



## General Terms and Conditions Zivver B.V.

### 1. Definitions

1.1. The capitalized terms in these General Terms and Conditions 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 and Conditions;
<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>Customer</b>	the legal entity or natural person, where applicable: exercising in a professional capacity, with whom Zivver enters into the Agreement;
<b>End User(s)</b>	the natural person or persons that are employees or independent contractors of the Customer or act on behalf of the Customer 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, moral rights, software 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>Offer</b>	the offer of services by Zivver to the Customer, as included in the offer document, physically or digitally, provided to the Customer;
<b>Parties</b>	the Customer and Zivver;
<b>Person</b>	any legal entity, firm, 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>Right of Use</b>	a prepaid, royalty-free, non-exclusive, non-transferable and non-pledgeable right to use the Intellectual Property Rights solely for the purpose of receiving and using the Services, and to sublicense this right to End Users for this same purpose;
<b>Schedule</b>	A schedule to the Agreement, whereby all schedules form an



integral part of the Agreement;

<b>Services</b>	the services that Zivver provides to the Customer to help Customer secure its communications and as further described in the Offer;
<b>Taxes</b>	all taxes, duties and other governmental charges;
<b>Third Party</b>	a Person that is not a Party;
<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>Website</b>	www.zivver.com along with related websites; and
<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.

- 1.2. Headings in the Agreement do no influence the interpretation of the Agreement.
- 1.3. A word in the Agreement in singular also includes plural and plural also includes singular, unless it follows otherwise from the context.
- 1.4. Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 1.5. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.6. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision
- 1.7. A reference to writing or written includes e-mail and Zivver-messaging but excludes fax.

## **2. Agreement and applicability and of General Terms and Conditions**

- 2.1. The Agreement comes into force and effect in accordance with the contents of the Offer.
- 2.2. The General Terms and Conditions are applicable to the Agreement, the use of the Services and all (future) offers by Zivver.
- 2.3. In case of any conflict between the documents, the following descending order of precedence applies:
  - (a) the Offer



- (b) the General Terms and Conditions
- (c) Schedules

While, to the extent that Zivver acts as processor within the meaning of the General Data Protection Regulation (GDPR), the data processing agreement takes the highest precedence in the ranking.

- 2.4. Amendments and additions to the Agreement are only valid if these have been agreed by the Parties in writing. Zivver reserves the right to unilaterally amend the General Terms and Conditions. Amendments to the General Terms and Conditions shall also apply to already concluded Agreements, taking into account a period of 20 Business Days after announcing such changes on the Website.
- 2.5. In the event that the Customer is not willing to accept changes to the General Terms and Conditions and such changes have a demonstrable material adverse effect for the Customer, 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 written notice to Zivver.
- 2.6. Minor amendments and amendments because of a change in legislation can always be made to the General Terms and Conditions. Zivver is not obliged to announce such changes and it does not entitle the Customer to terminate the Agreement.

### **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 twelve (12) months, unless agreed otherwise in the Offer and subject to any limitations under statutory law. Either Party may terminate the Agreement for convenience against the end of the contractual term. Termination requires that the terminating Party gives written notice of termination to the other Party no later than two (2) months before the end of the then current contract period. The Agreement will subsequently terminate by the end of the then current contractual term.
- 3.2. Customer is not entitled to prematurely terminate the Agreement.
- 3.3. In case of a breach of the Agreement by the Customer, Zivver is entitled to terminate access to or provision of the Service after judicial intervention or after notice of default stipulating a period of 30 days in which to remedy the breach. The consequences of termination do not give the Customer any right to compensation.



- 3.4. Without prejudice to any other right of Zivver, Zivver is authorized to suspend the Services under the Agreement or to terminate the Agreement immediately in writing if:
- (a) the Customer fails to perform any material obligation under the Agreement and (to the extent performance is not permanently impossible) the Customer still fails to perform such obligation within thirty (30) days after Zivver has requested the Customer to do so in writing. The Customer's obligations under articles 4, 7.1, 9, 10.7 and 12 shall in any event be deemed to be substantial obligations. Other obligations of Customer, whether or not considered together, may also qualify as material depending on the circumstances;
  - (b) End Users breach the terms and conditions that apply to their use of the Services;
  - (c) Customer has not paid an amount due under the Agreement by the agreed payment date; or
  - (d) the financial position of the Customer deteriorates to such an extent that, in the opinion of Zivver, its ability to fulfill its obligations under the Agreement has been jeopardized. This shall in any event be the case if the Customer (i) has become insolvent, (ii) has ceased to pay, (iii) the Customer or a Third Party files for bankruptcy, suspension of payments or statutory debt restructuring or similar insolvency proceedings, (iv) the Customer offers a creditors' arrangement, or (v) the Customer ceases the activities of its business.

Customer is not entitled to any damages in case of direct termination or suspension of the Agreement pursuant to this article.

- 3.5. In deviation of article 3.1, Zivver shall have the right to terminate (part of) the Agreement for convenience at any moment without any further liability if Zivver decides to discontinue (part of) the Services for all or a substantial part of its customers for any reason. Any prepaid fees in respect of these terminated Services shall be reimbursed pro-rata by Zivver to the Customer.
- 3.6. After termination of the Agreement, the Customer has, for data exchanged via Zivver Secure Email and File Transfer, the opportunity to download any data (from its End Users) still present on Zivver's systems within a period of 60 days. The Customer itself is responsible for downloading such data in a timely manner.
- 3.7. Upon termination of the Agreement, the following articles remain in full force and effect:
- (a) Article 8 - Liability;
  - (b) Article 10 - Intellectual Property and Right of Use;
  - (c) Article 12 - Confidentiality; and
  - (d) Article 14 - Governing law, Jurisdiction and Dispute Resolution

#### **4. Responsibilities of the Customer**

The Customer 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 Customer will ensure in



particular, but not exclusively, that:

- (a) all data indicated by Zivver as being reasonably necessary are promptly submitted to Zivver;
- (b) provide co-operation to Zivver in all matters relating to the provision and receipt of the Services as described in the Offer (including making personnel available where necessary);
- (c) provide Zivver with such information and materials that Zivver may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) the Service is not used by any persons other than the agreed End Users.

## **5. Description of the Services**

- 5.1. Zivver provides the Services included in the Offer, which Services the Customer purchases in accordance with the terms and conditions of the Agreement.
- 5.2. During the term of the Agreement, the Customer may purchase additional services, accounts 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. At the beginning of each month, for invoicing purposes and unless the Parties explicitly agree otherwise, Zivver shall (i) calculate the number of licenses, accounts and/or use of the Services on each day of the previous month; (ii) add each daily total together (the “**Active Licenses**”); and (iii) divide the Active Licenses by the calendar days in the previous month. If Zivver establishes that more services or licenses have been used, or accounts are created by a Customer than licenses have been purchased, Zivver may charge the Customer for the additional services, licenses or accounts in line with the pricing included in the Offer.
- 5.3. During the term of the Agreement, the agreed number of licenses of the Customer and the scope of the Services cannot be reduced by Customer.
- 5.4. The Customer is only permitted to use the Services in the intended manner described in the Offer and on a fair use basis. If the Customer uses the Services in any other way (e.g. using a single account with an entire organization and communicating with a substantial number of guest users), Zivver reserves the unilateral right and the Customer hereby accepts such right: (i) to invoice the Customer without any further notice for an amount reflecting the actual use of the Service; and/or (ii) to terminate / to suspend the Services for an indefinite period of time or until a new agreement has been reached with the Customer on continuance of the Services. This right does not affect Zivver’s other rights, such as those included in article 3.4.
- 5.5. The Customer agrees that any End User permitted by the terms of the Offer to access and/or use the Service must agree to comply with the User Terms. 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 Customer hereby accepts the User Terms and commits to 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. This may include (but is not limited to) dealing with technical issues and making changes or updates to reflect changes in legal, regulatory or commercial requirements. Zivver will endeavor to do so outside office hours as far as possible. Zivver will notify the Customer accordingly. Zivver is never liable for compensation for damage or losses in connection with taking systems out of service for the purposes set out in this article.
- 6.2. Zivver is entitled to modify its systems, or parts thereof, from time to time in order to improve or introduce functionalities and to resolve errors. If a modification leads to a considerable change in a functionality, Zivver will promptly notify the Customer. In the event of modifications that are relevant to multiple Customers, it is not possible to leave out a specific modification only for the Customer's benefit. Zivver is not liable to compensate for any damage or losses caused by such a modification. Should the aforesaid change in an existing functionality have substantial adverse consequences for the Customer, the Customer is entitled to terminate the Agreement in writing, subject to a one (1) month's notice period.
- 6.3. Starting point is that the improved version of existing functionalities of the solution purchased by Customer will be made available to Customer free of charge. Without prejudice to what is stated in the next sentence, Zivver reserves the unilateral right to charge Customer for making available new and/or additional functionalities that relate to functionalities already purchased by the Customer and which - at the discretion of Zivver - offer significant added value. Zivver is only entitled to charge these amounts if: (A) Customer has been informed in writing about (i) the new/additional functionality, (ii) the applicable costs, and (iii) Customer's right to opt out of activation of this functionality (the so-called opt-out right); and (B) 30 days have expired after such information has been shared and Customer has not made use of the opt-out right. In addition, Customer retains the right to deactivate such new and/or additional functionality at any time during the term of the Agreement and, as soon as technical feasible, the functionality will be deactivated and no further costs will be charged for this functionality.

## **7. Price and invoices**

- 7.1. Customer will pay all fees as included in the Offer and other amounts owed under the Agreements, plus any Taxes, to Zivver. All quoted amounts are in Euro and need to be paid in Euro.
- 7.2. The annual fixed costs of the Services will be invoiced upon the commencement of the Agreement and subsequently on an annual basis in advance. 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 a subsequent calculation. Implementation of the Services will be invoiced upon completion of the implementation.

- 7.3. Customer will pay all amounts within thirty (30) days after the date of the invoice. Customers accepts the possibility of electronic invoicing.
- 7.4. Per January of each year, Zivver is entitled to index the prices for its Services, compared to the prices for its Services in the previous calendar year, based on the consumer price index of Statistics Netherlands (CBS). In such event, the Customer is not entitled to terminate the Agreement.
- 7.5. If payment is not made in time, the Customer is obliged to pay, in addition to the principal sum, statutory interest - and in case of a commercial agreement: statutory commercial interest -; notwithstanding the right of Zivver to terminate the Agreement. Statutory (commercial) interest is owed until the relevant sums owed are fully paid. Customer will reimburse Zivver for all costs made for collection of unpaid amounts, including, but not limited to, reasonable attorney fees and judicial and extra-judicial collection costs
- 7.6. In the event that the Customer requests bankruptcy, is declared bankrupt, applies for or is granted suspension of payments, the Customer's activities are ceased or its business is wound up, all amounts owed to Zivver are immediately due and payable.
- 7.7. For authenticating users with multi-factor authentication, such as SMS, Zivver charges the costs per use of the relevant authentication method as included in the Offer. If a user has activated Trusted Device Authentication and opens a message secured by multi-factor authentication on a trusted device, Zivver only charges an amount equal to the relevant cost for such multi-factor authentication for the initial decryption of the message, regardless how often the specific message is accessed on the trusted device.

## **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 Customer 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 (4) times the annual fixed subscription fees which the Customer has paid Zivver under the Agreement in relation to the specific Services the claim relates to. Direct losses are understood to only include:



- (a) reasonable and demonstrable costs that Customer needed to incur to move Zivver to (again) perform its obligations under the Agreement;
  - (b) reasonable costs for establishing the cause and scope of the damage insofar as related to the direct damages as meant in this article; and
  - (c) reasonable and demonstrable costs that Customer has incurred to prevent or limit direct damage as meant this article.
- 8.3. Zivver's liability for indirect losses, including consequential losses, loss of profit, loss of goodwill, 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 this article 8 do not apply if the damage/losses are the result of an intentional act or gross negligence on the part of Zivver's management.
- 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, Customer itself is responsible for use of the Services and for the consequences of use of the Services by its End Users. The Customer hereby indemnifies and holds Zivver and/or Zivver's affiliates harmless against any type of claim, complaint or proceedings instituted by a third party (including any of Zivver's licensors) in connection with (i) the Customer's use of the Services and/or any use of the Services by End Users and (ii) the content of the data traffic or information originating from the Customer and/or its End Users as processed via the Service.
- 8.6. Customer indemnifies and holds Zivver harmless from and against any losses, costs, liabilities, claims and expenses (including reasonable attorneys' fees) suffered or incurred by Zivver and/or Zivver's affiliates as a result of its breach of the Agreement and End Users breaching the applicable terms and conditions.
- 8.7. Zivver endeavors to perform the Service as best it can, applying due care and professional competence. Zivver delivers and implements the Services on a best effort basis. In all other respects, Zivver will provide the Service 'as is'.
- 8.8. Customer bears full responsibility for files imported by Customer and Zivver provides no guarantee as to the quality of, fitness for a certain purpose of or the absence of viruses or other damaging components in these files.
- 8.9. Zivver implements and delivers the Services partially based on instructions by Customer and/or settings by Customer. Customer is responsible for such instructions and settings. Zivver is not liable for damage that in whole or in part is the caused by following such instructions and settings in regard of the implementation or delivery of the Services.





- 8.10. If applicable, any compensation clause included in the Agreement under which the Customer is entitled to compensation if Zivver fails to perform as agreed shall be considered a penalty clause as described in Book 6 of the Civil Code.

## **9. Privacy**

- 9.1. Zivver processes Personal Data at the instructions of Customer to enable proper use of the Services. Customer is responsible to inform End Users on such processing of Personal Data and Customer ensures that there is a legal ground for the instructions to Zivver for the processing of Personal Data.

- 9.2. As Zivver processes Personal Data at the request of the Customer 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 in, arising from or related to the Services are vested in Zivver, Zivver affiliates or their licensors.

- 10.2. Zivver grants Customer the Right of Use for the duration of the Agreement.

- 10.3. All Services, designs, products, software, materials and documents - with the exception of custom made Zivver e-learning modules - are and will be:

- (a) developed and/or drawn up solely for general use;
- (b) made available to all current and future customers; and
- (c) developed or made available to the Customer on a non-exclusive basis.

- 10.4. The Right of Use explicitly does not imply that the Customer has the right to inspect, obtain, copy and/or change the source code of the software appurtenant to the Services. The Right of Use does not entitle the Customer to grant one or more sublicences to Third Parties, unless Zivver has granted prior written permission to do so. Customer shall not sell, resell, distribute, rent, lease, license, sublicense, or assign the Right of use to any Third Party.

- 10.5. Any information that the Customer or its End Users save, send or otherwise process via the Services is and remains the property of the Customer and/or its End Users.

- 10.6. Zivver will not access confidential information (such as personal messages) that the Customer saves, sends, receives or otherwise processes via the Services, insofar as it is not necessary for the provision and proper operation of the Services. Insofar as it is necessary to access such confidential data in order to provide and adequately operate the Services, the Customer grants Zivver and its licensors a right of use of such confidential data. 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. Customer shall use its best efforts to prevent unauthorized access or use of the Services and shall promptly notify Zivver in writing if Customer becomes aware of any unauthorized access or use. If anyone gains unauthorized access to or use of the Services directly or indirectly through Customer, Customer will, at its own expense, take all reasonably necessary steps to terminate the unauthorized access or use. Customer shall, at its own expense, cooperate and assist in any action by Zivver to prevent or terminate unauthorized access or use of the Services and to remedy the occurrence.
- 10.8. If the Customer 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 this information for the Services.
- 10.9. Also in case of custom made Zivver e-learning modules Customer only obtains a Right of Use as to the modules and no Intellectual Property Rights.

## **11. Force majeure**

- 11.1. Zivver is not obliged to perform any obligation under the Agreement if it is prevented from doing so due to force majeure.
- 11.2. Force majeure means an external cause which Zivver cannot reasonably influence, which Zivver could not reasonably have foreseen at the time of the conclusion of the Agreement and which prevents Zivver from fulfilling an obligation.
- 11.3. Force majeure is in any case, but not exclusively, in case of government measures, electricity failures, failures of Internet, data network or telecommunication facilities, cyber attacks, war, civil unrest, terrorism, plagues, pandemic, natural disasters, fire, explosion, flood, strikes, suppliers not providing certain services to Zivver, which are reasonably required for Zivver to offer (part of) the Services, and force majeure of (suppliers of) Zivver.
- 11.4. Zivver is obliged in the event of force majeure to take reasonable measures to limit the effects of the force majeure on the performance of the Agreement.

## **12. Confidentiality**

- 12.1. Parties shall treat information that they receive from each other before, 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.

- 12.2. Neither Party shall without the written consent of the other Party provide confidential information about each other's business, affairs, customers or suppliers to Third Parties, except:
  - (a) to employees, directors, representatives, retained Third Parties or consultants of such Party who need to know such information in order to enable such Party to exercise its rights or perform its obligations under the Agreement; or
  - (b) to the extent required by law, a competent court or a governmental or regulatory body.
- 12.3. Customer permits Zivver to place Customer's name and, if applicable, logo on the Website and in marketing and advertising materials, subject to any trademark guidelines and other regulations of the Customer regarding use of its logo.
- 12.4. Parties agree to keep the contents of the Agreement, as well as the contents and functioning of the Services, confidential.

### **13. Miscellaneous**

- 13.1. If any provisions of the Agreement 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.
- 13.2. Customer cannot assign its rights and obligations under the Agreement, without Zivver's written consent. After written consent, Customer's legal successors shall be bound by the Agreement. Transfer of Customer's rights and obligations in any other way than provided for in this article is not possible. Zivver is entitled to transfer its rights and obligations under this Agreement to a Third Party that acquires the Services, the related business or business activity of Zivver or the shares in Zivver's shareholder.
- 13.3. Customer gives Zivver explicit permission to allow Third Parties to perform certain actions in connection with the performance of the Agreement, on the understanding that Zivver remains responsible towards Customer for the performance of the Agreement. The provisions of the data processing agreement regarding the use of Third Parties shall apply to all activities in which Zivver acts as a processor within the meaning of applicable laws and regulations (including the AVG).
- 13.4. All of Zivver's rights under the Agreement in the event of a default by Customer shall apply in full, unless an authorized representative of Zivver waives such right in writing.



If Zivver waives such right at any time, such waiver shall not apply to any subsequent deficiencies.

- 13.5. Zivver's records are leading, subject to evidence to the contrary from Customer.
- 13.6. These General Terms and Conditions are available in both Dutch and English. In case of any ambiguity or discrepancy between the Dutch version and this English version, the Dutch version shall prevail.

#### **14. Governing law, jurisdiction and dispute resolution**

- 14.1. The Agreement and the General Terms and Conditions and any dispute or claim arising out of or in connection therewith (including non-contractual claims) shall be governed by Dutch law.
- 14.2. In case of a complaint or claim, Customer shall first contact Zivver in order to try to find a solution.
- 14.3. If after reasonable efforts no amicable settlement can be reached, then all disputes in first instance shall be submitted exclusively to the District Court of Amsterdam, unless rules of mandatory law lead to the competency of another competent court.

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