

Terms of Engagement



The following terms of engagement apply to all work carried out by "AEDP" for you ("the Services") as set out in the attached Letter of Engagement unless agreed otherwise in writing by AEDP. In these terms, "we", "us" and "our" refers to AEDP, and "you" and "your" refer to our client. The Letter of Engagement and these Terms of Engagement are together referred to as the "Contract" or the "Engagement".

Your Responsibilities

Any reports issued or conclusions reached by us may be based upon information provided by and on your behalf. You warrant, represent and undertake to us (except as otherwise specifically notified to us by you in writing) that such information is complete and accurate and is not misleading (either on its face or by inference or omission) and that there are no other material facts known to you that may be relevant to us in carrying out the Services and further that we may rely on such information. We assume no responsibility and make no representations with respect to the accuracy or completeness of any information provided by you and on your behalf.

You remain responsible for any commercial decision that you make, and in taking such decisions regard must be had to the restrictions on the scope of our work and to the large number of other factors, commercial and otherwise, of which you and your other advisers are, or should be, aware from sources other than our work.

Reports and Advice

Reliance on Drafts

You shall not place reliance on draft reports, conclusions or advice, whether oral or written, issued by us as the same may be subject to further work, revision and other factors which may mean that such drafts are substantially different from any final report or advice issued.

Financial Analyses

We stress that reports contain in part our views, estimations and projections rather than facts. In particular, financial analyses will be subject to factors outside our knowledge at the time of compiling our report, such as future events and changing consumer trends.

Use and Purpose of Advice and Reports

Any advice given or report issued by us is provided for your use and benefit and in connection with the purpose in respect of which the Services are provided. You may provide such report or advice to any third party as long as the report is used in its entirety, including our Disclaimer, a copy of which is attached. In no event, regardless of whether consent has been provided, shall we assume any liability or responsibility to any third party to whom any advice or report is disclosed or otherwise made available.

Limitation of Liability

Cap

Nothing in relation to this Engagement shall in any way limit or exclude our liability for death or personal injury, any other liability which cannot lawfully be excluded or limited or to liability arising as a result of fraud on our part. Subject to this proviso:-

a) our liability to you in respect of breach of contract or breach of statutory duty or negligence or otherwise whatsoever arising out of or in connection with this Engagement will be limited to **once the professional fees paid by you for the services or the actual damages whichever is the lesser**. And b) we shall not be liable to you for any loss (whether direct, indirect or consequential) of profits, anticipated profits, revenues, goodwill, loss of business or anticipated savings, management time or for any other special, indirect or consequential loss or damage arising out of or in connection with this Engagement even if we have been advised of the possibility of such loss or damage and whether arising from breach of contract, breach of statutory duty, negligence or otherwise. **It is agreed that our fees have been determined in consideration of, and reflect, the limitations set forth in this clause**

Where we are jointly engaged by more than one party in relation to the same matter, the limit of liability will have to be allocated amongst you and these parties. It is agreed that, except where an allocation is expressly stated in this Contract, such allocation will be entirely a matter for you and you shall be under no obligation to inform us of the allocation. If (for whatever reason) no such allocation is agreed, you shall not dispute the validity, enforceability or operation of the limit of liability on the ground that no such allocation was agreed.

Proportionality

Our liability to you in respect of breach of contract or breach of statutory duty or negligence or otherwise whatsoever arising out of or in connection with this Engagement shall be limited to that proportion of the loss or damage (including interest and costs) suffered by you, which is ascribed to us by a Court of The Netherlands allocating proportionate responsibility to us having regard to the contribution to the loss and damage in question of any other person responsible and/or liable to you for such loss and damage. This provision shall have no application to any liability for death or personal injury, any other liability which cannot lawfully be excluded or limited or to liability arising as a result of fraud on our part.

For the purpose of assessing the contribution to the loss and damage in question of any other person pursuant to the preceding paragraph, it is agreed that no account should be taken of any limit imposed on the amount of liability of such person by any agreement made before the loss and damage in question occurred.

Fee Estimates and Quotations

Our fees will be charged on the basis set out in the Letter of Engagement or as otherwise notified to you. If we provide a costs estimate or quotation for a piece of work its effect is as follows:-

An estimate is our indication, made in good faith, of likely costs for carrying out the work concerned, based on information at the time the estimate is given for the scope and tasks agreed.

A quotation is a proposal by us to carry out specified work for a stated fee. If you accept that proposal, it then becomes a contractual commitment. If we carry out work in excess of that specified, our fees for that additional work will be charged at our then applicable standard hourly rates. We also reserve the right to charge additional fees on the same basis for material additional work arising from circumstances known to you when you accepted our quotation, but which you did not disclose to us.

Disbursements and Expenses

Unless you notify us in writing to the contrary, we will assume that we have authority to incur the usual disbursements and expenses encountered in the course of work we do for you. We shall in any event seek your express agreement before incurring on your behalf sums which are substantial in the context of the work in question and our knowledge of your circumstances. Disbursements and expenses are charged to you in addition to our fees.

Payment Terms

You are required to pay the fee charged without any deduction, discount or debt settlement no later than 14 days after the invoice date. Payments, which must be denominated in the currency indicated in the invoice, must be made by means of money transfer to a bank account designated by the Contractor. Objections to the amounts charged do not exempt the Client from its obligation to pay. If you fail to pay within the period referred to above, it is in default by operation of law after having been reminded by us at least once that payment is due within a reasonable period. In that case, you are liable to pay an overdraft interest rate set at 21% per annum on the credit balance with effect from the date on which the payment became due until the date of payment. In addition, all collection costs incurred after the Client's default, both judicial and extrajudicial, are for the Client's account.

The extrajudicial costs are set at at least 20% of the principal fees plus overdraft interest, without prejudice to the Contractor's right to collect the actual extrajudicial costs in excess of this amount. The judicial costs comprise all costs incurred by the courts and our legal team, even if they exceed the statutory rates.

We reserve the right to suspend our work on any matter and to withhold issuing reports for so long as any invoice remains outstanding.

Payment On Account of Fees

We will ask you, either at the outset of our work or as it progresses, to pay to us a deposit on account of our fees and disbursements.

Interim Invoices

We may invoice you at periodic intervals either at the end of each month or the end of each quarter as we consider appropriate before final completion of the work we have undertaken for you. An interim invoice represents our final charge for our work up to the date stated in the invoice unless we tell you otherwise at the time. We will send a final invoice prior to issuing our final report.

Intellectual Property

All intellectual property rights including copyright, database rights, design rights (whether registered or unregistered), trade mark rights or patent rights in any materials created or produced by us in relation to the Services (including any reports, forecasts, drawings, spreadsheets, plans or other material) shall remain the property of AEDP absolutely unless otherwise expressly stated in the Letter of Engagement provided always that subject to payment of our fees and disbursements in full we hereby grant to you a revocable license to use and copy such materials for your own internal use.

Termination of our Engagement

We expect to continue to act for you until we finish the work concerned. Either you or we may bring instructions to an end at any time by telling the other. We will not do this without good reason. Examples include your failure to give us adequate instructions and your failure to pay any amount due to us or provide monies on account of costs. If either of us terminates instructions, you must pay all fees and disbursements incurred before termination, plus any further fees and disbursements for work necessary to transfer our files to another adviser of your choice.

Post-Termination

Upon termination of the Contract:

Each party shall upon written request from the other return to the other all property and documentation of the other that is in its possession or control except that we shall be entitled to retain a reasonable number of copies of such documents that we require to maintain a record of our involvement in the Engagement;

We shall be entitled to retain all fees and disbursements previously paid by you to us and you shall pay forthwith all fees and disbursements due in respect of the Services provided up to the date of termination together with our reasonable costs and expenses incurred in connection with the termination of the Contract.

The terms of the Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind all parties.

Papers Held by AEDP

When we complete the work concerned, we shall, if requested, return to you all documents and other material loaned by you to us for the purpose of that work. Our working materials, all correspondence between you and us and other material generated by us in that work will remain our property. Unless agreed otherwise, we will retain these materials, normally for a minimum of six years, when we may destroy them without further reference to you. We may exercise a lien over (that is, retain) any of your property and money we hold for as long as fees and disbursements are outstanding.

Terms of Engagement

Indemnity

Except to the extent caused by any fraud or dishonesty by us, you agree to indemnify us to the fullest extent permitted by law against all liabilities, losses, claims, demands and reasonable expenses, including, but not limited to legal fees and expenses and internal time costs, brought against us by any party or person, other than you in connection with or arising out of the Engagement.

Personnel

No party shall directly solicit the services of any employee, agent or representative of the other who is involved in the Engagement without the prior written consent of the relevant party during the term of the Contract or for the period of six months after the termination of the Contract. If during the term of the Contract or for the period of six months after the termination of the Contract any employee of any party accepts an offer of employment made by another party as a result of an introduction in the course of the Engagement, the party shall pay to the other a sum equivalent to six months gross salary of the employee concerned including any monetary bonuses payable to that employee during the term of the Contract or for the period of six months after termination of the Contract.

The Time for Bringing Any Claims

Any claim for breach of contract, breach of statutory duty or negligence or otherwise whatsoever arising out of or in connection with the Engagement shall be brought against us within one month of the act or omission alleged to have caused the loss in question.

Confidentiality

Neither of us will disclose to any third party without the prior written consent of the other party any confidential information which is received for the purposes of providing or receiving Services including the contents of or information relating to any reports, forecasts, drawings, spreadsheets, plans or other material prepared by us for you which if disclosed in tangible form is marked confidential or if disclosed otherwise is confirmed in writing as being confidential or, if disclosed in tangible form or otherwise, is manifestly confidential.

Each of us agrees that any confidential information received from the other party shall only be used for the purposes of providing or receiving Services under this or any other contract between us. These restrictions will not apply to any information which:-

is or becomes generally available to the public other than as a result of a breach of an obligation under this paragraph; is acquired from a third party who owes no obligation of confidence in respect of the information; or is or has been independently developed by the recipient or was known to it or prior to receipt. Notwithstanding the paragraph above each party will be entitled to disclose confidential information of the other:

- a) to their respective insurers or legal or financial advisers;
- b) to their respective employees, officers or agents; and
- c) to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose.

Publicity

Unless otherwise set out in the Letter of Engagement, we shall be entitled to disclose, advertise and publicize our Engagement although we shall use our reasonable endeavors to inform you of any publicity or advertisement in advance of its release.

Force Majeure

Subject to the section headed "Your Responsibilities" above, neither we nor you shall be liable in any way for failure to perform, or delay in performing, our respective obligations under this Engagement (except for failure to pay any invoice) if the failure or delay is due to causes outside the reasonable control of the party who has failed to perform.

Data Protection

Your contact details will be added to our contacts database for use within AEDP and from time to time you may receive information from us that we think is relevant to you. We will not pass this information to any third party. If you do not want us to add your contact details to our database please inform us in writing.

Electronic Communications

During the period of the Engagement we may wish to communicate electronically with each other. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We each agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically, but we recognize that such procedures cannot be a guarantee that transmissions will be subject to delays, distortion and viruses. Accordingly, we shall each be responsible for protecting our own interests in relation to electronic communications and for ensuring that an electronic communication is not misaddressed. If the either of us is in doubt as to the correctness of a mail message they have received, then the contents of the message originating with the sender is decisive.

Complaints

If you are dissatisfied with our work, or wish to make a complaint, you should raise it as soon as possible with the director or associate director responsible for the work concerned in the first instance. If your complaint relates to that director or associate director, or remains unresolved after discussion with that director or associate director, you should contact our Executive Director.

Conflict

In the event of any conflict between these terms and conditions and the Letter of Engagement or any other document which forms part of the Contract, these terms and conditions shall prevail except where amended by specific reference to the relevant paragraph of these terms and conditions. In the event and only to the extent of any conflict between the Letter of Engagement and any referenced or attached document other than these terms and conditions the Letter of Engagement will take precedence.

Law and Jurisdiction

The Contract is governed by and construed in accordance with Dutch law. You and we hereby irrevocably submit to the non-exclusive jurisdiction of the courts of The Netherlands. In respect of any claim, dispute or difference of whatever nature concerning our appointment and arising from it. All disputes between the Client and the Contractor we be referred to the competent courts in The Netherlands. We will attempt to resolve any dispute that may arise under or in connection with this contract by negotiation. If after a reasonable time any dispute has not been resolved by negotiation, then subject to both parties' consent in writing, the parties may refer the dispute to arbitration or mediation.

In the case that this document is translated a language other than English causing any dispute to the interpretation of any of these conditions, the official English language version shall prevail.

Entire Agreement

The contract forms the entire agreement between the parties in relation to the services. It replaces any earlier agreements, representations or discussions. No party is liable to any other party (whether for negligence or otherwise) for a representation that is not in the contract.

Severance of Terms

If any of our terms of the Engagement are held to be invalid, the remainder of the terms will continue in full force and effect.

AEDP is the trade name of Business Ventures Leisure Entertainment B.V. and holds its registered offices at Oude Boslaan 26, 7771 DR Hardenberg, The Netherlands. The company is registered at the Dutch Chamber of commerce as a private limited liability company. These Terms of engagement can also be viewed at www.aedp.com and are deposited at the Dutch chamber of Commerce under number 77020405.