

1 > Agreement, offers and confirmation

- 1.1 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 the contractor Westontwerp N.V.
- 1.2 All offers are without commitment and are valid for two months. Prices quoted may be subject to change owing to unforeseen changes in the work. Prices are exclusive of VAT and other government levies. The rates and offers quoted will not automatically apply to future commissions.
- 1.3 Commissions must be confirmed by the client in writing. If the client fails to do so but consents to Westontwerp commencing the work commissioned, the terms of the offer will be deemed to have been agreed. Any subsequent oral agreements and stipulations will not be binding on Westontwerp unless he has confirmed them in writing.
- 1.4 If the client wishes to commission identical work to a party other than Westontwerp or has already commissioned the work to another party, he must inform Westontwerp accordingly in writing, stating the names of those other parties.

2 > Performance of the agreement

- 2.1 Westontwerp must make every effort to perform the work commissioned carefully and independently, to promote the client's interests to the best of his ability and to achieve a result that is useful to the client. To the extent necessary Westontwerp must keep the client advised of the progress of the work.
- 2.2 The client must do any and all things that are reasonably necessary or required to enable Westontwerp to deliver punctually and properly, in particular by supplying (or causing the supply of) complete, sound and clear data or materials in a timely manner.
- 2.3 Terms quoted by Westontwerp for completion of the design are approximations only, unless the nature or content of the agreement requires otherwise. If the stipulated term is exceeded, the client must give Westontwerp notice of default in writing.
- 2.4 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 Westontwerp.
- 2.5 Prior to production, reproduction or publication, each party must give the other the opportunity to check and approve the final draft, prototype or galley proofs of the design. If Westontwerp 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 Westontwerp's request.
- 2.6 Any complaints to Westontwerp must be filed in writing at the earliest possible time but not later than within ten business days after completion of the work commissioned, failing which the client will be deemed to have accepted the work commissioned in its entirety.

3 > Engagement of third parties

- 3.1 Unless otherwise agreed, instructions to third parties to be given in the context of executing the work commissioned will be given by or on behalf of the client. At the client's request Westontwerp may act as an agent for the client's account and risk. The parties may agree on a fee for such services.
- 3.2 If Westontwerp provides an estimate of third-party costs at the client's request, such estimate will be an approximation only. If required, Westontwerp may seek quotations from third parties on the client's behalf.
- 3.3 If Westontwerp procures goods or services from third parties in the performance of the work commissioned, for Westontwerp's own account and risk and on the basis of an express agreement, the general conditions of such supplier with regard to the quality, quantity, properties and delivery of such goods or services will also apply to the client.

4 > Intellectual and other property rights

- 4.1 Unless otherwise agreed, all intellectual property rights arising from the work commissioned – including patents, design rights and copyrights – will vest in Westontwerp. If any of such rights can be acquired only by registration, Westontwerp will have the sole and exclusive power to effect such registration.
- 4.2 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.
- 4.3 Unless the work is not suitable for that purpose, Westontwerp will at all times be entitled to imprint his name on or in or to remove it from the work (or to have his name imprinted on or in or removed from the work), and without Westontwerp's prior authorization the client may not publish or reproduce the work without identifying Westontwerp by name.
- 4.4 Unless otherwise agreed, all design drawings, illustrations, prototypes, scale models, templates, drafts, design sketches, films and other materials or (electronic) data files made by Westontwerp in the course of executing the design will remain Westontwerp's property, irrespective of whether they were made available to the client or to third parties.
- 4.5 Upon completion of the work commissioned, neither the client nor Westontwerp will have any obligation to retain any of the materials and data used.

5 > Use and licence

- 5.1 Once the client has fulfilled all his obligations under the agreement with Westontwerp, he will acquire an exclusive licence to use the design solely for purposes of publication and reproduction as such purposes were agreed when the work was commissioned. If no such specific purposes have been agreed, the licence will be limited to that manner of use of the design on which firm intentions existed on the date when the work was commissioned. Such intentions must have been verifiably stated to Westontwerp prior to the conclusion of the agreement.
- 5.2 Without prior written approval from Westontwerp, the client will not be entitled to any use of the design that is broader or different from the use agreed. In the event of broader or different use on which no agreement was reached, including any amendment, mutilation or infringement on the provisional or final design, the designer will be entitled to compensation due to infringement of his/her rights of at least three times the agreed fee, or a fee that is reasonably and fairly proportional to the infringement committed, without prejudice to the designer's right to claim reimbursement of the damage actually incurred.
- 5.3 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 early for any reason whatsoever, unless the consequences are contrary to the principles of reasonableness and fairness.
- 5.4 Westontwerp may use the design at his discretion for his own publicity or promotional purposes, with due observance of the client's interests.

6 > Fees and additional costs

- 6.1 In addition to payment of the agreed fee, Westontwerp will be entitled to reimbursement of any costs incurred by him in the performance of the work commissioned.
- 6.2 If Westontwerp is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear data and/or materials, or any change or error in instructions or briefings, such additional work will be charged separately on the basis of Westontwerp's usual fees.
- 6.3 If the fee to be paid is in any way subject to facts or circumstances to be evidenced by the client's accounting records, Westontwerp 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 Westontwerp. If the results of the accountant's audit differ more than 2% or NAF 100.- from the client's report and statement of account, the costs of the audit will be for the client's account.

7 > Payment

- 7.1 Payments must be made within 30 days of the invoice date. If Westontwerp has not received payment (or payment in full) at the end of that term, the client will be in default and will owe interest at the statutory rate. All costs incurred by Westontwerp 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 NAF 250.- excl. OB.
- 7.2 Westontwerp will have the right to invoice the client at monthly intervals for work performed and costs incurred in the performance of the work commissioned.
- 7.3 The client will pay the amounts due to Westontwerp without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the client may have made to Westontwerp. The client is not entitled to suspend payment of invoices for work that has already been performed.

8 > Notice of termination and dissolution of an agreement

- 8.1 If the client gives notice of termination of an agreement, he must pay, in addition to damages, Westontwerp's fee and the costs incurred in connection with the work performed until that date.
- 8.2 If the agreement is terminated by Westontwerp 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, Westontwerp's fee and the costs incurred in connection with the work performed until that date. In this context any conduct by the client on the grounds of which Westontwerp cannot reasonably be required to complete the work commissioned will also be regarded as breach.
- 8.3 The damages referred to in the preceding two paragraphs of this Article will comprise at least the costs arising from obligations undertaken by Westontwerp 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 Westontwerp if the work commissioned were fully completed.
- 8.4 Both Westontwerp and the client will 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). If the client is declared bankrupt, the designer will have the right to terminate the right of use granted, unless the consequences would be contrary the principles of reasonableness and fairness.
- 8.5 In the event of termination by the client on the grounds of breach in the performance of Westontwerp's obligations, the performance already completed and the related payment obligation will not be subject to cancellation, unless the client provides evidence that Westontwerp is in default of that performance. Amounts that Westontwerp 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.
- 8.6 If Westontwerp'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 agreement may be terminated only by written notice given with due observance of a reasonable notice period of not less than three months.

9 > Warranties and indemnities

- 9.1 Westontwerp warrants that the design supplied to the client has been made by him or her or on his or her behalf and, if the design is protected by copyright, that Westontwerp is the author within the meaning of the Auteurswet (Copyright Act) and as the copyright owner has the power of disposition of the work.
- 9.2 The client indemnifies Westontwerp or persons engaged by Westontwerp in the performance of the work commissioned against any third-party claim or action arising from the application or use of the design created by Westontwerp or persons referred to above.
- 9.3 The client indemnifies Westontwerp 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.

10 > Liability

- 10.1 Westontwerp will not be liable for:
 - a. errors or defects in materials supplied by the client;
 - b. misunderstandings, 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;
 - c. errors or defects by third parties engaged by or on behalf of the client;
 - d. inaccuracies in offers made by suppliers, or prices quoted by suppliers being exceeded;
 - e. errors or defects in the design or errors in the text/data if the client has given his approval in accordance with the provisions of Article 2.5 or has had the opportunity to perform an inspection and has declined to do so; or
 - f. 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.
- 10.2 Westontwerp will be liable only for direct damage attributable to him. 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 Westontwerp'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. Westontwerp's liability for all other damage, such as indirect damage, including consequential damage, loss of profits, mutilated or lost data or materials, or damage due to business interruption is hereby excluded.
- 10.3 Save in the event of intent or wilful recklessness by Westontwerp or Westontwerp's management – therefore except for persons under their control – Westontwerp'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 Westontwerp in the engagement of third parties, on the understanding that that amount will not exceed NAF 45,000 and will in no event be higher than the benefit that the insurance company may pay to Westontwerp.
- 10.4 Any and all liability will expire twelve months from the date of completion of the work commissioned.
- 10.5 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 Westontwerp cannot be held liable for any damage or loss that would not have occurred if such copies had existed.

11 > Other terms

- 11.1 The client will not be permitted to transfer or assign to third parties any of the rights under an agreement concluded with Westontwerp, save in the event and as part of a transfer of the client's entire business.
- 11.2 Both parties must keep confidential any and all 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.
- 11.3 The headings in these General Terms and Conditions have been included for easy reference only and are no part of these Terms and Conditions.
- 11.4 All agreements between Westontwerp and the client are governed by Curaçao law. The court that has the power to hear and decide any dispute between Westontwerp and the client will be the court having jurisdiction in the district where Westontwerp has his registered office or the court having jurisdiction pursuant to the law, at Westontwerp's option.
- 11.5 Westontwerp doesn't except cheques as a payment method.
- 11.6 Projects with a time span of more than three months will be invoiced after each completed phase.
- 11.7 Westontwerp will not give the original files (open files) or fonts, or images to clients, only PDF files for production.
- 11.8 Large projects or new clients will be billed 50% up front at the start of the project.
- 11.9 The license to use the design is granted for the use and edition/circulation as listed in the offer/estimate or as it was known to the designer when submitting the offer/estimate. Design may not be copied for other use than stated in the estimate or used for merchandise purposes.