



# GENERAL TERMS AND CONDITIONS OF DELIVERY

OTHERSIDE AT WORK 2023

VERSION 3.1

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CLASSIFICATION Public

## 1. Definitions

- 1.1 General Terms and Conditions of Delivery: these General Terms and Conditions of Delivery and any appendices thereto.
- 1.2 Consultancy Services: the work directed at, among other things, the design, configuration, training and project management of the Software.
- 1.3 Third Party/Third Parties: Parties engaged by Otherside to supply additional software functionalities. Third Parties explicitly do not include software components and/or tools for the proper functioning of the Software of Otherside, but only the functionalities defined as separate modules within the Software. If Third Parties are covered by the scope of the Supply Agreement, this will be explicitly mentioned in the Supply Agreement.
- 1.4 Services: the services related to and included in the Software, as described in the SLA, including Support and Maintenance.
- 1.5 End User: The entity that uses the Software and can authorise users (natural persons) to use the Software.
- 1.6 Otherside: the private company Otherside at Work B.V.
- 1.7 Fault: non-compliance of the Software or a Service with the Documentation.
- 1.8 Client: the other party of Otherside.
- 1.9 Licence Terms and Conditions: the Xpert Suite licence terms and conditions and/or licence terms and conditions of Third Parties and any appendices thereto.
- 1.10 Supply Agreement: The agreement between the End User and Otherside in which the supply of the Software and/or (Consultancy) Services has been agreed.
- 1.11 In Writing/Written: by letter or by email.
- 1.12 Software: the modular SaaS Software of Otherside and/or Third Parties as specified in the Supply Agreement.
- 1.13 Software Agreement: the agreement between Otherside and the End User in which the Data Processing Agreement, SLA and Licence Terms and Conditions have been agreed. The Software Agreement forms an integral part of the Supply Agreement.

## 2. General

- 2.1 These General Terms and Conditions of Delivery apply to all Otherside's offers and Supply Agreements. The applicability of the Client's general terms and conditions of purchase, if any, is explicitly excluded. To the extent that the performance of the Supply Agreement also includes the (re)selling of products and/or services of Third Parties, the relevant (general) terms and conditions of the Third Parties concerned apply. The use of Software of Third Parties is subject to the applicable terms of use of the Third Parties.
- 2.2 An Agreement is formed when both Parties have signed the Agreement. Agreements formed by electronic means

(e.g. by email) are not formed until an assignment or order from the Client has been confirmed by Otherside In Writing. Oral agreements are only valid if and as soon as they have been explicitly confirmed by Otherside In Writing.

## 3. Basis of the services

- 3.1 Otherside wants to work with its clients on the basis of a partnership idea, with each taking the other's reasonable interests into account. This reciprocity entails that Otherside and the Client will at all times provide support to each other in trying to achieve the best possible result from their mutual cooperation.
- 3.2 The (delivery) periods mentioned by Otherside are based on the information and circumstances known to Otherside at the time of concluding the Supply Agreement. The (delivery) periods are not strict deadlines, unless explicitly agreed otherwise in the Supply Agreement. Consequently, exceeding a (delivery) period does not automatically result in default by Otherside.
- 3.3 Default can occur in all ways that are provided for by the law. In any event, default by Otherside can exist once the Customer has given Otherside a realistic last chance, by means of a Written notice of default, of curing the default within a reasonable period and Otherside remains in attributable default after that period. The notice of default must include as complete and detailed a description of the default as possible to enable Otherside to respond adequately.

## 4. Development of software

- 4.1 If the Supply Agreement relates to the development and implementation of (customised) software, Otherside will carry out this work with due care and in accordance with the specifications agreed between the parties and any information, documentation and designs provided by the Client. Unless agreed otherwise by the parties, Otherside will, in co-creation with the Client, develop software in accordance with a development method that is characterised by the iterative design of the software or elements thereof (e.g. Scrum). In this connection, the parties accept that the software specifications have not been detailed, or not fully detailed, in advance and can be adjusted in consultation while the work is carried out, among other things for the purpose of the next iteration. The software to be delivered will comply with the most recently agreed (set of) specifications.
- 4.2 The Intellectual Property of developed and adjusted software is subject to the same IP clause as described in the Xpert Suite Licence Terms and Conditions.

## 5. Consultancy Services

- 5.1 Otherside, in collaboration with the Client, will perform Consultancy Services in accordance with the agreements

- made to that effect in the Supply Agreement or any other document (action plan or implementation plan).
- 5.2 In this connection, the Client will render all necessary co-operation to Otherside, including the timely provision of information requested and required by Otherside, as well as all other cooperation deemed necessary by Otherside.
- 5.3 Unless agreed otherwise in the Supply Agreement, Consultancy Services will be performed on the basis of a best-efforts obligation and will be settled with the Client on the basis of subsequent calculation.
- 6. Acceptance**
- 6.1 If the parties have agreed an acceptance procedure, the Software and/or Services will be considered to have been accepted once this acceptance procedure has been completed successfully.
- 6.2 If the parties have not agreed an acceptance procedure, the Services supplied will be considered to have been accepted once the Services have been performed. The Software made available after completion of the Implementation will be considered to have been accepted once the Client has put it to use or – if it is not put to use (in time) – in any case after 15 days have lapsed since it was delivered by Otherside.
- 6.3 If it has been agreed that the Service will be performed in phases, Otherside may suspend performance of elements pertaining to a following phase until the Client has approved the results of the preceding phase In Writing and has fulfilled the corresponding payment obligations. If Otherside has not received the required Written approval referred to within 30 calendar days, performance of that part of the Service will be considered to have been approved.
- 7. Fees and payment**
- 7.1 The fees payable by the Client to Otherside in respect of the Consultancy Service(s) and Software to be supplied are mentioned in the Supply Agreement.
- 7.2 Unless explicitly agreed otherwise In Writing, the price of the Consultancy Service(s) will be calculated retrospectively on the basis of Otherside's applicable hourly rates and the hours, or parts thereof, actually spent.
- 7.3 If Otherside performs its Consultancy Service(s) on-site at the Client's address, at least four (4) hours a day will be charged (regardless of the work).
- 7.4 All amounts and rates mentioned by Otherside are in euros, excluding VAT and other charges or government fees and including travel and accommodation expenses.
- 7.5 Otherside reserves the right to change its rates and fees annually per calendar year (n) in accordance with the Dutch Statistics Netherlands consumer price index (CPI). The determined indexation will be communicated prior to the calendar year. The CPI is calculated on the basis of the period from 1 October (n-2) up to and including 30 September (n-1), with a minimum of 0%.
- 7.6 In addition, Otherside has the right to pass on demonstrable major price increases of Third Parties and other suppliers of Otherside, which cannot reasonably be expected to be borne by Otherside in full, to the Client. In such situations, Otherside will consult with the Client about the details of the changes and the corresponding costs. If the parties are unable to reach agreement about the division of the costs, the Client may give Written notice of termination of the Agreement.
- 7.7 The Client will pay the fees owed within 30 days of the invoice date. If the Client fails to pay in time, it will be in default by operation of law following a Written notice of default. In that event, the Client will owe the statutory commercial interest rate (pursuant to Article 6:119a of the Dutch Civil Code) from the due date up to and including the day on which payment is made in full, such without prejudice to Otherside's other rights. Any judicial or extrajudicial costs (including in any case collection costs and enforcement costs) incurred by Otherside to compel the Client to fulfil its payment obligations will be for the Client's account.
- 7.8 Complaints regarding invoices sent by Otherside must be submitted in writing to Otherside within a period of six (6) months after the invoice date. After this period has expired, invoices are deemed to have been approved by the Client and no further complaints can be filed.
- (a) Each complaint must contain a clear description of the issue, including relevant invoice numbers and any supporting documentation necessary to assess the complaint.
- (b) Upon receipt of a complaint, Otherside will investigate the issue within a reasonable timeframe and inform the other party of its findings and any further steps.
- (c) If a complaint is not submitted within the specified period, all rights of the Client with respect to the invoice in question will lapse, and Otherside can no longer be held liable for any inaccuracy or deficiency in the invoice.
- (d) Submitting a complaint does not release the Client from their payment obligation. Disputed amounts must be paid within the agreed payment term, unless otherwise agreed upon in writing.
- 8. Term, termination and consequences of termination**
- 8.1 The (initial) supply term is stipulated in the Supply Agreement. If Software forms part of the supply and no term has been set, the Supply Agreement has a term of one (1) year. Unless agreed otherwise, after expiry of the initial term the term of the Supply Agreement will be automatically renewed for one (1) year at a time.
- 8.2 Both parties may give notice of termination of the Supply Agreement with effect from the end of the (renewed) term

- of the Supply Agreement, with due observance of a notice period of at least three (3) calendar months. The parties cannot terminate the Supply Agreement early or prematurely.
- 8.3 Without prejudice to their statutory rights, the parties may suspend performance of their obligations or terminate the Supply Agreement in full or in part without giving notice of default and without the necessity of court proceedings, in either case without being obliged to make a refund or pay damages, if:
- (a) an application for suspension of payment is made for, or suspension of payment is granted to, the other party;
  - (b) a petition for bankruptcy is made for the other party or the other party is declared bankrupt;
  - (c) the company of the other party is liquidated or terminated, unless for the purpose of a reconstruction or merger of companies;
  - (d) fraud has been committed by the company, board or higher management and fraud has been committed by an employee, unless the company demonstrates to have made every effort to prevent such fraud;
  - (e) the other party receives such publicity that continuation of the Supply Agreement cannot reasonably be asked in connection with possible reputational damage.
  - (f) the ownership of either party changes to such an extent that continuation of the Supply Agreement is unrealistic for either party for compelling reasons.
- 8.4 The parties may suspend performance of the obligations or terminate the Supply Agreement if either party fails to perform the obligations arising from the Supply Agreement at all or in full within a reasonable term after having been given Written notice of default.
- 8.5 If the Client terminates the Supply Agreement by means of annulment and has already received deliverables from Otherside in connection with the execution of the Service, such deliverables and corresponding payment obligations will not be subject to reversal, unless the Client demonstrates that Otherside is in default with regard to such deliverables. Any amount for which Otherside has issued an invoice prior to such termination in connection with what it has already properly done or supplied for the purpose of executing the Service, will remain payable in full subject to the provisions of the foregoing sentence and will fall due immediately at the time of termination.
- 8.6 Following the ending of the Supply Agreement, the Client may, if it so desires, request Otherside to renew the Supply Agreement by a maximum of six (6) months, unless the parties have agreed otherwise. Once approved by it, Otherside will render its cooperation, on the understanding that in such case use of the Software by the Client will be limited to read access. This rule does not apply to Software of Third Parties.
- 9. Liability**
- 9.1 Otherside's total liability for loss suffered by the Client in relation to the Software is set out in the Licence Terms and Conditions.
- 9.2 Otherside's total liability for loss suffered by the Client in relation to the Consultancy Services as a consequence of non-performance of the Supply Agreement by Otherside or a person for which it is liable pursuant to the law or on any other account is limited to compensation of loss up to the agreed value of the Consultancy assignment per event and twice this value for all events per calendar year together with a maximum of €500,000.
- 9.3 The liability limitations of this article do not apply if the loss suffered by the Client was caused by intent or gross negligence on the part of Otherside.
- 9.4 On each occasion, any entitlement to damages requires that Otherside is in default in accordance with Article 3.3 and that the Client notifies Otherside of the loss as soon as possible and at least within twelve (12) months after the loss was discovered.
- 10. Force majeure**
- 10.1 To the extent that it does not arise from the law, a party is not liable for any loss or obliged to fulfil any obligation if the loss or non-performance was caused by force majeure. Force majeure in this connection includes any circumstance that is outside the control of the party concerned and for which that party is not liable on any other grounds under Article 6:75 of the Dutch Civil Code.
- 10.2 If the force majeure continues, or is certain to continue, for a period exceeding four (4) weeks, either party may terminate the Supply Agreement without being obliged to pay damages to the other party. In the event of force majeure, the party relying on it will notify the other party In Writing as soon as possible on submission of the necessary evidence.
- 11. Confidentiality**
- 11.1 The Parties are obliged to maintain confidentiality of all confidential information (agreed rates, software lists, documentation, benchmark tests, specifications, object codes, source codes and machine readable copies of the software, including means of authentication) of the parties and/or Third Parties acquired by them in the context of the Supply Agreement or from any other source. Information is considered confidential if the parties have communicated this or if this follows from the nature of the information.
- 11.2 Either party will agree the same duty of confidentiality with its employees and/or third parties working for it and having actual access to the information previously referred to in this paragraph, will warrant compliance with this duty of confidentiality by its employees and/or third parties to the other party, and will indemnify the other

party against all losses suffered by it as a consequence of any unlikely breaches of this duty of confidentiality.

ery that cannot be resolved by consultation will be resolved by the competent Dutch judge of the Court of 's-Hertogenbosch, unless the parties agree on mediation or arbitration of a specific dispute.

## **12. Non-solicitation clause**

- 12.1 During the performance of the Supply Agreement and for six (6) months afterwards, the parties will refrain from employing personnel who were involved in performing the Supply Agreement, negotiating with them about employment and/or otherwise allowing them to work for them, other than after consultation and agreement between the parties.

## **13. Terms and conditions of employment, taxes and social insurance contributions**

- 13.1 Otherside guarantees that it and its suppliers or subcontractors will not use forced labour, child labour and/or exploitation and that no other violation of fundamental human rights occurs in producing and/or supplying the (Consultancy) Services.
- 13.2 Otherside will be responsible at all times for compliance with the obligations to which it is subject under the tax and social security laws.
- 13.3 Otherside will indemnify the Client for any claims relating to obligations of Otherside under tax and social security legislation and claims under terms and conditions of employment of its employees relating to work performed for the performance of the (Consultancy) Services.

## **14. Anti-bribery and anti-corruption clause**

- 14.1 Otherside will comply with, and ensure that its employees comply with, all applicable legislation, rules and regulations regarding (the prevention of) bribery and corruption. The Client also undertakes that it and its employees refrain and will refrain from offering, promising, giving or consenting to giving to a third party, accepting or consenting to accepting from any person, either for itself or themselves or on behalf of another person: any gift, payment, fee, financial or non-financial advantage or gain of any nature whatsoever, being illegal or corrupt under the laws of any country whatsoever (together referred to as "bribery"), in any direct or indirect relation to this Supply Agreement or any other existing or future agreement with Otherside; and that it will notify Otherside immediately of any request or demand for or offer of bribes in relation to the performance of this agreement; (the "Anti-Corruption Obligation").

## **15. Applicable law, competent court**

- 15.1 All agreements and any ensuing or relating obligations are exclusively governed by Dutch law.
- 15.2 All disputes arising from or relating to the Supply Agreement and these General Terms and Conditions of Deliv-