

General Terms and Conditions IT Logistics

1. Subject and scope

These General Terms and Conditions IT Logistics ("General Terms and Conditions IT Logistics") for Molenbergnatie N.V., with registered offices in Nieuwelandenweg 32, Haven 200, 2030 Antwerp, Belgium, Register Legal Persons number BE 0404.785.354 ("Molenbergnatie") govern the provision and use of the Molenbergnatie IT services ("Services"). There may at any time be explicit deviations from these General Terms and Conditions IT Logistics by way of separate agreement between Molenbergnatie and its customer ("Customer"). The General Terms and Conditions IT Logistics shall apply to all IT Services, whether directly or indirectly provided to the Customer as separate service or as supporting service for logistic services. The Customer agrees to waive its own general and special terms and conditions, even where it is stated therein that only those conditions may apply.

2. Obligations of the Customer

2.1. General

The Customer is not permitted to make modifications to Molenbergnatie Services. The Customer is liable for any damage that may arise as a result of modifications that are not permitted or not accredited by Molenbergnatie, or from the unlawful or incorrect use of Services by the Customer. The Customer undertakes not to download, send, or disseminate data containing viruses, worms, spyware, malware or any other similar malicious programs, nor will he carry out any operations or actions that may interrupt, destroy or restrict the functionality of the operation of the Services or any program, computer or means of telecommunications.

2.2. Required hardware, software and telecommunication

Molenbergnatie operates central computer hardware in its data center upon which certain software applications are run and maintained. These software applications are accessed through a web enabled interface and are not installed on the Customer's computer systems. The Customer acknowledges that he is responsible for the choice, purchase and operation of the hardware, software and/or telecommunication services required to connect with the Molenbergnatie Services. The Customer is responsible for the installation and related costs of purchasing and/or licensing such hardware, software and/or telecommunication services. Molenbergnatie is not liable for hardware, software, products and services of third parties, such as telecommunication equipment, operating systems and internet browsers, e-mail or EDI programmes.

Molenbergnatie reserves the right to modify at any time the requirements with which the Customer's software, hardware and telecommunication facilities must comply. Except where there are exceptional or highly urgent circumstances, Molenbergnatie undertakes to allow the Customer a reasonable term for carrying out any adjustments required.

The Customer must not only comply with Molenbergnatie's technical and security requirements, but must also take the necessary measures to protect its own data and be capable of recovering it in the event of loss.

2.3. Storage – Back Up

The Customer undertakes to store all files, messages and documents sent by or on behalf of Molenbergnatie on a medium that renders the Customer capable of storing personal information that is specific to it in a permanent manner (such as computer disks, CD-ROMs or the hard disk of the Customer's computer) or to print it out on paper so that this information remains available to the Customer and the Customer has access to the information at all times. The Customer, and not Molenbergnatie, is responsible for back ups of Customer data, unless agreed otherwise.

3. Molenbergnatie's obligations

The parties accept that all of Molenbergnatie's obligations under this Agreement are not to be qualified as obligations to achieve a certain result, but as obligations to apply reasonable efforts ("middelenverbintenis" / "obligation de moyens"). Molenbergnatie will take the commercially reasonable steps to ensure the continuity of Molenbergnatie Services. However, unless specified otherwise in the separate agreement with the Customer, Molenbergnatie cannot guarantee that the Services will meet Customer's or its Users' specific expectations, objectives or requirements.

Molenbergnatie may suspend the availability of Services for reasons that include maintenance. Any such suspension will be notified in any way that Molenbergnatie sees fit insofar as this is possible. Such suspension of services cannot in any way incur Molenbergnatie's liability or lead to any entitlement to compensation. Such suspensions will also not last for more than a reasonably, acceptable duration. For updates, new versions or options, additional charges may be announced by way of the publication of a notice of change. Unless explicitly agreed otherwise in a separate agreement with the Customer, the guarantees stated in the General Terms and Conditions IT Logistics are the only guarantees made by Molenbergnatie regarding the Services and are given in lieu of all other guarantees, including implicit guarantees or guarantees not to breach the rights of third parties.

4. Access to the Services

Some Services are made accessible through an internet browser, which connects to one or more Molenbergnatie's servers over the public internet. Due to the dependency on the internet and taking into account its volatile and sometimes unstable nature, it is possible that access to the Services is not available, for which Molenbergnatie cannot be held liable. Molenbergnatie cannot be held liable for any insecurity caused by the Customer's computer, browser, operating system, internet connection, firewall, network, etc. The Customer himself, and not Molenbergnatie, is responsible for updating any security-related aspect of the Customer's browsing environment, including applying patches, updating firewalls, installing and keeping up-to-date virus scanners, scanning for spyware, malware and other malicious code, etc.

5. Changes

In view of the service provision by Molenbergnatie and also given the further development of Molenbergnatie's Services these General Terms and Conditions IT Logistics, including the rates, may be subject to modifications by Molenbergnatie. In the event of such changes, the Customer will be informed of the change. The Customer will be notified of any changes at least one (1) month before the proposed modification comes into effect. Molenbergnatie reserves the right at all times to make changes to the technical characteristics and specifications of Services and/or, if applicable, the corresponding documentation without giving prior notice.

6. Term and termination

By agreeing to the present General Terms and Conditions IT Logistics, the Customer and Molenbergnatie enter into an agreement of unlimited term for the provisioning of the Services, unless another term was agreed in a separate agreement with the Customer. If the Customer does not comply with any obligation Molenbergnatie may suspend the fulfilment of its obligations if such shortcoming is not remedied within ten (10) calendar days from the date on which notice of default is sent. The suspension will cease as soon as the Customer resumes compliance with its obligations. In the event of repeated or serious breach or in the event of risk of breach by the Customer, Molenbergnatie has the right to suspend access to the Services, in whole or partially with immediate effect, without prior notice of default and without giving the Customer any right to compensation.

Either party may, without prejudice to its right to full compensation, terminate by law the agreement without additional notice of default, with immediate effect, if the other party has not complied with an essential obligation and if such omission has not been rectified within thirty (30) days after the notice of default has been issued. The agreement may be terminated by law with immediate effect in the event of a cessation of business activities, bankruptcy or liquidation. In such event, all amounts paid by the party in a situation of ceasing its business activities or bankruptcy or any equivalent proceedings, will be acquired. Both the Customer and Molenbergnatie have the right to terminate the agreement for convenience in part or in full at any time upon three (3) months prior written notice.

7. Rates and invoicing

The use of the Services will be invoiced in accordance with the standard rates in effect at the time the Services were provided as agreed with the Customer. Unless agreed otherwise the standard rate per man-day is 1.300 EUR VAT excluded. Invoices are due according to Molenbergnatie's general invoice conditions mentioned on its invoices.

8. Protection of privacy

With regard to the personal data submitted by the Customer to Molenbergnatie, which are recorded in databases and processed, Molenbergnatie undertakes to honour the Privacy Act of 8th December 1992 with regard to the processing of personal data. The Customer hereby gives Molenbergnatie specific permission to process his personal data for the following purposes:

1. for customer management (for example for the issue, collection and verification of invoices, for the exchange of correspondence in the context of the contractual relationship with the Customer, for identification in messages sent by the Customer and/or its Users, to prevent misuse and fraud, and in the event of disputes);
2. for fulfilment of the agreement;
3. for information activities or the promotion of Molenbergnatie, its products or services, or the products and/or services of its trading partners (direct marketing);

Customers not wishing to receive messages from Molenbergnatie in the context of direct marketing campaigns may at any time ask Molenbergnatie by registered letter to be included free of charge on the list created for that purpose. All Customers may be informed free of charge by Molenbergnatie about any personal data that relates to them, by sending Molenbergnatie a signed and dated written request, and, where appropriate, may request that incorrect, incomplete or irrelevant details be amended.

9. Access log

Molenbergnatie registers access to its Services in a log. This log can be reproduced on paper or any other type of information medium. It provides evidence that access has been gained to the Services, unless the Customer can prove the contrary. Statements or copies relating to transactions by the Customer, issued at the Customer's request and for legal reasons, are invoiced based on the rates in effect.

10. Risk allocation

Molenbergnatie is only liable for fraud, wilful misconduct and/or gross negligence in performing its obligations under the agreement that causes the Customer direct damage. Unless in the event of fraud or wilful misconduct of Molenbergnatie, Molenbergnatie's liability in relation to this agreement shall under no circumstances lead to any compensation for indirect damage of a financial, commercial nature or any other kind, such as time lost, loss of or damage to clientele, loss of data, loss of earnings, loss of profits, increase in general overheads, disruption of business, claims from third parties, reputation or expected savings.

In the event Molenbergnatie is held and found liable to compensate for damage, such liability will be restricted in all cases to the remedying of the proven direct damage. Molenbergnatie's aggregate liability with regard to this Agreement shall be restricted to 1.000 EUR, or, if this amount is higher, to the applicable rules and amount foreseen in the latest version of General Logistics Conditions of FEBETRA.

Molenbergnatie may under no circumstances be held liable for shortcomings arising from the circumstances in article 11 or by third parties (more specifically transport or delivery problems, hardware defects, connection or telecommunications problems). Except for more specific stipulations that may apply where appropriate, any complaint regarding Molenbergnatie Products must be made in writing, by registered letter, within thirty (30) days of the Customer having knowledge (or should reasonably have become aware) of the fact leading to the complaint. Molenbergnatie will be discharged of liability in case of notification after such thirty (30) days period. Molenbergnatie is not responsible for the Customer's products or the hardware, software, products or services of third parties. Molenbergnatie cannot be held liable for the failure of any infrastructure (software and hardware) that is not under Molenbergnatie's full control.

The Customer hereby agrees to indemnify and hold harmless Molenbergnatie against any and all claims or demands from third parties arising from the use by the Customer of the Services in a manner that does not correspond with these General Terms and Conditions IT Logistics and in general all applicable laws.

11. Force Majeure

Neither the Customer nor Molenbergnatie shall be responsible for any damage caused by the non-compliance or delay in compliance of obligations resulting from a case of force majeure, such as war, insurrection, terrorism, attacks, strike, social conflicts, accidents, fire, floods, telecommunication breakdowns. The availability of the Services may be suspended in case of events over which Molenbergnatie has no reasonable control. Any interruption and the consequences therefrom may under no circumstances lead to any entitlement to compensation. Molenbergnatie will endeavour to inform Customers about breakdowns within a reasonable period of time in any manner that Molenbergnatie deems appropriate. It will also endeavour to restrict the duration of any such interruptions in a reasonable manner. If due to force majeure, the Services are interrupted for a period of more than thirty (30) consecutive business days, either party may decide to terminate the Services affected by force majeure, giving a period of notice of fifteen (15) days by registered letter.

12. Intellectual property rights

Molenbergnatie is and remains the owner or beneficiary of the intellectual and industrial property rights and know-how associated with the Services, and it also remains at liberty to use them for any other purpose. No rights are attributed to the Customer other than those expressly stated in these General Terms and Conditions IT Logistics, unless explicitly agreed otherwise.

To the extent Molenbergnatie makes software or documentation available in the context of the supply of Services, Molenbergnatie grants the Customer as from the Effective Date (as defined in the order form) and for the duration of the agreement a non-transferable, limited, non-exclusive licence to use this software or documentation. This usage is restricted to the Customer's own business purposes.

If the software of the Services contains components, the rights of which belong to third parties, these third parties may require the Customer to sign a separate licence contract. If this is the case, the Customer undertakes to sign the contract submitted to it. In the event of the termination or suspension of Services, the associated licences are also terminated or suspended immediately. The Customer undertakes and ensures that in the event of the termination of Services, it will, at Molenbergnatie's sole discretion, return the software, documentation and all copies thereof to Molenbergnatie, and delete and/or destroy it.

The Customer must take all necessary measures to protect Molenbergnatie's intellectual and industrial property rights. In the event of a claim from a third party in connection with an infringement by Molenbergnatie of the intellectual rights of third parties, the Customer undertakes to inform Molenbergnatie immediately of such a complaint, as well as to provide all information and support, and to grant Molenbergnatie the right to conduct any legal proceedings and negotiations. If Molenbergnatie judges that any program may have infringed the intellectual rights of a third party, Molenbergnatie will, at its sole discretion, make the choice of whether to adapt the infringing program in such a way that there is no more question of an infringement, or to obtain the right on behalf of the Customer to continue using the program, or, should Molenbergnatie be of the opinion that neither of those options can be achieved, to terminate the right of use for the program in question and to reimburse any fees paid by the Customer for that program during the twelve months preceding the claim.

Without prejudice to the rights, if applicable, of the Customer under the legislation relating to the protection of computer programs, the Customer may not do the following regarding software provided by Molenbergnatie:

- modify, translate or adapt software in any way;
- decompile or disassemble the software in any way;
- copy the software in any way, except to make a back-up copy; and/or
- pass on, dispose of, grant as a sub-licence, lease, lend or distribute the software or documentation in any way to third parties.

Molenbergnatie reserves the sole right to correct any errors.

13. Notifications and announcements

Except where agreed otherwise, all notifications, applications and other announcements are deemed to have been made correctly if such notifications or announcements are made in writing via an e-mail message, in an announcement at the Molenbergnatie Internet website or by post. Electronic messages, connections, operations on the network and transactions between the Customer and Molenbergnatie shall be proven using the logs and transaction files kept electronically by Molenbergnatie. The Customer accepts the evidential value of this data.

14. Application and invalidity

If a provision of this Agreement is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, if possible, and insofar as such clause is invalid, illegal or unenforceable, be replaced by a valid, legal and enforceable clause reflecting as close as possible the initial intentions. If the invalid, illegal or unenforceable provision cannot be validly replaced, then no effect shall be given to said clause and it shall be deemed not to be included, such without affecting or invalidating the remaining provisions.

15. Applicable legislation – competent courts

For the application, interpretation and implementation of the General Terms and Conditions IT Logistics, Belgian law alone shall apply. The courts in Antwerp shall have sole jurisdiction for all disputes that may arise.