

## General terms Promo Bears 2010

### **Article 1. Definitions**

1. The client is referred to as the person who has given orders for the activities.
2. The supplier is referred to as the person who has accepted the orders for the activities.
3. An agreement is referred to as the request by the client for the supplier, to perform paid activities.
4. Activities is referred to all of that which the supplier makes and/or does or has made / has done in favour of the client, within the limits of the orders given by the client.
5. A quote is referred to as the more or less specified activities and the price indication of the costs attached to these activities.

### **Article 2. Deviating terms and conditions**

1. These terms and conditions are valid for all quotes, agreements and supply of supplier, unless they have been declared completely or partly non applicable on paper, or have been declared applicable as far as not contrary to the agreement as written down and agreed upon by client and supplier.
2. When combining the client's uniform buying conditions and these applying terms and conditions, the last will prevail.
3. Terms and conditions used by the client which are in conflict with these terms and conditions, can not be acknowledged, unless they have been agreed upon on paper by the supplier.
4. In case any of these articles should be declared non applicable, than this immediately goes for all other articles as well.

### **Article 3. Quotes**

1. All quotes are free of charge, unless stated differently in the quote itself.
2. If required, the supplier will send a quote for approval to the client prior to starting the activities. In case inevitable deviations from the quote may occur during progress of the activities, the supplier will inform the client as soon as possible.
3. Exceeding quotes up to 10% are accepted as budget risks by the client and so do not require reporting as such.
4. Exceeding quotes as a result of supplier's sales conditions and third parties approached by the supplier,

are not considered excess, not even when those terms have not been included separately in a quote, because those conditions are expected to be familiar to the client, and also because they are part of the current terms and conditions right from the start - as long as agreed upon.

#### **Article 4. Prices, delivery and payments**

1. All prices exclude VAT and any sending, transport or postal charges, unless explicitly stated differently.
2. The supplier owns the right to charge changes in prices which have taken place after a quote has been made.
3. All deliveries are expected to be sent from the supplier's established location.
4. All payments should be made in that location on to a bank account number indicated by the supplier.

#### **Article 5. Agreements and alterations**

1. An agreement is accepted by the supplier by, either written confirm acceptance to the client, or by starting the activities resulting from the agreement.
2. The client is obliged by and from the moment of the assignment's delivery.
3. The supplier is obliged by and from the moment of accepting the assignment.
4. Changes in the assignment, after this has been agreed upon, should be reported by the client timely and written. In case these are reported orally, the risk is at the client's expense.
5. In case alterations to the design of the product are necessary in order to produce a good product, the supplier can make these alterations without informing the client about the alterations beforehand.
6. Alterations in the assignment apply by and from the moment of the client's acceptance.
7. Any potential additional or deductive costs as a result of alterations in the assignment, principally are at the expense or in favour of the client.
8. Alterations in the assignment may result in the supplier's excess of the delivery time agreed upon beyond his responsibility.

#### **Article 6. Hiring third parties**

1. In case considered necessary at the supplier's judgement for a proper completion of an assignment, or when caused by the nature of an assignment, the supplier has the right to give order to third parties to supply or make available goods and / or services in any other way, at the expense of the client.

## **Article 7. Terms of payment**

1. Payment should be made, regardless of what is determined below, within the time frame set in the invoice and in case such should not be included, within thirty days after date of invoice.
2. The supplier ensures that the invoice is sent in time. Partial invoicing is always possible, unless explicitly excluded on paper. Exclusion from the right of partial invoicing however can never concern the costs mentioned in this or the following articles.
3. The supplier, regardless of the agreed terms of payment, has the right to secure payment by asking for an bank guarantee accepted by him.
4. In case the client does not meet the payment obligations within the time frame agreed upon, he owes interest – without the previous demanding notice or proof of default - on the invoice amount starting from the day, on which the invoice should have been paid. This interest is one twelfth of the current legal interest plus 2% for every month (or part of it) in excess of the payment date.
5. All costs, legal or non legal, concerning the collection of the amount due by the client and not paid in time, are at the expense of the client; as proof of owing these costs, handing over invoices will suffice; these costs are fixed at at least 10% of the concerning invoice amount and will be at least f 150,-- per invoice.

## **Article 8. Deferment, cessation and annulment**

1. The supplier owns the right to annul or cease further completion of an assignment, in case the client does not respect the terms of payment and/or can not deliver the required bank guarantee.
2. Also the supplier owns the right to cease without legal intervention all agreements between him and the client for as far as these have not been completed, in case the client does not meet his obligations in time or properly, which result from any agreement made with the supplier, or in case of client's financial bankruptcy or suspension of payment or in case of ceasing or liquidation of his company.
3. The results of suspension, cessation and / or annulment are at the full expense and risk of the client.
4. Suspension, cessation and / or annulment leaves payment obligations unimpeded for the activities already concluded. Moreover, the supplier owns the right to claim damages with the client as well as costs and interests caused by the client's failure or caused by the annulment of the agreement, including the deprived income for the supplier.

#### **Article 9. Delivery time**

The indicated delivery times are only an approach. Unless explicitly agreed upon on paper otherwise, the supplier accepts no responsibility of guarantee concerning the agreed delivery time and untimely delivery does not give the client any right to claim damages, annul the agreement or to not respect any obligations towards the supplier. The delivery time indicated by the supplier all apply to deliveries from stock and are valid on approach. The delivery time is based on the prevailing work circumstances at the moment of making the agreement and on the provider's timely delivery of products. In case delay arises as a result of an alteration of activities or because products which have been ordered in time can not be delivered in time by third parties, the delivery time is postponed at a reasonable duration of the delay. A reasonable excess of the first agreed delivery time respecting all circumstances does not give the client the right to cancel or annul the agreement with the supplier.

#### **Article 10. Duty to maintain**

1. The supplier will respect the client's interest with the greatest care during the completion of the activities for the client.

#### **Article 11. Reliability and protection of third parties**

1. The reliability for activities in favour of the supplier, which the supplier has passed on to third parties, is limited to as far as the third party effectively frees the supplier. The supplier will do everything or offer all the support to the client which can be required to obtain a claim of damages from third parties as high as possible in any case.

2. The client frees the supplier from all damage claims from thirds concerning produced materials or services supplied at the request of the client, which have been delivered to him.

#### **Article 12. Exoneration**

1. In case a complaint concerning the delivered goods and / or services is considered founded and the supplier's responsibility is determined, he will either at his choice pay compensation of at the most the invoice value of that which has been delivered, or replace that which has been delivered for free, after the originally supplied goods have been returned back to him. The supplier is never obliged to pay any further

damages.

2. The supplier's responsibility for direct damages resulting from failures in the goods or services supplied by him, is in any case limited to the amount of his fee reduced by out-of-pocket costs concerning the goods or services delivered. The supplier is not responsible for indirect damages. The client disassociates with his right to claim or annul an agreement based on the supplier's malfunctioning.

3. The supplier is not responsible for damage, loss or destruction of objects, materials or data, which have been made available to him by or in name of the client. Goods move at the risk of the client.

### **Article 13. Force majeure**

1. In case the supplier can not complete or can only partially complete the activities agreed upon due to force majeure, he has the right to postpone the agreement without further legal advice or to consider the agreement annulled or partly annulled, at his choice, without being responsible for any damage claims or guarantees.

2. Force majeure in this case means: cessation, exclusion, fire, machine breakdown and other company failures, either at the supplier's or at suppliers of goods and services, transport obstructions and other events out of his control, such as war, blockage, uproar, epidemics, devaluation, floods and storms, as well as sudden increases in import right, import fees and taxes, delay in or no delivery by suppliers, not obtaining the necessary permits and other governmental measures.

### **Article 14. Intellectual ownership**

1. By ordering publication or multiplication of objects protected by Copyright Act or any other legal arrangement in the field of intellectual ownership, which have been made available by or in the name of the client, the client declares legal prescriptions will not be violated and he frees the supplier from any claims from third parties or the direct and indirect consequences, financially as well as other, resulting from the publication or multiplication.

2. Intellectual ownership and materials, coming from activities, will be transferred to the client at the moment of ending the concerning cooperation between client and supplier, as far as they belong to the supplier and can be transferred, after all that is due from client to supplier has been paid - including any potential development costs and intellectual ownership rights. As far as intellectual ownership of third parties are involved, the supplier will consult the client at the request of the client before contacting third parties, if complete transfer is desired and / or possible, keeping in mind the costs it involves.



3. The supplier will, unless it concerns an assignment as meant in 1. and in accordance with the terms of exoneration of Article 14 of these terms and conditions, free the client from claims from third parties, in case the client should violate any rights of industrial or intellectual ownership by using what has been supplied. The client is obliged to send written information within 48 hours in case of a claim by a third party, and if required supply all information and cooperate where necessary for legal defence and/or settlement negotiations.

**Article 15. Delivery and duties**

1. No party has the right to hand over the rights and duties coming from the agreement made under these terms to third parties, except after previous written consent from the other party.
2. In case the (relevant activities of the) client's company is, for whatever reason and in whichever way, combined with or continued in another company, a several liability arises as far as meeting the obligations mentioned under 1 for the original and consecutive companies.

**Article 16. Authorised legal judge**

1. Only the Dutch law applies to all agreements made under these terms or any agreements based on them. All legal disputes coming from agreements made under these terms and conditions, can only appear before court with an authorised judge in the court district where the supplier is established, including obtaining provisional requirements.