

VALID FROM JANUARY 2023

These are the Terms & Conditions of Cellar Agency, with its statutory seat in Slochteren, the Netherlands and its office address in (3554 EZ) Utrecht, the Netherlands, at Stauntonstraat 9, Unit 11 (cellaragency@gmail.com, +31 6 2047 0816, cellaragency.com).

Cellar Agency is registered in the trade register of the Dutch Chamber of Commerce (*Kamer van Koophandel*) under file number: 80899986

Article 1 Applicability

- 1.1 These purchase conditions apply to all agreements that are to be entered into and have been entered into with Cellar Agency, including all legal acts and other acts that are aimed at the formation, change and execution of these agreements. These purchase conditions also apply to subsequent and additional assignments or instructions by Cellar Agency.
- 1.2 These purchase conditions are easily accessible on the website of Cellar Agency (www.cellaragency.com) and can be sent at the client's request without delay and at no charge.
- 1.3 Cellar Agency explicitly rejects terms and conditions used by the contractor and does not apply to the agreement, except in cases where Cellar Agency explicitly accepts these in writing.

Article 2 Formation of the agreement

- 2.1 Every offer by Cellar Agency is without obligation. The agreement with the contractor is formed only after written confirmation of the assignment or instruction by Cellar Agency.
- 2.2 Cellar Agency may take options with the contractor. The contractor will reserve its time based on an option for Cellar Agency and will only accept a conflicting assignment or obligation after consultation with Cellar Agency. An option does not oblige Cellar Agency to give an assignment or instruction.

Article 3 Cancellation of assignments or instructions

- 3.1 Cellar Agency has the right to cancel assignments or instructions at no cost if the client of Cellar Agency cancels the related assignment or instruction at the latest 24 hours before the start of work; the planning and administration of Cellar Agency determine the date and time of the start of work. Cellar Agency will inform the contractor without delay of a cancellation.

3.2 Cellar Agency will try to charge the client with costs already made at the time of the cancellation and with costs that can no longer be cancelled, but it is not liable for such costs if the client does not pay these. Notwithstanding article 7 on payment below, it is recommended that the contractor communicates the fees it will incur and charge these with permission in time to allow Cellar Agency to charge these to the client.

Article 4 Obligations of the contractor

- 4.1** In the performance of the agreement, the contractor shall exercise the care of a good contractor. The contractor will always keep Cellar Agency informed on the activities progress. The contractor performs the assignment or instruction independently and has complete creative freedom within the boundaries of the assignment or instruction. The contractor has full responsibility for the performance of the agreement as it is agreed.
- 4.2** Cellar Agency and the contractor are not a relationship of authority. In accordance with article 7:402 Dutch Civil Code (*BW*), the contractor is obliged to follow instructions by Cellar Agency during the performance of the agreement.
- 4.3** In case the assignment or instruction is given with a view to a specific person or specific persons, the contractor is not allowed to involve other persons unless with the express prior written permission of Cellar Agency. Articles 7:404 and 7:407, section 2 Dutch Civil Code (*BW*), apply to the agreement, unless Cellar Agency and the contractor explicitly agree otherwise in writing.
- 4.4** The contractor guarantees that its personnel and involved third parties have the required quality and perform all of their obligations. All cases of non-performance, whether incomplete, untimely or improper performance, of goods or services by personnel of the contractor and third parties involved by the contractor are attributed to the contractor.
- 4.5** The contractor shall exercise good care in using objects made available to it by Cellar Agency or the client to perform the agreement, such as clothing and jewellery. In any case, the contractor will not leave such objects unattended in a car.
- 4.6** The contractor guarantees that goods used in the performance of the agreement do not breach any third-party rights, and the contractor indemnifies Cellar Agency against any third-party claims in that regard.

- 4.7** The contractor and any person involved shall abide by the house rules and code of conduct of Cellar Agency, as amended from time to time, during the performance of the agreement. According to these rules, it is prohibited to take photographs or film during the performance of activities, except with permission of Cellar Agency. It is also prohibited to share photographs or film on social media or otherwise without the prior written permission of Cellar Agency.
- 4.8** The contractor is obliged to perform the agreement in accordance with all applicable laws and regulations with regard to, among other items, working conditions, safety and the environment.

Article 5 Performance of the agreement

- 5.1** The contractor will perform the agreement in time and according to the contents of the agreement. Agreed results will be delivered in the agreed way, in the agreed format and at the agreed location, supplied with the (digital) documents and materials requested by Cellar Agency.
- 5.2** Suppose Cellar Agency believes that the results delivered need to meet the agreement. In that case, the contractor will remedy the shortcoming within a reasonable time after the request to it at its own cost in a way determined by Cellar Agency. The reasonable time is determined by the client's need for Cellar Agency to obtain results and can therefore be short.
- 5.3** All agreed deadlines are considered to be strict and final. If the contractor expects delays, it will inform Cellar Agency immediately.

Article 6 Fees

- 6.1** The contractor will receive the fees for the assignment or instruction set out by Cellar Agency in writing in the confirmation of the assignment or instruction. All fees are in euros and exclude VAT. The fees are considered to include costs incurred in the performance of the agreement unless agreed otherwise in writing.
- 6.2** Travel time will be paid out to a maximum of 8 hours per day at 50% of the hourly rate. Pre-production meetings and preparation work are paid out only in case this is agreed in writing in advance.
- 6.3** Travel costs will be paid out on the basis of actual costs.
- 6.4** At its request, the contractor will grant Cellar Agency full access to documents and specifications to verify costs incurred by the contractor. Cellar Agency has the right at its costs to have the contractor's administration related to the assignment of instruction by Cellar Agency audited by a chartered auditor appointed by Cellar Agency.

- 6.5** In the event that a budget is agreed upon and it becomes apparent during the performance of the agreement that this budget will be exceeded, the contractor will notify Cellar Agency thereof in due time. A cost overrun cannot be charged to Cellar Agency until after Cellar Agency has received permission from its client to incur the additional costs and has notified the contractor thereof in writing.

Article 7 Payment

- 7.1** Invoices will be paid within 30 days after the invoice date on the bank account provided by the contractor, except in case the client of Cellar Agency has not yet entirely performed its payment obligations relating to the assignment or instruction to Cellar Agency. The claim against Cellar Agency is due and payable only after complete payment by the client to Cellar Agency, even if the contractor already sent an invoice to Cellar Agency.
- 7.2** Cellar Agency is in default regarding fees that are due and payable only after receiving a written notice of default giving a reasonable time for payment, and this time has lapsed unused.
- 7.3** Cellar Agency has the right to suspend the performance of its payment obligations against the contractor if the contractor fails to meet any of its obligations. Cellar Agency has unlimited rights to set off. Suspension of obligations by the contractor is excluded. The contractor may not set off any claim on Cellar Agency against debt to Cellar Agency, of whichever kind.

Article 8 Guarantee of status of independent contractor

- 8.1** The contractor and Cellar Agency expressly do not enter into an employment agreement. The contractor guarantees that they, if agreeing with a private person, act as an independent contractor and will provide Cellar Agency, at its request, with all documents with which this can be established. In any case, the contractor will provide its registration number in the Chamber of Commerce (KvK) and VAT number to Cellar Agency.
- 8.2** Suppose it is insufficiently clear to Cellar Agency that the contractor, a natural person, will perform the agreement as an independent contractor. In that case, it is free not to enter into the agreement or terminate an agreement already formed without being liable for any damages.
- 8.3** The contractor indemnifies Cellar Agency against claims by tax authorities and social insurance authorities regarding income tax and/ or social insurance contributions (employer's part and employees' part), including any fines and interests incurred related to activities performed for Cellar Agency. Cellar Agency will set off any contributions, fines and interests it is obliged to pay against all it is of will become obliged to pay to the contractor, on whichever ground.

Article 9 Intellectual property rights

- 9.1** All intellectual property rights on all that is used by the contractor in the performance of the agreement or that is created by the contractor during or as a result of the performance of the agreement are vested in the contractor and its licensors.
- 9.2** The contractor grants Cellar Agency a licence, with the right to grant sublicenses to the client on all that the contractor delivers about the performance of the agreement. The sublicense granted by Cellar Agency to the client gives the client the right to reproduce and make public the work that is delivered, which right is in time, place, medium and use limited to what the parties agree to at the time of formation of the agreement. If requested, the contractor will agree to transfer intellectual property rights.
- 9.3** Cellar Agency makes an effort to prevent its clients from using the work that is delivered by the contractor in a way that was not agreed upon and obliges its clients to publish the name of Cellar Agency and the contractor with every publication of the work. The client of Cellar Agency is not allowed to modify the work without prior written permission by Cellar Agency or to act in violation of moral rights as referred to in Article 25 of the Dutch Copyright Act (*Auteurswet*). However, Cellar Agency cannot be held accountable by the contractor for breaches of the rights of the contractor and third parties by the client or third parties. The contractor may not suspend or terminate any licence granted.
- 9.4** The contractor irrevocably authorizes Cellar Agency, excluding the contractor itself, to exercise the powers arising out of its intellectual property rights to protect and enforce against third parties the rights granted to Cellar Agency. Cellar Agency may, at its own cost, and if necessary, take legal measures after consultation with the contractor in the name of the contractor. The contractor is obliged to provide all requested cooperation in that respect.
- 9.5** The contractor guarantees its original work and does not infringe any third-party rights. The contractor will have its personnel and involved third parties sign a suitable quit claim, licence or transfer of rights for the agreed use. The contractor indemnifies Cellar Agency against all third-party claims in that respect.

Article 10 Confidentiality and privacy

- 10.1** Cellar Agency and the client will keep strictly confidential any information that they learn of which they understand or can reasonably be expected to understand its confidential character, among which details on the parties' organisation, except in the performance of the agreement as far as is strictly required, or if forced by a legal requirement or court order. The client will impose this obligation on the persons involved in the agreement's performance.

- 10.2** Cellar Agency processes personal data exclusively by the Personal Data Protection Act (*Wet bescherming persoonsgegevens*) and other applicable laws and regulations.

Article 11 Non-solicitation clause

- 11.1** It is prohibited for the contractor during the performance of the agreement and for two years after the agreement has ended to perform services in whichever form directly for clients of Cellar Agency, except for activities relating to the assignment of instruction by Cellar Agency. With this clause, Cellar Agency is protecting its position and the position of all its photographers and artists against the client. The contractor is completely free to work for third parties in any other way.
- 11.2** The contractor will incur an immediately due and payable penalty of € 10.000, - in case it breaches the non-solicitation clause above, notwithstanding the right of Cellar Agency to complete damages.

Article 12 Liability

- 12.1** The contractor is liable for all damages suffered by Cellar Agency and third parties due to an attributable failure in the performance of its obligations or as a result of unlawful acts by the contractor.
- 12.2** Suppose goods or services delivered by the contractor do not conform with the agreement between Cellar Agency and the contractor or do not answer to reasonable expectations based on the agreement's contents. In that case, attributable failure in the performance of obligations is considered to exist. Attributable failure in the performance of obligations is also considered to exist where the contractor violates what may be reasonably expected of a competent colleague acting with due care.
- 12.3** The contractor indemnifies Cellar Agency against all third-party claims in relation to the above.
- 12.4** The contractor is obliged to take out suitable liability insurance. At the request of Cellar Agency, it will provide a copy of the insurance policy.

Article 13 Termination of the agreement

- 13.1** Agreements entered into for a definite period that does not end as a result of the performance of a specific assignment or instruction and agreements entered into for an indefinite period may be terminated by Cellar Agency at all times giving reasonable notice.

- 13.2** Cellar Agency may dissolve an agreement with the client in whole or in part in writing without notice of default and without being liable for any damages or payment; in case suspension of payments is granted to the client, the bankruptcy of the client is requested, the client who is a natural person is given statutory debt adjustment under the Debt Management Act (*WSNP*), or the client, in other ways, loses the power to dispose of its capital.
- 13.3** In the event of dissolution, all claims of Cellar Agency on the client are due with immediate effect.
- 13.4** The contractor will return to Cellar Agency all documents, materials and other items used in the agreement's performance within 14 days after the agreement has ended.

Article 14 Applicable law and competent court

- 14.1** The legal relationship between Cellar Agency and the client is exclusively governed by and construed in accordance with the laws of The Netherlands. The Vienna Sales Convention does not apply.
- 14.2** All disputes arising in connection with the legal relationship between Cellar Agency and the client shall, in the first instance, exclusively be referred to the Court of Amsterdam, The Netherlands, notwithstanding the right of Cellar Agency to refer disputes to the court of the client's domicile.

Article 15 Additional provisions

- 15.1** For the construction of these purchase conditions, an electronic notice is considered to be a written notice.
- 15.2** Cellar Agency has the right to change the contents of these purchase conditions. Changed purchase conditions also apply to existing agreements. Cellar Agency will publish changed purchase conditions on its website before these come into force. The changed purchase conditions will come into force two weeks after the date on which these were published or so much later as the publication sets out.
- 15.4** If it proves that a provision in these purchase conditions in whole or in part lacks binding effect, the other provisions remain in force. The provision without binding effect in that event will be deemed to have been replaced by a condition that does have binding effect and deviates as little as possible from the content and purpose of the non-binding provision.

- 15.5** These purchase conditions also apply in favour of legal entities and persons who are involved by Cellar Agency in the performance of the agreement.
- 15.6** The client's rights arising out of the agreement with Cellar Agency cannot be transferred without prior written permission from Cellar Agency. This provision has effect under property law, as referred to in Article 3:83, paragraph 2 of the Dutch Civil Code (*BW*).

