

PASSAAT | General Terms and Conditions

GENERAL TERMS AND CONDITIONS OF PASSAAT GRAPHIC & WEB DESIGN INC. VERSION 1.2. JUNE 2012

1. Agreement, offer and confirmation

1.1 Applicability of General Terms and Conditions

These General Terms and Conditions shall apply to the exclusion of any purchase or other conditions of the client to the preparation, content and the performance of all agreements between the client and the contractor.

1.2 Offers

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 Written confirmation

Commissions must be confirmed by the client in writing. If the client fails to do so, but consents to the contractor commencing the work commissioned, the terms of the offer will be deemed to have been agreed. Any subsequent oral agreements and stipulations shall not be binding on the contractor unless he has confirmed them in writing.

1.4 Several contractors

If the client wishes to commission identical work to a party other than the contractor or has already commissioned the work to another party, he must inform the contractor accordingly in writing, stating the names of those other parties.

2. Performance of the agreement

2.1 Execution of work commissioned

The contractor 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 the contractor shall keep the client advised of the progress of the work.

2.2 Supply of data

The client must do any and all things that are reasonably necessary or required to enable the contractor 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 the contractor 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 the contractor notice of default in writing.

2.4 Tests, permits and statutory standards

Unless otherwise agreed, the performance of tests, the application for permits and the assessment whether the client's instructions comply with statutory of quality standards do not fall within the scope of the work commissioned to the contractor.

2.5 Publication and reproduction

Prior to production, reproduction of publication, each party must give the other the opportunity to check and approve the final draft, prototype or galley proofs of the design. If the contractor 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 afore said approval in writing at the contractor's request.

2.6 Complaints

Any complaints to the contractor 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.

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3. Engagement of third parties

3.1 Use of other suppliers

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 the contractor may act as agent at the client's account and risk. The parties may agree on a fee for such services.

3.2 Third-party quotations

If the contractor provides an estimate of third-party costs at the client's request, such estimate will be an approximation only. If required, the contractor may seek quotations from third parties on the client's behalf.

3.3 Third-party general conditions

If the contractor procures goods or services from third parties in the performance of the work commissioned, for the contractor'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 Copyright and industrial property

Unless otherwise agreed, all intellectual property rights arising from the work commissioned – including patents, design rights and copyrights – will vest in the contractor. If any of such rights can be acquired only by registration, the contractor will have the sole and exclusive power to effect such registration.

4.2 Search for the existence of rights

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 Reference to contractor's name

Unless the work is not suitable for that purpose, the contractor 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 the contractor's prior authorization the client may not publish or reproduce the work without identifying the contractor by name.

4.4 Property vested in contractor

Unless otherwise agreed, all design drawings, illustrations, prototypes, scale models, item plates, drafts, design sketches, films and other materials or (electronic) data files made by the contractor in the course of executing the design will remain the contractor's property, irrespective of whether they were made available to the client or to third parties.

4.5 Retention

Upon completion of the work commissioned, neither the client nor the contractor will have any obligation to retain any of the materials and data used.

5. Use and licence

5.1 Use

Once the client has fulfilled all his obligations under the agreement with the contractor 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 the contractor prior to the conclusion of the agreement.

5.2 Broader use

Without prior written approval from the contractor, 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.

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5.3 Use ban

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 Own publicity

The contractor 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 Fees and additional costs

In addition to payment of the agreed fee, the contractor will be entitled to reimbursement of any costs incurred by him in the performance of the work commissioned.

6.2 Fee for additional work

If the contractor 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 the contractor's usual fees.

7. Payment

7.1 Payment obligation

Payments must be made within 20 days of the invoice date. If the contractor 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 the contractor 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 350,00 excl. VAT.

7.2 Periodic payment

The contractor 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 No reduction or set-off

The client will pay the amounts due to the contractor without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the client may have made to the contractor. 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 Termination by the client

If the client gives notices of termination of an agreement, he must pay, in addition to damages, the contractor's fee and the costs incurred in connection with the work performed until that date.

8.2 Termination by the contractor

If the agreement is terminated by the contractor 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, the contractor'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 the contractor cannot reasonably be required to complete the work commissioned will also be regarded as breach.

8.3 Damages

The damages referred to in the preceding two paragraphs of this Article will comprise at least the costs arising from obligations undertaken by the contractor 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 the contractor if the work commissioned were fully completed.

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8.4 Bankruptcy

Both the contractor 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 to the principles of reasonableness and fairness.

8.5 Breach in the performance

In the event of termination by the client on the grounds of breach in the performance of the contractor's obligations, the performance already completed and the related payment obligation will not be subject to cancellation, unless the client provides evidence that the contractor is in default of that performance. Amounts that the contractor 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 Duration contracts

If the contractor'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 Copyright owner

The contractor 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 the contractor is the author within the meaning of the Auteurswet (Dutch Copyright Act) and as the copyright owner has the power of disposition of the work.

9.2 Indemnification against claims

The client indemnifies the contractor or persons engaged by the contractor 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 the contractor or persons referred to above.

9.3 Supplied materials or information

The client indemnifies the contractor 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 Liability

The contractor will not be liable for:

- a. errors of 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 of 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 Direct damage

The contractor 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 the contractor'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.

The contractor'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.

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10.3 Limitation of liability

Save in the event of intent or willful recklessness by the contractor or the contractor's management – therefore except for persons under their control – the contractor'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 the contractor in the engagement of third parties, on the understanding that that amount will not exceed Naf 10.000,-- and will in no event be higher than the benefit that the insurance company may pay to the contractor.

10.4 Expiration of liability

Any and all liability will expire twelve months from the date of completion of the work commissioned.

10.5 Copies of materials

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 the contractor cannot be held liable for any damage or loss that would not have occurred if such copies had existed.

11. Other terms

11.1 Transfer to third parties

The client will not be permitted to transfer or assign to third parties any of the rights under an agreement concluded with the contractor, save in the event and as part of a transfer of the client's entire business.

11.2 Confidential

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 Headings

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 Curaçao law

All agreements between the contractor and the client are governed by Curaçao law. The court that has the power to hear and decide any dispute between the contractor and the client will be the court having jurisdiction on the island where the contractor has his registered office or the court having jurisdiction pursuant to the law, at the contractor's option.

These General Terms and Conditions are a translation of the 'Algemene Voorwaarden van Passaat Graphic & Web Design Inc.' filed with the Court of Curaçao, under number 46 of 2006.

In the event of any difference between these two Terms and Conditions, the Dutch text will prevail.