



Terms and Conditions

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Index

1.	Applicability	4
2.	Offers and quotations.....	4
3.	Agreements, assignments and services.....	4
4.	Prices	5
5.	Payment.....	5
6.	Cooperation	6
7.	Intellectual property.....	7
8.	Confidentiality	7
9.	Risks in storing information	8
10.	Data	8
11.	Duration and termination of services	8
12.	Cancellation, intermediate termination (withdrawal)	9
13.	Complaints and their procedure	9
14.	Responsibility	10
15.	Force majeure	11
16.	Bankruptcy and loss of power to dispose of property	11
17.	Applicable law and the competent court	11

Terms and Conditions 100%EMAIL BV

Introduction

In this document you will find 100%EMAIL's Terms and Conditions. These apply if an agreement is made and/or a service is wanted. For any assignment or service covered by the term email marketing, 100%EMAIL is not able to guarantee anything about set goals and results, though 100%EMAIL will execute her activities like a good contractor should.

Every written agreement between 100%EMAIL and her client prevails these terms and conditions. 100%EMAIL maintains the right to alter or replete any part of the terms and conditions. Alterations are valid even for agreements already made, considering a 30-day period after electronical publishing the alterations. Minor alterations can be changed at any time. If a client does not accept these changes, he is allowed to end the agreement made with 100%EMAIL until the moment the alterations are taking effect.

Definitions

Terms within these terms and conditions have the following meaning:

1. "Terms and Conditions": Present terms and conditions.
2. "Client": The natural or legal person using 100%EMAIL's services.
3. "Service": Any email marketing or online service provided by 100%EMAIL. Agreements between 100%EMAIL and the client define these services and its specific conditions.
4. "Tasks": Any support in email marketing.
5. "Parties": 100%EMAIL and her client.
6. "Written": Contains not only pen-and-ink written, but also written per email, fax or any other way of communication that is technologically equal to 'written'.
7. "(Duration)Agreements": Any agreement between 100%EMAIL and a client in which 100%EMAIL is committed to executing tasks and or services. This can also be a one-time commitment. "Agreement" also contains every alteration and/or addition and every (legal) act in order to prepare or execute these.
8. "Works": email marketing campaigns, advises, designs, texts, logos developed by 100%EMAIL.
9. "100%EMAIL": 100%EMAIL, Delftsestraat 11F, 3013 AB Rotterdam.

1. Applicability

1. These terms and conditions apply to every offer, quotation and its acceptance and 100%EMAIL's tasks. These include but are not limited to all agreements made about 100%EMAIL's services.
2. Provisions that deviate from these terms and conditions and its additions or alterations or any other additions or alterations to the agreement, are only part of the explicitly written agreements between parties.
3. Directed offers or acceptations that refer to other (terms and) conditions will not be regarded as legal, unless both parties have explicitly agreed otherwise.
4. Applicability of general purchasing, leveraging or payment conditions or any other general or special conditions by the client is explicitly excluded.
5. The inapplicability of one of these provisions does not exclude the applicability of any other provision.

2. Offers and quotations

1. All offers, quotations, rates etc by 100%EMAIL are non-obligatory, unless they contain a given term for acceptance. A non-obligatory offer or quotation is valid for 14 days after dispatch by 100%EMAIL. Offers and quotations dispatched by 100%EMAIL can be revoked at any time. If a quotation or offer contains a non-obligatory proposal and is accepted by the client, 100%EMAIL is allowed to revoke this proposal within 48 hours after acceptance.
2. If the client's acceptance deviates from the proposal, 100%EMAIL is not bound to this deviation. In this case there is no agreement made, unless both parties have explicitly agreed otherwise.
3. If 100%EMAIL has not dispatched an offer or quotation, offers displayed in brochures, on promotional material or on the website are valid. These offers are always non-obligatory and can be altered or revoked by 100%EMAIL at any time.
4. Information in brochures, promotional material and on 100%EMAIL's website is as accurate as possible, but is only an indication. No rights can be derived from this information, unless parties have explicitly agreed otherwise.

3. Agreements, assignments and services

1. An agreement is made at the moment a written message including acceptance of the proposal, the offer and/or the quotation by the client is received by 100%EMAIL, unless the proposal is revoked in accordance with article 2 of these terms and conditions.
2. Oral agreements only oblige 100%EMAIL after written confirmation or after 100%EMAIL started the executional acts with the client's consent.
3. Tasks by the client demand clear and written descriptions.
4. Alterations in an already accepted written task need to be written as well and have to include a clear description of these alterations. 100%EMAIL is only bound to these alterations after written confirmation.
5. If 100%EMAIL suspends the execution of its obligations, she maintains her legal claims, including claims on payment for any suspended service.

4. Prices

1. Prices and rates as well as offers, quotations etc provided by 100%EMAIL are exclusive of VAT and any other possible extra cost or levy. These costs can include administrative fees and declarations by any third party engaged. This, unless explicitly mentioned otherwise.
2. A compiled price quotation does not oblige 100%EMAIL to leveraging any part of services included in offers or quotations against a corresponding part of the price.
3. Prices and rates in offers and quotations are based on the data provided by the client in the inquiry process. If this information changes after this process, it is possible it has consequences for the already given prices or rates. A change in rates will always be communicated with the client, before officially changing the rate.
4. All costs that could not have been foreseen in the quotation and are due to changes by the client, will be passed on to the client. Invoicing will at any time be based on recalculation, unless explicitly agreed otherwise.
5. An index of agreed prices and rates will be implemented yearly on January 1st without prior messaging, conform the CBS' most recently published Services Price Index. For parts of 100%EMAIL's services sourced from suppliers and third parties, 100%EMAIL has the right to pass price and rate changes by these parties onto her client.

5. Payment

1. Payment occurs at invoice and is obliged after activating 100%EMAIL's services. If payment needs to occur after dispatch of an invoice, this invoice needs to be met by the client within fourteen (14) days after the given date, unless both parties have explicitly agreed otherwise.
2. Possible advertisements based on assumingly unjust invoices or lacking execution of services, need to be received by 100%EMAIL within five (5) days after the date of the invoice. Failing this ultimatum the right of advertising on the particular invoice expires.
3. Only payments to 100%EMAIL liberate.
4. If an invoice has not been payed completely after the term defined in article 5.1 ends:
 - a. The client is in omission by operation of law, without the need for a notice of default;
 - b. The client will owe 100%EMAIL an overdue rate of 2% per month to be calculated cumulatively over the main sum. Parts of a month will be charged as full months;
 - c. In case of overdue payment, the client is bound to complete compensation of all extrajudicial and judicial collection charges, including the costs for lawyers, summoners and collection agencies;
 - d. 100%EMAIL has the right to charge at least €20,- per reminder, warning etc as an administrative fee. 100%EMAIL will make a notice of this in her agreements and/or invoices.
5. If the client does not comply with its payment obligations within the given term defined in article 5.1, 100%EMAIL is qualified to suspend its duties towards the client in leveraging services. This includes refusal to the client's account and the inability to use 100%EMAIL's services, until payment occurs or is guaranteed. This provision also includes the possibility of 100%EMAIL's reasonable suspicion of the client's creditworthiness.
6. If the client remains lacking in his payment obligations for twenty-eight (28) days even after reminders and warnings from 100%EMAIL, 100%EMAIL has the right to delete the client's account and its containments from her servers. 100%EMAIL is not accountable for any damage occurring in this case.

7. Payments made by the client will cover owed interests and costs and will consequently cover the claimable invoices due the longest, unless the client explicitly notes that the payment covers a later invoice.
8. If the client has one or more counterclaim(s) on 100%EMAIL, the client will waive the right of set-off. The said waiver is also applicable if the client requests (provisional) suspension of payment or is declared bankrupt.

6. Cooperation

1. 100%EMAIL will execute her services for the client as agreed. The client commits itself to 100%EMAIL in order to accept her services and these terms and conditions and grant the anticipated cooperation.
2. The client is aware of the fact that the quality of the services provided by 100%EMAIL is partly depending on the quality of the information provided by the client itself. The client is obligated to do whatever is reasonably demanded and needed in order to execute 100%EMAIL's services correctly and in time. The client especially needs to provide:
 - a. The necessary information and intelligence in the by 100%EMAIL desired way and on the by 100%EMAIL given time and date;
 - b. A fixed contact person if the client is not a natural person. He or she is expected to be authorized to take the necessary decisions and executions;
 - c. The data carriers, electronic files, software etc, compliant with the agreed specifications and free of viruses and defects.
3. The client is expected to take care of the validity and entirety of the information granted. The client exempts 100%EMAIL of any consequence following unjust and/or incomplete data.
4. The client is responsible for the safety and confidentiality of his username and password. The client is responsible for the – whether allowed or not – usage of his username and password and the information arising from his registration and is obliged to inform 100%EMAIL immediately at detecting or suspecting misuse of his username and password.
5. Services provided by 100%EMAIL according the agreement made with the client can only be applied for legal and legitimate activities. Furthermore, these can only be applied in a way that there is no infringement made in third parties rights, including but not limited to the rights of intellectual property.
6. The client exempts 100%EMAIL from possible claims from third parties that are correlated to the way the client uses 100%EMAIL's leveraged services.
7. In case required in the execution of the agreement, 100%EMAIL has the right to delegate particular operations to third parties. This is by assessment and under responsibility of 100%EMAIL.
8. The client provides the necessary hardware and software, auxiliary equipment and connections in order to properly use 100%EMAIL's services.
9. The client is not allowed to:
 - a. Behave in conflict with the Internet etiquette;
 - b. Invade intellectual properties of third parties;
 - c. Distribute, make accessible or provide information with pornographic containments, including but not limited to web pages with pornographic images, banners that advertise web pages with such content or the distribution of access codes for these particular websites;
 - d. Be concerned with so-called "hacking", including the unauthorised access to computer systems, software and/or data from third parties;
 - e. Distribute advertisements, messages and/or opinions in a way that can be considered as "spamming", thus complying with spam law and the email code;

- f. Stimulate the pursue of illegal activities or activities that can possibly damage 100%EMAIL's servers or any other server connected to the Internet, including but not limited to providing pirated software, hacker programs and archives or 'warez'-sites, via service provided by 100%EMAIL;
 - g. In any way be guilty to any punishable offence, including the distributing of and providing access to information that is in conflict with public order or common decency or is of a discriminating nature;
 - h. During the duration of the contract and within a year after ending the latter make an offer to an employee or third party under contract of 100%EMAIL in order to employ himself or any other form of cooperation with the client or indirectly for a sister or subsidiary company. If violated, the client will owe an immediately claimable fine to 100%EMAIL the size of a gross annual salary if a 100%EMAIL employee is involved. Otherwise a compensation of the spent year under contract starting at €50.000,- is fined for non-employees of 100%EMAIL. An additional directly claimable fine of €2500,- can be demanded for every day the violation continues. 100%EMAIL is also able to claim a compensation for damages suffered;
 - i. In any way behave inappropriate or unlawfully towards 100%EMAIL and/or third parties.
10. If the obligations mentioned in this article are not met in time, 100%EMAIL is entitled to suspend the execution of the agreement until the moment the client has met his obligations. The costs due to this suspension as well as the costs due to executing extra activities or the arising consequences are at the client's risk and charge.

7. Intellectual property

1. Developed works and services by 100%EMAIL remain the intellectual property of 100%EMAIL.
2. 100%EMAIL is authorised to copyright its intellectual property. This implies the inability for the client to reuse, distribute and use for a goal other than prescribed by 100%EMAIL.
3. If any case following from the first paragraph is attributable to 100%EMAIL, the client can explicitly use this in the regular business activity. The client is however not allowed to transfer this case in property, on loan or in any other limited right.
4. In case of violation of this article, the client owes a fine of €5000,- for every offence, undiminished 100%EMAIL's right of a complete indemnification.

8. Confidentiality

1. 100%EMAIL is obligated to confidentiality of all information gathered in closing and executing agreements with the client, knowing or at least reasonably suspecting that this information should be treated confidentially. This, unless 100%EMAIL as a consequence of legislation or a judicial decision is required to provide these data to third parties and 100%EMAIL can not legally claim or is not granted by a judge the entitlement to refuse to provide evidence.
2. 100%EMAIL will take all reasonably to be taken precautions in order to treat the confidential information provided by the client with secrecy.
3. 100%EMAIL guarantees that her employees and other persons under her supervision that are in any way involved with the execution of the agreement will adhere to the confidentiality obligation as defined in this article.
4. 100%EMAIL is authorised to publish executed services and activities as well as

recycling the used methods, if the client's privacy is guaranteed.

9. Risks in storing information

1. 100%EMAIL obliges herself to care for an adequate and careful storage of the data and information originating from the client, taken in consideration the technological possibilities. Unless proven otherwise, 100%EMAIL is expected to sufficient in this obligation.
2. The client as well does carry the risk involving damaging or loss of the data or information stored by 100%EMAIL or third parties, unless the damage or loss is due to malicious intent and/or conscious recklessness of 100%EMAIL, her executive board and/or her managers.

10. Data

1. Parties are obliged to act conform the Protection of Personal Data law (Wet Bescherming Persoonsgegevens – WBP – in Dutch) and the General Data Protection Regulation (Algemene Verordening Gegevensbescherming – AVG – in Dutch). Parties exempt eachother from claims based on privacy related legislations.
2. The client takes care of the provided data being correct and complete, from the moment of registration or later on. The client exempts 100%EMAIL for any consequence arising from the incompleteness or incorrectness of these data, claims from third parties included but not limited to.
3. The data provided by the client will be registered for two purposes, conform the earlier named legislation (WBP and AVG):
 - a. Granting the agreed services between parties;
 - b. Informing the client about developments with respect to the website, the service and/or new service.
4. The data provided by the client will never be distributed to third parties by 100%EMAIL without explicit consent of the client, unless 100%EMAIL as a consequence of legislation or a judicial decision is required to provide these data to third parties and 100%EMAIL can not legally claim or is not granted by a judge the entitlement to refuse to provide evidence.
5. In the context of executing the activities in the agreement, 100%EMAIL will process personal data in the role of processor on behalf of the controller, in which 100%EMAIL is not allowed to use the client's personal data for own purposes for processing and/or distributing to third parties, other than agreed.

11. Duration and termination of services

1. The agreement for services is entered into for one (1) year or as mentioned in the offer or quotation.
2. In case of an isolated service this article is non-applicable. In this case the agreements' duration lasts until both parties have met their obligations. Depending on the offer or agreement the situation will be determined.
3. The period of entry will continuously be extended tacitly with the same period, unless the client terminates the contract within one (1) month before the expiration of the agreed term. If termination does not happen within this term, a compensation for the whole period is owed. Termination cannot be sooner than the first year of the

- agreement.
4. Termination needs to happen in a written notice or by email and can only happen intermediately or with both parties' consent.
 5. In case 100%EMAIL wishes to terminate the contract, she will take a one-month period of notice and inform the client by email about the proposed termination.
 6. 100%EMAIL is authorised to suspend or terminate the contract directly on these grounds:
 - a. The client is in a default with regards to an essential obligation from the terms and conditions or the contract;
 - b. The client is declared bankrupt;
 - c. The client's activities are ended or liquidated;
 - d. The client has demanded suspension of payment.
 7. If 100%EMAIL suspends the fulfilment of her obligations, she maintains her claims from the law and the contract, including the claims on payments for the services that have been suspended.
 8. In case the client acts in conflict with his obligations as defined in these terms and conditions, 100%EMAIL is authorised to close the client's 100%EMAIL account without prior notification and without being held accountable for any compensation.
 9. Parties will return the confidential information to the rightful owner within fifteen (15) days, irrespective of the form the information is in.
 10. Obligations that are meant to continue even after termination of the assignment, will remain existing. The termination of the assignment explicitly does not dismiss parties of: confidentiality, prohibition on acquisition of employees, intellectual property, applicable law and the competent court.

12. Cancellation, intermediate termination (withdrawal)

1. The client waives all rights on dissolution of the contract (ex Art 6:265 BW) or other legislative provisions, unless compulsory provisions resist this. This under the right to cancel or withdraw from the contract.
2. Cancellation in these terms and conditions means: terminating the contract by one of the parties before commencing its execution.
3. Intermediate termination or withdrawal in these terms and conditions means: terminating the contract by one of the parties after commencing its execution, regarding article 11 of the terms and conditions.
4. If the client cancels or withdraws from the contract, he owes 100%EMAIL a compensation to be determined. The client is obliged to pay all costs, damages as well as the loss of profit to 100%EMAIL. 100%EMAIL is authorised to fixate the costs, damage and loss of profit and charge 20% – 100% of the agreed price to the client.
5. The client is accountable towards third parties for the consequences of cancellation or withdrawal and exempts 100%EMAIL in this case.
6. Already paid amounts by the client will not be repaid.
7. The provisions in this article apply to all cancellations and/or withdrawals as long as parties have not explicitly agreed other cancellation or withdrawal provisions in any other agreement.

13. Complaints and their procedure

1. Complaints about services and/or the website can be reported by the client per letter or email to 100%EMAIL.
2. A complaint needs to be reported as soon as possible after the fact that led to the

complaint mentioning all information relevant, in order for 100%EMAIL to investigate the complaint and if needed adequate response to the complaint. All consequences arising from not reporting the complaint in time are at the client's risk.

3. 100%EMAIL will send the client an acknowledgement within five (5) working days after receiving the complaint in which she will inform the client about further processing of the complaint.
4. If a complaint is justified, 100%EMAIL is only to be held accountable within the borders of article 12 of these terms and conditions.

14. Responsibility

1. 100%EMAIL carries out her tasks as can reasonably expected from a company in her industry, but does not accept any liability for damages, including personal injury, consequential damage, work injury, loss of profit and/or damage due to stagnation as a consequence of acts or neglects from 100%EMAIL, her employees or involved third parties, unless compulsory provisions resist.
2. The limitations of responsibility in this article do not apply when the damage or loss is due to malicious intent and/or conscious recklessness by 100%EMAIL, her executive board and/or her managers.
3. Undiminished the definitions in the other paragraphs of this article, 100%EMAIL's liability is limited to the amount on the invoice for leveraged services.
4. Undiminished the definitions in the other paragraphs of this article, 100%EMAIL's liability is at any time limited to the amount providable by 100%EMAIL's insurer, as far as 100%EMAIL is insured.
5. In case 100%EMAIL cannot leverage the agreed online services, 100%EMAIL is not to be held accountable, unless the incapability of leveraging is due to a strongly accountable deficiency within the spheres of influence of 100%EMAIL. The availability of the internet is dependent on the internet itself, 100%EMAIL's service provider and 100%EMAIL telecom provider. Therefore, the availability of online services will in most cases be outside 100%EMAIL's sphere of influence and thus liability, so 100%EMAIL will in no way accept responsibility.
6. The client loses his rights towards 100%EMAIL, is accountable for all damages and exempts 100%EMAIL against claim from third parties if and as far as:
 - a. The client does not notify 100%EMAIL within seven (7) days after discovery of any lack or after the time the given lack in all reason could have been discovered in an addressed letter to 100%EMAIL about its existence, in order to start an investigation;
 - b. Named damage arose from incapacity and/or instructions, advises, manuals or guides by 100%EMAIL used in conflict with the provided service by the client;
 - c. Named damage arose from mistakes, incompleteness or inaccuracy in data that have been provided by the client to 100%EMAIL;
 - d. Named damage arose from directions from or in name of the client to 100%EMAIL;
 - e. Named damage arose from activities or processes executed by the client itself or a third party, without prior written consent by 100%EMAIL
7. 100%EMAIL's accountability due to an accountable deficiency in compliancy with the contract will only exist when the client promptly and appropriately declares 100%EMAIL in default, giving a reasonable period for cleansing the deficiency while 100%EMAIL remains in default even after this period. The default notice must contain an accurate description of the deficiency, for 100%EMAIL to respond adequately. Conditional for the existence of any right on compensation is that the client reports the suffered damage in writing within thirty (30) days after its occurrence to 100%EMAIL.

15. Force majeure

1. In case of a force majeure 100%EMAIL is authorised to terminate the contract or suspend her obligations towards the client for a reasonable period without being liable for any compensation of damage.
2. Force majeure in these terms and conditions means: A non-accountable deficiency from 100%EMAIL's side, from the involved third parties or providers or any other momentous cause from 100%EMAIL's side.
3. If force majeure is involved when the contract has been executed partly, the client is held to his obligations towards 100%EMAIL to that point.
4. Circumstances that can be categorized as force majeure are: war, rebellion, mobilisation, domestic or foreign unrest, State intervention, striking and exclusion by 100%EMAIL's employees or the threat of the circumstances, disturbance of the currency proportions at the time the agreement was made, operational faults like fire, natural phenomena as well as internet or electricity malfunctions or defects in computers or other hardware necessary for services provided by 100%EMAIL.

16. Bankruptcy and loss of power to dispose of property

1. Without prejudice of the defined other articles of these terms and conditions the contract between 100%EMAIL and the client will be terminated without judicial intervention and without the necessity of a default notice when the client:
 - a. Is declared bankrupt;
 - b. Has demanded (provisional) suspension of payment;
 - c. Is affected by executorial confiscation;
 - d. Is put under special administration or conservatorship;
 - e. In any other way loses its power to dispose of property with regards to (parts of) his capital.
2. Paragraph 1 is applicable unless the curator or the official receiver acknowledges the arising obligations as insolvency assets.

17. Applicable law and the competent court

1. On the concluded contract between 100%EMAIL and the client only Dutch law is applicable. Disputes arising from this agreement will likewise be resolved in Dutch law.
2. Possible disputes will be resolved by a competent Dutch court, as 100%EMAIL is authorised to bring legal action before the competent court in the city where 100%EMAIL is situated.
3. With regard to disputes arising from a contract concluded with a party situated outside the Netherlands 100%EMAIL is authorised to act conform paragraph 2 of this article or to her choice bring legal action to a competent court in the country or state where counterparty is situated.