



GRAVITY

TERMS AND
CONDITIONS

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Article 1.

Definitions

1.

General Terms and Conditions: These general terms and conditions

2.

Gravity: The private company with limited liability Gravity B.V., located at Hanzeweg 35 in Barneveld, registered under number 58138668, at the Dutch Chamber of Commerce;

3.

Client: Any natural or legal person that purchases Services supplied by Gravity, or with whom Gravity enters or has entered into an Agreement.;

4.

Agreement: Any agreement for the sale and/or delivery of Products or Services by Gravity, of which the General Terms and Conditions are an integral part;

5.

Order: Every assignment to perform services and orders on behalf of the Client, including any amendment or supplement to the assignment, and all (legal) acts in preparation and implementation;

6.

Products: All matters that are subject to an Agreement including but not limited to; software, databases and websites as well as interim and / or final design, formats, etc. whether provisionally interim, partial or result of the Agreement made available to the Client by Gravity;

7.

Services: All services performed by Gravity, including but not limited to; digital production, the development of concepts, campaigns and, websites, databases, software, hosting as well as the consulting on promotion and implementation thereof, project management as well as any supplementary services;

8.

Business days: Normal work hours (8:30-17:30) and days (Monday through Friday) national holidays excluded.

10.

Error: The substantial non-compliance of the Products with the functional specifications that are expressed by Gravity in writing.

11.

Source code: a text listing of commands to be compiled or assembled into an executable computer program;

Article 2.

Applicability

1.

These General Terms and Conditions apply to all offers and Agreements under which Gravity delivers Products and/or Services of any kind to Client, even if such Products or Services are not (further) described in these General Terms and Conditions.

2.

Involvement of third parties by Gravity shall not affect the applicability of these General Terms and Conditions.

3.

Any terms or conditions of Client are explicitly rejected and excluded, and shall not form part of the Agreement. These General Terms and Conditions shall form the entire agreement between the parties, to the exclusion of all other terms or conditions.

4.

Deviations from these General Terms and Conditions are only valid if expressly agreed in writing. In the event that there is such a deviation, then the Customer will never rely on this exemption in future assignments.

5.

If one or more provisions of the General Terms and Conditions and/or an Agreement are null and void or become legally invalid, the remaining provisions of the General Terms and Conditions and/or an Agreement shall remain in full force. Parties shall enter into consultation about the provisions which are void, or which have become legally invalid, in order to agree on their replacement, provided that the purpose of the General Terms and Conditions and the said Agreement is preserved.

6.

If unclarity exists regarding the interpretation of one or more provisions of these General Terms and Conditions, then the explanation must be found "in the spirit of" these provisions.

7.

In the event of a conflict between the parties that are not regulated in these General Terms and Conditions, the conflict should be assessed "in the spirit of" these General Terms and Conditions.

8.

Gravity reserves the right to supplement and / or change these General Terms and Conditions.

9.

The latest version of the General Terms and Conditions shall apply, i.e. the version applicable at the time of concluding the Agreement.

Article 3.

Quotes & Offers

1.

All offers, quotes and other statements of Gravity are free of obligations, unless accepted by Gravity in writing.

2.

All prices and rates are exclusive of sales tax (VAT) and other taxes which are imposed by the government. Also excluded are any additional costs as part of the Agreement, including travel and subsistence, shipping and handling, unless otherwise indicated.

3.

A quote with multiple prices does not obligate Gravity to execute part of the offer against the given price.

4.

All numbers, sizes and/or other indications of the Products that are stated or agreed by Gravity are established to the best of its knowledge. Gravity can, however, not guarantee that there will be no deviations in respect thereof.

5.

If an estimate or quote made by Gravity with regard to the hours needed for an Order, no rights are given to the Client on the estimated or quoted scope.

6.

Given quotes or offers do not automatically apply for new quotes or offers.

Article 4.

Agreement

1.

An agreement is only valid insofar Gravity accepts an order of Client in writing by means of a confirmation.

Verbal promises by and arrangements with subordinates of Gravity only bind Gravity if they are confirmed in writing by Gravity.

2.

In the event Client fails to accept the offer in writing, but agrees that Gravity starts performing and / or the client cooperates in the execution of the offer, than the prices mentioned in the offer shall be deemed accepted.

3.

An order through the website of Gravity shall be deemed accepted when order form has been received and confirmed by Gravity.

4.

The agreement between Gravity and Client is entered into for a fixed term, unless the nature of the agreement dictates otherwise or if the parties expressly agree otherwise in writing.

5.

If the acceptance (whether or not to the agreed items) deviates from the offer or quote, no rights are given by Gravity. The agreement will not be concluded in accordance with these deviations, unless Gravity agrees to these deviations in writing.

6.

Gravity reserves the right to decline any Agreement without giving any reasons thereto.

Article 5.

Delivery times; Prices; implementation and modification of agreement

1.

All (delivery) times mentioned by Gravity are established to the best of its knowledge on the basis of the information known to Gravity at the time of conclusion of the Agreement and will be respected wherever possible. Gravity is not bound by (delivery) times which cannot be achieved due to circumstances arising after the conclusion of the Agreement. In case any term is threatened to be exceeded, Client and Gravity shall enter into consultation as soon as possible. Gravity shall not be deemed in breach of this Agreement for any missed delivery date caused by an act or omission of the Client, or any third party outside the control of Gravity. Gravity may revise estimated delivery dates and/or fees to take into account any delay caused by such parties.

2.

Gravity will use its best efforts to conduct the Services with due care and, where appropriate, in accordance with the written agreements. On the basis of current industry standards.

3.

Gravity reserves the right that a qualified third party performs certain tasks. The applicability of articles 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code are excluded.

4.

In the event either Gravity or a third party engaged by Gravity preforms any of its Services on Client's premises or a location designated by the Client, Client shall provide the facilities that are reasonably needed to perform the Services.

5.

In case it is agreed upon that the Services will be conducted in phases, Gravity will invoice according to the phases.

6.

In case it is agreed upon that the Services will be conducted in phases, Gravity is entitled to postpone the performance of the Services belonging to the next phase until Client has approved the results of the preceding phase in writing and paid the preceding phase.

7.

Client shall at all times provide Gravity, in good time, with all useful and necessary data and information necessary for the fulfilment of an Agreement. If Client fails to make available to Gravity data, documents, hardware, software, materials or personnel/agents that Gravity deems useful, necessary or desirable for the purpose of executing the Agreement, or if

Client fails to make these available in good time or in accordance with the Agreement, or if Client fails to meet its obligations under the Agreement or these General Terms and Conditions in any other way, Gravity shall be entitled to suspend the (further) execution of the Agreement in part or in full and shall also be entitled to charge and invoice Client for any costs in accordance with its standard rates, without prejudice to Gravity's right to exercise any other rights (such as the right to claim damages or the right to terminate the contract). Gravity shall in no event be liable for any damages caused to Client or any other third party in this regard. Client shall act faithfully and diligently to Gravity in the performance of this Agreement and any scope of work.

Client shall not unreasonably withhold, delay or condition any acceptance or consent required by Gravity during the performance of the Agreement.

If during the performance of the Agreement Gravity needs to carry out additional work or incurs damages as a result of any act or omission by the Client, in the execution of the agreement, by involved third party (ies), then the Client shall compensate these damages to Gravity.

8.

In the event the Agreement is adjusted or changed, then these changes or modifications are only valid if accepted in writing by both parties.

9.

Gravity is at any time entitled to adjust the applicable prices and rates in writing. In case the Client does not wish to agree with a possible increase in prices and rates, Client is entitled to terminate the Agreement in writing, unless price increase is required by law or this price increase occurs, counted after a period of three months from the date of conclusion of the agreement

10.

If Gravity conducts activities beyond the content or scope covered by the agreed Services and/or Products, Client will reimburse this work against the currently applicable rates of Gravity.

11. During a period of thirty (30) days after the acceptance of the Products, Gravity shall repair any Errors in the Products to the best of its ability. Data Recovery is not covered under the warranty. The warranty is void if Client, or a third party, corrects Errors or makes other changes to the Products without the written permission of Gravity.

Article 6.

Termination; dissolution

1.

If and when the agreement between Gravity and client is established, it is final and the parties are bound by the agreed arrangements.

2.

An Agreement between Gravity and Client with no duration and or no period has been agreed upon, the Agreement will be of limited duration and can be terminated by Gravity.

3.

Both parties are entitled to terminate the Agreement in writing with a motivated notice period of 2 (two) months, unless otherwise agreed in writing.

4.

If the agreement is terminated by Gravity for reasons that are not attributable to the Client, Gravity will consult with the Client, and arrange for transfer of the work to a third party. If the transfer of work results into additional costs, they will be charged to the Client. The Client shall pay such costs within the period mentioned, unless Gravity indicates otherwise. Until the time of full payment Gravity entitled to suspend its activities and / or keep the source code.

5.

If an agreement, with an agreed upon fixed price, is terminated by the Client, Gravity is entitled to charge the full amount of the agreed price to the Client

6.

If the Agreement is entered into, for a fixed term, this Agreement is tacitly renewed. Either Party has the right at any time after this extension, to terminate the contract, for which a notice period of 1 (one) month.

7.

Gravity is entitled to suspend the fulfillment of its obligations or to dissolve the agreement if Client does not fully or timely comply with the obligations under the agreement. If after the conclusion of the Agreement Gravity Client is unable to fulfill its obligations,

8.

Gravity is entitled to terminate the agreement if circumstances arise of such nature that the fulfillment of the contract is impossible or if other circumstances arise of such nature that the continuation of the Agreement is unreasonable to uphold to by Gravity, including uncomplying with the general and specific obligations as set out in these terms and conditions by the Client.

9.

Gravity is entitled to terminate the Agreement if the Client is in default, if suspension of payment is requested, has reached a debt restructuring arrangement, in a state of bankruptcy or otherwise not freely dispose of his assets.

10.

The Client agrees that in the event of a termination of the Agreement as set out in paragraphs 7, 8 and 9 of this article, Client shall immediately pay Gravity all amounts. Without prejudice to Gravity on damages and any costs.

11.

If Gravity suspends fulfillment of the obligations, Gravity retains its rights under the law and agreement.

Article 7.

Force Majeure

1.

A breach of any Agreement cannot be enforced against Gravity and/or the third party/parties engaged by Gravity if this does not arise from an attributable shortcoming of Gravity and/or the third party/parties engaged by Gravity and if Gravity and/or the third party/parties engaged by Gravity cannot be held liable for this under the law, the definition of force majeure within the meaning of Article 6.2 and the common opinion. In the event of such non-culpable non-compliance, the relevant part of the Agreement will be suspended. Gravity shall notify Client of such event as soon as possible.

2.

"Force Majeure" shall mean: any circumstance or event beyond the control and will of Gravity - regardless if this circumstance or event was provided for or was foreseeable at the time any Agreement was signed - as a result of which Gravity cannot reasonably be held to observe its obligations that are laid down in any Agreement. These circumstances or events shall include but are not limited to: war, fire, natural disasters, labour disputes, strikes, epidemics, governmental regulations and/or similar rules, embargoes, failure to comply with the

performance of any Agreement by (a) third party/parties engaged by Gravity, disruption of electricity supply, disruption, the unavailability of telecommunications services and (attempts to) unauthorized entry into and/or unauthorized use of the systems, networks and databases of Gravity and/or of which Gravity and/or the Client is (are) dependent and all work done by others than Gravity or by third parties engaged by Gravity, including agents and subcontractors.

Article 8.

Payment

1.

Client shall pay all invoices according to the applicable payment schedule within the offer.

2.

All invoices will be paid by Client in accordance with the payment conditions stated on the invoice. The payment term shall be fourteen (14) days after the invoice date, unless otherwise agreed in writing.

3.

Client is not entitled to suspension of payment or set-off on any ground whatsoever.

4.

Complaints about invoices shall be submitted to Gravity in writing (which includes: per e-mail), within eight (8) days after the date of dispatch of the invoices. The payment term shall not be suspended as a result of the complaint. In the event, it is established that Client has received a wrong invoice Gravity shall send a credit note to Client for the portion of the invoice amount that has was not correct and Gravity shall refund the overpaid amount to Client. After the aforementioned term has elapsed, Client will have forfeited her rights to lodge a complaint.

5.

In the event that Client does not timely pay the amounts, he shall be obliged to pay statutory interest plus 2.5% interest on the outstanding amount, such without any demand or notice being required.

6 .

In the event that Client fails to pay the amount due after having been served a letter of default, the claim can be handed over to a third party. In that event, in addition to the total amount due at that time, Client will be obliged to pay all judicial and extra judicial collection costs, including but not limited to attorney's fees.

7.

Any payments made by Client will first be credited against the oldest outstanding invoices, regardless of any other statement by Client.

Article 9.

Liability

1.

Gravity is solely liable for damages resulting from work carried out by Gravity, if these damages are caused by failure to deliver what can be reasonably expected by Client.

2.

Gravity is not liable for damages of any kind, caused by incorrect and / or incomplete information provided by or on behalf of the Client.

3.

Gravity is not liable for any loss of digital information, stored by the Client. This applies to all hosted and services provided by Gravity.

4.

Gravity is not liable for any damages incurred as a result of software which aims to harm, included but not limited to; computer viruses. Gravity is entitled to use antivirus software to limit damage to systems and or remove or isolate infected files.

5.

Except for damages caused by intent or deliberate recklessness by Gravity, the total liability of Gravity due to the fulfillment of the Agreement or any other reason the total aggregate liability is limited to compensation for direct loss up to the amount of the price stipulated in the agreement (exclusive of VAT).

6.

The Client shall submit a claim for compensation for damages suffered by Client within six months after discovering the damages to Gravity. Liability claim is void if Client fails to submit within six months will.

7.

Gravity is never liable for any indirect damages. Indirect damages also includes physical or mental injury, consequential loss, damage, lost profits, lost savings and business interruption.

8.

The limitations of liability included in this article also apply to third parties engaged by Gravity.

9.

The limitations of liability included in this article do not apply if the damage results from intent or gross negligence of Gravity or a third parties engaged by Gravity.

10.

Gravity can only be in default after having received a written notice, a reasonable period of time to meet its obligations or to correct any Errors or limit the damage.

11.

No warranties are given to any oral or written advice, unless agreed by the parties in writing. Gravity accepts no liability for damage resulting from an alleged negligent advice.

12.

The development of Software is a process of progressive insight that plays an important role, in addition to the input of the Client. The development process are almost always bugs and or Errors, which are not considered a mistake or disturbing. Gravity will fix these bugs free of charge within the warranty period. Gravity accepts no liability for damage resulting from one or more bugs or Errors in the developed software.

Article 10.

Indemnification

1.

Client agrees to indemnify, defend and hold Gravity, its present and future officers, directors, shareholders, employees and its affiliates harmless against any third-party claims arising out of the use of its Products and \ or Services or in connection with the Agreement, for damage which is not attributable to Gravity.

2.

In the event Gravity is addressed by such third-party directly, Client will indemnify Gravity and Client shall take the adequate measures to insure Gravity is indemnified. In the Event Client fails all costs and damages shall be passed on to Client.

Article 11.

Intellectual Property

1.

All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, software, tools, documentations, etc., in relation to the Products, Software and/or Services, including modifications thereto, delivered and/or used by Gravity are owned by Gravity or its licensor(s). No transfer or other grant of rights is given to Client.

2.

All Usage Rights in respect of the Products and (results of) Services that were made available under the Agreement are held exclusively by (or are licensed to) Gravity. Client only obtains the non-exclusive Usage Rights and authorities granted to Client under the Agreement. Client is not entitled to transfer or assign the granted Usage Rights to any other party than the designated End User stated in the Statement of Work. Client shall contractually agree with End User that End User is not allowed to grant Usage Rights to any other third parties including any Affiliates of End User.

3.

Nothing in this Agreement shall permit the Client to use, exploit, make public, reproduce, disclose, adapt any of Gravity's idea's, concepts, drafts, Products and or Services.

4.

Client is not permitted to modify, adapt or remove any designation concerning intellectual property rights that is established in the software, hardware, databases, websites and other materials.

5.

Gravity, in its sole discretion, may implement technical measures aimed at protecting the Products and/or Software, and Client is prohibited from attempting to remove or circumvent such protections. Upon Client's written request, Gravity shall furnish it a back-up copy of the Products and/or Software where any such technical protections have made it impossible for the Client to create such a copy.

6.

The transfer of intellectual property rights, as referred to in paragraph 1 of this Article, is only possible if Gravity and Client agree to this transfer in writing.

7.

If Gravity and Client agree to that the intellectual property rights, with respect to specific Client developed software, hardware, databases, websites or other materials, these shall be transferred to the Client, this shall not affect the rights of Gravity to the underlying general principles on which development, parts, ideas, designs, algorithms, documentation, works, programming languages, protocols, using standards for use without restriction.

8.

In the event the order is terminated, for any reason, before completion, Client can request Gravity to make the developed software source code available, conditions described in paragraph 9 of this Article, to further develop the software.

Article 12.

Confidentiality; privacy

1.

All information or materials provided to the other party (or by a third party on their behalf) and all information that Client and those working for it or on its behalf may hear, see, or derive in connection with Gravity's Services hereunder, which are not the subject of general public knowledge, shall be deemed to be "Confidential Information." Each party shall not, during or after this engagement, disclose or use any such Confidential Information without first obtaining the other party's written authorization. Each party shall, at the other party's request, require those engaged by a party to sign agreements, in which such persons agree not to use or disclose the Confidential Information.

2.

The obligations of a Receiving Party under this Agreement shall not apply to Confidential Information of the Disclosing Party to the extent it is required to be disclosed by any applicable law or regulation, or pursuant to a subpoena or order of a court or tribunal, agency or government authority of competent jurisdiction which is binding on the Receiving Party, provided that the Receiving Party shall immediately notify the Disclosing Party of and permit the Disclosing Party to contest, at its own cost, any such subpoena or order.

3.

Client assures complies with the applicable regulations regarding privacy and the processing of personal data, and shall indemnify Gravity for all claims of third parties against Gravity. Gravity, in turn, agrees that at all times when accessing or storing Client's data, Gravity shall have the industry standards in place to ensure unauthorized access of data is not possible.

4.

Gravity will impose its obligations under this agreement to the third parties it engages.

5.

Client agrees that during execution of this agreement and for a period of three years thereafter, Client shall refrain from hiring Gravity employees. In the event of a violation Client shall immediately pay, not open to mitigation, a penalty of 25.000, - Euro per violation.

Article 13.

Support & Maintenance

1.

Gravity offers, depending on the product, it's Clients the ability to purchase maintenance and support.

2.

Maintenance and support is based on a periodic advance and mutually agreed terms.

3.

Maintenance includes security updates and daily backups. Gravity is in no way liable for the backups including but not limited to all or partially lost backups.

4.

If maintenance in a functional improvement, Gravity is entitled to charge additional costs to compensate for this functional improvement.

5.

If the Client refuses to install new updates offered by Gravity, Gravity can claim costs for any consequences to the Client. Gravity also reserves the right to terminate this Agreement, or to modify this agreement in the event of a refusal.

6.

Support consists of providing verbal (telephone) advice on the use and operation of the products. On the basis of the advance, the Client is entitled to telephone advice with a maximum of 30 (thirty) minutes per call. If this time is exceeded, the prevailing hourly rate will be charged. Support is based on fair use and will never exceed three (3) hours per year. By exceeding this, Gravity reserves the right to charge a fee here.

7.

Gravity will only grant support for the latest updates to its products. Providing support for older versions, releases, etc. of Products is at Gravity's sole discretion.

8.

The Client is not entitled to maintenance and / or support if not agreed in writing by Gravity.

Article 14.

Development

1.

The development of the customized work takes place according to the following main phases:

- a) Definition Phase
- b) Concept phase
- c) Design Phase
- d) Development Phase
- e) Q & A (Quality & Assurance)
- f) Delivery Phase

In the event that the Client does not wish to follow the foregoing phases this will be at Client's own risk (and expense).

2.

An overage up to 10% is deemed accepted by Client without approval. Gravity does not need additional approval for overages of 10%.

3.

In case Products are delivered and tested in phases and / or in parts, the non-acceptance of a particular stage and / or part does not affect any acceptance of an earlier stage and / or another part.

4.

Notwithstanding the foregoing, if Client takes the Products into use than these Products shall be considered as fully accepted.

5.

Error (s) shall mean the failure to meet the agreed by Gravity (writing) functional specifications. In the event of a tailor-made development the nonconformity of (written) functional specifications.

6.

An Error shall be deemed an Error if it can be demonstrated, reproduced and caused by Gravity.

7.

Client is obligated to immediately report possible Errors to Gravity.

8.

The right to repair is void if Client, or a third party, corrects Errors or makes other changes to the Products without the written permission of Gravity

9.

Acceptance of the Products may not be withheld on grounds other than those relating to the specifications explicitly agreed between the parties nor due to the existence of minor Errors that do not affect the use of the Products.

10.

Gravity will make the source code available only after payment by the Client of the actual costs associated with the transfer of the source code and a lump sum equal to 25% of the price of the relevant contract (excluding VAT). An estimate of these actual costs can be given by Gravity if requested in advance.

Article 15.

Disputes and applicable law

1.

This Agreement and all disputes connected to or ensuing from these General Terms and Conditions are exclusively governed by Dutch Law. The applicability of the Vienna Sales Convention 1980 is excluded. All disputes connected to or ensuing from these General Terms and Conditions will exclusively be brought before the competent Court where Gravity has its statutory seat but always in the Netherlands

2.

The judge in the place where Gravity holds its statutory seat to will have the exclusive jurisdiction over the disputes, unless the law requires otherwise. Nevertheless, Gravity has the right to submit the dispute to the competent court according to law.

3.

The parties will appeal to the courts in the event the parties are unable to come to a mutually accepted settlement.

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