

TERMS AND CONDITIONS

01/01/2020

GENERAL TERMS AND CONDITIONS

Article 1 Definitions

1. JMR Digital Marketing VOF, established in Amsterdam, Chamber of Commerce number 70609128, is referred to as a service provider in these general terms and conditions.
2. The counterparty of the service provider is referred to as client in these general terms and conditions.
3. Parties refers to service provider and client together.
4. The agreement means the agreement for the provision of services between the parties.

Article 2 Applicability of general terms and conditions

1. These conditions apply to all quotations, offers, activities, agreements and deliveries of services by or on behalf of the service provider.
2. It is only possible to deviate from these conditions if this has been expressly agreed in writing by the parties. The agreement always contains best efforts obligations for the service provider, not result obligations.

Article 3 Payment

1. Invoices must be paid within 30 days of the invoice date, unless the parties have made other agreements in writing about this or if a different payment term is stated on the invoice.
2. Payments are made without any recourse to suspension or setoff by transferring the amount due to the bank account number specified by the service provider.
3. If the client does not pay within the agreed term, he will be in default by operation of law, without the need for any reminder. From that moment, the service provider is entitled to suspend its obligations until the client has fulfilled its payment obligations.
4. If the client remains in default, the service provider will proceed to collection. The costs related to that collection will be borne by the client. When the client is in default, he also owes statutory (commercial) interest, extrajudicial collection costs and other damage to the service provider in addition to the principal. The collection costs are calculated on the basis of the Decree on compensation for extrajudicial collection costs.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment of the client, the claims of the service provider against the client are immediately due and payable.
6. If the client refuses to cooperate with the execution of the assignment by the service provider, he is still obliged to pay the agreed price to the service provider.

Article 4 Offers and quotations

1. The offers of the service provider are valid for a maximum of 1 month, unless the offer states a different term of acceptance. If the offer is not accepted within that set period, the offer will expire.
2. Delivery times in quotations are indicative and, if exceeded, do not entitle the client to termination or compensation, unless the parties have expressly agreed otherwise in writing.
3. Offers and quotations do not automatically apply to repeat orders. Parties must agree this explicitly and in writing.

Article 5 Prices

1. The prices stated on offers, quotations and invoices from the service provider are exclusive of VAT and any other government levies, unless explicitly stated otherwise.
2. The prices of goods are based on the cost prices known at that time. Increases in this, which could not have been foreseen by the service provider at the time of the offer or the conclusion of the agreement, may lead to price increases.
3. With regard to the provision of services, parties to the conclusion of the agreement can agree on a fixed price.

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4. If no fixed price has been agreed, the rate for the services can be determined on the basis of the hours actually spent. The rate is calculated according to the usual hourly rates of the service provider, valid for the period in which he performs the work, unless a different hourly rate has been agreed.
5. If no rate has been agreed on the basis of the hours actually spent, a target price will be agreed for the service, whereby the service provider is entitled to deviate from this by up to 10%. If the target price is more than 10% higher, the service provider must inform the client in time why a higher price is justified. In that case, the client has the right to cancel part of the assignment that exceeds the target price plus 10%.

Article 6 Price indexation

1. The prices and hourly wages agreed upon entering into the agreement are based on the price level applied at that time. The service provider has the right to adjust the fees to be charged to the client on 1 January of each year.
2. Adjusted prices, rates and hourly wages will be communicated to the client as soon as possible.

Article 7 Provision of information by the client

1. The Client makes all information relevant to the execution of the assignment available to the service provider.
2. The client is obliged to provide all information and documents that the service provider believes are necessary for the correct execution of the assignment, in a timely manner and in the desired form and in the desired manner.
3. The client guarantees the correctness, completeness and reliability of the data and documents made available to the service provider, even if these come from third parties, unless the nature of the assignment dictates otherwise.
4. The client indemnifies the service provider against any damage in any form whatsoever resulting from failure to comply with the provisions of the first paragraph of this article.
5. If and insofar as the client requests this, the service provider will return the relevant documents.
6. If the client does not, not timely or properly provide the information and documents required by the service provider and the execution of the assignment is delayed as a result, the resulting extra costs and extra fees will be charged to the client.

Article 8 Withdrawal of assignment

1. The client is free to terminate the assignment to the service provider at any time.
2. When the client withdraws the assignment, the client is obliged to pay the wages owed and the costs incurred by the service provider.

Article 9 Performance of the agreement

1. The service provider performs the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. Service provider has the right to have work performed by third parties.
3. The implementation takes place in mutual consultation and after written agreement and payment of any agreed advance.
4. It is the responsibility of the client that the service provider can start the assignment on time.

Article 10 Contract duration assignment

1. The agreement between the client and the service provider is entered into for an indefinite period of time, unless the nature of the agreement dictates otherwise or the parties have expressly agreed otherwise in writing.
2. If parties have agreed a term for the completion of certain activities within the term of the agreement, this is never a strict deadline. If this term is exceeded, the client must notify the service provider in writing.

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Article 11 Amendments to the agreement

1. If during the execution of the agreement it appears that for the proper execution of the assignment it is necessary to change or supplement the work to be performed, the parties will adjust the agreement accordingly in a timely manner and by mutual agreement.
2. If the parties agree that the agreement will be changed or supplemented, the time of completion of the execution can be influenced by this. The service provider will inform the client of this as soon as possible.
3. If the change or supplement to the agreement has financial and / or qualitative consequences, the service provider will inform the client in writing as soon as possible.
4. If the parties have agreed on a fixed fee, the service provider will indicate to what extent the change or addition to the agreement will result in this fee being exceeded.

Article 12 Force majeure

1. In addition to the provisions of Article 6:75 of the Dutch Civil Code, a shortcoming of the service provider in the fulfillment of any obligation towards the client cannot be attributed to the service provider in the event of a circumstance independent of the will of the service provider, as a result of which the fulfillment of his obligations vis-à-vis the client is wholly or partially prevented or as a result of which the fulfillment of his obligations cannot reasonably be expected from the service provider. These circumstances include non-performance by suppliers or other third parties, power failures, computer viruses, strikes, bad weather conditions and work stoppages.
2. If a situation as referred to above arises as a result of which the service provider cannot meet its obligations to the client, those obligations will be suspended as long as the service provider cannot meet its obligations. If the situation referred to in the previous sentence has lasted 30 calendar days, the parties have the right to dissolve the agreement in whole or in part in writing.
3. In the case referred to in the second paragraph of this article, the service provider is not obliged to compensate for any damage, even if the service provider enjoys any advantage as a result of the force majeure situation.

Article 13 Set-off

1. The client waives his right to set off a debt to the service provider against a claim on the service provider.

Article 14 Suspension

1. The client waives the right to suspend the fulfillment of any obligation ensuing from this agreement.

Article 15 Transfer of rights

1. Rights of either party under this agreement cannot be transferred without the prior written consent of the other party. This provision applies as a clause with property law effect as referred to in Section 3:83 (2) of the Dutch Civil Code.

Article 16 Cancellation of the claim

1. In any case, any right to compensation by the service provider lapses 12 months after the event from which liability arises directly or indirectly. This does not exclude the provisions of Article 6:89 of the Dutch Civil Code.

Article 17 Insurance

1. The client undertakes to adequately insure and keep insured delivered goods that are necessary for the execution of the underlying agreement, as well as goods from the service provider that are present at the client and that have been delivered subject to retention of title against fire, explosion and water damage, as well as theft.
2. On first request, the client will make the policy of these insurance policies available for inspection.

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Article 18 Liability for damage

1. The service provider is not liable for damage resulting from this agreement, unless the service provider has caused the damage intentionally or with gross negligence.
2. In the event that the service provider owes compensation to the client, the compensation does not exceed the amount of € 1000.
3. Any liability for damage arising from or related to the performance of an agreement is always limited to the amount paid out in the relevant case by the (professional) liability insurance (s) taken out. This amount is increased by the amount of the deductible according to the relevant policy.
4. The limitation of liability also applies if the service provider is held liable for damage that results directly or indirectly from the improper functioning of the equipment, software, data files, registers or other items used by the service provider in the performance of the assignment.
5. The liability of the service provider for damage resulting from intent or deliberate recklessness on the part of the service provider or its managerial subordinates is not excluded.

Article 19 Client liability

1. If an assignment is given by more than one person, each of them is jointly and severally liable for the amounts owed to the service provider under that assignment.
2. If an assignment is issued indirectly or immediately by a natural person on behalf of a legal person, this natural person can also be a private client. This requires that this natural person can be considered as the (co-) policymaker of the legal person. In the event of non-payment by the legal person, the natural person is therefore personally liable for the payment of the invoice, irrespective of whether it has been submitted, whether or not at the request of the client, in the name of a legal person or in the name of the client as a natural person or both of them. .

Article 20 Indemnity

1. The client indemnifies the service provider against all claims from third parties that are related to the goods and / or services supplied by the service provider.

Article 21 Obligation to complain

1. The client is obliged to immediately report complaints about the work performed to the service provider in writing. The complaint contains as detailed a description as possible of the shortcoming, so that the service provider is able to respond adequately.
2. In any case, a complaint cannot lead to the service provider being held to perform other activities than agreed.

Article 22 Retention of title, right of suspension and right of retention

1. The goods present at the client and the delivered goods and parts remain the property of the service provider until the client has paid the entire agreed price. Until then, the service provider can invoke his retention of title and take back the goods.
2. If the agreed amounts to be paid in advance are not or not paid on time, the service provider has the right to suspend the work until the agreed part has been paid. There is then a question of credit default. In that case, a late delivery cannot be invoked against the service provider.
3. The service provider is not authorized to pledge the goods falling under his retention of title or to encumber them in any other way.
4. If goods have not yet been delivered, but the agreed advance payment or price has not been paid in accordance with the agreement, the service provider has the right of retention. The item will not be delivered until the client has paid in full and in accordance with the agreement.
5. In the event of liquidation, insolvency or suspension of payment of the client, the client's obligations are immediately due and payable.

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Article 23 Intellectual property

1. Unless parties have agreed otherwise in writing, the service provider retains all intellectual absolute rights (including copyright, patent right, trademark right, drawing and design right, etc.) on all designs, drawings, writings, carriers with data or other information, quotations, images, sketches, models, models, etc.
2. The intellectual absolute rights mentioned may not be copied, shown to third parties and / or made available or used in any other way without the written permission of the service provider.
3. The client undertakes to maintain the confidentiality of the confidential information made available to him by the service provider. Confidential information is in any case understood to mean what this article relates to, as well as company data. The Client undertakes to impose a written confidentiality obligation on its staff and / or third parties involved in the implementation of this agreement, to the effect of this provision.

Article 24 Confidentiality

1. Each of the parties will keep the information it receives (in whatever form) from the other party and any other information concerning the other party that it knows or can reasonably suspect is secret, confidential or information that it can expect its dissemination may cause harm to the other party, and shall take all necessary measures to ensure that its personnel keep the said information secret.
2. The confidentiality obligation referred to in the first paragraph of this article does not apply to information:
 - a. which was already or became public at the time the recipient received this information without a breach by the receiving party of a duty of confidentiality to which he is subject;
 - b. of which the receiving party can prove that this information was already in its possession at the time of disclosure by the other party;
 - c. that the receiving party received from a third party, the third party being entitled to provide this information to the receiving party
 - d. which is made public by the receiving party on the basis of a legal obligation.
3. The confidentiality obligation described in this article applies for the duration of this agreement and for a period of three years after its termination.

Article 25 Penalty for breach of professional secrecy

1. If the client violates the article of these general terms and conditions about confidentiality, the client will forfeit an immediately payable fine for the service provider of € 5,000 for each violation and in addition an amount of € 500 for each day that violation continues. This is irrespective of whether the violation can be attributed to the client. In addition, no prior notice of default or legal procedure is required to forfeit this fine. There is also no need for any form of damage.
2. The forfeiture of the fine referred to in the first paragraph of this article does not affect the other rights of the service provider, including his right to claim damages in addition to the fine.

Article 26 Non-takeover of personnel

1. The Client does not employ employees of the service provider (or of companies that the service provider has called upon to execute this agreement and who are or have been involved in the execution of the agreement). Nor does he let them work for him directly or indirectly in any other way. This prohibition applies during the term of the agreement up to one year after its termination. There is one exception to this prohibition: parties can make other agreements with each other in good business consultation. These agreements apply insofar as they are laid down in writing.

Article 27 Dispute resolution

1. Dutch law applies to these general terms and conditions.
2. All disputes arising from these general terms and conditions will be submitted exclusively to the competent court of the Amsterdam District Court.