

1 Agreement, offers and confirmation

1.1 These General Terms and Conditions apply to the exclusion of any purchase or other conditions of the client to the preparation, content and performance of all agreements between the client and the designer.

1.2 All offers are without commitment and are valid for two months. Prices quoted may be subject to change owing to unforeseen changes in the work. Prices are without VAT and other government levies. The rates and offers quoted will not automatically apply to future commissions.

1.3 Commissions must be confirmed by the client in writing. If the client fails to do so but consents to the designer commencing the work commissioned, the terms of the offer will be deemed to have been agreed. Any subsequent oral agreements and stipulations will not be binding on the designer unless he has confirmed them in writing.

2 Performance of the agreement

2.1 The designer must make every effort to perform the work commissioned carefully and independently, to promote the client's interests to the best of his ability and to achieve a result that is useful to the client. To the extent necessary the designer must keep the client advised of the progress of the work.

2.2 The client must do any and all things that are reasonably necessary or required to enable the designer to deliver in a timely manner, in particular by supplying complete, sound and clear data or materials.

2.3 Terms quoted by the designer for completion of the design are approximations only, unless the nature or content of the agreement requires otherwise. If the stipulated term is exceeded, the client must give the designer notice of default in writing.

2.4 Unless otherwise agreed, the performance of tests, the application for permits and the assessment whether the client's instructions comply with statutory or quality standards do not fall within the scope of the work commissioned to the designer. Unless otherwise agreed, the work commissioned does not include conducting searches for the existence of rights, including patents, trademark rights, drawing or design rights, copyrights or portrait rights of third parties. The same applies to any investigation into the possibility of such forms of protection for the client.

2.5 Prior to production, reproduction or publication, each party must give the other the opportunity to check and approve the final draft, prototype or galley proofs of the design. If the designer is to place orders with or give instructions to manufacturing companies or other third parties, whether or not in the client's name, the client must confirm their aforesaid approval in writing at the designer's request.

2.6 Deviations in the (final) result compared to what has been agreed are no reason for rejection, discount, compensation or dissolution of the agreement, if these deviations, taking all circumstances into account, are reasonably of minor importance.

2.7 Any complaints to the designer must be filed in writing at the earliest possible time but not later than within 10 business days after completion of the work commissioned, failing which the client will be deemed to have accepted the work commissioned in its entirety.

3 Engagement of third parties

3.1 Unless otherwise agreed, instructions to third parties to be given in the context of executing the work commissioned will be given by or on behalf of the client. At the client's request the designer may act as an agent for the client's account and risk. The parties may agree on a fee for such services.

3.2 If the designer provides an estimate of third-party costs at the client's request, such estimate will be an approximation only. If required, the designer may seek quotations from third parties on the client's behalf.

3.3 If the designer procures goods or services from third parties in the performance of the work commissioned, for the designer's own account and risk and on the basis of an express agreement, the general conditions of such supplier with regard to the quality, quantity, properties and delivery of such goods or services will also apply to the client.

3.4 If the designer, whether or not in the name of the client, provides assignments or directions to production companies or other third parties, the client must confirm their aforesaid approval in writing at the designer's request, as referred to in Art. 2.5.

3.5 The client does not engage third parties without consultation with the designer, as this may affect the execution of the assignment agreed with the designer. Where appropriate, the parties will consult which other contractors may be commissioned and which activities may be assigned to them.

3.6 The designer is not liable for errors or defects in products or services of third parties, regardless of whether these have been introduced by the designer. The client must address these parties himself. The designer can provide assistance if this is required.

4 Intellectual and other property rights

4.1 Unless otherwise agreed, all intellectual property rights arising from the commissioned work, including patents, design rights and copyrights, belong to the designer. If any of such rights can be acquired only by registration, the designer will have the sole and exclusive power to effect such registration.

4.2 Unless the work is not suitable for that purpose, the designer will at all times be entitled to imprint his name on or in or to remove it from the work, and without the designer's prior authorization the client may not publish or reproduce the work without identifying the designer by name.

4.3 Unless otherwise agreed, all design drawings, illustrations, prototypes, scale models, templates, drafts, design sketches, films and other materials or (electronic) data files made by the designer in the course of executing the design will remain the designer's property, irrespective of whether they were made available to the client or to third parties.

4.4 Upon completion of the work commissioned, neither the client nor the designer will have any obligation to retain any of the materials and data used.

## 5 Use and licence

5.1 Once the client has fulfilled all his obligations under the agreement with the designer, he will acquire an exclusive licence to use the design solely for purposes of publication and reproduction as such purposes were agreed when the work was commissioned. If no such specific purposes have been agreed, the licence will be limited to that manner of use of the design on which firm intentions existed on the date when the work was commissioned. Such intentions must have been verifiably stated to the designer prior to the conclusion of the agreement.

5.2 Without prior written approval from the designer, the client will not be entitled to any use of the design that is broader or different from the use agreed.

5.3 In the event of broader or different use on which no agreement was reached, including any amendment, mutilation or infringement on the provisional or final design, the designer will be entitled to compensation due to infringement of her rights of at least three times the agreed fee, or a fee that is reasonably and fairly proportional to the infringement committed, without prejudice to the designer's right to claim reimbursement of the damage actually incurred.

5.4 The client is not permitted to make changes to the provisional or final designs without written permission from the designer.

5.5 The client will not (or no longer) be permitted to use the results made available and any licence granted to the client in the context of the work commissioned will lapse:

- 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, unless the default is insignificant by reference to the overall scope of the work;
- b. if the work commissioned is terminated early for any reason whatsoever, unless the consequences are contrary to the principles of reasonableness and fairness.
- c. in case of bankruptcy of the client, unless the relevant rights have been transferred.

5.6 The designer may use the design at his discretion for his own publicity or promotional purposes, with due observance of the client's interests.

## 6 Fees and additional costs

6.1 In addition to payment of the agreed fee, the contractor will be entitled to reimbursement of any costs incurred by him in the performance of the work commissioned.

6.2 In addition to the agreed fee, the costs incurred by the designer for the execution of the assignment, such as travel and accommodation costs, costs for prints, copies, (printing) proofs, prototypes, and costs of third parties for advice, production and guidance, etc., are eligible for reimbursement. These costs are specified in advance as much as possible, except when a surcharge percentage is agreed.

6.3 If the designer is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear data and/or materials, or any change or error in instructions or briefings, such additional work will be charged separately on the basis of the designer's usual fees.

## 7 Payment

7.1 Payments must be made without deduction, settlement or suspension, within 15 days of the invoice date, unless otherwise agreed in writing or the invoice states otherwise. The client is not entitled to suspend payment of invoices for work that has already been performed.

7.2 All goods delivered to the client remain the property of the designer until all amounts that the client owes on the basis of the agreement concluded between the parties have been paid in full to the designer.

7.3 If the payment has not been received, the client will be in default and will owe interest at the statutory rate. All costs incurred by the designer in connection with overdue payments, such as costs of litigation and judicial and extra-judicial costs, including the cost of legal assistance, bailiffs and debt collection agencies, will be for the client's account. The extrajudicial costs will be not less than 10% of the invoice amount, with a minimum of £150.

7.4 The designer ensures timely invoicing. In consultation with the client, the designer may have the right to invoice the client at monthly intervals for work performed and costs incurred in the performance of the work commissioned.

7.5 The designer may suspend the execution of the assignment after the payment term has expired and the client, after having been reminded in writing to pay within 14 days, fails to do so, or when the designer understands from the client that payment will not be made.

## 8 Notice of termination and dissolution of an agreement

8.1 If the client gives notice of termination of an agreement, they must pay, in addition to damages, the designer's fee and the costs incurred in connection with the work performed until that date. If the agreement is terminated by the designer on the grounds of breach by the client in the performance of the agreement, the client will be required to pay, in addition to damages, the designer's fee and the costs incurred in connection with the work performed until that date. In this context any conduct by the client on the grounds of which the designer cannot reasonably be required to complete the work commissioned will also be regarded as breach.

8.2 The damages referred to in the preceding two paragraphs of this Article will comprise at least the costs arising from obligations undertaken by the designer in his own name with third parties for the performance of the work commissioned, as well as at least 30% of the balance of the fee that the client would owe the designer if the work commissioned were fully completed.

8.3 Both the designer and the client will have the right to terminate the agreement in whole or in part with immediate effect if the other party is declared bankrupt or is granted a suspension of payments (whether or not provisional). If the client is declared bankrupt, the designer will have the right to terminate the right of use granted, unless the consequences would be contrary the principles of reasonableness and fairness.

8.4 In the event of termination by the client on the grounds of breach in the performance of the designer's obligations, the performance already completed and the related payment obligation will not be subject to cancellation, unless the client provides evidence that the designer is in default of that performance. Amounts that the designer has invoiced before the dissolution for work performed or delivered properly under the agreement will remain payable in full with due observance of the previous sentence and will fall due immediately upon termination.

## 9 Warranties and indemnities

9.1 The designer warrants that the design supplied to the client has been made by him or her or on his or her behalf and, if the design is protected by copyright, that the designer is the author and as the copyright owner has the power of disposition of the work.

9.2 The client indemnifies the designer or persons engaged by the designer in the performance of the work commissioned against any third-party claim or action arising from the application or use of the design created by the designer or persons referred to above.

9.3 The client indemnifies the designer against any claim or action relating to intellectual property rights in materials or information supplied by the client and used in the performance of the work commissioned.

## 10 Liability

10.1 The designer will not be liable for:

- a. errors or defects in materials supplied by the client;
- b. misunderstandings, errors or defects in the performance of the agreement if such misunderstandings or errors were caused by acts of the client, such as late delivery or nondelivery of complete, sound and clear information and/or materials;
- c. errors or defects by third parties engaged by or on behalf of the client;
- d. inaccuracies in offers made by suppliers, or prices quoted by suppliers being exceeded;
- e. errors or defects in the design or errors in the text/data if the client has given his approval in accordance with the provisions of Article 2.5 or has had the opportunity to perform an inspection and has declined to do so.

10.2 In the event of intent or wilful recklessness by the designer or the designer's management – therefore except for persons under their control – the designer's liability for damage or loss arising from an agreement or any wrongful act committed against the client will be limited to the amount invoiced for the portion of the work performed, less the costs incurred by the designer in the engagement of third parties, on the understanding that that amount will not exceed £75,000 and will in no event be higher than the benefit that the insurance company may pay to the designer.

10.3 Any and all liability will expire twelve months from the date of completion of the work commissioned.

## 11 Other terms

11.1 If the client wishes to commission identical work to a party other than the designer or has already commissioned the work to another party, he must inform the designer accordingly in writing, stating the names of those other parties.

11.2 The client will not be permitted to transfer or assign to third parties any of the rights under an agreement concluded with the designer, save in the event and as part of a transfer of the client's entire business.

11.3 Both parties must keep confidential any and all facts and circumstances that come to their knowledge in the context of the work commissioned. The same duty of confidentiality in respect of such facts and circumstances must be imposed on any third parties engaged in the performance of the work commissioned.

11.4 The headings in these General Terms and Conditions have been included for easy reference only and are no part of these Terms and Conditions.

11.5 All agreements between the designer and the client are governed by UK law. The court that has the power to hear and decide any dispute between the designer and the client will be the court having jurisdiction in the district where the designer has her registered office or the court having jurisdiction pursuant to the law, at the designer's option.