

GENERAL TERMS AND CONDITIONS EPHORUS B.V., UTRECHT, THE NETHERLANDS

The following provisions shall be deemed to constitute the general terms and conditions of Ephorus B.V. These terms are laid down at the office of Ephorus B.V. in Utrecht on June 1st, 2010 and will be published on the website of Ephorus B.V.: <http://www.ephorus.com/media/124543/general%20terms%20and%20conditions.pdf>

These terms are valid from June 1st, 2010 and are a replacement of all previous general terms and conditions of Ephorus B.V.

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1. Definitions

In these Terms, the following capitalized terms used herein shall have the following meaning:

- (a) Access Codes: the user name(s) and password(s) provided by the Service Provider to the Customer.
- (b) Agreement: every agreement that in addition to these Terms has been concluded between the Parties, including its subsequent modifications and/or supplements, as well as all (legal) acts that were held to prepare and to carry out the Agreement, with or without electronic means.
- (c) Consumer: a private person, such as a student, with access to the Service, appointed by the Customer.
- (d) Customer Database: a database managed by the Service Provider in which the Customer can store the entered Documents and (meta) data.
- (e) Customer: the party, acting in pursuance of his trade or professional activity.
- (f) Document: a document uploaded using the Service, by the Customer or a Consumer, to the Customer Database.
- (i) In Writing: by paper or electronic means such as fax and/or e-mail.
- (g) Parties: the Service Provider and the Customer.
- (h) Service Provider: Ephorus B.V., trading as 'Ephorus'.
- (i) Service: all services of the Service Provider, including but not confined to: Ephorus Internet, Ephorus Group, Ephorus Database and Ephorus Integrated.
- (j) Terms: these General Terms and Conditions of Ephorus B.V.

2. Applicability

- 2.1. These Terms shall apply to all offers, legal relationships and Agreements under which the Service Provider provides Services to the Customer.
- 2.2. As soon as a Customer accepts an offer made by the Service Provider and/or the latter enters into an Agreement with a Customer, where a Customer accepts any Services provided by or on behalf of the Service Provider, the Customer concerned shall be deemed to consent unconditionally to these Terms. The application of the Customer's (general) terms and/or conditions is expressly rejected.
- 2.3. Deviations from and additions to these Terms shall only be valid if they have been expressly agreed In Writing.
- 2.4. If any provision of these Terms found to be null and void and/or be nullified, the other remaining provisions shall remain in full force. In such event, the Parties agree on a new provision or provisions to replace the null and void and/or nullified provision, whereby the intent and implications of the null and void provision and/or nullified provision(s) are to be preserved to the extent possible.
- 2.5. If a provision in these Terms is equivalent to, or constitutes an infringement of, a provision laid down in the Agreement, then the provision in the Agreement will prevail.

- 2.6. The Service Provider shall be entitled to amend or supplement these Terms unilaterally, by means of a notice In Writing to the Customer. Such an amendment shall enter into force at a date and time to be announced by the Service Provider. In the event that a date and time set for the entry into force is absent, the amendment shall come into effect as soon as the Customer is notified accordingly.

3. Price, offer and acceptance of the offer

- 3.1. All prices are expressed in Euro (€), VAT and other levies imposed by the government excluded, unless explicitly agreed otherwise In Writing.
- 3.2. All offers and other statements by the Service Provider shall be without obligation, unless the Service Provider expressly indicates otherwise In Writing.
- 3.3. If cost changing circumstances occur after the offer or conclusion of the Agreement, such as: labour costs or any duties or taxes levied imposed by the government, then the Service Provider is entitled to unilaterally adjust the price and rates of the Service in accordance with these changes. The Service Provider will notify the Customer In Writing about these adjustments as soon as possible.
- 3.4. The Agreement is only validly concluded if the Customer accepts an offer In Writing from the Service Provider by means of an acceptance In Writing.
- 3.5. The Customer warrants the accuracy and completeness of his information on which the Service Provider bases its offer and which have been stated by or on behalf of the Customer to the Service Provider. If the information from the Customer is inaccurate or incomplete, then the Service Provider is entitled to withdraw or change his offer.

4. Payment

- 4.1. The Customer shall be required to effect payment within the period of time mentioned on the relevant invoice. The Customer shall not be entitled to affect any discount, reduction, suspension or setoff.
- 4.2. In the event that a Customer fails to effect payment, the Customer shall be in default by operation of the law, all amounts which it owes the Service Provider shall fall due immediately, and it shall be liable for legally stipulated interest over the invoiced amount without the need for any additional or prior reminder or notice of default.
- 4.3. Furthermore, the Customer shall be liable for any expense or risk involved in securing payment by extrajudicial means. Such costs shall amount to 15% of the invoiced amount including any interest payable, unless the expenses actually incurred by the Service Provider exceed the same. In the latter case the Customer shall be liable for such actual expenses.
- 4.4. In the event of judicial debt collection the Customer concerned shall also be liable for the full payment of the actual judicial expenses incurred, which are deemed to include those for legal assistance, in so far as these actual expenses exceed any amount that may be awarded by way of costs of the relevant legal proceedings.
- 4.5. In the event that a Customer is in default of payment in relation to the Service Provider, the latter shall be entitled to suspend the further execution of any current Agreement between the Parties until such payment is effected, and the Service

Provider may demand cash payment in advance for any subsequent order or delivery of a Service.

- 4.6. In the event that an application is filed for the Customer's bankruptcy or it is declared bankrupt, his business is liquidated or terminated other than for the purposes of restructuring it or a merger of businesses, the Customer is in default of payment and the Service Provider shall be entitled to apply the measures as stated in the above-mentioned provisions.

5. Access to the Service

- 5.1. After conclusion of the Agreement between the Parties, the Service Provider shall provide the Customer with the Access Codes.
- 5.2. The Service Provider shall set up a database for the Customer in which all the Documents uploaded by the Customer can be stored. This database shall remain the Customer's property, whereas the Service Provider shall manage the database.

6. Right of use

- 6.1. The Service shall not be used for more than the number of Consumers stated in the Agreement.
- 6.2. The Customer shall not publish any information about the Service with regard to the quality of the Service, such as the results of a processed Document on plagiarism, and/or information about its Consumers, unless explicitly agreed otherwise In Writing.

7. Confidentiality of Access Codes

- 7.1. All details about the Access Codes are strictly confidential. The Customer who receives the Access Codes shall only use these for the purpose for which it has been provided.
- 7.2. The Customer shall ensure that the Access Codes remain confidential and warrants that third-parties, including its Consumers, shall not use those Access Codes. The Customer shall be responsible and liable for any damage caused by the use of these Access Codes.
- 7.3. As soon as the Customer is aware of the fact that third-parties, including its Consumers, obtained the Access Codes, the Customer shall inform the Service Provider immediately In Writing and the Customer has the obligation to change the Access Codes.
- 7.4. The Service Provider is at all times entitled to block the Customer's access to the Service if, according to the Service Provider, it has reasonable grounds to assume that the confidentiality of Access Codes has been compromised. If the Service Provider blocks the access to the Service, it will then notify the Customer about the blocked access as soon as possible.
- 7.5. If the breach of confidentiality of the Access Codes, is, according to the Service Provider, the result from a fault of the Customer, then the Service Provider will not provide any new Access Codes to the Customer. The Service Provider shall only provide new Access Codes if this is appropriate.

8. Intellectual Property rights

- 8.1. Any intellectual property rights to the Service and any related materials, such as designs, advices, sketches, drawings, documentation and also any preparatory materials for same which belong to the Service Provider (or its licensors) shall explicitly continue to vest in the Service Provider (or its licensors). Nothing in the Agreement and these Terms can or shall be construed as being a transfer of the Service Provider's intellectual property rights.
- 8.2. Intellectual property rights shall be deemed to refer to all international intellectual property and similar or related rights in the broadest sense of the term, which in particular is deemed to include – but is not confined to – (1) copyright, (2) design rights, (3) trade mark rights, (4) patents, (5) know-how (6) database rights, and (7) rights to domain names (or entitlement to the foregoing), including any future intellectual property rights, which is deemed to include all of the powers (including the right of reproduction and the right of making available to the public) that the relevant national and international legislation confers or may yet confer.
- 8.3. The Customer shall not be permitted to remove or alter any inscription on the relevant Services concerning the Service Provider's intellectual property rights, unless explicitly agreed otherwise In Writing.
- 8.4. The Customer shall warrant that it will not do or fail to do anything which has the effect of infringing Customer's intellectual property rights, or rendering them invalid and/or endangering them.
- 8.5. Should it nevertheless appear that a Service constitutes an infringement of any intellectual property rights belonging to a third-party and that the Customer is sued in this respect or receives notice of the infringement, the Customer shall have the obligation to notify the Service Provider of this In Writing immediately. In this case the Service Provider, acting at its sole discretion, shall obtain a licence to use the Service. The Customer shall not be entitled to enforce any claim against the Service Provider with regard to the infringement of any intellectual property right outside the Netherlands.
- 8.6. The Service Provider shall not in any way be held liable for the infringement of any intellectual property or some other exclusive right which occurs as a result of any modification made to Services provided by or on behalf of the Service Provider, or of any use or application of such Services other than the Service Provider has prescribed and/or assumed, and/or which occurs without the Service Provider's knowledge or consent In Writing.
- 8.7. The Customer shall indemnify the Service Provider against any claims based on intellectual property rights from third-parties, such as its Consumer(s), in the case of (parts of) a Document that is protected by any intellectual property right.

9. Privacy

- 9.1. The Service Provider shall, if and in so far the Service Provider qualifies as a processor of personal data, process personal data in accordance with the (privacy related) law.
- 9.2. The Customer shall indemnify the Service Provider against any claims of third-parties, such as its Consumer(s), whose personal data are recorded, registered and/or processed by the Service Provider as a result of using the Service by the Customer and/or its Consumer(s).

9.3. If and in so far the Customer qualifies as a responsible party or processor of personal data, it will use the Service in accordance with the (privacy related) law, including, but not confined to, providing the mandatory information based on privacy law with regard to personal data processing to its Consumer(s).

10. Non-culpable non-compliance on the part of the Service Provider (*force majeure*)

10.1. The Service Provider shall not accept any liability in the event that it is unable to fulfil its obligations due to non-culpable noncompliance or *force majeure*.

10.2. *Force majeure* shall include (but is not confined to) any situation of which the Service Provider has, in fact, no absolute control, including: war, the danger of war, rioting, a natural disaster, drought, an industrial strike, a lockout, a lack of personnel, fire, a nuclear reaction, government action, electricity failure, telecommunication malfunction (including internet networks), malfunction of backup centers, and terrorist attacks.

10.3. In the event that a situation of non-culpable non-compliance or *force majeure* lasts longer than three (3) months, both Parties shall be entitled to cancel the Agreement by means of a statement In Writing addressed to the other party.

10.4. In the event of non-culpable non-compliance or *force majeure* the Service Provider shall not be liable for and/or have an obligation to pay any compensation to the Customer concerned.

11. Dissolution and termination

11.1. The Customer shall be entitled to dissolve the Agreement in the event that the Service Provider fails to comply with its obligations pursuant to the Agreement, after being given a notice In Writing which is as detailed as possible, stipulating a reasonable period of time for it to remedy its default (be it substantial or otherwise). In setting a reasonable period of time for compliance the Customer shall be required to take all of the concrete circumstances of the case into account.

11.2. In the event of default on the part of a Customer (in so far his compliance is not permanently or temporarily impossible) the Service Provider shall be entitled to cancel or terminate the Agreement without judicial intervention, subject to its right to demand compliance (instead) or compensation (instead or in addition to same) and/or to take any other action (legal or otherwise).

11.3. Furthermore, the Service Provider shall be entitled to cancel all or part of an Agreement with immediate effect without notice of default or judicial intervention by means of a notice In Writing in the event that the Customer concerned is granted a moratorium on payments be it provisional or otherwise, in the event that an application is filed for the Customer's bankruptcy or it is declared bankrupt, his business is liquidated or terminated other than for the purposes of restructuring it or a merger of businesses, or in the event that the Customer's business is sold or a change occurs in his management board. Under no circumstances shall the Service Provider have an obligation to pay compensation pursuant to cancellation on these grounds.

11.4. Any amount for which the Service Provider has issued an invoice before termination or cancellation in connection with what it has already done or provided for the purposes of implementing an Agreement, shall remain payable in full and shall fall due with immediate effect upon cancellation.

12. Execution of Service and liability

- 12.1. All Services of the Service Provider are carried out as an obligation to use best endeavours to provide the Service with the utmost care.
- 12.2. The Service Provider shall not warrant the Customer that it shall make and keep the Service available to the Customer in a perfect manner. The Service Provider does not guarantee uninterrupted access, availability, security, suitability, absence of viruses, or reliability of the Service.
- 12.3. The Service Provider shall use its best endeavours to repair and/or restore defects of the Service within a reasonable period following the discovery of the defect by the Service Provider, and is entitled to use temporary solutions which restrict the use of the Service in order to repair and/or restore the defective (part(s) of the) Service.
- 12.4. The Service Provider shall not guarantee that the Service is suitable for every intended use by the Customer.
- 12.5. The Service Provider is entitled to make adjustments to the content and size of the Service.
- 12.6. The Customer must submit a complaint In Writing concerning a defect of the Service no later than fourteen (14) days after the provision of the Service by the Service Provider. In the event of a failure to meet this deadline any claim against the Service Provider, including any claim for compensation, shall lapse in respect of such defect.
- 12.7. Any obligation (legal or otherwise) on the part of the Service Provider to pay compensation on any grounds whatsoever shall be confined to compensation for direct loss (as mentioned in paragraph 12.8) and shall be no more than the equivalent of the amount for which the Service Provider has issued an invoice pursuant to the Agreement (VAT excluded). If the Agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the Agreement shall be set at the total of the fees (VAT excluded) stipulated for one year.
- 12.8. The total compensation for direct damage shall not, in any case exceed € 20.000,-.
- 12.9. Direct loss shall be deemed to refer to:
- (i) material damage to any property owned by Customer;
 - (ii) any reasonable expenses which Customer incurs for the purposes of determining liability and loss (or the extent of direct loss);
 - (iii) any reasonable expenses which Customer reasonably incurs, could incur or was permitted to incur for the purposes of preventing or limiting any loss in so far as the Customer can show that such costs had the effect of limiting direct loss;
 - (iv) any reasonable expenses which Customer reasonably incurs for the purposes of obtaining extrajudicial redress under the terms of Section 96(2)(c) of the Dutch Civil Code, Vol. 6.
- 12.10. Under no circumstances may the Service Provider be held liable for or be required to effect compensation for any indirect and/or incidental loss, unless any applicable

mandatory legislation does not permit such an exclusion or at any rate the entire exclusion of such loss (or part thereof). Amongst other things, indirect and/or incidental loss shall refer to (but shall not be confined to) consequential loss, a loss of turnover and or earnings, foregone savings, any investments that have been made, any loss due to the interruption or standstill of business operations and/or any expenses incurred for the purposes of preventing, determining or limiting indirect and/or incidental loss and/or liability for same, or costs incurred for the purposes of obtaining compensation for indirect or incidental loss by extrajudicial means.

- 12.11. Any claim for compensation and/or compliance made against the Service Provider or any right which the Customer is required to enforce against the Service Provider, shall lapse or be extinguished merely by virtue of the expiry of one (1) year following the incident which occasioned the loss or the invocation of any other right, unless it follows from these Terms that some other period (of prescription or otherwise) is applicable.
- 12.12. The Service Provider's liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed € 1.250.000,-.

13. Specific exemptions from liability

- 13.1. Even though the efforts of the Service Provider are aimed to provide the Customer the best Service possible, the Service Provider cannot guarantee that its Service is entirely accurate due to the fact that technology is not infallible. Therefore, the Customer recognizes and understands that the Service Provider shall not be liable in cases where, for example, the detected amount of plagiarism in a Document deviates from the actual amount.
- 13.2. The Service Provider shall not be liable for damages as a result of misspellings or erroneous grammar in the information provided by its Service.

14. Discontinuity of the Service

- 14.1. The Service Provider shall be entitled to discontinue the availability of the Service temporarily, without prior notification, in so far as this is necessary for maintenance to or improvement of the Service, including the website, servers, software and databases. The Service Provider shall make any effort to limit this interruption to a minimum and to inform the Customer in a timely manner.
- 14.2. The Service Provider reserves the right to unilaterally suspend the availability of its Service and to remove Documents entirely or partially from the Customer Database, if the Customer or its Consumer acts contrary to the provisions or the tenure of the Terms and/or the Agreement.

15. Penalty payments

- 15.1. If the Customer acts in breach of the provision laid down in paragraphs: 6.1 – 6.2 ('Right of use'), 7.1 – 7.5 ('Confidentiality of Access Codes') and/or 8.1 – 8.7 ('Intellectual Property rights') of these Terms, then the Customer is obliged to pay a fine, which is repayable on demand and can be called in immediately, of EUR 50.000,- for each breach and a penalty of EUR 5.000,- for each day this breach of contract continues, without prejudice to the Service Provider's right to claim compensation for all damages.
- 15.2. The Customer shall, without the requirement of giving notice of default, be in default and the Service Provider shall be entitled to terminate the Agreement, including these Terms and/or Agreement In Writing, without court intervention.

16. Governing Law and Competent Court

- 16.1. The legal relationship between the Parties, including these Terms and the Agreement, is solely governed and construed in accordance with the laws of the Netherlands.
- 16.2. Any dispute that may arise between the Parties shall be submitted to the competent Court in Utrecht, the Netherlands, notwithstanding the right of the Service Provider to submit the case to any other competent Court, both absolutely and relatively.
- 16.3. Any disputes that might arise between the Parties in connection with any Agreement concluded with Customer by the Service Provider or in connection with any further Agreements that might result there from, shall be resolved by the in paragraph 16.2 mentioned court, but not until after the procedure laid down in the Mini-trial Rules of the *Stichting Geschillenoplossing Automatisering* (Foundation for the Settlement of Disputes in the Automation Sector) in The Hague (for example a procedure for non-binding advice) has been followed, without prejudice to the right of the Parties to apply for disposition by summary proceedings.
