

Terms & conditions

These terms and conditions are translated to English. Only the Dutch general terms and conditions are legally valid.

Article 1. Application terms & conditions

1.1 These terms & conditions apply on all offers, quotations, order confirmations, invoices and agreements with BV NYBE, with head office at Schaapsweg 114, 3550 Heusden-Zolder and with company number: 0668.397.207, (hereinafter: “**NYBE**” of “**We**”). By placing an order for goods and/or services or concluding an agreement with NYBE, the customer (hereinafter: the “Customer”) acknowledges that they are aware of and fully accept the terms & conditions of NYBE. If the Customer does not understand these terms & conditions, or a part thereof, the Customer undertakes to request additional explanation from NYBE or to request a translation, failing which the Customer cannot invoke any ignorance.

1.2 The terms & conditions exclude the application of any terms & conditions of the Customer and always take precedence over the sales and/or purchase conditions of the Customer, unless NYBE expressly agrees in writing with the terms & conditions of the Customer. The Customer can in no way invoke silence on the part of NYBE to demand acceptance of its own terms and conditions.

1.3 We reserve the right to unilaterally change these terms & conditions.

Article 2. Orders and quotations

2.1 All offers and quotations of NYBE are without obligation until the complete and unconditional acceptance of the offer by the Customer. The agreement is concluded when the Customer signs the quotation unchanged and within the validity period, as stated on the quotation, for approval and returns it to NYBE and NYBE accepts this signed quotation within a period of five (5) working days. In the absence of a signed offer, the agreement is concluded with application of these terms & conditions after acceptance of the invoice from NYBE by the Customer.

2.2 Every order binds the Customer. The order or the agreement replaces all previously concluded and/or oral agreements with the same object.

2.3 Orders and quotations are strictly limited to their subject matter, in the sense that they are based on information available at the time of the preparation of the order or quotation. Incorrect, changed or new information or circumstances, even if established as a result of the execution of the work, may lead to suspension of the agreement and/or unilateral change of the terms and conditions and/or the price, without prejudice to any right of NYBE to terminate the agreement. The conditions and/or the price can also be unilaterally changed in response to an increase in the costs of NYBE, including but not limited to the prices of the suppliers or prices of the ordered goods.

2.4 Additional agreements or changes made later (more or less work) are only binding on NYBE if these have been confirmed in writing by NYBE without reservation.

2.5 NYBE's offers and quotations are prepared on the basis of the information provided by the Customer. Quotations and performances only include performances that are expressly stated therein. Additional performances or materials due to unforeseen circumstances (including missing, incorrect or misleading information) or any other reason not attributable solely to the conduct of NYBE are not included in these performances and will give rise to additional work.

2.6 Customer acknowledges that proposals and agreements may be digitally signed.

Article 3. Cancellation of the order

3.1 The cancellation of an order is only possible insofar as NYBE has not yet started the execution of the agreement (e.g. by ordering goods and/or services from third parties) and subject to payment of compensation of 30% of the agreed price, with a minimum of € 750 unless NYBE demonstrates a higher damage.

3.2 Any cancellation of an order by the Customer must be made by registered letter.

3.3 The Customer, when acting as a consumer when placing the order, within the meaning of the Belgian Code of Economic Law, benefits from the same conditions, if NYBE cancels the order.

Article 4. Performance of the agreement

4.1 NYBE undertakes to make all reasonable efforts to perform the Agreement in a diligent manner. NYBE is subject to a best efforts obligation. NYBE is always entitled, without the Customer's prior consent, to call

on third-party subcontractors to perform (part of) the work.

4.2 Specified delivery and execution times are always indicative and are not binding on NYBE. Delay in delivery and/or execution does not entitle the Customer to compensation or price reduction, nor to suspension of payment or termination of the agreement.

4.3 The Customer will do what is necessary to enable the execution of the agreement. The Customer is obliged to accept the ordered goods and/or services at the time of delivery. If the Customer refuses or fails to provide the necessary information or instructions to proceed with delivery, the goods or results of the services will be stored at the expense and risk of the Customer.

4.4 Additional costs resulting from delays, which are not attributable to NYBE (e.g. the provision by the Customer of incorrect, incomplete, misleading or late information), will be charged in accordance with Article 4.5 of these terms & conditions and will lead to a shift of the agreed delivery times.

4.5 Additional work will only be performed if agreed in writing or digitally. Such additional work is carried out on a cost-effective basis at the agreed unit prices, as stated in the quotation. If no unit prices had yet been agreed, the operations will be carried out at the hourly rate applicable within NYBE (and as evidenced by recent invoices from around such date), regardless of who carries out these works on behalf of NYBE.

Article 5. Payment methods

5.1 All invoices are, unless otherwise agreed in writing (eg by including a due date on the invoice), payable within a period of eight (8) calendar days. Each payment is charged on the oldest invoice due and first on the interest and costs owed.

5.2 The invoices are payable by bank transfer to the account number of NYBE. Invoices for recurring services, including hosting and maintenance of the website are payable by direct debit.

5.3 Additional work within the meaning of Article 2.4 is also subject to the terms & conditions of NYBE.

5.4 Any delay in payment by the Customer makes all amounts owed immediately due and payable and makes any payment method and/or discount allowed.

5.5 If the Customer fails to pay the invoice on the due date, the Customer will automatically and without prior notice of default owe NYBE late interest at an interest rate of 10%, as well as a lump sum compensation of 10% of the invoice amount with a minimum from € 250 from the due date until full payment. The Customer cannot apply a set-off.

5.6 If the funds cannot be collected by direct debit, the Customer will be contacted after two attempts to do so. The Customer will owe an administration fee of € 12.50.

5.7 In the absence of payment on the due date of the invoice, NYBE has the right to suspend its activities and to make the services rendered inaccessible until the Customer fulfills its payment obligations. NYBE also reserves the right to declare the agreement dissolved for products or services that have not yet been delivered as a result of non-payment by the Customer. NYBE has the right to claim goods delivered to the Customer in trade of presentation of a credit note for the residual value of the goods.

5.8 From two late payments, NYBE reserves the right to demand advance payments before carrying out the work.

Article 6. Complaints - protest of the invoice

6.1 Any protest must be sent to NYBE by registered letter within eight calendar days, with a detailed description of the complaint and with the invoice with which the relevant services or goods are invoiced. In the absence of protest in time, the services are deemed to have been definitively accepted and payment is due.

6.2 Visible defects or non-conforming deliveries must be notified to NYBE immediately, and no later than eight calendar days after delivery and/or execution, by registered letter.

6.3 Hidden defects can give rise to liability if the defect manifests itself within three months after delivery and/or execution. Hidden defects must be reported to NYBE, on pain of forfeiture, by registered letter with reasons within a period of eight calendar days following the discovery of the hidden defect by the Customer or following the moment when the Customer should have discovered the hidden defect, and in any case no later than three months after the date of delivery of the services/goods. The Customer must give NYBE a reasonable period of at least thirty days in its registered letter to remedy the undisputed defects as far as possible. Only after this period has expired, any liability can be withheld. Failure to comply with this provision will result in the loss of liability.

6.4 Claims for indemnification due to hidden defects within the meaning of Article 6.3 must be filed within

a short time and always within a period of three months after the defect was concluded. Any intervention, intervention or change made after the Customer's discovery of the defect, but before its contradictory determination with NYBE, automatically entails a forfeiture of recourse against NYBE.

6.5 In any case, in the case of an order for goods, the Customer must deliver the goods undamaged in the original packaging for examination by NYBE. If it appears that the complaint is invalid, the costs associated with the investigation etc. will be borne by the Customer.

Article 7. Liability

7.1 NYBE is not liable for errors in execution due to incomplete, misleading or incorrect information provided by the Customer or as a result of unapproved interventions by third parties.

7.2 NYBE cannot be held liable for any error (even a gross error) on the part of its employees, except in the case of deception, intent or fraud. Whatever the cause, form or subject matter of the claim invoking liability, NYBE shall in no event be held liable for any indirect and/or consequential damages such as, for example, loss of anticipated profit, decrease in turnover, increased operational costs, loss of clientele, loss of data, delay or interruption of activities, which the Customer or third parties would suffer as a result of any fault or negligence of NYBE or an appointee.

7.3 NYBE's liability in respect of services rendered to the Customer is in any case limited to either the reimbursement of the price paid by the Customer, or the re-performance or modification (at NYBE's discretion) of the services/the replacement of the delivered goods, at the option of NYBE. The total liability of NYBE will never exceed the price paid by the customer to NYBE for the services that gave rise to the claim, nor can it exceed the insured amounts in accordance with NYBE's professional liability policy.

7.4 With regard to the services provided by third party suppliers, NYBE assumes no liability above or other than the liability that the third-party suppliers are willing to accept for their products or services.

7.5 To the extent applicable, NYBE is not liable for any accidents resulting from entering places where deliveries are to be made.

7.6 NYBE is not liable for errors caused by third parties, e.g. publication tools, hosting parties, etc.

Article 8. Retention of title

8.1 The materials or works delivered or realized in the context of the execution of the agreement remain the property of NYBE until the purchase price (principal sum, costs and interests) in case of a purchase-sale has been settled in full by the Customer. The Customer is not entitled to deposit, change, dispose of or encumber the goods or works for the benefit of third parties with personal or real rights, or to dispose of them in any other way before the purchase price has been paid in full.

8.2 The Customer bears the risk of the delivery already from the delivery of the goods and/or the works.

8.3 NYBE also reserves the right to register the materials, which are delivered in the context of the execution of the Agreement, in the National Pledge Register insofar as the purchase price has not been paid in full by the Customer.

8.4 The Customer is not permitted to change, mutilate or remove the serial numbers, marks, type designations applied to the delivered goods before full payment of the purchase price (principal sum, costs and interests), on pain of compensation of 100% of the purchase price with a minimum of € 500.

Article 9. Force majeure

9.1 NYBE is not obliged to fulfill any obligation if it is prevented from doing so as a result of Force Majeure. "Force Majeure" includes, among other things, power failure, internet failure, data law or telecommunications facilities, supplier bankruptcy, imposed government measures, pandemic or other unexpected events over which NYBE has no reasonable control, without NYBE being obliged to prove the influence thereof.

9.2 In case of Force Majeure, NYBE is released from its obligations for the duration of the hindrance and for its scope, without the Customer being entitled to any price reduction or compensation.

9.3 Cases of Force Majeure grant NYBE the right to cancel the agreement in whole or in part without NYBE being obliged to pay any compensation.

Article 10. Processing of personal data

10.1 NYBE and the Customer generally undertake to comply with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of comply with those data and repealing Directive 95/46/EC.

10.2 If necessary, NYBE and the Customer will conclude a processing agreement.

Article 11. Nullity

11.1 If one of the Articles of these terms & conditions should prove to be invalid, the Parties agree to replace this provision with a valid provision that corresponds as closely as possible to the intention and scope of the invalid provision. This replacement provision will then apply.

Article 12. Transferability

12.1 NYBE has the right at all times to transfer the whole or parts of the agreement to third parties without the prior consent of the Customer.

12.2 The Customer cannot transfer the agreement in whole or in part without the prior written consent of NYBE. NYBE should not justify its refusal.

Article 13. Applicable law and competent court

13.1 Belgian law applies to the agreements concluded by NYBE, with the explicit exclusion of the Vienna Sales Convention. Any dispute relating to the conclusion, validity, performance and/or termination of this agreement or the terms & conditions will be settled by the competent court for the jurisdiction where NYBE has its registered office.

Article 14. Installation or use of the services

14.1 NYBE will install or have installed the ordered hardware and/or software in the agreed processing unit in accordance with the signed offer and only if this is provided for. The date of delivery is given only as an indication and does not bind NYBE.

14.2 The Customer will provide NYBE with all necessary information and content in time. The Customer must pass on all comments to NYBE no later than two weeks before the agreed delivery times. NYBE will not take into account comments submitted after the expiry of this period.

14.3 If the installation was not able to take place on time due to the fault of the Customer, the Customer will make payment as if the installation had taken place on time, without prejudice to NYBE's obligation to carry out the installation at a different time.

14.4 In order to carry out the installation in good order, the Customer will make the following available for free at the request of NYBE:

- a. Specifications, documentation, access codes and manuals of equipment, websites and software to which the system to be delivered must be connected;
- b. User facilities on computer systems, websites and telecommunications facilities with sufficient capacity;
- c. Support from knowledgeable staff;

All necessary information.

14.5 The Customer shall ensure in a timely manner that the environment in which the order must be delivered, installed and tested is suitable for this purpose. If the environment is not suitable due to any (technical) impediment, the Customer will ensure at its own expense that the impediment is remedied without delay and NYBE can execute the order.

14.6 Additional costs that are not attributable to NYBE, such as if the Customer fails to transfer information, documents, originals or images (on time) or if the Customer places additional orders, will be charged in accordance with Article 4.5 of the terms & conditions.

14.7 Installation costs, assembly costs or other costs relating to the delivery and commissioning of the order are not included in the price, unless expressly agreed in writing.

14.8 NYBE counts on transparent and open communication. NYBE expects the Customer to communicate in due time if it wishes to make certain changes.

14.9 The Customer must notify NYBE of any problems and adjustments, etc. to the order. The Customer does not have the right to appeal to a third party for any solution or adjustment without the prior written consent of NYBE on pain of compensation of € 1500 per case and per further day after determination. In addition, any warranty will be void if the Customer appoints a third party without the prior consent of NYBE.

Article 15. Performance of other services

15.1 Other services such as consultancy, workshops, training, etc. will always be provided by appointment. All appointments, physical or digital, are charged at the rate agreed in the quotation.

15.2 If the Customer is more than 15 minutes late, the appointment will be canceled and charged at the agreed rate.

15.3 The Customer has the right to cancel or change an appointment free of charge no later than 4 weeks

in advance. In case of late cancellation or modification, NYBE reserves the right to charge the following fees:

- a. 2 – 4 weeks before the appointment: 50% of the agreed price;
- b. 1 – 2 weeks before the appointment: 75% of the agreed price;
- c. Less than 1 week before the appointment: 100% of the agreed price.

15.4 It is not permitted to make audio or video recordings of the agreements, unless expressly agreed in writing.

Article 16. Rates

16.1 The rates agreed in the quotation are applied between office hours (09:00 – 17:00) on working days (GMT for Brussels).

16.2 At the request of the Customer, his request can be treated with urgency, i.e. when NYBE provides the services within 24 hours of notification, at the agreed rates multiplied by a factor of 2 with a minimum of € 162 (ex. VAT)/hour.

16.3 If the intervention has to be treated urgently on site, NYBE will perform the services within 48 hours of notification, the rates will be multiplied by a factor of 2,5 with a minimum of € 162.50 (excluding VAT)/hour. The hours worked are charged from the moment (an employee of) NYBE leaves the location.

Article 17. Service level

17.1 NYBE's services may be subject to a support and maintenance agreement. NYBE and the Customer will enter into a separate agreement for this purpose if they so wish.

17.2 Each request for support will be charged at the current rate.

Article 18. Liability

18.1 For the sake of clarity and by way of example only, NYBE is in no way liable for direct or indirect damage:

- a. Caused by incorrect, inaccurate or unrealistic information provided by the Customer;
- b. Caused by interventions by the Customer or third parties, which have not been approved by NYBE;
- c. Caused by misuse, including use in a humid or dusty environment.

18.2 Nor does NYBE accept any liability for the security (anti-malware, anti-spyware, antivirus, anti-ransomware), the uptime or the compliance with the law of the services it provides.

18.3 NYBE in no way guarantees the error-free operation of a programmed application. NYBE cannot be held liable for any damage resulting from any erroneous or interrupted operation of a programmed application. This is without prejudice to special provisions that are agreed in a service level agreement.

Article 19. Intellectual property rights

19.1 Intellectual Property Rights means rights under these terms & conditions in, relating to or caused by: (i) brand protection in an area and/or nice classification, or registering any domain, regardless of the suffix, containing a brand; (ii) any patent, national or international or any application (including a patent application) thereto and any and all reapplications, divisions, continuations, renewals, extensions and partial continuations of such patent, (iii) inventions, discoveries (regardless of whether they qualify for patent protection), disclosures of inventions, improvements, trade secrets, property information, knowhow, technology, financial and technical data; (iv) copyright, copyright registrations, registrations and applications therefor in any country, and all corresponding rights thereto in the world, (v) any other proprietary rights in or relating to the Confidential Information, including in any event the rights granted under the Belgian Law of 30 July 2018 on the protection of trade secrets (hereinafter: "Intellectual Rights").

19.2 NYBE retains all Intellectual Rights in the works it has developed for the Customer. NYBE grants the Customer a non-exclusive, non-transferable license to use it in accordance with its quotation or offer.

19.3 The Customer shall refrain from any act that may damage the Intellectual Rights of NYBE or third parties. In particular, the Customer refrains from copying, modifying, adapting, altering, translating, reproducing or reverse engineering the aforementioned works and from using any trademark/trade name/brand name of NYBE, without express written approval to that end. In no event shall NYBE be liable for any third-party claim for infringement of any third-party intellectual property. The Customer itself is liable for any infringement of intellectual rights of third parties as a result of content publicly distributed or reproduced by the Customer itself, whether or not through the works created by NYBE. This applies, for example, when placing images or texts on the website or in advertisements.

19.4 The Customer guarantees that it is the sole and rightful owner of the foreseen content, or that the use of this content in accordance with the agreement with NYBE does not infringe any rights of third parties. To the extent necessary, the Customer shall indemnify NYBE, upon first request, against any and all claims that are directly or indirectly based on any breach of the aforementioned warranty.

19.5 In case of a violation of the obligations stated in this Article, the Customer will be legally and without prior notice of default obliged to pay compensation equal to € 50,000, increased by € 1000 per day that the violation is continued, without prejudice to NYBE's right to claim higher compensation, provided it proves its actual damage.

19.6 Transfer of Intellectual Rights can only take place expressly and in writing.

19.7 NYBE reserves the right to exploit the works it has created within the framework of any agreement with the Customer, including but not limited to the reproduction, communication to the public, distribution and/or publication in the context of its commercial and promotional purposes. NYBE will refrain from any use incompatible with the foregoing purposes.

Article 20. Non-recruitment

20.1 During the agreement with NYBE, the Customer will, as well as 1 year after the end of the agreement:

- a. not induce or attempt to induce an employee/self-employed/subcontractor of NYBE to terminate the relationship with NYBE;
- b. not recruit an employee/self-employed person/subcontractor of NYBE (or otherwise employ them as a self-employed person or in any other capacity).

20.2 In the case of violation of the obligations referred to in this Article, the Customer will be legally and without prior notice of default obliged to pay compensation equal to 24 months of the gross salary and the compensation of the hired employee/self-employed employee/subcontractor, without prejudice to the right on the part of NYBE to claim higher compensation, provided that it proves its actual damage.

Article 21. Suspension

21.1 NYBE is always entitled to suspend its obligations under this agreement immediately without prior notice of default if the Customer commits an infringement against the concluded agreement, including the unlawful use of the website, punishable or indecent content provided on the website, and this infringement is not term of eight (8) working days will be rectified.

20.2 Where appropriate, the Licensor is permitted to deny access to the services provided without prior notice to the Customer.

Article 22. Duration and termination of the agreement

22.1 The agreement takes effect on the date of signature of the quotation in accordance with Article 2.1 of these terms & conditions and will have a specific term of 1 year, unless the quotation states otherwise.

22.2 The duration of an agreement is automatically extended (each time) with a period of 1 year at the end of the aforementioned term, unless the Customer or NYBE informs the other party by registered letter that it does not wish to extend it 3 months before the end of the current period.

22.3 The Customer can unilaterally terminate the agreement prematurely by means of a registered letter addressed to NYBE, subject to payment of all services provided by NYBE, as well as the costs that NYBE has to incur as a result of this termination, increased by a lump-sum compensation of 50% of the amount that NYBE could still have invoiced to the Customer, with a minimum of € 2500, if the agreement would have been fully performed. In any event, any advance paid remains vested in NYBE. In addition, NYBE reserves the right to claim a higher compensation if it proves that the damage actually suffered is greater than the fixed damage as determined above.

22.5 Termination of a contract will result in all data residing on devices controlled by NYBE being deleted without further notice. This removal cannot in any way give rise to liability on the part of NYBE.

22.6 NYBE has the right to terminate an agreement with immediate effect and without compensation, without prior notice, if the Customer becomes involved in a procedure for dissolution, bankruptcy or liquidation or if the Customer becomes insolvent or waives all or a substantial part of its assets.

Article 23. Confidentiality

23.1 The Customer is prohibited to validate any information which it has obtained from NYBE and of which it has been stated that this information is confidential or at least of which the Customer could reasonably have suspected this, including in any case included confidential information and information concerning computer software, software and websites, NYBE's prices, discounts and comparable conditions, audio and video recordings, guides, study materials to third parties, on pain of a fine of € 50,000 per violation.