

GENERAL TERMS AND CONDITIONS OF ADCTRA – Graphic design Illustrations Etc. VBA

Article 1 DEFINITIONS

1. ADCTRA: ADCTRA – Graphic Design Illustrations Etc. VBA, a limited liability company, established at Sabana Liber 103-B, Aruba on April 11, 2014, registered at the Chamber of Commerce & Industry of Aruba under number 44297.0.
2. Client: the natural person, company or other legal entity who purchases Services provided by ADCTRA.
3. Contract: Any agreement between ADCTRA and the Client for the provision of Services by ADCTRA to the Client against the payment of a fee. Such agreement can be reached verbal or in writing including by fax, letter or e-mail.
4. Services: All products supplied, services rendered or other activities performed, in the area of marketing, PR, graphic design, illustrations or other areas, by ADCTRA for the benefit of the Client.
5. Quotation: any estimate sent to the Client by ADCTRA detailing, inter alia, the description and the fee of the Services ADCTRA proposes to provide for the Client.

Article 2. APPLICABILITY

1. These general terms and conditions are applicable to all Contracts, Quotations and other relationships and agreements, by any name, between ADCTRA and the Client as well as to all Services provided by ADCTRA ensuing from any of the above.
2. Any deviations from, and additions to, these general terms and conditions shall only be valid if they have been explicitly agreed in writing in, for example, the Contract or in a separate (written) agreement between ADCTRA and the Client.
3. If any provision in these general terms and conditions were to conflict with the Contract or any additional agreement between ADCTRA and the Client, the provision set out in the Contract or additional agreement shall be applicable solely as regards the contradiction.
4. The applicability of the Client's general terms and conditions is explicitly excluded by ADCTRA, unless otherwise agreed upon in writing by ADCTRA.

Article 3. QUOTATION AND CONTRACT

1. All quotations sent by ADCTRA to the Client are non-binding unless otherwise stated in the quotation. A quotation is only valid for 30 days after the date it is sent to the client.
2. The fee stated in a quotation is an estimate based on client's specific instructions. ADCTRA reserves the right to amend its fee at any time after acceptance of a quotation on giving notice in case of unforeseen circumstances beyond ADCTRA's control or if the instructions of the Client change or in order to meet any rise in costs due to any factor beyond ADCTRA's control.
3. By accepting the quotation of ADCTRA, a legally binding Contract is formed and agreed upon between ADCTRA and the Client, whether this is done explicitly and/or in writing, including by fax, letter or e-mail, or verbal.
4. Upon request ADCTRA will provide a Client with a written Confirmation ("Opdrachtbevestiging"), which will include a confirmation of the Client's instruction, the agreed fee and any other stipulations agreed upon between ADCTRA and the Client. Not sending a written Confirmation does not constitute that no legally binding Contract has been formed and agreed upon between ADCTRA and the Client.
5. If no quotation is sent, a legally binding Contract is deemed to have been formed and agreed upon between ADCTRA and the Client when a Client agrees that ADCTRA commences with rendering its Services according to the request or instructions of the Client.

Article 4. CLIENT DATA

1. The Client is obligated to make available to ADCTRA all the documents, materials and/or information which ADCTRA considers to be necessary to perform the Services correctly in the required form, in the required manner and in good time. ADCTRA shall determine what required form, required manner and in good time shall be understood to mean. This includes any document in writing, artwork, drawings, designs, specifications, display materials, pictures or other images, and/or other form of media, including digital media, etcetera.
2. The Client guarantees the accuracy, completeness and the reliability of the documents, materials and information provided, even where such documents, materials and/or information originate from third parties.
3. ADCTRA may suspend the execution of its Services until such time as the Client has fulfilled the obligations referred to in the paragraphs 1 and 2 above.
4. The Client indemnifies ADCTRA against any loss or damage due to inaccurate or incomplete documents, materials and/or information. The Client guarantees the authenticity of the documents, materials and/or information and indemnifies ADCTRA against any infringement of any copyright or intellectual property rights of third parties on the documents, materials and/or information.
5. Any additional costs incurred and hours spent by ADCTRA as well as any other loss or damage sustained by ADCTRA due to the Client's failure to provide the documents, materials and/or information required for the execution of the Contract, or its failure to provide such documents, materials or information in good time or properly, shall be for the account and risk of the Client.
6. It is the responsibility of the Client to retain copies of any documents, materials and/or information provided to ADCTRA until the Services have been rendered in full. If the Client fails to do such, ADCTRA cannot be held liable for any costs or damages that could have been prevented by retaining copies.
7. Where possible, ADCTRA will return the original documents, materials and/or information, provided by the Client, to the Client on the Client's first demand.

Article 5. EXECUTION OF THE SERVICES

1. ADCTRA shall perform the Services to the best of its ability and with due regard for the instructions provided by the Client. ADCTRA is committed to achieve the best result for the Client and will keep itself available for consultation with the Client to ensure this can be achieved.
2. ADCTRA shall determine the manner in which the Services will be executed and by which employee(s) of ADCTRA.
3. ADCTRA may have work performed by a third party to be designated by ADCTRA, if ADCTRA deems such necessary or desirable, without informing the Client beforehand. This will be done for the account of the Client, unless otherwise agreed upon between ADCTRA and the Client. The utmost care will be observed in the selection of this third party. Each and any liability for failure, fault or shortcoming committed by these third parties is explicitly excluded. ADCTRA has the right to accept any limitation of liability stipulated by third parties, whose services have been procured by ADCTRA.
4. ADCTRA has the right to refuse rendering its services without being liable towards the Client to pay any damages, especially if it is requested to perform a Service which in its opinion is or may be of an illegal or libelous nature or an infringement of the proprietary or other rights of any third party. ADCTRA shall be indemnified by the Client in respect of any claims, costs and expenses arising of any libelous matter or any infringement of proprietary or personal rights contained to any Service rendered for a Client. The indemnity shall extend to any amount paid in respect of legal costs in settlement of any claim.

5. It is the responsibility of the Client to check all work for errors before production, printing or publishing of the work and to timely approve the work. Upon request of ADCTRA such approval must be done in writing.

Article 6. INTELLECTUAL PROPERTY

1. The execution of the Contract by ADCTRA does not constitute the automatic assignment of intellectual property rights vested in ADCTRA to the Client, unless otherwise agreed upon in writing between ADCTRA and the Client. All intellectual property rights that are created during, or which arise from, the execution of the Contract shall belong to ADCTRA, with the exception of prior existing intellectual property rights on documents, materials and information provided by the Client to ADCTRA. Insofar any intellectual property right can only be obtained by registration, only ADCTRA shall be legally able to obtain this registration.
2. ADCTRA will not investigate the existence of prior intellectual property rights and/or registrations of third parties, unless explicitly agreed upon. All prior intellectual property rights and/or registrations of third parties, and any costs or damages arising from such, will be for the risk of the Client. The Client will indemnify ADCTRA against any and all infringements of such rights and registrations.
3. Once ADCTRA has received full and complete payment for its Services and incurred costs, ADCTRA will grant the Client the exclusive license to use, reproduce and publish the material on which ADCTRA has intellectual property rights, solely for the purpose for which the materials have been constructed or for purposes authorized by ADCTRA.
4. Without the written approval of ADCTRA, the Client is not authorized to use the material for other purposes than agreed upon by both parties. The Client is not authorized to re-use prior material constructed by ADCTRA without the written consent of ADCTRA. Such consent may be subject to conditions, such as the payment of an additional fee, at the discretion of ADCTRA.
5. The Client is not authorized to modify the preliminary or final material constructed by ADCTRA, without consulting ADCTRA. ADCTRA will not withhold its consent to modifications, if this would lead to unreasonable results.
6. The license of the Client to use, reproduce and publish the material on which ADCTRA has intellectual property rights, shall terminate on termination of the Contract howsoever arising, or if the Client is in default with any obligation arising from the Contract.
7. Parties can deviate from these stipulations by means of a written agreement.

Article 7. FORCE MAJEURE

1. In the event that the parties fail to perform the obligations under the agreement, or fail to perform such obligations in good time or properly, as a result of force majeure ("overmacht") within the meaning of Section 6:75 of the Civil Code of Aruba, such obligations will be suspended until such time as the parties are able to perform them in the agreed manner.
2. In the event that the situation referred to in paragraph 1 above occurs, the parties will have the option to terminate all or part of the agreement in writing and with immediate effect, without any right to any compensation otherwise existing.

Article 8. FEES AND COSTS

1. The Client will be charged for the Services provided by ADCTRA based on the amount of time spent and the costs incurred by ADCTRA. Payment of the fee is not dependent on the result of the work unless otherwise agreed. Travel and other related expenses, if any, will be charged separately.
2. In addition to the fee, the Client will also be charged any expenses incurred by ADCTRA and the expense claims submitted by any third parties engaged by ADCTRA. This includes additional costs for printing, advertising, digital or other media, etcetera.
3. With respect to work and services that necessarily have to be rendered during the evening and/or in the weekend or during national holidays, the agreed upon fee can be increased to a rate of not more than 150%, at the discretion of ADCTRA.
4. ADCTRA may ask the Client for an advance payment or a deposit before providing the Services, at its discretion. ADCTRA may charge its fee at the end of the Contract or intermittently, if the Contract spans more than 3 months, at the discretion of ADCTRA.
5. If the rendering of the Services by ADCTRA leads to extra work and performances that cannot be deemed in reason to be included in the agreed upon price, ADCTRA shall timely inform the Client about the financial consequences of this extra work or performances.
6. In the event that fees or prices are subject to change before the Services have been fully provided, or if the instructions of the Client are modified in such a way that this leads to unexpected additional work for ADCTRA, ADCTRA shall be entitled to amend the agreed fee accordingly.
7. Where statutorily required, turnover tax ("BBO") will be charged separately on all amounts payable by the Client to ADCTRA.

Article 9. PAYMENT

1. Unless otherwise agreed, the Client shall ensure that the amounts due to ADCTRA are paid, without the Client being entitled to any deduction, discount or set-off, with the exception of any advance payment or deposit, within 15 days after the date of invoice. The date of payment shall be the date on which the amount due is credited to ADCTRA's account.
2. In the event the Client has not paid the bill sent to him on the due date at the latest, he shall automatically be in default, without any further notice of default being required. In the event the Client fails to pay, ADCTRA shall have the right to discontinue or suspend any and all activities for the Client at once, while it will not be liable towards the Client to pay damages on this account. Also, the Client shall owe an interest of 1.5% per month in respect of the outstanding invoice amount as of the moment the due date has passed, while part of a month shall be equivalent to a full month, as well as extrajudicial collection charges pursuant to Article 6:96, paragraph 2, letter c, Civil Code of Aruba, estimated at 15% of the outstanding invoice amount.
3. In the event of multiple Clients, the Clients shall be jointly and severally liable for the payment of the invoice amount and the interest (payments) and costs due.
4. If ADCTRA is of the opinion that the Client's financial position or payment record gives reason to do so, or if the Client fails to make an advance payment when requested or to meet an expense claim within the specified term of payment, ADCTRA may demand that the Client immediately provide (additional) security in a form to be defined by ADCTRA. If the Client fails to provide the required security, ADCTRA shall be entitled, without prejudice to its other rights, to suspend the further execution of the agreement forthwith and all amounts owed to ADCTRA by the Client of whatever nature and for whatever reason shall become immediately due and payable.

Article 10. TERMS

1. If a term/date within which the Services are to be provided has been agreed between the Client and ADCTRA and the Client fails to: (a) make an advance payment – if requested – or (b) make the necessary documents, materials and/or information available in good time, in full, in the required form and in the required manner then the Client and ADCTRA will consult one another about agreeing a new term/date within which the Services s to be provided.
2. Any term within which the work must be completed shall only be considered as a strict deadline if such has been explicitly agreed and in as many words between the Client and ADCTRA. If the work is not completed at the given term, ADCTRA will only be in default after receiving notice of default and after non-compliance of ADCTRA with the term stated in the notice of default.

Article 11. LIABILITY AND INDEMNITIES

1. ADCTRA is not liable for any loss or damage sustained by the Client due to the fact that the Client has provided inaccurate or incomplete documents, materials and/or information to ADCTRA.
2. ADCTRA is not liable for any consequential loss or damage, business interruption loss or indirect loss or damage due to ADCTRA's failure to perform, failure to perform in good time or failure to ensure proper performance.
3. ADCTRA is only liable to the Client for loss or damage resulting directly from an (interrelated series of) attributable shortcoming(s) in the execution of the Contract. This liability is limited to the amount of the fee charged for the Services provided. If the Contract comprises a continuing performance contract with a term of more than one year, the aforementioned amount shall be set at one time the amount of the fee charged to the Client in the twelve months prior to the occurrence of the loss or damage. Under no circumstances will the total amount of compensation for the loss or damage pursuant to this subsection exceed Afl. 1,000,00 per attributable shortcoming unless the parties – in view of the scope of the engagement or the risks associated with the engagement – believe there is reason to deviate from this maximum upon entering into the agreement. An interrelated series of attributable shortcomings is deemed to constitute a single attributable shortcoming,
4. The limitations of liability specified in this article are not applicable if and to the extent that there is evidence of willful misconduct or gross negligence committed by ADCTRA or its senior management ('leidinggevend personeel') or owner.
5. The Client is obliged to take measures to mitigate any loss or damage. ADCTRA is entitled to rectify or limit damage by carrying out repairs or improving the performed work.
6. The Client indemnifies ADCTRA against claims by third parties in respect of loss or damage caused by the Client's failure to provide ADCTRA with any documents, materials and/or information, or its failure to provide ADCTRA with fully accurate or complete documents, materials and/or information.
7. The Client indemnifies ADCTRA against claims by third parties (also including employees of ADCTRA and any third party engaged by ADCTRA) who sustain loss or damage in connection with the execution of the Contract due to any action taken or omitted to be taken by the Client or due to unsafe situations in its company or organization.

Article 12. TERMINATION

1. The Client and ADCTRA may (prematurely) terminate the agreement at any time by giving the other party notice. If the agreement ends before the Contract has been completed, the Client shall be liable to pay the fee in accordance with the hours specified by ADCTRA for work performed on behalf of the Client.
2. Notice of termination must be given in writing.
3. If the Client has effected (premature) termination, ADCTRA shall be entitled to compensation for the work it has performed as well as reimbursement of any additional costs already incurred by ADCTRA and any costs resulting from any cancellation of the services of third parties who have been engaged (such as – amongst other things – any subcontracting-related costs).
4. If ADCTRA has effected (premature) termination, the Client shall be entitled to receive ADCTRA's assistance in transferring work to third parties, unless in the event of willful misconduct or gross negligence committed by the Client as a result of which ADCTRA feels compelled to effect termination. The entitlement to assistance as provided in this paragraph is dependent on the Client having made all underlying outstanding advance payments or having met all expense claims.

Article 13. RIGHT TO SUSPEND PERFORMANCE

1. ADCTRA may, after a careful weighing of interests, suspend the performance of all its obligations, including handing over documents, materials, information or other items to the Client or any third party, until such time as all amounts owed and payable by the Client on demand have been settled in full.

Article 14. COMPLAINTS AND EXPIRY PERIOD

1. If a Client has any complaints about the Services rendered, the Client will notify ADCTRA of this in writing at the Client's earliest convenience, but no later than 10 workdays after the completion of the Contract. The Client will allow ADCTRA to investigate the complaints and carry out repairs or improve the performed work if ADCTRA deems such warranted, to the discretion of ADCTRA.
2. To the extent not otherwise provided in these general terms and conditions, rights of action and other powers of the Client of whatever nature and for whatever reason against ADCTRA in connection with the performance of work by ADCTRA shall always expire after 1 (one) year from the moment the Client became aware, or could reasonably have been aware, of the existence of such rights and powers.

Article 15. ELECTRONIC COMMUNICATION

1. During the execution of the Contract, the Client and ADCTRA can communicate with one another using electronic means.
2. The Client and ADCTRA shall not be liable towards one other for any loss or damage that may be sustained by either or each of them as a result of the use of electronic means of communication, including – but not restricted to – loss or damage due to non-delivery or delayed delivery of electronic communication, interception or manipulation of electronic communication by third parties or by software/equipment used for transmitting, receiving or processing electronic communication, transmission of viruses and the failure or poor functioning of the telecommunications network or other resources required for electronic communication, unless the loss or damage is the result of willful misconduct or gross negligence.
3. The Client and ADCTRA will both do or omit to do everything that may reasonably be expected of each of them in order to prevent the risks referred to above from occurring.
4. The data abstracts from the sender's computer systems shall constitute conclusive evidence of (the content of) the electronic communication sent by the sender until such time as evidence to the contrary is furnished by the receiver.

Article 16. OTHER PROVISIONS

1. If ADCTRA performs work on location at the Client, the Client shall ensure that a suitable place of work is provided which meets the statutory occupational health and safety standards and complies with all applicable regulations. The Client shall ensure that ADCTRA is in that case provided with office space and/or other facilities which ADCTRA considers to be necessary or useful to execute the Contract. With regard to any (computer) facilities made available, the Client is obliged to ensure continuity, amongst other things by means of adequate back-up, security and virus control procedures. ADCTRA will implement virus control procedures when using the Client's facilities.
2. ADCTRA will have the right to use examples of the Services rendered for the Client for its own publicity and/or promotion, without consulting the Client beforehand and without the Client's permission. ADCTRA will also have the right, where possible, to add a signature, name or mark to the work, or to remove a previously added signature, name or mark from the work, such to the discretion of ADCTRA.

3. If the Client wants to provide the same instructions to multiple designers/agencies comparable to ADCTRA, creating a competition situation between ADCTRA and the competitors, ADCTRA has to be informed of such in advance, under full disclosure of the identity of its competitors. If the services performed by ADCTRA in this situation do not lead to a final Contract, all costs incurred by ADCTRA related to this situation will be for the account of the Client.
4. After completion of the Contract neither ADCTRA nor the Client will have the obligation to retain or keep records of any of the documents, materials and information used or exchanged during the Contract.

Article 17. CONFIDENTIALITY

1. ADCTRA and the Client will both maintain full confidentiality regarding all the facts and circumstances they have learned during the Contract about the other party. This confidentiality also includes third parties, involved by either ADCTRA or the Client during the Contract.

Article 18. REPAIR CLAUSE IN RESPECT OF NULLITIES

1. If any provision from these general terms and conditions or from the underlying Contract should be wholly or partly void and/or invalid and/or unenforceable as a result of any statutory provision or regulation, court judgment or otherwise, then this will have no effect whatsoever on the validity of all other provisions in these general terms and conditions or the underlying Contract.
2. If any provision in these general terms and conditions or the underlying Contract should not be valid for a reason referred to in the preceding paragraph, but would be valid if it had a more limited scope or intention, then such provision will – firstly – automatically apply with the most far-reaching or most extensively more limited scope or intention with which or within which it is valid.
3. Without prejudice to the provisions in paragraph 2 above, the parties may, at their discretion, consult one another with the aim of agreeing new provisions that will replace the void or nullified provisions, with every possible attempt being made to ensure they are as close as possible to the object and purport of the void or nullified provisions.

Article 19. APPLICABLE LAW AND JURISDICTION

1. The Accounting Services Agreement shall be governed by Aruban law.
2. Any dispute will be settled by the Court of First Instance of Aruba.

A hard copy of these General Terms and Conditions can be obtained at request at the offices of ADCTRA, or by e-mail or fax. A copy is also available on the website: www.adctra.com. These General Terms and Conditions have been filed at the Registry of the Court of First Instance of Aruba.