

## General delivery terms of Studio Roosegaarde

### 1 Contract, quote and confirmation

- 1.1 These general terms are, with the exception of purchase, or other client provisional application the arisal, the content and the observance of all agreements agreed upon by Studio Roosegaarde.
- 1.2 Quotes are free of obligation and are valid for 2 months. Price quotes are subject to change by unforeseen changes in work. Prices are exclusive of VAT and other government levies. The tariffs stated are not automatically valid for future projects.
- 1.3 Projects must be confirmed in writing by the client. If the client omits to do this, but does however go along with Studio Roosegaarde's commencement of the project, then the content of the quote shall count as a contract. Later oral agreements and bids are binding for Studio Roosegaarde as soon as they have been confirmed in writing by Studio Roosegaarde.
- 1.4 If the client wishes to offer an identical project at the same time to third parties as this contractor or has already offered the project to another, he must tell Studio Roosegaarde, by supplying the names of these others.

### 2 Implementation of the contract

- 2.1 Studio Roosegaarde will undertake to carry out the project carefully and independently, to adhere to the wishes of the client to the best of its ability and to strive for a result that is usable by the client. In as far as necessary, Studio Roosegaarde shall keep the client updated in the progress of the work.
- 2.2 The client is bound to do that which is reasonably necessary or desirable to make a timely and correct delivery possible for Studio Roosegaarde, in particular through the timely provision of complete, reliable and clear data or materials.
- 2.3 A period of time given by Studio Roosegaarde for completion of the design has an indicative bearing, unless it appears otherwise in the foundation of content of the contract. In the event of exceeding the given period of time, the client must make this known to Studio Roosegaarde in writing.
- 2.4 Unless otherwise agreed, the carrying out of tests, application of licences and judgement of the client's instructions must completely conform to quality standards, not to the project of Studio Roosegaarde.
- 2.5 Prior to the start of production, reproduction or publication both parties must give each other the opportunity to check and approve the latest models, prototypes or proofs of the design.
- 2.6 Complaints must be made immediately, but in any case within ten working days from completion of the project, and must be made in writing to Studio Roosegaarde; in the absence of this it will be assumed that the client has completely accepted the contract.

### 3 Bringing in third parties

- 3.1 Unless otherwise agreed, contracts for third parties, in the framework of realisation of the design, are extended by Studio Roosegaarde. Contact with third parties is exclusively via Studio Roosegaarde.
- 3.2 If Studio Roosegaarde, at the request of the client, creates a costing estimate for third parties, then this estimate shall only have an indicative bearing. If so required, Studio Roosegaarde can request quotes on the client's behalf.
- 3.3 If, during implementation of the project, Studio Roosegaarde, according to express agreements, involves goods or services from third parties at its own expense and risk, after which these goods or service are forwarded on to the client, then the stipulations in the general delivery terms shall apply to the quality, quantity, capacity and supply of these goods and services and also apply to the client.

### 4 Rights of intellectual property and ownership rights

- 4.1 Unless otherwise agreed, all rights of intellectual ownership arising from the project – including patent law, model right and the copyright - belong to Studio Roosegaarde. In as far as a similar right can be obtained through a depot or registration, Studio Roosegaarde is the exclusive authority.
- 4.2 Unless otherwise agreed, the project does not include the carrying out of research into the existence of rights, including patent laws, brand rights, drawing or model rights, copyright or portrait rights of third parties. The same applies for any research into the possibility of similar forms of protection for the client.
- 4.3 Unless the work does not allow, Studio Roosegaarde is at all times authorised to state or remove her/his name on or at the job. The client is not permitted, without prior consent, to reproduce the work without stating the name of Studio Roosegaarde.
- 4.4 Unless otherwise agreed, all blueprints, illustrations, prototypes, models, designed, design sketches, films and other materials or (electronic) files related to the project, are the property of Studio Roosegaarde, regardless of whether these have been given to the client or third parties.
- 4.5 Unless otherwise agreed, Studio Roosegaarde retains the right to use the design and blue prints created after delivery of the design.

4.6 After completion of the project, neither the client nor Studio Roosegaarde have an obligation to each other in relation to the materials and data used.

4.7 Images and films from the design are free to be used by the client if Studio Roosegaarde is named as the designer.

## **5 Use and licensing**

5.1 If the client fully complies to their obligations resulting from the contract with Studio Roosegaarde, he will receive a licence for the physical use of the design in as far as this relates to the right of publication and reproduction in agreement with the agreed contract purpose. Studio Roosegaarde remains the intellectual owner of the (software)codes and specific working of the design.

5.2 The client is not authorised, without the written permission of Studio Roosegaarde, to (allow to be) use(d) the design more freely or in another way than is agreed. In the event of non agreed freer or other use, including changes, deformation of or damage to the previous or definitive design, the designer has the right to compensation according to infringement of her/ his rights of at least three times the agreed fee, at least compensation realistically and reasonably in relation to the infringement made, regardless of the right of the designer to compensation for the actual damages suffered.

5.3 The client is not (further) permitted to use the results provided and every licence extended to the client within the framework of the project shall expire: a. from the moment that the client does not (completely) comply to or is otherwise in breach of the (payment) obligation as set down in the contract, unless the short coming of the client, in the light of the entire project, is of subordinate meaning; b. if the project, for whatever reason, is prematurely ended, unless the consequences of this are in conflict with reasonability and fairness.

5.4 Studio Roosegaarde has, with consideration of the interests of the client, the freedom to use the design in its own publicity or promotion.

## **6 Fee and additional costs**

6.1 In addition to the agreed fee, the costs that Studio Roosegaarde creates during implementation of the project must also be compensated. An overview of this will be made within the quote.

6.2 If fee payment is dependant in any way on matters of circumstance, that arise from the administration of the client, Studio Roosegaarde the right, after a statement from the client to have the client's administration checked by an accountant selected by Studio Roosegaarde. If the outcome of the check by the account deviated from the statement and the client estimate by more then 2% of € 100, the costs of this check will be chargeable to the client.

## **7 Payment**

7.1 Payment must take place within 30 days from the invoice date. If, after this period of time, (full) payment has not been received by Studio Roosegaarde, the client is neglectful and will be liable to pay interest equal to the legal rate of interest. All costs incurred by Studio Roosegaarde, such as processing costs and non legal and legal costs, including the costs for legal aid, bailiffs and credit agencies, made as a consequence of late payment, shall be charged to the client. The non legal costs are set at a minimum of 10% of the invoice amount with a minimum of € 150 exc. VAT.

7.2 After approving the quote, Studio Roosegaarde has the right to charge its fees and development costs for the implementation of the project. This will take place in three steps: 50% before receipt of the carrying out of design, 30% 12 weeks after receipt of the design and 20% upon delivery of the design.

7.3 The client makes payments owed to Studio Roosegaarde without discount or settlement, apart from settlement related to the agreed advances that he has given to Studio Roosegaarde. The client is not authorised to defer payment of invoices for work already carried out.

## **8 Cancellation and dissolution of the contract**

8.1 If the client cancels a contract, he must, in addition to damages compensation, pay the fee and the costs incurred in relation to the work already carried out.

8.2 If the contract is dissolved by Studio Roosegaarde due to calculable shortcomings in compliance to the contract by the client, the client, in addition to damages compensation, must pay the fee and the costs incurred in relation to the work carried out. Conduct of the client based on which Studio Roosegaarde cannot reasonably demand that the project can be completed, will be jointly viewed in this as a calculable shortcoming.

8.3 The damages compensation stated in the previous two parts of this article shall include at least the costs arising from connections with third parties entered into by Studio Roosegaarde in its own name for the completion of the project, as well as at least 30% of the remaining part of the fee that the client is liable for at completion of the project.

8.4 Both Studio Roosegaarde and the client have the right to immediately, entirely or partly, dissolve the

contract in the event of bankruptcy or (previous) moratorium of the other party. In the event of bankruptcy of the client the designer has the right to end the user right given, unless the consequences of this conflict with reasonability and fairness.

8.5 In the event of dissolution by the client as a result of calculable shortcomings in the observance of obligations by Studio Roosegaarde, there shall be no question of non payment for the work already delivered and the payment obligations related to them, unless the client proves that Studio Roosegaarde is in neglect of achievements made. Amounts invoiced by Studio Roosegaarde before dissolution in connection with the implementation of the contract already carried out or supplied, remain, in regard of that stipulated in the previous sentence, just as indebted and at the moment of dissolution will be made directly claimable.

8.6 If the work carried out by Studio Roosegaarde consists of repetition of similar tasks, then unless otherwise agreed in writing, the relevant contract for this shall apply for an unlimited time. This contract may only be terminated by written cancellation, with consideration of a reasonable period of notice of at least three months.

## **9 Guarantees and safeguards**

Studio Roosegaarde guarantees that which is designed by him/ her and that, if there is a copyright on the design, he/ she counts as creator in the sense of copyright and is in possession of copyright on the work.

9.2 The client indemnifies Studio Roosegaarde or people brought into the project by Studio Roosegaarde for all demands of third parties arising from the application of the use of the result of the project.

9.3 The client indemnifies Studio Roosegaarde for demands related to rights of intellectual ownership or ownership of materials or data supplied by the client, which are used in the implementation of the project.

## **10 Liability**

10.1 Studio Roosegaarde is not liable for: a. faults or shortcomings in the materials supplied by the client. b. misunderstandings, faults or shortcomings in the implementation of the contract, if these originate from dealings of the client, such as non timely or non delivery of complete, sound and clear details/ materials. c. faults or shortcomings of third parties brought in on behalf of the client. d. faults or shortcomings in the design of the text/ details, if the client, in agreement with that stipulated in article 2.5, has given his consent, and has the opportunity to carry out a check and has made no use of this. f. faults or shortcomings in the design or the text/ details, if the client has allowed the creation or implementing of a certain model, prototype or proof to be omitted, and these faults could have been noticeable in a similar model, prototype or proof.

10.2 The client is exclusively liable for direct damages accountable to him. Direct damages are understood to mean: a. reasonable costs in the securing of the cause and size of the damage, in as far as the securing has relevance to the damage in the terms of these preconditions; b. any reasonable costs necessary to answer the faulty achievement of Studio Roosegaarde in the contract; c. reasonable costs, made to prevent or limit damage, in as far as the client shows that these costs have lead to limitation of the direct damages as stipulated in these general terms. Studio Roosegaarde has no liability for all general and previously stated damages, such as indirect damage, including consequential damage, loss of earnings, damaged or lost data or information, or damage through company stagnation.

10.3 Except in the case of deliberate or unwitting recklessness of Studio Roosegaarde or the company direction of Studio Roosegaarde –subordinates therefore excluded -, liability of Studio Roosegaarde for damages from an agreement or from an illegal act carried out towards the client is limited to the invoice amount that relates to the completed component of the project, less the costs incurred by Studio Roosegaarde for bringing in third parties, with the understanding that this amount shall not be higher than € 15.000 and in any case limited to the maximum amount that the insurer in the case of Studio Roosegaarde would pay out.

10.4 Each liability expires after two years from the moment that the project is complete.

10.5 The client is bound, if reasonably possible, to retain copies of materials and details supplied by him until the contract is completed. If the client omits to do this, Studio Roosegaarde can not be held liable for damages incurred in the absence of these copies.

## **11 General stipulations**

11.1 It is not permitted for the client to transfer any rights of contracts agreed with Studio Roosegaarde to third parties, other than by transferral of its entire company.

11.2 Parties are bound to treat facts, knowledge contacts of third parties and circumstances that, within the framework of the project, become known to other parties as confidential. Third parties, involved in the implementation of the project, shall be bound to identical confidential treatment in relation to these facts and circumstances arising from the other party.

11.3 Dutch law applies to the contract between Studio Roosegaarde and the client. The judge in the examination of differences between Studio Roosegaarde and the client is the authorised judge in the district where Studio Roosegaarde is located, or the authorised judge according to law, at the choice of Studio Roosegaarde. Rotterdam, January 2006