

General conditions for hire

From: Lamberink Events B.V.
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In these General Conditions for Hire Lamberink Events B.V. shall be referred to as the Owner and Lamberink Events B.V.'s customer or counter party shall be referred to as the Hirer.

Article 1. General

1. These conditions shall apply to all quotations, offers and agreements between the Owner and the Hirer where the Owner has declared these conditions to be applicable, to the extent that these conditions have not been expressly deviated from in writing by the parties.
2. Any deviations from these General Conditions for Hire shall be valid only where these are expressly agreed in writing.
3. The applicability of any Terms and Conditions adopted by the Hirer is expressly excluded.
4. In the event that one or more of the stipulations of these General Conditions of Hire may lapse, all other stipulations shall continue to apply in full.

Article 2. On site.

1. The Ferris wheel takes up a ground area of 21 x 17 metres. Total free space of 21 x 20 metres is necessary for setting up and taking down. The substrate must be hard surfaced. Where this is not the case the Hirer must provide road plates, at the Hirer's expense. Where there are excessive variations in level the Hirer is also to provide adequate cribbing. The associated costs shall be borne by the Hirer.
2. The location must be easily and safely accessible for the vehicles transporting the Ferris wheel. Where necessary the Hirer shall provide road plates for this purpose, and bear the associated costs.
3. Safe parking for the Owner's crane and trailers is to be provided close to the site.
4. A location for mobile accommodation is also to be provided close to the site. 3-phase electrical power, water and drainage are required. Where the location for accommodation is not available, additional accommodation expenses for the Owner and his personnel will be charged to the Hirer.
5. The electrical power supply required for the Ferris wheel must be provided before the work commences. This power may be provided by a generator or by the grid. A 3 x 80 Ampere supply is required. The associated costs shall be borne by the Hirer. Following consultation the Owner may be able to arrange for an electricity supply.
6. The location must be cordoned off for safety reasons during setting up and taking down. Unauthorised persons must not enter the cordoned-off area.

Article 3. Offers and quotations.

1. Offers made by the Owner are without obligation and will remain valid for 14 days, unless otherwise indicated. The Owner shall be bound by offers only where these are accepted in writing by the counter party within 14 days, unless otherwise indicated.
2. The prices in such offers exclude BTW (= VAT) and other state levies, as well as costs incurred in the context of the Agreement, including the costs of postage and administration, unless otherwise indicated..
3. Where the acceptance deviates from the offer set out in the quotation, on major or subsidiary points, then the Owner shall not be bound thereby. The agreement will not then be created in accordance with this deviating acceptance, unless otherwise indicated by the Owner.
4. Offers or quotations shall not automatically apply to future orders.

Article 4. Implementation of the agreement

1. The Owner will implement the agreement to the best of his understanding and ability, and in accordance with the requirements of good professional practice, all on the basis of the technical state of the art at that time.
2. Where and to the extent that the proper implementation of the agreement requires it, the Owner shall be entitled to have certain works carried out by third parties.
3. The Hirer shall ensure that all information identified by the Owner as being necessary, or information which the Other Party ought reasonably to understand would be necessary for the implementation of the agreement, is provided to the Owner in good time. Where the information required for the implementation of the agreement is not provided in good time to the Owner, then the Owner shall be entitled to suspend the implementation of the agreement and/or to charge the Hirer the additional costs arising from the delay, in accordance with the Owner's usual tariffs.
4. The Owner shall not be liable for damage of whatever nature arising because the Owner has worked on the basis of incorrect and/or incomplete information provided by the Hirer, unless the Owner ought properly to have been aware that this information was incorrect or incomplete.
5. Where work is carried out on the Hirer's location or at a location indicated by the Hirer by the Owner or by third parties engaged by the Hirer, then the Hirer shall provide the facilities reasonably required by those personnel, free of charge.
6. The Hirer hereby indemnifies the Owner against any claims from third parties who may suffer damages in connection with the implementation of the agreement, which damages are attributable to the Hirer.
7. The Hirer is to arrange for the required permits.

Article 5. Amendment of the agreement

1. Where during the implementation of the agreement it is found that amendments or additions to the works to be carried out are required for proper implementation, the parties shall modify the agreement accordingly, in good time and following mutual consultation.
2. Where the parties agree that the agreement is to be amended or added to, this may affect the time of completion of its implementation. The Owner will inform the Hirer of this as speedily as possible.
3. Where amendments or additions to the agreement will have financial and/or quality implications, the Owner will inform the Hirer of this in advance.
4. Where a fixed fee is agreed the Owner will indicate to what extent the amendments or additions to the agreement will result in this fee being exceeded.
5. In deviation from what appears in section 3 the Owner may not charge any additional costs where the amendments or additions are the consequence of circumstances attributable to the Owner.

Article 6. Fees

1. The Parties may agree a fixed fee when drawing up the agreement.
2. Where no fixed fee is agreed the fee will be based on the hours actually worked. The fee will be calculated in accordance with the Owner's standard hourly rates as applicable for the period in which the work is carried out, unless some variant hourly rate is agreed.
3. The fee and any cost estimates exclude BTW.
4. With rentals lasting longer than three months the costs incurred will be charged periodically.
5. Where the Owner has agreed a fixed fee or hourly rate, the Owner shall nevertheless be entitled to increase this fee or rate.

6. The Owner is moreover entitled to charge on any price increases where the rates for example for wages, fuels and the like have increased between the time of the offer and the time of delivery.
7. The Owner may furthermore increase the fees if during the completion of the work it is found that the quantity of work originally agreed or anticipated was inadequately estimated at the time of the agreement to the extent that the Owner cannot reasonably be expected to carry out the agreed work at the price originally agreed, and this situation is not attributable to the Owner. In that event the Owner shall inform the Hirer of the proposal to increase the fee or rate, stating the amount of the increase and the date on which it will take place.

Article 8. Payment

1. Payment is to be made within 14 days of the invoice date, unless otherwise agreed, in a manner to be indicated by the Owner and in the currency shown on the invoice. Objections to the amount of the invoice shall not suspend the obligation to make payment.
2. In the event that the Hirer fails to pay within the 14 day period, the Hirer shall be legally in default. The Hirer will then incur interest at 1% per month, unless the legislatively determined rate of interest is higher, in which case the legislatively determined rate shall apply. Interest on the outstanding amount will be calculated from the time when the Hirer is in default up to the time of payment of the entire amount.
3. In the event of liquidation, bankruptcy, seizure of assets or cessation of payments on the part of the Hirer, the Owner's claims against the Hirer shall be payable immediately. Operations will be suspended immediately and the Owner will dismantle the Ferris wheel as quickly as possible.
4. The Owner shall be entitled to have payments made by the Hirer deducted in the first place from the costs, then from the interest payable and finally from the principal and the current interest.
The Owner may refuse an offer to pay where the Hirer indicates a different sequence of allocation of payments, without the Owner thereby coming into default.
The Owner may reject full discharge of the principal, where the outstanding and current interest as well as the costs are not also discharged.
5. The Owner shall be entitled to charge a credit limitation surcharge of 2%. This surcharge will not be payable where payment takes place within 7 days of the invoice date.

Article 9. Retention of property

1. All items supplied by the Owner, possibly including designs, sketches, drawings, films, software, electronic or other files and the like shall remain the property of the Owner.
2. The Hirer is not entitled to hypothecate items covered by the retention of property or to pledge them in any other way.
3. In the event that third parties sequester the items delivered under retention of property or wish to vest rights in them or have these apply, then the Hirer shall be obligated to immediately inform the Owner of this as quickly as may reasonably be expected.
4. The Hirer is required to insure items supplied under retention of property and to keep these insured against damage from fire, explosion and water as well as theft, and to allow inspection of this insurance policy at the first request.
5. In the event that the Owner wishes to exercise the property rights referred to in this Article, then the Hirer now for then grants in advance unconditional and irrevocable permission to the Owner and third parties to be identified by the Owner to enter all those places where the property of the Owner may be located and to recover those items.

Article 10. Recovery costs

1. Where the Hirer is in default in meeting one or more of his obligations, all reasonable extrajudicial costs of recovery shall be borne by the Hirer. Where the Hirer remains in default

in making timely payment of a monetary sum, then he shall incur a penalty, payable immediately, of 15% of the outstanding amount, with a minimum penalty of € 50.

2. Where the Owner has incurred higher costs which were reasonably necessary, these shall also qualify for reimbursement.
3. Any reasonable judicial and executory costs incurred shall also be borne by the Hirer.
4. The Hirer shall also incur interest on the recovery costs incurred.

Article 11. Complaints procedure

1. Complaints relating to the work carried out must be reported to the Owner by the Hirer in writing within the period of hire. The notice of default must include the most complete and detailed description possible of the shortcoming, to allow the Owner to respond effectively.
2. Where a complaint is justified the Owner will carry out the works as agreed, unless this has in the interim demonstrably become pointless where the Hirer is concerned. This latter situation must be reported in writing by the Hirer.
3. Where the completion of the agreed works is no longer possible or sensible, the Owner shall be liable only within the limits set down in Article 15.

Article 12. Cancellation

1. Either party may cancel this agreement in writing at any time.
2. Where the agreement is cancelled in the interim by the Hirer the Owner shall be entitled to compensation on grounds of the resulting and demonstrable utilisation losses, unless facts and circumstances leading to the cancellation are attributable to the Owner.
The compensation shall be calculated as follows:
25% of the total remuneration in the event of cancellation of the agreement up to 3 months prior to the date of the works.
50% of the total remuneration in the event of cancellation of the agreement up to 2 months prior to the date of the works.
75% of the total remuneration in the event of cancellation of the agreement up to 1 month prior to the date of the works.
100% of the total remuneration in the event of cancellation of the agreement less than 1 month prior to the date of the works.
The Hirer shall then moreover be required to make payment in relation to any claims for work carried out up to that point. The provisional results of the works carried out up to that point shall then be made conditionally available to the Hirer.
3. Where the agreement is cancelled in the interim by the Owner the Owner shall arrange for the transfer of the works to some third party, in consultation with the Hirer, unless facts and circumstances leading to the cancellation are attributable to the Hirer.
4. Where the transfer of the work will entail additional costs for the Owner, these will be charged to the Hirer.

Article 13. Suspension and dissolution

1. The Owner shall be entitled to suspend the discharge of his obligations or to dissolve the agreement, as follows:
 - Where the Hirer fails to meet his obligations under the agreement in part or in whole.
 - Where following the making of the agreement, matters come to the attention of the Owner which give good grounds for suspicion that the Hirer will not meet his obligations. Where there are good grounds to suspect that the Hirer will not meet his obligations in full or properly, this suspension is permitted only to the extent that the shortcomings in question justify it.

- Where when making the agreement the Hirer is requested to provide security for the meeting of his obligations under the agreement, and this security is not provided or is inadequate.
- 2. The Owner shall be entitled to dissolve the agreement or to have it dissolved where circumstances arise of such a nature that compliance with the agreement is impossible or can no longer be required according to the standards of reasonableness or fairness, or where circumstances arise of such a nature that the upholding of the unamended agreement can not reasonably be expected. This may in particular apply in the case of risks of possibly improper use or misuse of attractions, this in the judgement of the Owner.
- 3. In the event that the agreement is dissolved then the Owner's claims against the Client shall be payable immediately. Where the Owner suspends his fulfilment of his obligations, he shall retain his entitlements flowing from the Agreement and from the law.
- 4. The Owner shall at all times retain the right to claim compensation for damages.

Article 14. Return of items provided

1. Where the Owner has made items available to the Hirer during the implementation of the agreement then the Hirer shall be obliged to return the items provided, in their original condition, in full and free of defects, within 1 day. Where the Hirer fails to meet this obligation he shall bear all the resulting costs.
2. Where following a demand to this end the Hirer nevertheless continues to be in default in meeting the obligation set out in 1. above, then the Owner shall be entitled to recover the resulting costs and damages from the Hirer, including the costs of replacement.

Article 15. Liability

1. The parties shall only be liable for direct damages.
2. Direct damages shall exclusively be taken to mean:
 - Reasonable expenses incurred in establishing the cause and extent of the damages, to the extent that this determination relates to damages in the sense imported by these General Conditions;
 - Any costs reasonably incurred in bringing the Owner's performance into line with the agreement, unless such costs cannot be ascribed to the Owner;
 - Reasonable costs incurred in preventing or limiting the damages, to the extent that the Hirer demonstrates that these costs have led to limitation of direct damage, in the sense imported by these General Conditions.
3. The parties shall not be liable for indirect damages, including but not limited to lost earnings, missed savings, business stagnation or damage to third parties, also not in the event of failure or failure properly to comply with the obligation to make repairs.
4.
 - a) Liability on the part of the parties for damages arising out of or connected with culpable shortcomings in the implementation of this agreement is limited to the amount paid out by the liability insurance arranged by the parties in the relevant case.
 - b) Where and to the extent that the insurance policy referred to does not pay out or only partly pays out then the amount of damages to be paid out shall be limited to direct financial damages, and then to the price specified in the relevant agreement as a maximum (excluding turnover tax), at least in relation to that element of the assignment to which the liability relates. The total compensation for damages shall in no circumstances exceed €500, excluding BTW. Where and to the extent that a project with a period exceeding six months is involved then the liability of the parties is further limited to the fees and the element of the hire price incurred over the last 6 months, excluding BTW.

- c) The limitations and exclusions set out in this Article shall lapse where and to the extent that the damages are the consequence of intentional damage, recklessness gross negligence or gross culpability on the part of the parties and/or their subordinates.

Article 16. Indemnifications

1. The Hirer hereby indemnifies the Owner against any claims by third parties concerning intellectual property rights relating to material or data provided by Hirer and used in the implementation of the agreement.
2. In the event that the Hirer provides the Owner with information media, electronic files, software and the like the Hirer hereby guarantees that the information media, electronic files and/or software are free of viruses and defects.

Article 17. Transfer of risk

1. The risk of loss of or damage to the items forming the subject of this agreement shall pass to the Hirer at the time when they are delivered to the Hirer in judicial and/or practical terms, and thereby placed under the power of the Hirer or a third party to be indicated by the Hirer.

Article 18. Force majeure

1. The Parties shall not be required to comply with any obligation where they were hindered in their performance by circumstances not attributable to fault, and not attributable to them by virtue of the law, legal proceedings or widely held opinions.
2. In addition to what is set out in legislation and in jurisprudence, force majeure shall in these General Conditions be taken to include all external causes, whether foreseen or unforeseen, over which the Owner can exercise no influence, but due to which the Owner is not in a position to meet his obligations. This shall be taken to include strikes, transport problems, natural disasters and epidemics and the like affecting the Owner.
3. The Owner shall further be entitled to appeal to force majeure where the circumstances preventing compliance or further compliance come into effect after the Owner ought to have complied with his obligations.
4. The parties may suspend their obligations under the agreement for the period that the force majeure continues. Where this period lasts longer than two months, either party shall be entitled to dissolve the agreement, without any requirement to pay compensation for damages to the other party.
5. To the extent that the Owner has partially complied with his obligations arising out of the agreement or will be able to so comply at the time the force majeure arises, and where independent value attaches to the element completed or to be completed, then the Owner shall be entitled to invoice separately for the part already completed or to be completed. The Hirer shall be obligated to pay this claim as if it were under a separate agreement.

Article 19. Confidentiality

1. Both parties are required to maintain confidentiality in relation to all confidential information which they have obtained from one another in the context of their Agreement or from some other source. Information shall be deemed to be confidential where so identified by the other party, or where this flows from the nature of the information.
2. Where on the grounds of a legal requirement or the findings of a court the Owner is obliged to provide confidential information to a third party identified by law or by the competent court, and the Owner is unable to invoke a right to privilege recognised or permitted by statute or by the competent court, the supplier is not obliged to pay compensation for damages or indemnification for damages and the counterparty is not entitled to dissolve the contract on the ground of any losses so caused.

Article 20. Intellectual property rights and copyright

1. Without prejudice to the further stipulations of these General Conditions the Owner reserves the rights granted to the Owner on the grounds of the Copyright Act.
2. All items supplied by the Owner, such as reports, recommendations, designs, sketches, drawings, and the like are intended exclusively for use by the Hirer and shall not be reproduced, publicised or brought to the attention of third parties by the Hirer, unless otherwise required by the nature of the items supplied.
3. The Owner reserves the right to use the knowledge acquired through the completion of the works for other purposes, to the extent that no confidential information is hereby revealed to third parties.

Article 21. Samples and models.

1. In the event that a sample or model is displayed or provided to the Hirer it shall be deemed to have been provided only as an indication, unless it is expressly agreed in writing that the item shall correspond to the sample or model.
2. In the case of an order relating to real estate, a statement of the floor area or other dimensions and indications shall also be deemed to be indicative only, without any requirement for the product to be delivered to correspond to these.

Article 22. Disputes

1. The Court in the district where the Owner is established shall be exclusively entitled to take cognisance of any dispute, except where the Canton Court is so entitled. Notwithstanding the foregoing, the Owner shall be entitled to bring any such dispute before the Competent Court specified by law.
2. The parties shall not first call upon the court until such time as they have made the utmost effort to resolve their dispute through mutual discussions.

Article 23. Applicable Law

1. Every agreement between the Owner and the Hirer shall be subject to the Law of the Netherlands.

Article 25. Amendments to, interpretation of and location of the General Conditions

1. These General Conditions are registered with the Chamber of Commerce at Groningen.
2. Where interpretation of the content or scope of these General Conditions, the text in the Dutch language shall prevail at all times.
3. The latest version lodged or where applicable the version which applied at the time of creation of the agreement shall apply.