



GENERAL TERMS AND CONDITIONS BRIGHTSTORMING

Article 1. Definitions

In the context of these General Terms and Conditions the definitions have the following meaning:

1.1 General Terms and Conditions: these General Terms and Conditions, applicable for the legal relation between the Client and Brightstorming. Using the Services and/or Products from Brightstorming is considered as awareness of these General Terms and Conditions, as well as acceptance thereof;

1.2 Agreement: any agreement of service provision or other Agreement that Brightstorming concludes with the Client and all Agreements and/or commitments arising from or relating to this.

1.3 Employee: a natural person who is employed at or associated with Brightstorming, whether or not based on an employment contract;

1.4 Order: the Agreement (of order) whereby Brightstorming commits itself towards the Client to perform certain Services and/or supply Products;

1.5 Quotation: the free offer made by Brightstorming to the Client;

1.6 The Client: the natural person or legal entity that has given Brightstorming the order to perform Services / supply Products or other Work activities;

1.7 Parties: Brightstorming and the Client jointly;

1.8 Work activities: all assigned Work activities to be performed by Brightstorming for the benefit of the Client and that have been accepted by Brightstorming as well as the Work activities agreed in the Agreement between Brightstorming and the Client as well as all Work activities arising from this for Brightstorming;

1.9 Products/Services: all Products and/or Services from Brightstorming to be supplied or delivered to the Client, including, among others, giving lectures, training courses and workshops, and performing and/or supervising brightstormsessions;

1.10 The web application: The Service which includes the making available and maintaining of a web application in order for the Customer to perform brainstorm sessions;

1.11 Intellectual property: all intellectual property rights of Brightstorming, including the copyright, rights on drawings and models and trademarks;

1.12 Personal data: any data about an identified or identifiable natural person;

1.13 Days: all calendar days;

1.14 Force Majeure: any circumstance beyond the control of Brightstorming – even when this was to be foreseen in the company of Brightstorming or its suppliers at the time that the Agreement was concluded and furthermore all circumstances whereby compliance of the Agreement cannot reasonably be requested from Brightstorming;

1.15 Non-accountable failure: among others, war, threat of war, rebellion, fire, factory disruption, strike, malfunction of systems/software, blockades, exclusion, traffic disruption, sickness of staff, the non-compliance or late compliance of their obligations by third parties;

1.2 Brightstorming: Brightstorming is a tradename of the commercial partnership “HatRabbits” registered at the Chamber of Commerce under number 59534281.

Article 2. Applicability

2.1 These General Terms and Conditions apply on all Products and/or Services from Brightstorming, including Quotations, Orders and Agreements, whatever they are called, whereby Brightstorming commits itself or will commit itself to perform Services and/or supply Products for the benefit of the Client, as well as all work activities arising from this for Brightstorming. These General Terms and Conditions are in any case applicable on all Agreements related to the development, production and issue of web applications and software suitable for the performance of brainstorm sessions, the training courses corresponding to this and the guidance of the sessions.

2.2 Deviations and/or additions to these General Terms and Conditions are only

valid if these have explicitly been agreed in writing. This agreement never implies that the deviating conditions of the Client are also applicable on other Agreements between Brightstorming and the Client.

2.3 If any condition in these General Terms and Conditions is in breach with a condition stipulated in the Agreement, the condition stipulated in the Agreement applies regarding the contradiction.

2.4 If any provision of these General Terms and Conditions is invalid, the other provisions in these General Terms and Conditions remain in force. The relevant invalid provision(s) will be replaced by another, valid, provision that will approach the intended effect of the invalid provision as much as possible.

2.5 The applicability of the General Terms and Conditions of the Client are explicitly rejected by Brightstorming.

2.6 When these General Terms and Conditions are once applicable between Parties, this agreement implies that these General Terms and Conditions will also apply on other (future) Agreements between Brightstorming and the Client.

2.7 Provisions from these General Terms and Conditions will not apply, if and insofar mandatory legal regulations object to this. If a provision based on this ground would be invalid under circumstances, the most favourable regulation for Brightstorming applies and all other provisions remain in full force.

2.8 If there is confusion regarding the explanation of one or more provisions from these General Terms and Conditions, the explanation must take place 'in the spirit' of these provisions.

2.9 If a situation arises between parties that is not regulated in these General Terms and Conditions, this situation must be assessed 'in the spirit' of these General Terms and Conditions.

Article 3. Concluding of the agreement

3.1 A Quotation made by Brightstorming is always without obligations. A Quotation is valid for 14 days.

3.2 An agreement between Brightstorming and the Customer is concluded at the moment that the Customer agrees with the Quotation or at the moment that Parties conclude a written Agreement regarding the user licence for the web application.

3.3 If the agreements made between Parties contain typing and/or spelling mistakes, Brightstorming will not be bound to these and Brightstorming will be given the opportunity to correct these mistakes.

3.4 Requests for service provision from Brightstorming are considered to be done by people/representatives of the legal entity that are authorised to do so.

3.5 Regarding the Work activities for which in relation to the nature and scope no Agreement was concluded, the invoice applies as order confirmation, which is considered to correctly display the Order or Agreement.

3.6 All Orders and/or Agreements apply as exclusively being given to Brightstorming, also if it was the explicit or tacit intention that the order will be performed by a certain person. The provision of article 7:404 Civil Code, that has a regulation for the latter case, and the provision of article 7:407 paragraph 2, that establishes a joint and several liability for cases where two or more people have been given an order, are excluded.

Article 4. Cancellation of the order

4.1 Brightstorming reserves the right to cancel or interim stop Orders or Agreements without stating a reason.

4.2 Cancellation or adjustment of the Agreement by the Client, based on legal requirements and the applicable Agreement between Parties, gives Brightstorming the right on compensation for made costs, including costs arising from contractual or other obligations towards third parties, as well as damage compensation due to loss of profit.

Article 5. Prices and payment conditions

5.1 Agreed prices are exclusive vat and travelling costs, unless agreed otherwise.

5.2 Brightstorming invoices the licence fees prior to the start date of the Agreement. The costs for the Services of Brightstorming will be invoiced at the end of the month or after completion of the work activities.

5.3 The payment term for invoices from Brightstorming is 14 days.

5.4 The Client explicitly renounces the right on discount or debt settlement. Furthermore, the Client, by law and without requiring a summons or notice of default, will already be in default and in failure towards Brightstorming before the expiring of the mentioned payment term if the Client requests receivership or is declared bankrupt.

5.5 Any invoice or claim is considered as a separate claim of Brightstorming on the Client.

5.6 If the Client or third party does not pay within the term mentioned in article 5.3, the Client is in default only by the expiration of that term, without this requiring any further notice of default.

5.7 In all cases whereby the Client is in default towards Brightstorming, the following is the result by law:

- a. Brightstorming has the right to immediately suspend or terminate the service provision;
- b. The Client owes the legal trade interest on the main amount or on the unpaid part of the main amount;
- c. The client owes to Brightstorming the collection costs that are the result of non-payment or late payment, both the judicial as extrajudicial costs. The extrajudicial collection costs are owed by the Client as soon as Brightstorming has engaged the assistance of a bailiff or an attorney/lawyer for the outstanding amount. The collections costs are 15% of the main amount increased with legal interest with a minimum of €40.-.

Article 6. Obligations of the Client

6.1 The Client ensures that all data and/or information required by Brightstorming for a good performance of the Agreement, is provided to Brightstorming on time and complete.

6.2 If the Client does not provide the necessary data and/or information to Brightstorming on time, Brightstorming has the right to suspend the performance of the Agreement. In that case Brightstorming can charge costs as a result of the delay.

6.3 In case Brightstorming delivers login data, usernames and/or passwords to the Client during the performance of the Agreement, the Client is not allowed to disclose this data to third parties without the written approval for this from Brightstorming.

Article 7. Duration agreement and termination possibilities

7.1 The Agreement has a duration of twelve (12) months.

7.2 The Agreement will be tacitly renewed for a same term, unless the Customer gives written notice to terminate before the end of the duration of the Agreement.

Article 8. Force majeure

8.1 If Brightstorming cannot meet its obligations due to a non-attributable permanent failure, it has the right to completely or partially terminate the Agreement by written notice, within a reasonable period, without Brightstorming being obliged towards the Client to pay any damage compensation – and also compensation of possible gained advantage.

8.2 A failure that cannot be attributed to Brightstorming is marked as permanent if the relevant performance cannot be carried out within a reasonable period after the circumstances have occurred. The reasonable period is considered to be at least 14 days.

8.3 If the performance can be carried out within a reasonable period the failure is not permanent and neither Brightstorming, nor the Client can terminate the Agreement. The obligation of Brightstorming to perform is suspended without Brightstorming being obliged towards the Client to pay any damage compensation or advantage allowance.

Article 9. Confidentiality

9.1 Parties guarantee the confidentiality of all data received from the other party of which one knows or should know that this has a confidential nature, unless a legal obligation requires disclosure of this data. In any case Data is considered as confidential if this is marked as such by any of the parties. Confidential information includes in any case any letter, program, software and customer data. This confidentiality applies for a period of five (5) years after termination of the Agreement between parties.

9.2 The Client is not allowed to use the data made available by Brightstorming, for any other purpose than for which this data was obtained.

9.3. The parties are not bound to the obligations mentioned in article 10.1 and 10.2 if:

- the relevant information was already known to the relevant party before being received from the other party;

- the relevant information was already public knowledge before being received from the other party;

- the relevant information becomes public knowledge after being received from the other party;

- when the relevant information must be disclosed based on a legal obligation;

- Both parties have given permission to disclose the relevant information.

Article 10. Privacy

10.1 If Brightstorming processes Personal Data during the execution of the Agreement, then Brightstorming shall process the Personal Data appropriately and carefully, and will keep to the legal regulations stipulated in the General Data Protection Regulation.

10.2 Brightstorming gives cooperation to the Client, when the Party Involved files a request to exert his or her rights such as, but not limited to, the right to view, improve, remove, objecting against the processing of the Personal Data, and a request to transferability of the own Personal Data.

10.3 Brightstorming informs the Client about the discovery of a possible Data Leakage

within 24 hours after its discovery. Brightstorming will subsequently keep the Client informed about developments surrounding the Data leakage.

10.4 When the Agreement between Brightstorming and Client ends, Brightstorming will destroy or return the Personal Data that Brightstorming has processed during the execution of the Agreement to the Client.

Article 11. Intellectual property

11.1 Unless agreed otherwise in writing, all intellectual property rights related to the Products and/or Services of Brightstorming belong to Brightstorming. These rights are not transferred unless parties agree otherwise in writing.

11.2 Unless agreed otherwise in writing, the Client will only receive a non-exclusive and non-transferrable user right for the use of the Products and/or Services of Brightstorming. The Client may only use the Products and/or Services as described in the Agreement.

11.3 Unless agreed otherwise in writing, the user right as mentioned in article 11.2 only applies for the Netherlands.

11.4 The Client is not allowed to implement any changes or adjustments in the Products and/or Services of Brightstorming.

11.5 The Client is not allowed, without prior approval of Brightstorming, to remove the name of Brightstorming from the Product and/or Service.

11.6 Unless agreed in writing, Brightstorming is allowed to use materials arising from the Agreements, such as designs, software and documents for other and/or own purposes, including promotional purposes.

11.7 Brightstorming has the right to use the delivered services and/or products, as well as the name and/or the logo of the Client as reference.

Article 12. Quality of the services

12.1 Brightstorming takes the greatest possible care to keep the Product available at all times. However, Brightstorming cannot give any guarantee that the Product will always be continuously available. Brightstorming is not liable for the consequences of

the (temporarily) unavailability of the Product.

12.2 Brightstorming is not liable for possible (consequential) damage that arises from the ideas and/or Products that emerge from brightstorming sessions.

12.3 Complaints about the Service and/or Products never give the right to suspend the payment obligations.

Article 13. Liability and indemnities

13.1 With the performance of the Agreement Brightstorming will use all care and expertise that can be reasonably expected from Brightstorming. Brightstorming is not liable for damage of whatever nature if it relied on inaccurate and/or incomplete data provided by the Client, unless the inaccuracy or incompleteness should be known to Brightstorming.

13.2 Brightstorming is not liable for any direct or indirect damage suffered by the Client, including consequential damage, that is related to a failure by Brightstorming or by people engaged by Brightstorming in the performance of the Agreement, unless this concerns intent and/or gross negligence.

13.3 Brightstorming is not liable for the loss, adjustment or damage of data or documents, nor for the loss of passwords by the Client.

13.4 Any claim on Brightstorming expires after a period of twelve (12) months after this has become due.

13.5 The Client indemnifies Brightstorming against any (product) liability by third parties as a result of a defect/failure in the Service and/or Product of Brightstorming.

13.6 If Brightstorming, with consideration of the aforementioned, can be held liable, this liability is limited to the insured amount that qualifies for payment under the (business) liability insurance of Brightstorming. If the damage is not covered by the insurance or the insurer does not pay out in any case, the liability is limited to maximum twice the invoice amount of the relevant Agreement or twice the invoice amount of the total of the last three (3) months, all this always with a maximum of € 5,000.-.

13.7 The Client indemnifies Brightstorming against all claims from third parties, for which Brightstorming is not liable under the aforementioned.

13.8 The burden of proof related to any alleged liability of Brightstorming lies with the Client. The Client accepts this burden of proof.

Article 14. Termination and cancellation of the agreement

14.1 In all cases whereby Brightstorming terminates an Agreement and/or Order with the Client by written notice, the Client is obliged to compensate Brightstorming for all damages, costs and loss of profit and must return to Brightstorming all documents and/or Products already delivered by Brightstorming. The documents and/or Products remain for the risk of the Client till Brightstorming has received and approved these.

Article 15. Right to suspend

15.1 If the Client does not correctly or not timely comply with any obligation that arises for him from an Agreement concluded with Brightstorming, as well as in case of bankruptcy or receivership or liquidation of the Client, the Client is legally considered to be in default and Brightstorming has the right, without any notice of default or legal intervention, to suspend the performance of the Agreement, till the obligation is met. In case Brightstorming suspends the performance of the Agreement or completely or partially terminates the Agreement, any claim it has or will have on the Client will be due immediately and at once.

15.2 If Brightstorming suspends the performance of the Agreement due to a late payment of the Customer, Brightstorming will restore the access to the web application within 5 working days after the Customer has met his/her payment obligations.

15.3 The Client is obliged to immediately inform Brightstorming if (one of the) circumstances occur(s) as mentioned in article 15.1 or if there is talk of force majeure on which basis the Client cannot comply with his obligations towards Brightstorming or cannot provide any information about facts and circumstances that (partly) influence the assessment of a situation that is of interest for Brightstorming.

Article 16. Other provisions

16.1 The Client will not hire or approach any employees involved with the performance of the Work activities, whether or not temporarily, directly or indirectly being employed by the Client, or either directly or indirectly perform Work activities for the benefit of the Client, whether or not in employment, during the term of the Agreement or any extension thereof and during the 24 months afterwards.

16.2 If Brightstorming includes another legal status in its company or there is talk of a merger with another company these General Terms and Conditions will remain applicable on the concluded Agreement(s).

16.3 Brightstorming is free to transfer all its rights and obligations based on the Agreement to a third party. This does not require the approval of the Client.

Article 17. Applicable law

17.1 All Agreements concluded with Brightstorming or commitments arising from these are exclusively subject to Dutch law.

17.2 In case of any dispute as a result of the Agreement on which these General Terms and Conditions applies, the court of Rotterdam has jurisdiction to be informed about the dispute.

Article 18. Adjustment

18.1 Brightstorming has the right to adjust these General Terms and Conditions. The adjusted provision(s) come(s) into force at the date indicated on the adjustment decision. On the website of Brightstorming a new version of the General Terms and Conditions can be read and downloaded after the moment of adjustment.

Article 19. Effective date

19.1 These General Terms and Conditions will come into force on 01-03-2017.

Article 20. Correction clause trivialities

20.1 If any provision from these General Terms and Conditions or from the underlying order/agreement may completely or partially be void and/or invalid and/or not enforceable, this due to any legal regulation, court ruling or otherwise, this will not affect the validity of all other provisions of these General Terms and Conditions or the underlying order/Agreement.

20.2 If any provision from these General Terms and Conditions or from the underlying order/agreement may not be valid for a reason as meant in the previous paragraph, but could be valid if it would have a more limited range or scope, this provision – for the time being – will automatically apply with the most reaching or extensive limited scope or meaning for or in which it is valid.

20.3 Without prejudice to the provision in paragraph 2 parties can consult with each other, if desired, in order to replace the void or annulled provisions with new provisions. Whereby these new provisions will relate to the purpose and scope of the void or annulled provisions, as much as possible.