

General terms & conditions of Merkwerk Utrecht B.V., exclusively applicable to “foreign orders”;

Article 1 Applicability

1.1 These general terms & conditions (“the general terms & conditions”) apply exclusively to all agreements between Merkwerk Utrecht B.V. (hereinafter “Merkwerk Utrecht”) and any foreign client or agent (“the client”) that has given Merkwerk Utrecht an order to perform work, as well as to offers and all pre-contractual relations.

1.2 If any (general terms &) conditions of the client are also declared applicable to any agreement, the general terms & conditions of Merkwerk Utrecht shall prevail at all times.

Article 2 Charges

2.1 The applicable charges are the charges as laid down in the most recent list of charges or confirmed to the client by Merkwerk Utrecht.

2.2 The charges do not include the variable cost of plates, additional classes, drawings, document data, excerpts from registers, authentication, translations, classifications [etc.] Nor do these charges include the costs that may arise following the submission of forms for applications/registrations by virtue of publication, granting, negotiations with third parties or other work, such as costs arising from official objections or opposition by third parties to the applicant. These costs will be charged on to the client separately. Cost budgets provided by Merkwerk Utrecht to the client serve as an indication only and are completely without obligation.

2.3 Merkwerk Utrecht is entitled – if Merkwerk Utrecht considers such necessary or desirable – to bring in third parties, the cost of which will be charged on to the client.

Article 3 Payment

3.1 Unless it is explicitly agreed otherwise in writing, advance invoices must be paid to Merkwerk Utrecht within 8 days and interim and final invoices within 14 days of the date of invoice. The client is not entitled to suspend its obligations to pay.

3.2 The client remains liable at all times for payment of the outstanding invoices addressed to the client, even if the client has stated that it has placed the order on behalf of a third party.

3.3 In the event that the client fails to pay within the terms stated in Article 3.1, the client is in default purely by the lapse of these terms, without any further notification of default being required. The client is then liable to pay interest to Merkwerk Utrecht on Merkwerk Utrecht’s outstanding claims of 1.5% on the amount payable per month or part thereof, without prejudice to Merkwerk Utrecht’s right to compensation under Dutch law.

3.4 As an additional security for the payment of all debts owed or to be owed by the client to Merkwerk Utrecht, the client grants to Merkwerk Utrecht by the act of placing the order a first pledge attached to the trademarks and/or models filed or registered by Merkwerk Utrecht for or on behalf of the client, whereby acceptance of these general terms & conditions by the client serves as proof of the existence of this pledge. In the event of payment default on the part of the client, Merkwerk Utrecht is entitled to enter this right of pledge in the relevant registers at the client’s expense. The pledge lapses upon payment by the client of all of its debts to Merkwerk Utrecht. Merkwerk Utrecht will then cancel any registration of the pledge, after the client has paid the costs thereof.

Article 4 Work

4.1 Merkwerk Utrecht guarantees that it will perform the work agreed upon to the best of its ability and in accordance with the requirements of good workmanship, with the observance of the professional code usually applicable in the sector.

4.2 The client explicitly agrees to the following:

a. Completeness cannot be guaranteed by Merkwerk Utrecht in relation to research performed by Merkwerk Utrecht, or through its mediation, into trademarks, models, trade names, etc., nor is any other guarantee given in relation to the results of such research. Any recommendations made in relation to the availability of a trademark or a model are given by Merkwerk Utrecht without obligation. Any decision to carry a trademark or model or have such carried, as well as all other decisions resulting from research performed, is taken entirely at the client’s risk and expense. The client must take measures itself for the performance of market research and other research that determines/may play a part in determining whether a trademark, model or trade name is permissible and/or available.

b. The client is responsible itself at all times for the prompt, correct delivery to Merkwerk Utrecht of all documents, copies and information required for the performance of the assignment. In particular, Merkwerk Utrecht is not obliged to perform actions relating to the availability and/or permissibility and/or protection of a trademark, model or trade name in advance at its own initiative.

c. In the case of the monitoring of trademarks, models, domain names and trade names, no guarantee is given by Merkwerk Utrecht in relation to the comprehensiveness of this monitoring.

d. If no clear instructions have been issued by the client, Merkwerk Utrecht is entitled at all times, but never obliged, to act at its own discretion, such as at the client’s risk and expense. The costs of this will also be borne by the client. The client hereby grants an explicit authority to this end. Unless it is explicitly agreed otherwise, Merkwerk Utrecht will not be obliged to perform the work ordered from it before or at a particular time.

e. In the case of the renewal of registrations of trademarks or models or other actions necessary to maintain rights, Merkwerk Utrecht will attempt to remind the client of the term in question. However, the client itself bears responsibility for monitoring such terms. The client is obliged to inform Merkwerk Utrecht of any change of address immediately.

Article 5 Liability

5.1 Providing incorrect and/or incomplete data by or on behalf of the client (including in the case such is provided in good faith) entitles Merkwerk Utrecht to dissolve the agreement.

5.2 The client recognises that the work performed by Merkwerk Utrecht has an advisory character. By virtue of the subjective grounds for assessment that always play a role in the work of Merkwerk Utrecht, Merkwerk’s total liability will always be limited to an amount not exceeding twice the amount of the invoice for the assignment in question.

5.3 In relation to damages of any nature whatsoever caused by actions or failure to act on the part of personnel employed by Merkwerk Utrecht, Merkwerk Utrecht is not liable except in cases of intent or gross negligence.

5.4 In the event that Merkwerk Utrecht makes use of third parties in the performance of the agreement, including foreign agents/colleagues, Merkwerk Utrecht is not liable for the conduct of these third parties.

5.5 The burden of proof in relation to any liability claimed on the part of Merkwerk Utrecht lies with the client. The client accepts this burden of proof.

5.6 The client will indemnify Merkwerk Utrecht against claims by third parties for damages relating to or ensuing from the agreement or any filing of a trademark or other action performed by Merkwerk Utrecht on the basis of the agreement.

Article 6 Applicable law and competent court

6.1 All agreements entered into and/or actions performed between Merkwerk Utrecht and the client are subject exclusively to the law of the Netherlands.

6.2 Disputes between the parties will in the first instance be submitted for adjudication to the competent court in Utrecht, the Netherlands, without prejudice to Merkwerk Utrecht’s right to submit any disputes to the competent court by virtue of Dutch legislation or the national legislation of the foreign client.