

General Terms and Conditions of MarktOnderzoekAssociatie Nederland (MOA) as applicable to the carrying out of assignments to conduct market research

Article 1 - General

- 1.1. These general terms and conditions, officially known as 'the General Terms and Conditions of MOA' apply to all offers and/or quotations and/or assignments and/or agreements pertaining to the carrying out of market research, hereinafter to be referred to as 'the Assignment', issued or accepted by a market research agency that is an affiliated member of the MOA, hereinafter to be referred to as 'the Agency', and the (potential) client, hereinafter to be referred to as 'the Client'.
- 1.2. Any deviation from these General Terms and Conditions is to be agreed in writing and only applies to the Assignment to which it explicitly refers. Any general terms and conditions by the Client shall not apply unless the parties have agreed in writing that (parts of) said terms and conditions are applicable in addition to these General Terms and Conditions.
- 1.3. All Assignments shall be carried out in accordance with the International ICC/ESOMAR Code of Marketing and Social Research Practice, to the extent that these General Terms and Conditions do not deviate from said Code of Practice. Under no circumstances shall Assignments be carried out in violation of the mandatory provisions and prescriptive requirements set out in Articles 1 to 18 and 24 to 29 of the International ICC/ESOMAR Code of Practice.

Article 2 - Research briefing

- 2.1. The Agency shall seek to obtain a sufficiently clear idea of the objectives that the Client wishes to achieve with the Assignment.
- 2.2. Any research proposals submitted by the Agency are based on information provided by the Client. The Client vouches for the fact that, to the best of its knowledge, it has provided all the information considered to be essential for setting up and carrying out the Assignment. The Client also vouches for the fact that it is authorised to use all the information provided to the Agency, including address details, for the purposes of market research.
- 2.3. All information provided to the Agency by the Client, either during the research briefing or during the research process, is strictly confidential and the Agency is obliged to preserve the secrecy of the information. This obligation to preserve the secrecy of the information also applies in the event that the Agency has received information from the Client, without subsequently being issued with an Assignment.

Article 3 - Research proposals and quotations

- 3.1. All research proposals and quotations submitted by the Agency are free of obligation. An Assignment shall be considered as having been accepted, once the Agency has confirmed the Assignment in writing, after having reached an agreement regarding the research proposal, or once research activities have commenced with the Client's knowledge after an agreement has been reached.
- 3.2. The Agency shall be entitled to charge a fee for submitting a research proposal, provided that this has been agreed with the Client in advance.
- 3.3. In the event that the Client has invited or is intending to invite more than one (potential) agency to submit a research proposal, the Client shall be obliged to notify all (potential) agencies of the number of agencies invited to submit proposals. In the event that the Client should fail to comply with this obligation and should subsequently fail to issue the Agency with an Assignment, the Client shall be obliged to cover all the costs incurred by the Agency in connection with the submission of the research proposal.
- 3.4. The rates and costs quoted by the Agency may not be increased for a period of four months following the quotation, unless the research cannot be carried out within the period specified in the research proposal due to fault on the part of the Client, or unless the Agency has reserved the right to increase its rates and costs. The amounts specified in quotations are always quoted exclusive of value added tax.

Article 4 - Liability

- 4.1. The Agency shall carry out the Assignment to the best of its knowledge and ability. Unless otherwise agreed in writing, this commitment shall be considered an obligation to perform to the best of one's ability. The Agency shall be liable for any shortcomings in the execution of the Assignment, to the extent that these shortcomings are due to failure on the part of the Agency to exercise the necessary care and expertise that could normally be expected in the performance of such an Assignment. Liability for any damage caused as a result of such failure, shall be limited to the sum of the payment received by the Agency for work carried out within the context of the Assignment. Any claims by the Client are to be made within one year from the date on which the damage was discovered. By failing to bring forward a claim within the above period, the Client forfeits the right to compensation. Any liability on the part of the Agency for any consequential damage incurred by the Client is hereby excluded. Within the context of these General Terms and Conditions, consequential damage is understood to include, among other things, all damage incurred as a result of any form of use of the research findings by the Client, or by any third party. Hence the Client is to indemnify the Agency against any claims by third parties on this count.

Article 5 - Delivery dates and planning

- 5.1. Agreed delivery dates shall not be binding in the event of a delay caused by unforeseen circumstances that involve interim changes in the Assignment or factors beyond the Agency's control, which may affect the fieldwork or the technical completion of the fieldwork. In the event that the Agency anticipates a delay, the Agency shall notify the Client to this effect immediately.
- 5.2. In the event that the Client wishes to introduce a change in the agreed schedule, the Agency shall endeavour to incorporate the change, provided that the Client discusses the change with the Agency in good time, and on the condition that, given the circumstances of the case in question, the Agency can reasonably be expected to do so. The latter will - to some extent - depend on the willingness on the part of the Client to cover the costs that the Agency is likely to incur as a result of the change that the Client wishes to make in the agreed schedule. Unless a different term is agreed in writing, the Client shall, in all cases, notify the Agency of any changes to the agreed schedule at least five working days before the fieldwork is due to start. In the event that the Client fails to observe said period of notice, the Agency shall be entitled to demand full payment of the agreed fee for the fieldwork. Any alternative income shall be deducted from that fee.

Article 6 - Changes / additional work

- 6.1. In the event that the Client wishes to introduce certain changes to the set-up and/or content of the research, the Client is to discuss the matter with the Agency well in advance. The Agency shall endeavour to incorporate any changes the Client wishes to make, provided that the Agency can reasonably be expected to do so, and provided that an agreement has been reached regarding such changes and the costs that can reasonably be charged in addition to the agreed fee, or deducted from the agreed fee.
- 6.2. Under no circumstances shall the Agency be permitted to make any changes to the agreed set-up and/or content of a research assignment without the Client's consent.
- 6.3. In the event that the Agency is likely to perform either more or less work than originally provided for in the research proposal on which the Assignment is based, the Agency shall consult the Client on the matter.
Any additional work to be carried out by the Agency shall be paid for by the Client, unless this additional work is necessary due to negligence on the part of the Agency, or because the Agency failed to accurately assess the extent of the work concerned, or could reasonably have anticipated such. The fee for the additional work in question shall be determined in mutual agreement by the parties.
In the event that the Agency needs to perform less work than originally intended, the Client shall be entitled to a reduction in the fee, provided and to the extent that the Agency has actually incurred fewer costs as a result. The actual amount of the reduction, resulting from less work having been performed, shall be determined in mutual agreement by the parties.

Article 7 - (Premature) termination of the Assignment / suspension and cancellation of the Assignment

- 7.1. In the event that the Assignment is not carried out in accordance with the research proposal on which the Assignment is based due to a fault attributable to the Agency, the Client shall serve the Agency written notice of default and shall give the Agency the opportunity to carry out the Assignment as agreed, observing a period of notice of one week. Only in the event that the Client cannot reasonably be expected to do so, shall the Client not be bound to grant the Agency the opportunity to carry out the Assignment properly.
Any additional costs incurred by the Agency, once the Agency has been served notice of default, do not qualify for reimbursement. Only in the event that the Agency persists in failing to meet its obligations after having been served notice of default, is the Client entitled to cancel the Assignment.
- 7.2. In the event that the Agency is unable to carry out the Assignment, or is unable to carry out the Assignment in accordance with the research proposal on which the Assignment is based due to a fault that can be attributed to the Client, the Agency shall serve the Client written notice of default and, observing a period of notice of one week, shall offer to carry out the Assignment as agreed, unless the Agency cannot reasonably be expected to do so. In the event that the Client chooses not to take advantage of said offer, the Client shall be obliged to reimburse the Agency for losses incurred arising from the non-performance of the Assignment.
The Agency shall be entitled to cancel the Assignment and/or to suspend the execution of the Assignment without having to serve notice of default, in the event that the Client fails to fulfil its obligations towards the Agency altogether, in terms of time, or as agreed.
- 7.3. In the event that the Agency or the Client becomes bankrupt, applies for (temporary) suspension of payment, or discontinues its operation, the other party shall be entitled to terminate the Assignment with immediate effect.

Article 8 - Conditions of payment

- 8.1. Unless otherwise indicated the rates specified in a research proposal and/or quotation include travelling expenses and board and lodging expenses. Upon request by the Client, the Agency is to provide a basic specification of any such costs that can be charged to the Client.
- 8.2. Unless otherwise agreed, payment shall be due within 30 days of the date of invoice.
Any outstanding payments shall be subject to interest calculated at the statutory rate from the date on which payment is due. In the event that the Client fails to fulfil one or more of its obligations towards the Agency, all reasonable costs incurred in the process of seeking to obtain payment without going to court are to be paid by the Client.
The Client is not entitled to suspend any of its obligations towards the Agency, nor is the Client entitled to set off any of its obligations against obligations on the part of the Agency.

Article 9 - Intellectual property

- 9.1. All rights (including the copyright) pertaining to the following (research) materials continue to rest with the Client, or shall be transferred to the Client:
- Questionnaires, instructions, specifications and data files furnished by the Client, and any other information provided by the Client.
 - The results of the market research - in the form of reports, recommendations, and other such documents - in the event that the Assignment involves specially tailored research, on the condition that the Client has settled all outstanding fees relating to the Assignment. Within the context of these General Terms and Conditions specially tailored research is understood to include all market research activities, both qualitative and quantitative, carried out specifically or solely on behalf of the Client.
- 9.2. The Agency is not permitted to disclose the content of (any part of) the research material referred to in Article 9.1 to any third party without the Client's consent.
- 9.3. All rights, including the copyright, pertaining to the following research materials rest and shall continue to rest with the Agency:
- Research proposals, cost estimates, quotations and other such documents.
 - All research materials developed by the Agency, such as research models, techniques, questionnaires, instruments and software.
 - The results of the market research in the form of reports, recommendations and other such documents in the event that the Assignment involves multi-client research. Within the context of these General Terms and Conditions multi-client research is understood to include all market research activities, both qualitative and quantitative, carried out within the framework of research, to the extent that the data is provided by and/or compiled from or for more than one client.
- 9.4. The Client is not permitted to disclose the content of (any part of) the research material referred to in Article 9.3 to any third party without the Agency's consent. The Client is entitled to reproduce the material referred to in Article 9.3. subclause c. for internal use, and to use this material for other internal purposes.

Article 10 - Damage caused to or by the test material

- 10.1. All damage caused to test material placed at the disposal of the Agency by the Client shall be paid for by the Agency, unless this damage is caused by factors beyond the Agency's control.
- 10.2. All damage caused by the (use of the) test material placed at the disposal of the Agency by the Client, shall be paid for by the Client, unless this damage was caused by deliberate intent or gross negligence on the part of (the personnel employed by) the Agency.
The Client shall indemnify (the personnel employed by) the Agency against any possible claims by third parties in this matter.

Article 11 - Applicable law / rules regarding the settlement of disputes

- 11.1. All agreements between the Client and the Agency are exclusively subject to Dutch law. All disputes that may arise as a result of, or in connection with the execution of an agreement or agreements between parties, are to be settled by the district court in the place where the Agency is situated, provided that the dispute falls within the jurisdiction of the district court, unless the Agency chooses to bring the dispute before the district court in the place where the Client's business premises are located.

Filed at the office of the district court in Amsterdam on 8 October 2001 under number 198/2001.

Amsterdam, September 2001