expiration or termination, including articles 6, 8, 9, 12, 20 and 21.

*Article 26*      **Applicable law and choice of forum**

1. The agreement shall be governed by Dutch law.
2. All disputes shall be settled by the competent court in the district where the contractor has its registered office.

*Article 27*      **Nullity and voidability**

1. If any provision from these terms and conditions or of the underlying contract should be wholly or partially void and/or voidable and/or invalid and/or unenforceable as a result of any statutory regulation, judicial decision or otherwise, this will not affect the validity of all the other provisions of these terms and conditions or of the underlying contract.
2. If no legal claim can be made on any provision in the assignment or on any part of the assignment, the remainder of the assignment will remain in full force, on the understanding that the provision of the part that cannot be claimed must be deemed to have been amended in such a way that a claim may be made thereon, whereby the intention of the parties with respect to the original provision or the original part will be maintained as much as possible.