

General Terms and Conditions of Toast ICT B.V.

Article 1 - Applicability of the General Terms and Conditions

1. These General Terms and Conditions form part of every legal relationship between Toast ICT B.V. and its Clients. They form an integral whole with the Toast ICT B.V. offers, quotations and agreements entered into.
2. If the Client declares its own terms and conditions applicable to the agreement(s) it has entered into with Toast ICT B.V., these terms and conditions are not binding insofar as they deviate from or conflict with the General Terms and Conditions of Toast ICT B.V.
3. It is only possible to deviate from these General Terms and Conditions by written agreement.
4. Agreements with Toast ICT B.V. only come into effect after they have been agreed in writing by both parties.
5. The nullity of any provision of these General Terms and Conditions does not affect the validity of the other provisions of these General Terms and Conditions.

Article 2 - Price and Payment

1. Prices quoted are, unless explicitly stated otherwise, exclusive of VAT. and other levies imposed by or on behalf of the government. Changes in raw materials, materials and labour may be changed by Toast ICT B.V. be charged to the Client. Any installation costs, transport costs and other costs to be incurred in connection with the delivery are not included in the price, unless explicitly stated. Hourly rates are indexed once per year in accordance with the CPI index.
2. Invoicing will be done by or on behalf of Toast ICT B.V. and take place as soon as the agreement was made and/or every 30 days or in case the Client is in default with any payment.
3. Payments must be made within thirty (30) days of the invoice date on the invoice issued by Toast ICT B.V. indicated manner. If the amount to be paid has not been received by Toast ICT B.V. within thirty (30) days of the invoice date. Toast ICT B.V. is entitled to charge statutory commercial trade interest, whereby part of a month is counted as a full month.
4. If Client fails to meet the payment terms, at the written request of Toast ICT B.V., a late payment fee of 3% of the outstanding amount shall be due.
5. The Client is not permitted to set off the amount owed against any amount that Toast ICT B.V. may be owed to the Client. The Client is also not entitled to suspend a payment on account of a payment made with Toast ICT B.V. agreement entered into in connection with any other agreement with Toast ICT B.V. agreement entered into. In case of art. 6 (Force Majeure) applies, the Client is not entitled to suspend any payment.
6. In case of an early termination of the agreement by the Client, an early termination fee is owed by the Client which amounts to 50% of the remaining amount which would have been charged if the agreement had not been terminated.

Article 3 - Execution of Agreements

1. Delivery times will be targeting times. If the agreed delivery terms are exceeded, Toast ICT B.V. will consult with the Client.
2. If an agreed delivery period is exceeded, Toast ICT B.V. never is obliged to pay any compensation to the Client.
3. The risks incurred by Toast ICT B.V. delivered goods are transferred at the time of delivery to the Client, which is marked by an end of work statement.
4. Toast ICT B.V. is entitled to suspend the further execution of the agreement entered into with the Client, if the Client agrees vis-à-vis Toast ICT B.V. has not fulfilled all its obligations, for whatever reason.
5. Toast ICT B.V. will at all times be entitled to use third parties in the execution of agreements.

Article 4 - Retention of Title

1. Until Toast ICT B.V. amount invoiced entirely by Toast ICT B.V. will have been received and/or the Client has delivered the otherwise agreed performance: goods delivered to the Client remain the property of Toast ICT B.V.; and any accessory rights to be granted or to be transferred with regard to the delivered goods remain explicitly with Toast ICT B.V. reserved.
2. The Client is therefore expressly prohibited from establishing any rights on the goods before payment of the invoices have been made in full.

Article 5 - Warranty

1. Toast ICT B.V. performs its services to the best of its ability.
2. This warranty expressly excludes damage or defects caused by or as a result of:
 - natural wear and tear;
 - theft of parts, disruptions, excessive dust, neglect by the Client, malfunctioning power or network facilities, exposure to chemicals,
 - extreme conditions in the room in which the equipment is placed (such as excessive humidity) or improper use by the Client;
 - insufficient maintenance;
 - repairs and/or modifications to the equipment, which are not carried out by Toast ICT B.V. have been performed or pre-approved; and/or
 - (directly or indirectly) a so-called "computer virus".
3. Software and malfunctions as a result of software or illegal software copies are excluded from the warranty.

Article 6 - Force Majeure

1. In the event of circumstances that impede the fulfilment of the obligations of Toast ICT B.V. (force majeure), as can be expected in the normal settlement of the transaction, to such an extent that it cannot be assumed that Toast ICT B.V. would also have accepted the obligation in the presence of these circumstances, the obligations of Toast ICT B.V. are suspended. If such a situation has lasted longer than ninety (90) days, the parties have the right to terminate the agreement by giving written notice. If performance has already been performed pursuant to the relevant agreement, the parties will settle the invoice amount on a pro rata basis.

Article 7 - Liability

1. If the Client considers that Toast ICT B.V. liable for compensation of damage, it is obliged to enter into consultation with Toast ICT B.V. before claiming Toast ICT B.V. is liable.

2. Toast ICT B.V. is not liable for damage resulting from incorrect, malfunctioning or incomplete data or information given or made available by the Client to Toast ICT B.V. This includes software bugs and or other issues regarding the availability of software which is required and / or used by Toast ICT B.V. to fulfil its services.
3. Toast ICT B.V. is not liable for consequential damage, for example in the form of loss of turnover or reduced goodwill in the business or profession of the Client.
4. Toast ICT B.V. is not liable for any data loss should this occur in the performance of its services, unless in case of gross negligence.
5. Toast ICT B.V. has the right at all times to undo damage suffered by the Client as far as possible.
6. The degree of liability of Toast ICT B.V. depends on the extent to which the Client provides Toast ICT B.V. in a timely manner. has given (additional) instructions to arrive at a correct execution of the agreement.
7. The liability of Toast ICT B.V. is limited to the amount that it has charged the Client as a fee for the work to which the damage-causing event relates, retained insofar as the damage is the result of intent or gross negligence on the part of Toast ICT B.V..
8. If the Client decides to intervene judicially in order to establish liability on the part of Toast ICT B.V., any compensation owed by Toast ICT B.V. will never amount to more than the amount paid by the liability insurer of Toast ICT B.V. maximum amount to be paid per claim.
9. The Client indemnifies Toast ICT B.V. for all claims from third parties related to the activities of Toast ICT B.V. except insofar as the liability is the result of intent or gross negligence on the part of Toast ICT B.V..

Article 8 – Confidentiality

1. Toast ICT B.V. shall observe total confidentiality concerning any communication, information, trade secrets, data of the Client or any other data in the context of the services performed for the Client by Toast ICT B.V. ("Confidential Information").
2. Toast ICT B.V. shall report any breach of this duty of confidentiality as soon as possible after Toast ICT B.V. is aware of such breach and shall take such actions as reasonably requested by the client to prevent and/or cure such breach(es). Furthermore, parties shall endeavour to observe secrecy with regard to the business affairs of the other party. They shall not disclose any aspects of their relationship to third parties, unless agreed otherwise.
3. The obligations set forth herein will not apply to any information that is or becomes generally available to the public, which is not the result of a breach of these General Terms and Conditions. A disclosure of Confidential Information required by law will not be considered to be a breach of these General Terms and Conditions, provided that the other party receives prompt written notice thereof.

Article 9 - Intellectual Property

1. Toast ICT B.V. acknowledges and agrees that all (future) right, title, and interest (including all copyrights, patents, trademarks, other intellectual property rights of the Client related to the software, source codes, products, programs, knowhow, concepts, techniques, inventions and designs) in the software and information in any medium, are deemed the sole and exclusive property of the Client. Toast ICT B.V. does not acquire any proprietary interest in the software or information of Client, and nothing in these General Terms and Conditions and/or the agreement shall constitute an assignment of any such rights.
2. Toast ICT B.V. may not copy, modify, reverse engineer, decompile, disassemble, disclose or use the software and/or the information of the Client in any way that infringes the (intellectual property) rights or proprietary interests of the Client or any third party.
3. Where necessary, the intellectual property rights created under this agreement will be transferred by Toast ICT B.V. to the Client in advance as from the date the intellectual property rights have been created or shall be deemed to have been created and in any event at first request of the Client. Toast ICT B.V. furthermore waives any possible moral rights to the intellectual property rights created under this agreement.

Article 10 - Dissolution

1. If the Client is granted a moratorium or goes bankrupt, Toast ICT B.V. has the right to immediately dissolve the agreement by written notice, or (at its option) to suspend the fulfilment of its obligations. All payments owed by the Client until the termination will then become immediately due and payable.

Article 11 - Applicable Law and Competent Court

1. On all information provided by Toast ICT B.V. agreements entered into with the Client are subject to Dutch law. All disputes, including those that are only regarded as such by one of the parties, which may arise between the parties as a result of negotiations, offers, the manner in which agreements are concluded, the content and the instances are exclusively settled by the competent court in the actual and legal place of business of Toast ICT B.V., at the discretion of Toast ICT B.V..