

# General Terms and en CONDITIONS

emixion SERVICES B.V.

KERKENBOS 1103 C

6546 BC Nijmegen

## GENERAL TERMS AND CONDITIONS

### TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	1
ARTICLE 2. IDENTITY OF EMIXION	1
ARTICLE 3. GENERAL PROVISIONS	1
ARTICLE 4. THE OFFER	1
ARTICLE 5. THE AGREEMENT	2
ARTICLE 6. DISSOLUTION AND NOTICE PERIODS	2
ARTICLE 7. LIABILITY	2
ARTICLE 8. FORCE MAJEURE	3
ARTICLE 9. INVESTMENTS	3
ARTICLE 10. PAYMENT AND INVOICING	3
ARTICLE 11. COMPLAINTS	4
ARTICLE 12. TRANSFER	4
ARTICLE 13. ADDITIONAL WORK	4
ARTICLE 14. INTELLECTUAL PROPERTY	4
ARTICLE 15. MANAGEMENT	5
ARTICLE 16. CONFIDENTIALITY	5
ARTICLE 17. EMPLOYEE CLAUSE	5
ARTICLE 18. APPLICABLE LAW	6
ARTICLE 19. SURVIVAL	6
ARTICLE 20. AMENDMENT OR SUPPLEMENTATION	6
CHAPTER II – PROCESSOR AGREEMENT PROVISIONS	6
ARTICLE 21. PROCESSING OF PERSONAL DATA	6
ARTICLE 22. EXECUTION PROCESSING	6
ARTICLE 23. SECURITY	7
ARTICLE 24. DUTY TO REPORT	7
ARTICLE 25. RIGHTS OF DATA SUBJECTS	7
ARTICLE 26. INSPECTION	7

## ARTICLE 1. DEFINITIONS

In these general terms and conditions, the following terms shall have the following meanings:

1. Emixion: the company defined in article 2 of these general conditions;
2. Principal: the (legal) person who purchases Services from Emixion and enters into an Agreement with Emixion;
3. Agreement: any agreement between Emixion and Principal to provide Services by Emixion to Principal;
4. Parties: Principal and Emixion together;
5. In Writing: by e-mail or by post;
6. Third Party/Parties: other natural or legal persons who are not part of this Agreement;
7. Services: the services provided by Emixion including but not limited to: online marketing, strategy development, SEO, SEA, Advertising, email marketing, web design, graphic design, hosting, domain name registration Website as a Service and Marketing as a Service.

## ARTICLE 2. IDENTITY OF EMIXION

- Company name: Emixion Services B.V.
- Street name and number: Kerkenbos 1103 C
- Postcode and place of business: 6546 BC Nijmegen
- Telephone number: 024-3482916
- Chamber of Commerce number: 09190941

## ARTICLE 3. GENERAL PROVISIONS

1. These general conditions apply to every offer and all (legal) acts of Emixion and to every Agreement concluded between Emixion and the Principal.
2. If there is a conflict between these general terms and conditions and the Agreement, the provisions of the Agreement shall prevail.
3. If the Agreement is concluded electronically, in deviation from the previous paragraph and before the Agreement is concluded, the text of these general terms and conditions may be made available to the Principal electronically in such a way that it can be easily stored by the Principal on a durable data carrier. If this is not reasonably possible, prior to the conclusion of the Agreement it will be stated where the general terms and conditions can be viewed electronically and that, at the request of the Principal, they will be sent electronically or otherwise free of charge.
4. Unless expressly agreed otherwise and In Writing, the applicability of other general terms and conditions is excluded.
5. Deviations from or additions to these general terms and conditions shall only be valid if expressly agreed In Writing.
6. If Emixion does not always require strict compliance with these conditions, this does not mean that the provisions thereof do not apply, or that Emixion would in any way lose the right to require strict compliance with the provisions of these general terms and conditions in other cases.
7. If and insofar as no appeal can be made to any provision of these general terms and conditions on the grounds of reasonableness and fairness or its unreasonably onerous nature, the provision in question will in any case be accorded a meaning corresponding as far as possible to its content and purport, so that an appeal can be made to it.
8. Emixion cannot guarantee that the work carried out by it will achieve the result desired by the Principal. The Agreement shall be performed on the basis of a best effort obligation and not on the basis of an obligation of result.
9. Emixion is entitled to engage Third Parties for the performance of the Agreement.
10. The effect of Art. 7:404 and 7:407 (2) of the Civil Code is excluded.

## ARTICLE 4. THE OFFER

1. Fundamentally, an offer is made on the basis of a presentation and a calculation. This offer is valid in principle for four weeks from the date of sending the offer. After these four weeks, Emixion reserves the right to adjust the calculation and/or the offer.
2. If an offer has a limited validity period or is made subject to conditions, this will be explicitly stated in the offer.

### EMIXION SERVICES B.V.

Kerkenbos 1103 C / 6546 BC Nijmegen / T 024 - 348 29 16

John M. Keynesplein 12-46 / 1066 EP Amsterdam / T 020 - 261 56 72

e sales@emixion.nl / e (support) support@emixion.nl / T (support) 024 - 240 34 16 / W www.emixion.nl

iban/sepa NL09ABNA0512445869 / BIC ABNANL2A / CC 09190941 / VAT NL 820275098 B01

woensdag, 28 juni 2023  
2022.2904.0772 V1.0

3. The offer contains a complete and accurate description of the digital content and/or Services offered. The description is sufficiently detailed to allow a proper assessment of the offer by the Principal. Obvious mistakes or obvious errors regarding, for example, displayed amounts do not bind Emixion.

## ARTICLE 5. THE AGREEMENT

1. The Agreement is concluded at the moment the Principal accepts the offer and fulfills the conditions (if any) set therein.
2. If any provision of these general terms and conditions or of an Agreement proves to be void or is nullified, this will not affect the validity of the general terms and conditions or Agreement as a whole. If this happens, the Parties will consult with each other to agree on a new provision to replace the void or nullified provision, taking into account as much as possible the purpose and meaning of the void or nullified provision.
3. Emixion reserves the right not to execute a concluded Agreement, for example if it has reasonable doubt or information that the Principal will not (be able to) fulfill its (financial) obligations. If Emixion refuses, it will inform the Principal In Writing of the refusal within a reasonable time after the conclusion of the Agreement.
4. These general conditions also apply to future, additional and/or follow-up orders.
5. Agreed delivery dates are always indicative. The deadlines for delivery and completion are not strict deadlines. Exceeding a term therefore does not entitle the Principal to compensation.
6. The Principal's right of suspension and right of set-off are excluded.

## ARTICLE 6. DISSOLUTION AND NOTICE PERIODS

1. If the Principal fails to meet one or more of its obligations or does not meet them on time or adequately, is declared bankrupt, applies for (temporary) moratorium and/or deferral of payment, proceeds to liquidate its business, and if its assets are seized in whole or in part, Emixion has the right to suspend the performance of the Agreement or to terminate and/or dissolve the Agreement by operation of law and without prior notice of default in whole or in part by a Written statement, all this at its discretion and always without prejudice to any right it may have to compensation for costs, damages and interest.
2. If the Agreement terminates due to force majeure, Emixion shall be entitled to payment for hours already worked or investments made at the time of termination of the Agreement.
3. Termination of an Agreement shall be by post and with notice by email ([administratie@emixion.nl](mailto:administratie@emixion.nl)) and subject to the notice periods below. During the first year, the Agreement cannot be terminated. After the first year, the Agreement may be terminated in Writing subject to the following notice periods:
  - a) A notice period of 3 (three) months if the Agreement is terminated during the first two running years of the Agreement;
  - b) A notice period of 6 (six) months from the third running year of the Agreement.
4. If the Agreement is not terminated, it will be automatically renewed for the same period with a minimum of one year, unless otherwise agreed In Writing.

## ARTICLE 7. LIABILITY

1. Emixion is not liable for indirect and direct damages. Not excluded is the liability of Emixion for damage resulting from intent or conscious recklessness of Emixion.
2. If Emixion can nevertheless be held liable in a concrete case, regardless of what is stipulated in this article, the total liability of Emixion will be limited to compensation of damage up to the amount of the investment agreed upon for that agreement (excluding VAT).
3. The amount of compensation will never exceed the amount paid out by Emixion's liability insurance.
4. If the Agreement is a continuing performance contract with a term of more than 6 (six) months, then, in deviation from paragraph 2 of this article, the investment agreed for that contract will be set at the total of payments (excluding VAT) of the past 6 (six) months prior to the event causing the damage.
5. Direct damage means:
  - a) Reasonable costs that the Principal would have to incur to make Emixion's performance conform to the Agreement; however, this substitute damage will not be compensated if the Agreement is dissolved by or at the suit of the Principal;



- b) Reasonable costs incurred by the Principal in having to keep its old system(s) and related facilities operational for a longer period because Emixion did not deliver on a final delivery date that was binding on to him, minus any savings resulting from the delayed delivery;
  - c) Reasonable costs incurred in determining the cause and extent of the damage insofar as the determination relates to damage within the meaning of these general conditions;
  - d) Reasonable costs incurred to prevent or limit damage insofar as Principal demonstrates that these costs have resulted in limiting damage within the meaning of these General Terms and Conditions.
6. The Principal shall indemnify Emixion against any claims by Third Parties, who suffer damage in connection with the performance of the Agreement.

#### **GENERAL PROVISIONS ON LIABILITY**

- 7. A condition for the existence of any right to compensation is always that the Principal reports the damage In Writing to Emixion as soon as possible after it occurs. Any claim for compensation against Emixion lapses by the mere lapse of 12 (twelve) months after the claim arose.
- 8. Emixion is not liable for damage caused by auxiliary persons as referred to in article 6:76 of the Dutch Civil Code.
- 9. Emixion is not liable for any damage, of whatever nature, due to the fact that Emixion has relied on inaccurate and/or incomplete data provided by the Principal or if the Principal has delivered such data too late.

#### **ARTICLE 8. FORCE MAJEURE**

- 1. In addition to the provisions of Article 6:75 of the Dutch Civil Code, a failure by Emixion to perform any obligation to the Principal cannot be attributed to Emixion in the event of a circumstance independent of the will of Emixion, as a result of which the performance of its obligations to the Principal is wholly or partially impeded or as a result of which the performance of its obligations cannot reasonably be required of Emixion. These circumstances include for example failures of suppliers or other Third Parties, (power) failures, computer viruses, extreme weather conditions, fire (danger), (imminent) danger of war, pandemics, epidemics, quarantines, absenteeism, disability, strikes, government measures and the failure of equipment, software, materials or bicycles/vehicles used to transport or assemble products.
- 2. Force majeure shall explicitly not include illness or disability of the Principal or its employees and other failures on the part of the Principal as a result of which it is unable to provide the required and/or requested information and/or documents in time. In these cases the Agreement cannot be dissolved on the basis of this article.
- 3. If a situation as referred to in paragraph 1 of this article occurs as a result of which Emixion cannot fulfill its obligations towards the Principal, then those obligations will be suspended for as long as Emixion cannot fulfill its obligations. If the force majeure situation has lasted for 30 (thirty) calendar days, both Parties have the right to dissolve the Agreement In Writing in whole or in part. In such a case, Emixion shall not be obliged to compensate for any damage, even if Emixion enjoys any benefit as a result of the force majeure situation.

#### **ARTICLE 9. INVESTMENTS**

- 1. All amounts are in euros and exclusive of VAT and other government levies unless otherwise agreed.
- 2. Emixion reserves the right to apply an inflation adjustment once a year.
- 3. Investments are based on price determining factors at the time of the offer. Emixion reserves the right to pass on to the Principal any changes in price determining factors, over which Emixion has no reasonable control, such as increases in excise duties, social security contributions, insurance payments or sales tax, 3 (three) months after the conclusion of the agreement, up to a maximum of 20% of the original amount.
- 4. A composite quotation does not oblige Emixion to perform a part of the Agreement at a corresponding part of the quoted amount.
- 5. Discounts and quoted amounts do not automatically apply to future Agreements.

#### **ARTICLE 10. PAYMENT AND BILLING**

- 1. To the extent not otherwise provided in the Agreement or additional terms and conditions, amounts due from the Principal shall be paid within 21 (twenty-one) days of the invoice date.

##### **emixion SERVICES B.V.**

Kerkenbos 1103 C / 6546 BC Nijmegen / T 024 - 348 29 16

John M. Keynesplein 12-46 / 1066 EP Amsterdam / T 020 - 261 56 72

e sales@emixion.nl / e (support) support@emixion.nl / T (support) 024 - 240 34 16 / W www.emixion.nl

iban/sepa NL09ABNA0512445869 / BIC ABNANL2A / CC 09190941 / VAT NL 820275098 B01

woensdag, 28 juni 2023  
2022.2904.0772 V1.0

2. The Principal has the obligation to report any inaccuracies in payment data provided or stated immediately to Emixion.
3. If the Principal fails to meet its payment obligation(s) in a timely manner, the Principal shall be made aware of the late payment by Emixion and the Principal shall be granted a period of 7 (seven) days to still meet its payment obligations. After failure to make payment within this additional seven-day period, the Principal will be in default. As a result, the Principal shall also owe the statutory (commercial) interest on the amount still due. And in addition to this, Emixion is entitled to charge the extrajudicial collection costs it incurred, if and when these costs had to be made.
4. In case of (reasonable prospect of) bankruptcy, liquidation or suspension of payments or a debt restructuring within the framework of the WSNP, the claims of Emixion on the Principal and the obligations of the Principal towards Emixion are immediately due and payable.
5. Payments made by the Principal shall always serve first to settle all interest and collection costs due, secondly to settle due and payable invoices that have been outstanding the longest, even if the Principal indicates that the payment relates to a later invoice.

## **ARTICLE 11. COMPLAINTS**

1. The Principal can no longer appeal to a defect in the performance if he has not protested to Emixion within 4 (four) weeks after he discovered the defect or reasonably should have discovered it.
2. The Principal must in any case give Emixion 4 (four) weeks to resolve the complaint in mutual consultation.
3. If a complaint is not reported to Emixion within the time limits mentioned in the preceding paragraphs, the product is deemed to comply with the Agreement and to function in accordance with the Agreement.
4. Complaints shall not suspend the Principal's obligation to pay.

## **ARTICLE 12. TRANSFER**

1. Rights and obligations of the Principal under this Agreement cannot be transferred without the prior Written consent of Emixion. This provision shall be deemed to be a clause having property law effect as referred to in Article 3:83 (2) of the Dutch Civil Code.

## **ARTICLE 13. ADDITIONAL WORK**

1. If, at the request of the Principal or at its own request, Emixion has, with the prior Written consent of the Principal, performed work or made other performances that fall outside the content or scope of the Agreement, this work or these performances will be compensated by the Principal in accordance with Emixion's usual rates. The Principal shall never be obliged to comply with such a request and may require that a separate Written Agreement be concluded for this purpose.
2. Principal accepts that the additional work or performance as referred to in paragraph 1 of this article may affect the agreed upon objectives, expectations and timelines.
3. Insofar as a fixed amount has been agreed for the Services, Emixion will always inform the Principal In Writing in advance of the financial consequences of the additional work.

## **ARTICLE 14. INTELLECTUAL PROPERTY**

1. All intellectual property rights pertaining to and/or resulting from the Agreement executed by Emixion shall rest with Emixion or its licensors, unless otherwise agreed In Writing. The Principal only acquires the non-exclusive and non-transferable rights of use expressly granted by these General Terms and Conditions and the law. Any other or further right of the Principal is excluded.
2. The documents provided by Emixion to the Principal are exclusively intended to be used by the Principal. The Principal is not allowed to publish and/or reproduce the obtained information in any form whatsoever. This includes editing, selling, making available, distributing and integrating - whether or not after editing - into networks, except that such disclosure and/or reproduction is permitted In Writing by Emixion and/or such disclosure and/or reproduction arises from the nature of the Agreement with Emixion.
3. If the Principal itself provides images, texts or other content for the performance of the Services, the Principal has a duty of investigation with respect to any intellectual property rights of Third Parties on

this content. The Principal indemnifies Emixion for any claims by Third Parties regarding intellectual property rights that may be vested in this content.

4. Emixion reserves the right to use the knowledge acquired in the performance of the Agreement for other purposes, to the extent that no confidential information of the Principal is provided to Third Parties.
5. Unless otherwise agreed, the Principal is not authorized to grant sub-licenses to Third Parties.
6. Emixion has the right to use the Principal's name and logo as a reference or for promotion.
7. The Principal shall indemnify Emixion against the claims of Third Parties concerning intellectual property rights.
8. If the Principal acts in violation of this article, the Principal will owe an immediately payable penalty in the amount of three times the amount stipulated for that Agreement, without prejudice to Emixion's right to compensation.

## **ARTICLE 15. management**

1. Emixion is entitled to make changes to the technical facilities and non-technical facilities with respect to the Services at any time.
2. change that in the reasonable opinion of Emixion requires a substantial, non temporary, adjustment on the part of the Principal will be made known to the Principal as soon as possible. The Principal cannot claim any compensation or damages, but has the right to terminate the Agreement with effect from the day of the announced change and subject to the agreed notice periods.
3. The Principal shall act and behave in accordance with what may be expected of a responsible and careful user of the Service(s).
4. Principal is always responsible for any use - including unauthorized use - made of the user and access rights granted to it. The Principal will take appropriate and reasonable measures to prevent unauthorized use. The Principal is not permitted to share user and/or access rights with Third Parties.
5. The Principal shall follow the instructions given by Emixion for the use of the Service(s) at all times.
6. Emixion reserves the right to discontinue/remove technical Services if they cause a failure and/or delay of the system. Emixion will assess whether there is such a failure or delay and may, without prior notice to the Principal, block the technical Services, or take other measures to eliminate the failure or delay. The Principal will never have a right to compensation or damages in these circumstances.
7. Emixion is entitled, without prior notice, to (temporarily) put its Services out of use or to limit their use to the extent that this is necessary for the reasonably required maintenance or for the necessary adjustments or improvements to be made by Emixion to the Services without giving rise to any right to damages or compensation from the Principal to Emixion.

## **ARTICLE 16. CONFIDENTIALITY**

1. Confidentiality of all confidential information, which the Principal and Emixion have obtained from each other in the context of the Agreement, is mandatory for the Parties. Information is confidential if so notified by Emixion or if this reasonably follows from the nature of the information.
2. If the Principal violates paragraph 1 of this provision, the Principal, regardless of whether the violation can be attributed to the Principal and without prior notice of default or legal proceedings, will owe Emixion an immediately payable fine of 20.000,- (twenty thousand) Euros for each violation without the need for any form of damage without prejudice to the other rights of Emixion, including its right to claim damages in addition to the fine.

## **ARTICLE 17. employee clause**

1. Each of the Parties shall, during the term of the Agreement as well as 1 (one) year after its termination, only with the prior Written consent of the other Party, employ or otherwise, directly or indirectly, have employed employees of the other Party who are or have been involved in the performance of the Agreement.
2. Emixion shall not withhold the relevant consent, where appropriate, if the Principal has offered appropriate indemnification. Appropriate compensation is defined as at least compensation of 12 (twelve) gross monthly salaries.
3. When Emixion performs work for a relationship of the Principal, the Principal must impose the same prohibition as mentioned in paragraphs 1 and 2 of this article in favor of Emixion on this relationship.

4. If the Principal or the Principal's client violates this article or if the Principal's client violates the employee clause, the Principal, regardless of whether the violation can be attributed to the Principal and without prior notice of default or legal proceedings, shall owe Emixion an immediately payable penalty in the amount of 12 (twelve) gross monthly salaries.

## **ARTICLE 18. APPLICABLE LAW**

1. Agreements between Emixion and the Principal are governed exclusively by Dutch law.
2. Disputes between Parties will be resolved as much as possible through proper consultation. All disputes between the Principal and Emixion will be settled exclusively by the competent court in the district where Emixion is located.

## **ARTICLE 19. SURVIVAL**

1. The provisions of these general terms and conditions and the Agreement that are intended to remain in effect after termination of the Agreement, including but not limited to article 7 (liability), article 13 (intellectual property rights), article 15 (confidentiality), article 17 (applicable law) and this provision (Survival), will remain in effect after termination of the Agreement.

## **ARTICLE 20. AMENDMENT OR SUPPLEMENTATION**

1. Emixion is entitled to unilaterally amend or supplement these general conditions. In this case, Emixion will inform the Principal of the changes or additions in a timely manner.
2. There will be a minimum of 30 (thirty) days between such notice and the effective date of the amended or supplemented terms and conditions.

## **CHAPTER II – PROCESSOR AGREEMENT PROVISIONS**

### **ARTICLE 21. PROCESSING OF PERSONAL DATA**

1. Should Emixion be designated as a processor as referred to in article 4 paragraph 8 of the General Data Protection Regulation (AVG), articles 21 to 26 of these general conditions qualify as agreements to be made in accordance with article 28 paragraph 3 of the General Data Protection Regulation (AVG).
2. Emixion will process personal data on behalf of the Principal. Among other things, Emixion processes the personal data of clients of the Principal, such as: (company) name, address, place of residence, telephone number, e-mail address and salutation.
3. Emixion processes personal data of Third Parties for the purpose of performing the Agreement concluded with the Principal.
4. Such data shall never be the property of Emixion. Data provided by the Principal for the above purpose shall remain the property of the Principal.
5. Emixion will not process the personal data longer than for the duration of the Agreement, unless the Principal has expressly instructed it to do so In Writing.
6. If, in the opinion of the Principal, certain personal data should or need no longer be kept, Emixion shall, upon the Principal's Written request, promptly destroy the relevant personal data specified by the Principal and certify to the Principal In Writing that it has done so.

### **ARTICLE 22. EXECUTION PROCESSING**

1. Emixion is only responsible for the processing of personal data that are processed in the context of the Services offered under the conditions set out in these general conditions. For the other processing of personal data, including the collection of personal data by the Principal and/or Third Parties, Emixion is explicitly not responsible, unless this Third Party has been appointed by Emixion.
2. Emixion will not, unless it has received express prior Written consent from the Principal and legal requirements are met, process personal data in countries outside the European Economic Area ("EEA"). Transfer of personal data to countries outside the EEA that do not have an adequate level of protection is prohibited. Emixion will immediately inform the Principal In Writing of any planned permanent or temporary transfers of personal data to a country outside the EEA and will only implement the transfer(s) with the Principal's Written consent.



3. Emixion will keep the personal data concerning the Principal separate from the personal data it processes for itself or on behalf of Third Parties
4. Emixion will process the personal data in a proper and careful manner and in accordance with Emixion's obligations under privacy laws, including European Regulations and the AVG.

### **ARTICLE 23. SECURITY**

1. Emixion will, in accordance with Article 32 AVG, take all appropriate technical and organizational measures to secure personal data against loss or any form of unlawful processing. These measures will, in view of the costs involved and the state of the art, correspond to the nature of the personal data to be processed.
2. Emixion makes every effort to prevent, detect and, where appropriate, take action against security breaches involving the personal data as much as possible.

### **ARTICLE 24. DUTY TO REPORT**

1. In the event of a security breach and/or a data leak as referred to in the Data Breach Notification Act, Emixion shall reasonably inform the Principal as soon as possible.
2. The obligation to report includes in any case the reporting of the fact that a leak or incident has occurred, as the (alleged) cause of the leak or incident, the as yet known and/or expected consequence and the (proposed) solution.
3. The Principal shall, if in its opinion necessary, inform Data Subjects and other Third Parties including the Personal Data Authority of a data breach or other incidents.
4. Emixion is not permitted to provide information about a data breach or other incidents directly to Data Subjects or other Third Parties, except to the extent Emixion is legally required to do so or has obtained permission from the Principal.

### **ARTICLE 25. RIGHTS OF DATA SUBJECTS**

1. Emixion shall cooperate with the Principal to, upon the approval of, and on behalf of the Principal:
  - a. Provide data subjects with access to personal data concerning them;
  - b. Delete or correct personal data of data subjects;
  - c. Demonstrate that personal data has been deleted or corrected, if it is incorrect (or there is discussion about the correctness of personal data).
2. Emixion shall cooperate, to the extent reasonably possible, with the Principal in complying with its obligations under the AVG and other applicable laws relating to the processing of personal data. The responsibility for fulfilling these obligations rests entirely and exclusively with the Principal. The investments associated with such cooperation are not included in the agreed investment and fees of Emixion and are fully borne by the Principal.

### **ARTICLE 26. INSPECTION**

1. Emixion shall permit the Principal to inspect Emixion's compliance with the security measures or, at the Principal's request, to have Emixion's processing facilities inspected by a designated investigative body.
2. Principal shall pay all costs, fees and expenses associated with the Inspection, including reasonable internal costs incurred by Emixion.
3. The Principal will provide Emixion with a copy of the Inspection's report.