

Terms & Conditions

Last updated June 2021

Article 1 - Definitions

- A. Media Suite (Trade Name) a company registered at the Chamber of Commerce of Aruba under name Smashing Invision Studio VBA and under number 50495.0
- B. Client: the natural person, Company or other legal entity who purchases Services provided by Media Suite.
- C. Contract: Any agreement between Media Suite and the Client for the provision of Services by Media Suite to the Client against the payment of a fee. Such agreement can be reached verbal or in writing including by letter or e-mail.
- D. Services: All products supplied, Services rendered or other activities performed, in the area of websites, (online) marketing, online services, graphic design or other related areas, by Media Suite for the benefit of the Client.
- E. Quotation: any estimate sent to the Client by Media Suite detailing, inter alia, the description and the fee of the Services Media Suite proposes to provide for the Client.

Article 2 - Applicability

- A. These general terms and conditions are applicable to all contracts, quotations and other relationships and agreements, by any name, between Media Suite and the Client as well as to all Services provided by Media Suite ensuing from any of the above.
- B. Any deviations from, and additions to these general terms and conditions shall only be valid if they have been explicitly agreed in writing in, for example, the contract or in a separate (written) agreement between Media Suite and the Client.
- C. The applicability of the Client's general terms and conditions is explicitly excluded by Media Suite, unless otherwise agreed upon in writing by Media Suite.

Article 3 - Quotation and contract

- A. All quotations sent by Media Suite to the Client are non-binding unless otherwise stated in the quotation. A quotation is only valid for 30 days after the date it is sent to the client.
- B. The fee stated in a quotation is an estimate based on client's specific instructions. Media Suite reserves the right to amend it's fee at any time after acceptance of a quotation on giving notice in case of unforeseen circumstances beyond Media Suite's control or if the instructions of the Client change or in order to meet any rise in costs due to any factor beyond Media Suite's control.
- C. By accepting the quotation of Media Suite, a legally binding Contract is formed and agreed upon between Media Suite and the Client, whether this is done explicitly and/or in writing, including by letter or e-mail, or verbal.
- D. Upon request Media Suite will provide a Client with a written Confirmation ("Opdrachtbevestiging"), which will include a confirmation of the Client's instruction, the agreed fee and any other stipulations agreed upon between Media Suite and the Client. Not sending a written Confirmation does not constitute that no legally binding Contract has been formed and agreed upon between Media Suite and the Client.

- E. If no quotation is sent, a legally binding Contract is deemed to have been formed and agreed upon between Media Suite and the Client when a Client agrees that Media Suite commences with rendering its Services according to the request or instructions of the Client.

Article 4 - Client data

- A. The Client is obligated to make available to Media Suite all the documents, materials and/or information which Media Suite considers to be necessary to perform the Services correctly in the required form, in the required manner and in good time. Media Suite shall determine what required form, required manner and in good time shall be understood to mean. This includes any document in writing, artwork, designs, specifications, display materials, pictures or other images, and/or other form of media, including digital media.
- B. The Client guarantees the accuracy, completeness and the reliability of the documents, materials and information provided, even where such documents, materials and/or information originate from third parties.
- C. Media Suite may suspend the execution of its Services until such time as the Client has fulfilled the obligations referred to in the paragraphs A and B above.
- D. The Client indemnifies Media Suite against any loss or damage due to inaccurate or incomplete documents, materials and/or information. The Client guarantees the authenticity of the documents, materials and/or information and indemnifies Media Suite against any infringement of any copyright or intellectual property rights of third parties on the documents, materials and/or information.
- E. Any additional costs incurred and hours spent by Media Suite as well as any other loss or damage sustained by Media Suite due to the Client's failure to provide the documents, materials and/or information required for the execution of the Contract, or its failure to provide such documents, materials or information in good time or properly, shall be for the account and risk of the Client.
- F. It is the responsibility of the Client to retain copies of any documents, materials and/or information provided to Media Suite until the Services have been rendered in full. If the Client fails to do such, Media Suite cannot be held liable for any costs or damages that could have been prevented by retaining copies.
- G. Where possible, Media Suite will return the original documents, materials and/or information, provided by the Client, to the Client on the Client's first demand.

Article 5 - Execution of the services

- A. Media Suite shall perform the Services to the best of its ability and with due regard for the instructions provided by the Client. Media Suite is committed to achieve the best result for the Client and will keep itself available for consultation with the Client to ensure this can be achieved.
- B. Media Suite may have work performed by a third party to be designated by Media Suite, if Media Suite deems such necessary or desirable, without informing the Client beforehand. This will be done for the account of the Client, unless otherwise agreed upon between Media Suite and the Client. The utmost care will be observed in the selection of this third party. Each and any liability for failure, fault or shortcoming committed by these third parties is explicitly excluded. Media Suite has the right to accept any limitation of liability stipulated by third parties, whose services have been procured by Media Suite.

- C. Media Suite has the right to refuse rendering its services without being liable towards the Client to pay any damages, especially if it is requested to perform a Service which in its opinion is or may be of an illegal or libelous nature or an infringement of the proprietary or other rights of any third party. Media Suite shall be indemnified by the Client in respect of any claims, costs and expenses arising of any libelous matter or any infringement of proprietary or personal rights contained to any Service rendered for a Client. The indemnity shall extend to any amount paid in respect of legal costs in settlement of any claim.
- D. It is the responsibility of the Client to check all work for errors before production, printing or publishing of the work and to timely approve the work. Upon request of Media Suite such approval must be done in writing.

Article 6 - Intellectual property

- A. The execution of the Contract by Media Suite does not constitute the automatic assignment of intellectual property rights vested in Media Suite to the Client, unless otherwise agreed upon in writing between Media Suite and the Client. All intellectual property rights that are created during, or which arise from, the execution of the Contract shall belong to Media Suite, with the exception of prior existing intellectual property rights on documents, materials and information provided by the Client to Media Suite. Insofar any intellectual property right can only be obtained by registration, only Media Suite shall be legally able to obtain this registration.
- B. Media Suite will not investigate the existence of prior intellectual property rights and/or registrations of third parties, unless explicitly agreed upon. All prior intellectual property rights and/or registrations of third parties, and any costs or damages arising from such, will be for the risk of the Client. The Client will indemnify Media Suite against any and all infringements of such rights and registrations.
- C. Once Media Suite has received full and complete payment for its Services and incurred costs, Media Suite will grant the Client the exclusive license to use, reproduce and publish the material on which Media Suite has intellectual property rights, solely for the purpose for which the materials have been constructed or for purposes authorized by Media Suite.
- D. Without the written approval of Media Suite, the Client is not authorized to use the material for other purposes than agreed upon by both parties. The Client is not authorized to re-use prior material constructed by Media Suite without the written consent of Media Suite. Such consent may be subject to conditions, such as the payment of an additional fee, at the discretion of Media Suite.
- E. The Client is not authorized to modify the preliminary or final material constructed by Media Suite, without consulting Media Suite. Media Suite will not withhold its consent to modifications, if this would lead to unreasonable results.
- F. The license of the Client to use, reproduce and publish the material on which Media Suite has intellectual property rights, shall terminate on termination of the Contract howsoever arising, or if the Client is in default with any obligation arising from the Contract.
- G. Parties can deviate from these stipulations by means of a written agreement.

Article 7 - Force Majeure

- A. In the event that the parties fail to perform the obligations under the agreement, or fail to perform such obligations in good time or properly, as a result of force majeure within the

meaning of Section 6:75 of the Aruban Civil Code, such obligations will be suspended until such time as the parties are able to perform them in the agreed manner.

- B. In the event that the situation referred to in paragraph A above occurs, the parties will have the option to terminate all or part of the agreement in writing and with immediate effect, without any right to any compensation otherwise existing.

Article 8 - Fees and costs

- A. The Client will be charged for the Services provided by Media Suite based on the amount of time spent and the costs incurred by Media Suite. Payment of the fee is not dependent on the result of the work unless otherwise agreed. Travel and other related expenses, if any, will be charged separately.
- B. In addition to the fee, the Client will also be charged any expenses incurred by Media Suite and the expense claims submitted by any third parties engaged by Media Suite. This includes additional costs for printing, advertising, digital or other media, etcetera.
- C. With respect to work and services that necessarily have to be rendered during the evening and/or in the weekend or during national holidays, the agreed upon fee can be increased to a rate of not more than 200%, at the discretion of Media Suite.
- D. Media Suite may ask the Client for an advance payment or a deposit before providing the Services, at its discretion. Media Suite may charge its fee at the end of the Contract or intermittently, if the Contract spans more than 3 months, at the discretion of Media Suite.
- E. If the rendering of the Services by Media Suite leads to extra work and performances that cannot be deemed in reason to be included in the agreed upon price, Media Suite shall timely inform the Client about the financial consequences of this extra work or performances.
- F. In the event that fees or prices are subject to change before the Services have been fully provided, or if the instructions of the Client are modified in such a way that this leads to unexpected additional work for Media Suite, Media Suite shall be entitled to amend the agreed fee accordingly.
- G. Where statutorily required, turnover tax will be charged separately on all amounts payable by the Client to Media Suite.

Article 9 - Payment

- A. Unless otherwise agreed, the Client shall ensure that the amounts due to Media Suite are paid, without the Client being entitled to any deduction, discount or set-off, with the exception of any advance payment or deposit, within 7 days after the date of invoice. The date of payment shall be the date on which the amount due is credited to Media Suite's account.
- B. In the event the Client has not paid the bill sent to him on the due date at the latest, he shall automatically be in default, without any further notice of default being required. In the event the Client fails to pay, Media Suite shall have the right to discontinue or suspend any and all activities for the Client at once, while it will not be liable towards the Client to pay damages on this account. Also, the Client shall owe an interest of 1.5% per month in respect of the outstanding invoice amount as of the moment the due date has passed, while part of a month shall be equivalent to a full month, as well as extrajudicial collection charges pursuant to Article 6:96, paragraph 2, letter c, Aruban Civil Code, estimated at 15% of the outstanding invoice amount.

- C. In the event of multiple Clients, the Clients shall be jointly and severally liable for the payment of the invoice amount and the interest (payments) and costs due.
- D. If Media Suite is of the opinion that the Client's financial position or payment record gives reason to do so, or if the Client fails to make an advance payment when requested or to meet an expense claim within the specified term of payment, Media Suite may demand that the Client immediately provide (additional) security in a form to be defined by Media Suite. If the Client fails to provide the required security, Media Suite shall be entitled, without prejudice to its other rights, to suspend the further execution of the agreement forthwith and all amounts owed to Media Suite by the Client of whatever nature and for whatever reason shall become immediately due and payable.

Article 10 - Terms

- A. If a term/date within which the Services are to be provided has been agreed between the Client and Media Suite and the Client fails to: (a) make an advance payment – if requested – or (b) make the necessary documents, materials and/or information available in good time, in full, in the required form and in the required manner then the Client and Media Suite will consult on another term/date within which the Service is to be provided.
- B. Any term within which the work must be completed shall only be considered as a strict deadline if such has been explicitly agreed and in as many words between the Client and Media Suite. If the work is not completed at the given term, Media Suite will only be in default after receiving notice of default and after non-compliance of Media Suite with the term stated in the notice of default.

Article 11 - Liability and indemnities

- A. Media Suite is not liable for any loss or damage sustained by the Client due to the fact that the Client has provided inaccurate or incomplete documents, materials and/or information to Media Suite .
- B. Media Suite is not liable for any consequential loss or damage, business interruption loss or indirect loss or damage due to Media Suite's failure to perform, failure to perform in good time or failure to ensure proper performance.
- C. Media Suite is only liable to the Client for loss or damage resulting directly from an (interrelated series of) attributable shortcoming(s) in the execution of the Contract. This liability is limited to the amount of the fee charged for the Services provided. If the Contract comprises a continuing performance contract with a term of more than one year, the aforementioned amount shall be set at one time the amount of the fee charged to the Client in the twelve months prior to the occurrence of the loss or damage. Under no circumstances will the total amount of compensation for the loss or damage pursuant to this subsection exceed \$500 per attributable shortcoming unless the parties – in view of the scope of the engagement or the risks associated with the engagement – believe there is reason to deviate from this maximum upon entering into the agreement. An interrelated series of attributable shortcomings is deemed to constitute a single attributable shortcoming,
- D. The limitations of liability specified in this article are not applicable if and to the extent that there is evidence of willful misconduct or gross negligence committed by Media Suite or its senior management.

- E. The Client is obliged to take measures to mitigate any loss or damage. Media Suite is entitled to rectify or limit damage by carrying out repairs or improving the performed work.
- F. The Client indemnifies Media Suite against claims by third parties in respect of loss or damage caused by the Client's failure to provide Media Suite with any documents, materials and/or information, or its failure to provide Media Suite with fully accurate or complete documents, materials and/or information.
- G. The Client indemnifies Media Suite against claims by third parties (also including employees of Media Suite and any third party engaged by Media Suite) who sustain loss or damage in connection with the execution of the Contract due to any action taken or omitted to be taken by the Client or due to unsafe situations in its company or organization.

Article 12 - Termination

- A. The Client and Media Suite may (prematurely) terminate the agreement at any time by giving the other party notice at least 30 days prior to contract termination. If the agreement ends before the Contract has been completed, the Client shall be liable to pay the fee in accordance with the hours specified by Media Suite for work performed on behalf of the Client.
- B. Notice of termination must be given in writing.
- C. If the Client has effected (premature) termination, Media Suite shall be entitled to compensation for the work it has performed as well as reimbursement of any additional costs already incurred by Media Suite and any costs resulting from any cancellation of the services of third parties who have been engaged (such as – amongst other things – any subcontracting-related costs).
- D. If Media Suite has effected (premature) termination, the Client shall be entitled to receive Media Suite 's assistance in transferring work to third parties, unless in the event of willful misconduct or gross negligence committed by the Client as a result of which Media Suite feels compelled to effect termination. The entitlement to assistance as provided in this paragraph is dependent on the Client having made all underlying outstanding advance payments or having met all expense claims.

Article 13 - Right to suspend performance

- A. Media Suite may, after a careful weighing of interests, suspend the performance of all its obligations, including handing over documents, materials, information or other items to the Client or any third party, until such time as all amounts owed and payable by the Client on demand have been settled in full.

Article 14 - Complaints and expiry period

- A. If a Client has any complaints about the Services rendered, the Client will notify Media Suite of this in writing at the Clients earliest convenience, but no later than 10 workdays after the completion of the Contract. The Client will allow Media Suite to investigate the complaints and carry out repairs or improve the performed work if Media Suite deems such warranted, to the discretion of Media Suite.
- B. To the extent not otherwise provided in these general terms and conditions, rights of action and other powers of the Client of whatever nature and for whatever reason against Media Suite in

connection with the performance of work by Media Suite shall always expire after 1 (one) year from the moment the Client became aware, or could reasonably have been aware, of the existence of such rights and powers.

Article 15 - Electronic Communication

- A. During the execution of the Contract, the Client and Media Suite can communicate with one another using electronic means.
- B. The Client and Media Suite shall not be liable towards one another for any loss or damage that may be sustained by either or each of them as a result of the use of electronic means of communication, including – but not restricted to – loss or damage due to non-delivery or delayed delivery of electronic communication, interception or manipulation of electronic communication by third parties or by software/equipment used for transmitting, receiving or processing electronic communication, transmission of viruses and the failure or poor functioning of the telecommunications network or other resources required for electronic communication, unless the loss or damage is the result of willful misconduct or gross negligence.
- C. The Client and Media Suite will both do or omit to do everything that may reasonably be expected of each of them in order to prevent the risks referred to above from occurring.
- D. The data abstracts from the sender's computer systems shall constitute conclusive evidence of (the content of) the electronic communication sent by the sender until such time as evidence to the contrary is furnished by the receiver.

Article 16 - Other provisions

- A. If Media Suite performs work on location at the Client, the Client shall ensure that a suitable place of work is provided which meets the statutory occupational health and safety standards and complies with all applicable regulations. The Client shall ensure that Media Suite is in that case provided with office space and/or other facilities which Media Suite considers to be necessary or useful to execute the Contract. With regard to any (computer) facilities made available, the Client is obliged to ensure continuity, amongst other things by means of adequate back-up, security and virus control procedures.
- B. Media Suite will have the right to use examples of the Services rendered for the Client for its own publicity and/or promotion, without consulting the Client beforehand and without the Client's permission. Media Suite will also have the right, where possible, to add a signature, name or mark to the work, or to remove a previously added signature, name or mark from the work, such to the discretion of Media Suite.
- C. If the Client wants to provide the same instructions to multiple designers/agencies comparable to Media Suite, creating a competition situation between Media Suite and the competitors, Media Suite has to be informed of such in advance, under full disclosure of the identity of its competitors. If the services performed by Media Suite in this situation do not lead to a final Contract, all costs incurred by Media Suite related to this situation will be for the account of the Client.
- D. After completion of the Contract neither Media Suite nor the Client will have the obligation to retain or keep records of any of the documents, materials and information used or exchanged during the Contract.

Article 17 - Confidentiality

- A. Media Suite and the Client will both maintain full confidentiality regarding all the facts and circumstances they have learned during the Contract about the other party. This confidentiality also includes third parties, involved by either Media Suite or the Client during the Contract.

Article 18 - Repair clause in respect to nullities

- A. If any provision from these general terms and conditions or from the underlying Contract should be wholly or partly void and/or invalid and/or unenforceable as a result of any statutory provision or regulation, court judgment or otherwise, then this will have no effect whatsoever on the validity of all other provisions in these general terms and conditions or the underlying Contract.
- B. If any provision in these general terms and conditions or the underlying Contract should not be valid for a reason referred to in the preceding paragraph, but would be valid if it had a more limited scope or intention, then such provision will – firstly – automatically apply with the most far-reaching or most extensively more limited scope or intention with which or within which it is valid.
- C. Without prejudice to the provisions in paragraph A above, the parties may, at their discretion, consult one another with the aim of agreeing new provisions that will replace the void or nullified provisions, with every possible attempt being made to ensure they are as close as possible to the object and purport of the void or nullified provisions.

Article 19 - Applicable law and jurisdiction

- A. This Agreement shall be governed by Aruban law
- B. Any dispute will be settled by the Court of First Instance of Aruba. A hard copy of these General Terms and Conditions can be obtained at request at the offices of Media Suite, or by e-mail or fax.

These General Terms and Conditions have been filed at the Registry of the Court of First Instance of Aruba.