

# Terms and conditions of Maykin Media, Amsterdam

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These conditions are filed on April 11, 2011 in the District Court of Amsterdam under number 47/2011.

## Article 1: Applicability

- 1 These general conditions apply to all agreements concluded by Maykin Media and where Maykin Media provides services or goods.
- 2 The counterparty of Maykin Media will in these conditions be referred to as "client".
- 3 The applicability of any terms and conditions of the customer is explicitly rejected.
- 4 By written agreement, the parties may deviate from the provisions of these terms and conditions.

## Article 2 Performance of work

- 1 All work will be carried out carefully and to the best effort by Maykin Media. Maykin Media does not, however, guarantee in reaching the subsequent goals of the client via the goods or services of Media Maykin unless explicitly defined (including for example revenue targets, traffic on the website, etc.).
- 2 Maykin Media may be assisted by a third party unless expressly prohibited on the part of the client in the execution of the work. These third parties may also rely on these conditions to avert liability from the client.
- 3 All the dates regarding implementation deliveries shall be construed as indicative. A deadline occurs only when Maykin Media has explicitly and in writing accepted such a deadline.
- 4 A functional design prepared by Maykin Media under the contract shall be deemed accepted unless subsequent written comments are given by the client within five days. Upon acceptance, this functional design will be the guide for the implementation of the (continued) work by Maykin Media.
5. If the technical execution of the work differs significantly from the functional design, the work is deemed non-conformative. In that case Maykin Media is held to resolve the written complaints on the part of the client, insofar as these are reported within 3 months after completion, free of charge.
- 6 Maykin Media provides for a period of three months after the date on which delivery has taken place free updates for technical implementation flaws ("bugs").
- 7 After the expiry of the period referred to in paragraphs 5 and 6, the client can no longer claim these

free facilities. All claims arising out of the aforementioned non-conformity lapse after the expiry of the period mentioned. Work carried out by Maykin Media after this period is based on the agreed (hourly) rate of Maykin Media.

8 Activities that are performed outside the agreed upon scope by Maykin Media are seen as additional work which will be paid according to the agreed (hourly) rate of Maykin Media. Also in case of changes and amendments to the contract the agreed (hourly) rate of Maykin Media will be charged.

### **Article 3: Price and payment**

1 All prices are exclusive of sales tax (VAT).

2 Maykin Media is entitled at any time to ask advance payments.

3 In the case of periodic payments, Maykin Media is entitled to raise its prices annually.

4 Payments must be made within 14 days after the invoice date. After the expiry of that period, statutory interest will be charged.

5. If payment has not been made within the mentioned term all extrajudicial costs made by Maykin Media will be fulfilled by the client. The additional minimum costs by Maykin Media in this case are set at 5% of the unpaid principal amount, with a minimum of € 500.

6. If Maykin Media in judicial proceedings is decided in favor of, all the costs Maykin Media has incurred, including in connection with this procedure, and the full cost of legal assistance on the part of Maykin Media, will be fulfilled by the other party.

7 Notwithstanding the previous paragraph Maykin Media is entitled to retain all deliveries and discontinue activities to the client if and as long as the client does not fulfill their obligations against Maykin Media.

8 Even if the client finds that a service provided to him is defective, he must fully comply with the obligations arising from the agreement. The client is not entitled to offset obligations to Maykin Media in this case.

### **Article 4 Liability**

1 In the event that there are culpable errors or shortcomings on the part of Maykin Media, Maykin Media is bound to repair in the manner and within the framework of the provisions of articles 2, paragraph 5, and 2, paragraph 6. The client does not have the right to terminate the agreement associated with these faults or shortcomings

2 Maykin Media is not liable for the damages incurred, such as for damages arising as a result of (attributable) errors or omission by the client, for example damages incurred due to:

- a. faults in the deliveries provided by Maykin Media, advice, software delivered, materials, documents, files or other data carriers;
- b. non-compliance by the client regarding advice provided by Maykin Media;
- c. faults in the electronic services of Maykin Media or third parties such as service providers, network operators and other telecommunications networks;
- d. delays in the execution of the contract.

3 Maykin Media is in no way liable for any consequential, indirect damage, loss, or damage caused by assisting and / or third parties.

4 If there is - in accordance with the preceding paragraphs - liability that arises for Maykin Media at any time for any damages suffered by the client as a shortcoming in the fulfillment of the obligations under this agreement by Maykin Media, this liability shall in all cases be limited to the invoice value of that particular part of the agreement to which the liability relates.

5. Damage for which Maykin Media under the preceding paragraph is liable to is only recoverable if the client can demonstrate that this damage could have been avoided, with reasonably plausible knowledge that was made available to Maykin Media, and has been reported within 30 days after its occurrence. After expiry of this period, any claim by client against Maykin Media expires.

6 Any complaint regarding the performance or omission of the performance of any assignment by the client must be filed within 30 days after occurrence of the damage with Maykin Media in writing.

7 The client indemnifies Maykin Media in respect of third party liability relating to damages of any kind caused by or in connection with the execution of the agreement.

## Article 5: Force Majeure

1 Maykin Media is not liable in case of force majeure. Force majeure is defined in these terms, in addition to what is understood in the law and jurisprudence, all external causes, foreseen or unforeseen, which Maykin Media can not influence, but due to which Maykin Media is unable to perform its obligations. Force majeure includes in any case: strike, fire, business or technical problems within the office or engaged by Maykin Media external parties, in the case of insufficient data or when Maykin Media has been provided incorrect data, or the lack of sufficient cooperation by client, at the discretion of Maykin Media.

2 In case of force majeure Maykin Media will consult with the client in order to achieve an

(alternative) solution or an adjustment of the contract. If this solution can not be reached within 14 days Maykin Media is entitled (in whole or in part) as repudiated or to rescind or cancel the agreement without being liable to pay damages to the client. In that case Maykin Media shall immediately notify the client that this is the case.

3 If Maykin Media at the time of the force majeure has complied with part of the agreement, Maykin Media is entitled to invoice the already executed parts of the agreement separately and the client is obliged to pay this invoice as if it were a separate agreement.

## Article 6: Intellectual Property

1 All intellectual property rights relating to or resulting from the work carried out by Maykin Media remain with Maykin Media.

2 The client receives a personal, non-exclusive and non-transferable right to use any such intellectual property after all outstanding invoices for all work by Maykin Media have been fulfilled by the client. This license implies the right to change or modify software. If changes are made by the client or third parties to software that is maintained by Maykin Media, the client will notify Maykin Media after any such modification within seven days.

3 Maykin Media is itself always entitled to the Intellectual Property Rights, in particular if it has developed software components / libraries wholly or in part, and whether or not for further use. Maykin Media will deliver the client the completed end product and not sell the relevant intellectual property rights to third parties and / or transfer these rights.

## Article 7 Disputes

1 All agreements between the parties and obligations arising from or in connection therewith, are governed by Dutch law.

2 All disputes arising out of or related to the agreements and commitments referred to in the preceding paragraphs, shall be brought exclusively to the District Court of Amsterdam.