

BLCKBRD B.V. GENERAL TERMS AND CONDITIONS

1. Terms and Definitions

Terms and Conditions: These General Terms and Conditions, as filed with the Chamber of Commerce in Utrecht, the Netherlands;

Client: Any natural person (individual) or legal entity who or that has engaged BLCKBRD to provide Services, whether based on the provision of goods or otherwise;

Services: Any and all activities, services and consultancy related to music and sound for the Client which are the subject of an Agreement or otherwise performed or provided by BLCKBRD at the behest of and/or for the benefit of the Client;

Proposal: the written record of terms agreed, drafted by BLCKBRD, regarding the Services to be provided by BLCKBRD;

Agreement: any agreement entered into between BLCKBRD and the Client, any amendment or addition thereto, and any and all acts (including legal acts) conducted in relation to the performance of the Agreement and any and all acts (including legal acts) required to enter into the Agreement;

BLCKBRD: BLCKBRD Soundbranding B.V., with its registered office in Utrecht, the Netherlands, the user of these General Terms and Conditions, including any of its affiliates which may use these Terms and Conditions.

2. Applicability

1. The Terms and Conditions form part of all Proposals and Agreements and apply to all other acts (including legal acts) performed by BLCKBRD.
2. Unless otherwise agreed between the Parties in writing, any general or specific terms, conditions or clauses proposed by the Client will not be recognised by BLCKBRD.
3. In the event that the Terms and Conditions and an Agreement were to contain mutually contradictory clauses, the Agreement will prevail.
4. If any part of the Terms and Conditions were to prove invalid or were rendered null and void, the remaining provisions of the Terms and Conditions will remain in full force and effect and the Parties will be required to make every effort to establish a replacement clause by agreement with the other Party, which will be valid and which match the original intentions of the parties as closely as possible.

3. Offers and Negotiation of Agreements

1. Any proposals (quotations) will not be binding on BLCKBRD and merely constitute an invitation to place an order.
2. An Agreement will be deemed to have been established when the Client has accepted the Proposal or if BLCKBRD has begun to fulfil an order. If BLCKBRD provides any kind of service at the Client's request before an Agreement has been negotiated and signed, the Client will pay BLCKBRD for this service in accordance with the rates applicable at BLCKBRD at that time.
3. BLCKBRD will be entitled to withdraw its Proposal before receiving the confirmation of acceptance of the Proposal, unless the Proposal specifies an acceptance period and this period has not yet expired.
4. BLCKBRD will only be bound if and when BLCKBRD has accepted an order by means of an Agreement. Any verbal commitments or agreements made by or with its staff will not bind BLCKBRD, unless and to the extent that BLCKBRD has confirmed such commitments or agreements in writing.
5. If and to the extent that the fulfilment of the order deviates from the terms set out in the Proposal BLCKBRD will notify the Client at the earliest possible stage.
6. Unless otherwise agreed between the Parties, if the amount stated in a Proposal is exceeded by up to 10%, the Client will accept this overrun as a budgetary risk. Any overruns of the amount(s) quoted in a Proposal as a result of sales terms and conditions set by suppliers and any other third parties engaged by BLCKBRD will not be deemed to constitute overruns as such, also not if the sales terms and conditions are not separately stated in a Proposal.

4. Amendments and Additions to the Agreement

1. Any amendments or additions to any provision of an Agreement and/or the Terms and Agreements can only be agreed in writing. Any changes to the performance of the Agreement will be included in the written report referred to in Article 8.1.

2. In the event that an amendment results in a delay in the performance of an Agreement, the Client will cover any expenses previously incurred by BLCKBRD, along with any work in progress and the previously reserved capacity and hours of employees, including with regard to project management, at market-compliant rates.

5. Rates

1. All rates charged by BLCKBRD are expressed in euros and are exclusive of value-added tax (VAT/sales tax), travel and accommodation expenses, telecommunications costs, courier charges, postal charges, materials and equipment, transport, and data storage, unless expressly otherwise provided for in an Agreement.
2. BLCKBRD will be entitled to charge on to the Client any change in the factors which affect the rates charged by BLCKBRD, including purchase prices, foreign-exchange rates, import and export duties, insurance rates, freight rates, and any other charges, levies or taxes, and an increase in the price index set by the CPB Netherlands Bureau for Economic Policy Analysis.(Centraal Planbureau).

6. Payment

1. BLCKBRD will invoice 50% of the total invoice amount for the Services following the signing of the Proposal, with the Principal subsequently paying this amount to BLCKBRD within 14 days. BLCKBRD will subsequently invoice 25% of the total invoice amount on initial delivery of the agreed Services and 25% on the final delivery of the agreed Services.
2. The Client will always pay the amounts invoiced within 30 days of the invoice date.
3. All payments will be made without deduction, withholding or offsetting and will be transferred to a bank account to be specified by BLCKBRD.
4. If BLCKBRD has reasonable doubt at any time regarding the Client's creditworthiness, or if BLCKBRD is required to pay (a) fee(s) to third parties in advance as part of the Agreement, BLCKBRD will be entitled, before providing any services/additional services, to demand that the Client pay the agree amount in advance or that the Client provide proper security.
5. The Client will be in default merely by failing to make payment by the due date or failing to provide security in a timely manner following a request by BLCKBRD to this effect. From such time onward, any receivables due to BLCKBRD from the Client, including statutory interest payable on these amounts, in respect of the relevant Agreement and related Agreements, will be immediately due and payable, and the Client will be required to pay to BLCKBRD any court or out-of-court costs payable.

7. Performance of the Agreement

1. BLCKBRD will perform any Agreements based on the circumstances applicable at the time the relevant Agreement is entered into and, to the extent dependent on services to be provided by third parties, on the data provided to BLCKBRD by such third parties.
2. The Client will provide BLCKBRD with all data and materials required for the performance of an Agreement, including, but not limited to, information media, within a reasonable period to be set by BLCKBRD, and will ensure that the required data is in accordance with the specifications provided by BLCKBRD.
3. Unless otherwise agreed between the Parties in writing, the Agreements will be performed during regular working hours and under normal circumstances.
4. BLCKBRD will be authorised to engage the services of third parties to be selected by it in the performance of an Agreement; BLCKBRD will enter into agreements with such third parties in its own name but at the Client's expense.

8. Written Reports and Complaints

1. BLCKBRD will keep the Client updated on the progress of the Services by means of periodic written reports. Any changes to the performance of the Agreement implemented in the meantime will be set out in these reports and will be deemed to constitute "changes" within the meaning of Article 4.1 of this Agreement.
2. If the Client disagrees with the contents of a written report or an invoice, a complaint must be filed in writing within two weeks of the dispatch date of the written report or invoice. Any errors in the Services which could not reasonably have been detected within this term must be reported in writing immediately after being detected, and in any event within two weeks of the expiry of an Agreement.

9. Intellectual Property Rights

1. The copyrights related to the works delivered by BLCKBRD are inalienable and will be managed by BLCKBRD. The works will be registered with BUMA/STEMRA and published by BLCKBRD Publishing BV. BLCKBRD indemnifies the Client, to the extent possible, against any third-party claims relating to musical works.
2. In the event that the Client provides any data and materials to BLCKBRD which are subject to copyrights, image rights or other (related) third-party intellectual and industrial property rights, the Client will indemnify BLCKBRD against any and all third-party claims.
3. Any estimates, budgets, plans, catalogues, software and other materials involving the knowhow of BLCKBRD which are provided to the Client as part of a Proposal or during the performance of an Agreement, will remain the property of BLCKBRD. The Client will keep confidential these items and any information contained therein, particularly any knowhow regarding the services to be provided, and not make them available to any third parties. Any results from Agreements which may have been made available to third parties are strictly for personal use, unless the Parties have agreed otherwise.
4. Notwithstanding the provisions of Article 9.2, BLCKBRD indemnifies the Client against any third-party claims, if and to the extent that the Client were to infringe on any intellectual property rights as a result of the use of the items delivered. In the event of any third-party claims, the Client will be required – subject to the lapse of this indemnification – to notify BLCKBRD accordingly in writing within 48 hours and to provide all information and/or cooperate in any manner which may be necessary in order to mount a defence and/or conduct settlement negotiations.
5. During the term of the Agreement, the Client will not be authorised to engage in any further or alternative use of the items produced at its behest other than that expressly agreed between the Parties in advance. If the Parties have made no arrangements in this regard, the first use will be deemed to have been agreed by the Parties.
6. During the term of the Agreement, the Client will not be authorised to alter the items produced at its behest, unless it has obtained the express prior written consent of BLCKBRD to do so.
7. BLCKBRD will be authorised to sign the item produced at its behest and to use the results of the Services without the Client's prior written consent for the purpose of its own services, in brochures, catalogues and portfolios and on websites, as well as for the purpose of exhibitions, advertising industry competitions and award ceremonies.
8. The Client is bound by Dutch copyright laws and undertakes to report the use of music to the appropriate rights organisations.

10. Force Majeure

1. If BLCKBRD is prevented by force majeure (i.e. circumstances beyond its control) to perform the agreed activities in whole or in part, it will be entitled to suspend the performance of an Agreement without the intervention of the courts or to consider an Agreement as rescinded in whole or in part, to be determined at its discretion, without being required to pay any compensation or provide any guarantee.
2. "Force majeure" here refers to: strike/industrial action, exclusion, fire, machine breakage and other forms of business interruption (either at BLCKBRD or at the companies of its providers of goods and services), transport failure and any other events beyond its control, including war, blockades, insurrection, terrorist acts, epidemics, devaluation, flooding and storms, along with a sudden increase in import duties and general duties and/or taxes, delays in, or failure of, delivery by suppliers, failure to obtain the required permits, and other government measures.

11. Liability and Exoneration

1. BLCKBRD will perform its work to the best of its ability and, in so doing, will demonstrate the level of care which can be expected of BLCKBRD. However, BLCKBRD will never be liable for any loss or damage of any kind whatsoever resulting from the inaccurate or incomplete provision of information by the Client. Furthermore, the Client will indemnify BLCKBRD against any third-party claims which may arise as a result of such inaccurate or incomplete provision of information.
2. While BLCKBRD will do everything within its powers to secure the stored data belonging to the Client, it accepts no liability for any loss of this data.
3. BLCKBRD is not liable for any loss or damage caused by wilful misconduct or equivalent gross negligence on the part of non-managerial personnel.

4. BLCKBRD is not liable for any loss or damage caused by acts or omissions on the part of third parties engaged by the Client in the performance of the Agreement.
5. Goods will be transported at the Client's risk.
6. The limitation and exclusion of liability contained in the Agreement do not apply if the loss or damage was caused by wilful misconduct or gross negligence on the part of managerial staff. "Managerial staff" in these General Terms and Conditions includes any subordinates with managerial or supervisory duties who are not members of the management or executive board.

12. Limitation of Liability

1. Any liability on the part of BLCKBRD established under the law is limited to the underlying invoice value, less the out-of-pocket expenses, or up to the maximum amount covered by BLCKBRD's liability insurance in this case.
2. BLCKBRD cannot be held liable for any consequential damage resulting from the Services provided.

13. Termination

1. Unless expressly otherwise agreed between the Parties, the Client will engage the services of BLCKBRD for a definite period of time. The commission will be deemed to have come to an end if the Services to be provided by BLCKBRD have been completed and the Client has not filed any complaints in accordance with Article 8.2 of the Terms and Conditions.
2. Any work performed by BLCKBRD following the completion referred to in the foregoing paragraph, including, but not limited to, as part of the management and maintenance of the databases, websites and other technical resources required for this purpose, will automatically result in a new contract for services signed between BLCKBRD and the Client, for which the latter would be liable to pay the standard rate charged by BLCKBRD.
3. Agreements cannot generally be terminated prior to the expiry date, unless the Client cannot reasonably be required to continue an Agreement. In this case, the Client must give at least two months' notice.
4. BLCKBRD will charge an amount for these two months which is equal, per month, to the monthly average of the previously invoiced amounts or, if BLCKBRD has commenced the performance of the Agreement less than two months before the date of cancellation, will determine the amount to be charged based on the Proposal.
5. In the event that an Agreement is terminated by means of cancellation, BLCKBRD, in addition to the fee specified in Article 13.4, will charge all previously incurred expenses along with the work in progress, at the rates applicable at that time.
6. If the Client fails to fulfil any of its obligations under an Agreement or fails to do so in a timely manner, the Client will be immediately in default and BLCKBRD will be authorised to undertake the following without notice of default or intervention by the court being required:
 - a) Suspend fulfilment until payment has been secured; and/or
 - b) rescind the Agreement in whole or in part;
 - c) notwithstanding the other rights of BLCKBRD and without BLCKBRD being required to pay any compensation for damages.
7. In the event that an Agreement is terminated by means of rescission, as set out in Article 13.6b, the Client will be liable to pay the full amount estimated in an Agreement at once.
8. In the event of bankruptcy, a moratorium on payment (temporary or otherwise) or termination or liquidation of the Client's business, all Agreements with the Client will be rescinded by operation of law, unless BLCKBRD informs the Client within a reasonable period of time that it requires compliance with all or part of the relevant Agreement, in which case BLCKBRD will be authorised to undertake the following without any notice of default being required:
 - a) Suspend fulfilment until payment has been secured;
 - b) and/or rescind the Agreement in whole or in part;
 - c) notwithstanding the other rights of BLCKBRD and without BLCKBRD being required to pay any compensation for damages.

14. Settlement of Agreement

1. Any and all designs, reproduction materials, copy, descriptions, artistic performances or services, films, videos and other promotional materials held by BLCKBRD on termination of the Agreement as a result of

- the Agreement, will be transferred to the Client free of charge immediately on the Client's request, after the Client has fulfilled all its financial obligations of any kind.
2. In all cases in which the Agreement between the Client and BLCKBRD is terminated as a result of any provision of the Terms and Conditions or due to the intervention of the courts, the Terms and Conditions will continue to govern the legal relationship between the Parties, to the extent that this is necessary for the settlement of the Agreement.

15. Transfer of Rights and Obligations

1. BLCKBRD is not authorised to transfer to a third party the rights and obligations described in an Agreement. In such an event, BLCKBRD will inform the Client accordingly in advance, while the Client will be entitled to terminate an Agreement by the date on which the transfer is to be completed. BLCKBRD will not be required to pay any compensation of any kind. The Client will not be entitled to transfer the rights and obligations under an Agreement without BLCKBRD's prior written consent.

16. Full Agreement

1. Any Agreement, including the Terms and Conditions, is a full representation of the rights and obligations of each Party and will replace all prior written and verbal agreements, declarations, statements and behaviours.

17. Applicable Law and Competent Court

1. These Terms and Conditions, along with all Agreements, are subject to Dutch law.
2. Any disputes arising as a result of or in connection with any Agreement or the Terms and Conditions will, unless otherwise required under the law, initially be referred to the competent court in Amsterdam, the Netherlands.