

# STUDIO ROOSEGAARDE GENERAL TERMS AND CONDITIONS

## 1 Agreement, offer and confirmation

- 1.1 These general terms and conditions (hereinafter: the "General Terms and Conditions") apply to all offers and to the formation, the contents and the performance of all agreements concluded between the client and the party accepting the assignment (hereinafter "Studio Roosegaarde"). Departures from these General Terms and Conditions can only be agreed between the client and Studio Roosegaarde in writing.
- 1.2 Quotations are issued without obligation and are valid for 2 months. Estimates may be subject to change due to unforeseen changes in the work. Prices are exclusive of Dutch VAT. The rates and offers that are specified do not automatically apply to future assignments. The client warrants that the details furnished by it or on its behalf to the designer, on which Studio Roosegaarde bases its quotation, are correct and complete.
- 1.3 Assignments must be confirmed by the client in writing. If the client fails to do so, but gives its consent for Studio Roosegaarde to start carrying out the assignment, the contents of the quotation are deemed to have been agreed and these General Terms and Conditions apply. More detailed verbal arrangements and stipulations are only binding on Studio Roosegaarde after it has confirmed them in writing.

## 2 Performance of the agreement

- 2.1 Studio Roosegaarde will use its best endeavours to carry out the assignment with due care and independently, to promote the client's interests to the best of its knowledge and to strive for a result that will be useful to the client, as can and may be expected of a designer acting reasonably and professionally. So far as necessary, Studio Roosegaarde will keep the client informed of the work's progress.
- 2.2 The client will do all that is reasonably necessary or desirable to enable the designer to make timely and correct delivery, such as promptly supplying complete, reliable and clear data or materials that Studio Roosegaarde has indicated, or the client understands or should reasonably understand, are needed for the performance of the agreement.
- 2.3 Any deadline stated by Studio Roosegaarde by which to carry out the assignment is indicative only, unless otherwise agreed in writing.
- 2.4 Unless otherwise agreed, the assignment issued to Studio Roosegaarde does not include:
  - a. conducting tests, applying for permits or assessing whether the client's instructions comply with statutory or quality standards;
  - b. investigating whether there are any rights including patent rights, trade mark rights, design or model rights, copyrights or portrait rights of third parties;
  - c. investigating the possibility of the forms of protection referred to in subparagraph b. for the client.
- 2.5 Before proceeding with implementation, production, reproduction or communication to the public, the parties will give each other an opportunity to check and approve the most recent models, prototypes or tests of the result.
- 2.6 Deviations in the final result from what was agreed do not constitute a reason for rejection, discount, compensation or termination of the agreement if, taking all circumstances into consideration, these deviations may reasonably be considered to be of minor importance.
- 2.7 Complaints must be communicated to Studio Roosegaarde in writing as soon as possible but in any case within ten working days of completion of the assignment, failing which the client will be deemed to have accepted the result of the assignment in full.

## 3 Enlisting third parties

- 3.1 Studio Roosegaarde is permitted to enlist third parties for and during the performance of an assignment. At the client's request, Studio Roosegaarde can act as an authorised agent of the client, for the client's expense and risk. The parties may arrange a fee, yet to be specified, for this.
- 3.2 If, at the request of the client, Studio Roosegaarde draws up a budget for the costs of third parties, this budget is indicative only. If desired, Studio Roosegaarde can request quotations on behalf of the client.
- 3.3 While carrying out the assignment, if Studio Roosegaarde purchases items or services from third parties for its own expense and risk, in accordance with an explicit arrangement, after which these items or services are passed to the client, then the provisions of the general terms and conditions of and/or separate arrangements with the third-party supplier in relation to the guarantee and to liability will also apply towards the client.
- 3.4 If Studio Roosegaarde issues assignments or instructions to production companies or other third parties, whether on behalf of the client or otherwise, the client will confirm its approval in writing to the third party concerned if asked to do so by Studio Roosegaarde.
- 3.5 The client will not enlist third parties without consulting Studio Roosegaarde if that may affect the performance of the assignment as agreed with Studio Roosegaarde. In such a case, the parties will consult as to which other contractors will be enlisted and what work will be assigned to them.
- 3.6 Studio Roosegaarde is not liable for faults or defects in products or services of third parties enlisted by or on behalf of the client, whether those third parties were introduced by Studio Roosegaarde or not. The client must itself hold these third parties to account. In such cases, Studio Roosegaarde can provide assistance if desired.

#### **4 Intellectual property rights and title**

- 4.1 All intellectual property rights to the results of the assignment arising from the assignment - including patent rights, trade mark rights, design or model rights and copyrights - accrue to Studio Roosegaarde. To the extent that such a right can only be obtained by means of filing or registering it, Studio Roosegaarde is exclusively authorised to do so, unless otherwise agreed.
- 4.2 The parties may agree that the rights referred to in the first paragraph will be transferred to the client in full or in part. Such transfer and any conditions under which transfer takes place will always be recorded in writing. Until the time of transfer, a right of use is granted, as set forth in Clause 5 of these General Terms and Conditions.
- 4.3 Studio Roosegaarde is at all times entitled to have its name mentioned in, or removed from, publicity in relation to the result of the assignment, in the manner customarily used for that result. Unless Studio Roosegaarde has given its prior written consent, the client may not communicate the result to the public or reproduce it without mentioning the name of the designer.
- 4.4 Unless otherwise agreed, the originals of the result that have been created by Studio Roosegaarde in the context of the assignment (such as designs, design sketches, drafts, recommendations, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, scale models, moulds, products or parts of products, films, audio, video and other presentations, source codes and other materials or files, electronic files, etc.) will remain the property of Studio Roosegaarde regardless of whether they are made available to the client or to third parties.
- 4.5 After the assignment is completed, neither the client nor Studio Roosegaarde will be obliged to retain the materials and data used, unless otherwise agreed.

#### **5 Use of the result**

- 5.1 After the client has complied in full with its obligations arising from the agreement with Studio Roosegaarde, it will be entitled to use the result of the assignment in accordance with the agreed purpose. If no arrangements have been made as to the

purpose, then the right of use will remain limited to the use for which the assignment was apparently issued. The right of use is exclusive, unless another form of use arises from the nature of the agreement or unless otherwise agreed.

- 5.2 If the result also relates to works that are subject to rights of third parties, the parties will make further arrangements as to how the use of these works will be regulated.
- 5.3 Without written consent, the client may not alter the result of the assignment, use or reuse it or implement it in a broader or different manner than has been agreed, or allow the third parties to do so. Studio Roosegaarde may attach conditions to any such consent, including the payment of fair compensation.
- 5.4 If the result is used more broadly or differently to what was agreed, which includes alteration, mutilation or impairment of the provisional or final result, Studio Roosegaarde is entitled to a payment for infringement of its rights equivalent to at least three times the agreed fee, or at least to compensation that is reasonably and fairly proportionate to the infringement, without losing any of its other rights.
- 5.5 The client will not be, or will no longer be, permitted to use the results provided to it, and all rights of use granted to the client in the context of the assignment will be cancelled unless the consequences would be contrary to reasonableness and fairness:
- a. from the time when the client fails to comply or to comply in full with its obligations on the basis of the agreement, including its obligations to make payment, or is otherwise in breach;
  - b. if the assignment is terminated prematurely for reasons named in Clause 8.1 of these General Terms and Conditions;
  - c. if the client is declared insolvent, unless the rights concerned were transferred to the client pursuant to Clause 4.2 of these General Terms and Conditions.
- 5.6 With due regard to the client's interests, Studio Roosegaarde is at liberty to use the results for its own publicity, acquisition of assignments, promotional activities, including competitions and exhibits, etc., and to obtain them on loan, if the results are tangible.

## **6 Fee and costs**

- 6.1 Studio Roosegaarde is entitled to a fee for carrying out the assignment. The fee may consist of an hourly rate, a consultancy fee, a fixed sum, whether or not related to the project sum, or any other form of payment to be agreed between the parties.
- 6.2 In addition to the agreed fee, the costs incurred by Studio Roosegaarde in carrying out the assignment, such as administrative overhead costs, travel and accommodation costs, costs for prints, copies, proofs, prototypes, and costs of third parties for advice, production and assistance etc., are also eligible for reimbursement. These costs will be specified in advance as far as possible, unless a mark-up percentage has been agreed.
- 6.3 If Studio Roosegaarde is obliged to carry out more or different work because of the late delivery or non-delivery of data/materials that are complete, reliable and clear, or because of an altered or incorrect assignment or briefing, or because of external circumstances, this work will be charged separately on the basis of the fee rates normally used by the designer. Studio Roosegaarde will inform the client of this in advance unless it is impossible to do so due to certain circumstances or if the nature of the work does not allow for delay.
- 6.4 If there is a delay or interruption in carrying out the assignment because of circumstances that cannot be attributed to Studio Roosegaarde, the client is obliged to pay any costs this may entail. Studio Roosegaarde will try to limit the costs as far as possible.

## **7 Payment and suspension**

- 7.1 All payments must be made without discount, set-off or suspension and within 14 days of the invoice date, unless otherwise agreed in writing or unless the invoice states otherwise.

- 7.2 All items delivered to the client will remain the property of Studio Roosegaarde until all amounts owed by the client to Studio Roosegaarde pursuant to the agreement concluded between the parties have been settled in full.
- 7.3 If the client is in default with full or partial payment of the amounts due, the client will owe Studio Roosegaarde statutory interest and extrajudicial costs of collection, which amount to at least 10% of the amount of the invoice, subject to a minimum of 1500 € euro excluding VAT.
- 7.4 Studio Roosegaarde will arrange for timely invoicing. In consultation with the client, Studio Roosegaarde may charge an agreed fee and costs in the form of advance payments, interim payments or periodically.
- 7.5 Studio Roosegaarde may suspend the performance of the assignment after the payment period has expired and the client has been sent a written reminder to make payment within 14 days, but has not done so, or when Studio Roosegaarde is given to understand from a communication or from the client's behaviour that payment will not be made.

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

- 8.1 If the client cancels the agreement and there is no imputable failure on the part of Studio Roosegaarde, or if Studio Roosegaarde dissolves the agreement because of an imputable failure by the client to perform the agreement, the client will owe an amount as compensation, in addition to the fee and the costs incurred for the work carried out up to that point. Conduct of the client on the basis of which the designer can no longer reasonably be required to complete the assignment will also be deemed to be an imputable failure in this context.
- 8.2 The compensation referred to in the preceding paragraph will include at least the costs arising from the obligations assumed towards third parties by Studio Roosegaarde in its own name in order to carry out the assignment, as well as at least 30% of the remainder of the fee that the client would owe if the assignment were completed in full.
- 8.3 Studio Roosegaarde is entitled to dissolve the agreement in full or in part with immediate effect, and all outstanding amounts will immediately become due and payable, if an application is filed for the client's insolvency, for suspension or provisional suspension of payments or for debt rescheduling.
- 8.4 If Studio Roosegaarde's work consists of repeatedly carrying out similar types of work, this will constitute a continuing performance contract unless otherwise agreed in writing. Such an agreement may only be terminated by written notice of cancellation, with due regard to a reasonable notice period of at least three months, during which period the client will continue to purchase the usual amount of work from Studio Roosegaarde, or will compensate Studio Roosegaarde financially.

## **9 Guarantees and indemnifications**

- 9.1 If the client uses the results of the assignment, the client will indemnify Studio Roosegaarde or third parties enlisted by the designer for the assignment against all claims by third parties arising from the application or use of the result of the assignment. This is without prejudice to the liability of Studio Roosegaarde to the client for non-performance of the guarantees referred to in the preceding paragraph and other liability referred to in Clause 10 of these General Terms and Conditions.
- 9.2 The client indemnifies Studio Roosegaarde against claims in relation to intellectual property rights to all materials and/or data furnished by the client that are used in the performance of the assignment.

## **10 Liability**

- 10.1 Studio Roosegaarde only accepts obligations to pay compensation to the extent that these are apparent from this clause.
- 10.2 In the event of an imputable failure, Studio Roosegaarde must first be sent written notice of default and given a reasonable period within which to comply with its obligations or rectify any mistakes or to limit or eliminate any damage. If performance

is not forthcoming within the reasonable period stated in the notice of default, then Studio Roosegaarde is only liable for alternative compensation, which means compensation of the value of the undelivered performance. All liability of Studio Roosegaarde for any other form of compensation is excluded, including additional compensation in any form whatsoever, as well as compensation for indirect or consequential damage or damage on account of lost sales and lost profits, lost savings or damage due to business interruption.

- 10.3 Except in the case of deliberate intent or wilful recklessness on the part of Studio Roosegaarde, its liability arising from imputable failure in the performance of its obligations will remain limited to the fee of the designer for the assignment, or at least that part of the assignment to which the liability relates. This amount will not exceed €75,000.00 and in any case is at all times limited to a maximum of the amount paid to Studio Roosegaarde by the insurer, where applicable. The amount for which Studio Roosegaarde is liable in such a case will be reduced by any sums that have been insured by the client.
- 10.4 In the event of an unlawful act on the part of Studio Roosegaarde or its employees or subordinates, for which it can be held liable in law, Studio Roosegaarde is only liable for compensation of damage resulting from death or physical injury. In these cases, the compensation will in no circumstances exceed € 100,000.00 per event causing damage, with a series of related events being deemed to be a single event.
- 10.5 Liability of Studio Roosegaarde for damage due to an unlawful act otherwise than that referred to in clause 10.4 above is explicitly excluded. If and to the extent that this exclusion cannot be invoked, the compensation per event - with a series of related events being deemed to be a single event - will in no circumstances exceed € 100,000.00 per event causing damage.
- 10.6 Any entitlement to compensation is conditional on the client reporting the damage to Studio Roosegaarde by registered letter without delay, but in no circumstances more than one month after it has arisen. Failing this, all entitlement to compensation will lapse.
- 10.7 The client indemnifies Studio Roosegaarde against all damage that Studio Roosegaarde may sustain as a result of claims made by third parties, including employees of the client, relative to the products and/or services delivered by Studio Roosegaarde to the client.
- 10.8 The provisions of this clause also apply for the benefit of employees of Studio Roosegaarde and any third parties enlisted by or for Studio Roosegaarde for the delivery of products and/or provision of services.

## **11 Confidential information and non-takeover clause**

- 11.1 Each party warrants that all information of a confidential nature received from the other party before and after conclusion of the agreement will remain confidential. Information will in any case be deemed to be confidential if it has been designated as such by one of the parties.
- 11.2 For the duration of the agreement and for one year after it comes to an end, each of the parties will only employ employees of the other party who were involved in the performance of the agreement, or have them work for it in some other manner, directly or indirectly, after proper and business-like consultations with the other party and with that other party's written consent.

## **12 Other provisions**

- 12.1 If the client wishes to issue the same assignment at the same time to others than Studio Roosegaarde, or has already issued the assignment to another party, the client will inform Studio Roosegaarde of this, stating the names of the other parties.
- 12.2 The client is not permitted to transfer any right arising from an agreement concluded with Studio Roosegaarde to third parties, otherwise than by transfer of its entire business or with Studio Roosegaarde's written consent.
- 12.3 The parties are obliged to observe confidentiality in relation to all confidential information, facts and circumstances that come to their knowledge in the context of the assignment, whether from the other party or from any other source, if it can

reasonably be understood that disclosure or communication of this information to third parties might cause harm to Studio Roosegaarde or the client. Third parties involved in performing the assignment will also be bound to treat these facts and circumstances originating from the other party as confidential.

- 12.4 If any provision of these General Terms and Conditions is void or is declared invalid, the other provisions of these General Terms and Conditions will continue to apply in full. In that case, the Parties will enter into consultations with the object of agreeing new provisions to replace the provisions that are void or have been declared invalid, whereby the object and the tenor of the conditions that are void or that have been declared invalid will be taken into consideration as far as possible.
- 12.5 The headings in these General Terms and Conditions only serve to assist readability and do not form part thereof.
- 12.6 All agreements between Studio Roosegaarde and the client are governed by Dutch law. In the first instance, the parties will try to resolve a dispute that arises between them by mutual consultation. Unless the parties have expressly agreed to written arbitration, the court that has jurisdiction by law or the court in the district where Studio Roosegaarde has its registered office, this at the discretion of the designer, will hear disputes between Studio Roosegaarde and the client.