

1. Agreement, offers and confirmation

- 1.1 These Terms of Business apply to the exclusion of any purchase or other conditions of the client, to the preparation, content, and performance of all agreements between the client and Niek Nijsen Ltd. (the “**contractor**”).
- 1.2 All offers are without commitment and are valid for 30 days. Prices quoted may be subject to change owing to unforeseen changes in the work. Unless otherwise specified, prices are exclusive of VAT and other government levies. The rates and offers quoted will not automatically apply to future commissions.
- 1.3 Commissions must be confirmed by the client in writing. If the client fails to do so but consents to the contractor commencing the commissioned work, the terms of the offer will be deemed to have been agreed. Any subsequent oral agreements and stipulations will not be binding on the contractor unless he has confirmed them in writing.

2. Performance of the agreement

- 2.1 The contractor shall undertake the work commissioned with skill and care and in the accordance with agreed specifications. To the extent necessary the contractor shall keep the client informed of the progress of the work.
- 2.2 The client shall 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 requirements, data or materials in a timely manner.
- 2.3 Prior to publication, each party must give the other the opportunity to check and approve the final draft of the commissioned work.
- 2.4 Following completion of the commissioned work and final closure of a project, the contractor will complete the handover of the commissioned work, for the client’s final acceptance.
- 2.5 Any client complaints to the contractor in relation to the commissioned work and its conformance with specifications must be filed in writing at the earliest possible time but not later than within ten (10) business days after completion of the commissioned work and its handover, failing which the client will be deemed to have accepted the work commissioned in its entirety and any and all rights to claim (additional or charged) compensation of damages will lapse.

3. Engagement of third parties

- 3.1 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 an agent for the client’s account and risk. The parties may agree on a fee for such services.
- 3.2 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 If the contractor procures services from a third party in relation to the commissioned work, for the contractor’s own account and risk and on the basis on an express agreement, the general conditions of such supplier with regard to the quality, properties and delivery of such services will also apply to the client.

4. Intellectual and other property rights

- 4.1 Unless otherwise specified in the agreed contract, all copyrights and intellectual property in the commissioned work developed in the course of the performance of this agreement will vest in the contractor. Once the client has fulfilled all its obligations under the agreement will the contractor release the rights to use, distribute, and display the commissioned work to the client.

- 4.2 The contractor's Background IP (including incremental improvements to it) will be owned by the contractor. For the purposes of this agreement, "**Background IP**" means all intellectual property owned by the contractor prior to the date of this agreement or generated or acquired at any time independently of its activities under this agreement which is necessary for the client to make, market or sell products to the extent they utilise the commissioned work. "**Incremental improvements**" to contractor's Background IP means improvements which are developed by the contractor without any material contribution by the client and which cannot be separated from or used independently of the contractor's underlying Background IP. Contractor's Background IP will be available to the client by way of the licence in article 5.
- 4.3 Where, during any pre-development phase, contractor applies its know-how to present alternative possibilities or concepts for achieving a solution ("**Concepts**"), such Concepts shall be treated as a contractor's Background IP. Once a particular Concept is selected by the client at the end of the pre-development phase ("**Selected Concept**"), the Selected Concept and further developments to it shall be treated in accordance with article 4.1. Concepts which are not selected for further development within the project ("**Non-selected Concepts**") shall be available to the client together with other Background IP in accordance with article 5 below.
- 4.4 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).
- 4.5 Upon completion of the commissioned work, 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 The contractor grants to the client a non-exclusive, worldwide, royalty-free, non-transferable licence under its Background IP to (i) use, sell, distribute, display or market client's products utilising the commissioned work; (ii) to use the Background IP contributed to the project in further developing the commissioned work provided that this does not extend to licensing or disclosing any Background IP to third parties; and (iii) to permit any of its affiliates to do any of the things set out in this article 5.1. (For the purposes of this article, "**affiliate**" means any entity which from time-to-time controls, is controlled by or is under common control with the client, and "**control**" means ownership or control of a majority of the voting rights, or the legal power to direct or cause the direction of the general management of the relevant entity.)
- 5.2 With regard to any Non-selected Concepts licenced under this agreement, the contractor shall have no further obligation to disclose or teach the client beyond what is disclosed for the purposes of the project.
- 5.2 The contractor may use the commissioned work at his discretion for his own publicity or promotional purposes, with due observance of the client's interests.

6. Confidentiality

- 6.1 Parties shall not disclose confidential information concerning or received from the other party, unless otherwise obligated by law or a judicial order.
- 6.2 Parties shall oblige their personnel to comply with article 6.1.
- 6.3 At the acceptance of the agreement parties shall enter into a non-disclosure agreement, the terms of which will continue to apply to the project for the duration of this agreement, unless otherwise agreed.
- 6.4 If the client fails to comply to any obligation in this article 6 it shall forfeit to contractor an immediately payable penalty of 25% of the accepted quotation for the commissioned work notwithstanding the right of contractor to claim its actual damages and costs in addition.

7. Processing of personal data

- 7.1 In so far as parties shall process personal data in executing the agreement, parties shall do so in a careful manner, in accordance with the applicable GDPR regulations implemented in the UK.
- 7.2 Parties shall take appropriate organisational and technical measures to safeguard personal data.
- 7.3 The contractor will only process and store personal data the client voluntarily provides for the purpose responding to the client's inquiry, or for the development of the commissioned work.
- 7.4 Neither party shall share any personal information, except when either party believes in good faith that the release is necessary to protect the rights, property, or safety of others.
- 7.5 If personal data is processed parties shall enter into a data processing agreement containing at least an obligation of the client to safeguard contractor against any and all damages (including penalties from responsible authorities) and claims from third parties deriving from the processed data.
- 7.6 Neither party shall rent nor sell personal information to other entities.

8. Fees and additional costs

- 8.1 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. Any costs outside the agreed fee will be agreed upon by both parties before such purchase will be made.
- 8.2 The contractor cannot be held liable for any delays or inability to complete the commissioned work caused by a client's declination of any such costs.
- 8.3 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, briefings or specifications, such additional work will be charged separately on the basis of the contractor's usual fees.

9. Payment

- 9.1 Payments must be made within the pay term indicated in the contractor's offer (or, if not indicated, within 30 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 costs of legal assistance, bailiffs and debt collection agencies, will be for the client's account.
- 9.2 Invoicing frequency will be indicated in the contractor's offer (but if not indicated, the contractor will have the right to invoice the client at monthly intervals for work performed and costs incurred in the performance of the commissioned work).
- 9.3 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.

10. Termination of the agreement

- 10.1 If the client gives notice of termination of an agreement, he must pay the contractor's fees and the costs (including committed third party costs) incurred in connection with the work performed until that date.
- 10.2 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 fees 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.
- 10.3 The damages referred to in Article 10.2 will included (but not be limited to) the costs (including committed costs) arising from obligations undertaken by the contractor in his own name with third parties in the performance of the work commissioned.
- 10.4 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 contractor will have the right to terminate the right of use granted, unless the consequences would be contrary the principles of reasonableness and fairness.
- 10.5 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.
- 10.6 If the contractor's work consists of recurrently performing work of a similar nature, the agreement in question will be valid for such time as the work is requested by the client (plus any agreed notice period), unless otherwise agreed in writing. Such agreement may be terminated by written notice given with due observance of a reasonable notice period of not less than one month.

11. Warranties and indemnities

- 11.1 The contractor warrants that the commissioned work supplied to the client has been made by the contractor or on its behalf and that the contractor is the author within the meaning of the Copyright Act and as the copyright owner has the power of disposition of the work.
- 11.2 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 or exploitation of the commissioned work.

12. Liability

- 12.1 The contractor will not be liable for (i) errors or defects in materials or information supplied by the client or caused by acts of the client, such as late delivery or non-delivery of complete, sound and clear requirements, information and/or materials, or client decision not to proceed with any steps reasonably recommended by the contractor; (ii) errors or defects by third parties engaged by or on behalf of the client; (iii) errors in the commissioned work or errors in the text/data if the client has given its approval in accordance with the provisions of Article 2.4 or has had the opportunity to perform approval inspection and has failed to do so; (iv) improper or unsafe handling or use of the commissioned work by consumers or personnel; (v) any addition or modification to the commissioned work in the final product which were not designed by the contractor; (vi) any matters relating to compliance of the commissioned work with technical or safety regulations or standards.
- 12.2 The contractor will be liable only for direct damage attributed to it, limited to reasonable costs incurred to prevent or limited 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.
- 12.3 The contractor shall not be liable for indirect and consequential damage, including loss of profits, loss of anticipated savings, loss of business, intervention in the field, corrupted or lost data or materials, or damage due to business interruption.

- 12.4 Save in the event of wilful intent or recklessness by the contractor, the contractor's total liability for damage or loss arising from its agreement or any wrongful act committed against the client will be limited to the value of amounts invoiced and paid in respect of the relevant project under this agreement.
- 12.5 Any and all liability will expire 1 month from the date of completion of the completed work.
- 12.6 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.

13. Other terms

- 13.1 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.
- 13.2 The headings in these Terms of Business have been included for easy reference only and are no part of these Terms and Conditions.
- 13.3 All agreements between the contractor and the client are governed by UK law. All disputes arising out of this agreement, or relating to the performance of this agreement, will be resolved exclusively by the competent court in the place of domicile of the party bringing the claim. However, if this would render a court outside of the UK, the court in the place of domicile of the party alleged to be in breach will have exclusive jurisdiction to settle the dispute. The preceding is without prejudice to a party's right to seek injunctive relief in relation to any breach and/or imminent breach of this agreement, or to seek enforcement of a payment obligation, in any court competent jurisdiction in any relevant territory.
- 13.4 Where a translation of these Terms of Business is also provided, in the event of any difference between the English language version and the translation, the English text will prevail.