



General terms & conditions

Martin and Lewis BV.

V.10.23 – 2020

1. Applicability, general

1.1 These terms and conditions apply to all quotations, offers and agreements made between Martin and Lewis as executor and its clients with regards to in implementation of any performed judicial- and factual operations.

1.2 A client constitutes: the contracting party working with Martin and Lewis as defined in article 1.1 of these terms and conditions.

1.3 These terms and conditions explicitly exclude the applicability of the client's own terms and conditions.

1.4 Changes in these terms and conditions can only come into effect after written consent by a legally authorized Martin and Lewis employee.

2. Establishment of the agreement

2.1 All Martin and Lewis quotations and offers are none-binding and may be revoked within 5 (five) days after the client's approval.

2.2 Agreements between Martin and Lewis and its clients come into effect upon the client's written approval of a quotation. within a reasonable timeframe or, if no quotation is presented, upon Martin and Lewis's written acceptance of a client's request.

2.3 Deviations from previously approved quotations and offers or additional requests are only binding after written confirmation from Martin and Lewis.

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2.4 All prices and rates quoted by Martin and Lewis exclude VAT, other taxes, rights and transportation costs. These costs reflect the situation as known at the start of the agreement. In case of unforeseen third price increases, Martin and Lewis reserves the right to increase the original quotation accordingly.

2.5 Quotations and offers based on an estimated scope of work and associated estimated time spent by Martin and Lewis constitute an indication of cost and are none-binding.

2.6 Agreements between Martin and Lewis and its clients have a limited term unless parties agree otherwise in writing.

2.7 Limited term agreements constitute a minimum duration of six (6) months. Upon reaching the end date, the agreement will automatically be renewed for a new six (6) month period without prior notice. Taking into consideration a three (3) month notice period, parties can terminate the agreement in writing at all times.

2.8 Agreements without a corresponding written quotation and/or confirmation are deemed binding after Martin and Lewis has started execution of projects governed by these terms and conditions..

3. Payment

3.1 Unless agreed otherwise Martin and Lewis invoices are payable within 14 days. Late payment of invoices may be deemed as failure to comply without Martin and Lewis having to provide a deficiency letter or default.

3.2 Martin and Lewis reserves the right to request (additional) financial guarantees at any time prior to or during a project. Martin and Lewis also reserves the right to suspend work until the client has complied with their request for (additional) financial guarantees. Should a client fail to comply with such request, then Martin and Lewis is entitled to terminate the agreement and to demand immediate payment of any outstanding amounts.

3.3 In case of non-compliance, and notwithstanding its rights to payment, Martin and Lewis reserves the right to suspend or cease work on the client's projects.

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3.4 Without prejudice to suspension and termination of this agreement under law or Martin and Lewis' terms and conditions, Martin and Lewis reserves the right to suspend work, until any agreed advance payments have been made in full by the client and/or his financial obligations towards Martin and Lewis have been met and/or financial guarantees have been given in writing. Failure to comply to these agreements within a reasonable amount of time gives Martin and Lewis the right to terminate the agreement and to hold the client liable for any damages incurred.

3.5 Exceeding a payment term may result in a contractually agreed interest rate of 2% per month, or part of the month, as well as extrajudicial collection costs against 15% of the remaining invoiced amount with a minimum of € 250.

3.6 Clients waive their right to settle any future claims against outstanding invoices. Under no circumstances can clients resort to a settlement of their commitments to Martin and Lewis or deduct from outstanding payments.

3.7 Should parties agree to have work executed in phases, then Martin and Lewis reserves the right to charge the associated costs upon completion of activities executed during the corresponding phase. Regardless of the cause, any discontinuation, suspension or delay in excess of two (2) weeks shall be deemed a partial completion of the agreed activities. Consequently, Martin and Lewis are entitled to charge to the client any and all completed activities up until this time against applicable rates as well as any and all third party costs incurred by Martin and Lewis on the client's behalf, minus any costs that may have been invoiced to the client under article 3.9.

3.8 All client payments are settled against interest payments and late payment costs before being settled against the longest outstanding payment due.

3.9 Unless agreed otherwise in writing, Martin and Lewis shall invoice 75% of a project's total costs upon approval of the agreed quotation and prior to commencing work. The remaining 25% will be invoiced upon completion of the project or, in case of phased delivery, proportionately upon completion of a specified project phase.

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3.10 Agreed monthly retainer fees shall be invoiced to the client in full on the first day of a given month with payments due no later than the 15th of that same month.

3.11 In case of an agreed performance based agency compensation, payments shall be made in accordance with separately agreed written terms and conditions. Any work carried out by Martin and Lewis that is not governed by the performance based terms and conditions shall be charged to the client against a fixed rate of €100 per hour, multiplied by the number of hours spent on the associated project.

In case the client is prevented from meeting its financial obligations towards Martin and Lewis, all associated costs and damages incurred will be charged to the client by Martin and Lewis. In accordance with "Aanbeveling II van het Rapport Voorwerk II" and without prejudice to Martin and Lewis' right to charge to the client the actual costs made and time spent, should these costs exceed the amounts recommended in the "Aanbeveling II van het Rapport Voorwerk II".

4. Termination

4.1 Without prejudice to the right to claim damages in cases where a client does not meet its obligations towards Martin and Lewis as described in these terms and conditions, or in cases where the client defaults, Martin and Lewis reserves the right to terminate the agreement with immediate effect, by means of a written termination announcement. Any outstanding invoices will become payable immediately

4.2 In addition to the situation described in article 4.1, Martin and Lewis has the right to terminate the agreement with immediate effect in the following situations:

- the client files for Chapter 11 or suspension of payments
- the court has granted Chapter 11 or suspension of payments to the client
- the client files for bankruptcy
- the client is declared bankrupt
- the client transfers ownership, liquidates or ceases (part of) its operations
- a client's assets are repossessed or the client forecloses

4.4 In case of termination of this agreement under article 4.2, any outstanding invoices and amounts, plus associated interest, damages and costs become due for immediate payment.

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5. Delivery

5.1 Reported delivery lead times or deadlines by which Martin and Lewis should have completed activities are non-binding unless explicitly agreed in writing by both parties. Martin and Lewis reserves the right to seek the assistance of third parties to complete the agreed assignments.

5.2 In cases of late delivery or subpar performance of agreed activities by Martin and Lewis, client is to send a written notice of default addressed to Martin and Lewis. Should Martin and Lewis fail to deliver before the deadline described in the notice of default, then client is entitled to terminate the agreement. Barring gross negligence or malice, Martin and Lewis may not be held liable for damages. Termination of the agreement by the client is not applicable in cases of force majeure.

5.3 In case Martin and Lewis expects they will not be able to meet an agreed deadline; they must notify the client immediately. Barring excessive late delivery, in which case the client has the right to terminate the agreement, the client's obligations towards Martin and Lewis remain unchanged.

5.4 The client's obligations towards Martin and Lewis remains unchanged in cases of late or excessive late delivery as a result of force majeure or the client's late delivery of materials and/or information that Martin and Lewis may require to complete work and ensure timely delivery. Under no circumstances will the client be entitled to receive damages.

5.5 Within the confines of what is deemed acceptable in the advertising industry, Martin and Lewis reserves the right to deviate from agreed amounts and/or methods of execution of its services. Such instances do not allow the client compensation for differences nor the right to return goods delivered by Martin and Lewis. Nor do they allow the client the right to demand damages, nor the right to terminate the agreement. In cases where Martin and Lewis have produced or developed bespoke materials or ideas for the client, the client is bound to accept a variance of 20% above or below the agreed amounts or numbers.

5.6 Martin and Lewis reserve the right to alter the composition of agreed deliverables and methods of production to comply with applicable laws and regulations.

5.7 Martin and Lewis reserve the right to deliver goods or services in partial deliveries. All payment terms will remain unchanged in cases of partial delivery of service or materials.

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5.8 The client accepts that change requests or changes in the scope after a project has been started, may have an impact on delivery dates. In case of such requested changes, Martin and Lewis will make the necessary corresponding adjustments to delivery dates, methods, should the situation require such changes. Additional work resulting from such changes, may be viewed as an additional project. Martin and Lewis will view such changes as a mutually agreed and new assignment and will confirm this to the client in writing. Upon any change request, Martin and Lewis reserves the right to send to the client an invoice covering all actual costs incurred by Martin and Lewis up until the date of a change request and without prejudice to any continuing obligations the client has with regards to agreed project fees, payment terms and all other agreements made with regards to billing and payments.

6. Liability

6.1 Under the terms and conditions, Martin and Lewis can only be held accountable for direct damages up to the maximum amount of the agreed price. Martin and Lewis may not be held accountable for loss of profits, business interruption, consequential damages and other financial disadvantages, irrespective of their origin, including damages caused by incorrect advice and/or delays.

6.2 For the duration of agreed projects, Martin and Lewis reserves the right to contract third party suppliers and sub-contractors., Martin and Lewis will vouch for these third party suppliers in the same way it does for its own employees.

6.3 The client is bound to protect Martin and Lewis from any third party claims related to this agreement.

6.4 The client has the obligation towards Martin and Lewis to accept responsibility for any damages, by virtue of the agreement upon activities trusted to Martin and Lewis, and for equipment trusted to Martin and Lewis by the constituent. Furthermore, Martin and Lewis can hold the constituent accountable for providing incorrect or belated instructions and untimely availability of affairs at the agreed upon time and fault or negligence in general, from the constituent's subordinates and/ or commanded third parties.

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6.5 The client is responsible for verifying the rightful use and intellectual property rights of any materials transferred to Martin and Lewis. In case client wants Martin and Lewis to make use of stock images or other assets downloaded from the internet, the client is responsible for payment of corresponding usage rights for these materials.

7. Intellectual property

7.1 Unless agreed otherwise, all rights for intellectual property designed and produced by Martin and Lewis belongs to Martin and Lewis.

7.2 Intellectual property rights will only be transferred to the client after explicit consent from Martin and Lewis and upon full and timely payment of all associated costs and invoices. Unless agreed otherwise, such rights are transferred solely for the client's marketing purposes in the Netherlands and are non-transferable without Martin and Lewis' explicit written consent

7.3 Credits related to intellectual property rights related to materials produced may not be deleted or altered by the client.

7.4 Martin and Lewis is entitled to display the client's name in any advertising or work produced in corporate presentations or promotions for their own marketing purposes.

7.5 The client confirms that all materials covered by this agreement do not infringe on any third party's intellectual property rights and will protect Martin and Lewis from liability.

8. Reservation of title

8.1 Martin and Lewis will transfer proprietary rights of physical deliverables (e.g. POS materials) once all financial obligations, including any existing outstanding financial commitments towards Martin and Lewis, have been fulfilled by the client.

8.2 Licenses and user rights granted to the client by Martin and Lewis will only come into effect after the commitments mentioned under article 8.1 have been settled in full. Such rights can only be derived after all financial obligations stated in paragraph 8.1 have been settled in full.

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8.3 Until all financial obligations towards Martin and Lewis have been met in full, materials delivered by Martin and Lewis may only be transferred to third parties for continuation of the client's normal conduct of business. Furthermore, only limited rights may be established that must have the written consent of Martin and Lewis.

8.4 All drawings, models, cost estimates, offers and other materials transferred at the client's request remain the property of Martin and Lewis and must be returned to Martin and Lewis upon first request. Failure to comply may result in payment of the value as determined by Martin and Lewis to Martin and Lewis.

9. Additional client obligations

9.1 The client agrees to provide Martin and Lewis with all necessary information, materials and cooperation (including providing accurate and complete information, making competent employees available, offering adequate workspace, good equipment and materials). To allow Martin and Lewis to execute the agreed activities to the best of its abilities.

9.2 Both client and Martin and Lewis agree to refrain from disclosing any information and/or know-how Martin and Lewis either receives from or shares with the client.

10. Advertising

10.1 Client agrees to immediately check the quality of the deliverables and collateral materials produced by Martin and Lewis upon completion and/or delivery of work, without prejudice to any remaining work to be executed and/or delivered by Martin and Lewis. Client also agrees to notify Martin and Lewis of any complaints in writing within 10 working days after completion or delivery of the deliverables. Failure to notify Martin and Lewis of complaints within this 10 day period will constitute satisfactory delivery and acceptance of the agreed deliverables.

10.2 Complaints do not constitute a client's right to delay its financial commitments toward Martin and Lewis. Martin and Lewis has the right to deliver an alternative form of service within a reasonable timeframe after a client's complaint has been received without entitling termination of the agreement with Martin and Lewis.

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11. Force Majeure

11.1 The following situations will constitute force majeure:

- A strike within the Martin and Lewis organization;
- Untimely or inferior delivery by third party suppliers subcontracted by either Martin and Lewis or the client to work on an agreed project.
- A strike at third party suppliers
- Natural disasters (including fire, water damage, storm damages, earthquakes;)floods)
- Riots, war, theft and any situation outside of Martin and Lewis' control preventing Martin and Lewis, to meet its obligations towards the client.

11.2 In cases of force majeure Martin and Lewis is not bound by the agreed delivery terms.

11.3 In case of force majeure the client is not entitled to terminate the agreement.

11.4 In situations where the force majeure exceeds a period longer than sixty (60) days both parties are relieved of their mutual obligations towards each other. In this case Martin and Lewis can claim payment for work executed prior to the start of the force majeure situation. In such instances Martin and Lewis can not be held liable for damages incurred by the client or third parties.

12. Applicable law and authorized court

12.1 These terms and all associated contracts are governed by Dutch law

12.2 In case of dispute ruling will be brought before the court in the legal district of Amsterdam.

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