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# 1

## **Agreement, offer and confirmation**

### 1.1

*These general conditions apply to all offers and the formation, content and fulfillment of all agreements concluded between the client and the Identity design company (hereinafter: Joram ipsum). Deviations from these general terms and conditions can only be agreed in writing between the client and Joram ipsum.*

### 1.2

*Offers are non-committal and valid for one month. Quotations can undergo changes due to unforeseen changes in the work. All prices are exclusive of VAT. Mentioned rates and offers do not automatically apply to future assignments. The client guarantees the correctness and completeness of the information provided to Joram ipsum on which the quotation is based.*

### 1.3

*Orders are confirmed by the client in writing. If the client fails to do so, but nevertheless agrees that Joram ipsum starts with the execution of the assignment, then the content of the quotation shall be deemed to have been agreed and these general terms and conditions shall apply. Further verbal agreements and stipulations will only bind Joram ipsum after they have been confirmed by him in writing.*

# 2

## **The implementation of the agreement**

### 2.1

*Joram ipsum makes every effort to carry out the assignment carefully and independently, to represent the interests of the client to the best of his knowledge and to strive for a client usable result, as can be expected from a reasonable and professional graphic agency. As far as necessary Joram ipsum will keep the client informed of the progress of the work.*

### 2.2

*The client does everything reasonably necessary or desirable to make timely and correct delivery by Joram ipsum possible, such as the timely delivery of complete, sound and clear data or materials, of which Joram ipsum indicates or of which the client understands or reasonably understand that these are necessary for the execution of the agreement.*

### 2.3

*A period specified by Joram ipsum for the execution of the assignment is indicative, unless otherwise agreed in writing.*

- 2.4 *Unless agreed otherwise, Unless otherwise agreed, the following items do not belong to the duties of Joram ipsum:*
- a. *performing tests, applying for permits and assessing whether instructions from the client meet legal or quality standards;*
  - b. *conducting research into the existence of rights, including patent rights, trademark rights, drawing or design rights, copyrights or portrait rights of third parties;*
  - c. *conducting research into the possibility of the in sub b. intended possible forms of protection for Joram ipsum.*
- 2.5 *Before implementation, production, reproduction or publication is made, both parties offer each other the opportunity to check and approve the latest models, prototypes or tests of the result.*
- 2.6 *Deviations in the (final) result compared to what has been agreed are no grounds for rejection, discount, compensation or dissolution of the agreement, if these deviations, taken into account in all circumstances, are of subordinate importance.*
- 2.7 *Complaints will be communicated to Joram ipsum in writing as soon as possible, but in any case within ten working days after completion of the assignment, failing which the customer has fully accepted the result of the assignment.*

### **3 Enabling third parties**

- 3.1 *Unless otherwise agreed, assignments are given to third parties in the context of the execution of the assignment, by or on behalf of the client. At the request of the client, Joram ipsum may, at the expense and risk of the client, act as authorized representative. Parties can agree on a further compensation to be agreed upon.*
- 3.2 *When Joram ipsum draws up a budget for the costs of third parties at the request of the client, this budget is indicative. If desired, Joram ipsum can request quotations on behalf of the client.*
- 3.3 *When in the execution of the assignment Joram ipsum, according to an explicit agreement, purchases goods or services from third parties for own account and risk, after which these goods or services are passed on to the client, then the provisions of the general conditions of and / or separate agreements with the supplier with regard to the guarantee and liability will also be towards the client.*
- 3.4 *When Joram ipsum, whether or not in the name of the client, provides assignments or instructions to production companies or other third parties, the client will, at the request of Joram ipsum confirm the approval referred to in article 2.5 of these general terms and conditions in writing.*

3.5 *The client does not engage third parties without consulting with Joram ipsum when this may affect the execution of the assignment as agreed with Joram ipsum. Both parties consult in the case in question which other contractors are called in and which activities are assigned to them.*

3.6 *Joram ipsum is not liable for errors or defects in products or services of third parties engaged by or on behalf of the client, irrespective of whether these have been introduced by Joram ipsum. The client must address these parties themselves. Joram ipsum can provide assistance if required.*

#### 4 **Intellectual property rights and property rights**

4.1 *All intellectual property rights arising from the assignment - including patent rights, trademark rights, drawing or design rights and copyright law - on the results of the assignment be due to Joram ipsum. Insofar as such a right can only be obtained through a deposit or registration, only Joram ipsum is authorized to do so, unless otherwise agreed.*

4.2 *The parties may agree that the rights referred to in the first paragraph are transferred wholly or partially to the client. This transfer and any conditions under which the transfer takes place are always recorded in writing. Until the moment of transfer the right of use as defined in article 5 of these terms and conditions will apply.*

4.3 *Joram ipsum has the right at any time to have his name mentioned or removed on, at, or in the publicity around the result of the assignment - in the manner usual for that result. The client is not permitted to publish or reproduce the result without mentioning Joram ipsum without the permission of Joram ipsum.*

4.4 *Unless otherwise agreed, the (originals of the) results created by Joram ipsum within the framework of the assignment (such as designs, draft sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, scale models, molds, prototypes, (partial) products, films, (audio and video) presentations, source codes and other materials or (electronic) files) remain property of Joram ipsum, irrespective of whether these have been made available to the client or to third parties.*

4.5 *After the completion of the assignment, neither the client nor Joram ipsum have a data retention obligation towards each other with regard to the materials and data used, unless agreed otherwise.*

## 5 Use of the result

- 5.1 *When the client fully complies with his obligations under the agreement with Joram ipsum, he obtains the right to use the result of the assignment in accordance with the agreed destination. If no agreements have been made about the destination, the right of use is limited to that use, for which the assignment has been provided. The right to use is exclusive, unless otherwise ensues from the nature of the agreement or agreed otherwise.*
- 5.2 *When the result also relates to works that are subject to third-party rights, parties make additional agreements on how the use of these works will be arranged.*
- 5.3 *The Client does not have the right, without written permission, to adjust the result of the assignment, to (re) use it in a broader or different manner than has been agreed, or to have this done by third parties. Joram ipsum can attach conditions to this permission, including paying a fair compensation.*
- 5.4 *In the event of non-agreed broader or other use, including change, mutilation or damage to the provisional or definitive result, Joram ipsum is entitled to compensation for infringement of his / her rights of at least three times the agreed fee, at least a fee which is reasonable and fair in relation to the committed infringement, without otherwise losing any other right.*
- 5.5 *The client is not (any longer) allowed to use the results made available and any right of use granted to the client within the framework of the assignment will lapse, unless the consequences thereof are contrary to reasonableness and fairness:*
- a. from the moment the client does not fulfill his (payment) obligations under the agreement or does not fully comply with them or is otherwise in default;*
  - b. if the assignment is terminated prematurely for reasons mentioned in article 8.1 of these Terms and Conditions;*
  - c. in case of bankruptcy of the client, unless the relevant rights have been transferred to the client in accordance with the second paragraph.*
- 5.6 *Joram ipsum, with due regard for the interests of the client, has the freedom to use the results for their own publicity, acquisition of assignments, promotion, including competitions and exhibitions, etc., and to get them on loan, when it concerns physical results.*

## 6

### Honorarium and costs

#### 6.1

*Joram ipsum is entitled to a fee for the execution of the assignment. This can consist of an hourly rate, a consultancy fee, a fixed amount, whether or not related to the project sum or out any other compensation to be agreed between the parties.*

#### 6.2

*In addition to the agreed fee, the costs that Joram ipsum incurs for the execution of the assignment, such as travel and accommodation costs (outside a radius of 75 km from the company Joram ipsum), costs for prints, copies, (printing) tests, prototypes, and costs of third parties for advice, production and supervision, are eligible for reimbursement. These costs are specified in advance as much as possible, except when a storage percentage is agreed.*

#### 6.3

*When Joram ipsum due to late or not delivering complete, sound and clear data / materials, by a modified or incorrect assignment or briefing, or by external circumstances is required to perform more or other activities, these activities will be honored separately, based on the customarily used fee rates used by Joram ipsum. Joram ipsum will inform the client about this in advance, unless this is not possible due to circumstances or does not allow the nature of the work postponement.*

#### 6.4

*If the execution of the order is delayed or interrupted due to circumstances that can not be attributed to Joram ipsum, then the client is obliged to reimburse any costs that this entails. Joram ipsum will try to limit the costs as much as possible.*

## 7

### Payment and suspension

#### 7.1

*All payments must be made without deduction, settlement or suspension, within 30 days after the invoice date, unless otherwise agreed in writing or the invoice states otherwise.*

#### 7.2

*All goods delivered to the client remain the property of Joram ipsum until all amounts due to the client to him pursuant to the agreement concluded between the parties is due and paid in full to Joram ipsum.*

#### 7.3

*If the client is in default with the full or partial payment of the amounts owed, the client owes legal interest and extrajudicial collection costs, which amount to at least 10% of the invoice amount with a minimum of € 150, - excl. VAT.*

#### 7.4

*Joram ipsum takes care of timely invoicing. In consultation with the client, Joram ipsum may charge agreed fee and costs as a deposit, advance, interim or periodic charge.*

#### 7.5

*Joram ipsum may suspend the execution of the assignment after the payment term has expired and the client after being summoned to pay within 14 days, fails to do so, or when Joram ipsum understands by means of a communication or behavior of the client that payment will be canceled.*

## 8

### **Cancellation and dissolution of the agreement**

#### 8.1

*When the client cancels the agreement without any fault or culpable shortcomings by Joram ipsum, or when Joram ipsum terminates the agreement due to an attributable shortcoming in the fulfillment of the agreement by the client, then the client, in addition to the fee and the costs incurred, in respect of the work done until then, an indemnification due. Conduct of the client on the basis of which Joram ipsum can no longer reasonably be expected that the assignment will be completed, in this connection are also considered as attributable shortcomings.*

#### 8.2

*The compensation referred to in the previous paragraph shall at least include the costs arising from the commitments entered into by Joram ipsum in its own name for the fulfillment of the assignment with third parties, as well as at least 30% of the remaining part of the fee that the client would owe upon full completion of the assignment.*

#### 8.3

*Both Joram ipsum and the client have the right to terminate the agreement immediately, in whole or in part, and all sums due become immediately due when a request for bankruptcy, (provisional) suspension of payments or debt repayment is filed with respect to the other party.*

#### 8.4

*If the activities of Joram ipsum consist of the repetitive performance of similar activities, then there is a continuing performance contract, unless otherwise agreed in writing. This agreement can only be terminated by written cancellation with due observance of a notice period of at least two months, during which period the client will continue to deduct the usual amount of work from Joram ipsum or will compensate financially.*

## 9

### **Guarantees and indemnities**

#### 9.1

*Joram ipsum guarantees that the goods supplied by or on behalf of him are conceived / designed and that, when there is copyright on the result, he / she counts as a maker within the meaning of the Copyright Act and as copyright owner has access to the work. Joram ipsum guarantees that the result of the assignment at the time of realization thereof, insofar as he knows or should reasonably be expected to know, does not violate the rights of third parties or is otherwise unlawful.*

#### 9.2

*When the client uses the results of the assignment, the client indemnifies Joram ipsum or third parties engaged by the assignment for all claims from third parties arising from the applications or the use of the result of the assignment. This does not affect the liability of Joram ipsum towards the client for non-compliance with the guarantees as referred to in the previous paragraph and other liability as referred to in article 10 of these terms and conditions.*

#### 9.3

*The client indemnifies Joram ipsum for claims relating to intellectual property rights to all materials and / or data provided by the client, which are used in the execution of the assignment.*

## 10

### **Liability**

#### 10.1

*In the event of an attributable shortcoming, Joram ipsum must first be given notice of default in writing, with a reasonable term to fulfill his obligations, or to repair errors or limit or eliminate damage.*

#### 10.2

*Joram ipsum is only liable to the client for direct damage attributable to him. Liability of Joram ipsum for indirect damage, including consequential damage, loss of profit, missed savings, mutilated or lost data or materials, or damage due to business interruption, is excluded.*

#### 10.3

*Except in case of intent or deliberate recklessness of Joram ipsum, the liability is limited to the fee of Joram ipsum for the assignment, at least that part of the assignment to which the liability relates. This amount is not higher than € 75,000, and in any case is limited at all times to a maximum of the amount that the insurer pays out to Joram ipsum in the case in question. The amount for which Joram ipsum is liable in the specific case is reduced by any sums insured by the client.*

#### 10.4

*Any liability expires by the lapse of one year from the moment the contract is terminated by completion, termination or dissolution.*

## 11

### **Other provisions**

#### 11.1

*If the client wishes to issue the same assignment to others than Joram ipsum at the same time or has already given the assignment to another party, he will inform Joram ipsum, stating the names of these others.*

#### 11.2

*The client is not permitted to transfer any right from an agreement concluded with Joram ipsum to third parties, other than for the transfer of his entire company or with written permission from Joram ipsum.*

#### 11.3

*The parties are obliged to maintain confidentiality of all confidential information, facts and circumstances that come to the attention of the other party within the context of the assignment, from each other or from another source, when it is reasonably understandable that disclosure or communication to third parties could harm Joram ipsum or the client. Third parties, who are involved in the execution of the assignment of these facts and circumstances originating from the other party will be bound to the same confidential treatment.*

#### 11.4

*If any provision of these general terms and conditions is null and void or is nullified, the other provisions of these general terms and conditions will remain in full force. In that case both parties will enter into consultation with the aim of agreeing new provisions to replace the void or nullified provisions, whereby the purpose and purport of the invalid or destroyed provisions is taken into account.*

11.5 *The inscriptions in these general terms and conditions are only intended to promote readability and are not part of these general terms and conditions.*

11.6 *Dutch law applies to the agreement between Joram ipsum and the client. In the first instance, the parties will attempt to resolve a dispute that has arisen in mutual consultation. Unless the parties have expressly agreed in writing to arbitration, the judge appointed according to the law, or the judge in the district where Joram ipsum is located, by choice of Joram ipsum, will take knowledge of disputes between Joram ipsum and client.*