



GENERAL TERMS & CONDITIONS

Uli Montague

Uli Montague, herein “CONTRACTOR” is a marketing consultant, providing their clients with marketing advice, as well as marketing solutions, such as but not limited to websites, printed media, advertisement, and Social Media solutions.

Uli Montague provides its services and digital/printed products to the “CLIENT”.

Both, CONTRACTOR and CLIENT in their entirety are herein called the “PARTIES”.

Applicability

- 1.1 These general terms and conditions apply to all agreements and/or activities and/or factual legal relationships of the CONTRACTOR. The acceptance and retention by the CLIENT without comment of an offer or order confirmation, to which reference has been made to these general terms and conditions, counts as consent to the application of these general terms and conditions.
- 1.2 These general terms and conditions also apply to all agreements of the CONTRACTOR, whereby third parties must be involved for the execution thereof.
- 1.3 Deviation from these general terms and conditions is only possible if PARTIES have expressly agreed in advance in writing. Consequently, terms and conditions to the contrary shall only form part of the agreement concluded between the parties if and insofar as both parties have expressly agreed to do so in writing.
- 1.4 The applicability of the general terms and conditions used by the CLIENT is expressly rejected, unless expressly agreed otherwise in writing.
- 1.5 In these general terms and conditions, 'in writing' means: by letter post or e-mail.
- 1.6 In the event that the CONTRACTOR allows deviations from these general terms and conditions, tacitly or otherwise, for a short or longer period of time, this does not affect its right to demand direct and strict compliance with these general terms and conditions. The client can never assert any right on the grounds that the CONTRACTOR applies the general terms and conditions flexibly.
- 1.7 Should any provision of these general terms and conditions be null and void or annulled, the remaining provisions will remain in full force and the void or annulled provision(s) of these general terms and conditions will be replaced by a new, legally permissible provision(s) in which the purpose and scope of the void or annulled provision(s) is taken into account as much as possible.
- 1.8 If a situation arises between PARTIES that is not regulated in these general terms and conditions , this situation must be assessed in accordance with the spirit of these general terms and conditions. If there is uncertainty about the interpretation of one or more provisions of these general terms and conditions, the explanation must take place according to the scope of these provisions.

2 Agreement, Offers and Confirmation

- 2.1 Offers are without obligation and are valid for 6 weeks. Offers may be subject to changes due to an unforeseen change in the work. Prices are exclusive of VAT and other government levies. The rates and offers mentioned do not automatically apply to future assignments.
- 2.2 Assignments must be confirmed in writing by the CLIENT. If the client fails to do so, but nevertheless agrees that the CONTRACTOR will start executing the assignment, the content of the offer will count as agreed. Further verbal agreements and stipulations bind the CONTRACTOR only after they have been confirmed in writing by the CONTRACTOR.
- 2.3 If the CLIENT wishes to issue the same assignment to others than this CONTRACTOR at the same time, or has already given the assignment to another person, he must inform the CONTRACTOR, stating the names of these others.

3 Fees and additional costs

- 3.1 In addition to the agreed fee, the costs incurred by the CONTRACTOR for the execution of the assignment are also eligible for reimbursement, such as, but not limited to hosting expenses, plugin purchases, stock photo purchases, third party services, such as photography, copy writing, etc.
- 3.2 If the CONTRACTOR is forced to perform more or more different work due to the failure to provide complete, sound and clear data/materials or due to an amended or incorrect assignment or briefing, these activities must be honored separately, on the basis of the usual fee rates used by the CONTRACTOR.
- 3.3 The usual consultation fee for additional work is €85.00 per hour, photography €150 per hour plus travel expenses. Translation services are charged per word at €0,21 per word, with a minimum of €25 per translation.
- 3.4 If payment is in any way dependent on facts or circumstances, which must be apparent from the CLIENT's records, the CONTRACTOR has the right, after a declaration to the CLIENT, to have the CLIENT's administration checked by an accountant to be chosen by the CONTRACTOR. If the outcome of the audit by the auditor deviates by more than 2% or € 90.00 from the statement and the settlement by the CLIENT, the costs of this audit will be borne by the CLIENT.
- 3.5 If between the date of the conclusion of the agreement and the execution of the agreement, changes are made to wages, employment conditions or social insurance, etc. by the government and/or trade unions, the CONTRACTOR is entitled to pass on the increases to the CLIENT. If a new price list by the CONTRACTOR becomes valid between the aforementioned dates, the CONTRACTOR is entitled to charge the client for the prices or rates stated therein.
- 3.6 In addition, the CONTRACTOR may increase the fee if, during the execution of the work, it appears that the originally agreed or expected amount of work was insufficiently estimated at the conclusion of the agreement, and this is not attributable to the CONTRACTOR, that it is not reasonably from the CONTRACTOR may be expected to carry out the agreed work at the originally agreed fee.

4 Payment

- 4.1 Payments must be made as stated in the offer within 14 days of publishing the website to the public, with or without WordPress access for the CLIENT, or 14 days after receipt of the invoice, whichever comes first. If after the expiry of this period no (full) payment has been received by the CONTRACTOR, the CLIENT is in default and owes interest equal to the statutory interest. All by the CONTRACTOR costs incurred, such as legal costs and extrajudicial and judicial costs, including the costs for legal assistance, bailiffs and collection agencies, incurred in connection with late payments, shall be borne by the client. The extrajudicial costs are set at least 10% of the offer amount with a minimum of € 150,- excl. VAT.
- 4.2 The CONTRACTOR has the right to charge his fee biweekly for work performed and costs incurred for the execution of the assignment.
- 4.3 The CLIENT shall make the payments due to the CONTRACTOR without discount or deductions, and not subject to deductible advances relating to the agreement provided to the CONTRACTOR.
- 4.4 The CLIENT is not entitled to suspend payment of invoices for work already performed.

5 Execution Of The Agreement

- 5.1 The CONTRACTOR will make every effort to carry out the assignment carefully and independently, to represent the interests of the client to the best of its knowledge and to strive for a result that can be used by the CLIENT. To the extent necessary, the CONTRACTOR will keep the CLIENT informed of the progress of the work.
- 5.2 The CLIENT is obliged to do everything that is reasonably necessary or desirable to enable timely and correct delivery by the contractor, in particular by timely delivery of complete, sound and clear data or materials, as well as personal preferences, where requested by the CONTRACTOR.
- 5.3 A period specified by the CONTRACTOR for the completion of the design has an indicative scope, unless the nature or content of the agreement shows otherwise.
- 5.4 The CLIENT must give written notice of default to the CONTRACTOR in the event of exceeding the specified period.
- 5.5 Unless otherwise agreed, carrying out test, applying for permits and assessing whether instructions from the CLIENT meet legal or quality standards are not part of the CONTRACTOR's assignment.
- 5.6 Before proceeding with production, reproduction or publication, the PARTIES must give each other the opportunity to check and approve the latest models, prototypes or tests of the design.
- 5.7 If the CONTRACTOR, whether or not on behalf of the CLIENT, will give orders or instructions to production companies or other third parties, the CLIENT must confirm his above-mentioned approval in writing at the request of the CONTRACTOR, and do so in a timely manner to not interfere with production and related due dates.

6 Engaging Third Parties

- 6.1 Unless otherwise agreed, assignments to third parties will be provided by, or on behalf of the CLIENT in the context of the realization of the design. At the request of the CLIENT, the CONTRACTOR may, at the expense and risk of the CLIENT, act as an authorized representative. PARTIES can agree on a further compensation for this additional task.
- 6.2 If the CONTRACTOR draws up a budget for costs of third parties at the request of the CLIENT, this budget will only have an indicative scope. If desired, the CONTRACTOR can request offers on behalf of the CLIENT.
- 6.3 If, in execution of the assignment, the CONTRACTOR obtains goods or services from third parties at his own expense and risk according to an express agreement, after which these goods or services are passed on to the CLIENT, then the provisions of the general terms and conditions of the supplier with regard to the delivery of these goods or services will also apply to the CLIENT.

7 Intellectual Property Rights and Copyrights

- 7.1 Unless otherwise agreed, all intellectual property rights arising from the assignment - including patent law, design right and copyright - belong to the CONTRACTOR. Insofar as such a right can only be obtained by a deposit or registration, the CONTRACTOR is exclusively authorized to do so. Copyright can only be transferred in written form.
- 7.2 Unless otherwise agreed, the assignment does not include conducting research into the existence of rights, including patent rights, trademark rights, drawing or design rights, copyrights or portrait rights of third parties, especially when these goods and files were provided by the CLIENT. The same applies to any investigation into the possibility of such forms of protection for the CLIENT.
- 7.3 Unless the work does not lend itself to it, the CONTRACTOR is at all times entitled to mention or remove his/her name on or near the work and the CLIENT is not permitted to publish or reproduce the work without prior permission and/or without mentioning the name of the CONTRACTOR.
- 7.4 The Contractor also reserves the right to use the knowledge increased by the performance of the service for other purposes, insofar as no confidential information is brought to the attention of third parties.
- 7.5 Unless otherwise agreed, the original files of drawings, illustrations, prototypes, characteristics of the website, designs, design sketches, films and other materials or (electronic) files created by the CONTRACTOR in the context of the assignment remain the property of the CONTRACTOR, regardless of whether they have been provided to the CLIENT or to third parties.
- 7.6 After completing the assignment, neither the CLIENT nor the CONTRACTOR have a retention obligation towards each other with regard to the materials and data used.

8 Usage and Licensing

- 8.1 When the CLIENT fully complies with his obligations under the agreement with the CLIENT, he obtains an exclusive license to use the design insofar, as this concerns the right of publication and reproduction in accordance with the destination agreed at the time of the contract. If no agreements have been made about the destination, the licensing is limited to that use of the design, for which

there were firm intentions at the time of the award of the contract. These intentions must be entirely disclosed to the CONTRACTOR before the conclusion of the agreement.

- 8.2 Without the written permission of the CONTRACTOR, the CLIENT is not entitled to use the design more widely or in a different medium or manner than agreed. In the event of unagreed broader or other use, including modification, mutilation or impairment of the provisional or final design, the CONTRACTOR is entitled to compensation for infringement of his/her rights of at least three times the agreed fee, at least compensation that is reasonably and fairly proportionate to the infringement committed, without prejudice to the contractor's right to claim compensation for the damage actually suffered.
- 8.3 The CLIENT is not (or no longer) permitted to use the results made available and any license granted to the CLIENT in the context of the assignment will lapse:
 - 8.3.1 from the moment that the client does not (fully) fulfil its (payment) obligations under the agreement or is otherwise in default, unless the shortcoming of the CLIENT is of minor importance in the light of the entire assignment;
 - 8.3.2 if the assignment, for whatever reason, is terminated prematurely, unless the consequences thereof are contrary to reasonableness and fairness.
- 8.4 The CONTRACTOR has the freedom to use the design for his own publicity or promotion, taking into account the interests of the CLIENT.

9 Termination and dissolution of the agreement

- 9.1 When the CLIENT terminates an agreement, he must, in addition to compensation, pay the fee and the costs incurred with regard to the work performed up to that point.
- 9.2 If the agreement is dissolved by the CONTRACTOR due to an attributable shortcoming in the fulfillment of the agreement by the CLIENT, the CLIENT must, in addition to compensation, pay the fee and the costs incurred with regard to the work performed up to that point. Conduct of the CLIENT on the basis of which the CONTRACTOR can no longer reasonably be expected to complete the assignment are also considered as an attributable shortcoming in this regard.
- 9.3 The compensation referred to in the previous two paragraphs of this article shall include at least the costs arising from the commitments entered into by the CONTRACTOR in its own name for the fulfillment of the assignment with third parties, as well as at least one third (1/3) of the remaining part of the fee that the CLIENT would owe upon full fulfillment of the assignment.
- 9.4 In the event of liquidation, of (application for) suspension of payment or bankruptcy, insolvency, or debt, or any other circumstance that prevents the CLIENT from freely disposing of his assets, the CONTRACTOR shall be entitled to dissolve the agreement with immediate effect, or to cancel the order or agreement, without any obligation on its part to pay any compensation. Judicial intervention or notice of default is not required for this. In that case, the CONTRACTOR's claims against the CLIENT are immediately due and payable.
- 9.5 In the event of bankruptcy of the CLIENT, the CONTRACTOR has the right to terminate the right of use and licenses granted, unless the consequences of this are contrary to reasonableness and fairness.

- 9.6 In the event of dissolution by the CLIENT due to attributable shortcoming in the fulfilment of the obligations by the CONTRACTOR, the services already provided and the related payment obligation will not be subject to reversal, unless the CLIENT proves that the CONTRACTOR is in default with regard to those services. Amounts invoiced by the CONTRACTOR before the dissolution in connection with what he has already properly performed or delivered in execution of the agreement remain due without prejudice to the provisions of the previous sentence and become immediately due and payable at the time of dissolution.
- 9.7 If the work of the CONTRACTOR consists of repeatedly performing similar work, the applicable agreement will apply, unless otherwise agreed in writing, for an indefinite period. This Agreement may only be terminated by written notice, subject to reasonable notice of at least three months.

10 Force Majeure

- 10.1 The CONTRACTOR is not obliged to fulfil any obligation towards the CLIENT if it is prevented from doing so as a result of a circumstance that is not due to fault, and is not at its expense under the law, a legal act or generally accepted views.
- 10.2 THE CONTRACTOR may suspend the obligations under the agreement during the period that the force majeure continues. If this period lasts longer than two months, each of the PARTIES is entitled to dissolve the agreement, without obligation to compensate the other party for damage.
- 10.3 In the event that performance of what the CONTRACTOR is obliged to do under the agreement is deemed not possible and permanently impossible, and due to a non-attributable event or situation on the part of the CONTRACTOR, i.e. force majeure, or in the event that another important reason arises on the part of the CONTRACTOR, the CONTRACTOR is entitled to dissolve the agreement between the PARTIES . If the abovementioned situation occurs when the agreement has been partially executed, the CLIENT is obliged to comply with its obligations towards the CONTRACTOR up to that moment.
- 10.4 In these general terms and conditions, force majeure is understood to mean, in addition to what is understood in this regard in the law and case law, all external causes, foreseen or not foreseen, over which the CONTRACTOR cannot exert any influence, but as a result of which the CONTRACTOR is unable to fulfill its obligations. This includes pandemics and strikes in the company of the CONTRACTOR or of third parties. THE CONTRACTOR also has the right to invoke force majeure if the circumstance that prevents (further) fulfillment of the agreement occurs after the CONTRACTOR should have fulfilled its obligation.

11 Warranties and Indemnities

- 11.1 The CONTRACTOR guarantees that the delivered goods have been designed by or on behalf of him/her and that, if the design is copyrighted, he/she is regarded as the creator within the meaning of the Copyright Act and as the copyright holder of the work.
- 11.2 The CLIENT indemnifies the CONTRACTOR or persons engaged by the CONTRACTOR in the assignment against all claims from third parties arising from the applications or the use of the result of the assignment.

- 11.3 The CLIENT indemnifies the CONTRACTOR against claims relating to intellectual property rights to materials or data provided by the CONTRACTOR that are used in the execution of the assignment.
- 11.4 If the CLIENT provides the CONTRACTOR with information carriers, electronic files or software , etc., it guarantees that the information carriers, electronic files or software are free of viruses and defects.

12 Complaints

- 12.1 Complaints about the work performed must be reported in writing by the CLIENT to the CONTRACTOR within (8) eight days of discovery, but no later than ten days after completion of the work in question. The notice of default must contain as detailed a description of the shortcoming as possible, so that the contractor is able to respond adequately.
- 12.2 THE CONTRACTOR shall make its views known to the complainant within 20 days of receipt of the complaint. This is also done in writing and with reasons.
- 12.3 If there is a justified complaint, the CONTRACTOR has the choice between adjusting the fee charged, correcting or re-performing the rejected work or no longer performing the assignment in whole or in part against refund in proportion to the work already paid by the CLIENT.
- 12.4 If the performance of the agreed work is no longer possible or useful, the CONTRACTOR will only be liable within the limits of Article 13.
- 12.5 Complaints do not suspend the client's payment obligation.

13 Liability

- 13.1 The CONTRACTOR is not liable for:
 - 13.1.1 errors or shortcomings in the material provided by the CLIENT,
 - 13.1.2 misunderstandings, errors or shortcomings with regard to the execution of the agreement if these find their reason or cause in actions of the CLIENT, such as the failure to provide complete, sound and clear data / materials on time or not at all.
 - 13.1.3 errors or shortcomings of third parties engaged by or on behalf of the CLIENT.
 - 13.1.4 defects in offers from suppliers or for exceedances of offers from suppliers.
 - 13.1.5 errors or shortcomings in the design or text/data, if the CONTRACTOR has given its approval in accordance with the provisions of Art. 2.5, or has been given the opportunity to carry out a check and has not made use of it.
 - 13.1.6 errors or shortcomings in the design or text/data, if the CLIENT has omitted the establishment or commissioning of a particular model, prototype or test, and these errors in such a model, prototype or test would have been observable.
 - 13.1.7 damage in the form of loss of turnover/reduced goodwill in the business of the CLIENT.
- 13.2 The CONTRACTOR is only liable for direct damage attributable to him. Direct damage is only understood to mean:
 - 13.2.1 reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these terms and conditions;
 - 13.2.2 any reasonable costs necessary to ensure that the contractor's defective performance complies with the agreement;

- 13.2.3 reasonable costs incurred to prevent or limit damage, insofar as the CLIENT demonstrates that these costs have led to limitation of the direct damage as referred to in these general terms and conditions. Liability of the CONTRACTOR for all other than the aforementioned damage, such as indirect damage, including consequential damage, loss of profit, mutilated or decayed data or materials, or damage due to business interruption, is excluded.
- 13.3 The CONTRACTOR is never liable in the event of force majeure.
- 13.4 The CONTRACTOR is not liable for damage of any kind that arises because or after the client has put the manufactured goods into use, processed or processed them after delivery, delivered them to third parties, or had them put into use, had them processed or processed or delivered to third parties.
- 13.5 Except in the case of intent or deliberate recklessness on the part of the CONTRACTOR or the management of the CONTRACTOR - subordinates therefore excluded - the liability of the CONTRACTOR for damage under an agreement or an unlawful act committed against the CLIENT is limited to the invoice amount relating to the part of the assignment performed, less the costs incurred by the CONTRACTOR for the involvement of third parties, on the understanding that this amount will not exceed € 20,000, 00 and in any event at all times limited to a maximum of the amount that the insurer pays to the CONTRACTOR, if any.
- 13.6 Any liability lapses due to the expiry of (1) one year from the moment the assignment is completed.
- 13.7 The CLIENT is obliged, if reasonably possible, to keep copies of materials and data provided by it until the assignment has been fulfilled. If the CLIENT fails to do so, the CONTRACTOR cannot be held liable for damage that occur due to non-existence of these copies.

14 Secrecy, Trade Secrets and Duty of Confidentiality

- 14.1 The PARTIES are not permitted to provide information that is or could be confidential in nature to third parties who are not involved in the agreement or to use the information for a purpose other than that for which it was obtained. With regard to such information, all parties are bound by a duty of confidentiality. Information is considered confidential if this has been communicated by one of the parties or if this results from the nature of the information.
- 14.2 In the event that the CONTRACTOR is obliged by a legal provision or a court decision to provide confidential information to a third party designated by law or the competent court, and the CONTRACTOR cannot invoke a legal or authorized right of change recognized or permitted by the competent court, then the CONTRACTOR is not obliged to pay compensation or compensation and the CLIENT is not entitled to dissolve the assignment on the basis of any damage caused by this.
- 14.3 The CONTRACTOR shall impose its obligations under this article on third parties engaged by it.



15 Other provision

- 15.1 The CLIENT is not permitted to transfer any right under an agreement concluded with the CONTRACTOR to third parties, other than in the event of a transfer of his entire company.
- 15.2 PARTIES are obliged to treat facts and circumstances that come to the knowledge of the other party in the context of the assignment confidentially. Third parties, who are involved in the execution of the assignment, will be bound by the same confidential treatment with regard to these facts and circumstances originating from the other party.
- 15.3 The inscriptions in these general terms and conditions only serve to promote readability and do not form part of these terms and conditions.
- 15.4 Dutch law applies to the agreement between the CONTRACTOR and CLIENT. The court to hear disputes between the CONTRACTOR and the CLIENT is the competent court in the district where the CONTRACTOR is located and registered, or the court competent under the law, at the choice of the CONTRACTOR.

Deventer, 30 August 2019

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