

Nepco – general terms and conditions

Offer, agreement and confirmation

1. These terms and conditions apply to the exclusion of any purchase or other conditions of the client to the preparation, content and performance of all agreements between the client and the contractor, hereafter named: Nepco. These general terms and conditions are an integral part of Nepco's offers.
2. All Nepco's offers are without commitment and are valid for one month. Prices quoted may be subject to change owing to unforeseen changes in the work. Prices are exclusive of VAT and other government levies.
3. Commissions must always be confirmed by the client in writing. If the client fails to do so but consents to Nepco commencing the execution of the commission, the terms and conditions of the offer will be regarded to have been fully agreed.

Intellectual and other property rights

4. All intellectual property rights arising from the commissioned work will vest exclusively in Nepco unless otherwise agreed and confirmed in writing by Nepco. If any of such rights can be acquired only by registration, Nepco will have the sole power to effect such registration.
5. Nepco will at all times be entitled to imprint or have imprinted his name on or in the commissioned work or to remove or have removed it from the commissioned work. The client may not use the work in any way without identifying Nepco's name unless otherwise agreed and confirmed in writing by Nepco.
6. All design sketches and drawings, prototypes, scale models, proofs of the work, photo's and films and other (electronic) data files or whatever other materials produced by Nepco in the course of executing the commission will remain Nepco's property irrespective of whether they were made available to the client or to third parties.
7. The client will unconditionally and irrevocably return Nepco's properties might these be in his possession in case Nepco wishes to execute his property rights.

Licence and use

8. Once the client has fulfilled his obligations under the agreement with Nepco, he will acquire an exclusive licence to use the work solely for the purpose agreed when the work was commissioned. About this purpose no misunderstanding must exist. The purpose of the commissioned work must unambiguously and verifiably be stated in the confirmation in writing by the client (see point 3.). If for any reason whatsoever no such a specific purpose has been agreed or stated in the confirmation by the client, Nepco will determine the purpose of the work considering the intentions of the client as far as they have been made clear to Nepco.
9. The client will not be entitled to any use of the commissioned work that is broader or different from the agreed purpose without prior written approval from Nepco. In the event of broader or different use on which no agreement was reached, Nepco will be entitled to compensation due to infringement of his rights of a fee that is reasonably and fairly proportional to the committed infringement, without prejudice to Nepco's right to claim reimbursement of the damage actually occurred.
10. The client will not (or no longer) be permitted to use the commissioned work for any purpose from the moment the client fails to fulfil his payments or other obligations under the agreement, in the event of his bankruptcy or in the event the agreement is terminated early for any reason whatsoever, unless the consequences are contrary to the principles of reasonableness and fairness. In the event of an unfortunate collapse of the agreement occur, the client and Nepco must reach a new agreement. If not, any licence granted to the client will lapse irrevocably.
11. Nepco is entitled, with due observance of the client's interests, the use of the design of the commissioned work (or by any chance the work itself) for any purpose other than the agreed purpose as is stated in the confirmation of the commission by the client.
12. In the event the client intends to destroy or dispose of the commissioned work he must immediately inform Nepco. The work must then be returned exclusively in the possession of Nepco.
13. The client is not entitled to transfer or assign to third parties any of the rights under the agreement concluded with Nepco, save in the event and as part of a transfer of the client's entire business.

Performance of the agreement

14. Nepco must make every effort to perform the agreement carefully and independently, to promote the client's interest to the best of his ability.
15. The client must do any and all things that are reasonably necessary or required to enable Nepco to deliver punctually and properly. In the event Nepco is not able to execute the commission punctually and properly in consequence of client's negligence, the client will be deemed to take the risks involved.
16. Prior to the actual production of the work Nepco must give the client the opportunity to inspect and approve of the final draft or proof of the work. Nepco will invite the client to do so. In case the client omits the aforesaid inspection given a reasonable term in view of the agreed date of delivery to do so, Nepco is entitled to completion and delivery of the commissioned work corresponding this final draft or proof of the work.
17. Unless otherwise agreed, instructions to third parties to be given in the context of the performance of the agreement will be regarded to be given by or on behalf of the client as well. In case goods or services are procured in the context of the execution of the commission, the general conditions of such suppliers with regard to the quality, quantity, properties and delivery of such goods or services will also apply to the client unless otherwise agreed.
18. Any complaints to Nepco must be filed in writing not later than within five business days after completion and delivery of the commissioned work, failing which the client will be deemed to have to accept the commissioned work in its entirety.

Fees and additional costs

19. In addition to payment of the agreed fee, Nepco will be entitled to reimbursement of any costs incurred by him in the performance of the agreement.
20. If Nepco through no fault of himself or caused by acts or negligence of the client is required to perform more or other work or use more or other materials, such additional work and materials will be charged on the basis of Nepco's usual fee and calculations.
21. In the event of an early termination of the commission by the client or an early termination of the agreement by Nepco on the ground of any breach in the fulfilment of the agreement by the client, the client must pay Nepco's fee and costs incurred in connection with the work performed until that date unless the client is able to prove the early termination occurred through Nepco's fault.

Payment

22. Payments must be made within 60 days of the invoice date. If Nepco has not received payment in full at the end of that term, the client will be in default. All verifiable costs incurred by Nepco in connection with overdue payments, including interest at the statutory rate, will be for the client's account. If Nepco has not received any complaints about the invoice within 14 days of the invoice date, the invoice will be regarded to be fully accepted and the client will be deemed to full payment with in the aforesaid term.
23. The client will pay the amounts due to Nepco without any reductions not being the set-off of adjustable advance payments which the client has made to Nepco relating to the execution of the commission.
24. In the event of an early termination of the agreement, the client is not entitled to suspend payment of invoices for work that has already been performed.

Warranties and indemnities

25. Nepco warrants that the work supplied to the client has been designed and made by him or on his behalf and that Nepco is the maker within the meaning of the law and has the power of disposition of the work as its intellectual proprietor.
26. The client indemnifies Nepco or persons engaged by Nepco in the execution of the commission against any third-party claim or action arising from the application or use of the commissioned work or any claim or action relating to intellectual property rights in materials or data supplied by the client and used in the execution of the commission.
27. The commission does not include conducting searches for the existence of any rights of third parties or any investigation into the necessity and possibility of avoiding unlawfulness by the client. Nepco is indemnified to do so.
28. Nepco will have no obligation to retain any of the used materials and data upon the completion and delivery of the commissioned work.

Liability

29. Nepco will be liable only for direct damage attributable to him, all other damage such as indirect damage hereby excluded. Direct damage will include only reasonable costs incurred to have Nepco's possible disappointing performance conform to the agreement, unless the client has given his approval in accordance with the provision of point 16. or has had the opportunity to perform an inspection and has failed to do so and the commission is executed conforming the aforesaid final draft or proof of the work.
30. Nepco will not be liable for errors or defects in materials and data supplied by the client, nor for errors and defects by third parties engaged only by the client, nor for errors and defects caused by acts or negligence of the client, nor for errors and defects in the offers of ancillary suppliers or subcontractors, nor for unforeseen increase in prices by ancillary suppliers or subcontractors.
31. Nepco's liability for damage arising from the agreement will in any case and at all times be limited to the invoiced amount for the portion of the work performed.
32. Any and all liability will expire six month from the date of completion and delivery of the commissioned work.

Other terms

33. In case any indistinctness or ambiguities spring from these general terms and conditions and in the event a situation occurs not covered by these general terms and conditions, client and Nepco will act along the lines of these general terms and condition.
34. Nepco's offer can not be considered valid and held against him in the event an obvious error which should be clear to the client has been made.
35. Nepco is at all times entitled to reject a commission. Nepco is entitled to terminate an agreement in the event circumstances occur under which the fulfilment of the obligations under the agreement is contrary to the principles of reasonableness and fairness. Nepco is entitled to reject a request for a chance of the agreement without in any way being in default.
36. All agreements between Nepco and his clients are governed by Dutch law.