

Theatermachine
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Terms and conditions of payment and delivery

Please note that the English translation is for convenience only;
only the Dutch version has legal effect!

Clause 1 – General

1.1 Where the following terms are used in this document, they are understood to mean:

Services Services provided by Theatermachine, concerning the creation of lighting designs and their implementation, providing advice on lighting for performing arts, museums, architecture and also the creation of lighting designs as an independent art form and related to creating lighting designs in the broadest sense.

Agreement Agreement between Theatermachine and the Client to which these terms and conditions apply.

Theatermachine Partnership Theatermachine, consisting of the partners Floriaan Ganzevoort, Mike Evers, Isabel Nielen and Benno Barends.

Client the natural or legal person who concludes or wishes to conclude an agreement with Theatermachine, or to whom Theatermachine makes an offer.

Place of business is the place of residence of the partner or partners who perform the Service for the Client.

1.2 These terms and conditions apply to all agreements concluded with Theatermachine and related negotiations, quotations, order confirmations and deliveries regarding the delivery of goods and/or Services.

1.3 Deviation from these conditions can only take place through a written statement from and/or acceptance by Theatermachine, which then, unless otherwise stated, applies exclusively to the agreement under consideration.

1.4 If any provision of these terms and conditions is not valid, for whatever reason, these terms and conditions will otherwise remain in force, while that provision will be deemed to have been replaced by an applicable provision that corresponds to the aforementioned provision in terms of its operation.

Clause 2 – Quotations and conclusion of contract

2.1 All quotations made by Theatermachine are valid during the expiry period stated on the quotation and cannot be unilaterally adjusted within this period.

2.2 If a quotation has been issued by Theatermachine, an agreement between Theatermachine and the Client will only be concluded after receipt by Theatermachine of a copy of that quotation signed for approval by the Client, either on paper or online.

2.3 De Theatermachine reserves the right to refuse assignments without giving reasons, or to accept them only after the Client has provided adequate guarantees for the Client to fulfill its obligations.

2.4 Changes and/or additions to an Agreement, as well as oral agreements and/or commitments made by Theatermachine in response to the Agreement, are only valid if they have been confirmed in writing by or on behalf of Theatermachine.

Clause 3 – Charges

3.1 All quoted prices of Theatermachine do not include VAT, import duties, taxes, levies, costs of packaging, loading and unloading, transport, additional materials, travel and accommodation costs and/or insurance, unless otherwise stated or further agreed between the parties.

3.2 If prices and/or rates of price-determining factors such as currency values increase for whatever reason, Theatermachine is entitled to increase the agreed price accordingly.

3.3 Reimbursement for travel and/or transport costs will be calculated

Based on €0.35 times the number of kilometers by road from Location to the location where the Service is performed and back

Based on travel by train in second class from Standing Place to the station that is close to the location where the Service is provided.

3.4 If agreed, accommodation costs (per diems) will be calculated on the basis of the amounts from the 2024 Collective Labor Agreement for theater and dance. The following maximum amounts will be invoiced, plus 21% VAT

Lunch within the Netherlands €12.57

Dinner within the Netherlands €26.19

Lunch outside the Netherlands €16.09

Dinner outside the Netherlands €33.52

Clause 4 – Payment terms

4.1 Unless otherwise agreed in writing, payment must be made within 14 days of the invoice date. The invoice will be sent at the start of the delivery of the Service, unless a different payment term has been agreed in writing.

4.2 If the Client has not fulfilled its payment obligations within the period stated in paragraph 1, Theatermachine is entitled to payment by the Client of:

a. default interest of 1.5% per month, unless the statutory interest is higher, part of a month counted as a full month, due on the outstanding amount from the due date until the day of full payment; and

b. extrajudicial collection costs amounting to 15% of the amount owed by the Client with a minimum of € 250.00.

4.3 Payments made by the Client serve to settle the oldest outstanding amount

4.4 If goods are delivered by Theatermachine, ownership of the goods will only be transferred to the Client after full payment of the purchase price. If payment is not made or not paid in full, goods already delivered can be reclaimed.

4.5 Unless otherwise agreed in writing, the total amount of the Services and goods to be delivered will be invoiced in three installments, namely 30% upon signing the assignment agreement or quotation, 40% at the start of the work and 30% after completion of the work.

Clause 5 – Fees

5.1 A daily flat rate fee is the fee charged for one day's work.

5.2 If a daily flat fee has been agreed, it will be charged per calendar day worked if:

a. this day has sufficient breaks (at least 2 hours per day for coffee, tea, lunch, dinner)

b. the working time on this day does not exceed 10 hours at the location of the Client or 14 hours from Place of Business to Place of Business.

5.3 The daily price will be charged if the breaks are shorter than stated in art. 5.2 a or the working time is up to two hours longer than stated in art. 5.2 b., increased by 10% of the daily rate per additional hour worked.

5.4 When the working time is two hours or longer than stated in art. 5.2 b., the daily fee is increased by 15% of that daily fee for each additional hour worked. This can only be deviated from once per agreed contract period if there is demonstrable force majeure.

5.5 An hourly rate is the fee charged per hour. The hours worked are rounded to the nearest quarter of an hour.

5.6 If work is performed for more than four consecutive hours, Theatermachine may charge a maximum of one additional hour for breaks (coffee, tea, lunch, dinner).

Clause 6 – Cancellation Clause

6.1 The agreement can be canceled by the Client, in which case cancellation costs are due in the amount of a percentage of the agreed fee depending on the period prior to the agreed starting date on which cancellation takes place according to the following scale

From 12 to 8 weeks: 15% of the fee for services to be provided, 100% of the amount for goods already ordered delivered.

From 8 to 2 weeks: 50% of the fee for services to be provided, 100% of the amount for goods already ordered or delivered.

Shorter than 2 weeks: 100% of the fee for services to be provided, 100% of the amount for goods already ordered or delivered.

6.2 If the event to which the agreement relates does not take place or takes place in a modified form and/or takes place on a different date and time, the Client shall pay the agreed amount in full. It is up to the Client whether to take out insurance for this eventuality.

Clause 7 – Auxiliary persons

7.1 Theatermachine is entitled to use assistants in the performance of the Services. The costs of engaging auxiliary persons will be passed on to the Client. These costs are included in a quotation or assignment agreement prior to the work being carried out.

7.2 Theatermachine is not liable for damage caused by auxiliary persons due to intent, gross negligence or recklessness.

Clause 8 – Attribution and credits

8.1 The Client must ensure that, in the event of mentions in program booklets, guides, almanacs, websites or yearbooks of or about the project, event or performance for which a Service has been provided by Theatermachine, the name “Theatermachine” and the name of the person who provided the service for Theatermachine is correctly stated.

8.2 The Service provided, as described on the quotation or invoice, must also be included in the statement referred to under 8.1. (For example: Lighting design: Benno Barends – Theatermachine)

Clause 9 – Force majeure

9.1 In the event that Theatermachine is prevented from fulfilling the Agreement in whole or in part or from providing the Services in whole or in part due to force majeure, Theatermachine is entitled to suspend the execution of the Agreement or to dissolve the Agreement in whole or in part without judicial intervention, without that Theatermachine is obliged to compensate the Client for any damage.

9.2 Cases of force majeure include circumstances as a result of which Theatermachine is temporarily or permanently unable to meet its obligations, such as fire, strike or lockout, riot, war, restrictive government measures, default of suppliers and furthermore all circumstances

under which it could not reasonably be expected (more) Theatermachine may be required to (further) fulfil its obligations towards the Client.

9.3 If the force majeure situation continues for more than 7 days, the Client has the right to terminate the Agreement by means of written notice, taking into account a period of two days.

9.4 Suspending or terminating the Agreement does not release the Client from its obligation to pay for services already delivered.

Clause 10 – Examination, delivery

10.1 The Client is obliged to inspect the delivered goods at the time of delivery, but in any case within the shortest possible period. The Client must investigate whether the quality and quantity of the delivered goods correspond with what has been agreed, or at least meet the requirements that apply in normal (trade) traffic.

10.2 Any visible shortages or defects must be reported to Theatermachine as soon as possible after delivery. The notice of default must contain as detailed a description as possible of the shortcoming, so that Theatermachine is able to respond adequately.

10.3 Complaints about the work performed must be reported in writing by the Client to Theatermachine within 7 days of discovery, but no later than 14 days after completion of the work in question. The notice of default must contain as detailed a description as possible of the shortcoming, so that Theatermachine is able to respond adequately.

10.4 If a complaint is justified, Theatermachine will, to the exclusion of any further liability, still carry out the work as agreed, unless this has now demonstrably become pointless for the Client. The latter must be made known in writing by the Client.

10.5 If it is no longer possible or useful to carry out the agreed work, Theatermachine will only be liable within the limits of Clause 11.

Clause 11 – Liability

11.1 If goods delivered by Theatermachine are defective, Theatermachine's liability towards the Client is limited to what is arranged in these conditions under "Inspection and delivery".

11.2 If the manufacturer of a defective item is liable for consequential damage, Theatermachine's liability is limited to repair or replacement of the item, or reimbursement of the (rental) price or fee.

11.3 Without prejudice to the above, Theatermachine is not liable if the damage is due to intent and/or gross negligence and/or culpable actions, or improper or improper use of the Client and/or its employees or subordinates.

11.4 The limitations of liability for direct damage included in these conditions do not apply if the damage is due to intent or gross negligence on the part of Theatermachine or its subordinates.

11.5 If Theatermachine is liable for direct damage, then that liability is limited to a maximum of the amount of the payment to be provided by Theatermachine's insurer, or at least to a maximum of the invoice amount, or at least that part of the assignment to which the liability relates.

11.6 Notwithstanding what is stated in paragraph 5 of this Clause, for an assignment with a term longer than six months, liability is further limited to the part of the fee owed for the last six months.

11.7 Direct damage is exclusively understood to mean:

- the reasonable costs to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these conditions;
- any reasonable costs incurred to ensure that the defective performance of Theatermachine complies with the agreement, unless these cannot be attributed to Theatermachine;
- reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to limitation of direct damage as referred to in these general terms and conditions.

11.8 De Theatermachine is never liable for indirect damage, including consequential damage, lost profits, missed savings and damage due to business stagnation.

11.9 The limitations of liability for direct damage included in these conditions do not apply if the damage is due to intent or gross negligence on the part of Theatermachine or its subordinates.

Clause 12 – End of Agreement

12.1 De Theatermachine is entitled to terminate the Agreement in writing with immediate effect if:

- a. the bankruptcy of the Client is filed, the Client applies for a suspension of payments or offers an agreement to creditors;
- b. seizure is made of all or part of the Client's property;
- c. the Client dies or is placed under guardianship;
- d. the Client transfers (part of) its business, changes its objectives or changes control over its business;
- e. the Client ceases business operations;
- f. the Client does not or does not properly fulfill any obligations arising from the Agreement and/or the conditions.

Clause 13 – Transferability

13.1 The rights and obligations of the Client towards Theatermachine are only transferable with the prior written consent of Theatermachine. The Client guarantees that these conditions apply to all legal relationships between Theatermachine and any legal successors of the Client.

Clause 14 – Applicable law and choice of forum

14.1 All legal relationships between Theatermachine and the Client are exclusively governed by Dutch law.

14.2 All disputes arising from the Agreement and/or the Terms and Conditions will be submitted exclusively to the court in Amsterdam.

Clause 15 – Validity of design

15.1 A design is made for a clearly defined period of time in advance. A new agreement will be entered into for revivals/resets.

15.2 A design is made for a room size known in advance.

Clause 16 – Intellectual property and copyright

16.1 Without prejudice to the other provisions of these general terms and conditions, Theatermachine reserves the rights and powers that belong to Theatermachine under the Copyright Act.

16.2 The Client is not permitted to make changes to the goods, unless the nature of the delivered goods dictates otherwise or has been agreed otherwise in writing.

16.3 Any designs, sketches, drawings, films, software and other materials or (electronic) files created by Theatermachine in the context of the assignment remain the property of Theatermachine, regardless of whether they are handed over to the Client or to third parties. have been stated, unless otherwise agreed.

16.4 All documents provided by Theatermachine, such as designs, sketches, drawings, films, software, (electronic) files, etc., are exclusively intended for use by the Client and may not be reproduced by him without prior permission from Theatermachine, be made public or brought to the attention of third parties, unless the nature of the documents provided dictates otherwise.

16.5 De Theatermachine reserves the right to use any knowledge acquired through the performance of the work for other purposes, provided that no confidential information is disclosed to third parties.

Clause 17 – Insurance

17.1 The Client, as well as Theatermachine, ensure that they have adequate Legal Liability Insurance for Businesses.

17.2 The insurance referred to in Clause 17.1 must, if applicable, also be valid outside the Netherlands.