



## ATTACHMENT A: GENERAL TERMS Develop2Create v 19.11.2015

### Article 1. General

1. These conditions apply to any proposal, offer and agreement between Develop2Create, hereinafter referred to as "Contractor", and Client to whom Contractor has declared the terms and conditions applicable to, insofar parties did not agree explicitly and in writing to defer from these conditions.
2. The conditions mentioned below also apply to agreements with Clients, where Contractor needs to use a third party for the execution of the assignment.
3. When one or more conditions in these general terms at any moment in time are judged invalid or might be judged invalid, all other condition will hold. Contractor and Client will discuss and agree new terms to replace the invalid conditions, taking into account the spirit and meaning of the original condition.
4. If the meaning of one or more of the conditions is not clear, then it needs to be interpreted "in the spirit" of the condition
5. If between Parties a situation arises not foreseen in these terms, the situation will be handled "in the spirit" of these terms.
6. When Contractor does not ask for strict obedience of the terms, this does not mean that the terms are not applicable, or that Contractor in any way will lose his rights to ask for strict adherence to the conditions in these general terms.

### Article 2. Offers en proposals

1. All offers and proposals of Contractor are not binding, unless a term of validity is stated in the offer.
2. When acceptance (whether or not partially) is not in line with the proposal in the offer, Contractor is not tied to it. There will be no agreement to the different terms, only after approval of Contractor.

### Article 3: Contract duration; execution period, risk-transfer, execution and changing the agreement, increase in price.

- 1 The agreement between Contractor and Client will be indefinitely, unless by nature of the agreement it is clear it is ending or when Parties explicitly agreed otherwise in writing .
- 2 When a term has been agreed to execute certain activities or to deliver certain matters, this will never be a fatal deadline. If a timeframe has been exceeded, Client has to set Contractor in default. Contractor will be offered a reasonable term to yet execute the agreed work.
- 3 Contractor will execute the agreement to his best knowledge and capabilities and according to good workmanship. This on the basis of the best practises available at that time.
- 4 With regard to the intended work, an effort based obligation is applicable, unless explicitly agreed otherwise.
- 5 Contractor has the right to subcontract certain activities. Article 7:404, 7:407 lid 2 en 7:409 BW are explicitly not applicable.
- 6 When, related to the contracted work, a subcontractor of Contractor or Client is working on Clients premises or a location assigned by the Client, Client will provide the facilities needed for the staff to do their work free of charge.
- 7 Contractor is entitled to execute the agreement in different phases and invoice every step on its own.
- 8 When the agreement is executed in phases, Contractor can postpone the work of the next phases, awaiting written approval from the Client for the results of the previous steps.
- 9 Client will take care that all information, that Contractor has indicated to be in need of or can be assumed to be necessary to execute the agreement, will be made timely available. When the information is not made available in time, Contractor has the right to postpone the execution of the agreement and/or charge the extra costs occurred due to the delay, using the customary rates. The term of execution does not start before Client has made available the information to the Contractor. Contractor is not liable for any damage whatsoever, in case Contractor has taken the incorrect or incomplete information provided by the Client as starting point.
- 10 When during the execution of the agreement, it appears that for a decent execution it is necessary to change or amend the agreement, parties will timely discuss the situation and adjust the agreement.
- 11 When the agreement is changed or amended, Contractor will be entitled to first start execution after the authorized persons of Contractor and Client has agreed the price and changed conditions related to the change, including the start moment of the change.
- 12 Without being in breach, Contractor can refuse a request for change of the agreement, in case this has qualitative or quantitative consequences for the related work to be executed or related products to be delivered.
- 13 In case Client is in breach with regard to the professional performance he is obliged to live up to, Client is liable for any direct or indirect damage occurred at Contractor side.
- 14 When a fixed fee or a fixed price has been agreed between Contractor and Client, Contractor is entitled at any time to increase the fixed price or fixed fee without Client being entitled to dissolve the agreement, if the increase in the price results from a power or duty under the law or regulations or is caused by an increase in raw materials, wages etc. or other grounds that were reasonably not foreseen when entering into the agreement.
- 15 When the increase in price other than by contract change, is more than 10% and takes place within three month after entering into the agreement, Client is only entitled to dissolve the agreement in writing based on title 5 chapter 3 of book 6 BW, unless
  - a. Contractor is willing to execute the agreement on the basis of what was originally agreed
  - b. The price increase is a consequence of a power or obligation imposed to the Contractor by law
  - c. It has been agreed that the delivery will take place more than three month later after entering into the agreement
  - d. Or, in case of delivery of a matter, when it has been agreed that the delivery would take place more than three month after the purchase



#### **Article 4: Suspension, dissolution and premature termination of the agreement**

1. Contractor is entitled to suspend the fulfilment of the obligation or to dissolve the agreement in case
  - a. Client is not, not fully or not timely fulfilling her obligations under the agreement after entering into the agreement
  - b. Contractor has solid grounds to expect that Client will not fulfil its obligations
  - c. When entering into the agreement, Client has been requested to secure her fulfilments of her obligations and this security is not or not fully met, or in case of delays caused by Client, it is not reasonable to keep Contractor to the original conditions
2. Furthermore Contractor is entitled to dissolve the agreement when circumstances arises of such a gravity that keeping to the agreement is impossible or in case of any other circumstances arises in which it is not reasonable to keep Contractor to the agreement.
3. In case the agreement is dissolved, all claims of Contractor towards Client are immediately due. When Contractor suspends the fulfilment of the agreement, he retains his lawful rights and claims forthcoming from the agreement.
4. In case Contractor suspends or dissolves the agreement, he is in no way obliged to compensate any damage or costs originating from this.
5. In case the dissolution is imputable to Client, Contractor is to be compensated for any damage or costs originating directly or indirectly from the dissolution.
6. In case Client is not fulfilling its obligations under the agreement and it is therefore reasonable to dissolve the agreement, Contractor is entitled to end the agreement immediately without any obligations to compensate any damage or costs, while Client by virtue of default is obliged to the payment of any damages or compensations.
7. If the agreement is terminated prematurely by Client, Contractor shall in consultation with Client, arrange for transfer of remaining work to third parties, unless the termination is imputable to the Client. If the transfer of work inflicts extra costs to Contractor, Client will be charged for the extra costs. Client is obliged to pay the extra cost in the said period, unless Contractor indicates otherwise.
8. In case of liquidation, (application of) suspension of payments or bankruptcy, or seizure - if and when seizure is not lifted within three months- at Client side, debt restructuring or any other circumstances where Client no longer can freely dispose of his assets, Contractor is free to dissolve the agreement immediately or to cancel the order or agreement, without any obligations to pay any damages or compensations. Claims from Contractor to Client are immediately due and payable.
9. If Client fully or partially cancels an order, all activities already executed and all matters ordered or prepared and all labour reserved to fulfil the agreement, will be charged fully to the Client.

#### **Article 5: Force majeure**

1. Contractor is not bound to fulfil any obligations towards Client in case he is hindered due to circumstances he is not to be blamed, or by power of law, a legal act or the prevailing opinion
2. In these terms, force majeure is defined, supplementary to what is recorded in law and jurisdiction, all causes from outside, foreseen or unforeseen, on which Contractor has no influence, however disables Contractor to fulfil his obligations. Strikes in Clients company or with third parties included. Contractor also has the right to invoke force majeure when circumstances hindering (further) fulfilment of the agreement, takes place after Contractor should have fulfilled his commitment.
3. Contractor can, during the period that force majeure is in place, suspend the agreement. If this period is longer than a month, both parties are entitled to end the agreement, without any obligations of payment of damage towards the other party.
4. As to the extent that Contractor, at the moment that force majeure went into effect, already has partly fulfilled his obligations under the agreement or will be able to fulfil, and there is value in what has been done or could do, Contractor is entitled to invoice what has already been done or could do. Client is obliged to pay the invoice as it were a separate agreement

#### **Article 6 . Payment and collection costs**

1. Payment must be made within 30 days after the invoice date, in a manner to be specified in the currency invoiced by the Contractor, unless otherwise specified by the Contractor. Contractor is entitled to periodic billing .
2. If Client fails in the timely payment of an invoice, the client is legally in default. Client shall owe an interest of 1 % per month, unless the statutory interest is higher, in which case the statutory interest is due. The interest on the due amount will be calculated from the moment the client is in default until the moment of payment of the full amount.
3. Contractor is entitled to have the payments made by Client allocated in the first place to reduce costs, then deducting the interest still due and finally to reduce the principal and accrued interest . Contractor may, without being in default, refuse a payment offer, if Client indicates a different order for the allocation of the payment. Contractor may refuse full payment of the principal amount, in case accrued interest and collection costs are not included in the payment.
4. Client is never entitled to settle the amount due to him by the Contractor. Objections to the amount of a bill do not suspend the payment obligation. Client who cannot appeal to section 6.5.3 ( Articles 231 and 247 of Book 6 BW) is not entitled to suspend the payment of a bill for any other reason
5. If the client is in default or omission in the (timely) fulfilment of its obligations, then all reasonable costs incurred to obtain satisfaction out of court are for Client. The extrajudicial costs are calculated on the basis of what is customary in the Dutch collection practice, currently the calculation method II report .

#### **Article 7. Retention**

1. All matters supplied by Contractor under the agreement, remains Contractor's property until Client has properly fulfilled all obligations under the agreement.



#### **Article 9. Liability**

1. If the Contractor is liable, this liability is limited to what is arranged in this provision
2. Upon acceptance of an assignment Contractor will in writing be safeguarded from all liability related to occurrences and decisions in the foregoing period.
3. Contractor is not liable for damages of any kind, caused by the Contractor's assumptions based on incorrect and/or incomplete information provided by Client or on his behalf.
4. If the Contractor is liable for any damage, the Contractor's liability is limited to the invoice value of the assignment, at least that part of the agreement related to the liability
5. The Contractor's liability is in any case limited to the amount paid by its insurer, as appropriate.
6. Contractor shall be liable for direct damage only.
7. Direct damage is only the reasonable costs incurred to assess the cause and extent of the damage, where the assessment relates to damage under these conditions, any reasonable expenses incurred for the poor performance of the Contractor to fulfil the agreement, insofar as this can be attributed to the Contractor and reasonable costs incurred to prevent or mitigate damage, insofar as Client proves that these expenses resulted in mitigation of direct damage under these conditions. Contractor shall never be liable for indirect damages, including consequential loss, lost profits, lost savings and damage due to business interruption
8. The limitations of liability included in this article do not apply if the damage is due to intent or gross negligence of the Contractor or his senior subordinates.

#### **Article 10. Indemnification**

1. Client shall indemnify the Contractor for any claims from third parties who suffer damages in connection with the execution of the agreement and whose cause are attributable to other than Contractor.
2. If the Contractor for that reason should be addressed by third parties, Client is obliged to assist the Contractor both outside and in law and immediately do everything that can be expected from him in such a situation.
3. Should Client fail to take adequate measures, then Contractor, without notice, is entitled doing so. All costs and damages arising from this at Contractor and third parties side, are for the account and risk of the Client.

#### **Article 11. Intellectual property rights**

1. The Contractor reserves the rights and powers which he is entitled to under the Copyright and other intellectual laws and regulations. Contractor has the right to use his knowledge increased during the execution of the agreement, also for other purposes, provided that no strictly confidential information of Client is revealed to third parties.
2. The Contractor reserves all rights of intellectual property related to intellectual products which he used or has used and/or developed and/or has developed in executing the agreement, and for which he possessed copyright or other intellectual property rights or is entitled to.

#### **Article 12. Applicable law and disputes**

1. All legal relationships in which the Contractor participates, only Dutch law is applicable, also if a contract wholly or partly is executed abroad or if the involved party is established there. The applicability of the CISG is excluded.
2. The judge in the location of Contractor has exclusive jurisdiction to hear disputes, unless the law requires otherwise. Nevertheless, the Contractor has the right to submit the dispute to the according to law competent judge.
3. Parties will only appeal to court if they have done their utmost to settle the dispute by mutual agreement

#### **Article 13. Location and modification of terms**

1. These terms are an integral part of the agreement between Client and Contractor.
2. Applicable is the latest version as communicated to Client by the Contractor prior to, or during, the conclusion of the agreement. The version number or date of these terms will be explicitly stated in the agreement between Client and Contractor.
3. The Dutch text of the general terms is decisive for the interpretation thereof.