

# Terms and Conditions

## Article 1 General

Dutch law applies to these Terms and Conditions.

## Article 2 Definitions

1. Consideration period: The time during which a customer can use his right of withdrawal from the contract
2. Customer: the natural person who does not act on behalf of a company working for a company
3. Day: A calendar day according to the UTC timezone
4. Permanent storage device: Any means that can be used, by a customer or business, to store information that is directed at him/her, personally, so that it is preserved for future consultation and reproduction of the unchanged, saved information.
5. Right of withdrawal: The right of the customer to withdraw from a closed contract within the consideration period.
6. Business: the natural or legal person who remotely offers products or services for purchase.
7. Remote contract: a contract about selling products or services that is closed remotely and that exclusively uses one or more systems that are provided by the business to enable remote communication.
8. Remote communication technology: means that can be used to close a contract and do not require the business and customer to be present in the same room at the same time.
9. Terms and conditions: the present Terms and Conditions of the business.

## Article 3 Identity of the business

PKG Software

Paul Konstantin Gerke

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VAT identification number/BTW-id: NL003562039B28

(No Dutch KvK number)

## Article 4 Applicability

1. These terms and conditions apply to all offers of this business and apply to any established remote contract and orders between the business and the customer.
2. The text of these terms and conditions will be made available to a customer before a remote contract is closed. If this is not possible in a suitable manner, the business will inform the customer, before a contract is closed, that it is possible to view these terms and conditions at the business location and that these terms and conditions can be mailed to the customer free of charge and as soon as possible.

3. Diverging from section 2, if the remote contract is closed using electronic systems, the text of these terms and conditions can be made available electronically before the contract is closed, instead. This will be done in such a way that the text can easily be stored by a customer on a permanent storage device. If this is not possible in a suitable manner, the customer will be informed how he/she can view the terms and conditions and that the customer can ask for a copy of the terms and condition to be sent to him/her electronically and free of charge, before the contract is closed.
4. In case that special conditions are specified for a given product or service, section 2 and 3 will still hold. In case of conflicting terms and conditions a customer can choose the terms and conditions that are most advantageous for him/her.
5. If one or more of the terms and conditions of this document do not uphold or are invalid, the remainder of these terms and conditions will still uphold and the invalid parts of these terms and conditions will be replaced, after negotiation, with alternatives that will approximate the original intent and meaning of the invalid parts as closely as possible.
6. Circumstances and situations that are not covered by these terms and conditions will be judged according to the spirit of these terms and conditions (i.e., the intent and meaning)..
7. Unclear explanations of this document are to be interpreted according to the spirit of these terms and conditions.

## **Article 5      Offered products**

1. It will always clearly be stated if an offer for a product is only offered for a limited time or under certain conditions.
2. Product offers are subject to change without notice. The business is free to change the products offered at any time.
3. An offer contains an exact and complete description of what product and/or service is offered. The description is sufficiently detailed to allow a good evaluation of the product by the customer. If the business uses images to describe or show a product, these images need to truthfully represent the offered product shown in the image. Accidental mistakes within an offer do not obligate the business.
4. All images and specifications about a product are an indication only and cannot form the basis of a compensation for damages or invalidation of a contract.
5. Images of products are a truthful representation of the offered product. The business cannot guarantee exact color that match the colors of the real product.
6. Every product offer contains information that clearly informs the customer about his/her rights and duties with respect to accepting the offer. This information includes in particular:
  - The price including taxes;
  - Possible costs for shipping;
  - The way the contract is closed and what actions are required to do so;
  - The applicability of the right of withdrawal;
  - The way the product is paid for, the way it will be shipped, and the way an order will be executed;
  - The time frame in which the offer can be accepted and the time frame in which the business guarantees the price of a product;
  - The costs for using remote communication technologies in case the costs of the used technology differ from the normal base costs of the used communication technology;

- If a closed contract is saved and archived, in case it is saved or archived, how the customer can obtain access to the archived documents;
- The way a customer can verify and correct information submitted to the business for the purposes of closing the contract, before the contract is closed;
- The languages that can be used to close the contract

## **Article 6      The contract**

1. The contract is closed, with the restrictions laid out in section 4, at the moment that the customer accepts an offer and he/she fulfills the outlined requirements for accepting that offer.
2. If a customer places an order by accepting an offer electronically, the business will confirm receiving the order electronically within two business days. The customer can terminate the contract at any time and free of charge as long as the placed order has not been confirmed by the business.
3. If the contract is closed electronically, the business will employ valid measures to secure the communication between the customer and the business for the purpose of exchanging data to close the contract. If electronic payments are offered, the business will employ security measures to secure the payments.
4. The business can, within the limits of the law, verify that the customer can fulfill his commitments to pay for his/her order. The business can verify, within the limits of the law, any facts or factors that are important for closing a remote contract responsibly. If the business has, based on its research, good reasons to not accept an order, the business may deny an order or request, or add special conditions to the execution of an order.
5. The business will provide the customer together with the product information, the following extra information, either in written form or in a form that can be easily stored by customer on a permanent storage device, about:
  - a) The visiting address of the business that the customer can direct complaints to;
  - b) The conditions under which and manner in which a customer can exercise his right of withdrawal, or if not applicable, a clear message about the exclusion of the product from the right of withdrawal;
  - c) Information about warranties or services that come forth of the completed order;
  - d) The information about the offer as laid out in article 5, section 3 of this document, with the exception of the case where the business has given that information *before* executing the contract;
  - e) The requirements for terminating a contract in case that the contract has a duration of one year or longer, including unlimited duration;
6. (rescinded)
7. Every contract is accepted under the conditions precedent of sufficient availability of the corresponding product.

## **Article 7      Right of withdrawal**

1. A customer is offered the right to withdraw from a contract about the purchase of a product, without declaring reasons for the withdrawal, within an evaluation period of 30 days that starts on the day the product is received by the customer.

2. During the evaluation period, the customer will handle the delivered product with care such that neither the packaging or the product are unnecessarily damaged, and the customer shall only use and handle product in the way that is required for a proper evaluation to assess if he/she wants to keep the product. If a customer wants to make use of his/her right of withdrawal, the customer will send the delivered product with all delivered accessories, if possible in their original packaging, back to the business according to the guide given by the business.
3. The right of withdrawal extends to delivered software products.
4. If a customer wants to exercise his/her right of withdrawal, he/she is required to signal this to the business within the 30 day evaluation period that starts after receiving the product. The customer must signal the use of the right of withdrawal to the business using the provided template form for the right of withdrawal (see the end of this document). After a customer signaled that he/she wants to exercise the right of withdrawal, the customer has to send back the product within 14 days. The customer has the burden of proof for showing that the product has been shipped back to the business in a timely manner.
5. Diverging from section 4, using the right for withdrawal for withdrawing from the purchase of software that was delivered to the customer by electronic means, nothing has to be shipped back to the business. The customer does not need to deliver a proof of returning software back to the business in this case.
6. After the evaluation period as described in section 1 and 2 has ended, the customer no longer has a right of withdrawal and the purchase is in effect.

## **Article 8      Costs when exercising the right of withdrawal**

1. If a customer makes use of the right of withdrawal, the customer will at most have to pay for the costs of returning the product to the business.
2. The business will refund the sum of money that was paid by the customer for the returned product as quickly as possible, but at least within 14 days after the customer signaled that he/she wants to exercise the right of withdrawal. A requirement for the refund is that the product has been received by the business, or that a conclusive proof can be produced that shows that a complete return of the product to the business has happened. For software that was delivered by electronic means, no such proof needs to be produced and no product needs to be returned to the business. The refund will be done by the same mean of payment that was used by the customer for paying for the product, unless the customer has given express permission to use another means of payment.
3. The customer is liable for the decrease of monetary value if a product was damaged by improper handling by the customer.
4. The customer will not be held liable for a decrease in monetary value of the product if the business did not sufficiently communicate all legal information about the right of withdrawal to the customer, as the law requires the business to do before the contract for purchase of a product is closed.

## **Article 9      Prices**

1. If an offer includes a time period during which the offer is valid, prices of the offered product will not be increased in this time period, with the exception of changes of prices due to changing taxes.
2. Deviating from section 1, the business can change the prices of products or services in case that the price changes are dependent on fluctuations in the financial market. If prices are dependent on fluctuations on the financial market, it will be indicated clearly on the offer that prices are merely an indication.
3. Increases of prices within three months after a contract has been closed are only allowed if legal requirements require such a change of prices.
4. Price increases three months after a contract has been closed are only allowed in case the business has notified a customer about this possibility before the contract was closed, and:
  - a) this change in price happens as a consequence of changes of legal requirements; or
  - b) the customer is given the chance to terminate his/her contract before the change in price would take effect.
5. All prices of offered products and services include the corresponding value added taxes (BTW).
6. All prices are made with reservations with respect to typing errors. The business is not liable for the consequences of typing errors. In case of typing errors, the business is not required to fulfill an order based on the erroneous price information.

## **Article 10      Compliance and warranties**

1. The business will make reasonable efforts to ensure that products or services fulfill the specifications and functions that are described in the corresponding product offer.
2. Compliance and warranties of software products are governed by specific software licenses that will be made available as part of the offer of a software product and as part of or together with the software product itself. Prior to installing or using software licensed by the business, the client confirms that he read and accepted the software license, including but not limited to any absences of warranty and limitations of liability stated in the software license.
3. A warranty that is issued by the business, a manufacturer, or importer will not invalidate any other legal rights and claims that a customer has towards the business due to the contract.
4. Damages or improper function of a product have to be reported within the first two months after the customer received the product. To return a product to the business, it has to be packaged in its original packaging. Software products that were received using electronic means do not need to be returned.
5. The warranty period for products that are manufactured by a third party is equal to the warranty period offered by that third party. The business itself is not liable for products that are manufactured by a third party with respect to their functioning, fitness of use in specific applications, or advises for how the product is to be used.
6. Warranties are void in case:
  - a) a customer repaired or modified the product himself or the product was repaired or modified by a third party;

- b) the product was used in circumstances that the product was not designed for or was otherwise used in a negligent way or in a way that violates the instructions given by the business or packaging instructions;
- c) the inadequateness of a product is wholly or partly a consequence of legal rulings by government instances with respect to the type or quality of product or the materials used within the product.

## **Article 11 Shipping and fulfillment of orders**

1. The business will use utmost diligence in receiving, processing, and fulfilling orders received for products or services and in the responding to requests about offered services and products.
2. The delivery address for a product or service is an address that is designated by the customer and communicated to the business.
3. Under the terms laid out in article 5 of this document, the business will process and fulfill accepted orders with a reasonable speed but at maximum within a period of 30 days, unless the customer agreed to a longer delivery period. In case the delivery is delayed for more than 30 days or in case the order can only be partially fulfilled, the business will inform the customer about these circumstances within 30 days after the order has been accepted. In such a case, the customer has the right to terminate the contract free of charge. The customer is not entitled to compensations.
4. All delivery periods are indications only. Indicated delivery periods cannot form the basis for a legal claim. In case the delivery of a product takes longer than the indicated delivery period, the customer is not entitled to compensations.
5. If an order is terminated according to section 3, the business shall refund the customer as soon as possible and within the maximum period of 14 days after the termination.
6. The business is responsible for any damages or loss of a product during shipping of the product to the customer. This responsibility expires at the moment when a product is delivered to the customer in person or delivered to another person who was clearly indicated towards the business as the customer's representative.

## **Article 12 Payment**

1. The customer has to pay for an order within 7 days after his/her consideration period started according to article 7 section 1, unless agreed on otherwise in writing. If the closed contract is concerns the delivery of a service, this period starts at the moment the customer has received the confirmation of acceptance from the business.
2. The customer is required to report mistakes and errors with respect to his/her payment information to the business as quickly as possible.
3. In case a customer does not pay, the business can bill the customer for costs that were announced to the customer before closing the contract, within the limits of the law.

## **Article 13 Complaints**

1. The business has an established complaint handling procedure in place and handles customer complaints according to this procedure.

2. Complaints about the execution and fulfillment of a contract must be clearly and thoroughly reported to the business within 2 months after the customer has encountered the shortcomings.
3. The business will answer received complaints within a time period of 14 days. If a complaint requires longer processing by the business, the customer will receive within 14 days an indication when he/she can expect an answer regarding his/her complaint.
4. In case the complaint cannot be resolved by direct negotiation, it will be converted into a dispute that can be handled according to the dispute regulations.
5. Complaints have to be directed at the business first. It is also possible to report complaints directly to the European ODR platform (<http://ec.europa.eu/odr>)
6. A complaint does not cancel the duties of the business, unless the business has indicated the opposite in written form.
7. In case a complaint is validated by the business, the business can choose either to repair the delivered product or to replace it free of charge.

## **Article 14 Disputes**

1. The contract that is closed based on these terms and conditions is closed entirely based on Dutch law. Also if the customer is living or situated in another country.
2. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

## **Article 15 Additional terms and conditions**

1. Additional terms and conditions that differ from these terms and conditions cannot be disadvantageous towards the customer. Additional terms and conditions need to be agreed upon in written form and in such a way that the customer can easily store those additional agreements on a permanent storage device.

## Template form: Right of withdrawal

(only file out this form and send it back to the business if you want to use your right of withdrawal)

To

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I/We want to withdraw from the purchase of the following products or services:

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Ordered on:

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Order number:

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Received on:

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Name of the customer:

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Address of the customer:

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IBAN Account number:

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Signature of the customer

(only applicable if submitted in in written form)

Date (YYYY-MM-DD)

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