

General terms and Conditions LINQ5 and Dealer4Dealer



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1. General

- 1.1. These general terms and conditions apply to all offers and agreements pursuant to which LINQ5 B.V. (registered at the Dutch Chamber of Commerce under number 01140251, also under the trade name DEALER4DEALER); hereafter "Supplier") offers to deliver and delivers goods and/or offers to provide and provides services of any nature whatsoever.
- 1.2. The applicability of the Customer's purchasing or other terms and conditions is specifically excluded.
- 1.3. Parties can modify these terms and conditions only in writing.
- 1.4. If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions shall remain fully in effect. Parties shall in this case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.
- 1.5. If there is a disagreement about the interpretation of these general terms and conditions, the Dutch version prevails.

2. Price and payment

- 2.1. All prices are in the currency stated and exclusive of turnover tax (VAT) and other levies imposed by the government, unless expressly is indicated otherwise. Supplier does not accept payments in currencies not stated. In the absence of a specified currency all prices are in Euros. All offers or quotations regarding the services of Supplier are free of obligations and are revocable until the Supplier electronically confirms that the agreement with the Customer is made.
- 2.2. If a periodic payment obligation on the part of the Customer applies, the Supplier shall be entitled to adjust the applicable prices and rates to the term specified in the agreement. If the agreement does not expressly provide for the possibility on the part of the Supplier to adjust the prices or rates, the Supplier shall always be entitled to adjust, in writing and with due observance of at least two months, the applicable prices and rates. If the Customer does not agree to the adjustment in this latter case, the Customer shall be entitled to terminate the agreement in

writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.

- 2.3. Amounts owed must be paid by the Customer in advance or in accordance with the payment terms stated on the invoice. The Customer may not suspend any payment and may also not set off any amounts owed. The amounts are due, irrespective of whether the Customer uses the services and/or software.
- 2.4. If the Customer fails to pay amounts due or fails to do so on time, the Customer shall owe statutory interest for commercial contracts (in accordance with article 6:119a Dutch Civil Code) on the outstanding amount without a demand for payment or a notice of default being required and the Supplier shall directly be entitled to suspend its services. If the Customer fails to pay the amount due after a demand for payment or a notice of default has been issued, the Supplier shall be entitled to refer the debt for collection, in which case the Customer must pay all judicial and extra judicial costs, including all costs charged by lawyers. The foregoing shall be without prejudice to the Supplier's other legal and other rights, which include the right to terminate and/or to suspend the services directly.
- 2.5. Information from the Supplier's records shall count as conclusive evidence with respect to the performance delivered by the Supplier and the amounts owed by the Customer, without prejudice to the Customer's right to produce evidence to the contrary.
- 2.6. The Supplier is entitled to sell, transfer or pledge its claims to payment of amounts owed to a third party.

3. Term and termination

- 3.1. If and insofar as the agreement concluded between parties is a continuing performance agreement, the agreement shall be entered into for the term agreed between the parties. A term of one year shall apply if no term has been agreed.
- 3.2. The term of the agreement shall be tacitly extended, each time by the period of time originally agreed, unless the Customer or the Supplier terminate the agreement with due observance of a notice period of one month prior to the end of the current term or rescind or terminate the agreement in accordance with law. The Customer is not entitled to terminate an agreement concluded for a definite period prematurely.
- 3.3. If an agreement does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing. If

a notice period had not been agreed between the parties, a reasonable period must be observed when notice of termination is given.

- 3.4. Each party shall only be authorised to rescind the agreement due to an attributable failure in the performance of the agreement of the other party (in accordance with article 6:265 Dutch Civil Code). The Customer's payment obligations and all obligations of the Customer or a third party engaged by the Customer to cooperate and/or provide information apply in all cases as essential obligations under the agreement. The Customer is only authorised to rescind the agreement if the Supplier, after a written notice of default that is as detailed as possible and that grants the Supplier a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the agreement.
- 3.5. If, at the time of rescission, the Customer has already received goods or services in the performance of the agreement, these goods or services and the associated payment obligations shall not be undone unless the Customer proves that the Supplier is in default with respect to the essential part of such goods or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by the Supplier prior to the rescission in connection with what it already properly performed or delivered in the performance of the agreement shall remain payable in full and shall become immediately due and payable at the time of termination.
- 3.6. Either of the parties may terminate the agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. If the Customer goes irrevocably bankrupt, its right to use the software, applications, websites and the like made available to it shall end, as shall its right to access and/or use the Supplier's services, without termination by the Supplier being required.
- 3.7. The Supplier is in no event obliged to pay any damages as a result of a cancellation or as a result of a rescission or termination, if these latter two are the result of a (potential) failure of the Supplier.

4. Interfaces

- 4.1. The Supplier mainly provides interfaces between software and/or SaaS-services (Software as a Service), which software and/or SaaS-services are beyond the control of the Supplier for which services also network connections, including the Internet, will be used which are not under the control of the Supplier. The Supplier is not liable for the failure to achieve correctly functioning interfaces due to these factors beyond its control, but the Supplier shall make efforts to ensure optimal availability and performance of its services and/or software.
- 4.2. The Customer itself must regularly make a backup of all data and is responsible for an adequate protection of its data. The Supplier is in no event liable for the costs of (reproducing) mutilated or lost data, nor for (consequential) damage or loss of profit on the part of the Customer. The Supplier hereby warrants that the data which the Customer has processed using the interface will be protected as much as reasonably possible against loss, theft, unauthorized access and alteration by third parties. The Supplier is not responsible for the content and accuracy of the data which the Customer has processed through the interface.
- 4.3. The Customer is responsible for the operation of its hardware, software, configuration, peripheral equipment, required licenses and internet connections necessary to use the services and/or software of the Supplier. The Customer bears the risk of selecting the items, goods and/or services to be provided by the Supplier and the Customer must always exercise the utmost care to guarantee that the requirements that the Supplier's performance must meet are accurate and complete.
- 4.4. The Customer guarantees that making equipment, software, material intended for websites, data files and/or other materials and/or designs available for the purpose of using through the interface does not infringe any rights of third parties. The Customer indemnifies the Supplier against any claim of a third party based on the allegation that such making available, use, maintenance, processing, installation or integration infringes a right of that third party.
- 4.5. The Supplier is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the Customer.
- 4.6. The Customer shall not in any manner whatsoever cause inconvenience or damage to the Supplier (or its customers) in using the services and/or software of the Supplier. The Customer is not allowed to perform actions which can be assumed to cause possible damage to the Supplier's (or its customers') systems. The Supplier is at all times entitled to limit or block the Customer's access to the

services and/or software for an indefinite period, without giving reasons, if the Supplier suspects misuse or other improper use.

- 4.7. The Supplier may temporarily put all or part of its services and/or software out of operation for preventive, corrective or adaptive maintenance or other forms of service. The Supplier shall not allow the period during which the service is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours.

5. Right of use

- 5.1. All intellectual property rights to the services, software, websites, data files, equipment, documentation, reports, offers, as well as other preparatory materials in this regard, made available to the Customer under the agreement are held exclusively by The Supplier, its licensors or its suppliers. The Customer shall have the rights of use expressly granted under these general terms and conditions, the agreement concluded between parties and the law. A right accorded to the Customer is non-exclusive and may not be transferred, pledged or sublicensed and is valid only during the term of the agreement between parties and if the use is in accordance with the agreement, these general terms and conditions and the law.
- 5.2. The Customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the services, software, websites, data files, equipment or materials, or have any such indication removed or changed.
- 5.3. Even if not expressly provided for in the agreement, the Supplier may always take technical measures to protect equipment, data files, websites, software made available, software to which the Customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The Customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.
- 5.4. The Supplier is entitled to make improvements to its services, software and documentation as it sees fit. The Supplier will timely inform the Customer of the processing of updates and/or upgrades insofar as these are relevant for the use of the services, software and documentation, all to the discretion of the Supplier.

6. Performance

- 6.1. The Suppliers shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the Customer. All services by the Supplier shall be performed on the basis of an obligation to use best endeavours unless and insofar as the Supplier has expressly promised a result in a written contract and the result concerned has also been defined with sufficient determinability in the contract.
- 6.2. The Supplier shall make the services and/or software available within a reasonable term following the conclusion of the agreement. The Customer accepts the services and/or the software in the state that it is in when delivered ('as is', 'where is'), therefore with all visible and invisible errors and defects.
- 6.3. All offers or quotations of the Supplier are free of obligations and are revocable, unless the Supplier has expressly stated otherwise in writing. The Customer may not derive any rights or expectations from indications of delivery time and dates or a cost estimate or budget issued by the Supplier.
- 6.4. The Customer remains responsible for the fulfilment of all administrative and retention obligations that apply to it by law and for the fulfilment of all the obligations by law regarding the protection of personal data. The Customer indemnifies the Supplier against claims in this regard, unless the Customer proves that the facts on which a claim is based are attributable to the Supplier. The Supplier does not guarantee that the provided services and/or software shall be adapted to changes in relevant legislation and regulations on time, held in the context of ensuring continuing availability of the services and/or software.
- 6.5. If, according to the agreement concluded between the parties, the Customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable towards the Supplier for performance of the agreement.
- 6.6. If, at the request or prior consent of the Customer, the Supplier has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods and services (additional work), the Customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with the Supplier's usual rates. The Supplier is not obliged to honour such a request and may require that a separate contract be concluded in writing for the purpose. Insofar as a fixed price has been agreed for the provision of services, the Supplier shall on request inform the Customer in writing about the financial consequences

of the additional work or additional provision of goods or services as referred to in this article.

- 6.7. The Customer may not sell, transfer or pledge its rights and obligations under a contract to a third party.

7. Maintenance and support

- 7.1. If agreed, the Supplier shall perform maintenance work with respect to the software specified in the agreement. The maintenance obligation includes fixing errors in the software (fixing substantial failure of the software to meet the functional or technical specifications of the software expressly agreed in writing) after a detailed report of the errors discovered in the software by the Customer.
- 7.2. Following the receipt of the report, the Supplier shall strive to the best of its ability to fix errors and/or implement improvements in later, new versions of the software in accordance with its usual procedures. Depending on the urgency and the Supplier's version and release policy, the results shall be made available to the Customer in a manner within a term determined by the Supplier. The Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. The Customer shall itself install, organise, parameterise and tune the corrected software or the new version of the software made available and support software required, and, if necessary, modify the equipment and operating environment used.
- 7.3. The fixing of errors shall take place at a location and in a manner determined by the Supplier. The Supplier is never obliged to recover data that has been corrupted or lost.
- 7.4. The Customer shall extend the cooperation required by the Supplier in the context of maintenance, including temporarily ceasing use of the software and making a backup of all data. The maintenance work performed by the Supplier does not affect the Customer's own responsibility for managing the software, including checking the settings and the way in which the results arising from operating the software are used.
- 7.5. Maintenance shall include making new versions of the services and/or software available, at the discretion of the Supplier. After an improved version has been made available, the Supplier shall no longer be obliged to fix errors in the previous version and to provide support and/or maintenance work with respect to a previous version.
- 7.6. If the services provided by the Supplier under the agreement include the

provision of support to users and/or administrators of the services and/or software, the Supplier shall provide by telephone or through its website or by email, advice on the use and functioning of the services and/or software specified in the agreement. The Supplier shall handle properly substantiated requests for support within a reasonable term in accordance with its usual procedures. The supplier does not guarantee the accuracy, completeness or timeliness of replies or the support offered. Support services shall be performed on working days during the Supplier's usual business hours.

8. Article 1 Processing Personal Data and Confidentiality

- 8.1. To the extent that personal data is processed using the services of the Supplier, the Customer is fully responsible and liable. The Supplier processes the data on instructions of the Customer. The Customer guarantees that it will process the personal data lawfully in compliance with the privacy legislation. The Supplier is not responsible for the appropriate purpose limitation. Both Parties will make every effort to take suitable technical and organisational measures to protect the personal data processed against loss or any form of unlawful processing.
- 8.2. The Supplier shall only process the personal data on the instructions of the Customer and in compliance with the instructions of the Customer laid down in the agreement. This shall not be deviated from without a written instruction, not even if the personal data has been processed into a form in which they can no longer be traced back to natural persons.
- 8.3. The Supplier will process the personal data only within countries of the European Union and inform the Customer which countries these are. Transmission to countries outside the European Union is prohibited.
- 8.4. The Customer indemnifies the Supplier against any and all claims of third parties in regard to the processing of personal data on instructions of the Customer, which may be instituted against the Supplier due to a violation of the privacy legislation not attributable to the Supplier.
- 8.5. All personal data exchanged by the Parties is governed by the duty of confidentiality to third parties. The Parties will make every effort to prevent that confidential information of the other party comes to the knowledge or is made available to third parties. All this shall not apply if the party disclosing such data demonstrates that certain information was already publicly known or already in its possession, other than by violation of a duty of confidentiality.
- 8.6. The Customer itself is responsible for the confidentiality and the periodical

change of the access codes and the imposition of this obligation on its staff and/or the users. The Supplier shall never be liable for any damage or costs as a consequence of the misuse of access codes, which cannot be directly attributed to the actions or omissions of the Supplier.

- 8.7. If a security leak is established, the Supplier shall report this to the Customer, and in response the Customer may immediately inform those involved thereof.
- 8.8. The Supplier may only deviate from the duty of confidentiality if the provision of information to third parties is logically necessary to perform the assignment or if there is a legal requirement to provide the information to a third party.

9. Liability of the Supplier

- 9.1. The Supplier's total liability due to an attributable failure in the performance of the agreement or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the Customer, shall be limited to compensation for direct loss up to a maximum of the price stipulated for the agreement concerned (excluding turnover tax (VAT) and other levies imposed by the government). If the agreement is mainly a continuing performance agreement with a term of more than one year, the price stipulated for the agreement shall be set at the total amount of the payments (excluding VAT) stipulated for one year. The Supplier's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 500.000 (five hundred thousand euros), however.
- 9.2. The Supplier's total liability for loss due to death or bodily injury or as a result of material damage to items shall never amount to more than EUR 1.250.000 (one million two hundred fifty thousand euros).
- 9.3. The Supplier's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of the Customer's customers, loss arising from the use of items, materials or software of third parties prescribed by the Customer to the Supplier and loss arising from the engagement of suppliers prescribed by the Customer to the supplier is excluded. The Supplier's liability for corruption, destruction or loss of data or documents is likewise excluded.
- 9.4. The exclusions and limitations of the Supplier's liability described above in this article are entirely without prejudice to the other exclusions and limitations of the Supplier's liability described in these general terms and conditions.

- 9.5. All the exclusions and limitations contained in these general terms and conditions shall also apply for the benefit of all natural persons and legal entities that the supplier engages in the performance of the agreement and shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of the Supplier's management.
- 9.6. Unless performance by the Supplier is permanently impossible, the Supplier shall only be liable due to an attributable failure in the performance of an agreement if the Customer declares the Supplier to be in default in writing without delay and grants the Supplier a reasonable term to remedy the breach, and the supplier culpably fails to fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the Supplier the opportunity to respond adequately.
- 9.7. For there to be any right to compensation, the Customer must always report the loss to the Supplier in writing as soon as possible after the loss has occurred. Each claim for compensation against the supplier shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the customer has instituted a legal action for damages prior to the expiry of this period.

10. Force majeure

- 10.1. None of the parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure on the part of the Supplier means, among other things: (i) force majeure on the part of the suppliers of the Supplier, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to the Supplier by the Customer, (iii) defects in items, equipment, software or materials of third parties the use of which was prescribed to the Supplier by the Customer or of which are connected to the interface delivered by Supplier, (iv) government measures, (v) power failures, (vi) Internet, data network or telecommunication facilities failures, (vii) war and (viii) general transport problems.
- 10.2. Either of the parties shall have the right to rescind the contract in writing if a situation of force majeure persists for more than 60 days. In such an event, that which has already been performed under the contract shall be paid for on a proportional basis without the parties owing each other anything else.

11. Applicable law and disputes

- 11.1. Agreements between the parties are governed by Dutch law. The United Nations Convention for the International Sales of Goods (CISG) does not apply.
- 11.2. Disputes that arise by reason of the agreement between the parties and/or by reason of any further agreements deriving from it shall be resolved by the competent court in the district of the Supplier has its place of business.