

# General Terms and Conditions

## 1. Definitions

In these General Terms and Conditions, the following terms are defined as:

- **Contractor:** de Wit Software, sole proprietorship, located at Wilhelminaplein 15, 3417AE, Montfoort, Chamber of Commerce number 94525447, VAT number NL005090024B47
- **Client:** the natural person or legal entity that has commissioned the Contractor to perform work
- **Work:** all work commissioned, or work resulting from, or directly related to the commission
- **Agreement:** any arrangement between Client and Contractor for the performance of Work by Contractor for Client

## 2. Applicability

1. These General Terms and Conditions apply to all offers, quotations, and Agreements between Contractor and Client.
2. Deviations from these General Terms and Conditions are only valid if explicitly agreed upon in writing.
3. The applicability of any purchasing or other conditions of the Client is explicitly rejected.

## 3. Quotations and Offers

1. All quotations and offers from Contractor are non-binding unless a deadline for acceptance is specified in the quotation.
2. Quotations are valid for 30 days unless otherwise indicated.
3. If a quotation is marked as "indicative," it should only be considered as a guideline price and no rights can be derived from it.
4. Contractor cannot be held to their quotations if Client can reasonably understand that the quotation contains an obvious mistake or error.

## 4. Formation of the Agreement

1. The Agreement is formed when the quotation or order confirmation signed by both Contractor and Client has been received back by Contractor.
2. If the assignment is given verbally, or if the signed quotation or order confirmation has not yet been received back, the assignment is deemed to have been established under these General Terms and Conditions when Contractor has started the execution of the assignment at Client's request.

## **5. Execution of the Agreement**

1. Contractor will execute the Agreement to the best of their insight and ability and in accordance with the requirements of good workmanship.
2. If Contractor deems it necessary to involve third parties for the execution of certain work, this will first be discussed with Client. After mutual approval, Contractor has the right to have this work performed by the discussed third parties.
3. Contractor has the right to execute the Agreement in different phases. Invoicing will take place per phase for the work performed in that phase.
4. If the Agreement is executed in phases, Contractor may suspend the execution of components belonging to a subsequent phase until Client has approved the results of the preceding phase in writing.
5. Client ensures that all data and materials, which Contractor indicates are necessary for executing the Agreement, are provided in a timely manner.
6. If the required data for the execution of the Agreement is not provided on time, Contractor has the right to suspend the execution of the Agreement.
7. Client ensures timely access to all systems, including cloud environments, necessary for performing the Work. When setting up new systems, Contractor maintains the necessary access rights for performing the Work.

## **6. Acceptance and Testing**

1. After delivery of (a phase of) the project, Client is obliged to test the delivered work and provide feedback to Contractor within 10 working days.
2. If Client does not provide feedback within this period, the delivered work is deemed to have been accepted.
3. Feedback must be provided in writing and with sufficient detail.
4. Contractor will assess the received feedback and, if justified, process it according to the original specifications.
5. Minor errors that do not prevent the operational or productive use of the software are not grounds for withholding acceptance.

## **7. Fees and Payment**

1. All prices used by Contractor are:
  - Exclusive of VAT
  - Inclusive of shipping, travel, accommodation, and other expenses, unless explicitly agreed otherwise in writing
2. The fee is calculated according to Contractor's usual rates.
3. Invoicing takes place monthly for work performed and costs incurred in that month.

4. Payment must be made within 14 days after the invoice date.
5. If Client fails to make timely payment, Client is legally in default. Client then owes the statutory commercial interest in accordance with Article 6:119a of the Dutch Civil Code. Interest on the due amount will be calculated from the moment Client is in default until the moment of payment of the full amount due.
6. In case of liquidation, bankruptcy, or suspension of payment of Client, Contractor's claims are immediately due and payable.
7. Contractor has the right to suspend the execution of the Agreement if an invoice is not paid within the payment term.
8. Costs for the use of cloud services, licenses, or other third-party services are directly charged to Client, unless agreed otherwise in writing.

## **8. Modification of the Agreement and Additional Work**

1. If during the execution of the Agreement it appears necessary to modify or supplement the work to be performed, parties will timely adjust the Agreement accordingly through mutual consultation.
2. Changes to the Agreement and additional work must be agreed upon in writing.
3. Without being in default, Contractor may refuse a request to modify the Agreement.
4. If the modification or supplement to the Agreement will have financial and/or qualitative consequences, Contractor will inform Client about this in advance.
5. If a fixed fee has been agreed upon, Contractor will indicate to what extent the modification or supplement to the Agreement will result in an excess of this fee.

## **9. Limitations and Responsibilities**

1. Contractor will make best efforts to develop the software according to the written agreed specifications. This constitutes a best-efforts obligation, not a results obligation.
2. Client acknowledges that:
  - Software development is an iterative process
  - Finding and fixing errors is a normal part of software development
  - All work after delivery, including fixing errors and implementing improvements, is considered new assignments subject to Contractor's usual rates
3. Contractor is not responsible for errors or problems arising from:
  - Changes made by Client or third parties without prior written permission
  - Incorrect or improper use
  - Changes in the system or usage environment not made by Contractor

## **10. Service Level Agreement (SLA)**

1. For malfunctions or problems, Contractor maintains the following response times:
  - Critical problems (business processes blocked): response within 24 hours
  - Regular problems: response within 3 working days
  - Other requests: response within 5 working days
2. Response time is defined as the time between problem reporting and Contractor's first substantive response.

## **11. Intellectual Property**

1. All intellectual property rights to the developed software remain with Contractor until full payment of the agreed price.
2. After full payment, Client receives a non-exclusive, transferable license for the use of the software.
3. Contractor retains the right to use knowledge gained and general concepts and solutions developed during the execution of the work for other purposes.
4. Contractor has the right to use the work for promotional purposes.

## **12. Liability**

1. Contractor's liability is limited to direct damage and to a maximum of the invoice amount of the Agreement.
2. Direct damage exclusively means:
  - Reasonable costs to determine the cause and extent of the damage
  - Any reasonable costs incurred to make Contractor's defective performance conform to the Agreement
  - Reasonable costs incurred to prevent or limit damage
3. Contractor is never liable for indirect damage, including consequential damage, lost profit, and damage due to business interruption.

## **13. Suspension and Dissolution**

1. Contractor is authorized to suspend the fulfillment of obligations or dissolve the Agreement if:
  - Client does not or not fully comply with the obligations from the Agreement
  - After concluding the Agreement, circumstances come to Contractor's knowledge giving good reason to fear that Client will not fulfill their obligations
  - Client was requested to provide security for the fulfillment of their obligations under the Agreement and this security is not provided or is insufficient

## **14. Termination**

1. Both parties can terminate the Agreement in writing at any time with a notice period of one month.
2. In case of early termination, Contractor is entitled to compensation for resulting capacity loss, unless facts and circumstances underlying the termination are attributable to Contractor.
3. In case of early termination by Client, Contractor is entitled to compensation for work already performed and commitments already made.

## **15. Confidentiality**

1. Both parties are obliged to maintain confidentiality of all confidential information they have obtained from each other or from other sources in the context of their Agreement.
2. Information is considered confidential if this has been communicated by the other party or if this follows from the nature of the information.

## **16. Privacy and Data Management**

1. Client agrees that their data will be collected and stored when Client contacts Contractor. Contractor complies with GDPR and will not provide Client's data to third parties unless Client has given permission.
2. The personal data of (potential) customers that may be processed by Contractor on behalf of Client during the assignment includes:
  - Contact details (including name and address details, email addresses, and phone numbers)
  - Technical data (including IP addresses and browser information)
  - Login details (including usernames and passwords)
  - Payment details (including IBAN/BIC and credit card information) Furthermore, Contractor may process the following personal data of Client's employees in the context of the assignment:
    - Employee contact details (including name and address details, email addresses, and phone numbers)
    - Technical data (including IP addresses and browser information)
    - Login details (including usernames and passwords)

## **17. Applicable Law and Disputes**

1. Dutch law exclusively applies to all legal relationships to which Contractor is a party.
2. Parties will only appeal to the courts after they have made every effort to resolve a dispute by mutual agreement.
3. The court in Contractor's place of business has exclusive jurisdiction to hear disputes.

4. These general terms and conditions are drawn up in Dutch and English. In the event of any dispute about the content or interpretation of these terms, the Dutch text shall be binding.

## **18. Amendment of Terms**

1. Contractor reserves the right to modify or supplement these terms.
2. Modifications also apply to already concluded Agreements with observance of a period of 30 days after announcement of the modification.