



## General Terms & Conditions Popcorn Brain B.V.

### **Article 1.** General applicability

1.1 Popcorn Brain BV, located at (1012 PS) Amsterdam at the Oude Braak 16A, registered with the Chamber of Commerce in Amsterdam under number 71562087 and VAT identification number NL858763709B01. Popcorn Brain BV will hereinafter be referred to as 'Popcorn Brain'.

1.2 These general terms and conditions apply to all offers, budgets, quotations, agreements and assignments of / with Popcorn Brain with a third party, hereinafter referred to as: 'Client' Deviations from these conditions only apply if Popcorn Brain has explicitly accepted them in writing. Applicability of any general terms and conditions used by the Client is excluded.

1.3 If a provision from these general terms and conditions proves to be void or voidable, it will be replaced by a valid provision that complies as much as possible with the purport of the voidable or void provision. If Popcorn Brain finds this necessary, the parties will consult each other about the content of the new provision. The other conditions remain in full force.

## **Article 2.** Offers and creation agreement

2.1 All offers and quotations from Popcorn Brain are without obligation and shall only qualify as an invitation to grant an assignment. An agreement is only concluded after written acceptance by the Client of the Popcorn Brain offer.

2.2 Assignments, including any changes, will only bind Popcorn Brain when they have been confirmed in writing by Popcorn Brain. Popcorn Brain can refuse an assignment without stating a reason and Popcorn Brain will not be liable for the damage that arises - directly or indirectly - from this refusal and / or will arise.

2.3 If the acceptance deviates (on minor points) from the offer, Popcorn Brain is not bound by it. No agreement will be concluded, unless Popcorn Brain indicates otherwise.

2.4 A composite quotation does not oblige Popcorn Brain to perform part of the assignment against a corresponding part of the stated price.

2.5 An indication or estimate of costs made by Popcorn Brain serves solely to enable the Client to weigh up the interests involved in the assignment and to make a choice in the various options offered by Popcorn Brain. Client can not derive any rights from such an indication or estimate, unless otherwise agreed in writing.

2.6 Offers and quotations do not automatically apply to future assignments.

2.7 Modifications to an agreement can only be agreed in writing.

### **Article 3. Rates**

3.1 Unless agreed otherwise, the Parties agree on the (hourly) tariffs with regard to (the various parts of) the work to be performed. The amounts included in the quotation issued by Popcorn Brain are indicative, unless otherwise agreed.

3.2 The rates and other costs included in the aforementioned offers and quotations are exclusive of VAT and any other government levies.

3.3 Popcorn Brain will only charge additional non-budgeted out of pocket costs to the Client in the context of the order if the Client has given prior written approval or if such costs have been incurred at the request of the Client. If additional out-of-pocket expenses have been incurred as a result of an error attributable to Popcorn Brain in the performance of its work, these costs will be charged to Popcorn Brain.

3.4 If the client does not want Popcorn Brain to carry out any work for products and/or services competing directly with his products and/or services. Popcorn Brain shall be entitled to an exclusivity fee to be agreed in more detail.

### **Article 4. Payment**

4.1 Unless agreed otherwise, Popcorn Brain will invoice 50% of the agreed total amount before the start of the work, 25% when shoot commences and 25% after delivery of service. The Client cannot invoke suspension or setoff. Objections against the invoiced amount do not suspend the payment obligation.

4.2 The Client is obliged to pay the invoices of Popcorn Brain within 7 days.

4.3 If a payment is not made on time or in full, the Client will owe an interest of 1.5% per month or part thereof on the unpaid balance, without further notice of default, unless the statutory interest rate is higher, in which case the statutory interest rate applies. The interest on the due and payable amount is calculated from the moment that the Client is in default until the moment of payment of the full amount. Popcorn Brain can then cease or suspend all work for Client without being liable for damage caused by this suspension.

4.4 In the event of liquidation, bankruptcy, attachment or suspension of payment of the Client, the claims of Popcorn Brain on the Client will become immediately due and payable.

4.5 In the absence of payment within the period indicated on the invoice, the Client is also liable for all extrajudicial and reasonable collection costs and administration costs with a minimum of 15% of the principal amount owed.

## **Article 5.** The work and obligations of Popcorn Brain

5.1 Popcorn Brain makes every effort to deliver the agreed work to the best of its ability within the agreed time. Exceeding the agreed time, for whatever reason, does not give the Client the right to request dissolution of the agreement or to claim compensation, unless otherwise agreed.

5.2 In consultation with Popcorn Brain, the client is entitled to move the agreed date of delivery of the result of the work, with due observance of the provisions of article 9.2 of these conditions.

5.3 The Client shall ensure that all data, of which Popcorn Brain indicates that these are necessary or of which the Client should reasonably understand that these are necessary for the execution of the agreement, are timely provided to Popcorn Brain. If the data required for the execution of the agreement have not been provided to Popcorn Brain in time, Popcorn Brain has the right to suspend the execution of the agreement and / or charge the Client for the extra costs resulting from the delay in accordance with the customary rates.

5.4 If the parties have agreed that the agreement will be executed in different stages, Popcorn Brain may suspend the execution of (parts of) a subsequent phase until the Client has approved the results of the preceding phase in writing and / or has paid any (partial) invoices.

5.5 If applicable, Popcorn Brain takes care of (the rental of) the appropriate location, arranging the cast, the so-called props, possibly music, voice-overs and further decoration of the location where the filming will be done by Popcorn Brain. Then Popcorn Brain also takes care of the written permission of the right-holders involved in connection with the publication and further exploitation of the material produced by Popcorn Brain on commission, in which the location, music, voice-over, artists and casts, props and other matters play a role.

5.6 Popcorn Brain must ensure adequate insurance of the location, items and persons that must be arranged by it in the execution of the assignment, unless otherwise agreed. Locations, affairs and people that are not included in the quotation or the budget will not be insured by Popcorn Brain.

5.7 The Client has no obligation whatsoever to make the material produced by Popcorn Brain public or to exploit it in any other way, as long as the agreed obligations have not been fulfilled by the Client.

## **Article 6.** Engaging third parties

6.1 Popcorn Brain has the right to use third parties selected by Popcorn Brain in the execution of the assignment / agreement. Popcorn Brain stipulates, taking all circumstances into account, the prices and conditions that are best for the Client. The costs of this are at the expense of the Client. The choice of these possible third parties to be engaged will, as far as possible and reasonable, be determined in consultation with the Client. Liability for errors and / or shortcomings of these engaged third parties is hereby excluded. Popcorn Brain is authorized by the Client to accept general conditions and liability limitations of third parties on behalf of the Client.

6.2 If Popcorn Brain uses third parties selected by the Client for the execution of the assignment, the responsibility and liability for (the choice of) these third parties lies with the Client.

## **Article 7.** Modification of the agreement

7.1 Parties will change the agreement on relevant parts in good time by mutual agreement if it appears during the execution of the assignment that certain circumstances impede or threaten to impede proper performance of the agreement.

7.2 Both Popcorn Brain and the Client are obliged to cooperate with an amendment to the agreement if it appears during the execution of the assignment that a change or extension is necessary for the proper fulfillment of the assignment. The additional costs associated with a change or extension will be borne by the Client, unless otherwise agreed.

7.3 If the Client wishes to change or supplement (parts of) the (execution of the) agreement in the interim, this will immediately be discussed with Popcorn Brain. If Popcorn Brain agrees with the changes or supplement, the associated additional costs are entirely at the expense of the Client.

## **Article 8.** Contract duration; execution duration

8.1 The agreement between Popcorn Brain and Client is entered into for the agreed duration. Time limits agreed for the completion of certain work within the term of the agreement are not final deadlines.

## **Article 9.** Cancellation

9.1 In the event of cancellation by the Client, Popcorn Brain reserves the right to charge the following to its choice:

1. 100% of the actual hours spent and costs incurred up to the date of cancellation;
- 2a. 50% of all the hours budgeted for the assignment and budgeted costs for cancellation two weeks before the start date of the assignment;
- 2b. 100% of all the hours budgeted for the assignment and budgeted costs for cancellation two working days or less before the start date of the assignment;
- 2c. 75% of all the budgeted hours for the assignment and budgeted costs for cancellation five days or less before the start date of the assignment;

9.2 If the Client wishes to suspend the start date of the order by one month or more, for whatever reason, and Popcorn Brain agrees, Popcorn Brain reserves the right to charge all related additional costs to the Client.

## **Article 10.** Suspension and dissolution

10.1 The parties are entitled to suspend the fulfillment of the obligations or to dissolve the agreement if:

- the other party does not or not fully comply with the obligations under the agreement;
- after the conclusion of the agreement, one party becomes aware of circumstances that give good grounds to fear that the other party will not fulfill its obligations. In case there is good reason to fear that the other party will only partially or improperly fulfill its obligations, the suspension is only permitted insofar as the shortcoming justifies it;
- the other party applies for (temporary) suspension of payments and / or is granted, files for bankruptcy or is declared bankrupt, resolves, ceases its business or when a substantial part of the assets of this party is enforced.

10.2 Popcorn Brain is also authorized to terminate the agreement (or have it terminated) if circumstances arise which are such that compliance with the agreement is impossible or can no longer reasonably be expected or if other circumstances arise such that unmodified maintenance of the agreement cannot reasonably be expected.

10.3 If the agreement is dissolved, the claims of Popcorn Brain on the Client are immediately due and payable.

10.4 If Popcorn Brain suspends fulfillment of the obligations, it retains its rights under the law and agreement. Popcorn Brain always reserves the right to claim compensation.



## **Article 11.** Liability

11.1 Any liability of Popcorn Brain, arising from or related to an attributable shortcoming or wrongful act, or based on any other legal grounds, is limited to direct damage to the amount that is paid out in connection with the liability insurance taken out by Popcorn Brain. If and insofar as no payment is made under insurance for whatever reason, all liability is limited to the amount that Popcorn Brain received for the work in connection with which the damage occurred, up to a maximum of € 10,000.

11.2 Popcorn Brain is not liable for damage, of whatever nature, which is the result of incorrect and / or incomplete information provided by the Client.

11.3 Popcorn Brain is not liable for indirect damage suffered by Client, including consequential damage, lost profit, lost savings and damage due to business stagnation.

11.4 Direct damage is exclusively understood as:

- the reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these conditions;
- any reasonable costs incurred to have the defective performance of Popcorn Brain comply with the agreement, unless these can not be attributed to Popcorn Brain;
- reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to limitation of direct damage as referred to in these general terms and conditions.

11.5 All claims of the Client lapse 12 months after the work for the assignment to which these claims relate.

## **Article 12.** Indemnities

12.1 The Client shall indemnify Popcorn Brain for and against all claims whatsoever by third parties in connection with an agreement respectively arising from the fulfilment of an agreement.

12.2 If Popcorn Brain is required to make use of equipment and / or infrastructure facilities such as an IT network of the Client, this will be entirely at the risk of the Client.

## **Article 13.** Force Majeure

13.1 The parties are not obliged to comply with any obligation if they are prevented from doing so as a result of a circumstance that is not due to fault, and neither under the law, a legal act or generally accepted for their account.

13.2 In these general terms and conditions, force majeure is understood in addition to what is understood in the law and jurisprudence, all external causes, foreseen or unforeseen, on which Popcorn Brain cannot exert influence, but as a result of which Popcorn Brain is unable to meet its obligations. work strikes in the company of Popcorn Brain or in the company of third parties engaged by Popcorn Brain are included.

13.3 Popcorn Brain also has the right to invoke force majeure if the circumstance that prevents (further) fulfillment occurs after Popcorn Brain should have fulfilled its obligations.

13.4 During the period that the force majeure continues, the parties can suspend the obligations under the agreement. If this period lasts longer than two months, each of the parties is entitled to dissolve the agreement, without any obligation to compensate the other party for damage.

13.5 Insofar as Popcorn Brain has at the time of the occurrence of force majeure partially fulfilled its obligations under the agreement or will be able to comply with it, and the part to be fulfilled or to be fulfilled belongs to independent value, Popcorn Brain is entitled to separate the part already fulfilled or to be fulfilled to invoice. The client is obliged to pay this invoice as if it were a separate agreement.

## **Article 14.** Confidentiality

14.1 The parties are obliged to keep confidential information, which is provided to the other party in the context of the assignment / agreement, confidential.

14.2 Popcorn Brain undertakes to agree with the third parties hired by it a confidentiality agreement that corresponds with the foregoing.

## **Article 15.** Intellectual Properties

15.1 All rights of intellectual property (including, but not limited to, copyrights, trademark rights, music rights) and other rights (including, but not limited to, rights to slogans, advertising properties and concepts) on all results of all work rest with Popcorn Brain or its licensors. Client and, if applicable, its client receives an exclusive license to multiply the results of the activities of Popcorn Brain and / or to publish and otherwise exploit it under its own name and as of its origin, in accordance with the agreements that have been made about it in the Popcorn Brain sent order confirmation or agreement between Popcorn Brain and Client.

15.2 Popcorn Brain has the right to use the knowledge acquired through the execution of the work for other purposes, insofar as no confidential information is brought to the notice of third parties. Popcorn Brain is also entitled to use the results of its work for its own publicity on its websites, in showreels, for prize festivals and for editorial and museum purposes, but not before the Client or its client has made the aforementioned results public.

## **Article 16.** Other provisions

16.1 Popcorn Brain is entitled to (partially) transfer the rights and obligations ensuing from the Agreement to a third party without prior permission from the Client.

## **Article 17.** Applicable law and competent court

17.1 Dutch law applies exclusively to all agreements and legal relationships with Popcorn Brain. All disputes will only be submitted to the competent court in Amsterdam.

*8th of January 2019*