

These General Terms & Conditions apply to all quotes provided by Kimworks to third parties such as clients, as agreed upon or communicated in an agreement, quotation, assignment and/or assignment confirmation for the performance of work and/or confirmation of an order to carry out work and/or the supply of services. The applicability of any general terms & conditions of the client is expressly rejected.

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Article 1: Definitions

1. Client: the natural person or legal entity that gives Kimworks an assignment to perform work and/or supply services.
2. Contracted party: Ms K. Huizenga trading under the name Kimworks, registered in the Commercial Register of the Chamber of Commerce under number 77583698, residing at and having her registered office at Blauwkapelseweg 21 BS (3572 KB) in Utrecht (hereinafter referred to as: Kimworks).
3. Assignment: the work to be carried out by Kimworks, as determined by mutual consultation between the client and Kimworks, whereby Kimworks applies its expertise and experience for the coaching of persons in the personal and/or business sphere, including within the context of writing (business) texts. The assignment also includes the sale and supply of goods by Kimworks.
4. In Writing/Written: for the purpose of these General Terms & Conditions, written correspondence also includes any email correspondence.

Article 2: Quotes

1. All quotes (including quotations, assignments and/or assignment confirmations) by Kimworks are dated and include a description, which is as complete and accurate as possible, of the work to be performed.
2. All quotes by Kimworks provide an overview of the pricing method, the payment term and the method of payment applicable to that particular assignment.
3. All quotes by Kimworks are valid for thirty (30) days after receipt by the client, unless Kimworks has expressly stated otherwise.
4. Quotes by Kimworks are not binding, unless Kimworks has expressly stated otherwise.
5. All amounts are exclusive of VAT, other government levies, and other costs incurred for the assignment. Exceptions only apply if Kimworks has expressly stated otherwise.

Article 3: Agreements

1. Agreements are only effective:
 - a. once Kimworks has received an email from the client accepting the quote: or
 - b. once Kimworks has actually started the work prior to receiving acceptance by email.
2. Agreements and quotations only apply to those assignments for which they have been agreed and not for future assignments to Kimworks.
3. Agreements can only be amended by mutual consent and to the extent that Kimworks has expressly agreed to the amendment.
4. If, during the term of the agreement, Kimworks carries out or has carried out other work on behalf of the client, this work will be deemed to have been carried out on the basis of separate agreements.
5. Kimworks commits to a best-effort obligation when entering into agreements. The nature of the work does not always allow Kimworks to guarantee a result. Kimworks cannot guarantee the realisation of an intended outcome of the assignment, unless the parties have expressly agreed otherwise. Kimworks does not guarantee that its efforts will lead to the client's actions – or the effects of the client's actions – having the desired effect.
6. If, for the purpose of the assignment, Kimworks processes personal data on behalf of the client within the meaning of the General Data Protection Regulation (GDPR), Kimworks and the client will enter into a processing agreement for this processing.

Article 4: Duration and termination

1. Agreements are entered into for the term that has been agreed by the client and Kimworks.
2. The client is entitled to terminate an agreement with Kimworks early in writing, stating the reason(s) for the termination.
3. An agreement for an indefinite period can be terminated by both the client and Kimworks in writing, stating the reason(s) and subject to a notice period of one (1) month, unless the parties have expressly agreed otherwise.
4. If the client terminates an agreement with Kimworks early, Kimworks is entitled to claim payment for the work that it has performed for the client under the agreement, for the period before the agreement was terminated.
5. Kimworks is entitled to terminate an agreement with immediate effect if the client fails to comply properly or in full with its obligations in respect of Kimworks or acts in breach of those obligations. Kimworks is not obliged, under any circumstance, to pay any compensation to the client.

6. The client and Kimworks are entitled to terminate this agreement with immediate effect, without a written formal notice of default or legal intervention being required, if:
 - The other party invokes force majeure, and the period of force majeure has lasted longer than three (3) months or as soon as it is has been established that this period will last longer than three (3) months;
 - The other party has applied for a suspension of payment or is declared bankrupt; or
 - The other party fails to comply with an obligation arising from and/or pertaining to this agreement, whereby said non-compliance is so serious that the other party cannot reasonably be required to continue this agreement, and the defaulting party, after having been given notice of default, remains negligent in meeting this obligation or fails to take appropriate steps to rectify the situation.

Article 5: Obligations of Kimworks

1. Kimworks will carry out its activities to the best of its ability and as a highly responsible professional.
2. Kimworks is registered as a certified coach in the register of the Dutch Association of Professional Coaches in the Netherlands (hereafter referred to as: NOBCO). Kimworks follows the International Code of Ethics (IEC) and the guidelines and code of conduct of NOBCO.
3. Kimworks has the right to engage the services of auxiliaries and to accept any limitations of liability of such parties on behalf of the client. However, Kimworks is not liable for the selection of nor any shortcomings on the part of these auxiliaries, unless there is intent or gross negligence on the part of Kimworks.
4. If Kimworks and the client have agreed on a specific deadline for any of the work performed by Kimworks, then that period only serves as a guideline and is not a final deadline.
5. If an agreed deadline is likely to be exceeded, Kimworks will notify the client as soon as possible. The client and Kimworks agree in advance that they will consult with each other if this should be the case.

Article 6: Obligations of the client

1. The client and all relevant parties are required to cooperate fully with Kimworks without reservation, to enable Kimworks to carry out the assignment without constraints. If the client fails to do this, the client will be obliged to reimburse Kimworks for all costs incurred as a result.
2. In cases where Kimworks requires information and/or documents to be sent or handed over by the client in order to carry out its work, the client must provide Kimworks with the information and/or copy documents. The term 'documents' covers all resources, documents or data carriers provided by the client to Kimworks, as well as all resources produced by the client in the context of performance of the work, including written documents and electronic documents.
3. If the client has provided Kimworks with information and/or documents, it must be able to guarantee the authenticity, accuracy, and quality of these documents. If the client fails to do this, the client will be obliged to reimburse Kimworks for all costs incurred as a result.
4. If the client has provided Kimworks with information and/or documents, the client guarantees that these are not subject to third-party rights that would preclude Kimworks from using them. The client indemnifies Kimworks against any claims that may arise from an infringement of any third-party rights.
5. If the performance of the assignment by Kimworks is delayed because the client has not provided Kimworks with all the necessary information and/or documents in a timely manner, the client is obliged to reimburse Kimworks for the costs incurred by Kimworks as a result. To the extent possible, Kimworks will confirm these costs to the client separately. Kimworks will also be entitled to suspend the work until the client has provided Kimworks with all of the required information and/or documents.
6. If the performance of an assignment by Kimworks consists, wholly or partly, of correcting or editing texts/business texts, the client is obliged to check the texts that have been created through the efforts of Kimworks for any inaccuracies. Kimworks is not liable to pay any compensation as a result of inaccuracies, errors or incomplete information in the completed texts.
7. If the client does not comply with one or more of its obligations, this can never result in a shortcoming on the part of Kimworks, and Kimworks can never be held liable for the consequences of this non-compliance.

Article 7: Advance, fee, invoicing, payment term, additional charges and immediate chargeability

1. Kimworks may ask the client to pay an advance. Where applicable, the advance payment must be made by the client before the work is started.
2. Kimworks agrees an hourly rate or a fixed fee with the client.
3. Kimworks will issue its invoices to the client on a monthly basis, unless expressly agreed otherwise.
4. Kimworks is entitled to adjust its rates at least once a year – for ongoing and new assignments – unless expressly agreed otherwise.
5. Kimworks will issue a separate and itemised invoice for any costs incurred by Kimworks for the performance of the assignment and the costs of any agreed additional work.
6. Kimworks' invoices must be paid within fifteen (15) days of the invoice date without recourse to payment suspension or offsetting, unless expressly agreed otherwise.

7. If the agreed payment term is exceeded and after having received at least one payment reminder from Kimworks to pay within a reasonable period of time, the client will be in default by operation of law.
8. All judicial and extra judicial costs relating to the collection of invoices are paid by the client.
9. If the client goes into liquidation, becomes bankrupt or enters into a moratorium on payments, all Kimworks' claims vis-à-vis the client become immediately due and payable.

Article 8: Additional work

1. The work performed by Kimworks that has not been described in the quote to the client is regarded as additional work.
2. To the extent possible, Kimworks will confirm the additional work and associated costs to the client in advance.
3. The client accepts that the planning of the work by Kimworks can be affected in the event of additional work.
4. Kimworks will charge the client separately for the agreed additional work.

Article 9: Unforeseen circumstances

1. The client bears the risk in the event that Kimworks identifies circumstances that substantially hinder or interfere with the performance of the work, unless Kimworks reasonably knew or should have known about those circumstances.
2. If unforeseen circumstances arise during the performance of the work, the client and Kimworks will consult with each other as soon as possible.
3. Any costs incurred by Kimworks in connection with unforeseen circumstances that require immediate action to limit any damage will be reimbursed to Kimworks by the client. Exceptions only apply if it is fair and reasonable for Kimworks to bear the risk of the particular circumstance.

Article 10: Non-attributable shortcomings

1. In addition to what is defined by the law and case law as non-unattributable shortcomings, the following circumstances also constitute an unattributable shortcoming on the part of Kimworks:
 - a. Non-availability of the relevant operational persons, for example, due to illness, incapacity for work, personal indispensability, strikes, or termination of employment, contract of assignment or freelance contract.
 - b. Delay at or shortcomings by suppliers.
2. If the non-attributable shortcoming is shorter than two (2) months, Kimworks reserves the right to suspend performance of the agreement until the circumstances causing the non-attributable shortcoming have ceased to exist.
3. If the non-attributable shortcoming continues for more than two (2) months, both Kimworks and the client are entitled to terminate the agreement without having to observe a notice period. In this case, Kimworks reserves the right to claim payment for the work that it has performed under the agreement before the circumstances occurred that resulted in the non-attributable shortcoming.

Article 11: Electronic communication

1. During performance of the assignment, the client and Kimworks may communicate with each other by electronic means.
2. Kimworks is not liable for any losses that the client may suffer as a result of using electronic means of communication, including – but not limited to – losses resulting from the failure or delay in the delivery of electronic communications, interception or manipulation of electronic communications by third parties or by software/hardware that is used to send, receive or process electronic communications, transmission of viruses and non-functioning or malfunctioning of the telecommunications network or other resources needed for electronic communications, unless the loss is the result of intent or gross negligence on the part of Kimworks. The data extracts from Kimworks' computer systems provide binding evidence of (the content of) the electronic communication sent by Kimworks until such time as evidence to the contrary is provided by the client.
3. The client and Kimworks will either do or refrain from doing all that can reasonably be expected of each of them to prevent any of the above-mentioned risks from occurring.

Article 12: Retention of title

Everything supplied and to be supplied by Kimworks, including designs, sketches, drawings, video images and (electronic) files, remains the exclusive property of Kimworks until all claims that Kimworks has or will have against the client have been paid in full, including in any case those referred to in Book 3 Article 92(2) of the Dutch Civil Code.

Article 13: Intellectual property

Kimworks reserves the right to use the knowledge gained during the work carried out, in the broadest sense of the word, for other purposes, provided that no confidential information about or from the client is disclosed to third parties.

Article 14: Confidentiality

1. Kimworks and the client will, both during and after the termination of the agreement, maintain strict confidentiality in respect of everything that is known to them concerning the expertise, business and interests of the other party in the broadest sense of the word, or of companies that are economically or organisationally affiliated with the other party, insofar as such facts and circumstances have come to their knowledge as a result of the agreement.

Kimworks

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2. If the client breaches the provisions of this article, the client will forfeit to Kimworks an immediately payable fine of fifteen thousand euros (EUR 15,000) for each breach, plus two hundred and fifty euros (EUR 250) for each day that the breach continues, without prejudice to Kimworks' right to claim full compensation from the client instead of the fine.

Article 15: Postponement

Kimworks is authorised to postpone the performance of its obligations if the client fails to perform its obligations arising from the agreement, fails to fulfil them in full or fails to do so on time, or if circumstances that have come to Kimworks' attention give good reason to fear that the client will not fulfil its obligations under the agreement. Kimworks is not obliged, under any circumstance, to pay any compensation to the client.

Article 16: Cancellation

1. The client can only cancel the assignment to Kimworks before the work has started by mutual consent. The client must always pay 30% of the agreed rate to Kimworks as a reasonable compensation for any loss or loss of profit suffered by Kimworks, unless Kimworks has expressly agreed otherwise with the client.
2. If the client wishes to change or postpone the assignment to Kimworks, this is possible only by mutual consultation. The client must at all times allow Kimworks to perform the assignment within thirty (30) days after the originally planned start date, otherwise it will still be required to pay Kimworks the rate as listed in paragraph 1.

Article 17: Liability

1. In the unlikely event that, during the performance of the work, an incident occurs which leads to liability, then that liability is limited to the amount paid out by Kimworks' business liability insurance policy, plus the amount of the excess that is payable by Kimworks under the applicable insurance policy.
2. Kimworks is not liable to compensate any damage if, at the time of the above-mentioned event, the client is in default in the performance of any obligation vis-à-vis Kimworks.
3. Kimworks is not liable for indirect damage of the client or third parties, including consequential losses and trading losses.
4. If Kimworks has received an assignment together with another contracted party, it is not liable for the entirety in respect of a failure of performance. The operation of Book 7 Article 407(2) of the Dutch Civil Code is expressly excluded.
5. If, for whatever reason, a payment is not made by the insurance company, any liability is limited to the amount charged by Kimworks for the relevant assignment in the relevant year up to a maximum of fifteen thousand euros (EUR 15,000).
6. Kimworks is entitled, at all times, if and to the extent possible, to remedy the damage suffered by the client.

Article 18: Nullity and retention of rights

1. If one or more provisions are void, the other provisions still remain in full force and effect. The client and Kimworks undertake to consult with each other in advance about any new provision(s) in replacement of the void provision(s), whereby the purpose and intent of the agreement and the void provision(s) will be retained as much as possible.
2. The failure of either party to enforce such provision(s) does not affect the rights of that party to claim fulfilment by the other party.
3. If one of the parties accepts a breach of the other party's obligations, this does not constitute a waiver of its rights arising from such a breach or obligation.

Article 19: Rights to the work

1. Only the client may derive rights from the Kimworks' work. Third parties cannot derive any rights from the assignment or the work.
2. The client is not permitted to transfer the rights of the work of Kimworks to third parties under any title whatsoever, other than with the express prior written consent of Kimworks.

Article 20: Complaints

1. Any complaints with respect to the work performed and/or the invoice amount must be communicated to Kimworks in writing, stating the reasons, within fifteen (15) days of the date of sending the documents or information relating to the complaint, or within fifteen (15) days of discovering the defect if the client can demonstrate that it could not reasonably have discovered the defect any earlier.
2. The submission of a complaint does not suspend the client's payment obligation vis-à-vis Kimworks, unless Kimworks has expressly agreed to this in writing.
3. Kimworks must be given the opportunity to investigate the client's complaint.
4. After this investigation, Kimworks will enter into consultation with the client to determine how the complaint can be turned into a positive result for both parties.

Article 21: Amendments and supplements

1. Kimworks is entitled to amend and/or supplement the General Terms & Conditions.
2. With regard to ongoing agreements, any amendments and/or supplements to the General Terms & Conditions enter into effect thirty (30) days after Kimworks has given notification of them in writing.

3. If the client is unable to accept the amendments and/or supplements, the client is entitled to dissolve the agreement before they enter into effect; the client can dissolve the agreement either on the date when the amendments/supplements enter into effect or on the date of receiving the notification. Kimworks is not obliged, under any circumstance, to pay any compensation to the client.

Article 22: Disputes, applicable law and competent court

1. A dispute relating to the interpretation and/or conclusion of an agreement between the client and Kimworks will first be submitted to Kimworks.
2. If the dispute has not been resolved after this internal procedure, the dispute will be exclusively settled by the Midden-Nederland District Court in Utrecht.
3. All agreements entered into with Kimworks are subject exclusively to the law of the Netherlands.

Article 23: Final provision

The General Terms & Conditions have been made not only for Kimworks, but also for the employees and auxiliaries of Kimworks, as if they themselves had made them. The term 'auxiliaries' also includes subcontractors engaged by Kimworks.