

TERMS AND CONDITIONS

1. Definitions

In these terms and conditions (the “**Terms and Conditions**”) the terms listed below are defined as follows:

1.1. **Agreement** shall mean any oral or written agreement between Thirona and the Client under which Thirona has agreed to render Services to the Client, any amendment or supplement thereto and all (legal) acts in preparation and/or execution of that agreement.

1.2. **Client** shall mean the entity purchasing the Services from Thirona or the entity that has otherwise entered into an Agreement with Thirona subject to these Terms and Conditions.

1.3. **GDPR** shall mean Regulation (EU) 2016/679 and any legislative instrument superseding, amending, or replacing this Regulation.

1.4. **Party** shall mean the Client or Thirona, together the **Parties** that have entered into an Agreement.

1.5. **Personal Data** shall mean any information provided by the Client to Thirona under the Agreement relating to an identified or identifiable natural person.

1.6. **Thirona** shall mean Thirona B.V., a limited liability company incorporated under the laws of the Netherlands, with its registered offices at Toernooiveld 300 Mercator 2 g (6525EC) Nijmegen, registered in the Chamber of Commerce under number 60119063.

2. Applicability

2.1. These Terms and Conditions govern the offering, sale and rendering of all services (the services herein referred to as the “**Services**”) from or on behalf of Thirona to Client and apply to all similar dealings between Thirona and Client, including all requests for offers and orders by the Client with respect to the purchase of Services and all legal relationships arising from the foregoing.

2.2. These Terms and Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the Services and shall apply in preference to and supersede any and all terms and conditions submitted by the Client. Thirona’s failure to object to any terms and conditions set by the Client shall not be construed as acceptance of any such terms and conditions.

2.3. Any change, addition or deviation from the quotation or offer provided by Thirona, these Terms and Conditions or any Agreement shall be valid only if agreed in writing by the authorized representatives of the Parties.

2.4. Any electronic communication (such as email) between the Parties shall be considered to be a “writing” and/or “in writing”. The electronic communication system used by Thirona will serve as sole proof for the content and the time of delivery and receipt of such electronic communication.

3. Contract Formation

3.1. Quotations or offers made by Thirona, in whatever form, are not binding upon Thirona and merely constitute an invitation to the Client to place an order.

3.2. All quotations issued by Thirona are revocable and subject to change without notice.

3.3. An Agreement shall come into effect under these Terms and Conditions upon an authorized representative of Thirona accepting in writing (i) a Client’s written acceptance of a quotation provided by Thirona, or (ii) a Client’s order.

3.4. If, and insofar as an Agreement has not yet been concluded in accordance with Section 3.3, the Agreement will be considered as concluded under these Terms and Conditions as soon as Thirona starts rendering Services to the Client.

3.5. Any order is not binding on Thirona until it is accepted by Thirona in writing.

3.6. Thirona is entitled to refuse an order in its absolute discretion and without giving a reason.

3.7. Unless expressly stated otherwise in the Agreement, time shall not be of the essence and any time or date for rendering Services is an estimate.

4. Thirona’s warranty

4.1. Thirona shall render the Services in a professional manner and exercising reasonable skill and care.

5. Client’s warranties

5.1. The Client warrants to Thirona that:

a. All Personal Data provided by the Client to Thirona, under the Agreement or otherwise, are obtained and processed in full compliance with the GDPR and the Dutch Data Protection Act;

b. All Personal Data provided by Client to Thirona under the Agreement or otherwise are provided for a purpose set out in the GDPR;

c. Thirona’s technical and organizational measures to secure, store and use Personal Data in connection providing the Services are considered appropriate by the Client;

6. Service Delivery

6.1. Thirona is entitled to render Services in parts.

6.2. Delay in rendering Services shall not relieve the Client of its obligation to accept those Services and to pay the rate specified in the Agreement for Services rendered. Thirona shall not be liable for any delay in rendering Services.

6.3. Thirona will determine the way it executes the Agreement and is entitled to engage a third party as a subcontractor (or as subcontractors) without notice to the Client.

6.4. The Services shall be delivered Ex Works (EXW) (ICC Incoterms 2020) Toernooiveld 300, 6525 EC Nijmegen, The Netherlands.

6.5. The ownership of the results of Services shall not pass to the Client, and full legal and beneficial ownership of such results shall remain with Thirona, unless and until Client has paid Thirona in full for the Services.

7. Acceptance and Payment

7.1. The Client shall have seven (7) days following delivery of (the results of) the Services to complete any acceptance tests. If the Client does not notify Thirona in writing of any non-conformance concerning the Services within that time, Services rendered will be deemed accepted.

7.2. The Client shall pay Thirona the fees and expenses specified in the Agreement within thirty (30) days following the date of Thirona’s invoice for Services rendered, by means of transfer into the bank account mentioned on the invoice.

7.3. All payments shall be made without any deductions for examples on account of any taxes or bank charges, and free of set-off or any other claims.

7.4. Prices and fees specified in the Agreement do not include value added tax (where applicable).

7.5. Thirona may, without prejudice to any other rights, charge an interest of one percent (1%) per month, from the due date, computed daily until all amounts outstanding are paid in full.

7.6. If full payment has not been received on any outstanding payment within thirty (30) days, Thirona has the right immediately to suspend (further) execution of the Agreement until all amounts outstanding are paid in full.

7.7. If any facts or circumstances give Thirona reason to believe that the Client may not fulfil some or all its obligations under the Agreement, the Client shall, immediately at the first request of Thirona, provide sound security (in the form of pledge, surety or otherwise) for the payment(s) owed, expected to be due under the Agreement and/or make an advance payment, at Thirona’s option. If the Client fails to provide such a security or make an advance payment, Thirona may immediately suspend (further) execution of the Agreement, and all amounts owed by the Client will become immediately due and payable.

7.8. Any complaint with respect to the invoice must be notified to Thirona in writing within seven (7) calendar days after the date of invoice. Thereafter, the Client shall be deemed to have approved the invoice.

8. Client Information

8.1. The Client shall provide Thirona with all relevant information, documentation, and data in the format and to the quality specified by Thirona in its standards (as may be varied from time to time and communicated to Client) ("**Client Information**") and in a timely fashion to enable Thirona to render Services envisaged by the Agreement.

8.2. Thirona is not obliged to commence rendering Services until it has received required Client Information within the agreed time. If Thirona receives Client Information later than agreed, the estimated term for the rendering of the Services will be extended by reason of this delay.

8.3. The Client shall provide Client Information preferably through Thirona's internet servers using a secure connection. Client Information sent in an alternative way shall be copied by Thirona to its servers and the original data carrier shall be destroyed or securely wiped. Thirona excludes any liability for the loss of Client Information if such transfer is required.

8.4. Thirona shall not act as a back-up provider or Client Information.

9. Personal Data

9.1. The Client, as data controller, will require Thirona to process Personal Data to perform the Services.

9.2. Thirona, as data processor, agrees to process such Personal Data received from the Client in accordance with GDPR and the Dutch Data Protection Act.

9.3. The Client will pseudonymize Personal Data in such a way that such data can no longer be attributed to a specific data subject without the use of additional information. The relevant additional information will be kept separately and securely by the Client and not provided to Thirona.

9.4. Thirona shall either delete and permanently remove or anonymise Personal Data upon completion of the Services.

10. Anonymized Data

10.1. In addition to Personal Data that the Client provides to Thirona for the Services, the Client agrees to use its best efforts separately to provide Thirona with data in an anonymized form for each data subject for which the Client is providing the Personal Data ("**Anonymized Data**") at the same time as the Client transfers such Personal Data. Client permits Thirona to transform Personal Data into Anonymized Data.

10.2. The Client shall process Personal Data to become Anonymized Data in compliance with applicable data privacy law in such way that such data cannot be used to identify a data subject and prior to communicating these data to Thirona.

10.3. The Client shall transfer Anonymized Data to a separate database on a HIPAA compliant server managed by Thirona and using a secured internet connection.

10.4. Thirona is permitted receive, copy, store and use Anonymized Data for its own business purposes without any restriction. For the avoidance of doubt, the Client acknowledges and agrees that Anonymized Data included in Thirona's database cannot subsequently be extracted.

11. Confidential Information

11.1. Each Party shall not disclose any confidential information obtained from the other Party in relation to the Agreement or during its execution ("**Confidential Information**") for a period of three (3) years after the disclosure thereof, except for Confidential Information that:

- i. is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public;
- ii. was already known by the receiving Party before receiving the Confidential Information from the disclosing Party or is hereafter rightfully disclosed to the receiving Party by a third party legally permitted to make such disclosure without restriction on use or disclosure;
- iii. is permitted to be disclosed by receiving Party pursuant to the prior express written consent of disclosing Party;
- iv. is required to be disclosed pursuant to applicable law, however, disclosing Party shall give receiving Party prompt written notice sufficient to allow disclosing Party to take whatever action it deems necessary to protect its Confidential Information.

11.2. Each Party shall use the Confidential Information solely in the context of the Agreement. Each Party will impose obligations equivalent to those under this Article on any third party it engages in connection with the Agreement.

11.3. All Confidential Information (including all copies thereof) shall remain the property of the disclosing Party and shall be returned to the disclosing Party upon written request and upon completion of the Services, except that the receiving Party may retain one copy of Confidential Information for legal and archival purposes.

12. Intellectual Property

12.1. The Client shall retain title to Client Information and own the results of the Services upon delivery, provided the Client has paid Thirona in full for the Services.

12.2. In addition to Thirona's intellectual property which exists prior to the effective date of the Agreement, Thirona shall own all rights, title, and interest in and to any intellectual property created, developed and/or reduced to practice in, related to, and/or connected with its proprietary software and associated services while providing the Services.

13. Term and Termination

13.1. An Agreement is concluded for an indefinite period of time and ends upon completion of the Services unless terminated earlier as provided in Article 8.3.

13.2. Each Party may terminate this Agreement with immediate effect and without prejudice to any of its other rights or remedies by sending a written notice to the other Party in the event that:

- i. the other Party fails to comply with material obligations arising from the Agreement and, if capable of remedy, is not remedied within fourteen (14) days after receipt of a notice from the other Party specifying the nature of the breach and stating its intention to terminate this Agreement if such breach is not cured;
- ii. the other Party becomes or is declared insolvent or a petition in bankruptcy has been filed against it or in the event a receiver or custodian is appointed for its business, or if a substantial portion of its business is subject to attachment or similar process.

13.3. If Thirona terminates the Agreement pursuant to Section 13.2 above, the Client is obliged to pay the fee for any Services rendered by Thirona until the effective date of termination. The Client shall, furthermore, reimburse to Thirona all costs that will be reasonably incurred by Thirona after the effective date of termination of the Agreement pursuant to commitments entered into by Thirona prior to the effective date of termination provided, however, that Thirona will use commercially reasonable efforts to mitigate such costs.

13.4. The terms of Article 11 (Confidential Information) of these Terms and Conditions shall survive 3 (three) years after termination or expiration of the Agreement. Sections 7.5, 8.3 and 13.4, and Articles 9, 10, 12, 14, 16 and 18 shall survive for an indefinite period. In addition, any other provisions which are required to interpret and enforce the Parties' rights and obligations under the Agreement shall also survive any termination or expiration of this Agreement, but only to the extent required for the full observation and performance of the Agreement.

14. Liability and Indemnification

14.1. Thirona is not liable for any consequential or indirect loss of any kind such as, without limitation, loss of profits, loss of business (opportunities), loss of data, loss of goodwill, loss of expected savings and or any other form of special damages.

14.2. To the extent permitted by applicable law and except in case of Thirona's gross negligence or willful misconduct, the total aggregate liability of Thirona (including its officers, directors, employees, contractors and agents) connected with, arising out of or related to

- i. these Terms and Conditions,
- ii. the Agreement, and
- iii. any claim of whatever nature and howsoever arising

shall be limited to direct damages to the extent actually suffered by the Client and shall not exceed the lowest of the following amounts: one hundred thousand euro (€ 100.000) or the total amount of fees paid by the Client to Thirona under the Agreement.

14.3. The Client shall defend, indemnify and hold harmless Thirona and its respective officers, directors, employees and successors and permitted assigns (collectively, "**Thirona Indemnitees**") from and against any and all damages (including awarded by any court or administrative authority), liability, costs and expenses, including legal and expert costs (together the "**Losses**"), in each case arising out of third party demands, claims, actions and lawsuits that are asserted or alleged against any Thirona Indemnitee arising out of or in connection with any:

- i. negligent act or omission, and/or

- ii. non-compliance with applicable law, and/or
- iii. infringement of any intellectual property right, and/or
- iv. breach of these Terms and Conditions or the Agreement, including any breach of warranties and/or gross negligence and/or willful misconduct provided that this indemnity shall not apply if such third-party action arises from the negligence or willful misconduct by Thirona Indemnitees.

14.4. Any claim for compensation against Thirona shall lapse if such claim has not been notified to Thirona in writing within one year after the grounds on which the claim is based are known to the Client or could have been known to the Client.

14.5. The provisions in this Article shall also apply for the benefit of all third parties engaged by Thirona in executing the Agreement.

15. Force Majeure

15.1. A Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of force majeure for Thirona's suppliers, as well as defects in objects, materials or software of third parties which the Client has required Thirona to use.

15.2. If a situation of Force Majeure lasts for more than thirty (30) calendar days, a Party shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately without the Parties otherwise owing each other anything further.

16. Publicity

16.1. Client irrevocably agrees that Thirona may refer to Client and the Services provided under the Agreement for Thirona's business purposes, including without limitation in connection with any Thirona sales, marketing, promotional and publicity materials, on its website, in email marketing, in any Thirona product or service materials, in any business development information and/or any other literature concerning Thirona's business.

16.2. Client hereby grants Thirona an irrevocable world-wide, royalty free, license to use Client's intellectual property (such as any trademarks or copyrights in its name) as Thirona may reasonably require to accomplish Thirona's the purposes as set out in this Article 16.

17. Miscellaneous

17.1. Parties may communicate with each other by electronic mail. Parties recognize risks associated with electronic mail include but are not limited to distortion, delays, interception, manipulation, and viruses. Parties hereby declare that they shall not hold each other liable for any damage incurred by either of them because of use of electronic mail.

17.2. Invalidity or unenforceability of any provision of these Terms and Conditions shall not affect or limit the validity or enforceability of any other provision hereof. Any such invalid or unenforceable provision shall be replaced or deemed to be replaced by a provision that is valid and enforceable. The interpretation of the replacing provision shall be as close as possible to the intent of the invalid or unenforceable provision.

17.3. The Client cannot assign its obligations and rights under the Terms and Conditions, a quotation or offer by Thirona or any Agreement to a third party without Thirona's prior written consent.

17.4. In case of conflict between these Terms and Conditions and an Agreement, the provisions of the Agreement shall prevail.

18. Applicable law and jurisdiction

18.1. These Terms and Conditions, any quotation or offer made by Thirona or any Agreement shall be governed exclusively by the laws of the Netherlands. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

18.2. All domestic disputes between Dutch Parties arising from these Terms and Conditions, any quotation or offer made by Thirona or any Agreement, including disputes regarding existence and validity shall be settled by the competent court in the district of Arnhem, the Netherlands.

18.3. All international disputes arising from these Terms and Conditions, any quotation or offer made by Thirona or any Agreement, including disputes regarding existence and validity, will be resolved by the Amsterdam District Court following proceedings in English before the Chamber for International Commercial Matters (Netherlands Commercial Court or NCC). An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC's Court in Summary Proceedings (CSP) in proceedings in English.