

## **Terms and conditions Peak Software**

**Email: [mail@peaksoftware.nl](mailto:mail@peaksoftware.nl)**

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### **Article 1 - Definitions**

1. Peak Software: Peak Software, established in Heiloo, KvK number 92977774.
2. Customer: the party with whom Peak Software has entered into an agreement.
3. Parties: Peak Software and the Client together.
4. Consumer: a Customer who is also an individual acting as a private person.

### **Article 2 - Applicability**

1. These terms and conditions apply to all quotations, offers, work, orders, agreements and deliveries of services or products by or on behalf of Peak Software.
2. Peak Software and the Customer may deviate from these terms and conditions only if agreed in writing.
3. Peak Software and the Customer expressly exclude the applicability of the general terms and conditions of the Customer or others.

### **Article 3 - Offers and quotations**

1. Offers and quotations by Peak Software are without obligation unless otherwise expressly stated therein.
2. An offer or quotation is valid for a maximum of 2 weeks unless a different period is stated in the offer or quotation.
3. If the Customer does not accept an offer or quotation within the applicable period, the offer or quotation shall lapse.
4. Offers and quotations do not apply to repeat orders unless Peak Software and the Customer agree in writing.

### **Article 4 - Acceptance**

1. Upon acceptance of an offer or quotation without obligation, Peak Software may still withdraw the offer or quotation within 3 days of receipt of the acceptance, without the Client being entitled to derive any rights therefrom.
2. Verbal acceptance by the Customer shall bind Peak Software only after the Customer has confirmed it in writing or electronically.

### **Article 5 - Prices**

1. Peak Software charges prices in Euros, including VAT and excluding any other charges such as administration or shipping costs, unless otherwise agreed in writing.
2. Peak Software may change the prices of its services and products on its website and in other communications at any time.
3. Increases in the cost prices of products or parts thereof, which Peak Software could not foresee at the time of making the offer or entering into the agreement, may give rise to price increases.
4. The consumer may cancel the contract because of a price increase in paragraph 3, unless the increase is due to a statutory regulation.
5. Peak Software will set the price of services based on actual hours spent.
6. The price shall be calculated in accordance with Peak Software's usual hourly rates applicable to the period in which it performs the work, unless otherwise agreed in writing.
7. When Peak Software and the Customer agree on a total amount for a service, this is always a target price, unless otherwise agreed in writing.
8. Peak Software may vary up to 10% of the target price.
9. Peak Software must inform the Customer in a timely manner why a higher price is justified if the target price is going to be more than 10% higher.
10. The Customer may cancel the part of the order that exceeds the target price (increased by 10%) if the target price is going to exceed 10%.
11. Peak Software may adjust its prices annually.
12. Peak Software will communicate price adjustments to the Customer prior to their effective date.
13. Consumers may terminate the agreement with Peak Software if they disagree with the price increase.

## **Article 6 - Payments and term of payment**

1. Peak Software may require a deposit of up to 50% of the agreed amount at the time of entering into the agreement.
2. The Customer must have made a subsequent payment within 14 days of delivery.
3. The payment deadlines used by Peak Software are strict payment deadlines. This means that if the Customer has not paid the agreed amount no later than the last day of the payment period, he is automatically in default and in default, without the need for Peak Software to send the Customer a reminder or a notice of default.
4. Peak Software may condition delivery on immediate payment or require security for the total amount of the services or products.
5. The Customer charges for products directly.
6. Peak Software may require a deposit of up to 50% of the agreed amount when entering into the agreement for a service.

7. The Client must pay invoices to Peak Software within 14 days of the invoice date, unless otherwise agreed or a different payment term is stated on the invoice.
8. The payment deadlines stated are deadlines for payment. Therefore, if the Customer has not paid the amount no later than the last day of the payment period, he is automatically in default and in default, without Peak Software having to send the Customer a reminder or declare the Customer in default.
9. Peak Software may condition delivery on immediate payment or require security for the total amount of the service.

#### **Article 7 - Right of advertising**

1. When the Customer is in default, Peak Software may invoke the right of claim with respect to the unpaid products delivered to the Customer.
2. Peak Software shall exercise its right of claim by written or electronic communication to the Customer.
3. Once the Customer has been notified of the invoked right of complaint, the Customer must immediately return the relevant products to Peak Software, unless otherwise agreed in writing.
4. The Customer shall pay the cost of retrieval or delivery in paragraph 3.

#### **Article 8 - Right of withdrawal**

1. A consumer may cancel an online purchase within 14 days of purchase without giving a reason. This right of withdrawal does not apply when:
  - the product has been used
  - it is a product that can spoil quickly, such as food or flowers
  - it is a product that has been customized or adapted specifically for the consumer
  - it is a product that cannot be returned for hygiene reasons, such as underwear and swimwear
  - the seal is not intact in the case of data carriers with digital content such as DVDs or CDs
  - the product or service involves lodging, travel, a restaurant business, transportation, a catering service or a form of leisure activity
  - the product is a loose magazine or loose newspaper
  - it is an emergency repair
  - it involves betting or lotteries
  - the consumer has waived his right of withdrawal
  - it relates to a service that is performed with the consent of the Customer in full within the cooling-off period and in which the Customer has expressly waived the right of withdrawal
2. The 14-day cooling-off period in paragraph 1, begins:
  - on the day after the consumer receives the last product or part of 1 order
  - once the consumer has entered into an agreement to provide a service

- once the consumer has confirmed that he will purchase digital content over the Internet
3. Consumers can exercise their cooling-off period by sending an email with that subject to mail@peaksoftware.nl.
  4. The consumer shall be obliged to return the product to Peak Software within 14 days of the notice of his right of withdrawal, failing which his right of withdrawal shall expire.

#### **Article 9 - Reimbursement of return costs**

1. If the consumer invokes his right of withdrawal and returns the entire order in time, the Customer shall pay the cost of doing so.

#### **Article 10 - Right of suspension**

1. Unless the Customer is a consumer, the Customer hereby waives the right to suspend performance of any obligation under this Agreement.

#### **Article 11 - Right of retention**

1. Peak Software may exercise its right of retention and, in that event, retain products of the Customer, until the Customer has paid all outstanding invoices from Peak Software, unless the Customer has provided adequate security for those costs.
2. The right of lien also applies under previous agreements under which the Customer has yet to pay money to Peak Software.
3. Peak Software shall not be liable for any damages incurred by the Customer due to the use of its lien.

#### **Article 12 - Settlement**

1. Unless the Customer is a consumer, he waives his right to set off any debt to Peak Software against any claim against Peak Software.

#### **Article 13 - Retention of title.**

1. Peak Software shall retain ownership of all products delivered until the Customer has paid all outstanding invoices from Peak Software relating to an underlying agreement, including claims due to default.
2. Until that time in paragraph 1, Peak Software may exercise its retention of title and repossess the goods.
3. Before ownership has passed to the Customer, the Customer may not pledge, sell, dispose of or otherwise encumber the products.
4. Voordat de eigendom op de Klant is overgegaan, mag de Klant de producten niet verpanden, verkopen, vervreemden of anderszins bezwaren.

#### **Article 14 - Delivery**

1. Delivery of products ordered online takes place at the (mail) address provided by the Customer.
2. If the Customer fails to pay the agreed amounts or fails to pay them on time, Peak Software may suspend its obligations until the Customer pays.
3. Late payment is a creditor default, which means that the Customer cannot hold a late delivery against Peak Software.

#### **Article 15 - Delivery time**

1. Peak Software's delivery times are indicative. If delivery is delayed, the Customer may not derive any rights from it unless otherwise agreed in writing.
2. The delivery period shall commence when the quotation signed by the Customer for agreement to Peak Software is confirmed in writing or electronically by Peak Software to the Customer.
3. The Customer shall receive no compensation and may not cancel the agreement if Peak Software delivers later than agreed. However, the Customer may cancel the agreement when agreed in writing or when Peak Software is unable to deliver within 14 days, after written notice or the Customer and Peak Software have agreed otherwise.

#### **Article 16 - Retention**

1. If the Customer does not take delivery of ordered products until later than the agreed delivery date, the risk of any loss of quality shall be borne entirely by the Customer.
2. Any additional costs resulting from premature or late purchase of products shall be borne entirely by the Customer.

#### **Article 17 - Warranty**

1. When the Customer and Peak Software have entered into an agreement of a service nature, it contains for Peak Software only an obligation of effort and thus no obligation of result.
2. The warranty on products applies only to defects caused by faulty manufacture or construction or faulty material.
3. The warranty does not apply:
  - in the case of normal
  - for damages caused by accidents
  - for damage caused by modifications made to the product
  - for damages caused by negligence or incompetent use by the Customer
  - when the cause of the defect cannot be clearly determined

4. The risk of loss, damage or theft of the products supplied by Peak Software shall pass to the Customer as soon as they are legally or de facto delivered, or at least come into the control of the Customer or of a third party taking delivery of the product on behalf of the Customer.

#### **Article 18 - Execution of the agreement**

1. Peak Software shall perform the Agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. Peak Software may have all or part of the agreed services performed by others.
3. Execution of the agreement shall be by mutual agreement and after written agreement and payment of any advance by the Customer.
4. The Client must ensure that Peak Software can begin the performance of the agreement in a timely manner.
5. If the Customer fails to ensure that Peak Software can start in a timely manner, the resulting additional costs shall be borne by the Customer.

#### **Article 19 - Provision of information by the Customer**

1. The Customer shall make available to Peak Software all information, data and records relevant to the proper performance of the Agreement in a timely manner and in the desired form and manner.
2. The Customer guarantees the accuracy and completeness of the information, data and documents made available, even if they originate from third parties, unless the nature of the agreement dictates otherwise.
3. When and to the extent requested by the Customer, Peak Software shall return the relevant records.
4. If the Customer does not, does not timely or does not properly provide the information, data or documents reasonably required by Peak Software and the execution of the agreement is thereby delayed, the resulting additional costs and additional hours shall be borne by the Customer.

#### **Article 20 - Duration of agreement service**

1. The agreement between Peak Software and the Customer for a service is entered into for the duration of 1 year, unless something else follows from the nature of the agreement or something else is agreed upon in writing.
2. After expiry of the period in paragraph 1, the agreement is tacitly converted into an agreement for an indefinite period, unless the Customer or Peak Software terminates the agreement with a notice period of 2 months. If the Customer is a consumer, a notice period of 1 month applies.

#### **Article 21 - Termination of fixed-term service**

1. The Customer cannot cancel a fixed-term service agreement until after 1 year.

2. After the minimum term of 1 year, the Customer can terminate the agreement in paragraph 1 with a notice period of 2 months.
3. After the minimum term of 1 year, a consumer can terminate the agreement in paragraph 1 with a notice period of 1 month.
4. If the contract for a service has been entered into for less than 1 year, the contract cannot be terminated mid-term.

#### **Article 22 - Secrecy**

1. The Customer shall keep confidential any information, in any form, received from Peak Software.
2. The same applies to any other information regarding Peak Software which the Customer knows or can reasonably suspect to be secret or confidential, or which he can expect that its dissemination may harm Peak Software.
3. The Customer shall take all necessary measures to ensure that it keeps the information in paragraphs 1 and 2 confidential.
4. The duty of confidentiality described in this article does not apply to information:
  - which was already public before the Customer learned of it or which subsequently became public without being the result of a breach of the Customer's duty of confidentiality
  - disclosed by the Customer pursuant to a legal duty
5. The obligation of confidentiality described in this article applies for the duration of the underlying agreement and for a period of 3 years after its expiration.

#### **Article 23 - Penalty clause**

1. If the Customer violates the article on confidentiality or intellectual property, he must pay Peak Software an immediately payable penalty for each violation.
2. If the Customer is a consumer then the penalty in paragraph 1: €1,000.
3. If the Customer is not a consumer then the penalty in paragraph 1 is: €5,000
4. In addition, the Customer must pay an amount of 5% of the applicable amount in paragraph 2 or 3 for each day that such violation continues.
5. The Customer must pay the penalty in paragraph 1 without the need for notice of default or court proceedings. There is also no need for damages.
6. Peak Software may claim damages from the Customer in addition to the penalty in paragraph 1.

#### **Article 24 - Indemnification**

1. The Customer shall indemnify Peak Software against all claims of others in connection with the products and/or services provided by Peak Software.

#### **Article 25 - Complaints**

1. The Customer must examine a product supplied or service rendered by Peak Software for any defects as soon as possible.
2. If a product delivered or service rendered does not meet what the Customer could reasonably expect, the Customer must notify Peak Software within 1 month of ascertaining the deficiency.
3. A consumer must notify Peak Software no later than 2 months after discovering the deficiency.
4. The Customer shall provide as detailed a description of the deficiency as possible so that Peak Software can respond appropriately.
5. The Customer must demonstrate that the complaint relates to an agreement between the Customer and Peak Software.
6. When a complaint is about work in progress, the Customer cannot demand that Peak Software perform any work other than that agreed upon.

#### **Article 26 - Notice of default**

1. The Customer must give any notice of default in writing to Peak Software.
2. The Customer is responsible for ensuring that his notice of default actually reaches Peak Software on time.

#### **Article 27 - Liability of Customer**

1. When Peak Software enters into an agreement with several Clients, each of them shall be jointly and severally liable for the performance of the agreements in that agreement.

#### **Article 28 - Liability Peak Software**

1. Peak Software shall only be liable for damage suffered by the Customer if such damage is caused by intentional or deliberate recklessness.
2. If Peak Software is liable for damages, this shall only apply to direct damages related to the performance of an underlying agreement.
3. Peak Software is not liable for indirect damages, such as consequential damages, lost profits or damages to third parties.
4. Where Peak Software is liable, such liability shall be limited to the amount paid out by a professional liability insurance policy. If no insurance is taken out or no compensation is paid, the liability is limited to the (part of the) invoice amount to which the liability relates.
5. All images, photographs, colors, drawings, descriptions on the website or in a catalog are only indicative and cannot lead to any compensation, rescission or suspension.

#### **Article 29 - Due date**



1. Any right of the Customer to compensation from Peak Software shall lapse 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions of Article 6:89 of the Civil Code.

### **Article 30 - Dissolution**

1. The Customer may rescind the agreement if Peak Software imputably fails to fulfill its obligations, unless such failure does not justify the rescission because of its special nature or minor importance.
2. If the fulfillment of the obligations by Peak Software is still possible, dissolution can only take place after Peak Software is in default.
3. Peak Software may cancel the agreement with the Customer if the Customer fails to fulfill his obligations under the agreement in full or in a timely manner, or if Peak Software becomes aware of circumstances which give it good reason to believe that the Customer will not fulfill his obligations.

### **Article 31 - Force majeure**

1. In addition to Article 6:75 of the Dutch Civil Code, a shortcoming of Peak Software by the Customer cannot be attributed to Peak Software in the event of force majeure.
2. The force majeure situation in paragraph 1 includes:
  - an emergency such as civil war or natural disaster
  - default or force majeure of suppliers, delivery drivers or others
  - power, electricity, internet, computer or telecom failures
  - computer viruses
  - strikes
  - government measures
  - transport problems
  - adverse weather conditions
  - work stoppages
3. When a force majeure situation occurs which prevents Peak Software from fulfilling 1 or more obligations to the Customer, those obligations shall be suspended until Peak Software can fulfill them.
4. From the time a force majeure situation has lasted for at least 30 calendar days, both the Customer and Peak Software may cancel all or part of the agreement in writing.
5. Peak Software does not have to pay any compensation to the Customer in a force majeure situation, even if Peak Software benefits from this.

### **Article 32 - Modification of agreement**

1. If it is necessary for its execution to modify a concluded agreement, the Customer and Peak Software may modify the agreement.

### **Article 33 - Modification of general conditions**

1. Peak Software may modify these terms and conditions.
2. Changes of minor importance may be made by Peak Software at any time.
3. Major changes will be discussed by Peak Software with the Customer in advance to the extent possible.
4. A consumer may terminate the underlying contract if the general terms and conditions are substantially changed.

#### **Article 34 - Transfer of rights**

1. The Customer may not assign any rights under an agreement with Peak Software to others without Peak Software's written consent.
2. This provision counts as a clause with property law effect as in Article 3:83 paragraph 2 of the Civil Code.

#### **Article 35 - Consequences of nullity or voidability**

1. If 1 or more provisions of these terms and conditions prove to be void or voidable, this will not affect the remaining provisions of these terms and conditions.
2. A provision that is void or voidable shall in such case be replaced by a provision that comes closest to what Peak Software had in mind when drafting the terms and conditions on that point.

#### **Article 36 - Applicable law and competent court**

1. These general terms and conditions and any underlying agreement between the Client and Peak Software shall be governed by Dutch law.
2. The court in the district of Peak Software's place of business shall have exclusive jurisdiction over any disputes between the Customer and Peak Software, unless otherwise provided by law.

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