



## **General terms and conditions of Jaaf Design Amsterdam**

### **1. Agreement, quotation and confirmation**

1.1 These general terms and conditions apply to the conclusion, content and performance of all agreements concluded between the Client and the Contractor, and exclude any purchase or other conditions of the client.

1.2 Estimates are quoted without obligation and valid for 2 months. Quotations may change due to any unforeseen changes in the work. The listed rates and offers do not automatically apply to later contracts.

1.3 Contracts must be confirmed in writing by the Client. If the client fails to do so but accepts that the contractor starts

with the implementation of the contract, the content of the quotation will be deemed to have been accepted. Later oral agreements and stipulations will only be considered binding if the contractor approves them in writing.

1.4 If the client, either previously or simultaneously wishes to grant the same contract to others than this contractor, the Client must inform the contractor of the names of these other parties.

### **2. Implementation of the agreement**

2.1 The contractor will strive to carry out the contract independently, with due care and attention and to the best of his ability and to represent the interests of the client, as well as endeavour to achieve a result which can be used by the client. In so far as is necessary, the contractor will keep the client informed of the progress of the work.

2.2 The client is required to do all that is reasonably necessary or desirable to enable the timely and correct delivery of the contract by the contractor, especially by timely providing complete, sound and clear data or materials.

2.3 A period specified by the contractor for the completion of the design is only indicative, unless the nature or content of the agreement indicate otherwise. The client must submit a written notice of default to the contractor if the indicated period is exceeded.

2.4 Unless otherwise agreed, performing tests, applying for permits, and assessing whether instructions of the client comply with statutory or quality standards are not considered to be part of the contract.

2.5 Before starting with production, reproduction or publication, all parties must first give each other the opportunity to review and approve the latest models, prototypes or design tests. If the contractor, whether or not on behalf of the client, grants contracts or instructions to production companies or other third parties, the client must confirm any subsequent approval in writing at the request of the contractor.

2.6 Complaints must be submitted to the contractor in writing as soon as possible, but at the latest within ten business days after completion of the contract. Failure to do so will be deemed as complete acceptance of and satisfaction with the contract outcome.

### **3. Hiring third parties**

3.1 Unless otherwise agreed, contracts granted to third parties in the context of the realisation of the design will be granted by or on behalf of the client. At the request of the client, the contractor may act as an authorised representative for the risk and account of the client. The parties may agree on a fee for this.

3.2 If the contractor at the request of the client draws up an estimate for third party costs, this estimate will only be indicative. If desired, the contractor may request further quotations on behalf of the client.

3.3 If, during the implementation of the contract, the contractor purchases goods or services from third parties (at his own risk and account as explicitly agreed beforehand), which are then transferred to the client, all provisions of the general terms and conditions of the supplier concerning the quality, quantity and delivery are also transferrable to the client.

#### **4. Intellectual property and proprietary rights**

4.1 Unless otherwise agreed, all intellectual property rights arising from this contract, including patent rights, design rights and copyrights, will be held by the contractor. Only the contractor has the right to obtain such rights by filing or registration.

4.2 Unless otherwise agreed, the contract does not include any investigation concerning the existence of rights, including patent rights, trademark rights, drawing or design rights, copyrights or portrait rights of third parties. The same applies to any investigation concerning the possibility of such forms of protection for the client.

4.3 Unless the work does not lend itself to this, the contractor will retain the right to include or remove his or her name on or from any work. The client may not publish or reproduce the work excluding the name of the contractor without prior permission.

4.4 Unless otherwise agreed, the work drawings, illustrations, prototypes, models, moulds, designs, sketches, films and other materials or (electronic) files will remain the property of the contractor, regardless of whether these have been provided to the client or third parties, unless otherwise agreed.

4.5 After completing the contract, neither the client nor the contractor will have any obligation to retain the used materials and data.

#### **5. Use and licence**

5.1 If the client fully meets his obligations under the agreement with the contractor, he will acquire an exclusive licence to use the design to the extent as this concerns publication and reproduction rights in accordance with the purpose agreed to in the contract. If no such agreements have previously been made about the purpose, the licence will be limited to the use of the design for which there were firm intentions at the time the contract was granted. These intentions must have been demonstrably communicated to the contractor before the conclusion of the agreement.

5.2 The client will not be entitled to use nor outsource the design in any other way than previously agreed without the written permission of the contractor. If the design is used in a way that has not been agreed, including alteration, mutilation or impairment of the provisional or final design, the contractor will be entitled to compensation for infringement of his or her rights of an amount at least three times the originally agreed fee; or a compensation which is fair and reasonable considering the infringement, without prejudicing the rights of the contractor to claim further compensation for any other damage actually incurred.

5.3 The client may not (or no longer) use the provided results and any licence granted to the client in the context of the contract will expire:

a. from the moment the client fails to (fully) fulfil his (payment) obligations under the agreement, or is otherwise in default, unless the shortcoming of the client is of minor importance considering the entire scope of the contract;

b. if the contract, for whatever reason, is terminated prematurely; unless the consequences leading to this outcome are not reasonable or fair.

5.4 The contractor will be free to use the design for his own publicity or promotion with due observance of the interests of the client.

#### **6. Fees and additional costs**

6.1 In addition to the agreed fee, any subsequent costs incurred by the contractor to carry out the contract will also be eligible for compensation.

6.2 If the contractor is required to carry out more or other work due to late or non-delivery of complete, sound and clear data/materials from the client, or due to a changed or incorrect contract or briefing, this work will be invoiced separately based on the usual fees charged by the contractor.

6.3 If the fee in any way depends on facts and circumstances demonstrated by the records of the client, following a statement from the client the contractor will have the right to select an accountant to audit the records of the client. If the result of said audit deviates by more than 2% or € 100 from the statement and settlement of the client, the costs of this audit will be borne by the client.

## **7. Payment**

7.1 Payments must take place within 14 days of the invoice date. 50% will be invoiced at the start, and 50% at the end. If after expiry of this period the contractor has not yet received (full) payment, the client will be considered to be in default and owe the statutory interest. All costs incurred by the contractor in relation to late payments, such as procedural costs and judicial and extrajudicial costs, including the costs for legal assistance, bailiffs and collection agencies, will also be borne by the client. The extrajudicial costs will amount to at least 10% of the invoice amount with a minimum of € 150 excluding VAT.

7.2 The contractor has the right to charge his fee on a monthly basis for the performed work and the costs incurred for the implementation of the contract.

7.3 The client will make the payments due to the contractor without discount or a set-off clause, except set-off with any advance payments provided to the contractor in relation to the agreement. The client does not have the right to suspend payment of invoices for completed work.

## **Termination and dissolution of the agreement**

8.1 If the client terminates the agreement, he must pay any outstanding fees and costs incurred in relation to the completed work, in addition to penalty compensation.

8.2 If the agreement is dissolved by the contractor due to an attributable shortcoming in the performance of the agreement by the client, the client remains liable for all fees and costs incurred in relation to the completed work, again in addition to compensation. Unreasonable conduct of the client which inhibit the contractor from reasonably completing the contract will in this context also be considered an attributable shortcoming.

8.3 The compensation referred to in the previous two sections of this article will at least include any costs resulting from fulfilling agreements concluded with third parties in the name of the contractor in implementation of the contract, as well as at least 30% of the remainder of the fee that the client would owe had the contract been completed.

8.4 Both the contractor and the client will have the right to fully or partially terminate the agreement with immediate effect in case of bankruptcy or (provisional) suspension of payments of the other party. In case of bankruptcy of the client, the contractor has the right to terminate the granted usage right, unless the consequences of this are not considered reasonable or fair.

8.5 If the client terminates the agreement due to a culpable failure of the contractor, any already performed work and associated payment obligations will not be cancelled, unless the client proves that the contractor is in default with respect to this work. The amounts invoiced by the contractor before the dissolution concerning any properly performed or delivered work will become immediately due at the moment of dissolution, subject to the provisions of the preceding sentence.

8.6 If the work of the contractor consists of recurring similar activities, the applicable agreement will be in force for an indefinite period, unless otherwise agreed in writing. This agreement may only be

terminated by means of written notice with due observance of a reasonable notice period of at least three months.

## **9. Guarantees and indemnifications**

9.1 The contractor guarantees that the delivered results have been designed by or on behalf of him or her and that if the design is encumbered by copyrights, he or she is the creator within the meaning of the Dutch Copyright Act and can freely dispose of the work as the copyright holder.

9.2 The client will indemnify the contractor or any persons hired by the contractor to carry out the contract against all claims from third parties arising from the use of the result of the contract.

9.3 The client indemnifies the contractor against any claims related to intellectual property rights on materials or data provided by the client that are used to carry out the contract.

## **10. Liability**

The contractor is not liable for:

- a. errors or shortcomings in the material provided by the client.
- b. misunderstandings, errors or shortcomings concerning the implementation of the agreement if these are caused by acts of the client, such as the late or non-delivery of complete, sound and clear data and/or materials.
- c. errors or shortcomings of third parties hired by or on behalf of the client.
- d. errors in quotations of suppliers; or if estimates provided by suppliers exceed the initial amount quoted.
- e. errors or shortcomings in the design or the text/data if the client has approved these in accordance with the provisions of Art. 2.5, or has been given the opportunity to verify them and has failed to do so.
- f. errors or shortcomings in the design or the text/data if the client has not produced or carried out a specific model, prototype or test, through which any such errors would have been detected.

10.2 The contractor is only liable for any direct damages attributable to him. Direct damage will only be:

- a. reasonable costs incurred to determine the cause and extent of the damage.
- b. any reasonable costs necessary to ensure that the lacking performance of the contractor will meet the agreement;
- c. reasonable costs incurred to prevent or mitigate damage, in so far the client demonstrates that these expenses resulted in the mitigation of direct damage within the meaning of these general terms and conditions.

The liability of the contractor for all other damage not listed above, such as indirect damage, consequential damage, loss of profit, corrupted or lost data or materials, or damage due to business interruption, is excluded.

10.3 Except in the case of intent or gross recklessness by the contractor or its management (excluding subordinates) the liability of the contractor for damages under an agreement or arising from an unlawful act committed against the client will be limited to the invoice amount concerning the performed part of the contract minus any costs incurred by the contractor in the hiring of third parties.

10.4 Any liability will expire one year after the contract has been completed.

10.5 The client is held to keep any copies of provided materials and data until the contract is completed, if reasonably possible. If the client fails to do so, the contractor cannot be held liable for any damage that would not have occurred if these copies had existed.

## **11. Other provisions**

11.1 The parties are held to observe the confidentiality of all facts and circumstances that have been disclosed to the other party in the context of the contract. Third parties that are involved in the implementation of the contract will be bound to the same confidentiality concerning these facts and circumstances.

11.2 The agreement between the contractor and the client is governed by the laws of the Netherlands. The competent court of the district where the contractor is established, or the court competent under

law, such at the discretion of the contractor, is entitled to hear any disputes between the contractor and the client.