

# Brand Builders

*Terms & Conditions*



## Brand Builders Terms & Conditions

### 1. Definitions

- 1.1. 'Client' means: the person or the company that issued the Assignment for the Work.
- 1.2. 'Contractor' means: Brand Builders B.V., located at Rijssensestraat 8 (7642CX) in Wierden, the Netherlands.
- 1.3. 'Parties' means: the Client and the Contractor jointly.
- 1.4. 'Assignment' means: the request by the Client to the Contractor to perform certain Work whether or not for payment.
- 1.5. 'Materials' means: all materials, information or data made available by the Client to the Contractor.
- 1.6. 'Work' means: everything that the Contractor carries out or arranges to be carried out for the Client, within the framework of the Assignments issued by the Client with a view to its communication interests.
- 1.7. 'Quote' means: A document (or budget) drawn up by the Contractor in which the Work is described and the costs associated with that Work are estimated.

### 2. Application

- 2.1. These terms and conditions apply to all Quotes by the Contractor and all Assignments, as well as to all agreements entered into between the parties however named, and also to all Work for the Contractor resulting from these.
- 2.2. Terms and conditions that deviate from these general terms and conditions, including those which are set out in the general (purchasing) terms and conditions used by the Client or by any third parties engaged, are not binding on the Contractor unless otherwise agreed in writing.

### 3. Client information

- 3.1. The Client is obliged to provide to the Contractor all Materials which the Contractor deems necessary for the proper execution of the issued Assignment in the desired form, in the desired way and in a timely manner.
- 3.2. The Client guarantees the correctness, completeness and reliability of the Materials, including those which come from third parties.
- 3.3. The Client indemnifies the Contractor for any damage which occurs as a result of incorrect or incomplete Materials.
- 3.4. The cost and risk of the extra time and cost incurred by the Contractor, as well as any other damage to the Contractor, due to the non-delivery, untimely delivery or unsatisfactory delivery by the Client of the Materials required for the carrying out of the Work are for the Client.
- 3.5. At the first request by the Client, the Contractor will return the original Materials provided by the Client.

### 4. Quotes

- 4.1. All Quotes by the Contractor are without obligation, unless otherwise expressly agreed in writing.
- 4.2. If requested, the Contractor will set out in writing the details of the Work prior to the Work commencing.
- 4.3. An agreement is concluded when the Client gives oral or written acceptance/email of the Quote or if the Contractor commences the Assignment (the latter only applies to Assignments up to EUR 5000).

- 4.4. In the event that the Work is commenced by the Contractor without prior written confirmation, the contents of the Quote (or the request for quotation by the Client if no Quote has been drafted) together with the contents of these terms and conditions are binding in respect of the Assignment. The Contractor will update the Client on the progress of the costs incurred and will inform the Client of any possible exceeding of the quoted amount.

## 5. Prices and payment

- 5.1. All prices used by the Contractor exclude VAT and exclude any shipment, transport or postage costs.
- 5.2. The Contractor is entitled to request an advance from the Client for quotes higher than EUR 50,000 ex VAT.
- 5.3. The Contractor is entitled to pass on price changes that occur after the Quote is issued to the Client.
- 5.4. All payments must be made into a bank account nominated by the Contractor.
- 5.5. The Client agrees to electronic invoicing by Contractor.

## 6. Assignments and changes

- 6.1. An Assignment is deemed to have been accepted by the Contractor and to have been granted by the Client either by written or oral confirmation of the quote for the Assignment to the Contractor, or by commencement of Work by the Contractor.
- 6.2. Changes to the Assignment must be communicated by the Client to the Contractor in a timely manner and in writing. If the Client fails to do so, any incorrect implementation of the changes is at the cost and risk of the Client.
- 6.3. Changes to the Assignment are effective upon and from their implementation by the Contractor, such implementation being apparent from, for example, the carrying out of the requested changes.
- 6.4. Increase or decrease in costs as a result of changes to the Assignment will be charged or credited to the Client.
- 6.5. Changes to the Assignment may cause the originally indicated timeline to be breached by the Contractor, for which the Contractor is not responsible.
- 6.6. If the Client decides for whatever reason to cancel or terminate further execution of an Assignment before the Assignment is completed, the Client is obliged to pay to the Contractor all costs already reasonably incurred, including hours already spent and all costs incurred to third parties, without prejudice to all other rights of the Contractor at law.

## 7. Engagement of third parties

- 7.1. If third parties are involved at the request of the Client or because the Contractor deems it useful or necessary for the execution of an Assignment, or if this arises due to the nature of the Assignment, the Contractor is entitled to issue Assignments to third parties on behalf and for the account of the Client. The third parties must be paid directly by the Client, unless expressly otherwise agreed in writing.
- 7.2. If while carrying out the Assignment, the Contractor engages third parties in its own name, the costs for the goods and/or services delivered by the third party will be charged to the Client by the Contractor.
- 7.3. If and to the extent that conditions applied by a third party engaged for the carrying out of an Assignment are applicable and/or that third party is bound to conditions or regulations which apply to the mutual legal relationship between that third party and the Contractor, the Contractor can also invoke the relevant conditions and/or the relevant regulations towards the Client. Otherwise, these terms and conditions continue to apply in full to the legal relationship between the Parties.

## 8. Payments

- 8.1. Payment must be made within twenty-one (21) days after the invoicing date, unless otherwise expressly agreed in writing, without the Client having any right to discount, deduction or offset.
- 8.2. If the Client does not meet its obligation to pay on time, the Client is immediately in default, without notice of default being required. From the moment of default, the Client is liable for the statutory commercial interest rate plus 2%.
- 8.3. The Contractor is at all times entitled to charge certain costs by means of partial and/or pre-invoicing to the Client, such invoices to be paid prior to the Contractor commencing or continuing the Work, or to stipulate that these costs will be invoiced to the Client directly. Such costs will in any case include costs for production, exposure and distribution activities.
- 8.4. All costs, including without limitation legal costs and (extra) judicial costs, incurred by the Contractor in relation to the collection of amounts due, will be charged to the Client. The extrajudicial costs amount to at least 10% of the amount due, with a minimum of EUR 250 (excluding VAT).

## 9. Suspension, cancellation and dissolution

- 9.1. If the Client does not comply with the terms of payment, the Contractor is entitled, without observing a notice period, to suspend or discontinue the execution of the Assignment.
- 9.2. If the Client does not, or does not in a timely or proper fashion, comply with its contractual obligations towards the Contractor, the Client is in default without notice of default being required from the moment of such non-compliance, or untimely or improper compliance. In such event, the Contractor has among other things the right to terminate the agreement(s) concluded between the Parties without judicial intervention, through dissolution or cancellation. In such case, the Client is obliged to reimburse the Contractor for costs already incurred, amounts advanced and the fee due at that time to the Contractor, without prejudice to the Contractor's entitlement to damages. The damage to be paid by the Client includes lost revenue (positief contractsbelang). For the determination of such lost revenue, the provisions of article 16 paragraphs 4 and 5 serve as guidance.
- 9.3. The Contractor is entitled, after carefully weighing the interests, to suspend the fulfillment of all its obligations, including the delivery of Materials or other goods to the Client or third parties, until the moment that all due and payable claims have been paid in full. This does not apply to Materials of the Client that have not (yet) been processed by the Contractor.
- 9.4. In the event of termination of the agreement by dissolution or cancellation due to an attributable shortcoming on the part of the Contractor, no return of anything delivered by the Contractor and/or performed or of anything already paid for by the Client will occur. The amounts due at the time of dissolution are immediately due and payable and cannot be used to offset any claim that the Client has against the Contractor.
- 9.5. A Party is entitled to dissolve the agreement(s) in whole or in part in the event of the bankruptcy or suspension of payment (surséance van betaling) of the other Party, as well as in the event of the shutdown or liquidation of the business of the other Party.

## 10. Delivery times

- 10.1. Timelines specified by the Contractor are indicative only and not hard deadlines, unless otherwise expressly agreed in writing. If the Contractor does not meet a deadline this does not release the Client from its obligations towards the Contractor.
- 10.2. In the event that a term/date is agreed between the Client and the Contractor in which the Assignment is to be completed and the Client fails to: (a) make an advance payment – if agreed – or (b) make available the required Materials on time, complete, and in the desired

way, the Client and the Contractor will discuss and agree a new term/date within which the Assignment must be completed.

- 10.3. In the event of any term being exceeded, the Client must give the Contractor written notice of default.

## 11. Duty of Care

- 11.1. The Contractor will carry out the Work carefully, keeping the interests of the Client in mind.
- 11.2. Where appropriate, the Contractor will inform the Client of possible legal risks of the (intended) use of the results of an Assignment (for example in the case of conflict with applicable legal and self-regulatory rules or violation of third party (intellectual) property rights). The Client remains at all times responsible for the use of the results of the Work. The Contractor is not liable for this, nor any other form of consequential damage, trading loss or indirect damage.
- 11.3. The Parties are mutually obliged to maintain secrecy in relation to the data, information, the Work and the activities (including ideas, advice, concepts and other proposals made by or coming from the Contractor) which have been made available to them, to the extent that these are confidential in nature, all this insofar as not otherwise determined in these terms and conditions and/or not otherwise agreed in writing by the Parties.

## 12. Complaints and evidence

- 12.1. Complaints of whatever nature in relation to the performance of any obligation resulting from the agreement concluded between the Parties, must be clearly described and well-motivated and made known to the other Party in writing as soon as possible and in any case within 10 (ten) days after receipt of the (partial) invoice, after the end of the (partial) Assignment or after notification by the Client to the Contractor, under penalty of forfeiture of any claim.
- 12.2. After the expiry of the periods mentioned above, complaints are no longer handled and the Client has processed its rights, unless the term in the relevant case is unreasonably onerous.
- 12.3. Barring evidence to the contrary, the information from the Contractor's records is determinative.
- 12.4. Complaints relating to invoices from the Contractor do not suspend the Client's payment obligation.

## 13. Liability

- 13.1. The Contractor is not liable for mistakes and/or shortcomings in the execution of the Assignment which have their cause in the conduct and actions of the Client and/or through third parties by or on behalf of the Client, including but not limited to the following cases:
  - (i) the non-delivery or late delivery of Materials;
  - (ii) shortcomings in designs that prior to the completion of the Assignment have been approved by the Client or of which the Client has failed to approve these (if asked) prior to the completion of the Assignment;
  - (iii) the transportation of works and/or goods;
  - (iv) shortcomings in relation to the (payment) obligations, including the late or partial payment of amounts owed to third parties;
  - (v) errors in and/or during the placement of communications in all possible media.
- 13.2. All claims for liability of the Contractor lapse after the expiry of a period of 6 months after the cessation of the Work or the completion of the Assignment respectively. The Contractor is never liable for indirect damage, other than in the case of intent / gross negligence. Indirect damage includes consequential damage, loss of profits, missed savings and damage due to business interruption.

- 13.3. The liability of the Contractor never exceeds the amount that the Contractor has invoiced to the Client within the framework of the Work performed for the relevant Assignment (ex VAT) minus out-of-pocket costs, (advanced) costs (including media fees) and amounts whether or not to pay engaged third parties. If the Contractor is insured in this respect, liability is expressly limited to a maximum of the amount that is paid out by the insurer in the relevant instance. If the Agreement is a continuing performance contract with a term of more than one year, the price stipulated for the Agreement will be set at 50% of the total payments stipulated for one year (excl. VAT and out-of-pocket costs, (advanced) costs (including media fees) and amounts whether or not to pay engaged third parties). However, on no account will the total liability of Advise for direct damage, on whatever account, exceed € 50,000 (fifty thousand euros). A series of connected failures will be regarded as a single failure.
- 13.4. The Client is obliged to adopt measures to minimise damage. The Contractor has the right to undo or limit the damage by fixing or improving the Work carried out.

#### **14. Force majeure**

- 14.1. In the event that the Contractor is hindered in carrying out the agreed Work completely and/or on time by force majeure, the Contractor is entitled to suspend the execution of the relevant agreement or to dissolve the agreement in whole or in part by means of a written declaration, without the Contractor being liable for any compensation or guarantee.
- 14.2. Force majeure is understood to include: strike, fire, machine breakdown and other operational disturbances, transport failures and other events beyond the control of the Contractor or its suppliers, as well as the sudden increase of import duties and excise duties and/or taxes, delays of delivery by suppliers, failure to obtain necessary permits and other government measures.

#### **15. Intellectual property, licence and use**

- 15.1. If and insofar as for the purpose of carrying out an Assignment the Client provides the Contractor with Materials and similar, the Client guarantees that these are not subject to any (intellectual) property rights or other third party rights, or that the Client has for the purposes of the Contractor received approval from the relevant third parties for the use of those Materials and similar. Further, the Client guarantees that the use of those Materials and similar does not infringe (legal) regulations, rules and/or guidelines.
- 15.2. The rights of intellectual property on the works that the Contractor develops in the framework of an Assignment for the Client are vested in the Contractor. The Contractor is entitled to establish (related) intellectual property rights for the acquisition and maintenance of its legal position.
- 15.3. Even after any transfer of the rights as set out in the previous paragraph, the Contractor remains entitled (with due observance of the rights of third parties) to use the results of the Assignment for submissions to competitions, educative, museum and editorial purposes, commercial or non-commercial internal use and (historical) self-promotion of the Contractor (for example on the Brand Builders website or other online channels such as YouTube). The entitlement of the Contractor applies to the Client and to others who have made a substantial or technical contribution.
- 15.4. If and to the extent that the Client meets all of its contractual obligations, the Contractor grants the Client an exclusive licence to use the approved results of the Assignment in accordance with the agreements between Parties regarding purpose of use, period, area and media as set out in the Assignment. If Parties have not agreed anything further on this, the licence is limited to the first use of the work as planned by the Parties.

- 15.5. The Client is not entitled to change the terms of the Assignment without prior written approval from the Contractor.
- 15.6. If the Client acts contrary to its contractual obligations, the Contractor is entitled to temporarily suspend or to terminate the exclusive licence granted for use of the work as described in article 15.4.
- 15.7. Parties can at any time make further agreements about any (partial) transfer of the intellectual property rights on the works created by the Contractor for the Client. Where appropriate, this also includes the source codes of software and websites developed by or with the Contractor.

## 16. Nature and Duration of the Agreement

- 16.1. The Contractor represents the Client's communication interests within the boundaries of the issued Assignment and taking into account the applicable law and (professional) regulations. The Contractor makes every effort to carry out the Work in accordance with the wishes of the Client. Unless otherwise expressly agreed, the Contractor is at all times free to perform and design the Work at its own discretion.
- 16.2. The Client is not entitled to allow the agreed Works to be (also) carried out by a third party without prior approval from the Contractor.
- 16.3. The agreement between Parties is entered into for an indefinite period or for the duration of the Assignment and/or completion of the Work, at the choice of the Parties.
- 16.4. If no fixed duration has been agreed for the collaboration and this has lasted longer than six months, a notice period of at least three months must be observed. Termination must be notified by registered mail. During this notice period the Client is obliged to meet its (payment) obligations to the Contractor as if no termination had taken place. (reference from article 9.2)
- 16.5. The Contractor's remuneration per month during the notice period as described in the previous paragraph is at least equal to 1/12th of the amount that the Contractor invoiced to the Client in the previous continuous twelve-month period. In the event that the collaboration has lasted a shorter period, the monthly remuneration is at least equal to the amount that was invoiced on average per month during that period.

## 17. Settlement of relations

- 17.1. All materials, including designs, copies, texts, descriptions, artistic efforts, films and publicity materials which remain with the Contractor at the end of the agreement, will upon the first request of the Client – against payment for the hours and costs for doing so – be made available by the Client to the Contractor after all payments owed by the Client to the Contractor (for whatever reason) have been paid.
- 17.2. The Contractor will keep the materials as described in the previous paragraph at the end of the agreement or Assignment for a maximum period of 3 months. During this period, the Client is obliged to make known whether they wish to receive such materials. If the Client wishes the Contractor to retain these materials for a longer period, the Parties will make further (financial) agreements in this regard. In every other case the Contractor is free to dispose of these materials.
- 17.3. If the relationship between the Parties ends for whatever reason, these terms and conditions continue to govern the legal relationship between the Parties to the extent this is required for the settlement of the relationship. This applies in any case for the provisions of article 15.

## 18. Transfer and duties

- 18.1. Neither of the Parties is entitled to transfer to third parties all or part of the rights and obligations which arise from agreements and Assignments to which these terms and conditions apply, without prior written approval from the other party.

- 18.2. In the situation that (the relevant activities of) the business of Client is merged or continued with another company for whatever reason, in whatever way and whatever form, this results in joint and several liability for the original and the subsequent company in respect of compliance with the obligations of the Client under article 18.1.

## 19. Relevant court/Vienna Sales Convention

- 19.1. Dutch law applies exclusively to all agreements to which these terms and conditions apply and to the agreements which arise from them.
- 19.2. All disputes arising from or relating to agreements governed by these terms and conditions or agreements which arise from them must be brought before a competent court in the district in which the Contractor is established.
- 19.3. Insofar as agreements concluded between the Parties also relate to international sales agreements for movable property, the applicability of the Vienna Sales Convention is explicitly excluded.

These conditions have been filed with the Chamber of Commerce in Enschede, the Netherlands.

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### Note about translation:

This is an English translation of a Dutch-language document prepared for information purposes only. All effort has been made to translate as accurately as possible without jeopardising the overall continuity and context. Inevitably, however, differences may occur in translation and if they do, the Dutch text will govern by law.

In this translation, Dutch legal concepts are expressed in English terms and not in the original Dutch. The concepts concerned may have different meaning to those terms when used in English; to the extent of any difference, the meanings of the terms in the Dutch language document will prevail.