

# CALAMITY JANE

## TERMS AND CONDITIONS

V.1: February 6, 2023

### 1 Definitions

- 1.1 General Terms and Conditions: These general terms and conditions.
- 1.2 Calamity Jane: The company Calamity Jane located at Christoffelkruidstraat 27 1032 LK Amsterdam registered under number 83028285 at the Dutch Chamber of Commerce.
- 1.3 Client: Any natural or legal person that purchases Deliverables and/or Services supplied by Calamity Jane, or with whom Calamity Jane enters or has entered into an Agreement.
- 1.4 Agreement: Any agreement for the sale and/or delivery of Services by Calamity Jane, of which the General Terms and Conditions are an integral part.
- 1.5 Fee means the fee for a Project and production costs as set out or referred to in the applicable Project Sheet.
- 1.6 Project means each project to which this Agreement applies, the particulars of which are set out or referred to in a Project Sheet.
- 1.7 Services means the consulting, creative work, development, design and/or production services to be provided by Calamity Jane to the Client for a Project as set out or referred to in the applicable Project Sheet.
- 1.8 "Calamity Jane Marks" means all logos, slogans, marks, designs, trade-marks, trade names, copyrights and other intellectual properties that relate to Calamity Jane's business in general.
- 1.9 Calamity Jane Materials shall mean any performance, idea, concept, title, suggestion, theme, plot, story, characterization, dialogue, set, setting, drafts, versions, sketches, rough cuts, outlines, notes, and recordings (including raw footage) in any media, whether or not in writing, in whatever stage of completion that may exist from time to time, computer or hard copy files, electronic, magnetic, or optical version or other materials that went into making the Project, except for any such intellectual property related to concepts or ideas that were not selected by Client to become, and ultimately became, a finalized Project.; and
- 1.10 Third Party Materials means any and all including but not limited to original music, licenses, proprietary technology, raw photo files, etc. created or provided by a third party service provider and licensed to or used by Calamity Jane in the Services and/or Deliverables.

## **1 Applicability**

- 1.1 Calamity Jane agrees to deliver the Services and Deliverables as set out in any Project Sheet in accordance with and subject to the terms and conditions of this Agreement and the Project Sheet.
- 1.2 Client acknowledges and agrees that Calamity Jane may, in the performance of its Services, use or incorporate Third Party Materials in the Deliverables. Client's right to use such Third Party Materials shall be subject to the terms of any applicable license as described in the applicable Usage Term Sheet. Unless explicitly stated otherwise in an Project Sheet, any expenditures or fees incurred in connection with the use of Third Party Materials shall be at Client's sole expense and shall be billed to Client in a separate invoice.

## **2 Agreement**

- 2.1 An agreement is only valid insofar the Project Sheet as been signed.
- 2.2 Verbal promises by and arrangements with subordinates of Calamity Jane only bind Calamity Jane if they are confirmed in writing by Calamity Jane.

## **3 Price and payment**

- 3.1 All prices and rates are exclusive of sales tax (VAT) and other taxes which are imposed by the government.
- 3.2 If not agreed within the applicable Project Sheet, Client shall pay 50% of the invoice issued to him by Calamity Jane within fourteen (14) days after the conclusion of the Agreement and 50% of the invoice issued to him by Calamity Jane within fourteen (14) days after the date on which the Service and/or Deliverables referred to in the Agreement is provided or are delivered.
- 3.3 Client is not entitled to suspension of payment or set-off on any ground whatsoever.
- 3.4 Complaints about invoices shall be submitted with Calamity Jane in writing (which includes: per e-mail), within eight (8) days after the date of dispatch of the invoices. The payment term shall not be suspended as a result of the complaint. After the aforementioned term has elapsed, Client will have forfeited her rights to lodge a complaint.
- 3.5 In the event that Client fails to pay the amount due after having been served a letter of default, the claim can be handed over to a third party. In that event, in addition to the total amount due at that time, Client will be obliged to pay all judicial and extra judicial collection costs, including attorney's fees.

## **4 Intellectual Property**

- 4.1 Calamity Jane shall retain title to and sole ownership of all rights in the Calamity Jane Materials and the Calamity Jane Marks.
- 4.2 The Client shall retain title to and sole ownership of all rights in the Client Materials and the Client Marks. Notwithstanding the foregoing, the Client grants to Calamity Jane a non-exclusive, non-transferable license to use the Client Marks and Client Materials solely for the purposes of the Services and Deliverables and the publicity and promotion provisions set forth below in this Section. Calamity Jane shall not make any other use of the Client Marks and Client Materials without the written consent of the Client.
- 4.3 Effective upon payment of the Fee in full, Calamity Jane:
- (a) assigns, grants and transfers the agreed upon usage rights as stated in the Production Estimates to the Client all of Calamity Jane's right, title and interest in and to the Deliverables excluding the Third Party Materials, Calamity Jane Materials and excluding the Calamity Jane Marks, provided that Client agrees not to make any alterations or modifications to the Deliverables without Calamity Jane's prior written consent; and
  - (b) grants to the Client the Project licenses, as described in the usage term sheet, to use the Third Party Materials and the C Calamity Jane Materials contained in the Deliverables provided that the neither shall not be exploited separately from the Deliverables nor licensed by the Client for use by any other person without the written consent of Calamity Jane.
- 4.4 For the avoidance of doubt, Calamity Jane retains the right to use the Deliverables for intercompany research, files, reference, publicity (including on Calamity Jane's reel, website, social media sites, events, awards).

## **5 Warranties**

- 5.1 Calamity Jane represents and warrants that it:
- (a) is a validly constituted corporation with the corporate capacity to enter into this Agreement;
  - (b) holds or will acquire the underlying rights or consents necessary to grant the rights granted herein; and
  - (c) will use its best efforts to provide the Services set forth on any Project Sheet.
- 5.2 The Client represents and warrants that it:
- (d) is a validly constituted corporation with the corporate capacity to enter into this Agreement;
  - (e) holds or will acquire the underlying rights or consents necessary to grant the rights granted herein;
  - (f) will review and approve the Deliverables and will ensure that its use of the Services will comply with all applicable laws, regulations and rules and any industry codes of conduct; and
  - (g) holds or will acquire the underlying rights or consent necessary to use the Client Materials and the Client Marks in the Services as provided herein and shall do all things and make all payments required to clear the use of the Client Materials and the Client Marks in the Services

## **6 Transfer of Risk**

- 6.1 All Services delivered by Calamity Jane shall remain its exclusive property until the amounts are paid by Client to Calamity Jane
- 6.2 The risk of the use of the Services after the applicable usage terms passes /end shall pass over to the Client upon the end of the agreed to usage term.

## **7 Confidentiality**

The parties acknowledge that in the course of Calamity Jane's service to the Client, one party ("Receiving Party") may receive and have access to and contact with information and expertise of a proprietary or confidential nature ("Confidential Information") belonging to the other party ("Disclosing Party"). Neither party will disclose any Confidential Information belonging to the other party to any person or entity, other than its employees on an as-needed basis, or use the same for any purposes other than in the performance of its obligations under this Agreement without the express written approval by the Disclosing Party. For purposes of this Agreement, Confidential Information shall mean, by way of illustration and not limitation, all information, whether or not in writing, whether or not patentable and whether or not copyrightable, of a private, secret or confidential nature, owned, possessed or used by the Disclosing Party, concerning the Disclosing Party's business, business relationships or financial affairs, including, without limitation, any invention, formula, vendor information, customer information, apparatus, equipment, trade secret, process, research, report, technical or research data, clinical data, know-how, computer program, software, software documentation, hardware design, technology, product, processes, methods, techniques, formulas, compounds, projects, developments, marketing or business plan, forecast, unpublished financial statement, budget, license, price, cost, customer, Calamity Jane or personnel information or employee list that is communicated to, learned of, developed or otherwise acquired by the Receiving Party in connection with this Agreement. Confidential Information shall not include any information that (i) is or becomes known to the general public under circumstances involving no breach by the Receiving Party or others of the terms of this Section (ii) is generally disclosed to third parties by the Disclosing Party without restriction on such third parties, (iii) is approved for release by written authorization of an officer of the Disclosing Party, or (iv) is proven to be independently developed by the Receiving Party without the use of any Confidential Information.

## **8 Limitation of Liability**

- 8.1 In no event shall either party be liable to the other for any incidental, consequential, exemplary, special, punitive, multiple or other indirect damages, including lost profits, arising out of the Agreement, whether based upon warranty, contract, tort, statute, strict liability or otherwise, regardless of whether it was reasonably foreseeable or the party had been advised of the possibility of such damages or losses.
- 8.2 Client shall be solely responsible and/or liable for the use of the Deliverables and all activities conducted around, through or in connection therewith by Client, its end users and any third parties, regardless of whether such uses or activities occur without Client's permission, and any consequences or actions resulting from the viewing, distribution, exhibition, marketing, promotion and/or other commercial communication relating to the Deliverables.
- 8.3 Notwithstanding anything else in this agreement, the aggregate liability of Calamity Jane to the client in any way arising out of or related to a project shall be limited to actual direct, provable damages not to exceed an amount equal to fees received by Calamity Jane under this agreement for that project.

## **9 Indemnities and insurances**

- 9.1 Client agrees to indemnify, defend, and hold harmless Calamity Jane, its present and future officers, directors, shareholders, employees, agents and its affiliates, from and against any and all loss, damages and expenses, including reasonable legal fees and disbursements, resulting from any third party claim, action or proceeding arising from a breach of this Agreement by Client.
- 9.2 Subject to the other provisions of this Agreement, each party agrees to indemnify, defend, and hold the other harmless from and against all loss, damages and expenses, including reasonable legal fees and disbursements, resulting from any third party claim, action or proceeding arising from (i) such party's gross negligence, fraud, and/or willful misconduct; (ii) breach of the confidentiality provisions set forth in this Agreement; and/or (iii) the infringement of a third party's intellectual property rights by the Client Marks and/or Client Materials. Each party shall promptly notify and consult the other regarding any claim or litigation to which the indemnities in this Agreement apply. Notwithstanding anything to the contrary set forth herein, an indemnifying party may not consent to entry of any judgment or enter into any settlement that imposes liability or obligations on an indemnified party or diminishes any such indemnified party's rights without first obtaining such indemnified party's express written consent.
- 9.3 Both parties shall procure and maintain its own necessary insurances.

## 10 Termination

- 10.1 This Agreement may be terminated, in whole or in part, in the following manner: (i) by either party upon ninety (90) days written notice to the other party, (ii) by the non-breaching party upon fourteen (14) days written notice to the breaching party if one party has materially breached this Agreement and failed to cure said breach within the notice period, (iii) by either party in the event of a Force Majeure that persists for thirty (30) days or more, and/or (iv) by either party if the other party is believed to be insolvent and/or files for bankruptcy.
- 10.2 Without limiting the foregoing, Calamity Jane may either extend the production schedule for a Project or terminate this Agreement as it applies to a Project effective upon written notice to the Client in the event the Client (i) fails to make a payment when due; (ii) fails to grant approvals or request modifications to documents submitted to it or otherwise communicate with Calamity Jane in accordance with the process set out in the Project Sheet; or (iii) fails to perform any other material obligation in this Agreement without cure within fourteen (14) days after receiving written notice from Calamity Jane.

## 11 Effect of Termination

- 11.1 In the event this Agreement is terminated by either party, Calamity Jane will account for all time and material spent on the Project(s) up to the time of termination and determine the total costs thereof, including any non-refundable amounts actually paid or owed by Calamity Jane to any third party in connection with the Project, all of which shall be included on a final invoice to the Client. Any fees previously owed and outstanding shall become immediately due and payable to Calamity Jane upon the termination of this Agreement.
- 11.2 The Client shall not make any use of any of the Deliverables after the termination of this Agreement and prior to the payment of the Fee in full until such time as the Client and have negotiated and agreed to terms upon which the Deliverables may be used, including the costs thereof.
- 11.3 The provisions of the articles 5, 7, 8 9 and 13, as they apply to a Project, shall survive any termination of this Agreement in whole or in part.

## 12 General

- 12.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior proposals, understandings or agreements between the parties and may be amended or modified only in writing and signed by both parties. The parties agree that any Schedule attached hereto may be amended or replaced by a new Schedule, or a new Schedule pertaining to a separate Project may be added, provided that the new Schedule is in writing and signed by both parties.

- 12.2 In the event of a discrepancy between the main body of this Agreement and a Project Sheet, the terms and conditions of the main body of this Agreement shall prevail unless the Project Sheet expressly overrides the main body of this Agreement.
- 12.3 Notice. All notices under this Agreement shall be in writing and shall be duly given if delivered personally, by fax or sent by registered mail or courier, postage prepaid, to the respective addresses of the parties appearing on page one of this Agreement. Any notice given shall be deemed to be received on the date which it is delivered if delivered personally or, if faxed or couriered, on the first business day next following the sending thereof or, if mailed, on the fifth business day next following the mailing thereof.
- 12.4 Benefit. This Agreement will inure to the benefit of and will be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.
- 12.5 Assignment. This Agreement may not be assigned by a party without the prior written consent of the other party.
- 12.6 Severability. If any part of this Agreement, or the application thereof to any party, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Agreement, which shall continue in full force and effect, or the application of this Agreement to the remaining party.
- 12.7 Force Majeure. Except with respect to payment of fees hereunder, neither party hereto shall be liable to the other party for any delay or failure to perform its obligations hereunder due to labour disputes, riots, storms, floods, explosions, earthquakes, acts of God, acts of any governmental authority, war, or any other cause or causes which are beyond the reasonable control of such party. The parties hereto shall use their reasonable efforts during the term of this Agreement to avoid or, if unavoidable, minimize the effects of any force majeure upon the performance of their respective obligations under this Agreement.
- 12.8 Governing Law; Jurisdiction. This Agreement is to be governed by and construed in accordance with the laws of the Netherlands. All disputes connected to or ensuing from the Agreement which cannot be amicably resolved, shall exclusively be brought before the competent Court in Amsterdam, The Netherlands.
- 12.9 Counterparts. This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile, PDF or other electronic means, each of which may be executed by less than all parties, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.