

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF EVANKU PROMOGIFTS, BRUGLAAN 60, 7611 BX AADORP**

### **Article 1 Definitions.**

**Clause 1:** In these General Terms and Conditions the following are understood:

- consultant or supplier: the user of these General Terms and Conditions, in this case Evanku Promogifts
- principal or client: a party in a contractual or pre-contractual association with the supplier.

**Clause 2:** Where "goods" are mentioned in these General Terms and Conditions, they are understood to mean both items to be supplied by the supplier and his services, including consultancy and creative work.

**Clause 3:** Where reference is made in these General Terms and Conditions or in a contract concluded between the supplier and the client to an internationally defined proviso (e.g., C.O.D., ex works, C.I.F., etc.) such a proviso should be understood in the sense of the Incoterms published in 2000 by the International Chamber of Commerce.

### **Article 2 Applicability**

**Clause 1:** Unless otherwise agreed in writing, these General Terms and Conditions apply to every association between the supplier and the client.

**Clause 2:** The stipulations of the previous clause also apply to subsequent or supplementary agreements between the supplier and the client in which the applicability of these General Terms and Conditions is not included in greater detail or with increased emphasis.

### **Article 3 Offers**

**Clause 1:** All offers in any form whatsoever are without obligation on the part of the supplier unless they include a period for acceptance and are based on supply in normal circumstances and in normal working hours.

**Clause 2:** If an offer without obligation is accepted, the supplier is entitled to revoke his offer within two days after the receipt of the acceptance.

**Clause 3:** Illustrations, catalogues, drawings and further data supplied to or by the supplier are subject to amendment without prior notice and are not binding on the supplier.

### **Article 4 Prices**

**Clause 1:** The price or prices stated in the offer is or are stated in Euros exclusive of Value-Added Tax and is or are based on the factors determining the price or prices at that moment.

**Clause 2:** The supplier is entitled at all times to determine that certain articles will only be supplied in certain minimum quantities.

### **Article 5 Supply of printed goods**

**Clause 1:** If the supplier is given instructions to supply products specially processed or compiled for a client, the client is obliged to provide reproducible material of good quality.

**Clause 2:** The supplier shall only be required to send the client an advance proof for approval if the client has so requested in writing prior to giving instructions. In that case the supplier undertakes to submit a proof to the client within five weeks after the receipt of the appropriate instructions and after the receipt of the material to be reproduced; said proof shall be deemed to have been approved if no reaction to the proof in writing is received within five working days after it has been dispatched.

**Clause 3:** All the costs of printing or associated therewith will be charged separately and are not included in the agreed prices unless otherwise has been expressly agreed.

### **Article 6 Consultancy work and product development**

**Clause 1:** The consultant is obliged to promote the client's interests to the best of his ability and to act in an advisory capacity on request.

**Clause 2:** The consultant shall observe strict confidentiality in respect of all information made available by the client, also after the business association has been terminated. On his part, the client is obliged to observe confidentiality in respect of everything that is made known to him in respect of the consultant's company and the company's products or services or both.

**Clause 3:** In the case of product development, consultancy in respect of promotional products to be applied, consultancy in respect of creative concepts, quotations for extended projects relating to products that are printed or otherwise, national or international market surveys into specific products or product demand for products not specifically described, in all cases which do not provide for the supply of specifically described goods, the client shall be obliged to make remuneration at an hourly rate or fixed rate agreed between the parties in advance.

### **Article 7 Supplies and delivery time**

**Clause 1:** The delivery times stated shall never be regarded as a statutory limit unless otherwise has been expressly agreed. Hence in the event of late delivery the supplier should be held in default in writing.

**Clause 2:** Delivery time commences on the latest of the following times:

- A. the day on which the agreement comes into being
- B. the day on which the supplier receives from the client the documents, data, permits and the like which are necessary for the implementation of the agreement
- C. the day on which the supplier receives from the client any amounts payable in advance in pursuance of the agreement.

**Clause 3:** If the delivery is delayed in whole or in part by *force majeure*, the supplier is entitled to suspend the delivery or to dissolve the agreement in whole or in part insofar as it has not been implemented and to claim payment in respect of those parts that have been carried out, such without being required to pay any compensation to the client.

**Clause 4:** In these General Terms and Conditions, *force majeure* is understood to be any circumstance independent of the supplier's will - even if such had been foreseeable at the time when the agreement came into being - which permanently or temporarily obstructs compliance with the agreement, as well as, insofar as such are not already understood, war, the threat of war, civil war, riot, strikes, lock-outs, transport difficulties, fire or serious breakdown or both in the supplier's company or in the company of its own suppliers.

**Clause 5:** In the case of products specially processed or compiled for the client, the supplier reserves the right to supply and invoice a maximum of 10% more or less than the agreed quantities.

**Clause 6:** After prior consultation, the supplier shall be permitted to dispatch goods in consignments; each consignment is to be paid for separately.

**Clause 7:** Unless otherwise agreed in writing, without prejudice to what has been stated above in respect of prices, the prices stated by the supplier are based on delivery ex works, warehouse or other place of storage, exclusive of turnover tax, import duties or other taxes, levies or obligations and exclusive of the costs of loading and unloading, transport and insurance.

**Clause 8:** Unless otherwise agreed in writing, delivery shall be effected ex warehouse, in which case the supplier shall be deemed to have supplied the goods and the client to have accepted them as soon as the goods have been offered to the client or as soon as the goods have been loaded on the means of transport or both.

**Clause 9:** Unless otherwise agreed in writing, transport shall be at the client's risk and expense, even if the carrier has expressly stipulated that all transport documents shall state that all damage ensuing from transport is at the carrier's risk and expense.

**Clause 10:** If the supplier makes samples available to the client, the client is obliged to return the samples to the supplier carriage paid, undamaged and in their original packaging, within fourteen days after receipt.

**Clause 11:** If the supplier shows or provides a model, sample or example, such is done only by way of an indication; the features of the items to be supplied may differ from those of the model, sample or example. The stipulations of Article 3 are also applicable.

## **Article 8 Complaints**

**Clause 1:** Complaints in respect of externally visible defects should be notified in writing within eight days after the delivery of the items; if this period is exceeded the supplier shall not be held to any form of compensation.

**Clause 2:** Complaints in respect of defects that are not externally visible should be notified in writing within eight days after they have been noticed until the last day of the third month after the goods have been supplied; this period shall be regarded as the expiry period.

**Clause 3:** Complaints in respect of the amount of the invoices sent by the supplier should be notified in writing within eight days after the invoice date; this period shall be regarded as the expiry period.

**Clause 4:** In respect of services, items or raw materials or both supplied by the supplier yet obtained by him from third parties, the stipulations of the previous clause shall only apply insofar as and to the extent to which the third-party supplier of said services, items or raw materials or both has provided the supplier with a guarantee.

**Clause 5:** Goods deemed by the supplier to be unsuitable will either be replaced by him or credited in the purchase price to the exclusion of any other form of obligation to make compensation or supplementary compensation.

**Clause 6:** Goods may only be returned after the written agreement of the supplier and at the client's expense and risk and such shall never imply any acceptance of liability.

### **Article 9 Retention of ownership**

**Clause 1:** The supplier reserves the ownership of all goods supplied by him to the client until the purchase price of said goods has been paid in full.

**Clause 2:** If the supplier carries out work for the client against reimbursement in the context of an agreement concluded with the client, the reserved right of ownership shall also apply until the client has paid said reimbursement in full to the supplier.

**Clause 3:** The reserved right of ownership also applies in respect of receivables which the supplier might obtain vis-à-vis the client because of default by the client in one or more of his obligations vis-à-vis the supplier.

**Clause 4:** As long as ownership of the supplied goods has not been transferred to the client, client may not pledge said items or grant any third party any rights thereon other than in the normal practice of his business; in the event of sale or credit, the client undertakes to insist on reservation of ownership from his customers on the same terms as those stipulated in this Article.

**Clause 5:** The client undertakes not to assign or pledge the receivables he obtains vis-à-vis his customers and also undertakes to pledge said receivables to the supplier as soon as the supplier has made known his requirements in that respect in the manner set forth in Section 3.239 of the Dutch Civil Code for the greater security of his claims under any title whatsoever vis-à-vis the client.

**Clause 6:** If the client does not fulfil his payment obligations vis-à-vis the supplier or if the supplier has good grounds for fearing that the client will not meet his payment obligations, the supplier shall be entitled to recover goods supplied under reservation of ownership. After recovery the client shall be credited with the market value, which in no case shall be higher than the original purchase price from which the costs incurred by recovery have been deducted.

### **Article 10 Payment**

**Clause 1:** Unless agreed otherwise in writing and without prejudice to the stipulations of the next clause, payments to the supplier should be made nett within fourteen days after the invoice date, which period is a statutory limit.

**Clause 2:** Unless expressly agreed otherwise, all payments by the client, however made, shall first be applied to offset the costs, then the interest incurred and finally the capital sum of the unpaid invoices.

**Clause 3:** Set-off or other forms of settlement are not permitted unless expressly agreed in writing.

**Clause 4:** At all times, before supplying or continuing to supply, the supplier is entitled to require payment in advance or security as he deems fit for the client's compliance with his payment obligations; the supplier shall be entitled to suspend further deliveries if the client does not meet this requirement, also in the event that a fixed delivery time has been agreed, such without prejudice to the supplier's right to claim compensation for damages in respect of the late implementation or non-implementation of the agreement.

**Clause 5:** If the client has not paid within the agreed period, he is legally in default and the supplier is entitled without any notification of default being required to charge interest on the unpaid invoice or invoices in the amount of 2% above the legal interest with a minimum interest percentage of 12% per annum over the invoice amount.

**Clause 6:** All out-of-court collection costs incurred by the supplier shall be at the client's expense and will be charged in proportion to the outstanding amount in the manner as indicated below, on the understanding that they shall amount to a minimum of EUR 70 Out-of-court collection costs are calculated over the capital sum to be received and are as follows:

|                                   |     |
|-----------------------------------|-----|
| over the first EUR 3,000:         | 15% |
| over the excess up to EUR 6,000:  | 10% |
| over the excess up to EUR 15,000: | 8%  |
| over the excess up to EUR 60,000: | 5%  |
| over the excess above EUR 60,000: | 3%  |

**Clause 7:** If the client is in default, all open receivables to the supplier from the client fall due immediately.

### **Article 11 Liability**

**Clause 1:** With the exception of the culpable guilt or deliberation on the part of the supplier's Board or subordinate managers, the supplier shall not be liable for costs, damages or interests which arise as the result of action or inaction by said persons or of others of the supplier's subordinates or by persons whom the supplier has involved in the implementation of the agreement.

**Clause 2:** Any liability by the supplier for consequential damage or other indirect damage is expressly excluded.

### **Article 12 Designs, models, etc.**

**Clause 1:** All drawings, sketches, diagrams, samples, models, tools and the like which are used by the supplier, even if they have been made available to the client, remain the property of the supplier, intellectually or physically or both, and hence may not be used without the express prior written permission of the supplier for any other purpose than the implementation of the agreement between the supplier and the client.

**Clause 2:** The client indemnifies the supplier against claims from third parties relating to rights of intellectual property in respect of the goods mentioned in the previous clause which originate from the client.

**Article 13 Disputes / applicable law**

**Clause 1:** The laws of the Kingdom of the Netherlands apply to all agreements to which these General Terms and Conditions apply in whole or in part.

**Clause 2:** Insofar as not expressly agreed otherwise in writing, all legal claims to which these General Terms and Conditions may give the client inducement shall lapse after the expiry of one year after the delivery date.