General terms & conditions

Kleidi october 2023

General Delivery and Payment Terms.

Definitions.

a. Client: the natural or legal person who has given an order to Kleidi for the manufacture of goods or the performance of work.
b. Kleidi: a supplier based in Amsterdam who has accepted the order as referred to in point a. or has submitted a prior offer or proposal for a possible order;
c. Information carriers: magnetic tapes and disks, optical disks, and all other means intended for the recording, editing, transmission, reproduction, or publication of texts, images, sound, or other data, in the broadest sense of the word.
d. Emergency: the failure of a product and/or service that must be investigated and resolved as soon as possible because the product and/or service cannot function further.
e. Bug: a flaw in the software of a product and/or service that causes it not to function as intended.
f. Request: a missing functionality that does not meet the criteria of a bug or emergency.
g. Downtime: The period during which a website is offline, for example, due to a server problem.

Article 1: Applicability

1. These terms and conditions apply to all quotations, order confirmations, orders, sales, deliveries, and all other agreements concluded with Kleidi.
2. The client's terms and conditions shall only apply to agreements concluded with Kleidi to the extent that Kleidi has acknowledged and confirmed them in writing.
3. The client with whom these conditions have been contracted once is deemed to have tacitly agreed to the applicability of these conditions to later agreements concluded with Kleidi.

Article 2: Quotations and Offers Definitions

1. The mere issuance by Kleidi of a price indication, budget, pre-calculation, or similar communication, with or without an offer or proposal designation, does not obligate Kleidi to conclude an agreement with the client. The quotation or offer is merely an invitation to enter into negotiations unless the quotation or offer states otherwise.
2. If it is expressly stipulated in the quotation or offer that it is considered an offer pursuant to Article 6:217 of the Dutch Civil Code, this offer includes an acceptance period of one month unless the quotation or offer states otherwise.
3. In the case of a quotation or offer in which it is expressly stipulated that it is considered an offer pursuant to Article 6:217 of the Dutch Civil Code, the agreement is concluded as soon as the written acceptance of the offer by the client reaches Kleidi. By doing so, the client explicitly agrees to these General Delivery

and Payment Conditions and expressly waives any applicability of their own General Terms and Conditions.

4. If the acceptance includes reservations or changes compared to the quotation or offer, the agreement will only be concluded, contrary to what is stipulated in clause 2, once Kleidi has informed the client of their agreement to these deviations.

5. If the quotation or offer is to be understood as an invitation to negotiate, an offer will be understood as a proposal by the client to enter into an agreement, which, upon acceptance, immediately results in the formation of an agreement.

6. Kleidi's acceptance of the offer by the client also includes a explicit rejection of the client's General Terms and Conditions, with reference to Article 6:225, paragraph 3, of the Dutch Civil Code.

7. A quotation or offer made by Kleidi or an order accepted by Kleidi only encompasses the activities and services described therein. Under no circumstances can Kleidi be required to perform additional activities and/or services beyond those described in the quotation or order, regardless of how closely related those additional activities and/or services may be to those described in the quotation or order.

8. Kleidi reserves the right to perform additional activities beyond what has been agreed upon and to invoice the client for these activities if they are in the interest of the client and/or necessary for the proper execution of the order. The client will be promptly informed of the execution of these additional activities.

Article 3: Electronic Data Traffic

1. An email message shall be considered equivalent to a written statement for the purposes of these general terms and conditions and all agreements.
2. In the event of a dispute regarding the receipt or sending of email messages, Kleidi's log file data shall constitute full proof. The client cannot suspend their obligations by disputing this.

Article 4: Changes and Cancellations

1. Changes to the agreement and deviations from these General Terms and Conditions shall only be effective if they have been agreed upon in writing between the client and Kleidi.
2. Kleidi reserves the right to cancel orders in whole or in part in the event of such a change in circumstances that it would be unreasonable to expect Kleidi to fulfill the agreement. The client shall have no right to compensation in case of cancellation.
3. The client is entitled to cancel an agreement before Kleidi has commenced its execution, provided that the client compensates Kleidi for any damage resulting from this cancellation. Under this damage, the losses suffered by Kleidi, lost profits, and in any case, the costs that Kleidi has already incurred in preparation, including those of reserved production capacity, purchased materials, contracted services, and storage, shall be included.

Article 5: Prices

1. Compensation for services rendered shall be in accordance with the prices specified in the quotation or agreement, or according to further written price agreements. Services not mentioned in the quotation will be invoiced to the client based on actual costs, unless written price agreements have also been established for these services.
2. In composite offers, there is no obligation to deliver a portion of the total performance at the price specified for that portion in the offer or at a proportionate part of the price stated for the entire performance.
3. Kleidi is always entitled to adjust prices to changes in price-determining factors occurring after the acceptance of the order and the execution of the work. If this adjustment takes place within three months after the acceptance of the order, the client has the right to terminate the agreement unless price changes result from legislation and/or government measures.
4. Extra complex text, unclear copy, unclear sketches, drawings, or models, defective information carriers, defective computer software or data files, defective methods of supplying materials or products by the client, and all similar supplies by the client that require Kleidi to perform more work or incur more costs than could reasonably be expected at the time of entering into the agreement, are grounds for an increase in the agreed price. Extraordinary or reasonably unforeseeable processing difficulties arising from the nature of the materials and products to be processed are also grounds for an increase in the agreed price.

Article 6: Obligations of Kleidi

1. Kleidi commits to providing services to the client in accordance with the description as specified in the quotation or agreement.
2. Kleidi guarantees that the tasks assigned to it will be carried out in accordance with the requirements of good and proper workmanship and in compliance with any applicable regulations. Kleidi ensures that the work provided is original unless similarity is required. In the latter case, the client indemnifies Kleidi against liability to third parties in this regard.
3. Kleidi determines the manner in which it deems the assignment should be executed. Kleidi obliges itself to follow the client's instructions upon request, unless this contradicts the nature of the assignment.
4. Kleidi is authorized to subcontract the assignment or parts thereof to third parties not employed by Kleidi if it deems that this would promote the proper and efficient execution of the assignment.
5.The obligations of Kleidi shall lapse:
a. If the client fails to fulfill its obligations under the agreement or a part thereof, or does so incorrectly.
b. If the client requests work that deviates from the advice of Kleidi
c. If work on the assignment has been carried out by parties other than those directly instructed by Kleidi, including subsequent changes.
The liability of Kleidi under this warranty will in all cases be limited to the total invoiced amount per assignment, excluding VAT.

Article 7: Obligations of the Client

1. The client is obligated to provide Kleidi with all information in a timely manner that could be relevant to the execution of this agreement.
2. Kleidi has the right to suspend the execution of the assignment until the client has fulfilled the obligations mentioned in the previous paragraph.
3. If a deadline has been agreed upon or specified for the execution of certain tasks or the delivery of certain goods, it shall never be considered a strict deadline. In the event of a deadline being exceeded, the client must therefore notify Kleidi in writing. Kleidi should be given a reasonable period to still fulfill what has been agreed upon. Kleidi is not liable for delayed delivery of products outsourced to third parties.
4. The client is prohibited from employing or attempting to employ employees, staff, or assistants of Kleidi. In the event of a breach of this prohibition, the client shall be liable to Kleidi for an immediately payable fine equal to 5 times the annual turnover of the respective employee, calculated based on the average over the five years preceding the employee's employment with the client.
5. Without Kleidi's permission, the client is not allowed to make changes to the designs, sketches, illustrations, etc. The client must always provide Kleidi with the opportunity to make the changes. Changes necessitated by an altered or incorrect assignment will be invoiced separately to the client.
6. The client is obligated to provide Kleidi with four copies of the work as soon as reproduction has taken place.

7. If the client simultaneously awards the same assignment to multiple companies, they must immediately inform Kleidi of this. If the client has previously assigned the same or a similar task to another company, they must mention this when awarding the assignment to Kleidi, regardless of whether the other company has accepted the assignment or not.
8. To ensure the correct execution, a proof or prototype of a project to be reproduced by the client must be submitted to Kleidi for approval before reproduction takes place. Kleidi will review the final proof or prototype and affix its initial and date with the notation “approved for reproduction.”

Article 8: Delivery and Storage

1. In the event that the client provides information carriers to Kleidi, these information carriers must comply with the specifications provided by Kleidi to the client. Additionally, in such a case, the client must ensure that they keep a copy or duplicate of their information carriers for their own records or have one made for their preservation.
2. If the delivery of information is carried out through a public telephone network or another direct connection, it can only be done at times agreed upon in advance with Kleidi and in accordance with the applicable rates and conditions of the operator of that connection, based on prearranged agreements regarding methodologies and protocols by both parties.
3. Kleidi is obliged to ensure the careful storage of information originating from the client. Unless proven otherwise, Kleidi is considered to have fulfilled this obligation.
4. Kleidi shall make all client data used in the execution of the assignment available to the client immediately after the completion of the assignment.
5. The risk of damage or loss of information stored at Kleidi expressly lies with Kleidi.
6. The risk of damage or loss of information during transportation or shipment is always borne by the client, regardless of whether the transportation or shipment is carried out by or on behalf of Kleidi, the client, or third parties.
7. The client indemnifies Kleidi against all claims by third parties related to the damage or loss of the information referred to in the preceding paragraphs.

8. The client is obliged to ensure the careful storage of goods originating from Kleidi.
9.The risk of damage or loss of goods stored by the client is expressly borne by the client.

Article 9: Disruptions and Incidents

1. Kleidi strives to ensure that the service runs as smoothly as possible. However, it is technically impossible to prevent every disruption of the service. In the event of an emergency, Kleidi is expected to respond within 48 hours and then resolve the emergency within 72 hours. If the client encounters issues with a bug, Kleidi is required to respond within 3 days, and the bug will be addressed within 5 days. For a request, Kleidi should respond within 3 days, and the request will be handled within 5 days.

Article 10: Delivery

1. Unless agreed otherwise, delivery takes place at the location where Kleidi conducts its business.
2. The client is obligated to fully cooperate with the delivery of the items to be supplied by Kleidi under the agreement. The client will also be in default without requiring any formal notice if, after Kleidi's first request, they fail to pick up the items to be delivered or, if delivery to their address has been agreed upon, refuse to accept the delivered items.

3. All delivery periods mentioned in an offer or otherwise are non-binding unless the parties have expressly agreed upon a fixed delivery date in writing. Kleidi undertakes to do everything reasonably possible to deliver within the desired timeframe.
4. An agreed-upon delivery period only commences for Kleidi after it has received all data to be provided by the client and, if any advance payment has been agreed upon, after Kleidi has received this advance payment.
5. Kleidi is not obligated to deliver the manufactured items in installments.
6. When performance is to be carried out in installments, each installment will be considered a separate transaction with all legal consequences.

Article 11: Inspection upon Delivery and Complaints

1. If the client does not make a written complaint within 14 days in the event of a defective delivery or performance by Kleidi, Kleidi is no longer obligated to address the client's objections.
2. The performance of the agreement is deemed to be in accordance with the contract between the parties if the client has failed to conduct the inspection or provide the notification as mentioned in paragraph 1 of this article in a timely manner.
3. Kleidi's performance is considered to be in accordance with the contract between the parties if the client has put the delivered items, or part thereof, into use, processed or handled them, delivered them to third parties, or allowed them to be put into use, processed or handled by third parties unless the client has complied with the provisions of paragraph 1 of this article.

4. If the 14-day period mentioned in paragraph 1 of this article is unreasonably short, even for a careful and alert client, it will be extended until the first moment when it is reasonably possible for the client to conduct the examination or notify Kleidi.
5. Kleidi is always entitled to replace an earlier defective performance with a new proper performance, unless the default is not capable of being rectified.

Article 12: Samples and Models

1. If a sample, model, test copy, working copy, concept, or version has been shown or provided to the client, it is presumed to have been provided solely for reference unless it is expressly agreed that the delivered product will correspond to it.

Article 13: Technical Maintenance

1. Technical maintenance of the website refers to keeping WordPress, plugins, themes up to date, and regularly creating a back-up of the website and database.
2. Intermediate changes to the website (installation of plugins, modifications to WordPress files, themes) by the client are at the client's risk. Any additional work required due to these changes after an update is the responsibility of the client and is not covered by the maintenance contract.
3. The creation of a copy of the website for testing purposes is not included in the maintenance contract.
4. Maintenance of contacts with the hosting company if applicable.

article 13: Technical Maintenance

5. Costs of a maintenance contract apply for one year and must be paid in advance, within 14 days after signing the contract.
6. The notice period for terminating a maintenance contract is 1 month before the contract expiration date.
7. Licenses used for themes and plugins remain the property of Kleidi at all times.

article 14: Liability and Indemnification

1. Kleidi is only liable for any damages suffered by the customer to the extent that such damage is caused by intent or willful recklessness.
2. The liability of Kleidi under the agreement with the customer is limited to an amount that is reasonable in proportion to the agreed price, without prejudice to the provisions of Article 5, paragraph 6, of these terms and conditions.
3. Kleidi is not liable for any damages of any kind that arise after the customer has taken the delivered goods into use, processed them, delivered them to third parties, or caused them to be taken into use, processed, or delivered to third parties.
4. Furthermore, Kleidi is not liable for damage in the form of loss of turnover or diminished goodwill in the customer's business or profession.

5. Kleidi is also not liable for damage to materials or products received from the customer and processed by Kleidi if the customer has not provided Kleidi with information about the properties and nature of these materials or products and has not provided proper information about the pre-processing and surface treatments applied, no later than at the time of entering into the agreement.
6. If Kleidi is held liable by a third party for any damage for which it is not liable under the agreement with the customer or these terms and conditions, the customer shall fully indemnify Kleidi and reimburse Kleidi for all that it must pay to such third party.
7. The customer bears the risk of misunderstandings regarding the content and execution of the agreement if such misunderstandings arise from specifications or other statements received by Kleidi orally or through a person designated by the customer or transmitted by technical means such as telephone, fax, email, and similar transmission media.
8. The customer indemnifies Kleidi against liability for copyright concerning reference materials provided by the customer, such as photos, drawings, etc., as well as for damage, loss, or destruction of materials and/or data provided by the customer. The customer is responsible for all consequences of its published material.

9. Advice given by Kleidi is provided to the best of its knowledge but Kleidi is not liable in this regard.
10.Kleidi is not liable in any case for website downtime.

article 15: Force majeure

1. A failure to fulfill the agreement cannot be attributed to Kleidi if it is not due to its fault, nor is it for its account under the law, a legal act, or prevailing views in society.

article 16: Payment

1. the amount invoiced shall, unless otherwise agreed in writing, be calculated according to Kleidi's standard rates.
2. Travel hours will be invoiced in full, unless stated otherwise in the agreement.
3. Costs incurred by Kleidi (e.g., research, documentation costs, etc.) will be invoiced to the customer.
4. Kleidi may, at any time, require the customer to prepay the entire or part of the agreed fee and/or costs.
5. Unless otherwise agreed with the customer, the customer must make payments within 14 days of the invoice date, without the right to any deduction or discount.
6. If the customer fails to meet its payment obligations, all rights transferred by Kleidi to the customer will expire upon the expiration of the payment term. This includes, among other things, that the customer is not permitted to use or allow the work made available to it for any purpose.

7. The customer shall be in default solely by exceeding the payment term mentioned in paragraph 5 of this article. If the customer fails to make a timely payment of an invoice, the customer shall be in default by operation of law, without a notice of default being required. Kleidi is entitled to charge interest equal to the statutory interest rate plus 2%, calculated from the due date of the invoice. Both extrajudicial and judicial collection costs, as well as attorneys' and bailiffs' fees incurred in connection with late payments, shall be borne by the customer.
8. If, even after written notice, the customer fails to pay the amount due to which it has been reminded, this will have the following consequences, without prejudice to any other rights of action that Kleidi may have:
a. All other outstanding claims in the name of the customer with Kleidi become immediately due and payable.
b. All costs incurred by Kleidi, both judicial and extrajudicial, including collection costs, discount costs, bank commissions, and the like, to achieve the full or partial collection of its claim on the customer, shall be borne by the customer. Regardless of the actual costs incurred in connection with the collection, the customer shall in any case owe Kleidi 15% of the invoice amount, with a minimum of €500. If the actual costs are higher than the aforementioned 15% of the invoice amount, the actual costs shall be charged to the customer. In the case of payment by means of bills of exchange and checks, bill of exchange and check costs shall be borne by the customer. The same applies to costs of reimbursement or costs associated with telephone bank orders.

9. Payments made by the client to Kleidi will in all cases be applied to settle the oldest outstanding balance owed by the client, including any accrued late fees and costs.
10. If the client disputes the amount, they must communicate their objections to Kleidi in writing within 7 days of the invoice date.
11. In the event of a valid complaint, Kleidi has the choice between adjusting the amount of its invoice, correcting or reperforming any rejected work, or entirely or partially canceling the underlying agreement. This can be done by a simple notification to the client, without the need for judicial intervention, and with a pro rata refund of any amount already paid by the client.
12. The amount to be paid by the client only entitles them to use the sketches, designs, software, and the like, as agreed upon by the parties. For any additional use at a later stage, the client is liable for an additional fee, the amount of which is determined by Kleidi. If nothing is agreed upon in writing regarding this matter, the initial use and first edition are considered the agreed-upon destination and print run.

Article 17: Orders for an Indefinite Period

1. Orders that result in regularly recurring, more or less varying tasks are considered to have been given for an indefinite period.
2. All other orders, except those given for an indefinite period, end upon their completion on the date determined by the parties.
3. Either party may terminate the order for an indefinite period at any time without the need for judicial intervention.

4. To terminate an order for an indefinite period, both parties must observe a notice period of at least one month.

Article 18: Suspension and Termination

1. Kleidi has the authority to suspend the fulfillment of its obligations or terminate the agreement if the client fails to fulfill its obligations under the agreement, either in part or in full.
2. Without prejudice to other provisions in these terms and conditions regarding termination, the agreement will be terminated without the need for judicial intervention and without any prior notice if the client is declared bankrupt, applies for a suspension of payments, or loses control over its assets or parts thereof through attachment, placement under guardianship, or any other means, unless the curator or administrator recognizes the obligations arising from this agreement as estate debts.
3. Termination results in all outstanding claims on both sides becoming immediately due. The client is liable for damages suffered by Kleidi, including loss of profit.

Article 19: Right of Retention

1. Kleidi is authorized to withhold the delivery of items that it holds on behalf of the client in connection with the execution of any order until all its claims related to any order have been settled.

Article 20: Copyright and Ownership Rights

1. The client guarantees Kleidi that, through the performance of the agreement, especially through the reproduction or disclosure of items received from the client, such as copies, typesetting, models, drawings, photographs, lithographs, films, data carriers, computer software, databases, etc., no infringement will be made upon rights that third parties may assert under the Copyright Act 1912 or other national, supranational, or international regulations related to copyright or industrial property rights, as well as rights concerning unlawful acts. The client shall indemnify Kleidi, both in and out of court, against all claims that third parties may assert under the aforementioned laws or regulations.
2. If reasonable doubt arises or continues to exist regarding the accuracy of the rights claimed by third parties as referred to in paragraph 1 of this article, Kleidi is authorized but not obligated to suspend the performance of the agreement until it is irrevocably established by a court that Kleidi does not infringe upon these rights by fulfilling the agreement. Then Kleidi will execute the order within a reasonable period.
3. Unless expressly agreed otherwise in writing, Kleidi always remains the holder of the copyright that may arise in the works produced by it in the performance of the agreement, such as copies, typesetting, design drawings, models, working and detailed drawings, data carriers, computer software, databases, photographic images, lithographs, films, and similar production and auxiliary means, even if the relevant activities are mentioned as a separate item in the offer or on the invoice.

4. The items to be delivered or delivered by Kleidi according to its design, such as copies, typesetting, design drawings, models, working and detailed drawings, data carriers, computer software, databases, photographic images, lithographs, films, and similar production and auxiliary means, as well as any part thereof that is an essential part of that design, may not, even if there is no copyright or other legal protection for Kleidi concerning the design, be reproduced in the context of any production process without Kleidi's written consent.
5. After delivery by Kleidi, the client obtains non-exclusive rights to use the works created by Kleidi within the framework of the agreement in the sense of the Copyright Act 1912 or works in the sense of paragraph 4 of this article. The aforementioned right to use is limited to the right of normal use of the delivered items and does not include the right to reproduce these items in the context of any production process.
6. The rights to inventions, know-how, and software obtained or developed before or during the execution of the assignment or the provision of services by Kleidi shall always remain the property of Kleidi.
7. Every delivery of items by Kleidi to the client is subject to ownership retention until the client has paid everything he owes under the agreement, including interest and costs.
8. The client shall return all designs and sketches, whether approved or rejected, to Kleidi within two months after delivery and is not entitled to reproduce any of these designs, sketches, and the like or parts thereof in any form without Kleidi's written consent. The return shipment is at the expense and risk of the client.

9. The data carriers not provided by the client remain the property of Kleidi, to the extent that they have not been invoiced separately and paid by the client. The same applies to the equipment and the associated parts used for data carriers.
10. In the event of loss or damage to the sketches, designs, and/or illustrations in the possession of the client and/or third parties, the client is obliged to compensate Kleidi for the resulting damage. Return shipments are also at the expense and risk of the client.

Article 21: Applicable Law and Jurisdiction

1. This agreement is governed by Dutch law.
2. A dispute is deemed to exist as soon as one of the parties declares it to be so.
3. All disputes arising from any agreement between Kleidi and the client shall be submitted to the judgment of the competent court in the district where Kleidi is established.

info@kleidi.nl
www.kleidi.nl