

TERMS & CONDITIONS

Date	05-12-2023
Version	v1

The following terms and conditions refer to SMC Agency B.V. ("The Agency") and its relationship with its clients and potential clients.

General Terms & Conditions of Business

1. Quotes & Prices

- 1.1. All quotes/estimates are valid for 30 days from the date of submission.
- 1.2. Quotes/estimates are based on the information provided by the Client, including but not limited to detail on quantities, structure, scope and functionality. Any quote/estimate may therefore be subject to change should the client's requirements change at any time.
- 1.3. Unless otherwise stated, courier costs (if applicable) and VAT will be charged extra.
- 1.4. If the contract or hourly price has not been fixed for the term of a contract, our hourly rate of €110 will apply.
- 1.5. The Agency reserves the right to alter the hourly rate at any time as business needs dictate.
- 1.6. Quotes/estimates are based on the Agency's current costs of production and unless otherwise agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.
- 1.7. Any estimates given by The Agency as to the time of completion or performance of its services (whether completion of the whole or a part of those services) shall be estimates only and time shall not be of the essence.
- 1.8. Any stated timescale is reliant upon the client providing all required information/copy/images/input within the time set out at project initiation.

2. Methods

- 2.1. The Agency reserves the right to sub-contract the fulfilment of an order or any part thereof.
- 2.2. Should the Client supply text, artwork or images, the Agency is not obliged to edit, check or guarantee the correctness thereof in any way whatsoever, and the end product shall be made at the entire risk of the Client.
- 2.3. The Agency shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any libelous matter or any infringement of copyright, patent design or any other proprietary or personal rights contained in any material supplied by the Client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.
- 2.4. The Client's property and property supplied to the Agency on behalf of the Client, while it is in the possession of the Agency or in transit to or from the Client, will be deemed to be at Client's risk unless otherwise agreed and the Client should insure accordingly.
- 2.5. The Agency may charge rent for storage of goods retained at Client's request, or items left with the Agency before receipt of the order or after notification to the Client of completion of the work.
- 2.6. When required to expedite project delivery ahead of the time needed for proper production of a given deadline, the Agency shall not be liable for defects occasioned thereby. Should such delivery require payment of overtime wages, delivery charges or other additional costs, all such extras will be for the Client's account.
- 2.7. The Agency shall not be required to use, print, upload or hold any matter which in its opinion is or may be of an illegal or libelous nature or an infringement of the proprietary or other rights of a third party.

3. Protection of Concepts and Ideas

If a potential Client has already invited the Agency beforehand to develop a concept and if the Agency accepts this invitation prior to conclusion of the principal contract, the following shall apply:

- 3.1 Origination and/or conceptual work and any copyright subsisting therein shall remain the property of the Agency unless otherwise agreed in writing with the Client.
- 3.2 By the invitation and acceptance of the invitation by the Agency the potential Client and the Agency enter into a contractual relationship ("pitching contract"). That contract will also be based on the GTC.
- 3.3 The potential Client acknowledges that already by developing a concept the Agency will render cost intensive services, even though the Client himself has not taken on any performance duties yet.
- 3.4 To the extent that they reach the level of originality required for copyright protection the linguistic and graphic parts of the concept are protected by the Dutch Copyright Law [Auteurswet] The potential Client is not permitted to use or edit those parts without the Agency's consent due to the Dutch Copyright Act alone.
- 3.5 Furthermore, the concept contains ideas that are relevant to advertising which do not reach the level of originality required for copyright protection and are thus not protected by the Dutch Copyright Act. Such ideas are generated at the beginning of every creative process and may be defined as the creative spark for all subsequent work results and, thus, as the origin of the marketing strategy. Accordingly, those elements of the concept are protected which are unique and characterize the marketing strategy. For the purpose of this agreement ideas shall in particular mean advertising slogans, advertising texts, graphics and illustrations, advertising means etc., even if they do not reach the level of originality required for copyright protection.
- 3.6 The potential Client undertakes not to exploit or have exploited commercially and/or use or have used the creative advertising ideas which the Agency presented as part of the concept in any context other than the

corrective of a principal contract to be concluded at a later time.

3.7 If the potential Client is of the opinion that the Agency presented ideas to him which he already had before the presentation, he shall notify the Agency thereof via e-mail within 14 days of the day of the presentation and include means of evidence which allow a chronological allocation.

3.8 Otherwise the Parties will assume that the Agency has presented an idea to the potential Client which is new to him. If the Client uses the idea, it has to be assumed that the Agency received remuneration therefor.

3.8 The potential Client may be released from his duties under this Clause if he pays a reasonable compensation plus 21% VAT. Such release shall become effective only after receipt of the full compensation payment by the Agency.

4. Identification marks

4.1 The Agency shall be entitled to make reference to the Agency and the author, if applicable, on all advertising means and in any advertising and promotion measures, without the Client being entitled to any payment in this respect.

4.2 The Agency shall be entitled to make reference to its current or former business relationship with the Client on its own advertising media, including but not limited to its website, by referring to the Client's business name and business logo, with the Client having the right to revoke his consent in writing at any time.

5. Invoices & Payment

5.1. Payment must be made no more than 30 days after date of invoice unless otherwise agreed in writing in advance.

5.2. We understand and will exercise our statutory right to interest under the Late Payment Directive amended by European Directive 2000/35/EC if we are not paid according to these terms.

5.3. All invoices are subject to NL VAT at the current rate, unless a valid exemption certificate is provided.

5.4. All payments must be in Euro's.

5.5. All work completed after project inception will be billed as it is completed at the end of every calendar month as Work in Progress (WIP) until the conclusion of the project.

5.6. If the Agency incurs any costs as a result of the Client's neglect or default, the Agency may charge those costs to the Client in addition to the contract price.

5.8. The Client shall pay for any preliminary work which is produced at his/her request, whether experimentally or otherwise. A 50% rejection fee is applicable on all designs executed by the Agency should the Client cancel their contract/order.

5.9. When payment is overdue, the Agency may suspend work, service and/or delivery without notice and without prejudice to any other legal remedy until due payment has been made. Furthermore, any work started but incomplete may be suspended and payment therefore becomes immediately due and payable, notwithstanding anything expressed herein, and any monies in respect of.

5.10. The Agency may require payment in advance, or a deposit of at least 50% of the quote/estimate total prior to instigating work on an order, particularly but not limited to the following situations: new clients; clients with a poor payment history; large, lengthy or complex projects. Where a deposit is required, the balance shall be due upon completion of the work, unless otherwise agreed in writing in advance.

5.11. If your payment is returned by the bank as unpaid for any reason, you will be liable for a charge of €50 for each occurrence.

6. Insolvency

6.1. If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is deemed to be unable to pay its debts or have a winding-up petition issued against it or being a person who commits an act of bankruptcy or has a bankruptcy petition issued against him, the Agency without prejudice to other remedies shall:

6.2 Have the right not to proceed further with the contract or any other work for the Client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Client. Such charge to be an immediate debt due to him.

6.3. In respect of all unpaid debts due from the Client have a general lieu on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debts.

7. Force Majeure

7.1. The Agency shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Client may by written notice to the Agency elect 'to terminate the contract and pay for work done and materials used', but subject thereto shall otherwise accept delivery when available.

8. Information Provided by You

8.1. You warrant that the name, address and payment information provided when you place your order with the Agency will be correct and you agree to notify the Agency of any changes in the name, address and/or payment details.

8.2. You agree that the Agency may disclose your name and address where any enquiries are made.

8.3. You warrant that you possess the legal right and ability to enter into this Agreement and to use the Agency's services in accordance with this Agreement.

9. Indemnity

9.1. You shall indemnify us and keep us indemnified and hold us harmless from all liabilities, actions, claims, proceedings, losses, expenses (including reasonable legal costs and expenses), costs and damages, howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement, or arising out of claims based upon or relating to our work for you or any claim brought against us by a third party resulting from the provision of any Services to you and your use of them.

9.2. The Agency will notify you promptly of any claim for which the Agency seeks specific indemnification at the currently supplied address. The Agency will afford you the opportunity to participate in the defence of such claim, provided that your participation will not be conducted in a manner prejudicial to the Agency's interests, as reasonably determined by the Agency and/or its legal representatives.

10. Limitation of Liability

10.1. All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, are subject always to sub clause 10.2.

10.2. Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

10.3. In any event, no claim against the Agency shall be brought unless you have notified the Agency of the claim within one year of the issue arising.

10.4. In no event shall the Agency be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, for any loss of business, contracts, anticipated savings or profits or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Agency's negligence or the negligence of its servants or agents or otherwise) which arise out of or in connection with the provision of any goods or services by the Agency.

10.5. The Agency warrants that its services will be provided using reasonable care and skill. Where the Agency supplies any goods supplied by a third party, the Agency does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign the benefit of any warranty, guarantee or indemnity given by the supplier of the goods to the Agency.

11. General Terms

11.1. These conditions and all other express terms of the contract shall be governed and constructed in accordance with the laws of the Netherlands and you hereby submit to the non-exclusive jurisdiction of the Dutch courts.

11.2. The Agency shall not be liable or deemed to be in breach of contract by reason of any delay in performing, or failure to perform, any of its obligations if the delay or failure was due to any cause beyond its reasonable control.

11.3. All quotes/estimates, briefs and other Client/Agency documents are commercially confidential and may not be disclosed to third parties without prior written agreement.

11.4. These terms and conditions, together with any documents expressly referred to in them, contain the entire Agreement between the Agency and the Client relating to the subject matter covered and supersede any previous agreements, arrangements, undertakings, proposals or contemporaneous communications, written or oral: between the Agency and the Client in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you confirm that you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been expressly made in this Agreement.

11.5. Any notice to be given by either party to the other may be sent by either email or post to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved, be deemed to be received on the day it was sent, or if sent by post shall be deemed to be served two days following the date of posting.

11.6. Headings, numbering and summaries are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

11.7. You acknowledge that no joint venture, partnership, employment, or agency relationship exists between you and the Agency as a result of your use of these services. You agree not to hold yourself out as a representative, agent or employee of the Agency. You agree that the Agency will not be liable by reason of any representation, act or omission to act by you.

11.8. The Agency reserves the right to revise, alter, modify or amend these terms and conditions, and any of our other policies and agreements at any time and in any manner without prior notification. Notice of any revision, amendment, or modification will be posted in accordance with our Terms and Conditions.

11.9. If any of the provisions of this Agreement are judged to be illegal or unenforceable, the remainder shall continue in full force and the effect of the remainder of them will be not be deemed to be prejudiced.

11.10. This Agreement takes effect on the date on which you order our services. Acceptance of these terms is an absolute condition of the Client requesting work. An order constitutes acceptance of all our Terms and Conditions.

11.11. You shall not assign this Agreement or any benefits or interests arising under this Agreement without the Agency's prior written permission.

12. Service Level Agreements

12.1. The hours provided in Service Level Agreements (SLA) can be used in any way, other than for fixed costs and essential services – such as web hosting or advertising placement – or towards payment of debts or existing/quoted jobs.

12.2. Once an account handler at the Agency has been given a job brief as part of the SLA, should the work take longer than 30 minutes, we will endeavour to provide a total estimate of how long the job will take for approval by the Client before any work is commenced.

12.3. For each job requested by the Client as part of the SLA, a minimum of 15 minutes will be deducted from the remaining SLA time allowance.

12.4. All hours worked as part of an SLA are recorded and can be forwarded to the Client on request.

12.5. Once a Client approaches the final two hours of their SLA allowance, the Agency will endeavour to notify them automatically via email, providing the opportunity to purchase another SLA.

12.6. Any hours that have not been used within the initial 12 months after purchase will roll over to the following year, up to a maximum of 24 months. However, although the Agency reserves the right to increase the hourly rate as business needs dictate, the hours in an SLA will be honoured at the original rate at which they were purchased for one year, after which time, any roll-over hours will be applied to subsequent years at the new hourly rate.

13. Delivery

13.1. Goods will be dispatched or must be collected by the Client when ready and the Client shall not refuse or delay delivery.

13.2. Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the Agency and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of despatch of the goods) and any claim in respect thereof must be made in writing to the Agency and the carrier within seven days of delivery (or, in the case of non-delivery, within 42 days of despatch). All other complaints and claims must be made in writing to the Agency within 28 days of delivery. The Agency shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Client proves that it was not possible to comply with the requirements and advice (where required) was given and the claim made as soon as reasonably possible.

13.3. Goods completed but not delivered shall thereupon forthwith become due and payable. Moreover after the expiration of 14 days notice the Agency may exercise a general lien on all the Client's goods and property in our hands and may dispose of such goods and property as they see fit and apply the proceeds towards such debts. The Agency may also elect to cancel further work and/or not produce any unmade balance of such contract and recover from the Client any losses sustained by so doing.

13.4. The Agency shall not be liable for any loss to the Client arising from delay in transit howsoever caused.

13.5. The risk in the goods passes to the Client upon delivery (whether to the Client or to a common carrier) but legal and beneficial ownership shall remain with the Agency until payment in full has been received (each delivery being considered as a whole). Until the date of payment the Client, if so required by the Agency, shall store the goods in such a way that they are clearly identifiable as the property of the Agency.

(Digital) Media Terms & Conditions

14. Proofing

14.1. Proofs, samples, specimens, sketches, photographs, links or any representation, whether partial or total, of the finished article in whatever form may be submitted to the Client for approval.

14.2. After approval the Client shall have no claim against the Agency for errors in the exemplar as approved by them.

15. Social Media Channels

Before an order is placed the Agency expressly points out to the Client that providers of "social media channels" (e.g. facebook; hereinafter referred to as Providers), in their terms and conditions of use, reserve the right to reject or remove advertisements or promotional appearances for any reason whatsoever. Accordingly, Providers are not obliged to forward content or information to users. Thus, there is a risk, which cannot be calculated by the Agency, that advertisements or promotional appearances are removed for no reason. Although in the case of a complaint of a different user Providers do offer an opportunity to reply, the content will be immediately removed also in that case. In that case restoring the original, lawful condition may take some time. The Agency works on the basis of the Providers' terms and conditions of use, on which it has no influence, and also makes them the basis of Client orders. By placing the order the Client expressly acknowledges that those terms and conditions of use (co-)determine the rights and duties of a contractual relationship, if any. The Agency intends to execute the Client's order to the best of its knowledge and belief and to comply with the policies of "social media channels". Due to the terms and conditions of use that are currently applicable and the fact that every user can easily allege a violation of the law with the aim that contents will be removed, the Agency cannot guarantee that the ordered campaign can be retrieved at any time.

16. Programming

16.1. The Agency can only program sites to be as secure as reasonably possible at the time of delivery and can not offer indemnity against future threats/developments.

16.2. Once the Agency has deemed a project to be complete, any amendments will be charged at the Agency's standard billing structure of €125/hour.

16.3. The Agency develops websites for compatibility with the current version of Microsoft Internet Explorer, Google Chrome and Mozilla Firefox: not all previous versions or every browser. If further compatibility is required, the Agency must be advised at the outset.

17. Ownership

17.1. The ownership of the web pages and copyright therein shall remain with the Agency until payment in full has been received for all sums owing. Once payment has been received, ownership and copyright shall pass to the Client for page text and graphics specific to the Client.

17.2. Ownership of all code used in processing web pages shall remain with the Agency and it is expressly agreed that the use of such code in processing the web pages does not confer any passing of title from the Agency to the Client.

18. Content & Images

18.1. The Client shall supply the copy for your web pages in clear and usable permanent or electronic form and shall be entirely responsible for the content of the web pages.

18.2. All images uploaded to websites by the Client (via CMS, FTP or other) should be optimised (compressed file size). The Agency can provide advice on the best image editing software packages, but accepts no responsibility for the performance or compatibility of third-party software, or the results they produce.

18.3. Any images supplied electronically will be incorporated into designs without charge provided that they are of suitable quality. All images need to be supplied as EPS illustrator vectors for logos and Photoshop tiffs (300dpi min) for pictures. Any logos that need to be re-drawn will be charged extra at our hourly rate. All supplied images requiring scanning or alterations to be charged at €20 per image. Images sourced from external image libraries may incur additional license/royalty charges payable by the Client.

18.4. When a test link is provided, it is the responsibility of the Client to test the functionality, read and check all copy, as well as approve the design and images used before approval is given.

18.5. The Agency can provide legal disclaimers and privacy policies; but it is the responsibility of the Client to confirm with their own legal advisers that these meet their individual requirements, as The Agency accepts no responsibility for their accuracy, relevance or currency.

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04-05-2023

Dennis Sol

