

Article 1: Definitions

In these terms and conditions "client" means every (legal) person who has entered into or wishes to enter into an agreement with Rovando B.V., whether or not operating under the trade name AdFactory-International, and besides him, his representative(s), proxy/proxies and legal successor(s). Rovando B.V., whether or not operating under the trade name AdFactory-International, is hereinafter called "commissionee".

Article 2: Applicability

1. These terms and conditions apply to every offer and every agreement between the commissionee and client, in so far as the parties did not deviate from these terms and conditions explicitly in writing.
2. These terms and conditions do also apply with regard to third parties that are instructed by the commissionee upon the execution of the relevant agreement.

Article 3: Offers

1. The offers made by the commissionee are without obligation; they are valid for 14 days, unless otherwise agreed upon in writing. The commissionee may nevertheless revoke an offer that includes a period of time, even after receipt of the assignment or commission, provided that this is done within 5 days.
2. The commissionee is only bound by the offer, if the opposite party confirms its acceptance in writing within 14 days. If the offer is accepted after a lapse of 14 days, the commissionee may adjust the time of its execution and/or fee/costs.

Article 4: Additional Work

1. Alterations to the approved functional design, test plan, test set-up or offer, inter alia as regards the set-up, functionality, the interpretation, the method, the size, the analysis, and/or reporting which are made in consultation with or at the request of the client, may lead to an adjustment of the agreed period of time or the payable costs.
2. If the number of tests, meetings and/or any execution prior to, during and after the test is specified, additional tests, meetings and/or any execution taking place at the request of the client may be charged.

Article 5 Execution

1. The commissionee will execute the agreement to the best of his knowledge and ability and in accordance with the requirements of good professional skills.
2. The commissionee may have certain duties performed by third parties.
3. The client ensures that all data, which the commissionee states to be necessary, or of which the client can reasonably supposed to understand that they are necessary for the execution of the agreement, will be handed out to the commissionee on time. If the data necessary for the execution of the agreement is not handed out to the commissionee on time, the commissionee may suspend the execution of the agreement and/or charge the client with the extra costs arising from the suspension on the basis of the usual rates.
4. Notwithstanding the aforementioned suspension the agreed terms of payment will remain in force unaltered and the provisions of Article 16 apply.
5. If it is agreed upon that the agreement will be executed in phases, the commissionee may suspend the execution of components belonging to the next phase until the client approves of the results of the phase prior thereto in writing.

Article 6: Completion

If there has been set a term for the completion of certain duties within the term of the agreement, this term is not considered to be a deadline. If the term for execution is exceeded, the client shall give the commissionee notice of default in writing.

Article 7: Reporting

1. Reporting occurs in accordance with the test set-up. If the test set-up does not specify the method of reporting, reporting is done in Dutch and in accordance with the requirements of good professional skill. If no reporting medium is agreed upon, the commissionee shall determine the medium.
2. The price of the offer shall include supplying the number of reports mentioned in the test set-up. Unless the test set-up provides otherwise, the client will receive one copy.

Article 8: Alteration

1. If during the execution of the agreement it turns out that it is necessary for a proper execution to alter or supplement the duties to be performed, parties will alter the agreement accordingly on time and in joint consultation.
2. If parties agree upon an alteration or addition to the agreement, this may influence the term for the completion of the execution. The commissionee shall inform the client hereof as soon as possible.
3. If the alteration or addition has financial and/or qualitative consequences, the commissionee shall inform the client hereof beforehand.
4. If a fixed fee has been agreed upon, the commissionee shall indicate to what extent the alteration or addition to the agreement will give rise to higher fees.
5. In derogation of paragraph 3 the commissionee may not charge additional costs, if the alteration or addition is caused by circumstances that can be imputed to it.

Article 9: Secrecy

1. The client undertakes to observe absolute secrecy about everything which (by whatever means) is brought to his attention relating to the commissionee and its products and services in the broadest sense, therefore including, but not limited to: ideas, processes, procedures, know-how and intellectual property rights. This obligation of secrecy will remain in full force after the termination of the agreement and relationship between parties.
2. The obligation of secrecy does not apply to information and data:
 - that are made public, not caused through an action by either party (directly or indirectly);
 - released under a statutory obligation or a final and binding decision of the court;
 - in regard to which the commissionee has granted written discharge from the obligation of secrecy.
3. The commissionee reserves the right to use the client's name for recommendation purposes and to reveal it as such, unless the client has explicitly raised objections thereto.

Article 10: Exclusivity

For the term of the agreement and subject to the provisions of the agreement, the client grants the commissionee the exclusive right to perform the commission allocated to it.

Article 11 (Intellectual) Property

1. The software, whether or not newly developed for the client, which is used for performance under the contract shall remain the commissionee's exclusive property.
2. Without prejudice to the rights of use arising from the agreement with the client concerning the software, systems and applications installed by the commissionee, the commissionee reserves the rights and powers conferred upon it by virtue of the Copyright Act.
3. All documents provided by the commissionee, such as reports, monitors, checklists, advice, sales guides, designs, drafts, software, etc., are for the sole purpose of being used by the client and may not be multiplied, disclosed or brought to the attention of third parties without the commissionee's prior consent.
4. The commissionee reserves the right to use the knowledge acquired in executing the work for other purposes, in so far as no confidential information is brought to the attention of third persons.

Article 12: Term of the Agreement

The agreement is entered into for an indefinite period of time, unless otherwise explicitly agreed upon in writing.

Article 13: Termination

1. An agreement for a definite period of time may not be terminated prematurely.
2. An agreement for an indefinite period of time (subscription) may only be terminated subject to three months' notice, counting from the first day of the month following the month in which notice is given. Notice of termination must be given by registered letter.
3. Either party also has the right to give notice or terminate the agreement with immediate effect, if:
A) one of the parties was declared insolvent or has been granted suspension of payment;
B) one of the parties does not meet its obligations arising from this agreement and remains in default, provided that notice of default has been given by registered letter or fax letter and a term of 14 days has been given to still meet the obligations;
C) one of the parties is not able to fulfil the agreement for a period exceeding one month as a result of force majeure, as referred to in Article 19.

Article 14: Defects and Complaints

1. On penalty of cancellation of his right to complain, the client must report any complaints about the execution of the commission in writing to the commissionee within 8 working days after the discovery thereof, yet not later than within 14 working days after completion of the (sub)commission in question, giving a detailed description of the complaint(s). If complaints are reported after said period, they will not be accepted anymore.
2. Attending to any complaint does not suspend the client's obligation to pay.
3. Complaining is not possible, if
 - the damage was caused by negligence on the part of the client;
 - the client acted in violation of the explicit instructions and directions of the commissionee;
 - the client has not met his obligations towards the commissionee (both financial and otherwise).
4. If the branch changes its views or if the relevant government regulations change after the agreement was entered into, this cannot be attributed to the commissionee and the client may not derive any rights therefrom for complaining.
5. In case the client, having regard to the provisions of paragraph 1 above, complains and the commissionee considers his complaint well founded, the commissionee, at its option, will execute the commission (once more) or grant a discount. The rights to be derived therefrom by the client may neither be transferred, nor passed *ipso jure*.
6. If, besides in the above-mentioned cases, a complaint is attended to, this is done without being obliged to do so.

Article 15: Fee

1. To offers and agreements in which a fixed fee is offered or is agreed upon paragraphs 2, 5, 6 and 7 of this Article apply. If no fixed fee is agreed upon paragraphs 3 up to and including 7 of this Article apply.
2. On entering into the agreement parties may agree upon a fixed fee. The fixed fee is excluding BTW (Dutch VAT).
3. If no fixed fee is agreed upon, the fee will be calculated on a time-spent basis. The fee is calculated on the basis of the commissioner's usual hourly rates, applicable for the period during which the duties are performed, unless an hourly rate was agreed upon that deviates therefrom.
4. Any cost estimates are excluding BTW, unless stated otherwise.
5. Commissions with a duration of more than 3 months will be invoiced every month.
6. The charged rates will be reviewed periodically (in principle as at 1 January) on the basis of wage and price developments and other factors that are relevant to setting rates.
7. The price stated in the offer is based on execution during usual office hours. If the duties must be performed outside the usual office hours due to causes not attributable to the commissionee, the extra costs shall be borne by the client, unless account has been taken of this in the offer or confirmation of the commission.

Article 16: Payment, Collection Charges

1. The client shall pay all invoices without discount or setoff within 14 days from the invoice date by transfer to an account to be designated by the commissionee, unless otherwise agreed upon in writing.
2. If the invoices are not paid within the aforementioned period of time, the client is in default by the mere expiry of the agreed term of payment, without a notice of default being required, irrespective of whether this default is attributable to the client or not.
3. Without prejudicing any other rights the commissionee may have, it then will be entitled to charge interest on the outstanding amount at the rate of 1,5 % per month or part of a month, counting from the due date.
4. All extrajudicial and court costs incurred by the commissionee related to a dispute with the client, both as a plaintiff and as a defendant, shall be for the client's account. The extrajudicial collection costs are set on the basis of the collection rates of the Netherlands Bar Association, the court collection costs at the amount really paid by the commissionee for the proceedings, also where they exceed the costs of litigation as fixed by the court.
5. Incoming payments will be used to settle the oldest outstanding debts - including interest and costs - even if the client in respect thereto states otherwise.
6. The client's payment obligation will neither be suspended in case and in so far as he is of the opinion that he has enforceable claims against the commissionee, nor in case these claims are related to complaints.

Article 17: Cancellation

In case of cancellation by the client, which is not attributable to the commissionee, all costs incurred by the commissionee related to the order and/or commission as well as the lost profit are forthwith due and payable, at a minimum of 10% of the principal sum, if necessary increased by any damage incurred by the commissionee as a result of the cancellation.

Article 18: Non-fulfilment/Termination/Dissolution/Suspension

1. The commissionee is entitled to terminate, dissolve or suspend the execution of the agreement with immediate effect, without judicial intervention, wholly or in part, without prejudicing any other rights it may have (to fulfilment and/or damages), if: - the client acts in violation of any term of the agreement between parties; - the client passes away, applies for suspension of payment or petitions for bankruptcy; - a petition in bankruptcy of the client was filed for and/or the Debt Rescheduling (Natural Persons) Act applies to him; - the client's company is stopped or wound up; - a private settlement is offered; - any assets of the client are attached; - pursuant to the provisions of the Social Security (Co-ordination) Act and/or Collection of State Taxes Act 1990 notice is given of the incapacity to make payment. In these cases every claim against the client is forthwith due and payable, without the commissionee being liable to pay damages.

2. The provisions of paragraph 1 of this Article apply *mutatis mutandis*, if the client, after he was invited thereto in writing, has not provided security deemed suitable by the commissionee within seven days.

Article 19: Force Majeure

1. Force majeure within the meaning of these terms and conditions means causes beyond the reasonable control of the commissionee, whether or not foreseeable on entering into the agreement, as a consequence of which the fulfilment cannot reasonably be required of the commissionee within reason, such as war, government measures, transport interruptions of whatever nature, strikes, lock-out or shortage of staff, quarantine, epidemics, failures of third parties that were engaged by the commissionee for the execution of the agreement, etc.

2. In case of force majeure the commissionee has the right to terminate the agreement wholly or in part, or to suspend the fulfilment of its obligations, without being liable to pay damages. The client remains liable for payment with respect to part of the agreement already executed.

3. In case of force majeure at the part of the commissionee, it will notify the client hereof as soon as possible and inform him whether fulfilment is still possible, and if so, within which period of time.

4. If fulfilment is not possible, or will not be possible within one month, both parties have the right to dissolve the agreement by notifying the other party hereof in writing, without the party of the one part being entitled to damages by the party of the other part. The client remains liable for payment with respect to the part of the agreement already executed by the commissionee.

Article 20: Liability

1. No liability shall be incurred by the commissionee in respect of damages caused by any failure in the performance of its obligations towards the client, except for any liability covered by the insurance as referred to in paragraphs 2 and 3 of this Article, plus excess/deductible. Any other claim for damages, of whatever nature, is excluded, unless in case of negligence or intention caused by the commissionee or its executive staff.

2. The commissionee is obliged to be insured a all times against liability for all damage caused by it, or by others it has engaged for executing the agreement, to the building, inventory, persons or property of the client's staff, or caused by carelessness and/or negligence. The maximum liability amounts to EUR 1,000,000 per event.

3. The client indemnifies the commissionee against any liability of third persons relating to damages of whatever nature, caused in connection with the execution of any commission, where this liability would be excluded if the commissionee could invoke the present conditions towards these third persons.

Article 21: Personnel of commissionee

1. During the term of contract between commissionee and its staff members, whether employed not, or during the term of the agreement between the client and commissionee respectively and during a period of six months after termination thereof, the client may not employ such staff members/employees of the commissionee nor in any other way, directly or indirectly, and without the knowledge of the commissionee, engage such staff members/employees for performing any duties. This prohibition also applies during a period of six months after termination of the contract between the commissionee and the intended employee.

2. If the client acts in violation of the aforementioned paragraph of this Article without the commissionee's consent, the client will forfeit a penalty of EUR 10,000 per intended employee per week or part of a week such a breach has continued or still continues respectively.

Article 22: Partial Invalidity

Where one or more provisions of the agreement with client are found not to be or not to be entirely legally valid, the other provisions shall remain fully in force. In place of any invalid provisions a suitable ruling shall apply which approaches as closely as possible the intent of parties and the economic effect intended by them in a legally effective way.

Article 23: Alteration General Conditions

In case the commissionee considers it desirable and/or necessary, it may alter these general conditions. The alteration takes effect from the moment at which the client is informed about it.

Article 24: Place of Performance, Applicable Law, Dispute Resolution

1. The place of business of the commissionee is the place where the client has to fulfil its obligations towards the commissionee.

2. All offers and agreements of the commissionee shall be exclusively governed by Dutch law.

3. In matters under the competence of the Subdistrict Division of the court, this Division shall have exclusive jurisdiction.

4. Disputes concerning a higher or indefinite value shall, at the option of the commissionee, be resolved either in conformity with the Minitrial Regulations, the Arbitration Regulations, the Expert Opinion Regulations or the Regulations for Binding Opinion Proceedings of the *Stichting Geschillenoplossing Automatisering* [Automation Dispute Resolution Foundation] (Patrijsweg 36, 2289 EX Rijswijk, sgo@inventive.nl; www.sgoa.org), as they run on the date of entering upon the agreement concerned, without prejudice to the right of the parties to take protective measures in urgent cases.