

## General terms and conditions

These are the General Terms and Conditions of Transform2Eden (hereinafter referred to as “T2E”), a company having its registered office at De Heijbloem 43, Nuenen, the Netherlands. T2E is registered at the Dutch Trade Register of the Chamber of Commerce under number 74043285.

### Definitions

In these General Terms and Conditions the following terms have the subsequent meaning unless explicitly stated otherwise.

**Terms and Conditions:** these general terms and conditions.

**Company:** the Counterparty acting in the conduct of a business or profession.

**CC:** the Dutch Civil Code (*Burgerlijk Wetboek*).

**Consumer:** the Counterparty not acting in the conduct of a business or profession.

**Assignment:** All activities, in any form, performed by T2E for (the benefit) of the Counterparty.

**Distance Service:** a contract that is concluded between T2E and the Counterparty under an organized distance service provision scheme, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

**Agreement:** each agreement concluded between T2E and the Counterparty.

**Counterparty:** the party that has accepted these Terms and Conditions and has given instructions to perform an Assignment. The Counterparty can be a Company or Consumer.

Unless the Terms and Conditions explicitly state otherwise, the singular shall include the plural and vice versa, and reference to the male form shall include the female form and vice versa, in relation to the interpretation of the Terms and Conditions.

### Applicability

1. These Terms and Conditions are applicable to all proposals and Agreements made between T2E and the Counterparty unless the parties have expressly waived these Terms and Conditions in writing.
2. These Terms and Conditions are also applicable to agreements with T2E, where third parties should be involved for the fulfillment of the agreement.
3. The applicability of terms and conditions of the Counterparty is hereby excluded explicitly.
4. Deviations of the Agreement and Terms and Conditions shall only be valid in case these have been explicitly agreed upon in writing.

## **Proposals**

1. All proposals where the contrary has not been explicitly stated, qualify as a non-committal proposal and can always be revoked, also if it includes a term for acceptance. Proposals can also be revoked within seven days after receipt by T2E, in which case no agreement will be concluded.
2. All proposals of T2E are valid for a period of 7 days, unless indicated otherwise.
3. T2E shall not be bound to his proposals when the Counterparty, based on reasonableness and fairness and in general accepted principles, should have understood that the proposal (in whole or in part) contains an obvious mistake or error.
4. In the event the acceptance (whether on minor points or not) deviates from the proposal, T2E shall not be bound to such acceptance. Unless T2E states otherwise, the Agreement will not be concluded in accordance with such deviating acceptance.

## **Conclusion of the agreement**

1. The Agreement is concluded by the acceptance of the Counterparty of the proposal of T2E.
2. Proposals can only be accepted in writing (including those made through electronic means). T2E is nonetheless entitled to acknowledge a verbal acceptance as if this would have been made in writing.
3. The Agreement is concluded upon receipt of a confirmation of assignment from the Counterparty by T2E, the Agreement between the parties is concluded, or upon the effective start of the execution by T2E.
4. The Agreement replaces all previous proposals, correspondence or other communication, in writing or verbally.

## **Performance of the agreement**

1. The Agreement will be performed by T2E to the best of its knowledge and ability, and in accordance with good professional practice. The activities to be performed are subject to a best efforts obligation on the part of T2E. The application of article 7:404, 7:407 paragraph 2 of the Dutch Civil Code is explicitly excluded.
2. T2E determines how and by whom the Assignment is performed. T2E is authorized to let third parties carry out certain tasks.
3. T2E is authorized to perform the Agreement in phases. In case the Agreement is performed in phases, T2E is entitled to invoice each executed part separately. If, and as long as an invoice is not paid by the Counterparty, T2E is not required to perform the next phase and is authorized to suspend the performance of the Agreement.
4. T2E is entitled to holiday days which are communicated in advance, despite the minimum hours included in the Agreement.

## **Changes and additional work**

1. If during the performance of the Agreement it appears to be necessary to change or supplement the Agreement for an adequate execution T2E will inform the Counterparty as soon as possible. Parties will proceed changing the Agreement timely and in consultation with each other.
2. If the parties agree that the Agreement needs to be changed/supplemented, the time to completion of the performance can be influenced by this. The Counterparty will be informed accordingly by T2E as soon as possible.
3. If the changes or supplement to the Agreement will have financial, quantitative and/or qualitative consequences, the Counterparty will be informed of this by T2E in advance.
4. If a fixed fee or fixed price is agreed upon, T2E will indicate to what extent the changes/supplement of the Agreement impacts the fee/price. In this case T2E will try – to the extent possible - to provide a quotation in advance.
5. T2E will not be entitled to charge additional costs in case the changes/supplement are due to circumstances attributable to T2E.
6. Changes made to the original Agreement shall only be valid once these changes are accepted by both parties by means of a supplementary or changed agreement.

## **Obligations Counterparty**

1. The Counterparty makes sure that all information, equipment or spaces required for the performance of the Agreement as indicated by T2E, or which the Counterparty should reasonably understand are required for the performance, are available in time. In addition, the Counterparty needs to provide all rights and authorizations to T2E that are required to execute the Assignment adequately.
2. T2E is not liable for any damages, of any kind, as a result of using incorrect and/or incomplete information provided by the Counterparty with respect to the performance of the Agreement, unless this inaccuracy or incompleteness should be known by T2E.
3. The Counterparty will ensure that the employees of the Counterparty's organization who are involved in the activities, are available in time.
4. The Counterparty should refrain from conduct which makes it impossible for T2E to properly execute the Assignment.
5. In case T2E or involved third parties by T2E carry out activities in relation to the Assignment at the Counterparty's location or a location designated by the Counterparty, the Counterparty will provide the reasonably desired facilities without any costs.
6. In case the Counterparty fails to meet its obligations as referred to in this article, T2E has the right to suspend the execution of the Agreement and/or charge the Counterparty for the extra costs, in accordance with the market prices or fees, incurred due to the delay.

## Rates

1. The by T2E indicated rates and prices are excluding VAT, unless explicitly agreed otherwise in writing.
2. The rates and prices are excluding shipment-, travel-, accommodation and other expenses, unless otherwise agreed.
3. In case no rate or price was explicitly agreed upon, the applicable rate or price will be determined based on the actual hours worked and the usual rates of T2E.
4. Prior to concluding the Agreement, T2E shall promptly provide the Counterparty with an overview of all additional costs, or shall provide information based on which these costs can be charged to the Counterparty.
5. In case T2E agreed a fixed rate or price upon concluding the Agreement, T2E is entitled to increase these, even in the event such rate or price was not provided under conditions/with reservation.
6. In the event T2E intends to change the rate or price, it shall inform the Counterparty accordingly as soon as possible
7. In case the increase of the rate or price takes place within three months after concluding the Agreement, the Counterparty is entitled to cancel the Agreement by a written notification, unless:
  - a. the increase derives from an authorization or a legal obligation of T2E under the laws of The Netherlands;
  - b. the increase is due to an increase of the price of raw materials, taxes, production costs, exchange rates, wages etcetera or for other reasons that could not have been reasonably foreseen upon conclusion of the Agreement;
  - c. T2E is prepared to execute the Agreement in accordance with originally agreed provisions; or
  - d. it has been stipulated that the execution will take place longer than three months after concluding the Agreement.

## Payment

1. Payment shall be made by means of a transfer into a bank account indicated by T2E, unless otherwise agreed.
2. T2E will send an invoice for the amounts payable by the Counterparty. The payment period of each invoice is 14 days after the date of the invoice, unless indicated differently on the invoice or otherwise agreed.
3. Invoicing takes place on a monthly basis, unless otherwise agreed.
4. T2E and the Counterparty may agree that the payments will take place in installments in line with the progress of the work. If payment in installments is agreed, the Counterparty must pay in accordance of the installments and percentages as included in Agreement.
5. Objections with respect to the amount stated in the invoice do not suspend the Counterparty's obligation to fulfill the payment.
6. The Counterparty may not set off any amounts with the amount to be paid in relation to an alleged counterclaim.

7. In the event of non-payment or an overdue payment, the Counterparty will be in default without any notice of default being required. As from the date such payment is due the Counterparty is required to pay the statutory (commercial) interest rate until the date of full payment. Interest accrued in relation to a part of a month shall be calculated for a full month.
8. All payments received from the Counterparty shall be applied (i) first to the payment of all costs, expenses and accrued and unpaid interest and (ii) second to the repayment of the oldest overdue invoices, even if the Counterparty states that such payment relates to other invoices overdue.
9. In the event the Counterparty is in default due to breaching its obligations, the Counterparty shall be liable for all reasonable extrajudicial costs incurred in relation to obtaining payment.
10. With respect to all extrajudicial (collection) costs T2E, to the extent the Counterparty acts in the capacity of a Company, is entitled to a compensation of 15% of the total principal amount outstanding with a minimum of €100,- for each invoice which has not been paid in full or in part.
11. With respect to all extrajudicial (collection) costs T2E, to the extent the Counterparty acts in the capacity of a Consumer, is entitled to the maximum statutory compensation as stated in the Dutch extrajudicial collection costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*).
12. To the extent the Counterparty acts in the capacity of a Consumer, T2E is only entitled to compensation of the extrajudicial (collection) costs once T2E has sent a written notice to fulfill the payment(s) within 14 days to the Counterparty upon the occurrence of default.
13. In the event of bankruptcy, suspension of payments, liquidation, seized assets, death or guardianship the claims of T2E and the obligations of the Counterparty towards T2E shall be immediately due and payable.
14. Any reasonably incurred judicial and enforcement costs shall be for the account of the Counterparty as well.

## **Distance service**

1. This provision only applies to the Counterparty in the capacity of Consumer.
2. In the case of Distance Service T2E is entitled to demand advance payment with a maximum of 50 per cent of the price.
3. In the case of Distance Service the Counterparty is entitled to withdraw from the Agreement within fourteen calendar days after concluding the Agreement without stating reasons.
4. The Counterparty may withdraw from the Agreement by using the withdraw form placed by T2E on its website or in a manner chosen by the Counterparty.
5. The Counterparty loses its right to withdraw when the Assignment is fully performed. In addition, the Counterparty loses its right of withdrawal when the performance of the Assignment by T2E has begun with the Counterparty's prior express consent, and with the acknowledgement that it will lose its right of withdrawal once T2E has fully performed the Assignment.
6. If the Counterparty has exercised the right of withdrawal, T2E will refund the full amount paid including shipment costs within fourteen calendar days of the dissolution of the Agreement.

7. The foregoing in this article does not apply if the Agreement relates to:
  - a. real estate;
  - b. financial services;
  - c. services concerning accommodation, travel, catering;
  - d. services carried out on a specific date or during a specific period;
  - e. newspapers, periodical or magazine with the exception of subscription contracts for the supply of such publications;
  - f. goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by T2E and which may occur within the withdrawal period;
  - g. sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
  - h. goods and/or services which are delivered within the withdrawal period with the Counterparty's consent;
  - i. goods and/or services that cannot be sent back according to their nature.
  - j. goods and/or service which are liable to deteriorate or expire rapidly.
  - k. goods made to the Counterparty's specifications or clearly personalised.

## **Complaints**

1. Upon performance of the Assignment, or at least within 7 days after completion, the Counterparty shall examine whether the performed Assignment meets the Agreement.
2. Complaints should be reported to T2E in writing within 7 days after performing the Assignment.
3. The right to a (partial) refund of the price, replacement or compensation for damages expires if a complaint is not reported within the prescribed term, unless an extended term arises from the nature of the Assignment or the circumstances of the situation.
4. The payment obligation shall not be suspended in the event the Counterparty informs T2E of the complaint within the prescribed term.

## **Force majeure and unforeseen circumstances**

1. Notwithstanding anything in these Terms and Conditions to the contrary, neither party shall be liable to the other party for any failure to perform or delay in the performance of any obligation under the Agreement when such failure to perform or delay in performance is caused by unforeseen circumstances or due to any cause or condition beyond the reasonable control of the party. In such event the parties are not required to comply with the obligations under the Agreement.
2. In addition to the interpretation of this concept under the laws of The Netherlands and case law, the term "force majeure" under these Terms and Conditions shall include all external causes, foreseen or unforeseen, beyond the reasonable control of T2E due to which T2E is unable to comply with its obligations.

3. Force majeure in relation to T2E shall in any case include:
  - a. strikes;
  - b. transport disruptions;
  - c. acts of government that prevent T2E from timely and/or proper fulfillment of its obligations;
  - d. riots, civil disturbance, wars,
  - e. traffic obstructions;
  - f. labor difficulties;
  - g. extreme weather conditions;
  - h. fire;
  - i. embargoes or inability to obtain supplies; and/or
  - j. any circumstances which obstruct the normal course of business resulting in the fact the performance of the Agreement by T2E cannot be reasonable expected by the Counterparty.T2E.

## **Termination**

1. Parties may terminate the Agreement at any time by mutual agreement.
2. Parties may prematurely terminate the Agreement in writing with a notice period of 1 maand.
3. Parties may terminate the Agreement with immediate effect in writing, in case of:
  - a. application by or granting to the other party of suspension of payment;
  - b. petition of bankruptcy by, or declaration of bankruptcy of, the Counterparty;
  - c. liquidation of the Counterparty or non-timely discontinuation of the enterprise of the Counterparty; or
  - d. administration order, guardianship or debt restructuring within the meaning of the Natural Persons Debt Restructuring Act (*WSNP*) of the Counterparty.
4. In case the Agreement shall be dissolved, the payments owned by the Counterparty to T2E are immediately due and payable. If T2E suspends the fulfillment of the obligations, it will retain its claims pursuant to the laws and the Agreement. T2E will always retain the right to demand damage compensation.
5. The provisions of the Terms and Conditions and the Agreement, which expressly or due to their nature are intended to remain in force after termination of this Agreement or the performance of the Assignment, shall remain in full force.

## **Liability**

1. T2E is only liable for direct damage caused deliberately or as a result of gross negligence of T2E, and limited to the amount paid out or covered by the insurance to T2E or limited to the amount specified in the invoice or an amount of 5.000,-, if the invoice amount is higher than €5.000,-.
2. Direct damage is exclusively understood as:
  - a. the reasonable costs of ascertaining the cause and scope of the damage, to the extent the determination is related to damage as referred to in the Terms and Conditions;
  - b. any reasonable costs incurred to repair the failure in the performance by T2E in order to meet the Agreement insofar as this can be attributed to T2E; or
  - c. reasonable costs incurred to prevent or limit damage, to the extent the Counterparty is able to demonstrate that these costs have led to a limitation of direct damage as referred to in the Terms and Conditions.

3. T2E shall not be liable for any indirect damage, including consequential loss, loss of profits, lost savings and damage caused by interruption of operations, loss as a result of providing insufficient cooperation and/or information to the Counterparty, damage as a result of information or advice provided by T2E, of which the contents do not explicitly form part of the Agreement and all damages which are not covered by direct damage as referred to in these Terms and Conditions.
4. T2E shall not be liable for mistakes in the material provided by the Counterparty or for misunderstandings or mistakes with respect to the performance of the Agreement if these are the result of actions of the Counterparty, such as late or non-delivery of complete, sound and clear information/materials.
5. T2E shall not be liable for mistakes in the event the Counterparty has already given approval, or has had the opportunity to carry out an inspection and has expressed no desire for such an inspection.
6. The liability restrictions set out in this article also apply to third parties appointed by T2E for the performance of the Agreement, and T2E shall not be liable for damages caused by failures of such third parties.
7. T2E shall not be liable for damage or loss of documents during transportation or mailing regardless whether these were transported or mailed by or on behalf of T2E, the Counterparty or third parties.

## **Confidentiality**

1. Both parties undertake not to disclose to third parties any confidential information obtained from each other or from another source in the context of the Agreement. Information is deemed to be confidential if the other party has communicated it as such or if this results from the nature of the information. The party receiving confidential information, shall only use it for the purpose for which it was provided.
2. If T2E is required by law or by any legal authority to disclose confidential information to third parties and T2E cannot invoke a legal privilege or a privilege acknowledged or approved by a competent court of law, T2E shall not be liable for any damages or compensation, and the Counterparty shall not be entitled to dissolve the Agreement pursuant to any damage caused by such disclosure.
3. Notwithstanding the above, T2E is authorized to include the name of the Counterparty in a list of business relations, that is published on the website for third parties or via other means, unless agreed otherwise.

## **Indemnification**

1. The Counterparty indemnifies T2E, to the extent permitted by law, against liability towards one or more third parties, arisen from and/or connected to the performance of the Agreement, irrespective of whether the damage is caused or inflicted by T2E or by the third parties appointed by T2E, by auxiliary materials or the completed Assignment.
2. In addition, the Counterparty indemnifies T2E, to the extent permitted by law, against all liabilities from third parties in connection with any infringement of Intellectual property rights of these third parties.
3. The Counterparty is always required to use its best efforts to limit the damage to a minimum.

## Intellectual property

1. All intellectual property rights to all the provided products, materials, analyses, designs, software, documentation, opinions, reports, quotes, (electronic) information and preparatory material thereof (together the "IE Material"), developed or provided as part of the Agreement, are owned exclusively by T2E or its licensors.
2. The Counterparty's sole rights and authorizations with respect to the IE Material derive from the Agreement and/or are expressly conferred in writing.
3. The Counterparty is not entitled to transfer any obtained rights or authorizations regarding the IE Material to third parties without prior written consent of T2E.
4. The Counterparty is not entitled to remove or alter any designation concerning intellectual property rights such as copyrights, trademarks or trading names from the IE Material.
5. Each exploitation, reproduction, utilization or publication of the IE Material by the Counterparty outside the scope of this Agreement or rights and authorizations granted, will be regarded as a violation of the intellectual property of T2E.
6. The Counterparty shall pay an immediately due and payable penalty of €2.000, not subject to any judicial moderation, for each infringement to T2E, without prejudice to the right of T2E to claim reimbursement of the damage incurred by the infringement or to take other legal actions in order to terminate the infringement.
7. In case the Counterparty has received expressly written consent of T2E for the exploitation, reproduction, utilization or publication of the IE Material outside the scope of this Agreement or granted rights and authorities, this shall not constitute as an infringement of intellectual property rights.
8. All the IE Material developed by T2E for the execution of the Agreement may be used for promotional purposes by T2E, unless otherwise agreed.

## Privacy

1. T2E respects the privacy of the Counterparty. T2E handles and processes all personal data provided in accordance with the applicable legislation, specifically the Dutch Personal Data Protection Act. The Counterparty agrees with this handling. T2E applies appropriate security measures for the protection of personal data of the Counterparty.
2. T2E will use the personal data of the Counterparty exclusively for the performance of the Agreement or to deal with a complaint.

## Expiration term

All claims and/or authorizations which the Counterparty may have against T2E and/or any third parties appointed by T2E have, by way of derogation from statutory limitation period, a limitation period of one year starting upon the occurrence of an event resulting in gaining such claims and/or authorizations by the Counterparty against T2E and/or any third parties appointed by T2E.

## Changes to parties

1. The Counterparty is not entitled to transfer its rights and obligations under the Agreement to any third party without the prior written consent of T2E.
2. T2E is entitled to impose conditions in relation to such consent.

## **Final provisions**

1. Any deviations from these Terms and Conditions can only be agreed in writing. No rights shall derive from such deviations with regards to legal relationships entered into subsequently.
2. The administration of T2E is considered, subject to counter-evidence, as proof of the requests made by the Counterparty. The Counterparty recognizes that electronic communication may serve as proof.
3. In case and to the extent that any provision of these Terms and Conditions and/or the Agreement will be declared invalid or unenforceable under the applicable legislation and regulations, the other provisions or parts of the provisions will continue to apply. T2E replace the provision in question with a valid and enforceable provision that differs as little as possible from the original provision.
4. The place of performance of the Agreement shall be deemed the place where T2E is located.

## **Governing law and jurisdiction**

1. These Terms and Conditions and the Agreement, and all non-contractual rights and obligations arising thereto, are governed by and will be interpreted in accordance with the laws of The Netherlands.
2. All disputes between T2E and the Counterparty related to these Terms and Conditions and the Agreement, or the agreements concluded in the performance of or in connection with these Terms and Conditions and the Agreement, will be submitted exclusively to the competent court of Oost-Brabant.

Transform2Eden