



# General Terms And Conditions

## 1. Definitions

1.1 In these General Terms and Conditions ("Terms") the following definitions shall apply: Agency: TBWA\Neboko BV, Tequila\BV, PR Company BV, Designers Orange Company BV, TBWA\Brand Experience Company BV and TBWA\Company Group Services BV, having their registered offices in Amstelveen, as well as their legal successors by universal or particular title;

Principal: all natural persons or juristic persons who purchase Services from the Agency, or with whom the Agency enters into an Agreement or with whom the Agency is negotiating about the conclusion of an Agreement;

Agreement: any agreement concluded between the Agency and Principal, any modification thereof or addition thereto, as well as all (legal) acts for the fulfilment of such agreement and, in retrospect, all (legal) acts that are required in order to enter into such agreement;

Services: the consulting and guidance by the Agency in the field of marketing communication with respect to goods, services and/or trade marks of the Principal pursuant to an Agreement;

Materials: all designs, written material, descriptions, reports, expert opinions, artistic performances, lithos, slides, films and other materials that the Agency develops or has developed in connection with an Agreement;

Suppliers: all third parties who, at the request of the Agency, supply products or provide services to the Agency in connection with the fulfilment of an Agreement, including but not limited to freelancers, production companies, graphic arts firms, illustrators, photographers, models, casting agencies, research agencies, advertising space providers, media purchase and advice agencies, web site builders, composers, musicians and collecting societies.

## 2. Applicability

2.1 These Terms form part of all Agreements between Agency and Principal and are applicable to all quotations, budgets, client assignment proposals issued by the Agency and all other acts and legal acts of Agency and Principal, and shall also apply, where possible, to any possible third parties who act as authorized representatives of Principal.

2.2 If the Agency engages a Supplier for the fulfilment of the Agreement, the terms and conditions on which the agreement between the Agency and the Supplier is concluded shall also be applicable to the Agreement between the Agency and Principal, without prejudice to the other rights and obligations applicable between Agency and Principal pursuant to the Agreement. If Principal has not received a copy of the terms and conditions of the Supplier, the Agency shall send a copy thereof free of charge upon first request thereto.

2.3 In the event of any inconsistency between the Terms and the applicable terms and conditions of a Supplier with respect to the Agency, the terms and conditions to which the Agency is bound with respect to a Supplier in connection with a specific subject shall prevail. The applicability of general terms and conditions of Principal is hereby explicitly precluded.

## 3. Conclusion of Agreements

3.1 Any offers, budgets or estimates shall not be binding upon the Agency and shall only qualify as an invitation to Principal to grant a client assignment. An Agreement shall only enter into force if and insofar as the Agency accepts a client assignment by Principal in writing or if the Agency carries out a client assignment. If at the request of Principal the Agency carries out any work before an Agreement has been concluded, Principal shall pay a compensation for it to the Agency according to the rates then applicable at the Agency.

3.2 Modifications to an Agreement can only be agreed in writing. If a modification involves a substantial restriction of the Services, the Agency may demand that the modification shall not take effect until after expiry of a term equal to the term of notice as laid down in Article 12.1. The expenses in connection with any modifications to the Agreement shall be borne by Principal.

3.3 The Agency is entitled to turn down offers or client assignments without stating the grounds. Even after conclusion of an Agreement, the Agency is entitled to cancel an offer or client assignment without stating the grounds, up until one week after Principal has approved a budget or client assignment proposal, in which case the Agency shall not be held to reimburse more than the amount already paid in advance by Principal, if any.

## 4. Fulfilment of Agreements

4.1 Unless agreed otherwise in writing, all client assignments shall be carried out during regular office hours and under normal circumstances. If it turns out during the fulfilment that adjustments to or deviations from the Agreement are useful or necessary, the Agency shall confer with Principal.

4.2 The Agency shall make a contact report of all contacts with Principal regarding the fulfilment of the Agreement, unless the contents of the contact concerned is of such minor importance that in all fairness it does not require any contact report.

4.3 Principal shall check all contact reports as soon as possible and approve these in writing or by e-mail. Contact reports are deemed to have been approved by Principal if Principal does not respond in writing within four working days after receipt of the contact report.

4.4 If a situation calls for such urgency that the approval referred to in paragraph 3 of this article cannot be awaited, the Agency may demand that Principal shall confirm the accuracy of a contact report in writing by return e-mail or mail before the Agency shall proceed to provide the agreed Services.

4.5 Any desired modifications to granted client assignments must be communicated to the Agency in writing and in time. Any verbally communicated modifications shall be at the risk of the Agency.

4.6 Any exceeding up to 10% of the budget stated in the client assignment proposal shall be accepted by Principal as a budget risk and does not need to be reported by the Agency to Principal beforehand. Under no circumstances shall any stated delivery deadlines be regarded as final dates, unless explicitly agreed otherwise in writing. In the event of late delivery, therefore, the Agency must be put into default in writing before being in default.

4.7 If, after TBWA\ has completed the agreed Services, Principal accepts the Materials that are the result of the client assignment concerned, any possible work to be carried out afterwards by TBWA\ with respect to such Materials shall be budgeted and invoiced separately.

4.8 The Agency shall retain the Materials during three calendar years. Upon expiry of such period the Agency may request Principal to communicate whether or not it would like the Agency to retain the Materials any longer, in which case a reasonable fee shall be charged. Unless Principal then requests to have the Materials retained for a longer period of time respectively to have them destroyed, the Agency shall send the Materials to Principal, provided that the relevant invoices have been paid, or at least that reasonable securities have been furnished to this effect.

## 5. Cancellation

Principal may exclusively cancel a client assignment in writing if after the conclusion of an Agreement or granting of the client assignment a change of circumstances has occurred that is such that in all fairness one cannot expect the Agreement to remain in force (without any modifications) and if the Agency accepts such cancellation. In that case Principal shall pay a fee to the Agency for the Services provided on the basis of time spent and expenses incurred. This also includes any engagements with Suppliers already entered into by the Agency. Furthermore, a compensation for loss of profits with respect to the cancelled client assignment shall then be payable by Principal.

## 6. Suppliers

6.1 When carrying out the Agreement, the Agency is entitled to make use of Suppliers selected by the Agency, in which case the Agency shall also be liable towards Principal for any defect caused by such Supplier.

6.2 The provisions in the previous paragraph, without prejudice to the other provisions in Article 2.2, shall not apply if pursuant to the terms and conditions applicable between the Supplier and the Agency a limitation of liability of the Supplier towards the Agency is in force, in which case such limitation of liability shall also apply to the relationship between Principal and the Agency.

6.3 If the Agency makes use of any Suppliers selected by Principal itself when carrying out the Agreement, the responsibility for the selection of and the performances by the Suppliers shall rest with Principal.

6.4 The Agency shall see to it that Suppliers shall invoice the Agency with specifications of all goods supplied and services provided per client assignment. The Agency shall charge the invoiced amounts forward to Principal by means of its own invoice.

## 7. Remuneration and invoicing

7.1 The services of the Agency shall be remunerated by the Principal on the basis of the budget drawn up by the Agency and approved by Principal.

7.2 Principal is aware of the fact that the Agency may enjoy privileges from media owners or other third parties in the form of discounts, commissions or otherwise, including but not limited to surcommissions, price reductions with respect to media placements or amounts that the media owner provider or other third party has failed to invoice (as yet), financial benefits related to the amounts spent by Principal on the media owner concerned compared to the total expenditure on media placements of Principal as well as any revenues in connection with music composed by third parties as commissioned by the Agency. Except for any explicit stipulation to the contrary agreed in writing, the aforementioned benefits shall be entirely for the benefit of the Agency.

7.3 If the Principal does not wish the Agency to carry out any work for products or services that compete directly with the product, service and/or the trade mark of Principal, the Agency shall be entitled to an exclusivity fee to be agreed in more detail.

7.4 The Agency shall invoice the Services per client assignment and/or time frame. Invoicing shall be effected if possible within 15 days after the month in which the Services have been delivered by the Agency and/or Suppliers. The Agency is entitled to advance or partial invoicing if the work represents a value of more than € 10,000 or where in its opinion the scale and the nature of the work so require.

7.5 Contrary to the previous paragraph, the production cost of commercials and media expenses must be paid in full by the Principal to the Agency before the date on which the Agency itself is obliged to pay such cost.

7.6 All prices of the Agency shall be expressed in Euro and exclusive of VAT. Unless expressly agreed otherwise, all levies or taxes imposed or charged with respect to the Services shall be borne by Principal. Any change to the factors influencing the price of the Agency, including rates of third parties, currency exchange rates, insurance rates and other levies or taxes, may be charged forward by the Agency to Principal.

## 8. Payment

8.1 Principal shall settle the Agency's invoices within thirty days of the date of invoice. The mere expiry of a term of payment shall put Principal into default, in which case all claims of the Agency against Principal shall be immediately and fully payable regardless of their grounds. Without any further notice of default, Principal shall owe statutory (late payment) interest as of the last day of the term of payment on all amounts that have not been paid by such date.

8.2 All payments shall be effected without any discount, suspension, withholding or set-off, by transfer to a bank account to be specified by the Agency. Under no circumstances shall Principal have the right to suspend its payment obligation.

8.3 All expenses out of court (to be) incurred by the Agency in order to obtain the amounts payable shall be borne by Principal. Such expenses shall amount to at least 15% of the amount payable by the Agency and shall under no circumstances amount to less than € 250 per unsettled invoice, without prejudice to the right of the Agency to claim the real costs.

8.4 Regardless of any statement to the contrary, all payments by Client are deemed to have been made on debts in the following sequence: interest, (extra) judicial collection charges, principal amounts payable (the less recent before the more recent).

## 9. Intellectual property rights

9.1 Principal warrants that goods made available to the Agency within the scope of an Agreement are not encumbered by any (intellectual) property rights of third parties, and that Principal, also for the benefit of the Agency, has been given consent to use such goods or to have them used. Furthermore Principal guarantees that when using such goods no infringement is made on any (legal) require-



ments and provisions. Principal shall indemnify the Agency for all claims by third parties and for all damage (to be) suffered by the Agency caused by the use of the goods by the Agency. In the event of a claim by a third party, Principal is obliged to inform the Agency within 48 hours in writing and to provide the Agency with all relevant information on demand and to render all necessary assistance in order to conduct a defence or to carry on settlement negotiations.

- 9.2 All results of the Services provided by the Agency for the benefit of Principal are deemed to be protected by intellectual property rights, including but not limited to copyrights, databank rights and industrial property rights (hereinafter referred to as: "intellectual property rights"). Unless explicitly agreed otherwise, all intellectual property rights based on the results of all Services shall rest with the Agency, and shall hereby be transferred to the Agency if necessary. If any of the aforementioned rights can be obtained exclusively by means of registration, the Agency shall be exclusively entitled thereto.
- 9.3 If the transfer of the intellectual property rights requires a more detailed legal instrument, Principal shall render its assistance upon first request thereto by the Agency and without any further terms and conditions to the drawing up and signing of such a legal instrument. Principal shall grant an exclusive licence up till the date of transfer to the Agency to use the intellectual property rights concerned in whichever manner and in whatever form, as well as a power of attorney to execute such rights in its own name. If Principal has fulfilled its obligations towards the Agency, Principal shall receive a licence to use the results of the Services provided for the benefit of Principal. Except for any arrangement to the contrary, the licence concerned is deemed to have been granted for the use by Principal in the Netherlands for a half year term and for the benefit of the media for whom the Services concerned have been developed by the Agency. Without any prior written approval of the Agency, Principal is not allowed to use the results of the Services in a different manner than has been explicitly agreed. Principal shall indemnify the Agency for all damage that it has suffered and/or any claims by third parties due to any different use from what has been agreed.
- 9.4 The intellectual property rights founded on the results of the Services can only be transferred to Principal if such has been agreed in writing. The Principal is entitled to use the results of the Services outside the Netherlands against payment of a fee to be agreed in more detail. If Principal wishes to acquire the intellectual property rights resting with Suppliers of the Agency, it must inform the Agency thereof in writing at the moment when the client assignment is granted or as soon as possible afterwards. The Agency shall then enter into consultations with the Supplier(s) concerned to see whether a transfer of intellectual property rights to Principal is possible.

## 10. Liability

- 10.1 Principal warrants towards the Agency the accuracy and completeness of the information supplied by Principal to the Agency about Principal and its products, services and/or trade marks and shall indemnify the Agency against all claims by third parties in this matter.
- 10.2 The Agency shall carry out the Services with the due care and shall see to it that the Services comply with the applicable legal requirements. If it is necessary to seek legal advice in the field of the applicable legislation, the corresponding expenses payable shall be borne by Principal.
- 10.3 If the Agency, when carrying out an Agreement, has doubts whether or not the Services comply with the legislation referred to in paragraph 2 of this Article, the Agency shall notify Principal thereof. If nevertheless Principal approves a budget or client assignment proposal of the Agency, the Agency shall not be liable towards Principal for any damage arising from the fact that the Services do not comply with the legislation referred to in paragraph 2 and Principal shall indemnify the Agency against any claims by third parties in this respect.
- 10.4 The liability of the Agency shall at all times be limited to the amount to be paid out in such event under the professional liability insurance of the Agency. This insurance applies limitations to the sum insured, amongst other things with respect to the amount per damage event and the number of damage events per year. Upon request thereto, access shall be given to the insurance policy terms and conditions. Should no payment be made pursuant to said insurance policy, regardless of the grounds, the liability of the Agency shall be limited to the net turnover (invoice amount less out-of-pocket expenses) invoiced by the Agency and paid in time in the twelve month period preceding the date on which the event occurred that has resulted in liability in connection with the agreement in respect of which the Agency has imputably failed to perform, with a maximum liability of € 100,000.
- 10.5 Except for gross negligence or wilful intent on the part of the board of directors of the Agency when selecting any Suppliers to be engaged, the Agency's liability for damage caused by work of Suppliers selected by the Agency shall be limited to the amounts that the Agency can claim from the Suppliers. Where appropriate, the Agency shall make an effort to obtain the highest possible damages from the Suppliers involved.
- 10.6 Principal shall indemnify the Agency for and against all claims whatsoever by third parties in connection with an Agreement respectively arising from the fulfilment of an Agreement.
- 10.7 All rights of legal action and other entitlements on the part of the Principal towards the Agency in connection with work carried out by the Agency shall lapse as soon as a one year term has expired since the date on which Principal has become aware of or could in all fairness have been aware of the existence of such rights and entitlements.

## 11. Force majeure

- 11.1 If the Agency is unable to fulfil its obligations towards Principal due to force majeure, such obligations shall be suspended for the duration of the force majeure circumstance. If the force majeure circumstance has lasted for one month, both parties shall have the right to dissolve the Agreement in writing in whole or in part if and insofar as such dissolution is necessary in all fairness. In the event of force majeure, Principal is not entitled to any compensation (of damage), even if the Agency would obtain any financial benefit due to the force majeure.

- 11.2 Force majeure on the part of the Agency is to be understood as any circumstance beyond the control of the Agency that prevents the fulfilment of its obligations towards Principal in whole or in part or because of which in all fairness fulfilment cannot be expected of the Agency, regardless of whether such circumstance could be foreseen at the time of the conclusion of the Agreement. Such circumstances also include: strikes and lockouts, stagnation or other problems with the production by the Agency or its Suppliers or the suppliers thereof or with the own transport or transport arranged by third parties or government measures.

## 12. Term and termination of Agreements

- 12.1 Agreements are entered into for an indefinite term unless explicitly agreed otherwise. Both Principal and the Agency are entitled to terminate an Agreement by registered mail subject to a term of notice of at least six months. During the term of notice all current obligations of Principal and the Agency shall remain in force. During the term of notice the remuneration of the Agency shall be at least equal to the higher amount of: (a) the remuneration invoiced by the Agency with respect to the term of notice based on the regular remuneration arrangement and (b) six times the average remuneration per month with respect to the twelve month period preceding the term of notice.
- 12.2 If Principal fails to fulfil properly or in time any obligation of Principal that could arise from the Agreement, Principal shall be in default and the Agency shall be entitled to suspend the fulfilment of the Agreement without any notice of default or judicial interposition until payment has been sufficiently secured and/or to dissolve the Agreement with Principal in whole or in part, all this without prejudice to any other rights of the Agency under any Agreement with Principal whatsoever and without obliging the Agency to pay any damages.
- 12.3 In the event of a wind-up, (provisional) administration order, suspension or liquidation of the company of Principal, or if Principal is aware that one of these situations is bound to occur, Principal is obliged to notify the Agency thereof as soon as possible, and all Agreements with Principal shall be dissolved by operation of law, unless the Agency notifies Principal that it wishes to fulfil part of the Agreement concerned, in which case the Agency shall be entitled, without any notice of default, to suspend the fulfilment of the Agreements concerned until payment has been sufficiently secured and/or to suspend all its payment obligations towards Principal, if any, all this without prejudice to any other rights of the Agency under any Agreement with Principal whatsoever and without obliging the Agency to pay any damages.
- 12.4 If an event occurs as referred to in the previous paragraph, all claims by the Agency against Principal shall be immediately and fully payable and the Agency shall be entitled to reclaim the products concerned, in which case the Agency and its authorized representative(s) shall be entitled to enter the premises and buildings in use by Principal at that time in order to regain possession of the products.
- 12.5 If the Agency uses its entitlement to dissolve as referred to in Article 12.3 or if a situation occurs as referred to in Article 12.4, the Agency shall be entitled to set off any amount to be reimbursed to Principal, if any, against a compensation for work already carried out as well as against a compensation for future loss of profits.

## 13. Exclusivity

- 13.1 During the term of an Agreement and without the Agency's written consent thereto, neither Principal nor its Dutch group companies shall grant any client assignments to other agencies for the performance of services that are equal or equivalent to the services to be provided by the Agency for Principal within the scope of the Agreement.

## 14. Final provisions

- 14.1 The Agency is allowed to transfer the described rights and obligations in any Agreement with Principal to third parties. The Agency is not held to pay any damages in this matter. Principal cannot transfer any rights and obligations from any agreement to third parties until after the Agency's consent thereto.
- 14.2 Any Agreement, including the present Terms, is a complete representation of the rights and obligations of parties and shall replace all previous written and verbal arrangements, statements, comments or actions of parties.
- 14.3 These Terms, as well as all Agreements, are governed by Dutch law. Any disputes arising from an Agreement or from these Terms shall be brought exclusively before the competent court of law in Amsterdam.
- 14.4 If and insofar as any provision of these Terms cannot be relied upon pursuant to any imperative rule of law, the unfair character of these Terms or pursuant to the principle of reasonableness and fairness, the provision concerned as regards contents and essence shall in all events be vested with a corresponding meaning to such an extent that the provision concerned may indeed be rightfully relied upon.
- 14.5 These Terms may be modified by the mere notification on the part of the Agency to Principal. In the absence of any protest within 30 days after notification, the modified Terms shall apply to all new Agreements as well as to all current Agreements as of the date of notification if and insofar as carried out after the date of notification.