

# Terms and Conditions

The terms and conditions below apply to all contracts and agreements TekMi enters into with her Clients. We did our best to draft our terms and conditions as clear and understandable as possible. Should there be anything unclear to you, please don't hesitate to contact us.

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## 1. Definitions

To make these terms and conditions easier to read and understand, we have included a list of definitions below.

In these terms and conditions we mean the following with:

1. **Client:** the person or company that wishes to receive an Offer from, or to enter into an Agreement with TekMi
2. **Other Party:** TekMi or the Client
3. **Offer:** a quotation issued by TekMi in which it provides a description of a specific product or a description of specific services and the price or indication of the price of the specific product or the specific services in the performance of an Agreement.
4. **Agreement:** the Agreement by which the Client accepts the Offer made by TekMi and which is concluded by signing the Order Form.

5. **Day:** calendar day;
6. **Website:** our website <http://tekmi.nl>
7. **Timely:** within 14 days

## **2. Applicability**

- 2.1. These Terms and Conditions shall apply to each Offer made and each Agreement concluded between TekMi and a Client.
- 2.2. General terms and conditions of our Clients are no part of the Agreement.
- 2.3. Deviations from and additions to these Terms and Conditions shall only apply when agreed to by both parties in writing. □

## **3. About us**

- 3.1. TekMi is located at the Fideliolaan 194, 1183 PS in Amstelveen and is registered at the Chamber of Commerce with number 64499782 and with VAT-number NL651304350B01
- 3.2. Our Clients can reach us by email on [support@tekmi.nl](mailto:support@tekmi.nl).

## **4. Our products and services**

- 4.1. TekMi creates tailored mobile applications, REST APIs, Responsive websites and Internet of things (IoT) solutions. TekMi also offers her Clients IT consultation.
- 4.2. The specific service that TekMi agrees to provide her Clients with, or the specific products TekMi will develop for the benefit of her Client, will be laid down in detail in the Offer.
- 4.3. We do our utmost to draft our Offer with care. Apparent mistakes or errors in the Offer do not bind TekMi.

## **5. The Offer and the Agreement**

- 5.1. Before TekMi enters into an Agreement it will always send the Client a written Offer.
- 5.2. The Offer is non-binding and based on the information provided by the Client.
- 5.3. The Offer made by TekMi shall be valid for 60 days, unless otherwise indicated. The Offer shall only be binding upon TekMi if the Client has confirmed it in writing within 15 days.
- 5.4. The Agreement is concluded by acceptance of the Offer in writing (via email or by signing the Agreement) by the Client.
- 5.5. After entering into the Agreement TekMi will set up a project plan in cooperation with the Client. The project plan sets out the agreed timeframe, important milestones and deadlines.

- 5.6. For additional, not in the original Offer included, work, TekMi will always send a new, additional Offer. The activities covered by this new additional Offer will commence after signing or agreeing to the Offer. The additional work will, if possible, be included in the project plan.

## **6. Price, invoicing and payment**

- 6.1. The price for TekMi's products and services is included in the Offer and is always given in Euro or in US Dollar and is exclusive of VAT.
- 6.2. Invoices will be issued by a private application and will be sent to the Client by email.
- 6.3. TekMi and her Clients can agree to a payment schedule based on which payments need to be carried out by the Client to the benefit of TekMi.
- 6.4. The invoice will be sent according to the payment schedule agreed on with the Client.
- 6.5. The invoice will include the price in Euro or US Dollar and VAT will be included on the invoice.
- 6.6. The invoice must be paid within 14 days after receipt. If the Client does not pay the amounts owed by the agreed date, it shall owe statutory interest on the outstanding amount, without any written demand or notice of default being necessary.
- 6.7. Should the Client, after receiving a notice of default, fail to settle the claim, the claim may be passed on for collection, in which case the Client shall be liable to pay in full, in addition to the total amount then due, any judicial and extra-judicial expenses, including any fees charged by external experts in addition to the costs determined by the courts, relating to the collection of this claim or other enforcement of rights, which shall be at least fifteen per cent of the outstanding invoice amount.

## **7. Delivery and performance**

- 7.1. TekMi shall make every effort to ensure that the Services are provided with due care and in accordance with the Agreement and the project planning.
- 7.2. All periods and dates specified by TekMi shall be established to the best of TekMi's knowledge on the basis of the information available to TekMi at the time of entering into the Agreement; the mere fact of any stated deadline being exceeded shall not constitute a default on the part of TekMi.
- 7.3. TekMi shall not be bound by a period or date that can no longer be achieved as a result of circumstances outside of its control and that occurred after the date on which the Agreement was concluded.

- 7.4. Any changes and delays to the project plan and the agreed timeframe will be discussed with the Client in a Timely manner. TekMi will update the project plan according to the changes agreed on with the Client.
- 7.5. If and in so far as required for the proper execution of the Agreement, TekMi shall have the right to have certain work done by third parties.
- 7.6. The end product will be delivered to the Client after testing it in acceptance environment or a TestFlight Beta testing.
- 7.7. The final product will be delivered by sharing the repository, providing code bundles, archives or binaries in accordance with what has been agreed on between parties and has been laid down in the offer and/or the order form.
- 7.8. TekMi shall deliver the Software to be developed to the Client and install it as much as possible in accordance with the specifications recorded in writing, with installation only occurring if installation by TekMi has been agreed in writing.
- 7.9. If an acceptance test has been agreed in writing between TekMi and the Client, the test period shall be 15 days from delivery of the product, or if it was agreed that the installation would be carried out by TekMi, after completion thereof. The Client is not allowed to use the product for productive or operational purposes during the test period.
- 7.10. The product shall be deemed to have been accepted:
- if an acceptance test has not been agreed: at the time of delivery or, if installation by TekMi has been agreed in writing, when the installation is completed, or
  - if an acceptance test has been agreed: on the first day after the test period, or
  - If a Client asks for permission to use the product for productive or operational purposes.
- 7.11 Should the conduction of the acceptance test prove that the product contains errors, which impede the progress of the acceptance test, the Client shall provide TekMi a detailed written notice, in which case the test period shall be interrupted until the product has been adapted in such a manner that this impediment is eliminated.
- 7.12 Acceptance of the product may not be withheld on grounds other than those that are relating to the expressly agreed specifications such as described in the Project Plan, nor because of the existence of minor errors, which means errors that do not reasonably preclude putting the product to operational or productive use.
- 7.13 If the product will be delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or part that already was accepted.

7.14 The Client is not allowed to use the product for productive or operational purposes during the test period, if the Client has not paid at least 50% of the fee agreed upon on conclusion of the Agreement.

7.15 If TekMi and the Client agree on maintenance of the service provided or the product developed, the details considering the maintenance will be put down separately in a Service Level Agreement.

## **8. Warranty**

8.1. Within a period of three months after delivery, or if the parties have agreed an acceptance test, three months after acceptance, TekMi shall do their utmost to repair any functional or technical defects in the developed software if these defects have been reported to TekMi within the aforementioned period. TekMi is not obliged to repair any other defects than those relating to the expressly agreed specifications of the product and as described in the Project Plan.

8.2. TekMi will charge its usual rates in the event the defect in the product is due to operating errors or improper use by the Client or other causes that are not attributable to TekMi. The obligation to repair expires if the Client or another third party modifies the product or the code of the software without TekMi's consent. The obligation to repair also expires in the event the Client, or another third party, restores or rebuilds the developed software without TekMi's explicit consent.

8.3. The obligation to repair expires if the Client has not fulfilled its payment obligations.

8.4. Reparation of any errors will be carried out the way and on the location TekMi determines.

8.5. TekMi is not obliged to repair any damaged or lost data.

8.6. TekMi is not obliged to repair any shortcomings and/or other defects after the warranty period as referred to in 8.1, unless TekMi and the Client have concluded a maintenance Agreement that includes such reparation.

8.7. The warranty period, as referred to in 8.1, does not include the repair of any defects that are relating to new software versions that are implemented after the start of the project, or older software versions that are no longer supported.

## **9. Confidentiality**

9.1. Both TekMi and the Client will observe strict confidentiality with regard to all information exchanged between parties before or after conclusion

of the Agreement and which they know or may reasonably be assumed to know is confidential.

- 9.2. Neither TekMi nor the Client shall be permitted for the duration of the Agreement and on termination thereof to disclose the content of confidential information to third parties without the prior permission of the other party.

## **10. Privacy and data processing**

- 10.1. If necessary for the execution of the Agreement, the Client will inform TekMi in writing on how legal obligations considering the protection of personal data are implemented by the Client.
- 10.2. The Client indemnifies TekMi against any claim by any person whose personal data is registered or processed in connection with the personal record held by the Client or for which the Client is responsible according to applicable laws and regulations, unless the Client can prove that the facts underlying the claim can be attributed to TekMi.
- 10.3. The responsibility for data processed while using a service of TekMi lies with the Client. The Client guarantees that the content, use and processing of the data is not illegal and does not infringe any rights of a third party. The Client indemnifies TekMi against any legal action of a third party in relation with the data or the performance of the Agreement.

## **11. Information security**

- 11.1. If parties have agreed to a certain level of security, TekMi is obliged to pursue that level of security. The effectiveness of the information security cannot be guaranteed in all circumstances.
- 11.2. In the absence of an Agreement on information security, security at a reasonably level suffice, taking into account the nature of the data and the state of technology.
- 11.3. Clients are expected to adequately secure their systems. An antivirus program shall be running at all times.

## **12. Risk-transfer**

- 12.1. The risk of loss, theft, malversation or damage to property, data (including: user names, codes and passwords), documents, software or data files which are manufactured, in connection with the performance of the Agreement, shall pass to the Client at the moment they are placed at the actual disposal of the Client or a person assisting the Client.
- 12.2. If the product will be delivered in stages and/or parts, the risk of loss, theft, malversation or damage to property, data (including: user names, codes and passwords), documents, software or data files which are

manufactured, in connection with the performance of that stage and/or part of the Agreement, shall pass to the Client at the moment that stage and/or part is placed at the actual disposal of the Client or a person assisting the Client.

### **13. Complaints**

- 13.1. TekMi likes happy Clients. Should a Client have a complaint, please do not hesitate to email us on [support@tekmi.nl](mailto:support@tekmi.nl). We will look into the complaint in a Timely manner.
- 13.2. Complaints concerning the realization of the Agreement should be notified promptly after discovery of the shortcomings, but no later than one month following completion of the work concerned.
- 13.3. After filing a complaint, we ask to give us four weeks to resolve the problem.
- 13.4. If a complaint is considered justified, TekMi shall undertake the work as agreed upon, unless such has become useless to the Client. The Client must notify TekMi accordingly if the latter is the case.
- 13.5. In the event that the Client submits a timely complaint, this shall not discharge it from its payment obligations.
- 13.6. If the complaint or dispute remains unresolved, Clients, being consumers, may be eligible to use the European Commission's Online Dispute Resolution platform that the Client can find here: <http://ec.europa.eu/odr>.

### **14. Termination**

- 14.1. Both TekMi and the Client shall only be entitled to terminate the Agreement if the Other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.
- 14.2. If an Agreement that by its nature and content is not brought to a close is entered into for an indefinite period of time, this may be terminated in writing by each of the Parties after proper consultation and with a statement of reasons. If the Parties have not agreed on an express notice period, a reasonable notice period must be observed in terminating the Agreement.
- 14.3. TekMi shall be entitled to terminate the Agreement in part or in full, with immediate effect, in writing without notice of default and without judicial intervention, if the Client is granted a moratorium of payments, provisionally or otherwise, if a petition for bankruptcy is filed in respect of the Client, or if the Client's company is wound up or terminated for reasons other than reconstruction or the merger of companies. TekMi

shall under no circumstances be obliged to pay any compensation as a result of a termination of the Agreement.

- 14.4. If the Client has already received services for the purpose of executing the Agreement at the time of termination as referred to in Article 14.1, these services and the related payment obligation cannot be revoked unless the Client is able to demonstrate that TekMi is in default in respect of these services. Any amounts TekMi has invoiced before termination in connection with work that it has already duly carried out or services that it has duly provided for the purpose of executing the Agreement, shall remain due in full, subject to due observance of the provisions of the preceding sentence, and shall become immediately due and payable at the time of termination.

## **15. Intellectual Property Rights**

- 15.1. All intellectual property rights of the products and services TekMi delivers under the Agreement, shall be held solely by TekMi or its licensors. The Client shall only obtain a right of use and powers as are explicitly granted in these Terms and Conditions. The Client shall not reproduce software or other materials or make copies thereof, except for the actions that are permitted within legal boundaries.
- 15.2. The Client is aware that software and other materials provided contain confidential information and trade secrets of TekMi or its licensors. The Client undertakes, without prejudice to the provisions of Article 9, to keep such software and materials secret and not to disclose or grant use of them to third parties without the express written permission of TekMi, and to use them only for the purpose for which they were placed at its disposal. The term 'third parties' includes, but is not limited to, any persons working at the Client's organization who do not necessarily need to use the software and/or other materials.
- 15.3. The Client is not permitted to remove from or change in the software, or other materials, any designation concerning copyrights, trademarks, trade names or other intellectual property rights, including any details concerning the confidential nature and secrecy of the software and/or material.
- 15.4. TekMi is entitled to arrange for technical measures to be taken at any time in order to protect the software and or materials. If TekMi has secured the software and/ or material by technical means, the Client shall not be permitted to remove or circumvent such security measures. If security measures result in the Client being unable to make a back-up copy of the software, TekMi will provide the Client with a back-up copy at the latter's request, or appoint an independent third party to do so, at the discretion of TekMi.

- 15.5. TekMi additionally retains the right to employ the knowledge it acquired during the implementation of the work for other purposes, provided no confidential information is disclosed to third parties by doing so.
- 15.6. If TekMi uses any material, which is protected by intellectual property rights and which is provided by and used on request of the Client, the Client guarantees that the use of this material is permitted. TekMi cannot be held liable by any right holders for infringement of their intellectual property rights.

## **16. Liability**

- 16.1. TekMi accepts liability to pay damages to the extent as shown by Article 16.
- 16.2. The total liability of TekMi due to an attributable failure in the performance of the Agreement shall be limited to compensation of the direct loss not exceeding the sum stipulated for this Agreement (excl. VAT). If the Agreement is primarily a continuing performance Agreement with a term exceeding six months, the price stipulated for the Agreement shall be set at the total of the fees (exclusive of VAT) stipulated for six months. The total compensation for direct loss shall not, however, in any case exceed 1000 EUR.
- 16.3. TekMi shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.
- 16.4. TekMi shall only be liable as a result of an attributable failure in the performance of an Agreement if the Client gives TekMi immediate and proper notice of default in writing, setting a reasonable term in which the breach can be remedied, and TekMi attributable fails to meet its obligations after this period. The notice of default must specify the failure in as much detail as possible, enabling TekMi to issue an adequate response.
- 16.5. A condition for the existence of any right to compensation shall in all cases be that the Client notifies TekMi in writing of the loss or damage as soon as possible after it occurs.
- 16.6. The limitations of liability for direct loss contained in the present terms and conditions shall not apply if the damage is due to any intentional act or omission or gross negligence on the part of TekMi or its subordinates.

## **17. Force Majeure**

- 17.1. Neither of the Parties shall be obliged to meet any obligations if it is prevented from doing so as a result of Force Majeure. The term 'Force

Majeure' shall include any non-attributable failure of any suppliers of TekMi.

- 17.2. If a situation of Force Majeure lasts for more than three months, the Parties shall be entitled to terminate the Agreement in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionally.

## **18. Applicable law and disputes**

- 18.1. These Terms and Conditions are to be construed in accordance with the laws of the Netherlands.
- 18.2. We will always do our utmost to prevent disputes from arising. In the unfortunate event that a dispute associated with these terms and conditions does arise, the dispute or claim shall be subject to the exclusive jurisdiction of the Dutch courts.

## **19. Miscellaneous**

- 19.1. If any part of the Terms and Conditions is unenforceable the enforceability of any other part of the Terms and Conditions will not be affected and all other clauses remain in full force and effect. So far as possible where any clause/sub-clause or part of a clause/sub-clause can be severed to render the remaining part valid, the clause shall be interpreted accordingly. Alternatively, the Client agrees that the clause shall be rectified and interpreted in such a way that closely resembles the original meaning of the clause /sub-clause as is permitted by law.
- 19.2. TekMi retains the right to amend these terms and conditions. The revised terms and conditions shall enter into force on the date announced. TekMi shall notify the Client in a Timely manner of the changes, and shall furnish the Client with a copy of the amended terms and conditions at the Client's first request. If no effective date has been communicated to the Client, the changes shall take effect as soon as the Client has been notified accordingly.