

GENERAL TERMS AND CONDITIONS OF SPOTLER

These general terms and conditions apply to all assignments accepted or carried out by Spotler Netherlands B.V. (Private limited company) or one or more of its affiliated companies as mentioned in the Definitions (hereinafter collectively and individually also referred to as '**Spotler**'), including any follow-up, modified or supplementary assignments. These general terms and conditions are an integral part of all agreements entered into by Spotler. The applicability of purchase or other general terms and conditions of Spotler's customer is expressly rejected, unless explicitly accepted by Spotler.

The terms beginning with a capital letter in these general terms and conditions and the Agreement have the meaning as defined in Chapter V (Definitions).

Spotler provides, based on software-as-a-service, a range of marketing technologies ('**the Platform**') that solve a broad spectrum of challenges in B2B, e-commerce, and customer service.

I GENERAL PROVISIONS

1. Quotation and Agreement

- 1.1. All negotiations, price quotations and offers regarding the Assignment are revocable without obligation. Requesting a quote or other invitation to make an offer does not bind Spotler.
- 1.2. Information stated in images, promotional materials, websites and the suchlike is not binding for Spotler unless expressly stated otherwise or specified in the offer for the Customer. All prices stated on the Website and in quotations, offers, and other materials are subject to typographical and calculation errors, so Spotler is not bound by (price) information containing typographical and calculation errors.
- 1.3. The General Terms and Conditions are part of the Agreement and apply to all negotiations, price quotations, offers, and other agreements related to the Assignment and/or the Platform, unless parties have expressly agreed otherwise. Spotler is entitled to compensation for legal costs if the Customer engages in extensive negotiations regarding the General Terms and Conditions and/or a separate Data Processing Agreement.
- 1.4. Spotler is entitled to modify the General Terms and Conditions. Spotler will inform the Customer at least two months before the implementation of the modifications about the proposed changes and their nature. If the Customer disagrees with the proposed changes, the Customer may object to the modifications. If the Customer does not explicitly object to the announced changes within fifteen Working Days before their implementation, they are deemed to have consented.
- 1.5. The Customer shall provide all reasonably requested and unsolicited information to Spotler for the Agreement.
- 1.6. An agreement is only concluded after either (i) the Customer has accepted a written offer from Spotler in writing, (ii) the parties have signed a written contract, or (iii) Spotler carries out a written assignment from the Customer, or (iv) the Customer has completed the registration process on the relevant Website.
- 1.7. Additional assignments or orders must always be placed with Spotler in writing. In all cases, Spotler is only bound after it has confirmed an assignment, order or agreement in writing (including by email). Verbal commitments only bind Spotler after it has confirmed these in writing.

2. Information Requirements

- 2.1. To determine the intended use of the Platform, the Customer has sufficiently informed Spotler of:
 - a. the objectives and requirements based on which the Customer wishes to enter into the Agreement;
 - b. the Customer's organisation, insofar as relevant for the Agreement.
- 2.2. The Customer has provided Spotler with sufficient and accurate information concerning clause 2.1. The Customer shall provide Spotler with additional information upon request, to the extent deemed relevant for the performance of the Agreement. In case of any ambiguity, Spotler will make inquiries with the Customer.
- 2.3. Under the mutual information obligations, the Customer bears the risk of selecting the Platform and/or Spotler.
- 2.4. In the case of a tender as meant in a public procurement act, the information obligation in this Article 2 is limited by the content, nature and scope of the information provided in the tender documents.
- 2.5. Parties shall keep each other informed of developments and changes that may be relevant to the performance of the Agreement.

3. Rates, prices and payment

- 3.1. All rates and prices applied by Spotler are exclusive of VAT and any other governmental levies, which are for the Customer's account.
- 3.2. Up to the moment of the Agreement's execution, Spotler is entitled to adjust rates and prices in response to price changes in hardware, labour wages, exchange rates, insurance premiums, fiscal charges, social insurance premiums, import duties and other governmental levies.
- 3.3. If the Customer uses purchase orders as a basis for payment, the Customer shall ensure that a purchase order number is provided to Spotler on time.
- 3.4. Spotler may annually index its rates and (agreed) prices as of 1st. January, based on the CBS Services Price Index (DPI 2015=100).
- 3.5. If Spotler (a) provides a logical successor for the Platform, (b) adds substantial application possibilities to the Platform, or (c) has had to implement or develop more than regular 'security & compliance' measures or related activities, Spotler has the right to increase the (applied and agreed) rates and prices by a maximum of 15%. An increase of more than 15% gives the Customer the right to terminate the Agreement.
- 3.6. Spotler is authorised to engage third parties in the performance of the Assignment, the costs of which shall be charged to the Customer. Spotler will consult with the Customer regarding the costs thereof prior to engaging the third party.
- 3.7. The Compensation for the Platform is due upon Delivery or on a date specified in the Agreement. Compensation for Services will be regularly invoiced or charged after performance.
- 3.8. The Customer shall pay amounts due to Spotler under the Agreement within 30 days of the invoice date.
- 3.9. Spotler will send the invoice electronically so that they may be received and processed electronically, taking into account any specifications the Customer may have provided. In accordance with any specifications provided by the Customer. The Customer agrees to this method of invoicing.

- 3.10. The Customer waives any right to suspend or set off any payment.
- 3.11. If the Customer fails to pay an invoice within the term referred to in Article 3.8, he shall be in default by operation of law and shall be obliged to pay compensation for the costs as described in Article 6:96(4) of the Dutch Civil Code. Extrajudicial collection costs shall be determined based on the Dutch Extrajudicial Collection Costs Compensation Decree (Besluit Vergoeding voor Buitengerechtelijke Incassokosten). Additionally, the Customer shall owe statutory interest as referred to in Article 6:119a of the Dutch Civil Code on the outstanding amount.
- 3.12. All further legal costs incurred by Spotler, including attorney fees, due to the Customer's failure to meet payment obligations, shall be borne by the Customer.
- 3.13. If the Customer fails to pay for any part of the Assignment, Spotler shall be entitled to suspend the remaining Services and/or the remainder of the Assignment until such time as Spotler has received said payment.
- 3.14. The amounts owed by the Customer are immediately payable if the Customer applies for (provisional) suspension of payments or bankruptcy, is declared bankrupt, if all assets of the Customer are seized, and if the Customer's business is discontinued, dissolved and/or liquidated.

4. Delay in the Performance of the Agreement

- 4.1. In the event of an anticipated delay in the provision of the Platform, Spotler shall inform the Customer of this delay, stating the cause and consequences thereof. Spotler shall also propose measures to the Customer to prevent (further) delay. The Customer shall not be entitled to any compensation (for damages) for such delay.
- 4.2. Agreed terms are only considered fixed and fatal if explicitly agreed in writing.

5. Intellectual Property Rights

- 5.1. All intellectual property rights relating to the Platform, Spotler's websites and the Documentation shall vest in Spotler or its suppliers, unless explicitly agreed otherwise in writing. Any right of use granted to the Customer shall be non-exclusive, non-transferable, non-pledgeable, non-sublicensable and non-resaleable.
- 5.2. Spotler shall indemnify the Customer against any claim based on an alleged infringement of intellectual property in connection with the Platform, provided that the Customer:
 - a. promptly notifies Spotler in writing of such claim; and
 - b. leaves the matter entirely to Spotler and provides all cooperation required thereof; and
 - c. makes no statements, commitments or acknowledgements of rights or facts without Spotler's prior written consent.
- 5.3. The indemnification mentioned in the previous clause does not apply to software originating from Spotler's suppliers.
- 5.4. If Spotler establishes that the claim or assertion is justified, Spotler shall – at its discretion – either ensure that the Customer obtains the right to continue using the Platform, or modify the Platform so that it no longer infringes, or replace it.
- 5.5. In the event of an alleged infringement of a third party's intellectual property right, Spotler shall, at its own expense, take all measures that may contribute to preventing stagnation of the Customer's business operations and to limiting costs and/or damages to be incurred by the Customer as a result thereof.

- 5.6. The indemnity regulated by this article does not apply if the claim or assertion results from using the Platform in combination with other products and/or services not originating from or via Spotler.
- 5.7. Under no circumstances shall Spotler bear any further liability concerning an infringement of an intellectual property right than that described in this article.

6. Reference in Publications and/or Advertising

- 6.1. Spotler may mention the Customer's name as a reference in publications (including press releases) or marketing and advertising materials, unless the Customer explicitly objects thereto.

7. Confidentiality

- 7.1. Parties shall not disclose to third parties or make public in any way information that comes to their knowledge during (the performance of) the Agreement and of which they know or reasonably should suspect its confidential nature, unless disclosure is required by law or court order. For the purposes of this provision, a court order includes any decision by a body competent to settle the dispute pursuant to Article 18, if the parties have agreed to an alternative form of dispute resolution.
- 7.2. Parties shall obligate their Personnel and the contractors (including self-employed persons, freelancers) engaged by them in connection with the Assignment over whom they have authority, to comply with the confidentiality obligation as set out in the previous paragraph.
- 7.3. Parties shall not make any public statements or announcements nor any communications to third parties regarding the (performance of the) Agreement and matters related thereto without the prior consent of the other party, except for the mention of the Customer's name in Spotler's advertising materials (as referred to in Article 6). Such consent shall not be required if the disclosure of information is based on a legal obligation, in which case the party obligated to disclose shall notify the other party well in advance of the disclosure, to allow the latter to take appropriate measures.
- 7.4. Spotler will, upon first request, make available to the Customer all data in its possession within the context of the performance of the Agreement, including any copies made thereof.

8. Personal Data and Data Protection

- 8.1. These General Terms and Conditions shall also serve as a Data Processing Agreement between the Parties as referred to in Article 28.3 of the General Data Protection Regulation ("GDPR"), unless the Parties enter into or have entered into a separate Data Processing Agreement, which shall then serve as such.
- 8.2. Insofar as Spotler acts as a processor, processing personal data on behalf of the Customer, within the meaning of the GDPR and in the context of the performance of the Agreement, Spotler shall ensure the implementation of appropriate technical and organisational measures so that the processing meets the requirements of the GDPR and ensures the protection of the rights of the data subject.
- 8.3. Spotler will not use, or cause to be used, any personal data made available by or via the Customer in any manner other than for the performance of the Agreement, unless otherwise required by law.

- 8.4. Spotler will only process personal data made available based on written instructions from the Customer as data controller. The Agreement shall be deemed by the parties to constitute such instruction.
- 8.5. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the varying likelihood and severity of the risks to rights and freedoms, Spotler shall implement appropriate technical and organisational measures to secure and maintain security of the personal data processed in and through the Platform on behalf of the Customer.
- 8.6. The responsibility for the data processed using the Platform or Services of Spotler lies entirely with the Customer. The Customer warrants to Spotler that the content, use and/or processing of the data is not unlawful and does not infringe any rights of any third party. The Customer shall indemnify and hold harmless Spotler against any legal claims by third parties, on whatever grounds, in connection with such data or the performance of the Agreement.
- 8.7. Spotler shall be entitled to engage third parties and/or sub-processors in connection with the performance of the Agreement and thereby – where applicable – for the processing of personal data. Spotler is responsible for the subprocessors it engages and will impose on them similar terms and responsibilities proportionate to the services to be performed by the subprocessor as those applicable to Spotler under this Data Processing Agreement.
- 8.8. By entering into the Agreement, the Customer consents to the subprocessors engaged by Spotler. The Customer hereby also grants general consent for the further engagement or replacement of subprocessors in categories specified in the Agreement. Spotler shall inform the Customer of any intended engagement of new subprocessors. If the Customer has reasonable objections to a new subprocessor, it shall notify Spotler immediately. Spotler shall consider the Customer's objection, but cannot guarantee that the new subprocessor will not be engaged.
- 8.9. Spotler will assist in fulfilling the Customer's obligations when data subjects exercise their privacy rights (such as the right of access, rectification, erasure and data portability). Spotler will not charge more than reasonable costs for this.
- 8.10. Spotler will assist in complying with the obligations regarding the notification of data breaches. Spotler will report data breaches to the Customer without undue delay and cooperate with investigations and analysis.
- 8.11. The Customer shall ensure adequate compliance with applicable legal retention periods regarding data used or entered. Spotler is not subject to any legal retention obligation for data entered by or on behalf of the Customer.
- 8.12. The Customer shall determine what happens to the personal data after termination of the Agreement, unless Spotler is under a legal obligation to retain such data.
- 8.13. Regarding Spotler's potential liability concerning the processing of personal data, the provisions of Article 10 of these General Terms and Conditions shall also apply.
- 8.14. The Customer shall always remain entitled to the data entered by it in the Platform, even if such data has been entered into the Platform by Spotler on behalf of the Customer. Such data also includes the reports that the Customer generates or retrieves from the Platform.
- 8.15. The data entered by the Customer through the Platform shall be stored in a database managed by third party/parties engaged by Spotler. The Customer has consented to such hosting party/parties.

9. Audit

- 9.1. Spotler will provide all cooperation to competent supervisory authorities such as the Authority for Financial Markets (AFM) and the Data Protection Authority in any investigation. Spotler shall therefore comply with any duly issued instructions from these authorities relating to the Services to be provided and the Platform made available by Spotler under the Agreement, provide all requested information and grant access to relevant data and documents. All this to the extent reasonably possible and subject to confidentiality obligations under law or towards third parties. Spotler may charge the Customer for any costs incurred as a result thereof.
- 9.2. During the term of the Agreement, the Customer may have an audit conducted once per year to assess how Spotler performs its obligations under the Agreement. The Customer shall only conduct or have such an audit conducted if it has reasonable grounds to doubt the information provided by Spotler and the parties have been unable to resolve such doubt through mutual consultation. The Customer shall ensure that the auditors sign a confidentiality agreement in advance. The Customer shall have the audit conducted exclusively by an independent registered accountant or EDP auditor. An audit, as referred to in this clause, shall be announced by the Customer at least one month in advance. Spotler shall reasonably cooperate with the audit. The Customer shall ensure that Spotler's business operations are not disrupted unless such disruption cannot be avoided. The Customer shall bear the costs of the audit, including any costs incurred by Spotler as a result of the audit.
- 9.3. If the conclusions of the audits referred to in this article establish that Spotler has seriously failed to perform its obligations under the Agreement, then any costs incurred by Spotler as a result of the audit shall be borne by Spotler. All other costs related to the audit shall be borne by the Customer.

10. Liability

- 10.1. The total liability of Spotler due to an attributable failure to perform the Agreement or on any legal ground whatsoever, explicitly including any failure to comply with a warranty obligation agreed with the Customer, shall be limited to compensation for direct damage up to a maximum of the amount the Customer has paid to Spotler in the 12 months preceding the incident causing the damage for the (Platform) product or specific Service that caused the damage (excluding VAT). A series of related incidents shall be considered as a single incident.
- 10.2. In no event shall the total liability of Spotler for direct damage, on any legal grounds, exceed € 100.000 per year.
- 10.3. The total liability of Spotler for damage due to death, physical injury or material damage to property shall never exceed € 200.000 per year.
- 10.4. Any liability of Spotler for indirect damages is excluded. Indirect damages shall at least include: consequential damages, loss of profit, lost savings, reduced goodwill, damages due to business interruption, damages resulting from claims by the Customer's customers, damages relating to the use of third-party items or software prescribed by the Customer to Spotler and damages relating to the engagement of suppliers prescribed by the Customer to Spotler as well as damages relating to mutilation, destruction or loss of data or documents.
- 10.5. The exclusions and limitations referred to in this Article 10 shall cease to apply if and to the extent that the damage results from the intent or wilful recklessness of Spotler's management.

- 10.6. Unless performance by Spotler is permanently impossible, liability of Spotler due to an attributable failure to perform the Agreement shall only arise if the Customer has given Spotler written notice of default (NL: ingebrekestelling), allowing a reasonable period for remedying the failure, and Spotler fails to comply with this period. The notice of default must contain a description of the failure that is as complete and detailed as possible to allow Spotler to respond adequately.
- 10.7. Any claim for damages against Spotler shall expire 12 months after the claim has arisen if such claim has not been brought before a court by the Customer within that period.
- 10.8. All obligations, including those under tax, health insurance and social security legislation relating to Personnel of Spotler, shall be borne by Spotler. Spotler shall indemnify the Customer against any liability in connection therewith.
- 10.9. The provisions of this article, as well as all other limitations and exclusions of liability mentioned in these General Terms and Conditions, shall also apply for the benefit of all natural persons and legal entities engaged by Spotler in the performance of the Agreement.

11. Insurance

- 11.1. Spotler has obtained and shall maintain insurance coverage appropriate and customary for its business operations, in accordance with standard industry practice and customs against liability
- 11.2. Upon the Customer's request, Spotler shall provide evidence of such insurance coverage to the Customer, unless prevented from doing so by legal obligations.

12. Personnel

- 12.1. For services performed at the Customer's location, Spotler will instruct its Personnel to observe the security procedures and house rules specified by the Customer.
- 12.2. Where work is performed at the Customer's location, the Customer shall provide an adequate and safe workplace.
- 12.3. During the performance of the Agreement and for one year after its termination, the parties shall not, without the other party's consent, employ each other's Personnel nor conduct negotiations with such Personnel regarding employment.

13. Replacement of Personnel of Spotler

- 13.1. Spotler may replace Personnel working at the Customer's location without the Customer's consent.
- 13.2. The Customer may request the replacement of Personnel working at the Customer's location if the Customer, on reasonable grounds related to the individual concerned, no longer considers their deployment desirable.
- 13.3. In the case of Personnel replacement, Spotler will not charge the Customer any associated costs unless Spotler demonstrates that the replacement request lacked reasonable grounds.
- 13.4. In case of Personnel replacement, Spotler will provide replacement Personnel at the same rate with at least equivalent expertise, education and experience to the initially deployed Personnel, or meeting the qualifications agreed upon between Parties.

14. Force Majeure

- 14.1. A failure to perform the Agreement that cannot be attributed to a Party and for which that Party cannot be held liable based on law, legal act or generally accepted standards, constitutes force majeure.
- 14.2. Force majeure includes, but is not limited to: lack of Personnel, strikes, military action, governmental actions, extreme weather conditions, power failures at Spotler's premises, pandemics, epidemics, failures or disruptions in telecommunications and internet connections facilitated by third parties, and delay or breach of performance by Spotler's suppliers.
- 14.3. If the performance of the Agreement or the Assignment is not possible due to force majeure and the resulting delay is foreseeable to be more than one month, either Party may terminate the Agreement after mutual consultation without owing any compensation to the other Party. The Fee for Services already provided by Spotler and for making the Platform available shall remain due and payable by the Customer in such case.

15. Duration, Termination and Dissolution

- 15.1. An Agreement for a fixed term cannot be terminated prematurely. Unless either Party has given written notice of termination at least one month before the end date of the fixed-term Agreement, the Agreement shall be automatically renewed for a period of 1 year.
- 15.2. If the Agreement has been concluded for an indefinite period, either Party may terminate the Agreement in writing with due observance of a notice period of six months.
- 15.3. Either Party may, without prior notice of default or judicial intervention, terminate the Agreement with immediate effect by means of a registered letter, if the other Party applies for (provisional) suspension of payments, files for bankruptcy or is declared bankrupt, or if the (business of the) other Party is discontinued, dissolved and/or liquidated.
- 15.4. Upon termination of an Agreement, settlement shall take place between Customer and Spotler based on (a) the portion of the Fee relating to the part of the Assignment that Spotler has already performed the Agreement at the time of termination, (b) other obligations that Spotler has already entered into for the performance of the Agreement to the extent these cannot be limited and (c) loss of profit insofar as such loss of profit is not included in the costs referred to under a) and b).

16. Continuing Obligations

- 16.1. Termination of the Agreement does not release the parties from obligations which by their nature continue after termination. These obligations include at least: payment (article 3.8 through 3.13), intellectual property rights (5), confidentiality (7), protection of personal data and data (8), liability (10), consequences of termination (15.4), disputes and applicable law (18), responsibilities and restrictions (29), rules of use (31), data portability (32), notices (34), delay or default (37).

17. Bribery and Conflicts of Interest

- 17.1. Parties shall not offer each other or third parties any gift, reward, compensation or (other) benefit of any nature that could be interpreted as an illegal practice. Neither shall they request, accept or receive from each other or third parties, for themselves or any other party, any gift, reward, compensation or (other) benefit of any nature.

18. Applicable Law and Disputes

- 18.1. The laws of the Netherlands shall govern all Agreements and their implementation.
- 18.2. Any disputes relating to the quotations and the Agreement that cannot be resolved through mutual consultation shall be submitted exclusively to the district court of The Hague.

II SERVICES**19. Applicability**

- 19.1. The provisions regarding Services in this Part II shall apply in addition to the general provisions set out in Part I if Spotler provides services such as implementation, support, courses and training, project guidance, consultancy, secondment and the like. In case of any ambiguity or conflict between the provisions of Part II (Services) and Part I (General Provisions), the provisions of Part II (Services) shall prevail.

20. Performance

- 20.1. Spotler shall endeavour to perform the Services to the best of its knowledge and ability and with due care. All Services provided by Spotler shall be performed on a best-efforts basis, unless and to the extent that Spotler has explicitly agreed upon a specific result with Customer and such result has been described with sufficient specificity in the Agreement.

21. Changes and Additional Work

- 21.1. If Spotler has performed work or other services outside the scope or content of the agreed Services, such work or services shall be compensated by Customer according to Spotler's then-applicable rates.

22. Training and Consultancy

- 22.1. Spotler is authorised to replace staff members involved in training provided or proposed by Spotler with other (external) persons with similar qualifications.
- 22.2. If Customer uses training or consultancy services from Spotler under the Agreement, Spotler shall, in consultation with Customer, schedule the training or consultancy and confirm the request for these services to Customer; taking into account Customer's desired planning where possible. However, Spotler cannot guarantee Customer's desired planning.
- 22.3. Both Customer and Spotler may cancel the training or consultancy free of charge up to three business days before the start date. In case of such cancellation, Parties shall mutually determine a new start date for the training or consultancy. Spotler has the right to charge the full costs for the training or consultancy if Customer cancels within three business days before the start date.
- 22.4. Spotler shall endeavour to provide the training or consultancy to the best of its ability within the agreed timeframes. All timeframes mentioned by Spotler in this context have been determined to the best of its knowledge based on the information available to Spotler when entering into the training or consultancy agreement. The mere exceeding of a mentioned timeframe does not constitute default by Spotler.
- 22.5. Training and consultancy shall be provided on Business Days during regular office hours.

- 22.6. Customer shall indemnify Spotler and its Personnel against claims from third parties who suffer damage in connection with the performance of the training or consultancy that results from Customer's acts or omissions or from unsafe situations in its organisation.

23. Services

- 23.1. If it has been agreed that Services will be performed in phases, Spotler is entitled to postpone the commencement of services belonging to a subsequent phase until Customer has approved the results of the preceding phase in writing.
- 23.2. If Spotler has performed work or other services at Customer's request or with Customer's prior consent beyond the scope of what Spotler has committed to under the Agreement, such work or services shall be compensated by Customer according to Spotler's applicable rates. However, Spotler is not obliged to comply with such a request and may require that a separate (written) agreement be concluded for this purpose.

24. Service Levels

- 24.1. Any agreements concerning service levels shall be explicitly agreed upon in writing only. Spotler shall endeavour to the best of its ability to achieve and maintain service levels, but offers no guarantees in this regard. Service levels are therefore always best-efforts obligations, unless the Parties have explicitly agreed otherwise in the Agreement. Spotler shall not be liable to pay any compensation or damages to the Customer if service levels are not achieved and/or maintained.
- 24.2. Where agreements on a service level have been made, the availability of the Platform, systems and related services shall always be measured in such a way that downtime announced in advance by Spotler due to preventive, corrective or adaptive maintenance or other forms of planned services, as well as circumstances beyond Spotler's control, shall be excluded from consideration. Subject to evidence to the contrary to be provided by Customer, the availability measured by Spotler shall constitute conclusive evidence.

III. THE PLATFORM

25. Applicability

- 25.1. The provisions in this Part III shall apply in addition to the general provisions set out in Parts I and II, since Spotler makes the Platform available to the Customer on a software-as-a-service basis. In case of any ambiguity or conflict between the provisions of Part III (the Platform) and Part I (General Provisions) and Part II (Services), the provisions of Part III shall prevail.

26. Interoperability

- 26.1. Spotler shall provide the Platform for the Customer's use and shall be responsible for the Platform's setup if agreed. Spotler is not responsible for the interoperability between the Platform and (parts of) the Application Landscape.
- 26.2. Customer is responsible for timely engaging the suppliers of parts of the Application Landscape that are important or necessary for interoperability with the Platform. Unless agreed otherwise, the Customer shall be responsible for coordinating the activities of all parties involved.

- 26.3. At Customer's request, Spotler shall participate in consultations with other parties and/or suppliers designated by Customer if it appears at any time that the Platform does not function properly in conjunction with other parts of the Application Landscape.
- 26.4. The consultation referred to in Article 26.3 aims to identify the cause of the insufficient integrated functioning and, where possible, find a solution therefor. The Customer shall bear the costs associated with the consultation and development of a solution at Spotler's then-applicable rates.

27. Complaint and Commencement of SaaS Service

- 27.1. Customer is obliged to inspect the Platform for Defects upon Delivery. Any resulting complaints must be submitted to Spotler in writing with supporting documentation within 14 days after Delivery, otherwise the Customers will forfeit its rights.
- 27.2. If Spotler has not received any complaint about a Defect or Defects within the period specified in the previous clause, Customer shall be deemed to have accepted the Platform in the state it was in at Delivery ("as is"), thus with all visible and invisible faults and defects, unless Parties have agreed upon a specific acceptance test.
- 27.3. Regardless of whether a complaint has been made under Article 27.1, the SaaS service shall commence upon Delivery of the Platform through the provision of access credentials to the Platform. Any delay on Customer's part in using or inspecting the Platform shall not affect the start date and the payment obligation from the moment of Delivery.
- 27.4. In the event of justified complaints, Spotler shall be obliged – at Spotler's discretion – to either repair the Defects within a reasonable time, or replace parts of the Platform within a reasonable time, or refund the Fee received for the Platform.
- 27.5. For Defects that only affect part of the entire Assignment, there shall be no right to refuse the other parts of the agreed Assignment.
- 27.6. If Customer's complaint relates to Services performed by Spotler, the complaint must be submitted, under penalty of forfeiture of rights, within 30 days after the alleged deficiency or within 30 days after the moment when such deficiency should reasonably have been discovered.

28. SaaS Solution

- 28.1. Spotler may make changes to the Platform. If such changes result in a change in the Customer's applicable procedures, Spotler shall inform the Customer as timely as possible, but the Customer shall bear the costs thereof. In that case, the Customer may terminate the Agreement in writing effective on the date the change takes effect, unless such change relates to changes in relevant legislation or other regulations issued by competent authorities or unless Spotler bears the costs of the change.
- 28.2. Spotler may continue providing the Platform using a new or modified version of the software. Spotler is not obliged to maintain, modify or add specific features or functionalities of the Platform specifically for the Customer.
- 28.3. Spotler does not warrant that the Platform will be error-free and function without interruptions.

29. Responsibilities and Restrictions

- 29.1. The Customer is responsible for the use of the Platform and the manner in which the results of the Platform are deployed.
- 29.2. The Customer shall ensure the functioning of its internet connection required for the use of the Platform and for taking necessary measures to protect its equipment, software, telecommunications and internet connections and automated systems against viruses, cybercrime and unlawful use by third parties, as well as for adequate system management.
- 29.3. Spotler is not responsible for verifying the accuracy and completeness of the data entered into the Platform, nor for the data generated using the Platform. Spotler is also not responsible for the data provided for the design and development of the Customer-specific part of the Platform. The Customer shall verify such data itself. Even if Spotler assists or supports the Customer – whether or not as part of the Services – in entering data into the Platform or generating data from the Platform, the Customer remains responsible therefor.
- 29.4. Unless agreed otherwise in writing, Spotler is not obliged to transfer data from the Customer's existing systems, website, or intranet or to establish a connection therewith.
- 29.5. Spotler is never obliged to provide Customer with a physical carrier containing the code and data of the Platform
- 29.6. Spotler may, without prior notice, (temporarily) block access to the Platform, suspend it or restrict its use if this is necessary for the security and protection of the Platform and associated data(storage), as well as for maintenance or for making adjustments or improvements to the Platform. This does not entitle Customer to any compensation from Spotler. Spotler shall try to limit the blocking to a minimum and inform Customer about the blocking in advance if possible.
- 29.7. To prevent or limit potential liability towards third parties or to limit the consequences thereof, Spotler is always entitled to take measures regarding an act or omission of or at the Customer's risk. The Customer is obliged to remove information immediately upon Spotler's first written request, failing which Spotler shall be entitled to either remove the information or make access thereto impossible, at Spotler's discretion.
- 29.8. The Customer shall not violate applicable laws and regulations when using the Platform and when executing its own services that use or are linked to the Platform, including but not limited to: the guidelines of the Advertising Code Committee and the ACM (Authority for Consumers and Markets).
- 29.9. Furthermore, the following acts and behaviors are explicitly prohibited when using the Platform and when executing Customer's own services in combination with the Platform: a) spamming: sending unsolicited large numbers of electronic messages with (substantially) the same content; b) infringing (intellectual property) rights of third parties; c) sending defamatory or libelous content; d) deceiving or misleading third parties including customers of Customer's services; e) using texts, logos, trademarks or other works or intellectual property rights of Spotler or its suppliers in the performance of Customer's services without having obtained explicit written permission; f) offering products or services that are prohibited according to applicable laws or regulations in the country where they are offered.

30. SMS & WhatsApp via the Platform

- 30.1. The special Advertising Code for SMS Services, established by the Advertising Code Foundation, forms part of this Code of Conduct. This means that advertising expressions for SMS Services must comply with the SMS Services Advertising Code. Whenever the SMS Services Advertising

Code is amended, the amended SMS Services Advertising Code will automatically apply to advertising expressions for SMS Services and become part of this Code of Conduct, effective from the date the amended SMS Services Advertising Code enters into force.

- 30.2. Regarding the (telecom) market conditions or security, Spotler may impose additional restrictions on SMS services via the Platform. The restrictions will be included in the Quotation.
- 30.3. When sending messages via SMS or WhatsApp, the Customer must take into account that not all distribution channels are encrypted.
- 30.4. Although Spotler does its best to ensure that its services run as well as possible, Spotler cannot guarantee that SMS messages will be delivered via the telecom providers.
- 30.5. Specifically for SMS services via the Platform, Spotler may increase the rates and prices of these services if the costs of purchasing the SMS services exceed the agreed rates and prices.

31. Event Management

- 31.1. Spotler offers a tool to manage event communication via a mobile website with integrated modules for invitations, registration and surveys ('**the EM Application**').
- 31.2. The Customer is solely and fully responsible for any agreements it enters into with third parties and for connecting these to the EM Application. Spotler is not liable for such agreements (e.g., connecting the EM Application to third-party registration or invitation software).
- 31.3. Spotler facilitates an event website via the EM Application but is not involved in its operation. Spotler has a purely facilitating role, also with regard to connections with external services, payment providers and accounting systems offered by third parties or other business relations. The Customer is therefore solely responsible for agreements with any third parties and indemnifies Spotler against all claims from such third parties. This also applies if the Customer has instructed Spotler to design the event website(s) or to assist with their design, and when the Customer provides data and materials to Spotler that must be used on the event website(s).
- 31.4. It is entirely up to the Customer and User to determine what information is placed on the event website. Spotler has no knowledge of the content of this information. Spotler accepts no liability for the data exchanged, stored, or processed using the Platform or the event website. The Customer indemnifies Spotler against claims from third parties based on the assertion that the information processed by the Customer or User through the Platform and/or the event websites is unlawful.
- 31.5. If a Service for the EM Application is purchased on a one-time basis, it is offered for the duration specified on the relevant (EM Application) Website and/or in the relevant quotation. An event website cannot be published more than two months before the start date of an event. For the EM Application, there is a maximum of seven days before the event. After the end date of an event, the event website will remain hosted for four more weeks.
- 31.6. Unless agreed otherwise, an agreement for the EM Application based on a subscription is entered into for an initial term of twelve months, commencing on the first day after the date the agreement for the EM Application is concluded. After the initial term, the subscription agreement shall be automatically renewed for consecutive terms of twelve months, unless the Customer terminates the agreement for the EM Application in writing before the end of the current term with due observance of a notice period of at least one (1) month.

32. Ticketing Service

- 32.1. If the Customer uses the EM Application to promote an event for which it offers (paid) tickets, Spotler does not form part of the (purchase) agreement between the Customer and the person (or legal entity) purchasing the offered tickets. Spotler acts only as an intermediary in the formation of such an agreement.
- 32.2. When offering tickets, the Customer is responsible for compliance with applicable legislation. More specifically: if the Customer allows consumers to purchase tickets, the User must ensure that it fully complies with consumer legislation and tax legislation applicable to the Customer or the persons (or entities) purchasing the tickets.
- 32.3. Spotler does not provide payment services. When offering tickets for payment via the EM Application, the payment is processed by an external payment provider. Spotler is not responsible for errors or delays in payment.
- 32.4. When offering tickets via the EM Application, the Customer is responsible for collecting (applying) and remitting the correct amount of VAT and other levies imposed by the government or legislation applicable to the Customer or the persons (or entities) purchasing the tickets.
- 32.5. When a ticket or tickets for an event is/are purchased via the EM Application and the person (or legal entity) purchasing the ticket(s) requests a refund of the amount paid, the Customer will reimburse Spotler for any refunds and all related costs. Spotler will send the Customer an invoice for such reimbursement.

33. API

- 33.1. By using an API provided by Spotler for interaction with (parts of) the Platform, the Customer fully accepts that the API token provides access to the Customer's application(s) and all (personal) data processed in these application(s).
- 33.2. The Customer may share the API token with third parties. By doing so, the Customer fully accepts the implications of sharing access to the API token and is responsible for concluding a data processing agreement with the third party concerned.
- 33.3. The Customer represents and warrants not to use Spotler's API nor to allow its use for sending unsolicited communications. The Customer also guarantees that the API token will not be misused and no misuse will be allowed in a manner that could harm Spotler or violate applicable legislation.
- 33.4. Spotler may impose limits on certain functionalities or restrict the Customer's access to parts or the entire API if the security of the Platform so requires.
- 33.5. As a condition for using the API, the Customer expressly accepts that Spotler cannot under any circumstances be held liable for any damage, loss of data or other consequences arising from or related to the use of the API.

34. Support Documentation

- 34.1. Spotler shall provide Customer with sufficient and comprehensible support documentation. This documentation shall be prepared in Dutch or English and can be found on the Platform

35. Rules of Use

- 35.1. Spotler expects the Customer and Users to handle the Platform and Services carefully. It is also highly desirable that (personal) data is handled carefully and with restraint.
- 35.2. The User is not permitted to use the Platform in violation of legal provisions or the Agreement, nor with the rights of third parties. Customer indemnifies Spotler against claims and damages resulting from breach of this warranty. Spotler is furthermore entitled, in the event of a breach hereof, to immediately suspend or even terminate the use of the Platform after the Customer has been given a reasonable period to remedy the breach and the Customer has not complied with this. Spotler shall not be liable for any refund or compensation to the Customer in case of suspension or termination.
- 35.3. The User is obliged to exercise due care when using the Platform and to use it exclusively for its intended purposes. The User is not permitted to store or process documents, images, video films and/or data files that have nothing to do with the intended use of the Platform using the Platform.
- 35.4. Spotler reserves the right to check the content of processed documents and data files for irregularities through random samples and will immediately remove unauthorised files from the Platform. Controlling random samples is also done to remove email addresses that are no longer in use or may lead to damage or disruptions.
- 35.5. The User shall always exercise necessary attention and caution regarding potentially harmful or unlawful Data. The User is responsible for the content and accuracy of the Data they provide or input, even if these originate from third parties. The User indemnifies Spotler against claims from third parties based on the input of harmful and/or unlawful Data.
- 35.6. Each User is obliged to keep the usernames and passwords assigned to them or created by them secret for access to the Platform. Spotler is not liable for misuse or loss of usernames and passwords by the User.
- 35.7. Spotler may assume that Users who log in with the username and password are actually the initially intended authorised users. As soon as the User knows or has reason to suspect that usernames and passwords have fallen into the hands of unauthorised persons, Spotler must be informed of this immediately in writing and by telephone.
- 35.8. Customer shall ensure that only the agreed number and only authorised users use the Platform. If Spotler identifies irregularities or unauthorised use in this regard, Spotler has the right to charge the then-applicable rates plus a 50% surcharge to the Customer and to terminate the right of use and the Agreement in whole or in part.
- 35.9. Spotler is expressly entitled to temporarily or permanently block the registration and/or access of the User to the Platform in case of (suspected) violation of the provisions in this article or case of non-acceptance of the terms of use included in this chapter by the User.
- 35.10. The Customer is responsible for compliance with local laws and regulations, such as those relating to privacy and data protection, distance selling (and consumer rights), unfair and/or unreasonable commercial practices, that apply in the country to which the Customer directs its activities. Spotler shall never be liable for any damage, fines, sanctions (or other forms of enforcement) suffered by the Customer or User or imposed upon them through the use of the Platform or the Services (including an event website created via the EM Application or an event itself).

36. Data Portability

- 36.1. Customer must ensure the storage and retention of the data entered into the Platform itself unless this is impossible with a particular platform.
- 36.2. If the provision of Services to Customer under the Agreement includes making backups of Customer's data, Spotler shall make such backups taking into account the periods agreed in writing. Spotler shall retain the backups for an agreed period and in the absence of agreements in this regard, for the period customary at Spotler. Spotler shall store the backups with due care.
- 36.3. If the Agreement ends for any reason whatsoever, Customer must ensure the timely storage and retention of the data present in the Platform or its transfer to another party engaged by Customer.
- 36.4. At the Customer's request, Spotler shall assist with data portability, which the Customer desires, against compensation and under terms to be agreed upon.

IV OTHER PROVISIONS

- 37. Spotler may transfer or outsource its rights or obligations under the Agreement or the General Terms and Conditions to an affiliated company or another third party engaged by it for this purpose, without the Customer's consent being required.
- 38. Any notice or other communication regarding the Agreement or the General Terms and Conditions must be addressed in writing to Customer's or Spotler's address, respectively, as stated in the Agreement.
- 39. In these General Terms and Conditions, 'in writing' shall also include by email, provided that the receiving party confirms receipt. A 'written agreement' shall also include an agreement recorded in electronic form, including but not limited to PDF format. 'Written signature' shall also include an electronic signature as referred to in Article 3:15a of the Dutch Civil Code (Burgerlijk Wetboek), provided it can be reliably verified and the signatory's identity can be established.
- 40. If any provision of the Agreement or the General Terms and Conditions is wholly or partially void, voidable or contrary to law, it shall be deemed to stand alone and not be applicable. Customer and Spotler shall, in such case, consult with each other to replace the provision in question with a provision of similar purport. The remaining provisions shall remain in full force and effect.
- 41. Spotler's delay or failure to enforce any right that Spotler has under the Agreement or the General Terms and Conditions against Customer shall never constitute a waiver of that right. If Spotler waives any right it has under the Agreement or the General Terms and Conditions, this does not mean that Spotler also waives or must waive that right or other rights in a subsequent case.
- 42. The General Terms and Conditions have been filed with the Chamber of Commerce under file number 55411592 and will be sent free of charge upon request. The General Terms and Conditions of Spotler can also be consulted at <https://trust.spotler.com/general-terms-and-conditions>

V DEFINITIONS

The terms that begin with a capital letter in these general terms and conditions and the Agreement shall have the meaning assigned to them as defined in this chapter V.

General Terms and Conditions		the provisions in this document; being a part of the Agreement
API		An Application Programming Interface is a set of rules, protocols and tools that enable different software applications to communicate with each other and exchange data. It functions as an intermediary layer that defines how different software components can interact with each other
Application Landscape		the entirety of internal and external systems, software, databases, interfaces, equipment, ICT infrastructure, and tools that form the automated information system for the Customer, to which the Platform is linked or in which the Platform is embedded
Data		the data entered by the Customer into the Platform and/or the data provided by the Customer to Spotler for use in the Platform, as well as the generated reports regarding the (email)traffic processed through the Platform
Defect		a malfunction and/or other defect that makes the Platform unsuitable for the agreed-upon use
User		the person who uses or will use the Platform
Order		the assignment given or to be given to Spotler for making the Platform available and/or providing Services
Customer		the party that has entered into an agreement with Spotler for making the Platform available, performing Services or carrying out work by Spotler; and also the party with which Spotler negotiates about the Platform with the aim of concluding an agreement for it as well as the party that has received a quotation from Spotler
Delivery		the making available by Spotler of (parts of) the Platform
Agreement		the arrangements between Customer and Spotler as recorded in writing in the Master Agreement and the attachments forming part thereof, of which the General Terms and Conditions in any event form an integral and inseparable part
Personnel		the staff members and/or auxiliaries to be engaged by parties in the performance of the Agreement
Services		the services that Spotler provides and will provide to Customer

Platform		the marketing communication applications made or to be made available by Spotler on a software-as-a-service basis
Spotler		Spotler Nederland B.V., Flowmailer B.V., Tripolis Services B.V., Tripolis Solutions B.V., Tripolis Webpower B.V., OBI4wan B.V., Squeezely B.V., Sooqr B.V., Tripolis Measuremail B.V., Wireless Services B.V., Datatrics B.V., Buckles B.V., Spotler E-Commerce B.V. and/or Momice B.V.
Fee		the total agreed prices for the Platform and the Services
Website		The website(s) of Spotler
Business Days		Monday through Friday, excluding generally recognized public holidays within the meaning of Article 3 of the Dutch General Extension of Time Limits Act