

General terms and conditions of Orange Systems BV

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Article 1 Definitions

In these general terms and conditions the following definitions will be used, unless explicitly agreed otherwise in writing:

Orange Systems: user of the general terms and conditions;

Customer: contracting party of Orange Systems, either acting as a natural person, a self employed person or a legal person;

Contract: the agreement between Orange Systems and the Customer.

Services include, among others:

- Buying, selling and the delivery of goods (hardware),
- Consulting (professional) services,
- Worldwide on-site IT infrastructure installations,
- Maintenance service, including amongst others: tape handling, IT infrastructure audit, and monitoring and spare parts management,
- Support on software and hardware,
- Development and sale of software (f.i. monitoring service software and spare parts management software),
- Data migration and data center move,
- Other information technology services.

Article 2 General

1. The articles and conditions of these general terms are applicable for every offer, quotation or agreement between Orange Systems and the Customer, unless the parties have explicitly stated otherwise in writing.
2. These agreements are also applicable for all agreements with Orange Systems, in which third parties need to be involved for the implementation.
3. General terms and conditions of the Customer, or any other terms or agreements, are not applicable, unless explicitly agreed in writing, that the general terms of the Customer are applicable, excluding these general terms.
4. If any provision of these general terms and conditions is void or annulled, the other provisions of these general terms and conditions shall remain in full force.

Article 3 Offers and agreements

1. All offers and other statements by Orange Systems are valid for a period of fourteen days and free of obligation, unless the parties have explicitly agreed otherwise in writing.
2. Acceptance of offers needs to be confirmed in writing by the Customer to Orange Systems within fourteen days.
3. An agreement is concluded after confirmation in writing by Orange Systems, or if Orange Systems has started to carry out the assignment.
4. Offers do not automatically apply for continuous assignments or additional orders.

Article 4 Alteration of the agreement

1. If a decent implementation of the agreement requires an alteration or addition of the services, the agreement can be changed with mutual consent.
2. If an alteration of the agreement has financial or other consequences, and/or consequences for delivery times and/or delivery terms, Orange Systems will inform the Customer immediately about it.
3. Regarding alteration of the agreement, Orange Systems can charge the Customer for the extra costs, unless the alteration or addition is the result of circumstances, which can be attributed to Orange Systems.

Article 5 Implementation of the agreement

1. Orange Systems retains the right to have third parties perform (certain parts of) the implementation of the agreement.
2. The Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which Orange Systems bases its offer and which have been stated by or on behalf of the Customer to Orange Systems.
3. The Customer delivers the measurements, requirements, performance specifications and other data of which Orange Systems states it is necessary to implement and execute the agreement, in due time and before commencement of the work.
4. If the information mentioned in article 5.3 is not provided to Orange Systems in due time, Orange Systems retains the right to postpone the implementation of the work and/or charge the extra costs resulting from the delay according to the usual fees to the Customer.
5. The Customer ensures that Orange Systems, employees of Orange Systems, or third parties hired by Orange Systems, have the required (reasonable) resources available free of charge, if the implementation takes place on the location of the Customer, or a location pointed out by the Customer.
6. If the implementation commences earlier than agreed in the contract, the additional costs, which derive from it, will be charged to the Customer. Orange Systems will present a specification of these costs to the Customer.

Article 6 Non-competition

1. It is prohibited for the Customer, or any third party that is involved in the implementation of the agreement, without geographical limitations, to do business with the clients or the business network of Orange Systems, during the contract and within two years after termination of the contract, if this imposes a competitive disadvantage for Orange Systems, unless explicitly agreed otherwise.
2. It is prohibited for the Customer, or any third party that is involved in the implementation of the agreement, within two years after termination of the contract, to be involved in the start up of a similar company as Orange Systems, with the intention to do business with Orange Systems' clients or business network.
3. It is prohibited for the Customer, or any third party that is involved in the implementation of the agreement, within two years after termination of the contract, to approach Orange Systems' clients and/or business network for commercial reasons, directly or through others, if it concerns the field of expertise in which Orange Systems operates.
4. Orange Systems' clients and/or business network are to be defined as: "all parties with commercial connections to Orange Systems during the contract and at the moment of termination of the contract".

5. After violation of the conditions set forth in this clause, the Customer, or any third party that is involved in the implementation of the agreement, should pay a directly claimable fine to Orange Systems of € 50,000 per violation, and € 5,000 per day (with a maximum of € 250,000) if the violation continues.
6. Mentioned amounts are directly claimable without formal notice, and without changing the right of Orange Systems to still claim full compensatory damages.

Article 7 Duration and termination

1. Both parties retain the right to terminate the contract, in writing, at any time.
2. If the Customer terminates the agreement at the latest thirty (30) working days before the start of the implementation, Orange Systems is entitled to receive payment of 50% of the agreed price or the agreed fee from the Customer. The Customer is required to pay for the work that has already been accomplished.
3. If the Customer terminates the agreement within thirty (30) working days before the start of the implementation, Orange Systems is entitled to receive payment of 100% of the agreed price or the agreed fee from the Customer.
4. The Customer may only terminate a support- or maintenance agreement in the cases stated in these terms and conditions.
5. Each of the parties may partly or completely terminate the agreement in writing with immediate effect and without a notice of default, if the other party is granted a provisional or non-provisional suspension of payments or moratorium, or if a petition for liquidation is filed with regard to the other party, or if the other party's business is wound up or terminated for other reasons besides a business reconstruction or merger. Orange Systems shall never be obliged on account of this termination to refund payments or funds already received or to pay damages. In the event of the Customer's liquidation, the right to use software provided to the Customer shall automatically be terminated according to the law.
6. Agreements regarding support and/or maintenance have a minimum duration of one (1) year and will be tacitly prolonged with one (1) year, unless the contract will be terminated considering a term of notice of three (3) months, unless the parties agree otherwise in writing.

Article 8 Prices and costs

1. All prices defined in Orange Systems' offer are based upon the price defining factors at the time of the agreement.
2. Orange Systems is allowed to calculate price increases to the Customer if Orange Systems can provide credible reasoning that the price defining factors have increased between the time of the offer and implementation of the agreement.
3. Price changes are also possible if the content of the agreement or assignment changes, if the agreement or assignment is prolonged, if third parties change their prices, or if the applicable laws and regulations, which do apply to Orange Systems, change.
4. Price changes can be implemented without further notice to the Customer.
5. The Customer is allowed to terminate the contract if the increase of the price occurs within three (3) months after the contract was concluded. After expiration of this term the Customer is allowed to terminate the contract if the increase amounts to more than 10%.
6. All prices used by Orange Systems are exclusive VAT and other taxes, levies, duties, and costs. Amongst others, these costs could be related to transportation, packaging, delivery, administration or other costs made to properly carry out the agreement, unless explicitly stated otherwise in writing.

Article 9 Payment

1. The Customer pays within twenty-one (21) days after the invoice date, unless the invoice specifies a different payment term. Payments will be done in a manner specified by Orange Systems, in the currency specified on the invoice. Payments should be made excluding the right of netting, a suspension of payments, or a discount.
2. Orange Systems retains the right to invoice one part of the price before the implementation starts, and to invoice the remaining part at the time of completion (of the work), or to invoice in another way, depending on the agreed upon payment term.
3. The Customer is legally in default, without the necessity of any written notice, if payment did not take place within twenty-one (21) days. The Customer has fully paid the invoice, if the bank account of Orange Systems has been credited with the specified amount.
4. In case of liquidation, bankruptcy, seizure or moratorium of the Customer, the claims of Orange Systems on the Customer are directly and completely claimable.
5. Orange Systems retains the right to deduct the payments made by the Customer firstly from the costs, subsequently from the indebted interest, and finally deduct the payments from the main sum and the current interest. All costs, concerning payment, including bank costs or costs concerning bills of exchange or other payment methods are for account of the Customer.
6. Orange Systems can reject a payment offer, without being legally in default, if the Customer persists in another order of payment ranking.
7. Orange Systems can reject a payment offer of the entire main sum, if the Customer did not pay the indebted and current interest as well as the costs. The Customer remains obliged to pay the full price, including all costs and interest.

Article 10 Delivery

1. Delivery times and -terms in offers and/or agreements of Orange Systems are indicative and are never a definitive time or term. Orange Systems is not in default, in case of exceeding a delivery time or –term, unless the Customer has written a notice of default.
2. In case of late or exceeded delivery times and/or –terms by Orange Systems, the Customer is not entitled to termination or compensation, unless the parties have explicitly agreed otherwise in writing.
3. Contractual delivery times and –terms only apply if the necessary data have been provided to Orange Systems and if possible payments, that need to be paid at the beginning of the implementation, have been received.

Article 11 Suspension and rescindment

1. Orange Systems retains the right, without legal proceedings, to suspend to fulfill its obligation or to rescind the agreement, in the following situations, if the Customer:
 - does not, does not in due time, does not completely, or does not considerably fulfill one or more obligations in the contract;
 - arranges a debt agreement with its creditors;
 - applies for an official moratorium;
 - is officially in bankruptcy;
 - liquidates, sells or transfers the company;
 - transfers the control of the company to a third party;
 - dishonestly uses goods, services, software and/or confidential information provided by Orange Systems;
 - disseminates information which is violating (inter)national laws and regulations;
 - will not fulfill its obligations, according to information which gives good reasons for Orange Systems to believe the Customer will fail to perform;

2. Orange Systems retains the right to rescind the agreement if performance of the agreement cannot possibly be demanded any longer, or if performance cannot reasonably be demanded any longer.
3. If the agreement will be rescinded, the claims of Orange Systems on the Customer are immediately claimable. If Orange Systems suspends to fulfill its obligations, Orange Systems retains its rights according to the contract and the law.
4. If the agreement will be rescinded due to a serious failure of the Customer to fulfill its obligations, like incorrect or unprofessional use, untimely payment, transfer to third parties etc., the Customer is obliged to pay at least the contractual price, including possible costs, increased with a compensation of 10% of the completed services and/or delivered goods.
5. Under all circumstances, Orange Systems retains the right to claim compensation for damages.

Article 12 Liability

1. Orange Systems' liability for not fulfilling its obligation is explicitly limited to the value of the provided services and/or delivered goods related to the obligation in question, with an absolute maximum of the amount mentioned in Orange Systems' business liability insurance.
2. Orange Systems is not liable for indirect damage, which includes consequential damage, lost profits, lost savings, lost cost reduction, loss of goodwill, mutilated or damaged data or materials, damage due to business interruptions and claims from third parties.
3. Orange Systems is not liable for damage, of any kind, due to the fact that Orange Systems used data provided by the Customer, which is incorrect or incomplete, unless Orange Systems could have known the incorrectness or incompleteness of the data.
4. Orange Systems is not liable for damage, which originated from (technical) trouble, interference or jams, or dysfunctional (electronic and/or data) connections or the quality of these connections, regardless of the fact if they were implemented by Orange Systems or third parties.
5. Orange Systems is not liable for damage, due to (criminal) intent, recklessness, (major) negligence of third parties hired by Orange Systems.
6. The use of the provided software or other digital material is done at the full risk and expense of the Customer.
7. For any right to damages to exist, the Customer must always report the damage or injury in writing to Orange Systems within fourteen (14) days after delivery. Any claim for damages against Orange Systems will expire three (3) months after the claim arises.
8. The Customer shall indemnify Orange Systems against all third-party claims because of product liability ensuing from a defect in a product or system, which has been delivered by the Customer to a third party and which partly consisted of equipment, software or other materials delivered by Orange Systems, except if and insofar as the Customer proves that the damage or injury was caused by that equipment, software or other materials.
9. The provisions in this article also apply for the benefit of all legal and natural persons utilized by Orange Systems in executing the agreement.

Article 13 Transfer of risk

The risk of damage, or the risk of loss of objects or data, including programs and/or source code, which is part of the agreement, transfers from Orange Systems to the Customer at the moment said objects and/or data will be in control of the Customer or a third party appointed by the Customer.

Article 14 Force majeure

1. Every failure to fulfill the obligations in the contract cannot be contributed to Orange Systems, if it was impossible for Orange Systems to perform due to circumstances, which were beyond its control, and which cannot be contributed to Orange Systems according to the law, legal act or public legal perception.
2. According to these terms, force majeure comprises all anticipated or non-anticipated external causes, over which Orange Systems has no control and result in the fact that Orange Systems cannot fulfill its obligations. These might be events such as wars, strikes, riots, crime, or acts of God, (like hurricanes, flooding, earthquakes, volcanic eruptions etc.), or events concerning hosting- or network providers, or acts of third parties Orange Systems has no control over.
3. Orange Systems retains the right to claim force majeure if the circumstance, which prevents the fulfillment of the obligation, occurred after Orange Systems should have fulfilled its obligation.
4. Both parties suspend their contractual obligations during the period of force majeure, until the time when performance is reasonably possible again.
5. Both parties are immediately permitted, out of court, without the necessity of a notice of default and without the possibility to claim damages, to terminate the contract if the situation of force majeure exceeds for a period of one month.
6. A force majeure claim can be presented to Orange Systems only in writing, with a delivery note, within fourteen (14) days after the force majeure came into existence.

Article 15 Samples, models and prototypes

If Orange Systems has showed and/or provided the Customer a program, program code, source code, a (sample) website, a sample, a model, a prototype or any other concept or example, than it is just presuming to be showed and/or provided as an indication, unless the parties have explicitly agreed that the final product shall fully resemble the example.

Article 16 Inspection and defects

1. The Customer shall inspect the delivered objects at the moment of delivery, or at least within fourteen (14) days after delivery. The Customer inspects if the quality and quantity of the delivered objects are conform the contract, at least inspects if it meets the requirements in the particular business environment.
2. Claims because of defects regarding provided goods and/or services, or claims concerning sent invoices from Orange Systems to the Customer, can only be made in writing, within eight (8) days after the defects were identified by the Customer.
3. If the Customer makes a claim within due time, the Customer shall still be obliged to receive and to pay the goods and/or services. Claims by the Customer never give a right to suspend the payment obligation.

Article 17 Retention of title

1. All objects, including delivered goods, designs, samples, models, drawings, films, software, sketches, (electronic) files etc., which are delivered to the Customer by Orange Systems, shall remain Orange Systems' property until the Customer has fulfilled all obligations in the contract.
2. The Customer is not entitled to pledge the objects, which are subject to Orange Systems' retention of title, or to encumber the objects in any other way.
3. If third parties seize objects or have the intention to seize objects, which are subject to Orange Systems' retention of title, or want to claim any other rights on the objects, the Customer shall notify Orange Systems immediately.
4. A Customer acting as a reseller may sell and re-deliver all items subject to Orange Systems' retention of title insofar as that is common in connection with its normal business operations. If the

Customer creates a new object wholly or partly from the objects delivered by Orange Systems, the Customer shall create that object solely for Orange Systems and the Customer shall hold the newly created object for Orange Systems until the Customer has paid all amounts owed according to the contract. In that event, Orange Systems shall possess all rights as the owner of the newly created object until the Customer has made full payment.

5. As the occasion arises, rights shall always be granted or transferred to the Customer on the condition that the Customer pays the agreed fees fully and in a timely manner.
6. Notwithstanding any delivery obligation, Orange Systems may maintain possession of the objects, products, proprietary rights, intellectual property rights, information, documents, databases and interim or other results of Orange Systems' services which have been received or generated in connection with the contract until the Customer has paid all amounts owed to Orange Systems.

Article 18 Collection costs

1. If the Customer is unable to fulfill the obligations in the contract and is therefore legally in default, all costs in order to collect the indebted amount, in or out of court, are without further notification for account of the Customer. In case of a claim regarding a debt receivable, the Customer owes a minimum of 15% in collection costs to Orange Systems.
2. If the Customer is unable to fulfill the obligations according to the contract and is therefore legally in default, all reasonable legal-, court-, execution- and collection costs, are without further notification for account of the Customer.
3. If the Customer is unable to fulfill the obligations in the contract and is therefore legally in default, the indebted and current interest of 1,5% per month (unless the legal interest is higher, in which case the legal interest shall apply), shall without further notification be paid by the Customer to Orange Systems. The interest will be calculated over the invoice amount or contractually agreed price, from the moment the Customer is legally in default, until the moment of full payment made by the Customer to Orange Systems.

Article 19 Guarantee

1. The Customer safeguards Orange Systems against claims of third parties concerning intellectual property rights on objects or data, which was provided by the Customer and which objects or data is used for the implementation of the contract.
2. If the Customer provides Orange Systems with information carriers, electronic files or software etcetera, it safeguards that it is free of viruses, defects or other potentially harmful elements.

Article 20 Intellectual property rights

1. All intellectual and/or industrial property rights to products, software, websites, databases, equipment or other materials developed or provided by Orange Systems, such as analyses, scripts, source code, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by Orange Systems, its licensors or its suppliers. The Customer shall only acquire the rights of use explicitly granted in these terms and conditions and by law. Any other or more extensive right of the Customer to reproduce software, websites, databases or other materials shall be excluded. Any right of use to which the Customer is entitled shall be non-exclusive and non-transferable to third parties.
2. Transfer of any intellectual and/or industrial property rights, can only explicitly be agreed upon in writing. A possible transfer shall not affect Orange Systems' right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages, source code etc., without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect Orange Systems' right to undertake developments for it self or third parties, which are similar to those done for the Customer.
3. The Customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or

industrial property rights from the software, websites, databases, equipment or other materials of Orange Systems.

4. The Customer warrants that there are no third-party rights, on equipment, software, materials intended for websites, databases, or other materials, including draft material. The Customer shall indemnify Orange Systems against any action based on the claim that said materials infringe any third-party rights.
5. All (digital) documents provided by Orange Systems, such as samples, models, examples, (sample) websites, designs, sketches, drawings, films, software,(electronic) files, etc., are intended to be used solely by the customer, and may not be reproduced, published or disclosed to third parties without prior approval from Orange Systems, unless otherwise agreed in writing.

Article 21 Computer services

1. Contracts concerning computer services shall be entered into for the term agreed between the parties, in the absence of which a one-year term shall apply. The term of the contract shall be tacitly extended by the length of the original period, unless one of the parties terminates the contract in writing, with a notice period of three months.
2. All data to be processed by Orange Systems shall be prepared and delivered by the Customer in accordance with the conditions to be stated by Orange Systems. Transport and transmission of data, in whatever manner, shall occur at the Customer's expense and risk, even if this has been carried out or arranged by Orange Systems.
3. The Customer warrants that all materials, data, software, procedures and instructions provided to Orange Systems, shall be correct and complete.
4. All equipment, software and other objects used by Orange Systems for the computer services shall remain Orange Systems' (intellectual) property, unless otherwise agreed in writing.
5. The Customer warrants that all statutory provisions concerning processing personal data have been strictly observed.
6. The Customer shall indemnify Orange Systems against all third-party claims, which may be filed against Orange Systems because of a violation of statutory or other laws concerning processing personal data, which is not imputable to Orange Systems.
7. The Customer is responsible for checking the accuracy and completeness of the results of the computer services. Orange Systems does not warrant that the computer services shall be provided without errors or without interruptions.

Article 22 Software

1. Orange Systems shall grant the Customer a non-exclusive right to use software developed or delivered by Orange Systems solely on the basis of a separate software license.
2. According to article 12 of these terms and conditions, Orange Systems is not liable in case Orange Systems' software, or software delivered by Orange Systems, provably influences or causes changes to databanks, file formats, applications, connections or other matters. On request, Orange Systems does deliver a report and/or advice in this case. If Orange Systems is asked to find a solution to the matter, this will take place according to the usual rates.
3. In case Orange Systems provides software from third parties to the Customer, Orange Systems is not liable for any malfunction or other errors in this software.

Article 23 Confidential information

1. Each of the parties warrants that all of the information received by the other party, which is known to be, or should be known to be, confidential in nature, shall remain secret, unless a legal obligation mandates disclosure of that information. The party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the parties as such.
2. If Orange Systems is in any way obliged to disclose confidential information, than they are not liable for damages or compensation because of the disclosure, and the customer is not entitled to rescind the contract on the basis of any damage that occurred because of the disclosure.
3. Personal information, provided documents, data and audiovisual information of the Customer remain confidential. Orange Systems does not supply personal information to third parties without prior consent of the Customer.

Article 24 Applicable law and disputes

1. In case of any dispute between Orange Systems and the Customer, the district court of Arnhem will be the single competent court, unless another court has jurisdiction.
2. Orange Systems retains the right to bring the dispute before a court in the place where the Customer usually takes residence, at least in the applicable court according to the law.
3. Dutch law shall be applicable concerning any agreement between Orange Systems and the Customer.