

# Terms and Conditions for the professional services provided by The Liberators B.V.

27-04-2018 version

## 1. Definitions

- 1.1. **Client:** the party that commissions The Liberators.
- 1.1. **The Liberators:** The Liberators B.V., a private limited company incorporated under Dutch law, with its principal place of business at (3521AL) Utrecht at Jaarbeursplein 6.
- 1.2. **Assignment:** the written or oral agreement, whereby The Liberators undertake to perform work for Client.
- 1.3. **Fee:** the remuneration for the work performed by The Liberators, not including Additional Expenses.
- 1.4. **Additional Expenses:** costs related to the Assignment, not included in the Fee, which are charged to Client on the basis of a specification. These include travel and accommodation expenses, reproduction costs and costs for necessary third-party services.
- 1.5. **Extra Charges:** Fees and Additional Expenses for work performed by The Liberators, which arose during the performance of the Assignment as a result of circumstances outlined in greater detail in Article 4(1) and (2) and Article 6(5) of these General Terms and Conditions.
- 1.6. **Force Majeure:** Circumstances in which performance of the Assignment cannot reasonably be required of The Liberators. This will include, but is not confined to, fire and floods, natural disasters, disruptions in power supply, internet and company equipment, and interruptions in transport and carriage. Force Majeure also includes absence due to illness or indisposition of personnel or third parties working on behalf of The Liberators, insofar as they are involved in and necessary for the performance of the Assignment.
- 1.7. **Hourly Rate:** the hourly rate for activities performed by The Liberators, including (gross) salary costs and a surcharge for non-assignment-related operating costs and profit;
- 1.8. **The Party:** Client or The Liberators;
- 1.9. **The Parties:** Client and The Liberators.

## 2. Scope of application

- 2.1. These General Terms and Conditions are applicable to all The Liberators' legal acts, offers and the conclusion and fulfillment of all agreements concluded between Client and The Liberators, unless it has expressly been agreed otherwise in writing in the Assignment;
- 2.2. The Liberators exclude the applicability of Client's general conditions and purchase conditions to the agreements concluded between Client and The Liberators.
- 2.3. If The Liberators do not always demand strict compliance with these General Terms and Conditions, this does not mean that the provisions in these General Terms and Conditions do not apply or that The Liberators would to any extent lose the right to require strict compliance with these General Terms and Conditions in other cases.

## 3. Quotation and Assignment

- 3.1. All The Liberators' quotations are without obligation and are valid for 14 days, unless otherwise indicated in writing. The offer will lapse if Client does not accept it within the aforementioned period. After expiry of the offer, The Liberators are entitled to change the offer.
- 3.2. Client guarantees the correctness and completeness of the requirements and information, provided by or on its behalf, on which The Liberators base the quotation. If this information proves to be incorrect or incomplete, The Liberators have the right to change the quotation or to terminate the Assignment.
- 3.3. The amounts stated in the quotation are excluding VAT, unless stated otherwise.
- 3.4. The Assignment is only established once The Liberators and Client have signed an agreement in which the scope of the work to be performed by The Liberators has been laid down, and The Liberators have received a (returned) signed copy of the agreement.

If The Liberators have not yet received the (returned) signed agreement, the Assignment will be deemed to have been concluded subject to the applicability of these General Terms and Conditions and the applicability of the

scope of work as described in The Liberators' quotation, at the time that The Liberators began the performance of the Assignment at Client's oral or written request.

- 3.5. Further oral agreements and stipulations between the Parties are only binding after they have been confirmed in writing by The Liberators.

#### **4. Execution of and amendments to the Assignment**

- 4.1. The Client will ensure that all information that The Liberators have indicated is required or that Client should reasonably understand is required for the correct and timely performance of the Assignment, is provided to The Liberators on time. If this information is not provided to The Liberators at all, or is not provided completely or correctly, The Liberators are entitled to suspend the performance of the Assignment and/or charge the resulting additional costs to Client for an hourly or other Fee applied by The Liberators at that time and according to a specification to be submitted by The Liberators.
- 4.2. If, during the performance of the Assignment, The Liberators have to carry out additional and/or other work than originally agreed due to changed and/or additional insights of Client and/or as a result of which the agreed delivery period cannot be fulfilled, then The Liberators will immediately inform Client of this. The costs of this work will be charged to Client as Extra Charges in accordance with a specification to be submitted by The Liberators. In this case The Liberators are entitled to suspend the performance of the Assignment and start with the performance of further work after Client has agreed in writing to the Extra Charges and/or the new delivery period and/or other conditions imposed by The Liberators. This suspension does not constitute a default on the part of The Liberators and is not a reason for Client to terminate or cancel the agreement.
- 4.3. If, at the exclusive discretion of The Liberators, Client's additional and/or changed insights are of such a nature and/or extent that they constitute a substantial change to the Assignment, The Liberators are entitled to terminate the agreement, without notice of default being required, in accordance with the provisions of Article 9(2) of these General Terms and Conditions.

#### **5. Engaging third parties**

- 5.1. Assignments given to third parties in the context of the performance of the Assignment are provided by or on behalf of Client and for Client's account and risk. At the request of Client, The Liberators may act as an authorized representative at Client's expense and risk. Said authorization will be laid down in writing. Parties may agree on additional reimbursement for this.
- 5.2. If The Liberators draw up a budget for third-party costs at Client's request, then this budget is indicative. If required, The Liberators may request quotations on Client's behalf.
- 5.3. If during the performance of the Assignment The Liberators involve the goods or services of third parties, after an express agreement and for their own account and risk, after which these goods or services are passed on to Client, then the provisions of the General Terms and Conditions and/or separate agreements with this third party with regard to guarantee and liability also apply for Client.
- 5.4. If The Liberators provide assignments or instructions to third parties on Client's behalf and for Client's account, Client will confirm these orders or instructions in writing at the request of The Liberators. The Liberators are not liable for the breaches of these third parties, regardless of whether they were introduced by The Liberators. Client must address these third parties themselves, should the need arise. If required, The Liberators can assist Client in this under conditions to be agreed later.
- 5.5. Client will not engage third parties without consulting The Liberators if it may affect the performance of the Assignment. Where appropriate, the Parties will consult each other about which other contractors will be called in and which activities will be assigned to them.

#### **6. Fees and costs**

- 6.1. The Liberators are entitled to a Fee for the performance of the Assignment. This Fee can be agreed as follows:
  - based on the actual time spent on performing the Assignment and the costs actually incurred, for the Hourly Rates and kilometer rates applied by The Liberators and according to a specification to be submitted by The Liberators; or
  - based on a fixed amount;
  - based on the composition mentioned in a. and b. of this article;

- if no other agreements have been laid down in the Assignment about the way in which the Fee is agreed upon, the manner described in the first bullet of this article applies.
- 6.2. In addition to the agreed Fee, The Liberators are entitled to reimbursement of Additional Expenses. These Additional Expenses are not included in the Fee.
  - 6.3. On 1 January and 1 July of each calendar year, The Liberators may pass on general increases in wages and prices in the rates applied by them on the basis of the most applicable Statistics Netherlands price index.
  - 6.4. Cost-increasing measures imposed by the government may at all times be passed on in the The Liberators' rates.
  - 6.5. If the performance of the Assignment is delayed or interrupted or otherwise influenced by circumstances that cannot be attributed to The Liberators, then Client is obliged to compensate any additional costs that this entails.
  - 6.6. Unless expressly stated otherwise, cost estimates and budgets are only indicative and no rights or expectations can be derived from them. Only if the Parties have agreed to do so, are The Liberators obliged to inform Client if a cost estimate or budget is exceeded.

## **7. Payment and collection charges**

- 7.1. The Liberators are entitled to charge the Fee, Additional Expenses and Extra Charges on a monthly basis.
- 7.2. All payments must be made within 30 days of the invoice date without deductions, settlement or suspension. Objections to the amount of an invoice do not suspend the payment obligation.
- 7.3. If, after having been reminded in writing by The Liberators to pay within 14 days, Client still fails to fulfil its payment obligation within these 14 days, Client will owe statutory interest and extrajudicial collection costs from that time until the time of payment; this interest and these costs will amount to at least 10% of the invoice amount and will be a minimum of € 150 excluding VAT.

## **8. Intellectual property and confidentiality**

- 8.1. All rights with regard to services, products and products of the mind that The Liberators develop and use, regardless of their nature, including advice, opinions, strategies, working methods, software, training programs, courses, methods, brochures and the like, are exclusively vested in and accrue to The Liberators and/or its licensors and never accrue to Client.
- 8.2. The Parties may agree that the rights referred to in the first paragraph are assigned entirely or in part to Client. This assignment and any conditions under which the assignment takes place will always be laid down in writing. The Liberators may attach conditions to this assignment of rights, including paying a Fee determined by The Liberators.
- 8.3. Client is not permitted to remove or change any designations concerning copyrights, brands, trade names or other rights from the material, including designations concerning the confidential character and secrecy.
- 8.4. If the provisions of this article are violated, Client will indemnify The Liberators against all damages suffered and to be suffered as a result, in particular if there are claims from third-party copyright owners.
- 8.5. The Parties are obliged to maintain the confidentiality of all confidential information, facts and circumstances that come to the attention of the Other Party within the framework of the Assignment, originating from each other or another source, about which it can be reasonably understood that disclosure or communication to third parties could damage The Liberators or Client. Third parties who are involved in the execution of the Assignment will be bound to the same confidential handling of these facts and circumstances originating from the Other Party.

## **9. Suspension and termination**

- 9.1. The Liberators are entitled to suspend their work or to dissolve the Assignment entirely or in part, without notice of default being required, if:
  - There is an attributable breach in the performance of the Assignment on the part of the Client, which also includes such behavior on the part of the Client on the basis of which it can no longer be reasonably required of The Liberators that they complete the Assignment.
  - Client is in default of payment of the invoice or progress invoice within the payment term, and if Client, after being reminded in writing to pay within fourteen days, fails to do so, or if The Liberators should be led to understand, based on any communication or conduct on the part of Client, that this payment will not take place.
  - Client fails to provide, at the request of The Liberators, sufficient security for the fulfilment of the payment obligations arising from the Assignment, in the case that The Liberators have good grounds for doubting

Client's ability to meet its payment obligations based on circumstances that have come to their knowledge after entering into the agreement.

- If Client files a petition for bankruptcy, suspension of payments, be it provisional or otherwise, or debt repayment, or if Client is deprived of the power to dispose of its assets, in which cases all amounts owed become immediately due and payable.
- 9.2. Client is not entitled to terminate the Assignment early, unless otherwise agreed in writing in the Assignment. If Client terminates the Assignment without imputable breach on the part of The Liberators, or if The Liberators terminate the agreement pursuant to the provisions of Articles 4(3) or 9(1) of these General Terms and Conditions, then Client will owe an immediately due and payable compensation, in addition to the Fee and any Additional Expenses or Extra Charges related to the work done until that time, without prejudicing The Liberators' right to claim all damages at law.
- 9.3. The compensation referred to in the previous paragraph will at least include the costs arising from the commitments made by The Liberators in its own name for the fulfillment of the Assignment with third parties, as well as at least 30% of the remaining part of the Fee.
- 9.4. In the event of termination on the grounds of the circumstances mentioned in Article 9(2) of these General Terms and Conditions, all payments received are used firstly to settle the costs, then the interest that has fallen due and finally the principal sum and current interest.

## **10. Liability and indemnity**

- 10.1. The Liberators' liability due to attributable breach in the performance of its obligations under the Assignment only arises if Client immediately gives The Liberators proper notice of default in writing, and in the process enables The Liberators to remedy the breach, or to limit damages, within a reasonable term and for its own account, and The Liberators continue to be in breach of their obligations after this term. The notice of default must contain an as detailed as possible description of the breach, so that The Liberators are able to respond effectively.
- 10.2. The Liberators are only liable to Client due to attributable breach in the performance of their obligations under the Assignment and only for direct damages attributable to The Liberators, and then only for alternative compensation, i.e. compensation for the value of the failed performance. Any liability on the part of The Liberators for any other kind of damages is excluded, including additional compensation in any form whatsoever, as well as compensation for indirect or consequential damages or damages due to loss, lost turnover or profit, loss of savings, loss due to business interruption and damage to image.
- 10.3. If The Liberators are liable to Client pursuant to the previous paragraphs of this article, this liability is limited to the amount of the Fee, at least to that part of the Fee that is charged to Client or to which the liability relates.
- 10.4. The Liberators are not liable for damages that arise due to the defectiveness of equipment, software, data carriers, registers or other means used by it in the performance of the Assignment, none of which are excluded, nor for damages caused by the interception by third parties of audio and/or data transmissions from telephones, faxes, or e-mails and the possible forging thereof.
- 10.5. All liability expires after the passing of one year from the time the Assignment has ended due to completion, termination or giving notice to terminate.
- 10.6. Client indemnifies The Liberators against any claims by third parties that suffer damages in connection with the implementation of the agreement for which the cause is not attributable to The Liberators. If The Liberators should be approached by third parties on this basis, then Client is obliged to assist The Liberators both in and out of court, and to do everything that may be expected of it in such a case and without delay. Should Client fail to take adequate measures, then The Liberators are entitled to resort to this themselves, without notice of default. All costs and damage on the part of The Liberators and third parties acting on its behalf arising from this will be borne entirely by Client.

## **11. Force Majeure**

- 11.1. Force Majeure may be invoked if the stated circumstances affect The Liberators as well as if the circumstances affect third parties engaged by The Liberators.
- 11.2. In the event of Force Majeure, The Liberators are entitled to suspend the performance of the agreement and The Liberators will do everything in their power to perform the Assignment as soon as possible.
- 11.3. In the event of Force Majeure, The Liberators are not entitled to compensation, compensation of costs incurred or interest. If the period in which fulfilment of the obligations by The Liberator is impossible due to Force Majeure

lasts longer than one month, The Liberators as well as the Client are entitled to terminate the agreement entirely or in part, without any obligation to pay each other compensation.

- 11.4. If The Liberators have already partially fulfilled their obligations on the occurrence of Force Majeure, or can only partially fulfill their obligations, The Liberators are entitled to charge separately for goods or services already delivered, and Client is obliged to settle this invoice.

## **12. Complaints, disputes and applicable law**

Complaints will be communicated to The Liberators in writing as soon as possible, but in any case within one month of completion of the Assignment, failing which Client will be deemed to have fully accepted the result of the Assignment.

- 12.1. The Assignment between The Liberators and Client is governed by Dutch law.
- 12.2. Should disputes arise between Parties that cannot be settled amicably, they will be submitted to the competent court of the district in which The Liberators is based.

## **13. Other provisions**

- 13.1. The version of the General Terms and Conditions, as applicable at the time the Assignment is established, applies to the Assignment. This version can be requested from The Liberators at all times.  
The latest version of the General Terms and Conditions is available on <http://www.the-liberators.com>.
- 13.2. If any provision of these General Terms and Conditions is null and void or is voided, the other provisions of these General Terms and Conditions will remain fully in effect. In that case, the Parties will consult with the aim of agreeing new provisions to replace the void or voided provisions. In doing so, the purpose and meaning of the void or voided provisions will be taken into account as far as possible.