

TERMS & CONDITIONS

Clause 1. Definitions

The following terms shall have the meaning herein assigned to them:

- **Agreement:** the entire content of these General Terms and the offered document(s) concerning the Project and/or the sale and delivery of Products and/or granting of the License.
- **Client:** the (legal) person or entity entering in to an agreement with CloudNed.
- **Client Content:** all materials, information, photography, writings and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.
- **Deliverables:** the services and work product specified in the offer to be delivered by CloudNed to the Client, in the form and media specified in the offer.
- **Final Art:** all creative content developed or created by CloudNed, or commissioned by CloudNed, exclusively for the Project and incorporated into and delivered as part of the Final Deliverables, including and by way of example, but not limited to, any and all visual designs, visual elements, graphic design, illustration, painting, photography, typographic treatments and text ; modifications to the Client Content, and CloudNed's selection, arrangement and coordination of such elements together with the Client Content and/or Third Party Materials.
- **Final Deliverables:** the final versions of Deliverables provided by CloudNed and accepted by Client.
- **Terms and Conditions:** the present Terms and Conditions of CloudNed.
- **CloudNed:** the designer agency, CloudNed, a private company registered under the laws of the Netherlands, with the following contact information:
 - Office:** Hofwardsweg 57C,
Geleen, 6161 DE
The Netherlands,
 - KvK:** 68160534
 - Email:** info@cloudned.com
 - Phone:** +31 85 071 93 00

- **License:** the granting of a non-assignable right and license to use the Trademarks.

- **Preliminary Works:** all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by CloudNed and which may or may not be shown and / or delivered to Client for consideration but do not form part of the Final Art.

- **Project:** the scope and purpose of Client's identified usage of the work product, as described in the offer or in another proposal.

- **Services:** all services and the work product to be provided to Client by CloudNed as described and otherwise further defined in the Proposal.

- **Third Party Materials:** proprietary third party materials which are incorporated into the Final Deliverables, including, without limitation, stock photography or illustration.

- **Trademarks:** all registered or to be registered trademarks, trade names, words, symbols, designs, artworks, logos or other devices or designs of CloudNed.

- **Client Products:** the products of Client delivered under the Trademark(s); the defined Final Deliverables and / or Final Arts, printed onto durable supports such as paper, canvases, cardboard and any other media used for publishing contents.

- **Contract:** an Agreement in the framework of a system organised by CloudNed, for the sale of Products and / or Services.

Clause 2. Applicability

1. The General Terms shall apply to all offers, proposals, Agreements and Contracts of CloudNed, unless stated otherwise. These Terms and Conditions will be made available electronically to Client, in a way that can be stored on a durable medium if no paper version of the Contract is given or sent to Client.

2. The General Terms govern all offers and the preparation, content and performance of all Agreements concluded between Client and CloudNed.

3. Invalidity or unenforceability of any of the provisions of the Agreement and/or the General Terms, shall not impair the validity of the remaining provisions. Should any provision of the Agreement and/or General Terms prove to be invalid or unenforceable, the Parties agree that it shall be replaced with a legal, valid and enforceable provision which has the same or the most equivalent legal and/or economic effect.

Clause 3. Offers

1. Offers are given based on information and specifications provided by Client, and are based on the Services and / or the delivery of Products, within normal terms and under normal circumstances.

2. The offer includes a complete and accurate description of the Products and / or Services. The description will be sufficiently detailed as to allow a proper assessment of the offer by Client. Each offer contains such information that is clear to Client as to what rights and obligations are attached to the acceptance of the offer. This concerns in particular: the price including taxes; any costs of delivery; how the Agreement will be achieved and what actions are required; the method of payment, delivery or performance of the Contract; the deadline for accepting the offer, or the period for adhering to the price; any other languages, including Dutch, in which the contract can be concluded.

3. Client cannot derive any rights from any errors in an offer.

4. The offers and quotations made by CloudNed are without engagement, nor with the effect that the offer constitutes a binding agreement between CloudNed and the recipient of the offer. Furthermore, the aforementioned offer is only valid for thirty (30) days, from the date stipulated thereon, unless specified otherwise.

5. The formation of an Agreement takes place by Client's written acceptance of the offer, provided that CloudNed may revoke the offer within three (3) days of receipt of the acceptance, in which case no agreement shall be deemed to be formed.

Clause 4. Contract

1. The Agreement is subject to the provisions of paragraph 3, concluded at the time of Client accepting the offer and meeting the corresponding conditions. If Client has electronically accepted the offer, CloudNed will immediately confirm the reception of the electronic acceptance of the offer.

2. CloudNed will make the following information available to Client, in writing or in such a way that it can be stored by Client in an accessible manner on a durable medium: the visiting address of the establishment of the business where Client can lodge complaints or ask for after sales service; information on after sales service; the data contained in Article 3 of these conditions, unless CloudNed has already provided, before the execution of the Agreement that information to Client.

Clause 5. Performance

1. CloudNed undertakes to perform the Services to the best of their knowledge, ability, and expertise, keeping in mind Client's stated purpose of the Project.

2. Unless expressly stipulated otherwise, the agreed lead or delivery time in the offer is an estimate.

3. CloudNed will prioritise performance of the Services as may be necessary or as identified in the offer, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the offer.

4. Client agrees to review Deliverables within the time identified for such reviews and to promptly either,

(i) approve the Deliverables in writing or

(ii) provide written comments and/or corrections sufficient to identify the Client's concerns, objections or corrections to CloudNed in a timely fashion, as defined by "Client Responsibilities", paragraph 7 of these Terms and Conditions.

5. CloudNed shall be entitled to request written clarification of any concern, objection or correction. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and CloudNed will undertake to make the same, in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the General Terms. In the absence of such notice from Client, the Project and / or Deliverable shall be deemed accepted.

Clause 6. Termination of the Contract

1. When a Contract is passed for the delivery of a Service or Products, any break-up of this Contract by Client does not waver costs for which work has already been engaged and / or produced. These costs include and are not limited to the time investment already put into the Deliverables by CloudNed,

any Final Deliverables under the form of prints that may have already been ordered by CloudNed for Client, costs of kilometres, communications and visits to Client, as set in prior agreement with Client, from CloudNed.

2. Any Contract termination has to be made in writing by Client and sent via registered letter or made electronically to CloudNed, at the addresses above-mentioned.

3. In case of any Contract termination, and under the condition that full payment of all fees, costs and expenses due have been acquitted, CloudNed will make sure any Final Deliverables under the form of prints which may have been ordered on Client's behalf are received by Client, however, no complaint or offer sales service will be available for those. In case of digital Services, CloudNed reserves themselves the right to not make the Final Deliverables available to the Client, as the breach of the Contract means the work is unfinished and deemed unfit for commercial use. In case of Contract termination, any work made for the Client Project is and remains the intellectual property and copyright of CloudNed and will be used or disposed of as seen fit by her. This can include use in their Personal Portfolio and other promotional materials.

Clause 7. Client responsibilities

1. Client acknowledges that they shall be responsible for performing the following in a reasonable and timely manner:

2. coordination of any decision-making with parties other than CloudNed;

3. provision of Client Content, in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the offer;

4. provision of other accurate and complete information and materials requested by CloudNed and final proof-reading;

5. and in the event that Client has approved the Deliverables but errors, such as, by way of example, not limited to but including, typographic errors or spelling mistakes, remain in the finished product Client shall incur the costs of correcting such errors.

6. Client acknowledges and agrees that CloudNed's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of their obligations to provide materials and written approvals and / or instructions pursuant to the offer and that any delays in Client's performance or changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of any term, condition or CloudNed's obligations under the General Terms and Conditions or the Agreement.

7. Client represents, warrants and covenants to CloudNed that:

8. Client owns all rights, titles, and interest in, or otherwise has full right and authority to permit the use of Client Content,

9. to the best of Client's knowledge, the (use of Client Content, in connection with the Project, does not infringe the rights of any Third Party,

10. Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and

11. Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

12. Client agrees to indemnify, save and hold harmless CloudNed from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a Third Party arising out of any breach of Client's responsibilities or obligations under the Agreement.

Clause 8. Changes

1. Unless otherwise provided in the offer, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client, which are outside the scope of the Services on a time and material basis, at CloudNed's standard hourly rate. Such charges shall be in addition to all other amounts payable under the offer, despite any maximum budget, Contract price or final price identified therein. CloudNed may extend or modify any delivery schedule or deadlines in the offer and Deliverables as may be required by such Changes.

2. If Client requests or instructs Changes that amount to a major revision of the on-going project, in or near excess of fifty percent (50%) of the time required to produce the Deliverables, and/or the value or scope of the Services, CloudNed shall be entitled to submit a new and separate offer to Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by CloudNed.

Clause 9. Fees and charges

1. In consideration of the Services to be performed by CloudNed, the License granted and/or the Products delivered, Client shall pay to CloudNed fees in the amounts and according to the payment schedule set forth in the offer, and all applicable sales, use or value added taxes (VAT).

2. Client shall pay CloudNed's expenses incurred in connection with the Agreement as follows: incidental and out-of-pocket expenses including but not limited to costs for postage, shipping, courier, service bureaus, printing, blueprints, models, presentation materials, typographic fonts, and, if applicable, travel reimbursement per kilometre (including parking fees and tolls) or other travel expenses (including transportation, meals, and lodging) incurred by CloudNed with Client's prior approval.

3. The Project pricing includes CloudNed's fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, agency fees, licenses and online access or hosting fees, will be billed to Client unless specifically otherwise provided for in the offer.

Clause 10. Payment

1. All invoices are payable within ten (10) days of reception of the final invoice, unless specified otherwise in any written Agreement between CloudNed and Client.

2. Unless agreed otherwise, any payments under the Agreement shall be effected to CloudNed's bank account by bank transfer or any other payment method agreed to by Client and CloudNed.

3. The currency of all payments is in EURO, unless another currency is stated in the Agreement or invoice.

4. If payments are not made punctually, the Client will be in default ("in verzuim") by operation of the law.

5. A monthly service charge of five percent (5%) is payable on all overdue balances. Payments will be credited first to late payment charges, and next to the unpaid balance.

6. Client shall be responsible for all collection or legal fees necessitated by default in payment.

7. CloudNed reserves the right to suspend ("opschorten") delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under the Agreement (including a License), are conditioned upon receipt of payment in full, which shall be inclusive of any and all outstanding additional costs, taxes, expenses, and fees, charges, or the costs of changes.

8. To the extent permitted by applicable law, Client shall not be entitled to assert any rights to set-off claims against their payment obligations under the Agreement. The payment obligation under the Agreement is absolute and unconditional.

9. In case of Agreement to an offer for a given Project, an account payment of 30 % of the total offer amount will be requested before work begins, unless specified otherwise in writing by CloudNed. This payment will be perceived within the given timeframe discussed and specified within the offer. If payment is not established within the set timeframe or the timeframe at which the offer expires, CloudNed reserves themselves the right to revise the offer and prices listed on the given offer. Refusal to pay this account will nullify the Agreement.

Clause 11. Term and default

1. The Agreement shall commence upon the acceptance of the offer and the reception of payment of the 30 % account of the final price listed on this offer, and shall remain effective until the Services and/or the delivery of Products are completed and delivered.

2. If CloudNed has cause to suspect that Client will be unable to perform their obligations under the Agreement, Client is obligated to provide, upon CloudNed's first request, sufficient security for complete performance of all their obligations with regard to the Contract, in a manner to be indicated by CloudNed.

3. Without prejudice to any other right or remedy available to CloudNed, CloudNed is entitled to terminate ("ontbinden") the Contract with immediate effect by notice in writing in the following events:

4. If after the conclusion of the Contract, CloudNed doubts the necessary liquidity of Client and Client cannot dispel such doubts by providing adequate supporting documents or sufficient security;

5. If a receiver, trustee, conservator or liquidator of Client, of all or a substantial part of its assets, is appointed;
6. If Client is declared bankrupt or granted suspension of payments, or if an application to that end is filed; or
7. If Client's business is liquidated or discontinued.
8. If Client is in default ("in verzuim"), by breaching any of its material responsibilities or obligations under the Agreement, which breach is not remedied within ten (10) days from receipt of a written notice ("ingebrekestelling") specifying the matter in default.

Clause 12. Confidential information

1. Each party acknowledges that in connection with the Agreement, they may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works.
2. Each party, its agents and employees shall hold and maintain in strict confidence all confidential information, shall not disclose confidential information to any Third Party, and shall not use any confidential information except as may be necessary to perform its obligations under the Offer except as may be required by a court or governmental authority.
3. Notwithstanding the foregoing, Confidential information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

Clause 13. Complaints and After Sales Service

1. Complaints about the implementation of the Agreement should be submitted to CloudNed during the performance of the project, when Client discovers these defects. Client must promptly, fully and clearly describe the issues, it is their responsibility to make them known to CloudNed so that these defects are not reflected in the Final Deliverables of the project. These complaints will be acknowledged and followed up in a timely fashion, in a professional manner, and corrections will be made appropriately, within the scope of Paragraph 7.
2. In case the complaints are not made within a timely manner (as described above), CloudNed will decline any responsibility as those complaints will be in direct link with the Responsibilities of Client (paragraph 7 of this Agreement) during the performance of the project.
3. If the complaints follow the Delivery of goods (after sales service), these complaints have to be made known to CloudNed within a reasonable time delay from the delivery of those goods. A delay of 5 working days will be asserted as reasonable for such complaints, beyond which point, CloudNed will decline any responsibilities.

Clause 14. Accreditation/promotion

1. CloudNed retains the right to reproduce, publish and display the Deliverables in CloudNed's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses.
2. CloudNed may describe their role in relation to the Project and, if applicable, the Services provided to the Client on their website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

Clause 15. Intellectual property

1. Client Content, including all pre-existing trademarks, shall remain the sole property of Client or their respective suppliers, and Client or their suppliers shall be the sole owner of all rights in connection therewith. Client hereby grants to CloudNed a non-exclusive, non-transferable license to use, reproduce, modify, display and publish Client Content solely in connection with CloudNed's performance of the Services, and limited promotional uses of the Deliverables as authorised in the Agreement.
2. All Third Party Materials are the exclusive property of their respective owners. CloudNed shall inform Client of all Third Party Materials that may be required to perform the Services, or otherwise integrated into the Final Art. Under such circumstances, CloudNed shall inform Client of any need to license, at Client's expense, and unless otherwise provided for by Client, Client shall obtain

the license(s) necessary to permit Client's use of the Third Party Materials, consistent with the usage rights granted herein.

3. In the event Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third Party Materials, Client hereby indemnifies, saves and holds harmless CloudNed from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a Third Party, arising out of Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Art.
4. CloudNed retains all (Copy)rights in and to all Preliminary Works. Any Preliminary Work must be returned to CloudNed after completion of Service within thirty (30) days.
5. CloudNed retains all (Copy)right and title in and to any original artwork comprising Final Art, including all rights to display. Any original artwork must be returned to CloudNed after completion of Service within thirty (30) days.
6. Unless otherwise agreed, CloudNed grants to Client the exclusive, perpetual and worldwide right and license to use, reproduce and display the Final Art and/or Trademarks solely in connection with the Project, as defined in the offer, and in accordance with the various terms and conditions of the Agreement and the General Terms. The rights granted to Client are for the usage of the Final Art in its original form only. Client may not crop, distort, manipulate, reconfigure, mimic, animate, edit, extract portions, intentionally alter the color of the Final Works, or otherwise create derivative works based on the Final Works.
7. Client shall have the sole responsibility for ensuring that any proposed trademarks or Final Deliverables intended to be a Trademark are available for use in commerce and federal registration and do not otherwise infringe the rights of any Third Party. Client hereby indemnifies, saves and holds harmless CloudNed from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by any Third Party alleging any infringement arising out of Client's use and/or failure to obtain rights to use or use of the Trademark.

Clause 16. Rights to Final Art

1. CloudNed will present Client with the following ownership options for Final Art:
2. **A - License:** either limited usage, exclusive license with no modification rights, or exclusive license with modification rights - all licenses include liquidation for unlicensed use.
3. **B - Assignment:** Upon completion of the Services, and expressly subject to full payment of all fees, costs and expenses due, CloudNed assigns to Client all right, title and interest, including without limitation copyright and other intellectual property rights, in and to the Final Art. CloudNed agrees to reasonably cooperate with Client and shall execute any additional documents reasonably necessary to evidence such assignment.

Clause 17. Governing Law

1. All Agreements, the General Terms and Conditions and other legally binding transactions between the Client and CloudNed are governed by Dutch law.
2. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties.
3. If they are unable to resolve the dispute, the dispute shall be settled before the courts of law in The Netherlands.
4. In the event of conflicting provisions between these General Terms and the License Agreement between Client and CloudNed, the provision of the License Agreement shall prevail.