

Article 1. Applicability

1. These CustomsFlows General Terms and Conditions apply to all offers of and agreements with CustomsFlows B.V, with its registered office at Tormentil 1 in Best, the Netherlands, hereinafter referred to as: CustomsFlows.

2. These CustomsFlows General Terms and Conditions are structured as follows:

- Paragraph I: Definitions;
- Paragraph II: General;
- Paragraph III: Changes.

Paragraph I: Definitions

Article 2. Definitions

The terms below, which are applied in these CustomsFlows General Terms and Conditions as well as all other applicable CustomsFlows conditions, have the following meaning:

1. Client: the natural person or legal entity with whom CustomsFlows has concluded an agreement. A natural person can only be or become a client if he acts in conduct of a profession or business;
2. Parties: CustomsFlows and the client jointly;
3. Agreement: the agreement between the client and CustomsFlows concerning CustomsFlows's provision of software to the client, which is subject to the CustomsFlows Software Conditions, as well as all other applicable CustomsFlows conditions, and the agreement between the client and CustomsFlows concerning the services to be provided by CustomsFlows, which is subject to the CustomsFlows Service Conditions, and all other applicable CustomsFlows conditions);
4. Software: the software made available by CustomsFlows to the client, including both software developed by CustomsFlows itself and software developed by third parties;
5. Customer portal: the digital environment in which the required information concerning the software is presented in an orderly manner. The client can enter reports in the customer portal and track the progress of reports;
6. Digital: communication via the customer portal or other customary CustomsFlows digital means of communication;
7. Hosting environment: the technical infrastructure in which CustomsFlows makes software available to the client by means of hosting;
8. Hosting: software accessible to the client in the hosting environment via the internet.
9. Main user: a user appointed by the client as manager of the software and who is registered as such with CustomsFlows;
10. User: an employee of the client or a third party who has the right to use the software under the authority of the client in accordance with the agreement;
11. Service report: a request for support in the use of the software made available by CustomsFlows and, if applicable, the hosting environment made available, as well as the remedy to the best of its abilities of imperfections in the software or hosting environment after a breakdown or defect has been reported;
12. Services: all services to be provided by CustomsFlows to the client, including but not limited to the performance of activities and providing training on the basis of an assignment or a subscription, all of the above as referred to in the CustomsFlows Service Conditions.
13. Standard training: standard training relating to the software;
14. Data: the data stored in the database belonging to the software by the client including personal data;
15. Personal data: personal data as referred to in the General Data Protection Regulation (GDPR), which are set out in appendix 1 to the CustomsFlows Privacy Conditions;
16. Controller: the controller as referred to in the GDPR, being the client who has instructed CustomsFlows to perform activities;
17. Processor: the processor as referred to in the GDPR, being CustomsFlows;
18. Activities: all activities the client has instructed CustomsFlows to carry out or that are performed by CustomsFlows on a different basis. The foregoing applies in the broadest sense of the word and, in any event, includes the activities arising from the agreement.

Paragraph II: General

Article 3. General

1. All rates and payments indicated in offers and proposals are without obligation unless expressly indicated otherwise in the offer.
2. The agreement between the client and CustomsFlows enters into effect when CustomsFlows has confirmed the agreement to the client in writing or when CustomsFlows has received back one copy of the agreement signed by both parties. Oral commitments and agreements only bind CustomsFlows insofar as they have been confirmed in writing by CustomsFlows.
3. Any purchase or other conditions applied by the client never form part of the agreement.
4. If any provision of these general terms and conditions, the agreement and/or other applicable CustomsFlows conditions are void or declared void, the other provisions of these general terms and conditions, the agreement and/or other applicable CustomsFlows conditions continue to apply in full and CustomsFlows and the client will consult in order to agree new provisions to replace the provisions that are void or that have been declared void, in which connection the purpose and purport of the provision that is void or declared void are observed as much as possible.
5. In case of conflicts between the provisions of the agreement and one or more applicable conditions, the following ranking will apply: (1) the agreement, (2) the General Terms and Conditions, (3) the CustomsFlows Software Conditions or the CustomsFlows Service Conditions, and all other applicable CustomsFlows conditions. All service not covered by the scope of application of the CustomsFlows Software Conditions are subject to the CustomsFlows Service Conditions.

Article 4. Rate, fee, invoicing and payment

1. The fee owed by the client to CustomsFlows is laid down in the agreement between the client and CustomsFlows.
2. The rates and fees for calendar years following the year in which the agreement is concluded can be adjusted by CustomsFlows, without prior notification and without the client having the right to terminate the agreement on the basis of the adjustment referred to in this paragraph, in accordance with the Statistics Netherlands index for 'CLA wages per month exclusive of special remunerations' in the private sector 'J information and communication'.
3. In the event CustomsFlows wishes to change the rates and fees for a subsequent year by an amount that exceeds the adjustment referred to in paragraph 2, CustomsFlows will be obliged to notify the client of this adjustment in writing at least 3 months before the end of the current calendar year. If CustomsFlows has not complied with this condition, the rates and fees for the next year can only be increased as set out in paragraph 2 of this article.
4. In the event CustomsFlows is confronted with increased purchasing costs and surcharges, levies etcetera imposed by the government of any kind, it will have to charge these on to the client.
5. In the event CustomsFlows incurs reasonable additional costs for the performance of the assignment or the subscription, such as accommodation and overnight expenses, office expenses or costs of third parties, CustomsFlows will have the right to charge these costs to the client on the basis of the CustomsFlows rates that apply at that time.
6. Unless indicated otherwise, all rates and fees are exclusive of turnover tax (VAT) and other levies that are imposed by the government. All rates and fees are always stated in euros, unless indicated otherwise.
7. CustomsFlows invoices the client as agreed in the agreement. In the event the client requests CustomsFlows to do so in writing, CustomsFlows will indicate the purchase order, PO, on its invoices, without prejudice to the client's payment obligation in the event the client has not provided the purchase order to CustomsFlows in time.
8. Payment must be made within the payment term indicated in the agreement. If no payment term has been agreed, Article 6:119a of the Dutch Civil Code (DCC) applies with respect to the statutory payment terms for companies and Article 6:119b DCC applies to the statutory payment terms for governments. If the agreed or statutory payment term is exceeded, the client will be in default without further notice of default and all extrajudicial and judicial costs related to the collection of any amount owed by the client will be for the client's account.
9. The provisions of article 9 paragraph 4 apply in the event the client exceeds the payment term(s).

Article 5. Confidential information

The parties commit towards each other that they will observe confidentiality with respect to all data of the other party that comes or will come to their attention or the attention of their employees and/or third parties involved in the performance of agreement(s) under their authority and in respect of which they have indicated or which the other party knows or should reasonably know to be confidential.

Article 6. Privacy

CustomsFlows arranges for protection of personal data in accordance with the CustomsFlows Privacy Conditions including appendices, as these apply to all offers from and agreements with CustomsFlows.

Article 7. Liability

1. CustomsFlows only accepts liability insofar as this is evident from this article. Otherwise, all liability on the part of CustomsFlows on any basis whatsoever and/or with respect to any loss whatsoever is excluded.

2. In case of an attributable failure to comply with the agreement, CustomsFlows shall only be liable for alternative compensation, which means compensation of the value of the performance that was not delivered. Any liability on the part of CustomsFlows for any other form of damage is excluded, including additional compensation of any kind, compensation of indirect loss or consequential losses or losses resulting from lost profit. Furthermore, CustomsFlows is never liable for losses due to delays, losses resulting from the loss of data, losses resulting from exceeding terms of delivery due to a change in circumstances, losses resulting from the client providing defective cooperation, information or materials or losses resulting from information or advice provided by CustomsFlows whose content does not form an express part of an agreement.

CustomsFlows is not liable in any event if the client makes changes or has third parties make changes to the products and/or services delivered by CustomsFlows. This also includes the use for purposes for which the products and services were not delivered.

3. The compensation to be paid by CustomsFlows in connection with an attributable failure to comply with an agreement will never exceed the total of the amounts invoiced on the basis of that agreement, exclusive of VAT, and the amounts not yet invoiced, exclusive of VAT, for products or services already delivered, which CustomsFlows could have already invoiced on the basis of that agreement, which total concerns exclusively the software or the service to which the event causing the damage relates. Reference in these CustomsFlows General Terms and Conditions to an event causing the damage also includes a series of related events.

In case of an agreement with a term exceeding one year, whether or not as a result of an extension by operation of law and/or contractually, the compensation in connection with an attributable failure will be at most the amount, exclusive of VAT, for the agreement due in respect of the year preceding the moment at which the damage arises.

The amounts and prices referred to in this paragraph are reduced by the credit amounts stipulated by the client and granted by CustomsFlows.

4. In case of intent or gross negligence on the part of CustomsFlows, its employees for whom CustomsFlows can be held liable at law, as well as the third parties engaged by CustomsFlows, CustomsFlows shall only be liable for compensation of damage resulting from death or physical injury. In such cases, the compensation shall never exceed the sum insured per event causing damage.

5. Liability on the part of CustomsFlows for damage arising from an unlawful act other than as referred to in paragraph 4 of this article is excluded expressly. If and insofar as this cannot be invoked, the compensation per event causing damage will never exceed the price, exclusive of VAT, stipulated in the agreement between the parties in which context the event occurred. In case of an agreement that is each time extended by operation of law, the compensation in connection with an attributable failure shall be at most the amount due for the agreement, exclusive of VAT.

6. The creation of any right to compensation is subject to the condition that the client has reported the damage to CustomsFlows in writing, with documentation and substantiation, as soon as possible after it arises, but at most within fourteen days after the damage arises.

7. The client indemnifies CustomsFlows against all damage CustomsFlows may sustain as a result of third-party claims related to the products or services provided by CustomsFlows, including but not limited to:

- claims from third parties, including employees of the client, who sustain damage as a result of unlawful conduct on the part of CustomsFlows's employees who were placed with the client and work under its supervision or on its instructions;
- claims from third parties, including CustomsFlows employees, who sustain damage in connection with the performance of the agreement as a result of acts or omissions on the part of the client or unsafe situations within its business;
- claims from third parties who sustain damage as a result of a defect in the products or services delivered by CustomsFlows that were used, altered or resold by the client while adding or in connection with products and/or services provided by the client or third parties, unless the client proves that the defect is not the result of the use, alteration or resale as referred to above.

8. CustomsFlows is never liable for damage the client could have prevented by creating one or more file back-ups of the software.

9. CustomsFlows is never liable for damage resulting from the theft of or damage caused to the goods of the client and/or its employees while representatives of the client and/or its employee reside at the CustomsFlows site or inside its buildings.

10. With due observance of the provisions of paragraphs 1 up to and including 9 of this article, any liability on the part of CustomsFlows, insofar as this is established at law, is limited in any event to the amount that is actually paid out in the relevant case under the CustomsFlows business and/or professional liability insurance.

The provisions of paragraph 3 of this article apply insofar as CustomsFlows is not able to invoke its liability insurance in relevant cases as a result of a cause for which CustomsFlows cannot be held responsible.

Article 8. Intellectual and industrial property

1. All intellectual and industrial property rights to all software and/or other programs, hardware, training materials or other materials such as analyses, designs, documentation, reports, offers, as well as materials in preparation thereof, developed or made available under the agreement vested exclusively in CustomsFlows, its suppliers or its licensors. The client cannot exercise rights in respect thereof in any way.

Insofar as it is established at law that the aforementioned software and/or other programs, hardware, training materials or other materials such as analyses, designs, documentation, reports, offers, as well as materials in preparation thereof, infringe the rights of third parties, CustomsFlows will indemnify the client against claims from third parties in this connection, such with due observance of the provisions of article 7 paragraph 10.

2. The agreement does not constitute a transfer of any intellectual property right to the software and the related services and all related documentation, information et cetera, including but not limited to patent rights, trademark rights, database rights and copyrights. The client cannot exercise rights in respect thereof in any way. CustomsFlows, its suppliers or its licensors remain at all times the parties entitled to these intellectual property rights.

3. The client will not reproduce, disclose or copy the software and/or other programs and/or other materials mentioned, or make them available to third parties. The client only has the right to make copies of the software and/or other programs or other materials for the purpose of creating backups. The client can never claim the surrender of the source code of the software, standard software, software adjusted by CustomsFlows in line with the client's wishes or software that was adjusted otherwise, other than on the basis of the provisions of an escrow agreement to be concluded between the parties.

4. The client will refrain from infringing the rights of third parties, including but not limited to intellectual and industrial property rights and privacy and indemnifies CustomsFlows against all possible claims from third parties in this connection.

Article 9. Obligations of the client

1. The client always provides CustomsFlows in time with all data and information useful or necessary for the proper performance of the agreement and will cooperate fully with CustomsFlows for this purpose. The client furthermore ensures that CustomsFlows is provided with all facilities required by CustomsFlows for the performance of the agreement.

2. In the event data necessary for the performance of the agreement are not available to CustomsFlows or are not available to CustomsFlows in time or in accordance with the arrangements or if the client otherwise fails to comply with its obligations, CustomsFlows will have the right in any event to suspend performance of the agreement and it will have the right to charge the costs that have arisen as a result thereof in accordance with its customary rates.

3. The client indemnifies CustomsFlows against damage resulting from the client's failure to comply with obligations.

4. In the event the client fails to comply with any obligation under the agreement and/or the conditions that apply to it "(in more than a mere subordinate sense)", CustomsFlows will have the right to suspend its obligations to the Client, including but not limited to blocking/suspending the (right of) use of the software and/or the services, without being obliged to pay compensation to the client in any way. In the event the software is used On-Premise, the client will owe in case of use of the software contrary to the above-mentioned blocking/suspension an immediately due and payable penalty of €1,000.00 for each day, including a part of a day, the aforementioned blocking/suspension is breached, without prejudice to CustomsFlows's other rights, including but not limited to the right to request a court injunction on further use and the right to compensation, also without being obliged to pay compensation to the client in any way.

All costs that arise from the provisions of this paragraph are for the client's account. The provisions of the previous two sentences also apply if the client does not remove the software and keeps it removed effective as from the end of the agreement, or if the client still uses the software in any way after the agreement has ended.

Article 10. Force majeure

In case of force majeure, CustomsFlows's obligations concerning the performance of the agreement will be suspended for the duration of such force majeure, without the parties being obliged to pay any compensation in this connection. Such circumstances included among other things: full or partial failure on the part of third parties engaged by CustomsFlows in the performance of the agreement, such as suppliers, subcontractors, overburdening of the hosting environment, the weather, earthquakes, fires, power failures, floods, water damage, loss, theft or destruction of tools or products, road blocks, strikes or work interruptions, import or trade restrictions, the outbreak of viruses, epidemics or pandemics and government measures including import and export measures as a result of such outbreaks, as well as any situation that is effectively beyond CustomsFlows's control.

Article 11. Terms of delivery

1. All delivery and other terms indicated by CustomsFlows have been determined to the best of CustomsFlows's knowledge on the basis of the data that were known to CustomsFlows at that moment. The delivery terms indicated are observed as much as possible.
2. The terms indicated by CustomsFlows never qualify as strict deadlines. Merely exceeding a delivery or other term indicated does not mean that CustomsFlows is in default.
3. CustomsFlows is not bound by delivery or other terms, which can no longer be met as a result of circumstances beyond its control that occurred after the agreement was concluded. If any term is about to be exceeded, CustomsFlows and the client will consult as soon as possible in order to attempt to find a solution that is reasonable and acceptable to both parties.

Article 12. Dissolution of the agreement

1. The parties have the right to dissolve all or part of the agreement with immediate effect if the other party fails to comply with any obligation under this agreement which is so serious in nature that the terminating party cannot reasonably be expected to continue the agreement and the defaulting party, after it was given notice of default by means of a registered letter and was afforded a reasonable term to comply as yet, fails to comply with this obligation or to take the appropriate steps to correct this.
2. CustomsFlows has the right to dissolve all or part of the agreement in writing with immediate effect in any event if the client is declared bankrupt, if the client applies for a suspension of payment or if the client is otherwise unable to comply with its payment obligations. CustomsFlows is never obliged to pay any compensation in connection with the dissolution referred to in the previous sentence.
3. If CustomsFlows has already carried out activities in implementation of the agreement at the time of dissolution and/or the client has already received performances, the client will only be able to terminate the agreement in part and exclusively for that part that has not yet been performed by CustomsFlows. Amounts invoiced by CustomsFlows before dissolution in connection with what it already performed or delivered in implementation of the agreement will remain due in full and will become immediately due and payable at the moment of dissolution, as will amounts for activities performed or performances received that were not yet invoiced at the moment of dissolution.
4. The agreement is dissolved by means of a registered letter addressed to the other party.

Article 13. Conditions applied by suppliers

1. When performing the agreement, CustomsFlows depends on the cooperation, services and deliveries by suppliers, which cannot be influenced directly by CustomsFlows. This includes inter alia, but is not limited to, providers of connections and data centres, including hosting providers. CustomsFlows therefore cannot be held liable in any way for any damage whatsoever arising from permanent or temporary cessation or from incorrect and/or incomplete operation of the services or deliveries provided by these suppliers. CustomsFlows will endeavour if reasonably possible to prevent and/or limit such potential damage.
2. The client indemnifies CustomsFlows against claims from suppliers related to damage that arises in any way as a result of unlawful or careless use by the client of the services and resources made available by the relevant suppliers.
3. In the event suppliers engaged by CustomsFlows apply general terms and conditions in their contractual relationship with CustomsFlows, those general terms and conditions will apply in full to the contractual relationship between CustomsFlows and the client. In case of inconsistencies between those general terms and conditions and the present general terms and conditions, as well as the agreement between the parties and other applicable conditions, the provisions of the present CustomsFlows General Terms and Conditions, the agreement as well as all other applicable CustomsFlows conditions shall prevail.
4. CustomsFlows has the right to invoke towards the client the general terms and conditions applied by the suppliers that can be invoked by it against CustomsFlows.

Article 14. Other provisions

1. Agreements between CustomsFlows and the client are governed exclusively by Dutch law. The applicability of the Vienna Sales Convention is excluded.
2. Notifications made to each other by the parties are made in writing or digitally. In derogation from the provisions of the previous sentence, dissolution and notice of default take place exclusively in writing.
3. Changes and additions to the agreement, these CustomsFlows General Terms and Conditions and/or other applicable CustomsFlows conditions are only valid insofar as they have been agreed in writing or digitally.
4. CustomsFlows has the right to transfer all rights and obligations arising from the agreement to third parties, which will be notified by CustomsFlows to the client in time, unless the client cannot reasonably be expected to continue the agreement with the third party in question. In the latter case, the client will have the right to dissolve the agreement effective as from the date on which the transfer referred to in the previous sentence occurred.

Article 15. Disputes

All disputes concerning the formation, interpretation or performance of the agreement to which the various CustomsFlows conditions apply as well as the agreements that may arise therefrom, and any other disputes concerning or related to these CustomsFlows General Terms and Conditions or other CustomsFlows conditions, legally or factually, without exception, will be settled exclusively by the Noord-Brabant District Court, Eindhoven location. However, CustomsFlows does have the right, but is not obliged, to submit a dispute to the competent court of the place where the client has its registered office.

Paragraph III Changes

Article 16. Changes

1. As regards existing agreements, being the agreements with the client that are in effect at the moment these CustomsFlows General Terms and Conditions enter into effect, these CustomsFlows General Terms and Conditions replaced previous CustomsFlows conditions.
2. CustomsFlows has the right at all times to change these CustomsFlows General Terms and Conditions and all other applicable CustomsFlows conditions unilaterally. The changed conditions apply as from the moment they have been provided to the client in writing or digitally. In the event the changed conditions that apply to an ongoing agreement are reasonably unacceptable to the client, the client will have the right to terminate the agreement in question with due observance of a notice period of three months. In the event the client does not terminate the agreement in question within one month after CustomsFlows informed the client of the changed conditions, the client will be deemed to have accepted the changed conditions.
3. Specific agreements in the existing agreement between CustomsFlows and the client pertaining to the previous conditions referred to in paragraph 1 continue to apply.
These CustomsFlows General Terms and Conditions were made available to the client prior to or at the time of the conclusion of the agreement to which these CustomsFlows General Terms and Conditions apply. The conditions can also be read and can be downloaded from the CustomsFlows website (<https://customsflows.com>). These English CustomsFlows General Terms and Conditions are a translation of the Dutch CustomsFlows General Terms and Conditions. If any provision of these English CustomsFlows General Terms and Conditions conflicts with the Dutch CustomsFlows General Terms and Conditions, the provision of the Dutch CustomsFlows General Terms and Conditions shall apply.