



General terms and conditions

These terms and conditions apply to all offers and agreements by ACTIVO, hereinafter to be referred to as: "supplier".

1.0. In these terms and conditions, the following definitions are used:

- 1.1. Supplier: ACTIVO.
- 1.2. Client: the natural or legal person(s), who commission(s) ACTIVO to offer support in data communication, in the form of performing activities and/or delivery of goods and/or services.
- 1.3. Quotation: the offer made by ACTIVO to client containing the conditions under which ACTIVO is willing to enter into an agreement with client, to offer support in data communication, in the form of performing activities and/or delivery of goods and/or services.
- 1.4 Agreement: the agreement by which ACTIVO commits itself to offer client data communication support outside, in the form of performing activities and/or delivery of goods and/or services, not within the context of an employment relationship.

2.0. Applicability terms and conditions

- 2.1. These general terms and conditions of sale and delivery apply to all offers and agreements whereby supplier delivers activities, goods and/or services of whatever nature, to client, also when such goods and/or services are not further described in these terms and conditions. Deviations from these conditions only apply if and insofar as explicitly agreed between parties in writing.
- 2.2. All offers are non-binding and may be withdrawn by supplier at any time.
- 2.3. Client's purchasing conditions or other general conditions do not apply, unless explicitly accepted in writing by supplier.

3.0. General provisions

- 3.1. Supplier undertakes to execute the agreed activities to the best of its knowledge and ability.
- 3.2. Supplier will make every effort to continuously keep its systems and connections operational, with the exception of the time required for maintenance work to its systems and connections, including preventive maintenance work.
- 3.3. Supplier is bound to follow any directions issued by client, necessary for execution of the agreement, provided such directions are issued timely to supplier.
- 3.4. Supplier is authorised to have the agreement, or part thereof, executed by third parties in its name and at its expense and risk.

4.0. Prices

- 4.1. The prices charged by supplier are in euros and are exclusive of value added tax (VAT) and any other statutory charges.
- 4.2. Delivery will be at prices applicable on the day of delivery, unless explicitly agreed otherwise in writing.

- 4.3. Notwithstanding the provisions of article 4.2, supplier reserves the right to change sales prices, discounts and sale and delivery terms and conditions without prior notice, unless explicitly agreed otherwise in writing and insofar not prohibited under mandatory law.
- 4.4. Client is entitled:
 - in case of changes to prices, discounts and other terms and conditions, except when such changes benefit client, to cancel any outstanding orders within eight days of notification of said changes, provided the orders have not yet been executed.
- 4.5. In the case of statutory measures resulting in implementation or amendment of taxes, charges or import duties which increase the cost price, supplier is entitled to charge such changes to client, even if parties have agreed on a fixed price for an order, without this entitling client to cancel said order(s).
- 4.6. Regarding activities and/or services performed by supplier for the benefit of client owes supplier the agreed fee as well as any costs, which supplier has reasonably been required to make on top of the agreed fee, in order to comply with its obligations towards client, based on the agreement.

5.0. Invoicing, payment and complaints

- 5.1. The prices of goods delivered by supplier are due at the time of delivery. The prices of services provided by supplier are due upon entering into the agreement regarding the provision of services, unless otherwise agreed.
- 5.2. Payment conditions are those given on the invoice provided by supplier to client. In the absence of such conditions, terms of payment of 14 days after invoice date apply.
- 5.3. Payment takes place without deduction or suspension for whatsoever reason, unless determined by arbitration or a court judgement finds client to have a deductible counter-claim or grounds for suspension.
- 5.4. When client exceeds the terms of payment, client is liable to pay 1.5% interest per month on the outstanding amount, without any prior notice of default being required from supplier. If, following notice of default, client does not comply with its payment obligation, supplier is entitled to arrange for collection of the debt, in which case client is also obliged to fully pay the extrajudicial and judicial collection costs, including lawyers' fees, on top of the total amount due and aforementioned interest; said collection costs and lawyers' fees will amount to at least 15% of the total amount due, but with a minimum of 125 euros.
- 5.5. Should the creditworthiness or payment performance of client justify this, supplier may require further surety of payment from clients for the goods and/or services delivered by supplier to client. In the absence of such surety, supplier is entitled to suspend execution of the agreement. The costs incurred in providing further surety requested by supplier from client will always be at the expense of client.
- 5.6. Client has the right of complaint with regard to amounts charged by supplier to client and/or with regard to the results of activities performed by supplier for client for the duration of one month after the invoicing date or one month after completion of the activities, respectively. The right of complaint expires after this period. If the result of the activities performed by supplier does not comply with the terms of the agreement between supplier and client, supplier has the right to comply with its obligations after all within a reasonable period, notwithstanding supplier's right to charge any additional costs incurred to client.

6.0. Confidentiality

- 6.1. Supplier declares to observe strict confidentiality regarding client's confidential information. Supplier shall take any measures required to ensure this confidentiality by personnel or third parties deployed by supplier for performance of its services.
- 6.2. Client is bound to confidentiality of confidential information regarding software, equipment and other goods delivered or otherwise provided by supplier to client. Client may not remove or change any markings in or on goods delivered by supplier.

7.0. Transfer of ownership

- 7.1. All goods delivered by supplier shall remain the property of supplier until client has made full payment of the amounts owed to supplier, as surety for payment of all entitlements of supplier, without exception.
- 7.2. Client may not sell, pledge, encumber or mortgage, nor rent, loan or transfer the supplied goods from its company in any manner or for any reason, as long as full payment has not been made of the amount or amounts owed to supplier, unless client's company is acting as reseller with the purpose of selling the goods supplied.
- 7.3. Non-compliance of the provisions of articles 5.1 and 5.2 of these terms and conditions by client gives supplier the right to terminate the agreement with client with immediate effect, as referred to in article 8 below.

8.0. Rights of supplier and client

- 8.1. Copyright and all other intellectual and/or industrial property rights on all equipment, software and other goods (including but not limited to analyses, designs, documentation, reports, quotations, etc.) delivered or otherwise provided by supplier to client, are retained exclusively by client or its licensors. Client only gains user rights, as explicitly granted in these terms and conditions, unless parties have explicitly agreed otherwise in writing.
- 8.2. Client may not remove or change any markings referring to copyright, brands, trade names or other rights of intellectual or industrial property, from the software, equipment or goods.
- 8.3. Supplier is entitled to take technical measures to protect the software, even after delivery. Client is obliged to cooperate in every possible way to facilitate such measures, and at the request of supplier will grant access to its business premises or to third-party business premises used by client.
- 8.4. Supplier indemnifies client against third-party action with regard to possible infringement of copyright of such third parties, insofar as such actions concern the software developed by supplier itself. Supplier shall pay the costs and damages irrevocably determined by the court ruling, provided client immediately informs supplier in writing and relinquishes handling of the case exclusively to supplier. Client is obliged to fully cooperate with supplier in that case.
- 8.5. Supplier is entitled to change or replace its delivered software in the event of action by third parties.
- 8.6. Client shall cooperate with execution of the agreement and will at all times provide supplier with timely necessary information.
- 8.7. Client remains responsible for the use and correct application of equipment, software and services delivered by supplier, and for safeguarding the information.
- 8.8. All equipment, goods or data supplied by client on information carriers must comply with the specifications required for performance of the activities.
- 8.9. Should client not (timely) comply with its obligations of the agreements, described above in articles 6.6 through 6.8, supplier is entitled to suspend execution of the agreement and to charge any consequential extra costs to client.

9.0. Delivery times

- 9.1. All delivery times stated by supplier in quotations or contracts, have, to the best of its knowledge, been based on the information known by supplier upon issuing the quotation or undertaking the agreement.
- 9.2. Supplier will observe the stated delivery times as much as possible. However, supplier is not bound to delivery times which cannot be achieved, due to changed circumstances which were unforeseeable at the time of issuing the quotation or undertaking the agreement.
- 9.3. Supplier must inform client of such changed circumstances as soon as these become known and must consult with client on further action.
- 9.4. Should the delivery times be seriously overrun, this may be regarded as due cause for termination of the agreement, subject to the provisions of these terms and conditions regarding termination of agreements.

10.0. Termination

- 10.1. The agreement ends upon completion of delivery of the agreed activities, goods and/or services or upon expiration of the period of time covered by the agreement.
- 10.2. Unless otherwise explicitly agreed in writing by parties, interim termination of the agreement may only take place through termination, only in the event of one party failing to (adequately) comply with its obligations of the agreement, after having received written notification of default by the other party.
- 10.3. Termination takes place without judicial intervention, by means of a registered letter.
- 10.4. Should the agreement have been partly executed by supplier at the point of termination, the termination applies only to that part not yet executed by supplier. Amounts due for activities already performed by supplier before termination, remain fully payable and become immediately payable at the point of termination.
- 10.5. Parties may wholly or partially terminate the agreement in writing with immediate effect and without judicial intervention, and without any liability for compensation as a result, in the event that:
 - a. either of the parties has been declared bankrupt;
 - b. either of the parties has been granted suspension of payment;
 - c. either of the parties is unable to comply with its payment obligation or
 - d. if the company of either of the parties is liquidated or dissolved, other than for the purpose of reorganisation or merger of companies.

11.0. Liability

- 11.1. Supplier cannot be held liable other than described in this article below.
- 11.2. In the event of a wrongful act by supplier or by persons deployed by supplier in execution of the agreement and for whom supplier may be held legally responsible, supplier is liable for compensation of damages due to death or physical injury and for material damage to installations and property owned by client and third parties, only insofar this is the result of intent or gross negligence.
- 11.3. Should supplier imputably fail to (adequately) execute the agreement, supplier shall only be liable for compensation of the value of the inadequate performance, which compensation may never exceed 50% of the amounts invoiced and yet to be invoiced by supplier to client on the basis of the agreement, increased with value-added tax.

- 11.4. A precondition for any right of compensation is that client must always immediately notify supplier in writing of the occurrence of any damage and must grant supplier a reasonable period of time in which to restore the damage, if and insofar it was caused by either a wrongful act or by imputable failure to (adequately) comply with the provisions of the agreement, on the part of supplier. The right to claim compensation expires following a period of six months after the date of completion of the order by supplier.
- 11.5. Supplier may never be held liable for damage occurring as a result of its systems and/or connections not functioning (adequately), nor for data transferred to and from the client's connected computer.
- 11.6. Client is liable towards third parties for the data sent by client via supplier's systems and connections and for the data uploaded to supplier's systems by or on behalf of client, and therefore indemnifies supplier against any damage and/or third-party claim directly or indirectly arising from or connected with this.
- 11.7. Client may not use supplier's systems and/or connections for the transmission of data which client knows or could reasonably be expected to know to be in conflict with any statutory legislation. Should client act in violation of this provision, supplier is entitled to immediately disconnect client, without prejudice to the payment obligation of client to supplier. Supplier then determines whether and if so, under what conditions reconnection can be effectuated, and whether the violation of the legislation in question will be reported to the applicable authorities. Client indemnifies supplier against all consequences and damages which such a violation may cause for supplier.
- 11.8. Client may also not use supplier's systems and/or connections for the transmission of data which hinders effective and unrestricted business performance by supplier to any degree. In such a case, supplier is entitled to take measures required to prevent and/or remove such a restriction, including but not limited to immediate disconnection of client from the supplier's systems and/or connections. Supplier then determines whether and if so, under what conditions reconnection of client will be effectuated. In such circumstances, client's payment obligation is maintained in full. Moreover, supplier is entitled to claim all costs and damages from client, which are a direct or indirect consequence of client's actions.
- 11.9. Client indemnifies supplier for any damages suffered by supplier as the result of third-party claims, resulting from the goods and services delivered by supplier to client.

12.0. Force majeure

- 12.1. In the case of force majeure and other such circumstances under which supplier cannot be reasonably and fairly required to fulfil the agreement, execution of the agreement will be suspended. Should such suspension last for the period of one year, the agreement may be terminated by registered letter.
- 12.2. Neither of the parties may be obliged to comply with any obligation under whatever circumstances, if it is prevented from doing so as a result of circumstances outside of its control and for which it is not considered responsible by law, legal action or generally accepted business practice.

13.0. Applicable law and disputes

- 13.1. These terms and conditions, as well as the agreements to which they apply, are governed by Dutch law.
- 13.2. Any disputes arising from this agreement between supplier and client, or as a result of further agreements based on this agreement, shall be settled by the competent court in The Hague.



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