

General Terms and Conditions of Coffee IT B.V.

These general terms and conditions have been filed at the registry of the Court of Midden-Nederland under number 174/2020 and are available for inspection at the offices of Coffee IT B.V., and are sent on request and may be downloaded from the website www.coffeeit.nl.

Article 1: Definitions

In these general terms and conditions, the stated terms have the following meaning:

1. Coffee IT B.V.: the organisation and user of these general terms and conditions, having its registered office at Vliegend Hertlaan 41 in Utrecht, and listed in the Commercial Register of the Chamber of Commerce under number 72465646.
2. Customer: the natural person or legal entity on whose instructions Coffee IT B.V. provides its services and/or delivers its products.
3. Services: all IT services that Coffee IT B.V. provides for the Customer in execution of an agreement.
3. Parties: the Customer and Coffee IT B.V.
4. Agreement: one or several agreements concluded between the Customer and Coffee IT B.V. and/or the changes and additions thereto.
5. Software: the software or mobile application that Coffee IT B.V. has developed and/or that is made available to the Customer in the context of the Agreement.
6. Showstopper: Critical showstopper: a problem causing the application to shut down inadvertently. Major showstopper: a problem rendering part of the app unusable.

Article 2: General

2.1 These general terms and conditions apply to each Agreement/assignment that has been formed. The applicability of any conditions of the Customer is explicitly rejected.

2.2 If there is a lack of clarity about the interpretation of one or more provisions of these general terms and conditions, they must be interpreted in the light of current legislation and case law.

2.3 If a situation occurs between the Customer and Coffee IT B.V. that has not been provided for in these general terms and conditions, this situation must be assessed in accordance with applicable legislation and case law.

2.4 Should one or more of the provisions of these general terms and conditions turn out to be void or be declared null and void, the other provisions of these general terms and conditions continue to apply in full. In that case, Coffee IT B.V. and the Customer will consult in order to reach agreement on new provisions to replace the void or nullified provisions, taking into consideration as much as possible the aim and purpose of the original provision.

2.5 If Coffee IT B.V. does not always require strict compliance with these terms and conditions, this does not mean that the provisions of these terms and conditions would not apply or that Coffee IT B.V. would have relinquished the right to require strict compliance with the provisions of these terms and conditions in any other cases.

Article 3: Offers and quotations

3.1 Unless stated otherwise, all offers are without obligation. Coffee IT B.V. has the right to revoke a no-obligation quotation within three days after the Customer has accepted it.

3.2 The Customer guarantees the correctness and completeness of the requirements and specifications for the presentation and other data provided by them or on their behalf to Coffee IT B.V. on which Coffee IT B.V. bases its offer.

3.3 If an Agreement is offered on the basis of subsequent calculation, the quoted prices only serve as a guideline, and the actual costs incurred by Coffee IT B.V. will be charged on.

Article 4: Formation of the Agreement

4.1. The Agreement is formed at the time that the Customer accepts the offer and satisfies the conditions set for it, or at the time that the performance of the Agreement/assignment has started.

4.2. Coffee IT B.V. will start with the performance of the Agreement after it has received the signed order confirmation from the Customer.

Article 5: Performance of the Agreement

5.1 Coffee IT B.V. determines the manner in which and the persons by whom the Agreement is performed. Coffee IT B.V. is entitled to engage third parties in the performance of the Agreement, to acquire goods from third parties, to purchase services from third parties, and to have the Agreement carried out wholly or partially by third parties, without notifying the Customer, and to charge on any associated costs, as specified in the quotation, to the Customer. These general terms and conditions also apply in favour of the third parties engaged by Coffee IT B.V.

5.2. Coffee IT B.V. does not guarantee that the website or software developed by it functions without interruptions or errors.

5.3. The Customer is aware that the Internet is not always a completely reliable facility for the transfer of information, and that failures, delays and errors may occur at any time.

Article 6: Changes to the Agreement

6.1 Adjustments of and deviations from these general terms and conditions and/or the Agreement are valid only if they have been agreed in writing between the Parties.

6.2 Any additional costs concerning changes or additions made are payable by the party initiating the changes.

6.3 If the Parties agree that the Agreement is to be changed or supplemented, this may affect the time of completion of the performance. Coffee IT B.V. will inform the Customer as soon as possible about this.

6.4 If the Parties cannot reach agreement about any changes or additions, the Parties remain bound by the original Agreement.

Article 7: The Customer's obligations

7.1. The Customer arranges that all data with respect to which Coffee IT B.V. indicates that this is required or with respect to which the Customer should reasonably understand that this is required for the performance or further performance of the Agreement is available in good time.

7.2. If the Customer makes software, telecommunications facilities, websites, materials, databases or other data available to Coffee IT B.V. on an information carrier, they must satisfy the specifications prescribed by Coffee IT B.V. that have been included in the Agreement/quotation.

7.3. The Customer is obliged to inform Coffee IT B.V. immediately about facts and circumstances that may be important in connection with the performance of the Agreement.

7.4. The Customer must refrain from conduct that makes it impossible for Coffee IT B.V. to properly perform the Agreement.

7.5. The Customer indemnifies and holds Coffee IT B.V. harmless against claims from any third parties who suffer loss in connection with the performance of the Agreement and/or unlawful acts, and which is attributable to the Customer.

7.6. The Customer arranges the proper functioning of their equipment or other technical facilities that must be used to access and use the software in the context of the performance of the Agreement.

7.7. The Customer is not allowed to use the software in such a manner that it may cause damage to the software and/or loss to Coffee IT B.V. and/or third parties.

7.8. In case of the situation referred to in this Article 7, Coffee IT B.V. is allowed to terminate the Agreement wholly or partially without prejudice to the other rights of Coffee IT B.V.

7.8. The Customer is responsible for displaying images, text, video or sound files whose rights are vested in third parties.

Article 8: Completion

8.1 If Coffee IT B.V. has stated a period within which it will perform the work, this period cannot be regarded as a strict deadline. Coffee IT B.V. will keep the Customer informed as well as possible of any delays.

8.2. In case a completion period agreed between Coffee IT B.V. and the Customer is exceeded unreasonably as a result of an event that is beyond the control of Coffee IT B.V. and that cannot be attributed to its acts and/or omissions, including as described in Article 19 of these general terms and conditions, this period is extended automatically by the period by which it was exceeded as a result of such event.

Article 9: Rates and change of rates

9.1. All stated prices in euros and rates are exclusive of VAT, unless stated otherwise in the quotation.

9.2. Coffee IT B.V. has the right to change the rates or hourly rates. These changes are communicated to the Customer in writing or electronically no later than 2 months before they take effect. If the Customer does not agree to the new rates or hourly rates, the Customer is entitled to terminate the Agreement from the time that the new rates or hourly rates apply. Termination must take place in writing and within 14 days after the Customer has been informed of the change of rates. Changes in taxes and levies are charged on in all cases, and do not form a ground for the Customer to terminate the Agreement.

Article 10: Fixed price

10.1. If the Parties have agreed on a fixed price for the performance of the Agreement, this means that 50% of the total agreed amount is invoiced to the Customer in advance. Coffee IT B.V. will start with the performance of the Agreement at the time that it has received the total down payment. The remaining agreed amount will be invoiced to the Customer immediately before completion.

10.2. Coffee IT B.V. may increase a fixed price that has been agreed on if during the performance of the Agreement it becomes evident that the originally agreed or expected quantity of work has changed to such a degree as a result of unforeseeable circumstances, for which Coffee IT B.V. cannot be blamed, or as a result of the Customer's acts, that Coffee IT B.V. may not reasonably be expected to perform the agreed work at the originally agreed price.

Article 11: Check

11.1. After completion, the Customer has 28 calendar days to report to Coffee IT B.V. any showstopper bugs and/or other comments relating to the work manufactured under the Agreement. After this report, if possible or technically possible Coffee IT B.V. will remedy the showstopper bug free of charge or carry out the work on the basis of the Customer's comments, provided that this work is within the context of the Agreement.

11.2 If the work is not within the context of the Agreement or if the Customer does not report to Coffee IT B.V. within the period described in Article 11.1, the work that the Customer wishes to be performed is considered to be a new agreement or assignment, and charged separately to the Customer.

Article 12: Cancellation

12.1. Except if agreed otherwise in writing and the Customer wishes to cancel the Agreement that was formed wholly or partially, but the work has not yet been started, the Customer is obliged to pay Coffee IT B.V. 15% of the total agreed price plus VAT as cancellation charges, without prejudice to the right to pay the surplus if the actual costs incurred are higher. Furthermore, the Customer is obliged to pay the costs arising from any obligations towards third parties reasonably assumed by Coffee IT B.V. for the fulfilment of the Agreement. At the Customer's request, Coffee IT B.V. will submit proof of the costs incurred.

12.2. The above arrangement of costs does not affect the possible statutory liability of the Customer for the damage or loss resulting from cancellation. This damage or loss may include, but is not limited to, the costs for engaging third parties or the costs for any hours already worked.

12.3 Barring other written agreements, cancellation of the Agreement in respect of which the work has already started is only possible upon payment of the full price that was agreed.

Article 13: Payment / Retention of title

13.1. The Customer must pay the invoices received from Coffee IT B.V. within 14 days of the invoice date, unless other arrangements have been made in writing.

13.2. Coffee IT B.V. sends the Customer a reminder if Coffee IT B.V. does not receive payment of the invoice amount within the term of payment. If the Customer does not comply with the sent reminder, the Customer is in default by operation of law without further notice/notice of default being required. In that case, the Customer owes the statutory commercial interest from the date on which the amount owed became due and payable until the time of payment. In addition, all costs of collection, after the Customer is in default, both judicial and extrajudicial, are payable by the Customer.

13.3. Disputes about the performance of the Agreement do not affect the Customer's payment obligation.

13.4. Setoff and suspension of the payment by the Customer is excluded.

13.5. If the Customer fails to pay, Coffee IT B.V. has the right to discontinue or suspend the performance of the Agreement without becoming liable for compensation towards the Customer.

13.6. In the event of winding-up, bankruptcy or liquidation, attachment or a suspension of payments on the part of the Customer, the claims of Coffee IT B.V. against the Customer become immediately due and payable.

13.7. All supplies/services to the Customer take place subject to retention of title. The ownership of the products arising from the Agreement passes to the Customer when the Customer has paid all claims (price, additional work, costs, interest, etc.) of Coffee IT B.V. in full, notwithstanding the provisions of Article 14 of the general terms and conditions.

Article 14: Intellectual property rights

14.1 The copyright as well as all other rights of intellectual property (which also include know-how) with respect to both preliminary and final texts and drafts, images, working drawings and detailed drawings, sketches, models, concepts, digital information, software, logos, designs, reports, advice, etc. that Coffee IT B.V. has manufactured or has made available in the context of the Agreement are vested in Coffee IT B.V. or its licensor. The Customer is not allowed, without the prior written consent of Coffee IT B.V., to disclose or multiply materials that were made available, with the exception of what has been stated in the Dutch Copyright Act.

14.2. All intellectual property rights in respect of all software, equipment, content, databases or other materials developed or made available under the Agreement such as analyses, designs, documents, reports as well as preparatory material thereof are vested exclusively in Coffee IT B.V. or its licensor. The Customer only obtains the rights of use and powers that are explicitly granted.

14.3. The Agreement is not intended to transfer the intellectual property rights. The Customer acknowledges that the intellectual property rights with respect to the software, particularly but not exclusively the so-called source codes, are and remain the property of Coffee IT B.V. or its licensor, and that these rights do not pass to the Customer.

14.4. The know-how and/or knowledge and/or experiences gained by Coffee IT B.V. during the performance of the Agreement belong exclusively to Coffee IT B.V. and do not need to be shared with the Customer.

14.5. Transfer of intellectual property rights is only possible after the Customer and Coffee IT B.V. have signed a deed to that effect.

14.6. The Customer is allowed to use the software and the app (application) in the form of a licence.

14.7. By giving an instruction to publish or reproduce items protected by the Dutch Copyright Act or any other statutory regulations in the field of intellectual property, which have been made available by or on behalf of the Customer, the Customer declares that statutory provisions and/or protected rights of third parties are not infringed, and the Customer indemnifies Coffee IT B.V. against the claims in that respect from third parties and/or against the direct and indirect consequences, both financial and otherwise, arising from the publication or reproduction.

14.8. The Customer is not allowed to remove or change any designation regarding the confidential nature or regarding copyrights, trademarks, trade names or other intellectual property rights from the software, websites, data files, equipment or materials.

Article 15: Publicity

15.1 Coffee IT B.V. is entitled to sign the work manufactured under the Agreement or to use it for its own publicity or PR purposes.

Article 16: Investigation into the existence of rights

16.1 The Agreement does not include carrying out an investigation into the existence of trademark rights, the protection of drawings or design protection, patent rights, copyrights and portrait rights of third parties. The same applies to investigation into the possibility of such forms of protection for the Customer.

Article 17: Termination and suspension

17.1. Coffee IT B.V. is authorised to suspend the fulfilment of its obligations or to terminate the Agreement if:

- the Customer does not fulfil their obligations or if the Customer does not do so in full (even after repeated requests);
- after concluding the Agreement, circumstances of which Coffee IT B.V. has become aware give it good reason to fear that the Customer will not fulfil its obligations. If there is good reason to fear that the Customer will fulfil only part of the obligations or will not fulfil them properly, suspension is permitted only to the extent justified by the shortcoming;
- the Customer has been granted a suspension of payments;
- the Customer has been declared bankrupt or put into liquidation;
- a statutory debt restructuring scheme is declared applicable in respect of the Customer.

17.2. If the Agreement is terminated, any debts owed by the Customer to Coffee IT B.V. become immediately due and payable in full. If Coffee IT B.V. suspends the fulfilment of its obligations, it retains its claims pursuant to the law and the Agreement.

Article 18. Liability and prescription

18.1. Coffee IT B.V. cannot be obliged to compensate any damage or loss that is a direct or indirect result of:

A. an event that is actually beyond its control, which therefore cannot be attributed to its acts and/or omissions, as described in Article 19 of these general terms and conditions, among others;

B. any act or omission of the Customer, their subordinates or other persons who have been employed by or on behalf of the Customer.

18.2. Coffee IT B.V. does not guarantee that the delivered items are free from any errors and/or omissions. Coffee IT B.V. is therefore not liable for any errors and/or omissions in products delivered, services provided or work performed.

18.3. Coffee IT B.V. is not liable for damage or loss, of any nature whatsoever, because Coffee IT B.V. has based itself on incorrect and/or incomplete information provided by the Customer.

18.4. Coffee IT B.V. is not liable for any damage or loss suffered by the Customer because the software is temporarily unavailable, for example on account of an error, failure, update or maintenance work, unless the unavailability of the software is unreasonably long due to the actions of Coffee IT B.V.

18.5. Coffee IT B.V. is in no event liable for damage or loss that has arisen or has been caused because the Customer incorrectly used the delivered items or the items made available or used them for a purpose other than the purpose for which they were manufactured.

18.6. Coffee IT B.V. does not accept any liability if the Customer demands, against the advice of Coffee IT B.V., that certain work must nevertheless take place.

18.7. If reasonably possible, the Customer is obliged to retain copies of the materials and data provided by them until the Agreement has been fulfilled. If the Customer omits to do so, Coffee IT B.V. cannot be held liable for damage or loss that would not have occurred had these copies existed.

18.8. If the Customer or a third party makes changes to the items delivered or made available by Coffee IT B.V., Coffee IT B.V. excludes any liability with respect to the effect and any damage or loss or consequential damage or loss.

18.9. Coffee IT B.V. is not liable for damage or loss of any nature or for any reason whatsoever, caused by the services or networks of third parties.

18.10. Coffee IT B.V. is not responsible for the content of the Customer's website. The Customer must ensure that the content of their website/database/app is not in violation of the law.

18.11. Coffee IT B.V. is never liable for indirect damage or loss, including consequential loss, loss of profits, lost savings or loss caused by business interruption.

18.12. If Coffee IT B.V. should be liable for any damage or loss, such liability of Coffee IT B.V. is limited to the amount of the payment made by the insurer of Coffee IT B.V. If the insurer in any case does not make payment, or if the damage or loss is not covered by the insurance, Coffee IT B.V.'s liability is limited to the invoice amount, at any rate to that part of the Agreement to which the liability relates.

18.13. The limitations of liability included in these general terms and conditions do not apply if the damage or loss can be attributed to an intentional act or gross negligence on the part of Coffee IT B.V. or its subordinates.

18.14. Rights of action and other powers of the Customer of any nature whatsoever in respect of Coffee IT B.V. in any event lapse after the expiry of 1 year from the time when a fact occurs for which the Customer may exercise these rights and/or powers in respect of Coffee IT B.V.

Article 19. Force majeure

19.1. Force majeure on the part of Coffee IT B.V. exists, among other things, if Coffee IT B.V. is prevented from fulfilling its obligations under the Agreement or the preparation thereof as a result of: war, danger of war, uprising, revolution, wilful damage, fire, water damage, flooding, government measures, import and export impediments, defective materials (including computers and other means of telecommunication), non-availability of materials (including computers and other means of telecommunication), all of this both in the company of Coffee IT B.V. and in the company of the Customer and in the company of third parties who are involved in the Agreement.

19.2. The Parties have the right to terminate the Agreement if the situation of force majeure on the part of Coffee IT B.V. has lasted longer than 2 months.

19.3. To the extent that, at the time of occurrence of force majeure, Coffee IT B.V. has already fulfilled part of its obligations under the Agreement or will be able to fulfil such obligations, and the obligations fulfilled or to be fulfilled have independent value, Coffee IT B.V. is entitled to invoice the fulfilled or to be fulfilled part of the obligations separately. The Customer is obliged to pay these invoices as if it concerned a separate agreement.

Article 20: Non-disclosure

20.1. Both Parties are obliged to keep secret all confidential information that they have obtained from each other or from another source in the context of their Agreement. Information is deemed to be confidential if the other party has communicated its confidential nature or if such confidentiality ensues from the nature of the information. The party receiving confidential information will only use this for the purpose for which it was provided.

Article 21: Concluding provisions

21.1. The version of the general terms and conditions that applied at the time of the formation of the Agreement applies at all times, unless the Customer, after concluding the Agreement, has accepted the applicability of a revised version of the general terms and conditions.

21.2. The Parties will not apply to a court until they have done their utmost to settle a dispute in joint consultation.

21.3. Dutch law applies to any agreement between Coffee IT B.V. and the Customer.

21.4. All disputes concerning agreements between the Customer and Coffee IT B.V. are submitted to the Court of Midden-Nederland.