Terms and Conditions of Delivery Studio Tognini BV

Article 1. Applicability

1. These terms and conditions of sale and delivery are applicable to and form an inextricable part of any and all offers, order confirmations, agreements and deliveries between Studio Tognini BV, hereinafter referred to as: 'Studio Tognini', and each and every client.
2. Additional and deviating provisions are only applicable if and to the extent that Studio Tognini expressly offered or accepted these in writing.

Article 2. Offer

1. Offers are valid for a period of one month, unless the offer indicates otherwise.
2. The documents (e.g. drawings, technical descriptions and the like) that are part of the offer are as accurate as possible but do not have binding effect. They remain the (intellectual) property of Studio Tognini and cannot be used, copied, made available to third parties or divulged otherwise without its consent.
3. If the client does not accept the offer then the client is held to forthwith return the documents as intended in the previous paragraph to Studio Tognini.
4. Studio Tognini is entitled to charge the costs that are associated with the offer, provided that it pointed the client to the said costs in writing in advance.
5. Overstepping of offers by 10% or more are reported to the client by Studio Tognini and can only be charged if the client approved the same.
6. Overstepping of offers up to 10% is accepted by the client as a budgetary risk and this consequently does not need to be reported to the client as such.

Article 3. Conclusion of the agreement

1. The agreement is concluded as soon as the unconditional acceptance of the offer reached Studio Tognini in writing.
2. If reservations or changes are made in the acceptance compared to the offer then, in derogation from the provisions set forth in the previous paragraph, the agreement is only concluded as soon as Studio Tognini informed the client to agree with the said deviations from the offer.

Article 4. Implementation of the agreement

1. In case of force majeure, e.g. in case of war, threat of war, civil war, riots, minor damage, fire, water damage, flooding, industrial action, lock-out, sit-in strike and official measures, Studio Tognini is entitled to either charge a potential price increase to the client or cancel the agreement either in whole or in part.
2. The client is held to inspect the work to be delivered on a good condition prior to the opening of the exhibition or the event.
3. Complaints regarding the work to be delivered as a result of an inferior condition must during the inspection forthwith be reported to Studio Tognini and must subsequently be confirmed in writing. After notification of the complaint Studio Tognini shall solve the problem as soon as possible after which an inspection again takes place upon application of the provisions set forth in paragraph 2.
4. If inspection takes place late or failing any complaints after a timely inspection Studio Tognini shall have complied with its delivery obligation.
5. After the delivery the client is entitled to commission the work. After delivery the work is fully at the risk of the client; if the work does not become the property of the client then the risk shall be vested in the client up to the moment of availability to Studio Tognini. If the work does not become the property of the client then the client must report each and every loss or theft of or damage to the goods used in the work to Studio Tognini and pay full compensation for the damages inflicted on the goods. The amount of the compensation for damages equals the new value minus the value of the potential residual, without prejudice to the further liability of the client for damages arising on the part of Studio Tognini due to the failing, late or improper delivery of the work.
6. The delivered work remains the property of Studio Tognini, as well as the copyrights in respect of the design, photos made by way of preparation, designs, scale models, models, drawings, etc., all to the extent that the offer does not indicate otherwise.
7. The client is held to deliver or make the work, to the extent that it is now owned by the same, available to Studio Tognini in the condition that it was delivered, immediately after conclusion of the exhibition or the event, unless stipulated otherwise.
8. Studio Tognini is held to inspect the delivered or available work on a good condition. The provisions set forth in paragraphs 2, 3 and 4 are equally applicable.
9. If the offer indicates that the title of the work is fully or partly transferred to the client then the said transfer of title takes place at and through the delivery, without prejudice to the provisions set forth in paragraph 10 below.
10. If the title of the work is meant to be transferred to the client then Studio Tognini reserves the title up to the moment that the full amount payable on account of the agreement has been paid, in which instance the title transfers on occasion of the last payment. As long as the title of the goods has not transferred to the client the latters shall not be authorised to pledge the work or parts thereof or to establish any right on the same for the benefit of third parties.
11. The goods of the client, which are in pursuance of the provisions of the specifications meant to be used during the performance of the work, as well as the goods of the client that are meant to be exhibited in, at, on or with the work shall only be transported to the place of the work if this was stipulated in writing.
12. During the transport as intended in paragraph 11 as also during the loading, the unloading and the stay at the exhibition or event area the risk in respect of the said goods shall fully be vested in the client. Studio Tognini shall not be held to make any payment to the client in case of loss or theft of or damage to the goods of the client, unless the cause can be found in intent or gross negligence on the part of Studio Tognini.
13. In the instances that the goods of the client are transported by Studio Tognini together with the goods of Studio Tognini or its suppliers the client shall be liable for any and all damages that are inflicted on goods, means of transport or persons employed or relied on by Studio Tognini as a result of a defect, by any name whatsoever, of the goods of the client. The client moreover indemnifies Studio Tognini against liability for compensation for damages on the part of third parties as a result of this kind of defect.
14. The delivery period stipulated by and between the parties is extended by the period during which Studio Tognini is prevented from complying with its obligations on account of force majeure.

Article 5. Payment

1. Payment of the price stipulated by and between the parties must take place without discount or setoff within thirty days after the date of the invoice, unless stipulated otherwise in writing. This shall not affect the authority of Studio Tognini to claim the payment of an advance on the price during the performance or the use of the work by the client. Payment of the said advance must take place within at most thirty days after the relevant amount was charged by invoice, however always before the work is delivered.
2. Payment of everything that is payable on account of these terms and conditions, other than pursuant to paragraph 1, must take place within ten days after the relevant amount has been charged by invoice.
3. If the payments as intended in paragraphs 1 and 2 did not take place within the payment terms then the client is in default by operation of law, and the client shall be liable to pay Studio Tognini the statutory interest on the outstanding amount effective from the due date of the invoice.
4. Any and all collection costs, both the judicial and the extrajudicial costs, are at the expense of the client. The extrajudicial collection costs are calculated according to the collection rate of the Dutch Bar Association.
5. Any and all payments are first applied to the costs and interest and then to the oldest outstanding debts.
6. If the client is in payment default vis-à-vis Studio Tognini in respect of any invoiced amount payable to Studio Tognini then Studio Tognini shall be authorised to suspend the implementation of any and all orders until the client has complied with all its obligations.
7. By way of security for payment of everything that the client is liable to pay to or for the benefit of Studio Tognini the latter shall be entitled to a right of retention on any and all goods of the client that were used during the design or the performance of the work or that are exhibited in, to, at or on the same.
8. Studio Tognini reserves the title of any and all goods delivered to the client until payment of the goods, including interest and collection costs, took place in full. The said reservation of title extends to any and all goods delivered by Studio Tognini and such until the lastly delivered goods were paid to Studio Tognini in full.

Article 6. Property rights

1. If the client hires goods from Studio Tognini, then any and all rights in respect of the said goods, e.g. intellectual rights and the user right, as well as the ownership of drawings, specifications, scale models, photos, etc. remain vested in Studio Tognini. Studio Tognini is moreover entitled to hire or sell the design and the goods or parts thereof to other parties.
2. If by agreement the client becomes the owner of goods and entrusts these to the management of Studio Tognini then the latter shall always retain and handle the goods and try to avoid damages as much as possible as befits a good pater familias.
3. If by agreement the client becomes the owner of goods then the client automatically also becomes the owner of the creative concept and the exclusive right to use these goods. The said right to use the goods implies that Studio Tognini is not entitled to, without express consent of the client, use the said goods for third parties. The right to use does not affect that Studio Tognini is the sole party that can provide (have provided) for the application of the said goods at trade fairs and exhibitions in which the client or third parties affiliated with the client participate. In addition, Studio Tognini is the sole party that can implement expansion of the number of goods or adjustments of existing goods within the concept created by Studio Tognini.
4. The client must monitor that the said right of Studio Tognini is not prejudiced, also if the materials are not managed by Studio Tognini.
5. Due to the nature of the activities of Studio Tognini it forms an immediate and considerable infringement of its business operations and reputation if the rights as determined in paragraphs 1 and 3 are breached by the client. Studio Tognini therefore reserves the right to in case of an infringement of its creative / intellectual or performing rights by the client hold the latter liable by filing a claim that shall amount to at least 200% of the total amount of the services lastly delivered to the client, without prejudice to any other provisions included in an agreement with the client.

Article 7. Rescission

1. The agreement is rescinded without judicial intervention and without any notice of default being required at the moment that the client is declared bankrupt, applies for suspension of payment or loses the right to dispose of its assets or a part thereof due to an attachment, guardianship or otherwise.
2. Reciprocal claims immediately fall due following the rescission. The client shall be liable for damages incurred by Studio Tognini as a result of the rescission, including lost profit.

Article 8. Exoneration

1. If objections regarding delivered goods and/or services are deemed to be well-founded and liability of Studio Tognini is established in connection therewith then Studio Tognini shall, at its sole discretion, either pay compensation equal to at most the invoice value of the delivered goods or replace the delivered goods free of charge after the originally delivered goods have been returned to the same. Studio Tognini shall never be held to pay additional compensation.
2. The liability of Studio Tognini for damages that are, either directly or indirectly, the result of defects in the services or goods delivered by the same shall in any case be limited to the amount of its fee minus the out-of-pocket costs with regard to the delivered goods. The client waives its right to claim rescission of the agreement pursuant to a breach of contract.
3. Studio Tognini shall not be liable for damage to or loss or destruction of objects, materials or data that were made available to the same for, by or on behalf of the client.

Article 9. Disputes

1. Any and all disputes shall exclusively be brought to the cognisance of the competent district court in the place of establishment of Studio Tognini – barring to the extent that it regards disputes that pertain to the jurisdiction of the sub-district court – unless the latter decides to bring the dispute to the cognisance of the competent district court in the place of establishment or residence of the client or unless stipulated otherwise by agreement.
2. Dutch law is applicable to any and all offers and agreements.

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