

# Studio Kraak General Terms and Conditions

The general terms and conditions of the sole proprietorship Studio Kraak, Gregoriusstraat 17, 9746 CD, Groningen, The Netherlands, trading as Studio Kraak.

## Article 1: Definitions

In this agreement the following definitions shall apply:

- a. Client: the natural or legal person who has ordered Studio Kraak to execute business activities, or to deliver services and/or products.
- b. The Order: the formal confirmation by Client, that the offer stated in the quotation, must be executed for her or him according to the terms and conditions indicated. The order can be recorded in combination of a quotation and a confirmation, or an agreement provided by contracting parties for that purpose.

## Article 2: General

1. These general terms and conditions shall apply to any offer, quotation or agreement between Studio Kraak and Client to the extent that contracting parties don't deviate from these conditions explicitly and in writing.
2. The present conditions shall also apply to all agreements with Studio Kraak, when third parties are engaged by Studio Kraak in the execution thereof.
3. Any deviations from and supplements on these conditions shall apply only if these are explicitly agreed upon in writing.
4. The applicability of any purchasing terms and conditions or other terms and conditions from Client will be explicitly rejected.
5. If one or more provisions in these general terms and conditions are null and void or should be declared void, the remaining provisions of these general terms and conditions shall continue to apply. In that case Studio Kraak shall consult with Client to agree on new provisions as a replacement for the void or destroyed provisions, which approximate the purpose and intent of the original provisions to the extent possible.
6. If ambiguity exists regarding the explanation of one or more of the provisions of these general terms and conditions, then the explanation shall be found "in the spirit" of these provisions.
7. If contracting parties encounter a situation that is not regulated in these terms and conditions, then this situation must be judged according to the spirit of these general terms and conditions.
8. If Studio Kraak does not always request strict compliance with these terms and conditions, this does not mean that the provisions are not applicable, or that Studio Kraak should lose in any sense the right to request strict compliance with the provisions of these terms and conditions in other cases.

## Article 3: Quotations, additional quotations, offers

1. All quotations, additional quotations and offers from Studio Kraak shall be without obligation unless a term of acceptance is stated in the offer.
2. Quotations by Studio Kraak are valid during 30 days from the date of quotation, unless stated otherwise. Studio Kraak is committed to quotations only if their acceptance by the other party is confirmed in writing within 30 days, unless stated otherwise in the quotation.
3. Studio Kraak can not be adhered to her quotations or offers if Client reasonably can understand that either the quotations or offers, or a component thereof, contain an apparent error or mistake.
4. Prices mentioned in a quotation or offer are excluding VAT and other governmental taxes, any costs to be made in relation to the agreement including travel and accommodation costs, shipping costs and administrative expenses, unless stated otherwise.
5. If the acceptance, whether or not on minor aspects, deviates from the quotation or offer, then Studio Kraak shall not be bound by it. The agreement will not be established with such deviating acceptance, unless Studio Kraak indicates otherwise.
6. A composite quotation does not obligate Studio Kraak to execute part of the order in exchange for a corresponding portion of the price specified. Offers or quotations don't apply automatically for future agreements.
7. The mere submission of an additional quotation, estimate or similar statement, whether or not indicated as a quotation, does not obligate Studio Kraak to reach an additional agreement with Client.

## Article 4: Contract period; implementation deadlines, transfer of risk, implementation and modification of the agreement; price increase

1. The agreement between Studio Kraak and Client is established for indetermined time, unless the nature of the agreement indicates otherwise or if contracting parties agree otherwise explicitly and in writing.
2. If a deadline is agreed upon for executing certain activities or delivering certain items, this deadline will

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never count as a fatal deadline for Studio Kraak. When a deadline is not met, Client should declare Studio Kraak in breach motivated and in writing, before can be spoken of an attributable deficiency. In case of that notice of default Studio Kraak should be offered a reasonable term to fulfil the specified obligation after all.

3. Studio Kraak shall always implement the granted Order according to good craftsmanship.

4. Unless explicitly agreed upon otherwise, Studio Kraak shall be entitled to engage third parties to implement the Order (in full or in part). The applicability of Article 7:404; 7:407(2) and 7:409(2) Civil Code (Dutch Law) is explicitly excluded.

5. Studio Kraak is entitled to implement the Order in separate phases and invoice the accordingly performed activities separately.

6. If the Order is implemented in phases, Studio Kraak can postpone the implementation of elements that belong to a next phase until Client has approved and accepted the results of the preceding phase in writing.

7. Client shall take care that all details of which Studio Kraak indicates or of which Client reasonably should understand being necessary to implement the order, are provided to Studio Kraak in time. If the details necessary for the implementation of the Order are not provided to Studio Kraak in time, Studio Kraak shall be entitled to suspend the implementation of the Order and/or charge on Client the extra costs that result from the delay according to the usual prices. The implementation term will only start after Client has provided the details to Studio Kraak.

8. If during the implementation of the Order it appears that the Order needs to be modified or complemented for a proper implementation, then those involved shall consult in time with each other the adjustment of the agreement that shall be necessary. If it results from this consultation that the nature, size or contents of the order, whether or not on request of Client, or specified by appropriate authorities, should be modified and that the agreement subsequently will be modified qualitatively or quantitatively, then Studio Kraak shall indicate beforehand in writing to the extent possible, how this modification will affect the order.

9. Client accepts that the agreement could be modified, including a modification in price, deadline or other conditions of the implementation. Contracting parties shall record in writing the agreed modification and the resulting modified offer as a specific agreement. The specific agreement will be effective on the moment of signing by contracting parties, or on a specific moment still to be agreed upon by contracting parties.

10. Studio Kraak shall be entitled to deject an offer for modification of the agreement, if accordance with the modification reasonably can not be demanded from her. A dejection by Studio Kraak to agree with a modification proposal shall not entitle Client to cancel or end the agreement.

11. If Client should be at fault in adequately complying to do what is expected of her or him towards Studio Kraak, then Client is liable for all damage occurring directly or indirectly on the side of Studio Kraak as a result of this default.

12. If Studio Kraak has agreed upon a fixed fee or fixed price with Client, then Studio Kraak shall be entitled anytime however to increase this fee or this price without Client being entitled to cancel the agreement because of that, if the increase of price:

a. results from a legal authority or obligation or

b. is attributable to a price increase of resources, wages, et cetera, or

c. on grounds that reasonably could not been foreseen at the start of the agreement.

13. Studio Kraak is entitled to increase the agreed rate as per 1 January or 1 July of each year when one or more of the following circumstances arise after the agreement is settled: an increase in the costs of materials or services that are needed to implement the agreement, an increase in shipping costs, the implementation of new, and/or an increase in current, governmental taxes, or comparable circumstances in general.

### **Article 4a: Retention of title and rights, retention and risk**

1. All items delivered to Client remain property of Studio Kraak, until all sums indebted by Client for the items delivered or to be delivered or activities achieved or to be achieved according to this agreement as all other sums that Client is indebted attributable to failure in payment obligation, are paid in full to Studio Kraak. A Client who acts as a reseller shall be entitled to sell or resell all items that are subject to retention of title as long as that is common practice in his/her normal business practice.

2. Where appropriate, rights shall always be given or passed to Client under the condition that Client shall pay the agreed specific compensations fully and in time.

3. Notwithstanding any delivery obligation, Studio Kraak may maintain possession of objects, products, proprietary rights, information, documents, files, databases and interim or other results of Studio Kraak's services, which have been received or generated as part of the agreement, until Client has paid all indebted sums to Studio Kraak.

4. The risk of loss, theft or damage shall pass to Client on the moment that the items, products, software or data which are subject of the agreement are placed at the actual disposal of Client or her/his assistant.

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## **Article 5: Suspension, dissolution and interim termination of the agreement**

1. Studio Kraak shall be entitled to suspend compliance with her obligations or to dissolve the agreement with Client, if Client does not fulfil his or her obligations from the agreement sufficiently or in time, if after acceptance of the agreement circumstances become known to Studio Kraak which give good reason to fear that Client will not fulfil his or her obligations, if Client when accepting the agreement was asked to warrant meeting the requirements of the agreement and this warranty is not provided or is insufficient or if by the delay on the side of Client no longer can be demanded from Studio Kraak that she will meet the agreement according to the originally agreed conditions.
2. Furthermore, Studio Kraak is entitled to dissolve the agreement if circumstances arise such that compliance with the agreement is impossible or if circumstances otherwise arise so that unaltered continuation of the agreement may no longer be reasonably expected of Studio Kraak.
3. If the agreement is dissolved, all amounts receivable by Studio Kraak shall be immediately due from Client. If Studio Kraak suspends compliance with her obligations, she retains her claims based on the law and the agreement.
4. In the event of suspension or dissolution, Studio Kraak shall not be obliged in any way to compensate for any resulting damage and costs.
5. If Client is accountable for the dissolution, then Studio Kraak shall be entitled to compensation for the damage, including the costs resulting directly or indirectly.
6. If Client fails to meet his or her obligations resulting from the agreement and this non-compliance justifies dissolution, then Studio Kraak shall be entitled to immediately dissolve the agreement without any obligation, on her side, to pay any compensation or remuneration, while Client on the other hand, attributable to breach of contract, shall be obliged to compensation or remuneration.
7. If Studio Kraak prematurely dissolves the agreement, Studio Kraak shall consult with Client to take care that activities still to be done will be transferred to third parties. This will be so unless such dissolution can be attributed to Client. If additional costs result from the transfer of activities, then these costs will be charged on Client. Client shall be obliged to pay these costs before the specified deadline, unless Studio Kraak indicates otherwise.
8. In the event of liquidation, (requesting) suspension of payment or bankruptcy, confiscation – if and as long as the confiscation is not ended within three months – against Client, admission of Client to a debt rescheduling arrangement under the Natural Persons Debt Rescheduling Act, or another circumstance in which Client can no longer freely dispose of his or her finances, Studio Kraak is free to terminate the agreement immediately or cancel the order or agreement, without any obligation on her side to pay any compensation or remuneration. In that event all amounts receivable by Studio Kraak from Client shall be immediately due.

## **Article 6: Force majeure**

1. Studio Kraak is not required to comply with any contractual obligation towards Client, if she is obstructed by a circumstance not attributable to a fault, and neither is her responsibility by virtue of the law, legal action or according to generally accepted standards.
2. In these terms and conditions force majeure is defined as, next to what under the law and case law is interpreted, all external reasons, foreseen or unforeseen, that are beyond control of Studio Kraak, however through which Studio Kraak cannot meet her obligations. Strikes by third parties shall be herewith included. Studio Kraak shall be entitled also referring to force majeure, if the circumstance obstructing continuous meeting the agreement, starts after Studio Kraak should have met her agreement.
3. Studio Kraak can postpone the obligations from the agreement during the period that the force majeure continues. If this period lasts longer than two months, then each of the contracting parties shall be entitled to dissolve the agreement, without obligation of compensation of damage to the other party.
4. As far as Studio Kraak, meanwhile, has met partly her obligations from the agreement at the time that the force majeure starts or will be able to meet these, and the achieved respectively to be achieved part has independent value, then Studio Kraak shall be entitled to invoice the already met respectively to be met part separately. Its is incumbent on Client to pay this invoice as if it concerns a separate agreement.

## **Article 7: Payment and collection costs**

1. Payment ought to happen within 14 days after the date of invoice, in a way indicated by Studio Kraak in the currency stated in the invoice, unless Studio Kraak has indicated otherwise in writing. Studio Kraak is entitled to invoice regularly.
2. If Client fails to pay the invoice in time, then Client is in default by law. When that happens, Client is indebted an interest of 1% per month, unless the legal interest is higher, in which case the legal interest is

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indebted. The interest on the claimable sum will be charged from the instant that Client is in default until the instant that the claimable sum is fully paid.

3. Studio Kraak is entitled to set payments made by Client in the first instance off against costs, then against overdue interest, and finally against the principal sum and current interest. Moreover, Studio Kraak may, without thereby being deemed to be in default, refuse an offer of payment if the customer proposes to allocate the money in a different sequence. Studio Kraak may also refuse the settlement in full of the principal sum if the overdue and current interest and costs are not paid at the same time.

4. Client is never entitled to levy what she or he is indebted to Studio Kraak. Objections to the amount stated on the invoice do not suspend Client's obligation to pay. Any Client who can not appeal to section 6.5.3 (Articles 236 until 238 Book 6 Civil Code – Dutch Law) neither is entitled to postpone payment of the invoice on other grounds.

5. If Client fails to meet his or her obligations, then all reasonable costs for obtaining payment out-of-court shall be charged on Client. The extrajudicial costs shall be charged on the basis of what is common practice in Dutch payment recoveries, currently the calculation method conform Dutch legislation [de Wet Incassokosten – WIK]. However if Studio Kraak had to pay higher collection costs that were reasonably necessary, the actual paid costs will be charged as compensation. Any legal costs and enforcement costs paid shall be recovered from Client. Client is also interest indebted on the indebted collection costs of 15% of the main sum on average.

### **Article 8: Contents and modification of the agreement**

1. Client shall accept that the time schedule of the Order can be affected, if contracting parties agree to expand or modify the approach, method or size of the Order and/or extend or modify the resulting activities intermediately.

2. If the intermediate modification affects the agreed fee or compensation costs, Studio Kraak will give Client notice of this as soon as possible.

3. If an intermediate modification occurs in the Order or implementation of the Order attributable to Client, Studio Kraak shall implement the necessary modifications, if required by the quality of service. A modification that results in additional work, shall be confirmed as an additional Order to Client. The provisions in Article 3. apply accordingly.

### **Article 9: Warranties, research and complaints, limitation period**

1. The results/items to be delivered by Studio Kraak meet the usual requirements and standards that can be reasonably set for them at the time of delivery and which they should meet in normal use.

2. The actual putting into use by Client of the results can be considered as a formal acceptance of the delivered results/items.

3. The warranty mentioned in Article 9(2) shall apply during a period of three months after delivery, unless this does not comply with the nature of the delivery or if contracting parties agreed otherwise. If the warranty provided by Studio Kraak relates to a result or an item that was produced by a third party, than the warranty is restricted to the warranty provided by the producer of the result or item, unless stated otherwise, however at the latest until three months after delivery.

4. Any form of warranty will be dissolved if a defect is caused by or results from injudicious or improper use or maintenance of the object by Client and/or by third parties when Client or third parties modified or tried to modify the result or item without written permission from Studio Kraak. Neither shall Client be entitled to claim warranty if the defect is caused by, or results from circumstances that are beyond control of Studio Kraak, including business circumstances such as, however not exclusively, altering software platform et cetera.

5. It is incumbent on Client to investigate or have investigated the delivered items and/or results, immediately at the time that the items and/or results either are presented to her/him or the respective activities are executed. Besides, Client should investigate whether quality and/or quantity of the delivered result or item is/are in accordance with what is agreed upon and meets/meet the requirements contracting parties had set. Any visible defects should be reported in writing to Studio Kraak within seven days after delivery. Any invisible defects should be reported in writing to Studio Kraak immediately or at least within fourteen days after their discovery. The notification should contain a description of the defect as detailed as possible, so that Studio Kraak can react adequately. Of defects can be spoken only if they are reproducible. Client should give Studio Kraak the opportunity to investigate or have investigated the complaint, and offer the necessary co-operation accordingly.

6. A complaint by Client within the warranty period does not postpone her or his payment obligation. In that event, Client shall remain also obliged to purchase and pay the remaining items ordered and the activities

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she or he has ordered Studio Kraak to execute.

7. If any defect is reported after the warranty period has ended, then Client cannot claim repair, replacement or compensation.

8. If it is clear that an item is defective and in this respect is timely claimed, then Studio Kraak shall take care of the repair of the defective item after proper notification of the defect by Client within a reasonable period of time, to be decided by Studio Kraak, or shall substitute its functionality, or shall provide adequate compensation to Client.

9. If it has become clear that a complaint is unfounded or charges still should be born by Client, then its resulting costs, including the investigation costs, on the side of Studio Kraak shall integrally be born by Client.

10. After the warranty period has expired all repair and replacement costs including administrative, shipping costs and call out fee will be charged on Client.

11. By way of derogation from the legal limitation periods, the limitation period of all requisitions and objections towards Studio Kraak and third parties engaged at the implementation of the agreement, shall be one year.

## **Article 10: Liability**

1. In the event that Studio Kraak might be held liable, then her liability, if established, is limited to what is regulated in this provision.

2. Studio Kraak is not liable for damage of any kind caused by Studio Kraak's reliance on incorrect and/or incomplete information provided by Client.

3. If Studio Kraak appears to be liable for any damage, then that liability is limited to the amount of the invoice, as far as the specific part of the Order the liability relates to, that is until a maximum of 10.000 euro.

4. Studio Kraak shall only be liable for direct damage.

5. Direct damage is strictly defined as:

– the reasonable costs involved in the identification of the cause and extent of the damage, to the extent that such identification relates to the damage within the meaning of these terms and conditions.

- any reasonable costs incurred in repairing the shortcoming in the execution of the assignment by Studio Kraak, unless such shortcomings cannot be attributed to Studio Kraak;

– reasonable costs incurred to prevent or limit damage, to the extent that Client demonstrates that such costs have led to the limitation of direct damage, within the meaning of these general terms and conditions.

6. Studio Kraak shall never be liable for indirect damage, including though not limited to consequential loss or damage, lost profit, loss of savings, damage due to stagnation of business.

7. The limitations of liability for direct damage, mentioned in these terms and conditions, shall not apply if the damage is done on purpose or is attributable to gross negligence by Studio Kraak or her subordinates.

## **Article 11: Indemnification**

Client shall indemnify Studio Kraak for any claims by third parties, who are suffering damage related to the execution of the agreement and this damage is attributable to others than to Studio kraak. If Studio Kraak in that respect might be addressed by third parties, then Client shall be obliged to assist Studio Kraak both judicially and extrajudicially and to do immediately anything that can be expected from her or him in such an event. If Client might fail in taking adequate measures, then Studio Kraak shall be entitled to take such measures herself, without notice of default. All resulting costs and damage on the side of Studio Kraak and third parties shall be charged on Client and shall be her or his risk.

## **Article 12: Intellectual property rights**

Studio Kraak reserves the rights and authority which she is entitled to under the Dutch Copyright Act and other legislation on intellectual property. Studio Kraak is entitled to use also for other purposes the increased knowledge on her side thanks to implementing the agreement, as far as third parties are not notified about strict confidential information of Client.

## **Article 13: Copyright**

After delivery by Studio Kraak Client shall obtain the right to personally use the items, created according to the agreement, in terms of the Dutch Copyright Act. This specific right of use is limited to the right of normal use of the delivered items within and by the own organisation of Client and does not include the right to multiply these items in particular. Client is not entitled to provide to third parties the items created by Studio Kraak. Client is not permitted to remove name and logo of Studio Kraak and/or her suppliers from the delivered item(s).

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## **Article 14: Confidentiality**

Studio kraak is obliged to keep secret any information and data of Client from third parties during and after ending the agreement. She will take all precautions to protect the interests of Client in relation to the order. Client shall not disclose the approach of Studio Kraak, her method of working and suchlike to third parties, neither provide them her reports and/or data.

## **Article 15: Applicable law and disputes**

1. Only Dutch law is applicable to all legal relationships between Studio Kraak and Client, also if an agreement is implemented abroad or if the legally involved party is located there. Studio Kraak and Client shall opt-out of the applicability of the UN Convention for the International Sale of Goods (CISG) and other international conventions that can be excluded.
2. The court in the location of Studio Kraak is exclusively entitled to take notice of disputes, unless the law imperatively prescribes otherwise. Studio Kraak is nevertheless entitled to submit the dispute to the legally competent court.
3. Involved parties will appeal to court only after they did strive to the utmost to settle the dispute in mutual agreement.
4. The original Dutch text of these General Terms and Conditions shall prevail over versions published in any other language.