

1 Definitions

Client: every natural or legal person with whom RANDOM enters into an agreement, or enters into negotiations regarding the realization thereof, or to whom RANDOM addresses a fee quote.

RANDOM: RANDOM STUDIO B.V., chamber of commerce [52826066] :

2 General terms & conditions

These general terms & conditions are applicable to all fee quotes and agreements, deliveries and services between Client and RANDOM, unless otherwise agreed upon – confirmed by RANDOM in writing.

2.2 This is the English translation of RANDOM's terms & conditions ('Algemene voorwaarden'). When any discrepancy between the Dutch and English versions of the terms & conditions occurs, the Dutch text will always be leading.

3 Works

3.1 Works must be confirmed by Client in writing. When RANDOM has not received a confirmation but Client nevertheless agrees to start the work, the contents of RANDOM's fee quote to Client will be deemed as agreed upon.

3.2 Commissions by Client to RANDOM are irrevocable.

3.3 Changes to the works must be made known to RANDOM by Client timely and in writing. Changes will take effect only when they are accepted by RANDOM. When the change is made known other than in writing, the risk of the performance of the requested change(s) lies with the Client.

4 Fee quotes

- 4.1 Upon request, RANDOM will provide Client with a detailed fee quote of the work involved with an work. All prices are excluding VAT.
- 4.2 Fee quotes are valid for 14 days. Fees may change due to unforeseen changes in the work. RANDOM will inform Client of such changes as soon as possible. Overrun of the original fee quote of up to 15% on works up to 50.000 EUR (excl. VAT) and up to 10% on works over 10.000 EUR (excl. VAT) are deemed accepted by Client and will not have to be reported by RANDOM beforehand.
- 4.3 When RANDOM – upon request by Client – draws up a budget for costs of third parties, this budget will be indicative – never final.

5 Delivery times

- 5.1 Any term for fulfilling the assignment provided by RANDOM will be indicative, unless otherwise agreed upon between parties in writing. RANDOM is, even when a definitive term is agreed upon, in default only when Client has provided RANDOM with a written notice of default, and RANDOM has failed to perform within the reasonable term set in the notice of default.

6 Invoicing

- 6.1 Unless otherwise agreed upon in writing, RANDOM will calculate invoices according to the following.
- 6.2 RANDOM will be compensated for works performed by her employees based on the hours worked by those employees. RANDOM employees will bill hours based on actual time worked, calculated based on current hourly rates. Hours will be assigned to assignments and invoiced simultaneously with production orders, insofar as possible. RANDOM retains the right to change hour-rates. Current hour-rates are listed in the fee quote.

- 6.3 When RANDOM performs extra work due to changes or additions to the assignment, due to late, incorrect or incomplete delivery of materials or data by Client, due to the recovery of the design or the result of improper use, or due to the (upon request or out of necessity) support of Client's employees or suppliers, this additional work, regardless of any prices agreed upon, be reimbursed according to RANDOM's usual hourly rates.
- 6.4 In case of works with production costs exceeding 20.000 EUR, RANDOM will invoice Client for at least 50% of the budget as an advance – after acceptance of the work by Client. Client shall pay this advance within 14 days of the invoice date.

7 Payments

- 7.1 Payments must be made within 30 days of the date of invoice. When no payment (in full) has been made within this timeframe, Client is in default and owes an interest equal to legal interest. All costs incurred by RANDOM, such as (but not limited to), legal fees, legal and non-legal expenses, including the costs of legal representation, bailiffs and collection agencies, made with regard to late payments, will be at the cost of Client. Non-legal expenses will represent at least 10% of the invoiced amount with a minimum of 150 EUR.
- 7.2 The Client will make the outstanding payments to RANDOM without discount or compensation, notwithstanding deduction with the refundable deposits with regards to the agreement.
- 7.3 When the Client defaults on his payment obligations or is otherwise in default, Client is not allowed (any longer) to use the materials that have been made available and any license granted following from the agreement will cease, unless this is not justified given the size of the fault in light of the entire assignment.

8 License / Use

- 8.1 When the Client fully complies with his obligations from the agreement with RANDOM, the Client will be granted an exclusive license to use the result of RANDOM's work insofar as this use regards the right to publish and copy the work according to the agreed upon purpose of the work. When no terms have been agreed upon regarding the use of the work, the grant of license will remain limited to the firm intentions regarding the use as they existed at the time of the granting of the work. These intentions must have been made known to RANDOM before entering into the agreement. In the agreement, further arrangements can be laid down regarding the duration of the license.
- 8.2 Insofar as use has been made of work by third parties containing (intellectual) property rights or other rights of third parties for part(s) of the [results of] the work, and that part is inextricable from the rest of the work, RANDOM may grant license rights for a limited amount of time. The Client is not licensed to any further or other use of the commissioned work than that use for which license has been granted, notwithstanding written extension of the duration or scope of use of the licensed use granted by RANDOM.
- 8.3 Unless otherwise agreed upon, the Client is not allowed to make nor have changes made to the preliminary or definitive design by RANDOM without RANDOM's permission in writing.
- 8.4 RANDOM has the right, taking into account the interests of the Client, to use the result of the works/design for its own publicity and promotion.

9 Intellectual property rights

- 9.1 Unless otherwise agreed upon in writing, all rights of intellectual property resulting from the work – including patent rights, design rights and copyrights – insofar as such a right can only be obtained through registration or deposit, only RANDOM will be authorized to such registration or deposit.
- 9.2 Unless otherwise agreed upon in writing, all works created by RANDOM in the execution of the work – such as illustrations, prototypes, designs, films and other materials or (electronic) files – will remain property of RANDOM, regardless of whether these have been delivered to the Client or third parties.

10 Guarantees / Indemnifications

- 10.1 The Client guarantees that the contents of the work(s) resulting from the work is correct when and insofar as the contents have been approved by the Client. The Client indemnifies RANDOM against all claims of third parties with regard to such content.
- 10.2 The Client indemnifies RANDOM against for claims with regard to rights of intellectual property on the materials or data provided by Client, that have been used in the performance of the work.
- 10.3 the Client indemnifies RANDOM or persons brought in by RANDOM for the completion of the work, against all claims resulting from the application or use of the result(s) of the work.
- 10.4 RANDOM guarantees that the result(s) of the work are designed by or on behalf of RANDOM and that when any intellectual property right is vested in the design, RANDOM will be deemed 'maker' as referred to in the Copyright Act (Auteurswet) and can have the work at its disposal as copyright owner. Insofar as RANDOM uses materials that are not supplied by the Client during the completion of the work, RANDOM guarantees either that no (intellectual property) rights or other rights of third parties vest therein or that RANDOM has gained the necessary permission for the use of the materials with regard to the work as agreed upon with the Client.

11 Liability

- 11.1 RANDOM can not be held liable for the following:
 - a. faults in the material(s) provided by the Client.
 - b. Mistakes or faults with regard to the execution of the agreement when the cause lies in the behaviors of the Client, such as the untimely or non-delivery of complete, correct and clear data/materials.
 - c. Faults of third parties brought in by the Client.
 - d. Flaws in fee quotes of suppliers or exceeding of suppliers' fee quote.
 - e. faults in the design or the text/data, when the Client has given his approval, or has been given the opportunity to check the design or the text/data and has declined this opportunity.

f. Faults in the design or text/data, when the Client has foregone the production or execution of a certain model, prototype or test, when such a model, prototype or test would have revealed such faults.

11.2 Subject to RANDOM's intent or gross negligence, RANDOM's liability for damages on account of execution of the agreement is limited to the invoiced amount relating to the []works delivered pertaining to the agreement, reduced by the costs made by RANDOM bringing in third parties.

11.3 Notwithstanding RANDOM's intent or gross negligence in the selection of brought in third parties, liability for work commissioned by RANDOM to third parties – on behalf of Client – is limited to the amounts RANDOM is able to recover from these third parties. RANDOM will do everything necessary, and reasonably offer Client all necessary assistance to gain the highest possible damages from the involved third party.

11.4 Any liability expires with the lapse of one year starting from the day of completion of the assignment.

12 Termination

12.1 When the Client terminates the agreement, for any reason whatsoever, the Client shall pay damages, as well as RANDOM's fee and costs, including, but not limited to, the costs paid by RANDOM to third parties stemming from the dissolution and/or the premature termination of the work.

12.2 When RANDOM terminates the agreement for breach of contract by the Client, the Client shall pay damages, as well as RANDOM's fee and any and all costs made pertaining to the works (already) performed. Any behaviors by the Client on the basis whereof RANDOM can no longer be expected to finalize the works, will in this respect be deemed an attributable default.

12.3 The damages mentioned in the previous articles will at least include the costs of the agreements entered into by RANDOM in its own name for the fulfillment of the work the agreements with third parties, as well as 15% of the remaining part of the fee that the Client would owe when the work would have been complete.

- 12.4 In case of a bankruptcy or suspension of payment of the other party, both RANDOM and the Client will be entitled to immediately dissolve the agreement fully or partially.
- 12.5 When the work, for whatever reason, is terminated prematurely, any license granted to Client pertaining to the work to use the designs at his disposal expires immediately.
- 12.6 All illustrations, prototypes, designs, design sketches, films and other materials or (electronic) files remaining with RANDOM at the end of the work, will be returned to Client at first notice, free of charge, when all amounts owed to RANDOM, on whichever basis, have been paid.

13 Applicable law

- 13.1 The Agreement between RANDOM and Client is governed by Dutch law.
- 13.2 Disputes between RANDOM and Client will be submitted to the competent court of Amsterdam.