

Terms and Conditions

Date:

Monday 1 February 2010 Version 1.0

Compiled by:

Frank en Vrij Media, Koos Postemalaan 4, 1217 ZC, Hilversum.

Index:

<i>DEFINITIONS</i>	<i>2</i>
<i>APPLICABILITY</i>	<i>2</i>
<i>QUOTATIONS</i>	<i>2</i>
<i>PRICES, DELIVERY AND PAYMENT</i>	<i>2</i>
<i>ORDERS AND INTERIM AMENDMENTS</i>	<i>2, 3</i>
<i>CLIENT MANAGEMENT</i>	<i>3</i>
<i>SUBCONTRACTING</i>	<i>3</i>
<i>PAYMENT DEADLINES</i>	<i>3, 4</i>
<i>SUSPENSION AND DISSOLUTION</i>	<i>4</i>
<i>DELIVERY TIMES</i>	<i>4</i>
<i>DUTY OF CARE</i>	<i>4, 5</i>
<i>OBJECTIONS, COMPLAINTS AND EVIDENCE</i>	<i>5</i>
<i>LIABILITY AND THIRD PARTY WARRANTY</i>	<i>5</i>
<i>EXONERATION</i>	<i>5</i>
<i>FORCE MAJEURE</i>	<i>5, 6</i>
<i>INTELLECTUAL PROPERTY</i>	<i>6</i>
<i>NATURE AND DURATION OF THE CONTRACT</i>	<i>6</i>
<i>TERMINATION</i>	<i>7</i>
<i>TRANSFERALS AND OBLIGATIONS</i>	<i>7</i>
<i>ARBITRATION</i>	<i>7</i>

1 Definitions

1.1 The Client is defined as: the person or company that has commissioned the Order of Services.

1.2 The Contractor is defined as: the person or company that has accepted the Order of Services.

1.3 The Order is defined as: the request by the Client to the Contractor to perform paid Services.

1.4 The Services are defined as: everything the Contractor makes and/or undertakes or causes to make and/or undertake on behalf of the Client within the framework of the Order(s) commissioned by the Client regarding his communication interests.

1.5 The Quotation is defined as: the more or less detailed specification of Services and the estimation of the costs of these Services.

2 Applicability

2.1 These general terms and conditions shall be applicable to the Orders of the Contractor, contracts between the Contractor and the Client and the deliveries from the Contractor to the Client, unless it has been explicitly stated in writing that these terms and conditions are not applicable, either entirely or in part, or it has been stated that these are only applicable when not in contravention with the contracts between Client and Contractor as stated in writing.

2.2 Any general conditions of purchase maintained by the Client are only applicable when this has been explicitly agreed upon and stated in writing by the Contractor and the Client.

2.3 If the general conditions (of purchase) maintained by the Client contravene these terms and conditions, these terms and conditions prevail.

3 Quotations

3.1 All Quotations are free of obligation unless otherwise stated in writing in the Quotation itself.

3.2 If required, the Contractor will submit a Quotation to the Client for approval before commencing Services. If substantial deviations from the Quotation should occur during the execution of the Order, the Contractor will inform the Client at the earliest possible stage.

3.3 Exceeding Quotations by up to 10% is accepted as a budgetary risk by the Client and therefore does not need to be reported.

3.4 Should the Quotation be exceeded due to conditions of purchase by suppliers and other third parties employed by the Contractor, this shall not qualify as exceeding the Quotation budget, even if these conditions have not been stated separately in a Quotation. Such conditions are presumed to be known to the Client and to be a part of the prevalent conditions from the beginning. If such conditions contravene the prevalent terms and conditions, the prevalent terms and conditions prevail.

4 Prices, deliveries and payments

4.1 All prices employed by the Contractor are exclusive of VAT and any occurring shipping and transport costs, unless Client and Contractor have explicitly agreed otherwise.

4.2 The Contractor has the right to charge the Client for changes in price that have occurred after the Quotation has gone out.

4.3 All deliveries by the Client or by third parties subcontracted by the Client will take place at the establishment where the Contractor is located.

4.4 All payments will be made to a bank account appointed by the Contractor.

5 Orders and interim amendments

5.1 An Order is accepted by the Contractor either by a written confirmation of the Order to the Client or by the Contractor commencing the execution of the Services. The Contractor has the right to refuse an Order without stating a reason.

5.2 The Client is bound by and from the time of the commissioning of the Order.

5.3 The Contractor is bound by and from the time of the written confirmation of the Order.

5.4 The Contractor must be notified by the Client in a timely manner and in writing of any amendments to the Order after this has been commissioned. If amendments are reported orally by the Client, the Client is liable for any costs and risks this incurs.

5.5 Any amendments to the Order apply by and from the time of their acceptance by the Contractor.

5.6 Any extra costs resulting from the amendments to the Order will be at the expense of the Client. Any lesser costs will be to the benefit of the Client.

5.7 Amendments to the Order may lead to the agreed-upon completion date being exceeded by the Contractor. In this case the Contractor is not liable for any damages to the Client resulting from the amended completion date.

5.8 If for any reason the Client should annul or terminate a commissioned Order before completion, the Client is obliged to pay the Contractor for any costs made and hours spent by the Contractor as well as any costs the Contractor must pay to third parties due to the annulment and/or termination of the Order, with due observance of all other rights accorded to the Contractor by law.

6 Client management

6.1 The Contractor will produce a contact report of all contact with the Client, unless otherwise agreed upon specifically.

6.2 In the case of contact by telephone a contact report will only be produced if the contents of the conversation warrant it in the judgment of the Contractor exclusively.

6.3 If the Client does not respond to the receipt of a contact report by return of post, the contents of the report are deemed correct and complete and both Client and Contractor are bound to the contents, unless the planning of the Order allows a waiting period of 24 hours and unspoken approval is not considered given until after this period.

6.4 If the Contractor is required to act within 4 days of the contact, the Contractor will request written approval from the Client beforehand by telefax.

6.5 The Contractor will send the contact reports to a person appointed by the Client.

7 Subcontracting

7.1 If the Contractor deems it necessary to the proper completion of an Order or if the nature of an Order requires it, the Contractor is authorized to commission third parties to deliver or otherwise make available goods and/or services on behalf of and at the expense of the Client.

7.2 Unless agreed otherwise the Contractor will pay the subcontracted third parties directly for delivered goods or services rendered and will charge the Client directly for the costs incurred in this way, potentially increased by an agency augmentation if and when Contractor and Client have agreed on this beforehand.

7.3 If and when the third party subcontracted by the Contractor maintains general terms and conditions and these conditions are applicable to the relationship between Contractor and the third party, these terms and conditions maintained by the third party also apply to the relationship between Contractor and Client, with the proviso that if the terms and conditions maintained by the third party contravene the prevalent terms and conditions, the prevalent terms and conditions will prevail in the relationship between Client and Contractor.

8 Payment deadlines

8.1 Notwithstanding the following paragraphs, payment is due within thirty days of the invoice date, unless the Contractor and the Client have previously agreed on a different term in writing. The Client is not authorized to deduct the amount due from any sum the Client might be owed by the Contractor.

8.2 The Contractor will ensure a timely invoice. Payment in instalments is possible at all times, unless this has been specifically excluded in writing. Exclusion from the right to invoices in instalments can never involve the costs listed in the following paragraphs.

8.3 Costs which the Contractor has to incur on behalf of the Client and which cannot be advanced by the Contractor due to the size of the sum. This includes the costs of television and/or commercial production, website production and (ether) media costs. These costs must be paid to the Contractor by the Client before the moment when the Contractor is obliged to pay these costs.

8.4 Postage and other distribution costs related to direct marketing mailings must have been received by the Contractor from the Client before the shipment or distribution by the Contractor.

8.5 Notwithstanding any payment conditions agreed upon, the Contractor is entitled to require a security from the Client in the form of a bank guarantee from any regular Dutch banking institution to match the total amount due to the Contractor on the basis of a particular Order from the Client.

8.6 If the Client fails to meet his payment obligations to the Contractor within the agreed term, the Client shall be held in default without first requiring summation or formal notice of default. The Client is obliged to pay interest from the day the invoice should have been paid. For every month (or part thereof) of the exceeding of the payment term, this interest consists of one twelfth part of the legal interest at the time of the invoice date, plus 2%.

8.7 All judicial and extrajudicial costs reasonably incurred by the user in connection with the collection of debt shall be for the client's account. These costs are fixed at 10% of the relevant invoice amount and will amount to at least € 100,- per demand. Submission of the relevant invoices is considered sufficient proof that the invoice costs are owed.

9 Suspension and dissolution

9.1 The Contractor is authorized to suspend compliance with his obligations or to dissolve the contract if the Client fails to meet his payment obligations or to provide the required bank guarantee.

9.2 The Contractor is further authorized to dissolve the existing contract between himself and the Client without judicial intervention, even if this contract has not been executed yet, if the Client fails to meet his contractual obligations to the Contractor in full, in time or in a proper manner

9.3 The Contractor is further authorized to dissolve any existing contract between the Contractor and the Client in the case of bankruptcy or suspension of payment by the Client, the closing down or liquidation of the company of the Client and/or the transferal of the assets and liabilities of the company of the Client.

9.4 The consequences of suspension and/or dissolution shall be fully to the account of and at the risk of the Client.

9.5 Suspension and/or dissolution leave intact all payment obligations for Services already rendered. The Contractor is further authorized to claim compensation for all damages, costs and interests caused by the default of the Client and the dissolution of the contract, including the loss of profit by the Contractor.

10 Delivery times

10.1 The stated delivery times are approximations. Unless specifically agreed otherwise in writing, the Contractor does not make any guarantees regarding the agreed delivery times. If delivery is not timely, this does not give the Client any right to compensation for damages, dissolution of the contract or non-compliance by the Client of any obligation to the Contractor.

11 Duty of care

11.1 The Contractor shall take the greatest possible care regarding the interests of the Client in the execution of the Services.

11.2 Assuming that clear agreements have been made regarding the purpose, the Contractor will take special care for the correct audio and/or visual design of the communications and other materials and for their compliance to the relevant legal specifications, codes of conduct, rules of self-regulation and guidelines, in as far as he can reasonably be expected to be aware of these.

11.3 The Contractor will further ensure the maintaining of secrecy concerning all data and information provided to the Contractor by the Client with regards to the Order.

12 Objections, complaints and evidence

12.1 In the case of visible flaws the Client has to lodge a written objection immediately after the Contractor has

delivered or presented the Services rendered to the Client, or within eight days after the work has been made public. The Contractor is never liable for damages to the Client resulting from mistakes in advertisements, printed materials or other media and for wrongful placement of orders, except in the case of intentional act or gross negligence by the Contractor.

12.2 In the case of invisible flaws the Client must lodge a written objection within eight days after the Client has discovered the flaws or could reasonably have been expected to discover them.

12.3 Objections relating to invoices must be lodged with the Contractor within eight days of the invoice date. The payment obligations will not be suspended in the case of such an objection.

12.4 Objections lodged after the terms listed above will not be processed. The Client has waived his rights in the matter, unless the terms can reasonably be extended.

12.5 The data from the administration of the Contractor is determining unless counterproof is provided.

13 Liability and third party warranty

13.1 Liability for Services to the benefit of the Client which have been subcontracted by the Contractor to a third party is limited to the amount the Contractor can claim from that third party. In such a case the Contractor shall do everything in that can reasonably be expected, or will cooperate with the Client as fully as can reasonably be expected, to claim from the third party involved an amount as high as possible.

13.2 The Client indemnifies the Contractor against all claims of third-parties regarding to the works and materials created by order of the Client, insofar as these works and materials have been presented to the Client for approval.

14 Exoneration

14.1 If an objection regarding goods delivered and/or services rendered is judged to be legitimate and liability of the Contractor has been established, the Contractor will choose to either pay compensation to a maximum of the invoice value of the goods delivered and/or services rendered or will replace the goods delivered and/or services rendered at no extra cost, provided the original goods or services have been returned to the Contractor. The Contractor is never obligated to pay further damages.

14.2 In all cases the liability of the Contractor for any damages suffered by the Client directly or indirectly as the result of faults or flaws in the goods delivered and/or services rendered by the Contractor is limited to the invoice value of the goods delivered and/or services rendered less the out-of-pocket costs incurred. The Client waives his right to claim dissolution of the contract due to default.

14.3 The Contractor is not liable for damage, loss or destruction of objects, materials or data which have been made available to the Contractor by or on behalf of the Client. Transportation of works and/or goods is at the risk of the Client.

15 Force Majeure

15.1 If the Contractor is prevented from executing the agreed Services fully or in part and/or on time by force majeure, the Contractor is authorized to suspend the execution of said contract or to dissolve the contract fully or in part by means of a written statement, without judicial intervention. This is wholly the choice of the Contractor, without the Contractor being liable for any compensation of damages or guarantee.

15.2 Force majeure includes but is not limited to: strike, lock-out, fire, machine failure and other corporate disruptions, be it at the company of the Contractor or with his suppliers, transport disruptions and other events outside his control, such as war, blockades, riots, epidemics, devaluation, floods and storms, and also sudden increases in import duties and other duties and/or taxes, delays or failures in delivery by suppliers, the failure to procure the necessary licenses and other government acts.

16 Intellectual property

16.1 If the Client makes materials etc. available to the Contractor for the execution of an Order, the Client guarantees that there are no third parties that can claim (intellectual) property rights or other rights, or that the Client has gained permission for their use from the third parties involved on behalf of the Contractor. The Client further guarantees that the use of those materials etc. does not contravene any (legal) regulations, rules, guidelines etc. The Client indemnifies the Contractor against all claims from third parties and against any damage suffered by the Contractor resulting from the use of the materials etc. made available by the Client.

16.2 The Contractor retains the rights of intellectual property to all works made by the Contractor as part of an Order on behalf of the Client. The Contractor grants the Client an exclusive license on forehand for the duration of the contract to use the work in accordance with the description in the Order, especially relating to the timeframe, the area and the media. At the end of the contract or the Order the Contractor and the Client will confer regarding the transferal of the intellectual property rights of the works created by the Contractor as part of the contract. This includes but is not limited to the source codes of the websites developed by the Contractor (if and when this applies).

16.3 If rights (of intellectual properties) of third parties are involved, the Contractor will insure that the agreements made with those third parties at least include the use of the work in the area, timeframe and the media as described in the Order.

16.4 If a third party makes a claim regarding the use of the work created by the Contractor and/or the materials etc. used to create this work, the Client and the Contractor are mutually obliged to inform the other in writing immediately and to supply all information and cooperation needed for the rebuttal and/or settlement negotiations upon demand, if and when the other could be held liable due to these terms and conditions or has taken on the obligation of indemnification.

16.5 During the timeframe of the relationship, the Client is not authorized to any further or other use of the commissioned work created by the Contractor other than the use previously specifically agreed upon. If no specific use has been agreed, then the first use shall qualify as the agreed use.

16.6 The Client is not authorized to change or adapt the commissioned work without prior written permission from the Contractor.

16.7 The Contractor is authorized to sign the commissioned work.

17 Nature and duration of the contract

17.1 The Contractor shall serve the communication needs of the Client within the boundaries of the commissioned Order. The Client is not authorized to request a third party to also perform the contracted Services without consultation with and permission from the Contractor. During the timeframe of the Order the Contractor will not perform similar Services for competing (products or services of other) Clients without consultation with or permission from the Client.

17.2 Unless specifically agreed in writing, or logically stemming from the nature of the Order, the Order of the Client to the Contractor is for an unlimited duration, with the understanding that from the time the relationship has been in existence for six months, both parties can terminate this relationship by certified post with a six month period of notice.

17.3 During the six month term mentioned in the previous paragraph, the Client is obliged to honor the fee agreements with the Contractor as though there were no notice of termination. Unless agreed otherwise, the Contractor's fee during this period per month shall equal at least 1/12 part of the income that the Contractor has received from the Client in the preceding calendar year.

18 Termination

18.1 All designs, reproduction materials, texts, descriptions, artistic presentations, film, source codes and other publicity materials which are in the possession of the Contractor at the end of the relationship, will be transferred to the Client by the Contractor without charge upon first request, after everything owed to the Contractor by the Client in any way has been paid. The Contractor will then also immediately give the media written orders to transfer the contracted media space/time not yet used to the Client or to a third party of the Client's choosing.

18.2 If the relationship between the Client and the Contractor ends for whatever reason, these terms and conditions continue to govern the legal relationship between the two parties if this is necessary to the closure of the relationship.

19 Transferal and obligations

19.1 Neither party is authorized to transfer any of the rights and obligations which stem from contracts and orders to which these conditions apply to any third party, in whole or in part, without prior written agreement from the other party.

19.2 In the situation that the (relevant activities of the) company of the Client are merged with or continued by

another company for any reason and in any way or form, then the original and the following company are jointly and severally liable for the fulfilling of the obligations to the Client as referred to in the previous paragraph.

20 Arbitration

20.1 All contracts to which these general conditions apply and all contracts which stem from these shall be governed by the laws of the Netherlands exclusively.

20.2 For all disputes stemming from or dependent on contracts to which these general conditions apply and all contracts which stem from these, the court in the Contractor's place of establishment has exclusive competent jurisdiction.

These terms and conditions have been deposited with the Chamber of Commerce in Hilversum.