

# MAKME NDE

## GENERAL TERMS AND CONDITIONS

### 1     DEFINITIONS

In these terms and conditions, as well as in the agreement to which these terms and conditions are applicable, the following expressions shall have the following meanings unless the context requires otherwise:

*MAKME NDE*                         means MAKME NDE B.V., a private company with limited liability, incorporated under the laws of The Netherlands, with its registered seat at the Van Diemenstraat 160, in Amsterdam (Chamber of Commerce: 34243945)

*Agreement*                         means the agreement between MAKME NDE and the Client, concerning the Production, including possible appendices;

*Assignment*                         means the commissioning of an instruction by the Client to MAKME NDE to make a Production;

*Client*                                 means a Dutch or foreign organization or company that commissions MAKME NDE to make a Production.;

*Fault*                                 means a material or technical fault in (the carrier of) the Production, as a result of which the Production is not to be used by the Client; Deviations, alterations or failures of a substantive or creative nature, do not come within "Fault" as meant in these General Terms and Conditions;

*Final Version*                         means the version of the Production after post production, which version will be delivered for use to the Client.

*General Terms and*

*Conditions*                         means these General Terms and Conditions;

# MAKME N D E

*Intellectual Property Rights* means copyrights, neighbouring rights, formats, communication concepts, database rights, models and trademarks and all other similar property rights which may subsist in any part of the world including, where such rights are enhanced or obtained by registration, any registration of such rights and applications as well as rights to apply for such registrations;

*Local Partner* means a reporter or other professional Local Partner that MAKME N D E commissions to make a Production.

*Parties* means MAKME N D E and the Client, and "Party" means one of them;

*Production* means the texts and/or photos and/or videos and/or websites, in whatever form, which the Local Partner makes by order of MAKME N D E for the Client, including the format, the raw material, the Final Version, adaptations, scripts, storyboards, working titles, leaders and promos;

## 2 APPLICABILITY

- 2.1 These General Terms and Conditions apply in full to the Agreement and its possible appendices and exclude all other terms and conditions whether provided by Parties (other than MAKME N D E) or third parties, unless previously agreed by MAKME N D E.
- 2.2. MAKME N D E reserves the right to alter these General Terms and Conditions at any time without prior written notice. The latest version of the General Terms and Conditions can be found at the website of MAKME N D E ([www.makmendemedia.com](http://www.makmendemedia.com)) with a date of last update. Altered General Terms and Conditions shall only be applicable to current Productions after consent by all Parties concerned.

# MAKME N D E

## 3. THE AGREEMENT

- 3.1. The Agreement will come into effect at the day both Parties has signed the document which contains the Agreement or at the day the Client has accepted the offer, which has been submitted by MAKME N D E in that respect, in writing or by e-mail.
- 3.2. These General Terms and Conditions, as well as other appendices, form part of the Agreement. Alterations of the Agreement or its appendices are only valid when in writing and confirmed as correct by both Parties.

## 4. THE PRODUCTION

- 4.1. MAKME N D E shall provide the following services on the Client's instructions:
  - a. pre production (Production definition, recruitment and selection of the Local Partner, media and/or technical advice to the other Parties concerning the Production, drafting of the Agreement);
  - b. management of the Production, from the MAKME N D E office in The Netherlands;
  - c. communication to the Client, the Local Partner and – if required – to the media;
  - d. contract management;
  - e. post production and delivery of the Final Version to the Client.
- 4.2. MAKME N D E shall at all times operate as "producer", which means that it shall be MAKME N D E that makes final decisions concerning the Production, whether technical, creative or otherwise. Nevertheless, MAKME N D E shall – if this comes to the benefit of the Production - consult and inform the Client and the Local Partner as often as required. A detailed production schedule will be provided after the research phase. For the general production workflow and phased feedback/approval rounds please refer to workflow overview.

# MAK MENDE

- 4.3. The Client shall provide MAKMENDE will all information, necessary for the making of the Production, in due time and at the expense of the Client. MAKMENDE shall not be liable for damages suffered by the Client as a result of not giving the information timely, completely or correctly. In case of third parties, involved with the Production, the Client sees to it that these third parties as informed sufficiently.
- 4.4. If the Client wishes to alter the Production (whether this is the format, the content, the scope or otherwise) after the preproduction stage has ended (and therefore the actual production has started), MAKMENDE has the right to charge the Client additional costs, at an actual and reasonable rate.
- 4.5. The Final Version of the Production will be delivered by MAKMENDE on the day and in the manner as stipulated in the Agreement. In case of delivery in digital form MAKMENDE guarantees that the Final Version of the Production will be delivered free from viruses and other diseases. The risk to use the Production passes at the moment MAKMENDE has placed the Final Version of the Production in the (test) environment, designated by the Client.
- 4.6. The Client is obliged to test the Final Version of the Production for the presence of Faults immediately after delivery. If within 240 hours (10 working days) after delivery the Client has not informed MAKMENDE about a possible Fault, the Final Version of the Production is deemed to be Faultless and accepted. In case a Fault has been reported in due time, MAKMENDE shall inform the Client as soon as possible whether or not the Fault is acknowledged by MAKMENDE and what will be the repair time.
- 4.7. MAKMENDE exerts herself to deliver the Final Version of the Production within the stipulated time. If for whatever reason MAKMENDE will not be able the deliver the Final Version of the Production in time, MAKMENDE shall inform the Client without delay, stating a new term of delivery, without being liable to pay damages.

# MAKME NDE

## 5. FORCE MAJEURE

- 5.1. Each Party shall be excused from performance of its obligations under the Agreement if and to the extent that this performance is hindered or prevented as a result of force majeure (“overmacht”) as meant in article 6:75 of the Dutch Civil Code.
- 5.2. As used in these General Terms and Conditions, “force majeure” means abnormal and unforeseeable circumstances beyond the control of the Party that seeks recourse to force majeure insofar as the consequences were unavoidable despite all precautions. Force majeure includes but is not limited to serious political unrest, war, extreme weather, infectious diseases, negative travel advice or other circumstances that render the making of the Production (and/or its quality) impossible.
- 5.3. On the occurrence of a force majeure situation the affected Party shall as soon as reasonably practicable after the event arises, notify the other Party of the force majeure situation and give – if possible – a forecast of the duration of the force majeure situation. To the extent and for the period that the Party is unable to comply its obligations under the Agreement, those obligations will be suspended and will not be liable to the other Party for any loss or damage which will be sustained by the other Party.

## 6. PAYMENT

- 6.1. The Client shall pay MAKME NDE the costs of the Production as set out in the Agreement.
- 6.2. Payment must be made in the manner and within the period stated on the invoice or in the Agreement.
- 6.3. If the Client has not paid the invoice by the due date of the invoice, the Client shall be sent a reminder within 14 days after expiration of the term of payment, in which the Client is given a term of 14 days to meet its obligation

# MAKME NDE

to pay. If, after this last term, the Client has not paid, the Client shall be in default without further notice.

- 6.4. Should the Client be in default as set out in clause 6.3, MAKME NDE may suspend the Production. The Client and the Client only shall be liable for damages, suffered by MAKME NDE as a result of this suspension.

## 7. INTELLECTUAL PROPERTY RIGHTS AND EXPLOITATION RIGHTS

- 7.1. The Intellectual Property Rights of the Production will belong to MAKME NDE. The Client nor the Local Partner are allowed to reproduce and/or disclose the Production without prior written consent of MAKME NDE.
- 7.2. MAKME NDE grants the Client an exclusive, transferable license to use the Final Version of the Production for the purposes the Production was agreed to be made. This right does *not* include the right to alter the Final Version without prior written consent by MAKME NDE.
- 7.3. Ensuing from paragraph 2 of this clause, the Client has the exclusive right to:
- a. disclose the Final Version of the Production – or parts of it – in every legal way;
  - b. reproduce the Final Version of the Production – or parts of it – in every legal way and on every possible carrier (mechanic, electronic and/or digital);
  - c. sell, let, lend, distribute or otherwise put (copies of) the Final Version of the Production at the disposal of third parties, whether commercially or otherwise;
  - d. utilize the Final Version of the Production – or parts of it – for promotional purposes;
  - e. file the Final Version of the Production;

# MAKME N D E

- 7.4. Notwithstanding the provisions of paragraphs 1 -3 of this clause, MAKME N D E retains the right to:
- a. file the Production;
  - b. utilize the format, the raw material and all other documentation concerning the Production – other than the Final Version - for other productions or purposes;
  - c. disclose the Final Version of the Production – or parts of it - for promotional purposes, including – but not limited to - the publication of the Final Version on the website of MAKME N D E;
- 7.5. The Client shall respect the moral rights of MAKME N D E, as meant in article 25 of the Dutch Copyright Act 1912. This means that the Client shall mention MAKME N D E as producer of the Production whenever reasonable and possible, shall not amend the Production other than as described in paragraph 3 of this clause, and shall not mutilate the Production.
- 7.6. In case of a remake, prequel or sequel of the Production, Parties shall - if necessary - make additional arrangements concerning the Intellectual Property rights and the exploitation rights issuing of it.
- 7.7. MAKME N D E warrants that at delivery of the Final Version of the Production to the Client no infringements are made on Intellectual Property Rights of third parties. If and to the extent that third parties hold the Client liable for a claimed infringement of their Intellectual Property Rights, MAKME N D E shall indemnify the Client and shall itself assume the defense at her own expenses.

## 8. INTELLECTUAL PROPERTY RIGHTS AND EXPLOITATION RIGHTS

### 8.1.

MAKME N D E shall have no liability in the conclusion and/or the performance of the Agreement, except as expressly set out in the Agreement and these General Terms and Conditions.

Parties shall only be liable for an attributable shortcoming after being given a notice of default, in which the Party is given a reasonable period of time to remedy the breach.

Parties shall only be liable for damages due to wilful intention or gross negligence.

Parties shall only be liable for direct damage suffered by another Party as a result of a attributable shortcoming or wrongful act, such as damage to tangible objects, reasonable costs incurred to prevent or limit direct damage and reasonable costs incurred in determining the cause of the damage, the liability, the possible repair and the extent of the damage. Liability for consequential damage, such as loss of profit, loss of savings and investments, loss of goodwill and business interruptions, is excluded.

MAKME N D E shall only be liable for direct damage suffered by other Parties as a result of a shortcoming attributable to MAKME N D E up to a maximum of the actual Production costs in the respect of any event or series of connected events.

MAKME N D E shall not be liable for any damages incurred by the Client or any other third party, regardless whether such damages is of a personal, business, material or immaterial nature, as a result of occurrences before and after the Production and related thereto.



## 9. TERMINATION OR POSTPONEMENT

### 9.1

Without prejudice to any other rights or remedies the Parties may have at law or under the Agreement, any Party shall have the right to terminate the Agreement immediately by serving a written notice in the event of: decease of a Party (natural person), bankruptcy, moratorium of payments, seizure or dissolution of the entity.

Each Party may at any time terminate the Agreement by cancellation of the Production.

### 9.2

In case of cancellation by the Client, the Client is obliged to pay to MAKMENDE the following compensation:

- a. up to 1 (one) week before starting the making of the Production: 50% of the total Production costs and the costs already incurred by the Local Partner and the Local Partner;
- b. within 1 (one) week before starting the making of the Production or during the making of the Production: 100% of the total Production costs.

In case of cancellation by MAKMENDE, MAKMENDE shall reimburse the Production costs already paid by the Client, after deduction of all reasonable expenses.

Indebtedness of the compensations as set out in this article shall be immediate and without recourse to the courts.

### 9.3

# MAK MENDE

In case of cancellation by the Local Partner, MAKMENDE shall find another Local Partner as soon as possible. If a Local Partner is not to be found within a reasonable period of time, MAKMENDE shall reimburse the amount of the organizational costs to the Client.

9.4.

MAKMENDE shall not be liable for any damages as a result of cancellation (including postponement or interruption due to force majeure). Nevertheless, MAKMENDE shall attempt to limit the financial and other consequences to the fullest extent possible.

9.5

In the event of postponement of the Production, MAKMENDE shall attempt to assure that the Production takes place at a later time. In case postponement is due to cancellation by the Local Partner, MAKMENDE shall attempt to find a replacement as soon as possible.

## 10 DISPUTE RESOLUTION

10.1

Any disputes that may arise between MAKMENDE and the Client shall be subject to the laws of The Netherlands. The Dutch courts shall hear such disputes to the exclusion of all other jurisdictions.

10.2.

All rights to lodge claims expire twelve months after the end of the Production or, if the Production did not take place, up to twelve months after the original planned date of delivery of the Production, as set out in the Agreement.

# MAKMEDE

These General Terms and Conditions have been filed at the office of the Commercial Register in Amsterdam under file number [Chamber of Commerce: 34243945]

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