

Terms and Conditions

gooitz

Version 110423

General terms and conditions gooitz

These are the General Terms and Conditions of gooitz (part of partnership G & J), located at Papendwarsstraat 3 in Zwolle (8011 PM), registered with the Chamber of Commerce under registration number 57412154 and accessible online at: www.gooitz.nl.

These General Terms and Conditions apply to any agreement concluded between gooitz and the legal entities that purchase Services and/or Products from gooitz (referred to as "Client").

Please note that these Terms and Conditions may be amended from time to time. We therefore advise you to check the Terms periodically for changes.

Other data gooitz:

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Article 1- Definitions

In these General Terms and Conditions, the following definitions shall apply:

- 1.1. **General Terms and Conditions:** the terms and conditions contained in this document.
- 1.2. **Day:** calendar day.
- 1.3. **Services:** the whole of the Services offered by gooitz, being:
 - a. Assisting and advising on placemaking projects - place led development;
 - b. Programming and organizing under the name Club Cele;
 - c. Forging coalitions for making better places for people;
 - d. Conduct design research;
 - e. Assist and advise in coming up with innovative concepts;
 - f. Lead workshops on placemaking, concept development, creativity, technology and business innovation;
 - g. City expeditions City at eye level (kids);
 - h. Placemaking and Placemaking kids;
 - i. Zooming in on trends, social media, Client experience, Client profiling, revenue models and how to improve a business model;
 - j. Initiating and organizing co-creation sessions.
- 1.4. **gooitz:** gooitz, Papendwardsstraat 3, 8011 PM Zwolle.
- 1.5. **Client:** the natural or legal person with whom gooitz has entered into an Agreement. It also means the person who is or is negotiating the Agreement with gooitz, as well as its representative(s), agent(s), assignee(s) and heirs.
- 1.6. **Additional Work:** work that falls outside the agreed Services.
- 1.7. **Agreement:** the contractually recorded Written arrangements between gooitz and Client, pursuant to which gooitz provides Services and/or Products to Client.
- 1.8. **Force majeure:** a shortcoming that cannot be attributed to the debtor, if this shortcoming is not due to his fault, nor for his account by virtue of the law, legal act or generally accepted practice.
- 1.9. **Parties:** joint designation of gooitz and Client.
- 1.10. **Products:** the whole of the Products developed by gooitz, being:
 - a. Methods;
 - b. Concepts;
 - c. Artistic design direction;
 - d. Other Products.
- 1.11. **Personal Data:** any information that relates to an identified or identifiable natural person. This includes information such as names, addresses, telephone numbers, e-mail addresses, dates of birth and other data that can be used to identify an individual.
- 1.12. **Written:** in these General Conditions, Written also includes the content of electronically sent messages, such as e-mail messages, provided that the identity of the sender and the integrity of the message have been sufficiently established.
- 1.13. **Processor:** a processor is an entity or person that processes personal data on behalf of the Controller. The processor acts only as instructed by the controller and has no independent control over the personal data being processed.
- 1.14. **Processor Agreement:** any further agreement concluded between the Parties in which arrangements are made regarding the handling of personal data and the security thereof.
- 1.15. **Controller:** an entity or person who determines why and how personal data are processed. This may, for example, be an organization, company or individual that collects and manages personal data for specific purposes. The controller is responsible for ensuring compliance with applicable privacy laws when processing personal data.
- 1.16. **Working days:** the days Monday through Friday, with the exception of official Dutch holidays and other days for which gooitz has given advance notice to be closed.

Article 2 – Applicability

- 2.1. These General Terms and Conditions apply to all quotations, offers and Agreements concluded between gooitz and Client and form an integral part of any Agreement for the supply of Services and/or Products.
- 2.2. All Services and Products are provided by gooitz exclusively on the basis of these General Terms and Conditions. This applies in particular if the Client applies conflicting General Terms and Conditions or if the provisions in the Client's General Terms and Conditions deviate from the provisions in these General Terms and Conditions.
- 2.3. In all cases where an Agreement terminates, these Terms and Conditions shall continue to govern the relationship between the Parties to the extent necessary for its settlement.
- 2.4. Any terms or conditions of the Client that deviate from, or do not appear in, these General Terms and Conditions are binding on gooitz only if and insofar as they are expressly accepted in Writing by gooitz.
- 2.5. Specific provisions take precedence over general provisions applicable to all Services in the event of inconsistencies.
- 2.6. gooitz reserves the right to modify or supplement these Terms.
- 2.7. Third party products and/or Services may be part of gooitz's Services. If that is the case, (the use of) those Products and/or Services are additionally subject to the (general) terms and conditions of the third party in question with the setting aside of the deviating terms and conditions in these General Terms and Conditions.
- 2.8. In the event of any conflict between the applicable (further) agreements and conditions, the following order of precedence shall apply:
 - a. Agreement;
 - b. Quotation;
 - c. Additional Terms and Conditions;
 - d. General Terms and Conditions;
 - e. Processor Agreement.

Article 3- Quotation, offer and acceptance

- 3.1. An Offer, prepared by gooitz, is non-binding and valid until 14 days after date by gooitz, unless otherwise indicated in the offer.
- 3.2. Client must accept the Quotation in Writing, unless gooitz agrees otherwise than in Writing.
- 3.3. Any terms or conditions of the Client that differ from, or do not appear in, these Terms and Conditions are binding on gooitz only if and to the extent expressly accepted in writing by gooitz.

Article 4- The Agreement

- 4.1. The Agreement between the Parties is concluded at the moment that the Client accepts the offer and complies with the specified conditions.
- 4.2. gooitz guarantees that the Services and Products comply with the Agreement, the specifications stated in the invoice, the reasonable requirements of soundness and/or usability and the legal provisions and/or government regulations existing on the date the Agreement was concluded.
- 4.3. gooitz is entitled to refuse the Client's application. Grounds for refusal include, but are not limited to:
 - a. An error in the offer made by gooitz;
 - b. Legal incapacity of the Client;
 - c. The absence of the information necessary to enter into the Agreement.
- 4.4. If gooitz refuses the Client's application, as defined in clause 4.3. of these General Terms and Conditions, gooitz shall notify the Client In Writing within fourteen Business Days of receipt of the application.

4.5. A refusal, as described in Article 4.3. of these General Terms and Conditions, will never lead to liability for any damages incurred.

Article 5- Intellectual Property Rights

- 5.1. All intellectual property rights to all Products developed or made available as part of the Service belong exclusively to gooitz or its licensors, unless otherwise agreed in writing.
- 5.2. The Client only acquires the user rights and powers explicitly granted in these General Terms and Conditions, the Agreement or otherwise In Writing.
- 5.3. The Client has the right to obtain the intellectual property rights to the Service developed or Products made available by gooitz, provided this has been agreed in Writing.
- 5.4. The Client is not permitted to change or remove any indication concerning copyrights, brands, trade names or other intellectual property rights from the Products, including indications concerning the confidential nature and secrecy of materials.
- 5.5. Any use, reproduction or disclosure of the Products beyond the scope of the Agreement or granted rights of use constitutes an infringement of intellectual property of gooitz or its licensors.
- 5.6. Client shall pay an immediately due and payable penalty of 5,000 euros per infringing act and 25,000 euros per willfully infringing act to gooitz, without prejudice to the right of gooitz to recover its damages from the infringement or to be allowed to take other legal action to have the infringement terminated and/or to recover damages. After the expiration of one business day after gooitz notifies Client of an infringement, Client shall also owe a penalty of 5,000 euros for each day that the infringement is not terminated.

Article 6- Additional work

- 6.1. If as a result of Client's wishes, which can reasonably be considered by gooitz as a modification or addition to the provisions of the quotation or the Agreement and the amount of work to be performed by gooitz under this Agreement increases then there is Additional Work.
- 6.2. If gooitz is of the opinion that Additional Work is involved, it shall notify the Client as soon as possible, and request Written approval for the execution of the proposed Additional Work.
- 6.3. gooitz is under no obligation to grant a request for Extra Work.
- 6.4. Any extension of the deadlines specified in the original quotation due to Additional Work shall be the responsibility of the Client.
- 6.5. gooitz will, in the case of Additional Work, inform Client in advance of the (estimated) costs and will only carry out the associated work after approval by Client.
- 6.6. gooitz will assume the already agreed rates when performing Additional Work. Also, gooitz is entitled to conclude a supplementary agreement describing the Additional Work and the associated rates.
- 6.7. The provisions of these General Terms and Conditions apply to all Additional Work to be performed by gooitz, to the extent that the Parties have not agreed otherwise.

Article 7- Duration, termination and dissolution

- 7.1. The duration of the Agreement depends on the nature of the assignment and will be determined per assignment. gooitz and Client determine the duration of the Agreement by mutual agreement. If no specific agreements are made regarding the duration of the Agreement, it will end as soon as the assignment is completed to the satisfaction of both Parties.
- 7.2. The Parties are not permitted to terminate the Agreement prematurely, except for the cases for which an exception is explicitly made in these General Terms and Conditions or in other parts of the Agreement.
- 7.3. The Agreement is considered terminated when the performance thereunder has been mutually delivered.
- 7.4. gooitz is authorized to terminate or suspend all or part of the Agreement with immediate effect, without judicial intervention, In Writing and without any obligation to pay damages or compensation, if:
 - a. Client does not fulfill obligations under the Agreement, in full or in time;
 - b. After the Agreement has been concluded, circumstances come to the knowledge of gooitz which give good reason to fear that the Client will not fulfill his obligations;
 - c. Client was asked at the conclusion of the Agreement to provide security for the fulfilment of his obligations under this Agreement and this security is not provided or is insufficient;
 - d. Due to the delay on the part of the Client it can no longer be required of gooitz to fulfill the Agreement against the original agreed conditions;
 - e. Client applies for suspension of payment or files for bankruptcy;
 - f. Client's bankruptcy is granted;
 - g. Client's operations are discontinued or liquidated;
 - h. Circumstances arise which are of such a nature that fulfillment of the Agreement becomes impossible or unamended maintenance of the Agreement becomes impossible or unamended maintenance of the Agreement can reasonably be required of gooitz.
- 7.5. The option to suspend under the cases mentioned in Article 7.4. of these General Terms and Conditions applies to all Agreements concluded with the Client, even if the Client is in default with regard to only one Agreement
- 7.6. If the Agreement is dissolved, the claims of gooitz against Client are immediately due and payable. If gooitz suspends fulfillment of its obligations, it retains its claims under the law and the Agreement.
- 7.7. If the dissolution is attributable to the Client, gooitz is entitled to compensation for the damage caused directly and indirectly as a result.

Article 8- Changes to Services

- 8.1. gooitz reserves the right to change or modify the Services without prior notice to Client(s).
- 8.2. In the event of changes to Services, gooitz will make every effort to notify Client(s) of such changes.
- 8.3. By continued use of a Service after such changes or modifications, Client(s) implicitly agree to the modified terms.
- 8.4. gooitz shall not be liable for any damage or loss resulting from any changes in the Services or pricing.

Article 9- Force Majeure

- 9.1. Neither Party shall be obliged to fulfill its obligations if a circumstance, which is beyond the control of the Parties and which was not foreseen or should have been foreseen when the Agreement was concluded, nullifies the possibility of fulfillment. The Parties may only invoke Force Majeure against each other if the Party affected by the deficiency notifies the other Party In Writing of the invocation of Force Majeure as soon as possible after its occurrence, and with the necessary supporting documents.
- 9.2. The circumstances referred to in Clause 9.1. of these General Conditions shall in any case mean:
- a. Shortcomings by Parties on whom gooitz depends in the provision of Services and Products (suppliers);
 - b. (Power) failures of Internet or other telecommunications facilities;
 - c. Unavailability of one or more staff members (due to illness);
 - d. Government actions; and
 - e. Natural disaster, network attacks, war, terrorist attacks and general transportation problems.
- 9.3. If a situation as referred to in the first paragraph of this article arises as a result of which gooitz is unable to fulfill its obligations to the Client, obligation(s) shall be suspended in whole or in part for the duration of such Force Majeure, without the Parties being mutually liable for any compensation in this respect.
- 9.4. The parties may only invoke Force Majeure against each other if the party concerned notifies the other party In Writing of such invocation of Force Majeure as soon as possible after the failure has occurred, on submission of documentary evidence.
- 9.5. In the event of Force Majeure, the party invoking Force Majeure must make every effort to ensure that the shortcoming being cured for Force Majeure is of the shortest possible duration.
- 9.6. If a Force Majeure situation has lasted for thirty days (30), or as soon as it is established that the Force Majeure situation will last for more than three months, each of the Parties has the right to terminate the Agreement In Writing, unless the nature and extent of the failure does not justify the interim termination. What has already been performed under the Agreement shall in that case be settled proportionately, without the Parties owing each other anything else.

Article 10- The Price

- 10.1. The hourly rate is exclusive of sales tax (VAT) and other government levies.
- 10.2. The hourly rate is exclusive of travel and other expenses. In case travel and other expenses are (to be) incurred, this will be reflected in the invoice.
- 10.3. If a price in an offer is based on data provided by the Client and these prove to be incorrect, then gooitz is entitled to adjust the prices to the prices reasonably corresponding to the correct data, even after the Agreement has already been concluded.
- 10.4. All prices mentioned in the offer of gooitz are subject to typing and calculation errors.

Article 11- Price Indexation

- 11.1. The prices and hourly rates agreed upon when entering into the contract are based on the price level applicable at that time.
- 11.2. Adjusted prices, rates will be communicated to Client as soon as possible.

Article 12- Terms of payment

- 12.1. gooitz will send an invoice to Client for the amount due by Client. The payment term of an invoice is 14 days after the date of the invoice, unless otherwise agreed between gooitz and Client.
- 12.2. Payments shall be made in the currency in which the invoice is issued.
- 12.3. If the Client fails to timely fulfill its payment obligation(s) after being notified by gooitz of the late payment and gooitz has given the Client a period of 14 days to still fulfill its payment obligation and after failing to make payment within this 14-day period, the Client shall owe statutory interest of 2% per annum and €95 administration costs on the amount due without further notice of default by gooitz.
- 12.4. In the event of late payment, in addition to the amount owed and the interest accrued thereon, the Client is liable to pay full compensation for both extrajudicial and judicial collection costs, including the costs of lawyers, bailiffs and collection agencies.
- 12.5. The claim for payment is immediately due and payable if the Client is declared bankrupt, applies for a suspension of payments, the Client dies and furthermore, if the Client goes into liquidation, is dissolved or if the bankruptcy is granted.
- 12.6. In the cases mentioned in article 12.4. of these General Terms and Conditions, gooitz has the right to terminate or suspend execution of the Agreement or any part thereof that has not yet been executed without notice of default or judicial intervention, without the Client thereby acquiring any right to compensation.

Article 13 – Liability

- 13.1. gooitz accepts liability for direct damage caused by its intent or gross negligence in the performance of this Agreement.
- 13.2. gooitz is not liable for indirect damages, consequential damages, lost profits, missed savings, damages due to business interruption, damages resulting from third party claims, or any other form of indirect or consequential damages.
- 13.3. If gooitz performs work for the Client on a hired basis, the Client shall be liable for any damages incurred during the performance of the Agreement. This applies only to damage caused by gooitz and directly related to the performance of the Agreement.
- 13.4. In no event shall gooitz's total liability under this Agreement exceed the total amount paid by the other party to gooitz under this Agreement prior to the occurrence of the damage.
- 13.5. gooitz shall use reasonable efforts to mitigate any damages and take measures to limit the effects of the damages as soon as possible.
- 13.6. This liability clause does not affect liability for intentional misrepresentation, fraudulent acts, personal injury or death, or any other liability that cannot be excluded by law.
- 13.7. The parties agree that they will promptly notify each other in writing of any claims or disputes arising out of or relating to this Agreement, and will cooperate in good faith to resolve any such claims or disputes.

Article 14- Confidentiality

- 14.1. The parties shall keep confidential any information they provide to each other before, during or after the performance of the Agreement if such information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential.
- 14.2. The parties shall also impose the obligation in the first paragraph of this article on their employees as well as the third parties engaged by them for the performance of the Agreement.
- 14.3. This obligation shall continue to exist even after termination of the Agreement for whatever reason, and for as long as the providing party can reasonably claim the confidential nature of the information.

Article 15- Processing of personal data

- 15.1. If Parties exchange personal data for the performance of their Services, Parties will enter into commitments that provide guarantees regarding the technical and organizational security measures related to the processing of personal data to be performed.
- 15.2. If gooitz qualifies as a processor within the meaning of the General Data Protection Regulation (hereinafter; GDPR), the GDPR obliges gooitz and Client to enter into a "processor agreement. In the absence of a further, separately agreed 'processor agreement', the provisions in this article shall apply as the undertakings referred to in the GDPR.
- 15.3. gooitz will ensure an appropriate level of security given the risks involved in the processing and the nature of the personal data.
- 15.4. Client guarantees that it will only enter or otherwise make personal data available to gooitz in an entirely lawful manner.
- 15.5. If, in the context of a legal obligation, for example pursuant to the AVG, the Client needs to change, remove or cede data stored in systems of gooitz, gooitz will assist in this as much as possible.

Article 16- Amendments to General Terms and Conditions

- 16.1. The General Terms and Conditions may be amended with reasonable notice, taking into account the justified interests of the Client. If the Client does not object to the relevant amendment within the period set by gooitz, the amendment shall be deemed accepted by the Client. In the event of such a change, gooitz will inform Client accordingly by means of a change notice. This possibility of modification is limited to changes that do not substantially alter the relationship between performance and consideration. This provision explicitly does not apply to price increases.
- 16.2. Changes shall also apply with respect to Agreements already concluded subject to a period of 30 days after publication of the change on the website of gooitz or by electronic notification. Changes of minor importance may be made at any time.

Article 17- Additional or different provisions

- 17.1. Additional provisions or provisions varying from these General Terms and Conditions may not be to the detriment of the Client and must be recorded in writing or in such a way that they can be stored by the Client in an accessible manner on a durable data carrier.

Article 18- Final Provisions

- 18.1. The Agreement, as well as any agreements and other legal acts resulting from or related to it, shall be governed exclusively by Dutch law.
- 18.2. If any provision of these General Conditions proves to be void, this shall not affect the validity of the entire Agreement. The parties will in this case replace (a) new provision(s) taking into account the intention of the original Agreement and General Terms and Conditions.
- 18.3. Disputes arising from the Agreement will be submitted to the competent court in Zwolle, the Netherlands.
- 18.4. gooitz has at all times the right to involve third parties in the execution of the Agreement.
- 18.5. Information and communications on the Website of gooitz are subject to errors.
- 18.6. All legal claims of the Client under the Agreement shall - subject to provisions of mandatory law - expire after one year, calculated from the day on which performance of obligations under the Agreement existing between the Parties became due and payable. This provision does not affect the regular limitation period of the claims of gooitz.