# GENERAL TERMS AND CONDITIONS OF ITTRADER B.V.

Last update August 2020

**CLAUSE 1 - APPLICABILITY AND DEFINITIONS**

1.1 These General Terms and Conditions apply to all offers and agreements of ITtrader B.V. and its affiliated natural persons or legal entities ("ITtrader B.V.") that involve the delivery of goods or the provision of services or performance of any kind, including the provision of software ('software–as a-service'), advice and any related work or other provision of services to a co-contracting party ("Customer"). Any deviations from or supplements to these General Terms and Conditions will only be valid if agreed in writing by ITtrader B.V. and the Customer.

1.2 The applicability of any purchasing conditions or other terms and conditions of the Customer is expressly excluded.

1.3 If any provision of these General Terms and Conditions is void or is declared invalid, the other provisions of these General Terms and Conditions will continue to apply in full. ITtrader B.V. and the Customer will then consult each other to agree new provisions to replace those provisions that are void or that have been declared invalid, observing the object and intention of the original provisions as closely as possible.

1.4 In that case, ITtrader B.V. and the Customer will enter into consultations with the aim of agreeing new provisions to replace the provisions that are void or have been declared invalid.

1.5 ITtrader B.V. is entitled to amend its General Terms and Conditions. The amended General Terms and Conditions will apply unless a written objection to any amendment is submitted within 30 (thirty) days after the date of the amendment.

**CLAUSE 2 - THE CONTRACT**

2.1. Offers/quotes and/or other communications from ITtrader B.V. are not binding. The Customer must accept offers in writing by signing a quote/order form/contract drafted by ITtrader B.V. to be accepted by the Customer.

2.2. A new offer from ITtrader B.V. cancels all previous offers. General documentation (such as catalogues, images, price lists or mailings provided by or on behalf of ITtrader B.V.) are not binding on ITtrader B.V. under any circumstances.

2.3. ITtrader B.V. may at any time correct any obvious errors in writing in quotes for and/or contracts with the Customer. These corrections will be binding.

2.4. The Customer guarantees the accuracy and completeness of the information it supplies to ITtrader B.V. on which ITtrader B.V. bases its offer/quote and/or other communications.

2.5. Once an offer is accepted or a contract is concluded, the Customer may not cancel it without ITtrader B.V.'s express written consent. Any consent to such a cancellation by ITtrader B.V. will be subject to the express condition that the Customer compensates ITtrader B.V. for any damage it suffers as a result of this cancellation.

2.6.    If the Customer comprises several natural persons and/or legal entities, each of them is jointly and severally liable to ITtrader B.V. for the performance of the contract.

**CLAUSE 3 – PRICE AND PAYMENT**

3.1.    The conditions of payment stated on ITtrader B.V.'s invoices are always binding. Time is of the essence for the payment of invoices.

3.2.    All prices are exclusive of value added tax (Dutch VAT) and other government levies and/or taxes.

3.3.    All prices are exclusive of the costs of implementation and installation of the products. They also exclude travel and accommodation expenses, extra hours and other special work-related costs, and ITtrader B.V. may charge them to the Customer at its customary rates, unless the parties expressly agree otherwise in writing.

3.4.    The Customer may not suspend payment of any amounts owed to ITtrader B.V. or offset them for any reason.

3.5.    If the Customer does not pay an invoice on time, it will owe ITtrader B.V. statutory commercial interest on the outstanding amount without notice of default being required. If, after receiving a demand, the Customer continues to be in default, ITtrader B.V. may outsource its claim and the Customer will be obliged to fully compensate the extrajudicial and judicial costs in addition to the principal sum and the statutory commercial interest incurred plus administrative costs of at least 15% of the amount to be collected, at a minimum of EUR 100. Payment of the outstanding amount will first go towards paying interest and then towards the principal.

3.6.    The Customer must notify ITtrader B.V. in writing of any objections to amounts invoiced before the payment term expires. After expiry of the payment term, any amounts invoiced to the Customer will be deemed to be accurate.

3.7.    ITtrader B.V. may increase its prices and rates annually in accordance with the price index that applies to the relevant product and/or service; ITtrader B.V. may at any time increase its prices and rates to reflect any relevant price increase pertaining to the products or services by its own suppliers.

3.8.    In addition to the annual price indexation under Clause 3.7, ITtrader B.V. may amend its prices and rates as laid down in the agreement if there is an increase in price-determining factors, which may include but are not limited to: wage costs, national insurance contributions, exchange rates and purchase prices. If there is a price increase of more than 10%, the Customer may terminate the contract in writing within thirty days after notice of the change was given by ITtrader B.V., with effect from the date on which the new prices and/or rates take effect.

**CLAUSE 4 - TERM OF THE CONTRACT AND TERMINATION**

4.1.    A contract is automatically renewed for the term agreed in the first contract, unless the Customer terminates it in writing on time with due observance of a notice period of at least three months.

4.2.    If the Customer terminates a contract before the minimum contract term has expired, ITtrader B.V. will still be entitled to receive payment of any remaining amounts that would have been owed if the contract had not been terminated early. If a contract is terminated early, ITtrader B.V. may still charge costs to the Customer to meet any fixed-term obligations it has to third parties in connection with the performance of the contract between ITtrader B.V. and the Customer, such as arranging for workplace management, installing optical fibre connections or performing any other service.

4.3.    ITtrader B.V. may terminate the provision of a service for technical, economic or commercial reasons with due observance of a notice period of at least three months. If it does so, it will provide a substitute service if possible. If the Customer refuses to accept this service or if no substitute service is available, the contract will be terminated with effect from the date when ITtrader B.V. ceases to provide its service. More specifically, ITtrader B.V. is entitled to cease delivering products and/or providing services originating with third parties in circumstances that are beyond ITtrader B.V.'s control.

**CLAUSE 5 - RETENTION OF OWNERSHIP**

5.1.    All goods delivered to the Customer will remain the property of ITtrader B.V. until the latter receives all of the amounts owed to it by the Customer, including any interest and costs. The Customer may not sell, pledge, or rent out any goods obtained under retention of title or make them available to third parties in any way.

5.2.    If a third party attaches the goods delivered under retention of title, the Customer will immediately inform ITtrader B.V. of the attachments levied.

5.3.    ITtrader B.V. may retain possession of any goods, products, property rights, data, documents, software, data files and intermediate or final results of the services received from or generated by a supplier in connection with the contract, notwithstanding any obligation to deliver or transfer them, until the Customer has paid all of the amounts it owes to ITtrader B.V., including any interest or costs.

**CLAUSE 6 - COOPERATION AND INFORMATION OBLIGATIONS**

6.1. The Customer will provide all the information and/or data that are or may be useful and necessary for the performance of the contract. The Customer guarantees the accuracy and completeness of such information and data.

6.2. The Customer will provide ITtrader B.V.'s employees with access to the locations where ITtrader B.V. is to carry out its work or provide the services in performing the contract.

6.3. If the Customer does not provide ITtrader B.V. with the information and/or data it requires for the performance of the contract in accordance with the arrangements between the parties, or does not do so on time or fails to fulfil its obligations in any other way, ITtrader B.V. may suspend its performance of the contract.

**CLAUSE 7 - CANCELLATION AND SUSPENSION**

7.1. ITtrader B.V. is entitled to cancel the contract out of court if the Customer fails to fulfil its obligations under the contract in whole or in part. Before cancelling a contract, ITtrader B.V. will inform the Customer of such failure and allow the Customer a reasonable period in which to remedy it. If the Customer fails to fulfil its obligations under a contract in whole or in part, ITtrader B.V. will be entitled to immediately suspend fulfilment of its obligations under the contract without notice of default being required. In no event will ITtrader B.V. be liable for damage related to cancellation or suspension.

7.2. ITtrader B.V. is entitled to cancel a contract out of court, in whole or in part and without notice of default being required if:

a. the Customer has applied for a suspension of payments or if suspension of payments has been granted to the Customer;

b. the Customer has filed for bankruptcy or insolvency or has been put into liquidation;

c. the Customer is dissolved/liquidated;

d. the Customer has ceased its business operations;

e. a considerable amount of the Customer's assets has been seized or if the Customer is no longer capable/may no longer be considered capable of fulfilling its obligations under the contract.

7.3. If, at the time of cancellation of a contract, ITtrader B.V. has already delivered services/products under the contract, the contract may only be cancelled to the extent that no products and/or services have yet been delivered unless the Customer proves that ITtrader B.V. has defaulted on an essential aspect of its performance.

7.4.    Any amounts invoiced by ITtrader B.V. before a cancellation in relation to any performance or delivery made pursuant to the contract will remain due in full, and will become immediately payable on the date of cancellation.

**CLAUSE 8 - LIABILITY**

8.1.    ITtrader B.V. only accepts obligations to pay compensation to the extent that these are provided by this clause.

8.2.    ITtrader B.V.'s liability for an attributable failure to perform, including in relation to a guarantee obligation, is limited to the damage arising directly from it. It is not liable for any additional, indirect or consequential damage.

8.3.    ITtrader B.V.'s total liability, for any reason whatsoever, is limited to the amounts invoiced and invoiceable to the Customer by ITtrader B.V. under the contract (exclusive of VAT). Under no circumstances will ITtrader B.V.'s total liability for direct damage exceed the amount for which ITtrader B.V. is insured, on any legal basis whatsoever. Subject to the provisions of the foregoing, in so far as ITtrader B.V. makes available products and/or services of third parties to the Customer compensation will never exceed the relevant compensation paid by such third parties to ITtrader B.V. or directly to the Customer.

8.4.    Under no circumstances will ITtrader B.V.'s total liability for damage due to death or physical injury exceed the amount for which ITtrader B.V. is insured, in which respect a series of connected events will be deemed to be a single event.

8.5.    The exclusions and limitations of liability referred to above do not exclude any damage due to intent or wilful recklessness on the part of ITtrader B.V. or its management.

8.6.    Any entitlement to compensation is conditional on the Customer reporting the damage to ITtrader B.V. by registered letter without delay, but in no circumstances more than one month after it has arisen. Failing this, all entitlement to compensation will lapse.

8.7.    The Customer indemnifies ITtrader B.V. against all damage that ITtrader B.V. may sustain as a result of claims made by third parties, including employees of the Customer, in connection with the products and/or services delivered by ITtrader B.V. to the Customer. The provisions of this clause are in part for the benefit of ITtrader B.V.'s employees and other auxiliaries that ITtrader B.V. may engage in performing the contract.

**CLAUSE 9 - FORCE MAJEURE**

9.1.    The Customer is obliged to perform any obligation should it be prevented from doing so as a result of force majeure. Force majeure includes:
  a.   circumstances beyond the control of the supplier's suppliers;

b. any failure on the part of a supplier's suppliers which the supplier is instructed to use by the Customer;

c. defective goods, equipment, software or materials of third parties which the supplier is instructed to use by the Customer;

d. government measures;

e. power outages;

f. internet, computer network or telecommunications facilities failures;

g. war;

h. work occupation;

i. strikes;

j. general transport problems;

k. unavailability of staff.

9.2. ITtrader B.V. will also be entitled to invoke force majeure if the non-attributable circumstance preventing (continued) performance occurs after ITtrader B.V. should have fulfilled its obligations.

9.3. If ITtrader B.V. has already fulfilled part of its obligations when force majeure takes effect, or is only able to fulfil part of its obligations as a result, it will be entitled to invoice those it has already fulfilled or those that can still be fulfilled separately, and the Customer will be obliged to settle this invoice as if it related to a separate contract. This does not apply if the work already performed

9.4. If the force majeure situation persists for more than ninety days, ITtrader B.V. and the Customer will be entitled to cancel the contract by means of a written notification. Anything that has already been performed under the contract will then be settled *pro rata* without ITtrader B.V. and the Customer having any further obligations towards each other.

**CLAUSE 10 - INTELLECTUAL PROPERTY AND COPYRIGHT**

10.1. If ITtrader B.V. makes products and/or services available to the Customer, the Customer is granted a non-transferable right of use, unless the parties expressly agree otherwise in writing.

10.2. ITtrader B.V. and/or its licensors own all copyrights and intellectual property rights to the products and services developed or made available by ITtrader B.V. and they may not be reproduced, disclosed or made known to third parties without ITtrader B.V.'s prior written permission.

10.3. The Customer is not authorised to alter or remove any indication relating to copyrights, trademarks, trade names or any other intellectual property rights from the materials.

**CLAUSE 11 - CHANGES TO WORK AND ADDITIONAL WORK**

11.1. If ITtrader B.V. carries out work, performs any service or makes any deliveries on the Customer's request or with the Customer's consent beyond the substance or scope of what is agreed, ITtrader B.V. will charge the Customer its customary rates for any such work, service or deliveries (to be considered additional work), unless the parties have expressly agreed otherwise in writing.

11.2. If the additional work is not more than 10% of the amount originally agreed in the contract, ITtrader B.V. will be entitled to carry out the additional work and charge it to the Customer at ITtrader B.V.'s customary rates without the Customer's prior consent.

**CLAUSE 12 - CONFIDENTIALITY**

12.1. ITtrader B.V. and the Customer are obliged to maintain confidentiality with regard to any information received from the other party in connection with a contract or obtained from another source which they know or reasonably ought to know to be confidential.

12.2. The access and identification codes and certificates provided to the Customer by or on behalf of ITtrader B.V. are confidential and the Customer must be treat them as such, and they may only be made known to authorised staff members of the Customer's own organisation. ITtrader B.V. is entitled to change access or identification codes and certificates at any time.

**CLAUSE 13 - PRIVACY AND PERSONAL DATA PROCESSING**

13.1. The Customer indemnifies ITtrader B.V. against any claims by individuals whose personal data has been registered or is being processed in the context of personal registration by the Customer, or for which the Customer is legally responsible in any other way.

13.2. The Customer is exclusively responsible for the personal data processed by it when using a service provided by ITtrader B.V. The Customer warrants with respect to ITtrader B.V. that the contents, use and/or processing of the personal data is not unlawful and do not infringe any rights of third parties. The Customer indemnifies ITtrader B.V. against any legal claim by a third party, for any reason whatsoever, in connection with this personal data or the performance of the contract.

**CLAUSE 14 - DELIVERY/ACCEPTANCE AND RISK**

14.1. Delivery dates set by ITtrader B.V. or agreed between the parties are target dates that will be observed to the extent possible. ITtrader B.V. will not be in default if it exceeds an occasional delivery date.

14.2. Products are delivered ex ITtrader B.V.'s factory/warehouse or from another factory/warehouse selected by ITtrader B.V., unless the parties agree otherwise in writing. The risk of destruction, loss, theft or deterioration of products passes to the Customer upon delivery. ITtrader B.V. may transport products at the Customer's risk and expense. ITtrader B.V. is not obliged to insure products during transportation unless the Customer explicitly requests such; the insurance costs will be borne by the Customer.

14.3. The Customer will inspect the products after ITtrader B.V. makes them available to the Customer. If the parties have agreed that ITtrader B.V. will install and/or implement the products, the Customer will inspect the products immediately after they are installed and/or implemented.

**CLAUSE 15 - RETURN SHIPMENTS**

15.1. Any unused products may be returned to ITtrader B.V. up to 3 days after delivery in their original packaging, unless the parties agree otherwise in writing. The Customer is required to apply for an RMA number for all return shipments. After the RMA number is issued, the Customer must return the product to ITtrader B.V. within three working days. All return shipments are at the buyer's/Customer's risk and expense.

15.2. Any return shipments that do not state an RMA number on the outside of the packaging will not be accepted and will be returned at the Customer's expense. For each returned product, 15% of its net value (at a minimum of EUR 35) will be charged for administration and restorage costs.

15.3. Defective products may be returned provided that they are in original condition, are returned in their original packaging and are accompanied by a clear specification of the complaint or defect and a copy of the original packing slip.

**CLAUSE 16 - GUARANTEE**

16.1. Products from ITtrader B.V.'s suppliers are expressly subject to the relevant supplier's warranty and other provisions. The warranty term differs for each manufacturer and product. If any manufacturing defects or faulty materials in a delivered product are discovered within the warranty period, ITtrader B.V. will make every effort to repair the product free of charge, provided that these defects are notified to ITtrader B.V. in writing and in detail within the warranty period. ITtrader B.V. will never be obliged to carry out repairs in the case of corrupted or lost data.

16.2. If, in ITtrader B.V.'s reasonable opinion, it is not possible to remedy manufacturing defects or faulty materials, or if this would take too long or it would be disproportionately expensive,

ITtrader B.V. will be entitled to replace the products by similar, but not necessarily identical, products free of charge.

16.3. ITtrader B.V.'s warranty obligation lapses if any manufacturing defects or faulty materials are the result of improper, careless or incompetent use, overdue maintenance or external factors such as sand, water or a fall, or if the Customer makes changes to the product, or has them made by a third party, without ITtrader B.V.'s permission.

16.4. ITtrader B.V. does not have any contractual obligation to remedy any manufacturing defects, faulty materials or other defects that are brought to ITtrader B.V.'s attention after the end of the warranty period. ITtrader B.V. will charge the Customer for any repair work carried out outside the warranty period at its customary rates.

## CLAUSE 17 - SERVICES

17.1. ITtrader B.V. will provide services to the Customer in accordance with the written arrangements between the parties. All of ITtrader B.V.'s services are to be provided on the basis of a 'best efforts' obligation. The Customer avails itself of any advice issued by ITtrader B.V. at its own risk and expense.

17.2. ITtrader B.V. is not obliged to provide support or maintenance without an express written agreement (Service Level Agreement).

17.3. ITtrader B.V.'s provides its services during its normal working hours. ITtrader B.V. will always inform the Customer of any circumstances that might affect its provision of services and their availability.

17.4. If ITtrader B.V. provides services on the basis of data to be provided by the Customer, the Customer warrants that all materials, data, software and instructions provided to ITtrader B.V. for the performance of the services are accurate and complete. The Customer is responsible for the use of the service and way in which the service is deployed by users, regardless of whether these users are in a relationship of authority with the Customer.

17.5. If ITtrader B.V. delivers and/or makes available products that are subject to licences granted to it by third parties, the Customer will be bound by all of the provisions of those licences and the Customer will indemnify ITtrader B.V. against the consequences of any use of the products that is in breach of the provisions of those licenses.

## CLAUSE 18 - SECONDMENT OF STAFF

18.1. If ITtrader B.V. and the Customer agree that ITtrader B.V. provides support staff for a specific period or that ITtrader B.V. provides any other type of facility, this will be subject to ITtrader B.V.'s applicable rates for services. These rates are exclusive of the cost of materials and call-out

charges, unless other rates are expressly agreed between the parties in writing. The Customer may not deploy the staff made available by ITtrader B.V. for any purpose other than the agreed work without ITtrader B.V.'s prior written permission.

18.2. The Customer will provide the employees made available by ITtrader B.V. with facilities and workspace and will guarantee that proper work and rest periods and working hours are observed, that the working environment is safe, and that the working conditions are fit for purpose and in accordance with the applicable laws and regulations.

18.3. ITtrader B.V. is entitled to charge the Customer for any overtime worked by employees who are made available in accordance with ITtrader B.V.'s customary overtime rates, unless the parties expressly agree otherwise in writing.

18.4. In consultation with the Customer, ITtrader B.V. may substitute the employee(s) that is/are made available by one or more persons with the same relevant qualifications. ITtrader B.V. may also do so if the employee in question is chronically ill or if he or she leaves ITtrader B.V.'s employment. ITtrader B.V. does not guarantee that such substitution will be possible. If not, the Customer's right to claim further performance of the contract and all of the Customer's claims in relation to non-performance of the contract will lapse. This will not affect the Customer's payment obligations for any work that has already been carried out.

18.5. The Customer is liable for all damage sustained by employees who are made available during or in connection with the work they are instructed to do. The Customer indemnifies ITtrader B.V. against claims by third parties for work carried out by any employee made available by ITtrader B.V.; it also indemnifies ITtrader B.V. against liability resulting from death or physical injury suffered by any employee made available by ITtrader B.V. and against claims from third parties, including ITtrader B.V.'s employees, who have suffered or continue to suffer damage resulting from the Customer's acts or omissions or from unsafe situations in the Customer's organisation.

**CLAUSE 19 - BUYING UP AND RECYCLING**

19.1. ITtrader B.V. buys up used products on the basis of subsequent calculation. ITtrader B.V. confirms the purchase prices to the Customer in writing after inspecting such products.

19.2. ITtrader B.V. buys up products from the Customer provided that they meet the pre-determined specifications. Products of a lower specification or products that are defective, incomplete or damaged will not be bought up. It will be entirely at ITtrader B.V.'s discretion (or that of any party acting on ITtrader B.V.'s instruction) to determine whether the products meet the specifications or if they are defective, damaged or incomplete.

19.3. The transportation, including packing, loading and unloading of the products offered for purchase, is for the Customer's account. The risk of destruction, loss, theft or deterioration of products does not pass to ITtrader B.V. until the goods in question have been accepted in writing by or on behalf of ITtrader B.V., unless the parties agree otherwise in writing.

19.4. If and in so far as costs are charged to ITtrader B.V. relating to waste processing or recycling, ITtrader B.V. may charge these costs, as well as the transportation costs in connection with the waste processing or recycling, to the Customer.


**CLAUSE 20 – SPECIAL VAT AND SANCTION COUNTRY RULES**

20.1. With every deal between ITtrader B.V. and the Customer, the customer will automatically declare to pay all taxes needed.

20.2. With every deal between ITtrader B.V. and the Customer, the customer will not delivery to a sanction country or know her customer will deliver to a sanction country.


**CLAUSE 21 - FINAL PROVISIONS**

21.1. Contracts between ITtrader B.V. and the Customer are governed by Dutch law.

21.2. All disputes between ITtrader B.V. and the Customer arising from or relating to the performance of a contract will be submitted to the competent court in Amsterdam.