

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 Kloaq.
- 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 exclusive of 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 Kloaq 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 to Kloaq unless he has confirmed them in writing.

2 Performance of the agreement

- 2.1 Kloaq will make every effort to perform the work commissioned carefully, 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, Kloaq will 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 Kloaq to deliver punctually and properly, in particular by supplying (or causing the supply of) complete, sound and clear data or materials in a timely manner.
- 2.3 Terms quoted by Kloaq for completion of the work are approximations only, unless the nature or content of the agreement requires otherwise.
- 2.4 Prior to production, reproduction or publication, each party must give the other the opportunity to check and approve the final prototype of the work. If Kloaq is to place orders with or give instructions to other third parties, whether or not in the client's name, the client must confirm his aforesaid approval in writing at Kloaq's request.
- 2.5 Any complaints to Kloaq must be filed in writing at the earliest possible time but not later than within ten 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 Kloaq 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 Kloaq provides an estimate of third-party costs at the client's request, such estimate will be an approximation only. If required, Kloaq may seek quotations from third parties on the client's behalf.
- 3.3 If Kloaq procures goods or services from third parties in the performance of the work commissioned, for Kloaq'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.

4 Intellectual and other property rights

- 4.1 Unless otherwise agreed, all intellectual property rights arising from the work commissioned – including copyrights and neighboring rights – will vest in Kloaq. If any of such rights can be acquired only by registration, Kloaq will have the sole and exclusive power to effect such registration.
- 4.2 Without Kloaq's prior authorization the client may not publish or reproduce the work without identifying Kloaq by name.
- 4.4 Unless otherwise agreed, all prototypes, templates, tapes and other materials or (electronic) data files made by Kloaq in the course of executing the commission will remain Kloaq's property, irrespective of whether they were made available to the client or to third parties.
- 4.5 Once the client has fulfilled all his obligations under the agreement with Kloaq, he will acquire an exclusive licence to use the work 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 work on which firm intentions existed on the date when the work was commissioned. Such intentions must have been verifiably stated to Kloaq prior to the conclusion of the agreement.
- 4.6 Without prior written approval from Kloaq, the client will not be entitled to any use of the work that is broader or different from the use agreed. 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 version of the work, Kloaq will be entitled to compensation due to infringement of his 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 Kloaq's right to claim reimbursement of the damage actually incurred.

- 4.7 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 fulfill 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.
- 4.8 Kloaq may use the works at his discretion for his own publicity or promotional purposes, with due observance of the client's interests.

5 Fees and additional costs

- 5.1 Unless agreed otherwise, Kloaq, in addition to payment of the agreed fee, will be entitled to reimbursement of any costs incurred by him in the performance of the work commissioned.
- 5.2 If Kloaq 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 Kloaq's usual fees.

6 Payment

- 6.1 Payments must be made within 30 days of the invoice date. If Kloaq has not received payment (or payment in full) at the end of that term, the client will be in default and will owe interest at the statutory rate. All costs incurred by Kloaq in connection with overdue payments, such as costs of litigation and judicial and extrajudicial 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.
- 6.2 Kloaq will have the right to invoice the client at monthly intervals for work performed and costs incurred in the performance of the work commissioned.
- 6.3 The client will pay the amounts due to Kloaq without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the client may have made to Kloaq. The client is not entitled to suspend payment of invoices for work that has already been performed.

7 Notice of termination and dissolution of an agreement

- 7.1 If the client gives notice of termination of an agreement, he must pay, in addition to any damages if such, Kloaq's fee and the costs incurred in connection with the work performed until that date.
- 7.2 If the agreement is terminated by Kloaq 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, Kloaq'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 Kloaq cannot reasonably be required to complete the work commissioned will also be regarded as breach.
- 7.3 The damages referred to in the preceding two paragraphs of this Article will comprise at least the costs arising from obligations undertaken by Kloaq 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 Kloaq if the work commissioned were fully completed.
- 7.4 Both Kloaq 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, Kloaq will have the right to terminate the right of use granted, unless the consequences would be contrary the principles of reasonableness and fairness.
- 7.5 In the event of termination by the client on the grounds of breach in the performance of Kloaq's obligations, the performance already completed and the related payment obligation will not be subject to cancellation, unless the client provides evidence that Kloaq is in default of that performance. Amounts that Kloaq 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.
- 7.6 If Kloaq's work consists of recurrently performing work of a similar nature, the agreement in question will be valid for an indefinite period of time, unless otherwise agreed in writing. Such agreement may be terminated only by written notice given with due observance of a reasonable notice period of not less than three months.

8 Warranties, indemnities and liability

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

- 8.2 The client indemnifies Kloaq 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.
- 8.3 Kloaq 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 work 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.
- 8.4 Kloaq will be liable only for direct damage attributable to him and will be limited to the amount invoiced for the portion of the work performed, less the costs incurred by Kloaq in the engagement of third parties, on the understanding that that amount will not exceed EUR 45,000 and will in no event be higher than the benefit that the insurance company may pay to Kloaq.

9 Other terms

- 9.1 The client will not be permitted to transfer or assign to third parties any of the rights under an agreement concluded with Kloaq, save in the event and as part of a transfer of the client's entire business.
- 9.2 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.
- 9.3 All agreements between Kloaq and the client are governed by Dutch law. The court that has the power to hear and decide any dispute between Kloaq and the client will be the court having jurisdiction in the district where Kloaq has his registered office or the court having jurisdiction pursuant to the law, at Kloaq's option.