

General Terms and Conditions

Attached are our General Terms and Conditions regarding Q3 Concept BV and the Q3 application. These General Terms and Conditions are part of and in addition to any approved quotation (order confirmation), agreement, Privacy statement Q3, and Service Level Agreement. These terms and conditions replace all previous General Terms and Conditions. In case of contradictions and/or deviations the General Terms and Conditions prevail over the Dutch ICT Terms and Conditions.

The purpose of the General Terms and Conditions is to establish binding agreements about general agreements. Proposals for amendments to these General Terms and Conditions are submitted by Principal and jointly discussed in tactical consultations (which, if necessary, will be held on an ad hoc basis). Once the amendment has been ratified, it will be recorded in writing by the contractor and added to the General Terms and Conditions. The client has the right to request the General Terms and Conditions from the contractor at any time. The Contractor may amend the General Terms and Conditions at any time. In the event of any amendments, the client will be informed of the amendments.

Should you have any questions regarding this agreement, you can always contact us.

1. General provisions

1.1 Retention of title and lien

Items delivered by the contractor will remain the contractor's property until the client has paid the contractor the claims arising from the agreement.

The client is not permitted to alienate, pledge or grant to a third party any other right to the goods delivered subject to retention of title, except in the context of normal business operations.

The principal is obliged to store goods delivered subject to retention of title with the necessary security, care and as recognizable property of the contractor.

If the client fails to fulfil its payment obligations to the contractor or if the contractor has good reason to fear that the client will fail to fulfil its obligations, the contractor shall be entitled to repossess the goods delivered subject to retention of title. The principal shall be obliged to cooperate fully in this respect.

Rights will always be granted or, as the case may be, transferred by the contractor to the client, subject to the condition that the client always pays the agreed fees on time and in full.

If the client - despite a written reminder containing a payment term of at least seven days - fails to fulfil its obligations in full or in part, the contractor may exercise the right of retention in respect of all of the client's goods which the contractor has under the client in the context of the performance of the agreement. In addition, the contractor may sell said goods, deliver them to a third party and deduct the proceeds from the outstanding invoices.

1.2 Liability

Contractor accepts legal obligations to pay compensation only to the extent that this is apparent from the previous articles. Liability (irrespective of whether arising from a breach of contract attributable to the contractor or from the law) is limited to compensation for damage that is a direct and exclusive consequence of the breach in question or of the act or omission on which the contractor's liability is based.

Total liability is further limited to a maximum of the price that the client owes as a result of the agreement for the work or performance for which the contractor has failed to perform or in connection with which the contractor is liable under the law. If the work to be carried out by the contractor extends over more than one year, the price for that work shall be set at the total of the fees for that work (excl. BTW) stipulated for one year. Under no circumstances, however, shall the total compensation to the contractor exceed € 10,000, regardless of the number of events on which the contractor's liability is based.

Damage which is a direct and exclusive consequence of a shortcoming attributable to the contractor or of an act or omission on which the contractor's legal liability is based shall be understood exclusively:

- a. The reasonable costs which the client would have to incur in order for the contractor to perform in accordance with the agreement. However, this damage will not be compensated if the client has dissolved the agreement;

- b. Reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to damage that is a direct and exclusive consequence of a shortcoming attributable to the contracted party, or of an act or omission on which the contracted party is legally liable;
- c. Reasonable costs incurred to prevent or limit the damage, to the extent that the client demonstrates that these costs have led to the limitation of damage that is a direct and exclusive consequence of a shortcoming attributable to the contractor or of an act or omission on which the contractor incurs statutory liability; and
- d. Reasonable costs of repairing damage caused by the contractor to objects and/or persons.

The liability for pure financial loss, including, but not limited to, lost or damaged data (files), fines and/or damages owed to third parties, loss of profit, lost savings or damage due to business stagnation, is excluded.

Liability on the grounds of a breach of contract attributable to the contractor shall only arise if the client immediately and properly notifies the contractor in writing of its default, giving the contractor a reasonable period within which to remedy the contractor's breach and if the contractor continues to fail imputably to fulfil the contractor's obligations even after that period has elapsed. The notice of default must contain as detailed a description of the breach as possible, so that the contractor can respond adequately.

Any right to compensation lapses if the damage is not remedied as soon as possible, but no later than six weeks after the date of the damage occurring, reported to the contractor in writing.

1.3 Dissolution

If the client fails to comply with a (payment) obligation under an agreement entered into with the contractor, as well as in the event of (a request for) suspension of payments, bankruptcy, placement under guardianship or liquidation of the client's company, the contractor is entitled to dissolve the agreement or part thereof without judicial intervention and without notice of default by means of a single written statement.

As a result of the dissolution, existing reciprocal claims shall become immediately due and payable. If, at the time of dissolution, the client has already received performances for the execution of the agreement, these performances and the related payment obligations shall not be subject to cancellation, unless and insofar as we are in default with regard to these performances. Amounts already invoiced by the contractor prior to the dissolution in connection with the contractor's alternative performance of the Agreement shall remain payable in full with due observance of the provisions of the previous sentence and shall become immediately due and payable at the time of dissolution.

1.4 Confidentiality and non-assumption clause

Each of the parties warrants that all information of a confidential nature received from the other party before and after the conclusion of the agreement will remain secret. Information will in any case be regarded as confidential if it has been designated as such by one of the parties.

Each party shall not use the confidential Information for any purpose other than that for which it has been provided by the other party and shall not use it in any manner other than as may be specified by the other party.

Each party shall, during the term of this Agreement as well as one year after termination thereof only with the prior written consent of the other party, employees and/or other employees of the other party who have been involved in the execution of the contract, employ or otherwise have it work for him, directly or indirectly.

The client is not permitted to have others, other than the contractor, directly or indirectly perform work on the Q3 application and/or other employees of another party, or to have them work on the Q3 application for themselves in any other way.

1.5 Promotion and name use

During the term of the agreement and even afterwards, the contractor is permitted to use the company name, logo or other recognisable material of the client for marketing and promotional purposes. If the client does not wish to do so, the accountant will not do so without prior written rejection by the client.

1.6 Disputes and applicable law

In the event of a dispute or impending dispute, the contractor has the right to have one or more experts carry out an assessment at the client's expense. The client shall grant all reasonable access and cooperation to this.

If the contractor has a dispute with the client with regard to the Agreement, the dispute settlement procedure described in this article will also be followed. A dispute under the agreement will initially be referred in writing to the management of both parties.

If the management of the parties is unable to resolve the dispute within 10 working days after the dispute has been submitted to them, the parties may decide to submit the dispute for mediation to the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering). The applicable rules for mediation can be found in the Minitrage Reglement of this foundation.

If the parties are unable to settle the dispute in accordance with the procedure described above, the parties may agree to binding or non-binding arbitration by the Foundation for the Settlement of Automation Disputes. If the parties are unable to agree on arbitration, the dispute will be submitted to the competent court in 's-Hertogenbosch. If the parties have agreed to non-binding arbitration, remaining disputes will also be submitted to the competent court in 's-Hertogenbosch.

All agreements to which these terms and conditions apply in whole or in part shall be governed by Dutch law.

2. Special provisions relating to the provision of services

2.1 Applicability

The provisions contained in this part of the Supplier's General Terms and Conditions apply in addition to the general provisions of these General Terms and Conditions if the Supplier provides services to the client.

If and in so far as the general provisions conflict with these special provisions, the latter provisions will prevail.

2.2 Execution

Contractor shall make every effort to perform the services to be provided by the contractor in a professional and professional manner, in accordance with the agreements made by the contractor with the client in this respect.

2.3 Hosting and (if applicable) local use

Contractor does not guarantee that the systems used by the contractor or made available to us will be available at all times. Nor does the contractor guarantee unimpeded access to the Internet and the contractor is therefore not liable for malfunctions in the connection to the Internet or malfunctions in the telecommunication infrastructure.

The contractor is only responsible for the implementation of security measures that the contractor has expressly agreed with the principal.

The contractor shall make every effort to make work on the Q3 application known in a timely manner. If this is reasonably necessary for maintenance, adjustments or improvements to the Q3 application to be carried out by the contractor or to protect the Q3 application against viruses and/or other attacks, however, the contractor is entitled to temporarily put the systems out of operation without prior notice and/or to restrict the use thereof. If the contracted party makes use of this right, the contracted party will not owe the client any compensation.

The client shall refrain from allowing other clients of similar services and/or to hinder internet users and/or to cause damage to the Q3 application. The customer will not start up and/or execute any processes or programmes of which it knows or should know that they (may) obstruct or cause damage to the Q3 application or other internet users.

The client is not permitted to use the systems for actions and/or conduct that is contrary to the law, the guidelines of the Advertising Code Committee, morality, public order and generally accepted standards and values that apply to communication over the Internet. In particular, the client shall refrain from:

- Spamming and hacking;
- Infringement of copyrighted works or act in any other way.
- Violate the intellectual property rights of third parties, such as the use of illegal software;
- Publishing or distributing (child) pornography;
- Placing hidden software such as viruses and spy-ware.

2.4 Data and privacy

Contractor shall only inspect e-mail and/or other files of the client and/or make them available to third parties in so far as this is necessary for the performance of the services, the contractor is obliged to do so on the basis of a statutory regulation or court ruling, or the other party acts, or is suspected to act, in violation of the provisions of the previous article.

The client is himself responsible for the management of user names and passwords provided by the contractor and the client. The service provider does not keep these data.

The client is itself responsible for taking back-up measures.

If the contractor processes personal data for the client in the performance of the Services, the client shall indemnify the contractor against claims based on the assertion that such processing is in violation of applicable regulations, unless the client proves that the facts underlying such claims are attributable to the contractor.

3. Special provisions relating to the development and supply of software or software adaptations

3.1 Applicability

The provisions contained in this part of the General Terms and Conditions are in addition to the general terms and conditions.

provisions of these General Terms and Conditions shall apply if the Supplier develops software at the client's request.

If and in so far as the general provisions conflict with these special provisions, the latter provisions shall prevail.

3.2 Development of software

Contractor will, in consultation with the client, specify in writing which software will be developed and how this will be done. Contractor shall carry out the development of the software with due care on the basis of the information to be provided by the client, for the correctness, completeness and consistency of which the client guarantees.

Contractor is entitled, but not obliged, to examine the correctness, completeness or consistency of the data, specifications or designs made available to the contractor and, if any imperfections are found, to suspend the agreed work until the contractor has removed the imperfections in question.

The contractor shall deliver and install the software to be developed to the Principal as far as possible in accordance with the specifications laid down in writing, the latter only if an installation to be carried out by the contractor has been agreed in writing.

The development of software will be considered completed as soon as the software has been developed with due observance of the provisions of the following paragraph of this article has been accepted by the client.

As soon as the software can be accepted in the Supplier's opinion, the Supplier will notify the client in writing. The principal will then have four weeks to carry out an acceptance test. After these four weeks, the software will be deemed accepted, unless the principal has notified the contractor in detail of errors within this period. These errors will then be corrected in accordance with the provisions of the previous article..

3.3 Intellectual property

Unless expressly agreed otherwise, the intellectual property rights to the software developed on the basis of the agreement shall be vested in the contractor. The customer acquires from the contractor, for the duration specified in the agreement, the non-exclusive and non-transferable right to use the software for the purpose intended by the parties. If the contractor makes use of software from third parties in the context of the development of software, the contractor will indicate whether and to what extent the use of the software is subject to the terms of use of these third parties. However, it is then the client's responsibility to take cognizance of these conditions of use and whether or not to agree to them.

The client shall indemnify the accountant against claims by third parties based on the assertion that materials, images, data and/or other information provided by the client to the accountant infringe the intellectual property rights of these third parties.

3.4 Escrow

A so-called escrow agreement can be drawn up. This agreement ensures that a copy of the source code is deposited with a notary or escrow agency. The client can only claim this source code in the event of calamities, emergencies, such as bankruptcy. The software (IP) rights and the source code are in Q3 Holding, this cannot go bankrupt, but it is theoretically possible. Such an agreement may also state, for example, that the deposited code can be checked for usability and that Q3 can be obliged to re-deposit the code in case of important new versions and updates of software. There are costs associated with the escrow: drawing up an agreement, notary fees, re-depositing the code, etc. The costs are borne by the client.

3.5 Guarantees

The contractor shall make every effort to rectify errors within a reasonable period of time, free of charge, provided that these have been reported to the contractor in writing within the aforementioned period of four weeks. Repair of mutilated or lost data is not covered by the warranty. The guarantee obligation will lapse if the client makes changes or has changes made to the Q3 application or the database without the written consent of the contractor.

Errors will be corrected at a location to be determined by the contractor. Contractor is entitled to introduce temporary solutions or program bypasses or problem avoiding restrictions in the software.