



September 2024

# General Terms and Conditions

These Terms and Conditions are divided into three sections. The first section concerns the Terms and Conditions, which always apply. The second section concerns Additional Conditions, which only apply if you purchase the specific corresponding the services.

Please be aware that this translation is for your convenience only; the original Dutch text is always leading in case of conflicts between the original Dutch text and this English translation.

## **1. GENERAL CONDITIONS**

### **1. Who are we and what is the purpose of this document?**

- 1.1. We are Esprit ICT or one or more of its group companies.
- 1.2. In these Terms and Conditions, we agree the basic rules that apply to the relationship between you (and your affiliated companies) and us, for all products and services that we provide to you. These rules also apply to our quotes and offers. These quotes and offers are without obligation, unless we have agreed otherwise with you. Your own terms and conditions do not apply.
- 1.3. We provide our services and products only on the basis an order that you have placed with us. This is only possible if we accept a signed order from you or by making oral agreements. It may be that we have made agreements in the order that deviate from these basic rules. In that case, the agreements in the order will prevail.
- 1.4. We may amend the basic rules in these Terms and Conditions from time to time. We will of course inform you about this. Every change will also apply to you, unless you inform us that you do not agree with a change within a reasonable period. If it concerns an important change that you do not accept, we may terminate the order. As regards price changes, we also make clear agreements further on in these Terms and Conditions.

### **2. What do we do for you and how?**

#### **What do we do?**

- 2.1. We provide the products or services, as specified in the order. We will of course do our best to perform the services with care, taking into account your needs and wishes. We will always make all reasonable efforts to achieve the agreed results. If we guarantee a certain result, we will describe this explicitly in the order.
- 2.2. The orders will end automatically as soon as the agreed products and services have been provided. If a term has been agreed in the order for the provision of the services, that term will be extended by periods of one year, unless the other agreements have been made in the order or you or we terminate the order at least two months before the end of the term.
- 2.3. As a rule, we follow our own work methods and we are not obliged to follow your instructions. If, however, we follow your directions or requests, we can charge you for the extra time that this takes based on our standard rates.
- 2.4. If we agree with you that the services will be performed by a certain person, we will do our best to ensure that this person is and remains available. We will inform you if this is not possible and be able to replace this person, without additional costs, with someone who has similar qualifications.

### **What about the schedule and deadlines?**

- 2.5. We will endeavour to meet the agreed schedule and deadlines. If it is clear that the schedule cannot be met, we will inform you about this and propose a new schedule. In that case, you must allow us a reasonable term to minimise the delay.
- 2.6. It may be that we carry out the work in phases. We may postpone the work for subsequent phases until the results of the previous phase has been approved or paid for.

### **Which user rights will be acquired?**

- 2.7. All intellectual property rights to the products and services that we provide are vested in us or in our suppliers and licensors.
- 2.8. We can (only expressly and in writing) agree with you that you will only acquire the intellectual property right to products developed specifically for you. We always reserve the intellectual property right to continue using the parts or materials that form the basis of these specific products, for ourselves or third parties. This does not restrict us from developing and using a similar product, unless other agreements have been made in the order.
- 2.9. In any case, you will acquire from us the right to use the products supplied by us for the purposes that have been described in the order for the duration of the order or the time that is specified in the order. This right is exclusive and cannot be transferred, passed on or pledged.

### **How is the security arranged?**

- 2.10. We will secure your information in accordance with the specifications agreed with you. If no specifications have been provided, our security will be at a reasonably appropriate level, in view of current technology, the sensitivity of the data and the related costs.
- 2.11. We strive to provide good security, but cannot promise that the security is effective under all circumstances.
- 2.12. Give passwords, codes and certificates only to authorised staff in your own organisation and treat them confidentiality. We may change codes and certificates.
- 2.13. To the extent that this does not fall under the services we provide, you should secure your systems and infrastructure in an appropriate manner and always use up-to-date anti-virus and other security programmes.

### **3. What do we expect from you?**

- 3.1. To enable the work to succeed, good collaboration is necessary. If we make a reasonable request for you to help us, you must provide all the assistance that is required. For example, provide the necessary facilities for our employees working at your location and ensure that these facilities meet the legal requirements. You will not charge anything for these facilities.
- 3.2. We are dependent on information from you for the performance our services. Therefore, you must provide us with all the relevant information we request. But even if we do not specifically request it, an effective partnership requires that you give us all the information you suspect may be relevant for us. You know that we trust that your information, notifications, designs, specifications and other statements are complete and correct.
- 3.3. If you provide us with software, equipment or other resources, you must make sure that all the licences or approvals we need for the performance of our work are in place.

- 3.4. You are also responsible for use thereof by and giving instructions to users. Amongst other things, this means that you must ensure that your staff are well-trained before they use the products and services provided by us. If required, we can provide such training for you.
- 3.5. It may be that you would like our staff working at your location to comply with your internal regulations and safety rules. We will instruct our staff to observe such rules, provided that you communicate the rules with us and our staff in advance.

#### **4. What must we both do?**

##### **How will we communicate during our partnership?**

- 4.1. To make the communication as smooth as possible, you must appoint a person to act as a direct point of contact for each order. This contact person must have the necessary experience, knowledge and an understanding of your objectives.
- 4.2. We will update your contact person on the performance of the work on a regular basis.
- 4.3. If we want to publish information about our partnership, we will first consult with you.

##### **How will confidential information be handled?**

- 4.4. Confidential information includes details of which the recipient knows or ought to know that this is of a confidential nature. For example, information or systems that may contain our, our suppliers' or our producers' company secrets. This of course also includes information that has been designated as confidential.
- 4.5. Confidential information may only ever be used for the purpose for which the information has been obtained. The recipient must ensure that confidential information remains secret. This will ensure that such information does not fall into the hands of third parties or be used or misused by someone.
- 4.6. It may be that we share confidential information with third parties if this is provided in a court decision or a legal provision. It may also be that we share confidential information with third parties if this is necessary for a good performance of the agreement.

##### **Can staff be transferred?**

- 4.7. Yes, they can. It may be that staff working at either party would like to transfer to the other party.
- 4.8. Conditions do however apply to the transfer of staff during the order and for one year after it ends. In the event of a transfer of staff, written permission must be obtained from the party at which the staff was employed. Permission is also required if staff are engaged indirectly (via third parties). Conditions may be attached to such permission. Different conditions apply to hiring of staff, as explained below (see section 9).

#### **5. What about the finances?**

##### **What will we charge you?**

- 5.1. You will owe us a fee for our services. If no specific prices have been agreed in the order, we will use our standard rates. We will be happy to send you the latest version of these rates on request.

- 5.2. For user rights and licences, you must pay for the relevant units, such as number of users, number of servers or virtual machines. You are responsible for paying for sufficient licences and user rights.
- 5.3. We may have to pay taxes (such as VAT), levies and suchlike as a result of our relationship with you. You must reimburse us for these and they will not be included in the price.
- 5.4. Cost estimates, budgets and proposed budgets are only estimates. No rights can be derived therefrom, unless we have agreed to this expressly and in writing.
- 5.5. If we provide you with more services or products than has been agreed in the original order, for example because you have asked or given permission for this or in the case of mitigation of security risks or incidents, the standard rate will be charged, except if specific agreements have been made.

#### **How can we change the rate?**

- 5.6. We will always inform you of a price change in advance, as much as reasonably possible.
- 5.7. We can change the price for our services on a three months prior notice, unless we have expressly agreed with you that the price will not be adjusted during a certain period. If you do not agree to a price change for our own services, you can terminate the order effective from the date on which the new prices take effect. A notice period of 30 days applies in that case. If the order is terminated, you must reimburse the costs we have incurred and investments we have made in the context of your order.
- 5.8. If you purchase and pay for products, software or services from another supplier via us, we can change the price for this/these immediately to pass on a price change by that other supplier. The termination option described above does not apply in that case.
- 5.9. We may adjust the price each year in line with the increase of our cost structure. You may not terminate the order in that case either.

#### **When do you have to pay?**

- 5.10. You must pay our invoices within 30 days from the invoice date.

#### **What if you don't pay?**

- 5.11. We will send you a reminder for the outstanding amount and a period within which to pay this amount. If you still do not pay, we may suspend our obligations to you. In that case, we may also choose to terminate the order.
- 5.12. If you do not pay, we may refer the debt for collection by a third party. In that case, you will also have to pay the judicial and extrajudicial costs of recovery and costs for experts.

### **6. What guarantees do you have with Esprit ICT?**

#### **What guarantees do we give you?**

- 6.1. We will offer you a guarantee for the third-party products or services we provide, as given by the producer.
- 6.2. As regards the services provided by us, we guarantee you that:
  - we will perform our obligations with care,
  - we will engage sufficient skilled staff, and
  - we will endeavour to achieve the agreed results.

- 6.3. We cannot of course guarantee that our products can be used with other systems that have not originated from us.
- 6.4. Defects that fall under the guarantee will be fixed by us free of charge. We will let you know where and when this fix will take place. If necessary, we will use temporary solutions, software bypasses or problem-avoiding restrictions to this end. If components, owned by you, need to be replaced, the new components will become your property and the old components ours.
- 6.5. The guarantee can also become ineffective. The guarantee will become ineffective if you or someone you have engaged:
  - uses our products or services in an unprofessional way;
  - has made changes or carried out other work (except if you have agreed these changes or work with us); or
  - has used the product or service in a way that is not stated in the documentation.

**What indemnifications do you offer us, and we you?**

- 6.6. We indemnify you against all third-party claims that are based on the position that our products or services infringe on the intellectual property of others. This only applies if you inform us that there is a claim as soon as possible, leave the management thereof entirely to us and help us by giving us the necessary authorisations and information.
- 6.7. We do not indemnify you if the infringement relates to:
  - materials that you have provided to us or changes;
  - changes that you, or a third party on your behalf, has made without our written permission; or
  - how you use our products or services is not consistent with the documentation.
- 6.8. You indemnify us against:
  - third-party claims that are based on the position that our use of facilities, materials or products that you have provided to us infringes on the rights of a third party;
  - claims by third parties that suffer damage or loss in the performance of the agreement as a result of your acts or omissions or unsafe situations in your organization;
  - claims by third parties that are based on a violation of the laws and regulations on the processing of personal data. You are not required to indemnify us if you can prove that we are exclusively to blame for the loss or damage.
- 6.9. Indemnification means not only that legal action must be taken for the other party, but also that the other party must be compensated.

**When is ownership transferred? And when the risk?**

- 6.10. The ownership of the goods delivered will be transferred when you have paid us the full amount that you owe us.
- 6.11. If you are a retailer, you may supply and sell on goods with retention of title to the extent that this falls within the normal running of your business.

- 6.12. We may retain software developed or received or other products and information until you have paid the full amount that we have agreed with you, even if we were to deliver these to you under the order.
- 6.13. You bear the risk for products and services once we have provided them to you.

#### **What do we do with personal data?**

- 6.14. In the context of our services, it may occur that we process some of your personal data, for example concerning your staff or customers. If this is the case, we will do this as your processor. You are responsible for the processing of this personal data.
- 6.15. We will do our best to store your personal data safely and therefore in any case take appropriate, technical and organisational measures. These are the measures described in the order. If nothing had been agreed in the order in that respect, we will use our standard measures. If you would like to know which measures we will take and how we will protect your data, we would be happy to explain.
- 6.16. You must ensure that you and your employees fulfil all the obligations under the law (the Dutch Personal Data Protection Act and – as per 28th of May 2018 – the General Data Protection Regulation) and other relevant regulations. If we have questions about this, you must send us the information that we need. We will assist you with regard to these obligations, insofar as technically possible. If we have to incur costs for this, these will subsequently be charged at the standard rates.
- 6.17. If it is clear that we process personal data for you, we will do so on the basis of a separate processing agreement.

#### **May you transfer your rights and obligations?**

- 6.18. Yes, you may transfer, sell or pledge your rights and obligations if you have obtained our permission to do so. We will only refuse to give our permission with good reason and in that case, we may attach conditions to our permission.

### **7. What if something still goes wrong?**

#### **What if you believe that we are not meeting our agreements?**

- 7.1. If you believe that we are not meeting or have not met our agreements, please let us know as soon as possible and give us as much detailed information as possible. In such case you must always give us a reasonable period to comply with the agreements. If a defect falls within our responsibility and we have not repaired it within the repair period, we are liable for the damage or loss arising directly from the defect.
- 7.2. If it remains impossible for us to meet our obligations, you may hold us liable for the loss or damage arising directly therefrom.

#### **What loss or damage will we compensate?**

- 7.3. If we are liable, we will compensate your direct loss or damage. This only includes:
  - the damage to your software, equipment and other goods, including in any case damage and non- or defective functioning’;

- the reasonable costs that you have had to incur because it was necessary to keep old systems and facilities operational for longer. Savings that have arisen because of this delay must however be deducted from these costs;
  - the reasonable costs that you, after our approval, have incurred to determine the cause and extent of the direct damage or loss.
- 7.4. We will compensate your damage or loss up to the amount that you have paid us for the order. If an order runs for longer than one year, we will compensate your damage or loss up to an amount of the agreed compensation for our products and services for one year. A maximum of €500,000 applies in both cases.
- 7.5. We cannot be held liable for loss or damage other than direct loss or damage, unless the loss or damage is a result of intent or deliberate recklessness of a manager of Esprit ICT.
- 7.6. We will compensate your loss or damage resulting in bodily injury up to a maximum of €1,250,000.
- 7.7. We cannot be held liable for loss or damage resulting from network disruptions caused by circumstances beyond our control.

#### **What about loss or damage insurance?**

- 7.8. Our insurance has a maximum cover of €5,000,000 for each event that we are liable for, up to a maximum of €10,000,000 per year. We will send you a certificate of our insurance on request. We will not of course amend this insurance to your detriment without prior consultation.

#### **May payments be postponed or set off?**

- 7.9. If something goes wrong, we will try to find a solution together with you. You are not allowed to delay or set off any payments in such situation.

#### **How can the relationship or an order be terminated?**

- 7.10. An order that has entered into for a certain period cannot be terminated early, unless we mutually agree on the (financial) consequences of such early termination. An order that has been entered into for an indeterminate period may however be terminated. A notice period of two months applies in that case.
- 7.11. An order may be terminated if the legal conditions have been met. A termination only applies to the future. All fees for our services up to the date of the termination must be paid.
- 7.12. If you are declared bankrupt or granted suspension payments, we can terminate or suspend the current orders with immediate effect and you will no longer be able to use the software or websites, and access to our services will end. This will happen automatically; we are not required to warn you.

#### **How will we resolve disputes with one another?**

- 7.13. We want you to be satisfied with our products and services. Things can go differently sometimes however. If you are not satisfied, please let us know about your complaint. We will work with you to see whether we can offer an appropriate solution.
- 7.14. If we are not able to find a solution together, disputes can be brought before the court. Disputes between you and us can only be brought before the District Court of Utrecht. This applies if you involve the court, but also if we do so.

- 7.15. The court will only apply Dutch law to our dispute, without the rules concerning conflicts of law. We exclude the provisions of the Vienna Sales Convention.

## **2. ADDITIONAL PROVISIONS**

### **8. Third-party services**

- 8.1. It may be that you purchase services from us that we, in turn, purchase from third parties. For example, the Software as a Service-services of Microsoft (Office 365), Citrix, certain support functions from hardware suppliers or data connections from telecom service suppliers. We will clearly specify any services that involve third-party services in the order.
- 8.2. It goes without saying that in such situations we cannot make agreements with you or promises to you that go beyond what the relevant provider offers us. The conditions that these providers use will in that case also apply directly to you. We will be happy to send you the providers' conditions that are relevant for you on request.

### **9. Hiring of staff**

- 9.1. We will ensure that the employee is available for the agreed period, except during normal holidays, sick leave or in the event he or she leaves the company.
- 9.2. Our employee will only carry out the work described in the order.
- 9.3. Even if we have made agreements for the deployment of a certain person, we may replace that person by one or more persons with similar qualifications. We will discuss this with you beforehand. You may ask us to replace our employee if the employee does not meet the agreed quality requirements; or the employee is sick for a long period of time.
- 9.4. We will process your request, but we cannot guarantee that replacement is immediately possible.
- 9.5. The employee will be provided to you for eight (8) work hours per day. You must ensure that the same work hours and terms of employment apply to him or her as is customary within your organisation. If the employee is required to work overtime, we will charge you our overtime rate.
- 9.6. We will charge you for the costs that the employee has to incur during his work for you.
- 9.7. The employee will work under our supervision and management.
- 9.8. You may not acquire or directly hire the employee from us or have him or her carry out work for you via a third party during and for one year after the order.
- 9.9. We will pay the income tax, social security contributions and VAT related to the deployment, needless to say in a timely manner.

### **10. Data centre services**

- 10.1. Data centres mean all forms of storage of your data in our environment and/or with our partner Uniserver (for example, our cloud services), or in an environment on your premises provided by us (on-premises services).
- 10.2. To begin with, it is important to note that the provisions of Clause 8 above (on third-party services) may also apply in this case.

- 10.3. You remain responsible for the functional and technical management of your software and data. You must comply with the preconditions and requirements stipulated by us. You are obliged to insure, or ascertain the insurance of, any physical components (e.g. servers) that are not owned by Esprit ICT.
- 10.4. We will provide back-up, disaster recover or recovery services only if stated in the order.
- 10.5. When we carry out maintenance to the infrastructure, we may disable all or part of the system temporarily. This will not take longer than is necessary and will be performed outside office hours wherever possible. We will inform you of such maintenance in advance, unless it concerns urgent maintenance.
- 10.6. If a dispute arises between you and a third party (for example, on the ownership of the data that you have stored with or via us), you cannot expect us to form an opinion on this or become involved. You must resolve your dispute with this party independently and provide us with full and correct information on the matter.

## **11. Sale of equipment**

- 11.1. The equipment that we sell you meets the specific requirements described in the order. We will only supply assembly and installation materials, software and other accessories if this has been described in the order.
- 11.2. If we have agreed that we are responsible for the installation or configuration, any data conversion will not be included. If a permit is required, you must obtain this yourself.
- 11.3. The costs for transport, insurance, rigging and hoisting, rental of temporary facilities and other costs are not included in the sale price. The same applies to the removal of old equipment. Unless agreed otherwise in the order, obviously.
- 11.4. You must ensure that the environment in which the software is placed meets the requirements, including temperature, humidity and technical environmental requirements. The structural work that is carried out by third parties is also your responsibility.

## **12. Equipment rental**

- 12.1. In principle, we rent out equipment without accessories. The rental of equipment will commence upon delivery to you. You may only use the equipment as we have agreed in the order. You are responsible for the assembly, installation and further set-up of the equipment. You must use the equipment carefully and maintain it properly during the period that we lease it to you.
- 12.2. You may inspect the equipment for defects before or upon delivery. We may ask you to sign a report of this inspection before we provide the equipment to you. If there are defects, we will replace or repair the equipment. If you do not cooperate in the inspection of the equipment to be rented, we may carry out an inspection ourselves. The report of this inspection is then also binding for you. If no inspection takes place at all, the equipment will be deemed to have been received in good condition.
- 12.3. At the end of the rental period, you must return the equipment to us in its original condition. You must bear the costs of transporting the equipment. You must cooperate in a final inspection before or no later than the last work day of the rental period. We will draw up a signed report with you containing the findings. If you do not cooperate in this, we may carry out the final inspection ourselves and a report drawn up by us will also be binding for you. You must pay for any damage to the equipment. This damage may comprise the costs for repair and the temporary unavailability of the equipment.

12.4. If attachment is levied on the equipment rented out by us, you must inform of this immediately in writing. You must immediately inform the bailiff levying the attachment of our lease agreement.

**13. Equipment maintenance**

13.1. If the equipment has been set up in the Netherlands, we will carry out the maintenance described in the order. You will not receive a replacement if we have to take away the equipment for maintenance, unless we make agreements with you on this.

13.2. In the order, we will agree with you which service levels we use and which maintenance services we carry out for you. If we have not made any specific agreements on this, we will in any case endeavour to resolve problems. You must immediately inform us of the problem in detail. You must also demonstrate and reproduce the problem before we try to resolve it.

13.3. Before we start the maintenance, you must make a back-up of your details.

13.4. If the equipment is connected to other equipment or software, it is possible that this connection will be tested. You must keep the equipment or software, the test procedures and information carriers available for this purpose.

13.5. If we are required to replace, overhaul or modify components, or if we have to move or reinstall equipment, we will charge you the costs for this on a separate invoice. This also applies to the costs of repairing breakdowns that have been caused, wholly or in part, by repair work by someone else.

13.6. We are not required to carry out work if the disruption is related to user errors, incorrect use of the equipment or external circumstances. Nor are we required to carry our research or repair that is related to equipment or to changes to equipment that have not been made by us or on our behalf, if you do not maintain the equipment in a timely manner or if the use conflicts with the agreed conditions.



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