



# General terms and conditions for business

December 2020

## 1. Definitions

The capitalized terms in this Agreement have the meaning ascribed to them in this article.

<b>Agreement</b>	the (digitally) signed and/or accepted Offer, including any attached schedules, and these General Terms.
<b>Business Days</b>	Monday through Friday from 8:30 AM up to 5:30 PM in the time zone of Zivver's headquarters and excluding local national holidays.
<b>Client</b>	the legal entity or natural person exercising its, his or her profession and with whom Zivver enters into the Agreement.
<b>End User(s)</b>	the natural person or persons that are employed by the Client and make use of the Services.
<b>Intellectual Property Rights</b>	any and all intellectual property rights, including without limitation, patents, design rights, copyrights, neighbouring rights, database rights, trademark rights, chip rights, trade name rights and Knowhow in, and relating to, Zivver, its affiliates, its licensors and/or its business.
<b>Knowhow</b>	all business secrets, secret formulas, inventions, designs, standards, (technical) data or information, processes, methods, raw materials and business methods, as well as all related information, knowledge, details, trade practices and improvements.
<b>Service Level Agreement</b>	means the applicable service level agreement of Zivver, which will be provided to the Client from time to time.
<b>Services</b>	services of Zivver that help the client to mitigate the risk for data breaches arising from the use of email, chat services and services supporting the exchange of large data files, which are included and further described in the Offer.
<b>Third Party</b>	a Person that is not a Party.
<b>Offer</b>	the offer of services by Zivver to the Client, as included in the offer document provided to the Client physically or digitally.
<b>Parties</b>	the Client and Zivver.



<b>Person</b>	any legal entity, firm, cooperation, partnership or other business entity, as well as any natural person.
<b>Personal Data</b>	any information relating to an identified or identifiable natural person, as referred to in article 4 sub 1 of the EU General Data Protection Regulation 2016/679 (GDPR).
<b>User Terms</b>	means the user terms and conditions which are available on Zivver's website, as may be amended from time to time.
<b>Written/in Writing</b>	means, in addition to written and signed paper documents, Zivver messages and email to the extent that the origin and integrity of these messages can be sufficiently established, unless explicitly stated otherwise in these General Terms.
<b>Zivver</b>	Zivver B.V. having its registered office in Amsterdam, the Netherlands and registered with the Dutch Chamber of Commerce under number 64894665.

## **2. Agreement and applicability and interpretation of the General Terms**

- 2.1. The Agreement comes into force and effect in accordance with the contents of the Offer.
- 2.2. The General Terms are applicable to the Agreement, the use of the Services and all (future) offers by Zivver.
- 2.3. Amendments and additions to the General Terms and/or the Agreement or only valid if these have been agreed by the parties in Writing. Zivver reserves the right to unilaterally amend the General Terms.
- 2.4. In case of any conflict between the documents, the following descending order of precedence applies:
  - (a) the Offer;
  - (b) the General terms; and
  - (c) the Service Level Agreement.
- 2.5. Assignment or transfer of any rights or obligations under the Agreement by the Client to any Third Party is not allowed without prior Written approval of Zivver.
- 2.6. Zivver is entitled to assign or transfer its rights and obligations under this Agreement to a Third Party that acquires the Services or the related business of Zivver and/or its shareholders.
- 2.7. Amendments to the General Terms shall also apply to already concluded Agreements, taking into account a period of 20 Business Days after announcing such changes on Zivver's website.
- 2.8. In the event that the Client is not willing to accept changes to the General Terms and such changes have a material adverse effect for the Client, it is entitled up to the date



that such new general terms and conditions come into full force and effect to terminate the Agreement by notice in Writing to Zivver.

- 2.9. Minor amendments and amendments because a change in legislation can always be made in the General Terms. Zivver is not obliged to announce such changes and it does not entitle the Client to terminate the Agreement in accordance with paragraph 8 of this article.

### **3. Duration and termination of the Agreement**

- 3.1. The Agreement has the term as agreed in the Offer and will automatically be renewed by successive periods of 12 months. Notice of termination must be set out in Writing, subject to a notice period of two months.
- 3.2. In case of a breach of the Agreement by the Client, Zivver is entitled to terminate this Agreement and/or terminate access to or provision of the Service after judicial intervention or notice of default stipulating a period of 30 days in which to remedy the breach. The consequences of termination do not give the Client any right to compensation.
- 3.3. After termination of the Agreement, the Client has the opportunity to download any data (from its End Users) still present on Zivver's systems within a period of 60 days. The Client itself is responsible for promptly downloading such data. After termination of the Agreement, Zivver will (accounting for the term described in this article) remove or destroy these data.
- 3.4. Upon termination of the Agreement, the following articles remain in full force and effect:
- (a) article 11 - Intellectual Property and Right of Use; and
  - (b) article 12 - Confidentiality.

### **4. Responsibilities of the Client**

The Client will do and/or omit everything that is reasonably required and desired to ensure that the Services are performed correctly in a timely manner. The Client will ensure in particular, but not exclusively, that:

- (a) all data indicated by Zivver as being reasonably necessary are promptly submitted to Zivver;
- (b) the Client's personnel are available where necessary for the performance of the Agreement;
- (c) the Service is not used by any persons other than the agreed End Users.

### **5. Description of the Services/products to be provided**

- 5.1. Zivver shall provide the Services included in the Offer, which Services the Client hereby purchases in accordance with the terms and conditions of this Agreement.
- 5.2. During the term of the Agreement, the Client may purchase additional services or licenses from Zivver, which shall be governed by the terms of this Agreement and which will not affect the term of the Agreement, unless the Parties explicitly agree otherwise.



- 5.3. During the term of the Agreement, the agreed number of licenses of the Client cannot be reduced, provided that this restriction shall not apply if the number of people employed by the Client changes significantly or the Client's business is legally demerged.
- 5.4. The Client explicitly grants Zivver permission to allow the execution by third parties of certain activities in connection with the performance of the Agreement, provided that Zivver remains responsible towards the Client for such performance.
- 5.5. The User Terms shall apply to any use by End Users of the Services. In the event of a conflict between the provisions of the Agreement and the provisions of the User Terms, the provisions of the Agreement shall prevail. The Client hereby accepts the User Terms and will ensure that its End Users shall comply with them.

## **6. Maintenance of and modification of the Services**

- 6.1. Zivver is entitled to take its systems, or parts thereof, temporarily out of service for maintenance, modification or improvement purposes. Zivver will endeavour to do so outside office hours as far as possible. Zivver will notify the Client accordingly. Zivver is never liable for compensation for damage or losses in connection with taking systems out of service for maintenance purposes.
- 6.2. Zivver is entitled to modify its systems, or parts thereof, from time to time in order to improve the functionality and to resolve errors. If a modification leads to a considerable change in the functionality, Zivver will promptly notify the Client. In the event of modifications that are relevant to multiple clients, it is not possible to leave out a specific modification only for the Client's benefit. Zivver is not liable to compensate for any damage or losses caused by such a modification. Should the aforesaid change in Zivver's functionality have substantial adverse consequences for the Client in its discretion, the Client is entitled to terminate the Agreement in Writing, subject to a one-month notice period.

## **7. Price and invoices**

- 7.1. For the Services and all other activities in connection with this Agreement, the Client will pay Zivver what is stated in the Offer and/or its schedules. All amounts are quoted in euros, and exclude turnover tax (VAT) and other governmental levied duties.
- 7.2. The annual fixed costs of the Services will be invoiced upon the commencement of the Agreement and subsequently on an annual basis. The variable costs for the Services will be invoiced on a quarterly basis, or a different basis if agreed in the offer, in arrears based on subsequent costing. Implementation of the Services will be invoiced upon completion of the implementation. The invoices will have a payment term of 30 days, for which the Client accepts possible electronic invoicing.
- 7.3. In January of each year, Zivver is entitled to index the prices for its Services, based on the consumer price index of Statistics Netherlands (CBS) and compared to the prices for its Services in the previous calendar year. In such event, the Client is not entitled to terminate the Agreement.
- 7.4. If payment is not made in time, the Client is obliged to pay, in addition to the amount owed and the commercial interest due, all the judicial and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt collection agencies.



7.5. In the event that the Client is declared bankrupt, applies for or is granted suspension of payments, the Client's activities are ceased or its business is wound up, all amounts owed to Zivver are immediately due and payable.

## **8. Liability**

8.1. Zivver maintains appropriate liability insurance cover. In this respect, Zivver has taken out professional and business liability insurance policies as well as a cyber risk insurance policy for this purpose.

8.2. For each event or series of related events, Zivver's liability for direct damage/losses suffered by the Client as a result of an attributable failure by Zivver to perform its obligations under the Agreement or an unlawful act on the part of Zivver, its employees or any third parties that it has engaged, is limited to four times the annual fixed subscription fees which the Client pays Zivver under the Agreement.

8.3. Zivver's liability for indirect losses, including consequential losses, loss of profit, lost savings, loss of business data or other data and losses due to business interruption is excluded.

8.4. Except for the cases referred to in article 8.2, Zivver cannot be held liable in any way for compensation, regardless of the grounds on which an action for compensation may be based. Notwithstanding the aforementioned, the limitations of liability referred to in article 8.2 shall not apply if the damage/losses are the result of an intentional act or gross negligence on the part of Zivver.

8.5. Zivver cannot influence any End User's use of the Services and the information sent or otherwise processed via the Services. As a consequence, the Client itself is and remains responsible for use of the Services and for the consequences of use of the Services by its End Users. The Client hereby indemnifies and hold Zivver harmless against any type of claim, complaint or proceedings instituted by a third party in connection with the content of the data traffic or information originating from the Client and/or its End Users as processed via the Service.

8.6. Zivver will endeavour to perform the Service as best it can, applying due care and professional competence based on the attached Service Level Agreement. In all other respects, Zivver will provide the Service 'as is'.

8.7. The only in the Service Level Agreement described compensation clause on which ground Client can claim compensation in case Zivver does not perform as agreed in the Agreement, must be viewed as a penalty clause in the sense of book 6 of the Dutch Civil Code.

## **9. Privacy**

9.1. Zivver processes Personal Data at the request of the Client to enable proper use of the Services. The Client is responsible to inform the End Users on such processing



of Personal Data and the Client ensures that there is a legal ground for the use of the Services by the Client.

- 9.2. As Zivver processes Personal Data at the request of the Client for the execution of the Agreement, Parties shall execute a data processing agreement which includes further arrangements on such processing and security of the Personal Data.

## **10. Intellectual property rights and Right of Use**

- 10.1. All intellectual property rights to the Services are vested in Zivver or its licensors. The Client hereby acquires a non-exclusive, non-transferable, non-pledgeable and non-sublicensable right for its End Users to use the Service for the term of the Agreement (the “**Right of Use**”).
- 10.2. All Services, designs, products, software, materials and documents have been and will be: (i) developed and/or drawn up solely for general use by Zivver; (ii) made available to all of its current and future customers by Zivver; and (iii) non-exclusively developed or made available to the Client.
- 10.3. The Right of Use explicitly does not imply that the Client has the right to inspect, obtain, copy and change the source code of the software appurtenant to the Services. The Right of Use does not entitle the Client to grant one or more sublicences to third parties, unless Zivver has granted its prior Written permission to do so.
- 10.4. Any information that the Client or its End Users save, send or otherwise process via the Services is and remains the property of the Client and/or its End Users.
- 10.5. If the Client and/or an End User sends information to Zivver for the purpose of feedback on an error or a suggestion for improvement, they grant Zivver an unlimited, perpetual Right of Use for this information in light of the Services.
- 10.6. Zivver will not access confidential information (such as personal messages) that the Client saves, sends or otherwise processes via the Services, insofar as it is not necessary for the provision and proper operation of the Services, for which Zivver hereby acquires a right of use. The foregoing does not apply if it is explicitly agreed with Zivver or if Zivver is obliged to do so pursuant to a statutory provision or court order. In such case, Zivver will undertake to limit access to the information as far as possible and within its power.
- 10.7. Client indemnifies Zivver for any claims of Third Parties related to infringement of (Intellectual Property) rights by the use of the Services by Client or its End Users.

## **11. Confidentiality**

- 11.1. Parties shall treat information that they receive from each other during or after the execution of the Agreement confidential when such information is marked confidential or when the receiving Party should be reasonably aware that such information has a



confidential nature. Parties shall impose this obligation also on its employees and on any contracted Third Parties that are used for the execution of the Agreement.

- 11.2. Zivver is, after Written approval of the Client, allowed for promotional purposes to indicate to Third Parties that the Client is making use of the Services. In this respect, Zivver shall take precautionary measures to protect the interests of the Client.
- 11.3. Parties agree to keep the contents of the Agreement, as well as the contents and functioning of the Services, confidential.

## **12. Miscellaneous**

- 12.1. If any provisions in the Agreement or in any attached schedules prove to be void or invalid, it will not affect the validity of the Agreement as a whole. In such case, the Parties will replace that provision by one or more new provisions reflecting the purport of the original provision as far as is possible under the law.
- 12.2. The Agreement, including any attached schedules, contains the entire agreement between the Parties relating to the subject of this Agreement and supersedes all earlier written, as well as oral agreements made by the Parties in this regard.
- 12.3. This Agreement, as well as the use of and the provision of the Services, are governed by Dutch law.
- 12.4. In case related to this Agreement a dispute between Parties occurs, Parties will first attempt to solve the dispute among each other. In this respect Parties could also (for instance) make use of mediation or submit the dispute to an independent Third Party.
- 12.5. To the extent that mandatory law does not prescribe differently, all disputes that occur in relation to this Agreement will be submitted to the competent court in the arrondissement in which Zivver is located.
- 12.6. The books of Zivver are leading, except if proven otherwise by Client.
- 12.7. This document also exists in the Dutch language. In case of any ambiguity between the Dutch version and this English version, the contents of the Dutch version shall prevail.