

**GENERAL TERMS & CONDITIONS**

Version of September 2021

**1. Offers and Agreements**

- 1.1 The present general conditions for sales and supply ("General Conditions") apply to all offers made by **Appwise** (with registered office at Watertorenstraat 2, 3590 Diepenbeek, Belgium, registered under company number 0503.920.245) to the party receiving these ("Customer") as well as to all Agreements between Appwise and the Customer in relation to any products or services to be supplied by or on behalf of Appwise, except to the extent that Appwise and the Customer have departed from them expressly and in writing. If specific conditions have been agreed upon, the General Conditions shall only apply to the extent that these specific conditions do not deviate from them (the "Agreement"). Hereinafter, Appwise and the Customer are jointly referred to as the "Parties" or individually as a "Party".
- 1.2 Purchase or other conditions, including general terms and conditions on requests for quotations or requests for proposals stipulated by the Customer shall not apply, unless and to the extent Appwise has expressly accepted them in writing. The application of these general and the specific conditions constitutes a determining condition for the consent of Appwise.
- 1.3 The Agreement between the Parties is governed by the following documents (in respective order and to the extent applicable): (i) a written agreement between Parties (if any), (ii) the offer of Appwise, (iii) the Specific Conditions (if applicable), (iv) these General Terms & Conditions and (v) Belgian Law.
- 1.4 All quotes or offers by Appwise are non-binding. They are only binding upon Appwise if and to the extent they have been confirmed in a written order confirmation from Appwise. Any offer of Appwise is valid for a duration of thirty (30) days, unless expressly stated otherwise in writing.
- 1.5 Verbal arrangements and undertakings by Appwise shall not be binding on Appwise unless and to the extent they have been confirmed expressly in writing by Appwise.
- 1.6 An Agreement between the Parties is only concluded after a written or electronic signature by the Parties, or the written or electronic confirmation of the offer by Appwise, and in any case at the moment that Appwise commences the execution of the Agreement after having received confirmation of the Customer, in writing or otherwise. The conclusion of the Agreement can only be refused by Appwise on the basis of objective reasons.

**2. Prices and charges**

- 2.1 All prices are quoted exclusive of VAT and all other charges levied by the authorities in respect of the Agreement and its performance.
- 2.2 In no event shall prices confirmed by Appwise for one order/proposal be binding for subsequent orders, unless it concerns orders within a larger framework agreement. A separate individual price is calculated for every service and every project. This price is only valid for that specifically defined service and/or project and therefore does not apply to other, even similar services and/or projects.
- 2.3 Additional services (i.e. not stated in the proposal and/or order confirmation) will be charged additionally to the Customer at Appwise's applicable rates. Appwise may reasonably increase fees and costs if, during the performance of its assignment, the amount of work proves to be much more than originally agreed or expected, as a result of which it cannot be reasonably expected of Appwise to perform the assignment at the fees and costs originally agreed. Appwise shall notify the Customers hereof and the Parties shall enter into negotiations should there be any remarks of the Customer.

**3. Deliveries – Force Majeure**

- 3.1 Any delivery date given by Appwise is for information purposes only. Appwise undertakes to do all that is commercially reasonable to carry out the deliveries and/or installation on the proposed or subsequently confirmed data, but cannot be held liable for any delay.
- 3.2 Appwise shall not be liable for non-performance, directly or indirectly, due to Force Majeure. Force Majeure means any circumstance unforeseen by and/or beyond Appwise's control or power, and which might result in a delayed or otherwise deficient performance of the Agreement. In such case, Appwise shall have the right to suspend the Agreement for as long as the Force Majeure circumstance occurs, as well as the right to demand payment for the work already done. The Parties agree that the difficulty or inability by either one of the Parties to perform any payment obligations, shall never qualify as Force Majeure.
- 3.3 Force Majeure can include, among others – without being limited thereto: unavailability and/or scarcity of certain materials, exceptional weather conditions, labour troubles, strikes or lockouts or interruption, wars, disease or accidents, pandemics that occur after signing of the agreement, communication and information technology breakdowns, government measures, export bans, delays in deliveries, transport and/or travel obstacles, including lack or withdrawal of transport facilities, export obstacles, import obstacles, breakdowns, war, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist attacks, terror safety regulations, government sanction, blockage, embargo, riot, crime, fire, explosion, unsatisfactory performance on the part of Appwise's suppliers or subcontractors, act of God (events such as natural disaster, etc.), etc.

**4. Payment**

- 4.1 Unless otherwise agreed in writing, all payments will be made by the Customer in advance and by means of wire transfers to Appwise. The original invoice shall:
- (a) be sent to the address indicated by the Customer;
  - (b) include the reference number of Appwise and Appwise's bank account details.
- 4.2 Unless otherwise agreed in writing, all local bank costs incurred by the Customer in relation to any payments to Appwise, or any other bank operation cost, shall be borne by the Customer.
- 4.3 Any delay in payment of invoices will trigger, ipso iure and without notice, (i) monthly late payment interests on the basis of Belgian applicable law, i.e. Wet betreffende de bestrijding van de betalingsachterstand bij handelstransacties (8% in 2021), which will accrue from the due date onwards, and whereby each month commenced will be considered a whole month, as well as (ii) a lump sum of 15 % of the outstanding amount, subject to a minimum amount of 125 Euro per invoice. All other outstanding amounts that have not yet become payable shall in addition immediately become payable.
- 4.4 Appwise is entitled to suspend or postpone the performance of its obligations under the Agreement if the Customer remains in default with regard to any (payment) obligation under the Agreement after expiry of a period of fifteen (15) calendar days after written notice to this regard was sent to the Customer.
- 4.5 Appwise reserves the right to unilaterally modify the payment terms stipulated under 4.1 if the financial situation of the Customer or the state of its earlier payments would warrant or justify this.
- 4.6 All products and/or services remain property of Appwise until all invoiced amounts are paid in full, including interest, costs, penalties and all taxes.
- 4.7 All invoices shall be considered as accepted unless contested in writing within ten (10) days of the date of the invoice. In the event of such dispute, the Customer will pay the undisputed amount and the Parties will use good faith efforts to reconcile the disputed amounts as soon as possible. Amounts owed by the Customer to Appwise cannot be set off or netted against a counterclaim by the Customer.

## **5. Warranty**

- 5.1 Warranty on product embedded and upgradeable software, appliances and software applications is ninety (90) days, unless otherwise agreed to in writing. The warranty applies only to manufacturing defects and provided that handling, installation, maintenance and adjustment of the equipment are carried out in line with the instructions provided by Appwise and in line with good practice. Any defect due to Force Majeure events, or attributable to the Customer's improper use, neglect, storage, operation handling or maintenance of the goods or any part thereof, are excluded from the warranty. During the warranty period, Appwise shall, at its sole discretion, replace or repair the defective subparts or units.

## **6. Liability - Indemnification**

- 6.1 The liability of Appwise shall always be assessed in the light of its best effort obligation ("*middelverenbintenis*"). In the case of inadequate services or performance of the Agreement, the liability of Appwise shall be limited to the (renewed) performance of the missing or inadequate services. If the (renewed) provision of the services is not (or no longer) possible or reasonable, the Customer shall be entitled to compensation in lieu of the damage suffered.
- 6.2 To the maximum extent permitted by law, under no circumstances and under no legal theory (whether in tort (including negligence), contract or otherwise, shall Appwise be liable to the Customer for any indirect or consequential damages (including, without limitation, lost profits, loss of revenue, loss of business or loss of data) incurred by the Customer hereto resulting from or arising out of or in connection with the agreement, even if the Customer has been informed of the possibility of such damages. Appwise will neither be held liable by the Customer for any direct or indirect damage to any third party, resulting from any use of the product designed by Appwise or the non-performance thereof. The Customer shall hold Appwise harmless for any claim brought against Appwise by any third party in consequence of damage caused to such third party by the use or the non-performance of the product designed by Appwise.
- 6.3 Unless in case of fraud and/or intentional breaches, or gross negligence of its obligations under this Agreement and unless explicitly stated otherwise in these General Conditions, Appwise's liability will always be limited to the lowest of the following amounts:
- a) the total fee paid by the Customer to Appwise for the execution of the Agreement;
  - b) the amount Appwise can recover under its insurance policies.
- 6.4 Appwise shall not be liable for any defect, error, or other dysfunction of a product (and no warranty shall extend to such product) when this is caused, directly or indirectly (i) by any abuse, misuse, mishandling, neglect, modification, alteration, repair, combination, integration, improper maintenance or testing, or any other act or omission of the Customer, its agents or subcontractors, or any third party supplying products or services to Appwise; (ii) by any tailored specification, implemented by Appwise at the request of the Customer, its agents or subcontractors, or any third party; (iii) by use of a product incompatible with the applicable legislation and/or regulations or (iv) by the further use or application by the Customer of the product after a problem has been found; (v) by (part of) a product or service supplied to Appwise by the Customer, its agents or subcontractors, or any third party (regardless of whether this takes place in the framework of Appwise offering, among others, assembly or implementation services).
- 6.5 The Customer shall indemnify and hold Appwise, and their respective officers, directors and employees harmless from and against any and all losses, costs, damage and expenses (including reasonable lawyers' fees and other mutually agreed legal fees) which any of them may bear or incur as a result of any claim relating to, arising out of or in connection with (i) any intentional harm or grossly negligent or willful act of the Customer or any of its employees, (ii) violation of any applicable law, regulation or order by the Customer, or (iii) any other act or omission by the Customer or any of its officers, employees or agents, provided, however, that a reasonable person could have predicted such loss, cost or damage.
- 6.5 The Customer shall be liable to the Customer's own customers (hereinafter referred to as the "End User") for the use of the products developed by Appwise. The Customer alone assumes the responsibility for the use made of the product by its End Users and fully indemnifies Appwise in this regard.

- 6.6 Appwise's liability exists solely when the Customer appropriately and as soon as reasonably possible (being not later than thirty (30) days after the damage came into existence) notifies Appwise of the issue in writing, proposing therein a reasonable time period for correction of the issue and Appwise then fails to meet the aforesaid obligations. The notification of the issue ought to be as detailed possible so that Appwise is in a position to react immediately and adequately. This notification shall not discharge the Customer from taking all reasonable measures to limit any possible damage to itself or to third parties.
- 6.7 Any claim for damages must be communicated in writing to Appwise within eight (8) days after the notice period of 30 days.

## **7. Confidentiality**

- 7.1 The Parties recognize that the information provided in the performance of the Agreement, including the offer as provided by Appwise and any information concerning a Party's customers, business procedures, methods, services and products, will be confidential.
- Being considered as confidential information (however without this list being exhaustive): all business and production secrets, including trade and commercial secrets, customer and supplier lists, trademarks and other intellectual property, source codes, computer programs, computer code, modules, scripts, algorithms, features and modes of operation, inventions, processes, schematics, testing procedures, software design and architecture, specifications, technical, commercial and financial information, reports and other information of any kind, related to the activities of a Party, regardless of whether the information in question was explicitly designated as confidential ("Confidential Information").
- 7.2 Neither Party will disclose to third parties (other than as described below) the other's Party Confidential Information without the prior written consent of the other Party. The confidentiality undertakings of the receiving Party pursuant to this Article shall remain in full force and effect for the duration of the Agreement and five (5) years thereafter.
- 7.3 The receiving Party shall not use any Confidential Information of the other Party for any purpose other than the performance or exercise of its rights under the Agreement. The receiving Party agree that they shall protect the Confidential Information of the other Party using not less than the same standard of care the receiving Party applies to its own proprietary, secret or Confidential Information (and in conformity with industry standards) and that the Confidential Information shall be stored and handled in such a way as to prevent unauthorized disclosure.
- 7.4 The receiving Party has the right to disclose or give access to the Confidential Information or any part thereof to its employees and/or consultants/contractors, to the extent such employees, consultants and/or contractors have a need to know within the framework of the Agreement and provided the receiving Party obtained the necessary confidentiality and nondisclosure undertakings no less restrictive than those contained in this Agreement from such employees, consultants and/or contractors prior to such disclosure or such giving access.
- 7.5 The disclosing Party may request in writing at any time that any written Confidential Information disclosed pursuant to the terms of the Agreement and any copies thereof be returned with a written statement to the effect that upon such return it has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the receiving Party shall comply with any such request within seven (7) calendar days of receipt of such request.
- 7.6 The term "Confidential Information" hereunder shall not include information which:
- (a) is or becomes part of the public domain without violation of the Agreement;
  - (b) is known and on record at the receiving Party prior to such disclosure by the disclosing Party (as the receiving Party can demonstrate by written record or other reasonable evidence); or
  - (c) is lawfully obtained by the receiving Party from a third party, whereby such third party is at its turn not bound by any confidentiality agreement with the disclosing party; or
  - (d) is developed by the receiving Party completely independently of any such disclosure by the disclosing Party.

- 7.7 Nothing herein shall be construed as granting to the receiving Party any proprietary rights or any licence in respect of the disclosing Party's Confidential Information, which is not otherwise granted to the receiving Party as part of the Agreement.
- 7.8 The Parties agree not to make any communication press release or other statements orally or in writing relation to the Agreement until the Parties have mutually agreed, in writing, the timing and text of any such communication, release or statement.
- 7.9 Without prejudice to the foregoing, the Customer acknowledges that in the event a confidentiality agreement (or similar agreement with regards to its subject) is signed between Parties, such confidentiality agreement shall prevail.
- 7.10 If the Customer violates the obligations in this article, Appwise shall be entitled to claim a fixed compensation of twenty-five thousand euros (€25,000), to be increased by one thousand euros (€1,000) for each day that the infringement continues and without prejudice to Appwise's right to prove and claim higher damages.

## **8. Non-Hire and Non-Solicitation**

- 8.1 During the term of the project and for one (1) year thereafter, neither Party will directly or indirectly recruit, solicit or induce any personnel or advisor of the other Party to terminate his or her relationship with such other Party without the prior written permission of the other Party.

## **9. Intellectual Property Rights**

- 9.1 For the purpose of the Agreement "Intellectual Property Rights" shall mean any and all now known or hereafter existing **(a)** rights associated with works of authorship, including but not limited to copyrights, copyrightable works, mask work rights, and moral rights; **(b)** trademarks, trade names, corporate names or service mark rights; **(c)** trade secret rights, know-how and other confidential information (including but not limited to ideas, information, improvements, specifications, drawings, programmer notes, discoveries and proposals); **(d)** patents, patent rights, patent disclosures, industrial property rights and inventions (whether patentable or not); **(e)** logos, layout design rights, design rights, **(f)** trade and business names, domain names, database rights, rental rights and any other industrial or intellectual proprietary rights or similar right (whether registered or unregistered); **(g)** all registrations, applications for registration, renewals, extensions, divisions, improvements or reissues relating to any of these rights and the right to apply for, maintain and enforce any of the preceding items, in each case in any jurisdiction throughout the world.
- 9.2 All Intellectual Property Rights that are part of the AppwiseCore Open Source Library (hereinafter the "AppwiseCore Library") will always remain with Appwise. The Intellectual Property Rights included in the AppwiseCore Library include, but are not limited to, the proprietary tools, methodologies, materials, know-how, processes, technologies, modules, components, programs, analysis, frameworks, software, algorithms developed or used by Appwise prior to or developed independently from the Agreement, including enhancements and improvements to the aforementioned tools and materials which Appwise developed prior or independently to the execution of the Agreement. The Customer shall not contest them and shall not itself acquire any rights to the Intellectual Property Rights included in the AppwiseCore Library nor assist third parties in doing so. The Customer shall merely be granted a license to use with regard to such Intellectual Property Rights that are part of the AppwiseCore Library and are embedded in the developments. Intellectual Property Rights included in the AppwiseCore Library will be considered Confidential Information and will remain the property of Appwise.
- 9.3 Appwise may use open source software or code in the products and services it develops in the context of the Agreement. The Customer shall not itself acquire any ownership rights to the open source software.
- 9.4 For each transfer of Intellectual Property Rights from Appwise to the Customer an IP transfer agreement will be concluded in mutual agreement between the Parties.

- 9.5 Parties undertake to notify each other of any actual, threatened or suspected infringement of any Intellectual Property Rights of the other Party.

## **10. Privacy**

- 10.1. Both Parties commit to respect the applicable privacy legislation – to the extent personal data is being processed in the execution of their obligations under the Agreement –, being: (i) the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27th 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); (ii) the Act of 30 July 2018 on the protection of individuals with regard to the processing of personal data, as well as (iii) any applicable local privacy legislation (hereinafter “Privacy Legislation”).
- 10.2 Appwise will only request the personal data of its Customers that are necessary for the purpose of its processing. Appwise will only process personal data based on a legal basis. The personal data supplied by the Customer will be used and processed in accordance with Appwise's privacy policy (to be consulted at <https://appwise.be/privacy.pdf>). The Customer grants Appwise permission to transfer this data to third parties (including but not limited to its subcontractors) in order to execute the Agreement.
- 10.3 Appwise has no obligation to (i) check whether the product is used by the Customer in a privacy compliant manner, nor (ii) to audit the provided personal data on its privacy compliance. Should Appwise either accidentally or purposely detect infringements, it is allowed to temporarily suspend its services until the infringement is resolved.

## **11. Miscellaneous Provisions**

- 11.1 Each Party warrants that it has the corporate capacity to enter into and perform the Agreement and shall not breach any obligation owed to any third party by doing so.
- 11.2 The relationship between Customer and Appwise is that of buyer and seller. The status of Customer hereunder will at all times be that of an independent contractor and, as such, Customer shall determine its own resale prices. Neither Party will have the right to represent the other Party as agent or otherwise to pledge the other Party's credit, assume any obligation of any kind on behalf of the other Party, to bind the other Party in any respect whatsoever, to accept any service of process upon the other Party or to receive any notice for the other Party of any nature whatsoever, except where authority to such effect has been previously issued in writing. Neither Customer nor Appwise will engage in any conduct, which might create the impression or inference that such agency or representation relationship would exist.
- 11.3 Appwise reserves the right to amend its General Conditions at any time. After notification of these new or amended terms to the Customer, the Customer has five (5) working days to formulate any remarks in this regard. If the Customer formulates any remarks, the Parties will enter into negotiations. In the absence of any remarks within this stipulated period the Customer shall be deemed to have accepted the amended terms – tacitly – and the new or amended General Conditions shall be deemed to have entered into force.
- 11.4 The failure of any Party to enforce or assert reliance upon, at any time or for any period of time, any of the provisions of these general and the specific conditions shall not be construed as a waiver of such Party's rights under such provisions, or the right of such Party thereafter to enforce each and every provision of these general and the specific conditions. Except when otherwise stated, any changes or modifications to these general and the specific conditions requested by either Party may only be implemented and binding if mutually agreed upon in writing and signed by duly authorized representatives of the Parties hereto.
- 11.5 Whenever possible, the provisions of these general terms and conditions and the specific conditions shall be interpreted in such a way as to be valid and enforceable under applicable law. However, if one or more provisions are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of that provision and of the terms and conditions shall continue in full force and effect as if such invalid, illegal or unenforceable provision had never been contained therein. Moreover, if the Parties decide to amend the invalid, illegal or unenforceable provision(s),

or any part thereof, and/or agree on a new provision, they should do so in such a way as to ensure that the new or amended provision embodies insofar as possible the purpose of the invalid, illegal or unenforceable provision(s).

- 11.6 Any notice or other form of communication required under of these general and the specific conditions must be in writing and delivered to the receiving Party by hand through a reputable courier service or sent by fax with a confirmation report or by registered mail (return receipt requested).
- Any notice shall be considered to have been delivered to the recipient's address on the date of delivery if delivered in person, 3 working days following the mailing date if sent by registered mail, and upon receipt of a transmission report if sent by fax.
- 11.7 Neither Party can assign or transfer any of its rights or obligations under of these general and the specific conditions, in whole or in part, to any third party without the prior written consent of the other Party, and any assignment or transfer without such consent shall be deemed null and void. However, Appwise shall be entitled to assign or transfer the Agreement, in whole or in part, to any other affiliate in the group of companies to which it belongs or in connection with the sale, transfer, merger, consolidation or any other disposition of all or substantially all of its assets or business, upon the provision of formal written notice to this effect to the Customer and provided such transfer or assignment does not adversely affect the Customer's rights.
- 11.8 Within a reasonable time prior to the issuance of news releases, articles, brochures, advertisements, and other information releases, concerning the Agreement and the performance thereunder, each Party shall obtain the written approval of the other Party concerning the content and timing of such issuance.
- 11.9 The Parties agree that execution of the Agreement by industry standard electronic signature software and/or by exchanging PDF signatures shall have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or relating to this Agreement, each party hereby waives any right to raise any defence or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed agreement electronically.
- 11.10 These General Terms and Conditions, as well as the specific conditions and all agreements between the Parties are governed by Belgian law excluding the application of the United Nations Convention on Contracts for the International Sale of Goods and no effect shall be given to any other choice-of-law or conflict-of-laws rules or provisions (whether Belgian, foreign or international).
- 11.11 All disputes that cannot be settled amicably shall be submitted to the jurisdiction of the Courts of Commerce of the judicial district of Antwerp, department of Hasselt (Belgium).