

HRlinkIT

# General Terms & Conditions





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**Description**

General terms & conditions

**Version**

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# General Terms & Conditions

## 1. General

- 1.1. In these General Terms & Conditions, the following definitions apply:
  - **HRLINKIT BV:** the limited company HRLINKIT (hereinafter referred to as 'HRLINKIT'), with registered office at Goudfazantenlaan 5a, 3001 Heverlee (Belgium), registered under company registration number 0474.404.927.
  - **HRLINKIT Services:** consultancy services, software development, integration, implementation, SaaS, and support services.
  - **Client:** Every company that wishes to use the HRLINKIT Services.
  - **Order:** The description of the HRLINKIT Services and the result that the Client may expect as described in the offer from HRLINKIT.
  - **General Terms & Conditions:** these HRLINKIT General Terms and Conditions.
  - **Website:** <https://www.hrlinkit.be/>
- 1.2. The Client and HRLINKIT are jointly referred to as the **Parties** and individually as the **Party**.

## 2. Cooperation

- 2.1. During the intake meeting, the Client will provide all the information necessary and useful to enable HRLINKIT to prepare an offer and describe the Order. Any information not sent and expectations not communicated by the Client shall not form part of the Order.
- 2.2. The cooperation will only come into effect after the Client has signed the offer provided by HRLINKIT. Any offer can be withdrawn by HRLINKIT until the Client's acceptance, and will lapse automatically after thirty (30) calendar days (unless otherwise specified in the offer).
- 2.3. The General Terms & Conditions apply and form an integral part of the offer. The Client waives any application of the provisions of its terms & conditions.
- 2.4. The Parties acknowledge having taken sufficient time prior to signing the offer to exchange information and ask the necessary questions.
- 2.5. HRLINKIT Services start at the time as determined by the Parties in the offer. If no time is determined, HRLINKIT Services will start in accordance with HRLINKIT's planning and a timing that could reasonably be expected in the sector in which HRLINKIT is active.

## 3. Testing & Validation

- 3.1. HRLINKIT shall ensure that, in accordance with the offer, it will proceed with testing the Order. The Client undertakes to provide feedback in good time and in a complete and structured way.
- 3.2. Unless otherwise agreed, testing shall first take place in a test environment and then in the Client's production environment.
- 3.3. The Client may only refuse the acceptance of the Order if tests show that the result of the Order does not correspond with the essential specifications of the Order.
- 3.4. If the Client fails to respond within ten (10) working days after the test results of the project validation were sent, it shall be deemed to have tacitly agreed and to have accepted/validated the result of the Order.

## 4. Warranty on customised solutions



- 4.1. After acceptance, the Client will be entitled to a warranty on customised solutions for a period of one (1) month, i.e., these specific developments that were made by HRLINKIT on the instruction of the Client.
- 4.2. Any defects in the customised solution that are notified in writing by the Client within this guarantee period and that are caused by HRLINKIT, shall be dealt with free-of-charge.
- 4.3. Any defects in the customised solution that are notified in writing by the Client outside this guarantee period (even if they have occurred during the guarantee period), will only be dealt with after signature of a **Service Level Agreement** with HRLINKIT, or upon payment of the support rates that apply at the time.
- 4.4. Any defects that occur as a result of (i) modifications made by the Client or third parties, (ii) interference with other hardware and software applications, (iii) incorrect use by the Client, (iv) faulty internet connection, server capacity, or electricity supply, (v) security measures, software or firewalls, are not covered by the warranty on customised solutions.

## 5. Modifications

- 5.1. Unless agreed otherwise between the Parties, HRLINKIT will not be responsible for saving the source material, data, and information provided by the Client at the start of the Order.
- 5.2. If the Client wishes to make any modifications to the result of the Order after validation and delivery in the production environment, the Client must submit a Change Request to HRLINKIT under the Service Level Agreement. Change requests will be dealt with in accordance with the conditions, procedure, and remuneration as provided for in the Service Level Agreement, or failing this, as determined in an offer drawn up in this respect.
- 5.3. Change requests will only be dealt with if it is possible, from a technical point-of-view, for HRLINKIT to implement the requested changes.

## 6. Payment

- 6.1. All payments occur in accordance with the pricing agreed in the offer.
  - 6.1.1. HRLINKIT Services carried out on the basis of a cost-plus contract will be invoiced at the time of delivery or at the end of each month, at HRLINKIT's discretion.
  - 6.1.2. HRLINKIT Services carried out for a fixed fee shall be invoiced at the times specified in the offer and, in the absence of any arrangement: thirty percent (30%) upon signing of the offer, forty percent (40%) after the tests have been conducted in the test environment, and thirty percent (30%) after the tests have been conducted in the production environment.
- 6.2. All tasks that HRLINKIT needs to complete at the Client's request outside the Order shall be considered as extra work. Extra work will be invoiced by HRLINKIT to the Client on the basis of a cost-plus contract.
- 6.3. The payments stated in the offer include only the remuneration to HRLINKIT for any services rendered. This remuneration does not include:
  - 6.3.1. Costs for extra work, including: providing services that were not expressly provided for, providing services resulting from information, questions, instructions from the Client that were not known to HRLINKIT at the time of signing, providing services resulting from deviations from or adjustments to the technical or functional specifications (or any iterations thereof), providing services resulting from a change in standards or legislation, providing services resulting from an investigation into third-party intellectual property rights.
  - 6.3.2. Costs that are the consequence of the Client's shortcomings, including costs relating to lost time or materials, late cancellation of agreements, or not fulfilling its tasks.
  - 6.3.3. Costs associated with certification, validation, or testing by third parties.
  - 6.3.4. Costs for travel, accommodation in Belgium or abroad, and dispatch cost.
  - 6.3.5. Costs for any support by HRLINKIT upon completion of the Order.
  - 6.3.6. Costs of any third-party software licences.
- 6.4. All payments shall be made in euros. The prices are net, excluding VAT.
- 6.5. HRLINKIT is entitled to revise its prices annually and without prior agreement from the Client based on the evolution of the consumer price index. Any other price revisions shall be



communicated in writing by HRLINKIT to the Client at least ninety (90) calendar days prior to the price revision.

- 6.6. Unless agreed otherwise in writing between the Parties, any disputes regarding invoices must be notified by the Client within 8 (eight) calendar days after the date of receipt of the invoice. Invoices are payable no later than thirty (30) calendar days from the invoice date. From their due date, they shall automatically and without notice accrue interest at the rate of eight percent (8%) per year calculated pro-rata from the due date until payment of the full amount. The Client cannot invoke any setoff.
- 6.7. In the event of non-payment of the invoice by its due date, the Client shall bear all costs and fees resulting from the collection of any outstanding debt, with a minimum of two-hundred-and-fifty euros (EUR 250), without any prior notice.

## 7. Suspension

- 7.1. HRLINKIT will be entitled to suspend the Order or its continuation:
  - If the Client fails to pay;
  - If no feedback is received from the Client that is necessary for HRLINKIT;
  - If it appears to HRLINKIT that the Client's credit status is compromised, for example when legal action is taken against that Client and/or where matters arise that make the proper fulfilment of the agreed obligations difficult or impossible.
- 7.2. The suspension of any obligation does not affect HRLINKIT's right to terminate the cooperation or to claim compensation.
- 7.3. Any advances, part payments, paid by the Client, may be used to compensate for damage suffered by HRLINKIT for breach of contract or other sums owed to HRLINKIT.

## 8. Termination

- 8.1. Agreements made between the Parties for a particular Order or a particular period, cannot be terminated early by the Parties.
- 8.2. In case of a serious breach by a Party of its obligations (such as late payment, refusing to cooperate with testing and validation, etc.) that are not remedied within a term of fifteen (15) calendar days after a written warning, the other Party may terminate the Agreement without prior notice, without judicial intervention, and without prejudice to any rights to claim compensation.
- 8.3. The intention to terminate the Agreement shall be sufficiently demonstrated by the act of sending a registered letter notifying the same.
- 8.4. If the Client requests support upon termination of the cooperation (including data exports, transfer of a service to another party etc.), HRLINKIT shall only provide this support (i) if all outstanding invoices have been paid and (ii) after prior payment for the deliverables.

## 9. Intellectual property

- 9.1. The Parties acknowledge that they shall each retain ownership of their respective intellectual property rights. No transfer of intellectual property rights shall take place unless otherwise agreed in writing.
- 9.2. Unless otherwise agreed, HRLINKIT will not transfer ownership of developments (and associated source code) to the Client, but will grant the Client user rights under a **Licence or Subscription Agreement**.
- 9.3. The Client undertakes not to decompile, reverse engineer, or in any other way try to ascertain the structure, build, operation, algorithms, and language of HRLINKIT's software.
- 9.4. The Client is responsible for any data or information provided to HRLINKIT to be used or incorporated into the result of the Order. The Client indemnifies HRLINKIT against any third-party claims relating to the data or equipment delivered.
- 9.5. The Client shall bear the sole responsibility for the Client's use of the result. HRLINKIT will not conduct any prior research into third-party intellectual property rights that may apply and will not be responsible if the result of the HRLINKIT Services infringes any third-party rights.



9.6. The Client acknowledges that it is inherent to HRLINKIT's business to make use of existing knowledge and build know-how throughout all orders. This knowledge or know-how will remain, is, and become the property of HRLINKIT.

## 10. Confidentiality

- 10.1. HRLINKIT undertakes to keep the Client's data and information confidential for a period of five (5) years from its disclosure and at least for a period of five (5) years from the date of the signature of this Agreement. HRLINKIT shall take appropriate technical and organisational measures to secure the Client's data and information against any disclosure, taking into account the state of the art.
- 10.2. If the Client's data contain personal data of third parties, the Client undertakes to inform HRLINKIT as to the personal data that must be processed by HRLINKIT. The Parties undertake to sign a **processing agreement** to this effect.
- 10.3. The Client shall bear sole responsibility for the confidential and personal management of any user names and passwords associated with the use of any software or Services of HRLINKIT.
- 10.4. The Client undertakes to keep information from HRLINKIT about business models, market positioning, technical innovations, system processes, software specifications, software architecture, software source codes, passwords, strategic, financial and supplier information, product roadmaps, trade secrets, and any information about intellectual property rights confidential for a period of five (5) years from its disclosure and at least for a period of five (5) years from the date of the signature of this Agreement.
- 10.5. Trade Secrets (including source codes of HRLINKIT software) remain confidential for as long as this Confidential Information is deemed a Trade Secret, irrespective of the aforementioned period of time.
- 10.6. After completion of the Order, HRLINKIT will be entitled to use the Order as a reference case for marketing purposes.

## 11. Delivery date

- 11.1. HRLINKIT Services start at the time as determined by the Parties in the offer.
- 11.2. The delivery date shall never occur during HRLINKIT's collective holidays or public holidays, nor if the delivery is hindered by force majeure.
- 11.3. The delivery date and schedule stated in the offer are a best estimate. Any delays may not ensue in termination of the agreement, cancellation of the Order, or any compensation.
- 11.4. If the Client does not accept the HRLINKIT Services at the time they are provided or delivered, HRLINKIT is nevertheless entitled to claim the payment of the invoice.

## 12. Support

- 12.1. Support is not included in the Order, unless agreed otherwise between the Parties in an offer or a Service Level Agreement or Subscription Agreement signed for that purpose.
- 12.2. HRLINKIT may agree in writing to carry out such maintenance under certain circumstances at the Client's request, through subcontractors or otherwise.
- 12.3. HRLINKIT has no obligation to deliver any support if a defect cannot be reproduced.
- 12.4. HRLINKIT will not be obliged to carry out any updates or upgrades. Nevertheless, if HRLINKIT deems an update or upgrade necessary to resolve a defect, the Client may not refuse this update or upgrade.
- 12.5. Support services provided by HRLINKIT are based on a best-effort obligation. HRLINKIT will not be liable for any reduction in the performance of software applications or processes.
- 12.6. The Client shall inform HRLINKIT, its staff, or subcontractors in time and in full of any safety requirements that apply at the Client's workplace.

## 13. Staff

- 13.1. HRLINKIT's staff shall never be under the Client's authority and supervision.



- 13.2.HRLINKIT will be responsible for its staff during the fulfilment of an Order. However, HRLINKIT will not be responsible for any deception, fraud, or criminal acts committed by the Client without HRLINKIT's instruction or knowledge.
- 13.3.HRLINKIT is entitled to replace the persons who assist with the Order with other persons with comparable experience and skills.
- 13.4.The Client undertakes not to solicit, approach, or mediate HRLINKIT's staff for the purpose of solicitation during the term of the cooperation and for a period of one (1) year thereafter. Any breach of this provision will lead to damages on the part of HRLINKIT which are estimated at six (6) months of the gross salary of the person concerned.

## **14. Liability**

- 14.1.HRLINKIT is not liable for any use, exploitation, or commercialisation by the Client of the result of the Order, or for any predictable damage that might arise from the use, exploitation, or commercialisation of the result of the Order, except in the case of intent or fraud.
- 14.2.Insofar as necessary, HRLINKIT's contractual liability under the Order or the agreement is limited to any payment made by the Client to HRLINKIT, up to a maximum of fifty-thousand euros (50,000).
- 14.3.HRLINKIT will not be responsible for any indirect damage, including damage to other goods of the Client, loss of opportunity, or losses related to the Client's business, loss of profit, decrease in turnover, decreased efficiency, loss of clients, loss of data, etc.
- 14.4.HRLINKIT will under no circumstances be liable for any damage caused:
- if it cannot be demonstrated that the defects were present at the time of production of any service;
  - if HRLINKIT could not be aware of the presence of the defects given the state of the art;
  - as a consequence of compliance with mandatory government requirements;
  - as a consequence of faulty internet connection, broadband connection, or any other service, infrastructure or hosting over which HRLINKIT has no control;
  - by defects in the hardware or software that the Client uses in combination with the result of the HRLINKIT Services;
  - by viruses, trojan horses, or bugs in the hardware or software used by the Client and not delivered or provided by HRLINKIT;
  - by hacking, phishing, pharming, or any other criminal act through which software is blocked or misused;
  - by errors or omissions of the Client, any third party, including incorrect instructions, incorrect manoeuvres, faulty operation, transformations to any hardware or software;
  - by use by the Client or any third party that is contrary to the purpose for which the HRLINKIT Services are intended, to applicable legislation, including but not limited to any security rules, breach of data protection legislation, etc.;
  - by the intervention of a third party not recognised or certified by HRLINKIT;
  - by the products and services of third parties, the manner in which they are provided, sold, leased, used, delivered, or performed.
- 14.5.The Client shall indemnify HRLINKIT against any claims or demands that third parties could make against it based on any defect or damage arising from the circumstances as listed above.

## **15. Force majeure**

- 15.1.Force majeure means all circumstances that occur beyond the control of one of the Parties after the conclusion of the Agreement or Order, which cannot be attributed to them and that prevent the fulfilment of the Order such as war, terrorism, political unrest, strike, embargo, government decisions, natural disasters, fire, seizure, limitations in power, telecommunication, and internet, pandemics, unexpected and long-term illness of HRLINKIT's key employees, etc.



- 15.2. The Party invoking the above circumstances shall immediately notify the other Party in writing of the occurrence and expiry thereof.
- 15.3. If the force majeure situation on the part of one of the Parties lasts longer than thirty (30) calendar days, the Agreement may be terminated by the other Party by registered letter, without any compensation being due (with the exception of compensation for the services delivered prior to the force majeure situation).
- 15.4. The existence of any of these circumstances relieves both HRLINKIT and the Client of any liability arising from the non-fulfilment of the Agreement during the force majeure situation. Nevertheless, the Client shall pay for all services delivered prior to the date of notification of the occurrence of the force majeure situation.

## **16. The Client's personal data**

- 16.1. The personal data provided by the Client relating to its own staff involved in an Order shall only be processed by HRLINKIT in the context of normal fulfilment of an Order and normal management of the client database, administration, and accounting.
- 16.2. If the personal data are processed to inform the Client about HRLINKIT's services, the Client will be able to subscribe or object to any processing of its personal data by sending HRLINKIT a simple request to that effect by e-mail to [privacy@hrlinkit.be](mailto:privacy@hrlinkit.be).
- 16.3. The Client may at any time request the communication, correction, or removal of its personal data. Contacting HRLINKIT by e-mail will also be sufficient for this purpose.

## **17. Miscellaneous**

- 17.1. The General Terms & Conditions apply and form an integral part of the offer from HRLINKIT. The General Terms & Conditions can be supplemented with specific provisions in (i) a Service Level Agreement, (ii) a Licence or Subscription Agreement, and/or (iii) a Processing Agreement. In the event of any conflict between the offer and the General Terms & Conditions, the offer shall take precedence. In the event of any conflict between the specific conditions and the General Terms & Conditions, the specific conditions shall take precedence.
- 17.2. The rights and obligations of the Parties cannot be transferred to any third party or associated company except with prior written agreement between the Parties. This does not affect HRLINKIT's right to use independent service providers or subcontractors, or HRLINKIT's right to transfer any activity to a third party.
- 17.3. The nullity, impracticability, or unenforceability of any clause of these General Terms & Conditions shall not affect the validity or enforceability of the General Terms & Conditions.
- 17.4. Only the General Conditions of Sale in the Dutch language are normative for any interpretation of the terms used. The translations are prepared by HRLINKIT for the sole purpose of the Client's comprehension.
- 17.5. The Agreement is exclusively governed by and construed in accordance with Belgian law.
- 17.6. In the event of a dispute, the courts and tribunals of the district where HRLINKIT has its registered office shall have exclusive jurisdiction.

**Version of 18 February 2021**

