

Terms and Conditions

W3S Digital
April 2022



General Provisions

1. Quotation and agreement

- 1.1 W3S Digital is part of Digital Development Group B.V., hereinafter referred to as 'W3S Digital'.
- 1.2 These Terms and Conditions apply to all quotations, legal relationships and agreements by which W3S Digital supplies goods and/or services of any kind to the Client. Deviations from and additions to these Terms and Conditions are only valid if this have been agreed upon in writing.
- 1.3 All quotations and other expressions of W3S Digital are free of engagement unless indicated otherwise in writing by W3S Digital. The Client is responsible for the accuracy and completeness of the requirements, specifications of the performance and other data specified by them to W3S Digital, on which W3S Digital its bases its Quotation.
- 1.4 Applicability of purchasing- or other conditions of the Client is expressly rejected.
- 1.5 If any provision of these Terms and Conditions is null and void or annulled, the other provisions of these Terms and Conditions shall remain in full force and effect.

2. Price and payment

- 2.1 All prices are exclusive of VAT and other levies which may be imposed by the government, as well as (periodic) costs charged by third parties which the Commissioning Party wishes to make use of.
- 2.2 Invoices are to be paid by the Client within thirty days of the invoice date. The Client is not entitled to deduction or suspension of payment.
- 2.3 If the Client fails to pay the amounts due on time, the Client shall owe statutory interest on the outstanding amount, without any demand or notice of default being required. If the Client continues to fail to pay the claim after a demand for payment or notice of default, W3S Digital may pass on the claim for collection, in which case Client will be obliged to pay all judicial and extrajudicial costs, including costs charged by external experts, in addition to the costs determined in court.



3. Confidential information and privacy

- 3.1 Each of the Parties warrants that the data received from the other party which is known, or should be known, to be of a confidential nature, shall remain secret, unless such data must be disclosed by either party pursuant to a legal obligation. The party receiving confidential information shall only use this information for the purpose for which it was provided.
- 3.2 The Client shall indemnify W3S Digital against claims from persons whose personal data have been registered or are being processed within the context of a registration of persons kept by the Client or for which the Client is otherwise responsible by law, unless the Client proves that the facts underlying the claim are solely attributable to W3S Digital.

4. Retention (of title)

- 4.1 All goods delivered to the Client remain the property of W3S Digital until all amounts owed by the Client for the goods delivered or to be delivered or work carried out or to be carried out by W3S Digital, as well as any other amounts owed by the Client as a result of the Client's failure to pay, have been paid in full to W3S Digital.
- 4.2 Wherever applicable, rights are always granted or transferred to the Client on the condition that the Client pays the agreed upon fees in due time and in full.
- 4.3 W3S Digital may retain the generated goods, products, property rights, data, documents, data files and (intermediate) results of the services of W3S Digital, in spite of an existing obligation to surrender or transfer, until the Client has paid all amounts due to W3S Digital.

5. Risk

- 5.1 The risk of loss, theft or damage of goods, products, software or data which are the subject of the Agreement, shall pass to the Client at the moment they are placed within the actual disposal of the Client.

6. Intellectual or industrial property rights

- 6.1 All intellectual and industrial property rights to the website developed by W3S Digital pursuant to the Agreement belong to the Client, unless stated otherwise in the Quotation, collaboration contract or order confirmation belonging to the initial



assignment. Intellectual and industrial property rights belonging to licensors or W3S Digital's suppliers will remain with them. The Client will acquire a non-exclusive and non-transferable right of use for these.

- 6.2 The Client is not permitted to remove or modify any designation relating to the confidential nature or to copyright, brands, trademarks or other intellectual or industrial property rights from the software, websites, data files, equipment or materials.
- 6.3 W3S Digital is allowed to take technical measures to protect the software or with regards to agreed upon limitations on the duration of the right to use the software. The Client is not allowed to remove or evade such technical measures. If security measures result in the Client being unable to make a back-up copy of the software, W3S Digital shall provide the Client with a back-up copy upon request.
- 6.4 Unless W3S Digital makes a back-up copy of the software available to the Client, the Client may make one back-up copy of the software, which may be used solely to protect against involuntary loss of possession or damage. Installation of the back-up copy shall take place only after involuntary loss of possession or damage. A back-up copy must have the same labels and copyright indications as present on the original copy (see Article 6.3).
- 6.5 W3S Digital shall indemnify the Client against each legal claim from a third party based on the allegation that software, websites, data files, equipment or other materials developed by W3S Digital itself infringe an intellectual or industrial property right applicable in the Netherlands, on the condition that the Client informs W3S Digital immediately in writing about the existence and the contents of the legal claim and leaves the handling of the case, including the conclusion of possible settlements, entirely to W3S Digital. For this purpose, the Client will provide the necessary powers of attorney, information and cooperation to W3S Digital to defend itself, if necessary on behalf of the Client, against these legal claims. This obligation to indemnify shall lapse if the alleged breach relates to (i) materials made available by the Client to W3S Digital for use, adaption, processing, handling or incorporation, or (ii) to changes made by the Client to the software, website, data files, equipment or other materials or to changes made by third parties. If it has been irrevocably established in law that the websites, data files, equipment or other materials developed by W3S Digital itself infringe any intellectual or industrial property right belonging to a third party or if, in the opinion of W3S Digital, there is a reasonable chance that such an infringement will occur, W3S Digital will, if possible, ensure that the Client can continue to use the delivered product or functionally equivalent other software, websites, data files, equipment or relevant other materials without interference, e.g. by modifying the infringing components or by acquiring a right of use for the Client. If W3S Digital, at its sole



discretion, cannot ensure or cannot ensure other than in a manner than is (financially) unreasonable burdensome for it, that the Client can continue to use the provided goods without interference, W3S Digital will take back the provided goods against crediting of the acquisition costs less a reasonable usage fee. W3S Digital shall not make its choice in this context without previous consultation with the Client. Any other or further liability or indemnification obligation of W3S Digital resulting from infringement of intellectual or industrial property rights of a third party is fully excluded, including liability and indemnification obligations of W3S Digital for infringements caused by the use of the provided software, websites, data files, equipment and/or materials (i) in a form not modified by W3S Digital, (ii) in conjunction with goods or software not provided by W3S Digital or (iii) in another manner than that for which the equipment, software, websites, data files and/or other materials were developed or intended.

- 6.6 The Client shall ensure that no third-party rights will oppose the provision to W3S Digital of equipment, software, material intended for websites (visual material, text, music, domain names, logos etc.), data files, or other materials, including design material, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Client will indemnify W3S Digital against any action based on the allegation that such provision, use, adaptation, installation or incorporation infringes on any right of third parties.

7. Termination of Agreement

- 7.1 Each of the parties will be entitled to dissolution of the Agreement only if the other party (in all cases after a proper written notice of default which is as detailed as possible and in which a reasonable period for remedying the shortcoming is given) imputably fails to comply with essential obligations under the Agreement.
- 7.2 Notwithstanding what has been stipulated in law in this respect by means of directory law, the Client may only terminate a service agreement in the cases provided for in these Terms and Conditions.
- 7.3 Each of the Parties can terminate the Agreement in writing with immediate effect, in whole or in part and without notice of default, if the other party is granted a provisional or non-provisional suspension of payments, if bankruptcy is declared with respect to the other party, or if the other party's company is liquidated or terminated other than for the purpose of a reconstruction or merger of companies. As a result of such a termination, W3S Digital shall never be obliged to refund money already received, or to pay compensation. In the event of bankruptcy of the Client, the right to use software made available to the Client will expire by operation of law.

- 7.4 Termination of the Agreement based on attributable failure is only permissible after a written notice of default which is as detailed as possible and which sets a reasonable period for remedying the shortcoming.
- 7.5 If W3S Digital has already met some of its obligations to the Client at the moment the agreement is terminated as referred to in Article 7.1, these performances and the related payment obligation shall not be the object of annulment, unless the Client proves that W3S Digital is in default with respect to these performances. Amounts that W3S Digital has invoiced prior to the Termination in connection with what it has already duly carried out or provided in performance of the Agreement will, with due observance of the provisions in the previous sentence, continue to be owed in full and shall become immediately due and payable at the time of Termination.

8. W3S Digital's liability; indemnity

- 8.1 W3S Digital's liability for direct and indirect damage, consequential damage, loss of profit, missed savings, reduced goodwill, damages caused by business interruption, damages resulting from claims by customers of the Client, mutilation or loss of data, damages related to the use of goods, materials or third-party software prescribed by the Client to W3S Digital, damages related to the use of suppliers prescribed by the Client to W3S Digital and all forms of damages other than those mentioned in Article 8.1 and 8.2, on any grounds whatsoever, are excluded.
- 8.2 The restrictions mentioned in the previous Paragraph of this Article 8 shall lapse if and in so far as the damage is the result of intent or gross negligence on the part of W3S Digital.
- 8.3 W3S Digital's liability for attributable failure in the performance of an Agreement shall in all cases only arise if the Client gives W3S Digital immediate and proper notice of default in writing, setting a reasonable period for remedying the shortcoming, and if W3S Digital still remains attributable in breach of its obligations after that period. The notice of default must contain as complete and detailed a description as possible of the shortcoming, so that W3S Digital is able to respond adequately.

9. Force majeure

- 9.1 Neither party is obliged to fulfil any obligation if prevented from doing so is as a result of force majeure. Force majeure shall include force majeure of W3S Digital's suppliers, failure to properly fulfil obligations of suppliers prescribed by the Client

to W3S Digital, as well as defects in goods, materials, or third-party software of which the use has been prescribed by the Client to W3S Digital.

- 9.2 If a force majeure situation has lasted longer than thirty (30) days, the parties have the right to terminate the Agreement in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties owing each other anything else.

10 Applicable law and disputes

- 10.1 The agreements between W3S Digital and the Client are governed by Dutch law. Applicability of the CISG 1980 is excluded.
- 10.2 Disputes that may arise between W3S Digital and the Client as a result of an Agreement concluded between W3S Digital and the Client or as a result of further agreements resulting therefrom, will be settled through arbitration in accordance with the Rules of Arbitration of the Foundation for the Resolution of ICT Disputes (Stichting Geschillenoplossing Automatisering) in The Hague, all this without prejudice to the right of the Parties to request a provision for arbitration in summary proceedings and without prejudice to the right of the Parties to take precautionary legal measures.

Services

The provisions mentioned in this chapter "Services" are, in addition to the Terms and Conditions, applicable if W3S Digital provides services such as advising, consultancy, support, hosting, designing, developing, and implementing or managing websites or information systems. These provisions are without prejudice to the provisions on specific services contained in these Terms and Conditions.

11 Execution

- 11.1 W3S Digital will endeavour to perform their services with care where appropriate in accordance with the agreements and procedures laid down with the Client in writing. All services by W3S Digital will be performed based on a best-efforts obligation, unless W3S Digital has expressly promised a result in the Quotation letter and the result in question has also been described with sufficient definition. Agreements concerning a level of service are always only agreed upon in writing.

- 11.2 If it has been agreed that the services will take place in phases, W3S Digital will be entitled to postpone the start of the services belonging to a phase until the Client has approved the results of the previous phase in writing.
- 11.3 Only if this has been agreed upon in writing, will W3S Digital be obliged to follow timely and justifiable instructions given by the Client when performing the services. W3S Digital will not be not obliged to follow instructions that change or supplement the content or scope of the agreed upon services; however, if such instructions are observed, the work in question will be paid for in accordance with arrangements made.
- 11.4 If no invoicing schedule is included in the Quotation letter, all amounts relating to the services provided by W3S Digital will be due once per subsequent calendar month.
- 11.5 W3S Digital reserves the right to place a footer indication in the website to be delivered. The footer indication will also be a link to w3s.nl. In doing so, we inform that the website is a product developed by W3S Digital and any errors can be reported to us.

12. Changes and additional work

- 12.1 If W3S Digital has carried out work at the request or with prior agreement of the Client that falls outside the content or scope of the agreed upon services, this work will be compensated by the Client according to the usual rates of W3S Digital. If the Client explicitly does not choose to use an Agile working method, additional work will also be involved if a system analysis, a design, or specifications are to be expanded or altered.
- 12.2 The Client accepts that work or performances as referred to in Article 12.1 may affect the agreed upon or expected time of completion of the services, as well as the mutual responsibilities of the Client and W3S Digital. The fact that (the demand for) additional work occurs during the performance of the Agreement shall never be a ground for the Client to dissolve or terminate the Agreement.
- 12.3 Insofar as a fixed price has been agreed upon for the services, W3S Digital will, upon request, inform the Client in advance and in writing of the financial consequences of such additional work or performances.

14 Warranty

- 14.1 W3S Digital will endeavour to resolve any errors in the website within a reasonable period, providing these are reported to W3S Digital by the Client in writing within



three months after delivery, or, if an acceptance test has been agreed upon between the Parties, within three months after acceptance and described in detail. W3S Digital does not guarantee that the website will work without interruption, errors or any other defects, or that all errors and any other defects will be corrected. W3S Digital may charge the costs of repair according to its usual rates in case of usage mistakes or improper use by the Client or other causes not attributable to W3S Digital, or if the errors could have been detected during the agreed upon acceptance test. Recovery of damaged or lost data is not covered by the warranty. The warranty obligation shall lapse if the Client makes changes or has changes made to the website without written consent from W3S Digital, which consent will not be unreasonably withheld.

14.2 W3S Digital is entitled to apply temporary solutions, program detours or problem-avoiding restrictions to the website.

14.3 W3S Digital has no obligation to repair for errors reported after the end of the warranty period referred to in Article 14.1, unless a maintenance agreement has been concluded between the Parties which includes such an obligation to repair.

15 Maintenance

15.1 If a maintenance agreement has been concluded for the website, the Client will report in detail to W3S Digital any errors observed in the website in accordance with W3S Digital's usual procedures. Upon receipt of the report, W3S Digital will endeavour to remedy the errors and/or make improvements in subsequent versions of the website. Depending on the urgency, the results will be made available to the Client in the manner and timeframe to be determined by W3S Digital. W3S Digital is entitled to apply temporary solutions, program detours or problem-avoiding restrictions to the website.

15.2 W3S Digital does not guarantee that the website will work without interruption, error or any other defects, or that all errors and any other defects will be corrected.

15.3 W3S Digital may charge the costs of repair according to its usual rates in case of usage mistakes or improper use or other causes not attributable to W3S Digital, or if the website has been altered by others than W3S Digital. Recovery of damaged or lost data does not fall under maintenance.

15.4 If no invoicing schedule has been agreed upon between the Parties, all amounts relating to maintenance of software are due prior to the start of the maintenance period.



16. Software from suppliers

- 16.1 If and in so far as W3S Digital provides third-party software to the Client, the Terms and Conditions of those third parties will apply to that software, provided that W3S Digital has informed the Client of this in writing, to the exclusion of the provisions in these Terms and Conditions. The Client accepts the aforementioned Terms and Conditions of third parties. These Terms and Conditions are available for inspection by the Client at W3S Digital and W3S Digital will send these Terms and Conditions to the Client upon request and free of charge. If and in so far as the aforementioned third-part Terms and Conditions in the relationship between the Client and W3S Digital are deemed not to apply or are declared invalid for whatever reason, the provisions of these Terms and Conditions shall apply.