

General Terms and Conditions Yellow Dress Retail

January 2018

1 Agreement, quotation and confirmation

- 1.1** These General Terms and Conditions (hereinafter referred to as the “General Terms and Conditions”) apply to all quotations and the conclusion, content and fulfilment of all agreements concluded between the client and the Contractor (hereinafter referred to as “YDR”). Deviations to these General Terms and Conditions can only be agreed in writing between the client and YDR.
- 1.2** Quotations are non-binding and valid for two months. Quotations may be subject to change due to unforeseen changes to the work. The prices do not include VAT. Stated rates and offers do not automatically apply to future contracts. The client is responsible for the accuracy and completeness of the information provided by it or on its behalf based on which YDR prepares the quotation.
- 1.3** Contracts will be confirmed by the client in writing. If the client fails to do so, but nevertheless does accept that YDR starts with the implementation of the contract, the content of the quotation will be considered to have been accepted and these General Terms and Conditions apply. Further oral agreements and stipulations are only binding to YDR once they have been confirmed by it in writing.

2 Implementation of the agreement

- 2.1** YDR strives to implement the contract carefully and independently, to represent the interests of the client to the best of its abilities, and to pursue a result that can be used by the client as may and can be expected from a professionally acting firm. YDR will keep the client informed of the progress of the work to the extent necessary.
- 2.2** The client will do all that is reasonably necessary or desirable to make the timely and correct delivery by YDR possible, such as the timely provision of complete, sound and clear data or materials of which YDR indicates or of which the client understands or could reasonably understand that these are necessary for the implementation of the agreement.
- 2.3** A period for the implementation of the contract indicated by YDR is merely indicative unless otherwise agreed in writing.
- 2.4** Unless otherwise agreed, the following is not part of the contract awarded to YDR:
- a.** carrying out tests, requesting permits, and assessing whether the instructions of the client meet the statutory standards (and product-related) quality standards;
 - b.** studying the existence of rights, including patent rights, trademarks, drawing or design rights, copyrights or portrait rights of third parties;
 - c.** studying the possible forms of protection for the client referred to under b;
 - d.** the actual protection of the design by means of the possible forms of protection referred to in sub b.
- 2.5** Before the start of the implementation, production, reproduction or publication, the parties will enable each other to check and approve the latest models, prototypes or result samples, based on which the client needs to give its final approval unless otherwise agreed.
- 2.6** Deviations of the (final) result from what has been agreed will not serve as grounds for rejection, discount, compensation or dissolution of the agreement if these deviations are of minor significance taking into account all circumstances.
- 2.7** Complaints will be shared with YDR as soon as possible but in any event within ten business days after the completion of the contract, failing which the client will be considered to have accepted the results of the contract in full.



3 Hiring third parties

- 3.1** Unless otherwise agreed, contracts with third parties in the context of the implementation of the contract will be granted by or on behalf of the client. YDR can at the request of the client act as the authorised representative for the risk and account of the client. The parties may agree on a yet to be specified fee for this.
- 3.2** If YDR draws up an estimate of the costs of third parties at the request of the client, this estimate will be indicative. If desired, YDR can request quotations on behalf of the client.
- 3.3** If for the implementation of the contract YDR purchases goods and services from third parties for its own risk and account based on an express agreement, after which these goods and services are passed on to the client, the provisions of the General Terms and Conditions and/or separate agreements with the supplier concerning warranty and liability will also apply for the client.
- 3.4** If YDR, whether or not in the name of the client, grants contracts or instructions to production companies or other third parties, the client will at the request of YDR confirm the approval referred to in Article 2.5 of these General Terms and Conditions in writing.
- 3.5** The client will without consulting with YDR not hire third parties if this may affect the implementation of the contract as agreed with YDR. The Parties will, in that case, discuss what other contractors will be hired and what work will be assigned to them.
- 3.6** YDR is not liable for errors or defects in products or services of third parties hired by or on behalf of the client, regardless of whether these have been introduced by YDR. The client must hold these parties accountable itself. YDR can provide assistance if required.

4 Intellectual Property Rights and Proprietary Rights

- 4.1** All intellectual property rights, including patent rights, trademarks, drawing rights, design rights and copyrights, arising from the contract will be held by YDR. Insofar such right can only be obtained by filing a deposit or registration, only YDR is authorised to do so unless otherwise agreed.
- 4.2** The Parties may agree that the rights referred to in the first paragraph will be transferred fully or partially to the client. This transfer and any conditions under which the transfer takes place will be captured in writing. Until the moment of the transfer, a right of use will be granted as set out in Article 5 of these General Terms and Conditions.
- 4.3** YDR will always have the right to indicate or remove its name in publications related to the result of the contract in the manner customary for the result.
- 4.4** Unless otherwise agreed, the (original) results (such as designs, design sketches, concepts, recommendations, reports, estimates, budgets, design briefs, work drawings, illustrations, pictures, prototypes, models, templates, moulds, (semi-finished) products, films, audio, video, presentations, source sources and other materials or (electronic) files and the like) created in the context of the contract will be the property of YDR, irrespective of whether they have been provided to the client or third parties.
- 4.5** After the completion of the contract, neither the client nor YDR will be held to any retention duty with respect to the used materials and data, unless otherwise agreed.

5 Use of the result

- 5.1** Once the client has fully met its obligations under the agreement with YDR, it will acquire the right to use the result of the contract in accordance with the agreed purpose. If no agreements have been made on the purpose, the right of use will remain limited to the use for which the contract was (seemingly) awarded. The right of use is exclusive unless the nature of the agreement dictates or it has been agreed otherwise.



- 5.2** If the result also relates to products that are subject to the rights of third parties, the parties will make additional agreements on how the use of these products will be arranged.
- 5.3** The client will without written permission not modify, expand or implement the right to use the result of the contract in a different way than agreed on or allow third parties to do so. YDR may impose conditions to this permission, including the payment of a reasonable fee.
- 5.4** In case of a broader or different use which has not been agreed on, including modification, mutilation or degradation of the provisional or final result, YDR is entitled to a fee for infringement of its rights of at least three times the agreed fee, or a fee which is reasonable and equitable in relation to the infringement without prejudice to any of its other rights.
- 5.5** The client may not or no longer use the provided results and any right of use granted to the client in the context of the contract will expire unless the consequences thereof would not be reasonable and fair:
- a.** from the moment the client fails to (fully) fulfil its (payment) obligations under the agreement or is otherwise in default;
 - b.** if the contract is terminated prematurely for reasons not set out in Article 8.1 of these General Terms and Conditions;
 - c.** in case of bankruptcy of the client, unless the rights in question have been transferred to the client in accordance with Article 4.2 of these General Terms and Conditions.
- 5.6** YDR may use the results for its own publicity, procurement of contracts, promotional purposes, including competitions and exhibitions and the like, and to receive physical results in loan, taking into account the interests of the client.

6 Fees and costs

- 6.1** YDR is entitled to a fee for the implementation of the contract. This may be an hourly rate, a consultancy fee, a fixed rate, whether or not related to the project sum, or any other fee agreed between the parties.
- 6.2** In addition to the agreed fee, the costs incurred by YDR for the implementation of the contract, such as office, travel, accommodation, print, proof and prototypes expenses and costs of third parties for advice, production and assistance and the like will be eligible for reimbursement. These costs will be specified in advance as much as possible, except if a surcharge percentage has been agreed on.
- 6.3** If complete, sound and clear data and/or materials fail to be delivered on time or at all, or YDR is due to external circumstances forced to carry out more or other work, this work will be paid separately based on the usual rates charged by YDR. YDR will inform the client in advance unless this is not possible due to circumstances or the nature of the work does not permit postponement.
- 6.4** If the implementation of the contract is delayed or interrupted due to circumstances that cannot be attributed to YDR, the client is obliged to reimburse any resulting costs. YDR will limit these costs as much as possible.

7 Payment and suspension

- 7.1** All payments must be made without deduction, settlement or suspension within 30 days after the invoice date unless otherwise agreed in writing or stated otherwise on the invoice.
- 7.2** All goods delivered to the client will remain the property of YDR until all amounts the client owes to YDR based on the agreement concluded between the Parties have been paid in full.
- 7.3** If the client defaults on paying all or part of the due amounts, the client will owe the statutory interest and extrajudicial collection costs, which amount to at least 10% of the invoice amount with a minimum of €150,- excluding VAT.
- 7.4** YDR will be responsible for the timely invoicing. YDR may, in consultation with the client, charge the agreed rate and costs an advance or interim or periodic payment.



7.5 YDR may suspend the implementation of the contract once the payment period has expired and the client after having received written summons to make the payment within 14 days still fails to do so, or if YDR due to notice or acts of the client determines that payment will not be made.

8 Termination and dissolution of the agreement

8.1 If the client terminates the agreement without any attributable failure by YDR, or if YDR dissolves the agreement due to an attributable shortcoming in the implementation of the agreement by the client, the client will owe penalties, in addition to the fee and the costs incurred for the performed work. Acts of the client based on which YDR cannot reasonably be expected to complete the contract will be considered an attributable shortcoming in this regard.

8.2 The penalties referred to in the previous paragraph will include at least the costs incurred by YDR on its own behalf for contractual commitments with third parties needed for the implementation of the contract and at least 30% of the remaining part of the fee that the client would owe for a fully completed contract.

8.3 Both YDR and the client have the right to dissolve the agreement in whole or in part and all due amounts will become immediately due and payable if a request for bankruptcy, (provisional) suspension of payments or debt restructuring is filed for the other party.

8.4 If the work of YDR consists of repeatedly carrying out similar work, a continuing performance agreement will exist, unless agreed otherwise in writing. This agreement can only be terminated by means of written notice with observance of a reasonable notice period of at least three months, during which period the client will continue to purchase the usual amount of work from YDR or provide financial compensation.

9 Warranties and indemnities

9.1 YDR guarantees that the delivered products have been designed by it or on its behalf and that, if the result is protected by copyright, YDR will be considered the creator within the meaning of the Dutch Copyright Act and has free disposal over the work as the holder of the copyright. YDR guarantees that the result of the contract at the time of creation does not infringe on the rights of third parties or is otherwise unlawful to the extent of its (reasonably required) knowledge.

9.2 If the client uses the results of the contract, it indemnifies YDR or third parties hired by YDR for the contract with respect to all claims of third parties arising from the applications or the use of the result of the contract. This does not affect the liability of YDR towards the client for any failure to fulfil the guarantees as referred to in the previous paragraph and other liabilities as referred to in Article 10 of these General Terms and Conditions.

9.3 The client indemnifies YDR against claims related to intellectual property rights on any materials and/or data provided by the client used for the implementation of the contract.

10 Liability

10.1 YDR must in case of an attributable shortcoming first receive a written notice of default with a reasonable period to still fulfil its obligations or remedy any errors or limit or recover any damage.

10.2 YDR is only liable towards the client for direct damage which is attributable to YDR. YDR does not accept any liability for indirect damage, including consequential damage, loss of profit, lost savings, corrupted or lost data or materials, or damage due to business stagnation.



- 10.3** Except in the event of intent or wilful recklessness of YDR, its liability will be limited to its fee for the contract, or at least to the part of the contract to which the liability relates. This amount will not exceed €10,000,- and will always be limited to the amount paid by the insurer to YDR in the specific case. The amount for which YDR is liable in the specific case will be reduced by any amounts that have been settled by the client.
- 10.4** Any liability will expire after a period of one year after the contract has ended due to completion, termination or dissolution.

11 Other provisions

- 11.1** If the client wishes to grant the same contract to others than YDR at the same time or has previously awarded the contract to another party, it will inform YDR of the names of these third parties.
- 11.2** The client may not transfer any right arising from a contract with YDR to third parties, except in case of a transfer of the entire company or with the written consent of YDR.
- 11.3** The parties are required to observe the confidentiality of all confidential information and circumstances of which they learn in the context of the contract from each other or from another source of which they can reasonably understand that disclosure to third parties would adversely affect YDR of the client. Any third party involved in the implementation of the contract will be bound to the same confidentiality with respect to these facts and circumstances provided by any other party.
- 11.4** If any provision of these General Terms and Conditions becomes invalid or void, the remaining provisions will remain in full force and effect. The parties will negotiate on new provisions to replace the invalid or void provisions in which intent of the original provisions will be regarded to the greatest possible extent.
- 11.5** The headings in these General Terms and Conditions only serve to enhance the legibility and are not part thereof.
- 11.6** All agreements between YDR and the client will be governed by Dutch law. The parties will initially attempt to resolve a dispute in mutual consultation. Unless the parties have explicitly agreed to arbitration in writing, the competent court or the court in the district in which YDR is located, such as at the discretion of YDR, will rule on disputes between YDR and the client.

Filed with the Chamber of Commerce in Amsterdam with number 34333722 and available [on our website](#).

