General Terms & Conditions Tele-Sales Direct B.V.

1. Definitions

1.1 In these general terms and conditions, the following words will have the following meanings:

Agreement: any agreement whereby Contractor supplies goods and/or rights, including rights of use, and/or provides services to Client;
Client: any natural person exercising a profession or business or a legal entity who enters into or has entered into an agreement with Contractor;
Contractor: Tele-Sales Direct B.V., having its registered office and place of business in (5222 BP) 's-Hertogenbosch on the address Graaf van Solmsweg 52 (Dutch Chamber of Commerce number 17237068);
GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;
Parties: Contractor and Client together.

1.2 Terms in these general terms and conditions refer to Dutch legal concepts only (as in some cases referred to in the Dutch language in italics) and shall be interpreted accordingly. The use of these or similar terms in any other jurisdiction shall be disregarded.

2. Applicability

2.1 These general terms and conditions apply to all offers, activities, quotations, agreements and any other legal relationship and their execution between Contractor and Client.
2.2 These general terms and conditions also apply to all agreements with Contractor of which the execution requires the involvement of third parties.
2.3 This version of the general terms and conditions replaces earlier versions of the general terms and conditions used by Contractor.
2.4 Any deviations from these general terms and conditions and/or the Agreement are only valid if they have been explicitly agreed upon by Contractor and Client in writing or electronically.
2.5 Contractor is at all times entitled to amend or supplement these general terms and conditions unilaterally. In that case Contractor shall timely inform Client of the amendments or additions.
2.6 Parties explicitly reject the applicability of any general terms and conditions of Client.
2.7 If the general terms and conditions have once applied to a legal relationship between Contractor and Client, Client is deemed to have agreed in advance to the applicability of the general terms and conditions to agreements concluded and to be concluded thereafter, including amendments and additions to the general terms and conditions.
2.8 If one or more provisions of these general terms and conditions are null and void or annulled, the remaining provisions of these general terms and conditions shall remain in full force and effect. Contractor shall then adopt new provision(s) to replace the void or voided provision(s), taking into account as much as possible the purpose and purport of the original provision(s).

3. Offers and price

3.1 All offers made by Contractor are without obligation. Contractor reserves the right to withdraw all offers both before and after acceptance by Client, without giving reasons.
3.2 Contractor is not bound by verbal and/or written commitments by its board or its employees, unless Contractor has confirmed these commitment(s) in writing. Any subsequent additional agreements or amendments made between the Parties shall bind Contractor only if confirmed in writing by Contractor.
3.4 All prices are exclusive of turnover tax and other government levies or any additional costs, unless stated otherwise in writing in the offer or (order) confirmation (*opdrachtbevestiging*).
3.5 If the assignment exceeds a duration of three months, Contractor is entitled to pass on any cost increases (if any) to Client after that period, in particular wage, shipping and telecommunication costs. If the Parties are unclear as to the commencement of the assignment, the commencement date of the assignment shall be deemed to be the date of the (order) confirmation.
3.6 If instructions from Client result in changes to the (execution of the) original assignment, Contractor is entitled to charge Client additional costs.
3.7 If Client requests the assignment to be executed faster or outside normal working hours (i.e. before 9 a.m. or after 5 p.m.), Contractor is entitled to charge Client for additional costs.

4. Conclusion of an Agreement

4.1 The Agreement is concluded by sending the (order) confirmation by Contractor to Client and acceptance by Client, or - if this is earlier – at the time Contractor has actually started executing the Agreement and this was or should have been known to Client.

4.2 The content of the Agreement is laid down in the (order) confirmation. It is established between the Parties that the (order) confirmation correctly and fully reflects the content of the Agreement, unless Client sends Contractor a written notice to the contrary within ten (10) days after the date of the (order) confirmation. After expiry of the aforementioned period and barring notification to the contrary as referred to in this clause, the Parties shall be bound by the Agreement as laid down in the (order) confirmation.

5. Execution of the assignment

5.1 Contractor shall execute the assignment in accordance with the Agreement, unless instructed otherwise.

5.2 Work and services are performed by Contractor on the basis of an obligation of effort (*inspanningsverplichting*). Contractor will never be liable for the result.

5.3 An execution period included in the (order) confirmation is not a fixed (final) term for fulfilment of the assignment. Client cannot derive any rights from that term.

5.4 If and to the extent required for a proper execution of the Agreement, Contractor is entitled to have certain work performed by third parties.

5.5 With regard to contact with third parties of any nature or content whatsoever, Contractor only undertakes to make a certain effort. Contractor is never liable for the result.

5.6 Client indemnifies Contractor against any claims from third parties who suffer damages in connection with the execution of the Agreement, the cause of which can be attributed to others than Contractor.

6. Suspension or dissolution

6.1 Contractor has the right to suspend (*opschorten*) the fulfillment of its obligations under the Agreement or - at its discretion - to dissolve (*ontbinden)* the Agreement, in case:

a. Client fails to properly fulfil his obligations under the Agreement (including timely payment) and/or these general terms and conditions (in a timely manner);
b. Contractor becomes aware of circumstances that give him good reason to fear that Client will not properly fulfil his obligations under the Agreement and/or these general terms and conditions (in time);
c. of an (application for) bankruptcy, suspension of payments or an arrangement with creditors outside bankruptcy with regard to Client;
d. Client proceeds to liquidate its business;
e. Client is placed under guardianship or dies;
f. Client is dissolved; and/or
g. of seizure in respect of Client or Client can no longer freely or fully dispose of its assets in any other way.

6.2 In the event of dissolution of the Agreement based on a circumstance referred to in paragraph 1 of this clause, Client shall be liable for any damage suffered by Contractor, including loss of profit and costs of notice of default, unless this would be unacceptable according to standards of reasonableness and fairness in the given circumstances.

7. End of the assignment

7.1 Upon completion of the activities described in the Agreement, the assignment is terminated by completion.

7.2 Any (possible) secondment agreement shall terminate by operation of law if the period as agreed in the Agreement has expired.

7.3 If Parties have agreed on reimbursement on the basis of subsequent calculation, the assignment is terminated after approval of the final invoice by Client. The final invoice has been approved by Client if he has not objected to it within seven (7) days after receipt thereof.

7.4 Contractor is authorized at all times to (prematurely) terminate the assignment, subject to a notice period of ten (10) working days.

7.5 Client is not authorized to (prematurely) terminate the assignment.

8. Payment

8.1 Unless otherwise agreed in writing, the term of payment is fourteen (14) days from the invoice date.

8.2 Client is not entitled to deduct any payment to be made by him because of a counterclaim he has filed, to suspend his payment obligation or to set off or compensate any payment obligation against any counterclaim Client may have against Contractor.

8.3 After expiry of the payment term referred to in clause 8.1 Client is in default by operation of law. Client shall then owe twelve percent (12%) interest per year over the outstanding amount.

8.4 After expiry of the payment term, as referred to in clause 8.1, Contractor has the right to take extrajudicial collection measures without further (written) notice of default. Contractor has the right to recover the costs involved in those measures from Client. The extrajudicial costs are set at fifteen percent (15%) of the amount due, with a minimum of € 90.00, on the understanding that Contractor is always entitled to claim the actual costs incurred.

8.5 After expiry of the payment term Contractor is entitled to take legal measures without further (written) notice of default or notification. Contractor is entitled to recover the costs involved in these measures from Client in full, i.e. in deviation of any fixed procedural cost reimbursement scheme.

8.6 Complaints or objections about the quality of the services provided by Contractor or any other shortcoming of Contractor should be made known within seven (7) days after the results or outcomes of the assignment have been shared by Contractor with Client, or at the latest seven (7) days after an invoice has been received. Complaints outside of the complaint period as described above will not be considered, whereby it applies that Client's claims in this regard have lapsed. If the complaint period cannot be determined on the basis of the foregoing, a complaint period of seven (7) days shall apply after any shortcoming is discovered or reasonably should have been discovered by Client.

8.7 If a circumstance as mentioned in clause 6.1 occurs, all claims Contractor has against Client shall become immediately due and payable.

9. Retention of title and revocation

9.1 All items delivered by Contractor, including results of research, designs, sketches, drawings, films, software, (electronic) files, (log) books, components, etc., remain Contractor’s property until Client has fulfilled all obligations from all Agreements concluded with Contractor. Until all aforementioned obligations have been fulfilled by Client, Contractor may invoke his retention of title and repossess the items. Costs incurred during revocation (taking back) of these properties will be recovered from Client.

9.2 In case Contractor wishes to exercise his property rights referred to in this clause, Client hereby gives unconditional and irrevocable permission to Contractor to enter all those places where Contractor's property is located and to recover these properties (or have them recovered).

10. Imputation and setoff

10.1 Payments made by Client first serve to settle all interest and costs owed, as referred to in clauses 8.3 through 8.5, and then due and payable invoices that have been outstanding the longest, even if Client explicitly states at the time of payment that the payment pertains to a later or different invoice.

10.2 Client is not allowed to setoff of any claim which it may have on Contractor.

10.3 Client is not allowed to encumber or dispose of any claim which Client may have on Contractor, without Contractor's prior written consent.

11. Penalty

11.1 In the event of any failure to comply with any obligation Client has towards Contractor, Client forfeits, without further notice or notice of default, an immediately payable penalty not subject to mitigation equal to twenty percent (20%) of the monetary value of the obligation or the amounts invoiced or to be invoiced, without prejudice to Contractor's right to demand fulfilment of the obligation and/or compensation from Client for damages suffered and/or still to be suffered.

12. Liability

12.1 Should Contractor be liable, such liability shall be limited to what has been regulated in this clause.

12.2 Contractor's total liability on account of an attributable failure to comply with the Agreement or on any legal ground whatsoever, explicitly including any failure to comply with a guarantee obligation agreed upon with Client, shall be limited to compensation of only direct damage up to a maximum of the amount of the price stipulated for that Agreement (exclusive of VAT). If the Agreement is primarily a continuing performance contract (*duurovereenkomst*) with a term of more than one year, the price stipulated for that Agreement will be set at the total of the fees (excluding VAT) stipulated for one year.

12.3 Contractor's liability is excluded, on any legal ground whatsoever, insofar as the amount of damages exceeds the cover provided by Contractor's professional liability insurance.

12.4 Contractor is not obliged to fulfil any obligation, including any legal and/or agreed guarantee obligation, if it is prevented from doing so as a result of force majeure (within the meaning set out in clause 13).

12.5 A condition for the existence of any right to compensation is always that Client reports the damage to Contractor in writing as soon as possible after its occurrence, but no later than fourteen (14) days after discovery. Any right to compensation lapses in case of untimely notification. Any claim for compensation against Contractor lapses by the mere expiry of six (6) months after the occurrence of the loss, unless Client has instituted legal action for compensation before the expiry of that term.

13. Force majeure

13.1 Contractor is not obliged to comply with any obligation in the event of force majeure. In these general terms and conditions, force majeure is defined, in addition to its definition in law and jurisprudence, as all external causes or circumstances beyond Contractor's control, but as a result of which Contractor is prevented from fulfilling his obligations, including but not limited to: (civil) war, danger of war, terrorism, riots, a pandemic or epidemic, fire, water damage, flooding, landslide, weather conditions, strikes, sit-down strikes, lockouts, import and export restrictions, government measures, electricity failures, internet, network or telecommunication facility failures, general transport problems, all this both in Contractor's company and with third parties from whom Contractor obtains the required materials, products, raw materials or services in full or in part.

13.2 In these general terms and conditions, force majeure is also understood to mean the failure to properly fulfil the obligations by suppliers, which are prescribed by Client to Contractor.

13.3 In the event of force majeure Contractor is entitled, at its own discretion, to suspend execution of the assignment until he is able to execute it as stipulated, or to dissolve the Agreement without judicial intervention, by informing Client of this in writing and without Contractor being obliged to pay any compensation, unless this would be unacceptable according to standards of reasonableness and fairness in the given circumstances.

13.3 As soon as it is permanently impossible for Contractor to meet his obligations due to the existence of a force majeure situation, or as long as the force majeure situation persists or will persist for more than eight (8) weeks, each Party is entitled to dissolve the Agreement, without Contractor being liable for compensation.

13.4 In so far as Contractor has already partially fulfilled his obligations under the Agreement at the time of the occurrence of force majeure or will be able to partially fulfil them, Contractor is entitled to invoice the part already fulfilled or to be fulfilled, separately. Client is obliged to pay this invoice.

14. Confidentiality

14.1 Parties are obliged to keep confidential all confidential information that they have obtained from each other or from other sources in the context of the Agreement. Information is considered confidential if this has been communicated by the other Party or results from the nature of the information.

15. Intellectual property

15.1 Without prejudice to the other provisions of these general terms and conditions, Contractor reserves the rights and powers to which Contractor is entitled under the Copyright Act.

15.2 All documents provided by Contractor, such as reports, advice, offers, agreements, designs, sketches, drawings, software, etc., are exclusively intended to be used by Client and may not be reproduced, disclosed, or brought to the notice of third parties by him without Contractor's prior written consent, unless the nature of the documents provided dictates otherwise.

15.3 Documents, files and databases created or compiled by Contractor during the execution of the assignment remain Contractor's property until Client has fulfilled all his obligations towards Contractor.

15.4 Contractor reserves the right to use the knowledge gained by executing the assignment for other purposes, insofar as no confidential information is brought to the attention of third parties.

16. Personal data

16.1 In case personal data are processed by Client or Contractor, the following shall apply. Contractor is a processor within the meaning of the GDPR. Client is a processor within the meaning of the GDPR.

16.2 Contractor will ensure an appropriate level of security, given the risks involved in processing personal data. However, this security is limited to systems or infrastructure under Contractor's control and in no way releases Client from its obligations under the GDPR.

16.3 If Client has to change, remove or transfer data on the basis of a legal obligation, Contractor will cooperate, subject to compensation by Client of the reasonable costs to be incurred by Contractor.

17. Disputes and governing law

17.1 The legal relationship(s) between Contractor and Client is/are governed by Dutch law.

17.2 Any disputes arising from legal relationship(s) between Contractor and Client shall be submitted exclusively to the District Court Oost-Brabant, location ‘s-Hertogenbosch.