

General Terms & Conditions



Last update: 2020/09/07

These General Terms and Conditions (Terms) is an exhibit to the Agreement executed between the Parties. This Exhibit is hereby incorporated by reference into the Agreement. Except as expressly stated herein, each capitalized term used in these Terms shall have the same meaning as assigned to it in the Agreement (if any).

1. Definitions

- 1.1. **"Customer Intellectual Property Rights"**: means all intellectual property rights and know-how owned by or licensed to Customer
- 1.2. **"Effective Date"**: means the date on which the Services are started as defined in the Agreement
- 1.3. **"Developed Intellectual Property Rights"** means all intellectual property rights in any explicitly referenced Deliverables specifically created, developed or modified by Skyscrapers or its subcontractors specifically for Customer under this Agreement;
- 1.4. **"Service"** means, collectively, (i) the services set out in the Agreement; (ii) any changes to such services; (iii) any additional services agreed on after Effective Date
- 1.5. **"Skyscrapers Intellectual Property Rights"**: means all intellectual property rights owned by or licensed (other than from Customer) to Skyscrapers at the Effective Date.
- 1.6. **"Subcontractors"**: means any contractor or third party engaged by Skyscrapers to assist in the provision of the Services

2. Conflict

- 2.1. If and to the extent of any conflict between these Terms and the Agreement, the Agreement shall prevail.

3. Payment & Invoicing

- 3.1. The Customer accepts digital PDF invoices by e-mail and will provide Skyscrapers with the right address to send invoices to. Skyscrapers cannot be held responsible if the provided e-mail address does not function, and invoices are not received.
- 3.2. The Customer will pay Skyscrapers invoices within fourteen (14) days of their issue date.
- 3.3. Skyscrapers reserves the right to charge interest on late payments of undisputed invoices at the rate of 1.5% per month for the period starting with the due date and ending with the payment date. A reminder fee of € 50 will be invoiced per reminder letter.
- 3.4. Skyscrapers reserves the right to suspend Services for Services that are more than thirty (30) days overdue by providing five (5) working days prior written notice to the Customer.



- 3.5. Malfunction of services provided by Subcontractors shall not constitute grounds for withholding payments due to Skyscrapers from the Customer.

4. Price

- 4.1. Skyscrapers reserves the right to adjust the prices of provided Services at the beginning of each calendar-year following (a) the Belgian consumer index and (b) market pricing.
- 4.2. The prices for software, services and support thereof provided by Subcontractors can be changed without notice to reflect a cost change from said Subcontractor.
- 4.3. All prices mentioned in the Agreement or any other documentation provided to Customer are VAT excluded.
- 4.4. The price and any additional charges and services under the Agreement are exclusive of personal travel time and travel costs, meals and lodging. Expenses will be charged at cost and a 5% administration fee. Travel time will be charged at 50% of the hourly rate.
- 4.5. In case a Subcontractor prices are in another currency than Euro, Skyscrapers may charge a markup to cover the administration costs and exchange risks. This markup will never exceed 5%.

5. Delivery

- 5.1. Skyscrapers agrees to deliver the Services and Deliverables on the date specified in the Agreement or as mutually agreed between the Parties at a later moment during the Agreement's execution.
- 5.2. All Services are a commitment to perform to the best of one's ability. There is no commitment to specific results or deliverables at any time unless explicitly mentioned in the Agreement.
- 5.3. Customer shall be deemed to have accepted the Services:
 - 5.3.1. a) if Customer gives written notice of acceptance of the Services and deliverables,
 - 5.3.2. b) if Customer fails to provide a written statement of nonconformity to Skyscrapers within 5 business days after the most recent delivery of Services
 - 5.3.3. or c) if Customer utilizes the Services for purposes other than as strictly necessary for testing for acceptance.
- 5.4. Skyscrapers has the right to audit the Customer, not more once a year, to verify if all rights and commercial conditions are respected and previously reported correctly by the customer. This may include but is not limited visiting the Customer's offices and asking for the applicable information.
- 5.5. Skyscrapers may over time adjust and improve the provided Services without giving advance notice. Such changes are never a cause for a termination of the Agreement neither by Skyscrapers or the Customer.

6. Intellectual property rights

- 6.1. All Customer Intellectual Property Rights shall be and remain the property of the Customer.
- 6.2. Customer grants Skyscrapers and Subcontractors, for the duration of the Agreement, a royalty-free, non-transferable, non-exclusive licence to use the Customer Intellectual Property Rights in so far as necessary to enable Skyscrapers to execute the Agreement.
- 6.3. All Skyscrapers Intellectual Property Rights shall be and remain Skyscrapers' property, unless



specified otherwise in the Agreement.

- 6.4. Skyscrapers grants the Customer a royalty-free, non-transferable, non-exclusive licence to use the Skyscrapers Intellectual Property Rights for the purpose of Customer receiving the full benefit of the Services and to enable Customer to use the Deliverables.
- 6.5. All Developed Intellectual Property Rights shall be the property of Customer as of their creation under the condition of full payment of all fees due under this Agreement. If all conditions are met Skyscrapers assigns, all copyright or other intellectual property rights in these Developed Intellectual Property Rights to Customer. Consequently, all information, program configuration, reports, studies, flow charts, diagrams and other tangible material of any nature whatsoever produced specifically by or as a result of any of the Services and all copies of any of the preceding shall be the sole and exclusive property of Customer.
- 6.6. Providing full payment of all fees due, all Developed Intellectual Property Rights are granted to Customer under an irrevocable, worldwide, non-exclusive, royalty-free license (without the right to sublicense and without warranty) to use, copy, reproduce, process, adapt and modify the source code in any way for its own use within the own company. Skyscrapers retains full ownership and licensing rights. No warranty is provided after termination of the Agreement.

7. Liability

- 7.1. The Parties are liable to pay damages in accordance with the law. Neither Party can be held liable for consequential loss and/or indirect damage, including but not limited to operating loss, higher operating expenses, loss of data, lost profit, loss of goodwill or other indirect loss.
- 7.2. In case of an occurrence where the Service is not meeting the expected level of quality:
 - 7.2.1. a) For Services without a specific Service Level Agreement, no compensation can be claimed, and
 - 7.2.2. b) For Services with a specific Service Level Agreement, no additional compensation can be claimed beyond the Service Credits for such occurrence as described in the Service Level Agreement.
- 7.3. Save in case of wilful misrepresentation and even in case of serious fault, negligence and/or omission, no indemnity is due by Skyscrapers for damages caused by the delivered goods or Service performed by it.
- 7.4. In case of an incident that Customer wishes to lay claim on, the Customer will notify Skyscrapers in confirmed writing within 5 working days after the incident.
- 7.5. Skyscrapers's total liability to the Customer under the Agreement will be limited to the price paid by the Customer to Skyscrapers for the Services provided in the 6 months prior to a claim is made.

8. Subcontractors

- 8.1. Customer shall ensure compliance to all Terms of any Subcontractors that are part of the Agreement or Services.
- 8.2. All costs, prices and budgets of Subcontractors communicated by Skyscrapers during the commercial negotiations and during the execution of the Agreement are estimates. The customer agrees to pay the cost as formally reported by the respective Subcontractors.
- 8.3. In case Amazon Web Services is used in any of the Services



- 8.3.1. The Customer accepts that use of the Amazon Web Services (“AWS”) is subject to the AWS Customer License Terms, a separate agreement between you and Amazon Web Services, Inc., a current version of which is located here <https://s3-us-west-2.amazonaws.com/legal-reseller/AWS+Reseller+Customer+License+Terms.pdf>

9. Term and Termination

- 9.1. Any irredeemable period (“Initial Contract Period”) will be stated in the Agreement.
- 9.2. Either Party can terminate the Agreement at the end of an irredeemable period or if no irredeemable period has been agreed after twelve (12) months from the Effective Date with two (2) months advance notice in writing. If the Agreement is not terminated at the end of the period, the Agreement is automatically extended in successive six (6) months’ periods, until it is terminated by one of the parties by sixty (60) days’ advance notice in writing at the end of such period.
- 9.3. The Agreement may be terminated immediately by notice in writing:
- 9.3.1. a) by either Party if the other Party is in material breach of any of its obligations under these Terms and the Agreement and (if capable of remedy) fails to remedy the breach for a period of thirty (30) days after written notice by that Party. For the avoidance of doubt, any breach of a payment obligation shall be a material breach of this Agreement;
- 9.3.2. b) by either Party if the other Party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary (other than for the purposes of an amalgamation or reconstruction), or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts;
- 9.3.3. or c) if Skyscrapers gets revoked its license to offer a Service by a third party.
- 9.4. Upon termination Skyscrapers will make available upon request by the Customer any Customer data that may exist and that Customer cannot access itself. Skyscrapers will be entitled to charge a fee for its efforts.
- 9.5. Upon termination by the Customer, Customer shall pay all outstanding fees and, if relevant, the termination fees that have been agreed.

10. Confidentiality

- 10.1. Any information supplied by the Parties to each other shall be deemed proprietary Confidential Information. Such information shall be treated as strictly confidential and the Parties shall not disclose any such information, except as may be approved by the Parties prior and in writing.
- 10.2. When a Party becomes aware that it may be required by law, regulation or court order from a court of competent jurisdiction to disclose any of the Confidential Information, it will immediately notify the disclosing Party in writing of that fact and all of the relevant circumstances. If that is not possible, it will notify the disclosing Party immediately after the disclosure has been made providing it can do so without being limited by binding law, regulation or court order.
- 10.3. The Parties shall not disclose any Confidential Information to any party other than to the Parties, including but not limited to employees and subcontractors, who need to know such information to execute the Agreement. The Parties shall ensure that each such individual to whom Confidential Information will be submitted will be made aware of, adhere to, and agree to be bound by these



Terms.

11. Personal Data & Security

- 11.1. The Parties must comply with relevant data protection legislation in the contexts where processing of personal data occurs.
- 11.2. If personal data is processed by Skyscrapers the Parties will enter into a Data Protection Agreement.
- 11.3. The Parties will implement the necessary security measures and policies to maximise the confidentiality of any processed personal data.

12. General Provisions

- 12.1. Skyscrapers is allowed to use the Customer as a reference in marketing materials, including the Customers name, logo and Services in use. The contents of any full customer cases or quotes are subject to Customers approval.
- 12.2. Skyscrapers reserves the right to at any time, with prior written notice, to change these Terms. Changes cannot negatively impact prices and other terms that are part of the Agreement. The latest version in effect at any time can be seen on <https://skyscrapers.eu/legal> .
- 12.3. The Customer acknowledges that Skyscrapers may delegate performance of some or all of its obligations under the Agreement to Subcontractors; provided, however, that Skyscrapers shall remain fully responsible for the performance of such duties.
- 12.4. Neither Party shall be liable to the other for any delay in or failure to perform its obligations due to any cause beyond its reasonable control (force majeure), including but not limited to any industrial dispute. If such delay or failure continues for at least 60 days, either Party will be entitled to terminate the Agreement by notice in writing.
- 12.5. The Parties acknowledge that its relationship with the other shall be that of an independent contractor. Nothing contained in the Agreement shall be construed as establishing any agency, employer/employee relationship, partnership or joint venture between Skyscrapers and Customer.
- 12.6. If any provision hereof is declared invalid by a court of competent jurisdiction. In that case such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of the Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- 12.7. The Customer does not have the right to assign the Agreement without the written consent of Skyscrapers. Skyscrapers is entitled to assign the Agreement to an Affiliate, its parent company or a third party in the event of sale, restructuring or reorganization, including merger, demerger, divestment and dissolution.
- 12.8. Belgian law applies to all Skyscrapers agreements. Any issue resulting from a Skyscrapers agreement will exclusively be dealt with in the courts of Antwerp.