

Terms and Conditions

Intercept



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Terms and Conditions Intercept - version 2022



1 Definitions

Offer/Special Offer	each offer of Intercept to conclude an Agreement;
Business Secrets	all information which is in whole or in part not known outside of Parties or not generally known with or easily accessible outside of Parties for persons within circles who are customarily handling such information;
Services	all (additional) services and/or (technical) work activities, of any kind, which are performed by Intercept pursuant to the Agreement, including the rendering of consultancy services and the development of Software and/or making Software available;
Continuing Performance Contract	an Agreement from which a continuing obligation follows or an obligation to deliver a performance periodically during a specified period, or each time a Party indicates to have the desire to this end;
IP rights	all rights of intellectual property and rights related to it, such as copyrights and database rights as well as rights to Business Secrets and know-how, which follow from the results of the Services and Software;
Client	the natural person(s) and/or legal entit(y)(ies) to whom Intercept makes a Special Offer to deliver Products, perform Services and/or with whom Intercept concludes an Agreement;
Agreement	each agreement between Parties pursuant to which Intercept renders Services to Client;
Part(y)(ies)	Intercept and Client;
Personal Information	all information about an identified or identifiable natural person;
Intercept	the private limited company Intercept B.V. (registered with the Commercial Register of the Dutch Chamber of Commerce under number: 58096973), this being the user of the Conditions;
Writing	by letter, electronic message or bailiff's notification;
Software	all software, whether or not basis of user licence(s) made available or delivered to Client and/or developed for Client and/or other software-related means including software interfaces, (mobile) applications, web applications and/or (other) control and/or user environments made available by or through Intercept to Client, including but not limited to Microsoft Azure, including instruction documentation material and other information belonging to the software;
Confidential Information	all information of a confidential nature which Parties possess, including (i) Personal Information and (ii) Business Secrets;
Conditions	these general conditions of sale of Intercept.



2 Applicability

- 2.1 These Conditions apply to all Offers and Agreements and all obligations that follow from and build on these.
- 2.2 If the Conditions were applicable to an Agreement, then these apply automatically - without the requirement that this needs to be agreed upon separately between the Parties in question - to each Agreement concluded at a later time, unless the Agreement in question expressly agrees otherwise in Writing between Parties.
- 2.3 In the event of voidness or nullification by Client of one or more provisions of the Conditions, the remaining provisions of the Conditions remain fully applicable on the Agreement. Parties will enter in consultation to replace a void or voided provision of the Conditions by a provision which is valid or not subject to nullification and which is as much as possible in line with the purpose and purport of the void or voided provision.
- 2.4 To the extent that an Agreement deviates from one or more provisions of the Conditions, what is stipulated in the Agreement prevails over the Conditions. The other provisions of the Conditions remain fully applicable to the Agreement in that case.
- 2.5 If translations are issued of these Conditions, then the version in Dutch prevails over the version(s) in another language.

3 Offers

- 3.1 An Offer is, unless expressly specified otherwise, free of obligation and valid during the period specified in the Offer. If the Offer does not specify a period for acceptance, then the Offer lapses fourteen (14) days after the date specified in the Offer.
- 3.2 An Offer accepted by Client within the validity period may be withdrawn by Intercept during five (5) working days after the date of receipt of the acceptance without giving reasons by Intercept, without resulting in any obligation of Intercept to reimburse any damage or loss suffered by Client as a result of this.
- 3.3 If Client provides information to Intercept with a view to make an Offer, Intercept may assume the correctness of that information and will base its Offer on this. Client indemnifies Intercept for each claim of third parties pertaining to the use of information provided by or on behalf of Client.
- 3.4 A price list or other overview, which specifies prices in a general sense, provided by Intercept to Client, is not an Offer.



4 Formation of agreements

- 4.1 With due observance of what is otherwise stipulated in the Conditions, an Agreement is only formed:
 - a. by acceptance by Client of an Offer; or
 - b. by confirmation of assignment in Writing of an assignment provided by Client (orally or in Writing) other than on basis of an Offer; or
 - c. because Intercept effectively executes an assignment of Client.
- 4.2 The Agreement supersedes and replaces all previous proposals, correspondence, agreements or other communication between Parties which has taken place prior to the conclusion of the Agreement.
- 4.3 Amendments and/or additions to the Agreement are only valid after acceptance by Intercept in Writing. Intercept is not obligated to accept amendments and/or addition to an Agreement. Intercept is entitled to charge any costs pertaining to the amendments and/or additions to the Agreement to Client.
- 4.4 Commitments by and agreements with subordinates or representatives of Intercept only obligate Intercept towards Client if and to the extent that these commitments and/or agreements are confirmed to Client by Intercept in Writing.

5 Prices and rates

- 5.1 Prices referred to in an Offer or Agreement are in Euro and are - unless expressly specified otherwise - excluding turnover tax and/or other levies imposed by the government.
- 5.2 If an assignment is provided to Intercept by Client without a price being agreed upon, then this is carried out, regardless of previously made Offers or prices previously used, for the price as it applies at the time of the execution of the Agreement.
- 5.3 If four (4) months lapse after the date that the Agreement is concluded and its performance is still not completed by Intercept (other than as a result of an attributable breach of Intercept), an increase in one or more of the price-determining factors (at the reasonable discretion of Intercept) may be charged to Client. Payment of the price increase takes place simultaneously with the payment of the principal sum or the final instalment.
- 5.4 If the price increase desired by Intercept as referred to in article 5.3 relative to the original price amounts to more than ten percent (10%), then Client is entitled to give notice of termination of the Agreement as it relates to future obligations of Intercept, for a period of fourteen (14) days after notice of the price change. After this period expires, this power to terminate comes to lapse. Intercept is under no circumstance obligated towards Client to reimburse any damage and loss suffered as a result of a price increase or notice of termination.



6 Payment

- 6.1 Payment of invoices sent by Intercept to Client needs to take place within 14 days after the invoice date, unless agreed upon otherwise in Writing. Payment needs to take place at a bank account specified by Intercept.
- 6.2 If the payment of an invoice has not fully taken place within the agreed upon period, then Client is immediately in default by operation of law, without the requirement of further notice of default, and owes legal interest for commercial transactions (article 6:119a of the Dutch Civil Code) starting from the date after the due date of the invoice in question. In addition, all extrajudicial collection costs are at the expense of Client, the costs of which are hereby determined by Parties in advance at least 15% of the outstanding debt with a minimum of EUR 150, without prejudice to the competence of Intercept to claim the actual extrajudicial costs if these are higher.
- 6.3 Payments made by Client serve respectively to pay owed costs, interest and then invoices due and payable that have been outstanding the longest, also if Client specified with the payment that the payment pertains to a different invoice.
- 6.4 All receivables of Intercept on Client are immediately due and payable in the following cases:
 - a. if Intercept learns of circumstances after concluding the Agreement which constitute good grounds to fear that Client will not comply with obligations, at the discretion of Intercept;
 - b. in the event of requesting bankruptcy or suspension of payment of Client, winding-up or bankruptcy of Client.
- 6.5 Intercept is, on the basis of its estimation of the creditworthiness of Client, entitled to require the compliance of payment obligations, both the ones that are due and payable and the ones which are not, provision of security or partial advance payment. If and as long as Client remains in default with the required security or full or partial advance payment, Intercept is entitled to suspend its obligation of delivery.
- 6.6 Intercept has the right to execute the Agreement in various phases and to then invoice the separately executed work activities separately to Client.
- 6.7 Without prejudice to its other suspension rights, Intercept is entitled to suspension of the work activities which belong to a subsequent phase until the Client has approved of the results of the preceding phase in writing.



7 Delivery/completion time

- 7.1 The delivery/completion time indicated by Intercept in the context of an Agreement is always an indication and therefore never applies as strict deadline, unless Parties have expressly stipulated otherwise in Writing. Exceeding the agreed upon delivery/completion time does not result in a right to compensation under any circumstance.
- 7.2 The delivery/completion time specified by Intercept becomes effective if all (technical) details are agreed upon, all necessary information and such are in possession of Intercept and all necessary conditions to execute the Agreement are complied with.
- 7.3 To determine the delivery/completion time, Intercept assumes that the assignment can be carried out under the circumstances as they existed at the time of concluding the Agreement.
- 7.4 If there are other circumstances than those which were known to Intercept at the time of concluding the Agreement, Intercept may extend the delivery/completion time with the time necessary to execute the Agreement under the changed circumstances. If the work activities cannot be fitted into the planning of Intercept as a result of this, then these will be carried out/completed as soon as the planning of Intercept allows for it.
- 7.5 If there is a case of suspension of obligations by Intercept due to a failure of performance of Client, the delivery/completion time is extended with the duration of the suspension. If the work activities cannot be fitted into the planning of Intercept as a result of this, then these will be carried out/completed as soon as the planning of Intercept allows for it.



8 Duration and Execution of the Agreement

- 8.1 The Agreement is concluded for the period as specified in the Agreement. If no period is specified in the Agreement and the Agreement is a continuing performance contract, then the Agreement is concluded as open-ended agreement with a minimum of one year. If no notice period is agreed upon, then a notice period of at least one month applies, which can first be invoked taking effect from the end of the (minimum) duration in question.
- 8.2 Notice of termination in the interim period of an Agreement for specified period is not possible, unless agreed upon otherwise in writing or confirmed by Intercept.
- 8.3 Notice of termination needs to take place in writing.
- 8.4 Intercept will carry out the agreement to the best of its ability and understanding and in accordance with high standards.
- 8.5 Intercept is entitled to have the Agreement be carried out by third parties, or hire third parties - such as but not limited to Microsoft - for the execution of certain Services. The applicability of articles 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code are ruled out.
- 8.6 Pertaining to services which Intercept purchases from third parties for rendering its Services to Client, Intercept may never be called to account for more or other than what applies in the relationship between Intercept and its supplier(s) of that Service in question.
- 8.7 Intercept is entitled to transfer its rights and obligations from the Agreement to a group company of Intercept as referred to in article 2:24b of the Dutch Civil Code. Client will cooperate to such a transfer unconditionally and sign an instrument to this end, all in accordance with what is stipulated in article 6:159 of the Dutch Civil Code.
- 8.8 Client ensures that all information, of which Intercept indicates that these are necessary or of which the Client should reasonably understand that this is necessary to execute the Agreement, is provided to Intercept in a timely manner. If the information required for the execution of the Agreement is not provided to Intercept in a timely manner, then Intercept has the right to suspend the execution of the Agreement and/or charge the extra costs that follow from the delay in accordance with the customary rates to Client. Client guarantees the correctness of the information provided by Client. Intercept is not liable for damage and loss, of any kind whatsoever, because Intercept based itself on incorrect and/or incomplete information provided by the Client for the execution of the Agreement.
- 8.9 If Client does not comply with the obligations as set out in the previous paragraphs of this article and delay arises in the execution of the work activities, the work activities will be executed as soon as Client still complies with the obligations and the planning of Intercept or the third hired by Intercept allows for it. Client is liable for all (additional) costs and/or damage and loss for Intercept following from the delay.
- 8.10 Client indemnifies Intercept for any claims of third parties, which suffer damage and loss in relation to the execution of the Agreement and which is attributable to Client.



- 8.11 Intercept ensures an optimal availability of the Services. However, Intercept is not liable for failure or inaccessibility of the Services rendered by or through Intercept, as a result of circumstances which were not reasonably foreseeable for Intercept. This includes failures in internet connections, power outage and other failures which are outside of the control of Intercept. Intercept is also not liable for damage and loss as a result of failure and/or inaccessibility of Services as a result of normal maintenance work activities.
- 8.12 The Agreement may stipulate that the development of Software by Intercept takes place on the basis of the Agile method ('Agile method'), where the execution of the Agreement is divided into steps (so-called 'Sprints'). Intercept and Client may additionally determine on the basis of a framework ('framework') set out in the Agreement which work activities are performed by whom and, also, the specifications of the wishes of Client are set out therein. Intercept will ensure that Client has the opportunity to test what is completed each time after each interim completion after a Sprint. If the following Sprint is started in consultation with Client, then the completed Sprint preceding that one is considered to have been accepted by Client.

9 Privacy and data processing

- 9.1 Intercept renders its services in accordance with the General Data Protection Regulation.
- 9.2 If Intercept considers this of importance for the execution of the Agreement, Client will inform Intercept immediately in writing, if requested, about the way in which Client executes the obligations pursuant to the legislation in the field of the protection of personal information, including the General Data Protection Regulation.
- 9.3 Client indemnifies Intercept for claims of persons whose personal information is registered or processed in the context of registration of personal data which is kept by Client or for which Client is otherwise responsible pursuant to the law, unless Client proves that the facts which lie at the basis of the claim can solely be attributed to Intercept.
- 9.4 The responsibility for the data which is processed using a Service rendered by Intercept lies solely with Client. Client also guarantees to Intercept that the content, the use and/or the processing of the information is not unlawful and does not violate any right of a third party. Client indemnifies Intercept against any legal action of third parties, pursuant to any reason whatsoever, in relation to this data or the execution of the agreement.
- 9.5 If Intercept is obligated pursuant to the agreement to provide for a form of information security (other than pursuant to the General Data Protection Regulation), then this security will comply to the specifications concerning security as agreed upon between parties in writing. If a description of the security in the Agreement is lacking, then the security will comply to a level which, considering the state of technical knowledge, the sensitivity of the data and the costs related to implementing the security, is not unreasonable.



10 Acceptance and warranty

- 10.1 Without prejudice to what is stipulated in article 8.12, the Services will be subjected to an acceptance test by Client within a reasonable period (this not being longer than 10 working days after delivery/completion) after execution of the obligations of the Agreement by Intercept. If Client has not reported the determined or to be determined defects within the aforementioned reasonable period after delivery/completion to Intercept in Writing, then the right of the Client lapses to invoke this. Meant to be understood as defect is each defect which is evidenced or would be evidenced by means of an acceptance test - for which every manner of normal use of the completed software or (result of a) Service is tested.
- 10.2 Other defects to rendered Services upon delivery/completion have to be reported to Intercept in Writing and supported by reasons within 5 days after discovery or after they were reasonably discovered. If this report is done at a later time, the right of Client lapses to invoke this.
- 10.3 If Parties do not reach agreement about the question whether there is a defect or not, then an independent expert is hired. The expert is appointed by Intercept in consultation with Client. The costs of the expert are paid in anticipation of the expert opinion, at first by Intercept and Client each for one half. The costs of the expert are ultimately borne by the (more) unsuccessful party, unless agreed upon otherwise.
- 10.4 Complaints of any kind whatsoever pertaining to the execution by Intercept of an Agreement do not suspend the payment obligation of Client and Intercept may only be notified of this in Writing.

11 Expiry periods

Without prejudice to what is stipulated in article 10, legal actions and other competences of Client, pursuant to any reason whatsoever, towards Intercept in relation to rendered Services, come to lapse - without the possibility of interruption - 12 months after the date that Client became aware of could reasonably be aware of the existence of these rights and competences, if on that account prior to the lapse of this period no claim in Writing is filed with Intercept.



12 Dissolution

- 12.1 If Client does not perform or partially performs one or more of the obligations pursuant to the Agreement, Client is in default by operation of law and Intercept has the right to unilaterally dissolve the Agreement, without further notice of default and without judicial intervention, in whole or in part, by means of a notification to Client in Writing. In addition, Intercept is entitled to suspend its obligations pursuant to the Agreement, without Intercept being obligated to any compensation and without prejudice to any rights that may accrue to Intercept, including the right to full compensation. All receivables which Intercept may have or acquire on Client in these cases will be immediately and fully due and payable.
- 12.2 In the event of bankruptcy, suspension of payment, shutdown, winding-up or acquisition or any comparable situation of the business of Client or if Client discontinues the business or if a substantial part of the assets of Client are attached or if Client should no longer be considered to be able to comply with the obligations from the Agreement, then Client is in default by operation of law and Intercept has the right to unilaterally dissolve the Agreement, in whole or in part, without further notice of default and without judicial intervention, by means of a notification in Writing, without Intercept being obligated to any compensation and without prejudice to its further rights, which includes the right of Intercept to full compensation.

13 Liability and insurance

- 13.1 Intercept is liable towards Client for damage and loss which Client suffers and which is a result of a failure in the performance of the Agreement attributable to Intercept and which needs to manifest itself within a period of no more than 24 months after the termination of the actual work activities of Intercept for or for the benefit of Client pursuant to the Agreement, with due observance of what is stipulated in article 1.
- 13.2 This liability is limited to no more than three times the invoice amount excluding VAT, with a maximum of € 1,000,000. If the Agreement is a Continuing Performance Contract, the liability of Intercept for the damage and loss referred to in article 1.1 is limited to an amount equal to three times the invoice amount of that Continuing Performance Contract excluding VAT calculated on the last 6 months prior to the arising damage and loss of Client, with a maximum of € 1,000,000. This limitation of liability applies correspondingly to any indemnification obligations of Intercept.
- 13.3 The following is not eligible for reimbursement:
- a. damage and loss arisen by actions or omissions of Client or third parties in violation with instructions provided by Intercept or in violation with the Agreement;
 - b. damage and loss as a direct or indirect result of incorrect, incomplete and/or faulty information provided by or on behalf of Client to Intercept.



- 13.4 If and to the extent that (the functioning of) the Services depends on the (functioning of) services of third parties, then Intercept is, in addition, never liable for damage and loss arisen as a direct or indirect result of the services of these third parties not or no longer functioning, whether or not as a result of the fact that Client and/or Intercept are denied access to these services, other than as a result of an attributable breach of Intercept towards th(is)(ese) third part(y)(ies) pursuant to an agreement concluded with th(at)(ose) third part(y)(ies).
- 13.5 Client indemnifies Intercept of all claims of third parties due to damage and loss arisen by or in relation to Services rendered by Intercept.
- 13.6 A series of interrelated incidents causing damage or loss count as one event/incident causing damage or loss for the applicability of this article.
- 13.7 The limitations and/or exclusions of liability set out in this article 13 apply in deviation of what is stipulated in these terms and conditions also to the benefit of the personnel of Intercept, any auxiliary persons and third parties who are involved in the execution of the Agreement by Intercept.



14 Confidentiality

- 14.1 Parties are obligated to confidentiality of all Confidential Information which they have acquired from each other or from another source in the context of their Agreement. Information is confidential if this is communicated by a Party or if this follows from the nature of the information.
- 14.2 If, pursuant to a statutory provision or a court ruling, Intercept is obligated to also provide Confidential Information to third parties designated by the law or the competent court, and Intercept cannot claim a right to refuse to give evidence in the matter, recognised or permitted by law or the competent court, then Intercept is not obligated to compensation or damages and Client is not entitled to dissolution of the Agreement.
- 14.3 Each Party to the Agreement will keep all Confidential Information and the content of the Agreement confidential, only use this information to execute the Agreement and limit access to that Confidential Information to persons who have to take note of it for that purpose. Parties guarantee that these persons are obligated to confidentiality of the Confidential Information through an employment agreement and/or a confidentiality agreement.

15 Intellectual property rights

- 15.1 All IP rights rest solely with Intercept and/or its licensors, unless agreed upon otherwise in the Agreement in writing.
- 15.2 If parties have agreed in writing with an Agreement that IP rights transfer to Client, then this does not affect the right or the possibility of Intercept to use and/or exploit the components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and such, that lie at the basis of that development, for other purposes, without any limitation, either for oneself or for third parties. The transfer of an IP right also does not affect the right of Intercept to effect developments for oneself or a third party which are similar or derived from that which is or will be done for Client.
- 15.3 Client is not allowed to remove any designation pertaining to IP rights in the results of the Services and/or Software, or to make it illegible or change it.
- 15.4 Intercept may make use of third parties for the rendering of the Services. In the event that the IP rights also accrue to third parties, Intercept may be obligated to licence terms of these third parties.
- 15.5 In the event that it is judicially irrevocably established that the results of Services rendered and/or Software delivered by Intercept violates any intellectual property right belong to a third party, or in the event that there is a reasonable cause at the discretion of Intercept that such a violation takes place, Intercept ensures as much as possible that Client can continue to use the results of the Service and/or Software (or something functionally equivalent) without interruption. Each other or farther-reaching liability or obligation of indemnification of Intercept in relation to violation of intellectual property rights of a third party is entirely ruled out, unless the violation is the result of gross negligence or intent by Intercept.



16 Rights of use

- 16.1 Intercept hereby provides Client with the right to use the results of the Services and/or Software within the business of the Client and to disclose and/or reproduce it in that context.
- 16.2 This right of use is without prejudice to what is stipulated in the Agreement not exclusive and not transferrable and cannot be issued in licence to a third party by Client.

17 Applicable law and competent court

- 17.1 The Dutch law applies exclusively to all Agreements concluded by Intercept with the exclusion of the Vienna Convention on Contracts for the International Sale of Goods.
- 17.2 All disputes between Parties are solely settled by the Court of Overijssel, location Zwolle, the Netherlands.

