

Terms and Conditions

The Product Architects BV

1. DEFINITIONS

1.1. Capitalized terms used herein have the meaning ascribed below, or where such terms are first used, as applicable:

'Agreement' shall mean the Order Form incorporating these General Terms and Conditions.

'Customer' shall mean the customer identified in an Order Form.

'Deliverable' shall mean a deliverable, if any, defined in an Order Form.

'Force Majeure Event' shall mean an event, or series of related events, that is outside the reasonable control of the Party affected (including, but not limited to, fire, war, terrorist attack, unfavourable weather conditions, force majeure on the part of the third party suppliers of TPA, failures in goods, equipment, software or materials of third parties the use of which the Customer prescribes to TPA, government measures, disruption of internet, data network or telecommunications facilities, unavailability of third party servers, strike, unavailability of Employees and/or their equipment, general transportation problems and electricity outages).

'Pre-existing Materials' shall mean all intellectual property rights in the result of the Services and/or Deliverables (including in any hardware or other software, applications, materials, spreadsheets, documents, presentations, information, data, idea's, etc.: (a) owned or licenced by TPA prior to the Effective Date, (b) licensed from any third party during the term of this Agreement, (c) obtained (whether created, purchased or licensed) by TPA during the term of this Agreement separately from and otherwise than in connection with this Agreement or not specifically and exclusively for the Customer whether obtained as a result or in connection with the provision of the Services otherwise.

'Terms & Conditions' shall mean the present document entitled "*Terms & Conditions TPA*"

'TPA' shall mean the Product Architects, with company number 0746.353.236 and registered office at Thonetlaan 74, 2000, Antwerp, Belgium.

'Order Form' shall mean an ordering document specifying the Services to be provided hereunder that is entered into between TPA and Customer.

'Party/Parties' shall mean TPA and/or Customer

'Services' shall mean the services provided by Product Architect to Customer pursuant to an Order Form.

2. SCOPE AND DELIVERY

2.1. These Terms and Conditions shall apply to all Agreements whereby TPA provides Customer with any Services whatsoever and however described.

2.2. TPA shall provide Customer all Services and Deliverables in accordance with this Agreement.

2.3. TPA shall perform the Services and provide the Deliverables in a good, diligent, workmanlike manner in accordance with industry standards in effect upon the

date of performance. TPA shall provide all services on the basis of a reasonable effort obligation, unless and in so far as TPA has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.

2.4. All delivery terms provided by TPA are provided to the best of its knowledge and are based on the data which was known or brought to the attention of TPA when entering into the Agreement. The mere fact that any term of delivery is exceeded shall not constitute a default of TPA and TPA shall not be bound by any terms (of delivery). If any term threatens to be exceeded, Product Architecture and Customer shall consult together as soon as possible. TPA may charge Customer for all Services and Deliverables which were not in the initial scope at their TPA' then current hourly rates.

2.5. Part of the Services provided by TPA are regarded as consultancy services. Notwithstanding the foregoing, TPA may, upon agreement, engage third parties on behalf of Customer to assist with activities such as, but not limited to, marketing, communication, user recruitment, design, testing, support or software programming. These third parties will not be regarded as subcontractors of TPA and TPA will not be liable or responsible for these third parties. Customer accepts and acknowledges that, in relation to these third parties, the terms and conditions of these third parties will apply.

2.6. Unless otherwise set out in the Order Form, TPA will, upon completion of each Deliverable under an Order Form, submit a copy to Customer. Customer is responsible for reviewing the Deliverable in accordance with the provisions of the Order Form. If nothing has been agreed, Customer shall review the Deliverable within 10 calendar days. Customer shall notify TPA within 5 calendar days if any submitted Deliverable does not satisfy the agreed upon criteria. TPA will use reasonable commercial efforts to correct the deficiency as soon as reasonably practicable. If no notification is given within 5 calendar days, the Deliverables are deemed to be accepted.

2.7. Even if the Agreement for the provision of Services has been entered into with a view to implementation by one or more specific individuals, TPA shall at all times and at its sole discretion be entitled to replace this individual with one or more other individuals (employees or freelancer) with the same qualifications.

2.8. In the event that TPA' Services consist out of workshops and/or talks the following shall apply:

(a) unless otherwise set out in the Order Document, Customer shall provide a suitable location, facilities, accommodation and catering.

(b) unless otherwise set out in the Order Form, TPA may reschedule the workshop and/or talk at any time without cost by giving at least two days' notice to the Customer.

(c) Customer shall be entitled to cancel or rescheduling of a workshop and/or talk giving at least 4 weeks' notice. In such event TPA shall not charge any costs other than the costs related to the travel

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arrangement and other costs which cannot be cancelled. If the event of notice of cancellation or rescheduling between 4 and 2 weeks prior to the workshop and/or talk, TPA shall be entitled to charge the travel and non- cancellable costs plus 20% of the fees which would have been due if the workshop/talk took place/ In all other events TPA shall be entitled to charge for the cancelled or rescheduled workshop and/or talk in full and may invoice the Customer for the costs related to the workshops and/or talks, such as, but not limited to travel costs and other non- cancellable costs.

3. FEES, PAYMENT AND PAYMENT TERMS

3.1. Payment. In consideration of the Services and/or Deliverables, Customer shall pay TPA the charges set forth in the relevant Order Form.

3.2. Indexation. TPA may adjust the fees annually on 1 January based on the following formula:
New price = Base price * (0.2 + 0.8 * (New index /Initial index))

For which the following definitions apply:

- Base price: price at the start of the Contract;
- Initial index: the index published by Agoria "national average reference wage cost" for the month preceding the signing of the Contract;
- New index: the index published by Agoria "national average reference wage cost" for the month preceding the date of indexation.

3.3. Overtime. If the Customer requests TPA to provide Services outside normal business hours, the following shall apply:

- performance between 10 PM and 7 AM: + 100%;
- performance on Saturday: + 50%;
- performance on Sunday or public holiday: + 100%.

3.4. Payment terms. Customer shall pay TPA within thirty (30) days after receipt of invoice. Payments will be made without right of set-off or chargeback.

3.5. In the event of late payment by the Customer, where such payment is not subject to a good faith dispute, TPA shall, without prejudice to any other rights and remedies, be entitled to charge a late payment interest equal to the rate set out in the Belgian Late Payment Act (Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties as amended from time to time). After expiry of the payment period, the Customer is automatically in default without any prior notice being required. The Customer is not entitled to settlement or suspension of a payment.

3.6. In the event of late payment of an invoice, (i) TPA is entitled to increase the amount of the invoice by 15 % as compensation, (ii) all costs, the extra judicial collection of the invoice, and all costs of the legal proceedings and enforcement will be borne by the Customer and (iii) TPA will be entitled to suspend the Services until the invoice is paid in full.

3.7. Taxes. All fees, charges and other sums payable to TPA under this Agreement do not include VAT or other taxes or levies, excluding any taxes based on Product Architect's net income.

3.8. Expenses. Hourly rates, fixed prices and maximum prices exclude costs for travel time, travel costs, accommodation and similar costs. Customer shall reimburse TPA for such reasonable travel, accommodation and similar costs incurred in connection with the provision of the Services and/or Deliverables.

3.9. Additional terms and conditions in respect of the charges, invoicing and payment are set out in the applicable Order Form.

4. CO- OPERATION BY THE CUSTOMER

4.1. The Services provided by TPA to the Customer under an Order Form are dependent on the availability and cooperation of Customer. Customer understands and agrees to provide Product Architect's any and all information and which may be necessary or useful to perform the obligations under the Agreement.

4.2. Customer shall ensure that all information and data provided to TPA will be complete, accurate and up-to-date. Customer indemnifies TPA for all damages resulting from incorrect, late or incomplete provision of information.

4.3. Customer shall ensure that the personnel used for the co-operation with TPA has appropriate competence and training for the assigned tasks and the necessary power of attorney for TPA to receive the requested information and/or documentation.

4.4. If any services by a third-party vendor contracted by Customer are necessary for the execution of the Services and/or Deliverables, Customer shall manage and coordinate them at their own costs.

4.5. Failure to comply with the obligations set out in this clause 4 (*Co-operation by the Customer*) may have an impact on the costs and timing.

4.6. In case any TPA personnel or subcontractors perform activities at Customer's location, Customer shall arrange, free of charge, for the facilities reasonably required by such personnel or subcontractors, such as, if required, a workroom with telecommunication facilities etc. Customer shall indemnify TPA against any claims from third parties, herein included personnel or subcontractors of TPA, who in connection with the execution of the agreement suffer any loss caused by any action or failure to act of Customer or by unsafe situations on Customer's premises. Product Architect's personnel shall at all times remain under the exclusive authority of TPA.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. Upon full payment of all outstanding sums and unless otherwise agreed TPA grants and transfers to the Customer title to all intellectual property rights to the result of the Services and/or Deliverables which is not a Pre- existing Material. The Customer will own all rights in any copy, translation, modification, adaptation or

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derivation of such results/Deliverable. Such grant and transfer shall relate to the monetary rights but shall leave the moral rights untouched.

5.2. The intellectual property rights to the Pre-existing Materials shall remain with TPA or a third party – in such case such Pre-existing Material is provided by a third party. TPA grants to Customer a non- exclusive, worldwide license to use the Pre-existing Materials to the extent that such would be necessary to make use of the result of the Services and/or Deliverable.

5.3. TPA shall have an unrestricted right to use, distribute and exploit any general knowledge, including – but not limited to – any concepts, procedures, methods, know-how, and general approaches, developed or used to provide the Services and/or Deliverables as long as such general knowledge does not contain any Confidential Information.

6. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

6.1. Obligation. Provided that the Customer has complied with its obligation under the agreement, paid the charges to TPA for the use of the Services and Deliverables, TPA will, at its expense:

(a) defend, or at its option settle, any claim brought against Customer by an unaffiliated third party alleging that Customer's use of the Deliverables during the term of the relevant Order Form infringed its intellectual property rights (each, an "Infringement Claim"); and

(b) indemnify Customer against and pay (1) any settlement of such Infringement Claim or (2) any damages awarded by a final court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim

6.2. Conditions. The obligations of TPA in this clause 7 are conditioned upon Customer:

(a) promptly notifying TPA in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve TPA of its obligations under this clause 7 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice.

(b) giving TPA , at Product Architect's expense, reasonable assistance and information requested by TPA in connection with the defense and/or settlement of the Infringement Claim; and

(c) tendering to TPA sole control over the defense and settlement of the Infringement Claim, provided that TPA shall not settle any action without consent of Customer, unless such settlement provides for the unconditional release of Customer from all liabilities and obligations.

Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. Customer will not, without the prior written consent of TPA, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.3. Exclusions. TPA will have no obligation to Customer to the extent any Infringement Claim or resulting award:

(a) arises out of any unauthorized use, reproduction or distribution of the Deliverables;

(b) arises out of the modification or alteration of the Deliverables by anyone other than TPA or a by TPA approved third party,

(c) is based on any information, designs, specification, instruction, service, data or material not furnished by TPA.

6.4. Certain remedies. If the Deliverables are, or in Product Architect's reasonable opinion are likely to become the subject of an Infringement Claim and/or injunction as the result of an Infringement Claim, TPA may, at its expense and option, elect to either:

(a) obtain the right for Customer to continue the use of the Deliverables in accordance with this Agreement,

(b) make such alterations, modifications or adjustments to the Deliverables to make it/them non-infringing, but substantially functionally equivalent;

(c) replace the Deliverables with a non- infringing substantially similar substitute; or

6.5. if neither (a), (b) or (c) can be achieved after the exercise of commercially reasonable efforts, terminate the right of use and refund Customer any unused, prepaid fees with respect to the affected part of the Deliverables.

6.6. This clause 6 states the entire liability and obligations of TPA and Customer's exclusive remedy with respect to any actual or alleged infringement of third-party intellectual property rights in relation to the Deliverables.

7. PROCESSING OF PERSONAL DATA

7.1. TPA does not seek or require, and Customer shall use commercially reasonable efforts not to provide TPA with, access to (or the means to access) personal data (other than personal data relating to Customer personnel that is obtained by TPA in the ordinary course of maintaining its business relationship with Customer).

7.2. If TPA nonetheless would be processing Personal Data in order to perform its obligations under the Agreement, Customer shall act as data controller and TPA as data processor of such personal data as these terms are defined in Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. In such event the rights and obligations of the Parties will be set out in a separate data processing agreement.

7.3. In any event Customer ensures that the personal data that Customer supplies or discloses to TPA has been obtained fairly and lawfully and that Customer will obtain all necessary approvals from persons whose personal data is being processed and

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registrations with authorities (as applicable) to permit Customer to transfer the personal data to TPA.

8. CONFIDENTIALITY

8.1. Each Party undertakes to keep confidential all information (written or oral) of a confidential nature regarding the business operations, methodologies, processes, strategies, plans, way of working, customers, technical and commercial information and prices of the other Party which have been obtained or received prior to this Agreement or which the Party will obtain or receive during the term of this Agreement, save for information which is:

- (a) already in its possession without restrictions as to use or disclosure other than a result of this clause 8 (*Confidentiality*);
- (b) or becomes a part of the public domain through no act or omission of the other Party;
- (c) is lawfully received from a third party without restrictions as to use or disclosure; or
- (d) required by a court of law or other competent authority (including but not limited to public authorities).

8.2. Each Party hereby undertakes:

- (a) to keep the confidential information secret and not disclose it, in whole or in part, to any person other than (i) with prior written consent of the disclosing Party or (ii) its employees, directors, subcontractors and consultants who have a direct need to know such confidential information for the sole purpose of complying with its obligations under this Agreement. The receiving Party shall ensure that these parties are bound by confidentiality obligations which are not less stringent than those set out in this Agreement;
- (b) to use the confidential information solely in relation to this Agreement and to refrain from using such confidential information in any manner which could prejudice the disclosing Party; and
- (c) to use the same degree and care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to ensure the confidentiality of such confidential information and avoid any third party to use or have access to the confidential information; and
- (d) upon the written request of the disclosing Party, to forthwith and promptly return or, at the direction of the disclosing Party, destroy, any and all confidential information. Notwithstanding the foregoing, either Party shall be entitled to retain a copy of the confidential information to comply with its legal or compliance obligations, or to retain one copy of the confidential information to the extent that this is necessary for that Party to manage or participate in a dispute with the other Party.

8.3. If the receiving Party is required to disclose confidential information by law or a competent court, the receiving Party shall, to the extent allowed, use reasonable efforts to give advance notice of such compelled disclosure to the disclosing Party, cooperate with the disclosing Party in connection with any efforts to

prevent or limit the scope of such disclosure and/or use of such confidential information, take reasonable precaution to disclose the minimum amount necessary and seek to protect the confidentiality of such disclosed information.

8.4. Notwithstanding anything else in this Agreement, TPA shall have the right to collect and analyse data and other information relating to the use and performance of various aspects of the Services. TPA will be free to (i) use such information and data during and after the term hereof to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other TPA offerings, and (ii) disclose such data in aggregate provided that such data or information does not directly or indirectly identify Customer's confidential information.

8.5. Each Party shall, however, have the right to announce the entering into of this Agreement (and any other agreements in connection therewith) or by posting a logo on its website. TPA shall be entitled to write a use case which shall be subject to prior approval of the Customer, such approval not unreasonably being delayed or refused.

8.6. This clause 8 shall survive the expiry or termination of this Agreement for a period of five (5) years.

9. LIMITATION OF LIABILITY

9.1. If TPA fails in the execution of its obligations, it is exclusively bound to provide the Services and/or Deliverables again (*i.e.* repair by performing the agreement). Only if this is not possible, will TPA be held to compensate the direct losses within the limits described in these terms and conditions.

9.2. Neither Party will in any event be liable under this Agreement or the termination thereof for any loss of profits, loss of data, loss of revenues, loss of use, loss of anticipated savings, interruption of business activities, damages to third parties or third parties' goods or indirect or consequential damages of any kind.

9.3. TPA aggregate liability for all damages and indemnities arising out of or related to this Agreement, whether in contract or tort, or otherwise, shall be limited to the total amount actually paid by the Customer as set out in the Order Form during the twelve (12) months period preceding the event giving rise to such liability. Notwithstanding anything to the contrary, TPA's limitations of liability under this clause 9.3 shall not apply to gross negligence or wilful misconduct.

10. TERM AND TERMINATION

10.1. Unless otherwise agreed between the Parties in writing, the Agreement will commence as from the signing of the Order Form and expire upon completion of the Services as set forth in the Order Form.

10.2. Either Party shall have the right to immediately terminate this Agreement if (i) the other Party has committed a material breach of this Agreement, and has not rectified the same within thirty (30) calendar days after receipt of written notice from the non-breaching

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Party specifying the breach, (ii) in the event of proof of fraud committed by the other Party or (iii) the other Party becomes the subject of a bankruptcy order or becomes insolvent or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory, or if a receiver or administrator is appointed over its assets.

10.3. Without prejudice to any other rights or remedies that TPA may have, if this Agreement is terminated (irrespective of the reason therefore), TPA shall always be entitled to charge Customer for Services and Deliverables provided and costs incurred up to the date of termination.

10.4. Any termination of this Agreement shall not affect (i) any accrued liabilities and rights of the Parties prior to such termination, and (ii) any provision of this Agreement that is expressed to survive its expiration or termination.

11. NON-SOLLICITATION

11.1. During the term of the agreement and for a period of one year thereafter, Customer agrees that it will not actively approach the employees or self-employed staff of TPA directly or indirectly with the intention of engaging these employees or self-employed staff.

11.2. In the event of a breach of clause 12.1 (*Non-solicitation*), Customer will pay to TPA a fixed sum equal to the total cost of the employee or self-employed staff involved over a period of twelve months.

12. FORCE MAJEURE

12.1. If a Force Majeure Event gives rise to a failure or delay in either Party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

12.2. A Party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that Party performing any obligation under this Agreement, must: (a) promptly notify the other; and (b) inform the other of the period for which it is estimated that such failure or delay will continue.

12.3. A Party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

13. MISCELLANEOUS

13.1. Entire Agreement. The Parties agree that this Agreement (including any Order Forms hereunder) constitutes the entire agreement between the Parties and supersedes any and all prior negotiations, representations and agreements, whether written or oral, between the Parties with respect to the subject matter hereof.

13.2. Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent

possible so as to give effect the intent of the Parties and will be reformed to the extent necessary to make such provision valid and enforceable.

13.3. Non-waiver. Any failure of either Party to insist upon or enforce performance by the other Party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver of such Party's right to assert or rely upon such provision, right or remedy in that or any other instance.

13.4. Order of precedence. In the event of a conflict between the Terms and Conditions and the Order Form, the Order Form shall prevail over the Terms and Conditions. For avoidance of doubt, the Parties expressly acknowledge and agree that any additional terms such as purchase or invoice terms shall not apply even if these terms say differently.

13.5. Assignment. Neither Party may assign the Agreement in whole or in part without the prior written consent of the other Party, provided that no such consent will be required to assign the Agreement in its entirety to (i) an affiliate that is able to satisfy the obligations of the assignor under the Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning Party's assets.]

13.6. Subcontracting. TPA is entitled to use subcontractors for the performance of its obligations under the Agreement.

13.7. Notices. Any notice or other communication under this Agreement given by either Party to the other (other than the normal daily communication) will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledgement received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified in the Order Form. Either Party may from time to time change its address for notices under this clause by giving the other Party notice in accordance with this clause.

13.8. Relationship of the Parties. TPA is entirely free and independent in performing the Services. There is no hierarchical relationship between TPA (or employees, agents or subcontractors on which TPA relies for the execution of the Services under this Agreement) and the Customer. Nothing in this Agreement shall be construed as a creation of partnership, joint venture, agency or otherwise between the Parties. Neither Party has the right to enter into an agreement in name of the other Party.

13.9. Survival. All provisions of the Agreement which are expressly marked to survive the termination or expiration of the Agreement, as well as all provisions of the Agreement which aim to enforce or execute the Agreement after the termination or expiration of the Agreement shall survive the Agreement and remain in full force.

14. GOVERNING LAW AND JURISDICTION

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14.1. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the Belgian laws, excluding the Vienna Sales Convention of April 11, 1980.

14.2. Each Party irrevocably agrees that the applicable court is the courts of Antwerp (district Antwerp) shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation which cannot be settled in an amicable way.