

General Terms and Conditions Nostium BV

Version January 2024

1. Definitions

In these General Terms and Conditions the following terms shall have the following meanings:

- Data: information, data and materials (e.g. photos) from Client;
- Services: all services commissioned by the Client, which are stated in the Agreement and/or which are performed or should be performed by the Contractor on other grounds, including but not limited to the provision of the System;
- IP rights: copyrights, portrait rights, trademark rights, drawing or model rights, patent rights, techniques and processes developed by or on behalf of the Contractor incorporated in the System and/or other intellectual property rights;
- Client: the natural or legal person for whom the Contractor provides Services;
- Contractor: Nostium BV, established in Eindhoven and registered with the Chamber of Commerce under number 75481685;
- Agreement: the agreement between the Client and the Contractor in which the Services to be performed by the Contractor for the benefit of the Client are set out;
- Party(ies): Client and/or Contractor;
- Product: all items supplied by the Contractor, such as products and materials;
- Written: on paper, by post, by e-mail;
- System: the software system of the Contractor to which the Client is granted the right to use under the terms of the Agreement and these General Terms and Conditions.

2. Applicability

2.1. These General Terms and Conditions apply to all legal transactions between Client and Contractor (including in any case all quotations and Agreements). Deviations from these General Terms and Conditions can only be agreed in writing between Client and Contractor.

2.2. These General Terms and Conditions will also apply to the Client and to any third parties that the Contractor engages for the performance of Agreements, unless otherwise agreed.

2.3. The Contractor may amend or supplement these General Terms and Conditions. The amended General Terms and Conditions shall apply to current long-term agreements, with due observance of a term of 30 days after publication by the Contractor on its website or via electronic messaging. The Client shall have the right to terminate the Agreement (interim) against the effective date of the new General Terms and Conditions if the amendments are material and/or unreasonably onerous for the Client.

2.4. The applicability of any purchasing or other conditions of the Client is expressly excluded.

3. Quotation

3.1. Quotes are without obligation and are valid for 30 days.

3.2. Quotations are based on the information provided by the Client. If this information is incorrect or incomplete, this may lead to a change in the stated price and/or delivery time.

3.3. All prices stated in the Contractor's quotation are subject to typing and calculation errors.

3.4. Prices and conditions in quotations do not automatically apply to future quotations, agreements and orders.

3.5. If the Client wishes to simultaneously issue the same assignment to parties other than the Contractor or has previously issued the assignment to another party, the Client will inform the Contractor of this, stating the names of these other parties.

4. Establishment of agreement

4.1. An Agreement is concluded by written acceptance of the quotation. If there is no written acceptance, but the Contractor otherwise agrees that the Contractor will commence the execution of the quotation, the content of the quotation will be deemed to have been agreed and to be the Agreement and these General Terms and Conditions will apply.

4.2. Additional verbal agreements are only binding on the Contractor after they have been confirmed in writing by the Contractor.

5. Duration and termination of agreement

5.1 The Agreement is entered into on the date of acceptance of the offer and is valid for an indefinite period, unless the nature or scope of the assignment in the Agreement implies that it has been entered into for a definite period. In that case, the Agreement shall end by operation of law on the agreed end date or the date on which the services have been provided by both parties.

5.2 Licenses to the System shall have a term of one year from the date stated in the Agreement, which term shall be tacitly extended each year for periods of 1 (one) year each time, unless either Party terminates the license in writing at least 3 (three) months before the end of the then current period.

5.3 Either Party shall have the right to terminate the Agreement immediately in writing in the following cases:

- a. The other Party fails to fulfil its obligations under the Agreement, even after notice of default has been given giving a reasonable period for fulfilment;
- b. The other Party indicates that it is no longer able or willing to meet its (payment) obligations under the Agreement;

c. The other Party is granted a moratorium or declared bankrupt;

d. Circumstances arise that make compliance with the Agreement impossible or that it cannot reasonably be expected of the Contractor to maintain the Agreement unchanged.

5.4 In the event of misuse, unauthorized use or replication of the System by or on behalf of the Client, the Contractor shall have the right, without any obligation to pay damages, to immediately terminate or dissolve the Agreement in whole or in part.

5.5 Upon termination of the Agreement for any reason:

a. the license and the right to use the System shall end on the date of termination of the Agreement. Contractor shall then return or destroy the software provided for that purpose and all copies thereof as well as all documentation relating to the System to Contractor within 14 (fourteen) days in accordance with Contractor's instructions;

b. the claims of the Contractor are immediately due and payable;

c. the Contractor is entitled to claim damages from the Client, unless the Agreement ends as a result of a shortcoming attributable to the Contractor;

d. Contractor shall, at the first request of Client, return or destroy all data that Contractor has received from Client in the context of the performance of the Agreement. Returning or destroying data is not an option for data for which and for as long as Contractor has a retention obligation.

6. Price

6.1. Prices for the Services and delivery of Products to be provided by the Contractor are agreed in the Agreement, which may include, among other things, start-up and start-up costs, license costs, an hourly rate and/or consultancy fee.

6.2. One-time start-up and initial costs as well as the license costs for the first year, as stated in the Agreement, are due prior to delivery, unless the Parties have agreed otherwise in writing.

6.3. License fees after the first year will be invoiced annually in advance to the Contractor.

6.4. All by Prices indicated by the Contractor are exclusive of VAT and exclusive of travel, transport or other costs related to the delivery by the Contractor. These costs are specified in advance as much as possible, except when a surcharge percentage has been agreed.

6.5. If the performance of the Agreement is delayed or interrupted by circumstances that cannot be attributed to the Contractor, the costs incurred as a result will be charged to the Client. The Contractor will attempt to limit the costs as much as possible.

6.6. The Contractor has the right to adjust its rates for services annually. The Client expressly agrees to price increases of up to 5%. In the event of price increases above this percentage, the Client may terminate the Agreement within 2 (two) weeks after the announcement of the price increase. If the Client does not respond to the announced price change within 2 (two) weeks, the Client is deemed to have accepted the new prices.

7. Payment

7.1. All payments shall be made by the Client without deduction, settlement or suspension, within 30 days after the invoice date, unless otherwise agreed in writing or a different payment term is stated on the invoice. Annual license fees must be paid before the expiry of the then applicable period. If no timely payment is received, the Client will not be provided with a top-up code and the continuation of the use of the System cannot be guaranteed.

7.2 The Contractor has the right to request an advance payment and to commence performance of the Agreement only when the advance payment has been received.

7.3 Any complaints regarding invoices must be submitted to the Contractor in writing within 7 (seven) days of the invoice date.

7.4 All Products delivered to the Client shall remain the property of the Contractor until all amounts owed by the Client to the Contractor have been paid in full.

7.5 In the event of late payment, the Client will immediately be in default and the Contractor will have the following rights:

- a. Suspend its obligations under the Agreement until all amounts owed by the Client to the Contractor have been received by the Contractor;
- b. Charge statutory interest;
- c. Charge collection costs in accordance with the Collection Costs Act.

8. Collaboration and obligations of the Client

8.1. Client shall ensure that Data that Contractor requires for the performance of the Agreement are delivered in a timely manner. This also includes Data that Contractor has not explicitly requested, but of which Client reasonably knows or could know that this Data is necessary for the performance of the Agreement.

8.2. The Client guarantees the accuracy and completeness of the Data provided by or on behalf of the Client to the Contractor.

8.3. Client shall inform Contractor as soon as possible in writing about changes in relevant Data. Client is responsible for the availability of the most recent contact details in Contractor's administration.

8.4. The Client will at all times act and behave as may be expected of a responsible (Internet) user.

8.5. The Client is responsible for backing up its own database.

8.6. Client shall refrain from hindering other customers of Contractor or from causing damage to the System. Client is prohibited from starting up processes and/or programs – whether or not via the system made available by Client – or from using them, of which Client knows or could reasonably suspect that this hinders and/or causes damage to Contractor, its other customers and/or other third parties or of which the risk is therefore reasonably present. This also explicitly includes (in)direct damage due to, for example, misconfiguration on the part of Client

and 'open relaying' by a mail server incorrectly configured on behalf of the Client. In this context, the Client is only permitted to start processes and/or programs if there is a direct connection to the System, permitted by the Contractor.

8.7. The use of webcams and/or similar software that upload images at very short intervals is not permitted without prior written permission from the Contractor.

8.8. The Client is not permitted to load the processors of the Contractor's server by more than 30% for a period longer than 20 seconds. If it is clear or suspected that the Client has or wishes to use software that exceeds the aforementioned values, the Client will discuss the possibilities thereof with the Contractor.

8.9. The setting the interval at which the Client's e-mail is read must be at least 5 (five) minutes.

8.10. Client is not permitted to use the System and/or disk space made available by Contractor under the Agreement for actions and/or conduct that are in conflict with applicable laws and regulations, netiquette, the Agreement (including these General Terms and Conditions) and additional written agreements. This includes, but is not limited to, the following actions and conduct:

- a. Spamming/ the unsolicited sending of large quantities of e-mail with the same content and/or the unsolicited posting of large numbers of newsgroups on the Internet with the same content, including spam sent via any other provider with reference to a website, e-mail address or other service of Contractor;
- b. Infringing IP rights or otherwise acting contrary to IP rights of the Contractor or third parties;
- c. The publication and/or distribution of (child) pornography;
- d. Sexual harassment and/or other forms of harassment of persons;
- e. Hacking/the unauthorized entry into other computers and/or computer systems.

9. Execution of agreement

9.1. The Contractor shall make every effort to perform the Agreement carefully, taking into account any agreed specifications, to serve the interests of the Client to the best of its knowledge and to strive for a result that is useful to the Client, as can and may be expected of a reasonable and professional Contractor.

9.2. To the extent necessary, the Contractor will keep the Client informed of the progress of the performance of the Agreement.

9.3. All delivery times are determined by the Contractor to the best of its knowledge, based on the information available at that time, and are observed as much as possible, but are not fatal terms.

9.4. The Contractor has the right to make partial deliveries.

9.5. Client has the right to adjust functionality of the System. A limitation of functionality does not release Client from its payment obligations.

9.6. The Contractor will, for the fee stated in the Agreement, set up the database once and install the program and any modules at the location for which the license(s) are provided. The System will then be delivered ready for use on location. Upon delivery, all passwords for equipment and software must be available to the Contractor. The Client will ensure this. The Client is also responsible for ensuring that, in the case of external system management, the system management is aware of the installation date and is preferably also present. If this is not the case, any additional installation costs may be charged to the Client by the Contractor.

9.7. Contractor has the right to (temporarily) decommission the System and/or to limit its use if Client fails to comply with an obligation under the Agreement (including these General Terms and Conditions) or acts in conflict with it. Contractor will inform Client of this in advance, unless this cannot reasonably be expected of Contractor. Client's payment obligation will continue to exist during the decommissioning. Commissioning will resume when Client complies with the Agreement again and has paid the fee charged by Contractor for recommissioning.

10. System delivery and acceptance

10.1. The Contractor shall provide the Client with the opportunity to inspect the System before putting it into use and to approve it in writing.

10.2. Deviations in the System compared to what has been agreed that are reasonably of minor importance are not grounds for rejection, discount, termination of the Agreement or compensation.

10.3. If the System is not approved by Client, Client will sufficiently describe in writing why not. Contractor will study errors or deviations from the Agreement found by Client and, where justified, remedy them.

10.4. If the inspection and written approval does not take place within 10 (ten) working days after delivery, the Client is deemed to have fully accepted the Agreement System.

11. Updates

Client is automatically notified of updates to the System and is responsible for installing them as well as using the latest version of the System. Contractor is not responsible or liable for any consequences if Client does not work with the latest version of the Software.

12. Additional work, extra costs

If the Contractor is required to perform more or other Services due to the failure to provide complete, proper and clear data/materials or the failure to provide them on time, due to a changed or incorrect order or briefing, or due to external circumstances, these Services will be charged separately to the Client on the basis of the Contractor's current price.

usual rates. The Contractor will inform the Client of this in advance, unless this is not possible due to circumstances or the nature of the Services does not allow for postponement.

13. Enabling third parties

13.1. If the Contractor itself, at its own expense and risk, engages third parties for the performance of the Agreement, the provisions of these General Terms and Conditions apply, unless separate conditions apply from the third parties, for example with regard to warranty and/or liability.

13.2. The Client shall not engage third parties without consulting the Contractor if this could affect the performance of the Agreement.

14. Intellectual Property Rights (IP Rights)

14.1. All IP rights arising from the Agreement shall belong exclusively to the Contractor and/or its licensors.

14.2. None of the provisions contained in the Agreement or General Terms and Conditions may be construed as a transfer of IP rights, unless such transfer has been expressly agreed in writing. Client is only granted a right of use as stated in these General Terms and Conditions.

14.3. Any use, reproduction or publication of the goods delivered under the Agreement that falls outside the scope of the Agreement or the granted rights of use constitutes an infringement of the intellectual property of the Contractor or its licensors.

14.4. Contractor has the right to have his name mentioned in the System and on, with or in publicity surrounding the result of the Agreement – in the manner customary for that result. Client is not permitted to remove this name without prior written permission from Contractor, or to make the result public or reproduce it without mentioning Contractor's name.

14.5. Contractor is permitted to take technical measures to protect or secure the System. Client is not permitted to remove or delete this security.

14.6. Unless otherwise agreed in writing, the results achieved by the Contractor within the framework of the Agreement shall remain the property of the Contractor. This concerns results such as designs, design sketches, concepts, advice, reports, budgets, estimates, specifications, working drawings, illustrations, photographs, prototypes, models, moulds, (partial) products, films, (audio and video) presentations, source codes and other materials or (electronic) files.

14.7. The Contractor will take action against anyone who in any way infringes its IP rights.

14.8. The Client indemnifies the Contractor against claims relating to IP rights on all materials and/or data provided by the Client that are used in the performance of the Agreement.

15. Usage rights

15.1. Client will be granted use of the System in accordance with the agreed purpose. If no agreements have been made about the purpose, the right of use is limited to the use for which the order was (apparently) issued.

15.2. If the result also relates to works that are subject to third party rights, the rights and obligations imposed by the third party also apply with regard to their use.

15.3. Client shall not modify, reuse or have modified the System in a more extensive or different manner or have it used by others than agreed without prior written permission from Contractor. Conditions may be attached to Contractor's permission, including payment of a fee.

15.4. In the event of a broader or different use that has not been agreed upon, including modification, mutilation or infringement of the provisional or final result, the Contractor shall be entitled to compensation for infringement of his (IP) rights, without loss of other rights. This compensation shall amount to at least three times the compensation agreed for the result.

15.5. The Client is no longer permitted to use the results made available, and any right of use granted to the Client shall lapse, in the following cases:

- a. From the moment that the Client fails to meet his (payment) obligations under the Agreement or fails to do so in full or is otherwise in default;
- b. When the Agreement is terminated (prematurely) for reasons stated in article 5.3 of these General Terms and Conditions.

15.6. Contractor has the right to use the results for its own publicity, acquisition of orders and promotional activities. Contractor will take into account the interests of Client in this.

16. Complaints

Complaints regarding the System and/or Services and/or Products delivered by the Contractor must be communicated to the Contractor in writing as soon as possible, but in any case within 10 (ten) working days after delivery, or if the complaint occurs later, within 10 (ten) working days after discovery thereof. The Contractor is not obliged to handle complaints after this period.

17. Force majeure

17.1. In the event of force majeure, the Contractor may suspend the fulfillment of its obligations or part thereof and the Client may not claim fulfillment or compensation. If the period of force majeure lasts longer than 3 (three) months, both the Contractor and the Client may terminate the Agreement in whole or in part without being liable for compensation. However, if the Contractor has partially fulfilled its obligations before or after the occurrence of the force majeure, the Contractor is entitled to a proportionate part of the compensation.

17.2. Force majeure is understood to mean in any case, but not exclusively: disruptions of the internet or other telecommunications facilities, whether or not as a result of computer crime (e.g. (D)DOS attacks) as well as disruptions of public infrastructure required for the delivery of services, inaccessibility or malfunctioning as a result of server maintenance, power failure,

shortcomings in the performance by third parties on whom the Contractor depends for the provision of the services, defectiveness of items, equipment or materials the use of which the Client has prescribed to the Contractor, the unavailability of one or more employees (due to illness), mobilization, war, terrorist attacks, strikes, stagnation in supply, fire, natural disasters, diseases, epidemics, pandemics, quarantines and government measures.

18. Warranty, Contractor obligations

18.1. The Contractor guarantees the soundness of the System, Services and Products supplied by it to the Client.

18.2 However, the Contractor cannot guarantee unhindered access to the System or that the Services can be used at all times.

18.3 No warranty claims can be made and the Contractor accepts no liability for damage resulting from incorrect use of the System or from use of the System in combination with incorrect or defective hardware.

18.4 If the functionality of the Software is not or to a lesser extent hampered by the presence of errors in the Software, this does not give the Client the right to reject the Software in whole or in part. The Contractor will make every effort to remedy the errors in a subsequent version of the Software.

18.5 The Contractor shall refrain from viewing the Client's Data and shall not make it available to third parties, unless the Client is obliged to do so on the basis of the performance of the Agreement, the law or a court order.

19. Liability

19.1. Contractor shall only be liable to Client in the event of an attributable failure to comply with the Agreement. Except in the event of intent or gross negligence, Contractor's liability shall be limited to what is stipulated in this article.

19.2. In the event of an attributable shortcoming, the Contractor must first be given written notice of default, i.e. a reasonable period to still fulfil obligations or to correct any errors or to limit or eliminate damage. Without such notice of default, no right to compensation arises.

19.3. The liability of Contractor towards Client is limited to direct damage. Direct damage is understood to mean only:

- a. The damage caused to tangible property (material damage);
- b. Costs that the Client has had to incur in order to urge the Contractor to properly fulfil the Agreement;
- c. Costs incurred by the Client to limit, prevent or repair direct damage;
- d. Costs incurred by the Client to ensure that the performance still complies with the Agreement;
- e. Costs incurred to record the cause and extent of the damage, insofar as it concerns direct damage;
- f. Costs incurred in relation to ending or limiting a data breach (as defined in the GDPR).

19.4. Contractor's liability for indirect damage, including in any case consequential damage, lost profits, missed savings, mutilated or lost data or materials or damage due to business stagnation, is excluded.

19.5. The Contractor shall never be liable for damage resulting from incorrect, incomplete or late information provided by the Client or damage resulting from disruptions, errors or delays caused by the Internet, disruptions in the electricity supply, in communication connections or in equipment or for other causes that prevent or delay the use of the System and/or the associated facilities of the Client or third parties.

19.6. Given the large number of nodes on the Internet with human intervention, use of local networks and wireless communication, Contractor must take into account that information obtained or sent via the Internet is freely accessible. Contractor is not liable for damage in any form whatsoever caused by sending confidential or secret information. Contractor is also not liable for security or misuse by third parties of stored data of Client.

19.7. In the event that the Contractor is liable for damages suffered, the amount of compensation will be limited to the amount paid out in the relevant case under the Contractor's applicable liability insurance.

19.8. If for whatever reason no payment is made under the applicable liability insurance of Contractor, any liability of Contractor is limited to the amount paid or to be paid by Client for the Agreement, or at least that part of the Agreement to which the liability relates. Contractor's liability is in any case limited to €75,000.

19.9. The execution of the Agreement by Contractor is made exclusively for the benefit of Client. Third parties may not derive any rights from the content of the Services performed or the Agreement. Client indemnifies Contractor against all claims from third parties arising from or related to the performance of the Agreement.

19.10. The limitation of liability of the Contractor described in this article is also stipulated for the benefit of third parties engaged by the Contractor for the performance of the Agreement.

19.11. Claims relating to alleged liability of the Contractor must be submitted as soon as possible but no later than 12 (twelve) months after the end of the Agreement.

20. Confidentiality

20.1. The parties are obliged to maintain confidentiality of all confidential information, facts and circumstances that arise from each other or from other sources in the context of the quotation and Agreement.

come to the attention of the other Party and of which it can reasonably be understood that disclosure or communication to third parties could cause damage to the Contractor or Client. Third parties involved in the performance of the Agreement will be held to the same confidentiality.

20.2. The obligation of confidentiality shall not apply where the information or data (a) was already in the lawful possession of the receiving Party prior to its receipt from the disclosing Party; (b) was independently developed by the receiving Party without the use of information or data of the disclosing Party; (c) is or becomes publicly known or accessible other than through an act or omission of the receiving Party; or (d) is disclosed to the receiving Party by a third party without breach of any obligation of confidentiality owed to the disclosing Party.

20.3. The confidentiality obligations in this Article shall not apply to the extent that confidential information of the disclosing Party is required to be disclosed by law, regulation, court order or decision of a government agency. The receiving Party shall then use its best efforts to limit the scope of such required disclosure.

21. Personal data

21.1 The Privacy Policy as published on the Contractor's website, see <https://cherry-group.nl/disclaimer-privacy-statement/>, applies to the processing of personal data of the Client by the Contractor when this is the case. The Contractor has the right to change the Privacy Policy from time to time.

21.2 If the Contractor will process personal data in the performance of the Agreement, the General Data Protection Regulation ("GDPR") obliges the Contractor and the Client to make written agreements with regard to the processing to be carried out by the Contractor. Unless the Parties separately conclude a processing agreement, the provisions in this article will apply as the agreements referred to in the GDPR.

21.3 Where the performance of the Agreement involves the processing of personal data as referred to in the GDPR, Contractor shall be considered the (sub-)processor (as defined in the GDPR) on behalf of Client with respect to such personal data. Contractor shall process the personal data exclusively under the authority of Client and for the performance of the Agreement.

21.4 Client shall ensure that it has obtained all necessary consents and authorizations required to process and store its personal data under the Services Agreement, whereby Contractor shall not be responsible or liable to Client for obtaining such consents or authorizations on its behalf. Client warrants that it will process, store and use its personal data in accordance with all applicable laws, regulations and codes of conduct.

21.5 The Contractor shall take appropriate technical and organizational measures against unauthorized or unlawful processing of data entered or stored by the Client on the basis of the Agreement and against unintentional loss or destruction or damage of such data.

21.6 Unless expressly provided otherwise in the Agreement or to the extent reasonably necessary to enable Contractor to meet its obligations under the Agreement, Contractor will not view any data that Client has placed with Contractor, and Contractor will not make any data available to third parties, unless Contractor is required to do so by law, regulation, court order or decision of a government agency.

21.7 The Contractor may process personal data in countries within the European Union as well as outside it, provided that in the latter case sufficient guarantees are provided pursuant to Article 46 GDPR for the protection of personal data.

21.8 Client shall fully indemnify Contractor upon request against all claims, costs, losses, damages, expenses, charges, actions, fines and/or sanctions which Contractor may make or suffer or which may be brought against Contractor or imposed on Contractor in relation to data processed by Client and/or Contractor in the context of the Agreement (including as a result of any claim or allegation that such processing is a breach of local and/or international data protection legislation and/or other legislation relating to the processing of personal data).

22. Applicable law and disputes

22.1 Dutch law applies to all orders, agreements and legal acts between the Client and the Contractor.

22.2 The applicability of the Vienna Sales Convention is expressly excluded.

22.3 The Client and Contractor will preferably resolve their disputes amicably.

22.4 If the Client and Contractor cannot resolve a dispute amicably within a reasonable period of time, the dispute may be submitted to the court in the district where the Contractor is established, unless mandatory law prescribes a different court.

23. Other provisions

23.1. The Client is not permitted to transfer any right under the Agreement to a third party other than in the event of a transfer of its entire business or with the written consent of the Contractor.

23.2. If there is any conflict between these General Terms and Conditions and the Agreement, the provisions of the Agreement shall apply in that regard.

23.3. If a provision of these General Terms and Conditions and/or the Agreement is null and void or is annulled, the other provisions of the General Terms and Conditions and/or the Agreement will remain in full force. In that case, the parties will consult with each other with the aim of agreeing on new provisions to replace the null and void or voidable provisions, whereby the purpose and scope of the null and/or annulled provisions will be taken into account as much as possible.

23.4. If the Contractor does not always request strict compliance with these General Terms and Conditions, this does not mean that the provisions thereof do not apply, or that the Contractor would lose the right to request strict compliance with the provisions of these General Terms and Conditions in other cases.