



Momkai

General Terms and Conditions

CLAUSE 1: GENERAL CONDITIONS

1 These General Conditions govern the legal relationships between the company with limited liability Momkai B.V. (hereinafter: 'Momkai') and the client (hereinafter: the 'Client') and remain fully in force after termination of the relationship.

2 Applicability of any general conditions of the Client is hereby explicitly excluded.

3 Any amendments to these General Conditions are only valid if agreed explicitly in writing.

CLAUSE 2: REALISATION OF AN AGREEMENT

1 An agreement is entered into once the Client has accepted the offer from Momkai in writing or, in the absence of written acceptance, if Momkai has confirmed in writing the oral acceptance of the Client.

2 If there is no acceptance as set out in Clause 2.1, the agreement is deemed to have been entered into as soon as Momkai has commenced performance of the agreement and this performance is the result of negotiations by or on behalf of the Client from which Momkai could reasonably deduce that the Client agreed that the performance should commence.

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3 Where an offer consists of several parts, Momkai is not obliged to perform any such part for payment of a proportionate part of the total price contained in the offer (example: in the event a proposal contains 4 elements, Momkai cannot be obliged to perform 3 out of these 4 elements for 3/4th of the total price).

CLAUSE 3: FEES AND PAYMENT TERMS

1 Amounts are exclusive of turnover tax (VAT) and any other levies and any charges third parties, unless otherwise indicated.

2 If, at the request or with the prior consent of the Client, Momkai carries out work or performs outside the content or scope of the already agreed work, the Client shall pay for such work or performance on the basis of Momkai's customary rates. Upon request, Momkai can provide Client with an overview of these rates.

3 Payment should be made, notwithstanding the provisions in the following sections, within the term specified on the invoice and in the absence of such term within twenty one (21) days of the invoice date. Payment of third party costs incurred by Momkai, shall be paid within seven (7) days of the invoice date.

4 Momkai shall invoice once immediately following the realisation of an agreement and the remaining part after it has been performed, unless agreed otherwise. Momkai is

at liberty to send interim invoices for payment of completed parts of an agreement and costs incurred.

5 If the Client has not paid an invoice within the term specified in 3.3, then it is in default and Momkai may immediately enforce all claims against the Client. From the moment that the Client is in default until the moment it pays the sum owed in full, it is liable to pay interest of 1% per month over the outstanding amount.

6 If the Client fails to make payment, Momkai is entitled to claim from the Client all its extrajudicial and judicial costs in the matter with a minimum of 10% of the outstanding amount.

7 Momkai is also entitled to terminate the agreement if the Client fails to make payment even after Momkai has offered the Client a reasonable period in which to pay what it owes. In the event of such termination, the Client is liable to pay the agreed price in full.

8 If the Client does not make payment within a reasonable term proposed by Momkai, the Client may not or no longer use the materials it has been provided with and will lose all rights (of use) it has been granted.

9 Apart from setting off any advance payments it has made, the Client may not set off against, suspend or make deductions from the amount it owes.

10 If the Client terminates all or part of an agreement before the end of the agreement, all claims that Momkai has against the Client shall become immediately payable, without the need to serve any notice of default. The client is liable vis-à-vis any third parties for damage as a result of such termination and indemnifies Momkai accordingly.

CLAUSE 4: PERFORMANCE OF THE AGREEMENT

1 Momkai has an obligation to perform to the best of its ability.

2 Unless agreed otherwise, Momkai may perform the agreement as it sees fit and to make certain choices based on its own opinions, methods and interpretations and may designate third parties to carry out the work.

3 In case Momkai has approval from the Client to award contracts to third parties, Momkai shall be free to enter into such contracts in the name and for the account and risk of the Client.

4 In the event Momkai assigns third parties for the performance of its services, it may apply its customary fees.

5 The testing of the materials supplied by Momkai for compliance with regulations and the use of the materials shall be at the risk and expense of the Client.

6 If the agreement consists of several parts, Momkai may suspend the performance of new parts until the Client has given written approval for any parts already delivered.

7 Momkai may also suspend the performance of the agreement if there has not been payment in full of one or more agreed payments, notwithstanding the right of Momkai to full payment of the agreed price.

8 The Client shall take all reasonable steps necessary or desirable to enable Momkai to perform its tasks on time and correctly, in particular by providing the necessary cooperation and the required data and materials in time.

9 If it is an agreement of indefinite duration, and the Client either substantially reduces the amount of work or terminates the relationship with Momkai, without observing the agreed notice period – or in the absence of any agreed notice period - during a period that can be deemed a reasonable notice period, Momkai is entitled to the average monthly income it received from the Client over the preceding 6 months times the number of months of said (notice) period that was not observed.

CLAUSE 5: DELIVERY PERIODS

1 Unless agreed otherwise, delivery periods are approximates and therefore not deadlines. In the event Momkai fails to meet the obligations set forth in any agreement, the Client shall first provide Momkai with written notice of default.

2 If a delivery period is exceeded, Momkai is not liable to the Client for any kind of compensation. Nor is the Client entitled to terminate the agreement unless the exceeding of the delivery period is such that it is not reasonable to expect the Client to maintain the relevant part of the agreement.

3 If the delivery of any reference materials or the payment of any stipulated advance payments or other payments is later than the term agreed, Momkai is entitled to extend the delivery period by at least the period of the delay.

CLAUSE 6: AMENDMENTS TO THE AGREEMENT AND ADDITIONAL WORK

1 If it appears that amendments to the agreement are necessary, the parties shall discuss these. If there is an absence of any written agreement, the amendment is deemed to take effect as soon as Momkai has commenced performance of the amended agreement and such commencement results from acts by or on behalf of the Client, from which Momkai could reasonably infer that the Client agreed to the amendment.

2 After any amendment, Momkai may increase the agreed fee proportionately and charge any additional costs to the Client.

3 Additional work due to late supply or the supply of incorrect or insufficient data or material shall be invoiced on basis of the customary rates of Momkai. In the event such additional work changes the planning of Momkai, Momkai is entitled to charge the Client for any additional costs (including costs for engaging third parties).

4 If an amendment to the agreement results in exceeding an agreed delivery period, such period, unless otherwise agreed, shall be extended indefinitely. The implications of such exceeding shall be for the account and risk of the Client.

CLAUSE 7: MATERIALS

1 Materials supplied by or on behalf of Momkai remain at all times the property of Momkai or of any third party that has provided these materials to Momkai.

2 The Client shall treat the materials supplied by or on behalf of Momkai with the greatest possible care and – where these are not digital files – return such material by courier or registered post at first request of Momkai.

3 Momkai shall treat the materials supplied by or on behalf of the Client with the greatest possible care and – where these are not digital files – return such material by courier or registered post at first request of Momkai.

4 The shipping of materials is at the risk and expense of the Client.

CLAUSE 8: INTELLECTUAL PROPERTY RIGHTS AND RIGHTS OF USE

1 All intellectual property rights, including copyright, on the results of the work of Momkai or of any third party subcontracted by Momkai, shall remain with Momkai or such third party.

2 Momkai grants the Client the right to use the results of the work performed by Momkai on behalf of the Client in the manner agreed in writing. Insofar as there is no such agreement in writing, the Client shall have the right to use the results of the work performed by Momkai on behalf of the Client in unchanged form for the purposes envisaged by the parties. For any additional use, such as a longer period, other forms of use or an extension of the territory, prior approval from Momkai is required. If the Client or any third party that has been supplied material by Momkai uses such material in any manner other than that for which consent was given, Momkai may apply its customary fees. Websites may only be used in the agreed domain(s), or if there is no such agreement, only in the domain in which the website was first used.

3 Any alterations in the results of the work performed by Momkai on behalf of the Client shall only take place by Momkai, unless the nature of such alterations is not of substance. Not of substance are, for example, alterations necessary for the relevant use by the Client. In principle, alterations of an artistic nature are not considered alterations not of substance and, therefore, Momkai shall make such alterations.

4 Momkai is permitted to sign the work it produces. Where possible and customary, the Client shall credit Momkai being the designer. However, at first request of Momkai, the Client shall remove the name Momkai.

5 Momkai reserves the right to use the work it produces for its portfolio and other PR purposes (including entering it for awards).

6 If Momkai has put forward any ideas, the Client may not make use of such ideas if the relevant project, for whatever reason, is not ultimately performed by Momkai.

7 The Client may not register the materials supplied by Momkai, including words, images, slogans, pay offs, etc., as a trademark or otherwise without the prior written consent of Momkai.

CLAUSE 9: REVIEW AND COMPLAINTS

1 Upon receipt of the results of the work of Momkai, the Client shall review whether these results comply with what parties have agreed upon.

2 Any complaint concerning the results of the work of and/or invoicing by Momkai must be submitted in writing to Momkai within fourteen (14) days of the delivery or invoice date respectively. A complaint shall not suspend the payment term of any invoice.

3 If any complaint has not been made within the above mentioned time frame, the results of Momkai will be deemed to have been received in good condition or the work will be deemed to have been performed in correct manner and the invoices to be correct.

4 In the event of failure in the results of the work, Momkai shall be offered the opportunity to correct the rejected results or to perform the work again.

CLAUSE 10 : GUARANTEE ON SOFTWARE

1 In the event Momkai develops and delivers software, and parties have agreed to conduct an acceptance test, such acceptance test shall be performed by the Client within fourteen (14) days after delivery of the software, in order to verify whether the software meets the agreed upon specifications. No later than on the last day of such acceptance test, the Client shall send Momkai its acceptance report with, to the extent applicable, a

description of any defects. Momkai will endeavour best efforts to correct said defects within a reasonable period. As regards defects that are considered a failure attributable to Momkai, Momkai will endeavour best efforts to correct said defects within one month of receipt of the acceptance report. In the event of defects which are not attributable to Momkai, it will charge its customary fees. In the event parties did not agree on an acceptance test, the software will be delivered as is and for the repair of any defects, Momkai will charge its customary fees. Any obligation to correct defects shall lapse if and when the Client or a third party has modified the software or if the defects are due to the use by third parties.

CLAUSE 11: LIABILITY AND INDEMNIFICATION

1 The total liability of Momkai for direct loss is limited in any circumstances to the maximum payment that Momkai has received in the 30 days immediately preceding the moment at which the liability of Momkai arose. 'Direct loss' means only material loss that is the direct consequence of an attributable fault or an unlawful act of Momkai. The limitation of liability referred to in this article does not apply in case of intentional acts and gross negligence of Momkai's managers and directors.

2 Momkai's liability for any loss other than direct loss as defined in the previous section is hereby excluded. 'Loss other than direct loss' includes consequential loss, business loss, loss of profit, lost savings, loss due to business stagnation and loss resulting from or connected with the materials supplied by Momkai.

3 Momkai is not liable for any defects in the results of its services due to the improper use by others than Momkai or due to circumstances beyond the control of Momkai (such as changing technology) and Momkai shall not be liable for any loss or damage to materials provided by Client to Momkai. Furthermore, Momkai is not liable for any damage as a result of loss of data.

4 If the Client or any third party assigned by the Client implements changes to the software supplied by Momkai, the liability of Momkai for damage resulting from defects in this software is excluded.

5 In any event, each claim must be made within six (6) months after the damage occurred for which it holds Momkai liable.

6 The Client indemnifies Momkai against any third party claims.

CLAUSE 12: TERMINATION OF THE AGREEMENT

1 In addition to the terms set forth in these General Conditions and the provisions provided by law, Momkai is entitled to terminate the agreement with the Client without notice if and as soon as the Client becomes insolvent or seeks bankruptcy or a moratorium. If, when the agreement is terminated the Client has not met all its obligations to Momkai, then all rights conferred on the Client shall automatically lapse, without the need for any legal steps to achieve this.

2 Momkai is furthermore entitled to terminate the agreement with the Client if the Client, without the permission of Momkai, makes changes to the results of the work of Momkai and repeatedly ignores Momkai's requests to restore the changes.

CLAUSE 13: FORCE MAJEURE

1 If either Momkai or the Client are unable to fulfil their obligations due to force majeure, such obligations shall be suspended for the time that the force majeure continues. If such period exceeds thirty (30) days, either party has the right to terminate part or all of the agreement in writing, without the obligation to pay any form of compensation. Payments already due and payable remain due and Payable.

2 Force majeure on the part of Momkai includes late or non-delivery by any third party; sickness and temporary or permanent occupational disability of employees of, or third parties subcontracted by, Momkai, whereby the Client is not entitled to reimbursement of costs or compensation for loss.

3 Force majeure on the part of the Client does not include the late or non-delivery by any third party, the cancellation or amendment of any contract by any third party or change in the (legal) circumstances as a result of (cancelled) cooperation, such as a merger or takeover.

CLAUSE 14: PROHIBITION ON ENGAGEMENT OF EMPLOYEES

1 The Client nor any person or company associated with the Client shall employ or otherwise engage the services of any employee of Momkai who has been involved in any way with the performance of the agreement, during the term of the agreement and until two years after performance of the last services. Breach of such prohibition shall carry an immediate penalty of EUR 1,000 per day for each day such breach continues, notwithstanding the right of Momkai to claim its actual damage.

CLAUSE 15: CONFIDENTIALITY

1 Each party will keep confidential and take the necessary measures to ensure that its staff will keep confidential information that it receives from the other party (in whatever form) and any other information concerning the other party of which it knows or reasonably should understand that such information is confidential or with regard to information, the disclosure of which is detrimental to the other party.

2 The obligation of confidentiality referred to in Clause 15.1 shall not apply to information:

- a. was already public at the time that the recipient received this information or subsequently became public without a breach by the receiving party of any obligation to keep such information confidential;
- b. of which the receiving party can prove that it was already in its possession at the time of receipt of said information from the other party;
- c. received by the receiving party from a third party which did not act in breach of any obligation to keep said information confidential; d. information disclosed by the receiving party under a legal obligation;

3 The obligation of confidentiality set out in this Clause shall apply for the duration of the longest running agreement between the parties and for a period of three years after the termination of that agreement.

CLAUSE 16: MISCELLANEOUS

1 The Client is not entitled to transfer its rights or obligations to any third party.

2 If any section or provision of these General Conditions or of any agreement entered into between Momkai and the Client should at any time become void or voidable, then the other terms shall remain in full force. A new term shall be drawn up to replace the void or voidable section(s) or provision(s) which is as close as possible to the intention of the parties.

3 These General Conditions and all agreements between the parties are subject to Dutch law and any disputes shall be brought exclusively before the court with relevant jurisdiction in Amsterdam.