

INDG Terms and Conditions

Definitions

Capitalized words and phrases have the meanings given to them in this article 1 "Definitions".

"Acceptance" means the Customer agrees to the completed delivery of the Services as described in article 5.

"Affiliate" means any entity that directly or indirectly is controlled by INDG. "Control," for purposes of this definition, means ownership or control over the affiliate.

"Agreement" means the GTC together with any Statement of Work. When Customer signs an Agreement the GTC shall automatically apply.

"Change Request" means the Parties written agreement to change the SoW's scope of Services and the estimated impact on timelines, resources and/or costs.

"Confidential Information" means, all customer lists, potential customer lists, marketing and agreed prices, financial information, business plans, and technical information, whether written or verbal, and all code, inventions, algorithms, knowhow and ideas. Information that is publicly accessible or that becomes publicly accessible without being attributable to the receiving party, is not considered Confidential Information.

"Customer" means the natural person or legal entity identified on a Statement of Work as the counterparty of INDG.

"Customer Data" means Customer's information or other data processed, stored or transmitted by, in or through a Deliverable, including without limitation any Personal Data. Customer Data does not include Third Party Software, Software, or any Documentation.

"Data Processing Addendum" or "DPA" means the agreement governing the relationship between the parties in relation to the processing of data in compliance with any applicable data processing laws and incorporated into and made part of the GTC (available on request).

"Defect" means any material non-conformance with the Documentation or the Deliverable.

"Deliverable" means a tangible or intangible good or service (e.g.: a 3D Model image, render, animation, video, 360 sequence or application, guides and documentation) provided by INDG to Customer and identified in the applicable Statement of Work as a Deliverable.

"Documentation" means the written technical specifications regarding the applicable Deliverable.

"Effective Date" means the date in the Agreement on which the Agreement becomes effective. If no such date is indicated, it means the date on which the Agreement is signed by the last of the two parties.

"INDG" means INDG Digitale Communicatie BV, the company registered under number 02065160 with the Dutch Chamber of Commerce, that provides Services as specified on the applicable Statement of Work. INDG includes any subcontractors.

"GTC" means these General Terms and Conditions.

"Intellectual Property" means, including but not limited to, software (in source and object code), websites, databases, analyses, scripts, designs, documentation, reports, offers, as well as any preparatory materials in that regard.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, without limitation, viruses, worms, time bombs and Trojan horses.

"Personal Data" means the definition in article 4(1) of the General Data Protection Regulation ("GDPR"; <https://gdpr-info.eu/art-4-gdpr/>).

"Term" means the Initial Term together with any applicable Extension Term.

"Services" means the actions (e.g. creating and providing Deliverables), that are ordered by Customer and that INDG will perform for the Customer, as specified in the applicable SoW.

"Software" means the software developed by INDG inclusive any accompanying Documentation.

"Statement of Work" or "SoW" means the mutually agreed deal related documentation. Such documentation can describe the Services, the Deliverables, the applicable fees and other matters the parties may agree upon. Any timelines, resources or costs set forth in such documentation are INDG's good faith estimates and do not constitute a warranty of price or completion of Services within a specified time.

"Third Party Software" means software developed other than by INDG that interoperates with the Services.

"User" means an individual who is authorized to use the Software and to whom Customer (or INDG at Customer request) has supplied user identification and password information, required to use or access the Software.

Article 1 Process and Scope

1. Each party acts exclusively in its own name and on its own behalf with respect to the rights and obligations pursuant to these GTC.
2. All services performed by INDG for the Customer, shall be subject to the GTC regardless of whether the services are performed pursuant to a SoW, order form, purchase order, or other oral or written documentation.
3. Customer may order Services and/or Deliverables from Supplier under the GTC per individual SoW.
4. Any SoW shall be separately numbered and shall be subject to and governed by the GTC. No Customer terms shall apply.
5. INDG (or its subcontractors) shall perform the Services and/or deliver the Deliverables that are specified in the applicable SoW.
6. The scope of Services and/or Deliverables in a SoW may be changed with a Change Request.
7. Customer's co-operation is essential to INDG's performance of the Services. Such co-operation includes the timely provision of assistance, a continuous exchange of information, full replies within the agreed time periods to inquiries made by INDG, and sharing any new information that is likely to affect the development of the applicable project and/or SoW.

Article 2 Payment, Fees and Prices

1. Customer shall pay INDG for the Services as specified in the applicable SoW. Out-of-pocket expenses, such as any applicable per diem, travel, meals, lodging and other expenses shall be specified in the applicable SoW.
2. Customer shall provide complete and accurate contact information and invoicing address to INDG and shall notify INDG of any changes to such information.
3. Except as otherwise specified in a SoW, payment obligations are non-cancellable, and fees paid are non-refundable.
4. INDG shall have the right to invoice i) in advance ii) during the project and iii) on delivery. Pre-payments are due immediately. Other payments are due within 30 days after the invoice date, unless agreed otherwise in the SoW. Non-payment will constitute a material breach of the GTC.

5. INDG may suspend any Services under the applicable SoW for payments that are more than thirty (30) days overdue until the amounts due are paid in full. INDG's suspension or continuation of the Services will not limit any of INDG's other available remedies.
6. Customer may not withhold or set off any amounts due under this Agreement. Any late payment will be subject to INDG's collection costs and will bear interest until paid at the minimum statutory rate for late payments in commercial transactions under Dutch law on all sums unpaid at the due date, plus reasonable attorneys' fees and costs incurred in collecting unpaid amounts.
7. Rates defined in the SoW are valid and applicable during the term of the SoW.
8. All prices and fees are valid for 3 months after the Effective Date of the applicable SoW.
9. INDG's prices and fees are subject to annual indexation according to the HICP EU20 rates published by Eurostat.
10. All fees are exclusive of VAT and other taxes or duties (except for taxes levied on INDG's net income), which shall be added to INDG's invoices at the applicable rate.

Article 3 Warranty

1. INDG warrants that:
 - a) all its services shall be performed in a good and workmanlike manner;
 - b) each Deliverable shall materially conform to its specifications as described in the applicable SoW.
2. If a Deliverable does not conform to its specifications in the applicable SoW, and the Customer has notified INDG within ten (10) business days from the delivery of this Deliverable, INDG shall use commercially reasonable efforts to make the Deliverable conform the specifications. If Customer is not content with the esthetic part of the Deliverable, INDG shall provide reasonable efforts, on the basis of INDG's standard hourly rates, to enhance the Deliverable until Customer is satisfied.
3. If INDG did not correct the non-conformity within ninety (90) days from the date of such notification, the Customer may terminate the applicable Services, (which includes termination of the right to use the non-conforming Deliverable), within ninety (90) days.
4. INDG does not provide any warranty in case the Deliverable was modified other than by INDG, or if the Deliverable is used in a manner that was not specified by INDG in the Agreement and/or applicable SoW.
5. This warranty represents INDG's sole liability and the Customer's sole remedy for breach of this warranty. This warranty is in lieu of and excludes all other warranties, representations or conditions for Services, whether express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement.

Article 4 Intellectual Property

1. All Intellectual Property developed or provided by INDG, shall be held solely by INDG, unless specifically agreed otherwise in the applicable SoW. A right of use to which Customer is entitled shall be non-exclusive and non-transferable to third parties, unless specifically agreed otherwise in the applicable SoW.
2. Any Customer Data provided by Customer to INDG shall always remain Customer's sole property. Customer grants to INDG a non-exclusive, fully paid-up license to use the Customer Data in any form or medium as needed for the performance of the Services pursuant to the GTC.
3. Any transfer of Intellectual Property shall explicitly be agreed in writing. If the parties agree to transfer any Intellectual Property to the Customer, then this shall not affect INDG's right to apply and to use the Intellectual Property, either for itself or for third parties, without any limitation on other purposes.
4. The Customer represents and warrants that it owns and/ or has all necessary rights to use, and have INDG use and incorporate any materials provided to INDG.
5. After INDG's prior written consent, the Customer shall be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other Intellectual Property.

Article 5 Indemnification

1. INDG will defend Customer from and against any claim made by a third party against Customer to the extent the claim is based on an allegation that INDG's Intellectual Property, infringes upon, or misappropriates a copyright in any country or a patent of the United States, Japan, or a member state of the European Patent Organization, and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by INDG arising out of such claim, provided (i) Customer provides INDG with prompt written notice of the claim, and (ii) Customer gives INDG sole control of the defense of the claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the claim.
2. Customer will defend INDG against any claim, demand, suit or proceeding made or brought against INDG by a third party alleging that Customer's Data, or Customer's use of any Service or Deliverable in breach of a Statement of Work or this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against INDG"), and will indemnify INDG from any damages, reasonable legal and attorneys' fees and as a result of a Claim Against INDG, provided INDG i) gives Customer notice of the Claim Against INDG, ii) gives Customer sole control of the defense and settlement of the Claim Against INDG (except that Customer may not settle any Claim Against INDG unless it unconditionally releases INDG of all liability), and iii) provides Customer with all assistance reasonably required.

Article 6 Liability

1. Notwithstanding anything to the contrary in these GTC, INDG's total liability for direct damages resulting from the performance or non-performance of its obligations under the GTC, or any non-contractual obligation, indemnity or otherwise, is limited to the value of all fees in the 12 months (paid or payable) prior to the event causing the damage giving rise to the claim.
2. Notwithstanding anything to the contrary in the GTC, INDG is not liable under the GTC for any indirect, incidental, consequential or punitive damages, including claims for loss of profit, loss of revenues, interruption of operations and/or operational losses, loss of data, increase in costs and/or loss of expected savings, overhead costs, loss of business, or any other such indirect losses of any nature whatsoever.
3. The Parties shall not exclude liability for any damage arising out of gross negligence or intentional misconduct.
4. INDG is not liable for the cost of procurement of substitute software or services.

Article 7 Term & Termination

1. The GTC shall be applicable on the Effective Date of the Agreement and the GTC shall remain in force until the Parties have completed their obligations under the Agreement, unless terminated earlier as stipulated in this article 7.
2. The Agreement can only be terminated if there are no more active SoWs.
3. Customer shall pay INDG for all Services performed until the date of termination, and for all costs incurred by INDG in connection with those Services.
4. Either party may terminate the Agreement if the other party breaches any material provision of the Agreement and fails, within ninety (90) days after receipt of notice of such breach, to either correct the breach or commence corrective action that is reasonably acceptable to the aggrieved party.
5. Either party may terminate the Agreement with immediate effect and without a notice of default, if the other party is granted a provisional or non-provisional suspension of payments, if a petition for bankruptcy is filed with regard to the other Party or if the other Party's business is discontinued or terminated for other reasons besides a business reconstruction or merger. INDG shall never be obliged, on account of this termination, to refund any fees or funds already received or to pay any damages.
6. Either party may terminate the Agreement six (6) months following the date of the completion of Services under all Statements of Work.
7. Customer shall pay INDG for all Services performed until the effective date of termination and for all costs incurred by INDG concerning the terminated Services unless the Statement of Work specifies different or additional payment conditions.
8. After termination, Customer will promptly destroy or return to INDG all copies of INDG's Confidential Information, excluding any licensed Deliverables.
9. Upon termination of this Agreement, INDG will actively provide Customer with the choice to i) export or download – in standard database back-up format – Customer's Data, or ii) delete or destroy all copies of Customer's Data, in INDG's possession or control. Customer's failure to provide INDG with its choice in writing within 30 days following a request thereto, INDG shall have no obligation to maintain or provide Customer's Data and may delete or destroy all copies of Customer's Data from INDG's systems or otherwise in INDG's possession or control.
10. Any part of the GTC that is not terminated shall continue to be active and in any case articles 2, 4, 5, 6, 7, 8, 9 and 11 shall survive the termination of the GTC.

Article 8 Confidentiality

The Parties are obliged to keep the Confidential Information and the existence and content of the GTC in strict confidence. The Parties shall only use the Confidential Information to implement the obligations in the GTC. Each Party shall not disclose any relevant information to any third party, except in the following circumstances: (a) such information is or will be in the public domain (provided that this is not the result of a public disclosure by the receiving party); (b) information disclosed as required by applicable laws, rules or regulations; or (c) information required to be disclosed by any Party to a third party (e.g. legal advisor, tax advisor, accountant). The Parties shall ensure that employees (including employees of affiliates) and third parties, are subject to and comply with similar confidentiality obligations that are no less stringent than the obligations that apply to the Parties in accordance with the GTC. This confidentiality obligation survives the termination of the GTC for a period of five years.

Article 9 Data

1. During the Term, INDG might need Customer Data to perform the Services. On INDG's request, Customer delivers the Customer Data necessary to provide the Services to INDG.
2. Customer shall always transfer any Customer Data in a secure and/or encrypted manner. Where necessary according to applicable law, personal data shall be transferred fully anonymized.
3. INDG undertakes to ensure the security of information processed and of its information system. In this context INDG will adopt in particular all necessary measures to ensure data integrity by protecting them against accidental or unlawful destruction or accidental loss, or alteration, data confidentiality from disclosure or access by unauthorized third parties, and control of the data communication to only those who need to know.
4. Each Party is responsible for complying with any obligations applying to it under applicable data privacy laws and regulations.
5. Unless agreed otherwise in writing, both Parties may process personal data received from the other party in connection with the performance of the Services provided under the Agreement, thereby independently determining the purposes and means of the processing and acting as data controller (which means the entity which alone or jointly with others determines the purposes and means of the processing).
6. INDG reserves the right to enter into a data processing agreement, if deemed necessary for the purposes of compliance with the applicable data protection law.

Article 10 Insurance

INDG, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, adequate insurance coverage with one or more reputable insurance companies, with sufficient insurance minimum limits, as further specified in INDG's insurance certificate(s). INDG will provide Customer, at its request, with the corresponding certificate(s) from the insurance companies concerned.

Article 11 Governing law & Dispute resolution

The GTC is governed by the laws of The Netherlands and the parties hereto hereby submit to the exclusive jurisdiction of the competent court of Amsterdam, the Netherlands. INDG reserves the right to bring the dispute to another competent court. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not be applicable.

Article 12 Miscellaneous

1. The legal relationship between the parties is that of independent contractors. The GTC does not constitute a partnership, a corporation, a joint venture or an agency relationship between the Parties.
2. If any provision of the GTC is found to be illegal, void or unenforceable by a court of competent jurisdiction or mutually agreed arbitrator, then the other provisions shall remain in full force and effect, and the affected provision will be modified so as to render it enforceable and effective to the maximum extent possible.
3. The Parties acknowledge that the use of an electronic signature (e. g. DocuSign, Adobe Sign), by the authorized representatives of the Parties, is a legally sufficient and binding method to be applied to the GTC.
4. Customer agrees to collaborate with INDG on topics such as a joint press release or a case study and Customer agrees to the use of its name and logo by INDG with the sole purpose to display these in commercial media such as INDG' website or brochures.
5. For twelve (12) months after the completion date of any Services, Customer will not hire, solicit, or attempt to solicit the services of any employee or contractor of INDG without the prior written consent of INDG. This does not apply to hiring in response to general job advertisements unrelated to the Agreement.
6. INDG may assign, delegate, subcontract or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without Customer's consent.
7. These terms are compiled in the English language and INDG may provide these, for informational purposes only, in a language other than English. The English version shall be the only binding and enforceable version of these terms.