

!DAY

creative business partners

.DAY
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toDAY:
2018

in:
Amsterdam

to:
Suppliers and Customers

concerning:
General terms and Conditions

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page:
01

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GENERAL TERMS- AND CONDITIONS

DAY creative business partners BV 2018

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 Day Creative Business Partners B.V. (the contractor, hereinafter referred to as 'Day') and any natural person or legal entity that purchases services from Day or with whom Day enters into an agreement or is negotiating about entering into an agreement ('the Client'). These General Terms and Conditions also apply to all offers that Day submits to the Client.

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 Day commencing the work commissioned, the terms of the offer will be deemed to have been agreed. Any amendments or subsequent oral agreements and stipulations will not be binding on Day, unless it has confirmed by them in writing.

1.4 If the Client wishes to commission identical work to any party other than Day at the same time or has already commissioned the work to any other party, the Client must inform Day thereof in writing, stating the names of those other parties.

2 Performance of the agreement

2.1 Day will make every effort to perform the work commissioned carefully and independently, to promote the Client's interests to the best of its ability and to achieve a result that is useful to the Client. To the extent necessary in Day's opinion, Day will keep the Client informed of the progress of the work. This obligation relates only to work carried out by Day itself.

2.2 The Client must do any and all things that are reasonably necessary or required to enable Day 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 Periods mentioned by Day for completion of the design are approximations only, unless the nature or content of the agreement requires otherwise. If the stipulated period is exceeded, the Client must serve Day with a 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 Day.

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 Day 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 his aforesaid approval in writing at Day's request.

2.6 Any complaints about Day's performance of the commissioned work must be lodged with Day in writing at the earliest possible time but not later than ten business days after the 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 the work commissioned will be given by or on behalf of the Client. At the Client's request, Day may act as an agent at the Client's risk and expense and accept the general terms and conditions of third parties on behalf of the Client. The parties may agree on a fee for such services.

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

3.3 If Day procures goods or services from third parties in the performance of the work commissioned at Day's own risk and expense and on the basis of an express agreement, the general terms and 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 In the unlikely event that Day engages a third party as a subcontractor, contrary to Article 3.1 of these General Terms and Conditions, which will be the case only if the parties have explicitly laid this down in writing, the following applies. If Day engages a third party for the execution of an agreement, the terms and conditions under which the agreement between Day and the relevant third party is concluded will also apply to the agreement between Day and the Client, without prejudice to the other rights and obligations arising under this agreement. If the Client has not received a copy of the terms and conditions of this third party, Day will send the Client a copy thereof on demand.

3.5 In the event of any inconsistency between these General Terms and Conditions and the terms and conditions of a third party that has been engaged, which are binding on Day with respect to a specific subject, the latter terms and conditions will prevail.

4 Intellectual and other property rights

4.1 Unless otherwise agreed, all intellectual property rights arising from the work commissioned – including patents, design rights and copyrights – will vest in Day. If any of such rights can be acquired only

by registration, Day will have the sole and exclusive power to effect such registration.

4.2 Unless otherwise agreed, the work commissioned does not include conducting searches for the existence of rights, including patents, trademark rights, industrial design rights, copyrights or 'portrait rights' within the meaning of Dutch law, vested in third parties. The same applies to any investigation into the possibility of such forms of protection for the Client.

4.3 Unless the work is not suitable for that purpose, Day will at all times be entitled to imprint its name on or in or to remove it from the work (or to have its name imprinted on or in or removed from the work), and without Day's prior authorization, the Client may not publish or reproduce the work without identifying Day by name.

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

4.5 Upon completion of the work commissioned, neither the Client nor Day will have any obligation to retain any of the materials and data used.

4.6 The intellectual property rights relating to the results of the work performed by Day under the agreement may be assigned to the Client only if this has been agreed upon in writing

5 Use and licence

5.1 Once the Client has fulfilled all his obligations under the agreement with Day, 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 the manner of use of the design in respect of which firm intentions existed on the date when the work was commissioned. Such intentions must have been verifiably communicated to Day prior to the conclusion of the agreement.

5.2 Without prior written approval from Day, the Client will not be entitled to any use of the design that is broader or different from the use agreed. In the event of any broader or different use on which no agreement was reached, including any amendment, mutilation or impairment of the provisional or final design, Day will be entitled to compensation due to the infringement of its 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 Day's right to claim compensation for the loss or damage actually suffered.

5.3 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 time 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.

5.4 Day may use the design at its discretion for its 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, Day will be entitled to the reimbursement of any costs incurred by him in the performance of the work commissioned.

6.2 If Day 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 Day's usual fees.

6.3 If the fee to be paid is in any way dependent on facts or circumstances to be evidenced by the Client's accounting records, Day will, upon receiving a statement of account from the Client, be entitled to have the Client's accounting records audited by an accountant to be selected by Day. This audit will constitute the basis for determining the aforementioned facts or circumstances. If the results of the accountant's audit differ more than 2% or EUR 100 from the Client's report and statement of account, the costs of the audit must be borne by the Client.

7 Payments

7.1 Payments must be made within 30 days of the invoice date. If Day 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 Day 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, must be borne by the Client. The extrajudicial costs will be not less than 10% of the invoice amount, with a minimum of €150 (VAT excluded).

7.2 Day will have the right to invoice the Client at monthly intervals for work performed and costs incurred in the performance of the work commissioned.

7.3 The Client will pay the amounts due to Day without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the Client may have made to Day. The Client is not entitled to suspend payment of invoices for work that has already been performed.

8 Force majeure

8.1 If Day cannot fulfil its obligations towards the Client as a result of force majeure, these obligations will be suspended for as long as the situation of force majeure lasts. If the situation of force majeure has lasted for a month, both parties will be entitled to dissolve the agreement wholly or partly in writing, to the extent that this dissolution is reasonably necessary. In the event of force majeure, the Client will not be entitled to any compensation for loss or damage, even if Day should benefit in any way from the situation of force majeure.

8.2 Force majeure on the part of Day means any circumstances beyond Day's control that prevent the performance of its obligations towards the Client, either wholly or partly, or as a result of which Day cannot reasonably be expected to perform these obligations, irrespective of whether these circumstances were foreseeable at the time of the conclusion of the agreement. Such circumstances include strikes and lock-outs, delays or other problems in the production by Day or its suppliers or the latter's suppliers or in its own transport or the transport carried out by third parties, or in the work performed by third parties that have been engaged, or measures taken by government agencies.

9. Notice of termination and dissolution of an agreement

9.1 Day may terminate the agreement prematurely without needing to put forward any ground to do so. Day will make use of its possibility of terminating the agreement prematurely in the following situations (which are not listed exhaustively): if the Client fails to fulfil any obligation towards Day or comply with any agreement made with Day; if Day or any of its employees are no longer able to continue the perform the agreement properly; if any employees have been treated unfairly by or on behalf of the Client. If Day terminates the agreement prematurely, the Client must pay the fee and the costs incurred for the work performed until that date.

9.2 If the Client gives notice of termination of an agreement, he must pay, in addition to damages, Day's fee and the costs incurred in connection with the work performed until that date.

9.3 If the agreement is terminated by Day on the grounds of any breach by the Client in the performance of the agreement, the Client will be required to pay, in addition to damages, Day'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 Day or its employees cannot reasonably be required to complete the work commissioned will also be regarded as a breach.

9.4 The damages referred to in the preceding two paragraphs of this article will comprise the remaining part of the fee the Client would have owed if the agreement had been performed in full as well as any costs arising from obligations undertaken by Day in its own name with third parties for the performance of the work commissioned.

9.5 Both Day 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 suspension of payments (whether or not provisional). If the Client is declared bankrupt, Day will have the right to terminate the right of use granted, unless the consequences are contrary to the principles of reasonableness and fairness.

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

9.7 If Day's work consists of recurrently performing work of a similar nature, the agreement in question will be valid for an indefinite period, unless otherwise agreed in writing. Such agreement may be terminated only by a written notice given with due observance of a reasonable notice period of not less than three months.

10 Warranties and indemnity

10.1 Day warrants that the design supplied to the Client has been made by it or on its behalf and, if the design is protected by copyright, that Day is the author within the meaning of the Dutch Copyright Act [Auteurswet] and, as the copyright owner, has the power of disposition of the work.

10.2 The Client indemnifies Day or persons engaged by Day in the performance of the work commissioned against any third-party claim or action arising from the applications or use of the design created under the agreement.

10.3 The Client indemnifies Day against any claim or action relating to intellectual property rights in respect of materials or information supplied by the Client and used in the performance of the work commissioned.

10.4 If the Client claims compensation directly from a third party, engaged by Day or otherwise, the Client must indemnify Day for any third-party claim in relation to this claim for liability as well as any associated costs for Day.

11 Liability and lapse

11.1 Day will not be liable for loss or damage as a result of:-
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 non-delivery 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; or
- f. errors or defects in the design or errors in the text/data if the Client has not had a particular model or prototype prepared or a particular test performed and the errors would have been apparent in such model, prototype or test.

11.2 Day will be liable only for direct loss or damage attributable to it. Direct loss or damage will include only the following:

- a. reasonable costs to assess the cause and extent of the loss or damage, to the extent that such assessment concerns loss or damage within the meaning of these General Terms and Conditions;
- b. any reasonable costs necessarily incurred to ensure that Day's defective performance is in line with the agreement, only to the extent that this concerns work performed by Day, any prior or subsequent costs to remedy this defective performance being excluded;
- c. reasonable costs incurred to prevent or limit the loss or damage, to the extent that the Client demonstrates that those costs led to a limitation of the direct loss or damage referred to in these General Terms and Conditions. Day's liability for all other loss or damage, such as indirect loss, including consequential loss/damage, loss of profits, mutilated or lost data or materials, or loss due to business interruption is hereby excluded.

11.3 Save in the event of intent or wilful recklessness by Day or Day's management – therefore except for persons under their control – Day'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 Day in the engagement of third parties, on the understanding that this amount will not exceed EUR 45,000 and will in no event be higher than the benefit the insurance company may pay Day.

11.4 Any and all liability of Day in connection with the performance of an agreement or any work performed by Day will lapse 12 months from the date on which Day has informed the Client that the work commissioned has been completed.

11.5 Where reasonably possible, the Client will be required to retain copies of materials and data he has supplied until the work commissioned has been completed. If the Client fails to do so Day cannot be held liable for any damage or loss that would not have occurred if such copies had existed.

12 Other provisions

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

12.2 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.

12.3 The headings in these General Terms and Conditions have been included for easy reference only and are no part of these General Terms and Conditions. The Dutch text of these General Terms and Conditions is binding.

12.4 All agreements between Day and the Client are governed by Dutch law. Any disputes that may arise between Day and the Client will be exclusively submitted to the competent court in Amsterdam or the court having jurisdiction pursuant to the law, at Day's discretion.

12.5 To the extent that any provision of these General Terms and Conditions cannot be invoked on the grounds of a mandatory statutory provision, the unreasonably burdensome nature of this provision or on the ground of reasonableness and fairness, only the provision concerned will be deemed invalid and the other terms and conditions will continue to be valid.

12.6 These General Terms and Conditions may be amended by Day giving notice thereof to the Client. If no objection is lodged within 30 days of the date of the notification, the amended General Terms and Conditions will apply with effect from the date of the notification to all new agreements and to all current agreements to the extent they are executed after the date of the notification.