

General Terms and Conditions of SOMEHOW

1 The offer and agreement

- a. These General Terms and Conditions of SOMEHOW govern any and all quotations, offers, agreements and the provision of services by SOMEHOW B.V. having its registered office at Haparandadam 7, studio C9, 1013 AK Amsterdam, the Netherlands, Chamber of Commerce registration number 58222545 (to be referred to below as the 'Contractor') and any and all agreements (to be referred to below as an 'Agreement') that the Contractor concludes with its client (to be referred to below as the 'Client').
- b. An Agreement can consist of a separate contract or an offer from the Contractor that the Client has signed to indicate its acceptance of it, possibly in response to an application or a request for a proposal from the Client. In the latter case the Agreement will not be deemed to have been concluded until the Client has signed the offer to indicate its acceptance of it. If in the same case the Client nonetheless consents in writing, including by means of e-mail, to the Contractor's commencing the performance of the Agreement, the context of the offer will be deemed to have been agreed. Further oral or written agreements and stipulations will not be binding for the Contractor until the Contractor has confirmed them in writing. The ranking order of the documents is: (i) the contract/offer/order confirmation; (ii) these General Terms and Conditions; and (iii) the application/request for a proposal. In the event of any contradictions or uncertainties, a higher ranking document will prevail.
- c. All offers made by the Contractor are without engagement, unless the offer in question stipulates otherwise.
- d. An offer for more than one part will not lead to the Contractor being obliged to carry out a part of the offer at a proportional part of the price offered.
- e. These General Terms and Conditions also govern supplementary orders and subsequent orders placed by the Client. The rates stipulated will not automatically apply in respect of future orders.
- f. Any terms and conditions of purchase or other terms and conditions of the Client's do not apply, unless the Contractor has explicitly accepted them in writing.
- g. The Contractor's offers, and the related documentation and any and all materials that the Contractor makes available for demonstration purposes, are the property of the Contractor. The Client may not copy them, allow third parties to inspect them or make them available to third parties, unless the Contractor has given explicit written permission to do so. In the event that the Contractor and the Client do not conclude an Agreement, the Client will return any and all offers, proposals and other documentation to the Contractor; the Client will not

be entitled to derive any rights from such documents and will not use the offers, proposals and related documents (or their content).

2 Performance of the Agreement

- a. The Contractor will make every possible effort to perform the Agreement with all due care, if applicable in accordance with the agreements and procedures laid down with the Client in writing. The Contractor's work will be performed on the basis of a best efforts obligation.
- b. The Contractor will keep the Client informed about the progress of the work, insofar as possible and if necessary.
- c. The Client will always provide any and all information, materials or information that are useful or necessary in connection with the performance of the Agreement, including temporary or permanent access to the Client's employees, and will further lend any cooperation in a timely manner that is reasonably desired by the Contractor. In the event of any delay that is caused by the Client, the Contractor will in any event be entitled to suspend the performance of the Agreement and will be entitled to charge the costs that ensue and the costs related to any idleness in accordance with its customary rates.
- d. In the event that a term has been agreed or is agreed at a later date for the performance of the work, under no circumstances will such a term be of the essence.

3 Iterations, acceptance, transfer of risk and guarantee

- a. When the Agreement is being performed there will be one or more iteration rounds for each design phase, as indicated in the quotation, offers and/or Agreement. At the end of an iteration round a design phase will be delivered in whole or in part, at which time the Client will be entitled to indicate within 10 working days what changes it wishes to have made to what has been delivered. In the event that a material change in the scope of the agreed work is desired, that will be deemed to constitute a request to perform additional work.
- b. The Client will be obliged to agree separately on an acceptance procedure for the development of software; if it fails to do so the software will be deemed to be 'as is' at the time of delivery.
- c. The risk of damage or loss of the results and materials that are delivered will be transferred to the Client at the time of delivery.
- d. The Contractor will make every effort to repair within a reasonable term any defects in the software that has been delivered in the event that they have been reported to the Contractor in writing and in detail within a term of thirty (30) days after delivery or, in the event that the parties have agreed on an acceptance test, within thirty (30) days after acceptance. The repair will be performed free of charge, unless the software has been developed on the Client's instructions other than for a fixed price, in which case the Contractor will charge the costs of the repair in accordance with its customary rates. The

Contractor will be entitled to charge the costs of the repair in accordance with its customary rates in the case of user errors or improper use on the part of the Client or another cause that cannot be attributed to the Contractor or in the event that the errors could have been discovered when the agreed acceptance test was performed.

- e. The duty to repair will lapse in the event that the Client makes changes or allows changes to be made to the software without written permission to do so from the Contractor. The Contractor will not refuse to grant such permission on unreasonable grounds.

4 Engagement and management of third parties

- a. The Contractor is the single point of contact for the Client; however, unless the parties have agreed otherwise, orders and instructions given to third parties that the Client has selected and engaged in the context of the performance of the Agreement will be given by or on behalf of the Client.
- b. Without the Contractor's prior permission the Client will not be permitted to enter into contracts with third parties in connection with what has been considered in the Agreement. In the event that the Client acts contrary to this provision it will forfeit to the Client a penalty that will be due on call in the amount of EUR 50,000 (fifty thousand euros), without prejudice to the right to demand specific performance of the undertaking to which the penalty provision relates and, in addition to the penalty, to claim compensation of the actual damage that has been sustained and that will be sustained in the future.
- c. The Client may also engage third parties directly in the context of the performance of the Agreement. In such a case, when it engages third parties the Client will consult with the Contractor in advance to every extent possible and furthermore will exercise all due care; the applicability of Articles 7:404, 7:407(2) and 7:409 of the Dutch Civil Code (*Burgerlijk Wetboek*) is explicitly excluded. In such a case, the Client furthermore authorizes the Contractor to accept any limitations of liability of third parties on behalf of the Client.
- d. At the Client's request the Contractor can also act as the authorized representative, at the Client's risk and expense, towards the third parties designated by the Client. The parties may agree on a certain fee for that service.
- e. If, at the Client's request, the Contractor draws up an estimate of the costs of third parties, that estimate will be only indicative in nature. The Contractor can request offers on behalf of the Client if the Client so desires.
- f. In the event that when the Agreement is being performed, other than on the ground of Article 4(d), the Contractor purchases goods or services from third parties at its own risk and expense in accordance with an explicit agreement, after which those goods or services are passed on to the Client, the provisions stipulated in the General Terms and Conditions of those third parties will apply

with respect to the quality, quantity, properties and delivery of those goods or services, also towards the Client.

5 Prohibition against taking over staff members

- a. During the term of the Agreement and for a term of one year after the Agreement has ended each of the parties will employ employees of the other party's who are involved or who have been involved in the performance of the Agreement or otherwise allow them to work for it only after it has received prior written permission to do so from the other party. Conditions may be attached to such permission.

6 Intellectual property rights

- a. Unless the parties have explicitly agreed otherwise, the result and materials that are made available to the Client on the ground of the agreement (including analyses, reports, recommendations, designs, sketches and drafts, prototypes, flow charts and data analyses, etc.), including preparatory materials and sketch versions are intended exclusively to be used for the purpose that has been explicitly agreed with the Contractor. In particular, unless the parties have explicitly agreed otherwise the Client will not be entitled to directly or indirectly use the results and materials that are made available in order to develop (or have developed) uses, applications, etc.
- b. In the event that the Agreement has been split up and is carried out in phases, unless the parties have agreed otherwise the Client explicitly will not be entitled to use the results from one or more earlier phases for one or more subsequent phases if the Client has not instructed to do so.
- c. In the event of any use that has not been agreed, the Contractor will be entitled to compensation equal to at least three times the amount of the order, without prejudice to the Contractor's right to claim compensation to the damage that has actually been sustained.
- d. Any and all intellectual property rights (including copyrights, knowhow and design rights) in respect of the results referred to above will be vested in the Contractor. Insofar as any such right can be obtained only by means of a filing or registration, only the Contractor will be authorized to do so.
- e. Unless the parties have explicitly agreed otherwise, the physical materials and/or files containing the results referred to above will remain the property of the Contractor, regardless of whether they have been provided to the Client or to third parties.
- f. The Client has the (non-exclusive) right to disseminate the results that the Contractor has developed and delivered for the Client within the Client's organization in whole or in part, but always in an unchanged form.
- g. In any event, the Client will not (or will no longer) be entitled to use the results and materials that have been made available, and each and every right of use

that has been granted to the Client will lapse as from the time at which the Client is in default, unless the Client's breach is of minor significance.

- h. The Contractor will be entitled to use the knowledge, insights and methods that have come to its attention as a result of the performance of the agreement, also for other purposes, insofar as that does not result in any confidential information of the Client's being brought to the attention of third parties. In particular, drafts that the Client has rejected may be proposed to other clients. The Contractor may apply the techniques and applications that the Contractor has applied or that it applies in the future in connection with what has been manufactured for the Client or may use them for the benefit of other clients.
- i. In the event that a right of use has been agreed with the Client, the Contractor will be entitled to name the results and materials in question in the customary manner for its own publicity and promotion in its portfolio, presentations and press materials. The Contractor will be entitled to name the Client as its client in its portfolio, presentations and press materials.

7 Prices, changes/additional work and payment

- a. All prices are exclusive of VAT. Unless the parties have agreed otherwise the prices are in euros and payment must be made in euros.
- b. Unless the parties have agreed otherwise the prices are exclusive of expenses that are paid for the Client's benefit. Those expenses will be charged separately.
- c. In the event that the Contractor has given an indication or estimate of the total costs of the services to be provided, that does not mean that the parties have agreed on a fixed price unless the Contractor has explicitly indicated that a fixed price applies. Under no circumstances will an available budget that the Client has indicated be deemed to constitute a fixed price.
- d. If at the request of the Client or with the Client's prior permission the Contractor has performed work or provided other goods and/or services that fall outside the content or scope of the agreed work (additional work), the Client will pay the Contractor for such work on the basis of the Contractor's customary rates. The Contractor will not be obliged to comply with a request from the Client to perform such extra work and may stipulate that a separate agreement be concluded in that context.
- e. There will also be deemed to be additional work in the event that the Contractor must perform additional work as a result of the Client's failure to provide full, correct and clear information and/or materials in a timely manner.
- f. The Client accepts that in the event that the parties agree that the services to be provided will be expanded or changed, that may affect the time at which the provision of services is completed. The Contractor will notify the Client in that respect as quickly as possible.
- g. Unless the parties have agreed otherwise all amounts agreed are always due on a monthly basis in arrears.

- h. 50% of the amount of the order must be paid in advance; otherwise, the Contractor will be entitled to suspend the performance of the Agreement. In derogation from the preceding provision, the Contractor may request payment of the entire amount or other portion in advance.
- i. The term for payment is 15 calendar days after the invoice date.
- j. In the event that payment is not made in a timely manner the Contractor will be entitled to charge statutory commercial interest. In the event that the Client fails to pay the claim, the claim may be passed on to a debt collection agency for collection, in which case the Client will also be obliged to pay 15% extrajudicial collection costs.
- k. The amounts that the Contractor receives from the Client will be deducted first from the costs due, subsequently from the interest and finally from the principal amount.
- l. In the event that the Agreement is performed in phases the Contractor will be entitled to suspend a subsequent phase until the Client has paid the invoices for the preceding phase(s).
- m. The Client is not entitled to set off any amounts or to suspend a payment obligation.
- n. Complaints must be lodged within seven days after the delivery date; otherwise, the result of the Agreement will be deemed to have been accepted.

8 Liability

- a. The Contractor's liability is subject to the limitation stipulated in this provision.
- b. The Contractor is not liable for:
 - i. errors or shortcomings in the materials that are made available by the Client;
 - ii. misunderstandings, errors or shortcomings in respect of the performance of the Agreement in the event that they are the result of or are caused by acts on the part of the Client;
 - iii. errors or shortcomings on the part of third parties that have been engaged by or on behalf of the Client;
 - iv. defects in offers from suppliers or for quotations from suppliers being exceeded; and
 - v. errors or shortcomings in the results that are delivered, in the event that the Client has failed to implement a test or have a test performed and those errors would have been detectable if such a test had been performed.
- c. The Contractor's liability is limited to the Client's extra costs that are the direct result of the culpable breach. This is taken to mean exclusively: the reasonable costs in order to determine the cause and the scope of the damage, insofar as the determination relates to damage within the meaning of these Terms and Conditions, any reasonable costs that are incurred in order to bring the defective performance in line with the Agreement, insofar as that can be

attributed to the Contractor, and reasonable costs that are incurred in order to prevent or limit damage, insofar as the Client demonstrates that those costs have led to a limitation of direct damage within the meaning of these General Terms and Conditions. Under no circumstances will the Contractor be obliged to compensate any trading loss, consequential damage or other indirect damage, including in particular damage due to loss of profits, a failure of expected savings to be realized or loss of data.

- d. The Contractor's total liability is limited to an amount equal to the lesser of the following two amounts: EUR 10,000 or the amount equal to the total of the fees that the Client has already paid (exclusive of VAT) for the agreed work (with the exception of work and deliveries carried out by third parties).
- e. Any further liability on the part of the Contractor for damage sustained by the Client is excluded, regardless of the ground for the damage sustained, whether as a result of breach of contract, a wrongful act or otherwise.
- f. The limitation of the Contractor's liability will not apply in the event of an intentional act or omission or gross negligence.
- g. The Client indemnifies the Contractor against any and all claims brought by third parties that ensue from the Agreement, including claims related to such third parties' intellectual property rights in respect of materials and information that are provided by the Client. In the event that the Contractor is held liable by third parties in that context, the Client will be obliged to assist the Contractor both judicially and extrajudicially and to immediately do everything that can be expected of it in such a case.
- h. In derogation from the statutory prescription periods, the prescription period in respect of any and all claims and defences towards the Contractor and third parties that the Contractor engages in connection with the performance of the Agreement has a term of one year.

9 Termination and dissolution

- a. The Client may not terminate the Agreement prematurely.
- b. The parties may terminate the Agreement in whole or in part effective immediately, without any judicial intervention being required, by means of a written notification to the other party in the event that the other party (i) is declared bankrupt; (ii) is granted a provisional or definitive suspensions of payments; or (iii) the business is liquidated or terminated.
- c. In the event that the Contractor dissolves the Agreement on the ground of a culpable breach in respect of the Client's compliance with the Agreement, the Client will be obliged to pay the fee and the costs incurred with respect to the work performed until that time. Actions on the part of the Client on the ground of which the Contractor no longer reasonably can be expected to comply with the Agreement will be deemed to be a culpable breach in this context.
- d. There will be no obligation to undo in the event of termination or dissolution.

10 Other terms and conditions (including confidentiality and *force majeure*)

- a. The Client and the Contractor undertake to keep the information that they exchange confidential. Information will be deemed to be confidential if the other party so states or if that ensues from the nature of the information. The following information is deemed not to be confidential: information that the party that shares has already released into the public domain, information that the recipient can demonstrate it already rightfully possessed before it received it from the party that provided it and/or information that the recipient has received from a third party rightfully and without any duty of confidentiality.
- b. The Contractor will not be obliged to comply with any obligation in the event that it is prevented from doing so as a result of a circumstance that was not caused by blame and that is not for its account in accordance with the law, a legal act or in accordance with generally accepted standards, which also includes culpable and non-culpable breaches on the part of third parties. In the event that a situation involving *force majeure* continues longer than 90 days, each of the parties will be entitled to dissolve the Agreement in writing, in which case the performance that already has taken place on the ground of the agreement will be settled proportionately, without the parties owing each other any further amounts.
- c. The Contractor will be authorized to suspend the obligations or dissolve the Agreement in the event that the Client fails to comply with its obligations pursuant to the Agreement in whole or in part.
- d. Without prejudice to the other provisions stipulated in these General Terms and Conditions, neither party will assign any rights and/or obligations pursuant to the Agreement or transfer them in any way to a third party without receiving explicit and prior permission to do so from the other party. Permission will not be required in the event of a transfer of all or a substantial part of the business to a third party.
- e. In the event that any provision stipulated in these General Terms and Conditions is null and void or is nullified, the other provisions stipulated in these General Terms and Conditions will remain fully in force and the Contractor and the Client will consult in order to agree on new provisions to replace the provisions that are null and void or that have been nullified, in which context the purpose and purport of the provision that is null and void or that has been nullified will be taken into consideration to every extent possible.
- f. Dutch law applies. The court in the district in which the Contractor has its business location will have exclusive jurisdiction.
- g. The parties acknowledge that the active and constructive participation in an ICT Mediation is a reasonable and suitable measure to prevent or limit impending damage in the event that that impending damage is related to a failure on the part of a supplier to properly comply with any contractual obligation or its failure to do so properly and in a timely manner. The Client therefore undertakes to participate actively, constructively and unconditionally immediately at the

Contractor's written request in an ICT Mediation in accordance with the ICT Mediation Rules and Regulations of the Dutch Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering), having its registered office in The Hague, the Netherlands (see www.sgoa.org and www.sgoa.eu).

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