

GENERAL TERMS AND CONDITIONS

Kryoz Technologies BV, with its registered office and principal place of business in Enschede, hereinafter referred to as: user Trade register: Chamber of Commerce Veluwe and Twente: 08177692.

Article 1: Definitions

In these general terms and conditions, the following terms shall have the following meaning, unless explicitly stated otherwise.

User: the user of the general terms and conditions.

Other party: the other party (principal and/or purchaser) of user.

Agreement: the agreement to provision of service and/or purchase.

Article 2: General

1. These conditions shall apply to each offer and agreement between user and another party to which these conditions have been declared applicable by user, insofar as these conditions are not explicitly deviated from in writing by parties.

2. The present conditions shall also apply to all agreements with user, of which the execution requires the involvement of third parties.

3. Any deviations under these general terms and conditions shall only be valid if these are explicitly agreed upon in writing.

4. The applicability of any purchase or other conditions of the other party is explicitly rejected.

5. If one or more of the provisions in these general terms and conditions are null and void or might be nullified, the remaining provisions of these general terms and conditions shall remain in full force. In that case user and other party shall hold consultations in order to agree on new provisions in replacement of the null and void or nullified provisions, bearing in mind, if possible and as much as possible, the aim and purport of the original provision.

Article 3: Offers

1. The offers made by user are without obligation; they hold good for 30 days, unless stated otherwise. User is only bound by the offers, if acceptance thereof is confirmed by the other party within 30 days in writing, unless stated otherwise.

2. Delivery periods in offers of the user are indicative and do not entitle the other party to dissolution or compensation in case they are exceeded, unless explicitly stated otherwise.

3. The prices in said offers are exclusive of VAT and other government levies, as well as any costs to be incurred as part of the agreement, including costs for shipping and handling, unless stated otherwise.

4. If the acceptance deviates (on minor aspects) under the offer included in the quotation, user shall not be bound by it. The agreement shall then not be concluded in accordance with this deviating acceptance, unless user indicates otherwise.

5. A combined quotation does not oblige user to carry out a part of the order at a corresponding part of the quoted price.

6. Offers do not automatically apply to future orders.

Article 4: Execution of the agreement

1. User shall carry out the agreement to the best of his knowledge and ability and in accordance with the requirements of good craftsmanship, all this on the basis of the state of the art known at that time.

2. If and insofar as a proper execution of the agreement so requires, user shall have the right to have certain activities performed by third parties.

3. The other party shall see to it that user is provided with all data, of which user indicates that these are necessary or of which the other party should reasonably understand that these are necessary for the execution of the agreement. If user has not been provided in time with the data needed for the execution of the agreement, user is entitled to suspend the execution of the agreement and/or to charge the other party with the extra costs arising from the delay in accordance with the usual rates.

4. User shall not be liable for damage, of any nature whatsoever, on account of user having assumed incorrect and / or incomplete data supplied by the other party, unless this incorrectness or incompleteness should have been known to user.

5. If it is agreed that the agreement will be carried out in stages, user can suspend those parts of the execution belonging to a next stage, until the other party has approved in writing the results of the immediately preceding stage.

6. If activities are carried out by user or by third parties called in by user as part of the order on the location of the other party or on a location designated by the other party, the other party shall provide free of charge the facilities required in reasonableness by those employees.

7. Other party indemnifies user against any claims by third parties suffering damage in connection with the execution of the agreement, which is attributable to the other party.

Article 5: Modification to the agreement

1. If it turns out during the execution of the agreement that it is necessary for a proper execution to modify or supplement the activities to be performed, parties shall adapt the agreement in writing accordingly in time and in mutual consultation.

2. If parties agree that the agreement is to be modified or supplemented, the date of completion of the execution may be influenced because of that. User shall inform the other party of that as soon as possible.

3. If the modification or supplementation to the agreement will have financial and/or qualitative consequences, user shall inform the other party of this in advance.

4. If a fixed fee is agreed on, user shall indicate to what extent the modification or supplementation to the agreement will result in this fee being exceeded.

5. In deviation from paragraph 3 user cannot charge additional costs, if the modification or supplementation is the result of circumstances that may be attributed to user.

Article 6: Duration of the agreement; term of execution

1. The agreement between user and another party is entered into for an indefinite period of time, unless the nature of the agreement dictates otherwise or parties have explicitly agreed otherwise in writing.

2. If within the duration of the agreement a date is agreed on for the completion of certain activities, this shall never be a firm date. Therefore, when the date of execution is exceeded, the other party should give user notice of default.

Article 7: Fee

1. When concluding the agreement parties can agree on a fixed fee.

2. If no fixed fee is agreed on, the fee shall be determined on the basis of hours actually spent. The fee will be calculated according to user's customary hourly rates, applicable to the period in which the activities are performed, unless a deviating hourly rate is agreed on.

3. The fee and any costs estimates are exclusive of VAT.

4. For orders with a term of more than 3 months the costs payable shall be charged periodically.

5. If user agrees with the other party on a fixed fee or hourly rate, user shall nevertheless be entitled to increase this fee or rate. User can pass on price increases, if user can demonstrate that between the moment of offer and delivery significant price changes have occurred with regard to e.g. wages. User is also allowed to raise the fee when it turns out during the execution of the activities that the amount of work originally agreed on or expected when concluding the agreement was underestimated to such an extent, this not being attributable to user, that user cannot in reasonableness be expected to carry out the activities agreed on at the fee originally agreed on.

6. User shall inform the other party in writing of his intention to raise the fee or rate. User shall state the volume of and the date on which the increase shall take effect.

7. If the other party does not wish to accept the increase of the fee or rate made known by user, the other party is entitled to cancel the agreement in writing within seven working days after said notification, or to cancel the order by the date mentioned in user's notification on which the price or rate adjustment would become effective.

Article 8: Payment

1. Payment is to be made within 14 days of date of invoice, in a manner to be designated by user in the currency stated in the invoice. Objections to the invoice amount do not suspend the other party's obligation to pay.

2. If the other party fails to pay within the 14-day term, the other party is in default by operation of law. User shall then be entitled to charge an interest rate of 1% a month. The interest over the amount due shall be charged from the moment the other party is in default until the moment of payment of the full amount.

3. In case of the other party's winding-up, bankruptcy, attachment or suspension of payment the claims of user on the other party shall be immediately due and payable.

4. User shall have the right to have the payments made by the other party serve in the first place to settle the costs, then to settle the accrued interest and finally to reduce the principal sum and the outstanding interest. User may refuse an offer to pay, without defaulting because of that, if the other party indicates another sequence for the imputation.

User can refuse full repayment of the principal, if the accrued and outstanding interests as well as the costs are not paid either.

Article 9: Collection costs

1. If the other party fails or omits to fulfill his obligations (in time), all reasonable extrajudicial collection costs shall be borne by the other party. In case of a monetary claim, the other party shall at any rate be obliged to pay collection costs. The collection costs shall be calculated in accordance with the collection rate as recommended in collecting business by the Netherlands Bar Association.

2. If user has incurred higher costs, which were reasonably necessary, these shall also be eligible for repayment.

3. Any reasonable court costs incurred shall also be borne by the other party.

Article 10 Inspection, complaints

1. Complaints on activities performed should be reported to user by the other party in writing within 8 days after discovery, yet within 14 days at the latest after completion of the relevant activities. The notice of default should contain as detailed a description of the shortcoming as possible, so that user can react adequately.

2. If a complaint is justified, user shall as yet carry out the activities agreed on, unless this has meanwhile become pointless for the other party. This last aspect should be expressed by the other party in writing.

3. If the service agreed on or yet to be performed is no longer possible or appropriate, user shall only be liable within the limits of article 14.

4. In case of delivery of articles purchased the other party should (have) inspect(ed) these as soon as possible. In doing so the other party should check if the articles delivered meet the agreement, namely: if the right goods have been delivered, if the goods delivered correspond, as far as quantity is concerned, with the quantity agreed on, if the goods delivered meet the quality requirements agreed on, or, if these are absent, the requirements that may be set to normal use and/or commercial purposes.

5. If any visible faults or defects are found, the other party should report these to user in writing within 8 days after delivery.

6. The other party should report invisible defects to user in writing within 3 days after discovery, yet within 3 months after delivery at the latest.

7. Even if the other party lodges a complaint in time, his obligation to pay and to purchase orders placed continues.

8. Goods can only be returned to user after his prior written permission.

Article 11: Guarantee

1. User guarantees that the goods supplied by her shall be free from design, material and manufacturing faults for a period of 3 months after delivery. The guarantee does not apply to assembly/disassembly activities carried out by third parties

2. If the product shows a design, material or manufacturing fault, the other party is entitled to repair the product. User may choose to replace the product, if repair is strenuously resisted. The other party shall only be entitled to replacement when repair of the product is not possible.

3. The guarantee does not apply, if the damage results from improper treatment or from instructions not being followed properly.
4. By improper treatment is meant: overburdening the product, improper/unskillful assembly/disassembly of the product.
5. If the guarantee concerns a product that has been produced by a third party, the guarantee is limited to the guarantee given by the producer in question.

Article 12: Cancellation

1. Both parties can at all times cancel the agreement.
2. If the agreement is cancelled prematurely by the other party, user is entitled to compensation on account of loss of utilization capacity brought about and made plausible because of that, unless facts and circumstances underlying the cancellation are attributable to user. The other party is then also obliged to pay the declarations for activities performed until then. The provisional results of the activities performed until then shall also be placed at the disposal of the other party subject to approval.
3. If the agreement is cancelled prematurely by user, user shall in consultation with the other party see to the transfer to third parties of activities still to be performed, unless facts and circumstances underlying cancellation are attributable to the other party.
4. If extra costs are involved for user in the transfer of the activities, they shall be charged to the other party.

Article 13: Suspension and dissolution

1. User is entitled to suspend the fulfillment of the obligations or dissolve the agreement, if
 - the other party does not or not fully meet the obligations under the agreement
 - circumstances, brought to the attention of user after concluding the agreement, give user good cause to fear that the other party will not meet its obligations. In case there is good cause to fear that the other party will only partially or not properly fulfill the agreement, suspension is only allowed insofar as justified by the shortcoming.
 - the other party, on concluding the agreement, has been requested to provide security for the fulfillment of its obligations under the agreement and this security fails or is insufficient. As soon as security has been provided, the right to suspension ends, unless this fulfillment has been unreasonably delayed because of that.
2. User is also entitled to (cause to) dissolve the agreement, if circumstances occur which are of such a nature that fulfillment of the agreement cannot possibly or can no longer be required according to standards or reasonableness and fairness or if otherwise circumstances occur which are of such a nature that unchanged maintenance of the agreement cannot in reasonableness be expected.
3. If the agreement is dissolved, user's claims on the other party shall be immediately due and payable. If user suspends the fulfillment of the obligations, he shall retain his claims under the law and under the agreement.
4. User always retains the right to claim compensation.

Article 14: Liability

1. If user were to be liable, this liability shall be limited to what has been provided for in this provision.
2. If user is liable for direct damage, that liability shall at most be limited to the amount of the payment to be made by user's insurer, that is to a maximum of twice the invoice amount, that is that part of the order the liability is related to. User's liability for direct damage is at all times limited to a maximum of € 25000,- (in words: twenty-five thousand euros).
3. Direct damage shall only be taken to mean:
 - the fair costs to assess the cause and the extent of the damage, insofar as the assessment relates to damage in the sense of these conditions;
 - any costs incurred in reason to have user's inadequate performance meet the agreement, unless they cannot be attributed to user;
 - reasonable costs incurred to prevent or limit damage, insofar as other party demonstrates that these costs have led to limitation of direct damage as referred to in these general terms and conditions.
4. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage by business interruption.
5. The limitations of liability for direct damage included in these conditions do not apply, if the damage is due to intention or gross negligence of user or her employees.

Article 15: Passing of risk

1. The risk of loss or damage of the products, which are subject of the agreement, pass to the other party the moment they are legally and/or actually delivered to the other party and thereby brought under the control of the other party or of a third party to be designated by the other party.

Article 16: Retention of title

1. All goods delivered by user shall remain the property of user until the other party has fulfilled all obligations under all agreements concluded with user.
2. Goods delivered by user, falling under retention of title by virtue of paragraph 1, can only be resold in the context of an ordinary course of business and can never be used as means of payment.
3. The other party is not entitled to pledge or encumber in any other way the goods falling under retention of title.
4. The other party gives user or a third party to be designated by her now for then unconditional and irrevocable permission, in all cases in which user wants to exercise her property rights, to enter those places where user's properties will then be and to take away those goods in those places.
5. If third parties seize the goods delivered under retention of title or create or lay claims to them, the other party is obliged to inform user thereof as soon as can reasonably be expected.
6. The other party undertakes to insure and keep insured the goods delivered under retention of title against fire, explosion and water damage as well as against theft.

Article 17: Force majeure

1. Parties are not obliged to meet any obligation, if they are hindered in that as a result of a circumstance not attributable to negligence, and nor in accordance with the law, a legal act or common opinion attributed to them.
2. In these general terms and conditions force majeure means, in addition to what is covered by that in law and case law, all external causes, foreseen or not-foreseen, on which user cannot exercise any influence, yet because of which user is not capable of fulfilling her obligations. Strikes in user's company are included in that.
3. User also has the right to rely on force majeure, if the circumstance hindering that (further) fulfillment, arises after user should have met the obligation.
4. For the period force majeure continues, parties can suspend the obligations under the agreement. If this period lasts longer than two months, each of the parties shall be entitled to dissolve the agreement, without obligation to compensation of damage to the other party.
5. Insofar as user has meanwhile fulfilled or will be able to fulfill his obligations under the agreement at the time of force majeure arising, and substantive value falls on the part fulfilled or to be fulfilled, user shall be entitled to separately charge the part fulfilled or to be fulfilled. The other party is obliged to pay this charge as if it were a separate agreement.

Article 18: Secrecy

1. Both parties are obliged to secrecy of all confidential information, which they have obtained from each other or from another source under the terms of their agreement. Information is considered confidential when this has been communicated by the other party or when this ensues from the nature of the information.

Article 19: Intellectual property and copyrights

1. Without prejudicing the other provisions in these general terms and conditions, user reserves the rights and powers belonging to user by virtue of the Copyright Act (Dutch: Auteurswet, Handelsnaamwet).
2. All documents provided by user, such as reports, advice, agreements, designs, sketches, drawings, software, etc., are meant to be used by the other party only and cannot be multiplied by him, publicised, or brought to the knowledge of third parties without user's prior permission, unless the nature of the documents provided requires otherwise.
3. User reserves the right to use the knowledge gained in the execution of the activities for other purposes, insofar as no confidential information is brought to the knowledge of third parties.

Article 20: Samples and models

1. If the other party is shown or provided with a sample or model, it is supposed to have been provided only as an indication, unless it is explicitly agreed on that the product to be supplied will agree with it.
2. In case of an order in respect of an immovable property, the statement of the surface is also supposed to be meant as a mere indication, without the product to be supplied being required to meet that indication.

Article 21: Disputes

1. The court in user's domicile has exclusive jurisdiction to take cognizance of disputes. User is nevertheless entitled to submit the dispute to the court competent according to the law.
2. Parties shall only appeal to the court after they have done their utmost to settle a dispute mutually.

Article 22: Applicable law

1. Netherlands law shall apply to each agreement between user and the other party.

Article 23: Modification and location of the conditions

1. These conditions are filed at the website of Kryoz Technologies. The version filed most recently or the version applicable at the time of concluding the agreement shall always apply.