

Thermoforming Consulting – General Terms and Conditions

Drafted on 1 October 2014.

General Terms and Conditions of Thermoforming Consulting, established at Oostsingel 16, 5802 AN, in Venray, the Netherlands, registered with the Chamber of Commerce under number 61548294.

Definitions

In these General Terms and Conditions, the following terms are used as defined below, unless explicitly stated otherwise.

General Terms and Conditions: The General Terms and Conditions as stated below.

Thermoforming Consulting: Thermoforming Consulting, registered with the Chamber of Commerce under number 61548294.

Service: All work, of whatever form, that Thermoforming Consulting has carried out for, or for the benefit of, the Client.

Honorarium: The financial reimbursement that is agreed with the Client for the performance of the assignment.

Assignment: The contract of instruction to provide services.

Client: The one who has accepted the validity of these General Terms and Conditions and given instructions for the provision of the Service.

Contract: Any contract entered into between Thermoforming Consulting and the Client.

Scope

These General Terms and Conditions apply to every quotation and Contract entered into between Thermoforming Consulting and the Client, unless the General Terms and Conditions are departed from by the parties explicitly and in writing.

These General Terms and Conditions are also applicable to contracts with Thermoforming Consulting for the implementation of which third parties must be involved.

The applicability of any of the Client's purchasing conditions or other general terms and conditions is expressly excluded.

If one or more provisions of these General Terms and Conditions are void or voidable, the other provisions of these General Terms and Conditions remain in effect. In this event, Thermoforming Consulting and the Client will consult with each other to agree new provisions to replace the void or voided ones.

Departures from the Contract and the General Terms and Conditions are only valid if they are explicitly agreed with Thermoforming Consulting in writing.

Quotations

Quotations should preferably be made in electronic form, unless pressing circumstances make this impossible.

Quotations are valid for 3 months. Quotations lapse after this period has expired.

Thermoforming Consulting cannot be held to its quotations if the Client, in accordance with the requirements of reasonableness and fairness and generally accepted standards, should have understood that the quotation or an element thereof contains a manifest fault or clerical error.

If the acceptance departs from the offer included in the quotation, whether or not on points of minor importance, then Thermoforming Consulting is not bound by this. The Contract then does not come into being in accordance with this differing acceptance, unless Thermoforming Consulting indicates otherwise.

A composite quotation does not oblige Thermoforming Consulting to perform an element of the Assignment for a corresponding part of the stated price.

Quotations do not automatically apply to future orders or reorders.

Formation of the contract

The Contract comes into being through the timely acceptance by the Client of Thermoforming Consulting's quotation.

Duration of the contract

The Client and Thermoforming Consulting may enter into a Contract for a limited period. The Client and Thermoforming Consulting will agree the period in mutual consultation.

Both the Client and Thermoforming Consulting are entitled to terminate the Contract at any time, with the observance of a period of notice of two months.

Amendments to the contract

If, during the implementation of the Contract, it becomes apparent that it is necessary to amend or supplement the Contract to ensure its proper implementation, then Thermoforming Consulting will inform the Client of this as soon as possible. The parties will then amend the Contract in a timely manner and in mutual consultation.

If the parties agree that the Contract will be amended or supplemented, this can influence the time of the completion of the implementation. Thermoforming Consulting will inform the Client of this as soon as possible.

If the amendment or supplementation of the Contract will have financial, quantitative and/or qualitative consequences, then Thermoforming Consulting will inform the Client of this in advance.

If a fixed Honorarium and/or fee is agreed, then Thermoforming Consulting will indicate the extent to which the amendment or supplementation of the Contract will influence the price. In this event Thermoforming Consulting will attempt, as far as possible, to issue a quotation in advance.

Thermoforming Consulting may not make any additional charges if the amendment or supplementation is a consequence of circumstances that can be attributed to Thermoforming Consulting.

Amendments to the Contract originally entered into between the Client and Thermoforming Consulting are only valid from the time at which these amendments are accepted in writing by both parties by means of a supplementary or amended Contract.

Implementation of the contract

Thermoforming Consulting will implement the Contract to the best of its knowledge and ability, and in accordance with the requirements of good workmanship.

Thermoforming Consulting is entitled to arrange for certain work to be carried out by third parties. The applicability of article 7:407, paragraph 2 and article 7:409 of the Dutch Civil Code is explicitly excluded.

Thermoforming Consulting is entitled to implement the Contract in phases.

If the Contract is implemented in phases, Thermoforming Consulting is entitled to invoice and require payment for each implemented element separately. If and for as long as this invoice is not paid by the Client, Thermoforming Consulting is not obliged to implement the following phase, and is entitled to suspend the contract.

If the Contract is implemented in phases, Thermoforming Consulting is entitled to suspend the implementation of those elements that belong to the following phase or phases until the Client has approved in writing the results of the preceding phase.

The Client will issue all information or instructions that are necessary for the implementation of the Contract, or which the Client can be reasonably expected to understand are necessary for implementation of the Contract, to Thermoforming Consulting in a timely manner.

If the above-mentioned information and instructions are not issued, or not issued in a timely manner, then Thermoforming Consulting is entitled to suspend the implementation of the Contract. The additional expenses that are incurred through the delay will be borne by the Client.

The applicability of article 7:404 of the Dutch Civil Code is explicitly excluded.

Workshop and/or Training

If the Client has registered for a workshop and/or training, Thermoforming Consulting will announce the location where the workshop and/or training will be held two weeks in advance.

If there are insufficient participants, and/or in the event of illness or force majeure, Thermoforming Consulting is entitled to cancel a workshop and/or training programme, or to move it to a different date. Thermoforming Consulting will communicate this to the Client at least one week in advance.

In the event of the cancellation of a workshop and/or training programme by Thermoforming Consulting, the registration fee will be refunded in full.

Cancellation

The Client is entitled to cancel the workshop and/or training.

The Client may cancel the workshop and/or training up to two weeks in advance of the event without charge.

In the event of the cancellation of the workshop and/or training less than two weeks in advance, the Client is liable to pay the Honorarium in full or in part. In the event of cancellation:

- between two weeks and one week in advance of the workshop and/or training, the Client is obliged to pay 50% of the registration fee;
- less than one week in advance of the workshop and/or training, the Client is obliged to pay 75% of the registration fee;
- two working days in advance of the workshop and/or training, the Client is obliged to pay 100% of the registration fee.

In case of force majeure the Client is not obliged to pay the full Honorarium.

Honorarium

The Honorarium consists of the agreed hourly fee and/or a fixed amount per project.

The Honorarium and/or the fees are exclusive of VAT and other government levies, unless indicated otherwise.

It will be determined in the quotation whether the Honorarium is inclusive or exclusive of travel, accommodation, packaging, delivery, shipping and administration costs.

Thermoforming Consulting will provide a statement of all associated costs, or provide information on the basis of which these costs can be calculated by the Client, in a timely manner before the Contract is entered into.

Amendment of honorarium

If Thermoforming Consulting agrees a fixed Honorarium and/or fee when the Contract is entered into, then Thermoforming Consulting is entitled to increase this Honorarium or fee, also when the Honorarium or fee is not originally specified provisionally.

If Thermoforming Consulting has the intention of amending the Honorarium and/or fee, it will inform the Client of this as soon as possible.

If the increase of the Honorarium or fee takes place within three months of the Contract being entered into, the Client can terminate the Contract by means of a written statement, unless:

- the increase arises from a right of Thermoforming Consulting or an obligation resting upon Thermoforming Consulting in accordance with the law;
- the increase is due to a rise in the price of raw materials, wages etc. or on other grounds that could not reasonably have been foreseen when the Contract was entered into;
- Thermoforming Consulting is still prepared to implement the Contract on the basis of that which was originally agreed;
- it is stipulated that the implementation will be carried out more than three months after the Contract was entered into.

The Client is entitled to terminate the Contract if the Honorarium or the fee are increased more than three months after the Contract was entered into, unless it is stipulated in the Contract that the implementation will be carried out more than three months after the Contract was entered into.

Thermoforming Consulting will inform the Client in the event of the intention to increase the Honorarium or the fee, stating the extent of the increase and the date upon which it will take effect.

Implementation periods

The work will be carried out within a period stated by Thermoforming Consulting.

If a period is agreed or stated for the performance of particular work, then this period is only indicative and is not to be regarded as a strict deadline.

If Thermoforming Consulting needs information or instructions from the Client that are necessary for the implementation of the Contract, then the implementation period will commence after the Client has provided these to Thermoforming Consulting.

If an implementation period is exceeded, the Client must issue Thermoforming Consulting with a written notice of default, whereby Thermoforming Consulting will be offered a reasonable period to nonetheless implement the Contract.

A notice of default is not necessary if the implementation has become permanently impossible, or it otherwise becomes apparent that Thermoforming Consulting will not meet its obligations arising from the Contract. If Thermoforming Consulting does not commence implementation within this period, then the Client is entitled to terminate the Contract without judicial intervention and/or seeking compensation.

Transfer of risk

The items that are the subject of the Contract are at the cost and risk of Thermoforming Consulting until the time that these are made available to the Client.

The risk of loss, damage or reduction in value of items that are the subject of the Contract is transferred to the Client at the time that the items become available to the Client or to a third party designated by the Client.

Payment

Payment will take place by means of transfer to a bank account specified by Thermoforming Consulting, unless agreed otherwise. Transfer will take place by means of an invoice.

Payment can be made both in advance and in arrears. It will be determined in the quotation whether payment must be made in advance or in arrears, unless agreed otherwise.

Payment in arrears must be made within 14 days of the invoice date, in a manner to be specified by Thermoforming Consulting and in the currency in which the invoice is issued, unless agreed otherwise.

The Client is not authorised to deduct any amount from the payable amount by reason of a counterclaim made by the Client.

Thermoforming Consulting is entitled to invoice the Client for work carried out in the period in question. Invoicing will take place monthly.

Thermoforming Consulting and the Client may agree that payment be made in instalments in proportion with the progress of the work. If payment in instalments is agreed, the Client must make payment in accordance with the periods and percentages as established in the Contract.

Objections to the level of the invoice do not have the effect of suspending the payment obligations.

In the event of bankruptcy, suspension of payment or placement under conservatorship, the amounts owed to Thermoforming Consulting and the obligations of the Client towards Thermoforming Consulting are immediately claimable.

Collection costs

If the Client is in default or in breach of the Contract in fulfilling its obligations (in a timely manner) then all reasonable costs incurred to obtain an out-of-court settlement are payable by the Client. The Client is in any event liable to pay the collection costs.

With regard to the extrajudicial (collection) charges, Thermoforming Consulting is entitled – in departure from article 6:96 paragraph 5 of the Dutch Civil Code and the Payment of Extrajudicial Collection Charges Decree – to a payment of 15% of the total outstanding principal sum, with a minimum of €90 for every invoice that is wholly or partly unpaid.

Any reasonable legal costs and execution costs incurred are also payable by the Client.

Retention of title

All items supplied by Thermoforming Consulting within the framework of the Contract remain the property of Thermoforming Consulting until the Client has properly fulfilled and fully complied with that which is required of it by virtue of the Contract.

Payable amounts also include the reimbursement of all charges and interest, including those of earlier or later supplies and services provided, as well as compensation claims due to breach of contract.

For as long as the ownership of the supplied items has not been transferred to the Client, the Client may not sell on, pledge or in any other way encumber that which falls under the retention of title, except within the normal conduct of its business.

Suspension

If the Client does not fulfil an obligation arising from the Contract, or does not meet it fully or in a timely manner, then Thermoforming Consulting is entitled to suspend the corresponding obligation. In the event of partial or inadequate fulfilment, suspension is only permitted in so far as this is justified by the shortcoming.

Moreover, Thermoforming Consulting is entitled to suspend the fulfilment of the obligations if:

- after the Contract is entered into, Thermoforming Consulting becomes aware of circumstances that give good grounds to fear that the Client will not fulfil its obligations;
- the Client is requested, on entering into the Contract, to provide security for the fulfilment of its obligations arising from the Contract, and this security is not provided or is insufficient;
- circumstances arise of such a nature that fulfilment of the Contract is impossible, or that the unamended maintenance of the Contract cannot be reasonably required of Thermoforming Consulting.

Thermoforming Consulting reserves the right to claim compensation.

Termination

If the Client does not fulfil an obligation arising from the Contract, or does not meet it fully, in a timely manner or properly, then Thermoforming Consulting is entitled to terminate the Contract with immediate effect, unless the shortcoming, in view of its limited significance, does not justify the termination.

Moreover, Thermoforming Consulting is entitled to terminate the Contract with immediate effect if:

- after the Contract is entered into, Thermoforming Consulting becomes aware of circumstances that give good grounds to fear that the Client will not fulfil its obligations;
- the Client is requested, on entering into the Contract, to provide security for the fulfilment of its obligations arising from the Contract, and this security is not provided or is insufficient;
- due to a delay on the part of the Client, Thermoforming Consulting can no longer be required to fulfil the Contract under the originally agreed conditions;
- circumstances arise of such a nature that fulfilment of the Contract is impossible, or that the unamended maintenance of the Contract cannot be reasonably required of Thermoforming Consulting;
- the Client is declared bankrupt, submits an application for a suspension of payment, requests the application of debt rescheduling for natural persons or is served with a writ of sequestration on all or part of its property;
- the Client is placed under conservatorship;
- the Client deceases.

Termination will take place by means of a written declaration, without judicial intervention.

If the Contract is terminated, the Client's debts to Thermoforming Consulting become immediately due and payable.

If Thermoforming Consulting terminates the Contract on the above-mentioned grounds, Thermoforming Consulting is not liable for any costs or compensation.

If the termination is attributable to the Client, the Client is liable for the damage suffered by Thermoforming Consulting.

Force majeure

Breaches may not be attributed to Thermoforming Consulting or the Client if they are not their fault, or if they are not accountable by law, juristic act, or according to the generally accepted standards. In this case the parties are also not bound to fulfil the obligations arising from the Contract.

In these General Terms and Conditions, the term “force majeure” is defined as – in addition to what is understood in law and jurisprudence in this regard – all external causes, foreseen or unforeseen, upon which Thermoforming Consulting can exercise no influence and through which Thermoforming Consulting is not able to fulfil its obligations.

Circumstances regarded as resulting in force majeure include strikes, lockouts, fire, water damage, natural disasters or other external contingencies, mobilisation, war, traffic congestion, blockades, import or export restrictions or other government measures, stagnation or delay in the supply of raw materials or machinery components and lack of labour forces, as well as any circumstances through which normal business operations are impeded, as a result of which the fulfilment of the Contract by Thermoforming Consulting cannot be reasonably sought by the Client.

Thermoforming Consulting is also entitled to invoke force majeure if the circumstance that hinders (further) fulfilment of the Contract occurs after Thermoforming Consulting should have fulfilled its obligations.

In case of force majeure the parties are not obliged to proceed with the Contract, and are not bound to pay any compensation.

During the period that the force majeure continues, both Thermoforming Consulting and the Client can fully or partly suspend the obligations arising from the Contract. If this period lasts for longer than 2 months, both parties are entitled to terminate the Contract with immediate effect, by means of a written notification, without judicial intervention and without the parties being able to claim any damages.

If the situation of force majeure is of a temporary nature, Thermoforming Consulting reserves the right to suspend the agreed service for the duration of the situation of force majeure. In the event of permanent force majeure both parties are entitled to terminate the Contract without judicial intervention.

If at the time of the occurrence of force majeure Thermoforming Consulting has already partly fulfilled, or will fulfil, its obligations arising from the Contract, and independent value accrues to the part fulfilled or to be fulfilled, then Thermoforming Consulting is entitled to separately invoice the part already fulfilled or to be fulfilled. The Client is bound to pay this invoice as if there were a separate Contract.

Guarantees

The Contract between Thermoforming Consulting and the Client leads to an obligation to perform to the best of one's ability and not to an obligation to guarantee a certain result. Thermoforming Consulting accordingly guarantees that the work carried out by it will conform with the Contract and will be properly carried out.

The guarantee stated in these General Terms and Conditions applies to usage within Europe.

If the Service provided does not conform with the Contract, Thermoforming Consulting will, after notification of this, provide a replacement or carry out a repair at no charge.

When the guarantee period has expired, all costs of repair or replacement, including administrative, shipping and call-out charges, will be borne by the Client.

No form of guarantee covers damage caused by incompetent use or lack of care, or as a result of alterations made by the Client or by third parties, nor does Thermoforming Consulting provide any guarantee for damage arising as a result of these defects.

The guarantee also becomes inoperative if the defect has arisen through or is a result of circumstances beyond the control of Thermoforming Consulting.

Liability

The implementation of the Contract is entirely at the risk and responsibility of the Client. Thermoforming Consulting is only liable for direct damage that has arisen through wilful recklessness or an intentional act or omission of Thermoforming Consulting.

The liability of Thermoforming Consulting is excluded for indirect damage, including in any event consequential damage, loss of profit, lost savings and loss due to business interruption, or immaterial damage to the Client. In the case of consumer purchase, this limitation does not extend further than is permitted pursuant to article 7:24, paragraph 2 of the Dutch Civil Code.

Thermoforming Consulting is not liable for damage, of whatever nature, resulting from Thermoforming Consulting basing its actions upon inaccurate and/or incomplete information provided by the Client, unless this inaccuracy or incompleteness ought to have been known to Thermoforming Consulting.

If Thermoforming Consulting is liable for any damage, then the liability of Thermoforming Consulting is limited to an amount equal to the amount stated in the invoice, or to the amount to which the insurance taken out by Thermoforming Consulting gives entitlement, with the deduction of the policy excess borne by Thermoforming Consulting under the terms of the insurance.

Thermoforming Consulting is under no circumstances liable for damage caused by shortcomings of third parties brought in by Thermoforming Consulting.

The Client must report the damage for which Thermoforming Consulting can be held liable to Thermoforming Consulting as soon as possible, but in any event within 10 days of the damage having arisen, on penalty of the forfeiture of any right to compensation for this damage.

Any liability claim against Thermoforming Consulting lapses within one year of the Client having become aware, or possibly reasonably having become aware, of the harmful event.

Indemnity

The Client indemnifies Thermoforming Consulting against any claims by third parties who suffer damage in connection with the implementation of the Contract which is attributable to the Client.

If Thermoforming Consulting may be sued for this reason, then the Client is bound to provide Thermoforming Consulting with both judicial and extrajudicial support. Furthermore, all costs and damage on the part of Thermoforming Consulting and third parties will be at the expense and risk of the Client.

Limitation period

In departure from the legal limitation period, a limitation period of one year applies to all claims against Thermoforming Consulting and any third parties brought in by Thermoforming Consulting.

Intellectual property

Thermoforming Consulting reserves the rights and powers accruing to it under the provisions of the Copyright Act and other intellectual property legislation and regulations.

Thermoforming Consulting reserves the right to utilise the knowledge acquired for the performance of the work and general information for other purposes and other work, in so far as no confidential information is hereby communicated to third parties.

Confidentiality

Both Thermoforming Consulting and the Client are obliged, both for the duration of and after the termination of the Contract, to maintain confidentiality regarding all facts and particulars concerning the business which they know or can reasonably suspect are confidential. This duty of confidentiality also includes all details of employees, clients, commissioning bodies and other business contacts which are learned of by reason of the Assignment.

Privacy

Thermoforming Consulting will store the details and information that the Client provides to Thermoforming Consulting carefully and confidentially.

Thermoforming Consulting may only use the personal details of the Client within the framework of the implementation of its obligation to supply, or of dealing with a complaint.

Thermoforming Consulting is not permitted to lend out, hire out or sell the personal details of the Client, or to publicise them in any other manner.

If Thermoforming Consulting is obliged to provide confidential information to third parties by virtue of a legal provision or court decision, and Thermoforming Consulting cannot claim a legal right of immunity, or such a right recognised or permitted by the competent court in this respect, then Thermoforming Consulting is not liable to pay compensation or grant indemnification. The Client is also not entitled to terminate the Contract by reason of any damage arising in this way.

The Client agrees that Thermoforming Consulting may approach the Client for statistical or customer satisfaction research. If the Client does not wish to be approached for research, the Client may make this known.

Thermoforming Consulting reserves the right to utilise the other details of the Client in anonymous form for (statistical) research and databases.

Interpretation, translation

As well as the original Dutch version of these General Terms and Conditions, there are two other versions of the General Terms and Conditions, translated into English.

The Dutch version of the General Terms and Conditions of Thermoforming Consulting is the authentic version. This version of the General Terms and Conditions will take precedence in the event of the explanation or interpretation of the General Terms and Conditions. In the event of a difference in meaning or interpretation between the two versions, then the Dutch version of the General Terms and Conditions will prevail.

Applicable law, disputes

Dutch law is exclusively applicable to all legal relationships to which Thermoforming Consulting is a party. This also applies if an obligation is wholly or partly fulfilled outside of the Netherlands or if the Client has its place of business outside of the Netherlands.

The applicability of the Vienna Sales Convention (CISG) is excluded.

Disputes between Thermoforming Consulting and the Client will only be submitted to the competent court in the Limburg district, unless the law mandatorily prescribes otherwise.

Location

These General Terms and Conditions are filed at the Chamber of Commerce under number 61548294.