



19.01.2006

General Sales and Delivery Conditions WADM Agency.



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Legal entity/legal status

1. Waal aan de Maas B.V. (hereinafter also referred to as: 'WADM') is the trade name of an advertising agency which is run in the form of a limited liability company with the objective of advising, designing and realising, or having realised, advertising, as well as arranging for, or having arranged for, advertisements and the placing, or having placed, of same.
2. The provisions contained in these General Conditions have not been exclusively drawn up for WADM, but also for the benefit of all such persons as may be engaged by WADM for the execution of any assignment, or for such persons for whose acts or omissions WADM might be legally liable.

Assignment

- 3.1 All assignments shall be accepted and executed solely by WADM in its capacity as a contractor. This also applies if the explicit or tacit intention prevails that an assignment will be carried out by a particular person. The applicability of clause 7:404 Burgerlijk Wetboek (Civil Code), which provides an arrangement for the latter case, and/or clause 7:407 subsection 2 of the BW, which vests private liability for such cases in which an assignment is granted to two or more persons, is explicitly excluded.
- 3.2 WADM is at liberty to have assignments carried out by personnel of WADM, to be assigned by the latter and under its liability, whereby third parties may be engaged as and when necessary.
- 3.3 WADM shall observe the proper duty of care of a good contractor in executing the assignments attributed to it, in executing all work and in selecting other persons (legal entities) to be engaged by it.

Principal

4. The term 'Principal' is understood to refer to any person who has commissioned WADM to design, or have designed, advertising or advertising communications, or to execute, or have executed same, or to provide advice about same for the former's sake or on their behalf, or to arrange for advertisements, or have arranged for same and/or to place same or have them placed for the former's sake or on their behalf, which assignment has been accepted by WADM in accordance with the provisions of clauses 3 and 8.

Fee

- 5.1 The Principal owes a fee for the execution of the assignment, to be increased by advances and value added tax (hereinafter also referred to as: 'the invoice'). The fee is established on the basis of the maximum expenditure of time, to be estimated beforehand, and of an estimate on that basis as mentioned hereinafter.
- 5.2 The payment obligation is indivisible and cannot be offset, unless otherwise provided for in a further agreement.
- 5.3 WADM's fee shall not be dependent on the outcome of the assignment. If an assignment is withdrawn, the effectively incurred costs based upon hours spent as set forth heretofore shall remain due, unless such costs are mitigated at the discretion of WADM.
- 5.4 Work carried out may be invoiced intermediately if the execution of the assignment spans a period of more than one month, at the discretion of WADM.

- 5.5 WADM shall be entitled at all times to demand payment from the Principal of one or more advances to be offset against the amount ultimately owed.

Quotation

6. A quotation from WADM comprises an estimate with regard to an assignment, including a brief outline of the method of operation proposed, as well as a price estimate as described in clause 11 hereinafter.

Applicability

7. All quotations from WADM are understood to fall under the applicability of these General Conditions, both in relation to the quotation and to any other agreements that may have come about on the basis of said quotation. The application of any other general conditions to which the Principal appeals is explicitly declined by WADM. In particular, any general or specific conditions of the Principal are excluded to the extent to which such conditions might relate to payment, offsetting of payment, or the right to pledge or transfer any claims made by WADM against the Principal(s).

Establishment of the agreement

- 8.1 All quotations made by WADM are without obligation unless they include a time frame for acceptance. If a quotation from WADM includes an offer without obligation which is accepted, WADM reserves the right to revoke such a quotation within two working days of receipt of acceptance.
- 8.2 The Principal may only revoke an assignment, in writing, if it has not yet been accepted by WADM and if all costs or tendering costs incurred for the purposes of judging the assignment and preparation of the acceptance are refunded or paid to WADM.

Amendments

9. Amendments of all agreements and of these General Conditions will take effect only if they have been agreed upon in writing between the parties.

Reporting

10. WADM may draw up contact reports for all appropriate contacts with the Principal. These may be sent to the Principal for approval. If the Principal has not reacted in writing within four working days of dispatch, the report in question will be considered to be correct, and both parties shall be bound by it.

Budget

- 11.1 If so required, WADM produces a budget in relation to an assignment in which the method of operation proposed is briefly indicated, including a price estimate.
- 11.2 If necessary, the budget will include a fee specification (on the basis) of the hourly rates applied by WADM plus all associated costs.
- 11.3 If certain costs or cost items cannot be assessed when drawing up the budget, for example, because these depend on the progress of the project or on price quotations from third parties, or cannot be estimated with certainty in any other way, such costs may be included on a pro memoria basis. Final invoicing of such costs will take place after completion and within reason.

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- 11.4 The budget may be adapted by WADM if, and according to the extent to which, it is based upon circumstances or facts which have subsequently changed.
- 11.5 WADM shall be entitled to exceed the estimated budget by a maximum of 10% without prior consultation.
- 11.6 The Principal shall sign WADM's budget for approval upon receipt and return the signed copy to WADM. Such a confirmation of approval cannot be conferred by means of an electronic message.
- 11.7 Budgets that have not been returned within 30 days will be considered to have been approved.
- 11.8 If work is carried out by WADM at the Principal's request before the approval procedure of the budget as outlined heretofore has been finalised, WADM shall be entitled to charge its fee and expenses, within reason, also in the event that such costs were not included in the budget or if approval of the budget was not forthcoming.

Prices

- 12.1 In the event that a budget as referred to in clause 11 is not applicable, the following shall apply.
- 12.2 All prices are exclusive of VAT and costs for carriage and postage.
- 12.3 In deviation from what is set forth in clause 9, WADM shall have the right to invoice to the Principal such price increases by third parties as have become known after the provision of the quotation.

Execution and delivery

- 13.1 WADM shall execute the assignment to the best of its ability and based upon its professional insights.
- 13.2 If the instruction provided by Principal gives adequate cause, and if several possibilities must be exploited by WADM before a final proposal can be worked out, the work involved shall be understood to form part of the agreement, based upon the eventual proposal.
- 13.3 The services and associated goods shall be delivered to WADM's place of domicile. If the services are delivered by means of electronic data management, services shall be deemed to have been delivered at the moment at which they are accessible to the receiving party (or at any rate the moment when the message has reached the mailbox of the receiving party).
- 13.4 Transfer of title of such goods as may have been delivered takes place by means of delivery and payment in full. The risk rests with the Principal as of delivery.

Time planning

- 14.1 The time planning to be provided by WADM in relation to the assignment shall be considered only to be indicative and not a final deadline(s).
- 14.2 Untimely delivery of any part shall not entitle the Principal to rescind the agreement or to claim damages, unless the Principal has specifically laid down the importance of a certain timescale in writing beforehand and this has been acknowledged by WADM.
- 14.3 Even in the case of the specific importance of a certain timescale as referred to in subsection 2 of this clause, WADM shall not be liable for the delayed delivery if the delay was caused by circumstances beyond the control of WADM.

Complaints

- 15.1 If the object of delivery exhibits visible flaws upon delivery, the Principal shall be under the obligation to immediately forward a claim in writing, within three working days at the latest.
- 15.2 The Principal shall be under the obligation to report in writing such flaws as were not visible upon delivery without delay, but in any event within three working days at the latest from the moment at which such flaws could reasonably have been established.
- 15.3 Complaints in relation to invoices must be filed with WADM in writing within eight days of the date of invoice. The payment term shall not be suspended in consequence of such a complaint.
- 15.4 WADM is not obliged to handle such complaints as are not submitted in writing and in a timely manner in keeping with the provisions of this clause.

Deferment

- 16. WADM is entitled at all times to defer the execution of the assignment in the event that the Principal fails to meet any obligation towards WADM, including the putting up of security as demanded under clause 26.5.

Several assignments for the same project

- 17. If the Principal wishes to grant the same assignment to several designers/design bureaus, they must inform WADM about this in advance. The Principal is also under the obligation to do this if they have already granted the same assignment to another designer/design bureau.

Correctness of data

- 18. WADM shall rely on the correctness and completeness of the data provided by the Principal in relation to the assignment/briefings. The Principal shall be liable for any such harmful consequences as may result from any incorrectness or incompleteness.

Production support

- 19.1 WADM shall supervise the execution of such assignments as are granted to graphic or other (production) businesses by or on behalf of the Principal.
- 19.2 Unless explicitly agreed otherwise in writing, WADM shall never be an autonomous party in such an agreement with a production business. WADM may represent the Principal vis-à-vis a production business to the extent to which it is appropriate in accordance with a reasonable execution of the assignment and has been confirmed in writing.
- 19.3 Before provision of the final approval for production, WADM shall have approved in writing the final printer's proof, revision proof or final prototype.
- 19.4 Also, in the event that work by WADM in relation to production support has not been separately included in the budget, such work shall be compensated by the Principal.

Media contracts

- 20. Following the granting of the assignment to WADM and its mediation, the Principal shall conclude the media contracts with the media bureau that ultimately takes care of publication in the media of the advertising communication in question.

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Copyright etc.

- 21.1 Copyright, the rights over any drawing or model, or any other intellectual property rights in relation to any design (be it provisional or final), working or final drawing, model or any other form of design, shall rest with WADM.
- 21.2 Unless agreed otherwise in writing, by accepting the assignment and without prejudice to the provision of clause 3, the Principal shall obtain the right solely to one-time use for the purpose and within a measure envisaged by the parties at the time of the acceptance of the assignment.
- 21.3 The Principal shall only be entitled to the use of any items for which the intellectual property rights as referred to in article 1 of this clause are vested with WADM if payment of everything owed to WADM has taken place in full. If a payment term has not yet expired, any use shall automatically be deemed to take place under the resolute condition of untimely payment and WADM shall thereafter be entitled to stop (or cause to stop) any subsequent use.
- 21.4 The Principal is not allowed to apply (or have applied) changes to a design of WADM's without prior consent in writing from WADM. WADM shall not withhold this consent on unreasonable grounds, but must be given the opportunity to carry out (or have carried out) such changes itself under conditions that are customary for WADM.

Originality

22. WADM guarantees that any work created by WADM is original and that WADM has the availability of the relevant rights in relation to its use as described in the assignment.

Mention of name

- 23.1 WADM is entitled, unless this has been precluded in writing, to sign its designs or to mention (or have mentioned) its name in the colophon or in a title role, a website that was designed by WADM or otherwise, provided the usual method is applied.
- 23.2 If WADM so requires, the work to be multiplied shall be provided, as far as applicable, with the symbol 'c' or 'd', with mention of the WADM name, as well as the year of first publication or the year and/or number of an international depot.

Promotional use

24. Without prejudice to what will be agreed concerning rights, WADM shall be entitled to use its design for the sake of its own promotion and/or publicity. WADM shall only require permission from the Principal to this effect if the latter themselves have not yet proceeded to the use of the design, which permission shall not be unreasonably withheld.

Termination of assignment

- 25.1 The Principal shall be entitled to rescind the assignment, be it solely under the following conditions:
- all costs incurred within reason by WADM (fees included) up to the moment of rescinding shall become due immediately for payment by the Principal - and -
 - the Principal shall immediately refund to WADM the profit margin with regard to the assignment to be reasonably expected, now fixed for this purpose at 25% of the total amount involved in the assignment.

- 25.2 If circumstances prevail in which WADM cannot exert influence – irrespective of whether these are dependent upon the Principal's will – and which render fulfilment of the assignment by WADM effectively impossible, WADM shall have the right to return the assignment, whereby the latter shall be entitled to the compensation as set forth in subsection 1 of this clause.
- 25.3 In the event of suspension or provisional suspension of payment, or the bankruptcy of one of the parties, the other party shall have the right to terminate this agreement immediately. The provisions of subsection 1 of this clause also apply in such a case.
- 25.4 If it becomes apparent to WADM before the time of delivery that the Principal is not creditworthy, or if the Principal does not meet, either appropriately or in a timely manner, any of their obligations towards WADM, or if the Principal has been declared bankrupt or has filed a request for bankruptcy with the court, has applied for suspension of payment or if such suspension has been granted to the latter, or if the Principal's business has been seized or the Principal has been placed under administration or curatorship, WADM shall be entitled to fully or partly rescind all its agreements with the Principal without notice of default or judicial intervention and without themselves being bound to any indemnification, all of this without prejudice to WADM's other rights in such an event.
- 25.5 WADM shall be entitled to rescind the agreement if circumstances occur with regard to the services of persons or materials of which WADM avails itself, or is accustomed to availing itself in the execution of the agreement that are of such a nature that the execution of the agreement becomes either impossible or so problematic that fulfilment of the assignment can no longer be reasonably required.

Payment

- 26.1 All payments must be received within thirty days from the date of invoice, unless other arrangements have been made in writing.
- 26.2 If and for as long as the Principal has not paid all that is due in a timely manner, the Principal shall be deemed to be in default, for which they will become liable for 'penalty interest'; this to be composed of the legal interest, to which a 2% penalty has been added.
- 26.3 All extrajudicial costs incurred by WADM with regard to the collection of outstanding monies shall be for the account of the Principal. In the event of a default, the Principal shall at any rate owe to WADM a minimal amount as established in the rates for fees of the Orde van Advocaten. If the actual costs are higher, the Principal shall also be bound to payment of the excess amount.
- 26.4 Payments shall be made on the bank account or giro account as advised by WADM or otherwise communicated.
- 26.5 WADM shall be entitled at all times, without prejudice to agreements regarding payment, to demand a security against the fulfilment of the Principal's financial obligations, including a bank guarantee, and the Principal shall be under the obligation to cooperate with this within reason.

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Electronic data traffic

- 27.1 E-mail messages shall be deemed equivalent to a declaration in writing in the context of these General Conditions and all agreements unless otherwise specified.
- 27.2 In the event of a dispute about the receipt or non-receipt of e-mail messages, substantive evidence shall be provided by the log-file data of WADM.
- 27.3 E-mail messages shall be deemed to have been received when they become accessible to the other party (or at any rate the moment at which they have reached the mailbox of the receiving party).
- 27.4 The party making use of telecommunication is responsible for the choice thereof. A party making use of telecommunication facilities shall be responsible for such damage as ensues from data deterioration during transmission or a delay in transmission, to the extent to which such damage can be recovered from the telecom operator involved.

Hand-over of materials

28. All materials and all digital information relating to the assignment which have been made available to the Principal as such shall be handed to the Principal upon the latter's first demand, but only after the Principal has fulfilled all of their obligations towards WADM. Costs for the data carrier required to that effect shall be for the account of the Principal. The same provision applies to the Principal with regard to the materials and digital information of WADM (such as working drawings, artwork etc.), unless other arrangements have been made.

Liability/limitation for damage

- 29.1 The Principal shall indemnify WADM against any liability towards third parties for any deficiency of a product made on the basis of WADM's design, unless this occurs as the result of a design deficiency which could reasonably be expected to have been evident to WADM at the time of design.
- 29.2 Under no circumstance shall WADM be liable, either towards the Principal or towards third parties, for any consequential or other damage. Without prejudice to the aforementioned, WADM shall never be liable for an indemnification in excess of the amount involved in the assignment.
- 29.3 Without prejudice to the provisions of clause 18, The Principal shall remain liable at all times and shall indemnify WADM against any damage or claim emanating from incorrect or incomplete description or mention of products or components thereof within the scope of the assignment.

Force majeure

- 30.1 Force majeure is understood to include: any circumstances beyond the direct control of WADM or that WADM could not reasonably have been expected to foresee and that temporarily or permanently impede the fulfilment of WADM's obligations on the basis of the agreement. Such circumstances include, among other things: strikes in businesses other than WADM (spontaneous strikes or political strikes), a general shortage or unavailability in the WADM business of the raw materials and other materials, matters and/or services required to achieve the performances agreed, unforeseeable stagnation with secondary suppliers or other third parties on whom WADM is dependent, as well as general transport problems, restrictive governmental measures,

mobilisation, war, danger of war, total or partial default on the part of third parties from whom materials or services are obtained or lack of raw materials, semi-manufactured products, consumables and/or energy.

- 30.2 In the event of force majeure, WADM shall be entitled to defer fulfilment of its obligations towards the Principal or, at the discretion of WADM, to rescind the agreement in whole or in part without judicial intervention and without being liable for any form of compensation.
- 30.3 If WADM has already partially met its obligations at the start of the force majeure situation, or can only meet its obligations partially, WADM is entitled to separately invoice that part executed or to be executed and the Principal shall be obliged to pay this invoice as if a separate contract were involved. This does not, however, apply if the part already executed or to be executed does not have an autonomous value.
- 30.4 If WADM subsequently carries out a part of the assignment deferred due to force majeure at a later stage, the Principal shall owe to the former the complete compensation agreed, without any discount.

Secrecy

31. WADM remains under the obligation to treat with discretion all information from the Principal that is recognised by the former as confidential.

Transfer

32. No rights and/or obligations on the strength of such agreements as have emanated from these Conditions can be transferred to third parties without prior consent in writing from the other party.

Applicable law

33. Dutch law applies to the exclusion of all other laws.

Competent court

34. Any dispute arising from any agreement between WADM and the Principal shall be submitted to the judgement of the competent court in the district in which WADM has its registered office.



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WADM