

Studio Rewind General Conditions (Ch. of Comm.: 24459761)

General

In these General Conditions the terms set out below have the following meaning: Client: the party awarding the contract. Contractor: Studio Rewind. Working Days: all days with the exception of Saturdays, Sundays, 1 January, Easter Monday, Ascension Day, Whit Monday, Christmas and Boxing Day, the days defined or to be defined by the authorities as public holidays and the day on which the birthday of H.M. the Queen is officially celebrated. Days: all calendar days. Contract or Agreement: the contract for services under which the Contractor undertakes to the Client to carry out activities for the Client against payment of a fee and costs. The provisions set out in Sections 7:404 and 7:407 subsection 2 of the Dutch Civil Code are not applicable.

1 Agreement, offer and confirmation

1.1

With the exclusion of any purchase or other conditions of the Client these General Conditions are applicable to the formation, the content and the fulfilment of all agreements entered into between the Client and the Contractor.

1.2

Offers are without any obligation and are valid for 1 month. Quotations are subject to change due to an unforeseen change in the activities. Prices are excluding VAT and other levies by the authorities. The rates and offers referred to are not automatically applicable to future contracts.

1.3

The Client must confirm any contract for services in writing. If the Client omits to do so, but nevertheless agrees that the Contractor commences the performance of the services, the contents of the offer shall be considered as agreed. Further verbal arrangements and stipulations shall only bind the Contractor after they have been confirmed in writing by the Contractor.

1.4

If the Client wants to award the same contract at the same time to others than this Contractor or has already awarded the contract previously to another, the Client must inform the Contractor if this stating the names of these others.

2 Performance of the agreement

2.1

The Contractor will endeavour to perform the services accurately and independently, to promote the Client's interest to the best of his ability and to pursue a result useful to the Client. Insofar as it is necessary the Contractor will keep the Client informed of the progress of the activities.

2.2

The Client is obliged to do whatever is reasonably necessary or desirable in order to enable the timely and correct delivery by the Contractor, such as, in particular, by supplying or having supplied within due time complete, sound and clear information or materials.

2.3

A period for completing the design indicated by the Contractor is indicative, unless otherwise appears from the nature or the content of the agreement. In the event that the period indicated is exceeded, the Client must send a written notice of default to the Contractor.

2.4

Unless otherwise agreed carrying out tests, applying for licenses and assessing whether the instructions of the Client comply with the legal or quality standards do not form part of the Contractor's contract.

2.5

Before production, reproduction or disclosure is to take place, the parties must give each other the opportunity to check and approve the most recent models, prototypes or tests of the design. If the Contractor, whether or not in the name of the Client, gives instructions or directions to production companies or other third parties, the Client must at the request of the Contractor confirm in writing his approval referred to above.

2.6

Complaints must be notified in writing to the Contractor as soon as possible, but in any event within ten working days after completion of the contract, failing which the Client is deemed to have fully accepted the result of the contract.

3 Engagement of third parties

3.1

Unless otherwise agreed, contracts with third parties in connection with the formation of the design will be awarded by or on behalf of the Client. At the request of the Client the Contractor can act as the authorised representative at the expense and risk of the Client. To this end the parties can arrange a fee further to be agreed.

3.2

If at the Client's request the Contractor prepares an estimate for the costs of third parties, this estimate will only be indicative. If required the Contractor can apply for offers on behalf of the Client.

3.3

If in performing the contract the Contractor purchases goods or services from third parties according to an explicit arrangement at his own expense and risk, after which these goods or services are passed on to the Client, the provisions in the general terms and conditions of the supplier with regard to the quality, quantity, capacity and provision of these goods or services will also be effective with regard to the Client.

4 Intellectual property rights and property rights

4.1

Unless otherwise agreed, all intellectual property rights arising from the contract for services - including the patent right -, the model right and the copyright accrue to the Contractor. Insofar as such a right can only be obtained by an application or registration, the Contractor will exclusively be entitled to submit them.

4.2

Unless agreed otherwise, the investigation into the existence of any rights, including patents, brand rights, drawings or model rights, copyrights or portrait rights of third parties, does not form part of the contract for services. The same applies to any investigation into the possibility of such forms of protection for the Client.

4.3

Unless the work does not lend itself to it, the Contractor will at any time be entitled to state or have stated or remove his/her name on or in connection with the work and the Client is not allowed without prior consent to disclose or reproduce the work without stating the name of the Contractor.

4.4

Unless otherwise agreed, the working drawings, illustrations, prototypes, models, moulds, designs, sketches, films and other material or (electronic) files created by the Contractor in connection with the contract, remain the property of the Contractor regardless of whether they were handed over to the Client or to any third parties.

4.5

After completion of the contract neither the Client nor the Contractor have any obligation to each other to retain the materials and information used.

5 Use and license

5.1

If the Client fully fulfils his obligations under the agreement with the Contractor, he will obtain an exclusive license to use the design insofar as this relates to the right to disclose and reproduce it according to the intended use agreed in connection with the contract for services.

If no arrangements have been made about the intended use, the granting of the license remains restricted to the use of the design for which there were firm intentions at the moment that the contract for services was awarded. These intentions must have been made demonstrably known to the Contractor before entering into the agreement.

5.2

Without the written consent of the Contractor the Client will not be entitled to use the design or have it used in a wider sense or in way other than has been agreed. In the event of a non-agreed wider or different use, also including the alteration, mutilation or damage to the preliminary or final design, the Contractor will be entitled to compensation due to infringement of his/its rights, amounting to three times the agreed fee, at any rate a compensation which is in reasonable and fair relation to the infringement committed, notwithstanding the right of the Contractor to claim compensation of the loss actually suffered.

5.3

The Client is not or no longer allowed to use the results made available and any license granted to the Contractor in connection with the contract for services will lapse:

- a. from the moment that the Client does not or does not fully fulfil his (payment) obligations on account of the agreement or is otherwise in default, unless the shortcoming of the Client is of minor importance in the light of the entire contract for services;
- b. if the contract for services is terminated prematurely for any reason whatsoever, unless the consequences of it are contrary to reasonableness and fairness.

5.4

With due observance of the interests of the Client the Contractor is free to use the design for his own publicity or promotion.

6 Fee and associated costs

6.1

Apart from the agreed fee the costs incurred by the Contractor for performing the contract for services will also be eligible for reimbursement.

6.2

If due to the late supply or non-delivery of complete, sound and clear information/materials or due to a changed or inaccurate contract for services or briefing the Contractor is forced to perform more or other activities, these activities must be paid for separately on the basis of the usual rates of the fees applied by the Contractor.

6.3

If the remuneration has been made dependent in any way on facts or circumstances which must be apparent from the Client's accounts, after a statement from the Client the Contractor will be entitled to have the accounts of the Client verified by an accountant to be chosen by the Contractor. If the outcome of the verification by the accountant differs by more than 2% or €100.00 from the statement and the settlement by the Client, the costs of this verification will be at the expense of the Client.

7 Payment

7.1

Payments must be made within 14 days of the invoice date. If after this period has expired the Contractor has not yet received (full) payment, the Client will be in default and he will owe interest equal to the statutory interest rate. All the costs incurred by the Contractor such as litigation costs and extra-judicial and court costs, including the costs of legal assistance, bailiffs and debt collection agencies, incurred in connection with late payments will be at the expense of the Client. The extrajudicial costs are set at a minimum of 10% of the invoice amount with a minimum of €150.00 excl. VAT.

7.2

The Contractor is entitled to charge his fee monthly for activities carried out and costs incurred for the performance of the contract for services.

7.3

The Client will make the payments without discounts or set-off, subject to set-off against the offsettable advance payments relating to the agreement which he paid to the Contractor. The Client is not entitled to suspend payment of invoices for activities already carried out.

8 Termination and dissolution of the agreement

8.1

If the Client terminates an agreement, he must pay, apart from damages, the fee and the costs incurred with regard to the activities carried out until that moment.

8.2

If the agreement is dissolved by the Contractor due to an attributable failure in the performance of the agreement by the Client, the Client must pay, apart from damages, the fee and the costs incurred with regard to the activities carried out until that moment. Any conduct of the Client on the basis of which it can no longer be required of the Contractor to complete the contract for services, will in this connection also be considered as an attributable failure.

8.3

The damages meant in the previous two paragraphs of this Clause will include at least the costs arising from the obligations entered into by the Contractor in his own name for the performance of the contract for services, as well as at least 30% of the remaining part of the fee that the Client would owe upon the complete performance of the contract for services.

8.4

The Contractor as well as the Client are entitled to dissolve the agreement immediately in whole or in part in the event of the bankruptcy or (provisional) moratorium of the other party. In the event of the bankruptcy of the Client the Contractor will be entitled to terminate the right of use granted, unless the consequences of this are contrary to reasonableness and fairness.

8.5

In the event of dissolution by the Client due to an attributable failure in the performance of the obligations by the Contractor, the performances already provided and the associated payment obligation cannot become subject to cancellation, unless the Client proves that the Contractor is in default with regard to that performance. Amounts invoiced by the Contractor before the dissolution in connection with what he has already properly carried out or delivered in performing the agreement, remain fully due with due observance of the provisions set out in the previous sentence and will become immediately due and payable at the moment of dissolution.

8.6

If the activities of the Contractor consist of repeatedly performing similar activities, the agreement applicable to this will be effective for an indefinite period of time unless otherwise agreed in writing. This agreement can only be terminated via a written notice with due observance of a reasonable notice period of at least three months.

9 Warranties and indemnities

9.1

The Contractor warrants that what he/she has provided has been designed by him/her or on his/her behalf and that if any copyright would be attached to it, he/she is considered as the maker within the sense of the Dutch Copyright Act (*Auteurswet*) and can dispose of the work as the copyright owner.

9.2

The Client indemnifies the Contractor or the persons engaged in connection with the contract for services against any claims by third parties arising from the applications or the use of the result of the contract for services.

9.3

The Client indemnifies the Contractor against any claims with regard to the intellectual property rights to the materials or information supplied by the Client and used in fulfilling the contract for services.

10 Liability

10.1

The Contractor will not be liable for:

- a. faults or shortcomings in the material supplied by the Client.
- b. misunderstandings, faults or shortcomings with regard to the fulfilment of the agreement if they are associated with or caused by acts of the Client, such as the late or non-supply of complete, sound and clear information/materials.
- c. faults or shortcomings of third parties engaged by or on behalf of the Client.
- d. defects in offers of suppliers or for exceeding the quotations of suppliers.

- e. faults or shortcomings in the design or the text/information, if the Client has given his/her approval according to the provisions in Clause 2.5, or has been given the opportunity to check these and has not made use of this.
- f. faults or shortcomings in the design or the text/information, if the Client has refrained from the creation of a certain model, prototype or carrying out a test or having a test carried out and these faults would indeed have been noticeable in such a model, prototype or test.

10.2

The Contractor is exclusively liable for direct loss attributable to him. Direct loss means only:

- a. reasonable costs to ascertain the cause and scope of the loss, insofar as the ascertainment relates to loss within the sense of these Conditions.
- b. any reasonable costs necessary to make the defective performance of the Contractor comply with the agreement;
- c. reasonable costs incurred to prevent or restrict the loss insofar as the Client has demonstrated that these costs resulted in the restriction of direct loss as meant in these Conditions.

The liability of the Contractor for all other loss than that referred to above, such as indirect loss, including consequential loss, lost profits, mutilated or perished information or materials, or loss due to operational delays, is excluded.

10.3

Except in the event of the intention or conscious recklessness of the Contractor or the Contractor's management - therefore excluding the subordinates - the Contractor's liability for loss on account of an agreement or of a wrongful act committed with regard to the Client, will be limited to the invoice amount relating to the part of the contract for services that has been fulfilled, decreased by the costs of engaging third parties incurred by the Contractor, on the understanding that this amount is in any event always limited to the maximum amount that the insurer will pay to the Contractor as the occasion arises.

10.4

Any liability will lapse after one year from the moment that the contract for services has been completed.

10.5

The Client is obliged, if reasonably possible, to retain copies of materials and information provided by him until the contract for services has been completed. Should the Client not have provided these, the Contractor cannot be held liable for loss which would not have occurred if these copies had existed.

11 Other provisions

11.1

The Client is not allowed to transfer any right under an agreement entered into with the Contractor to any third party other than in connection with the transfer of his entire business.

11.2

The parties are obliged to observe confidentiality with regard to facts and circumstances which come to the notice of the other party in connection with the contract for services. Third parties involved in the performance of the contract for services, shall be bound to the same confidentiality with regard to these facts and circumstances originating from the other party.

11.3

The headings in these General Conditions only serve to improve its readability and do not form part of these Conditions.

11.4

The agreement between the Contractor and the Client is governed by Dutch law. Any disputes between the Contractor and the Client will be heard by the competent court in the district in which the Contractor is established, or the court having jurisdiction according to the law, this at the Contractor's discretion.