

# Terms and conditions Balloon.Art

## Article 1 Definitions

**Balloon.Art:** The user of these terms and conditions and all companies and organisations affiliated to Balloon.Art in any way.

**Other Party:** The Party contracted by Balloon.Art, and the person/persons conducting negotiations with Balloon.Art.

## Article 2 Applicability and Validity

These General Terms and Conditions are applicable to all agreements in which Balloon.Art is the contracted or contracting party, the seller or the buyer.

Deviations from and additions to agreements signed or to these General Terms and Conditions are valid only if and in so far as Balloon.Art has expressly confirmed these in writing. Any general terms and conditions of the Other Party are not accepted by Balloon.Art and will not apply.

If one or several provision in these General Terms and Conditions is null and void or voided, all other provisions in these General Terms and Conditions will remain in full force.

In case these General Terms and Conditions and the contract contain contrary provisions, the contract will prevail.

## Article 3 Formation of Contracts

3.1 Balloon.Art is only bound by a contract once it has been expressly confirmed in writing, or if Balloon.Art is performing the contract.

## Article 4 Pricing

Prices are in euros, excluding VAT, unless stated otherwise.

Balloon.Art is entitled to pass on price increases in cost-determining factors to the Other Party if such price increases arise after the formation of the contract.

## Article 5 Performance

The Other Party must inform Balloon.Art immediately of facts and circumstances that may affect the performance of the contract.

The Other Party must also immediately make available to Balloon.Art all information and materials, including information carriers that are needed for the performance of the agreement and must ensure that this information complies with the specifications indicated by Balloon.Art.

Balloon.Art is entitled to contract third parties for the proper performance of the contract, with whom Balloon.Art enters into agreements in its own name, but on behalf of the Other Party.

## Article 6 Payment

Payment must be made within 14 days of the invoice date in a manner to be indicated by Balloon.Art.

In case payment is not made within the payment term mentioned in article 6.1, the Other Party is immediately in default, without notice of default being required, in which case 1.5% interest per month must be paid to Balloon.Art on the invoiced amount from the date of default until payment has been made in full.

Payment must be made without set-off or suspension, regardless of the reasons.

Prior to the provision or continued provision of goods or services, Balloon.Art is entitled to require security from the Other Party on the performance of its payment obligations.

The full sum of the remaining part of the payment is immediately payable if the Other Party has requested a suspension of payments order or has filed for ban-

ruptcy, if any of its assets have been attached, if the Other Party is placed under administration or guardianship, dies or if its company is discontinued, liquidated or wound up, and also if the Other Party is in arrears with any payment.

Payments made by the Other Party will be applied to first pay any interest and costs payable to Balloon.Art. Second, the oldest outstanding invoices will be settled, even if the Other Party states that the payment relates to a later invoice. All collection costs related to the amount to which the Other Party is indebted, which costs are set at 15% of the unpaid sums, will be at the expense of the Other Party, with a minimum of € 250.00.

## Article 7 Retention of Title

All items delivered and to be delivered will remain the exclusive property of Balloon.Art until all claims Balloon.Art has or will have on the Other Party - including in any case claims for interest and judicial and extra-judicial costs as defined under article 3:92, paragraph 2 of the Dutch Civil Code - have been paid in full.

As long as ownership of the items has not been transferred to the Other Party, it is not allowed to pledge or grant any right in respect of these items to a third party, except within the ordinary course of its business. The Other Party is obliged to store the goods delivered under retention of title carefully and mark them as Balloon.Art's recognisable property. The Other Party must treat these items with due care. Also, the Other Party must insure these items against all calamities, based on the invoiced amount, and must submit to Balloon.Art at its first request the names and addresses of the insurers and copies of the insurance policies.

If third parties levy attachment on the items delivered under retention of title or wish to create or assert rights thereupon, the Other Party is obliged to inform Balloon.Art thereof immediately.

Balloon.Art is entitled to take back items delivered under retention of title that are still held by the Other Party if the Other Party is in default in the performance of its payment obligations or has or runs the risk of having financial difficulties. The Other Party will at all times grant Balloon.Art free access to its premises and/or buildings for the purpose of inspecting the items and/or executing its rights.

The aforementioned provisions leave all other rights accruing to Balloon.Art unimpaired.

## Article 8 Delivery Time

8.1 Delivery times stated are in no case to be considered as strict deadlines, unless expressly agreed otherwise. In case of non-timely delivery, Balloon.Art must be given written notice of default.

## Article 9 Force Majeure

Force Majeure is taken to mean: every circumstance outside the direct influence of Balloon.Art, or every situation it could not reasonably have foreseen that temporarily or permanently impedes the performance of Balloon.Art's obligations under the contract. Such circumstances include: restrictive government measures, mobilisation, war and danger of war, revolution, strike, confiscation, attachment, exceptional weather conditions, lack of transport capacity, or partial or total default by third parties whose services are contracted.

In case of force majeure, Balloon.Art has the right to either suspend the performance of its obligations to the Other Party, or to cancel the contract, in whole or in part, without judicial intervention being required and without being obliged to pay any compensation, such as at Balloon.Art's discretion.

## Article 10 Confidentiality

All information the Parties share will be treated as confidential information and will therefore be kept strictly secret from third parties. Aforementioned information will only be used for the purpose for which it has been provided.

Confidential information includes in any case: business information, such as customer files and commercial figures.

## Article 11

11.1 Balloon.Art is entitled to use the name of the Other Party and the subject of the contract entered into with this Other Party for its own publicity or promotion, also by publishing this information on the website of Balloon.Art.

## Article 12 Intellectual Property

All intellectual property rights arising from the performance of the contract (including, but not limited to patent rights, design rights, copyrights and database rights) will accrue to Balloon.Art. Balloon.Art is entitled to imprint its name on or remove its name from the item, or have its name imprinted or removed, and to use the work for its own publicity or promotion. The Other Party must ask for permission for each use of any of such rights vested in Balloon.Art.

The Other Party will refrain from using any of the ideas developed by Balloon.Art or know-how made available by Balloon.Art that is not protected by an intellectual property right as defined in the previous article. The Other Party must ask for permission for each use of any of such ideas developed and know-how made available by Balloon.Art.

The Other Party will cooperate at Balloon.Art's first request if, for the registration of an intellectual property right, Balloon.Art must submit a request, file, registration or perform any other act.

The Other Party guarantees that the use of objects and materials made available does not constitute an infringement of any intellectual property right of a third party and indemnifies Balloon.Art against any resulting claim. Balloon.Art is not obliged to examine if intellectual property rights are attached to such objects and materials made available.

## Article 13 Complaints

The Other Party must inform Balloon.Art as soon as possible of complaints on goods and services delivered, in any case within 8 days of delivery. The filing of a complaint does not discharge the Other Party from its payment obligations.

If the term included in article 13.1 is not observed, the Other Party may be deemed to have accepted the goods or services delivered.

## Article 14 Liability

Balloon.Art's liability is limited to the provisions laid down in this article.

Balloon.Art is only liable for damage suffered by the Other Party resulting from an attributable failure, wrongful act, or caused in any other way if this damage is the direct and exclusive result of gross negligence and wilful intent on the part of Balloon.Art.

Balloon.Art's liability is in all cases limited to the sum paid by its insurer in the relevant case.

If Balloon.Art is liable towards the Other Party for compensation of damage, this liability is limited to the invoiced amount, reduced by the applicable VAT and up to a maximum of € 15,000.00.

Balloon.Art does not accept any liability for damage to (private) property of the Other Party.

The Other Party and its staff members must observe the standards and safety instructions given on behalf of Balloon.Art. In case this is refused, all consequences are for the account of the Other Party.

Balloon.Art is not in any case liable for damage resulting from the non-observance of terms, nor for any consequential loss or indirect damage, including damage due to lost profits or lost savings. The right to claim damages will lapse 12 months after the occurrence of the damage came or could have reasonably come to the knowledge of the Other Party.

The Other Party indemnifies Balloon.Art against all claims by third parties. The Other Party cannot at any time hold liable staff members of Balloon.Art, third parties engaged by Balloon.Art or staff members of that third party.

## Article 15 Suspension and Termination

If prior to the delivery of goods and services to the Other Party it appears that this Other Party is insufficiently creditworthy, if the Other Party does not, not properly or not in a timely manner perform any of its obligations towards Balloon.Art, if the Other Party has been declared bankrupt or a request for bankruptcy has been filed at the Court, if the Other Party has requested a suspension of payments order or such order has been granted to it, if the Dutch Debt Management (Natural Persons) Act [Du. Wet Schuldsanering Natuurlijke Personen] has been declared applicable, if the company of the Other Party is stopped or liquidated, if goods of

the Other Party are attached or if it is placed under administration or guardianship, Balloon.Art will be entitled to suspend the performance of all its obligations towards the Other Party or to terminate its contracts with the Other Party in part or in full, without any notice of default or judicial intervention being required and without being obliged to pay any compensation, all this without prejudice to Balloon.Art's other rights under such circumstances.

Upon confirmation of the project Balloon.Art commences scheduling staff and ordering goods to meet a timely delivery of the goods and/or services. In the event of a cancellation by the Other Party a cancellation fee will be charged that represents a reasonable compensation for hours and means invested as well as lost income. The fee is calculated as follows; in case of cancellation after confirmation of the project by the client, 25% of total agreed cost + cost of purchases made; in case of cancellation 30 days or less before mutually agreed date of delivery 50% of total agreed cost + cost of purchases made; in case of cancellation 14 days or less before mutually agreed date of delivery 100% of total agreed cost.

## Article 16 Warranty

16.1 Warranty will only be granted by Balloon.Art if such has been expressly agreed in writing.

## Article 17 Interpretation of General Terms and Conditions

If uncertainty exists regarding the interpretation of any of the provisions in these General Terms and Conditions, the explanation will be found in the original purpose of such provision.

The General Terms and Conditions have been drawn up both in Dutch and in English. The Dutch text of these General Terms and Conditions will at all times be leading in their interpretation.

## Article 18 Disputes and Applicable Law

All contract are exclusively governed by Dutch law.

All disputes between the parties will in the first instance be submitted to the District Court of Amsterdam, located in Amsterdam, the Netherlands, without prejudice to the right of Balloon.Art to have the dispute settled through arbitration or binding opinion.

## Article 19 all quoted prices exclude VAT

19.1 all prices mentioned are exclusive of VAT, unless specifically stated.

19.2 Income tax; In some countries, instead of VAT, income tax must be paid immediately when working as an artist. In this case, the prices mentioned are exclusive income tax.