



WE ARE LEAN AND AGILE

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Terms and conditions



Engage! Software BV

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General Terms and Conditions of Engage! Software BV

Article 1 Subject

1.1 Engage! Software BV (“Engage”) shall make the software as defined in the quotation remotely available to Customer (by use of the Internet), without providing a physical copy to Customer (a so-called SaaS service). These general terms and conditions describe under which conditions the online access to this SaaS service will be provided to Customer.

1.2 These general terms and conditions also stipulate under which conditions Engage offers maintenance, support and coaching services, as well as training courses related to the SaaS service.

Article 2 Access to the SaaS service

2.1 Engage grants to Customer the right of access to the SaaS service as described in the quotation.

2.2 In order to access the SaaS service, Engage will provide the initial username(s) and password(s) to Customer. Hereafter, Customer can create or change username(s) and/or password(s). Usernames and passwords are strictly personal. Under no circumstances may this information be provided to other parties by Customer and/or one of its users, except within the Customer’s own organization.

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2.3 Engage is entitled to change the assigned username(s) and/or password(s). Customer agrees to treat the username(s) and password(s) confidentially and with care and to make these known only to authorized persons. Engage is not liable for damages and costs resulting from abuse of the username(s) and/or password(s), unless the abuse has been made possible as a direct result of an act or omission of Engage.

2.4 If Customer fails to fulfill its obligations under these general terms and conditions and the quotation, understood to include but not be limited to payment of owed compensation for the services as described in this agreement, Engage has the right to deny Customer access to the SaaS service and/or to temporarily suspend access.

2.5 Customer is responsible for the management and monitoring of the settings, the use of the SaaS service and the manner in which the results obtained via the SaaS service are used. Engage is not responsible for data conversion, except as explicitly stated in the quotation. Engage is also not responsible if the SaaS service is used offline.

2.6 Engage may modify the content of the SaaS service. In the event that a modification results in a change in fees, Engage will notify Customer of the change in writing. Customer is then entitled to terminate the agreement in writing, by the date on which the modification takes effect, unless the modification is due to changes in laws and regulations.

2.7 Engage may provide the SaaS service using new or modified versions of the underlying software used by the SaaS service.

2.8 Engage is not required to provide Customer a copy of the underlying software and/or source code, in any manner whatsoever.

2.9 Engage will perform a daily backup of Customer's data. This backup is kept for two weeks.

Article 3 Services

3.1 Engage will maintain the SaaS service. This maintenance includes, among other things, maintaining knowledge of the SaaS service and underlying software, fixing discovered

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bugs to the extent that Engage considers relevant, developing new or modified versions of the underlying software if Engage considers doing so relevant, and providing a support help desk such as described below.

3.2 Engage is entitled to temporarily suspend the SaaS service due to maintenance in any form whatsoever. Engage will do so only as long as is necessary for maintenance purposes and, where possible, will do so outside the normal business hours of the Netherlands. If this maintenance takes place within normal business hours as stated above, Engage will inform Customer.

3.3 Engage will perform the service to the best of its ability with due care, where appropriate in accordance with the written agreements and procedures made with Customer. All services will be performed based on a best efforts obligation.

3.4 Engage will perform the following support services for Customer:

- Service Center: Engage's service center is available during office hours by telephone at +31 20 530 7280 or e-mail at support@engage.nl. Support requests will be handled within 24 hours, during office hours.
- An extensive digital and printable manual has been incorporated in all products.
- Instruction videos: An extensive library is available via the Internet.
- User conferences are organized on a regular basis.

3.5 Engage offers the training courses as described in the quotation. Engage also offers coaching as described in the quotation. These services are provided at the rates included in the quotation.

3.6 In the event that Engage employees perform activities at Customer's location, Customer will provide, free of charge and within reason, the desired facilities of those employees, such as, if applicable, a workspace with telecommunication facilities, etc. Customer shall indemnify Engage against claims from third parties, including Engage employees, who in connection with implementing the agreement suffer damage as a result of an act or omission of Customer or of unsafe situations in Customer's organization.

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3.7 Engage does not guarantee that the software underlying the SaaS service is free of errors, nor that it shall work uninterrupted at all times.

Article 4 Due compensation

4.1 All prices are exclusive of sales tax (VAT) and other taxes that are imposed by the government.

4.2 Customer is responsible for paying in advance the charges as described in the quotation. With regard to periodic charges, Engage is entitled to adjust the applicable prices and fees by providing written advance notice of at least three months.

4.3 If Customer does not agree with an adjustment of prices and fees as made known by Engage according to Article 4.2, Customer is entitled to terminate or cancel the agreement in writing within seven working days of Engage's notification as intended by the articles. Such termination or cancellation shall take effect as of the date on which the price or fee adjustment would occur as given in Engage's written notice.

4.4 Engage is entitled in all cases to adjust the agreed upon prices and fees by written notice to Customer for services that, according to the related schedule or according to the agreement, shall be delivered on a date that is at least three months after the date of such notice.

4.5 All invoices shall be paid by Customer according to the payment terms stated on the invoice. In the absence of specific conditions, Customer shall pay within thirty days of the invoice date.

4.6 If Customer fails to pay the amounts due within the agreed period, Customer shall, without any required notice, owe the statutory commercial interest on the outstanding amount. If, after being given notice, Customer remains negligent in paying the amount due, the claim may be transferred to an external party in which case Customer, in addition to the existing amount due, shall also be responsible for full compensation of judicial and extra-judicial costs, including any fees charged by external experts, in addition to the legally incurred costs related to the collection of the claim or otherwise of the exercise of rights, such costs determined to be a minimum of 15% of the total amount.

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4.7 If, when entering into an agreement, Engage and Customer do not agree on a price for specific services, Engage shall determine the payment for its services based on actual costs. If the compensation of Engage's services is calculated based on actual costs, this calculation shall occur based on the number of hours specified by Engage related to the service, except in so far as Customer demonstrates that Engage's specification is incorrect.

4.8 Customer rights are granted or, in this case, transferred under the condition that Customer fully and timely pays the agreed compensation.

Article 5 Duration of the agreement

5.1 This agreement shall take effect on the date of signing of the quotation and shall be valid for the period of time as agreed in the quotation. If no period is specified in the quotation, the agreement shall be valid for the initial period of one year.

5.2 The agreement shall be automatically renewed each year with the same period as the existing agreement, unless one of the Parties terminates this agreement in writing prior to the end of the agreement period, observing a notice period of two months.

5.3 Each of the Parties is entitled to dissolve the agreement due to an attributable shortcoming in fulfillment of the agreement only if the other party attributively fails to comply with substantial obligations of the agreement and in all cases after a detailed written notice is given in which a reasonable period is indicated for eliminating the deficiency. Customer's payment obligations and all other obligations of cooperation by Customer or a third party arranged by Customer are always deemed to be substantial obligations of the agreement.

5.4 If Customer has already received services in the implementation of the agreement at the time of dissolution as referred to in Article 5.3, then these services and the associated payment obligation shall not be subject to cancellation, unless Customer proves that Engage is in default with respect to a substantial part of those services. Amounts that Engage has invoiced before the dissolution in relation to that which it has already satisfactorily implemented or delivered pursuant to the agreement remain fully payable,

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taking into account that which is stipulated in the previous sentence, and become immediately claimable at the moment of the dissolution.

5.5 Customer is never entitled to prematurely cancel an agreement, which is valid for a fixed period of time, for services or for tasks.

5.6 Either party may without formal notice terminate the agreement in whole or in part in writing effective immediately if the other party is granted temporary or permanent suspension of payment, if bankruptcy is requested by the other party, if the business of the other party is liquidated or terminated other than for the purpose of reconstruction or merger, or if there is a change in decisive control of Customer's business. As a result of such termination, Engage is never to be held to any restitution of already received monies or to any compensation for damages. In case of bankruptcy of Customer, the right of Customer to usage of the services expires by operation of law.

Article 6 Privacy

6.1 Customer indemnifies Engage against claims of persons whose personal data are registered or processed within a framework of a personal registration that is kept by Customer or for which Customer is otherwise legally responsible, unless Customer proves that the facts on which the claim is based are solely attributable to Engage.

6.2 The responsibility for the data that are processed in using the services provided by Engage lies solely with Customer. Customer guarantees to Engage that the content, the use and/or processing of the data are/is not illegal and do/does not infringe on any rights of a third party. Customer indemnifies Engage against any legal claims from third parties, for whatever reason, related to these data or the implementation of the agreement.

6.3 If Engage must incur costs to support Customer with meeting its responsibilities as described in this Article, then Customer shall reimburse these costs according to Engage's prevailing fees.

Article 7 Liability

7.1 The total liability of Engage due to an attributable shortcoming in the fulfillment of the agreement or for any other reason, specifically including any failure to comply with a warranty obligation made by Customer, is limited to compensation of direct damage up to

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a maximum amount equal to the price stipulated in the agreement (exclusive of VAT). This limitation of liability shall apply by analogy to the indemnification obligations of Engage. If the agreement is primarily a continuation agreement, the stipulated price in the agreement is set at the total compensation (exclusive of VAT) for six months. In no event shall the total liability of the supplier for direct damage, for whatever reason, exceed €45,000 (forty-five thousand Euro).

7.2 Engage's liability for damage for death or bodily injury or liability due to material damage shall never exceed the benefit of the liability insurer minus the deductible. Reimbursement shall in no event exceed €200,000 (two hundred thousand Euro).

7.3 Engage's liability excludes indirect damage, consequential damage, lost profit, lost savings, loss of goodwill, damage due to business interruptions, damage due to claims of customers of Customer, damage related to the use by Engage of Customer's authorized products, material or programs of third parties, and damage related to the engagement of suppliers authorized by Customer to Engage. The liability of Engage due to mutilation, destruction or loss of data or documents is also excluded.

7.4 The exclusions and limitations of the liability of Engage, such as described in the preceding paragraphs of this Article, leave the remaining exclusions and restrictions of Engage's liability entirely unrestricted.

7.5 The exclusions and limitations referred to in this Article shall not apply if and in so far as the damage is the result of intent or deliberate recklessness of the management of Engage.

7.6 Unless compliance by Engage is permanently impossible, Engage's liability exists due to an attributable shortcoming in fulfillment of the agreement only if Customer gives prompt written notice to Engage, in which a reasonable period is indicated for eliminating the deficiency, and Engage also remains after this period attributively falling short in the fulfillment of its obligations. The written notice must contain a description of the shortcoming, which is as complete and detailed as possible, so that Engage is given the opportunity to adequately respond.

7.7 A condition for the existence of any right to compensation for damage is always that Customer provides written notice to Engage of the damage as soon as possible. Any claim

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of compensation for damage against Engage expires after the mere lapse of six months after the claim arises.

7.8 Apart from the cases mentioned in this Article, no liability for compensation for damage rests with Engage, regardless of the grounds on which an action for compensation for damage could be based.

Article 8 Confidentiality

8.1 Each of the parties assures that all information of a confidential nature received from the other party before and after entering into the agreement shall remain private. Information shall be, in any case, considered confidential if this is indicated as such by one of the parties. Customer understands that the content and operation of the SaaS service is considered confidential.

8.2 Customer shall promptly notify Engage in writing of any (possible) violation of this Article. Customer shall also do everything possible, either by its own initiative or upon Engage's request, to minimize any possible damage for Engage.

Article 9 Force majeure

9.1 None of the parties is required to comply with any obligation if it is prevented in doing so as a result of circumstances outside its control. Under circumstances outside its control are, in any case but not exclusively, understood an improper compliance with obligations by suppliers authorized to Engage by Customer; governmental measures; electricity disruptions; interruptions in the operation of the Internet, computer network or telecommunications facilities; war; work occupancy; strikes; general transportation problems; and the unavailability of one or more staff members not due to the fault of Engage.

9.2 When the force majeure situation has lasted more than ninety days, parties are entitled to terminate the agreement by written notice of cancellation. That which has already been performed under the agreement will be settled proportionately, moreover without any obligation of parties to each other.

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Article 10 Intellectual property

All intellectual or industrial property rights of software, equipment or other material developed or made available under the agreement, such as analyses, designs, documentation, reports, quotations, as well as preparatory material of such, rest exclusively with Engage or its licensors.

Article 11 Other provisions

11.1 In the event that Customer is a consumer, who does not use the SaaS service in the exercise of his or her profession or business, then he or she normally has the right of return. However, due to the nature of this SaaS service, a consumer does not have this right in this case.

11.2 The application of possible purchase or other conditions of Customer is expressly not allowed.

11.3 If any provision of these general terms and conditions is invalid or annulled, the remaining provisions of these general terms and conditions shall remain in full force, and Engage and Customer shall enter into consultations to agree on new provisions to replace the invalid or annulled provisions, whereby the aim and scope of the invalid or annulled provision is observed as much as possible.

11.4 All (delivery) dates mentioned by Engage are established to the best of its knowledge based on the information known to Engage upon entering into the agreement, and they shall be observed as much as possible; the sole failure to meet a mentioned delivery date does not put Engage in default. Engage is not bound to (delivery) dates that, due to circumstances beyond its control that have arisen after the agreement has been entered into, can no longer be met. If failure to

meet a date threatens to occur, Engage and Customer shall enter into consultations as soon as possible.

11.5 In the case of export of equipment, components or software by Customer, the relevant export provisions apply. Customer shall indemnify Engage against all claims of third parties related to breaches of the applicable export provisions attributable to Customer.

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11.6 All provisions that by their nature are intended to continue to apply after the end of the agreement, such as the provisions concerning confidentiality and intellectual property, shall remain in force after the end of the agreement.

11.7 The agreement may be amended if Parties jointly agree in writing.

11.8 The agreement is governed by Dutch law.

11.9 Any disputes between Parties which may arise from the agreement or as a result of further agreements will be settled through the courts of Amsterdam.

COMPANY INFORMATION

Company Information

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