

General Terms and Conditions 2024

1 Agreement, offer and confirmation

1.1 These General Terms and Conditions ("General Terms and Conditions") govern all offers and the preparation, content and performance of all agreements concluded between the client (the "Client") and VROEGH Design B.V. ("VD") and its departments VROEGH Ventures ("VD") and Sync ("VD"). Deviations from these General Terms and Conditions may be agreed on between the Client and VD only in writing.

1.2 All offers are without commitment and are valid for one month. Prices quoted may be subject to change due to unforeseen changes in the work. Prices are exclusive of VAT. The rates and offers quoted do not automatically apply to future commissions. All scheduling of the designs and work commissioned contained in the offer are tentative. The Client warrants that the information provided to VD by it or on its behalf and on which VD bases the offer is correct complete and not misleading.

1.3 Commissions are confirmed in writing by the Client. If the Client fails to do so but consents to VD commencing the work commissioned, the terms of the offer are deemed to have been agreed on and these General Terms and Conditions apply. Any subsequent oral agreements and stipulations are not binding on VD until he has confirmed them in writing.

2 Performance of the agreement

2.1 The Client must do any and all things that are reasonably necessary or required to enable VD to deliver punctually and properly, such as supplying (or causing the supply of) complete, sound and clear data or materials in a timely manner of which VD states or of which the Client understands or should reasonably understand that they are necessary for the performance of the agreement. Tool-specific specifications shall be made available to VD in a time and manner that VD has a reasonable opportunity to incorporate these. Information to be included in the design for subsequent processes and procedures shall be made available to VD in a time and manner that VD has a reasonable opportunity to incorporate these.

2.2 Terms stated by VD for the performance of the work commissioned are approximations only unless otherwise agreed in writing.

2.3 The design is carried out with a 3D CAD software program, data is made available to the Client in .STEP file format. If the design requires adjustment for production or distribution by the Client, the client shall timely submit an overview in writing of all required adjustments. All adjustments require prior written approval from VD.

2.4 Unless otherwise agreed, the following do not form part of the work commissioned to VD:

- a. performing tests, applying for permits and assessing whether the Client's instructions comply with statutory or quality standards;
- b. investigating any existing rights, including patents, trademarks, drawing or design rights or portrait rights of third parties; and
- c. investigating the possibility of the forms of protection referred to in (b) for the Client.

2.5 Prior to the performance, production, reproduction or publication, the parties must give each other the opportunity to check and approve the final draft, prototypes or galley proofs of the result.

2.6 Differences between the (final) result and the agreements made cannot serve as grounds for rejection, discount, damages or dissolution of the agreement if those differences are reasonable and of minor importance, taking all the circumstances into account.

2.7 Any complaints must be filed with VD in writing at the earliest possible time but no later than ten business days after a notice of completion is issued by VD to the Client of the work commissioned, failing which the Client is deemed to have accepted the result of the work commissioned in its entirety. The same applies to the notice of completion of a part of the work commissioned.

2.8 During the term of the agreement, Client may request VD in writing to make changes to the agreed scope of services. Upon receipt of the change request, VD will review the change to determine whether and on what terms the changes are feasible and will notify Client in writing of its approval or disapproval. A change is defined as any modification, new introduction, activity or detailing of a service, quantity, method etc., unless it is seen by both contracting parties as part of the original contract.

2.9 If a change request from the Client requires an extensive review by VD, the review effort can be invoiced to the Client on the basis of the usual fees of VD.

2.10 The contractual adjustments to the agreed conditions and services required for a review and/or amendment shall be separately agreed to in accordance with article 1 of these general terms and conditions. Following a change request VD shall determine a new timetable for the work commissioned and submit a change offer to the Client. If no agreement is reached within 10 business days following the submission of the change offer to the Client, VD shall continue to carry out the work commissioned in accordance with the originally agreed scope of services. If the change request has caused any delay in the work commissioned the timetable will be automatically extended for the duration of such delay.

2.11 Following the acceptance or utilization of the data and/or (partial) results of the collaboration, VD shall not be held responsible for any subsequent costs related to samples, tools or devices.

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3 Engagement of third parties

3.1 Unless otherwise agreed, instructions to third parties in the context of the performance of the work commissioned are given by or on behalf of the Client. At the Client's request, VD may act as an agent for the Client's account and risk. The parties may agree on a fee for such an agency.

3.2 If VD provides an estimate of third-party costs at the Client's request, that estimate is an approximation only. If required, VD may apply for quotations from third parties on the Client's behalf.

3.3 If VD procures goods or services from third parties in the performance of the work commissioned, for VD's own account and risk and on the basis of an express agreement, whereby those goods or services are passed on to the Client, these general conditions of and/or any separate agreements made with that supplier with regard to warranties and liability also apply to the Client.

3.4 If VD gives commissions or instructions to production companies or other third parties in the Client's name or otherwise, the Client will confirm in writing at VD's request the approval referred to in Article 2.5 of these General Terms and Conditions.

3.5 The Client may not engage any third parties without consultation with VD if that may influence the performance of the work commissioned as agreed on with VD. The Parties will consult, if necessary, as to which other contractors will be engaged and which work will be assigned to them.

3.6 VD is not liable for any errors or defects of products or services of third parties engaged by or on behalf of the Client, irrespective of whether they have been introduced by VD. The Client itself must hold those parties accountable. VD may assist in that regard if necessary.

4 Intellectual and other property rights

4.1 All intellectual property rights arising from work commissioned – including patents, trademarks, drawing or design rights and copyrights – in respect of the results of the work commissioned are vested in VD. Insofar as any of such rights can be acquired only by means of an application or registration, VD will have the sole and exclusive power to the effect that application or registration unless otherwise agreed. To the extent reasonably necessary to vest the intellectual property rights in VD, the Client will perform all acts required upon first demand of VD.

4.2 The parties may agree that the rights referred to in paragraph 1 are transferred in whole or in part to the Client. Such transfer and the conditions, if any, on which the transfer takes place must always be recorded in writing. Until the moment of transfer, a right of use is granted as regulated in Article 5 of these General Terms and Conditions.

4.3 VD is entitled at any time to imprint his name on or in, or to remove it from, the result of the work commissioned (or publicity related thereto) or to have his name imprinted on or in, or removed from, the result of the work commissioned, in a manner that is customary for that result. Without VD's prior consent the Client may not publish or reproduce the result without identifying VD by name.

4.4 Unless otherwise agreed, the (original) results (such as designs, design sketches, drafts, advice, reports, budgets, estimates, specifications, design drawings, illustrations, photographs, prototypes, scale models, templates, prototypes, products and partial products, films audio and video or other presentations, source codes and other materials or (electronic) data files etc.) made by VD as part of the work commissioned remain VD's property, irrespective of whether they have been made available to the Client or to third parties.

4.5 On completion of the work commissioned, neither the Client nor VD will be under any custodian duty in respect of any of the materials and data used unless otherwise agreed.

5 Use of the result

5.1 Once the Client has fulfilled all his obligations under the agreement with VD, he acquires the right to use the result of the work commissioned in accordance with the agreed purpose and under the conditions set out in the agreement. If no such specific purpose has been agreed on, the right of use is limited to that use of the design for which the commission was (manifestly) given. The right of use is exclusive, unless otherwise apparent from the nature of the agreement or otherwise agreed. The right of use is limited to the end result of the designs and work commissioned and does not include the right to use any preceding designs or other data provided by VD.

5.2 If the result also relates to works that are subject to third-party rights, the parties will make additional agreements on how the use of those works will be regulated.

5.3 Without VD's prior written consent, the Client is not entitled to change the result of the work commissioned, use or reuse it in a broader or different manner than agreed, or allow third parties to do so. VD may make that consent subject to conditions, including payment of a reasonable fee.

5.4 Without VD's prior written consent, the Client is not entitled to produce, sell or distribute designs that are very similar to or may be confused with the result of the work commissioned.

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5.5 In the event of broader or different use on which no agreement was reached, including any modification, mutilation or infringement on the provisional or final result, VD is entitled to compensation on the grounds of infringement of his/her rights of at least three times the agreed fee, or a fee that is reasonably proportional to the infringement committed, without losing any other rights.

5.6 The Client is not (or no longer) permitted to use the results made available, and any right of use granted to the Client in the context of the work commissioned will lapse;

- a. the moment that the Client fails to perform or to fully perform its payment or other obligations under the agreement, or is otherwise in default;
- b. if the work commissioned is terminated prematurely for the reasons referred to in Article 8.1 of these General Terms and Conditions; or
- c. if the Client is declared bankrupt unless the rights in question have been transferred to the Client in accordance with Article 4.2 of These General Terms and Conditions.

5.7 VD and its individual departments each have the authority to use the results of a collaboration between the client and VD, including the name, logo, and outcome of the collaboration, at their discretion for their own publicity, to secure commissions, for promotional purposes, including competitions and exhibitions, etc., and to obtain them on loan if physical results are involved.

6 Fees and additional costs

6.1 VD is entitled to a fee for the performance of the work commissioned. That fee may consist of an hourly rate, a consultancy fee, a fixed amount, whether or not related to the project sum, or any other fee agreed on between the parties.

6.2 In addition to payment of the agreed fee and Out-Of-Scope fees, VD is entitled to reimbursement of any costs incurred by him in the performance of the work commissioned, such as administrative overheads (15%), travel and entertainment (travel cost and travel time) expenses, costs of prints, copies, (galley) proofs and prototypes, and costs of third parties related to advice, production, supervision, etc. Those costs must be itemised beforehand to the extent possible unless a mark-up percentage is agreed on.

6.3 If VD is required to perform additional work which is not included in the offer, the costs of this work will be charged separately on the basis of VD's usual Out-Of-Scope fees, which are set at €148.83 per hour (2024), and invoiced monthly, if not otherwise agreed in writing. VD will then inform the Client accordingly beforehand unless the client agreed already, or when it is impossible due to circumstances or the nature of the work does not allow any delay.

6.4 If the performance of the work commissioned is delayed or interrupted due to circumstances beyond VD's control, the costs involved, if any, are payable by the Client. VD must attempt to limit those costs to the extent possible.

6.5 The Client hereby a priori approves the assignment of all claims VD may have resulting from the work commissioned under the agreement.

6.6 VD is entitled to adjust its fees to compensate for inflation. Adjustments shall not exceed the consumer price index, as established by the Centraal Bureau Voor de Statistiek in the Netherlands. If VD carries out such adjustment it shall inform the client in writing.

6.7 When discounts are negotiated or part of special offers, it's crucial to recognize that these discounts may necessitate a more adaptable approach to project deadlines. In situations where discounts are applied to a project or task, VD reserves the authority to make necessary adjustments to project timelines, including the potential extension of deadlines, to accommodate any changes resulting from the application of discounted services.

7 Payment and suspension

7.1 All payments must be made without any deduction, set-off or suspension within 15 days of the invoice date unless otherwise agreed in writing or stated in the invoice.

7.2 All goods, delivered to the Client remain VD's property until all the amounts that the Client owes VD under the agreement concluded between the parties have been paid to VD.

7.3 If the Client fails to pay all or part of the amounts due, it owes statutory trade interest and out-of-court costs of collection, amounting to at least 10% of the invoice amount, subject to a minimum of € 150, excluding VAT.

7.4 VD must arrange for timely invoicing. In consultation with the Client, VD may charge the agreed fee and costs as an advance, in the interim or periodically.

7.5 VD may suspend the performance of the work commissioned after the term for payment has expired and the Client, after a written demand to make payment within 14 days, fails to make that payment, or if VD is forced to conclude on the grounds of a statement or act on the part of the Client that payment will not be made.

7.6 If the Client suspends the work commissioned for a period exceeding three months VD can invoice all the work commissioned for this period directly to the Client, regardless of whether the work has been carried out or not.

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8 Notice of termination and dissolution of the agreement

8.1 If the Client gives notice of termination of the agreement, without any breach on the part of VD, or if VD dissolves the agreement on the grounds of breach by the Client in the performance of the agreement, the Client is liable for damages in addition to VD's fee and the costs incurred in connection with the work performed until that time. In this context, any conduct by the Client on the grounds that VD cannot reasonably be required to complete the work commissioned is also regarded as a breach.

8.2 The damages referred to in the preceding paragraph of this Article include at least the costs arising from obligations undertaken by VD in his own name with third parties for the performance of the work commissioned, as well as at least 30% of the balance of the fee that the Client would owe VD if the work commissioned, were completed in full.

8.3 If a petition in bankruptcy or a petition for a suspension or provisional suspension of payment or for application of the debt rescheduling arrangement is filed and awarded in respect of the other party both VD and the Client have the right to terminate the agreement in whole or in part with immediate effect, and all amounts due are payable immediately.

8.4 If VD's work consists of recurrently performing work of a similar nature, a continuing performance agreement is involved, unless otherwise agreed in writing. Such an agreement may be terminated only by written notice given while observing a reasonable notice period of no less than three months, during which period the Client must continue to purchase the customary amount of work from VD or must provide financial compensation.

8.5 If the Client has not produced, distributed and/or marketed the result of the work commissioned after two years following the notice of completion the license of the Client to produce, distribute and market the result of the work commissioned is terminated by operation of law without any right to compensation for the Client. VD is subsequently free to grant such license to a third party.

8.6 If it becomes apparent during the performance of the work commissioned that the end result can only be reached, produced, distributed and/or marketed with high additional costs which were not foreseeable at the moment of confirmation as described in article 1.3, VD shall inform the Client. In such case, VD shall submit a change order to the Client. The Client has to approve or disapprove the change order within 10 business days after receipt. If the change order is disapproved or no response is given by the Client, either party can terminate the agreement in writing without a notice period. All work commissioned carried out by VD until that moment shall be invoiced to the Client.

9 Warranties and indemnities

9.1 VD warrants that the result has been designed by him or her or on his or her behalf and, if the result is copyright-protected, that VD is the author within the meaning of the Auteurswet (Dutch Copyright Act) and as the copyright owner has the power of disposition of the work. VD warrants that, as far as he/she knows or reasonably ought to know, the result of the work commissioned does not infringe any third-party rights and is not otherwise unlawful.

9.2 If the Client uses the results of the work commissioned, it indemnifies VD or persons engaged by VD in the performance of the work commissioned against any third-party claims arising from the application or use of the result of the work commissioned. This is without prejudice to VD's liability towards the Client for failure to comply with the warranties referred to in the preceding paragraph and any other liability as referred to in Article 10 of these General Terms and Conditions.

9.3 The Client indemnifies VD against any claim or action relating to intellectual property rights in materials or information supplied by the Client and used in the performance of the work commissioned.

10 Liability

10.1 In the event of a breach, VD must first be given written notice of default, setting a reasonable term in which to perform his/her obligations, to correct any errors or limit or reverse the loss.

10.2 VD is liable to the Client only for direct damage attributable to VD. VD's liability for indirect damage, including consequential damage, loss of profits, lost savings, mutilated or lost data or materials, or damage due to business interruption is excluded.

10.3 Since the Client is responsible for production, distribution, putting into circulation and marketing of the designs and/or other work commissioned. VD is not liable for any damages to any (legal) person resulting from production, distribution, putting into circulation or marketing of the designs and/or the other work commissioned, unless the damages are a result of willful misconduct or gross negligence by VD.

10.4 The Client indemnifies VD against any claims any third party may have against VD resulting from production, distribution or marketing of the designs, unless the damages are a result of willful misconduct or gross negligence by VD.

10.5 Except in the event of willful misconduct or gross negligence on the part of VD, VD's liability is limited to the fee charged for the work commissioned, or in any event, the part of the work commissioned to which the liability relates. That amount may not exceed EUR 75,000 and may in no event be higher than the benefit paid to VD by the insurance company in the case in question. The amount for which VD is liable in the case in question is reduced by any sums insured by the Client.

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10.6 Any and all liability expires two years from the date on which the work commissioned has ended on the grounds of completion, termination or dissolution.

10.7 VD is not responsible for manufacturing the end result or any component of the end result nor is it responsible for putting the end result into circulation. Hence VD does not qualify as a “producer” as set out in directive 85/374/EEC and cannot be held liable under article 6:185 DCC.

11 Other provisions

11.1 If the Client wishes to commission the work at the same time to parties other than VD, or has previously already commissioned the work to another party, it must inform VD accordingly, stating the names of those third parties.

11.2 The Client is not permitted to transfer or assign to third parties any of the rights under an agreement concluded with VD, except in the event of a transfer of the Client’s entire business or with VD’s written consent.

11.3 Sync, a subsidiary of VROEGH Design B.V., holds the potential to evolve into an autonomous entity in the near future. In the event of such a transformation, any ongoing contracts or projects related to Sync will be seamlessly transferred to this newly established entity. Rest assured that you will be promptly notified should such a transition become imminent.

11.4 Both parties must keep confidential any and all confidential information, facts and circumstances that come to their knowledge in the context of the work commissioned, from each other or from any other source, of which they can reasonably understand that their publication or disclosure to third parties might damage VD or the Client. The same duty of confidentiality in respect of such facts and circumstances must be imposed on any third parties engaged in the performance of the work commissioned.

11.5 If any provision of these General Terms and Conditions is void or voided, the other provisions of these General Terms of Conditions continue to apply in full. In that case, the parties will consult in order to agree on new provisions to replace the void or voided provisions that are as close as possible in keeping with the purpose and scope of the void or voided provisions.

11.6 In the case that articles in these General Terms and Conditions are written in another language than English, the English text of the Agreement shall prevail.

11.7 VD is entitled to unilaterally amend the applicable General Terms and Conditions at any time during the Agreement. Such amendment shall be effective after the amended General Terms and Conditions are submitted to the client.

11.8 The headings of these General Terms and Conditions have been included for easy reference only and do not form part of these General Terms and Conditions.

11.9 All agreements between VD and the Client are governed by Dutch law. The parties will first attempt to settle any dispute that arises in consultation. The court in the district in which VD has its registered office has exclusive jurisdiction to hear and decide on any disputes between VD and the Client in first instance.