



GENERAL TERMS AND CONDITIONS OF MIND MEDIA B.V.

Having its registered office at the Louis Eijssenweg 2B in (6049 CD) Herten, The Netherlands
Registered with the Chamber of Commerce under number 14132584

Article 1. Definitions

In these general terms and conditions, the terms below are defined as follows:

1. **Mind Media BV:** the private company with limited liability Mind Media BV located at the Louis Eijssenweg 2, (6049 CD) Herten registered at the Chamber of Commerce under number 14132584.
2. **Client:** the natural person or legal entity who instructs Mind Media BV to carry out work, to provide services or who purchases goods from Mind Media BV.
3. **Parties:** Mind Media BV and the Client jointly.
4. **In writing:** "In writing" for the purposes of these general terms and conditions shall also include communication by e-mail, fax or digital (for example via an online interface), provided that the identity and integrity of the content are duly established.
5. **Works:** all products manufactured by Mind Media BV in the fields of literature, science or art, whether or not produced on behalf of the Client.

Article 2. Applicability

1. The present general terms and conditions are applicable to any and all proposals, offers, agreements and deliveries of Mind Media BV, of whatever nature, unless this applicability is fully or partly expressly excluded in writing and/or unless expressly stipulated otherwise.
2. Any general terms and conditions of the Client, by any name whatsoever, are expressly rejected. Deviations from and additions to these terms and conditions shall only be applicable if and to the extent that they have expressly been accepted by Mind Media BV in writing.
3. Should Mind Media BV have permitted deviations from the present general terms and conditions for a short or a longer period of time, whether or not implicitly, then this shall not affect its right to demand direct and strict compliance with these terms and conditions as yet. The Client cannot derive any rights from the manner in which Mind Media BV applies the present terms and conditions.
4. The present terms and conditions are equally applicable to all agreements concluded with Mind Media BV for the implementation of which third parties must be relied on.
5. If the Client consists of multiple (legal) persons then they shall jointly and severally be obliged to comply with any and all obligations on account of the agreement concluded with Mind Media BV.
6. Should one or more provisions of the present terms and conditions or of any other agreement concluded with Mind Media BV be in breach of a mandatory statutory provision or any applicable legal provision then the relevant provision shall expire and shall be replaced by a new, legally permissible and comparable provision to be established by Mind Media BV.
7. Mind Media BV reserves the right to change the present terms and conditions at any time. The applicability of these general terms and conditions means that the applicability of all previous (versions of) general terms and conditions lapses.

Article 3. Proposals and offers

1. Any and all proposals and offers of Mind Media BV are revocable and are made subject to contract, unless indicated otherwise in writing.
2. The Client guarantees the correctness and completeness of dimensions, requirements and specifications of the performance supplied to Mind Media BV by or on behalf of the same and of other data on which Mind Media BV bases its proposal.
3. Errors or clerical errors in the proposal of Mind Media BV shall not bind Mind Media BV.
4. A complex quotation shall not oblige Mind Media BV to perform a part of the activities included in the proposal at a corresponding part of the price quoted.
5. The prices in the proposals and offers of Mind Media BV shall be exclusive of VAT and other official duties and exclusive of any costs that may be incurred within the context of the contract, including shipping and service costs, unless indicated otherwise.

Article 4. Conclusion of the agreement

1. Barring the provisions set forth below an agreement with Mind Media BV shall only be concluded after Mind Media BV has accepted respectively confirmed a contract in writing. The order confirmation is deemed to correctly and completely represent the agreement, unless the Client immediately objects to the same in writing.
2. The content of the delivery shall exclusively be determined by the description of the delivery and/or contract specified in the offer and order confirmation.
3. Additional arrangements agreed on or changes made later shall only have binding effect on Mind Media BV if they have been confirmed in writing by Mind Media BV within fourteen (14) days and the Client did not object to the same in writing within three (3) working days.
4. The invoice shall be deemed to correctly and completely represent the agreement for agreements, activities or transactions for which, due to their nature and scope, no written offer or order confirmation is sent, barring written objections submitted within seven (7) working days after the date of the invoice.
5. Each and every agreement shall be concluded by Mind Media BV on the suspensive condition that Mind Media BV shall be authorised to check the creditworthiness of the Client, the latter in connection with the financial compliance with the agreement. Should Mind Media BV be of the opinion, on reasonable grounds, that the Client is not (sufficiently) creditworthy then Mind Media BV shall be entitled to temporarily suspend its obligations. Should there be question of this kind of suspension then Mind Media BV shall forthwith inform the Client accordingly in writing and give the Client the opportunity to provide security.
6. Mind Media BV has the right, upon concluding the agreement or thereafter and before (further) performance, to demand that the client provides security that both the payment obligations and the other obligations will be complied with.

Article 5. Delivery and delivery times

1. Unless agreed otherwise, delivery takes place ex works at the place of business of Mind Media BV. The Client shall be obliged to take receipt of the purchased goods at the moment that the same are made available to it or are offered for receipt to the Client.
2. If the client refuses to take delivery or is negligent in providing information or instructions that are necessary for the delivery, the goods to be delivered will be stored for the risk and account of the client. The client will owe additional costs in such situations.
3. If Mind Media BV requires data from the client within the context of the performance of the agreement, the delivery time commences after the client has made all required data available to Mind Media BV.
4. If Mind Media BV has indicated a time for the delivery or the implementation of the agreement then this shall only be approximate. A specified delivery time can therefore never be qualified as a fatal deadline. In the event that a delivery date is exceeded, the Client should, therefore, give Mind Media BV written notice of default. Mind Media BV must then be granted a reasonable time limit to implement the agreement as yet.
5. Mind Media BV reserves the right to suspend delivery depending on the delivery situation in the market.
6. Mind Media BV reserves the right to engage third parties not employed by it in the performance of (parts of) the assignment for its account.
7. Drawings, technical descriptions, images, colours, sizes and indications of materials used shall be stated by Mind Media BV in good faith and as precise as possible. However, these informative data shall not be binding. Deviations occurring within the margins that are customary in the industry must be accepted and shall not give the Client a right to complain, replacement, compensation of damage or any other right, unless the agreement expressly provides for a smaller margin in respect of deviations.

Article 6. Invoicing and payment

1. Mind Media BV shall be authorized, prior to the implementation of the agreement, to desire an advance or full prepayment from the Client. Advances must be paid immediately and shall be deducted from the last invoice.
2. The payment of invoices must take place within fourteen (14) days after the date of the invoice, in a manner to be indicated by Mind Media BV in the currency of the invoice and without setoff, discount and/or suspension.
3. After the expiry of fourteen (14) days after the date of invoice the Client shall be in default by operation of law without any further notice of default being required.
4. As from the moment of default the Client shall be liable to pay interest on the due and payable amount equal to 1% per month, unless the statutory commercial interest is higher in which instance the statutory commercial interest shall apply. As from that moment any and all judicial and extrajudicial costs that Mind Media BV incurs in order to obtain satisfaction – both in and out of court – shall be at the expense of the Client. In that case the Client shall be liable to pay compensation equal to at least 15% of the outstanding amount with a minimum of € 150.00. Should the costs actually incurred and to be incurred by Mind Media BV exceed the aforementioned amount then these costs shall equally qualify for compensation.
5. In case of liquidation, insolvency, debt management or suspension of payment of the Client or a relevant application or petition the claims of Mind Media BV and the obligations of the Client vis-à-vis Mind Media BV shall immediately fall due.
6. Payments made by the Client are first applied to payable interest and costs and then to the oldest due and payable invoices, even if the Client specifies that the payment is related to a later invoice.
7. Mind Media BV shall be authorised to reject full repayment of the principal amount if the accrued interest and accruals as well as the costs are not also paid.

Article 7. Intellectual property rights and user rights

1. Works created by Mind Media BV may not be edited, processed or used in any other way than what for which the work was originally created, unless with the express permission of Mind Media BV.
2. All intellectual or industrial property rights arising from the execution of the contract are vested in Mind Media BV or its licensors. To the extent that such a right can only be obtained by deposit or registration, then only Mind Media BV is authorized to do so.
3. Client acquires only those user rights which are expressly granted by these conditions and the law. The Client is excluded from any other or more extensive right to reproduce or publish the Work. A right of use that belongs to Client is non-exclusive and non-transferable. Any right to change the Work exists only if expressly attributed to the Client in writing.
4. The Client obtains the aforementioned rights of use only when he has complied with all his obligations vis-à-vis Mind Media BV.
5. Mind Media BV reserves an unrestricted and perpetual license to use the Works and its components in its operations and to supply these rights to third parties, if any intellectual property right concerning the Work is transferred to the Client. Mind Media BV will only extradite these Works in parts to third parties.
6. Mind Media BV at all times reserves the right to use the knowledge that has increased due to the execution of the agreement for other clients, insofar as no confidential information from the Client will be disclosed to third parties.
7. The Client is not entitled to remove or alter any indications of copyright, trademarks, trade names or other intellectual property rights from the Works, including statements concerning the confidential nature and secrecy of the Works.
8. Mind Media BV has the right to take technical measures to protect the Works. The Client is not permitted to remove or avoid this protection.
9. Any use, reproduction or disclosure of the Works outside the agreed use, shall be regarded as a violation of the copyright of Mind Media BV. Per infringing act the Client owes Mind Media BV an immediate and payable in full penalty of ten (10) times the invoice amount Client owes regarding the provision of the Works, without prejudice to the right of Mind Media BV in damages and notwithstanding the right of Mind Media BV to take (additional) legal measures to (do) end the copyright infringement.
10. Unless the Work is not suitable for that purpose, Mind Media BV is at all a time entitled to (make) mention or delete her name at or with the Work and the Client is not allowed, unless otherwise agreed, to publish or reproduce the Work without mentioning the name of Mind Media BV without prior written permission.

Article 8. Reservation of title

1. Any and all goods delivered or to be delivered by Mind Media BV shall remain the property of Mind Media BV up to the moment that the Client has complied in full with all its payment obligations vis-à-vis Mind Media BV on account of any agreement concluded with Mind Media BV for the delivery of goods, the performance of activities or the supply of services, including claims in connection with a failure to comply with this kind of agreement.
2. A Client who acts as a reseller shall only be authorised to sell and deliver the goods that are subject to the reservation of title of Mind Media BV to the extent that this falls within the framework of the normal business operations of its company.
3. If the Client (also) forms a new good from the goods delivered by Mind Media BV then the Client shall only form this good for Mind Media BV and the Client shall hold the newly formed good for Mind Media BV until the Client has paid any and all amounts payable on account of the agreement; up to the moment of satisfaction in full by the Client Mind Media BV shall in that case be entitled to any and all ownership rights with regard to the newly formed good.
4. Rights are granted or transferred to the Client under the condition that the Client promptly and in full pays the agreed fees.
5. The Client shall not be allowed to establish limited rights on goods that are subject to the reservation of title of Mind Media BV. If third parties (wish to) establish (limited) rights on the goods subject to the reservation of title then the Client shall forthwith inform Mind Media BV accordingly.
6. Mind Media BV hereby already reserves an undisclosed pledge on delivered goods of which the title has transferred to the Client due to payment and which are still in possession of Mind Media BV, by way of additional security for claims, other than within the meaning of article 3:92 paragraph 2 of the Dutch Civil Code, which Mind Media BV may still have vis-à-vis the Client on any account whatsoever.
7. The Client is obliged to keep (have kept) the delivered goods subject to the reservation of title separate from other goods, with the required diligence and recognisable as property of Mind Media BV.
8. The Client is obliged to insure the goods against fire, explosion and water damage as also against theft during the period of the reservation of title and to on demand provide Mind Media BV insight into the policies of said insurances. Any and all claims of the Client vis-à-vis insurers of the goods on account of the aforementioned insurances shall, if so desired by Mind Media BV, be pledged to Mind Media BV in an undisclosed manner by way of additional security for the claims of Mind Media BV vis-à-vis the Client.

Article 9. Suspension and dissolution

1. If the Client fails to comply with its obligations under the agreement then Mind Media BV shall, without prejudice to the relevant provisions set forth in the agreement, be entitled to dissolve the agreement out of court by means of a registered letter. The dissolution shall only take place after the Client has been given written notice of default and has been offered a reasonable time limit to remedy the shortcoming.
2. Mind Media BV shall, without any demand or notice of default being required, moreover be authorised to dissolve the agreement, either in whole or in part, out of court by means of a registered letter and with immediate effect if:
 - a. the Client applies for (provisional) suspension of payment or if the Client is granted (provisional) suspension of payment;
 - b. the Client files a winding-up petition or is declared insolvent;
 - c. the company of the Client is liquidated;
 - d. an important part of the company of the Client is taken over;
 - e. the Client discontinues its current company;
 - f. an attachment is, through no fault of Mind Media BV, imposed on a considerable part of the assets of the Client or if the Client should otherwise no longer be deemed able to comply with the obligations on account of the agreement.
3. If the Client has already received performances for the implementation of the agreement at the time of dissolution then the Client can only partly dissolve the agreement and such exclusively for the part that has not been implemented yet by or on behalf of Mind Media BV.
4. Amounts that have been invoiced by Mind Media BV to the Client prior to the dissolution in connection with that which Mind Media BV has already performed for the implementation of the agreement shall remain payable by the Client to Mind Media BV and shall immediately fall due at the time of dissolution.

5. If the Client, after having been given notice of default in connection therewith, fails to comply, fails to comply in full or fails to comply in time with any obligation on account of the agreement, Mind Media BV shall be entitled to suspend its obligations vis-à-vis the Client without being liable to pay any compensation to the Client in that respect. Mind Media BV shall also be entitled to this in the circumstances as intended in paragraph 2 of this article.

Article 10. Warranties

1. Unless otherwise agreed in writing, Mind Media BV will guaranty a one (1) year limited warranty on sensors and accessories (including all components that can be connected to the encoder) and two (2) years on the encoders itself. Excluded are items that are subject to wear, if this is customary, or items intended for single (or limited) use, such as snap connections and electrodes. Warranty on these items is limited to manufacturing defects.
2. If the Client, within three (3) months after delivery of the faulty item, invokes the guarantee clause ex paragraph 1 of this article, Mind Media BV will charge no cost for repair or delivery of the faulty item to Mind Media BV. After the expiry of the aforementioned term, the costs of shipping the defective item shall be borne by the Client. All shipping charges for items not covered under warranty, shall be borne by the Client.
3. Warranty on repaired (or replaced) items will be limited to three (3) months after receipt of the repaired or replaced item by the Client, without prejudice to the original warranty ex paragraph 1 of this article. This (extended) warranty applies only to the repaired or replaced item.
4. Any warranty is void if a defect is attributable to careless or improper use of the item.

Article 11. Complaints

1. Mind Media BV reserves the right to refuse items that are not returned in accordance with the applicable return procedure. Before a Client returns an item to Mind Media BV, the Client must contact the support department of Mind Media BV.
2. Provided that the item is being returned under warranty, Mind Media BV will repair or (temporarily) replace the faulty item within five (5) working days, provided that the defective item was returned under the applicable return procedure.
3. Notwithstanding paragraph 2 of this article, if a (complaint regarding a) defective encoder is reported and returned to Mind Media BV within six (6) months after delivery of the encoder, Mind Media BV endeavors to repair or (temporarily) replace the returned, defective encoder within twenty (20) working days.
4. The assessment of whether a faulty item is eligible for repair lies entirely with Mind Media BV. Mind Media BV has the right to replace the item if repair turns out to not be (or no longer be) possible.
5. Items that have been repaired or replaced by Mind Media BV, will be returned to the address of the company which purchased the item, unless otherwise expressly agreed.
6. Additional shipping costs for shipment to an address other than specified in paragraph 5 of this Article, will be borne by the Client, depending on the destination, the item and the method of shipment, unless otherwise expressly agreed.
7. Items that are returned to Mind Media BV, but which are not eligible for repair or replacement, will only be returned to the Client on Client's request and at the Client's expense.

Article 12. Repair out of warranty

1. When the Client returns a faulty item, out of warranty, to Mind Media BV for repair, the Client agrees to take on the cost of assessing the defective item (research costs).
2. When the Client returns a faulty item, out of warranty, to Mind Media BV for repair, the Client agrees to take on the costs of repair with a ceiling of the amount communicated to the Client concerning repair of the faulty item.
3. If the (expected) cost of repair exceeds the maximum amount communicated to the Client, Mind Media BV will send the Client a price quote and will only proceed to repair the item after Client's consent.

Article 13. Replacement

Mind Media BV is entitles to replace a faulty item with a full functional (revised) copy of equal or better quality than the original type and quality, without charging the Client for more than the maximum costs of repair ex Article 12 of these conditions.

Article 14. Liability

1. If Mind Media BV is liable for damage, said liability shall be limited to the actual compensation paid by the insurer of Mind Media BV in that specific case. If the insurer does not pay compensation, the liability of Mind Media BV will be limited to compensation of direct damages and at most to the invoice amount of the agreement, or that part of the agreement to which the liability relates. Direct damage is exclusively understood as:
 - a. the reasonable costs for the establishment of the cause and the scope of the damage, to the extent that the establishment is related to damage within the meaning of these general terms and conditions;
 - b. the possible reasonable costs incurred in order to have the defective performance of Mind Media BV comply with the agreement, unless they cannot be attributed to Mind Media BV;
 - c. reasonable costs incurred in order to prevent or limit damage, to the extent that the Client demonstrates that these costs resulted in limitation of the direct damage within the meaning of these general terms and conditions.
2. Mind Media BV is never liable for indirect losses, including consequential losses, lost profit, missed savings, losses resulting from business interruptions and losses resulting from a defective product delivered by Mind Media BV.
3. The client indemnifies Mind Media BV against all third-party claims in connection with product liability as a result of a defect in a product delivered by the client to a third party and that consisted (in part) of products delivered and/or materials processed by the Mind Media BV.
4. The limitations of liability for direct damage included in these general terms and conditions shall not be applicable if the damage can be blamed on intent or gross negligence on the part of Mind Media BV.

Article 15. Lien

Mind Media BV has the right to keep the goods, products, property rights, data, documents, data files received or generated within the context of the agreement and the (interim) results of the services of Mind Media BV, despite an existing obligation to surrender them, until the client has paid all amounts owed to Mind Media BV.

Article 16. Force Majeur

1. Unforeseen circumstances of any kind, as well as mobilisation, the threat of war, government measures, work strikes, factory occupations, transport strikes, fire, floods, a failure to comply or a failure to comply on time or properly on the part of third parties on which Mind Media BV depends for the performance of the agreement, which means that the agreement cannot be performed or, according to objective standards, cannot be performed without disproportionately onerous efforts and/or costs, will apply as force majeure for Mind Media BV. The same applies if Mind Media BV is unexpectedly confronted with illness or accidents involving its personnel and/or third parties whose replacement cannot be arranged at short notice within reason.
2. The client will enable Mind Media BV to render the agreed performance in accordance with the agreement within a reasonable term as yet if one of the circumstances referred to in the previous paragraph arises.
3. Any liability on the part of Mind Media BV of any kind is excluded in the event of force majeure. The parties will not exercise their right to dissolve the agreement in the event of force majeure until two months have passed since the start of the situation of force majeure arose, unless the parties agree a longer term for rendering the agreed performance as yet.
4. If Mind Media BV has already complied with part of its obligations when the situation of force majeure arises, or is only able to comply with part of its obligations, Mind Media BV will have the right to separately invoice that part that has already been delivered or that part that is deliverable and the client will be obliged to settle this invoice as if it were a separate agreement. However, this does not apply if the part that has been delivered or, as the case may be, that can be delivered does not have independent value.

Article 17. Applicable law and choice of forum

1. All agreements concluded and to be concluded by Mind Media BV shall be governed by Dutch law.
2. All disputes, including those that are only considered as such by one of the parties, which arise pursuant to an agreement to which the present terms and conditions are fully or partly applicable or pursuant to other agreements that arise from such an agreement, shall be settled by the competent court in the district where Mind Media BV has its registered office, unless a mandatory statutory provision opposes such. This shall not alter the fact that Mind Media BV may agree with the Client to have the dispute settled by means of independent arbitration.