

# Terms and conditions

## STUDIO SIZE GENERAL TERMS AND CONDITIONS

### Article 1. GENERAL

#### 1.1 Introduction

These are the General Terms and Conditions of STUDIO SIZE, having its registered office and principal place of business in Arnhem at Cannenburglaan 34 (6825 KK), filed with the registry of the Court of Arnhem, under number 64867528.

#### 1.2 Client

In these General Terms and Conditions, the term Client shall be understood to mean: the party that requests STUDIO SIZE to issue a quote and/or enters into a Contract with STUDIO SIZE under which STUDIO SIZE provides a product or service.

#### 1.3 Product

In these General Terms and Conditions, the term Product shall be understood to mean: all activities (services) to be performed and works to be produced by STUDIO SIZE for the Client, which shall include designs, drafts, logos, house styles, formats, models, sketches, texts, and any other materials, services or documents.

#### 1.4 Applicability of the General Terms and Conditions

These General Terms and Conditions shall apply to the formation, substance and fulfilment of any Contract concluded between STUDIO SIZE and the Client, as well as to any quotes issued by STUDIO SIZE. These conditions cannot be departed from, unless agreed otherwise in writing.

#### 1.5 Other Conditions

The applicability of general terms and conditions of the Client or third parties is hereby expressly excluded.

#### 1.6 Applicability in relation to Third Parties

These General Terms and Conditions shall apply to all work performed by third parties that STUDIO SIZE uses in the fulfilment of the Contract.

#### 1.7 Conflicting Provisions

If the Contract contains any provisions contrary to these General Terms and Conditions, the Contract shall take priority.

#### 1.8 Foreign Language

If these General Terms and Conditions have also been drawn up in a language other than Dutch, the Dutch text shall, in the event of a conflict, take priority.

## **Article 2. QUOTE, CONTRACT AND CONFIRMATION**

### 2.1 Quote

Each quote drawn up by STUDIO SIZE shall be free of obligation and remain valid for a period of thirty days. STUDIO SIZE shall be entitled to withdraw the quote at any time. If the Client accepts the no-obligation quote, STUDIO SIZE shall be entitled to withdraw the offer within seven (7) days of acceptance.

### 2.2 Amendments to the Contract

STUDIO SIZE shall invoice the Client when STUDIO SIZE has to perform other, additional work beyond the scope of the Contract. Otherwise, the Client shall owe the agreed price for the delivery of the Product. STUDIO SIZE shall only be indebted to do the work, if this is still reasonably possible.

### 2.3 Start of Fulfilment

STUDIO SIZE shall not be obligated to start the execution of its obligations under the Contract or to complete the same until STUDIO SIZE has received all details from the Client that it needs for the fulfilment of the Contract.

### 2.4 Included in the Price

All prices quoted and agreed upon shall be exclusive of VAT. The cost of transport, dispatch and/or postage, import and export duties, taxes, clearance charges, travelling and accommodation costs relating to the performance of the work and/or the provision of services, etc. shall be payable by the Client.

### 2.5 Design Agency

If the Client wishes to award one and the same job simultaneously to parties other than STUDIO SIZE, the Client shall notify STUDIO SIZE thereof, stating the names of the other agencies. If a Client has previously awarded the same job to another agency, the Client shall be obligated to disclose that agency's name.

## **Article 3. FULFILMENT OF CONTRACT**

### 3.1 Fulfilment of Contract

STUDIO SIZE shall attempt to carry out the Contract as carefully as possible, to serve the Clients' wishes to the best of its ability and to aim for a result that is of use to the Client. In so far as necessary, STUDIO SIZE shall keep the Client informed of the progress of the work in the fulfilment of the Contract.

### 3.2 Performance of Work by Third Parties

STUDIO SIZE shall be entitled to have work performed by third parties on behalf of and at the expense of the Client, without requesting the Client's prior permission.

### 3.3 Provision of Information

In case the needed information for the completion of the Contract has not been provided to STUDIO SIZE in a timely manner, STUDIO SIZE shall be entitled to postpone the completion of the Contract and/or to charge the Client for the additional costs resulting from the delay at STUDIO SIZE's then applicable hourly rates. Therefore, the Client shall ensure that all information, including but not limited to information and documentation which STUDIO SIZE identifies as being necessary or which the Client should reasonably understand to be necessary for the fulfilment of the Contract, will be provided to STUDIO SIZE in a timely manner.

### 3.4 Request for Third-party Supplier Quote

When, at the Client's request, STUDIO SIZE draws up a third-party cost estimate, this estimate shall only be indicative and the Client shall therefore not be able to derive any rights therefrom. If required, STUDIO SIZE can request quotes on behalf of the Client.

### 3.5 Approval of Design and Intermediate Results

Unless agreed otherwise, STUDIO SIZE shall start the agreed work by making a functional de- sign/sketch/storyboard and submitting this to the Client for approval. This approved functional de- sign/sketch/storyboard shall be decisive for the question of whether STUDIO SIZE has met its responsibilities under the Contract. STUDIO SIZE may postpone the performance of parts that are scheduled for the next stage until the Client has approved in writing the results associated with the previous stage.

### 3.6 Publication and Duplication

Before proceeding to produce, duplicate or publicize the Product, the parties shall enable one another to inspect and approve the latest models, prototypes or proofs of the Product. At STUDIO SIZE'S request, the Client shall confirm its approval in writing or by email.

### 3.7 Period of Delivery

A period specified by STUDIO SIZE for the fulfilment of the Contract shall be indicative and therefore not constitute a deadline, unless the nature or substance of the Contract should prove otherwise. The Client must give STUDIO SIZE written notice of default in all cases, allowing a reasonable extra period of time for delivery of the Product.

### 3.8 Dissolution by the Client

If STUDIO SIZE fails to deliver the Product within this reasonable extra period, the Client shall be author- ised to dissolve those parts of the Contract that have not been fulfilled. If STUDIO SIZE has already ful- filled the Contract in part, the Client shall retain the part of the goods already delivered or take receipt of the part of the Product that is already complete and pay the price due therefor, unless the Client demonstrates that the delivered portion of the Product cannot or can no longer be effectively used or applied by the Client. In the latter case, the Client shall be authorised to dissolve the Contract

for the part already performed as well, subject to the obligation to return the part already delivered or performed to STUDIO SIZE at the Client's own expense and risk or to compensate STUDIO SIZE for the value thereof.

### 3.9 Damages

A failure on the part of STUDIO SIZE to meet the delivery date shall not entitle the Client to damages.

### 3.10 Tests, Permits and Statutory Provisions

The Client is responsible for conducting tests with the Product (in a timely manner), applying for permits concerning the Product and complying with the legislation and regulations (which includes, but is not limited to, the Telecommunications Act (Telecommunicatiewet) and the Personal Data Protection Act (Wet Bescherming Persoonsgegevens) applying to the Product.

### 3.11 Dispatch

If STUDIO SIZE sends the Product or parts thereof to the Client, through the agency of the Client or otherwise, in any way, including but not limited to dispatch by post, courier or email, STUDIO SIZE shall do so at the Client's expense and risk.

## **Article 4. INTELLECTUAL PROPERTY RIGHTS**

### 4.1 Intellectual Property Rights

Unless expressly agreed otherwise in writing, all intellectual property rights under the Contract shall be vested in STUDIO SIZE.

### 4.2 Investigation into the Existence of Rights

Unless agreed otherwise in writing, the Contract does not include conducting an investigation into the existence of patent rights, trademark rights, trade name rights, rights to drawings and models, copyright and third-party portrait rights. The same applies to any investigation into the possibility of such forms of protection for the Client.

### 4.3 Identification

STUDIO SIZE shall at all times be entitled to have its name mentioned on or removed from the Product. The Client shall not be allowed to manufacture, publicise or duplicate the Product without stating the name of STUDIO SIZE.

### 4.4 Private Promotion

Unless other express written agreements have been made, STUDIO SIZE shall be entitled, without requiring prior written permission from the client, to use the Client's name and the Product developed for the Client (e.g. short films, images and photos) for its own publicity, promotional or other purposes via such channels, but not limited to those channels, as social media.

## **Article 5. USER LICENCE**

### 5.1 Use

If the Client fully meets its obligations, including the obligation to pay, under the Contract with LUK- KIEN, the Client shall acquire an ongoing, non-transferable, non-exclusive licence to use the Product, in so far as this concerns the right of publication and duplication in accordance with the designated use stipulated in the Contract and the nature of the Product does not dictate otherwise. If nothing has been agreed about the designated use, the user licence shall remain limited to use of the Product for which there were fixed plans at the time the Contract was formed.

### 5.2 Third-party Rights

The ongoing licence referred to in Article 5.1 shall not include third-party rights if STUDIO SIZE has entered into contracts with third parties in connection with the fulfilment of the Contract and these contracts include more severe limitations, in time, scope and otherwise.

### 5.3 Changes

The Client may not make changes to the provisional or final Product without STUDIO SIZE's written permission.

## **Article 6. FEES**

### 6.1 Fees and Incidental Costs

In addition to the agreed fee, the costs incurred by STUDIO SIZE in the fulfilment of the Contract shall also be reimbursable.

### 6.2 Fee for Additional Work

The fixed, quoted price shall be the starting point. If STUDIO SIZE is compelled to perform additional or other work as a result of overdue delivery or non-delivery of complete, sound and clear information/materials or due to an amended or inaccurate contract or briefing, the Client shall be invoiced therefor on the basis of subsequent costing at the then applicable rates, unless agreed otherwise in writing.

## **Article 7. PAYMENT**

### 7.1 Payment Obligation

Payment shall be due within thirty (30) days of the invoice date. If STUDIO SIZE has not received (full) payment after this period has lapsed, the Client shall be immediately in default and owe interest equaling the statutory trade interest as referred to in Section 6:119a of the Netherlands Civil Code, without prejudice to STUDIO SIZE's right to demand immediate and full payment. All costs incurred by STUDIO SIZE, such as legal costs, costs of legal aid, including but not limited to amounts awarded by the court, judicial and extrajudicial collection costs incurred in connection with overdue

payment, shall be payable by the Client, except for the legal costs and costs of legal aid if STUDIO SIZE should be ordered to pay the costs as the losing party. The extrajudicial costs shall be set at at least 10% (ten per cent) of the invoice amount, subject to a minimum of €200.

#### 7.2 Partial Invoices and Prepayment

The Client shall be required to pay 30% of the total value of the Contract in advance, unless agreed otherwise in writing. STUDIO SIZE shall also be entitled to invoice 30% of the total value of the Contract halfway through the fulfilment, unless agreed otherwise in writing. In addition, STUDIO SIZE shall be entitled to continue to invoice in instalments in cases where this is reasonable given the scope of the Contract or the circumstances of the case, unless agreed otherwise in writing.

#### 7.3 Postponement

STUDIO SIZE shall not proceed to fulfil the Contract or shall postpone fulfilling it until these instalments have been credited to the bank or giro account specified by STUDIO SIZE.

#### 7.4 Settlement of Third-party Costs

STUDIO SIZE shall be entitled to request full payment for costs from the Client, in particular the costs associated with the production of commercials and ether media before STUDIO SIZE is obligated to settle these costs (on behalf of the Client). In addition, STUDIO SIZE shall at all times be entitled to require security for payment from the Client.

#### 7.5 Complaints

Complaints about invoices must be submitted to STUDIO SIZE in writing within seven (7) days of the day of dispatch of the invoices. The due date shall not be postponed as a result of any such complaints. After the above period, the Client shall have forfeited the right of complaint.

#### 7.6 No Discount or Compensation

The Client shall make the payments due to STUDIO SIZE without delay, discount or compensation, barring any offsets against offsettable advances relating to the Contract that the Client has paid STUDIO SIZE.

#### 7.7 Payments Made

Payments made by the Client shall serve firstly to settle all interest and costs and secondly to settle the oldest outstanding invoices, even if the Client states that the payment is made to settle a later invoice.

### **Article 8. DELIVERY AND COMPLAINTS**

### 8.1 Obligation to Use One's Best Efforts

STUDIO SIZE shall use its best efforts to duly fulfil the Contract. STUDIO SIZE does not guarantee that the products it supplies are suitable for the purposes for which the Client intends to designate or use them, even if STUDIO SIZE has been notified of this purpose, nor that the Products will be successful in achieving the Client's objectives, unless the parties have expressly agreed otherwise.

### 8.2 Delivery

The Client shall be obligated to inspect the goods immediately on delivery to see whether they comply with the Contract, particularly with regard to soundness, solidity and completeness.

### 8.3 Inspection

If the Client does not immediately – i.e. within 48 hours – lodge a written complaint about the quantity delivered, the Client shall be deemed to have accepted the quantities stated on the consignment notes, receipts or similar documents as being correct.

### 8.3 Complaint

The Client can no longer claim that the Product delivered, completed or performed does not comply with the Contract if it has not notified STUDIO SIZE thereof in writing within eight (8) days after it has detected this or reasonably could or should have detected this, in any event after three (3) months have lapsed since the goods were delivered, the work was performed or the services were completed.

### 8.4 Postponement

Any complaint regarding the goods delivered, work performed or services provided shall not affect the Client's obligations pursuant to previous or future deliveries or performances and shall not entitle the Client to postpone payment of the amount due to STUDIO SIZE.

## **Article 9. GUARANTEES AND INDEMNIFICATIONS**

### 9.1 Indemnification against Third-party Claims

The Client shall indemnify STUDIO SIZE and the third parties engaged by STUDIO SIZE against all claims from the Client and/or third parties in relation to (parts of) the Product delivered by STUDIO SIZE. The Client shall indemnify STUDIO SIZE and the third parties engaged by STUDIO SIZE against all claims from the Client and/or third parties to intellectual property rights in respect of the materials and/or information supplied by the Client that are used in the fulfilment of the Contract. If any intellectual property right

and/or another right is infringed and STUDIO SIZE and/or the third parties engaged by STUDIO SIZE are held liable for these infringements, the Client shall compensate STUDIO SIZE and/or the third parties and pay all costs, including those related to any proceedings.

## 9.2 Other guarantees

STUDIO SIZE shall provide no guarantee with respect to the Product. Every Product that has not been rejected within eight (8) days of delivery or in respect of which the Client has not lodged a written complaint with STUDIO SIZE within this period or that the Client has not started using, shall be deemed to have been accepted. In the event of any shortcomings in the fulfilment of the Contract, STUDIO SIZE shall be immediately notified thereof and the Client shall provide STUDIO SIZE with all relevant evidence. If this information should show any faults in the fulfilment of the Contract, STUDIO SIZE shall, at its discretion, repair or replace the Product or parts thereof free of charge within a period thirty (30) days, provided that repair or replacement is reasonably possible in STUDIO SIZE's opinion and the Client allows STUDIO SIZE to take back the defective Product or a part thereof and the Client cooperates fully on the repair or replacement. In cases where repair or replacement is not reasonable or not possible, STUDIO SIZE shall repay the Client the amount paid to STUDIO SIZE for the Product, minus a reasonable fee for use of the Product. Even in the event of repayment, STUDIO SIZE shall be entitled to take back the Product and not effect repayment until the Client has returned the defective Product to STUDIO SIZE.

## 9.3

The guarantee referred to in Article 9.2 shall not apply if the damage to the Product is caused by use of the Product that does not qualify as 'normal use', by negligence or by injudicious use of the Product or parts thereof, by incorrect installation and/or maintenance of Product, including but not limited to adjustments to or repair work on the Product, without prior written permission from STUDIO SIZE.

## 9.4 Security

If the Agreement obliges STUDIO SIZE to provide a form of information security, that security will correspond to the specifications on security as agreed in writing between the parties. STUDIO SIZE never guarantees that the information security will be effective under all circumstances. Should the agreement not contain clear specifications on security, security will comply with a level that, depending on the state of technology, the sensitivity of the information and the costs related to security, is not unreasonable. STUDIO SIZE can never be held liable for losses relating to DDoS attacks or other third-party attacks on the Product it has provided.

## **Article 10. FORCE MAJEURE**

### 10.1 Force majeure



If STUDIO SIZE is temporarily or permanently unable to meet a substantial part of its obligations due to causes beyond its control or for which it is not liable according to the law or common opinion, this qualifies as force majeure, which in these General Terms and Conditions is understood to include non-fulfilment of obligations under the Contract as a result of illness and/or absence of staff that are crucial for the delivery of the Product, breach of contract by third parties engaged by STUDIO SIZE, break-down of equipment or facilities, including unavailability of telecommunication services and electricity, strikes, riots, government measures, fire, natural disasters, flooding, acts of war and suchlike and the situation lasts at least fourteen (14) days, either party shall be entitled to dissolve the Contract without the other party being entitled to compensation for any damage or loss in respect of this dissolution.

### 10.2 Extension of Period

A period agreed on for delivery or performance of work or services shall be extended by the period during which STUDIO SIZE was unable to meet or fulfil its obligations due to force majeure.

### 10.3 Partial Performance

If, during the period of force majeure as referred to in Article 10.1, STUDIO SIZE is able to meet parts of the Contract or has met parts of the Contract, it shall be entitled to carry out those parts and invoice them separately, as though they constituted a separate Contract.

## **Article 11. LIABILITY**

### 11.1 Liability

STUDIO SIZE shall not be liable for:

- a. faults in the material made available by the Client;
- b. faults in the fulfilment of the Contract if these are caused by or due to actions on the part of the Client, such as non-delivery or late delivery of complete, sound and clear information/materials;
- c. faults by or on behalf of or on the part of third parties engaged by the Client;
- d. faults in quotes from suppliers or suppliers exceeding their quotes;
- e. defects in the Product, if, in accordance with the provisions of Article 3.5, the Client has given its approval or has been given the opportunity to conduct an inspection and has indicated that it does not require such an inspection, or has not lodged a written complaint within eight (8) days after the damage or loss arose;
- f. faults or problems arising after delivery due to use or maintenance of the Product by parties other than STUDIO SIZE;
- g. costs incurred by the Client or payments made by the Client because of claims against the Client in connection with not having permits or the Product not complying with legislation and regulations applying to the Product;
- h. damage or loss due to loss of profit, stagnation of work, loss of business and/or other

data (files) or any other trading or financial loss, possibly related to use of the Product supplied by STUDIO SIZE.

#### 11.2 Limitation of Liability

If and in so far as STUDIO SIZE is liable and the damage or loss is not due to gross negligence intent on the part of STUDIO SIZE, its liability will at any rate be limited:

- a. to the amount paid out in respect thereof by STUDIO SIZE's liability insurance;
- b. if the insurer does not pay out in any specific case or the damage or loss is not covered by the insurance, to the value of the invoices paid by the Client in the period of two (2) months prior to the moment at which the damage or loss arose, at least in so far as the invoice relates to that part of the Contract to which the liability pertains.

#### 11.3 End of Liability

All liability ends when thirty (30) days have lapsed since the moment the Contract was fulfilled, unless STUDIO SIZE has acknowledged liability in respect thereof. If and in so far as the Contract has not yet been fulfilled, STUDIO SIZE's liability shall end when thirty (30) days have lapsed since the damage or loss arose, with a series of incidents counting as one (1) incident.

#### 11.4 Copies of Materials

If reasonably possible, the Client shall be obligated to keep any copies of the materials and data provided in its possession until the Contract has been fulfilled. If the Client fails to do so, STUDIO SIZE cannot be held liable for any damage or loss that would not have occurred had these copies been available.

#### 11.5 Obligation to Retain

On fulfilment of the Contract, the Client and STUDIO SIZE shall not be reciprocally obligated to retain any of the materials and data referred to in Article 11.4 and the Product delivered by STUDIO SIZE.

### **Article 12. TERMINATION AND DISSOLUTION**

#### 12.1 Termination of Contract by the Client

If the Client terminates the Contract, which must be done by giving notice by registered letter, the Client shall owe the fee and the costs incurred in relation to work performed under the Contract thus far, without prejudice to STUDIO SIZE's right to claim damages due to the termination.

#### 12.2 Dissolution of Contract by STUDIO SIZE

If the Contract is dissolved by STUDIO SIZE on account of a breach of contract by the Client, the Client shall owe the fee and the costs incurred in relation to work performed under the Contract thus far, without prejudice to STUDIO SIZE's right to claim damages due to the termination. Any conduct on the part of the Client on the grounds of which

STUDIO SIZE can no longer reasonably be required to fulfil the Contract shall also be regarded as a breach.

### 12.3 Damages

In addition to compensation for the damage or loss incurred by STUDIO SIZE as referred to in Article 8, the compensation payable by the Client shall at least equal 25% (twenty-five per cent) of the (total) price stipulated in the Contract, subject to a minimum of €500 (five hundred euros).

### 12.4 Bankruptcy

Both STUDIO SIZE and the Client shall be entitled to dissolve the Contract immediately in whole or in part if the other party goes bankrupt or applies for a moratorium.

### 12.5 Use of Product after Premature Termination

If the Contract is terminated prematurely for any reason whatsoever, the Client shall not or no longer be permitted to use the Product made available to it and the licence or licences granted to the Client under the Contract shall end.

### 12.6 Continuing Performance Contracts

If the activities to be performed by STUDIO SIZE under the Contract consist of a repetition of similar activities, the Contract applicable for the purpose shall be valid for an indeterminate period of time, unless agreed otherwise in writing. This Contract may only be terminated by giving notice by registered letter, with due observance of a notice period of at least six (6) months.

### 12.7 Transfer to Third Parties

The Client shall not be entitled to transfer its rights or obligations under the Contract(s) to any third party without prior written permission from STUDIO SIZE.

## **Article 13. AMENDMENT**

### 13.1 Pre-existing Contracts

Any amendments and/or additions to these General Terms and Conditions shall also apply to pre-existing contracts, subject to thirty (30) days' notice following written notice of the amendment.

### 13.2 Rights of the Client

The Client shall be solely entitled to terminate the Contract as of the day on which the amended and/or supplemented General Terms and Conditions take effect, if these conditions constitute such a deterioration of the Client's position that the Contract would not have been concluded under such conditions.

## **Article 14. OTHER PROVISIONS**

### 14.1 Transfer to Third Parties

The Client shall not be permitted to transfer any right under the Contract and/or to the Product to third parties other than as part of a transfer of its entire business.

#### 14.2 Confidentiality

The parties shall be obligated to maintain confidentiality with regard to facts and circumstances of which they take cognisance in connection with the Contract. Any third parties that are engaged in the fulfilment of the Contract shall be under the same obligation with regard to facts and circumstances brought to their attention by the Client.

#### 14.3 Netherlands Law

The Contract and any resulting contracts shall be governed by Netherlands law. The competent court of Arnhem shall be solely authorised to take cognisance of any disputes between STUDIO SIZE and the Client.

#### 14.4 Registration

The Dutch version of these General Terms and Conditions have been deposited at the Court Registry of the District Court Gelderland, location Arnhem, under number 64867528.