

# General terms and conditions

of:

**M2LAB B.V.**

hereinafter referred to as: User

## Contents

Definitions	2
1. General	2
2. Offers and orders	2
3. Implementation of the Agreement	2
4. Prices	3
5. Payment	3
6. Extrajudicial costs	4
7. Litigation costs	4
8. Duration of the Agreement	4
9. Additional work	4
10. Time limits	5
11. Secrecy	5
12. Copyright	6
13. Force majeure	6
14. Advertisements	6
15. Liability	7
16. Indemnities	8
17. Dissolution and suspension	9
18. Transfer	9
19. Recruitment of staff	9
20. Reporting	10
21. Applicable law and disputes	10

# General terms and conditions

## Definitions

In these general terms and conditions, the following terms are used in the following sense, unless explicitly stated otherwise.

User : the User of the general terms and conditions.

Client : the other party to the User.

Agreement : the agreement to provide services.

## 1. General

1.1 These general terms and conditions apply to all offers and agreements of the User, as well as to the execution of all work by the User.

1.2 Deviations from these general terms and conditions shall only apply if and insofar as they have been explicitly agreed in writing.

1.3 Terms and conditions of the Client do not bind the User, except if and insofar as they have been explicitly accepted by the User in writing, and then only apply with regard to the then specifically mentioned agreements.

1.4 This document has been translated automatically from Dutch. If, for any reason, there are discrepancies in the translation, the Dutch version shall prevail.

## 2. Offers and orders

2.1 User is entitled to revoke his offer within 8 working days after the User has received the acceptance of the offer by the Client.

2.2 Verbal agreements only bind the User after and insofar as they have been confirmed in writing by the User.

2.3 Unless explicitly stated otherwise in the relevant offer, all offers are based on the performance of the work during normal working hours on working days.

2.4 All offers are valid up to 30 working days after the date of quotation/offer date.

## 3. Implementation of the Agreement

3.1 The User is authorised to make use of third parties in the performance of the Agreement.

3.2 To the extent necessary, the Client shall ensure that the User's employees and/or assistants are granted the access to sites, buildings and/or projects required for the performance of the work and that all the necessary formalities have been completed. In addition, if, for example, the User's work takes place at a location where the Client has (partial) supervision, the Client shall ensure that the safety provisions of the laws and/or regulations relating to the work and working conditions are fully complied with.

# General terms and conditions

3.3 The Client shall at all times provide the User with all relevant available and/or required data, information and documentation, which is and/or may be of importance for the proper performance of the assigned work. This includes the safety provisions referred to in Article 3.2.

3.4 The Client guarantees the accuracy of the data, information and documentation provided by him and is liable for all damage (including but not limited to damage on the part of the User as a result of a controller/inspector taking action in vain) that arises from or is related to inaccuracy thereof. The Client shall also indemnify the User against all claims relating to any damage as referred to above.

3.5 If test materials are returned to the Client, the risk of damage and loss shall be borne by the Client (client).

## 4. Prices

4.1 The User will be entitled to charge the then applicable rates for the performance of the Agreement. User is entitled to increase the agreed rates if the costs and/or prices on which the rates are based give reason to do so.

4.2 Unless explicitly agreed otherwise, travel time will be charged.

4.3 Prices quoted by the User in offers are exclusive of turnover tax or other government levies unless stated otherwise.

4.4 Unless explicitly agreed otherwise, overtime, including evening, night, Saturday and Sunday work as well as work on a generally recognised public holiday, will be entirely for the account of the Client, at the applicable rates.

4.5 Any delay in the performance of the Agreement caused by circumstances that are not for the User's account and/or could not reasonably have been foreseen by the User will be for the Client's account.

## 5. Payment

5.1 Unless otherwise agreed (see offer/invoice), payment must be made by order or the specified number of days after the invoice date in the agreed currency by transfer of the amount due to the bank or giro account stated on the invoice. The day of payment is the day on which the money is credited to the bank or giro account.

5.2 User is authorised to have payments made by the Client serve to settle, firstly, all interest and costs owed, secondly, due and payable invoices that have been outstanding the longest, even if the Client states that the payment relates to a later invoice.

5.3 The Client is not entitled to invoke a discount or set-off in the event of payment.

5.4 After expiry of the term of payment, the Client will be in default and from that date onwards will owe interest in addition to the principal sum in the amount of the statutory interest rate, increased by 2 percent per month. At the end of each year, the amount on which the interest stipulated in the previous year's agreement is calculated will be increased by the interest due for that year.

## 6. Extrajudicial costs

# General terms and conditions

If the Client fails to fulfil one or more of its obligations or is in default, all reasonable costs incurred to obtain extrajudicial settlement will be borne by the Client. In any case, the Client shall be liable for payment:

- About the first € 8.500,00 15%;
- About the excess up to € 13.000,00 10%;
- Over the excess up to € 32,500.00 8%;
- About the excess up to € 130,000.00 5%;
- Over the excess 3%.

With a minimum of € 150,00 per case. If the User can demonstrate that he has incurred higher costs, which were reasonably necessary, these will be eligible for reimbursement.

## 7. Litigation costs

The Client is obliged to reimburse all costs reasonably incurred by the User in connection with legal proceedings in which the Client has been wholly or predominantly ruled against. These costs shall in any case include the costs of external experts, bailiffs and lawyers, also to the extent that these costs exceed the amount awarded by the court in the matter.

## 8. Duration of the Agreement

If the Agreement has been entered into for an indefinite period of time, the Client is entitled to terminate the Agreement by registered letter with due observance of a notice period of at least 6 months.

## 9. Additional work

9.1 If an extension or amendment of the order to increase the price or to extend the period required for the execution of the work, the User will inform the Client of this before the execution of the amended order is proceeded with.

9.2 If, as a result of additional wishes on the part of the Client, which lead to a change in the agreed work, the performance to be provided by the User pursuant to this Agreement is increased or expanded, it will be deemed to be additional work that qualifies for additional compensation in accordance with the applicable rates.

9.3 If the User is of the opinion that additional work is involved, it will notify the Client of this in writing as soon as possible. User shall also provide the Client with an indication of the consequences for the period for completion of the work, as well as the consequences for the estimated costs.

9.4 During the course of an investigation, it may be considered necessary to carry out more investigations than initially quoted. User reserves the right to invoice the customer for this as additional work.

## 10. Time limits

Terms given by or to the User shall never be regarded as deadlines, unless expressly agreed otherwise in writing. In the event of overdue performance, the User must therefore, in those cases in which the performance is still possible, be given notice of default, whereby the User is given a reasonable period, based partly on industry practice, in which to still fulfil its obligations. If this

M2LAB BV | Kraaivenstraat 36-05 | 5048 AB Tilburg | Tel: +31(0)13 463 06 88 |

Bank: NL98RABO0320815897 | KVK:69000387 | VAT: NL857683755B01 | [www.m2lab.nl](http://www.m2lab.nl) | [info@m2lab.nl](mailto:info@m2lab.nl)

# General terms and conditions

extended period is exceeded, the Client will be entitled, except in the event of force majeure within the meaning of Article 13, to dissolve the Agreement insofar as no work has yet been carried out. In such a case, the User shall not be liable for damages.

## 11. Secrecy

11.1 Both parties are obliged to keep confidential any information, technical data and/or documentation, as well as any other data that can be regarded as confidential, originating from the other party. This duty of confidentiality also extends to the (content of the) Agreement. The Client is also obliged to maintain the confidentiality of all information relating to the (manner of) execution of the Agreement by the User, except in so far as the User has given permission for publication.

11.2 The parties will not make data and information as referred to in this article available to third parties and will only disclose them to their personnel to the extent that this is necessary for the performance of the agreed performances.

11.3 The parties will do everything reasonably possible to ensure confidentiality with regard to the data and information referred to in this article. The parties will ensure that their employees comply with the duty of confidentiality.

11.4 There is no question of confidentiality on the part of the User if the Client provides the report provided by the User to third parties. After verification of the correctness of the report, the User will make all relevant information relating to the report available to this third party.

11.5 Reports provided by the Client to third parties (not the Client) will be regarded as public and will not be subject to confidentiality. However, this only applies to the studies described in the report in question.

## 12. Copyright

The intellectual and industrial property rights in respect of reports, certificates, advice, audiovisual materials and other documents provided to the Client (including by means of computer connections, or online reports provided by means of telecommunication) are vested exclusively in the User. The Client is only permitted to disclose these to third parties or to allow them to use them after he has fulfilled all his obligations towards the User. If the Client wishes to publish the entire report as such, stating the name of the User, it must request prior written permission from the User. If it only wishes to publish data from the report in question, such permission is not necessary.

## 13. Force majeure

13.1 If the performance of the Agreement is prevented or seriously hindered as a result of a circumstance that cannot be attributed to the User (force majeure), its obligations will be suspended. During the period in which fulfilment of the User's obligations is not possible due to force majeure, the Client is not authorised to dissolve the Agreement, nor is there an obligation to pay compensation in that case.

13.2 If the User has already partially fulfilled its obligations when the force majeure commences, or can only partially fulfil its obligations, it will be entitled to invoice the part already performed or the part to be performed separately.

13.3 Force majeure within the meaning of this article shall be deemed to exist if compliance is prevented by strikes (including strikes within the User), lockouts, riots, irregularities, insurrections,

# General terms and conditions

measures taken by the government and/or other competent authorities, accidents and other impeding circumstances beyond the User's control.

13.4 The User will also be entitled to invoke force majeure if the circumstance that prevents (further) compliance occurs after the User should have complied with its obligation.

## 14. Advertisements

14.1 In the event of complaints relating to the User's work, the Client must complain within three working days after he has discovered or could have discovered irregularities in the performance of the work to which the complaint relates and/or the damage in question. Upon expiry of this period, any right to, for example, compensation and/or rectification of the irregularities shall lapse.

14.2 Complaints must be reported by registered letter, in as much detail as possible, stating all relevant information, including report and certificate numbers and invoice and letter numbers.

14.3 Any rights of the Client by virtue of a timely complaint will lapse if the Client does not invite the User to attend an expertise to be held by him or if the Client reminds the User of the possibility of holding a counter expertise.

14.4 If the User deems the complaint to be well-founded, the User will, as far as possible and within the limits of reasonableness and fairness, remedy the irregularities.

14.5 Even if the Client submits a complaint on time, the Client's obligation to pay for the instructions given will continue to exist.

## 15. Liability

15.1 Should the Contractor be liable, this liability will be limited to the provisions of this provision.

15.2 Contractor is not liable for damage of any nature whatsoever caused by the fact that Contractor has relied on incorrect and/or incomplete information provided by or on behalf of Principal.

15.3 By entering into any Agreement, the User will assume a best-efforts obligation, and under no circumstances a result obligation.

15.4 In the event that the Contractor is liable for any damage, the Contractor's liability will be limited to a maximum of one time the invoice value excluding VAT of the order, or at least to that part of the order to which the liability relates, with a maximum of € 5.000,00 excluding VAT. If the assignment continues for more than six months, the aforementioned liability will be limited to an amount equal to the total amount exclusive of VAT that the Contractor received from the Client in the context of the assignment in the last two months prior to the occurrence of the damage.

15.5 Contractor is only liable for direct damage.

15.6 Direct damage is exclusively understood to mean (i) the reasonable costs incurred to determine the cause and extent of the damage, insofar as such determination relates to damage within the meaning of these General Terms and Conditions, (ii) any reasonable costs incurred to have the Contractor's defective performance comply with the Agreement, insofar as these can be attributed to the Contractor, and (iii) reasonable costs incurred to prevent or mitigate damage, insofar as the Principal can demonstrate that these costs led to the limitation of direct damage as referred to in these General Terms and Conditions. Contractor shall at all times be entitled to repair direct damage itself or have it repaired, and Client shall at all times offer Contractor the opportunity to do so and

# General terms and conditions

allow a reasonable period of time. This is subject to the forfeiture of any claim and/or claim for damages by the Client against the Contracted Party.

15.7 Under no circumstances will the Contractor be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business interruption.

15.8 Any legal action against the User will lapse one month after completion of the work to which the claim relates, except in the event that the irregularity could not have been detected within that period. In the event that the Client could not have detected the irregularity within the aforementioned period of 1 month, the provisions of article 14 paragraph 1 shall apply mutatis mutandis, on the understanding that in such a case any legal action shall lapse 30 days after the date on which the Client has discovered or could have discovered the irregularity. Any liability on the part of the User and the assistants involved by the User in the execution of an Agreement shall in any case be extinguished 3 months after the completion of the work or after the date of issue of the report or certificate issued by the User.

15.9 Any right to compensation will lapse if the Client, after the User has definitively rejected a (supposed) claim of the Client in writing, has not filed a claim in court within three months of the aforementioned written notification.

15.10 The Principal indemnifies the Contractor against all claims from third parties, and the Contractor will reimburse the costs it incurs or will incur in connection with the defence against such claims from third parties, which relate to or arise from work performed by the Contractor under the Agreement(s) with the Principal.

15.11 The User will never be responsible and/or liable and/or can be held liable for decisions taken on the basis of the report(s) and/or certification(s) issued.

15.12 The limitations of liability contained in this article do not apply if the damage is due to intent or gross negligence on the part of the Contractor or its managerial subordinates.

## **16. Indemnities**

16.1 The Client indemnifies the User against claims by third parties relating to intellectual property rights on materials or data provided by the Client that are used in the performance of the Agreement.

16.2 If the Client provides the User with data carriers, electronic files or software etc., the latter guarantees that the data carriers, electronic files or software are free of viruses and defects.

## **17. Dissolution and suspension**

17.1 If one of the following circumstances arises, the User will be entitled to suspend the (further) performance of the Agreement, or to proceed to dissolve the Agreement, without prejudice to its right to claim damages. This is the case if..:

- goods of the Client are seized or the Client is granted a moratorium on payment or the Client's bankruptcy is declared or is declared bankrupt;
- the Client fails to fulfil one or more of his obligations towards the User or;

# General terms and conditions

- The User has good reason to fear that the Client is or will be unable to fulfil its obligations under the Agreement and that the Client, in the User's reasonable opinion, does not provide sufficient security for the fulfilment of its obligations.

17.2 If one of the circumstances referred to in article 17.1 occurs, the User is authorised to stipulate that everything that can be claimed from the Client will be immediately due and payable.

17.3 If unforeseen circumstances arise, for example with regard to persons and/or materials that the User uses or tends to use in the performance of the Agreement, which are of such a nature that the performance of the Agreement becomes impossible or so and/or disproportionately expensive that it can no longer reasonably be expected to comply with the Agreement, the User will be entitled to dissolve the Agreement, without being liable to pay any compensation.

17.4 In the event of termination of the Agreement, at least the performances already performed by the User will be reimbursed by the Client. This provision does not affect all other rights of the User.

17.5 If, in the case of an Agreement, the Client prematurely terminates the Agreement for one of the predetermined periods, the User will be entitled to a reasonable fee for the remaining period, which will be based at least on an amount equal to 75% of the average amount charged per month until the termination. The foregoing also applies in the case of an Agreement for an indefinite period of time, if the Client does not observe the notice period referred to in Article 8. The right to this additional compensation lapses if the termination is the result of an attributable shortcoming on the part of the User.

## **18. Transfer**

The Client shall not transfer any rights arising from the Agreement to third parties without the User's prior written consent.

## **19. Recruitment of staff**

Neither Party may, for the duration of the Agreement or within two years after termination of the Agreement, employ staff of the other Party, except with the written consent of the other Party.

## **20. Reporting**

20.1 The Client is expressly prohibited from making changes to the certificates issued by the User.

20.2 The User will only provide information on certificates to parties who have the unique certificate number and are in possession of all numbered pages. User will inform the client afterwards of the certificate that has been requested.

20.3 Reports may not be published without the User's written consent.

20.4 Reports may be withdrawn by the User if one or more of the following events occur:

- in the event of non-payment or late payment of the relevant report;
- ...in forgeries;
- in the event of incorrect information, the report in question.

## **21. Applicable law and disputes**

21.1 Every Agreement between the User and the Client is governed by Dutch law.

# General terms and conditions

21.2 Unless the parties agree otherwise in mutual consultation, all disputes shall be settled by the District Court of Breda. This clause does not affect the User's right to bring the dispute before the competent court in accordance with the Act or the applicable international treaty.

21.3 These General Terms and Conditions were filed with the Chamber of Commerce in Tilburg on [date of filing] and replace all previous editions.