



Terms and conditions.

Document history

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Section 1. General provisions

Article 1. Applicability Terms

These general terms and conditions are used by Trust Tester B.V., also trading under the name Digital Trust Solutions (hereinafter also referred to as: "supplier" and "these general terms") and shall apply to all quotations, offers, orders and agreements issued or received by or entered into with Supplier.

These general terms can only be derogated from if agreed by parties in writing.

The applicability of any of the client's general terms and conditions, howsoever such general terms and conditions may be called and whatsoever from they may have is explicitly precluded.

If any provision of these general terms should be null and void, the other provisions of these general terms remain fully applicable and effective. In that case, supplier and client shall enter into consultation in order to arrange for new provisions which have the same purpose, as much as possible, and that will replace the provisions that are null and void.

The provisions of these general terms may also be relied upon by all natural persons and legal entities that form supplier or that work for supplier. This stipulation constitutes an irrevocable third party clause for the natural persons and legal entities mentioned in this article.

Article 2. Confidentiality

Client and supplier ensure that secrecy is observed with respect to all information received from the other party of which information the receiving party knows or should reasonably know it is confidential. This prohibition does not apply if and insofar as the information concerned must be provided to a third party in compliance with a judicial decision, a statutory requirement, a statutory order by a public authority or for the proper performance of the agreement. The party that receives the confidential information may only use it for the purpose for which it has been provided. Information is in any case deemed confidential if it has been designated as such by either party.

Article 3. Security

If supplier is obliged to provide some form of information security under the agreement, this protection meets the specifications on security that parties have agreed on in writing. Supplier does not guarantee that the information security provided is effective under all circumstances. If the agreement does not include an explicitly defined security method, the security features provided meet a level that is not unreasonable in view of the state of the art, the implementation costs, the nature, scope and context as known to supplier of the information to be protected, the purposes and the standard use of supplier's products and services and the probability and seriousness of foreseeable risks.

The access or identification codes and certificates provided by or on behalf of supplier to client are confidential and must be treated as such by client, and they may only be made known to authorized staff in client's own organization or company. Supplier is entitled to change the access or identification codes and certificates. Client is responsible for managing these authorizations and for providing and duly revoking access and identification codes

In the event security features or the testing of security features pertain to software, hardware or infrastructure that has not been delivered by

supplier to client, client guarantees that all licenses or approvals have been obtained so that the performance of such activities is actually allowed. Supplier is not liable for any damages caused by or in relation to the performance of these activities. Client indemnifies supplier against any claims, for whatever reason, arising from these activities being performed.

Supplier is entitled to adapt the security measures from time to time if this should be required as a result of a change in circumstances.

Client adequately secures its systems and infrastructure and keeps these adequately secured.

Supplier may give client instructions about security features intended to prevent or to minimize incidents, or the consequences of incidents, that may affect security. If client should fail to follow the instructions issued by supplier or by a relevant public authority, or should fail to follow these in time, supplier is not liable and client indemnifies supplier against any damage that may arise as a result thereof.

Supplier is at any time permitted to install technical and organizational facilities to protect hardware, data files websites, software made available, software or other works to which client has been granted access, whether directly or indirectly, also in connection with a restriction agreed on in the content or the duration of the right to use these objects. Client may not remove or circumvent any of such technical facilities or have these removed or circumvented

Article 4. Transfer of risk

The risk of loss, theft, misappropriation or damage of goods, information (including user names, codes and passwords), documents, software or data files that are created for, delivered to or used by client in the context of the performance of the agreement pass to client at the moment these are placed under the actual control of client or an auxiliary person of client.

Article 5. Performance of services

All services provided by supplier are performed on the basis of a reasonable-efforts-obligation unless and insofar as supplier has explicitly promised a result in the written agreement and the result concerned has been described in the agreement in a sufficiently precise manner.

Supplier is not liable for any damage suffered or costs incurred as a result of the use or misuse that is made of access or identification codes or certificates or any other security means unless the misuse is the direct result of any intent or deliberate recklessness on the part of supplier's management.

If the agreement has been entered into with a view to it being performed by one specific person, supplier is always entitled to replace this person by one or more persons who have the same and/or similar qualifications.

Supplier is not obliged to follow client's instructions when performing the services, more particularly not if these instructions change or add to the content or scope of the services agreed on. If such instructions are followed, however, the activities performed are charged at supplier's applicable rates.

Article 6. Obligation to provide information and render assistance

Parties acknowledge that the success of activities to be performed in the field of information and communications technology depends on proper and timely cooperation of parties. Client undertakes always to fully cooperate, within reason, and in time.

Client vouches for the correctness and completeness of the data, information, designs and specifications provided by on or behalf of client to supplier. Supplier shall have no obligation to check data, information, designs or specifications provided by client for correctness or inaccuracies.

For reasons of continuity, client designates a contact person or contact persons who act in that capacity for the time supplier performs its services. Client's contact persons have the relevant experience required, specific knowledge of the subject matter and a proper understanding of the objectives that client wishes to achieve.

Client bears the risk of selecting the goods and/or services to be provided by supplier. Client always exercises the utmost care to guarantee that the requirements set for supplier's performance are correct and complete.

Client is responsible for the management, including checks of the settings, and use of the products delivered and/or services provided by supplier, and the way in which the results of the products and services are implemented. Client is also responsible for appropriately instructing users and for the use of the products and services that is made by users.

Client itself is responsible for the hardware, infrastructure and auxiliary software and ensures that the (auxiliary) software for its own hardware is installed, organized, parameterized and tuned and, where required, that the hardware, other (auxiliary) software and the operating environment used are modified and kept updated, and that the interoperability wanted by client is effected.

Article 7. Project and steering groups

If both parties are participating in a project or steering group in which one or more of their employees have been appointed, the provision of information takes place in the manner agreed on for that project or steering group.

Decisions made in a project or steering group in which both parties are participating are only binding on supplier if the decisions are made in accordance with that which parties have agreed on in writing in this regard or, if no written arrangements have been made in this context, if supplier has accepted the relevant decision in writing. Supplier is never obliged to accept or implement a decision if, in its opinion, the decision cannot be reconciled with the content and/or proper performance of the agreement.

Client ensures that the persons that it has assigned to participate in a project or steering group are authorized to make decisions that are binding on client.

Article 8. Terms and deadlines

Supplier makes reasonable efforts, within reason, to comply with the terms and delivery periods and/or dates and delivery dates, whether or not these are deadlines and/or strict dates, that it has specified or that have been agreed on by parties. The interim dates and delivery dates specified by supplier or agreed on by parties always apply as target dates, do not bind supplier and are always indicative

If a term or period of time is likely to be exceeded, supplier and client consult as to discuss the consequences of the term being exceeded in relation to further planning.

In all cases – therefore, also if parties have agreed on deadlines and strict delivery periods or dates and delivery dates – supplier is only in default because of a term or period of time being exceeded after client has served supplier with a written notice of default and has set a reasonable period of time for supplier to remedy the failure to meet its obligations and this reasonable term has passed. The notice of default must describe supplier's breach to meet its obligations as comprehensively and in as much detail as possible so that supplier has the opportunity to respond adequately.

If it has been agreed that the activities to be performed under the agreement must be performed in phases, supplier is entitled to postpone the start of the activities for a next phase until client has approved the results of the preceding phase in writing.

Supplier is not bound by a date or delivery date or term or delivery period, whether or not these are deadlines and/or strict dates, if parties have agreed on an adjustment in the content or scope of the agreement (additional work, a change of specifications, etc.) or a change in approach with respect to the performance of the agreement, or if client fails to fulfil its obligations under the agreement or fails to do so on time or in full. If additional work should be required during the performance of the agreement, this never constitutes a reason for client to give notice of termination of the agreement or to terminate the agreement for breach.

Article 9. Termination of the agreement for breach or by serving notice of termination

Either party is exclusively entitled to terminate the agreement for breach following an imputable failure of the other party to meet its obligations under the agreement if the other party, in all cases after a written notice of default has been served that is as detailed as possible and in which the other party is granted a reasonable period of time to remedy the breach, should still culpably fail to meet any of its essential obligations under the agreement. Client's payment obligations and all obligations of client or a third party contracted by client to cooperate and/or to provide information apply in all cases as essential obligations under the agreement.

If, at the time of the termination for breach, client has already received goods or services in the performance of the agreement, this performance and the relevant payment obligations cannot be undone unless client proves that supplier is in default with respect to the essential part of the performance due. With due regard to the provisions of the preceding sentence, sums invoiced by supplier prior to the termination for breach in connection with what has already been properly performed or delivered in the performance of the agreement remain due in full and become immediately payable at the time of the termination for breach

An agreement which, due to its nature and content, is not discharged by performance and which has been entered into for an indefinite period of time may be terminated, following consultation between parties, by either party by serving written notice of termination to the other party. Reasons for the termination must be stated. If a notice period has not been agreed on between parties, a reasonable period must be observed when notice of termination is served. Supplier is never obliged to pay any compensation because of this termination.

Client is not entitled to terminate an agreement for services that has been entered into for a definite period of time before the end of the term; client is not entitled either to terminate an agreement that ends by completion before it has been completed.

Either party may terminate the agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a suspension of payments, whether or not provisional, a petition for bankruptcy is filed against the other party or the company of the other party is liquidated or dissolved other than for restructuring purposes or for a merger of companies. Supplier may also terminate the agreement, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of client's company. Supplier is never obliged to repay any sum of money already received or pay any sum of money in compensation because of termination as referred to in this paragraph. If client is irrevocably bankrupted, its right to use the software, websites and the like made available to client ends, as does its right to access and/or use supplier's services, without supplier being required to cancel these rights.

Article 10. Force Majeure

Neither party is obliged to meet any obligation, including any statutory and/or agreed guarantee obligation, if it is prevented from doing so by circumstances beyond its control (overmacht). Circumstances beyond supplier's control include, among other things: (i) circumstances beyond the control of supplier's suppliers, (ii) the failure by supplier to properly meet obligations that were contracted by supplier on client's instructions, (iii) defects in goods, hardware, software or materials of third parties that supplier uses on client's instructions, (iv) measures by public authorities, (v) power failures, (vi) failures of the Internet, data network or telecommunication facilities, (vii) (cyber) crime, (cyber) vandalism, war or terrorism and (viii) general transport problems

If a force majeure situation lasts for more than sixty days, either party has the right to terminate the agreement, in writing, for breach (ontbinden). In such event, all that has already been performed under the agreement must be paid for on a proportional basis, without anything else being due by either party to the other party.

Article 11. Service Level Agreement

Possible arrangements about a service level (Service Level Agreement) are exclusively agreed on in writing. Client promptly informs supplier about any circumstances that may affect the service level or its availability.

If any arrangements have been made about a service level, the availability of software, systems and related services is always measured in such a way that unavailability due to preventive, corrective or adaptive maintenance service or other forms of service that supplier has notified client of in advance and circumstances beyond supplier's control are not taken into account. Subject to proof to the contrary offered by client, the availability measured by supplier is considered conclusive.

Article 12. Back-ups and data retention

Client itself remains responsible for making back-ups and for complying with all the applicable statutory obligations with respect to keeping records and data retention. Supplier is in no way liable for any loss of data (in the broadest sense of the term) if client does not meet this obligation.

In the event supplier should decide to make a back-up, it is not obliged to store such back-up for more than 24 hours.

Article 13. Transfer of rights and obligations

Client is not entitled to sell, transfer or pledge its rights and obligations under an agreement to a third party

Supplier is entitled to sell, transfer or pledge any claims it has to payment of any sums due to a third party.

Article 14. Applicable law and disputes

Any disputes that may arise from an agreement between parties and/or from any further agreements deriving from this agreement are resolved by arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering – SGOA – (www.sgoa.eu), this without prejudice to either party's right to request preliminary relief in preliminary relief proceedings or arbitral preliminary relief proceedings and without prejudice to either party's right to attach property before judgment. Arbitration proceedings take place in Amsterdam, or in any other place designated in the Arbitration Regulations.

If a dispute that arises from an agreement entered into by parties or from any further agreements deriving from this agreement is within the jurisdiction of the cantonal section of the Netherlands District Court (kantongerecht), either party is entitled, notwithstanding the provisions of article 22.2, to bring the case as a cantonal court case before the competent district court in the Netherlands. Parties are only entitled to initiate these proceedings if arbitration proceedings concerning the dispute have not yet been instituted under the provisions of article 14.2. If, with due observance of the provisions of this article 14.3, either party has brought the case before the competent district court to be heard and decided, the cantonal judge of that district court is competent to hear the case and to decide on it.

Regarding a dispute that arises from an agreement entered into by parties or from any further agreements deriving from this agreement, either party is always entitled to institute ICT mediation proceedings in accordance with the ICT Mediation Regulations of the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering – SGOA – (www.sgoa.eu). The other party is then obliged to actively participate in the ICT mediation proceedings that have been instituted. This legally enforceable obligation in any case includes having to attend at least one joint meeting of mediators and parties, in order to give this extrajudicial form of dispute resolution a chance of success. Either party is free to terminate the ICT mediation proceedings at any time after this first joint meeting of mediators and parties. The provisions of this paragraph do not prevent either party, if this party deems doing so necessary, from requesting preliminary relief in preliminary relief proceedings or in arbitral preliminary relief proceedings nor do they prevent either party from attaching property before judgment.

Section 2. Software-as-a-Service (SaaS)

The provisions in this section 'Software-as-a-service (SaaS)' apply, apart from the General provisions of these general terms, if supplier performs services under the name or in the field of Software-as-a-Service (also referred to as: SaaS). For the application of these general terms, SaaS is understood to mean a service by which supplier makes functionality available to and keeps functionality available for client remotely, through the Internet or another data network, without providing client with a physical carrier with or download of the relevant underlying software.

Article 15. SaaS Implementation

Supplier provides the SaaS on client's instructions. Client may solely use the SaaS for its own organisation or company and only insofar as required for the use intended by supplier. Client may allow third parties to use the SaaS service provided by the supplier only after agreement has been reached with the supplier.

Supplier may adjust the content or scope of the SaaS. If such adjustments are substantive and result in a change in client's current procedures, supplier informs client about this as soon as possible and the costs of this adjustment are at client's expense. In this case client may serve notice of termination of the agreement, which termination takes effect on the date on which the adjustment takes effect, unless the adjustment is related to amendments in relevant legislation or is at supplier's expense.

Supplier may continue to provide the SaaS using a new or modified version of the underlying software. Supplier is not obliged to maintain, modify or add particular features or functionalities of the SaaS specifically for client.

Supplier may temporarily put all or part of the SaaS out of service for preventive, corrective or adaptive maintenance services or other forms of service. Supplier ensures that the period of time during which the SaaS is out of operation does not take longer than necessary and ensures, where possible, that the service takes place at times when the SaaS is usually used least intensively.

Supplier is never obliged to provide client with a physical carrier or download of the underlying software.

Article 16. Guarantees

Supplier does not guarantee that the SaaS is free of errors and functions without any interruptions. Supplier makes every effort to repair the errors in the underlying software within a reasonable period of time if and insofar as underlying software is concerned that has been developed by supplier itself and client has provided supplier with a detailed, written description of the relevant errors. In a particular case, supplier may postpone repairing errors until a new version of the underlying software is put into service. Supplier does not guarantee that errors in the SaaS that has not been developed by supplier itself are repaired. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the SaaS. If the SaaS, or part of it, has been developed on client's instructions, supplier may charge client for the costs incurred by repairing the error(s) at supplier's applicable rates. Supplier is never obliged to repair other imperfections than those referred to in this article. In the event supplier is prepared to remedy other imperfections than those referred to in this article, supplier is entitled to charge client a separate fee for this.

On the basis of the information provided by supplier on measures to prevent and restrict the effects of malfunctions, errors and other imperfections in the SaaS, corruption or loss of data or other incidents, client identifies and lists the risks to its organization or company and, where necessary, takes additional measures. Supplier declares itself prepared to render assistance, at client's request, to the extent reasonable and according to the financial and other conditions set by supplier, with respect to further measures to be taken by client. Supplier is never obliged to recover data that have been corrupted or lost other than placing back – where possible – the most recent back-up of the data in question.

Supplier will make every effort to adapt the SaaS service in a timely manner to changes in relevant laws and regulations.

Article 17. Commencement of the service; payment

The SaaS provided by supplier – and, where relevant, support-commences within a reasonable period of time after the agreement has been entered into. Unless agreed on otherwise, the SaaS commences by supplier client granting access to the SaaS that is made available by supplier. Client ensures that it has the facilities required to use the SaaS immediately after the agreement has been entered into.

The fee payable by client for the SaaS is included in the agreement. If no payment scheme has been agreed on, all sums related to the SaaS delivered by supplier become due and payable, in advance, per calendar month.

Section 3. Standard clauses on data processing

The provisions in this section 'Standard clauses on data processing' apply, apart from the General provisions of these general terms, if supplier processes personal data, in the context of the performance of an agreement, for the controller(s) as (sub)processor as meant in the laws and regulations on personal data protection. These 'Standard clauses on data processing' together with the practical arrangements made on personal data processing in the agreement or in a separate appendix (for example a Data Pro Statement) form a processing agreement as meant in article 28, paragraph 3 of the General Data Protection Regulation (GDPR).

Article 18. General

Supplier processes the personal data on client's behalf and in accordance with the written instructions agreed upon by supplier and client.

Client, or client's client, is the controller in the sense of the GDPR, has control over the processing of personal data and has established the purpose of and the means for the personal data processing.

Supplier is processor in the sense of the GDPR and, for that reason, has no control over the purpose of and the means for the personal data processing and, therefore, does not take any decisions on, amongst other things, the use of the personal data.

Supplier implements the GDPR as laid down in this section 'Standard clauses on data processing' and in the agreement. Client is responsible for assessing, on the basis of this information, whether supplier offers adequate guarantees with respect to applying appropriate technical and

organisational measures for the processing to meet the requirements posed by the GDPR and to adequately safeguard the protection of the data subjects' rights.

Client guarantees vis-à-vis supplier that it acts in compliance with the GDPR, that its systems and infrastructure are at any time appropriately secured and that the content, the use and/or the processing of the personal data are not unlawful and do not breach any third party rights.

Client is not entitled to seek recovery from supplier of an administrative fine imposed on client by the supervisory authority, on whatever legal ground. In the present section (Section 2) 'supervisory authority' is understood to mean the supervisory authority referred to in the GDPR.

Article 19. Security

Supplier takes all technical and organizational security measures. When implementing these technical and organizational measures, supplier has taken into account the state of the art, the costs involved in implementing the security measures, the nature, scope and context of the processing, the nature of its products and services, the processing risks and the varying risks, in terms of likelihood and severity, posed to the rights and freedoms of the data subjects that supplier could expect in view of the use intended to be made of its products and services.

Unless explicitly stated otherwise in the agreement, supplier's product or service is not intended for processing special categories of personal data or data relating to convictions under criminal law or criminal offences.

Supplier endeavours to ensure that the security measures to be taken by supplier are appropriate for the use of the product or service intended by supplier.

The security measures described offer a security level, in client's opinion and taking the factors referred to in article 19.1 into account, appropriate to the risk involved in processing personal data used or provided by client.

Supplier may adjust the security measures implemented if this should be required, in supplier's opinion, to continue to offer an appropriate security level. Supplier keeps a record of important adjustments and informs client of these adjustments where relevant.

Client may request supplier to implement further security measures. Supplier is not obliged to implement any adjustments in its security measures following such request. Supplier may charge client for the costs involved in implementing the adjustments requested by client. Supplier is not obliged to actually implement these adjusted security measures before the security measures requested by client have been agreed on in writing.

Article 20. Personal data breaches

Supplier does not guarantee that the security measures are effective in all circumstances. If supplier discovers a personal data breach, supplier informs client of this without undue delay. The agreement stipulates in which way supplier informs client of personal data breaches. If no specific arrangements have been agreed on, supplier contacts the client's contact person in the usual way.

It is up to the controller – i.e. client or client's client – to assess whether the personal data breach reported by supplier must be reported to the supervisory authority or the data subject. Reporting personal data breaches is, at any time, controller's – i.e. client's or client's client's – responsibility. Supplier is not obliged to report personal data breaches to the supervisory authority and/or the data subject.

Where required, supplier provides further information on the personal data breach and renders assistance in providing the information to client that client needs to report a breach to the supervisory authority or the data subject.

Supplier may charge client for the costs involved in this context, within reason and at supplier's current rates.

Article 21. Confidentiality

Supplier ensures that the obligation to observe confidentiality is imposed on any person processing personal data under supplier's responsibility.

Supplier is entitled to provide personal data to third parties if and insofar as this should be required pursuant to a judicial decision or a statutory requirement, on the basis of an authorised order by a public authority or in the context of the proper performance of the agreement.

Article 22. Obligations following termination

In the event the processing agreement ends, supplier deletes, within the period of time agreed on in the agreement, all personal data received from client that it has in its possession in such a way that they can no longer be used and are rendered inaccessible, or, if agreed on, returns these data to client in a machine readable format.

Supplier may charge client for any costs possibly incurred in the context of the stipulation in the previous paragraph. Further arrangements on this may be laid down in the agreement.

The provisions of article 22.1 do not apply if statutory provisions should prohibit supplier to delete the personal data or return these, in part or in full. In such event supplier only continues to process the personal data insofar as required under its statutory obligations. The provisions of article 22.1 do not apply either if supplier is a controller in the sense of the GDPR with respect to the personal data.

Article 23. Data subjects' rights, Data Protection Impact Assessment (DPIA) and audit rights

Where possible, supplier renders assistance in reasonable requests by client that are related to data subjects exercising their rights against client. If supplier is directly contacted by a data subject, supplier refers this data subject, whenever possible, to client.

If client should be obliged under the GDPR to carry out a Data Protection Impact Assessment (DPIA) or a prior consultation following this, supplier renders assistance, at client's reasonable request, in this DPIA or prior consultation.

At client's request, supplier provides all information that would be reasonably required to demonstrate compliance with the arrangements laid down in the agreement with respect to personal data processing, for example by means of a valid Data Pro Certificate or another certificate at least equal to it, an audit report (Third Party Memorandum) drafted by an independent expert commissioned by supplier or by means of other information to be provided by supplier. If client should nevertheless have reasons to assume that the personal data are not processed in accordance with the agreement, client may commission an audit, no more than once per year and at client's expense, by an independent, certified external expert who has demonstrable experience in the type of data processing that is carried out under the agreement. Supplier is entitled to refuse an expert if this expert affects, in supplier's opinion, supplier's competitive position. The audit is limited to verifying compliance with the arrangements on personal data processing as laid down in the agreement. The expert is obliged to observe confidentiality with respect to his findings and only reports issues to client which result in a failure by supplier to meet its obligations under the agreement. The expert provides supplier with a copy of his report. Supplier may refuse an expert, an audit or an instruction by the expert if this should be, in supplier's opinion, in violation of the GDPR or other laws and regulations or if this should be an unacceptable breach of the security measures implemented by supplier.

Parties hold consultations on the findings of the report as soon as possible. Parties comply with the improvement measures proposed and laid down in the report insofar as this can be reasonably expected from them. Supplier implements the proposed measures insofar as these are appropriate in supplier's opinion, taking into account the processing risks associated with supplier's product or service, the state of the art, the implementation costs, the market in which supplier operates and the intended use of the product or service.

Supplier is entitled to charge client for the costs it has incurred in the context of the provisions laid down in this article.

Article 24. Subprocessors

Supplier has stated in the agreement if and, if so, which third parties (subprocessors) supplier contracts for the processing of personal data.

Client grants supplier permission to contract other subprocessors in the performance of supplier's obligations under the agreement.

Supplier informs client about possible changes with respect to the third parties it contracts. Client is entitled to object to said change by supplier.