

# Terms of sale and delivery 1.0

---

## 1. Scope of application and validity

- 1.1. These terms of sale and delivery (hereinafter the "Terms") shall apply in relation to any service provided by Delegate Netherlands B.V., KvK No. 85703346 (hereinafter the "Supplier"), unless otherwise explicitly agreed in writing.
- 1.2. The Terms have been accepted by the Customer if the Terms have been attached to an offer from the Supplier; if the offer includes a reference to the Terms and the offer has been accepted by the Customer; or if the Customer in any other way has accepted the Terms.
- 1.3. Even if the Supplier does not at a later time refer to these Terms in an offer, an order confirmation, an agreement or other types of correspondence, the Customer accepts that the Terms shall apply to any service provided, cf. clause 1.1.
- 1.4. If the Customer wants to apply its own terms of purchase, terms of supply or any other terms, this requires the Supplier's prior acceptance in writing. Any reference to such terms in the Customer's acceptance of the Supplier's offer does not constitute a qualified acceptance, as a reference to the Customer's own terms shall have no legal effect in relation to the Supplier.

## 2. Services

- 2.1. The Supplier provides consultancy and consultancy and development services (hereinafter "Consultancy Services"), support (hereinafter "Support") and sales of third party software licenses (hereinafter "Licenses").
- 2.2. The Supplier is entitled to have the work carried out by sub-suppliers, in total or in part. The Supplier will check the quality of the work carried out before it is delivered to the Customer.

### 3. Offer and formation of contract

- 3.1. Any offer from the Supplier regarding Consultancy Services must be considered estimates or rough calculations, unless it explicitly appears from the offer that it is a fixed price offer.
- 3.2. All offers are valid for fourteen (14) days from the date of the offer, unless otherwise explicitly written in the offer.
- 3.3. When submitting an offer for Licences, the Supplier makes reservations for exchange rate fluctuations.
- 3.4. The Customer can accept an offer by signing the Statement of Work/contract or by sending an email (hereinafter the "Confirmation").
- 3.5. Unless otherwise agreed, these Terms and the Confirmation represent the total contractual basis between the Supplier and the Customer (hereinafter the "Agreement").

### 4. Licences

- 4.1. The Supplier sells Licences for different cloud services (e.g. Microsoft) in its capacity as being a distributor of Licences on behalf of a software manufacturer (hereinafter "Third Party") and not as supplier or owner of the said cloud services.
  - 4.1.1. The Supplier has entered into agreements with such Third Party regarding distribution of Licences on behalf of the Third Party.
- 4.2. When purchasing Licences from the Supplier, the Customer furthermore accepts the Third Party's separate terms.
  - 4.2.1. If the Agreement is terminated, the Customer continues to be bound by the Third Party's separate terms as long as the Customer uses the Third Party's products/Licences.
- 4.3. Subscription-based Licences
  - 4.3.1. Subscription-based Licences (e.g. Microsoft) are automatically renewed immediately before expiry of the subscription period. The subscription period appears from the offer, which the Customer has received from the Supplier in connection with the purchase of the Licences. If Licences are added during an on-going subscription period, the Customer will purchase Licences that apply for the rest of the subscription period, after which all Licences comprised by the subscription will be renewed all together..
  - 4.3.2. If the Customer requests to terminate a subscription regarding subscription-based Licences, this must be notified in writing to the Supplier at the latest fourteen (14) days prior expiry of a subscription period.
  - 4.3.3. If the Customer has not terminated the subscription for Licences in due time before an automatic renewal takes place, the Customer will automatically have accepted such new subscription period.

### 5. Payment and terms of payment



- 5.1. The Supplier always invoices Consultancy Services based on the actual time spent (*time & material*).
- 5.1.1. Each commenced fifteen (15) minute period will be invoiced.
- 5.2. Consultancy Services provided outside of normal working hours (weekdays 08:30-16:30) will be invoiced at 200% of the Supplier's standard hourly rate.
- 5.3. If the Customer has ordered Consultancy Services and subsequently cancels them with less than two (2) days' notice to the Supplier, the Customer will be charged a fee for late cancellation of Consultancy Services equivalent to 50% of the payment for such planned Consultancy Services.
- 5.4. Consultancy Services are invoiced at the end of each month, however, at the latest when a task has been completed.
- 5.5. The Supplier's hourly rates for Consultancy Services are adjusted and without further notice annually on the 1. January, however adjustments may be made no earlier than three (3) months after the date of entry into force of the Agreement.
- 5.5.1. The adjustment of the Supplier's hourly rates is based on the Dutch consumer price index (CPI).
- 5.6. All prices are stated in EURO, VAT excluded.
- 5.7. The Supplier's invoices fall due within thirty (30) days of the invoice date..
- 5.8. Any past due, unpaid amounts will carry interest of 1.5% per month or fraction of a month.
- 5.9. If the Customer has any unpaid and outstanding invoices, the Supplier is entitled to suspend any delivery of Services to the Customer until payment has been received in full.
- 5.10. The Customer is not entitled to set-off or withhold any part of the purchase price due to counterclaims.

## **6. Disbursements and transport costs**

- 6.1. In addition to payment for Consultancy Services provided pursuant to this Agreement, the Supplier is entitled to compensation for reasonable expenses, including transport and travelling expenses, meals and refreshments in case of hotel stays, expenses related to communication etc., that have actually been incurred in connection with the provision of the Consultancy Services.
- 6.2. If Consultancy Services are provided on-site, time spent on transport to and from the Customer's address will be charged with 50% of the Supplier's standard hourly rate.

## **7. Delivery**

- 7.1. The Supplier's Consultancy Services are delivered pursuant to the Agreement.



- 7.2. Any delivery dates are estimated and non-binding for the Supplier, unless they have specifically and in writing been specified as fixed delivery dates.
- 7.3. In case of significant delay caused only by circumstances related to the Supplier, the Customer is entitled to terminate the Agreement with immediate effect, if the Supplier has not made delivery at the latest thirty (30) working days after having received the Customer's written notice of such delay.
- 7.4. If the Customer chooses to terminate the Agreement with immediate effect, the Supplier is obliged to deliver the results available at the time of such termination, and the Customer is obliged to pay for them and to reimburse any disbursements incurred by the Supplier. The Customer cannot claim any other remedies for breach, including a claim for damages, unless such delay is caused by the Supplier's gross negligence or wilful intent.
- 7.5. If the Supplier is obliged to deliver specific results at a fixed price and such results have not been delivered when the Customer terminates the Agreement with immediate effect, the provisions in clause 7.4 shall apply, however, the Customer shall be entitled to a reasonable proportionate reduction in the agreed fixed price determined by the Supplier.
- 7.6. In case of delay caused by circumstances related to the Customer, the Supplier is entitled to postpone the time of delivery to the extent the Supplier considers it necessary to do so.
- 7.7. The risk of third-party products, including Hardware and Licenses, passes to the Customer upon delivery.
- 7.8. The Supplier takes retention of title in any Service that the Customer purchases from the Supplier. The retention of title remains until the Customer has paid the total purchase price plus interest and costs as well as any expenses related to the sale which may have been incurred by the Supplier on behalf of the Customer.

## **8. Customer's obligations**

- 8.1. The Customer's active and timely involvement/participation is of vital importance to the supply of Consultancy Services in order to comply with the contractual obligation.
- 8.2. The Customer's non-involvement/non-participation in due time may be vital in terms of deadlines, fixed prices and time estimates. Non-involvement/non-contribution may lead to extra costs.
- 8.3. The Customer must disclose all relevant information and materials to the Supplier in due time, including any data extractions, documentation, requirements, process-flows and use-cases, in order to comply with agreed and estimated times of delivery.
- 8.4. The Customer must allocate the required resources to procure information and material, and for testing and error reporting.
- 8.5. The Customer undertakes to provide access to available product information, required systems, user information and other documentation that is current and relevant for the Supplier's fulfilment of the Agreement.

## 9. Complaints

- 9.1. In terms of quality, the Consultancy Services must be according to industry standards and not conflict with any third party rights.
- 9.2. Upon receipt of Consultancy Service from the Supplier that is not subject to an agreed and specific acceptance test or similar upon delivery, the Customer is obliged immediately, and no later than three (3) weekdays after delivery, to inspect the Consultancy Services thoroughly in order to ensure that it is free from any defects. Defects that have not been reported to the Supplier within three (3) weekdays after delivery cannot at a later time be claimed as defects, but will be remedied as extra work.
- 9.3. It is specified that in such cases where the Supplier has had freedom of choice as regards the performance of its Consultancy Services, e.g. user interface, selection of colours, graphics etc., such selections do not constitute a defect. Any amendments of the selections made is charged on a time and material basis.
- 9.3.1. Only functional or configurational defects in the Consultancy Services, where the delivered services deviate from the Customer's clear specifications, may constitute a defect. Cosmetic defects in the delivered Consultancy Services can never be considered a defect.
- 9.3.2. Defects caused by errors in third party software (e.g. software defects in an operating system or an internet browser) or the Customer's faulty or incorrect configuration of third party software, can never be considered a defect.
- 9.3.3. Any amendments of the delivered services, that are not a defect, are charged on a time and material basis.
- 9.4. If the Customer discovers a defect, the Customer must immediately make a written complaint to the Supplier, including a description of the defect and its impact on the Customer.
- 9.5. If the Supplier has not remedied the defect at the latest thirty (30) working days after having received the Customer's written complaint, the Customer is entitled to terminate the Agreement with immediate effect.
- 9.6. If the Customer chooses to terminate the Agreement with immediate effect, the Customer is obliged to keep the delivered services and pay for them, less a proportionate reduction determined by the Supplier, unless the Customer establishes that the delivered services cannot be used by the Customer for the agreed purpose, even after further remedial action. The Customer cannot claim any other remedies for breach, including a claim for damages, unless such defects are caused by the Supplier's gross negligence or wilful intent.

## 10. Intellectual property rights

- 10.1. By actual payment of the agreed fees and any disbursements, the Customer acquires a global, non-exclusive right of use, unlimited in time, to the services that the Supplier may create or develop for the Customer under the Agreement. The Customer may amend, adjust and further develop the developed software, which includes use of the software or parts thereof in connection with the supply of services to a third party.

- 10.2. The Supplier will maintain all rights to its own components, methods, processes, tools, trade secrets and standard procedures.
- 10.3. Regarding software not developed by the Supplier, the rights owner's (manufacturer's) licence terms in force from time to time shall apply, unless otherwise explicitly specified in writing.

## 11. Processing of personal data

- 11.1. If the Supplier in the context of the provision of services to the Customer processes personal data on a large scale or processes special categories of data as referred to in Article 9 of Regulation (EU) 2016/679 of the European Parliament and of the Council (the "Regulation"), the parties will sign a separate data processor agreement. If the parties do not sign a separate data processor agreement, the following data processor agreement will apply:
- 11.1.1. Both parties must continuously implement appropriate technical and organizational measures that will meet the requirements set out in the Regulation in order to ensure protection of the rights of data subjects.
- 11.1.2. The Supplier must comply with the requirements in Article 28 of the Regulation, including to provide the Customer with the assistance specified in Article 28, against standard payment by the hour, and provide such information and make required any documentation available to the Customer in order for the Customer to monitor the Supplier's compliance with the requirements in Article 28, including by allowing and contributing to audits and inspections.
- 11.1.3. The Supplier is entitled, at its own expense and risk, to use sub-suppliers, who also process the Customer's personal data, provided that the Supplier, in case of an intended replacement of a sub-supplier or use of a new sub-supplier, notifies the Customer in writing at least thirty (30) days before the intended replacement date, in order for the Customer to be allowed to object to the intended replacement.
- 11.1.4. The Supplier will ensure that all sub-suppliers meet the requirements in Article 28 of the Regulation and the obligations in this section.
- 11.1.5. The Supplier cannot without the Customer's prior written approval transfer the Customer's personal data to countries outside the EU/EEA or to a sub-supplier who has not adopted the EU-U.S. Privacy Shield scheme.
- 11.1.6. Any processing of the Customer's personal data is based on documented instructions from the Customer. The documented instructions are partly composed of the parties' contractual basis in order to allow such processing that is necessary in order for the Supplier to fulfil its agreements with the Customer, and partly the separate instructions given by the Customer to the Supplier.
- 11.1.7. If the Customer does not instruct the Supplier otherwise, the Supplier is entitled and obliged to delete the Customer's personal data at the latest three (3) months after the business relationship between the parties is finally terminated.
- 11.1.8.

In case of any amendments of the categories of personal data or the categories of data subjects, which the Supplier processes for the Customer, the Customer must immediately notify the Supplier thereof.

## 12. Breach

12.1. In case of material breach, the non-breaching party may terminate the Agreement with immediate effect, provided that the non-breaching party has given the breaching party a deadline of at least twenty (20) weekdays to remedy the material breach and no remedial action has been taken before expiry of the deadline.

## 13. Liability and limitation of liability

13.1. With the limitations specified in these Terms, the parties are liable in damages towards each other pursuant to the ordinary rules of Dutch law.

13.2. Unless the Supplier has acted with gross negligence or intent, the Supplier is never liable in damages for financial consequential losses, business interruption, lack of savings, loss of profits, goodwill, image, loss of data or costs to restore data, software or indirect losses.

13.3. The Supplier's liability in damages is furthermore, in any circumstances and regardless of the degree of negligence, limited to the lowest amount of either: 1) the value of the total consideration paid by the Customer to the Supplier during the twelve (12) months preceding the claim for damages, or 2) EUR 50,000.

## 14. Force Majeure

14.1. The Supplier shall not be liable towards the Customer if such liability is caused by circumstances outside the Supplier's control, including war and mobilisation, Acts of God, strikes, lockouts, fire, extreme weather, breakdown of electricity or telecommunications network, delayed or defective deliveries from sub-suppliers, damage to production facilities and cyber attacks, which the Supplier should not have taken into account or could not have avoided or overcome by taking reasonable action.

14.2. If the Supplier is prevented from fulfilling the Agreement due to force majeure, the Agreement will be suspended for the period of time such force majeure event exists. If the force majeure event exists for more than three (3) months, the Agreement may be terminated by either party with fourteen (14) days' written notice, without the parties being entitled to claim damages towards each other.

## 15. Confidentiality

15.1. The parties are mutually obliged to keep confidential all information about the other party in the nature of trade secrets and which are not generally known to the public. The parties agree that information about the other party's prices and customers is always considered trade secrets.

15.2. Regardless of clause 15.1, the Supplier is entitled to use the Customer's name as a reference for marketing purposes.



15.3. The duty of confidentiality shall apply without limitation in time and shall continue after the other parts of the Agreement have terminated.

## **16. Assignment**

16.1. The Supplier may assign its rights and obligations pursuant to a third party.

## **17. Amendments and separate terms**

17.1. Any amendment of the Terms must be in writing.

17.2. Amendments of the Terms must be notified by the Supplier with a prior notice of three (3) months. If the Customer cannot accept the amendments given notice of, the Customer may terminate the Agreement with a notice of sixty (60) days. The termination does not become effective if the Supplier at the latest thirty (30) days after receipt of the Customer's notice of termination has revoked the amendments towards the Customer.

## **18. Disputes**

18.1. Any dispute between the Supplier and the Customer shall be settled pursuant to Dutch law, without regard to any principles of private international law specifying any other choice of law.

18.2. Disputes shall be settled at the Court in Amsterdam.

18.3. Regardless of the above, the Supplier may, however, always determine that a dispute is to be settled in the Customer's home court.