

## GENERAL TERMS AND CONDITIONS SQUARELL

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## GENERAL TERMS AND CONDITIONS SQUARELL

These are the general terms and conditions of Squarell B.V., Oude Weerlaan 27, Hillegom, the Netherlands. These Conditions apply to all offers, sales, deliveries, agreements and services of Squarell B.V. and the execution thereof.

### 1 General

#### 1.1 The following definitions apply:

Conditions: the general terms and conditions in question.

Supplier: Squarell B.V.

Other Party: each legal body, commercial partnership, company or other entity that enters into or has entered into an agreement with Supplier, or to whom an offer or proposal is or has been made or extended by or on behalf of Supplier, or to whom or by order of whom a delivery is or has been made by or on behalf of Supplier, or by order of or for the benefit of whom one or more services is or has been performed by or on behalf of Supplier.

Software: computer programme(s) recorded on media or material that can be read by a computer together with any associated documentation irrespective of the form of this documentation.

Subscription: a subscription for services, granting the Other Party a non-exclusive limited right to use services of the Supplier, and any selected additional modules for which a monthly fee is charged;

#### 1.2 Deviations from these Conditions will only be in force if confirmed in writing by the Supplier.

#### 1.3 Other general terms and conditions other than these Conditions, including the purchasing conditions and other general terms and conditions of the Other Party, do not apply and are expressly rejected by the Supplier.

### 2 Offers

#### 2.1 Each offer or quotation made by or on behalf of the Supplier is made without obligation and does not bind the Supplier except when and for so far as the Supplier has explicitly stated otherwise in writing.

#### 2.2 Price lists, brochures, catalogues, folders and other information provided by or on behalf of the Supplier are prepared as carefully as possible but they nevertheless bind the Supplier only when and for so far as they have been explicitly confirmed by the Supplier in writing.

#### 2.3 All brochures, catalogues, price lists and folders provided in connection with an offer or quotation and all associated (technical) information provided in the form of designs, drawings or other illustrations, models, samples, tables, schedules, etc. and all other data and information provided remain explicitly the industrial and intellectual property of the Supplier. The Other Party is expressly forbidden from copying any material, data or information as meant in the previous sentence either wholly or partially and/or from making it known to third parties in whatever way and/or from allowing it to be used by third parties and/or from selling it. The use of this material, data and information remains strictly limited to use by the Other Party within the framework of the order given to the Supplier.

#### 2.4 Any prices specified are only valid for the quantities offered.

### 3 Realisation and content of an agreement

#### 3.1 An agreement between the Supplier and the Other Party is realised at the moment that the Supplier confirms in writing the acceptance of an assignment or order from the Other Party; the scope and content of the agreement is in accordance with that stated in the written confirmation of the Supplier.

#### 3.2 If an offer or quotation, in the light of the provisions of Clause 2.1, is not without obligation and a binding time period for the offer has been set then the agreement is realised at the moment that the offer or quotation is accepted within the time limit by the Other Party; in such a case the confirmation of the assignment, order or binding offer is deemed to correctly and completely represent the agreement.

#### 3.3 An agreement binds the Supplier only when it has been entered into and when the written confirmation meant in Clause 3.1 has been signed by one or more persons who are authorised to commit the Supplier in such a manner. Any agreements or additions and/or changes to them or in them and agreements, promises, etc., drawn-up or made by an employee, representative, agent or other intermediary or by one or more other people who are not authorised to commit the Supplier in such a manner, are not binding to the Supplier unless confirmed in writing by the Supplier.

#### 3.4 Any changes and/or partial cancellation or complete cancellation of an assignment or order by or on the request of the Other Party can only take place with the prior written permission of the Supplier and on condition that activities already performed by the Supplier will be paid for, in full, by the Other Party and, in case of a subscription payment of the remaining terms as meant in Clause 17.1 hereunder will be made; in the case of a change and/or partial cancellation requested by the Other Party, the Supplier is entitled to pass on any related (extra) costs and/or fees for the remaining terms to the Other Party and to redetermine the delivery time.

#### 3.5 For activities or assignments where, because of their nature and size, no quotation or order confirmation is sent, the agreement will be realised at the moment the Supplier or someone on behalf of the Supplier actually begins to carry out the agreement and, in such cases, the invoice will be considered as the order confirmation.

#### 3.6 At any time before, during or after the execution of any agreement the Supplier is entitled to demand the provision of sufficient certainty from the Other Party regarding timely settlement by the Other Party of his payment obligations and other obligations.

#### 3.7 The Supplier is authorised to make use of third parties for the execution of the agreement; the costs involved will be passed on to the Other Party in line with the quotations provided.

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## 4 Prices

- 4.1 Except when and for so far as binding prices apply, all price quotations are without obligation. Except when otherwise explicitly notified in writing, prices are (i) ex-works or ex-warehouse delivery from the Supplier, (ii) exclusive of VAT, import duties and other taxes, levies and duties, (iii) exclusive of the costs of packaging, loading and unloading, transport and insurance; and (iv) exclusive of the costs of assembly, installation and commissioning unless otherwise explicitly stated, in which case the costs named here will be separately specified. Unless specifically expressed otherwise, prices stated or agreed upon will be in Euros (EUR).
- 4.2 In every case, prices are stated or agreed upon under the condition that changes in exchange rates will be passed on if the official exchange rate at the moment of delivery deviates by more than 2 % from the exchange rate on the date when the offer or quotation was made, the latter exchange rate parity being considered as 100.
- 4.3 If there is an increase in one or more of the factors determining the cost price then the Supplier is entitled to increase the order price accordingly, on the understanding that any future price increases which the Supplier is aware of on the date of the order confirmation should be specified on this order confirmation.
- 4.4 Supplier may adjust any fee, agreed hourly rate or price for goods and/or services included in its pricelist from time to time. Supplier will inform the Other Party of any such changes. The new prices will take effect in the month after such communication.

## 5 Risk and transport

- 5.1 The risk with regard to the goods sold and/or delivered by or in the name of the Supplier to the Other Party is transferred to the Other Party at the moment these goods are segregated for the benefit of the Other Party; and for goods not supplied out of stock, at the moment the goods are loaded for transportation to the Other Party or to a place indicated by the Other Party, except when and for so far as might be otherwise agreed in writing. Unless agreed otherwise in writing on the offer of confirmation, all supplies will be EXW as meant in the Incoterms 2020. Any loading and unloading, transport, assembly, installation and the putting into operation of the goods will at all times be at the risk of the Other Party. Unless indicated in writing by the Other Party to the Supplier, the manner of packing, transport, shipment etc, of goods is a matter completely at the discretion of the Supplier and will be determined with the care which reasonably can be expected from the Supplier.

## 6 Delivery and delivery time

- 6.1 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 4 and 5 of these Conditions, deliveries are made on a carriage paid basis to the Other Party or to another place specified, on time, by the Other Party. For orders or deliveries under a specified amount, the Supplier is entitled to pass on an amount covering the administrative costs to the Other Party.
- 6.2 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 5 about the transfer of risk, the moment of delivery is the moment that the goods are unloaded or discharged at the place where they must be delivered (the actual transfer); this also holds applies if the Supplier must assemble, install and/or put the goods into operation.
- 6.3 The Other Party must report any shortages, defects and damage, in writing, directly to the Supplier within 8 days of the actual transfer as meant in 6.2 and if nothing is reported then the goods will be regarded as having reached the Other Party in good condition, complete and without damage.
- 6.4 The Supplier is entitled to make partial deliveries, which can be invoiced separately, and, when this occurs, the Other Party is obliged to pay these separate invoices in accordance with the provisions specified in Clause 14 of these Conditions.
- 6.5 Except when and for so far as it has otherwise been agreed in writing, the delivery times specified by or on behalf of the Supplier in an offer or quotation are not intended to have a deadline and are only of indicative nature, which means, amongst other things, that when a delivery is late, the Other Party must explicitly notify the Supplier in writing before the Supplier can be held in default.
- 6.6 If goods are not purchased by the Other Party within the delivery time or period, or if the Other Party does not observe an agreed call-off period then the Supplier is entitled to invoice the Other Party for the goods in question and, furthermore, the Supplier is entitled to store these goods at its own discretion but wholly at the cost and risk of the Other Party. In the case where the Other Party does not purchase or call off within the agreed period, the Supplier, according to his own choice, can demand fulfilment by the Other Party or can dissolve the agreement, without prejudice to the right of the Supplier, in either case, to claim damages.

## 7 Force majeure (non-attributable failure)

- 7.1 If the Supplier, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and, in the judgement of the Supplier, the force majeure is of a permanent or long-lasting nature, then the parties can come to a settlement regarding the termination (in Dutch: "opzegging" or "beëindiging") of the agreement in accordance with the rule of law and any consequences thereof.
- 7.2 If the Supplier, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and, in the judgement of the Supplier, the force majeure will be of a temporary or transitory nature, then the Supplier is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.
- 7.3 Considered as "force majeure" are each circumstance, cause or event, wherever it is occurring, appearing or arising which temporarily or permanently prevents the correct, complete and timely fulfilment of any obligation of the Supplier or makes it impossible or unreasonably problematic or uneconomical, and each circumstance, cause or event which the Supplier, in all fairness, cannot be expected to prevent or which wholly or partially falls outside the sphere of influence of the Supplier, or on which the Supplier can exercise no influence. The following,

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amongst other factors, are considered as circumstances, causes or events resulting in force majeure: fire, explosion, lightning strike, ice break-up, low water, high water, tidal wave, spring tide, flood, earthquake, natural disasters; storm, tornado, cyclone, snow, frost and other weather conditions; strikes, work stoppages, excessive (sickness) absenteeism of personnel, labour unrest, lock-outs, boycotts; war (declared or not), mobilisation, siege, besieging, blockade, molestation; riots, revolution, social unrest; governmental actions and/or regulations which prevent, delay or otherwise hinder the fulfilment of obligations; lack of transport resources; unnavigability or usability of any eligible transportation routes or means of transport; disturbances or interruptions in the provision, delivery or availability of energy; disturbances or interruptions in or of the functioning of any public utility; disturbances or interruptions or ending of the supply of raw materials, semi-finished and/or finished; disturbances or delay in or of, or interruptions or ending of the supply of parts, spare-parts and other articles; software malfunctioning, malware, ransomware or software hacks; non-fulfilment of obligations by a debtor or contract partner of the Supplier (including the non-fulfilment of obligations by one or more third parties); technical disturbances and/or faults, delays, disturbances or interruptions to or with the repair of machines, material, equipment, tools and/or instruments; serious illness and illnesses of an epidemic or pandemic character and any government measure or restriction related to such epidemics or pandemics.

- 7.4 If the Supplier, as a result of force majeure, is prevented from fulfilling his obligations with regard to one or more of his customers or buyers, but not his obligations with respect to all his customers or buyers, then the Supplier is entitled to decide himself which of the obligations will be fulfilled and for which customers or buyers, as well as the order in which they will be fulfilled.
- 7.5 The Supplier is entitled to demand payment for all activities performed by or on behalf of the Supplier in the execution of the agreement with the Other Party before the force majeure circumstance, cause or event appeared or emerged.
- 8 Guarantee/Service**
- 8.1 With due observance to the provisions specified elsewhere in these Conditions, the Supplier guarantees the quality of the materials used and their promised characteristics as well as the correct working of the goods provided by the Supplier. For new products this guarantee is valid for a period of twenty four (24) months after delivery (including any "viewing period"), unless otherwise agreed in writing. A guarantee for goods purchased elsewhere by the Supplier is only given for and so far as it is provided by the original manufacturer(s). For products that are not new a guarantee is only valid for and so far as this has been explicitly agreed; with such a guarantee the provisions of these General Conditions apply except when and for so far as deviations to them have been agreed in writing.
- 8.2 Faults in any goods supplied which fall under the guarantee will, exclusively at the discretion of the Supplier, only be rectified or the goods will be replaced if the faults, in the opinion of the Supplier and/or manufacturer, are attributable to construction faults or faults in or any shortcomings of the materials used as a result of which the goods are unusable by the Other Party for the purpose for which they are can reasonably be thought of as intended.
- 8.3 In principle, guarantee work will be performed within the business of the Supplier (for example, by the service department) and during normal working hours. Activities associated with guarantees will only be performed outside normal working hours if a separate service contract has been entered into and only when and for so far as this is specified in this service contract.
- 8.4 The Supplier is entitled to allow guarantee activities to be performed outside his own business if this, in the opinion of the Supplier, is in the best interest of these activities or if the performance of such activities at the business of the Supplier, in all reasonableness, is not possible nor desirable.
- 8.5 Goods eligible for guarantee work must be sent carriage-paid to the Supplier. If the guarantee work is to be performed outside his own company then the Supplier is entitled to pass on the connected travel costs and accommodation expenses to the Other Party as well as any (special) costs of transport, packing and insurance and the costs of any testing equipment and materials used. The Other Party will arrange at its costs for transport and adequate packaging of goods that are sent to the Supplier for guarantee work.
- 8.6 If, in the opinion of the Supplier, the goods tendered for rectification or repair exhibit no faults then all costs made will be passed on to the Other Party, also during the period under guarantee.
- 8.7 All guarantee claims lapse if the Other Party itself makes changes and/or repairs to the product supplied or allows them to be made, or if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers) directives or the user instructions including instructions regarding the RMA procedure, or is being used or treated injudiciously in any other way, or if a software change has been made in or with regard to the product supplied by a party other than the Supplier, or if the product supplied has been or is being used or applied for purposes other than for which it is intended, or if the product supplied has been or is being used in a way which the Supplier in all reasonableness could not have expected.
- 8.8 If the Other Party does not fulfil one or more of his obligations, the Supplier is released from his guarantee obligations.
- 8.9 Satisfying the guarantee obligation is regarded as the only and complete compensation.
- 9 Right of retention and reservation of ownership ("verruimd eigendomsvoorbehoud")**
- 9.1 If and for so long as the Other Party has not satisfied all his obligations towards the Supplier the Supplier then has the right to retain all goods in his possession which have come from the Other Party or have come on behalf of the Other Party, no matter the origin or reason.
- 9.2 The Supplier is obliged to administer the goods meant in Clause 9.1 or to allow them to be administered in accordance with sound commercial practice but the Other Party has no right to press for damages or compensation in the case of the goods being completely or partially perished or lost and/or damaged when this is not the fault of the Supplier, and, furthermore, the risk associated with these goods remains with the Other Party.

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- 9.3 All goods of the Supplier remain property of the Supplier until all invoices of the Supplier to the Other Party have been paid in full (in Dutch: "verruimd eigendomsvoorbehoud"). Without prejudice to the provisions in Clause 5 of these Conditions regarding the risk and the transfer thereof, all the goods supplied by or on behalf of the Supplier remain the property of the Supplier until the moment that all debts owed by the Other Party to the Supplier has been settled in full, this debt being the amount that the Other Party has owed the Supplier since the realisation of the agreement, inclusive of all interest and costs. In the case of an account relationship and/or Subscription the ownership of all goods supplied (including the hardware needed to use the software licence or Subscriptions) remains with the Supplier until the moment that the Other Party settles his account and/or has paid the final term agreed upon for any Subscription. At the first demand from the Supplier, the Other Party must authorise the immediate return of the goods which have not yet been fully paid for wherever these may be.

## 10 Liability

- 10.1 Except when and in as far as something else might otherwise ensue from the provisions of imperative law concerning (product) liability and except in case of gross negligence or wilful misconduct of the higher management of the Supplier, any and all liability of the Supplier is at all times limited to directly caused damages and is, at all times, limited to the amount, in each case, made good by the liability insurer of the Supplier. If the Supplier has no liability insurance or the insurance does not cover the relevant liability, then any liability on the part of the Supplier is at all times limited to the net amount invoiced for the task, services, product, delivery or circumstance in question. The Supplier is never liable for indirect and/or consequential damages, including loss of profits.

Bearing in mind what is specified elsewhere in this Clause, the Supplier, in every case, is not liable for damage or loss directly or indirectly caused by:

- (i) injudicious use of the product supplied or its use for a purpose other than what it reasonably could be considered suitable for or its use for a purpose other than what, by objective standards, it is suitable for or its use for any other purpose than what the Supplier reasonably could have imagined that it should be used for;
  - (ii) careless conduct by the Other Party, of the personnel of the Other Party;
  - (iii) infringement of any patent, utility to model, brand, origin indication, model law, copyright or neighbouring right, right to a semiconductor product or the topography thereof, right to a database or other collection of data, or any other industrial or intellectual ownership rights or any other exclusive right, or infringement or violation of a licence under any such a right, which is the direct or indirect result of the use and/or application and/or publication or replication of data provided by or on behalf of the Other Party such as descriptions, drawings, models, designs, etc.
- 10.2 The Supplier is obliged to observe the specified delivery time or delivery period as much as possible, yet will never be liable if they are exceeded and when they are exceeded the Supplier is not obliged to provide any compensation for damages. Exceeding a delivery time or delivery term does not give the Other Party the right to terminate or to dissolve the agreement or to refuse to purchase goods and/or services. In cases where the delivery time or term is exceeded excessively, the parties must consult with each other.
- 10.3 If the Supplier provides a helping hand during the assembly and/or putting into operation and/or installation of the goods without this being explicitly mentioned in the assignment then this occurs wholly at the risk of the Other Party.
- 10.4 Settlement of the prevailing guarantee obligations and/or the payment by the Supplier's insurer or payment by the Supplier (with due observance of the maximum amount meant in Clause 10.1) of the assessed damage is to be regarded as the only and complete compensation. For the rest, the Other Party indemnifies the Supplier explicitly and completely.
- 10.5 Without prejudice to the provisions otherwise specified in this Clause, every claim for damages lapses one year after the damage has manifested itself or has been discovered or has been recognised or reasonably could have been expected to have been discovered or recognised, and, in all cases, three years after delivery.
- 10.6 With respect to goods for which the Supplier has involved third parties, the applicable (contract and/or guarantee) provisions applying to the respective transaction are also valid for the Other Party if and in so as far as the Supplier wants to invoke them.
- 10.7 Except when and in as far as something else might otherwise ensue from the provisions of imperative law and except in case of gross negligence or wilful misconduct of the higher management of the Supplier, the Supplier is not liable for shortcomings of its own suppliers and contract partners of the Supplier.

## 11 Claims

- 11.1 Without prejudice to the provisions in Clause 6.3 of these Conditions, any claims can only be handled if they are received in writing by the Supplier within eight (8) days of the delivery as meant in clause 6.2. For hidden faults, claims are only possible within the guarantee period.
- 11.2 Claims can only be handled when the nature and grounds for the complaints are accurately stated.
- 11.3 Claims regarding invoices must be lodged in writing with the Supplier within eight (8) days of the date of the invoice.
- 11.4 If within the applicable time period no claim is made or no claim is made in the required manner, then the delivery will be considered as completely satisfying the agreement and to be unconditionally accepted and approved by the Other Party; an invoice against which no claim has been lodged in the required manner within the period of eight days specified in Clause 11.3 will be regarded as having been unconditionally accepted and approved by the Other Party.
- 11.5 If a claim with regard to goods supplied by the Supplier is found to be legitimate, then the Supplier is only obliged to (at the discretion of the Supplier) replace or repair the unsound goods, the Other Party having no additional right to any other compensation.

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- 11.6 Lodging a claim never discharges the Other Party from his payment obligations towards the Supplier.
- 11.7 Returning the product supplied or any part thereof, for whatever reason, can only take place after the previous explicit written approval and with the forwarding instructions of the Supplier.
  
- 12 Permits and other requirements needed for the delivery and/or use of the goods and software**
- 12.1 The Other Party is responsible for ensuring that all permits, concessions, licences, consents and so forth that might be necessary for the delivery by the Supplier of the goods and/or services and/or licenses sold or for the Supplier to fulfil his obligations, are obtained on time and in the correct form; the costs associated with obtaining such permits, concessions, licences, consents and so forth are to be borne by the Other Party.
- 12.2 The absence of any permits, concessions, licences, consents and so forth as meant in Clause 12.1 will be considered as an accountable failing (failure) on the part of the Other Party and the Other Party will not be released from any of his commitments towards the Supplier, nor can it be a reason for the postponement of the fulfilment of any obligation the Other Party has towards the Supplier.
- 12.3 The Other Party is liable for all damage which directly or indirectly may be caused by the absence of any permits, concessions, licences, consents and so forth as meant in Clause 12.1 and the Other Party indemnifies the Supplier against claims and demands connected with such damage.
  
- 13 Intellectual property rights**
- 13.1 The Other Party will employ the software (in its widest sense), peripheral equipment, technical data, wiring and/or work plans, instructions, drawings and all other essential documentation and other data and information supplied by or on behalf of the Supplier only for its own (internal) use and will unless otherwise agreed upon in writing, not in any way pass it on or sell or make it available to third parties nor allow any third party to use it. The Other Party will respect all rights of intellectual property of the Supplier and will not register any name, domain-name, trademark or other right whatsoever referring to the Supplier in its name neither will it refer to the cooperation with the Supplier without prior authorisation of the Supplier in any of its communications.
- 13.2 If in the unhoped for event that a good sold by the Supplier to the Other Party in the Netherlands infringes an industrial or intellectual property right of a third party and the Other Party is held liable then the Other Party is obliged at once to inform the Supplier in writing of the situation and the Supplier can then choose either to procure the right to be able to use the good, or to provide a replacement good which does not infringe the right, or, once the Other Party has returned the good, refund the purchase price to the Other party after subtraction of reasonable compensation to cover the period when the good was available to the Other Party. With regard to infringements of industrial and intellectual property rights outside the Netherlands the Other Party can make no claim or demand whatsoever against the Supplier.
- 13.3 The Supplier cannot be held liable in any way with regard to the infringement of any industrial or intellectual property right or any other exclusive right which is the result of any change in or to a good sold or supplied by or on behalf of the Supplier or in the use or application of such a good which is different to that which the Supplier could have expected or assumed, or which is the result of its integration, use or application in combination with other goods not sold or supplied by or on behalf of the Supplier, or which is the result of a software amendment not made by the Supplier.
  
- 14 Payment**
- 14.1 If no payment in advance has been agreed or specific other payment terms have been agreed upon, payment must be made on delivery or within thirty (30) days of the invoice date into the bank account indicated by the Supplier. In the case of assembly or installation work, payment must be made within thirty (30) days of the date on which the assembly or installation work started or, if the (commencement of the) assembly or installation work is delayed through no fault of the Supplier, within thirty (30) days of the date on which the assembly or installation work, without the delay, should have begun, with the proviso that if the Supplier has demanded payment in instalments, then payment will be made in the appropriate manner. The date on the Supplier's bank statement when the payment is recorded as received applies as the date on which the payment has occurred.
- 14.2 Fees for Subscriptions will become due upon placement of an order for subscription and will be charged monthly through direct debit or as otherwise agreed. The first invoicing period runs from the order confirmation date and one month ahead. After that, invoicing takes place automatically monthly in advance on the previous order confirmation date.
- 14.3 Each payment by the Other Party will be used first for the settlement of any interest due and for any collection and administration costs and, after that, for the settlement of any open claims in order of age beginning with the oldest.
  
- 15 Default: interest and costs**
- 15.1 The Other Party will be liable for ensuring that a payment or the settlement of any other obligation occurs on time without the need for a reminder, summons or in default declaration.
- 15.2 If the Supplier does not receive a payment due from the Other Party on time then, beginning from the day on which the payment should have been made, the Supplier will automatically charge the Other Party interest at a rate of one and a half (1,5 %) per month, without prejudice to any further rights the Supplier has; when calculating the interest owed, months started but not completed will count as whole months. This so-called delay interest rate of 1,5 % per month is a minimum rate and if this rate, when calculated on a yearly basis, is at any time less than 5% more than the officially applicable interest rate ex clause 6:119a Dutch Civil Code in The Netherlands then it will be automatically increased, so that, on a yearly basis, it is 5% higher than the official interest rate.
- 15.3 All the legal and extrajudicial costs incurred by the Supplier, including the costs incurred by the Supplier for legal aid and legal advice, are to be borne by the Other Party. The extra judicial collection costs amount to 15% of the amount to which the Other Party is indebted inclusive of any interest due, without prejudice to the right of the Supplier to claim damages from the Other Party for the actual collection costs made if these are more than the 15% specified.



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## 16 Ending an agreement

16.1 In the case of non-observance by the Other Party, the Supplier will be entitled to terminate and/or dissolve the agreement without judicial intervention and without prejudice to the right of the Supplier to claim damages, to make use of the rights resulting from retention of title and to take other (legal) steps, and without prejudice to the right of the Supplier to demand fulfilment (with or without compensation) of the agreement instead of its termination.

If any payment of a Subscription fee is not received within 7 days after a reminder, the Other Party will receive a new reminder. If this new reminder does not lead to payment of all outstanding amounts, the Supplier is entitled to block access to all Subscriptions, service and hardware and all fees for the remaining term agreed upon become immediately due and payable. Access to the relevant services and hardware will be unblocked after receipt of payment of all outstanding amounts.

16.2 The Supplier may terminate the agreement with the Other Party with immediate effect if any of the following circumstances occurs; the Other Party is declared bankrupt, goes into liquidation, presents a request for suspension of payment, or if the Other Party (temporarily or definitely) is granted a suspension of payment or if there is a seizure of the total assets of the Other Party or a part thereof or has made a dissolution decision. The Supplier is also entitled to immediately terminate any agreement with the Other Party if it can not be reasonably expected from the Supplier to continue the cooperation with or supply to the Other Party, for instance (but not limited to) if the supply to Other Party causes reputational damages to the Supplier or the Other Party seems to violate mandatory and/or criminal laws.

16.3 If an agreement, according to the provisions of this Clause, is terminated or dissolved then the amount that the Other Party owes to the Supplier at the moment of termination or dissolution and the remaining terms of any subscription period agreed upon remain as the full debt and the Other Party will be liable to pay interest and costs according to the provisions of these Conditions, without prejudice to the right of the Supplier to demand damages or any other rights due to the Supplier.

## 17 Cancellation by the Other Party

17.1 The Other Party has the right to annul the order or agreement in the following instances: (i) if the Supplier, after exceeding the delivery time, again exceeds an agreed new delivery time agreed by both parties without any justifiable grounds, provided that the Other Party has declared in writing before agreeing to the new term of delivery that he will refuse acceptance if the new delivery term is exceeded; and/or (ii) if the Supplier within a reasonable period of time cannot fulfil his delivery obligations for other reasons than force majeure and has made this known to the Other Party. Cancellation as meant in this Clause will never result in the Other Party being compensated for any damages. Subscriptions may be terminated in according with the terms agreed in the order form. Early termination of a subscription by the Other Party will render the remaining terms due and immediately payable, unless any breach of the Supplier has not been remedied within a reasonable term upon the written request of the Other Party and such breach justifies the immediate termination of the relevant subscription by the Other Party.

After the initial term agreed, the Other Party may terminate any Subscription, reduce the services subscribed to and/or remove additional services with 3 months written notice.

## 18 Alterations to an agreement and these Conditions

18.1 Alterations to an agreement are only valid if they are made in writing and the Supplier has consented to the alteration(s). The Supplier is entitled to amend or add to these Conditions. Any amendment and/or addition will be binding on the Other Party, but not earlier than one month after the Other Party has been notified in writing of the amendment or addition to the Conditions.

## 19 Privacy and data

19.1 The privacy policy of the Supplier can be consulted at [squarell.com/nl/juridisch/privacy-policy](https://squarell.com/nl/juridisch/privacy-policy) and applies to the processing of personal data by Supplier as a controller, e.g. with respect to personal data of the Other Party's contact persons.

19.2 Should the Supplier process any personal data as a processor for the Other Party, the Supplier and the Other Party endeavour to enter into a separate data processing agreement on reasonable terms. In absence of such a data processing agreement, the below provisions apply to the data processing by Supplier on behalf of the Other Party.

19.2.1 The personal data that Supplier processes are personal data with respect to drivers employed or hired by the Other Party, and includes data such as their names, location, driving styles (the 'Personal Data').

19.2.2 Supplier processes the Personal Data for the duration of the agreement with the Other Party and for the purpose of providing the Software, including for the purpose of making the data, including the Personal Data, that is processed when using the Software available to the Other Party.

19.2.3 The Other Party ensures that any personal data processed by it as controller will be processed and handled with care and that it complies with the applicable personal data legislation. It is the Other Party's responsibility to ensure that it secures its access to the Personal Data, including ensuring that the log in details used to access the Software, are kept secure and confidential.

19.2.4 Supplier only processes the Personal Data so that the Other Party can make use of the Software, and otherwise on the Other Party's written instruction. Supplier does not process the Personal Data for its own purposes. Supplier may however be legally obliged to process Personal Data outside the Other Party's instruction if it is required to do so on the basis of applicable laws. Should Supplier receive a legally binding request, it shall notify the Other Party thereof, unless the applicable law prohibits it from notifying the Other Party on important grounds of public interest.

19.2.5 Supplier keeps the Personal Data confidential. Its employees working with the Personal Data will keep the Personal Data confidential and will only handle them for the purposes set out above.

19.2.6 Supplier takes appropriate technical and organizational security measures to secure and protect the Personal Data.

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- 19.2.7 If there is a security breach that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data (a 'Data Breach'), Supplier will notify the Other Party thereof without undue delay. Upon the Other Party's request, Supplier will give the relevant information in its possession with respect to the Data Breach, in order for the Other Party to notify it to the competent authorities and the data subjects, if required.
- 19.2.8 For Supplier to be able to offer the Software, it uses its own service providers. Supplier ensures its service providers are bound to the same or similar provisions as set out in Clauses 19.2.4-19.2.9. in as far as this relates to such service providers' processing activities. The Other Party gives its general approval to use service providers. If Supplier wants to change or add a service provider, it will notify the Other Party thereof. The Other Party may object to the change or addition within 7 working days after the notification. If the processing of the Personal Data is not adversely affected by such change or addition the Other Party shall not object so that Supplier can continue to offer the Software to the Other Party. If the Other Party does timely object, and Supplier cannot amend the Software or services to accommodate the Other Party's objection with 14 days of its objection, the Other Party may terminate the agreement. Supplier shall reimburse those fees the Other Party has paid in advance, for the remaining Subscription period during which the Software is discontinued.
- 19.2.9 At the end of the agreement with the Other Party, the Supplier shall, at the Other Party's request - and provided the Other Party is not in default of the agreement - hand over and/or delete the Personal Data.
- 19.2.10 If a data subject directs a question or a request about their Personal Data at Supplier, it will forward this to the Other Party so that the Other Party can handle the question or request itself. Taking into account the above and the nature of the processing Supplier will provide further reasonable assistance to respond to the data subjects' requests for exercising their rights under the applicable personal data legislation.
- 19.2.11 Taking into account the nature of the processing and the information available to Supplier, it will provide reasonable assistance to help the Other Party with the applicable obligations relating to security, Data Breach notifications, privacy impact assessments, and prior consultation. Furthermore, Supplier will, upon the Other Party's reasonable notice, give the Other Party the information and reasonable cooperation required for the Other Party to verify whether Supplier complies with the provisions of this Clause 19.
- 19.2.12 Supplier reserves the right to charge a reasonable fee for assisting the Other Party beyond its usual support activities.
- 19.2.13 The Other Party grants Supplier the right and, if necessary hereby instructs Supplier, to anonymize the Personal Data so that Supplier can use and publish this anonymized data for benchmark reports, analyses and its other purposes. Personal data legislation no longer applies to such anonymized data.

## 20 Software and Subscriptions

- 20.1 If the Supplier (or a third party or programmer employed on behalf of the original Supplier) supplies Software and/or offers access to Software and/or a licence to use or implement its Software in products and/or services of the Other Party, the following specific conditions of this Clause 20 apply:
- 20.2 The Other Party is (at its own costs) responsible for ensuring that all relevant or useful data and information necessary for the carrying out of the agreement is made available to the Supplier on time and in an understandable and usable form. The Other Party is responsible for the use and the correct application of the Software, the hardware and any services provided or to be provided by or on behalf of the Supplier and will, if any right to use or access the Software will be made available to the clients of the Other Party, inform its clients of any information regarding the correct application or use the Supplier deems necessary. Furthermore, the Other Party is responsible for the use and the correct application of the administration and calculation methods employed and the Other Party is responsible for the protection of the data. If, in the pursuance of the agreement, the Other Party has to make material, equipment and/or data (data and information on information carriers) available, then the Other Party is responsible that these meet the specifications required for the execution of the agreement.
- 20.3 In the case where the data and information necessary for the execution of the agreement is not made available to the Supplier or the information made available is not complete or is not made available on time or in the correct form or if the Other Party does not otherwise meet his commitments, the Supplier is entitled to suspend or discontinue the agreement; in such a case the Other Party, without prejudice to the rights of the Supplier with regard to compensation for damages and payment of the price agreed upon, will be liable to the Supplier for the costs of the activities which have already been carried out in pursuance of the execution of the agreement and, moreover, the Supplier is entitled to pass on any extra costs incurred calculated using the tariffs which are in effect.
- 20.4 If the Supplier grants the Other Party the right to use or access its Software, non-exclusive use or access the Software for the services agreed upon is granted unless agreed otherwise. The Software may only be used by the Other Party for the purposes agreed upon. Any Software that can only be accessed or used through a unique code made available for use in one device (such as "Profile" and "Libraries") may only be uploaded in one processing unit of Other Party or its clients.
- 20.5 The source code of any Software of the Supplier and/or sold by the Supplier the Supplier and/or granted access or license to by the Supplier will not be made available to the Other Party. The ownership of the Software and all rights relating to industrial and intellectual ownership remain with the Supplier and will be respected by the Other Party. Markings relating to rights of industrial or intellectual ownership such as author's right markings will not be removed or made unreadable or unrecognisable by the Other Party. The Other Party will not reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Supplier or any services provided, unless the Supplier grants written prior permission for such activities.
- 20.6 By entering into any agreement concerning or relating to Software developed by or sold by the Supplier, the Other Party declares that he knows that the Software contains confidential information and business secrets of the Supplier. The Other Party is obliged to keep the Software secret and not to make it known to third parties.



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- 20.7 Contrary to the period specified in Clause 8 of these Conditions the guarantee period in the case of Software is three months from the date of delivery (which is, if no hardware is sold along with the Software, the date the Other Party could access or use the Software or, if that is earlier, the date on which any code enabling use or access the Software has been provided to the Other Party). After delivery in usable form, the Software will be deemed to have been accepted by the Other Party. During the 3 month guarantee period the Supplier will do his best to rectify any faults resulting from the failure of the Software to conform to the user-manual. Such rectification will only be free of charge if a maintenance contract has been signed or when a usage fee has been agreed which includes maintenance and where the faults are not caused by or related to usage faults on the part of the Other Party or other reasons not attributable to the Supplier. In other cases the costs of rectification can or will always be passed on to the Other Party. The guarantee does not cover the recovery of any lost data. The guarantee lapses if the Software is amended or changed by anyone other than the Supplier or has been used or accessed for purposes other than those agreed upon by the Supplier and the Other Party or any purposes other than indicated by the Supplier. If a Subscription to access Software is sold and the Other Party complies with its obligations under the relevant agreement, the Supplier will, at its own expense and as its sole obligation and the Other Party's sole and exclusive remedy for any breach, use commercially reasonable efforts to correct any reproducible error in the Software reported to the Supplier in writing (along with all information available to the Other Party that is relevant to verifying, diagnosing, or correcting the error) during the term of the Subscription.
- 20.8 The Supplier does not guarantee that any Software will function without interruption or without faults or that all faults will be rectified or corrected. If no specific service levels have been agreed upon, up to and including 5% downtime per week is in any case acceptable and can not lead to any liability, guarantee claims or otherwise.
- 20.9 When a maintenance agreement for the Software has been made with the Supplier or during the period of any Subscription, the Other Party is obliged to notify the Supplier immediately and clearly in writing concerning any faults detected in the Software. After receipt of this notification, the Supplier will then do his best to rectify the faults if the Software does not conform to the specifications referred. Recovery of lost data is not covered by the maintenance agreement. If the faults are caused by or relate to usage faults on the part of the Other Party or other reasons not attributable to the Supplier then the Supplier is entitled to pass on the cost of repair to the Other Party. If the faults are caused by or related to changes or amendments in the Software made by anyone other than the Supplier then the Supplier is entitled to pass on all repair costs to the Other Party.
- 20.10 When a maintenance agreement has been made and/or when Software is being given access through during a Subscription period and when an improved version of any Software becomes available on the market, the Supplier is allowed to make such a version available to the Other Party. Three months after the making available of the new version to the Other Party, the Supplier will no longer be obliged to rectify faults in older versions. If a new version of the Software offers more possibilities and/or functions than older versions, the Supplier is entitled to charge a fee for making the new version available. The Supplier himself is at all times entitled to use the Software that he has developed or which has been developed on his behalf or which he has commissioned, or to apply and to develop the Software further and to allow others to use, apply and/or further develop the Software.
- 20.11 When the Supplier provides access to or a licence to use Software that he has not developed himself, but only grants the right of use or access to Software from a third party in accordance with the conditions of use or licensing agreement of or with the third party or if maintenance with regard to Software is carried out on the basis of the conditions of an agreement between the Supplier and a third party, then the provisions on maintenance, guarantees and remedies of these Conditions do not apply if the provisions of the relevant agreement or agreements that the Supplier has with the third party or parties do not offer similar or more favourable rights to the Supplier. The Supplier, at the request of the Other Party, will provide information about the provisions that are applicable.
- 20.12 When the Other Party enters into an agreement to buy hardware together with a Subscription for services, the Other Party is granted a non-exclusive limited right to use the services, and any selected additional modules which are made available by the Supplier. The Other Party does not acquire the Subscription or any copy or part. The Subscription entitles the Other Party to use the Subscription for the number of entries, additional modules, etc. specified for each Subscription type. Only the Other Party, its representatives and clients will be entitled to use the Subscription. The Other Party agrees to be fully responsible and liable for any third parties that are given access to the Subscription by the Other Party. Any hardware bought together with the Subscription will remain property of the Supplier until all fees for the relevant hardware and the Subscription for the initial term agreed upon are paid in full.
- 20.13 If the Supplier develops any specific, customised Software for the Other Party, parties will agree on the terms of development, sale and use of such specific Software and the specific requirements and specifications of such Software. In such case the Other Party will at all times remain responsible for the correctness, completeness, relevance and reliability of the data and information it will provide the Supplier with. If an agreement has been made to develop the Software in steps or in phases, the Supplier is entitled to delay or postpone all or a part of the activities of the following step or phase until such time as the Other Party has approved, in writing, the results of the previous step(s) or phase(s). The parties can agree to change and/or extend the activities regarding the development of specific Software previously agreed. If a fixed price has been previously agreed then the Supplier will inform the Other Party of the extra costs involved for the required or agreed change(s) or extension(s). In the case of changes or extensions the delivery time, or the point in time when the activities are planned for completion, will be extended or deferred as appropriate. If, in the opinion of the Supplier during the execution of the agreed activities, it appears that a change and/ or extension is necessary or desirable and it has been agreed that the Software is to be developed on a fixed price basis, then the Supplier will inform the Other Party of the additional costs resulting from the change or extension. If the Other Party does not agree to the suggested change(s) and/or extension(s) and the associated price increase in writing within fourteen days, the Supplier is entitled to delay or postpone the execution of the activities, in which case the Other Party will be liable to the

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Supplier for the costs of the activities already carried out, calculated using the tariffs of the Supplier which are applicable, this without prejudice to the right of the Supplier to demand damages. If the Supplier informs the Other Party about a necessary or desirable change or extension, the delivery time or date of completion of the activities will be extended or deferred by at least three weeks. If any further change or extension to the activities occurs then the delivery time or time of completion of the activities will be extended further or deferred accordingly.

## 21 Consultancy

21.1 If the Supplier provides consultancy services, the following specific clauses apply:

The Supplier is entitled to postpone or defer the activities involved in a following step or phase or a part of these activities until such time as the Other Party has approved, in writing, the results of the previous step(s) or phases(s).

If a fixed price has been agreed, the Supplier will inform the Other Party of the price increase involved as a result of the desired or agreed change(s) or extension(s). In the case of changes or extensions the completion dates for the activities will be extended accordingly.

21.2 If during the execution of the agreed activities the Supplier feels that a change and/or extension to them is necessary or desirable, the Supplier will inform the Other Party about this and, where a fixed price has been agreed for the advice, the Supplier will also inform the Other Party of the amount of price increase for the change or extension. If the Other Party has not agreed to the proposed change(s) and/or extension(s) in writing within fourteen days, the Supplier will be entitled to postpone or delay the execution of the activities, in which case the Other Party is obliged to pay the costs of the activities already carried out in accordance with the tariff used by the Supplier, irrespective of whether a fixed price has been agreed and without prejudice to the right of the Supplier to demand compensation. If the Supplier informs the Other Party about a necessary or desirable change or extension, then the date on which the advice is to be completed will be extended by at least three weeks, and, furthermore, if a change or extension of the activities actually takes place, this completion date will be extended correspondingly.

21.3 Should the Other Party cancel consultancy services assigned to the Supplier, the full price for the (expected) total amount of services will notwithstanding clause 3.4 become immediately due and payable, unless such cancellation is due to an attributable breach of the Supplier in the execution of the consultancy services.

## 22 Applicable law; disputes

22.1 Dutch Law is applicable to all offers, agreements, deliveries and services produced or made, entered into, performed or executed by or on behalf of the Supplier. The treaty of the United Nations concerning international trade agreements relating to movable goods (Vienna Trade Treaty) will not apply.

All disputes, including those which are only considered as such by one party, resulting from, or connected with, an agreement to which these Conditions are applicable or the execution thereof and which cannot be solved amicably, will be settled in the first instance by the District Court of the district in which the Supplier is located if the Other Party is domiciled in the European Union. If the Other Party is not domiciled in the European Union, any and all disputes between parties shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute by one arbiter, place of arbitration will be Amsterdam.

## 23 Validity

23.1 If any provision in these Conditions is not completely valid or only partially valid and/or not enforceable, then this will have no effect on the validity of the other provisions in these Conditions. If a provision in these Conditions should prove to be invalid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope, then this provision will be automatically valid with the most far-reaching or extensive range or scope with which or within which it is valid.