

**General Terms and Conditions of Sale and Delivery of ExtraVar B.V.**

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**1. General**

- 1.1. In these terms and conditions, ExtraVar B.V. is referred to as ExtraVar, while the co-contracting party is further referred to as the other party.
- 1.2. If one or more provisions of these terms and conditions are fully or partially void or voided, the other provisions of these general terms and conditions will remain fully applicable. The parties will consult in relation to the void and/or voided provisions in order to agree on new provisions to replace them, during which consultations the aim and purpose of the void or voided provisions will be taken into account as far as possible.
- 1.3. ExtraVar reserves the right to amend these general terms and conditions with immediate effect by notifying the other party in writing.

**2. Applicability of the conditions**

- 2.1. These terms and conditions apply to every offer, quotation and agreement between ExtraVar and the other party to which ExtraVar has declared these terms and conditions applicable, insofar as the parties have not explicitly deviated from these terms and conditions in writing.

- 2.2. These terms and conditions also apply to agreements with ExtraVar, for whose performance ExtraVar needs to involve third parties.
- 2.3. ExtraVar expressly rejects the applicability of the other party's general terms and conditions, however named, unless ExtraVar has expressly accepted them in writing.
3. Offers and quotations
  - 3.1. All offers and quotations are without obligation, unless they specify a term for acceptance.
  - 3.2. No rights can be derived in any way from the offer or quotation if the product or service to which the offer or quotation relates is no longer available.
  - 3.3. Offers and quotations are based on the information that the other party provides with the request. The other party warrants the accuracy, completeness and reliability of the information and documents made available to ExtraVar by or on behalf of the other party, even if these originate from third parties.
  - 3.4. The accuracy of the information in ExtraVar's offers and quotations is subject to the accuracy of the information that has been provided in this respect by the supplier(s) to ExtraVar. The content of advertisements is not binding on ExtraVar.
  - 3.5. ExtraVar is entitled to charge the other party all costs that it has incurred to be able to provide the other party with the offer or quotation and the other party is then obliged to reimburse ExtraVar for these costs, unless expressly agreed otherwise with ExtraVar in writing.
  - 3.6. Prices in offers and quotations exclude VAT and other government levies, any costs to be incurred for the purpose of the agreement, including costs of travel, accommodation, dispatch and administration costs, unless indicated otherwise.
  - 3.7. Prices in offers and quotations are the prices that apply on the date on which the offer or quotation is made. If a price increase occurs after an offer or quotation has been made, or after an agreement has been concluded, but before delivery has taken place, for whatever reason, ExtraVar is entitled to pass on this increase to the other party, provided that it is based on circumstances beyond ExtraVar's reasonable control.
  - 3.8. ExtraVar is entitled to adjust its level of salaries and costs annually in accordance with the most recent price index applicable to collective labour agreement (CLA) salaries for business services, as published by Statistics Netherlands (CBS), and to pass on this indexation to the other party.
4. Conclusion of an agreement, duration and termination
  - 4.1. Agreements are concluded as soon as ExtraVar is in receipt of the quotation or order confirmation signed by both parties, unless it revokes an offer or quotation that was made without obligation or it has already performed the work commissioned by the other party.

- 4.2. An agreement for services is open-ended, unless it follows from the content, nature or purpose of the assignment that it has been entered into for a fixed term. Either party may terminate such an open-ended agreement in writing by giving notice in accordance with the provisions of Article 18.3.
- 4.3. If the agreement has been entered into explicitly and in writing for a fixed term, it will be tacitly renewed each time by a period of one year after the end of the initial period, unless one of the parties terminates the agreement by registered letter with recorded delivery. The other party must observe a notice period of three months before the end of the period in question.
5. Delivery periods
- 5.1. The delivery periods specified by ExtraVar are deemed only to be approximate, unless they have been explicitly described as strict deadlines in writing. The mere fact that a delivery period has been exceeded does not mean that ExtraVar is in default.
- 5.2. If ExtraVar exceeds delivery periods, for whatever reason, it is neither obliged to compensate any resultant loss the other party suffers or to pay any stipulated penalty, nor does the other party acquire a resultant right to terminate the agreement or to suspend its obligations towards ExtraVar.
- 5.3. ExtraVar is in no way bound by delivery periods that cannot be met due to circumstances beyond its control that have occurred after the agreement was concluded.
6. Risk
- 6.1. The risk of loss or damage to goods delivered or to be delivered by ExtraVar to the other party, passes to the other party when these goods are brought under the control of the other party or of an auxiliary person that it uses.
- 6.2. Goods are always dispatched and transported at the expense and risk of the other party, even if ExtraVar arranges for their dispatch and/or carries out the transport. The other party must insure the dispatch and transport of goods.
7. Obligations of the other party
- 7.1. The other party is obliged, at its own expense and risk, to provide all cooperation that ExtraVar deems necessary for the performance of the agreement, free of charge, punctually and in the form requested by ExtraVar, to ExtraVar, its employees or auxiliary persons, failing which ExtraVar will be entitled to suspend the fulfilment of its obligations towards the other party until the other party has fulfilled this obligation, subject to the other party's obligation to compensate ExtraVar for the loss arising from any suspension. The provision of cooperation by the other party includes supplying the necessary information and documentation, granting unhindered network access, installing or having a third party install audit tools, the punctual and adequate reporting of defects and malfunctions, storing equipment, and providing safe workplaces and facilities.

**Met opmerkingen [RD1]:** In de brontekst staat 'werkplakken', in de vertaling is uitgegaan van 'werkplekken', een typfoutje dus. Graag controleren.

- 7.2. The other party is obliged to inform ExtraVar immediately in writing about facts and circumstances that may be important for the performance of the agreement.
- 7.3. The other party warrants the accuracy, completeness, suitability and reliability of the data and/or facilities that are made available to ExtraVar by or on behalf of the other party, even if these originate from third parties.
- 7.4. Costs and/or loss resulting from the other party's failure to comply with its obligations towards ExtraVar, including those under this article, are payable by the other party.
8. Force majeure
- 8.1. ExtraVar is not obliged to fulfil any obligation arising from the agreement with the other party if it is prevented from doing so after the agreement has been concluded by a circumstance that is beyond its control or area of responsibility.
- 8.2. Force majeure on the part of ExtraVar exists if it is prevented from fulfilling its obligations because of any external causes, whether foreseen or not, over which it cannot exert any influence, including war, uprisings, riots, acts of war, fire, natural disasters, strikes or work stoppages, interruptions in the supply of energy or materials, a failure to deliver or to deliver on time by the supplier of the product and/or service, interruptions or malfunctions in a service and/or product of a supplier, government measures and import and export barriers.
- 8.3. ExtraVar is also entitled to rely on force majeure if the circumstance that prevents the performance or further performance of the agreement occurs after ExtraVar should have fulfilled its obligation.
- 8.4. If the force majeure is temporary, ExtraVar is entitled to suspend performance of its obligations under the agreement for as long as the force majeure lasts. ExtraVar is not entitled to suspend performance if performance is permanently impossible or if temporary force majeure continues for longer than six months. In these cases, the parties are entitled to terminate the agreement by means of a letter sent to the other party with recorded delivery, without either party being obliged to compensate the other party for any loss.
- 8.5. If ExtraVar has partially fulfilled its obligations under the agreement or will be able to still partially fulfil them when the force majeure occurs, and an independent value can be attached to the part that has been or should be fulfilled, the other party will be obliged to pay for this part in proportion to the agreed price, as if it were a separate agreement.
9. Intellectual property rights
- 9.1. ExtraVar reserves the rights and powers to which it is entitled under the Copyright Act (*Auteurswet*) and other intellectual property laws and regulations.
- 9.2. All intellectual property rights to anything that has been or is being delivered or made available by ExtraVar to the other party vest exclusively in ExtraVar, its licensor or the manufacturer of the delivered items.

The other party will acquire only those rights of use and powers that are expressly granted to it under the agreement.

- 9.3. The other party is not permitted to reproduce or have a third party reproduce the delivered items or to make or have a third party make copies of them.
- 9.4. The other party is aware that the items that are delivered or made available may contain confidential information and/or business secrets. The other party undertakes not to make the items that are delivered or made available, or the content thereof, known or to give them in use to third parties, and only to use them for the purpose for which they have been delivered or made available.
- 9.5. The other party warrants that no third-party rights prevent ExtraVar from using the items that the other party have made available to ExtraVar for whatever purpose. The other party indemnifies ExtraVar against any claim based on the assertion that ExtraVar's use, in whatever way, of the items made available by the other party infringe any third-party rights.

10. Confidentiality

Both parties undertake to keep confidential all information that comes to their mutual knowledge in connection with the agreement and which has been designated as confidential or secret and/or in respect of which the other party should be reasonably aware of its confidential or secret nature, including information concerning the content or use of software, documentation and/or other materials provided or used by ExtraVar, both during and after the end of the agreement, and not to use such information for their own benefit, unless agreed otherwise in writing. Also see Article 9.4

11. Auxiliary persons and assignment of rights.

- 11.1. ExtraVar is free to engage third parties in the performance of the agreement. The other party is not free to engage third parties in the performance of the agreement, unless ExtraVar has agreed to this in writing.
- 11.2. ExtraVar is permitted to assign its rights and obligations under the agreement with the other party to third parties. The other party is not free to assign its rights and obligations under the agreement with ExtraVar to third parties, unless ExtraVar has agreed to this in writing.

12. Liability and indemnification

- 12.1. If ExtraVar is liable, its liability is limited to the provisions of this article.
- 12.2. ExtraVar will only be liable for loss suffered by the other party because of one or more breaches attributable to ExtraVar if the other party has given ExtraVar a written notice of default that allows ExtraVar a reasonable period in which to remedy the breach and ExtraVar nevertheless fails to comply with its obligations. Any right to compensation will lapse irrevocably if the other party fails to report its loss to ExtraVar in writing within one year of it occurring.
- 12.3. ExtraVar is liable for direct loss only. 'Direct loss' exclusively means:

- a. the demonstrable and reasonable costs of determining the cause and extent of the loss, insofar as the determination relates to direct loss within the meaning of these terms and conditions;
  - b. the demonstrable and reasonable costs incurred to have ExtraVar's defective performance conform to the agreement, except if the agreement is terminated and/or ExtraVar is not to blame for the loss;
  - c. the demonstrable and reasonable costs incurred to prevent or limit loss, insofar as the other party demonstrates that these costs have actually led to the limitation of direct loss as referred to in these terms and conditions or damage to the property of the other party and/or third parties.
- 12.4. ExtraVar will never be liable for indirect loss, which includes consequential damage, lost profits, missed savings, lost data and business interruption losses.
- 12.5. ExtraVar's liability in any case is limited to compensation for direct loss capped at the amount invoiced or to be invoiced to the other party on the basis of the agreement, at least as far as that part to which the liability relates is concerned. ExtraVar's liability under any continuing performance agreement is limited to compensation for direct loss capped at the amount invoiced to the other party for the three months prior to the loss occurring.
- 12.6. ExtraVar's liability in any case is always limited to the amount paid out by its insurer, where applicable, plus the amount of the excess.
- 12.7. Any penalties forfeited by ExtraVar will be deducted from any compensation payable by ExtraVar to the other party in respect of the same incident.
- 12.8. The other party is liable for all loss as a result of loss, theft or damage to ExtraVar's property, if this property is located on the other party's premises.
- 12.9. The limitations of liability contained in this article also apply if ExtraVar's employees and auxiliary persons act with intent or are grossly negligent, unless the direct loss is attributable to intent or gross negligence on the part of ExtraVar, its bodies or its executive officers.
- 12.10. The other party indemnifies ExtraVar against third-party claims, including claims from employees and auxiliary persons of ExtraVar, which are directly or indirectly related to the performance of the agreement.
- 12.11. The limitations of liability included in this article are also stipulated for the benefit of third parties engaged by ExtraVar. These third parties may rely directly on this limitation of liability.
13. Payment
- 13.1. Payment must always be made within fourteen days of the invoice date into an account number to be designated by ExtraVar, unless other payment conditions have been agreed in writing. ExtraVar is entitled to invoice periodically.
- 13.2. ExtraVar's accounts constitute conclusive evidence of the services provided and goods delivered by ExtraVar and of the payments owed for that purpose by the other party, without prejudice to the other party's right to provide evidence to the contrary.

- 13.3. If the other party fails to pay an invoice on time and in full, it will owe interest of one per cent per month after the expiry of the payment term of the invoice, without the need for any notice of default, unless the statutory commercial interest rate is higher, in which case statutory commercial interest will be due. The interest is calculated on the entire invoice amount, even if the invoice has been partially paid, until the full invoice amount has been paid.
- 13.4. If the other party fails to meet its payment obligation following a notice of default, all reasonable costs incurred by ExtraVar to obtain extrajudicial payment will be payable by the other party. The extrajudicial costs, including all costs as referred to in Section 6:96 of the Dutch Civil Code, amount to 15% of the invoice amount, subject to a minimum of €350.00, excluding VAT. If ExtraVar applies for the bankruptcy or liquidation of the other party, the other party will owe the costs of the related petition in addition to the principal sum, interest and extrajudicial costs.
- 13.5. If the other party fails to pay on time, ExtraVar will be entitled to suspend all its obligations towards the other party without the other party being entitled to any compensation in that regard.
- 13.6. The other party's right to deduct any claims it may have against ExtraVar from ExtraVar's claim against the other party is expressly excluded.
- 13.7. ExtraVar is entitled to investigate or have a third party investigate the other party's creditworthiness. If ExtraVar believes there is a justifiable expectation that the other party will not be able to meet its obligations, ExtraVar will be entitled to require the other party to provide sufficient security for the fulfilment of its obligations. As long as the other party does not meet this requirement, ExtraVar will be entitled to suspend the fulfilment of its obligations towards the other party. The refusal by the other party to provide the required security entitles ExtraVar to terminate the agreement by means of a written statement to that effect, notwithstanding ExtraVar's right to compensation from the other party for its resultant loss.
- 13.8. If ExtraVar is fully or partially successful in legal proceedings, the other party will be obliged to reimburse ExtraVar for all costs that ExtraVar actually incurs in connection with these proceedings.
14. Complaints and prescription period
- 14.1. The other party is obliged to examine or have a third party examine the goods or services delivered by ExtraVar or its supplier, immediately when the goods are under its control or the work has been performed. In doing so, the other party must examine or have a third party examine whether those goods or services comply with what the parties have agreed.
- 14.2. Visible defects must be reported to ExtraVar in writing within seven days of delivery and hidden defects within seven days of their discovery, failing which the other party will no longer be entitled to any repairs, replacement or compensation from ExtraVar. The report of a defect must include the most detailed possible description of the established defect.

Even if the other party lodges a complaint on time, a defect does not suspend its obligations towards ExtraVar. The other party must give ExtraVar the opportunity to investigate a reported defect.

- 14.3. If it is established that an item is defective and this defect has been reported in writing on time, ExtraVar will be free, at its discretion, to repair the defect within a reasonable period of time, to replace the defective item after it has been returned to ExtraVar because ExtraVar has requested this, or to pay the other party replacement compensation for the item.
- 14.4. If it is established that the other party has wrongly lodged a complaint, the resultant costs incurred by ExtraVar, including the costs incurred in connection with examining the report, are payable in full by the other party.
- 14.5. Complaints about invoices must be reported to ExtraVar in writing within seven days of receipt of the invoice, failing which the other party will be deemed to have agreed to the invoice.
- 14.6. Notwithstanding the statutory prescription periods, the prescription period for all claims and defences against ExtraVar and third parties engaged by ExtraVar in the performance of an agreement with the other party, is one year.

15. Retention of title and pledges

- 15.1. All goods delivered to the other party will remain the property of ExtraVar or its supplier until the other party has paid everything that ExtraVar may have to claim and/or receive from it under all agreements concluded with the other party, including claims relating to penalties, interest, costs and damage.
- 15.2. The goods delivered by ExtraVar, which are subject to a retention of title under the previous paragraph of this article, may not be resold, donated or used as a means of payment by the other party. The other party is not entitled to pledge or otherwise encumber the goods covered by the retention of title.
- 15.3. If the other party fails to fulfil any obligation towards ExtraVar, even after a notice of default, or fails to do so on time or correctly, ExtraVar will be entitled to gain access to places where the goods subject to the retention of title are located, in order to repossess these goods or remove them, even if the delivered goods would have become the property of the other party as a result of accession or otherwise.
- 15.4. The other party undertakes not to assign or pledge any claims it acquires against its customers to third parties. By entering into an agreement with ExtraVar, the other party pledges all its existing and future claims against third parties to ExtraVar, in the manner indicated in Section 3:239 of the Dutch Civil Code, as additional security for ExtraVar's claims against the other party, for whatever reason.
- 15.5. In the event of attachment, a provisional or final moratorium on the payment of debts, bankruptcy or liquidation, the other party must immediately inform the bailiff making the attachment, the administrator, receiver or liquidator of ExtraVar's ownership rights. The other party warrants that any attachment of the goods belonging to ExtraVar will be lifted immediately.

16. No takeover of employees

- 16.1. During the term of the agreement and for one year after its termination, the other party may not employ any employees of ExtraVar who have been involved in the performance of the agreement or otherwise have them work for it, directly or indirectly, without ExtraVar's written permission.
- 16.2. If the other party acts contrary to the previous paragraph, it will owe ExtraVar compensation amounting to 100% of the employee's most recently applicable hourly rate multiplied by one thousand and forty hours, plus the training costs that ExtraVar invested in the employee during the period of employment. If an hourly rate does not apply to the employee concerned, the other party will owe ExtraVar compensation amounting to that employee's most recent gross annual salary. The parties may consult with each other and agree in writing on different compensation.

17. Third-party conditions

- 17.1. Because ExtraVar sometimes makes available products from third parties, including hardware and software, to the other party, the conditions of use of those third parties will apply in those cases, unless expressly agreed otherwise in writing. The other party expressly accepts these conditions of the third party or parties concerned.
- 17.2. These conditions are often delivered together with the aforementioned products because they are normally enclosed in the packaging of the products concerned. ExtraVar will provide these conditions to the other party on request.
- 17.3. If and insofar as the aforementioned third-party conditions are deemed not to apply to the relationship between ExtraVar and the other party, for whatever reason, the provisions of these terms and conditions of ExtraVar will apply.

18. Termination for cause or with notice

- 18.1. In addition to the termination options under Section 6:265 of the Dutch Civil Code, the agreement between the parties may be terminated, without judicial intervention, by means of an extrajudicial written statement, without the other party being entitled to any compensation from ExtraVar, if the other party is declared bankrupt or is liquidated, applies for a provisional moratorium on the payment of debts, or loses the power to dispose of its assets by attachment, being placed under guardianship or otherwise, unless the guardian, administrator, receiver or liquidator fulfils the obligations under the agreement.
- 18.2. As a result of the termination, existing claims on both sides become immediately due and payable. The other party is liable for the loss suffered by ExtraVar in connection with the termination.
- 18.3. In the event of a continuing obligation, either party may fully or partially terminate the agreement, subject to a three-month notice period, without any compensation being due.

19. Applicable law and jurisdiction

- 19.1. All agreements are governed by Dutch law, even where an obligation is fully or partially performed under a contract or if the other party is domiciled abroad. The Vienna Sales Convention is expressly excluded.
- 19.2. Disputes between ExtraVar and the other party in connection with an offer or quotation made by ExtraVar, or in connection with an agreement with ExtraVar or further ensuing agreements, will be settled by the competent Dutch court in the judicial district in which ExtraVar has its registered office, unless mandatory provisions of law prescribe otherwise. ExtraVar is nevertheless entitled to submit the dispute to another competent court by law.

Additional provisions on cloud services

20. General

In addition to the provisions in the first section of these terms and conditions, the provisions in this section apply to ExtraVar making software available remotely to the other party and keeping it available for the other party's benefit via the internet or another network, for the storage of the other party's data, without the other party being provided with a physical carrier with the software concerned. The services concerned are further referred to in this section as cloud services.

21. Purchase of cloud services

- 21.1. The other party may not use the cloud services in such a manner that the functioning of the cloud services could be put at risk and/or the underlying software affected. The other party may further not use the cloud services in a manner that is prohibited by law, regulations, government measures or ordinances or that infringes the rights of ExtraVar or third parties.
- 21.2. The other party may not allow third parties to use the cloud services, unless this has been explicitly agreed with ExtraVar in writing.

22. Availability of cloud services

- 22.1. ExtraVar will endeavour to achieve and maintain uninterrupted availability of the cloud services. ExtraVar may temporarily disable all or parts of the cloud services for maintenance purposes. ExtraVar will keep any disabling of the cloud services to a minimum and notify the other party in good time, unless it cannot reasonably be required to do so.
- 22.2. The availability of the cloud services as measured by ExtraVar constitutes conclusive evidence, without prejudice to the other party's right to provide evidence to the contrary.
- 22.3. If ExtraVar believes that the functioning of the cloud services may be put at risk and/or the underlying software may be affected by the actions of the other party, or that the other party is using the cloud services in a way that is prohibited by law, regulations, government measures or ordinances or that infringes the rights of ExtraVar or third parties, ExtraVar will be entitled to take all measures it reasonably considers necessary to prevent and/or end this situation.

23. Permission to store, transmit and copy data  
The other party hereby unconditionally authorises ExtraVar to store, transmit and/or copy all data that it supplies via the cloud services, insofar as ExtraVar considers this reasonably necessary for the fulfilment of the agreement between the parties.
24. Third-party conditions  
The purchase of cloud services may require third-party software, in which case the terms of use of those third parties may apply to the agreement between ExtraVar and the other party.
25. Termination  
In addition to the possibility to terminate as set out in Article 18.3, ExtraVar will also be entitled to terminate the agreement between the parties with immediate effect if the other party does not keep its own software sufficiently up-to-date and incompatibilities arise between its software and the storage and/or other services provided by ExtraVar.
26. End of cloud services
  - 26.1. At the end of the cloud services, ExtraVar will be entitled to remove the data stored under the cloud services, unless the other party has given notice in writing prior to the end of the cloud services that ExtraVar must store and make the data available to the other party.
  - 26.2. Work that ExtraVar performs at or after the end of the cloud services will be charged on the basis of actual costs.