

General terms and conditions Bright Digital B.V.



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Article 1. Applicability

1. These general terms and conditions apply to and form part of all orders, quotations, offers, agreements and commitments entered into by Bright Digital B.V., regardless of their name, unless Bright will have explicitly deviated from these terms and conditions in writing.
2. In this document the following definitions apply
 - 2.1. **Bright:** the private company Bright Digital B.V., established in Apeldoorn, the Netherlands, both within and outside its capacity as a company in the field of marketing strategy, digital marketing, inbound marketing and marketing automation.
 - 2.2. **Client:** any other party, legal person or natural person or a number of persons acting jointly, whether legal persons or not, who enter into an agreement with Bright, or instruct Bright to perform work or provide services.
 - 2.3. **Agreement:** any agreement that comes about between Bright and the client, any change thereto or addition thereto, as well as all (legal) acts in preparation and in implementation of that agreement.
3. These conditions can only be deviated from in writing, provided that the management of Bright has signed this or when Bright has implemented it.
4. If the court declares one or more provisions to be inapplicable for whatever reason, or declares them invalid, the other conditions will continue to apply without prejudice.
5. General conditions of the client are explicitly rejected, unless these conditions have been accepted by Bright in writing.
6. The present terms and conditions also apply to all agreements with Bright, for the implementation of which third parties must be involved.

Article 2. Offers and quotations

1. All offers, including tenders, data in any added appendices, prices and other conditions, are without obligation, unless a period for acceptance is stated in the offer. They are valid for 30 days, unless stated otherwise. Bright is only bound by the offers if the acceptance thereof is confirmed in writing by the client within 30 days, unless indicated otherwise.
2. The prices in the aforementioned offers and quotations are exclusive of VAT, office costs and any costs to be incurred in the context of the agreement, unless indicated otherwise.
3. A composite quotation does not oblige Bright to execute part of the assignment against a corresponding part of the quoted price.

Article 3. Conclusion of agreements

1. Agreements are closed in writing, but also if Bright implements the offered or discussed work and activities.
2. The agreement replaces and replaces all previous proposals, correspondence, agreements or other communication, written or oral.
3. The contents of printed matter, website, media etc. do not bind Bright, unless explicitly referred to in the agreement.
4. Bright reserves the right, without stating reasons, not to accept agreements or to accept them exclusively on the condition that the agreement is confirmed in writing in advance by the client and / or that the work will only commence after payment by Bright after advance payment.

Article 4. Execution of the agreement

1. Bright, or contracted party, will execute the agreement according to the requirements of good workmanship, in accordance with the procedures agreed with the client and thereby promote the client's interests to the best of its knowledge. With regard to the intended activities, there is explicitly an obligation of best efforts on the part of the Bright.
2. Bright determines the way in which and by whom the assignment or the agreement is executed, while taking into account the requirements made known by the client as much as possible. If and to the extent that a proper execution of the agreement requires this, Bright has the right to have certain work done by third parties.
3. Any financial objectives of the client never apply as a guarantee or result obligation of Bright.
4. The client ensures that all data, which Bright indicates that they are necessary or which the client should reasonably understand to be necessary, for the execution of the agreement, will be provided correctly and timely to Bright.
5. If the information required for the execution of the agreement is not provided to Bright in time, Bright has the right to suspend the execution of the agreement and / or to charge the client for the extra costs resulting from the delay according to the usual rates.
6. Bright is not liable for damage of any nature whatsoever, because Bright made assumptions on incorrect and / or incomplete information provided by the client.
7. If work is carried out by Bright or third parties contracted by Bright in the context of the assignment at the location of the client or at a location designated by the client, the client shall provide the facilities reasonably required.
8. If the client provides Bright with information carriers, electronic files or software etc., the client guarantees that these are free of viruses and defects.
9. If Bright has made a meeting, conversation report or report of a certain contact with the client, and the client does not respond by return after receipt thereof, the content thereof will be considered correct and complete and the parties will be bound by its content.
10. Client will not give similar assignments to another agency, unless Bright has agreed.

Article 5. Amendment of the agreement

1. Any changes and additions to the agreement are only valid if Bright has confirmed these in writing or when Bright has implemented this.
2. If the parties agree that the agreement will be amended or supplemented, the time of completion of the implementation may be affected.
3. If a fixed price has been agreed, the more or less costs will be charged to the client and made payable by the client.

Article 6. Prices and costs

1. All prices are exclusive of VAT, office costs and costs of third parties.
2. Client will pay the costs of third parties directly to the third party as much as possible. If these are disbursed by Bright, Bright is entitled to charge a surcharge for this.
3. The parties may determine the price for the work to be performed by Bright in various ways, namely a) a fixed price for a specific assignment, b) a fixed price based on an estimated number of hours and / or work, c) based on a retainer (subscription), or d) against payment of the actual hours spent. In addition, Bright can license software against payment of a license fee.
4. A budget provided or agreed by Bright, as mentioned above, can never be regarded as a fixed price, but only as an indication or estimate. This also applies to an available budget made known by the client. Hours that have been or will be made by Bright outside the budget or the budget will be charged additionally and will be made payable by the client. Bright will inform the more (or fewer) hours to be spent in advance as much as possible.
5. Bright is furthermore entitled to pass on price increases if Bright can demonstrate that between the moment of offering and execution of the agreement, the factors that determine the price, such as wages and other prices, have risen considerably.
6. In addition, Bright may increase the price if, during the execution of the work, it appears that the originally agreed or expected amount of work was insufficiently estimated at the conclusion of the agreement, and this cannot be attributed to Bright, which cannot reasonably be assumed Bright can be expected to perform the agreed work at the originally agreed price.
7. Travel time is charged at 50% of the agreed (or the applicable) hourly rate and out of pocket travel expenses including km fees (€ 0,40 cent per km) will be charged.
8. Bright reserves the right to periodically charge the costs due.

Article 7. Payment and security

1. Payment by the client must be made, without suspension or settlement, within 14 days after the date of invoice, with a payment method to be specified by Bright.
2. Bright reserves the right for the performance of the agreement, to demand security, or to set different payment conditions in another sense, such as (advance) payment of the agreed rate.
3. If the client fails to pay, then will the client be legally in default and from that moment the client will owe 2% interest per month until the moment of payment of the full amount.

4. All extrajudicial costs included in the collection - including collection costs and any reasonable judicial and execution costs incurred - are also for the account of the client. The extrajudicial costs amount to at least 15% of the principal sum due. The mere involvement of a third party by Bright creates the liability.
5. In the event of liquidation, bankruptcy, seizure or suspension of payment from the client, the claims of Bright on the client are immediately claimable.
6. Complaints against invoices must be submitted in writing to Bright within 14 days. Complaints against the amount of the invoices do not suspend the payment obligation.

Article 8. Contract duration, cancellation, execution period

1. The agreement is entered into for an undetermined period of time, unless agreed otherwise. In that case, both parties can cancel the agreement in writing, subject to a cancellation period of three months, unless otherwise agreed. During the cancellation period, the client is at least obliged to pay a monthly amount equal to the average invoiced amount for the months already invoiced prior to cancellation.
2. A contract that has been entered into for a definite period of time is tacitly renewed for this same period, and can only be terminated at the end of the current contract year, subject to a three-month cancellation period.
3. Agreements that apply to a specific project or assignment cannot be terminated prematurely. If such an assignment is nevertheless prematurely terminated by the client, then Bright retains the right to payment of the price agreed at the start for the entire assignment, or (in the absence thereof) at least the lost profit on this, as well as compensation for the already made costs, without prejudice to the rights that Bright is entitled to by virtue of the law.
4. In the event of premature termination, Bright will arrange for the transfer of work still to be performed to a third party / parties in consultation with the client. However, Article 14 applies to this. If the transfer of the work entails extra costs for Bright, these will be charged to the client. Bright has the right to suspend its obligations in this regard until the client has fulfilled all its payment obligations.
5. In the event of an extension of the agreement, any previously granted discounts will be undone and the current prices of Bright will apply from that moment.
6. If a period has been agreed for the performance of certain activities within the term of the agreement, this is never a strict deadline and therefore the agreement cannot be terminated due to exceeding the deadline. If the execution period is exceeded, the client must therefore first give Bright notice of default in writing.

Article 9. Complaints about work performed

1. Complaints about the work performed must be reported in writing by the client to Bright within 14 days after discovery, but no later than 30 days after completion of the work concerned. The notice of default must contain as detailed a description as possible of the shortcoming, so that Bright is able to respond adequately.
2. Complaints as referred to in the first paragraph do not suspend the payment obligation.

3. Complaints will no longer be processed after the aforementioned periods have expired, and the client has no longer (claim) rights in this regard.
4. If a complaint is well-founded, Bright has the choice between adjusting the price charged, correcting or re-performing the rejected work free of charge or not fully or partially continuing to perform the agreement against restitution in proportion to the price already paid by the client.

Article 10. Suspension and termination

1. If the client wishes to dissolve the agreement in whole or in part, this must be done in writing by a registered letter.
2. Bright is authorized to suspend the compliance with the obligations or to dissolve the agreement if:
 - a. the client does not or not fully comply with the obligations under the agreement;
 - b. after the agreement was concluded, Bright came to the knowledge that circumstances give good reason to fear that the client will not fulfill its obligations;
 - c. at the conclusion of the agreement, Bright asked the client to provide security for the fulfillment of its obligations under the agreement and this security is not provided or is insufficient;
 - d. if circumstances arise that are of such a nature that fulfillment of the agreement is impossible or can no longer be required by standards of reasonableness and fairness;
 - e. bankruptcy, suspension of payment, total or partial cessation of business or business, liquidation, transfer, death, in receivership or if the Legal Debt Settlement Scheme for Natural Persons is or has been declared applicable to the Client and furthermore in the case of goods of the Client in a precautionary or enforceable order. be seized.
3. If the agreement is dissolved, the claims of Bright on the client are immediately claimable. If Bright suspends compliance with its obligations, it will retain its claims under the law and agreement, including the right to compensation.

Article 11. Non-attributable shortcoming (force majeure)

1. The parties are not obliged to fulfill any obligation if they are prevented from doing so as a result of a circumstance that is not due to fault, and is not for their account under the law, legal act or generally accepted beliefs.
2. In these general terms and conditions, force majeure is understood to mean, in addition to what is understood in this regard by law and case law, all of external causes, foreseen or unforeseen, over which Bright cannot influence, but as a result of which Bright is unable to fulfill its obligations to come. Strikes or lack of capacity in the office of Bright (or the third parties it contracted) as well as disruptions of the internet, including a computer network or telecommunication facilities.

Article 12. Liability

1. Bright is not liable for direct or indirect damage suffered by the client or third party or parties that is related to a shortcoming by it or by the persons it engages in the execution of the agreement, unless there is intent or gross negligence.
2. If Bright is unexpectedly held liable and Bright is insured for liability, the liability is at all times limited to a maximum of the amount to be provided by the insurer of Bright in the appropriate case.
3. If the insurer does not provide a payment and Bright is unexpectedly held liable, the liability is limited to direct damage up to a maximum of the invoice amount of the agreement, at least that part of the assignment to which the liability relates. For an assignment with a duration of more than six months, liability is further limited to the price owed for the last three months. The liability at all times never exceeds € 10,000 (in words: ten thousand euros) in direct damage.
4. The liability of Bright for indirect damage (including consequential damage, lost profit, lost savings and damage due to business interruption) is at all times eliminated. This also applies to any damage that relates to or is the result of a cyber attack, a data breach, due to the use of software (including plug-ins), the malfunctioning of templates, websites or campaigns.
5. The client indemnifies Bright against all claims and legal claims of third parties.

Article 13. Confidentiality

1. Client and its employees and third parties engaged by it are bound to maintain the confidentiality of all confidential information that they receive from Bright or from another source, such as forfeiting a penalty amount of € 50,000 that cannot be set off (in words: fifty thousand euros)) for each violation, without prejudice to the right of Bright to claim full compensation or compensation. Information is considered confidential if this is stated by the other party or if this results from the nature of the information.

Article 14. Intellectual property

1. Without prejudice to the other provisions of these general terms and conditions, Bright reserves all rights and powers that accrue to it under the Copyright Act or other intellectual property rights, including (but not limited to) source codes and (functional and technical) designs.
2. All items provided by Bright, in the broadest sense of the word, are exclusively intended for use by the client and may not be reproduced, published, or brought to the knowledge or possession of third parties without the prior permission of Bright. , unless the nature of the documents provided or the law dictate otherwise.
3. If Bright is willing to undertake to transfer an intellectual property right, such an obligation can only be entered into explicitly and in writing.
4. If the parties agree in writing that an intellectual property right with regard to software, websites, source codes, data files, designs, equipment or other materials specifically developed for the client will transfer to the client, this will never affect the right or the possibility of Bright to use and / or exploit the components, general principles, ideas,

designs, algorithms, documentation, works, programming languages, protocols, standards and the like underlying this development, without limitation, for other purposes, either for themselves or for thirds.

5. The client indemnifies Bright against any right of action with regard to any right of intellectual property.
6. The client guarantees that all text elements, images, photos, designs, trademarks or other illustrations that are provided to Bright are the property of the client and / or that the client has permission to use them.

Article 15. Non-takeover of staff

1. During the term of the agreement and one year after its termination, the Client shall in no way whatsoever, except with the permission of Bright, employees of Bright or of companies which Bright has invoked to implement this agreement and which are (have been) involved) in the performance of the agreement, commissioning it or otherwise let it work for itself, directly or indirectly, such on the forfeiture of a non-deductible penalty of € 50,000 (in words: fifty thousand euros) per violation.

Article 16. Expiry period

1. Every right of action and other powers of the client vis-à-vis Bright, for whatever reason, will in any case lapse after the expiration of one year from the moment when a fact occurs that the client can use these rights and / or powers against Bright and the client did not institute legal proceedings within this period.

Article 17. Applicable law and disputes

1. The present conditions, as well as all offers, quotations, assignments, agreements and other commitments by whatever name, of Bright are exclusively governed by Dutch law.
2. The applicability of the Vienna Sales Convention is excluded.
3. All disputes will be settled by the competent court that has jurisdiction at the seat of Bright, unless any mandatory provision precludes this, and this does not affect the right of Bright to submit a dispute to the court that is based on the law. is authorized.
4. If the client is established outside the EU, or in Denmark, the parties agree to submit their dispute to the Netherlands Arbitration Institute, in accordance with the most recent regulations (www.nai-nl.org). Only one arbitrator will be appointed and the proceedings will be conducted in the English language. The location of the sessions is Amsterdam. The foregoing does not affect the possibility for each party to take summary proceedings in urgent cases before the competent court in the region where the other party is established.