

LINDA NIEUWSTAD

Terms and Conditions for the work of Linda Nieuwstad

L.M. Nieuwstad, hereinafter referred to as 'Linda Nieuwstad', is a one-woman business that is registered in the commercial register of the KvK (Dutch Chamber of Commerce) under number 30238557. These General Terms and Conditions apply to all Linda Nieuwstad's offers, commissions, agreements and work. Departures from these Terms and Conditions only apply if the parties have agreed them in writing.

A copy of these Terms and Conditions will be sent free of charge upon request.

1. Definitions

- a) Offer: the juridical act or the proposal (whether verbal or written) that following its acceptance leads to an agreement (as referred to in Article 6:217 of the BW (Dutch Civil Code).
- b) Cancellation: all forms of ending or termination of the agreement; cancellation must be made in writing.
- c) Distance buying: an agreement in which use is solely made of one or more distance communication methods (such as phone or online sales) as part of a system organised by Linda Nieuwstad for the distance selling of products that includes the entering into of an agreement;
- d) Buyer: the purchaser, whether a consumer or commercial purchaser (natural person or legal entity) that Linda Nieuwstad enters into the agreement with.
- e) Quotation: any offer made by Linda Nieuwstad that is made to the buyer following a request to carry out a commission.
- f) Renter: the parties can also agree that the work will not be bought but will instead be rented. All obligations of the buyer apply for the renter too.
- g) Commission: the product that is delivered by Linda Nieuwstad.
- h) Agreement: the arrangement(s), both verbal and written, made between Linda Nieuwstad and the buyer that specify which product Linda Nieuwstad will provide for which remuneration and under which conditions.
- i) Force majeure: in addition to that which is meant by this term in law and case law, this term encompasses all external causes, whether foreseen or unforeseen, that Linda Nieuwstad cannot exercise any control over and that as a result make her unable to fulfil her obligations. This term accordingly includes work strikes in the business of Linda Nieuwstad or third parties and any illness suffered by Linda Nieuwstad and any assistants of hers who are charged with carrying out the commission. Linda Nieuwstad is also entitled to invoke force majeure if a circumstance that is preventing the actual or further performance of the agreement occurs after she should have fulfilled an obligation.
- j) Parties: Linda Nieuwstad and the buyer together.
- k) In writing/written: All communication between Linda Nieuwstad that relates to the commission that takes place either by post or digitally via social media or otherwise. This does not include verbal communication.

2. General points and applicability

1. The product that Linda Nieuwstad provides is the designing and delivery of works of art in the broadest sense of the term.
2. These Terms and Conditions apply to every offer, quotation, commission and agreement between Linda Nieuwstad and a buyer to which Linda Nieuwstad has declared this agreement applicable.
3. These Terms and Conditions also apply to any follow-up commissions.
4. Any terms and conditions of the buyer are expressly rejected.
5. The buyer declares that he has taken note of the Terms and Conditions in the following way and that he agrees to these Terms and Conditions:
 - a) by signing a quotation or agreement or
 - b) by awarding a commission either verbally or in writing or
 - c) by awarding a commission by phone or
 - d) by awarding a commission by e-mail.
6. In the case of an agreement entered into verbally/by phone, Linda Nieuwstad always refers to the location of these Terms and Conditions and will also send a copy of them upon request.

7. If there is a lack of clarity about the interpretation of one or more provisions of these Terms and Conditions then the interpretation must be made 'in the spirit' of these Terms and Conditions.
8. These Terms and Conditions continue to apply in full at all times, even if one or more provisions in these Terms and Conditions are at any time declared (in whole or part) null and void or become invalid or are annulled.
9. The parties will then consult with each other about new provisions to replace the invalid or annulled provisions. In doing so, as far as possible the purpose and scope of the original provisions will be the guiding principle.

3. Formation of an agreement

1. The agreement is formed following the buyer's acceptance (in writing or verbally) of Linda Nieuwstad's proposal, including of these Terms and Conditions. An automatic electronically generated confirmation of receipt is not valid as such a confirmation. Linda Nieuwstad is entitled to refuse such an order.
2. Until the date of the agreement's formation, the buyer cannot derive any rights from statements, conducted conversations, comments made, promises etc., all this in the broadest sense of the terms.
3. The commission's proposal will make it as clear as possible what the scope and content of the commission is, what its duration is and what the requested remuneration is.
4. Linda Nieuwstad cannot be held to her quotations or offers if they contain an obvious clerical error or other error.
5. All prices quoted and other quotations are made by Linda Nieuwstad entirely without obligation, unless a deadline for acceptance is set.
6. Linda Nieuwstad is at all times entitled to make price changes as the result of an increase in the consumer price index set by CBS (Statistics Netherlands) or for statutory reasons.
7. The prices quoted in the quotation or proposal are exclusive of VAT for business clients and inclusive of VAT for consumers, unless otherwise stated.
8. All communicated tariffs are exclusive of dispatch costs, travel expenses or other levies and charges.
9. If parts of the buyer's acceptance deviate from the proposal included in the quotation then Linda Nieuwstad is not bound by it. The agreement is not formed unless and until Linda Nieuwstad states otherwise.
10. Quotations and tariffs do not apply for future commissions.
11. The buyer is responsible for the correctness and completeness of the information that is given to Linda Nieuwstad by him or on his behalf that the proposal is based on.
12. Should it be the case after the agreement is formed that the prices of raw materials, wages, import duties, taxes or other external costs rise (whether or not as the result of currency exchange rate changes) then Linda Nieuwstad is entitled to bring the purchase price into line with this increase. Linda Nieuwstad will inform the buyer of such a circumstance as soon as possible. If the buyer is a business client, he will then be entitled to terminate the agreement within a period of eight (8) days, unless the increase is the result of a statutory price increase. Consumers are entitled to terminate the agreement unless it is stipulated that the delivery will take place more than three (3) months after the purchase or if the increase is the result of a statutory circumstance.

4. The performance of the agreement

1. Linda Nieuwstad will endeavour to perform the agreement to the best of her knowledge and ability and in accordance with the requirements of good craftsmanship (obligation to use best endeavours).
2. In so far as applicable, the buyer is responsible for the timely and complete provision of the information needed to carry out the commission. This is done both on his own initiative and at the request of Linda Nieuwstad.
3. Deviations from the interim result or end result in respect of that which was agreed are no reason for rejection, rebates, compensation or the termination of the agreement.
4. Linda Nieuwstad is entitled at all times to adjust or change the performance of the agreement if she deems this necessary or if the situation requires it. In doing so, the agreed commission will be taken into account as far as possible.

5. If Linda Nieuwstad has to perform contract extras that were not known at the time the agreement was formed then she is entitled - after consulting with the buyer - to charge for the resulting additional costs.
6. The duration of the agreement depends on the commission. The lifetime and duration will always be communicated clearly beforehand.
7. The buyer is obliged to complete the agreement's planned arrangement(s) (such as online and offline meetings) during the lifetime.

5. Bringing in third parties

1. Linda Nieuwstad has the right to have certain work performed by third parties (such as specialists, experts, trainers and advisors), especially if this is required for the proper performance of the agreement. The applicability of Articles 7:404, 7:407 paragraph 2 and 7:409 BW is expressly excluded.
2. If Linda Nieuwstad brings in third parties that affect the performance of the commission then Linda Nieuwstad will communicate this where necessary.

6. Right of withdrawal

1. This Article only applies for consumers.
2. When purchasing a product using distance buying, the buyer has the option to terminate the agreement within 14 days without giving any reasons. This cooling-off period commences on the day after the day on which the confirmation of the commission is received.
3. If the buyer wishes to utilise his right of withdrawal then he is obliged to make this known to Linda Nieuwstad no later than 14 days after the confirmation of commission is received.
4. If it is the case after the expiry of the periods stated in paragraphs 2 and 3 that the buyer has failed to make it known that he wishes to utilise his right of withdrawal then the purchase is a fact.

7. Force majeure

1. Linda Nieuwstad is not obliged to fulfil any obligation whatsoever vis-à-vis the buyer if she is prevented from doing so by force majeure. This also applies to a circumstance that is nobody's fault and that is not for her account by virtue of the law, a juridical act or according to generally accepted standards.
2. During the period that the force majeure lasts, Linda Nieuwstad may suspend the obligations arising from the agreement and/or have herself replaced by a third party. If the force majeure lasts longer than two (2) months then the parties can terminate the agreement without being obliged to pay compensation.
3. If it is the case at the time that the force majeure commences that Linda Nieuwstad has in the meantime partially fulfilled her obligations r is expected to be able to fulfil her obligations under the agreement then she is entitled to invoice separately for that part which she has fulfilled (or is still to fulfil respectively) if this has not already been done. The buyer is obliged to pay this invoice as if there were a separate agreement.
4. In the case of force majeure, Linda Nieuwstad will make reasonable efforts to provide the buyer with an alternative solution should the latter so desire.

8. Terms and conditions of delivery and payment

1. The delivery period varies from commission to commission and is always set in conjunction with the buyer.
2. An agreed delivery period is indicative and is never a strict deadline. In other words, this does not lead to Linda Nieuwstad being in default.
3. If the delivery is delayed then Linda Nieuwstad will communicate this as soon as possible by e-mail.
4. If Linda Nieuwstad needs information from the buyer to perform the agreement or if full or partial prepayment has been agreed then the delivery period does not commence until the correct and complete information or the prepayment respectively has been received by Linda Nieuwstad.
5. Delivery does not take place until the products have left Linda Nieuwstad's atelier. The risk for the delivered products does not pass to the buyer until the point in time of delivery, irrespective of what Linda Nieuwstad and the buyer have agreed regarding transportation and insurance. In other words, transportation is made at the buyer's risk.

6. Linda Nieuwstad is entitled to levy freight charges for the transportation of the products.
7. If the buyer refuses to accept the delivery then Linda Nieuwstad may charge him the resulting costs. In that case, Linda Nieuwstad is also entitled to terminate the agreement and likewise reserves the right to claim full compensation.
8. Invoicing is carried out online. If the buyer wishes to receive a written copy by post then Linda Nieuwstad can levy additional charges for this.
9. In the case of a new assignment, Linda Nieuwstad will send an initial invoice for a 50% down payment beforehand. The second invoice will be sent after delivery. This arrangement only applies if this is not deviated from in the quotation; if it is then that which is set out in the quotation applies.
10. A payment deadline of 7 days after invoice date applies, without deduction, setoff or suspension, unless stated otherwise on the invoice.
11. If the payment deadline is exceeded then the buyer is in default and he owes interest at a rate equal to the statutory interest rate that applies for business transactions or consumer transactions respectively.
12. All costs such as litigation costs and judicial and extrajudicial costs (including the costs of legal assistance, bailiffs and payment collection agencies) incurred by Linda Nieuwstad in connection with overdue payments will be borne by the buyer. The extrajudicial costs will be charged in accordance with the Netherlands Extrajudicial Collection Costs (Fees) Decree. If the buyer is a consumer then these collection charges will not be charged until a demand has been sent that gives the buyer a period of fourteen (14) days after the date of the demand to pay the claim after all.
13. If the payment deadline is exceeded then Linda Nieuwstad is entitled to suspend performance of the commission or delivery of a product.
14. If that stated in the previous paragraph occurs then Linda Nieuwstad is entitled to charge the cancellation costs on to the buyer.
15. In the event of a failure to comply with the payment conditions, Linda Nieuwstad is entitled to immediately stop or cancel the commission. This does not release a buyer from his obligation to pay.
16. Any objections to the amount of the invoice must be reported to Linda Nieuwstad immediately after receipt but at the latest within 14 days. These objections do not suspend the obligation to pay.
17. In the case of existing clients, Linda Nieuwstad may opt to depart from the provisions in this Article.

9. Retention of title

1. All delivered products remain the property of Linda Nieuwstad until the buyer has fulfilled all his obligations vis-à-vis Linda Nieuwstad under the agreement.
2. If the buyer fails to fulfil his obligations under an agreement entered into with Linda Nieuwstad or if Linda Nieuwstad has reasonable fears that the buyer will fail to fulfil his obligations then Linda Nieuwstad is entitled to take back the delivered products from the buyer or from third parties who are holding the item(s) for the buyer. In that case, the buyer must cooperate with this.

10. Intellectual property rights and proprietary rights

1. The buyer expressly recognises that all rights of intellectual and/or industrial property with regard to the products, materials and information provided by Linda Nieuwstad to the buyer, including (the design of) samples, packagings, labels, the design, the composition and/or specification of samples, products and semi-finished products, as well as the technical and commercial knowhow, models, techniques, samples, designs and patterns, rest with Linda Nieuwstad, her suppliers or other entitled parties.
2. If and in so far as Linda Nieuwstad makes products on the basis of explicit instructions from the buyer, such as specifications, designs, sketches, models or patterns supplied by the buyer, then the buyer warrants that no third-party rights are being infringed. The buyer indemnifies Linda Nieuwstad against third-party claims and will reimburse Linda Nieuwstad for all costs she incurs in connection with these claims.
3. The buyer will ensure - or arrange for this to be done - that Linda Nieuwstad will be identified on or with the result/work of art. This applies both at the location where the work of art is located and for publications in the media or on the website.

4. The buyer is not permitted to make changes to (or to have them made to) the result/work of art unless he has Linda Nieuwstad's consent.
5. Any unagreed use made of a work of art of Linda Nieuwstad is considered to be a violation of Linda Nieuwstad's intellectual property rights.
6. In the event of a violation as referred to in paragraphs 3, 4 and 5, Linda Nieuwstad is entitled to compensation in the amount of the remuneration charged by Linda Nieuwstad for the work of art, without her losing any rights to claim compensation for other losses suffered (this including the right to compensation for all direct and indirect loss and all actual judicial and extrajudicial costs).

11. Hiring works of art of Linda Nieuwstad

1. The parties can agree that the work will not be bought but will instead be rented. All provisions from these Terms and Conditions apply mutatis mutandis. In that case, the title remains with Linda Nieuwstad.
2. The renter will look after Linda Nieuwstad's work of art with due care and diligence. The renter is liable for damage caused to the work of art during the transportation to the location designated by the renter, for damage occurring during the rental period and for damage occurring during the transportation back to Linda Nieuwstad at the end of the rental period.
3. The rental period runs until the agreed end of the rental period in the quotation; a longer period may only be agreed after both parties have agreed it.
4. Linda Nieuwstad is entitled to retrieve her work at the renter's expense if the obligations under this agreement are not fulfilled. Linda Nieuwstad also has this option in the case of termination, suspension and cancellation as referred to in Article 12 of these Terms and Conditions.

12. Termination, suspension and cancellation conditions

1. Both Linda Nieuwstad and the buyer are entitled to terminate the agreement in whole or part with immediate effect, whereby for Linda Nieuwstad all amounts owed are immediately due and payable, if there is:
 - a) a petition for insolvency or
 - b) postponement of payment (including on a temporary basis) or
 - c) debt management/restructuring, without any obligation on the part of Linda Nieuwstad to pay any compensation or damages.
2. Paragraphs 3 to 4 inclusive only apply for a buyer who is a business client. A consumer only has the right of withdrawal as formulated in Article 6 and for this reason has no other right of cancellation.
3. Cancellation becomes a fact when Linda Nieuwstad has confirmed receipt of the cancellation. The point in time of cancellation is deemed to be the postmark date - for a cancellation by post - or the date and time of the e-mail containing the confirmation of the cancellation.
4. The buyer is entitled to cancel the commission within 14 days. If the commission is cancelled then Linda Nieuwstad is entitled to claim any compensation and cancellation costs. These consist of all costs incurred up to then, including down payment-related costs and the reasonable costs of lost profits.
5. The conditions described in this Article apply in all cases and for all reasons put forward, i.e. including in the event of the illness of, or other force majeure situation affecting, the buyer.
6. Linda Nieuwstad is entitled to cancel or reschedule an appointment because the agreement cannot be performed properly or because a state of force majeure exists. This may specifically refer to illness, occupational disability or deaths within the family and circle of friends.
7. Linda Nieuwstad is authorised to suspend fulfilment of a commission's obligations or to terminate the agreement if:
 - a) the buyer fails to fulfil the obligations under the agreement at all or in full or in good time;
 - b) circumstances that Linda Nieuwstad learns of after the agreement has been entered into give her reasonable fears that the buyer will not fulfil the obligations;
 - c) it is the case at the time the agreement is entered into that the buyer is asked to provide collateral for the fulfilment of his obligations under the agreement and this collateral fails to materialise or else is insufficient;
 - d) or if the delay on the part of the buyer means that Linda Nieuwstad can no longer be required to perform the agreement under the originally agreed conditions.

8. Furthermore, Linda Nieuwstad is authorised to terminate the agreement if circumstances occur that are of such a nature that performance of the agreement is impossible or if circumstances otherwise occur that are of such a nature that Linda Nieuwstad cannot be reasonably required to maintain the agreement unaltered.
9. If the buyer fails to fulfil his obligations under the agreement and this non-fulfilment justifies termination then Linda Nieuwstad is entitled to terminate the agreement immediately and with immediate effect, without having any obligation to pay any compensation or damages, whereas the buyer is indeed obliged to pay compensation or damages by virtue of attributable non-performance.
10. If Linda Nieuwstad has failed imputably in the performance of the agreement then this does not lead to reimbursement of the agreed price and/or to compensation for the loss suffered; instead, Linda Nieuwstad will make reasonable efforts to perform the agreement properly after all. Linda Nieuwstad will not charge any costs for this.

13. Liability

1. If Linda Nieuwstad is liable then the liability is limited to that which is regulated in this Article, unless something else is prescribed as mandatory by the law.
2. If Linda Nieuwstad is liable then in all cases this does not apply to:
 - a) errors or shortcomings on the part of third parties brought in by or on behalf of Linda Nieuwstad;
 - b) loss, theft or damage of the buyer's personal property;
 - c) force majeure situations;
 - d) incorrect or incomplete information provided by the buyer;
 - e) inexpert use of the delivered item or its use for a purpose other than that for which it is suitable according to objective criteria;
 - f) the case where Linda Nieuwstad has proceeded on the basis of incorrect or incomplete information provided by or on behalf of the buyer;
 - g) third parties who are deployed in the performance of the agreement at the request of or with the consent of the buyer;
 - h) materials or services supplied by third parties at the request of or with the consent of the buyer; or
 - i) misunderstandings, garbling, delays or the inadequate communication of orders and notifications as the result of using the Internet or any other (digital or other) means of communication, unless a statutory obligation applies to this end.
3. Only direct loss (incl. damage/harm) attributable to Linda Nieuwstad is eligible for compensation. Liability for indirect loss – such as in any case but not limited to: consequential loss, lost profits, garbled or lost information or mutilated or lost materials or reduced revenues – is excluded. In the case of a purchase by a consumer, this limitation does not go beyond that which is permitted by virtue of Article 7:24 paragraph 2 BW.
4. The buyer indemnifies Linda Nieuwstad against claims by third parties who suffer loss (incl. damage/harm) in connection with the performance of the agreement and whose cause is attributable to the buyer.
5. The buyer is liable vis-à-vis Linda Nieuwstad for the loss (incl. damage/harm) suffered by Linda Nieuwstad that is caused by a failure attributable to the buyer.
6. If Linda Nieuwstad is liable for any loss (incl. damage/harm) then Linda Nieuwstad's liability is limited to a maximum of the invoice amount of the commission, or at any rate to that portion of the commission to which the liability relates.
7. Linda Nieuwstad's liability is also limited at all times to the amount that her liability (or professional liability) insurer pays out, plus the excess that applies for Linda Nieuwstad.
8. Linda Nieuwstad is solely liable vis-à-vis the buyer for direct loss that is attributable to Linda Nieuwstad. Any other form of loss (incl. damage/harm) howsoever called, including consequential loss, personal injury, direct trading losses, indirect loss etc., is excluded.
9. Linda Nieuwstad is only liable if the buyer can demonstrate that he has suffered loss (incl. damage/harm) through an attributable failure (i.e. an error).
10. Linda Nieuwstad's liability, including consequential loss, lost profits, missed savings, garbled or lost information or mutilated or lost materials, or losses through business interruption, is excluded.

11. The limitations referred to in this Article do not apply:

- if the loss (incl. damage/harm) is due to deliberate intent, deliberate recklessness or fault on the part of Linda Nieuwstad;
- if there is product liability in respect of a consumer (within the meaning of Book 6 Title 3 Part 3 of the BW).

14. Warranties and complaints

1. The products to be delivered by Linda Nieuwstad comply with the usual requirements and norms that may be reasonably set for them at the time of delivery and that they are intended for, given normal use.
2. The buyer is obliged to check the delivered product as soon as he receives it. Any defects must be reported to Linda Nieuwstad in writing and with reasoning no later than ten (10) days after the delivery, and in the case of external defects, without delay.
3. If the complaint is demonstrably well-founded then Linda Nieuwstad will endeavour to resolve it properly.
4. If no defects are reported to Linda Nieuwstad within the aforementioned period then any possibility of submitting a complaint lapses. Defects in the delivered item that are the result of inaccurate information provided by the buyer are expressly considered to not be 'defects'.
5. Complaints do not give the buyer the right to suspend or set off payments.
6. Complaints about the delivered product can never be a reason to demand a rebate, compensation or termination of the agreement.

15. Confidentiality and privacy/GDPR

1. The parties are obliged to keep confidential all that which is discussed during or in relation to the performance of the commission.
2. Information is considered to be confidential if it is communicated as such by the other party or if this arises from the nature of the information.
3. The duty of confidentiality does not apply if:
4. Linda Nieuwstad is obliged to disclose the information by virtue of either the law or a binding ruling by the court or government body;
5. The information is generally known;
6. Linda Nieuwstad acts for herself in litigation where this information could be of importance.
7. Personal data that reaches Linda Nieuwstad will be handled with care and in confidence. Data will solely be used for the stated purpose and principle. In this regard, Linda Nieuwstad complies with the applicable privacy legislation, in particular the GDPR (the General Data Protection Regulation, known in the Netherlands as the 'AVG').

16. Amendment of terms and conditions and findability

1. Linda Nieuwstad is at all times entitled to amend or supplement these Terms and Conditions.
2. Any amendments of these Terms and Conditions accordingly apply at all times.
3. The most up-to-date version of the Terms and Conditions can always be found on Linda Nieuwstad's website.

17. Dispute settlement rules and applicable law

1. A dispute exists if just one of the parties asserts that it does exist.
2. The parties will do their utmost to resolve a dispute by agreement. If they do not succeed then the parties can appeal to the court.
3. The court in the district (region) where Linda Nieuwstad's place of domicile is located is the sole court competent to take cognizance of disputes, unless the law prescribes otherwise as mandatory. Linda Nieuwstad reserves the right to submit a dispute to another competent court.
4. The agreement is solely governed by Dutch law, including in the case of foreign purchasers.
5. The applicability of the Vienna Sales Convention is excluded.