

ADFORMIX B.V. GENERAL CONDITIONS (09-04-2020)

1. Applicability

- 1.1 These general conditions will form part of all agreements and apply to all legal and other acts between Adformix and the client, even where those legal or other acts should not lead, or not be related, to an agreement. The applicability of any general conditions of the client is expressly rejected by Adformix.
- 1.2 These general conditions have also been stipulated for the director(s) of the said private company with limited liability and for the persons employed by Adformix. All orders will, notwithstanding article 7:404 of the Dutch Civil Code (DCC) and article 7:407 (2) DCC, exclusively be accepted and performed by Adformix.

2. Offer, acceptance and agreement

- 2.1 An offer or quotation issued by Adformix will not be binding on it and will only be deemed to constitute an invitation for placing an order.
- 2.2 Adformix will be entitled to refuse, or not to perform, orders without stating reasons. As evidence of the contents of the order and any follow-up instructions, the Adformix file administration will serve as binding proof for the parties.
- 2.3 An agreement will be formed as soon as Adformix has accepted an order from the client in writing by means of an order confirmation or by performing the order. If Adformix renders any service on request before full agreement has been reached about the price and payment conditions for such performance, the client must pay Adformix in that respect in accordance with Adformix's rates applicable at that time. To the extent that the client accepts an offer from Adformix with deviations of minor significance, such deviations will not form part of the agreement and the agreement will be formed in accordance with the offer made by Adformix.
- 2.4 All quotations made by Adformix have been made with due care. Adformix cannot guarantee, however, that no discrepancies will occur in that respect. Any samples, drawings or models shown or supplied are indications of the relevant products only. Dissolution may take place only in the event of serious deviations of the quotations made by Adformix or of the drawings or models.
- 2.5 When engaging third parties, Adformix will exercise due care and, when choosing such third parties, consult with the client in advance as much as possible. Adformix will not be liable for any failure to perform by such third parties. If Adformix engages third parties that stipulate a limitation of their liability, any such stipulation will be accepted by Adformix also on behalf of the relevant client.

3. Rates

- 3.1 All Adformix's rates will be expressed in euros and be exclusive of turnover tax, all unless indicated otherwise. Adformix may pass on any change of the factors impacting Adformix's price, including cost prices, exchange rates and levies or taxes, to the client. If the price increases within three months of the order, the client may dissolve the agreement subject to the obligation to pay Adformix the price of the services rendered at the prices and rates agreed in that respect.
- 3.2 If the agreement has been entered into for a fixed amount, Adformix will retain the right to perform more services than stated in the order and charge the client in that respect at Adformix's customary hourly rates, provided that such services are necessary for proper performance of the order. The client will – unless this is not reasonably possible – be notified of the performance of such additional services in writing in advance, in which event it is to communicate within five working days that it cannot agree to the additional services and related costs, failing which Adformix will be authorised fully to perform the additional services and to invoice the client in that respect.

4. Payment

- 4.1 Payment by the client to Adformix is to be made within fourteen days of the invoice date, without any discount or deduction. In the event of doubt about the creditworthiness of the client, Adformix will be entitled to require advance payment or the provision of security, failing which Adformix will be entitled to suspend or terminate its services with immediate effect, without prejudice to Adformix's right to payment of services already performed and damages.
- 4.2 After expiry of the payment period, the client will, without any notice of default being required, owe interest of 1% per calendar month, part of a month being calculated as a full month. After expiry of each calendar year, the amount on which interest is calculated will be increased by the interest due for that year.
- 4.3 If, even after expiry of a further payment period, the client still has not paid the full amount, it is to compensate Adformix for all and any judicial and extrajudicial costs subject to a minimum of 15% of the remaining invoice amount. If, as a goodwill gesture or otherwise, Adformix allows the client to suspend the performance of any obligation, the new deadline will at all times be firm.

5. Retention right

- 5.1 Adformix will be authorised to retain all documents directly or indirectly relating to the order, including the documents supplied to Adformix by or on behalf of the client, as well as the internal documents of Adformix produced by it for purposes of the order, until the moment that the client has performed all its contractual and statutory obligations vis-à-vis Adformix, increased by any interest and costs.

6. Force majeure

- 6.1 If, due to a non-attributable failure ("force majeure"), Adformix cannot perform its obligations vis-à-vis the client, such obligations will be suspended for the duration of the force majeure situation. If the force majeure situation has lasted for three months, both parties will be entitled to dissolve all or part of the agreement in writing.
- 6.2 Force majeure on the part of Adformix will be understood as any circumstance beyond Adformix's control, as a result of which the performance of its obligations vis-à-vis the client, or the relevant part thereof, is prevented, delayed or rendered uneconomical, or as a result of which the performance of such obligations cannot reasonably be required from Adformix.
- 6.3 Force majeure will in any event include:
- general: any delay or prevention caused by agents engaged by or on behalf of Adformix in the performance of its services;
 - in respect of securing media communications by Adformix on the instructions of a publisher: a refusal by the publisher to post the relevant media communication of the client sold by Adformix.

7. Risk of storage of information

- 7.1 Any damage or loss of the client's information stored at Adformix's will be at the expense and risk of client, unless Adformix has demonstrably failed in the performance of its obligation to ensure careful storage. Adformix may store the information entrusted to it by using automated systems.
- 7.2 The risk of damage and loss during transport or shipment will at all times be at the expense and risk of the client, irrespective of the party on whose behalf the transport takes place.
- 7.3 The client will indemnify Adformix against any third-party claims in this respect.

8. Intellectual property

8.1 The intellectual property rights of the products manufactured by Adformix for the client will vest in Adformix, unless expressly agreed otherwise in writing. This will also hold true for products building on a design that is subject to intellectual property rights of the client. Adformix declares that, to the extent known to it, the products do not infringe any third-party intellectual property rights applicable in the Netherlands. Adformix can, however, not indemnify the client against any infringements of third-party intellectual property rights.

8.2 If Adformix manufactures, or causes the manufacture of, products on the explicit instructions from the client on the basis of a design or software or other product that does not originate from Adformix, the client will indemnify Adformix against all and any infringements in respect of third-party intellectual property rights.

8.3 The client warrants that it will not infringe - or allow or enable third parties to infringe - intellectual property rights of Adformix or its suppliers in respect of the products, for example by copying, adapting, or counterfeiting them.

9. Retention of title

9.1 Title to any items supplied by Adformix will remain vested in Adformix until full payment by the client of the claims of Adformix under this agreement or similar agreements, as well as the claims against the client on account of attributable failure in the performance of such obligations under the said agreements, including claims regarding penalties, interest and costs.

9.2 As long as title to the items supplied remains vested in Adformix, the client may not in any way change, dispose of, or encumber same, or make them available to any third party.

10. Complaints

10.1 Complaints regarding defects in the items supplied are to be communicated in writing to Adformix within eight days of the moment that the defect could reasonably have been discovered, or at least fourteen days of termination of the order. The client is not entitled to complain if it has not performed its obligations under the agreement vis-à-vis Adformix.

10.2 If complaints have been filed in good time, correctly and legitimately, Adformix may either, at its option, repair the defect or supply the items agreed on, or give a discount on the price. By performing any of these actions within a reasonable term, Adformix will be discharged from its obligations and not owe any damages.

11. Liability

11.1 Adformix will not be liable for any direct or indirect damage, including consequential damage, suffered by the client or third parties. The client is to indemnify Adformix against any claims from third parties, on any basis whatsoever. This limitation of liability will not apply if the damage is the result of intent or gross negligence on the part of the management of Adformix.

11.2 Adformix's liability, on any basis whatsoever, will in any event be limited to the amount to be received by it from its professional liability insurer in the relevant event, or, if payment under an insurance policy is not possible, to the amount of the invoice value, exclusive of VAT, of the relevant partial or full order to which the alleged liability relates, subject to a maximum of EUR 5,000.

12. Dissolution

12.1 Adformix will be entitled to dissolve the agreement in or out of court – in addition to the cases referred to in the law - by giving written notice if the client loses free control of all or part of its income and capital, irrespective of whether this occurs pursuant to a legislative measure such as bankruptcy, or is in default in the performance of any obligation under the order and the conditions attached to it, all without prejudice to Adformix's right to claim full damages from the client.

13. Non-solicitation clause

13.1 During the term of this agreement and for two years after termination thereof, the client will not employ any Adformix employees or agents or have such employees or agents directly or indirectly work for it in any other manner, save with Adformix's express written consent.

13.2 For purposes of this agreement, employees/agents will be understood as all private individuals and/or legal entities that, for purposes of the services performed by Adformix – or by its affiliates – were engaged during the term of the agreement with the client.

14. Personal data and GDPR

14.1 By entering into an agreement with Adformix, the client will give Adformix consent to process the personal data supplied by the client for the performance of the agreement, or to take steps before entering into the agreement with Adformix at the request of the client. These personal data can be accessed by Adformix only and will not be disclosed to any third parties, unless Adformix is obliged to do so pursuant to the law or a court decision. Further information regarding the – privacy-sensitive – data collected by Adformix for purposes of its services can be found in the Privacy Statement on the Adformix website (<https://www.adformix.com/privacy-statement/>).

15. Applicable law and competent court

15.1 The legal relationship between the parties will be governed by Dutch law. Any disputes will be dissolved by the Dutch court only. The district court for North Holland, Alkmaar location, will be exclusively competent to hear the disputes between the parties, unless Adformix, as the claimant or applicant, opts for the district court that, pursuant to applicable directory law, has territorial jurisdiction, in which event such court will be competent.