

TERMS AND CONDITIONS | Motion Guru ©2019

Adelaartlaan 109 | 5665CW | Geldrop | Nederland
www.motion-guru.com | info@motion-guru.com
Telefoon: +31 6 34 04 04 79 | KVK - 60912952 | BTW - NL205523146B01

Table of contents



- Article 1 – Definitions	2
- Article 2 – Applicability	2
- Article 3 – Quotations	3
- Article 4 – Formation of the Agreement	3
- Article 5 – Obligations of the Client	3
- Article 6 – Implementation and Agreement	4
- Article 7 – Prices and rates	4
- Article 8 – Duration of the work and delivery times	5
- Article 9 – Working hours	5
- Article 10 – Invoicing and payment	5
- Article 11 – Termination of the Agreement / compensation / suspension	6
- Article 12 – Force majeure	7
- Article 13 – Occasional foreclosure of the Client	7
- Article 14 – Liability for damage	8
- Article 15 – Intellectual property rights	9
- Article 16 – Confidentiality	9
- Article 17 – Expiry period	10
- Article 18 – Applicable law	10

Article 1 - Definitions

Motion Guru

Motion Guru, established in Geldrop (Netherlands) and registered with the Chamber of Commerce under number: 60912952.

The Conditions

These terms and conditions.

Client

The natural person, partnership, company or legal person who gives Motion Guru an order or possibly wants to give an order for the delivery of Products.

Products

The goods offered by Motion Guru to the Client, sold, to be delivered or delivered (such as designs, proposals and projects, recorded on carriers of image and / or sound) and services, including the manufacture, processing and / or processing of carriers of image and / or sound or other work in the creation of a creative production.

Agreement

Any agreement between Motion Guru and the Client regarding the sale and delivery of Products, including quotations, orders and order confirmations (which may or may not arise from a framework agreement).

Creative production

A creative production or audiovisual that has been created by cinematographic, mechanical or electronic means and is a work in the copyright sense. Image and / or sound carriers: physical means on which image and / or sound can be recorded, such as a PC / laptop, usb, hard disk, smartphone, audio tape, video tape, DVD, photographic material, cinematographic material, or similar material.

Article 2 - Applicability

2.1

The Terms and Conditions apply to the formation, content and implementation of the agreement and to all other legal acts and legal relationships between Motion Guru and the Client.

2.2

Deviating or additional stipulations to the Terms and Conditions are only valid if accepted in writing by Motion Guru and only apply to the relevant Agreement.

2.3

If a provision of the agreement (including the Conditions) is invalid for any reason whatsoever, the remaining provisions of the agreement remain in force. Parties will interpret the invalid provision in such a way that it approximates the original provision as closely as possible.

2.4

If a provision in a specific offer, order confirmation or agreement deviates from a provision in the Conditions, the provision in the offer, order confirmation or agreement will prevail.

Article 3 - Quotations

3.1

Quotations from Motion Guru are always without obligation, unless it is a written quotation that explicitly states otherwise. Motion Guru can revoke a non-binding offer within 5 working days after receipt of the acceptance. Offers are revocable, even if a period for acceptance is stated.

3.2

Unless Motion Guru has indicated otherwise, a quotation will in any case expire after 30 days have passed since the date of the quotation or, in the case of an oral quotation, the date on which Motion Guru made the quotation.

3.3

Offers are based on the information provided by the Client.

Article 4 - Formation of the Agreement

4.1

Unless the Client has accepted a quotation from Motion Guru in writing, an order for delivery of products will only bind Motion Guru if and after Motion Guru has confirmed the order in writing or, observable by the Client, has proceeded with the execution thereof.

4.2

For work for which no quotation or order confirmation is sent due to the nature and scope, the invoice also counts as order confirmation, which is deemed to accurately and completely reflect the Agreement.

Article 5 - Obligations of the Client

5.1

The Client must inform Motion Guru in a timely manner about all facts and circumstances that are or could be of interest to Motion Guru in connection with the implementation of the Agreement (including specific assignments).

5.2

The Client must make all information, documents and matters that Motion Guru requires for the execution of the Agreement available to Motion Guru in a timely manner. Furthermore, the Client must fully cooperate with Motion Guru that is necessary for the timely and correct execution of the Agreement.

5.3

If the execution of an agreement is delayed by the lack of information, documents and / or items to be provided by the Client or at the request of the Client or by other causes for which the Client is entitled, Motion Guru will be entitled to charge the costs resulting from this in accordance with the charge of the usual rates to the Client.

Article 6 - Implementation and Agreement

6.1

Motion Guru performs the Agreement to the best of its knowledge and in accordance with the requirements of good workmanship.

6.2

Motion Guru can have the agreements fully or partially executed by third parties.

6.3

Motion Guru has ultimate responsibility for production management at all times and determines the manner in which and by which persons the agreement will be executed, while taking into account, if and insofar as this is in accordance with Motion Guru's views, the wishes expressed by the Client.

6.4

If the Creative production is available for display in accordance with specifications, Motion Guru informs the Client orally or in writing, with the request to approve the Creative production. This moment applies as delivery of the Creative production concerned, unless otherwise agreed.

6.5

After the first delivery of the Creative production concerned, the Client has 2 feedback options for making adjustments to the final product. After this, the Client can only request changes to essential points from the Creative Production submitted for approval if the costs resulting from these changes are fully paid by the Client, unless Motion Guru has demonstrably deviated from the Agreed specifications on essential points. Motion Guru will offer the then modified Creative production to the Client for approval at a time to be agreed upon in accordance with Article 6.4.

6.6

Motion Guru has the right to refuse the execution of an agreement if the concrete work entails special risks for Motion Guru which Motion Guru was not informed of or was not reasonably aware of when entering into the Agreement, without prejudice to the obligations of the Client based on the agreement.

Article 7 - Prices and rates

7.1

Prices and rates quoted by Motion Guru are exclusive of VAT and other statutory taxes.

7.2

If applicable, travel time is calculated in accordance with the agreed hourly rates.

7.3

Any extensions of a working day as mentioned in Article 9.1 are agreed in advance (verbally or in writing) and charged as overtime. A surcharge of 150% above the agreed hourly rate applies.

7.4

For working time on Saturdays, Sundays and public holidays, insofar as notified in advance by Motion Guru, a surcharge of 150% above the agreed hourly or daily rate applies.

7.5

Additional costs for insurance and costs related to accommodation are agreed in advance and charged on the invoice.

7.6

If prices / rates of price-determining factors such as wages, materials and insurance premiums undergo an increase, Motion Guru has the right to increase its prices and rates accordingly.

Article 8 - Duration of the work and delivery times

8.1

The duration of the work can, apart from the effort of Motion Guru, be influenced by other factors, including the weather, the quality of the information that Motion Guru receives and the availability and cooperation provided by the Client or involved third parties. Both parties are aware that the planning of the work during the term of the agreement may be subject to change. Motion Guru cannot therefore guarantee the completion time of the work. Both parties take into account that the times indicated as deadlines, milestones, delivery dates or other similar terms must be considered as estimates and therefore not as a deadline.

Article 9 - Working hours

9.1

The working time per working day is a maximum of 8 hours, unless extensions have been agreed orally or in writing in advance.

9.2

Lunch and dinner time are considered as working time.

Article 10 - Invoicing and payment

10.1

Invoicing takes place at the times and in the manner agreed between the parties. If and insofar as nothing has been agreed between the parties, invoicing will in principle take place monthly, without prejudice to Motion Guru's right to implement the agreement in parts and to invoice accordingly.

10.2

Payment by the Client must be made without discount, deduction or settlement within the agreed payment terms, but in no case later than 30 days after the invoice date. Payment must be made in euros. The time / date indicated on the bank statements of the Motion Guru is regarded as the day of payment.

10.3

Invoices are deemed to have been approved by the Client if he has not objected in writing and with reasons within 14 days of the invoice date.

10.4

In the event of late payment, the Client will be in default by the mere expiry of the payment term, so without a reminder or notice of default being required, and will owe an immediately payable interest on the overdue amount (principal and any costs and interest) equal to the statutory interest until the day of full payment of principal, interest and any costs per month or part of a month.

10.5

Motion Guru is furthermore authorized to suspend the execution of any agreement concluded with the Client and to postpone new work until full payment has been received.

10.6

All judicial and extrajudicial (collection) costs reasonably incurred by Motion Guru that Motion Guru incurs as a result of the Client's failure to fulfill its payment obligations towards Motion Guru are for the account of the Client.

10.7

In the event that an Agreement is concluded with more than one Client, these Clients are jointly and severally liable to Motion Guru for the whole if work has been carried out for them.

Article 11 – Termination of the Agreement / compensation / suspension

11.1

In the event that the Client cancels a given assignment and terminates the agreement without the situations referred to in Article 11.2 on the part of Motion Guru, Motion Guru is, without prejudice to its right to claim full compensation, entitled to compensation in any case, which is determined as much as possible in consultation with the Client on the basis of the following elements:

- all out-of-pocket costs of Motion Guru, plus any cancellation fees owed by contracted freelancers;
- all hours worked by Motion Guru up to the time of cancellation at the usual rate;
- a reasonable reimbursement for overhead costs from Motion Guru;
- lost profit from Motion Guru;

This provision applies without prejudice to Motion Guru's right to submit a dispute about this to the court at any time.

11.2

Both parties have the right to terminate the Agreement with immediate effect by giving written notice to the other party if the other party:

- A) become bankrupt or apply for a suspension of payment (or a similar foreign procedure or situation);
- B) ceases its business operations;
- C) also after a notice of default attributable to a substantial obligation under the Agreement.

In the event that the aforementioned circumstances concern the Client, the Client is deemed to be in default and amounts owed by the Client to Motion Guru are immediately due and payable, without prejudice to Motion Guru's right to full compensation.

11.3

Motion Guru is furthermore entitled to terminate the Agreement in the manner indicated above and with the aforementioned consequences if the Client has not fulfilled its payment obligations towards Motion Guru more than twice.

11.4

If the Client has already received a performance for the implementation of the Agreement, the Client can only terminate the agreement for the part that Motion Guru has not yet performed. Amounts paid or invoiced in connection with the performance that Motion Guru has already delivered, remain indebted and become immediately claimable in the event of partial dissolution.

Article 12 - Force majeure

12.1

Force majeure includes all situations in which the parties are permanently or temporarily unable to meet their obligations towards the other party as a result of a foreseeable or unforeseeable circumstance that is beyond their control.

12.2

Force majeure on the part of Motion Guru includes in any case (war) danger, failure of third parties engaged by Motion Guru, fire, frost, natural disasters, disruptions in the business of Motion Guru, energy, internet, computer or (mobile) telephone failures.

12.3

If Motion Guru is unable to (continue to) execute the Agreement due to (temporary or permanent) force majeure, Motion Guru will not be liable for any damage ensuing therefrom for the Client. In that case, Motion Guru may, at its option, suspend performance of its obligations or terminate the agreement in whole or in part by giving written notice to the client, without being obliged to pay any compensation. In the event of suspension, Motion Guru is still entitled to fully or partially terminate the agreement in the manner indicated above.

Article 13 - Occasional foreclosure of the Client

13.1

If for any reason the Client is incidentally prevented from fulfilling an agreed agreement with Motion Guru, the Client must inform Motion Guru of this as soon as possible, and no later than 48 hours before the agreed appointment.

13.2

Motion Guru is entitled to charge its (extra) costs as a result of the cancellation of an appointment by the Client to the Client.

Article 14 - Liability for damage

14.1

If the implementation of the agreement entails risks for Motion Guru that exceed the normal risks, the Client is liable for damage resulting therefrom for Motion Guru or third parties engaged by it. The Client ensures that he is sufficiently insured for liability in this regard.

14.2

Motion Guru is not liable for damage, direct or indirect, of any nature whatsoever, due to the loss in whole or in part, destruction or damage of (Carriers of) images and / or sound or of other items of the Client during the manufacture, processing or processing thereof by Motion Guru.

14.3

Motion Guru is not liable for the loss, destruction or damage of any backup copies of image / video / sound carriers for the Client, saved by Motion Guru.

14.4

If any liability should be placed on Motion Guru, it will in any case be limited to the amount that Motion Guru is paid under the liability insurance it has taken out in the relevant case, plus the amount of the applicable insurance policy's own risk.

14.5

The limitation or exclusion of liability of Motion Guru included in this Article 14 does not apply if and insofar as damage is the direct result of intent or deliberate recklessness on the part of Motion Guru.

14.6

Without prejudice to the provisions of Article 14.7, the Client indemnifies Motion Guru, its employees and those involved in the implementation of the agreement (such as third parties engaged by Motion Guru) against all claims from third parties, of whatever nature and for whatever reason, that in any way are related to the (implementation of the) Agreement, except if and insofar as there is intent or willful recklessness on the part of Motion Guru.

14.7

The Client indemnifies Motion Guru against all claims from third parties with regard to all copyrights and other intellectual property rights related to the work that Motion Guru performs for the Client.

14.8

The Client fully compensates Motion Guru or third parties engaged by it for all damage and / or costs related to the claims referred to in Articles 14.6 and 14.7, including any costs of legal assistance, if and insofar as this damage is not for the account of Motion Guru under the Agreement.

14.9

The Client will never personally hold Motion Guru employees and other persons engaged by it for the implementation of the Agreement personally liable.

14.10

The client must report damage to Motion Guru in writing as soon as reasonably possible after its occurrence, as well as any claims from third parties.

Article 15 – Intellectual property rights

15.1

The copyright and other intellectual property rights on all Products developed by Motion Guru are held by Motion Guru.

15.2

Motion Guru has the right to state its name in the customary part of the products in such a way that it is clearly legible due to its design, size, placement in image and duration of display.

15.3

Motion Guru only gives the client permission to use the products in accordance with what is included in the agreement.

15.4

The client is not entitled to change the products, shorten them, cut them, arrange them differently or make other edits or changes, without prior written permission from Motion Guru.

15.5

Any use by the client of the products delivered by Motion Guru that has not been agreed and / or for which the agreed fee has not been paid is considered an infringement of Motion Guru's copyright and other intellectual property rights.

15.6

Motion Guru can take care of obtaining the necessary permission for the use of copyright, trademark or other protected material from third parties that is used in the products on behalf of the client. Motion Guru is only obliged to do this if and insofar as this is explicitly part of the agreement (or order confirmation) and only in accordance with (the scope of) the use that has been agreed in the agreement (or order confirmation) and exclusively with regard to the agreed rightholders and / or bodies representing specific rightholders.

Article 16 – Confidentiality

16.1

Barring written permission from the client, Motion Guru will not provide the confidential information received from the client to third parties. This applies on the understanding that, as a result of the implementation of the agreement, Motion Guru may use increased knowledge for other purposes, as long as no confidential information is provided to third parties.

16.2

Unless Motion Guru has given prior written permission for this, the client will only use documents and items provided by Motion Guru in connection with the agreement (such as designs, drawings, films, individual images, files, software and other materials) in connection with the execution of the agreement and not make it available to third parties, in whole or in part, or make it available to the public.

Article 17 – Expiry period

17.1

Insofar as not stipulated otherwise in the Terms and Conditions, claim rights of the client on any ground whatsoever vis-à-vis Motion Guru in connection with the execution of the agreement will lapse at least one year after the moment that the client became aware or could reasonably have been aware of the existence of these rights and powers.

Article 18 – Applicable law

18.1

Dutch law applies to the agreement and to any related agreements and legal relationships between the parties.

