

# GENERAL TERMS AND CONDITIONS

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Version 2020

## 01 DEFINITIONS

1.1 In these terms and conditions the following terms mean:

**BRANDOUTLOUD:** BRANDOUTLOUD VOF incorporated under the laws of The Netherlands, with its registered seat at Zuidlarenstraat 57, unit 0.12, in The Hague. Contractor and the user of these general terms and conditions, his legal successor (s) and / or (legal) persons designated by the agency.

**Client:** any (legal) person or body having the legal authority to enter into the agreement or issue an order to perform work and/or deliver products; that commissions BRANDOUTLOUD to make work.

**Proposal:** A written quotation or offer from BRANDOUTLOUD

**Budget:** A written statement from BRANDOUTLOUD, whether or not prior to the conclusion of an agreement, containing an estimate, without obligation, of the costs associated with the work to be performed or the products to be delivered.

**Agreement:** all agreements between the client and BRANDOUTLOUD, including possible appendices

**Work:** all (creative) work that BRANDOUTLOUD has performed, produced and/or delivered as part of the assignment, including items, software, photos, films, texts, ideas, sketches, drawings, models, logos, names, brands, designs, concepts, colours, printing, plans, artworks, etc.

**Activities:** all that BRANDOUTLOUD designs, manufactures, delivers, undertakes, or has designed, manufactured, delivered or undertaken for the benefit of the client.

## 02 APPLICABILITY

2.1 These General Terms and Conditions apply to the exclusion of any purchase or other conditions of the client to the preparation, content and performance of all agreements between the client and BRANDOUTLOUD.

2.2 These General Terms and Conditions are included with every proposal and exclude all other terms and conditions, whether provided by parties other than BRANDOUTLOUD or third parties, unless previously agreed by BRANDOUTLOUD.

2.3. Upon signing the proposal, the order is confirmed and the client automatically accepts these General Terms and Conditions.

2.4 BRANDOUTLOUD reserves the right to alter these General Terms and Conditions at any time without prior written notice. The latest version can be found at [www.brandoutloud.org](http://www.brandoutloud.org). Altered General Terms and Conditions shall only be applicable to current work after consent by all parties concerned.

## 03 AGREEMENT

3.1 All offers are without commitment and are valid for two months. Prices quoted may be subject to change due to unforeseen changes in the work. Prices are exclusive of VAT and other government levies. The rates and offers quoted do not automatically apply to future commissions. The client warrants that the information provided to BRANDOUTLOUD by it or on its behalf and on which BRANDOUTLOUD bases the offer is correct and complete.

3.2 Commissions are confirmed in writing by the client. If the client fails to do so but consents to BRANDOUTLOUD commencing the work commissioned, the terms of the offer are deemed to have been agreed on and these General Terms and Conditions apply. Any subsequent oral agreements and stipulations are not binding on BRANDOUTLOUD until the agency has confirmed them in writing.

3.3 Alterations of the agreement or its appendices are only valid when in writing and confirmed as correct by both parties.

3.4 If the client wishes to commission identical work to a party other than BRANDOUTLOUD or has already commissioned the work to another party, he must inform BRANDOUTLOUD accordingly in writing, stating the names of those other parties.

## 04 PERFORMANCE OF THE AGREEMENT

4.1 When executing the agreement, BRANDOUTLOUD has creative and intellectual freedom to achieve certain results based on its own insights, its own methods and its own interpretations. Complaints can never be made against this.

4.2 BRANDOUTLOUD must make every effort to perform the work commissioned carefully and independently, to promote the client's interests to the best of his or her ability and to aim to achieve a result that is useful to the client. To the extent necessary BRANDOUTLOUD must keep the client informed of the progress of the work.

4.3 The client must do any and all things that are reasonably necessary or required to enable BRANDOUTLOUD to deliver punctually and properly, such as supplying (or causing the supply of) complete, sound and clear data or materials in a timely manner, providing sufficient facilitation for obtaining required documents, such as visa, media permits and customs clearance, and/or other of which BRANDOUTLOUD states or of which the client understands or should reasonably understand that they are necessary for the performance of the agreement.

4.4 Agreed deadlines and/or dates for final delivery are only valid if the client adheres exactly to the established agreements. If this is not the case, BRANDOUTLOUD's obligation to meet the deadlines lapses. In the latter case, BRANDOUTLOUD may determine to suspend work and charge any costs that this entails.

4.5 If the execution of the agreement is accelerated upon request of the client, BRANDOUTLOUD may charge the related overtime hours and other costs to the client.

4.6 Terms stated by BRANDOUTLOUD for the performance of the work commissioned are approximations only, unless the nature or content

of the agreement requires otherwise. If the stipulated term is exceeded, the client must give BRANDOUTLOUD notice of default in writing.

4.7 Unless otherwise agreed, the performance of tests, the application for permits and the assessment whether the client's instructions comply with statutory or quality standards do not fall within the scope of the work commissioned to BRANDOUTLOUD.

4.8 Prior to performance, production, reproduction or publication, each party must give each other the opportunity to check and approve the final draft, prototypes or galley proofs of the result. If BRANDOUTLOUD is to place orders with or give instructions to manufacturing companies or other third parties, whether or not in the client's name, the client must confirm his aforesaid approval in writing at BRANDOUTLOUD's request.

4.9 Any complaints must be filed with BRANDOUTLOUD in writing at the earliest possible time but no later than ten business days after completion of the work commissioned, failing which the client is deemed to have accepted the result of the work commissioned in its entirety.

## 05 ENGAGEMENT OF THIRD PARTIES

5.1 Unless otherwise agreed, instructions to third parties in the context of the performance of the work commissioned are given by or on behalf of the client. At the client's request BRANDOUTLOUD may act as an agent for the client's account and risk. The parties may agree on a fee for such services.

5.2 If BRANDOUTLOUD provides an estimate of third-party costs at the client's request, that estimate is an approximation only. If required, BRANDOUTLOUD may seek quotations from third parties on the client's behalf.

5.3 If BRANDOUTLOUD procures goods or services from third parties in the performance of the work commissioned, for BRANDOUTLOUD's own account and risk and on the basis of an express agreement, these general conditions of such supplier with regard to quality, quantity, property, warranties and liability of such goods also apply to the client.

5.5 The client may not engage any third parties without consultation with BRANDOUTLOUD if that may influence the performance of the work commissioned as agreed on with BRANDOUTLOUD. The Parties will consult, if necessary, as to which other contractors will be engaged and which work will be assigned to them.

5.6 BRANDOUTLOUD is not liable for any errors or defects of products or services of third parties engaged by or on behalf of the client, irrespective of whether they have been introduced by BRANDOUTLOUD. The client itself must hold those parties accountable.

## 06 INTELLECTUAL PROPERTY RIGHTS AND CREDITS

6.1 Unless otherwise agreed, all intellectual property rights arising from the work commissioned - including patents, trademarks, drawing or design rights and copyrights - are vested in BRANDOUTLOUD. If any of such rights can be acquired only by registration, BRANDOUTLOUD will have the sole and exclusive power to effect that application or registration.

6.2 Unless otherwise agreed, the work commissioned does not include conducting searches for the existence of rights, including patents, trademark rights, drawing or design rights, copyrights or portrait rights of third parties. The same applies to any investigation into the possibility of such forms of protection for the client.

6.3 BRANDOUTLOUD is entitled at any time to imprint his name on or in, or to remove it from, the result of the work commissioned (or publicity related thereto) or to have his name imprinted on or in, or removed from, the result of the work commissioned. Without BRANDOUTLOUD's prior authorisation the client may not publish or reproduce the work without identifying BRANDOUTLOUD by name.

6.4 Unless otherwise agreed, all designs, design sketches, drafts, advice, reports, budgets, estimates, specifications, design drawings, illustrations, photographs, prototypes, scale models, templates,

prototypes, products and partial products, films audio and video or other presentations, raw files and other materials or (electronic) data files made by BRANDOUTLOUD in the course of execution remain BRANDOUTLOUD's property, irrespective of whether they have been made available to the client or to third parties.

6.5 Upon completion of the work commissioned, neither the client nor BRANDOUTLOUD will be under any obligation to retain any of the materials and data used, unless otherwise agreed.

6.6 The client must ensure that BRANDOUTLOUD's contribution is clearly designated in any publicity with respect to the result. If it has been agreed that third parties will be involved in an amendment or elaboration of the result, the client will oblige those third parties to include a clear reference to BRANDOUTLOUD's contribution to the result in all publicity.

6.7 BRANDOUTLOUD will be entitled to an unobtrusive reference to his name in the result. The manner in which the name reference is to be made will be: BRANDOUTLOUD, [www.brandoutloud.org](http://www.brandoutloud.org), unless otherwise decided in mutual consultation.

## 07 USE AND LICENSE

7.1 Once the client has fulfilled all his obligations under the agreement with BRANDOUTLOUD, he will acquire an exclusive licence to use the work solely for purposes of publication and reproduction as such purposes were agreed when the work was commissioned. If no such specific purpose has been agreed on, the licence will be limited to that manner of use of the work on which firm intentions existed on the date when the work was commissioned. Such intentions must have been verifiably stated to BRANDOUTLOUD prior to the conclusion of the agreement.

7.2 If the result also relates to works that are subject to third-party rights, the parties will make additional agreements on how the use of those works will be regulated.

7.3 Without BRANDOUTLOUD's prior written consent, the client is not entitled to change the result of the work commissioned, or to use or reuse it in a broader or different manner than agreed, or to

allow third parties to do so. BRANDOUTLOUD may make that consent subject to conditions, including payment of a reasonable fee.

7.4 In the event of broader or different use on which no agreement was reached, including any modification, mutilation or infringement on the provisional or final result, BRANDOUTLOUD is entitled to compensation on the grounds of infringement of his/her rights of at least three times the agreed fee, or a fee that is reasonably proportional to the infringement committed, without losing any other rights.

7.5 The client will not (or no longer) be permitted to use the results made available, and any licence granted to the client in the context of the work commissioned will lapse:

- a. from the moment that the client fails to fulfil his payment or other obligations under the agreement or to do so in full, or is otherwise in default, unless the default is insignificant by reference to the overall scope of the work;
- b. if the work commissioned is terminated prematurely for the reasons whatsoever, unless the consequences are contrary to the principles of reasonableness and fairness
- c. if the client is declared bankrupt, BRANDOUTLOUD will have the right to terminate the licence granted, unless the consequences would be contrary the principles of reasonableness and fairness

7.6 BRANDOUTLOUD may use the work at his discretion for his own publicity or promotional purposes, with due observance of the client's interests.

## 08 FEES AND ADDITIONAL COSTS

8.1 BRANDOUTLOUD is entitled to a fee for the performance of the work commissioned. That fee may consist of an hourly rate, a consultancy fee, a fixed amount, whether or not related to the project sum, or any other fee agreed on between the parties.

8.2 In addition to payment of the agreed fee, BRANDOUTLOUD is entitled to reimbursement of any costs incurred by the agency in the performance

of the work commissioned, such as administrative overheads, travel and accommodation expenses, costs of prints, copies, (galley) proofs and prototypes, and costs of third parties related to advice, production, supervision, etc.

8.3 If BRANDOUTLOUD is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear information and/or materials, any change or error in instructions or briefings, or any external circumstances, such additional work is charged separately on the basis of BRANDOUTLOUD's usual fees.

8.4 If the performance of the work commissioned is delayed or interrupted due to circumstances beyond BRANDOUTLOUD's control, the costs involved, if any, are payable by the client. BRANDOUTLOUD must attempt to limit those costs to the extent possible.

8.5 If the fee to be paid is in any way subject to facts or circumstances to be evidenced by the client's accounting records, BRANDOUTLOUD will be entitled upon receiving a statement of account from the client to have the client's accounting records audited by an accountant to be selected by BRANDOUTLOUD. If the results of the accountant's audit differ more than 2% or € 100 from the client's report and statement of account, the costs of the audit will be for the client's account.

## 09 PAYMENT AND SUSPENSION

9.1 All payments must be made within 30 days of the invoice date, unless otherwise agreed in writing or stated in the invoice.

9.2 All goods delivered to the client remain BRANDOUTLOUD's property until all the amounts that the client owes BRANDOUTLOUD under the agreement concluded between the parties have been paid to BRANDOUTLOUD.

9.3 If BRANDOUTLOUD has not received payment (or payment in full) at the end of that term, the client shall be sent a reminder within 14 days after expiration of the term of payment, in which the client is given a term of 14 days to meet its obligation to pay.

9.4 If, after this last term, the client has not paid, the client shall be in default without further notice.

9.5 Should the client be in default, BRANDOUTLOUD may suspend performance of the work commissioned. The client and the client only shall be liable for damages, suffered by BRANDOUTLOUD as a result of this suspension.

9.6 The client will owe interest at the statutory rate. All costs incurred by BRANDOUTLOUD in connection with overdue payments, such as costs of litigation and judicial and extrajudicial costs, including the cost of legal assistance, bailiffs and debt collection agencies, will be for the client's account. The extrajudicial costs will be not less than 10% of the invoice amount, with a minimum of € 150.

9.7 In consultation with the client BRANDOUTLOUD may charge the agreed fee and costs as an advance, in the interim or periodically. BRANDOUTLOUD will have the right to invoice the client at monthly intervals for work performed and costs incurred in the performance of the work commissioned.

9.8 The client will pay the amounts due to BRANDOUTLOUD without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the client may have made to BRANDOUTLOUD. The client is not entitled to suspend payment of invoices for work that has already been performed.

9.9 BRANDOUTLOUD may suspend the performance of the work commissioned if BRANDOUTLOUD is forced to conclude on the grounds of a statement or act on the part of the client that payment will not be made.

## 10 TERMINATION AND DISSOLUTION

10.1 If the client gives notice of termination of an agreement, he must pay, in addition to damages, BRANDOUTLOUD's fee and the costs incurred in connection with the work performed until that date.

10.2 If BRANDOUTLOUD dissolves the agreement on the grounds of breach by the client in the performance of the agreement, the client will be required to pay, in addition to damages, BRANDOUTLOUD's fee and the costs incurred in connection with the work performed until that time. In this context any conduct by the client on the grounds of which BRANDOUTLOUD cannot reasonably be required to complete the work commissioned is also regarded as breach.

10.3 The damages referred to in the preceding paragraphs of this article include at least the costs arising from obligations undertaken by BRANDOUTLOUD in his own name with third parties for the performance of the work commissioned, as well as at least 30% of the balance of the fee that the client would owe BRANDOUTLOUD if the work commissioned were completed in full.

10.4 Both BRANDOUTLOUD and the client have the right to terminate the agreement in whole or in part with immediate effect, if the other party is declared bankrupt or is granted a suspension of payments (whether or not provisional).

10.5 In the event of termination by the client on the grounds of breach in the performance of BRANDOUTLOUD's obligations, the performance already completed and the related payment obligation will not be subject to cancellation, unless the client provides evidence that BRANDOUTLOUD is in default of that performance. Amounts that BRANDOUTLOUD has invoiced before the dissolution for work performed or delivered properly under the agreement will remain payable in full with due observance of the previous sentence and will fall due immediately upon termination.

10.6 If BRANDOUTLOUD's work consists of recurrently performing work of a similar nature, the agreement in question will be valid for an indefinite period of time, unless otherwise agreed in writing. Such an agreement may be terminated only by written notice given while observing a reasonable notice period of no less than three months.

## 11 FORCE MAJEURE

11.1 Each party shall be excused from performance of its obligations under the agreement if and to the extent that this performance is hindered or prevented as a result of force majeure ("overmacht") as meant in article 6:75 of the Dutch Civil Code.

11.2 As used in these General Terms and Conditions, "force majeure" means abnormal and unforeseeable circumstances beyond the control of the party that seeks recourse to force majeure insofar as the consequences were unavoidable despite all precautions. Force majeure includes but is not limited to serious political unrest, war, extreme weather, infectious diseases, negative travel advice or other circumstances that render the performance of the work commissioned (and/or its quality) impossible.

11.3 On the occurrence of a force majeure situation the affected party shall as soon as reasonably practicable after the event arises, notify the other party of the force majeure situation and give - if possible - a forecast of the duration of the force majeure situation. To the extent and for the period that the party is unable to comply its obligations under the agreement, those obligations will be suspended and will not be liable to the other party for any loss or damage which will be sustained by the other party.

## 12 WARRANTIES AND INDEMNITIES

12.1 BRANDOUTLOUD warrants that the result has been designed by him or her or on his or her behalf and, if the result is copyright-protected, that BRANDOUTLOUD is the author within the meaning of the Dutch Copyright Act (Auteurswet) and as the copyright owner has power of disposition of the work.

12.2 If the client uses the results of the work commissioned, it indemnifies BRANDOUTLOUD or persons engaged by BRANDOUTLOUD in the performance of the work commissioned against any third-party claims arising from the application or use of the result of the work commissioned.

12.3 The client indemnifies BRANDOUTLOUD against any claim or action relating to intellectual property rights in materials or information supplied by the client and used in the performance of the work commissioned.

## 13 LIABILITY

13.1 In the event of breach, BRANDOUTLOUD must first be given written notice of default, setting a reasonable term in which to perform his/her obligations, to correct any errors or to limit or reverse the loss.

13.2 BRANDOUTLOUD will not be liable for:

- a. indirect damage, including consequential damage, loss of profits, loss savings, mutilated or lost data or materials, or damage due to business interruption
- b. errors or defects in materials supplied by the client
- c. misunderstanding, errors or defects in the performance of the agreement if such misunderstandings or errors were caused by acts of the client, such as late delivery or nondelivery of complete, sound and clear information and/or materials;
- d. errors or defects by third parties engaged by or on behalf of the client;
- e. inaccuracies in offers made by suppliers, or prices quoted by suppliers being exceeded;
- f. errors or defects in the work or errors in the text/design/data if the client has given his approval in accordance with the provisions of Article 3.6 or has had the opportunity to perform an inspection and has declined to do so; or
- g. errors or defects in the design or errors in the text/data if the client has not had a particular model or prototype prepared or a particular test performed and the errors would have been apparent in such model, prototype or test.

13.3 BRANDOUTLOUD will be liable only for direct damage attributable to the agency. Direct damage will include only:

- a. reasonable costs to assess the cause and extent of the damage, to the extent that such assessment concerns damage within the meaning of these general conditions;
- b. any reasonable costs necessarily incurred to have BRANDOUTLOUD's defective performance conform to the agreement; and
- c. reasonable costs incurred to prevent or limit the damage, to the extent that the client demonstrates that those costs led to a limitation of the direct damage referred to in these general conditions.

BRANDOUTLOUD's liability for indirect damage, including consequential damage, loss of profits, loss savings, mutilated or lost data or materials, or damage due to business interruption is excluded.

13.4 Save in the event of intent or wilful recklessness by BRANDOUTLOUD or BRANDOUTLOUD's management - therefore except for persons under their control - BRANDOUTLOUD's liability for damage or loss arising from an agreement or any wrongful act committed against the client will be limited to the amount invoiced for the portion of the work performed, less the costs incurred by BRANDOUTLOUD in the engagement of third parties, on the understanding that that amount will not exceed € 25,000 and will in no event be higher than the benefit that the insurance company may pay to BRANDOUTLOUD.

13.5 Any and all liability will expire twelve months from the date on which the work commissioned has ended on the grounds of completion.

13.6 Where reasonably possible the client will be required to retain copies of materials and data he has supplied until the work commissioned has been completed. If the client fails to do so BRANDOUTLOUD cannot be held liable for any damage or loss that would not have occurred if such copies had existed.

## 14 OTHER TERMS

14.1 The client is not permitted to transfer or assign to third parties any of the rights under an agreement concluded with BRANDOUTLOUD, except in the event of transfer of the client's entire business or with BRANDOUTLOUD's written consent.

14.2 Both parties must keep confidential any and all confidential information, facts and circumstances that come to their knowledge in the context of the work commissioned. The same duty of confidentiality in respect of such facts and circumstances must be imposed on any third parties engaged in the performance of the work commissioned.

14.3 All agreements between BRANDOUTLOUD and the client are governed by Dutch law. The court that has the power to hear and decide any dispute between BRANDOUTLOUD and the client will be the court having jurisdiction in the district where BRANDOUTLOUD has its registered office or the court having jurisdiction pursuant to the law, at BRANDOUTLOUD's option.

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