

General terms and conditions

Tweede golf B.V.

Version: 2.1

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Article 1 - Definitions

In these general terms and conditions, the following terms shall have the following meanings:

1. Tweede Golf B.V. (hereinafter referred to as 'Tweede Golf'): the private company with the name 'Tweede Golf', with its registered office at Castellastraat 26 (6512 EX) in the city of Nijmegen. Registered in the Chamber of Commerce ('KvK') under the number 092021.
2. Client: the party entering into - or negotiating an Agreement with Tweede Golf;
3. Party/Parties: the Client and Tweede Golf together or each individually;
4. Agreement: any Agreement between Tweede Golf and the Client, which is aimed at providing Services and/or creating Works by Tweede Golf;
5. In Writing/Written: notification, either by email, post, fax or by an electronic device;
6. Services: the service(s) to be performed by Tweede Golf on behalf of the Client as specified in the Agreement. This includes, but is not limited to activities in the field of software development services, hosting, team augmentation and the organisation of training sessions and/or workshops.
7. Work(s): all works developed by Tweede Golf, such as (for example) websites and (web) applications, software, designs, layouts, documentation, advice, reports and other products of the mind, as well as preparatory material thereof and files or data carriers (whether or not encoded) on which the Works are located.

Article 2 - General provisions

1. This Agreement leads to an obligation of best-effort and not an obligation of result. This may be deviated from if agreed In Writing in the offer.
2. Unless expressly agreed upon In Writing and otherwise, the applicability of other (general) terms and conditions is excluded.
3. Tweede Golf will always execute the Agreement independently. If Tweede Golf has a need to engage third parties, Tweede Golf shall promptly notify the Client.
4. If an offer made by Tweede Golf has a limited period of validity or is made subject to conditions, then this will be explicitly stated in the offer.
5. Obvious errors or mistakes concerning, for example, the amounts displayed in either Agreements, statements by or offers from Tweede Golf do not bind Tweede Golf.

Article 3 - The agreement

1. The Agreement is concluded at the moment that the Client accepts the offer and fulfills the conditions, if any, laid down herein.
2. Tweede Golf will make every effort to always meet agreed upon deadlines. If there is a (suspected) delay, Tweede Golf will notify the Client immediately. If a deadline is exceeded, this shall not entitle the Client to compensation.

Article 4 - Suspension and Termination of the Agreement

1. Tweede Golf reserves the right not to execute the Agreement if Tweede Golf has reasonable grounds to do so. Reasonable grounds include, but are not limited to, doubts on the part of Tweede Golf as to whether the Client is able to meet his (financial) obligations. If Tweede Golf refuses to execute, they will inform the Client In Writing of this refusal within a reasonable time, stating its motivation.
2. If the Client does not fulfill one or more of its obligations, or does not fulfill them on time or adequately, is declared bankrupt, applies for (temporary) suspension of payments and/or deferral of payments, proceeds to liquidate its business, or if its assets are seized in whole or in part, Tweede Golf has the right to suspend the execution of the Agreement or to terminate and/or dissolve the Agreement by operation of law and without prior notice of default in whole or in part by means of a Written statement, all this at its discretion and always without prejudice to any of its rights to compensation for costs, damages and interest.
3. If the Agreement is terminated on the grounds of force majeure, Tweede Golf is entitled to payment for the hours already worked, or the investments already made at the time of the termination of the Agreement. If the relevant offer was fixed price, this amount will be calculated based on the most current hourly rate of Tweede Golf and the hours already worked and the investments already made at the time of the termination of the Agreement.

Article 5 – Workshop and training

1. If there is an Agreement for the purpose of conducting a workshop or training by Tweede Golf, Tweede Golf is allowed to cancel the workshop or training in case the minimum number of participants specified in the Offer are not confirmed before the date specified in the Offer.
2. If there is an Agreement for the purpose of conducting a workshop or training by Tweede Golf, the following requirements regarding cancellation by the Client apply:
 - a. In case of cancellation by the Client within 5 (five) days before the start of the workshop/ training, 100% of the amount stated in the offer will be invoiced to the Client by Tweede Golf;
 - b. In case of cancellation between 5 (five) and 10 (ten) days before the start of the workshop/ training, 60% of the amount stated in the offer will be invoiced to the Client by Tweede Golf;
 - c. In case of cancellation before 10 (ten) days before the start of the workshop/training, only the costs reasonably incurred by Tweede Golf will be invoiced to the Client by Tweede Golf.

Article 6 - Liability

1. Tweede Golf is not liable for indirect and direct damages. Not excluded is the liability of Tweede Golf for damages resulting from intent or gross negligence of Tweede Golf.
2. If Tweede Golf is nevertheless liable, then this only concerns direct damage. Tweede Golf's total liability will be limited to compensation for damage up to the amount of the fee (excluding VAT) stipulated for the Agreement.
3. If the Agreement is an agreement with a term of more than six months, the fee stipulated for that contract will be set at the total of the fees (excluding VAT) for the past six months.
4. The amount of the compensation shall never exceed the amount paid out by the liability insurance.
5. Direct damage is understood to mean:
 - a. Reasonable costs that the Client would have to make to substitute the work of Tweede Golf in order to meet the intended result of the Agreement; however, this replacement damage will not be compensated if the Agreement is dissolved by or at the suit of the Client;
 - b. Reasonable costs incurred by the Client in being forced to keep its old system or systems and associated facilities operational for a longer period because Tweede Golf failed to deliver on a final delivery date that was binding for it, less any savings resulting from the delayed delivery;
 - c. Reasonable costs incurred in determining the cause and extent of the damage insofar as the determination relates to damage within the meaning of these terms and conditions;
 - d. Reasonable costs incurred to prevent or limit damage insofar as the Client demonstrates that these costs have led to limitation of damage within the meaning of these terms and conditions.
6. The Client indemnifies Tweede Golf for any claims by third Parties, who suffer damage in connection with the execution of the Agreement.
7. The existence of any right to compensation is always conditional upon the Client reporting the damage In Writing to Tweede Golf as soon as possible after the damage arose. Each claim for compensation against Tweede Golf expires by the mere lapse of 12 (twelve) months after the claim arose.
8. Tweede Golf is not liable for damage of any kind, when Tweede Golf has relied on incorrect and/or incomplete information provided by the Client or when the Client delivered such data late.
9. Tweede Golf is not liable or responsible for decision-making by the Client. Even in the event that Tweede Golf provides the Client with advice (for instance, during a workshop), the Client remains fully responsible and liable for the decision-making.

Article 7 - Force majeure

1. Supplementary to the provisions of Article 6:75 of the Dutch Civil Code a failure of Tweede Golf to comply with any obligation towards the Client cannot be blamed on Tweede Golf in the event of a circumstance beyond its control that wholly or partially prevents it from complying with its obligations towards the Client or that in all reasonableness prevents Tweede Golf from fulfilling its obligations.

2. If a situation as referred to in paragraph 1 of this Article arises that prevents Tweede Golf from meeting its obligations towards the Client, those obligations will be suspended for as long as Tweede Golf is unable to meet them. If the situation referred to in the preceding sentence has lasted 30 (thirty) calendar days or more, both Parties are entitled to terminate the Agreement in whole or in part by Written notice. In that case Tweede Golf is not liable to pay any damage, even if Tweede Golf enjoys any advantage due to the force majeure situation.

Article 8 - Fee/Price

1. All amounts are in Euros and exclusive of sales tax and other government levies, unless otherwise agreed.
2. Supplier reserves the right to annually increase its fees in accordance with the "Zakelijke en ICT-dienstverlening; omzetontwikkeling, index 2015=100".
3. Discounts and quoted amounts do not automatically apply to future orders.

Article 9 - Payment and invoicing

1. Payment is due within 30 (thirty) days after the invoice date. Hours incurred are billed monthly.
2. If the Client does not meet its payment obligation(s) in time, they will be notified, In Writing, by Tweede Golf and the Client will be given a period of 7 (seven) days to meet its payment obligations. If payment is not made within this seven-day period, the Client will be in default and will owe the statutory (commercial) interest on the outstanding amount. Furthermore, Tweede Golf is entitled to charge extrajudicial collection costs and may postpone any Services still to be performed and/or Works to be delivered until Client proceeds to pay the amount due by him in full.
3. In the event of (a reasonable prospect of) bankruptcy, liquidation or suspension of payments or a debt restructuring within the framework of the WSNP, the claims of Tweede Golf on the Client and the obligations of the Client towards Tweede Golf are immediately due and payable.

Article 10 - Complaints

1. The Client can no longer invoke a defect in the performance of the Service/ Works and/or a failure to execute on the Agreement by Tweede Golf, if the Client has not protested to Tweede Golf within 2 (two) months of discovering the defect or when it should reasonably have discovered it.
2. Complaints must be made known to Tweede Golf In Writing to the designated contact person within Tweede Golf, and clearly described so that Tweede Golf is reasonably able to act on the complaint.
3. Tweede Golf has at least 4 (four) weeks to resolve the complaint in mutual consultation.
4. If a complaint is not reported to Tweede Golf within the time limits mentioned in the previous paragraphs, the Service/ Work is deemed to comply with the Agreement and to function in accordance with the Agreement.
5. Complaints do not suspend the Client's payment obligation.

Article 11 - Transfer

1. Rights of both Parties under this Agreement cannot be transferred without the prior Written consent of Tweede Golf or the Client. This provision is a clause with effect under property law as referred to in Article 3:83 (2) of the Dutch Civil Code.

Article 12 - Intellectual Property

General provisions Intellectual Property:

1. If the Parties have not agreed upon otherwise In Writing in the Agreement, then all intellectual property rights relating to and/or resulting from the Services/ Works provided by Tweede Golf, are property of Tweede Golf. The Client will in this case only obtain the non-exclusive and non-transferable user rights that are explicitly granted by these terms and conditions and the law. Any other or further rights of the Client are excluded, unless otherwise agreed upon In Writing. Open-source software will never be able to be transferred by Tweede Golf to Client.
2. Tweede Golf reserves the right to use the knowledge acquired in the execution of the Services/ Work for other purposes, provided that no confidential information of the Client is provided to third Parties.
3. Unless otherwise agreed, the Client is not authorized to grant sub-licenses to third Parties.
4. The Client indemnifies Tweede Golf for the claims of third Parties concerning intellectual property rights.
5. If the Client acts in violation of this article, the Client will owe an immediately payable penalty equal to three times the stipulated amount for that Agreement, without prejudice to Tweede Golf's right to compensation.
6. Only if agreed In Writing in the offer are the intellectual property rights relating to and/or resulting from the Services/ Works provided by Tweede Golf transferred to Client.
7. The transfer of intellectual property is held under retention of title. The intellectual property is transferred only when the Client fulfills its full payment obligation. No transfer of property will take place without full payment by Client to Tweede Golf. Such full payment also includes any collection costs and interest.

Article 13 - Personality Rights

1. The name of Tweede Golf must be clearly mentioned in connection with any Work used, or must be included in the publication with a reference to the Work, unless the Parties agree otherwise.
2. When reproducing and publishing a Work, the Client will at all times respect the personality rights of Tweede Golf in accordance with Article 25, paragraph 1 of the Dutch Copyright Act (Auteurswet). Tweede Golf will explicitly not waive its personality rights, unless Parties agree otherwise In Writing.
3. For each infringement of the personality rights to which Tweede Golf is entitled under Article 25 of the Copyright Act, including the right to mention a name, the Client will owe immediately due and payable compensation of one time the stipulated amount for that Agreement, without losing any right to compensation of other damage suffered

(including the right to compensation of all direct and indirect damage and all actual judicial and extrajudicial costs).

Article 14 - Confidentiality

1. Both Parties are obliged to keep all confidential information, which Parties have obtained from one another as part of the Agreement, confidential. Information is confidential if this is communicated by Parties or if this reasonably follows from the nature of the information.
2. The obligations under this article shall survive termination of the Agreement for any reason, and for as long as the party providing the information can reasonably claim the confidentiality of the information.

Article 15 - Employee clause

1. During the term of the Agreement as well as 1 (one) year after its termination, each of the Parties shall not, without the prior Written consent of Tweede Golf or the Client, take on employees of Tweede Golf or the Client, directly or indirectly.
2. In the event of violation of the provisions of article 15 (1) the Client shall be liable to pay an immediately due and payable penalty of EUR 10,000 for each violation established without notice of default being required, as well as an immediately due and payable penalty of EUR 500 for each day that the violation continues. The foregoing without prejudice to the right to claim other damages.

Article 16 - Applicable law

1. Agreements between Tweede Golf and the Client to which these general terms and conditions apply will be governed exclusively by Dutch law.
2. Disputes between Parties will be resolved as much as possible through proper consultation. When proper consultation does not work, the Parties always resort first to mediation in which the mediator role is fulfilled by an independent third party appointed by the parties. If mediation does not offer a solution the dispute between the Client and Tweede Golf will be settled exclusively by the competent court in the district where Tweede Golf has its registered office.

Article 17 - Survival

1. The provisions of the general conditions and the Agreement which are intended to remain in force after termination of the Agreement shall remain in full force after the termination of the Agreement.

Article 18 - Amendment or supplementation

1. Deviations from or additions to these general terms and conditions shall only be valid if expressly agreed In Writing.
2. Tweede Golf is entitled to unilaterally amend or supplement these general terms and conditions. In that case, Tweede Golf will inform the Client in time of the changes or additions.
3. There will be a minimum of 30 (thirty) days between this notification and the entry into force of the amended or supplemented condition.