

# GENERAL TERMS AND CONDITIONS

## ARTICLE 1. SCOPE

1.1 These general conditions apply to all commercial transactions of DevElite BV, with registered office at Zandvoortstraat 42, 2220 Heist-op-den-Berg, Belgium, VAT BE 0682.492.988 – RLP Mechelen (hereinafter referred to as “DevElite”).

1.2 Together with any accepted orders, special conditions and applicable license conditions, they constitute the agreement between the parties. Possible general terms and conditions of the customer do not apply.

1.3 DevElite has the right to change these terms and conditions subject to notification to the customer. Counting as notification is an announcement on the website [www.develite.be/generalconditions](http://www.develite.be/generalconditions), on the invoice or via e-mail. These changes will then take effect one (1) month after the notification, unless a later date is indicated.

## ARTICLE 2. APPLICATION DOCUMENTS

2.1 The service(s) and/or license(s) that DevElite will provide are described in the application document. Unless stated otherwise, an application document is valid for thirty (30) days. An order placed on the basis of an application document is deemed to have been accepted if DevElite does not reject the order within eight (8) days.

2.2 Application documents are always estimates in the sense that they are based on information that is available at the time of preparation of the application document and possibly on prices of third parties. Incorrect or new information, or price changes by third parties, may give rise to a change of the terms and conditions and/or the price.

## ARTICLE 3. PRICES

3.1 All quoted prices are exclusive of VAT, accommodation and travel costs, and apply in Belgium during office hours.

3.2 For services outside Belgium, the rates stated in the application document are increased by 25% within the EU and 35% outside the EU.

3.3 Outside normal business hours, the rates stated in the application document are increased by:

- 25%; weekdays until 9:00 pm
- 50%; weekdays after 9:00 pm
- 50%; Saturdays until 5:00 pm
- 100%; Saturdays after 5:00 pm
- 100%; Sundays

3.4 Travel costs within Belgium are charged at € 0.80 per km, with a minimum of € 100. If the customer does not provide parking, parking costs will be charged at actual cost.

3.5 In the case of services outside Belgium, expenses are charged as follows; travel, parking and hotel costs = actual cost; travel time (both directions) at 70% of the hourly rate; out of pocket expenditures = lump sum per person per day at the most recent “daily lump sum allowance for executive personnel” rate as published in the Belgian Official Journal. In addition, an administrative fee of € 50 is charged for arranging flight and hotel (per booking), unless the customer handles this itself. In this case, the customer must ensure that it coordinates with DevElite so that everything is ready on time (visa, etc.).

3.6 All prices, rates and costs are adjusted annually at the beginning of the year on the basis of the formula  $R_n = R_o (0.2 + 0.8 (S_n/S_o))$  (where  $R_n$  = new rate;  $R_o$  = old rate;  $S_n$  = reference hourly wage costs (country average – wages and social charges) published by Agoria, in force the month prior to the price adjustment;  $S_o$  = reference hourly wage costs (country average – wages and social charges) published by Agoria, in force the month prior to concluding the agreement).



## ARTICLE 4. INVOICING

4.1 The presumed quantities included in the application document accepted by DevElite are an estimate of the work and services to be provided, taking into account the parameters known at the time of acceptance of the application document.

4.2 Licenses are invoiced in advance on the basis of the accepted application document. Credit or a refund for pre-paid licenses that have not been used is not possible.

4.3 Cloud computing services are billed monthly in advance.

4.4 Services are invoiced after delivery.

4.5 Complaints about invoices must be communicated to DevElite by registered letter within eight (8) days of receipt.

4.6 Payment will be made within fifteen (15) days after the invoice date. Failing this, the amounts due will be automatically and without prior notice of default be increased from the due date by the interest rate determined in the Act of 2 August 2002 on combating late payment in commercial transactions. In addition, the amount due will be increased by 10%, with a minimum of € 150. Court costs and costs of implementation are not included in this amount. Non-payment of a single invoice makes all other invoices that are not yet overdue immediately due and payable. DevElite reserves the right, if necessary, to suspend further work and can therefore no longer be held accountable for any agreed scheduling and the like.

4.7 If there are reasonable reasons to doubt the creditworthiness of the customer, DevElite has the right to demand additional security in respect of payment and to suspend further execution of the agreement up to that moment.

## ARTICLE 5. IMPLEMENTATION

5.1 DevElite will make every effort to deliver the license(s) and/or the service(s) in accordance with the agreement.

5.2 Specified delivery and execution periods are approximate and only take effect when agreement on all (technical) details has been reached and after all data or materials that are useful for the execution are in possession of DevElite and it has received the possibly required prepayment. The specified deadlines are always set with the expectation that DevElite can continue to work as was foreseen at the time of the application document.

5.3 The customer shall ensure that the necessary representatives are available to give DevElite the required explanations about the hardware and software of the customer. The customer will also provide the necessary facilities, including parking, adequate workspace (sufficiently lit and ventilated), electrical power, communication possibilities (including the possibility to connect to the DevElite server(s)), access to the working environment of the customer (of course limited to and for execution of the agreement), etc. Where necessary, DevElite will be granted permission and access to carry out work outside normal business hours.

5.4 The customer is aware that the execution of the agreement may in certain cases lead to a temporary unavailability of parts of the working environment. DevElite will consult with the customer in such a case.

5.5 The customer shall provide DevElite in writing and in time with all information needed to enable DevElite to correctly assess and perform the services to be provided.

5.6 In order to obtain a favourable outcome, the customer will allocate sufficiently qualified personnel. This personnel will not be replaced during the term of the agreement, except in the case of a dismissal, long-term illness or force majeure, or subject to a written agreement between the parties. If the personnel assigned to the agreement have to be replaced, the new employees will have equivalent qualifications. The customer accepts that replacements or the non-availability of those responsible for its project organisation can lead to a longer execution period for the project and thus a higher cost price.

5.7 In the case of additional work, DevElite will submit an application document to the customer.

## ARTICLE 6. ACCEPTANCE

6.1 Standard software (being generally available and not specially developed within the framework of the agreement, even if modifications or extensions have been made for the benefit of the customer, but within the basic possibilities of this software) is deemed to be accepted when delivered, installed if applicable, in execution of the agreement. The maintenance agreement and the cloud computing services come into effect from the signing of the order.

6.2 Tailor-made software (being software implemented by DevElite under the agreement, including in particular: integrated code and functional objects in the standard software, integral add-ons, being functional-technical units that together form a system or subsystem, additionally added to the standard software to meet the specific computerisation needs and wishes of the customer as described in the agreement and which are



not included in the standard software on the contract date) is deemed to be delivered and accepted as soon as it is installed and functions in a test environment at the customer's premises and is transferred to the working environment ("live") with the consent of the customer. The same applies if all or any part of the tailor-made software was used by the customer in any way and was therefore installed in the working environment.

## ARTICLE 7. RIGHT OF USE

7.1 The customer agrees with the license agreement(s) applicable to the delivered software. To the extent that it is not already handled in the applicable license agreement for the software concerned, the following provisions apply.

7.2 The customer is granted only a non-transferable and non-exclusive right of use to the software (both standard and tailor-made).

7.3 This right of use implies the right for the customer to use the supplied software on the indicated or specified devices for the needs of its company, thus internal use, together with the accompanying documentation, and to make copies of the software. These copies will not be used by the customer but will only be used to replace the original material that has become unusable; they are subject to the terms of the license and may only be used within that framework.

7.4 A separate license is required for each device on which the customer uses the software (unless determined otherwise by the software owner). However, the customer may temporarily use the software for a one-time period of one month on an alternate device (different hardware) when the specified device is temporarily unusable.

7.5 The customer is not permitted to sell, rent, dispose of or transfer any part of the software, or use it in any other way than for the customer's own use and business, as stipulated in the agreement.

7.6 If, without the prior written consent of DevElite, the customer transfers to third parties any part of the software delivered or executed in performance of the agreement, it will owe DevElite lump sum compensation that is calculated as follows (the highest of the following amounts): either the amounts originally charged by DevElite for execution of the agreement as well as additional interventions, increased by 30%, or the price that is requested by DevElite of other customers according to the contracts or rates, to be submitted at the time of the infringement, for similar licenses and/or services, also to be increased by 30%.

7.7 The above applies without prejudice to any compensation or amounts that the customer will have to pay in respect of breaches of license agreements or property rights of third parties.

## ARTICLE 8. WARRANTY

8.1 DevElite will do all it can to ensure that the supplied software complies with the included specifications on condition that it is used by the customer in accordance with the instructions in a suitable environment, and the customer has provided DevElite with the correct information about its system, way of working and goals.

8.2 If the software does not function in accordance with the warranty offered during the first fifteen (15) days following delivery, and if DevElite is unable to remedy this, the customer may return the software, and DevElite will provide a refund.

8.3 DevElite undertakes to carefully perform the service(s) in accordance with the agreement.

8.4 The above-mentioned warranties do not apply in the event of improper use, accident, alteration, use in an inadequate physical or operational environment, or in a working environment other than the foreseen working environment, incorrect maintenance by the customer, or a defect caused by software or a product for which DevElite is not responsible.

## ARTICLE 9. SUPPORT

9.1 Support: subject to payment of the "support fee", DevElite provides telephone support for problems/questions related to the contracted software. The customer can contact the help desk by telephone during normal working hours (from Monday to Friday, with the exception of Belgian legal holidays, from 09:00 am to 5:30 pm), at the following telephone number; +32 15 25 31 61.

9.2 The support fee is invoiced annually in advance and the amount depends on the contracted software.

9.3 Reporting and handling support questions is subject to a well-defined procedure.

9.4 Update/maintenance: subject to payment of the "update/maintenance fee", DevElite makes available to the customer the versions released by the relevant software manufacturer under the update or maintenance service. All related services (such as installation, implementation, training, etc.) regarding these versions are not included in the update/maintenance fee.

9.5 If the customer wishes support while it has not paid the support fee or the update/maintenance fee, DevElite will invoice on a cost-plus basis. The support will then be scheduled on a project basis.



9.6 Work performed that does not fall under the support fee will be billed separately if necessary:

- on-site support at the customer;
- maintenance and reorganisations of disks, files or databases, setting up security;
- installation of software on the client or on the server;
- installation, implementation and/or training on “hot fixes”, “service packs” and “new releases”;
- support with regard to operational or technical problems due to the hardware, improper maintenance, incorrect manipulation or modification of the software by the customer or a third party, improper use, accident, use in an unsuitable physical or operational environment, or in any other than foreseen working environment, or defect caused by the software or product for which DevElite is not responsible;
- support of unsupported software version;
- Microsoft SQL maintenance and monitoring;
- requests to add or change correctly working software, consultancy, research, project management, integration and migration, roll-out, acceptance testing, batch scheduling, reporting, training and in general any work that does not directly relate to the resolution of operational or technical problems.

## ARTICLE 10. LIABILITY OF DEVELITE

10.1 The operating loss or damage resulting from media risks, malfunctions and/or a professional error on the part of DevElite is in all cases limited to reimbursement of the actual and personal damage, and is limited to the lowest of the following amounts:

- the invoiced price of the software or service (the twelve (12) last monthly amounts in the case of periodic prices) that is the cause of the damage (less the amounts charged for standard software (licenses) or packages from third parties; these after all were also paid to third parties by DevElite);

or

- in the case of operating damage caused by DevElite:
  - for physical and property damage, a combined maximum of € 1,500,000.00 per claim per year, including, but limited to:
    - non-economic damage, maximum € 375,000.00 per claim per year;
    - accidental pollution, maximum € 500,000 per year;
    - nuisance caused to neighbours, maximum € 500,000 per year;
    - in the case of damage resulting from a professional error of DevElite:
    - for physical, property and non-economic damage, a combined maximum of € 250,000.00 per claim per year;
    - in the event of damage caused by DevElite to goods entrusted, a maximum of € 25,000.

Non-economic damage is limited to 25% of the capital foreseen for the property damage, without this amount being less than € 250,000. If the capital for the physical and property damage is combined, the non-economic damage will be limited to 25% of the combined capital.

DevElite is only liable for the pure non-economic damage insofar as this is due to a professional error.

10.2 Liability for professional error is understood to mean: liability for any shortcoming in commitments, any negligence, error, inaccuracy, misleading statement, any failure by DevElite committed in the performance of intellectual services (including studies, designs, advice, guidelines, etc.) in the context of the professional activities of DevElite.

10.3 Liability for media risks is understood to mean: liability for risks associated with the design of websites, web pages and/or the management of the content with which they are developed. This concerns among others:

- the infringement of intellectual and industrial property rights such as infringements of copyright law, trademark law, trade and domain name rights, database rights to the exclusion of the portrait rights as well as the right to the protection of privacy;
- the loss of image or reputation, defamation, slander, breaches of public order and good morals (including pornography, racism, discrimination of any kind, subversive propaganda);
- violations of the rules governing economic dominance, price fixing, unfair competition, consumer protection.

10.4 DevElite is not liable for media risks if it has not specified the content and/or design of the site/webpage itself. The liability resulting from not deleting information, or not doing so in time, when imposed/demanded by an administrative or judicial authority is for the expense of the customer.

10.5 Liability for malfunctions is understood to mean: liability for the complete or partial failure of, malfunctions in and/or delays of systems. DevElite is only liable for malfunctions due to a professional error and/or a defect in the delivered products and/or executed work. Excluded is damage due to:

- a shortage in the memory capacity reserved by the customer;
- the unavailability of information in a non-electronic format.



10.6 DevElite is only liable for damage as a result of computer viruses or any act of computer crime when this is caused by:

- a defect in the security software or system developed and/or provided by DevElite;
- the faulty installation of a security system performed by DevElite;
- erroneous advice and/or a wrongly advised choice by DevElite in the area of security systems, except when this system clearly does not correspond, for any person skilled in the matter, to a level of security acceptable at the time of the work;
- incorrectly performed maintenance and/or the update of a security system unless the result of this, for any person skilled in the matter, clearly does not meet an acceptable level of security at the time of this maintenance and/or update. DevElite is not liable for failure to request maintenance and/or an update in time.

10.7 Liability on the part of DevElite is excluded in the cases below (list not exhaustive):

1. damage caused by war, civil war and events of the same nature;
2. damage caused during a strike, lock-out, riot, terrorism, sabotage and acts of violence with a collective impact and damage caused by radioactive, toxic, explosive or other hazardous properties of substances;
3. the costs of searching for, researching and withdrawing from the market products or works that are defective or suspected to be, including the compensation owed to third parties;
4. the damage resulting from a visible defect in the delivery or a defect known to the customer before the damage occurred, unless the customer proves that the accident could not be prevented;
5. any damage resulting from a repetition of the technical failure of the system if the fault that was the basis of the first failure could not be detected and/or was not remedied;
6. the commitments relating to the attainment of a result that exceed the commitments normally applicable to the exercise of the profession, as well as any damage resulting from the fact that the products or works, although not defective, do not have the promised effectiveness or generate the promised return;
7. the personal liability of the subcontractors of DevElite;
8. any damage resulting from a choice of equipment or software recommended by DevElite that is deemed by any person skilled in the matter to clearly meet the objectives and the needs of the customers;
9. any damage resulting from an inadequacy in the capacity of the system memory provided by the customer in view of the current or future information to be processed;
10. any damage that could have been avoided with a simple back-up (of the specific software or configuration), before the start of the work;
11. any damage resulting from the disclosure of professional secrets, confidential information, the unauthorised use of information processing systems, the forgery or abuse of computer programs, the use of insufficient security in computer programs, the unlawful use of the computer for personal purposes by the customer;
12. consequential damage such as loss of profit, even if this is the direct consequence of the incident that forms the basis of the damage; commercial loss, rising costs, disruption of planning, a claim by a third party;
13. indirect damage, even if it could be foreseen or if DevElite was informed in advance of the possibility of this damage;
14. loss of or damage to data;
15. loss of business activities, income, clientele (including damage to the good name or image) or of expected profits or savings;
16. if DevElite is requested to provide services with regard to software not installed by DevElite, DevElite will not be liable for shortcomings in that software, whether this is due to the installation, programming or previously provided services related to that software.

10.8 If the customer makes use of the cloud computing services, DevElite is also exempt from all liability for one or more of the following reasons (the list is not exhaustive):

- the inability to install the software on the remote server (cloud) as a result of the adaptation of the list of compatible software by the external provider of the server;
- decrease in quality of the external server due to non-compliance with advice given;
- misuse of servers and software;
- total or partial destruction of the information that is transmitted or stored as a result of errors that can be directly or indirectly attributed to the customer;
- in the event of total or partial non-compliance by the customer (or its agents) with its obligations and/or in the event of failure of the internet and/or the internet supplier;
- the cloud computing services provided depend on other technical operators, whereby DevElite cannot be held liable for the consequences of the failure of these technical operators;
- in the case of force majeure;
- due to the characteristics of the internet, which are known by the customer, DevElite is also not considered liable for, among others,



- the content of the information,
- abuse of passwords,
- unauthorised disclosure of confidential information due to a system malfunction or piracy.

10.9 Any claim directed against DevElite in the context of the cloud computing services must in any event be declared by registered mail within 48 hours after the relevant event that gives rise to a possible liability.

10.10 The limitations of liability in this article do not apply in the case of deception on the part of DevElite.

## ARTICLE 11. RESPONSIBILITY OF THE CUSTOMER

11.1 The customer is responsible for the security of the system (devices, hardware and software and, if applicable, the supplied cloud services). If the customer does not make use of the cloud computing services, the customer will take physical copies of the programmes and the data, and store these separately so that no loss of data or other information is possible, and thus here DevElite is also not liable. The customer shall keep a precise record of the number of copies and their location, and inform DevElite if one or more of the copies are stored in a different location from where the indicated devices or hardware are located. If the customer uses the cloud computing services, the copies will be stored using that system.

11.2 When using devices or other hardware, the customer will equip each device or piece of hardware with a virus scanner. DevElite is not liable for damage caused by viruses at the customer. In addition, the customer guarantees that all devices, hardware, equipment, programmes, software and other assets that it uses have been legally acquired and used by it. It has all rights to this and it indemnifies DevElite in this matter.

11.3 Before discarding any data carrier or designated devices, the customer shall ensure that all software contained therein has been erased or destroyed.

11.4 The customer is obliged to keep its database technically up-to-date. All DevElite objects with changes must systematically be read in. The customer must confirm to DevElite when an object goes live. Only in this way can new objects be delivered. The customer must provide a copy of the database to DevElite at regular intervals, unless DevElite has access via Remote Support (optional service).

11.5 The customer using the cloud computing services is responsible for the content of the stored data and will only use the external cloud service for the application of the delivered DevElite, to the exclusion of any other application. The customer is responsible for the content of the information stored in the external cloud via DevElite and undertakes to respect the rights of third parties.

## ARTICLE 12. TERM OF THE AGREEMENT

12.1 By signing an application document, the customer commits itself to the full intended purchase. Each party can terminate the agreement:

- without notice of default if the other party files for bankruptcy or has been declared bankrupt or in the event of apparent insolvency on the part of that party;
- if the other party fails to fulfil its obligations within thirty (30) days after being admonished to do so.

12.2 The agreements regarding the "Update Fee", "Support Fee" and "Cloud Computing" have a term of one (1) year from acceptance of the application document and are tacitly renewed with periods of one (1) year, unless notice is given by registered letter by the parties at the latest three (3) months before the end of the current period.

## ARTICLE 13. DUTY TO COOPERATE

13.1 The parties undertake to inform each other immediately of any difficulty that may impede the punctual performance of the services and to provide each other with any explanation that can facilitate such.

## ARTICLE 14. FORCE MAJEURE

14.1 If one of the parties is unable to fulfil its obligations under the agreement for a period of more than three (3) months, the other party has the right to terminate the agreement by means of a registered letter without judicial intervention, with immediate effect, without prejudice to the rights to damage compensation that continue to apply to the injured party.

## ARTICLE 15. GENERAL

15.1 The customer undertakes to treat all information that it comes to know about DevElite on the basis of an application document or in the context of the agreement as confidential and not to disclose it to third parties.





If necessary, the needed procedures will be issued for this, and the necessary obligations will be imposed on personnel.

15.2 The customer undertakes not to directly or indirectly hire employees, former employees or subcontractors of DevElite. This provision applies during the agreement and for two (2) years after its termination. Neither will the customer directly or indirectly entrust certain agreements to these people. In the event of infringement of this clause, the customer will pay to DevElite compensation equal to 24 months gross salary of the employee or ex-employee, as last paid by DevElite.

15.3 DevElite is entitled, subject to notification to the customer, to mention the system sold to the customer, and to use the name of the customer, in its brochures and advertising.

15.4 The parties will submit all disputes concerning the execution and interpretation of the agreement to the courts of Turnhout, and only these courts will be competent to rule on such matters.

15.5 This agreement is subject to Belgian law.

## ARTICLE 16. SPECIAL CONDITIONS REGARDING CLOUD COMPUTING

### SERVICES

16.1 If the customer concludes an agreement, including cloud computing services, the following special conditions also apply.

16.2 The cloud computing services are provided for a minimum period of 12 months and are invoiced in advance.

16.3 The cloud computing services comprise the maintenance and storage of the customer's data for the DevElite application, within the limits of the special terms and conditions, with the possibility of having a specific stored item restored.

16.4 The storage (back-up) and fee owed depends on the subscription chosen by the customer and the use (see the Cloud price list), and is payable by direct debit. The retention period for the data is limited to 7 calendar days (except in the case of explicit contractual deviation), after which the data is destroyed/deleted without further notice.

16.5 DevElite will do its utmost to provide 24/7 access to the infrastructure. Access, however, may be suspended temporarily, among others due to a technical intervention to improve the system, or for maintenance, while always aiming for the least possible suspension of the services. The targeted availability level is 99.5%.

16.6 Malfunctions or defects in the cloud system must be reported immediately to DevElite (by e-mail or telephone), after which DevElite will use all its human and technical resources to ensure continuation of the services. Outside the normal hours of accessibility between 9 am and 6 pm, any intervention or support under this article will be subject to a minimum of € 75 on top of the normal basic hourly rate plus 50%, unless the intervention is needed due to an act of DevElite or its cloud services provider.

16.7 Upon termination of the agreement, the customer can request all the stored data by registered mail within 2 months after expiry of the agreement, regardless of the cause. In the absence thereof, the customer is deemed to have surrendered the data. The cost of transferring the data is fixed at € 1.000.00 per transfer.

**Last update: November 2020**

