

Definitions

- SPS: the private company with limited liability Smart Platform Solutions B.V., with its registered office in the municipality of Haarlemmermeer and its principal place of business in Nieuw-Vennep (2151 JX), at Leusveld 104, registered in the Commercial Register of the Chamber of Commerce under number 60295449, also the party that applies these general terms and conditions.
- Other Party: the party that trades with SPS as a client or in any other capacity and as such instructs SPS to perform acts and activities.
- In Writing/Written: in writing includes by fax or e-mail.
- Agreement: an agreement between SPS and the Other Party.
- Activities: all activities instructed or that are performed by SPS on any other basis, such in the broadest sense of the word and comprising in any event the activities referred to in the offer or, as the case may be, all activities that could be useful for the assignment that was issued. These activities include among other things contracting and performing activities that are intended to trade in and/or manufacture complete machines and/or sets of components to be installed in a machine, in both cases under SPS' own brand name.

Article 1: Applicability

1. These general terms and conditions apply to all legal relationships, including Agreements (both oral and written), between SPS and the Other Party, irrespective of the capacity in which the Other Party acts. These general terms and conditions also apply to all stages preceding the conclusion of an Agreement, including all offers and proposals on the part of SPS and to the activities performed by SPS before the conclusion of the Agreement. Unless defined otherwise below, all such legal relationships are referred to hereinafter as 'Agreements'.
2. Deviations from these general terms and conditions are only binding if they have been agreed In Writing between the parties and only in the specific cases mentioned in that Agreement.
3. The applicability of any general terms and conditions applied by the Other Party is hereby rejected expressly and they do not bind SPS.
4. If one of the provisions of these general terms and conditions is void, it will be deemed to have been replaced with such a provision considered to be valid as is most closely in line with the void provision. The same applies to provisions SPS cannot invoke for other reasons.
5. SPS has the right to amend these general terms and conditions. The amended general terms and conditions are deemed to have been accepted if the Other Party has not objected to the amended general terms and conditions within 14 days after the amended general terms and conditions were sent or communicated to it.
6. As regards acts and Activities by third parties, the conditions that are customary in the relevant sector or the conditions whose applicability has been stipulated will also apply.
7. SPS has the right at all times to declare applicable provisions from terms and conditions applied by third parties with which it has concluded agreements for the performance of the assignment that was issued.

Article 2: Conclusion of an Agreement

1. All offers made by SPS are without obligation. Agreements are not concluded until they have been confirmed by SPS to the Other Party In Writing.
2. Offers drawn up by SPS are based on information provided by the Other Party until the offer date. The Other Party guarantees the accuracy and completeness of this information.
3. If the acceptance by the Other Party includes any reservation or any change with respect to the offer, the Agreement will be concluded if and when SPS has confirmed to the Other Party In Writing that it agrees to this deviation from the offer. That agreement is never deemed to concern the possible applicability of the general terms and conditions that are applied by the Other Party.
4. Later agreements or changes do not bind SPS until they have been confirmed by SPS to the Other Party In Writing.

Article 3: Engaging third parties

1. SPS engages third parties for the performance of the Activities. The choice of third parties to be engaged by SPS is made by SPS, with due observance of the necessary care, unless the Other Party has issued certain regulations in this connection.
2. If these third parties wish to limit their liability in connection with the performance of an assignment issued by the Other Party, SPS assumes and if necessary confirms to the Other Party that all assignments issued by it by the Other Party comprise the authorisation to accept such limitation of liability on behalf of the Other Party.

Article 4: Rates and payment

1. All agreed rates are stated in euros.
2. All rates are exclusive of turnover tax (VAT) and other levies that are imposed by the government.
3. SPS has the right to increase the agreed price if one or more of the following circumstances occur after the conclusion of the Agreement: price increases, increase in the cost of raw materials, materials, semi-finished products or services required for the performance of the Agreement, increase of the dispatch costs, wages, employer's contributions, national insurance, costs related to other terms of employment, transport, introduction of new and/or increase of existing government levies, import and export duties or other levies and/or taxes in the Netherlands or abroad, or, in general, such circumstances that are comparable to the matters set out above. If such a circumstance occurs, SPS will have the right to adjust the offered or agreed prices accordingly and if necessary with retroactive effect. SPS must be able to demonstrate the changes.
4. The agreed rates are also owed if damage occurred during the performance of the Agreement.

5. Any discounts apply once and do not bind SPS with respect to other Agreements.
6. SPS applies a payment term of 30 days, unless otherwise agreed in writing.
7. If the payment term is exceeded, the Other Party will owe SPS extrajudicial collection costs in the amount of 15% of the amount to be claimed subject to a minimum of €350 to be increased by turnover tax. This penalty is expressly punitive in nature and must not be considered to be fixed/alternative compensation. SPS has this right without prejudice to the right to charge the actual costs to the Other Party if the actual costs are demonstrably higher.
8. All costs, both judicial and extrajudicial, with respect to the collection of what is owed by the Other Party and amounts/invoices not paid on time are for the account of the Other Party.
9. In case of multiple claims on the part of SPS against the Other Party, payment by the Other Party is first allocated to any costs owed, then to the interest and finally to the oldest claim, irrespective of the claim or component indicated by the Other Party.
10. Settlement or suspension by the Other Party on any basis whatsoever and by whatever name is excluded.

Article 5: Delivery and performance of the assignment

1. Delivery dates are always indicated by approximation by SPS and are not binding. Exceeding scheduled delivery dates never releases the Other Party from its obligations arising from the Agreement and will not give the Other Party the right to dissolve the Agreement and/or claim compensation.
2. When determining the delivery date, SPS assumes that it will be able to carry out the assignment in the circumstances that are known to it at that time.
3. In case SPS suspends its obligations, the delivery time will be extended by the duration of the suspension. If continuation of the activities cannot be fitted in the planning of SPS, the Activities will be completed as soon as this is permitted by the planning.
4. Stoppage or delays are not for the account of SPS, unless caused by its intent or gross negligence.
5. If the delivery time is exceeded to such an extent that the Other Party cannot be expected within reason to maintain the Agreement, the Other Party will have the right to terminate the relevant Agreement, with due observance of the provisions of articles 6, 7 and 8 below.

Article 6: Defects, claims and complaints

1. Complaints can only be made In Writing and exclusively within one (1) week after performance of the assignment, or within one (1) week after the moment of discovery of any defect, or within one (1) week after the moment it should have been possible to discover any defect.
2. SPS is not liable for any misprints, clerical and/or counting errors and/or lack of clarity in the offers, confirmations of assignments and/or prospectuses, nor for the consequences thereof. In the event of a difference of interpretation of offers, confirmations of assignments and/or prospectuses, SPS' interpretation will be binding.
3. Defects in part of the goods delivered do not give the Other Party the right to reject the entire performance that was delivered.
4. In the event of non-conformity, SPS always has the right to replace a previous unsound performance with a new, sound good and/or performance, or, at the discretion of SPS, remedy the defect, or compensate the difference in value between a sound performance and the performance that was actually delivered, or to grant the Other Party a discount on the offered price to be determined in mutual consultation. Performance of the Agreement will then apply as entirely proper. The Other Party cannot dissolve the Agreement in such cases.
5. The Other Party will render all cooperation desired by SPS for investigation of the complaint and enable SPS to conduct or have conducted an investigation (on site) into the quality and/or quantity of the performance/good delivered.
6. SPS must be enabled to implement measures that mitigate damage if it wishes to do so.
7. If SPS is not afforded sufficient opportunity to remedy a defect that has occurred or to mitigate damage, all costs that arise therefrom will be for the account of the Other Party.
8. If the performance of inspections has been agreed or is desirable, such at the discretion of SPS, the Other Party will be required to render all cooperation in this connection requested by SPS. Inspections are for the account of the Other Party unless agreed otherwise.
9. A complaint concerning certain Activities does not suspend the Other Party's payment obligation with respect to those or other Activities.

Article 7: Guarantee

1. SPS guarantees for up to twelve (12) months after the start of the applicable guarantee period that products manufactured by it or on its behalf will not display defects in the material or structural defects:
 - a. In the case of products that are manufactured entirely new, this guarantee concerns the material and construction of the entire product.
 - b. In the case of modified products, the guarantee issued by SPS concerns exclusively the materials and/or constructions applied by or on behalf of SPS for the purpose of modification.
2. Supplementary to paragraph 1 of this article, SPS guarantees that the structural components (being the mechanical components) of new products manufactured by or on behalf of SPS will not display defects in the material or structural defects for five (5) years after the start of the applicable guarantee period.
3. The guarantee period commences at the moment of "ready for production" by signing the CE declaration belonging to the product. Existing guarantee periods are not extended after repair work.
4. (Possible) guarantees do not apply in the event of defects and/or damage arising from:
 - a. incorrect maintenance;

- b. incorrect use, abuse or neglect;
 - c. wilful negligence;
 - d. normal wear and tear;
 - e. fire caused inter alia but not exclusively by open fires, extreme weather conditions, such as, but not limited to: storms, lightning, floods, natural disasters,
 - f. explosions;
 - g. circumstances of war;
 - h. vandalism;
 - i. abnormal environmental pollution, which includes but is not limited to aggressive atmosphere, harmful gasses, vapours and/or chemicals, salty atmosphere or any other contact with salt water, excessive temperatures and/or high humidity, which are not caused by the climate;
 - j. intrusion of or damage resulting from dirt;
 - k. spraying of products or components of products with substances other than the appropriate ones;
 - l. use of aggressive liquids or solvents.
5. All (possible) guarantee claims lapse if the Other Party itself makes changes to or performs repairs on the goods delivered or has such performed by a party other than SPS or designated by SPS.
 6. The Other Party can only invoke a (possible) guarantee claim after it has complied with all of its obligations towards SPS and after it has notified its complaint(s) to SPS In Writing within the term referred to in article 6.1.
 7. In accordance with article 6 of these general terms and conditions, the Other Party is furthermore required in all cases to enable SPS to remedy a possible defect with due observance of a reasonable term.
 8. Any guarantee claims only oblige SPS to repair or replace all products or components that display defects in the material or structural defects for its own account at the location or locations of manufacture, such without prejudice to the provisions of paragraph 9.
 9. The guarantees issued by SPS never go so far as to oblige SPS to incur more costs than for which it is or would be liable pursuant to article 9 of these general terms and conditions.
 10. Routine maintenance, items intended for routine maintenance (including paint and stickers) and minor modifications are excluded from the guarantee.
 11. Taxes or environmental levies with respect to the removal and processing of waste, for example, are excluded from the guarantee issued by SPS as is consequential damage. Consequential damage includes but is not limited to the costs of transport, lost profit, increased overhead, labour and material costs and operational inefficiency.
 12. Prior to any procedure, the parties commit that they will do everything within their power to settle any disagreement and/or dispute that may arise in connection with and/or reliance on or, as the case may be, implementation of the guarantee, in mutual consultation.
 13. The guarantee can be transferred to the new owner within the guarantee period that has been set.

Article 8: Suspension and dissolution

1. If the Other Party:
 - a. fails to comply with any obligation arising for it from the Agreement with SPS, or
 - b. if it should become clear during the performance of an assignment or thereafter that the Other Party provided incorrect information or withheld information, or
 - c. if the Other Party is declared bankrupt, or
 - d. it applies for a suspension of payment or statutory debt rescheduling, or
 - e. it offers its creditors or part of them an arrangement or settlement, or
 - f. in the event an attachment is levied against all or part of its assets, or
 - g. if the Other Party sells or liquidates its assets, or
 - h. in the event the Other Party dies, or
 - i. is placed under guardianship, or
 - j. loses control over its business, affairs or part thereof in any other way,
 - k. SPS will have the right to suspend (further) compliance of all obligations or, as the case may be, performance of the Agreement towards the Other Party or consider the Agreement(s) with the Other Party as dissolved in whole or in part, without such requiring notice of default and/or judicial intervention, while retaining its right to compensation.
2. SPS has the right to suspend further performance of the Agreement without giving notice of default or dissolve it in whole or in part in the event the Other Party acts contrary to article 4.
3. If the Other Party wishes to dissolve the Agreement, it will have to give SPS notice of default In Writing first in all cases. The Other Party is required to notify SPS accurately and In Writing of the defects that have been identified in the performance. The Other Party will afford SPS a reasonable term to comply as yet with the obligations arising from the Agreement or to remedy the defects.

Article 9: Liability

1. With the exception of mandatory liability, SPS is not liable in any way for any damage, by whatever name or arising from any cause, other than as a result of intent or gross negligence, which must be demonstrated by the Other Party.
2. In the event of liability, SPS is never obliged to compensate an amount in damage that exceeds the part of the invoice amount paid by the Other Party that concerns the delivery or service that led to liability (excluding VAT) or a proportionate part thereof.
3. In the event SPS is insured against the relevant damage, its liability will be limited to the amount that is paid out in the relevant case by the insurer pursuant to the policies less the excess.

4. SPS is never liable for direct trading loss and/or consequential loss, such as losses consisting of lost profit or reduced income on the part of the Other Party and/or third parties.
5. SPS is not liable for damage if the Other Party provided insufficient, incorrect or incomplete information for the determination and performance of the activities to be performed by SPS and the goods to be delivered by SPS, unless the damage cannot be considered to be a consequence thereof, such to be demonstrated by the Other Party.
6. The Other Party indemnifies SPS against all damage caused to third parties or the property of third parties by or in connection with the goods and/or services delivered to the Other Party by SPS.
7. Claims for compensation must be notified by the Other Party to SPS by registered letter within one (1) week after the damage was discovered or could have been discovered within reason, while stating the amount of the damage, subject to forfeiture of rights.

Article 10: Force majeure

1. SPS is not liable for the fact that the agreed activities have not been performed or have not been performed in full, if such is the consequence of force majeure. Force majeure is defined as a set of circumstances that prevent compliance with the obligation and that cannot be attributed to SPS. Force majeure includes in any event war, a state of war, a state of siege, civil war, rebellion, revolution, insurrection, military or other takeover of power and plundering in connection with these circumstances, strikes within or outside the business of SPS or at third parties to be engaged by SPS and other labour disputes elsewhere to the extent this complicates SPS' provision of its services, squatting, seriously complicating weather conditions, traffic disruptions, government measures, general transport problems, sabotage, business interruption, and, more in general, any cause that cannot be attributed to the company. The matters set out above do not alter SPS' obligation to attempt to prevent and avoid situations of force majeure as much as possible.
2. SPS also has the right to invoke force majeure if the circumstance that prevents (further) compliance occurs after SPS should have complied with its obligation.
3. SPS' obligations are suspended during force majeure. If the period in which SPS is unable to comply with its obligations as a result of force majeure exceeds thirty (30) days, SPS will have the right to dissolve the Agreement without SPS becoming obliged to pay compensation in such cases.
4. If SPS already complied with part of its obligations or can only comply with part of its obligations when the situation of force majeure arises, it will have the right to invoice separately that part that has already been performed or, as the case may be, that can be performed and the Other Party will be obliged to pay this invoice as if it concerned a separate contract.

Article 11: Retention of title

All goods delivered or to be delivered by, on behalf or for the account or risk of SPS pursuant to any agreement whatsoever remain the inalienable property of SPS or the party that owns that property until the Other Party has complied with all claims concerning the consideration for the goods delivered or to be delivered by SPS pursuant to an agreement as well as activities performed or to be performed for the benefit of the acquirer pursuant to such an agreement, and in connection with claims for failure to comply with such agreements, including claims related to penalties, interest and costs.

Article 12: Confidentiality

Both parties are obliged to observe confidentiality regarding all confidential information that they acquire from each other or another source within the context of the Agreement. Information is confidential if such has been communicated by the other party or if this follows from the nature of the information. This duty of confidentiality may only be breached with the Written approval of the other party and/or pursuant to a statutory obligation.

Article 13: Applicable law/disputes

1. All Agreements between SPS and the Other Party are governed exclusively by Dutch law. The place where SPS has its registered office will be the place of liquidation and claim settlement.
2. All disputes between SPS and the Other Party will be settled by the Amsterdam District Court.
3. Without prejudice to the provisions of paragraph 2, SPS has the right to submit a dispute to the competent court of the place of residence or business of the Other Party.