

GENERAL TERMS AND CONDITIONS

Last updated 2021-04-16

I. Definitions

1. UpstartIT: Manfred Linzner-Scherf, established in Schaarbeekstraat 69, 1066 WH Amsterdam, Chamber of Commerce no. 80011152.
2. Customer: the person and/or company with whom UpstartIT has entered into an agreement.
3. Parties: UpstartIT and Customer together.
4. Consumer: a Customer who is an individual acting for private purposes.

II. Applicability

1. These terms and conditions will apply to all quotations, offers, activities, orders, agreements and deliveries of services or products by or on behalf of UpstartIT.
2. Parties can only deviate from these conditions if they have explicitly agreed upon in writing.
3. The parties expressly exclude the applicability of supplementary and/or deviating general terms and conditions of the Customer or of third parties.

III. Offers and quotations

1. Offers and quotations from UpstartIT are without engagement, unless expressly stated otherwise.
2. An offer or quotation is valid for a maximum period of 1 month from its date, unless another acceptance period is stated in the offer or quotation.

3. If the Customer does not accept an offer or quotation within the applicable time frame, the offer or quotation will lapse.
4. Offers and quotations do not apply to repeated orders, unless the parties have agreed upon this explicitly and in writing.

IV. Acceptance

1. Upon acceptance of a quotation or offer without engagement, UpstartIT reserves the right to withdraw the quotation or offer within 3 days after receipt of the acceptance, without any obligations towards the Customer.
2. Verbal acceptance of the Customer only commits UpstartIT after the Customer has confirmed this in writing (or electronically).

V. Prices

1. All prices used by UpstartIT are in euros, are exclusive of VAT and exclusive of any other costs such as administration costs, levies and travel-, shipping- or transport expenses, unless expressly stated otherwise or agreed otherwise.
2. UpstartIT is entitled to adjust all prices for its products or services, shown in its shop, on its website or otherwise, at any time.
3. The price with regard to services is determined by UpstartIT on the basis of the actual working hours.
4. The price is calculated according to the usual hourly rates of UpstartIT, valid for the period in which he carries out the work, unless a different hourly rate has been agreed.
5. If the parties have agreed on a total amount for a service provided by UpstartIT, this is always a target price, unless the parties have explicitly agreed upon in writing on a fixed price, which cannot be deviated from.
6. UpstartIT is entitled to deviate up to 10% of the target price.

7. If the target price exceeds 10%, UpstartIT must let the Customer know in due time why a higher price is justified.
8. If the target price exceeds 10%, the Customer has the right to cancel the part of the order that exceeds the target price by 10%.
9. UpstartIT has the right to adjust prices annually.
10. UpstartIT will communicate price adjustments to the Customer prior to the moment the price increase becomes effective.
11. The Consumer has the right to terminate the contract with UpstartIT if he does not agree with the price increase.

VI. Payments and payment term — Services

1. The Customer must pay invoices of UpstartIT within 14 days, unless parties have made other agreements about this or if the invoice has a different payment term.
2. Payment terms are considered as fatal payment terms. This means that if the Customer has not paid the agreed amount at the latest on the last day of the payment term, he is legally in default, without UpstartIT having to send the Customer a reminder or to put him in default.
3. UpstartIT reserves the right to make a delivery conditional upon immediate payment or to require adequate security for the total amount of the services or products.

VII. Consequences of late payment

1. If the Customer does not pay within the agreed term, UpstartIT is entitled to charge an interest of 1% per month from the day the Customer is in default, whereby a part of a month is counted for a whole month.
2. When the Customer is in default, he is also due to extrajudicial collection costs and may be obliged to pay any compensation to UpstartIT.
3. The collection costs are calculated on the basis of the reimbursement for extrajudicial collection costs.

4. If the Customer does not pay on time, UpstartIT may suspend its obligations until the Customer has met his payment obligation.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment on behalf of the Customer, the claims of UpstartIT on the Customer are immediately due and payable.
6. If the Customer refuses to cooperate with the performance of the agreement by UpstartIT, he is still obliged to pay the agreed price to UpstartIT.

VIII. Suspension of obligations by the Customer

1. The Customer waives the right to suspend the fulfillment of any obligation arising from this agreement.

IX. Settlement

1. The Customer waives his right to settle any debt to UpstartIT with any claim on UpstartIT.

X. Insurance

1. The Customer undertakes to insure and keep insured the following items adequately against fire, explosion and water damage as well as theft:
 - goods delivered that are necessary for the execution of the underlying agreement
 - goods being property of UpstartIT that are present at the premises of the Customer
 - goods that have been delivered under retention of title
2. At the first request of UpstartIT, the Customer provides the policy for these insurances for inspection.

XI. Guarantee

1. When parties have entered into an agreement with services included, these services only contain best-effort obligations for UpstartIT, not obligations of results.

XII. Performance of the agreement

1. UpstartIT executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. UpstartIT has the right to have the agreed services (partially) performed by third parties.
3. The execution of the agreement takes place in mutual consultation and after written agreement and payment of the possibly agreed advance by the Customer.
4. It is the responsibility of the Customer that UpstartIT can start the implementation of the agreement on time.
5. If the Customer has not ensured that UpstartIT can start the implementation of the agreement in time, the resulting additional costs and/or extra hours will be charged to the Customer.

XIII. Duty to inform by the Customer

1. The Customer shall make available to UpstartIT all information, data and documents relevant to the correct execution of the agreement to in time and in the desired format and manner.
2. The Customer guarantees the correctness, completeness and reliability of the information, data and documents made available, even if they originate from third parties, unless otherwise ensuing from the nature of the agreement.
3. If and insofar as the Customer requests this, UpstartIT will return the relevant documents.

4. If the Customer does not timely and properly provides the information, data or documents reasonably required by UpstartIT and the execution of the agreement is delayed because of this, the resulting additional costs and extra hours will be charged to the Customer.

xiv. Duration of the agreement

1. The agreement between UpstartIT and the Customer is entered into for the duration of 12 months, unless it results otherwise from the nature of the agreement or if the parties have expressly agreed otherwise in writing.
2. If a fixed-term contract has been entered into, it will be tacitly converted into an open-ended contract at the end of the term, unless 1 of the parties terminates the contract with due observance of a notice period of 1 month, or if a Consumer terminates the agreement with due observance of a notice period of 1 month / the agreement ends at the end of the fixed term.
3. If the parties have agreed upon a term for the completion of certain activities, this is never a strict deadline, unless specified explicitly otherwise in writing. If this term is exceeded, the Customer must give UpstartIT a written reasonable term to terminate the activities, before it may either terminate the contract or claim damages.

xv. Intellectual property

1. UpstartIT retains all intellectual property rights (including copyright, patent rights, trademark rights, design and design rights, etc.) on all designs, drawings, writings, data carriers or other information, quotations, images, sketches, models, scale models, etc., unless parties have agreed otherwise in writing.
2. The Customer may not copy or have copied the intellectual property rights without prior written permission from UpstartIT, nor show them to third parties and / or make them available or use them in any other way.

xvi. Confidentiality

1. The client keeps any information he receives (in whatever form) from UpstartIT confidential.
2. The same applies to all other information concerning UpstartIT of which he knows or can reasonably suspect that it is secret or confidential, or of which it can expect that its disclosure may cause damage to UpstartIT.
3. The Customer takes all necessary measures to ensure that he keeps the information referred to in paragraphs 1 and 2 secret.
4. The obligation of secrecy described in this article does not apply to information:
 - which was already made public before the Customer heard this information or which later became public without being the result of a violation of the Customer's duty to confidentiality
 - which is made public by the Customer due to a legal obligation
5. The confidentiality obligation described in this article applies for the duration of the underlying agreement and for a period of 3 years after the end thereof.

xvii. Penalties

1. If the Customer violates the articles of these general terms and conditions about secrecy or intellectual property, then he forfeits on behalf of UpstartIT an immediately due and payable fine of € 1000 if the Customer is a Consumer and € 5000 if the Customer is a company, for each violation and in addition an amount of 5% of the aforementioned amount for each day that this violation continues.
2. No actual damage, prior notice of default or legal proceedings are required in forfeiting the fine referred to in the first paragraph of this article.
3. The forfeiture of the fine referred to in the first paragraph of this article shall not affect the other rights of UpstartIT including its right to claim compensation in addition to the fine.

xviii. Indemnity

1. The Customer indemnifies UpstartIT against all third-party claims that are related to the products and/or services supplied by UpstartIT.

xix. Complaints

1. The Customer must examine a product or service provided by UpstartIT as soon as possible, but in any case within 1 month after the delivery, for possible shortcomings.
2. If a delivered product or service does not comply with what the Customer could reasonably expect from the agreement, the Customer must inform UpstartIT of this as soon as possible, but in any case within 14 days after the discovery of the shortcomings.
3. Consumers must inform UpstartIT of this within two months after detection of the shortcomings.
4. The Customer gives a detailed description as possible of the shortcomings, so that UpstartIT is able to respond adequately.
5. The Customer must demonstrate that the complaint relates to an agreement between the parties.
6. If a complaint relates to ongoing work, this can in any case not lead to UpstartIT being forced to perform other work than has been agreed.

xx. Giving notice

1. The Customer must provide any notice of default to UpstartIT in writing.
2. It is the responsibility of the Customer that a notice of default actually reaches UpstartIT (in time).

xxi. Joint and several Client liabilities

1. If UpstartIT enters into an agreement with several Customers, each of them shall be jointly and severally liable for the full amounts due to UpstartIT under that agreement.

xxii. Liability of UpstartIT

1. UpstartIT is only liable for any damage the Customer suffers if and insofar as this damage is caused by intent or gross negligence.
2. If UpstartIT is liable for any damage, it is only liable for direct damages that results from or is related to the execution of an agreement.
3. UpstartIT is never liable for indirect damages, such as consequential loss, lost profit, lost savings or damage to third parties.
4. If UpstartIT is liable, its liability is limited to the amount paid by a closed (professional) liability insurance and in the absence of (full) payment by an insurance company of the damages the amount of the liability is limited to the (part of the) invoice to which the liability relates.
5. All images, photos, colors, drawings, descriptions on the website or in a catalog are only indicative and are only approximate and cannot lead to any compensation and/or (partial) dissolution of the agreement and/or suspension of any obligation.

xxiii. Expiry period

1. Every right of the Customer to compensation from UpstartIT shall, in any case, expire within 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions in article 6:89 of the Dutch Civil Code.

xxiv. Dissolution

1. The Customer has the right to dissolve the agreement if UpstartIT imputably fails in the fulfillment of his obligations, unless this shortcoming does not justify termination due to its special nature or because it is of minor significance.
2. If the fulfillment of the obligations by UpstartIT is not permanent or temporarily impossible, dissolution can only take place after UpstartIT is in default.
3. UpstartIT has the right to dissolve the agreement with the Customer, if the Customer does not fully or timely fulfill his obligations under the agreement, or if circumstances give UpstartIT good grounds to fear that the Customer will not be able to fulfill his obligations properly.

xxv. Force majeure

1. In addition to the provisions of article 6:75 Dutch Civil Code, a shortcoming of UpstartIT in the fulfillment of any obligation to the Customer cannot be attributed to UpstartIT in any situation independent of the will of UpstartIT, when the fulfillment of its obligations towards the Customer is prevented in whole or in part or when the fulfillment of its obligations cannot reasonably be required from UpstartIT .
2. The force majeure situation referred to in paragraph 1 is also applicable - but not limited to: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); defaults and force majeure of suppliers, deliverymen or other third parties; unexpected disturbances of power, electricity, internet, computer or telecoms; computer viruses, strikes, government measures, unforeseen transport problems, bad weather conditions and work stoppages.
3. If a situation of force majeure arises as a result of which UpstartIT cannot fulfill one or more obligations towards the Customer, these obligations will be suspended until UpstartIT can comply with it.

4. From the moment that a force majeure situation has lasted at least 30 calendar days, both parties may dissolve the agreement in writing in whole or in part.
5. UpstartIT does not owe any (damage) compensation in a situation of force majeure, even if it has obtained any advantages as a result of the force majeure situation.

xxvi. Modification of the agreement

1. If, after the conclusion of the agreement and before its implementation, it appears necessary to change or supplement its contents, the parties shall timely and in mutual consultation adjust the agreement accordingly.

xxvii. Changes in the general terms and conditions

1. UpstartIT is entitled to amend or supplement these general terms and conditions.
2. Changes of minor importance can be made at any time.
3. Major changes in content will be discussed by UpstartIT with the Customer in advance as much as possible.
4. Consumers are entitled to cancel the agreement in the event of a substantial change to the general terms and conditions.

xxviii. Transfer of rights

1. The Customer cannot transfer its rights deriving from an agreement with UpstartIT to third parties without the prior written consent of UpstartIT .
2. This provision applies as a clause with a property law effect as referred to in Section 3:83 (2) Dutch Civil Code.

xxix. Consequences of nullity or annulability

1. If one or more provisions of these general terms and conditions prove null or annulable, this will not affect the other provisions of these terms and conditions.
2. A provision that is null or annulable shall, in that case, be replaced by a provision that comes closest to what UpstartIT had in mind when drafting the conditions on that issue.

xxx. Applicable law and competent court

1. Dutch law is exclusively applicable to all agreements between the parties.
2. The Dutch court in the district where UpstartIT is established is exclusively competent in case of any disputes between parties, unless the law prescribes otherwise.