

# TERMS & CONDITIONS

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## 1 Definitions

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1.1. In these General Conditions (“Conditions”) the following terms have the following meanings:

- The Marketing Collectiv: The Marketing Collectiv in Amsterdam, as well as its legal successors under general or special title and all companies and / or companies affiliated with him or with these legal successors;
- Client: any natural or legal person with whom The Marketing Collectiv enters into an Agreement or with whom The Marketing Collectiv is negotiating about the conclusion of an Agreement;
- Agreement: every Agreement that is concluded between The Marketing Collectiv and the Client, any amendment or addition thereto, as well as all (legal) acts for the implementation of that Agreement and, in retrospect, all (legal) acts required for entering into that Agreement ;
- Services: all activities that are the subject of the Agreement;
- Content/media: printed, audiovisual and auditory Media, everything in the broadest sense of the word;

- Media Operator: any company whose activity is the exploitation of Media, with which The Marketing Collectiv concludes or has concluded agreements with regard to a Media placement;
- Marketing/media planning and marketing/media strategy: all activities related to advice on the selection, timing and budgeting of the Media in connection with Media Placement;
- Media placement: an advertisement realized in the Media for the benefit of the Client.
- Media execution: the whole of activities related to the performance of a Media placement, in particular, but not limited to: reserving a Media placement, contracting a Media Operator or having it contracted or coordinating a Media placement;
- Assignment: any assignment from the Client, in whatever form;
- Standard Rates Media Operator: the Standard Rates for Media Placements applied by a Media Operator from time to time, as shown by the rate cards used by the Media Operator from time to time.

## **2. Applicability**

2.1. These Terms and Conditions form part of all Agreements and apply to all (other) actions and legal acts of The Marketing Collectiv and Client.

2.2. The applicability of any general or specific terms and conditions or stipulations of the Client is explicitly rejected by The Marketing Collectiv unless agreed upon in writing (e-mail or letter).

### **3. Offers, formation and content of Agreements**

3.1. An offer or quotation is not binding on The Marketing Collectiv and only serves as an invitation to provide an assignment by the Client.

3.2. An Agreement is only concluded if and insofar as The Marketing Collectiv accepts an assignment from the Client in writing (e-mail or letter) or if The Marketing Collectiv executes an Assignment. If The Marketing Collectiv performs any activities at the Client's request before an Agreement has been concluded, the Client will pay The Marketing Collectiv for this in accordance with the rates then applicable at The Marketing Collectiv.

3.3. An Agreement between The Marketing Collectiv and the Client may concern activities in connection with Content and PR activities, Design, Marketing/Media planning and Marketing/Media Strategy as well as Media or marketing execution. The Marketing Collectiv and the Client will agree on a case-by-case basis which of these activities will form part of the Agreement.

### **4. Changes and additions**

4.1 Amendments and additions to any provision in an Agreement and / or the Conditions can only be agreed in writing (e-mail or letter).

4.2 If a change and / or addition as referred to in the previous article is agreed, this change or addition only applies to the relevant Agreement, unless explicitly stated otherwise.

### **5. Prices**

5.1. The performance by The Marketing Collectiv of an assignment takes place on the basis of the circumstances applicable at the time of entering into the Agreement and, insofar as dependent on the performance of third parties, on the information provided by those third parties to The Marketing Collectiv.

5.2. All prices of The Marketing Collectiv are expressed in Euros and exclusive of VAT. Unless explicitly agreed otherwise, all levies or taxes imposed or charges in respect of the Services are at the expense of the Client.

5.3. Any change in the factors that influence the price of The Marketing Collectiv, including prices of third parties, exchange rates, insurance rates and other levies or taxes, The Marketing Collectiv can pass on to the Client in consultation.

5.4. The Client will pay The Marketing Collectiv an amount equal to an amount to be agreed between The Marketing Collectiv and the Client. This is determined per agreement and assignment / service and made known in advance.

5.5. Where relevant, The Marketing Collectiv will endeavor to negotiate a Media Discount (the difference between the Standard Rates Media Operator and the rates actually agreed by The Marketing Collectiv and the Media Operator) with the Media Operator. The Client will never be able to derive any claim against The Marketing Collectiv from the amount of the Media Discount stipulated by The Marketing Collectiv.

5.6. The Client will pay The Marketing Collectiv an amount equal to the previously agreed media costs and management budget.

## **6. Performance of the Agreement**

6.1. The implementation of an Assignment by The Marketing Collectiv takes place on the basis of the circumstances applicable at the time of entering into the Agreement and, insofar as dependent on the performance of third parties, on the information provided by those third parties to The Marketing Collectiv.

6.2. The Client will make available to The Marketing Collectiv all data required for the implementation of the Agreement, including but not limited to previews, designs, placement schedules and other creative material, and guarantees the correctness and completeness thereof.

6.3. The Marketing Collectiv is entitled in the performance of the Agreement to use third parties of its choice, with whom The Marketing Collectiv concludes agreements in its own name. In some cases, a Tripartite Agreement will be concluded between the Client, The Marketing Collectiv and a third party, in which case the General Terms and Conditions of this third party will also apply.

## 7. Payment

7.1. The Marketing Collectiv will send the Client an invoice within four weeks after the date of the Media Placement or Marketing Execution regarding the agreed costs, regarding media costs and / or management costs.

7.2. Unless otherwise agreed, the payment term is 30 days after the invoice date.

7.3. If The Marketing Collectiv uses third parties in the performance of the Agreement as referred to in Article 6.3, The Marketing Collectiv may stipulate that the Client makes the payments to these third parties. In the event of payment by the Client to a third party designated by The Marketing Collectiv, this payment is considered a legally valid payment to The Marketing Collectiv by the Client.

7.4. All payments will be made without discount, deduction or settlement, at the offices of The Marketing Collectiv, or into a bank account to be designated by The Marketing Collectiv. The client never has the right to suspend his payment obligation.

7.5. If at any time The Marketing Collectiv has reasonable doubts about the Client's creditworthiness, The Marketing Collectiv is entitled, before performing or continuing to perform, to require the Client to pay the purchase price in advance or to provide adequate security.

7.6. The Marketing Collectiv has the right to charge media budgets intended for media purchase to the Client in advance. This amount will then have to be paid in advance, this will be made known in time before entering into the agreement.

7.7. The Client is in default by the expiry of a payment term. In that case, all claims of The Marketing Collectiv on the Client under the relevant Agreement and directly related Agreements are immediately due and payable.

7.8. Without further notice of default, the Client owes interest on all amounts that have not been paid by the last day of the payment term at the latest, from that day on, interest equal to 1% per month until the date of full payment.

7.9. If the Client has not paid the amount and interest owed even after the expiry of a further payment term set by registered letter, the Client is obliged to reimburse The Marketing Collectiv for all extrajudicial and judicial costs. The extrajudicial costs to be reimbursed will be calculated on the basis of the collection rate applicable from time to time of the Dutch Bar Association. However, these costs will amount to a minimum of € 250 and are exclusive of the sales tax due.

## **8. Force majeure**

8.1. If The Marketing Collectiv is unable to fulfill its obligations towards the Client due to force majeure, those obligations will be suspended for the duration of the force majeure situation.

8.2. If the force majeure situation has lasted 1 month, both parties have the right to dissolve the Agreement in writing in whole or in part. In the event of force majeure, the Client is not entitled to any (damage) compensation, even if The Marketing Collectiv should have any advantage as a result of the

force majeure. These circumstances also include the refusal of Media Placement by a Media Operator.

8.3. Force majeure on the part of The Marketing Collectiv is understood to mean any circumstance beyond the control of The Marketing Collectiv, as a result of which the fulfillment of its obligations towards the Client is wholly or partly prevented or as a result of which the fulfillment of its obligations cannot reasonably be expected of The Marketing Collectiv, regardless of whether that circumstance was foreseeable at the time of the conclusion of the Agreement.

8.4. The parties will inform each other as soon as possible of a (possible) force majeure situation.

## **9. Liability**

9.1. Except in the case of intent or gross negligence on the part of The Marketing Collectiv or its staff, The Marketing Collectiv is not liable for any damage - direct or indirect - of the Client or third parties as a result of or in connection with The Marketing Collectiv's performance of an Agreement.

9.2. Except in the case of gross negligence or intent on the part of The Marketing Collectiv or its personnel and with due observance of the provisions of the previous paragraph, the Client will indemnify The Marketing Collectiv against and against all claims from third parties, whatsoever, with regard to compensation of damage, costs or interest in connection with the Agreement or arising from the performance of the Agreement.

## 10. Termination

10.1. If the Client does not properly or not timely fulfill any obligation that may arise for him from the Agreement, the Client is in default and The Marketing Collectiv is entitled without notice of default or legal intervention:

- to suspend the execution of the Agreement until payment is sufficiently secured and / or
- To dissolve the Agreement with the Client in whole or in part, without prejudice to The Marketing Collectiv's other rights under any Agreement with the Client and without The Marketing Collectiv being obliged to pay any compensation.

10.2. In the event of bankruptcy, (provisional) suspension of payments, closure or liquidation of the Client's business or if the Client knows that one of these situations will occur, the Client is obliged to inform The Marketing Collectiv of this as soon as possible.

10.3. In the event of a situation as referred to in the previous paragraph, all Agreements with the Client will be dissolved by operation of law, unless The Marketing Collectiv informs the Client within a reasonable time that it wishes to fulfill part of the relevant Agreement, in which case The Marketing Collectiv is entitled without notice of default. is:

- suspend the implementation of the relevant Agreement (s) until payment has been sufficiently secured and / or
- to suspend any payment obligations towards the Client; all this without prejudice to The Marketing Collectiv's other rights under any Agreement with the Client and without The Marketing Collectiv being obliged to pay any compensation.



10.4. In the event of a situation as referred to in Article 10.2, all claims of The Marketing Collectiv on the Client are immediately and fully due and payable.

## **11. Transfer of Rights and Obligations**

11.1. The Marketing Collectiv is permitted to transfer the rights and obligations described in any Agreement with the Client to third parties. The Marketing Collectiv is then not obliged to pay any compensation in this respect.

11.2. The Client is not entitled to transfer his rights and / or obligations under an Agreement to any third party without the prior written consent of The Marketing Collectiv.

## **12. Non-competition clause**

12.1 Direct collaboration between the client and any contingent experts/freelancers of The Marketing Collectiv is not permitted. This is not permitted for the client without written permission from The Marketing Collectiv, either directly or indirectly (interim management) to perform similar activities (similar to activities between TMC & client), whether or not in (permanent) employment or otherwise (directly or indirectly), during the term of this agreement, as well as for 2 years after the termination of this agreement. In the event of violation of this provision, the client forfeits in favor of The Marketing Collectiv, without judicial intervention, a fine of € 5,000.00 (in words: five thousand euros) that is not subject to judicial moderation and is immediately due and payable for each day or part thereof that the violation continues.

### **13. Entire Agreement**

13.1. The Agreement, including all applicable terms and conditions of The Marketing Collectiv, is a full representation of the rights and obligations of the parties and replaces all prior written and oral agreements, statements, statements and / or conduct of the parties.

### **14. Applicable law, competent court**

14.1. Dutch law is applicable to these Conditions, as well as to all Agreements.

14.2. All disputes arising as a result of the Agreement or these Terms and Conditions will, unless otherwise required by law, be subject to the judgment of the competent court in Amsterdam.

### **15. Conversion**

15.1. If and insofar as any provision of these terms and conditions cannot be invoked on the grounds of its unreasonable nature or on the grounds of reasonableness and fairness, the relevant provision will in any case be subject to content and purport and as much as possible corresponding with it, meaning that the relevant provision can rightly be invoked.

Amsterdam, September 2020