



# General Terms & Conditions

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## 1. Introduction

These general terms and conditions of Xpirit Nederland B.V., with its registered offices in Hilversum (“Xpirit”) apply to all services Xpirit performs (the “Services”) and all agreements Xpirit enters into with its customers (the “Client”).

Only these general terms and conditions apply; other general terms and conditions are hereby expressly rejected.

Regarding terms and conditions that deviate from these general terms and conditions, Xpirit is only bound to what it has accepted in writing and signed by its duly authorized representative.

Xpirit may change these general terms and conditions from time to time. Xpirit will inform the Client hereof by e-mail after which the Client has 5 work days to object to the changes. If the Client objects, the changes won't take effect. If the Client doesn't object (in time), the changes will take effect with expiration of the 5 work day period.

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## 2. Times

Unless agreed otherwise, Xpirit will perform the Services during regular office hours (between 8.30 am and 5.30 pm from Monday through Friday, excluding generally recognized holidays in The Netherlands).

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## 3. Rates

Unless agreed otherwise, Xpirit performs the Services on a time and materials basis (*nacalculatie*). All prices and amounts exclusive of VAT.

For Services performed during regular office hours, Xpirit will charge Client 100% of its hourly rate.

For Services performed from Monday through Friday (not being a generally recognized holiday in The Netherlands) between 7.00 am and 8.30 am or between 5.30 pm and 10.00 pm, Xpirit charges 150% of its standard hourly rate.

For Services performed at other times than the times indicated above, Xpirit charges 200% of its hourly rate.

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## 4. Performance

Xpirit only has a commercial best efforts obligation (*inspannen naar beste vermogen*); nothing may be construed as an obligation to deliver a certain result (*resultaatsverplichting*) as part of the Services, unless otherwise agreed and described with sufficient determinability.



The Client will provide Xpirit and its employees with access to all locations, systems, environments, Client personnel, hardware and software as necessary to properly perform the Services.

the parties will continue to provide each other with information that may reasonably effect the duration, quality, price and/or scope of the Services.

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## 5. Results

Xpirit warrants that the results are free from any viruses, worms, Trojan Horses, time bombs or other alike foreign elements at the moment of delivery.

Under the condition Client has paid the applicable fees, Xpirit transfers to Client all ownership rights, copyrights, and all other intellectual property rights to the results of the Services.

Where a transfer is impossible, Xpirit hereby grants Client a perpetual, fully paid up right to use the results of the Services within the scope of the assignment. However, third party materials are always made available under the relevant third party license.

If a third party claims that the results of the Services infringes on a third party intellectual property right, Client must promptly warn Xpirit thereof.

Xpirit will defend Client against such claim if Client reasonable cooperates with Xpirit and allows Xpirit to control the defense and all related settlement negotiations, and Xpirit will indemnify Client from and against any damages finally awarded for such infringement.

If an injunction is sought or obtained against Client's use of the results of the Services as a result of a third party infringement claim, Xpirit may, at its sole option and expense (a) procure for Client the right to continue using the affected results; (b) replace or modify the affected results with a functionally equivalent alternative so that it does not infringe; or, if (a) and (b) are not commercially feasible, (c) take back the affected results and reimburse Client for the hours during which the affected results were made.

Xpirit will have no liability for any third party claim of infringement based upon (a) use, operation or combination of results of the Services with non-Xpirit programs, data, equipment, or documentation if such infringement would have been avoided but for such use, operation or combination; or (b) any third party products, services, or software.

This provisions above constitute the entire liability of Xpirit, and Client's sole and exclusive remedy with respect to any third party claims of infringement of its intellectual property rights.

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## 6. Employees

Xpirit's employees always remain under the direction and supervision of Xpirit.

Xpirit will ensure that the Xpirit personnel appointed to perform the Services possesses the qualifications, knowledge and expertise needed to properly perform the Services.



During performance of the Services Xpirit may, in good consultation with the Client, replace Xpirit employees with equally or better qualified employees.

Xpirit may subcontract the Services. However, Xpirit will remain responsible and liable towards the Client for the performance of those subcontractors.

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## 7. Approval

If the parties have agreed on a maximum budget and/or maximum number of hours for performing the Services, Xpirit won't exceed such maximum without the prior written consent of Client.

At the end of each month, Xpirit shall submit for approval with Client its itemized time sheets for the Services actually performed in that month, which approval Client shall not withhold on unreasonable grounds. Approval of hours shall imply acceptance by Client of the Services performed during those hours.

Xpirit shall invoice Client monthly for approved hours.

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## 8. Expenses

Client will reimburse Xpirit for travel and living expenses incurred by Xpirit in the performance of the Services, provided such expenses (a) are actual and reasonable; (b) have been pre-approved by Client in writing (an email from Client's relevant service manager will suffice); (c) are substantiated with receipt; and (d) are in line with Client's travel policy (if provided before the start of the Services).

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## 9. Payment

Client shall pay correctly invoiced amounts within 30 days of receiving Xpirit's invoice.

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## 10. Confidentiality

The parties agree to maintain each other's confidential information a secret and treat it in the same manner it treats its own confidential information (but always with a reasonable degree of care). The parties will not share each other's confidential information with third parties without the prior written consent of the other party.

The parties may agree on additional confidentiality terms if desired. Xpirit remains entitled to use the knowledge, expertise and know how it gained from performance of the Services and apply it with third parties.

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## 11. Liability

Each party's aggregate liability is limited to direct damages up to a maximum of EUR 100.000. No party is liable for any indirect damages (*indirecte schade*), consequential damages (*gevolgschade*), loss of business (*bedrijfsstagnatie*), lost savings (*gemiste besparingen*), lost revenues (*omzetderving*), lost profits (*winstderving*), or loss of goodwill (*verlies van goodwill*).

The limitations of liability set out herein do not apply in case of intentional or gross negligence (*opzet of bewuste roekeloosheid*).



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## 12. Personal Data

If performing the Services requires Xpirit to process personal data, the following will apply:

- a. Client is considered the 'controller' (*verantwoordelijke*).
- b. Xpirit is considered the 'processor' (*bewerker*) and will only process such personal data in accordance with Client's instructions.
- c. Xpirit shall maintain adequate technical and organizational measures to protect such personal data against loss or wrongful processing.

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## 13. Term and Termination

Unless agreed otherwise, an agreement is in effect for a period of 12 months. An automatic renewal does not apply.

Either party may terminate its agreement with the other party for convenience (*tussentijds opzeggen*) without liability taking into account a notice period of 30 days. In this case, Client will compensate Xpirit for the Services actually performed and approved up to the moment of termination.

A party may terminate its agreement with the other party immediately and without further notice if the other party (a) breaches its obligations hereunder and fails to substantially cure such breach within 30 days of receiving notice thereto; (b) breaches its confidentiality

obligations hereunder; (c) requests or is granted a moratorium of payment; and/or (d) is declared bankrupt.

Upon termination, Xpirit will provide all results of the Services to Client within a reasonable period of time. Removal or destruction of Client's confidential information will be done in accordance with Client's instructions.

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## 14. Poaching

During the term of the agreement and for a term of 12 months after its expiration or termination, neither Party shall (directly or indirectly) solicit, hire, or entice away (or seek or attempt to solicit, hire or entice away) from the employment of the other party and/or any of its subsidiaries or affiliated companies any person employed (or any person who has been so employed in the preceding six (6) months) by such other party in the provision or receipt of the Services without the prior written consent of a Party except for Xpirit respects any personnel of Client that followed a training course with Xpirit.

Each party acknowledges that the prohibition and restriction contained in this clause are reasonable in the circumstances and necessary to protect the business of the other party.

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## 15. Applicable law & Jurisdiction

These general terms and conditions and all other agreements between the parties are governed by



Dutch law. All disputes arising from or relating to these general terms and conditions or any agreement between the parties will be brought before the competent court of the city of Amsterdam, The Netherlands.