

GENERAL TERMS AND CONDITIONS CONVERSAL BV

Last updated on 3 november 2022.

This is a non-binding translation of the Dutch general terms and conditions. If this translation conflicts in any way in interpretation, the original Dutch version will prevail and have precedence at all times over this translation.

1. Welcome

We are Conversal, a private limited liability company, with registered offices at Boekhoutstraat 121, 1790 Affligem, with company number 0848.529.769. These general terms and conditions describe the rules of engagement on the basis of which we (as a service provider) will provide services to you (as a customer). They apply to all our offers, agreements, services and products, and contain important information about your rights and obligations. These general terms and conditions are also applicable to any intellectual property rights that are being commercialized by Conversal, including all affiliated entities, products, brands and trade names under control of Conversal. You accept these general terms and conditions by placing an order with us, approving an offer, or signing an agreement with us. These general terms and conditions will have precedence over your own general terms and conditions, unless we explicitly consent to deviating terms in writing. In our Privacy Policy, we stipulate what personal information we collect as a 'data controller' and how we use and share it to improve our services.

2. Our Collaboration

2.1. THE TARIFFS

In principle, our services are provided at an hourly rate of EUR 85.00 or EUR 95.00 (excl. VAT) depending on the seniority level of the employee involved, unless stated otherwise. External costs will be charged to you. At the start of each new calendar year an indexation or price adjustment of these rates is possible, of which you will be informed in due time. Provided services will be invoiced as per our agreement. In the absence of any special arrangements, the services will be invoiced periodically based on the progress made. You also have the option to purchase a certain amount of credit ("credits") by way of prepayment, which can be exchanged for future work. Purchased credits are never, in any way, refundable. Credits are customer-specific and valid for a maximum of one year from the date of issue. Credits are non-transferable and will automatically expire if not used prior to the expiration of their term.

2.2. THE QUOTATION

If you are interested in our services, we will be happy to provide you with a free quotation with an overview of your wishes, our rates, and a cost estimation. All information, execution and delivery times are provided purely indicatively. The quotation will be valid for one month, unless the quotation explicitly stipulates a different term. As soon as you approve our offer without further comments, we will get to work within the framework of the terms stipulated in this agreement. After accepting the offer, you can still cancel the order within one week, subject to payment of a fixed annulation compensation for an amount equal to 25% of the total cost price stated in the offer. If an advance payment has been determined, we will only start our services after receipt of this advance payment. Decisions made by the customer that cause additional work not foreseen in the quotation will be charged separately at the standard hourly rate.

2.3. OUR SERVICE EXECUTION

We will make the necessary efforts in a professional manner in order to match our services as closely as possible to your wishes, and are therefore only bound by an obligation of means. To this end, we can also collaborate without your explicit consent with other service providers as subcontractors. When designing a new website, we will submit one or more basic design(s) to you for approval. Upon receipt of your comments on the basic design (provided that you submit them within a reasonable period of time), we will complete the website based on your feedback, if any. We will ensure that your website is correctly displayed in the latest stable version of the web browsers most commonly used at that time, for a period of 3 months after final delivery.

2.4. YOUR OBLIGATION

For certain projects we require additional information before we can perform our obligations, such as general data, text or images. If you or a third party beyond our control do not react within a reasonable timeframe or do not provide the necessary information on time, we may suspend the contract. Any costs resulting from these delays will be charged at our usual rates. If you repeatedly fail to cooperate, systematically cause delays, or fail to meet your obligations, we have the right to unilaterally terminate our agreement, terminate our performance, and/or send a final invoice before all services have been performed. We may terminate our agreement with immediate effect if you are in a state of bankruptcy, insolvency, have applied for a temporary deferral of payment, or have lost the free control over your assets. It is important to keep us informed of any changes to data or contact information. If you fail to do so, we cannot be held liable for any damages.

2.5. PROJECT MANAGEMENT

Every project at Conversal consists of operational work hours (the actual design and programming) and project management ("PM"). PM includes the planning and follow-up of the work, the management of everyone who works on the project, all communications and meetings with the customer, the processing of feedback, strategic advice, quality control, and the final completion of a site to prepare for launch. Our quotations take into account project management during the envisaged timeframe, extended with 4 weeks. If the project requires more than the foreseen timeframe outside of our responsibility, all additional PM hours will be charged at our standard hourly rate.

2.6. PROJECT DURATION

Once our quotation is signed, we will dedicate part of our team capacity to your project, for up to 6 months after the signing of the bid. It is therefore important that you provide the necessary cooperation and/or feedback in order to complete the project within the envisaged timeframe. After this time period, we reserve the right to charge all remaining work at our standard hourly rate (operational work hours as well as PM).

2.7. NON-POACH

During the term of our partnership and for a period of eighteen (18) months following its termination, you will not, directly or indirectly (including your affiliated entities), contact, directly or indirectly, any of our employees, associates, representatives or subcontractors, regardless of their legal status, with a view to their recruitment, employment, or collaboration in any form. In the event of a breach of this non-solicitation clause, you will be liable to pay a lump-sum compensation equal to the total gross compensation owed by us to the person recruited for his or her services during a period of eighteen (18) months prior to the recruitment, without prejudice to our right to claim higher damages if the actual damage suffered exceeds the aforementioned amount.

3. The result

3.1. THE DEADLINES

Although execution times are only indicative and not binding, we will of course make every effort to provide our services within a reasonable period of time. However, an extension of a predetermined delivery period cannot give rise to a right to cancel the order or to any form of compensation. In the event of an abnormal delay in performance within reasonable control of Conversal, you have the right to cancel the engagement provided that we have not complied with our commitments within a time period of twenty (20) working days after you have delivered us a notice of default. You expressly renounce any other possible remedy, in particular but not limited to any form of compensation. We are available for support on working days between 8.30 a.m. and 5 p.m. We strive to process all reports within a reasonable period of time.

3.2. THE DELIVERY

The project will be considered definitively completed once the customer has received the final version of the compiled website, irrespective of the moment of actual implementation (without regard to the moment on which the website goes live, becomes accessible, or is in use). As customer, you shall immediately check the delivered products and completed projects upon receipt. You undertake to formulate in writing to Conversal any complaints regarding visible and non-conforming defects, upon penalty of preclusion, within a period of one (1) month after delivery, with a detailed description of the defect. The products and completed projects are considered to be definitively accepted in as far as they are not disputed with reference to justified reasons within one (1) month after delivery. After definitive completion of the project and final delivery to the customer, there will be a standard guarantee period of six (6) months for the elimination of any hidden defects (so-called bugs) for which we are responsible, unless stated otherwise. Additional adjustments will always be invoiced at our fixed hourly rate.

Conversal retains full title to all goods sold and work performed, until the price for the goods and services is paid in full (in principal, interests and costs). Technical problems cannot give rise to any form of compensation. You will be responsible for the installation of the necessary mechanisms for security, storage and repair of data. For promotional purposes, we have the right to refer to the delivered end products as a reference, including the mention of your company and logo in our (online and offline) portfolios.

3.3. THE INVOICING

Periodically and in accordance with our agreements, we will send you an invoice for the services provided. These are payable within 21 days, unless stated otherwise. Any invoice can be protested within eight (8) days of receipt, in writing and by stating the motivations for such protest in reasonable detail, failing which the invoice shall be deemed to have been irrevocably accepted. No other form of complaint shall give you the right to suspend or postpone payment in whole or in part. If you do not pay an invoice on time, default interest will be due by operation of law and without notice of default on the invoiced amount, according to the legal interest rate for late payment in commercial transactions. In addition, a fixed administrative fee of 10% of the amount due will be charged for late payment, with a minimum of EUR 200.00. In the event of late payment, we shall be entitled to suspend work or services still in progress until the amounts due have been paid in full. If our invoice (plus any interest and negligence costs) has not been paid one week after a notice of default has been sent, we have the right to deactivate the products offered by us (including but not limited to the website, domain name, and e-mail server) until payment of the outstanding amount.

4. Liability

4.1. FORCE MAJEURE

We do not accept any liability in the event that we are unable to fulfil our obligations due to force majeure or a foreign cause. If the force majeure is only of a temporary nature, we will still try to fulfil all obligations from the moment that this is reasonably possible again. If a continuation is no longer reasonably possible, the agreement will be revised or dissolved in mutual consultation. Already delivered performances will still be invoiced.

4.2. RELATIONSHIPS WITH THIRD PARTIES

Insofar as we are dependent on the cooperation, services and deliveries of third parties, we can in no way be held liable for damage arising from these relationships or the termination thereof.

4.3. SHORTCOMINGS

We strive for the best possible availability (uptime) of our own services and optimal integration with external services, but cannot guarantee this. We are in no way liable for any damage incurred by you, unless a serious shortcoming in the performance of our contract is attributable to us as a result of grave or deliberate misconduct. In such event you may give us a written notice of default, allowing us a reasonable period of time depending on the complexity to still fulfil our obligations, which in no event can be shorter than twenty (20) workdays. We can in such case only be held liable for substitutionary damages that cannot exceed the same amount invoiced in relation to the services that have resulted in the direct and immediate damages incurred by the customer. We are not responsible for any shortcoming on the part of a representative or third party. Any liability for any other form of damage is excluded, including any compensation for indirect damages, consequential damages or damages due to loss of turnover or profit. You will indemnify us in full against any claim (principal sum, interest and costs) in connection with matters for which you yourself are responsible.

4.4. USE OF THE WEBSITE

You are solely responsible for the content and material on the website. We cannot be held liable for incorrect or incomplete information published on the website.

You are responsible for obtaining all necessary consents and permissions to post material on your website, including links to external websites. We do not accept any liability in connection with the content, data dissemination or publications on your website. Any copyrights, fees, expenses or penalties in connection therewith are your sole responsibility. Information that you transmit over the internet or place on your website may be intercepted and stored by third parties. We are not liable for any damages caused by the transmission of any confidential or secret information.

Even if you are not the user, you remain liable for the lawful and reasonable use of the services and goods provided. In the event of a serious suspicion of abuse, excessive use (fair use), or illegal activities, we have the right to temporarily or permanently deny access to these services or goods, without you being entitled to any compensation for any damages. You will indemnify us in full for any damages we may suffer as a result thereof.

5. Intellectual property

We invest a lot of time, energy and resources in creating a unique website tailored to your needs. All the materials we provide in this context may therefore only be processed or incorporated into websites other than those for which they were created with our explicit permission. You agree to the inclusion of a reference to Conversal as web designer at the bottom of the websites developed by us, which may not be removed without our explicit permission. You will receive a non-exclusive user license to all codes developed by us for the website, for the same period of time as the code is protected by applicable copyright law. The usage rights will only be transferred to you after full payment of our invoice. If we notice any fair use violation, we are entitled to charge a reasonable fee for this. We are also entitled to use our intellectual property for other purposes. We always retain ownership of all our intellectual, industrial and other property rights, including the materials, ideas, concepts or designs provided by us, as well as our copyrights, neighbouring rights, know-how, trademarks, trade names, logos, drawings, models, patents, domain names, source files, rights to databases, computer programs and semiconductors. To the extent that we rely on material supplied by third parties, your user license will be subject to the terms and conditions of the relevant third party supplier's license. We hold no liability in relation thereto.

6. Website content

Any sample texts that are made available to you for populating the website do not include any legal advice. The use and any consequences thereof are entirely at your own risk. We do not accept any responsibility for the content or use of text and / or images on the website, whether or not provided by us, or for any consequences or damage resulting from its use, of any kind. Our sample texts are offered to you as is and without any warranty of accuracy, completeness or usefulness. Legislation, future changes to regulation, and administrative, legal and/or judicial interpretation can have an impact on the content of your website. We are by no means responsible for compliance with any laws nor the impact of any future changes thereof, and have no obligation to our update sample texts. The sample texts supplied by us only serve as a general draft, after which you are responsible for the compliance with the applicable regulations and the preparation of the required documentation tailored to your company. If you do not have the necessary knowledge in relation thereto, we advise you to seek professional legal advice.

7. Data protection

Insofar as you have personal data processed by us or an external partner as part of our agreement, we merely function as a 'data processor' of this data and do so carefully. You remain the 'data controller' of all personal data and are responsible for the instructions you give us in relation thereto. In this sense, you must fully comply with the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data, the European Regulation n° 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), and any other relevant legislation in relation to privacy and data protection. The conditions and modalities on the basis of which we act as 'data processor' of personal data for you are specified in the Data Processing Attachment to these general terms and conditions, which forms an integral part thereof. If personalized documentation is required to be drafted as a result of our specific professional relationship, all reasonable internal and external costs related to the preparation and review of such documents will be invoiced separately in full. In the context of the services we provide to you, we process the personal data of the contact persons you provide to us in our capacity as 'controller'. The contact details of these persons may be processed within the framework of our customer management, for marketing purposes, and serve to execute our agreement with you.

For more information, please refer to our separate Privacy Policy.

8. Ongoing Cooperation

8.1. YEARLY CONTRACTS

We offer the possibility to integrate certain recurring services and products from specialized partners in your project, for which we invoice those costs on the basis of contracts that are automatically renewed on a yearly basis. This simplifies amongst others the registration and management of your domain name, the hosting of your website, and the integration of specific plug-ins. Those type of agreements are tacitly renewed for a new period of one year, unless the agreement is unambiguously terminated in writing at least one month before the expiry date. The registration and use of such products and services are also subject to the terms and conditions of this external supplier. We do not bear any liability in this respect. You are responsible for the content as well as the transfer of the website in the event of termination of the such agreements. Our possible assistance will be charged at the usual hourly rate.

8.2. THE MAINTENANCE

We offer the possibility to have your website maintained by us periodically and to offer support on the basis of a contract of indefinite duration. These are always terminable, subject to a notice period of three months. These general terms and conditions will also apply to the maintenance agreement.

8.3. THE MARKETING

We offer the possibility to assist you in the marketing and commercialisation of your website on the basis of a one-year contract. This contract is tacitly renewed for a further period of one year, and can be terminated quarterly as of the first renewal. These general terms and conditions will also apply to the marketing agreement.

9. General terms and conditions

9.1. AMENDMENTS

Conversal reserves the right to change these general terms and conditions unilaterally by simple notification. If an existing customer objects to a change of the terms within a reasonable time period after being informed of the intended amendment, the changed terms and conditions shall only apply as per the next order from, or invoice to, that particular customer. The version of the terms and conditions in effect at the time of placing an order by the customer, will be applicable to the legal relationship resulting from that order.

9.2. TRANSFER OF RIGHTS

No one can transfer his or her rights and/or obligations arising from these general terms and conditions or our agreements to a third party without the consent of the other party.

9.3. INVALIDITY

If an article in these general terms and conditions is declared invalid, the other provisions shall remain in force. In mutual consultation, the annulled provision will be replaced by an article that comes closest to the spirit of the article declared invalid.

9.4. APPLICABLE LAW

These general terms and conditions and all agreements related thereto are subject to Belgian law. In case of a dispute, the courts of Gent, department Dendermonde are exclusively competent.

ANNEX: DATA PROCESSING

1. Processor

Within the framework of our services, we may process personal data on behalf of the customer, consisting of all information on the basis of which a natural person can be identified. As a data processor, we can be requested to process personal data, whether or not carried out by automated means, including the collection, recording, organisation, structuring, storage, updating or modification, retrieval, consultation, use, disclosure by transmission, distribution or otherwise making available, alignment or combination, blocking, erasure or destruction of data. As data controller, the customer is responsible for determining the purpose and means of processing personal data, and must provide the necessary guarantees for their processing.

2. Processing

We only process personal data to the extent necessary for the execution of our contract with the customer. The processing of personal data shall always take place in a proper and careful manner, in accordance with the applicable privacy legislation and only on the basis of the customer's written instruction. The customer guarantees that the instructions given are in accordance with the applicable privacy legislation. For the processing of personal data, we have the right to call upon professional partners who process personal data on our behalf for the performance of our obligations under the agreement with our customers without their explicit consent. Our partners that will process any personal data will in turn take the necessary technical and organizational measures to protect the personal data. Our liability within the framework of data processing is limited according to the provisions contained in article 4.3 of the General Terms and Conditions.

3. Security

We apply at least the usual technical and organizational security measures that may reasonably be expected of us to protect personal data against destruction, loss, alteration, forgery, distribution or unauthorized access. It is the customer's responsibility to take appropriate security measures with regard to the use of personal data by the customer. Personal data will only be transferred to a partner in a country outside the European Economic Area if that country ensures an adequate level of protection for your personal data, has entered into a separate processing agreement, or with your written consent. As soon as we become aware of a data breach, we will notify the customer within a reasonable period of time so that the customer is able to comply with the reporting obligation under privacy laws. This notification will include a description of the data breach, the nature of the breach, when the data breach occurred, as well as an indication of the technical measures we have taken to stop the breach and prevent future breaches.

4. Assistance

In as far as possible, we will reasonably assist the customer as data controller upon request by making certain relevant information available in order to fulfil its legal obligations under privacy legislation, including: - respecting the rights of every data subject whose personal data is processed; - carrying out a data protection impact assessment in order to assess the impact of the processing activities on the protection of personal data; - carrying out an audit, insofar as all costs in this respect are borne by the customer. We will inform the customer of requests made directly to us by a data subject in connection with the processing of personal data for which the customer is responsible for processing.

5. Confidentiality

We take measures to keep all confidential personal data confidential, even after termination of the agreement with the customer. Our employees who have access to this personal data are also bound by this confidentiality and must refrain from copying, passing on, transferring or otherwise distributing personal data to third parties. This commitment does not prevent the use of personal data within the framework of our services, insofar as the disclosure is necessary to comply with legal requirements or legal proceedings, or insofar as this information is publicly available.

6. Duration

Our commitments based on this Data Processing Attachment will remain in effect for as long as we have access to the personal data concerned. Upon termination of the contract with the customer, the customer is responsible for exporting the personal data. As soon as the storage of personal data is no longer necessary for the execution of the order, we will either delete them or return them to the customer within a reasonable period of time, unless the customer demands a different storage term, their storage is necessary to prove to the customer the fulfilment of our commitments, to comply with legal requirements, or within the framework of customary retention mechanisms that are reasonably limited in time (back-ups).