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## General Terms and Conditions of Factorr

October 2022

This document is provided in English as a translation from Dutch of the official Factorr General Terms and Conditions filed with the Chamber of Commerce (no. 83284818). Please note, while we aimed for an accurate translation, the English version of the text is not legally binding and is only provided for the sake of transparency and accessibility. Factorr declines any responsibility for inaccuracies, discrepancies, or less-than-timely updates in the English version. For the official version, please refer to the **"Algemene Voorwaarden Factorr"** document.

### Definitions

- **"Agreement"** means the agreement between Factorr and the Client.
- **"Assignment"** means the Products and Work as described Assignment Confirmation.
- **"Auxiliary Person"** means a third party (other than Factorr), to whom Factorr has subcontracted all or part of one or more Work.
- **"Claim"** means a (legal) claim of any kind (whether for breach of contract, tort or otherwise).
- **"Client"** means the natural person, partnership, general partnership or legal entity who requests Factorr to provide a quotation and/or has entered into an agreement with Factorr as Contractor.
- **"Confidential Information"** means any information, trade secrets or other proprietary information designated as confidential or confidential by its nature, including the Documentation and the Deliverable.
- **"Damages"** means damages and costs resulting from attributable failure to perform the obligations under the Agreement.
- **"Delivered"** means the Delivered by Factorr under the Agreement, including (part of) a Product and/or (part of) Work that Factorr has delivered to or performed for Customer under the Agreement.
- **"Documentation"** means all information provided in the formation and/or performance of the Agreement including but not limited to brochures, flyers, manuals, specifications, plans, descriptions, explanations, tables, diagrams, databases, and calculations.
- **"Engagement Confirmation"** means the written engagement agreement between Client and Factorr, in which these Terms and Conditions are declared applicable, and any other attachments thereto.
- **"Event"** means an event, including but not limited to a (music) performance and/or other event, a concert, dance event, trade show, conference, business event, exhibition, and/or a public or private event in which one or more persons participate, organized by the Customer and for which Factorr supplies Products and/or performs Work.
- **"Factorr"** means Factorr B.V., located at Tuinlaan 90, 3111 AV, in Schiedam, registered in the trade register of the Chamber of Commerce under number: 83284818.
- **"General Terms and Conditions"** means the provisions of this document.
- **"IP Rights"** means all rights of intellectual and industrial property and/or similar rights of Factorr, including but not limited to patent, design, trademark, database, neighboring, domain name, trade name and copyrights on ideas, products, tools, models, samples, drawings, house styles, designs, design sketches, images, (web-based) technologies, software, algorithms, material, information, methods of calculation, and other works, including any modifications or improvements.
- **"Parties"** means Factorr and Client jointly.
- **"Party"** means Factorr or Client individually.
- **"Personal Data"** means any information about an identified or identifiable natural person.
- **"Product"** means all works produced by Factorr for Client in performance of the Agreement and delivered to Client, including, but not limited to, designs, concepts, advertisements, logos,

visual Identities, flyers, brochures, (design) sketches, designs, event materials, websites, software, banners, films, and other materials or (electronic) files.

- **"Third Parties"** means other parties involved in the Project, of which Agreement is a part.
- **"Work"** means the work performed by Factorr for Client in performance of the Agreement, including recruitment advice, campaign proposals, conducting research and development, conducting feasibility studies, consulting, designing, manufacturing or adapting software, systems or operating systems, assembly, disassembly, installation, de-installation, incorporation, erection, dismantling, presentation, coordination, organization, testing, inspection, inventory, training, and supervision.

### 1. Applicability

- 1.1. These General Terms and Conditions apply to every offer, quotation and Agreement between Factorr and a Customer to which Factorr has declared these terms and conditions applicable, to the extent that these General Terms and Conditions have not been expressly deviated from by the Parties in writing. Any deviation from or addition to the General Terms and Conditions agreed by the Parties shall only relate to the specific Agreement for which it has been agreed and not for any other Agreement.
- 1.2. Auxiliary Persons may rely on the General Terms and Conditions towards the Client in the same manner as Factorr itself.
- 1.3. Any deviations from these General Terms and Conditions shall only be valid if expressly agreed in writing.
- 1.4. The applicability of any purchasing or other conditions of the Customer is expressly rejected.
- 1.5. If one or more of the provisions of these General Terms and Conditions are null and void or destroyed, the remaining provisions of these General Terms and Conditions shall remain fully applicable. Factorr and the Client shall then consult to agree on new provisions to replace the void or voided provisions, whereby if and to the extent possible the purpose and intent of the original provision shall be observed.
- 1.6. Article headings are intended solely to promote the readability of the General Terms and Conditions. No rights can be derived from the article titles.
- 1.7. Factorr has the right to change these Terms and Conditions in whole or in part at any time. The amended Terms and Conditions shall then also apply to any Agreements already entered into, except insofar as this appears to be contrary to reasonableness and fairness. Factorr will inform the Client of the changes to the General Terms and Conditions in a timely manner. If the Customer is of the opinion that the changes are contrary to reasonableness and fairness, the Customer must inform Factorr of this within 10 working days after the notification, failing which the Customer shall be deemed to agree to the changes.
- 1.8. Provisions of the Engagement of which it is expressly or by their nature intended that they shall remain in force after expiry or termination of the Engagement shall remain in force after expiry or termination.
- 1.9. These General Conditions are drawn up in both the Dutch and English Language. The General Terms and Conditions in the Dutch Language shall prevail.

### 2. Agreement, quotation and confirmation

- 2.1. All quotations made by Factorr, both orally and in writing, are entirely without obligation, unless the contrary has been expressly made known to the Client in writing in a quotation and, as long as no Agreement has been concluded, may be changed or withdrawn by Factorr at any time, without Factorr owing any (compensation) to the Client.
- 2.2. Unless the contrary has been expressly made known to the Customer in writing in an offer, all offers made by Factorr shall lapse if they have not been accepted by the Customer at the latest within 10 working days after dispatch by written notification to Factorr.
- 2.3. An Agreement shall only be concluded after (i) the Customer and Factorr have signed an Agreement, (ii) the Customer has accepted an offer from Factorr by written communication to Factorr,

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or (iii) if Factorr has already started with the execution of the order, arising from agreements or statements made by or on behalf of the Customer on which Factorr could reasonably rely in which case the General Terms and Conditions shall apply.

2.4. The Client acknowledges that electronic forms of communication can create a valid agreement. The electronic files created by such communication shall serve as valid evidence.

2.5. If an offer is accepted by the Client, Factorr has the right to withdraw the offer within three (3) working days after receipt of the acceptance; in that case, no Agreement has been established without Factorr owing any (compensation) to the Client.

2.6. A price included in an offer that relates to part of the order does not oblige Factorr to deliver Products or perform Work that falls outside the offer at the same price as included in the offer.

2.7. Offers or quotations do not automatically apply to future assignments.

2.8. The Customer shall be obliged to provide Factorr with all data, information, and documents requested by Factorr and other data, information, and documents which may be relevant for the preparation and execution of the Order in a timely, complete and correct manner, on the basis of which Factorr shall make an offer to the Customer and execute it.

2.9. If, after the conclusion of an Agreement, it appears that the Customer has not provided the data, information, and documents referred to in Clause 2.8 in a timely, complete or correct manner, the Customer shall be in default without notice of default by Factorr being required. In such a case, Factorr is entitled to (i) execute the Agreement, whereby additional costs resulting from the default of the Customer shall be for the account and risk of the Customer, or (ii) rescind the Agreement with immediate effect and/or immediately terminate or suspend the execution of the Agreement, without prejudice to the obligation of the Customer to pay the agreed fee in full to Factorr.

2.10. If the Customer has been notified in advance and an offer does not lead to the conclusion of an Agreement, the Customer shall be obliged to reimburse the costs reasonably incurred by Factorr in connection with the offer and/or work performed.

2.11. Factorr is not bound by obvious mistakes, typos or other obvious errors in quotations, offers or quotations.

2.12. Agreements between Factorr and the Customer's contact person or representative bind the Customer. If during the execution of the Work no contact person or representative of the Customer is present on site, consultation is not possible and immediate measures or provisions have to be taken, Factorr is authorized to change the nature and scope of the Work or Products, under the obligation of the Customer to reimburse Factorr for the costs related to these changes.

### 3. Execution of the Agreement

3.1. Factorr shall make every effort to execute the Engagement carefully and independently, to represent the Client's interests to the best of its knowledge and to strive for a result useful to the Client, as can and may be expected of a reasonable and professionally acting Contractor. To the extent necessary, Factorr shall keep the Client informed of the progress of the work.

3.2. If and as far as a proper execution of the Agreement requires this, Factorr has the right to have work done by third parties. Under no circumstances shall outsourcing entitle the Customer to claim any compensation or the right to dissolve the Agreement.

3.3. The Customer shall ensure that all data and/or materials, which Factorr indicates to be necessary or which the Customer should reasonably understand to be necessary for the execution of the Agreement, are provided to Factorr in a timely manner. If the data required for the execution of the Agreement are not provided to Factorr in a timely manner, Factorr shall be entitled to suspend the execution of the Agreement and/or to charge the Customer the additional costs resulting from the delay according to the usual rates.

3.4. Any deadline specified by Factorr for the execution of the Order is indicative and not a deadline, unless otherwise agreed in writing.

3.5. If it has been agreed that the Agreement will be executed in

phases, Factorr is entitled to suspend the execution of that Work or delivery of those Products belonging to a subsequent phase until the Customer of Factorr has approved in writing the Deliverable of the preceding phase and/or has paid the fee for the Deliverable.

3.6. Unless otherwise agreed, Factorr's Order does not include:

A) performing tests, applying for permits and assessing whether instructions of the Customer meet legal or quality standards;

B) conducting research into the existence of rights, including patent rights, trademark rights, drawing or model rights, copyrights or portrait rights of third parties.

C) conducting research into the possibility of the possible forms of protection referred to in sub b. for the Client.

3.7. Before execution, production, reproduction or publication, the Parties shall give each other the opportunity to check and approve the final models, prototypes or tests of the result.

3.8. Deviations in the Delivered compared to what has been agreed upon shall not be a reason for rejection, discount, suspension, compensation or dissolution of the Agreement, if these deviations, taking all circumstances into account, are reasonably of minor significance.

### 4. Amendments to the Agreement

4.1. If during the performance of the Agreement it appears that for proper performance it is necessary to modify or supplement the work to be performed, the Parties will timely and in mutual consultation modify the Agreement accordingly in writing.

4.2. If the Parties agree that the Agreement is amended or supplemented, the time of completion of the execution may be affected as a result. Factorr will inform the Client of this as soon as possible and vice versa.

4.3. If the amendment or supplementation of the Agreement will have financial and/or qualitative consequences, Factorr shall inform the Customer about this in advance.

4.4. If an amendment of the Agreement results in an agreed delivery term being exceeded, this term shall be extended by a reasonable period, unless otherwise agreed in writing. Such an overrun and the associated costs and damages shall be at the sole expense and risk of the Client.

4.5. If a fixed fee has been agreed upon, Factorr shall indicate in this respect to what extent the change or supplement to the Agreement will result in a change of this fee.

4.6. Notwithstanding clause 4.3, Factorr will not be able to charge additional costs if the change or supplement is the result of circumstances that can be attributed to Factorr.

### 5. Obligations of Client

5.1. Client is responsible for any use of the (intellectual) property (rights) of third parties, including the payment of remittances and fees in that respect.

5.2. Client is themselves fully responsible for obtaining the required permission from third parties, taking out the necessary insurances and, if necessary, obtaining and maintaining (the appropriate) permits, licenses, certificates and other necessary evidence of consent or requirements. The Customer shall indemnify Factorr against any governmental and/or third-party fines imposed in connection with, and damage resulting from, the Customer's failure to properly comply with any statutory requirement, any permit condition, lack of consent or license and/or any governmental and/or other standard or directive requirement. The Client shall always provide Factorr with immediate and full access to any agreement made with the government and/or any authority in connection with the Order.

5.3. The Client shall bear responsibility for the acts and omissions of the third parties engaged by it and/or involved on its initiative, including for the participants of Events.

5.4. Factorr does not guarantee the accuracy and/or usefulness of its information, advice and instructions. Use of the information, advice or instructions shall therefore be entirely at the expense and risk of the Customer.

5.5. All prices are subject to printing and typesetting errors. Client is responsible for providing the correct quality content. Factorr accepts no liability for the consequences of printing and typesetting errors.

5.6. Customer is solely responsible for, among other things, the

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following:

A) appointing one or more persons, preferably at senior management level, with the appropriate skills, knowledge and/or experience to supervise (the execution of) Work and (the delivery of) the Products;

B) timely and complete assessment of the adequacy of the Deliverable;

C) accepting responsibility for the Deliverable;

D) implementing and maintaining a system of internal control, including the monitoring of ongoing activities, as well as

E) compliance with applicable national and foreign laws and regulations applicable to the (activities of) the Client.

5.7. Client is responsible for correct compliance with all applicable national and foreign laws and regulations regarding the protection of Personal Data. This obligation also applies in the context of providing and making available to Factorr (Personal) data relating to its personnel, its customers or third parties, regardless of whether these (Personal) data originate from third parties or are provided or made available to Factorr by third parties on behalf of the Customer.

5.8. Unless other arrangements have been made in the Order Confirmation, Customer agrees that the Delivered shall be deemed to have been accepted by Customer (and the Services or the relevant part shall be deemed/ to have been completed) as soon as 30 days have elapsed after delivery in final form, or as soon as Customer uses it for the first time in the course of business, whichever is earlier.

5.9. If Work is performed by Factorr or third parties engaged by Factorr in the context of the Assignment at the Client's premises or a location designated by the Client, the Client shall ensure, free of charge, the security of the place where the Work is performed and the facilities reasonably required by those employee(s).

## **6. Provision of food, drink, transport and accommodation**

6.1. In the context of the Order, the Client shall always provide all persons present at Factorr or third parties engaged by Factorr with food and drink free of charge during the production days before the Event.

6.2. For an Event in the Netherlands, the Customer shall provide all persons of Factorr and third parties engaged by Factorr with at least one place to stay during the production days in a three star hotel in a single room including breakfast at a maximum distance of 15 kilometers from the location of the Event.

6.3. In case of an Event outside the Netherlands but within the EU, the Client shall provide all persons of Factorr and third parties hired by Factorr during the production days with at least a stay in a four star hotel in a single room including breakfast at a maximum distance of 10 kilometers from the location of the Event. The Customer shall arrange airline tickets for all these persons of at least economy comfort class. The Client will also provide transfers from the airport to the hotel and back, and from the hotel to the location of the Event and back. The Client shall also pay for food and drink (sejour) during the stay for the execution of the Assignment.

6.4. For an Event outside the EU, the Client shall provide all persons of Factorr and third parties engaged by Factorr during the production days with at least accommodation in a four star hotel in a single room including breakfast at a maximum distance of 10 kilometers from the location of the Event. The Client shall provide business class airline tickets for these persons. The Client will also provide these persons with transfers from the airport to the hotel and from the hotel to the location of the Event and back. The Client shall also provide reimbursement for food and drink (sejour) during the stay for the execution of the Assignment.

6.5. For each Event for which Factorr is engaged, Client shall - if applicable - provide Factorr with at least four VIP or backstage passes including two parking passes.

## **7. Engagement of third parties**

7.1. Unless otherwise agreed, assignments to third parties in the context of the execution of the Order shall be given by or on behalf of the Client. At the request of the Client, Factorr may, at the expense

and risk of the Client, act as an agent. The parties may agree on a further to be agreed fee for this.

7.2. If Factorr draws up a budget for third party costs at the request of the Client, this budget shall be indicative. If required, Factorr may request quotations on behalf of the Client.

7.3. If, in the execution of the Order, Factorr procures goods or services from third parties at its own expense and risk in accordance with explicit agreements with the Customer, after which these goods or services are (re)delivered or resold to the Customer, the provisions of the General Terms and Conditions of and/or separate agreements with the supplier shall also apply towards the Customer. Factorr shall enable the Customer to take note of the General Terms and Conditions of and/or separate agreements with the supplier.

7.4. When Factorr, whether or not in the name of the Customer, issues orders or instructions to production companies or other third parties, the Customer shall, at Factorr's request, confirm the approval referred to in clause 3.7 of these General Terms and Conditions in writing.

7.5. The Customer shall not engage third parties without consultation with Factorr if this could affect the execution of the Order as agreed with Factorr. As the occasion arises, the parties shall consult which third parties will be engaged and which work will be assigned to them.

7.6. With regard to the Order, the Customer shall not give (or have a third party give) any order to carry out (or have a third party carry out) any work which is identical or similar to that of Factorr, or to tolerate, adapt, use or edit such work (or have it adapted, used or edited), except with the prior written consent of Factorr.

7.7. The Customer shall not be permitted to assign any rights under an Agreement entered into with Factorr to any third party, other than upon transfer of his/her entire business or with the prior written consent of Factorr.

7.8. Factorr shall not be liable for any errors or defects in Products or Work of third parties engaged by or on behalf of the Customer, whether or not introduced by Factorr. The Customer must address these Parties itself. Factorr can provide assistance in this respect if required.

## **8. Fee and expenses**

8.1. Factorr shall be entitled to a fee in accordance with the Assignment Confirmation. Unless expressly agreed otherwise in writing, this fee shall not depend on the result of Factorr's work. The fee may consist of an hourly rate, a consultancy fee, a fixed amount or any other fee agreed between the Parties. Paragraphs 8.2, and 8.4 to 8.11 of this article shall apply to offers and agreements in which a fixed fee is offered or agreed upon. If no fixed fee is agreed upon, paragraphs 8.3 to 8.11 of this article apply.

8.2. The parties may agree on a fixed fee when the Agreement is concluded.

8.3. If no fixed fee is agreed upon, the fee will be determined on the basis of hours actually worked. The fee will be calculated according to Factorr's usual hourly rates, valid for the period in which the Work is performed, unless a different hourly rate has been agreed upon.

8.4. Any Work or Products that are performed or delivered in addition to or in deviation of at the request of Customer will be charged on subsequent calculation (additional work). Circumstances that may lead to subsequent calculation are: Changes in the specifications, design, program of requirements or wishes approved by the Customer of Factorr, failure to deliver complete, sound and clear data/materials on time or at all, due to a changed or incorrect order or briefing, or due to external circumstances, circumstances in which the Order is to be executed or expectations of Factorr by the Customer which were made known at the conclusion of the Agreement; Shortcomings or defects in products of which lie wholly or partly outside Factorr's sphere of influence; shortcomings in the cooperation of the Customer in the execution of the Agreement. The Customer shall be deemed to have agreed to the additional work and associated costs if the Customer has allowed the performance of the additional work or delivery of more Products to take place without showing that it is not desired.

8.5. The fee and any cost estimates are exclusive of VAT and other

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government levies.

8.6. For assignments with a duration of more than 3 months, the costs due will be charged periodically.

8.7. If Factorr agrees with the Customer on a fixed fee or hourly rate, Factorr is nevertheless entitled to increase this fee or rate.

8.8. Factorr is entitled to pass on price increases if Factorr can prove that after the offer, costs have risen significantly as a result of e.g. increases in tax charges or excise duties, war, strikes, natural disasters, wage increases, tightness in the labor market, raw material prices, currency and/or exchange rate changes, technology and/or rights organizations.

8.9. In addition, Factorr may increase the fee if, during the execution of the work, it appears that the originally agreed or expected amount of work was underestimated to such an extent when the Agreement was concluded, and this is not attributable to Factorr, that Factorr cannot reasonably be expected to perform the agreed work at the originally agreed fee.

8.10. Factorr shall notify the Customer in writing of any intention to increase the fee or rate. In doing so, Factorr shall state the scope of and the date on which the increase will take effect.

8.11. Unless expressly agreed otherwise in writing, overhead costs, travel time, travel and accommodation costs, costs for prints, copies, (printing) proofs, prototypes, and costs of third parties for advice, production and supervision etc. shall be charged separately by Factorr to the Customer. These costs shall as far as possible be specified in advance, except where a mark-up percentage is agreed.

## 9. Payment and collection costs

9.1. Payment of the fee must be made within 14 days of the invoice date, unless otherwise stipulated in the Agreement, in a manner to be indicated by Factorr in the currency in which the invoice was drawn up. Objections to the amount of the invoices do not suspend the payment obligation.

9.2. If the Customer does not meet his payment obligations or does not meet them on time, he shall be in default by operation of law - and without further notice of default - and obliged to pay Factorr the statutory commercial interest.

9.3. The Client shall not have the right to suspend payment of invoices or to set off fees.

9.4. If two Clients have entered into an Agreement with Factorr, they shall be jointly and severally liable for the fulfillment of the payment obligations under this Agreement.

9.5. In case of liquidation, bankruptcy, reorganization, loss of free disposal of assets, sale, seizure or suspension of payments of the Client, the claims of Factorr against the Client shall be due immediately and at once.

9.6. Factorr has the right to have payments made by the Customer go first of all to reduce the costs, then to reduce the accrued interest and finally to reduce the principal sum.

9.7. If the Client is in default in the fulfillment of its (payment) obligations, all reasonable costs incurred to obtain satisfaction out of court shall be borne by the Client. The extrajudicial costs shall in any case amount to 15% of the total amount due (with a minimum of € 1,500). If Factorr has incurred higher costs for collection, the actual costs incurred are eligible for reimbursement. Any judicial and execution costs incurred shall also be recovered from the Customer. Statutory interest shall be due on the due collection costs.

## 10. Duration and Termination

10.1. An Agreement is entered into for the duration of the Work for an Event or for an indefinite period of time.

10.2. Unless agreed otherwise in the Assignment Confirmation, each of the Parties is authorized to terminate a fixed-term Agreement prematurely, subject to one month's notice.

10.3. An Agreement for an indefinite period may be terminated by each of the Parties subject to three months' notice.

10.4. Factorr is authorized to terminate the Agreement with immediate effect (prematurely), if Factorr observes that:

a. the government, a supervisory body, a professional organization or a governing body has introduced new legislation or regulations,

decisions, policies or instructions or has changed existing legislation or regulations, decisions, policies or instructions as a result of which the performance of the Engagement would be wholly or partly illegal or otherwise unlawful;

b. circumstances have changed (including but not limited to changes of control over the Client or over one or more Group Companies of the Client) such that Factorr's performance of the Engagement would be wholly or partly illegal or unlawful.

10.5. Termination of the Agreement has no retroactive effect. In case of termination of the Assignment, the Customer shall owe Factorr a compensation in accordance with the Assignment Confirmation for the Work performed up to and including the termination date, Products delivered as well as other costs incurred for third parties engaged and loss of profit calculated over the (remaining original) duration of the Agreement. Any amounts charged by Factorr in connection with Work already performed and Products delivered before the termination shall be immediately due and payable at the time of termination.

10.6. If Factorr has terminated the Agreement (prematurely), the Customer shall not be entitled to compensation for damages.

10.7. If the Agreement is terminated prematurely by Factorr, Factorr will, in consultation with the Customer, take care of transferring any work still to be performed to third parties, unless the termination is based on facts and circumstances which are attributable to the Customer. If the transfer of the work involves additional costs for Factorr, these will be charged to Customer.

10.8. Furthermore, the Customer shall be obliged to reimburse any costs arising from any commitments with third parties already entered into by Factorr for the fulfillment of the Order, all this without prejudice to the possibility for Factorr to recover any damage resulting from the termination from the Customer.

10.9. Factorr is also entitled, in consultation with the Customer, to stop the Event should events take place as a result of which things and/or persons end up in a threatening or unsafe situation. If the Event is stopped in such a case, this shall, without prejudice to article 15 of these General Terms and Conditions, have no financial consequences for Factorr. This means, among other things, but not exclusively, that this shall not affect Factorr's right to the agreed fee and that Factorr shall not be liable for any damages of the Client or third parties.

## 11. Suspension and Dissolution

11.1. Factorr is authorized to suspend the performance of work and/or delivery of Products if:

A) Customer does not or not fully meet the payment obligations under the Agreement.

B) After the conclusion of the Agreement Factorr becomes aware of circumstances which give good reason to fear that the Customer will not fulfil the payment obligations.

C) At the conclusion of the Agreement, the Customer was requested to provide security for the fulfillment of his obligations under the Agreement and this security is not provided or insufficient.

where any loss resulting from this suspension is at the expense and risk of the Customer. In case of suspension Factorr will also be entitled to deny the Customer the use or access to and/or proceed to take out of service: locations, software, installations and other facilities.

11.2. Furthermore, Factorr is authorized to dissolve the Agreement (have the Agreement dissolved) if circumstances arise which are of such a nature that fulfillment of the Agreement can no longer be required according to standards of reasonableness and fairness, or if other circumstances arise which are of such a nature that unchanged maintenance of the Agreement can no longer be reasonably expected.

11.3. If the Agreement is dissolved, the claims of Factorr against the Customer shall be immediately due and payable. If Factorr suspends the fulfillment of its obligations, it shall retain its claims under the law and the Agreement.

11.4. Factorr shall always retain the right to claim damages.

11.5. In the event of an attributable failure, the parties shall first

give each other written notice of default. The creditor shall allow the debtor a reasonable period of time to still fulfill his/her obligations, or to rectify any errors, replace Products or limit or eliminate damage. The notice of default must contain as detailed a description as possible of the failure. If fulfillment fails within the specified period, 11.6. Without prejudice to Factorr's right to additional compensation, Factorr has the right to rescind the Agreement without further notice of default or judicial intervention in the following (not exhaustively listed) cases, if:

- a. Customer fails to fulfill his payment obligations towards Factorr;
- b. Customer is declared bankrupt;
- c. Suspension of payment is granted to Customer;
- d. Client is obliged to give notice to the tax collector as referred to in Section 36 of the Collection of State Taxes Act 1990;
- e. an attachment under a warrant of execution is levied on Client's goods which has not been lifted - other than by execution - within one month;
- f. Client loses free disposal or all of its assets in any other way;
- g. Client transfers its business to a (legal) person that is not part of the group within the meaning of Section 2:24b of the Dutch Civil Code;
- i. Client ceases its activities or is dissolved.

## 12. Delivery, delivery time, retention of title and risk

12.1. Delivery times mentioned in offers, order confirmations and/or agreements are approximate and therefore not final and do not bind Factorr, unless expressly agreed otherwise in writing.

12.2. Delivery times shall only commence at the time of the conclusion of the Agreement, or if later, upon receipt of all necessary data, information and documents as referred to in Clause 2.8 of these General Terms and Conditions.

12.3. The Customer is not permitted to use the Deliverable for purposes other than those for which it is intended under the Agreement. The Customer is not permitted to make changes to the Delivered without Factorr's written consent.

12.4. Delivery of Products shall take place by delivery in to Customer, delivery at the location of the Event or delivery in a storage area to be designated by Customer.

12.5. Ownership of the Products, notwithstanding the actual delivery or handover, shall not pass to the Customer until he has paid in full all that he owes or will owe to Factorr under any Agreement. Without prejudice to the retention of title, the risk of the Products shall pass to the Customer at the time of delivery. If the Customer does not or not fulfill his payment obligations in a timely manner, Factorr is entitled to take back the (delivered) Products.

12.6. As long as the ownership has not been transferred to the Customer, the Customer shall properly ensure the Products and keep them carefully and as recognizable property of Factorr.

12.7. The risk of the Products shall pass to the Customer after delivery. The Customer shall then be responsible for (the consequences of) the use of, and shall be liable for any damage to and/or loss of the Products.

12.8. The Work shall be deemed to have been (a) delivered and/or the Products shall be deemed to have been delivered (a) at the moment when the Client has approved the Work and/or the Products, (b) the Client has taken the Products into use and/or (c) Factorr has notified the Client that the Work has been completed and the Client has not notified Factorr within a reasonable time whether or not the Work has been approved.

12.9. Factorr shall not be liable in case of loss theft and/or damage of Products delivered to the Customer, belonging money and other goods.

## 13. Intellectual Property

13.1. The Customer is prohibited from stripping any items owned by Factorr of any trademarks or trade names or other notices.

13.2. When creating a website, Factorr shall not be obliged to make the source code, and the development documentation available to the Customer.

13.3. If third parties seize Factorr's property at the expense of the Customer, the Customer shall promptly notify Factorr in writing with

attachment documents.

13.4. All intellectual property rights to the Deliverable arising from the Agreement shall belong to Factorr. Insofar as such a right can only be obtained by filing or registration, only Factorr shall be authorized to do so, unless otherwise agreed.

13.5. The Parties may agree that all or part of the IP Rights shall be transferred to the Customer. This transfer and any conditions under which the transfer takes place shall always be recorded in writing. Until the moment of transfer and payment of the agreed remuneration for it, a right of use is granted as regulated in article 14 of these General Terms and Conditions.

13.6. Factorr shall at all times have the right to mention or remove his/her name on, near, or in publicity around the Delivered - in the manner customary for that Delivered. The Customer shall not be permitted, without prior consent of Factorr, to publish or reproduce the Delivered without mentioning the name of Factorr.

13.7. Unless otherwise agreed, the (originals of the) Deliverables (such as designs, design sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, models, molds, (partial) products, films, (audio and video) presentations, source codes, source files and other materials or (electronic) files etc.) delivered by Factorr in the context of the Order shall remain the property of Factorr, irrespective of whether they have been made available to the Customer or to third parties. The Parties may agree on a further to be agreed fee for the transfer of the Delivered.

13.8. After completion of the Order, the Customer and Factorr shall have no retention obligation towards each other with respect to the Delivered, unless otherwise agreed.

13.9. Factorr shall be free to use or copy, further elaborate or use acquired or increased knowledge, know-how experience, competencies and skills, ideas, general event material for other Assignments or other purposes than the Deliverable.

## 14. License

14.1. Wanneer de Opdrachtgever volledig voldoet aan zijn/14.1. When the Customer fully complies with his/her obligations that follow from the Agreement with Factorr, he/she acquires the right to use (license) the Delivered in accordance with its intended use. If no agreements have been made about the destination, the right of use shall be limited to that use for which the Agreement was (apparently) granted. The right of use is exclusive and non-transferable, unless the nature of the Agreement dictates otherwise or if otherwise agreed.

14.2. If the Delivered is partly subject to rights of third parties, Parties shall make additional agreements how the use of the Delivered will be arranged.

14.3. Without written consent from Factorr, the Customer shall not have the right to modify, use or (re)use or perform the Delivered in any other way than agreed, or to have this done by third parties. Factorr may attach conditions to this permission, including the payment of an additional fee.

14.4. In case of any broader or other use not agreed upon, including modification, mutilation or impairment of (drafts of) the Deliverable, Factorr shall be entitled to a compensation for infringement of his/her rights of at least three times the agreed fee, or at least a compensation that is proportionate to the infringement committed, without losing any other rights.

14.5. Without prior permission from the Designer, the Client is not permitted (any longer) to use the Deliverable or to further develop it or have it further developed, and any right of use (license) granted to the Client in the context of the Assignment shall lapse, unless the consequences are contrary to reasonableness and fairness:

- i. from the moment that the Client fails to fulfill or fails to fully fulfill its (payment) obligations under the Agreement or is otherwise in default;
- ii. if the Agreement is dissolved;
- iii. in case of bankruptcy of the Client.

14.6. The Customer shall make press photographs and/or video material available to Factorr free of charge on which (the designs) of Factorr's Deliverable are visible. Factorr shall, with due regard

to the interests of the Customer, be free to use the Delivered, free of charge, for its own publicity, acquisition of orders, promotion, including use on the internet, websites and social media, competitions and exhibitions, etc.

## **15. Liability and indemnification**

15.1. Factorr accepts the legal obligations to compensate for damages to the extent shown in this Clause 15.

15.2. The Customer may no longer rely on a defect in the Delivered if he has not complained about it to Factorr in writing within fourteen days after he has discovered or should have discovered the defect.

15.3. The total liability of Factorr due to any attributable failure of Factorr in the fulfillment of an Agreement shall be limited to the amount paid out by the insurance company in a particular case.

15.4. If the insurance company does not pay out, the liability of Factorr shall be limited to direct damage and to an amount of the invoice value of the Delivered that gave rise to the damage. If the Agreement lasts longer than six months, the liability shall be limited to the invoice value in the preceding six months.

15.5. "Direct damage" as referred to in Clause 15.3 shall mean exclusively:

(i) the reasonable costs which the Customer would have to incur in order to have Factorr's Delivered Product conform to the Agreement. However, this damage shall not be compensated if Customer has rescinded the Agreement.

(ii) reasonable costs incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these conditions;

(iii) reasonable costs incurred to prevent or limit damage, to the extent that the Principal demonstrates that these costs have resulted in a limitation of direct damage within the meaning of these terms and conditions.

15.6. A connected series of attributable failures shall count as one attributable failure.

15.7. Factorr and Auxiliary Persons shall never be liable for limitations in the use and loss of data, which loss could have been prevented by the Customer by adequately making a proper backup and storage methods in accordance with usual market practices, commercial agreements, goodwill, turnover or profit (regardless of whether this is to be regarded as direct or indirect damage or consequential damage) nor for any other indirect or consequential damage in connection with the Products or Work.

15.8. Liability of Factorr for indirect damage, including but not limited to consequential damage, immaterial damage, reputation damage, lost profits, missed savings and damage due to business stagnation, is excluded.

15.9. In no case Factorr accepts liability for any damage suffered by the actions, omissions or actions of third parties, such as suppliers and visitors to events.

15.10. The Customer shall be liable for any damage inflicted by the Customer or third parties to items lent and/or rented by Factorr to the Customer.

15.11. If the Customer provides Factorr with information carriers, electronic files or software etc., the Customer shall indemnify Factorr against any damage caused by these files, for example by, but not limited to, viruses and defects.

15.12. Factorr is not liable for the execution of advice or instructions by or on behalf of the Customer.

15.13. Factorr shall not be liable for damages resulting from or related to incorrect instructions, incorrectly prescribed material type, incorrect information and/or other errors given by the Customer or third parties engaged by the Customer. Information includes technical information, designs, specifications, dimensions, materials, models, shapes and colors.

15.14. Factorr and Auxiliary Persons shall not be liable for Damage resulting from the provision of false, misleading or incomplete information or Documentation by the Customer or third parties, failure to comply with laws or regulations in the field of the protection of privacy and of Personal Data which fall under the responsibility of the Customer, or the withholding of information or documentation

or the misrepresentation of facts with respect to information or documentation by others than Factorr and Auxiliary Persons.

15.15. The Client shall indemnify Factorr against any third party claims relating to intellectual property rights used in the performance of the Agreement on materials or data provided by the Client.

15.16. Any liability shall lapse by the lapse of one year from the moment the Agreement has been terminated by completion of the work, delivery of the Products, termination or dissolution.

## **16. Return of items made available**

16.1. If Factorr has made goods available to the Customer in the performance of the Agreement, the Customer is obliged to return the delivered goods within 8 days after completion of the work (unless otherwise agreed) in their original state, free of defects and in full. If the Principal fails to fulfill this obligation, all resulting costs shall be borne by the Principal. If auxiliary persons have made items available to the Client, Article 16.1 also applies.

16.2. If, for whatever reason, the Client still remains in default with the obligation mentioned under 16.1 after being warned to do so, Factorr has the right to recover the resulting damage and costs, including replacement costs, from the Client.

## **17. Samples and Models**

17.1. If a sample or model has been shown or provided to the Client, it is presumed to have been provided as an indication only, unless it is expressly agreed that the product to be delivered will correspond with it.

## **18. Insurance**

18.1. Factorr is covered by comprehensive insurance in a number of areas, including business liability insurance and business travel insurance.

18.2. Customer is obliged to take out one or more sound insurance policies to cover the damages and claims mentioned in the Agreement and these General Terms and Conditions, including business liability insurance with a minimum insured sum of €2,500,000 and business travel insurance.

18.3. At Factorr's first request, Customer shall provide Factorr with proof of insurance as well as proof of payment of the insurance premiums.

## **19. Transfer**

19.1. Except with the express prior written consent of the Client, neither Party may assign, in whole or in part, the rights or obligations arising from an Engagement, it being understood that Factorr may, however, assign its rights or obligations under the Engagement to its legal successors or another Factorr Entity. The parties shall neither directly nor indirectly assign Claims arising from the Engagement to third parties.

## **20. Personnel recruitment ban**

20.1. During the term of the Agreement as well as for one year after termination thereof, the Client is prohibited from prohibited to directly or indirectly approach employees, workers or freelancers of Factorr (or its suppliers) who have been involved in the execution of the Agreement, to employ them, or on the basis of an agreement of assignment or otherwise to have work done and/or advice given outside Factorr.

20.2. In case of violation of this provision, Customer shall forfeit to Factorr a penalty equal to one hundred percent (100%) of the annual salary of the relevant employee, worker or self-employed person in his/her new position.

20.3. If the Client has to pay a fine, this shall not affect Factorr's other rights, including the right to performance, damages and dissolution. If the Customer has to pay a penalty, Factorr shall only be entitled to damages to the extent that they exceed the penalty.

## **21. Force majeure**

21.1. Force majeure shall mean: any circumstance independent of the will of Factorr and the third parties hired by it, as a result of which the fulfillment of Factorr's obligations towards Customer cannot be required from Factorr in whole or in part.

21.2. Force Majeure within the meaning of Clause 21.1 of these Terms and Conditions includes, without limitation;

- Non-attributable failure of Factorr or of third parties which Factorr makes use of in the execution of the Agreement, such as auxiliary persons and other contractors of Factorr;
- Including (but not limited to) strikes, work lockouts, illness, import/export/transit bans, machine breakdowns, transportation problems, traffic disruptions, energy disruptions, delivery problems, changed regulations, governmental measures, non-performance of obligations by suppliers (such as energy companies), natural disasters, extreme weather conditions, fire, pandemic, epidemic terrorism and war and/or threat of war, hacks, cyber-attacks or other technical failures and circumstances resulting therefrom, such as government interventions including quarantine measures, which reasonably prevent either Party from complying and which result in delays, as well as delays or shortcomings in suppliers and/or other third parties engaged in the execution of the Agreement.

21.3. In the event of force majeure, Factorr shall not be liable and shall be relieved of its obligation to fulfill the Agreement for as long as the relevant impediment persists. If the period in which fulfilment of the obligations by Factorr is not possible due to Force Majeure lasts longer than two months, then both Factorr and the Customer shall be entitled to rescind the Agreement in whole or in part, without the Customer being entitled to any (damage) compensation from Factorr on that account.

21.4. In the event of force majeure, Factorr shall be entitled to that part of the fee for the work and Products delivered by him/her and to reimbursement of costs which Factorr has already incurred or which are unavoidable, e.g. in connection with orders and assignments to third parties which have already been made and which can no longer be cancelled without an obligation to pay damages.

## 22. Confidentiality

22.1. Parties are obliged to keep confidential all confidential information, facts and circumstances, which come to the knowledge of the other party in the context of the Order, from each other or from another source, of which it can be reasonably understood that disclosure or communication to third parties could harm Factorr or the Client.

22.2. Factorr shall be free to include the Delivered for promotional purposes in its portfolio and to depict it on its website or in other promotional material.

22.3. With respect to confidential information the Parties undertake to take all reasonable measures for safe custody or storage in respect thereof.

22.4. Both Parties are obliged to keep confidential all confidential information they have obtained from each other or from other sources in the context of the Agreement. Information is considered confidential if it has been communicated by the other Party or if it arises from the nature of the information. The parties shall bind their employees, or third parties involved in the execution of the Engagement, to the same duty of confidentiality with respect to these facts and circumstances originating from the other party.

22.5. Confidential information shall not include information that:

- A) is already publicly accessible (including information provided to a government agency and publicly accessible) other than as a result of a breach of this confidentiality obligation by the receiving party,
- B) has been provided to the receiving party by a third party;
- C) came to the knowledge of the receiving Party without a duty of confidentiality prior to disclosure by the providing Party to the receiving Party; or
- D) was developed by the receiving Party itself independently of the provision of that information by the providing Party.

22.6. If, on the basis of a statutory provision or a judicial decision, Factorr is obliged to disclose confidential information to third parties designated by law or by the competent court, and Factorr cannot in this respect invoke a legal or by the competent court recognized or allowed right to refuse to give evidence, Factorr is not obliged to pay damages or compensation and the Client is not entitled to

dissolve the Agreement on the basis of any damage caused by this. 22.7. In case of violation of any obligation of the Customer pursuant to the provisions of article 22, the Customer shall owe Factorr, without any notice of default being required, an amount of €5,000 (five thousand euros) for each violation, to be increased by €1,000 (one thousand euros) for each day that the violation continues, this without prejudice to any other right to which Factorr is entitled, such as the right to compensation.

## 23. Privacy/processor agreement

23.1. If Factorr has to process personal data of (customers of) the Client in the context of the Work to be performed, Factorr shall be considered as a "processor" and the Client as a "controller" within the meaning of the General Data Protection Regulation (AVG) and a processor agreement shall be concluded.

## 24. Complaints and guarantees

24.1. The Customer shall be obliged to notify Factorr in writing of any defect relating to the Delivered without delay but at the latest within 3 working days after the Customer has discovered or reasonably should have discovered the defect. If the Customer fails to do so, Factorr shall be deemed to have fulfilled its obligations and the Customer can no longer invoke a defect in the performance. The complaint or notice of default should contain as detailed a description of the shortcoming as possible, so that Factorr is able to respond adequately.

24.2. If the Customer files a complaint in a timely manner, this shall not suspend his payment obligation. The Customer shall, in that case, also remain obliged to purchase the Products or Services and to pay.

24.3. In case of a justified complaint, Factorr shall have the choice between repairing or replacing the Delivered Product free of charge. The Customer shall give Factorr the opportunity to do so. If repair or replacement is not possible or desirable, the Agreement will be dissolved at the request of the most diligent party.

24.4. Unless the Parties have agreed otherwise, Factorr warrants its performance for a period of six months after delivery of the Products and/or completion of the Work.

24.5. If Factorr has purchased Products from third parties and/or has outsourced work to third parties, the warranty as described in clause 24.4 shall be limited to the warranty provided to Factorr by these third parties to the extent that it is less than six months.

24.6. If Factorr has purchased a Product on behalf of the Customer from a supplier or manufacturer and this Product is defective, the Customer shall first turn to the supplier or manufacturer with reference to the warranty conditions of the supplier or manufacturer. Factorr shall provide the purchase order and purchase invoice to the Customer for the purpose of this recourse.

## 25. Limitation period/ statute of limitations.

25.1. Any legal claim on Factorr or other authority of the Customer shall lapse one (1) year after the termination and/or completion of the performance of the Agreement to which the claim relates, subject to those facts on which the legal claim is based that could not have been discovered within this period. In such case, the relevant legal claim shall lapse one year after the moment when the said fact could or should have been ascertained.

## 26. Applicable law, choice of forum and disputes

26.1. The court in Factorr's place of business has exclusive jurisdiction to take cognizance of disputes, unless otherwise required by mandatory law. Nevertheless, Factorr has the right to submit the dispute to the court with jurisdiction according to the law.

26.2. The parties shall only resort to court after they have made every effort to settle a dispute by mutual agreement.

26.3. Any agreement between Factorr and the Customer shall be governed by Dutch law.