

Emotion Studio Terms & Conditions

1. Applicability

- 1.1 These terms & conditions are applicable to all legal relationships between Emotion Studio and its counter parties on the basis of which Emotion Studio provides services to a client. Services provided by Emotion Studio entail research, consultancy, advice, presentations, workshops, training and the development of (physical or digital) products.
- 1.2 Departures from and additions to these terms & conditions are only valid if agreed by both parties in writing. The applicability of purchasing conditions or other terms and conditions of the client is expressly rejected.
- 1.3 If any provision of these terms & conditions is void or voidable or is or becomes entirely or partially invalid for any reason, the other provisions of these terms & conditions will remain in full force and effect.
- 1.4 Emotion Studio reserves its right to modify the provisions of these terms & conditions. These new terms & conditions shall enter into effect and become part of the agreement sixty (60) days after the client has been informed of the modification.

2. Offers and agreements

- 2.1 All offers, proposals and quotations of Emotion Studio remain valid for a period of 60 (sixty) days, unless otherwise specified in the specific offer or quotation.
- 2.2 An agreement is constituted when it is signed by both parties or when Emotion Studio, with consent of the client, has started with the execution of the services agreed upon .
- 2.3 Each Agreement qualifies as a service provision agreement (*overeenkomst van opdracht*) in the sense of article 7:400 of the Dutch Civil Code. Unless specifically provided, no employment agreement is constituted between parties.

3. Provision of services

- 3.1 Emotion Studio will provide its services on the basis of a best efforts obligation, unless and to the extent that Emotion Studio has expressly guaranteed a (sufficiently determinable) result in the written agreement.
- 3.2 The client is itself responsible for the use or further implementation of the (results of) the services provided by Emotion Studio after the conclusion of Emotion Studio's involvement.
- 3.3 In case the client requires a PO-number (Purchase Order number) for the execution of services, Emotion Studio is entitled to postpone the execution of said services until the moment the client has created and communicated the PO-number.
- 3.4 If the services are rendered in phases, Emotion Studio will be entitled to postpone the commencement of work of any phase until the client has approved the results of the preceding phase.
- 3.5 Should the client wish or require amendments or additions to agreed services after the conclusion of the agreement, the terms for such additional or amended services will be discussed and agreed upon between the parties.
- 3.6 The turnaround time of an agreement is dependent on various factors and circumstances, such as the quality of the data and information provided by the client. Stated delivery or completion dates are therefore not regarded as strict deadlines, unless the Parties have expressly agreed otherwise in writing.
- 3.7 The client will appoint a contact person for the duration of the work by Emotion Studio, with the necessary experience, specific subject knowledge and insight into the desired objectives of the client.
- 3.8 The client will not be entitled during the execution of the agreement nor for a period of one year after the end thereof to employ an employee of Emotion Studio who is (or was) involved in the execution of the agreement or to otherwise use his or her services, directly or indirectly, unless Emotion Studio has expressly consented thereto in writing. In case of non-performance, a penalty shall be payable by the Client of the annual salary that the employee in question is paid at that moment by Emotion Studio.
- 3.9 If employees of Emotion Studio carry out work at the location of the Client, the Client will without charge ensure the provision of the facilities reasonably required by these employees to properly carry out the services and that will meet all requirements relating to working conditions that are legally or otherwise applicable.

4. Delivery of products

- 4.1 In case the service performed by Emotion Studio to the Client includes the development, production and delivery of one or more (physical or digital) products, the following conditions apply.
- 4.2 Emotion Studio guarantees the physical soundness of the product at the moment of delivery. Emotion Studio does not guarantee that (use of) the product will lead to the envisioned or desired results that parties have discussed in connection with the agreement.
- 4.3 If a product proves to have been physically defective, the client will Inform Emotion Studio as soon as possible. Emotion Studio will then in consultation with the client elect either:
 - a. to repair the object;
 - b. to replace the object;
 - c. to credit the client for a proportionate part of the invoice.
- 4.4 A complaint as referred to in article 4.3 shall not suspend the client's obligation to pay the agreed price for the products.
- 4.5 As all products of Emotion Studio are custom-made for clients, the client does not have the right to return a non-defective product after delivery, or to withdraw the order of a product, from the moment that the agreement has been entered into.
- 4.6 The client agrees to indemnify Emotion Studio from any claims, losses, damages, liabilities, including legal fees and expenses, from third parties arising out of the use or misuse of a product.
- 4.7 After delivery, Emotion Studio remains the owner of the products delivered for as long as:
 - a. the client fails or will fail in the fulfillment of its obligations pursuant to the agreement or any other agreement between the same parties;
 - b. the client has not paid any claims arising from non-fulfillment of those agreements, such as compensation for damages, penalties, interest and costs.

5. Obligations and warranties of the client

- 5.1 The client will make available to Emotion Studio (upon request by Emotion Studio) all data, materials or employees and give all cooperation necessary for the execution of the agreement.
- 5.2 Unless this is explicitly agreed otherwise, the client bears the risk for the selection, the use and the application of the information data, and materials within his organisation which are necessary for the performance of the services by Emotion Studio and is responsible for carrying out safety procedures and proper systems management.
- 5.3 The client guarantees that there are no rights of third parties which preclude making information, data or other materials available to Emotion Studio for the purpose of performing the services. When Emotion Studio uses data supplied by the Client for the performance of Services, the Client is responsible for compliance with privacy regulations. The client indemnifies Emotion Studio against all damage and costs which Emotion Studio may suffer or incur due to a claim by a third party based on the allegation that such making available, use, adaptation, installation or incorporation infringes any right of that third party.
- 5.4 The client indemnifies Emotion Studio against all damages and costs, including — but not limited to — damages resulting from (alleged) infringements of intellectual property and ancillary rights, claims by third parties, collection costs, the statutory commercial interest, loss of profits, penalties incurred and legal fees, which Emotion Studio incurs or which result from (i) attributable breach of the agreement by the client, (ii) any action of the client in relation to the performance of this agreement or (iii) an unlawful act.
- 5.5 If the client does not promptly or fully comply with the obligations stated in this article, Emotion Studio will be entitled to suspend the implementation of the agreement (in full or in part). This will be without prejudice to the right of Emotion Studio to exercise any other legal and/or agreed right. As long as the client does not comply with the obligations stated in this article, Emotion Studio cannot default on its own obligations under the agreement.

6. Price and payment

- 6.1 Unless stated otherwise all amounts mentioned by Emotion Studio will be in Euro and exclusive of turnover tax (VAT).
- 6.2 Unless agreed otherwise between parties, Emotion Studio shall invoice 50% of the total amount of the agreement prior to the provision of its services and Emotion Studio is entitled to suspend the commencement of the provision of services until reception of this payment. Emotion Studio shall invoice the remaining 50% after the conclusion of its services.
- 6.3 Payments to Emotion Studio must be made within 30 (thirty) days of the invoice date, and without any entitlement to discount and/or set-off, unless otherwise agreed in writing or stated on the invoice.
- 6.4 Emotion Studio reserves its right to transfer its claims to payment of compensation to a third party.

7. IP rights

- 7.1 All intellectual property rights vested in Emotion Studio or the client before conclusion of the agreement shall not be transferred to the other party, unless specifically agreed otherwise in writing.
- 7.2 Unless the parties have otherwise expressly agreed in writing, the intellectual property rights regarding all test results, advices, reports, and other results of the services specifically developed by Emotion Studio for the client shall be vested in the client. Emotion Studio shall assign to the client all intellectual property rights that Emotion Studio will accrue as a result of the services upon receipt of full payment of the client for the services.
- 7.3 After assignment of the intellectual property rights as laid down in the previous paragraph, the client grants Emotion Studio a royalty-free right to use the results of the services for promotional and internal business purposes only.
- 7.4 The assignment of intellectual property rights as laid down in this article expressly does not apply to materials that are not the result of the services specifically provided for the client, such as — among other materials — Emotion Studio's models, methods, look and feel, templates, questionnaires, surveys, software, platforms, and (digital) tools.
- 7.5 The client will not be permitted to make changes or additions (or cause such to be made), to use or to allow third parties to use the materials protected by Emotion Studio's intellectual property rights.
- 7.6 Emotion Studio may introduce technical facilities (or cause such facilities to be introduced) for the protection of the software, files, equipment or materials supplied by Emotion Studio to the client regarding an agreed restriction to the content or the duration of the right of use. The client will not be permitted to remove or bypass any such a technical facility (or cause it to be removed or bypassed).
- 7.7 If and to the extent that Emotion Studio makes use of materials protected by the client's intellectual property rights during the performance of the services, the client guarantees that it is authorized to grant Emotion Studio access to and the use of such materials for the purpose of the execution of the Agreement.

8. Liability

- 8.1 The liability of Emotion Studio due to an attributable breach of its obligations and/or on account of an unlawful act will be limited to compensation for direct damage suffered by the Client up to a maximum of the amount that Emotion Studio's liability insurance pays out to Emotion Studio in the case in question, plus the deductible access. However, under no circumstances will the total liability of Emotion Studio for direct damage, of whatever nature, exceed the amount that Emotion Studio charged for the agreement in question (exclusive of VAT), or an amount of € 50,000, whichever is lower.
- 8.2 Direct damage is understood to mean exclusively:
 - a. reasonable costs which the client would need to incur to make the performance of Emotion Studio correspond to the agreement; which damage will however not be compensated if the agreement is terminated by or at the suit of the client;
 - b. reasonable costs incurred in assessing the cause and the extent of the damage, in so far as the assessment is related to direct damage as referred to in this agreement;
 - c. reasonable costs incurred in preventing or limiting damage, in so far as the client proves that such costs led to a limitation of direct damage as referred to in this agreement.
- 8.3 Any liability of Emotion Studio for damage other than direct damage ("indirect damage"), including — but not limited to — consequential damages, loss and/or damage of data, loss of profits and lost sales, are excluded.

- 8.4 The restrictions mentioned in the preceding paragraphs of this article will lapse if and in so far as the damage is the result of intentional or willful recklessness on the part of Emotion Studio or its employees.
- 8.5 The liability of Emotion Studio due to attributable breach of an agreement will in all instances arise only if the client immediately gives proper written notice of default, whereby a reasonable period within which the attributable breach may be remedied is stipulated, and Emotion Studio after this period still fails in the performance of its obligations.

9. Duration and termination

- 9.1 An agreement is concluded for the term of the project that is determined by the scope of the services agreed between parties and, therefore, has no fixed term. Neither party is entitled to terminate an agreement prematurely unless expressly agreed otherwise and at all times with due compensation for the services rendered by Emotion Studio up to the moment of termination and compensation of damages incurred by Emotion Studio due to the termination, including loss of profits.
- 9.2 Each party will be entitled to terminate the agreement in full or in part in the event of the other party being declared bankrupt or granted a moratorium, as well as in the event of the closing down or liquidation of the business of the other party other than for purposes of reconstruction or merger of enterprises, or if the controlling interest in the company of the other party changes.
- 9.3 Termination of the agreement on the ground of an attributable breach will only be permitted following a written notice of default whereby a reasonable period is stipulated within which the breach may be remedied.
- 9.4 In the event of termination of the agreement, for whatever reason, there will be no reversal of that which Emotion Studio has already delivered and/or carried out nor the related obligation to make payment. Amounts invoiced by Emotion Studio prior to termination in respect of that which Emotion Studio has already performed or delivered properly in accordance with the agreement will remain payable in full subject to the provisions of the preceding sentence and will become due and payable at the time of the termination.

10. Confidentiality

- 10.1 The client will ensure that all information received from Emotion Studio — including data, designs, documentation and software — which the client knows or should reasonably know to be of a confidential nature, remains confidential.
- 10.2 The same applies, *mutatis mutandis*, to information received by Emotion Studio from the client.

11. Miscellaneous

- 11.1 These terms & conditions and any agreement are construed in accordance with and shall be governed by and interpreted in accordance with the laws of The Netherlands exclusively.
- 11.2 Parties agree that all actions and/or proceedings relating to contractual and non-contractual obligations arising under or in connection to these terms & conditions or any agreement shall be brought exclusively before the competent court in Rotterdam, The Netherlands.
- 11.3 The Parties may agree on another form of dispute settlement, such as arbitration or mediation.
- 11.4 A failure to exercise or enforce any right granted in the terms & conditions shall not constitute a waiver of such right.