

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 Terms & Conditions apply to all offers of Cellar Agency and all agreements and other legal relationships between Cellar Agency and the client. These terms and conditions also apply to subsequent and additional assignments or instructions and new agreements with the client.
- 1.2 These Terms & Conditions are easily accessible on the website of Cellar Agency (www.cellaragency.com) and can also be sent at the client's request without delay and at no charge.
- 1.3 Cellar Agency explicitly rejects the Terms & Conditions used by the client and does not apply to the agreement, except if Cellar Agency explicitly accepts these in writing.
- 1.4 Cellar Agency has the right to change the contents of these Terms & Conditions. Changed terms and conditions also apply to existing agreements. Cellar Agency will publish changed Terms & Conditions on its website before these come into force. The changed Terms & Conditions will come into force two weeks after the date on which these were published or so much later as the publication sets out.

Article 2 Formation of the agreement

- 2.1 Offers by Cellar Agency that are addressed to specific persons are considered offers and are without obligation. The agreement with the client is formed by the client's oral or written acceptance of the request. Verbal acceptances will be confirmed in writing by Cellar Agency.
- 2.2 Offers by Cellar Agency that are not addressed to specific persons are considered invitations to the client to make an offer. The client's request or enquiry is deemed to be the offer. The agreement with the client is formed by written acceptance of the offer or actual performance of the agreement to which Cellar Agency relates the offer.

- 2.3** Options given by Cellar Agency are without obligation. Cellar Agency always remains at liberty to provide options to third parties and enter into agreements with third parties.
- 2.4** Articles 6:227b en 6:227c of the Dutch Civil Code (*BW*) do not apply to the agreement with the client.

Article 3 Cancellation of assignments or instructions

- 3.1** The client has the right to cancel assignments or instructions at no cost until 24 hours before a call time/booking starts. However, the client is at all times liable for external expenses that are already made and for the making of external expenses that can no longer be cancelled. The planning and administration of Cellar Agency determine the date and time of the start of work. The client will pay for preparation work by Cellar Agency of over 2 hours, despite timely cancellation.
- 3.2** The total value of the agreement will be paid by the client in case of cancellation within 24 hours before the start of a call time/booking. The planning and administration of Cellar Agency determines the date and time of the start of work.

Article 4 Rates and expenses

- 4.1** Services are provided at the rates applicable at the time of the formation of the agreement. All rates exclude VAT and include agency-fee and external expenses unless otherwise indicated. Travel time and travel costs are charged separately in accordance with the below arrangements. Pre-production meetings and preparation work can be charged separately.
- 4.2** Rates are based on working days consisting of 8 hours. The rate for half a day is based on a working day consisting of 4 hours plus a surcharge. Days for filming consist of 10 hours or 5 hours for half a day. Services are offered per day or half a day and not per hour, except for pre-production meetings, preparation work and overtime.
- 4.3** Overtime will be charged at 20% of the day rate per hour, effective from the first hour after a full or half day has passed. Overtime in case of filming is charged at a rate of 150% of the hourly rate. The hourly rate is calculated as 10% of the day rate.
- 4.4** Travel time is charged at a rate of 50% of the hourly rate with a maximum of 8 hours per day. The hourly rate is calculated as 1/5 of the day rate. Travel time in case of air travel is charged for a fixed price of 50% of the day rate, irrespective of the duration of the journey.

- 4.5** Travel expenses outside of Amsterdam is charged in accordance with the legally binding rates of the Dutch Government: 0,21 euro cent per kilometre for editorials and 0,30 euro cent per kilometre for commercial bookings. In case of travel by public transport outside of Amsterdam, the actual expenses are charged based on second-class travel. Costs of air travel is charged based on actual costs in economy class. Taxi/ÜBER and parking expenses outside of Amsterdam are for the account of the client, within reasonable limits, as are expenses for stay in other countries and expenses for meals/beverages during booked projects/productions.
- 4.6** If a budget is agreed upon and it becomes evident that it will be exceeded during the performance of the agreement, Cellar Agency will notify the client of it in due time. The amount of the cost overrun will be charged to the client unless it replies to Cellar Agency immediately that it does not agree to the cost overrun. In that case, Cellar Agency may suspend the performance of the agreement or have it suspended until the parties have come to an agreement on the matter.
- 4.7** In case external expenses increase during the performance or duration of the agreement due to circumstances beyond the control of Cellar Agency, the additional expenses will be charged to the client. External costs include, without limitation, materials used in the performance of the agreement and rates of third parties involved in the version of the contract.
- 4.8** Cellar Agency has the right to index its rates on a yearly basis in accordance with the consumer price index published by Statistics Netherlands (*CBS*) and to change its rates in other respects. Changed rates apply from the moment these are stated.

Article 5 Payment

- 5.1** Invoices will be paid ultimately within 14 working days after the invoice date. Payments must be transferred to the bank account mentioned on the invoice. The client will send the correct and complete billing information to Cellar Agency at the latest when the agreement is formed. (address, attn. VATnumber and also any PO number or other reference that is necessary to process the payment)
- 5.2** Claims of Cellar Agency are due and payable as of the moment the agreement is formed. So, sending an invoice or using a PO number or other client reference is not required for claims to become due and payable. If the client would like a reference on an invoice to be changed to process payment, the client will inform Cellar Agency and send the requested reference via email within five days after the invoice date.

- 5.3** Cellar Agency has the right to send invoices for agreed rates in advance and during the performance of an agreement in case external expenses are made. Payment of agency fees and external costs incurred by Cellar Agency cannot be reclaimed if the assignment or instruction is cancelled or discontinued.
- 5.4** If payment terms are exceeded, the client is considered to be in default *de jure* without any notice of default being required. Cellar Agency has the right to charge default interest if payment terms are exceeded by 1% on the outstanding amount per month or part thereof, except when the statutory commercial interest rate is higher, in which case this is payable. The client shall pay all judicial and extrajudicial expenses (including legal fees) that are incurred by Cellar Agency pertaining to the collection of invoices, with a minimum of 15% of the outstanding amount including interest.
- 5.5** The client does not have the right to suspend payment obligations. The client has no right to set off any payment obligation to Cellar Agency against any claim it has on Cellar Agency, of whichever nature these are.
- 5.6** Cellar Agency may suspend the performance of its obligations, including regarding the provision of services, in case the client fails to meet its (payment) obligations, whichever nature these are. Cellar Agency may also suspend the performance of its obligations in case the client fails to send the information referred to in Article 5.1 to Cellar Agency. Cellar Agency is not liable for any damages arising out of or in connection with suspending the performance of obligations.

Article 6 Performance of the agreement

- 6.1** In the performance of the agreement, Cellar Agency shall exercise the care of a good contractor. The obligations of Cellar Agency are best-effort obligations. The client has the right to give directions in the performance of the agreement. Cellar Agency and any person it involves in the performance of the agreement, however, retain the artistic freedom to determine in which way the agreement is performed. In no way shall the agreement between Cellar Agency or the persons it involves and the client consist of a relationship of authority.
- 6.2** Cellar Agency and the persons it involves shall exercise reasonable care in using objects made available to them by or on behalf of the client to perform the agreement, such as clothing and jewellery. The risk of damage, loss or theft remains with the client. The client shall keep sufficient insurance. The client guarantees that such objects, text and images made available to Cellar Agency and the persons it involves by or on behalf of the client do not breach any third-party rights, and the client shall indemnify Cellar Agency against any third-party claims in that regard.

- 6.3** Cellar Agency may involve third parties in the performance of the agreement. Articles 7:404 and 7:407 Lid, 2 of the Dutch Civil Code (BW), is not applicable.
- 6.4** Suppose the client wishes a specific person or third party to be involved in the performance of the agreement. Cellar Agency will reasonably try to apply this person or third party in that case. If this is not possible, for whichever reason, Cellar Agency will recommend an alternative person or third party with similar expertise and skills. Except where the client has notified Cellar Agency in advance and writing that the specific person or third party it wishes to be involved is a condition to the formation of the agreement, involving another person or third party does not give the client the right to dissolve or terminate the contract.
- 6.5** The client has to tell Cellar Agency beforehand the names of the persons it will hire to work with Cellar Agency and the third parties involved in Cellar Agency. Suppose the client uses unannounced persons or replaces persons who were announced. In that case, third parties engaged by Cellar Agency may no longer want to work on the assignment or instruction, considering the artistic freedom they require. In that case, Cellar Agency has the right to dissolve the agreement without any liability.
- 6.6** Cellar Agency will exercise reasonable effort to perform the agreement or have the agreement performed within the agreed schedule. Adjustments in the schedule do not give the right to dissolve or terminate the agreement nor to suspend payment obligations.
- 6.7** The client and any person involved shall abide by the Terms & Conditions of Cellar Agency rules and code of conduct, 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.

Article 7 Intellectual property rights

- 7.1** All intellectual property rights, among which, without limitation, copyrights, neighbouring rights, database rights, design rights, trade mark rights, trade name rights and patent rights, and other rights on all that is used in the performance of the agreement or that is created during the performance of the agreement, including connected know-how, are vested in Cellar Agency and its licensors.
- 7.2** In writing beforehand, the client is granted a licence on what Cellar Agency delivers about the agreement. The intellectual property rights will not be transferred and remain vested in Cellar Agency and its licensors. The licence provides the client with the right to reproduce and make public the work delivered, which is in time, place, medium and use limited to what the parties agree to at the time of formation of the agreement.

- 7.3** The client can grant sublicenses to third parties with prior written permission from Cellar Agency. Permission can be subject to conditions. The client's licence is granted under the condition precedent of a complete performance of the (payment) obligations of the client to Cellar Agency, of whichever nature. In the case of payment in instalments, the use by the client before the last instalment is paid is at the client's own risk.
- 7.4** It is the client's sole responsibility to arrange permissions and rights from portrayed persons and other third-party right holders required for the intended use of what is delivered by Cellar Agency unless Cellar Agency directly involves the represented persons and third-party right holders, or it is agreed otherwise in writing. The client indemnifies Cellar Agency and the persons engaged by Cellar Agency against any third-party claims by these portrayed persons and third-party right holders.
- 7.5** The client is responsible for complying with applicable laws and regulations in using the work delivered by Cellar Agency, among which on advertising law. The client indemnifies Cellar Agency against any third-party claims in that regard.
- 7.6** The client will publish the name of Cellar Agency and the persons it involves with every publication of the work delivered. The client will follow the directions by Cellar Agency in that respect. Modifying the work without prior written permission from Cellar Agency is prohibited. Permission can be subject to conditions. Modifications are considered to be, without limitation, the cutting, manipulating and adapting of images. As referred to in Article 25 of the Dutch Copyright Act (Auteurswet), moral rights apply without limitation. The foregoing also applies if Cellar Agency agrees to an unlimited licence with the client or transfers intellectual property rights.
- 7.7** The client incurs an immediately due and payable penalty to an amount of three times the rates and costs payable by the client under the agreement for every breach of the contents of this article on intellectual property rights, which includes the use of delivered work that was not agreed, notwithstanding the right of Cellar Agency to claim the surrender of profits and full damages. Cellar Agency has the right to terminate the client's licence if it violates this article on intellectual property rights. Cellar Agency is not liable for damages to the client or third parties connected to this termination. The client indemnifies Cellar Agency against any third-party claims in this regard.
- 7.8** Cellar Agency has the right, at its costs, to have the books and records of the client that relate to the use of the work delivered by Cellar Agency audited by a chartered accountant appointed by Cellar Agency at the client's offices.

Article 8 Confidentiality and privacy

- 8.1** 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.
- 8.2** Cellar Agency processes personal data exclusively in accordance with Personal Data Protection Act (*Wet bescherming persoonsgegevens*) and other applicable laws and regulations.

Article 9 Force majeure

- 9.1** In addition to what is provided in article 6:75 Dutch Civil Code (*BW*), a failure to perform under the agreement cannot be attributed to Cellar Agency if it results from circumstances for which it cannot be blamed, such as war, the danger of war, mobilization, riots, strikes or exclusions, fire, floods, illness/viruses and/ or accidents of the persons involved by Cellar Agency, computer failures, interruption of operations and decreased production, shortage of raw materials or packaging material, transport delays, legal intervention, import limitations or other limiting measures by the authorities, as well as any other circumstance that prevents the performance of the agreement that is not exclusively dependent on the will of Cellar Agency, such as delays and failures in the delivery of goods and provision of services by persons involved by Cellar Agency.
- 9.2** In such an event, the obligations of Cellar Agency are suspended. Only after six months do the parties have the right to dissolve the agreement in whole or in part. Suspension and dissolution do not lead to any liability for Cellar Agency, irrespective of any advantage as a result thereof for Cellar Agency.

Article 10 Liability

- 10.1** Cellar Agency is not liable for consequential damages of the client, including, without limitation, loss of profit, damage to its image and claims by third parties. Cellar Agency is not liable for damage, loss or theft of objects that are made available by or on behalf of the client to Cellar Agency and the people Cellar Agency involves for the performance of the agreement, such as clothing garments and jewellery, nor is it liable for damage to other property of the client or persons working for the client or with the client.
- 10.2** The liability of Cellar Agency for other types of damages is limited to the amount paid in the specific circumstances under its insurance policy. The claim on Cellar Agency for payment of damages is due only after Cellar Agency has received payment from the insurance company in the relevant matter.

- 10.3** If no payment by the insurance company is made for whatever reason, the liability of Cellar Agency is limited to an amount of € 2,000.-. Any damage claim on Cellar Agency is barred by a lapse of 24 months from the moment the claim comes into existence.
- 10.4** The above mentioned exclusions and limitations of liability do not apply in case of wilful misconduct or gross negligence by Cellar Agency.

Article 11 Dissolution of the agreement

- 11.1** 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 granted statutory debt adjustment under the Debt Management Act (*WSNP*) or the client in other ways loses the power to dispose of its capital.
- 11.2** In the event of dissolution, all claims of Cellar Agency on the client are due with immediate effect.

Article 12 Applicable law and competent court

- 12.1** 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.
- 12.2** 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 domicile of the client.

Article 13 Additional provisions

- 13.1** For the construction of these terms and conditions, an electronic notice is considered to be a written notice.
- 13.2** In case it proves that a provision in these terms and 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 provision that does have binding effect and deviates as little as possible from the content and purpose of the non-binding provision.

13.3 These terms and conditions also apply in favour of legal entities and persons who are involved by Cellar Agency in the performance of the agreement.

13.5 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*).

