

## GENERAL TERMS & CONDITIONS GRNDWORX B.V.

### CLAUSE 1 - DEFINITIONS AND APPLICABILITY

1.1 The following definitions are used in these General Terms & Conditions:

**Affiliates:** every business that is classed as a group company (in Dutch: "*groepsmaatschappij*") within the meaning of Article 2:24b Dutch Civil Code ("DCC") and all subsidiary companies (in Dutch: "*dochtervennootschap*") within the meaning of Article 2:24a.

**Claims:** means any claim or proceeding of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence).

**Contracts:** all agreements that already have been concluded or shall be concluded in the future, either in writing, orally or implicitly/tacitly, between GrndWorX and a Client, including (but not limited to) framework agreements and all separate (purchase) agreements which may ensue therefrom.

**Client:** any person or legal entity who/which places an Order with GrndWorX, or to whom/which GrndWorX issues an Offer (submits a quotation), or with whom/which GrndWorX implicitly or otherwise enters into or shall enter into a (Continuing Performance) Contract in any form.

**Deliverables:** means all Services, assignments, projects, products, graphics, designs, brochures, equipment, hardware, data, software, and/or all other (IT-)materials or deliverables produced, delivered, used and/or performed by GrndWorX to a Client.

**Fee:** the fee that Clients have to pay to GrndWorX for the Deliverables, which fee is (unless stated otherwise) exclusive of disbursements and expense occurred, such as (but not limited to): hosting, software licenses, market research, photography and illustration, special events (i.a. meetings and conferences), travel expenses, courier services, media monitoring (online, social media, radio, television and press), media buying, et cetera.

**General Terms & Conditions:** these general terms & conditions;

GrndWorX: GrndWorX B.V. (trade register number: 74475029) and its Affiliates.

**Losses:** means any harm, (financial) los, (material) damage, costs or expenses suffered by any party, as well as all Claims and liabilities in any way relating to or arising out of a Contract, an Order and/or Deliverables.

**Offer:** any offer (quotation) communicated orally or in writing by GrndWorX to a Client regarding the purchase of products and/or services from GrndWorX, or invitation to conclude a Contract.

**Order:** any written or oral request from a Client to GrndWorX to deliver Deliverables.

**Services:** all services, working activities and/or Deliverables provided or performed by GrndWorX.

1.2 These General Terms & Conditions apply to all Offers, Orders, Services and all (existing and future) Contracts.

1.3 The acceptance of an Offer, submitting an Order and/or or concluding a Contract with GrndWorX, shall constitute the Client's acceptance of the applicability of these General Terms.

- 1.4 Any deviations from these General Terms & Conditions are only valid if they are agreed explicitly and in writing by GrndWorX.

## **CLAUSE 2. OFFERS, REALIZATION OF CONTRACTS AND ORDERS**

- 2.1 All Offers, Orders and prices stated by GrndWorX are free of obligation or commitment. GrndWorX will be entitled at all times to refuse and/or refuse to process Orders (regardless of whether these are placed pursuant to an Offer that has been issued), without giving any reason for said refusal because of – amongst other reasons – the fact that sometimes GrndWorX can be dependent on third parties for the performance of a Contract or rendering the Services. Therefore, unless agreed otherwise in writing, GrndWorX shall not own any delivery obligation to a Client whatsoever (continuous or otherwise). Such a (continuous) delivery obligation shall and will not arise by virtue of the mere fact that GrndWorX did regularly process previous Orders from a Client during a particular period of time.
- 2.2 A Contract shall only be formed after GrndWorX accepts a Client's Order, including if a Client has placed an Order based on an (obligation-free) Offer that has already been made.
- 2.3 As soon as an Order placed by a Client is accepted by GrndWorX or at any rate is actually being processed, the Order can not be cancelled or returned, and the Client will be obliged to purchase the ordered Deliverables. The Client's non-acceptance of the Deliverables in question will not relieve it of its obligation to pay for the Deliverables.

## **CLAUSE 3. PRICES, INVOICING AND PAYMENT TERMS**

- 3.1 Unless expressly agreed otherwise, all prices stated by GrndWorX are denominated in euros and are exclusive of Dutch VAT and costs for handling, packaging, postage (international or otherwise), port duties and/or transport fees, any taxes and/or any other levies or costs.
- 3.2 The prices stated are free of obligation and may thus be changed by GrndWorX at any given time. If a price is changed after an Order has been placed, the Client will only be entitled to cancel the Order within five days after the price change is announced.
- 3.3 Prices agreed in Contracts that have already been concluded, will not be binding in the event of manifest errors (or typographical errors) and/or clerical errors, or when one of the cost-determining factors of the Deliverables (or (raw) materials/products/services required for this) changes in the period between the conclusion of the Contract and the time of delivery and the resulting price increase cannot or can hardly be influenced by GrndWorX. In that case, GrndWorX has the right to adjust the agreed price accordingly, regardless if the cost price increase was foreseeable at the time of the Offer, all this with due observance of the applicable legal regulations. If in such a case the price increase exceeds ten (10) percent, the Client has the right to cancel (in Dutch: "*annuleren*") the Contract free of charge within five (5) days after notification of the price increase, however without any right to compensation or damages. If the Deliverables have already been delivered, they will be taken back as soon as possible after the cancelation at the expense of

GrndWorX. Until the time that the Deliverables are taken back, the Client remains fully liable and responsible for quality reduction, damage, theft, et cetera.

- 3.4 Unless alternative arrangements are made:
- a) GrndWorX is entitled to invoice ordered Deliverables (partial or in whole) up front, as a prepayment, or periodically (i.e. weekly or monthly afterwards);
  - b) Services will be invoiced by the hour against the applicable rate;
  - c) disbursements and other expenses occurred are payable ten (10) days after being invoiced
  - d) invoices must be paid within ten (10) days after the invoice date; this payment deadline (and any alternative term agreed upon) is always absolute final, also when GrndWorX agrees to later payment as a courtesy.
- 3.5 Failure to meet the aforementioned payment deadline for invoices, will give GrndWorX the right to transfer the invoice to an external collection agency, in which case the Customer will be liable to pay – in addition to the statutory (commercial) interest for late payment – all costs actually incurred (which may include extrajudicial collection costs, court costs, and any attorneys' fees), with the minimum amount being either EUR 250.00 (two hundred and fifty euros), exclusive of Dutch VAT or – at GrndWorX discretion – fifteen (15) percent of the amount of the outstanding invoice.
- 3.6 Suspension (in Dutch: "*opschorting*") and/or offset (in Dutch: "*verrekening*") of any payment (obligation) by a Client towards GrndWorX is prohibited and is expressly excluded.

#### **CLAUSE 4. DELIVERY AND PERFORMANCE TIMES, RETENTION OF TITLE**

- 4.1 Delivery and/or performance times stated by GrndWorX are merely indicative. The exceeding of any delivery or performance deadline will not entitle the Client to claim Losses or to cancel the Order or terminate (in Dutch: "*ontbinden*") the Contract, unless and to the extent that the deadline is exceeded so egregiously that allowing the Contract to stand would be unacceptable under the standards of reasonableness and fairness.
- 4.2 Information concerning the Deliverables provided by GrndWorX (characteristics, colour, pictures, graphic design, brochures, web design, concepts, et cetera) is issued in line with best knowledge and belief and with the utmost care, but shall never be regarded as binding in anyway whatsoever.
- 4.3 Any defects in some of the delivered Deliverables, do not give the Client the right to reject or refuse the rest of the Order.
- 4.4 Deliverables will remain the property of GrndWorX until the moment of full payment of all amounts the Client owes GrndWorX, including any late payment interest and costs. Title to the Deliverables GrndWorX delivers to the Client will only be transferred subject to the conditions precedent (as referred to in Section 3:92 DCC) of full payment by the Client of both the purchase price as well as any late payment interest and costs owed.

## CLAUSE 5. DUTY OF EXAMINATION, COMPLAINTS, LIMITATION OF OF ACTION AND LIABILITY

- 5.1 The Client must, immediately upon or after receiving the Deliverables, check (duty to inspect) whether the Deliverables delivered are in accordance with the Order placed and/or satisfy the Contract, as well as whether there are any defects or damage to the Deliverables.
- 5.2 Complaints regarding damage or defects must be reported by the Client to GrndWorX by email with proper specification ([enquiry@grndworx.com](mailto:enquiry@grndworx.com) or directly communicated to the responsible GrndWorX project leader) no later than five (5) working days after discovery, in default of which the Client will the Client will no longer be able to invoke any defect.
- 5.3 The time limit for filing complaints in respect of invoices sent out by GrndWorX is a maximum of five (5) working days after the date of receipt. If the Client has not objected about the invoice within that time limit in writing and with reasons via [enquiry@grndworx.com](mailto:enquiry@grndworx.com), or directly communicated to the responsible GrndWorX project leader, the invoice will be deemed to reflect the underlying transaction(s) with GrndWorX accurately and to have been approved by the Client.
- 5.4 Any right (or right of claim) which the Client can assert against GrndWorX relating to errors in GrndWorX's delivery or defects in Deliverables supplied by GrndWorX, will irrevocably lapse as soon as the terms for filing a complaint stated in this Clause have elapsed. If a Client fails to cooperate, or fails to cooperate sufficiently, with GrndWorX in investigating the validity of the claim in question within the aforementioned terms for filing a complaint, all related rights (or rights of claim) relating thereto will also immediately and irrevocably lapse. The Deliverables to which complaints relate must be available for possible inspection by GrndWorX in the condition in which the Deliverables were found on the date the defects were discovered.
- 5.5 In deviation of Article 6:76, 6:170 and 6:171 DCC, GrndWorX is not liable for any losses or damages caused by its employees and subordinates (in Dutch: "*ondergeschikten*"), nor for any losses or damages caused by auxiliary persons, sub-contractors, independent contractors and/or other assisting third parties (in Dutch: "*hulpverleners*" or "*niet-ondergeschikten*") engaged by GrndWorX.
- 5.6 GrndWorX is not liable for any consequential and/or indirect losses or damages (in Dutch: "*indirecte schade*" or "*gevolgschade*"), including (but not limited to): trading loss (such as: loss of profits, income, revenue, reputation, turnover, anticipated savings, business, contracts, goodwill, clients time/hours or commercial opportunities), as well as all other (forms of) consequential harm or business losses. Consequential and/or indirect Losses also explicitly includes all Losses that are arising out – or are the result – of errors, malfunctions and/or failures in the Deliverables (except as far as it concerns losses to the delivered Deliverables itself).
- 5.7 GrndWorX shall not be responsible for fixing corrupted or lost data. In no event shall GrndWorX be liable for any limited use or loss of data that could have been prevented by a Client executing adequate and proper back-up and storage procedures in line with good industry practice.
- 5.8 All rights (or rights of claim) which a Client has against GrndWorX regarding delivered Deliverables will lapse (in Dutch: "*vervallen*") if the Client has not instituted legal proceedings against GrndWorX

no more than six (6) months after the Client became aware of (or should reasonably have become aware of) the losses or damages.

- 5.9 The term for prescription (in Dutch: "*verjaring*") of all claims (or rights of claim) and defences of a Client against GrndWorX is twelve (12) months.
- 5.10 GrndWorX shall not be liable for any delays or non-performance directly or indirectly resulting from circumstances or causes beyond its control or influence, including in any case (but not limited to): emergencies, (natural) disasters, accidents, pandemics, (threat of) war or terrorism, insurrection, riots, fire, (power or telecom) failures/malfunctions, logistical problems, government measures, et cetera. This also includes: third parties (including staff, auxiliary persons or other parties on which GrndWorX depends to comply correctly) who do not perform due to, for example, a strike, illness or other unforeseen absence or circumstances. Performance shall be postponed for the duration of such event of force majeure. If the event of force majeure lasts for three months or more, either party may terminate the Contract, without being obliged to pay the other party any kind of compensation. GrndWorX shall, however, retain the right to receive payment for Deliverables already supplied or Services already rendered.

## **CLAUSE 6. RESPONSIBILITIES OF THE PARTIES**

- 6.1 GrndWorX will perform the Services in a competent and professional manner, with such care and skills as is customary, in accordance with good industry practice. GrndWorX disclaims all other warranties, either express or implied, except and then only to the extent that GrndWorX has explicitly agreed in the Contract to provide the Client a result conditional to the result having been described accurately.
- 6.2 The Client is responsible for determining that the scope of the Services is appropriate for its needs and shall be responsible for compliance with all applicable national and foreign legislation and regulations in the area of protection of privacy and personal data including where the Client provides GrndWorX with – or puts at GrndWorX disposal – (personal) data of its personnel, its clients or other third parties, even if such (personal) data originates from third parties or is provided to GrndWorX or put at GrndWorX's disposal by third parties at Client's request.
- 6.3 The Client shall furnish GrndWorX in a timely manner with all data or information which is useful and necessary to execute the Contract properly.

## **CLAUSE 7. TERMINATION OF CONTRACTS**

- 7.1 Unless terminated sooner in accordance with its terms, a Contract shall be terminated (in Dutch: "*beëindigd*") by operation of law once the Services have been performed
- 7.2 Unless agreed otherwise, in deviation of Article 7:408 subsection 1 DCC, neither party may (prematurely) cancel (in Dutch: "*opzeggen*") a Contract which is entered into for a *definitive* period of time and/or for the duration of a project (fixed term contract).

- 7.3 Unless agreed otherwise, a Contract entered into for an *indefinite* period of time can be cancelled (in Dutch: "*opgezegd*") by either party at the end of each month, without cause, by giving written notice to the other party subject to a notice period of one (1) full calendar month.
- 7.4 Without prejudice to the right as referred to in Clauses 7.1, 7.2 and 7.3 above, either party shall be entitled to terminate (in Dutch: "*ontbinden*") a Contract in accordance with of Article 6:265 DCC (and all other applicable legal requirements) with immediate effect by sending a written termination notice to the other party, in case any of the following events will occur:
- a) a breach by the other party of an obligation under that Contract and that party is in default (in Dutch: "*verzuim*") as referred to in Article 6:265 DCC subsection 2 DCC;
  - b) in the event the other party has filed a request for a moratorium or its own bankruptcy, or admits in writing its inability to pay its debts as they become due;
  - c) the other party has been declared bankrupt.
- 7.5 Any termination or cancellation whatsoever, will have no retroactive effect. Upon termination of the Contract, the Client will compensate GrndWorX under the agreed terms for the Services already performed and expenses incurred through the effective date of termination. Upon termination, any amounts invoiced in connection to Services performed prior to the termination shall be due and payable immediately.

#### CLAUSE 8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 8.1 Unless agreed to otherwise, all intellectual or industrial property rights (direct or indirect) related to the Deliverables provided by GrndWorX to the Client, accrue exclusively and will remain or become, in their entirety, the property of the Client.
- 8.2 "**Confidential Information**" means all (digital) documents, documents and (other) information regarding the Deliverables and/or the company of either party (and its Affiliates), including but not limited to: (future) business activities/plans, producers/manufacturers, suppliers, clients, client databases, prices, recipes, strategies, personnel, financial data, et cetera, of which the other party knew or reasonably should have known the confidential nature. Both parties (including its Affiliates) are obliged to keep Confidential Information strictly confidential from anyone.

#### CLAUSE 9. DATA PROTECTION

- 9.1 The Client acknowledges that personal data may be processed by GrndWorX as a controller, for the purpose of or in connection with (a) the performance of Services; (b) applicable legal or regulatory requirements; (c) requests and communications from competent authorities (the: "**Purposes**"). Each party shall comply with applicable data protection laws and regulations when processing personal data.
- 9.2 The Client further acknowledges that personal data may be disclosed to, and processed by, GrndWorX its Affiliates and/or competent authorities for the aforementioned purpose. personal



data may also be disclosed to, and processed by, other third parties to the extent reasonably necessary in connection with the aforementioned Purposes.

- 9.3 The parties acknowledge and agree that GrndWorX will act as a controller when processing personal data for the Purposes. GrndWorX has a privacy policy, which is available at <https://grndworx.com/privacy-policy/> in which more information can be found about the processing and protection of personal data by GrndWorX when acting as a controller.
- 9.4 The Client further acknowledge that Personal Data may be processed by GrndWorX as a processor in connection with the performance of Services.

#### **CLAUSE 10. GENERAL PROVISIONS**

- 10.1 If, in a given case, GrndWorX refrains from invoking an applicable provision in the General Terms and Conditions, this will not affect GrndWorX' entitlement to invoke that provision or any other provision in a subsequent case.
- 10.2 GrndWorX is entitled to (unilaterally) amend these General Terms and Conditions unilaterally from time to time.
- 10.3 The applicable version will always be that which applied on the date the Contract was formed with the Client.
- 10.4 If there is a dispute regarding the interpretation or explanation of any provision of these General Terms and Conditions, the Dutch translation as included on several places in the text of these General Terms and Conditions, shall always take precedence and will be leading for the purposes of such interpretation.

#### **CLAUSE 11. APPLICABLE LAW, COMPETENT COURT, ARBITRATION**

- 11.1 These General Terms and Conditions and all (existing and future) Contracts, as well as any disputes and/or non-contractual obligations relating thereto, are governed exclusively by the laws of the Netherlands.
- 11.2 With respect to all Contracts, the applicability of the 'United Nations Treaty on Contracts for the International Sale of Goods' (CISG) – also known as the Vienna Sales Convention 1980 – is expressly excluded.
- 11.3 Any disputes between GrndWorX and a Client ensuing from – or relating to – these General Terms and Conditions or any Contract, will be submitted in the first instance exclusively – and thus to the exclusion of any other court – to the competent section of the Amsterdam District Court.
- 11.4 Contrary to the provisions of Clause 11.3, if a Client is established in a non-EU Member State, GrndWorX will be exclusively entitled (in the form of discretionary authority) to choose that any dispute as referred to in Clause 11.3 shall be settled in accordance with the most recent and then-applicable version of the '*Arbitration Rules of the Netherlands Arbitration Institute*' (NAI) in Rotterdam, the Netherlands. Unless the parties shall agree otherwise at that time:
- a) the arbitral tribunal shall be composed of one arbitrator;

- b) the arbitrator of the arbitral tribunal shall be appointed according to the 'list procedure' as laid down in the aforementioned Arbitration Rules;
- c) the proceedings shall be conducted in the Dutch language;
- d) the place of arbitration shall be Rotterdam;
- e) the arbitral tribunal shall decide as 'amiable compositeur' (in Dutch: "*goede personen naar billijkheid*") with due observance of the rule of law (that being Dutch law).
- f) consolidation of the arbitral proceedings with other arbitral proceedings, as provided for in Article 1046 of the Dutch Code of Civil Procedure and Article 39 of the Arbitration Rules of NAI, is excluded;
- g) the arbitration decision shall not be subject to appeal.

## **CLAUSE 12. SOLICITATION OF GRNDWORX TEAM MEMBERS**

- 12.1 GrndWorX is not a recruitment business. The Client understands and acknowledges:
- a) the investment in time and money GrndWorX makes in recruiting, training and building its team of GrndWorX, other subcontractors and employees ("Team");
  - b) and that by virtue of its portfolio business model, losing one member of the Team to a client will have a material impact on its business.
- 12.2 Losing one member of the Team means losing the Fees GrndWorX expects to receive from the Client under these conditions and also losing the fees expected to be received from the other clients who make up that Team members portfolio. It may take some time before GrndWorX finds a suitably qualified replacement for that Team member and could result in GrndWorX losing some clients altogether.
- 12.3 Accordingly, the Client agrees that it shall not, and shall procure that none of its group companies shall, without the prior written consent of GrndWorX at any time from the date on which the Terms of Engagement are executed to the expiry of twelve months after the last date of supply of the Services, solicit or entice away from GrndWorX employ or attempt to employ any Team member who is or has been, engaged (directly or indirectly through a company) as a contractor, employee or subcontractor of GrndWorX in the provision of the Services to the Client in the previous 18 months.
- 12.4 Any consent given by GrndWorX shall be subject to the Client paying GrndWorX a one-off fee, by way of liquidated damages, in the sum of € 50,000 plus VAT. The Client acknowledges and agrees that this sum represents a fair estimation of GrndWorX's losses and is reasonable and proportionate to protect its interests under the Terms of Engagement.

## **CLAUSE 13. DATE AND SOURCE OF THE GENERAL TERMS AND CONDITIONS**

- 13.1 These General Terms and Conditions were adopted on December 1<sup>st</sup> 2021 and may be reviewed and downloaded via: <https://grndworx.com/terms-and-conditions>.