

CONDITIONS SHARK PROJECTS

Article 1. Definitions

Agreement:	agreement for the performance, whether contracted out or not, of work and/or the performance of services and/or the manufacture of products;
Shark Projects:	Shark Projects, a private company with limited liability, established in Amsterdam, Nieuwe Prinsengracht 70-2;
Client:	the client of Shark Projects by virtue of a written or oral agreement;
Estimates:	the quotations drawn up by Shark Projects.

Article 2. Applicability of these conditions

1. These general terms and conditions shall apply to every quotation by Shark Projects and to every agreement between Shark Projects and the client, in so far as not explicitly provided otherwise by the parties in writing. If provided otherwise in a written agreement, the present terms and conditions shall remain in full force in all other respects.
2. Terms and conditions used by the client shall only be applicable if explicitly agreed upon in writing. References to general terms and conditions of the client client on writing paper, invoices and suchlike shall not suffice in this respect. In the event of any conflict with such general terms and conditions, the present terms and conditions shall prevail unless otherwise agreed upon otherwise in writing.

Article 3. Estimates

1. Estimates drawn up by Shark Projects shall remain valid for two months, unless Shark Projects submits a quotation stating a shorter period in which the offer must be accepted. Shark Projects shall only be bound to an order only after having accepted it explicitly in writing.
2. Prices listed in the budget are exclusive of turnover tax and other government levies and shall be valid for a maximum of two months.
3. Written acceptance of the order by Shark Projects shall be decisive for the contents of the agreement.

Article 4. Contract period, terms, performance

1. The agreement shall be entered into for an indefinite period of time, unless the parties explicitly agree otherwise.
2. Any term agreed upon within the duration of the agreement with respect to completion of certain work shall never be a fatal term, unless explicitly agreed otherwise. Even if the performance term has been exceeded, Shark Projects shall only be in default after having been declared in default by the client by registered letter and failing fulfilment within the reasonable term stated in the notice of default.
3. If, at the request of the client, Shark Projects draws up an estimate of the costs of third parties, such estimate shall only be indicative, and acceptance thereof by the client shall not be binding on Shark Projects. Unless agreed upon otherwise, assignments to third parties shall be given by or on behalf of the client, within the framework of realisation of that which has been agreed upon by Shark Projects and the client. At the request of the client, Shark Projects may act as an attorney agent for the account and risk of the client, at a fee to be agreed upon.

Article 5. Modification of the agreement

1. If, during fulfilment of the agreement, adequate performance appears to require a modification of or supplement to the work to be carried out, the parties shall adjust the agreement accordingly in writing in good time and in mutual consultation. Modification of or supplement to the agreement agreed by the parties may affect the point of time of completion. Shark Projects shall notify the client thereof in writing as soon as possible. If the modification of or supplement to the agreement has financial or qualitative consequences, such consequences shall also be included in the new, written agreement.
2. If, due to unforeseen circumstances, the modified or supplemented new agreement cannot be fulfilled in accordance with the agreement, Shark Projects shall have the right to charge the client all resulting additional costs unless the modification or supplement is due to circumstances which can be imputed to Shark Projects.

Article 6. Cancellation

Cancellation of an order by the client must take place by registered letter and shall only be permitted if such registered letter has been received by Shark Projects within five working days of the day on which the order was accepted by Shark Projects. In addition, cancellation of an order shall only be possible if Shark Projects has not yet ordered the goods to be purchased for that order from its suppliers, unless Shark Projects can still cancel the orders concerned with its suppliers at no charge. In the event of cancellation of an order, the client shall at any rate be obliged to pay 20% of the agreed total sum as cancellation costs, without prejudice to the obligation of the client to full compensation of the costs incurred by Shark Projects, including quotation and administration costs.

Article 7. Termination

1. Shark Projects can terminate the agreement in writing any time, subject to a notice period of one week. In the event of urgent reasons, Shark Projects shall be allowed to depart from this one- week notice period.
2. Termination of the agreement by the client shall be subject to a notice period of two months. In addition to damages, the client shall pay Shark Projects the fee and the costs incurred with respect to the work performed until then.

Article 8. Exigibility

The amount due by the client by virtue of the agreement entered into between the parties shall be forthwith payable without notice of default if: circumstances have come to the knowledge of Shark Projects after conclusion of the agreement, which give good reason to believe that the client will fail to fulfil its obligations; the client has been requested to provide security upon conclusion of this agreement and such security has either not been provided or is insufficient.

Article 9. Suspension and rescission

1. If (one of) the events mentioned in Article 8 occur(s), Shark Projects shall be entitled to suspend further performance of the agreement or to rescind the agreement.
2. If circumstances occur with respect to persons and/or materials (usually) utilised by Shark Projects for the performance of the agreement and these circumstances are of such a nature that, in the opinion of Shark Projects, the performance of the agreement becomes problematic and/or disproportionately expensive to the extent that, in the opinion of Shark Projects, fulfilment of the agreement can no longer be reasonably required in reasonableness, Shark Projects shall be entitled to rescind the agreement without observance of a notice period.
3. If the client fails to fulfil one of its obligations under the agreement or fails to do so in time, Shark Projects shall have the right to suspend further performance of the agreement or to rescind the agreement without observance of a notice period, without any further notice of default.
4. Rescission of the agreement by Shark Projects shall not impair its right to full damages by the client.

Article 10. Defects, terms for complaints

1. Complaints about work carried out and/or products supplied shall be notified to Shark Projects by the client in writing within five working days after the defect has been established or upon completion of the work. If the complaint about the work carried out has not reached Shark Projects within the required term, the performance of the work by Shark Projects shall be deemed to have been in accordance with the agreement. On expiry of the term referred to above, the client shall have no right to claim (un?)fulfilment, rescission or damages.
2. If Shark Projects considers a complaint to be justified, Shark Projects shall carry out the work as yet or deliver the product as yet as agreed upon, unless the client has indicated in writing that it renounces such fulfilment. If fulfilment of the service agreed is no longer possible or if the client no longer requires further performance, Shark Projects shall only be liable only within the limits of Article 13.

Article 11. Fee

1. The fee shall be calculated according to Shark Projects's customary hourly rates, valid for the period in which the work is carried out, unless a deviating hourly rate has been agreed.
2. The cost estimate, as included in the budget, is exclusive of VAT and exclusive of other government levies.

Article 12. Payment

1. Upon acceptance of the order, Shark Projects shall send the client an invoice to the amount of 50% of the total order sum. In addition, interim invoices may be sent, at the discretion of Shark Projects.
2. Payment shall be effected within 30 days of the invoice date. If payment is not effected within this period, the client shall be in default by operation of law. If payment is not effected on time, the client shall pay default interest to the amount of the interest rate of the European Central Bank, augmented by 7% interest per annum.
3. All collection costs, including the total costs of legal assistance, both judicial and extrajudicial, rendered by whosoever, even by Shark Projects itself, shall be payable by the client upon commencement of default as referred to in the previous paragraph and shall be entirely for the client's account. The minimum costs for the work to be carried out by Shark Projects for collection shall amount to € 100.00 (exclusive of VAT) per hour or part thereof. The costs of legal assistance shall at least be fixed at the reimbursement rates of the Amsterdam court, viz. € 662.00 for claims up to € 9,983.00.; € 780.00 for claims up to € 19,512.00.; € 998.00 for claims up to € 39,025.00.; € 1,442 for claims up to EUR € 97,562.00.; € 2,450.00 for claims up to € 195,125.00.; or at two points of the applicable liquidation rate or at the itemised actual costs reasonably incurred in so far as these are higher than the minimum reimbursement rates.
4. In the event of liquidation, bankruptcy or suspension of payment of by the client, the payment obligations of the client shall become immediately claimable.
5. The client shall not be entitled to settle the amount due to Shark Projects with any amount of a counterclaim made by the client, nor to deduct any other amount for any reason whatsoever, nor to suspend its payment obligation for any reason whatsoever.

Article 13. Liability

1. Shark Projects shall only be liable only for the damage suffered by the client if such damage is the direct consequence of default in the fulfilment which may be attributed to Shark Projects or of an unlawful act attributable to Shark Projects. In addition, the latter shall only apply only in so far as such unlawful act is directly and exclusively intentional or due to gross negligence by Shark Projects or its executives. Shark Projects shall never be liable for any damage caused if terms are exceeded, or due to the loss or mutilation of data submitted, or consequential damage or indirect damage including damage due to loss of profit or missed savings.
2. Shark Projects shall, at any rate, not be liable for faults in the material made available by the client, misunderstandings or mistakes with respect to the performance of the agreement if occasioned or caused by acts of the client, mistakes by third parties called in by or on behalf of the client, and for faults in the product or design if the client has already approved the product or design or if the client has been given the opportunity to carry out an inspection but failed to take advantage of that opportunity.
3. The client shall bear all risks with respect to its own goods owned by it which are in the possession of Shark Projects for the performance of the agreement, and must take out insurance for these risks itself, if required.
4. In the event of liability on the part of Shark Projects, such liability shall be restricted to the amount of the fee payable by the client for the agreement to which the damage relates, but at any rate limited to a maximum of € 10,000.00 per event and per agreement.

Article 14. Force majeure

1. The obligations of Shark Projects shall be suspended during force majeure.
2. Force majeure is understood to be circumstances which prevent fulfilment of the contract and which cannot be attributed to Shark Projects. These shall, if and in so far as such circumstances render fulfilment impossible or unreasonably difficult, include without limitation: strikes, a general lack of raw materials and other goods or services required for realisation of the agreed performance, unforeseeable stagnation in processes of suppliers or other third parties on whom Shark Projects is dependent, and general transport problems. Shark Projects shall also have the right to plead force majeure if the circumstances hindering (further) fulfilment occurs after Shark Projects should have fulfilled its obligations.
3. If, upon commencement of force majeure, Shark Projects has already fulfilled part of its obligations, or can only fulfil part of its obligations, it shall have the right to separately invoice the part which has already been performed or can be performed and the client shall be obliged to pay this invoice as if it concerned a separate agreement.

Article 15. Intellectual property rights

1. All rights of intellectual or industrial property on software developed or made available by Shark Projects, equipment and other materials such as designs, documentation and reports, shall remain exclusively vested in Shark Projects. The client shall exclusively obtain the rights of use as explicitly assigned to it by written agreement. Such rights may not be copied, reproduced or made available or sold to third parties by the client, subject to the explicit written permission of Shark Projects.
2. In the event of violation of the stipulation subparagraph 1 of this Article, the client shall be liable to forfeit an immediately payable penalty of € 25,000.00 per violation, without prejudice to Shark Projects's right to recover the damage suffered or to be suffered by it and the costs incurred from the client.
3. The client shall warrant Shark Projects that fulfilment of the agreement and in particular the reproduction and publication of all goods received by the client, shall not infringe any rights which may be exercised against it by virtue of any national or international legal or contractual stipulation in the field of copyright. The client shall further protect Shark Projects against any claims, both judicial and extrajudicial, which third parties may exercise by virtue of any legislation whatsoever.
4. If doubt arises or continues to exist about the correctness of rights pretended by third parties as referred to in the previous paragraph, Shark Projects shall be entitled to suspend fulfilment of the agreement until the point of time at which it has been irrevocably established in court that Shark Projects does not infringe such rights for fulfilment of the agreement.
5. The client shall not be allowed to remove any statement about copyrights, trade marks, trade names or other rights of intellectual or industrial property from software, equipment or materials, nor to change them.

Article 16. Confidentiality

1. All information of the client which is submitted to Shark Projects for performance of the agreement shall be strictly confidentially treated by Shark Projects and shall therefore not be given for inspection to third parties or disclosed by Shark Projects without the other party's consent.
2. Upon termination of the agreement, Shark Projects shall return the submitted data and files to the client against payment of the costs, or destroy them, at the option of the other party. If the client has failed to react within 30 days after having been requested by Shark Projects in writing to notify Shark Projects of the aforementioned option, Shark Projects shall be free to return the submitted data and files against payment of the costs or to destroy them, at its own discretion.

Article 17. Settlement of disputes

Contrary to the statutory regulations for the competence of the civil court, any dispute between the client and Shark Projects shall be settled by the Court in Amsterdam, in so far as the court is competent. If the law designates the subdistrict court as competent court, the statutory regulations shall apply. Shark Projects shall remain entitled at all times to serve a summons on the client before the court which has jurisdiction by law or by the applicable international treaty.

Article 18. Applicable law

All agreements between Shark Projects and its client shall be governed by Dutch law.