

General terms and conditions

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Webkracht

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Webkracht is a trade name of Fidela VOF – coc nr 76044033.

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Article 1. Definitions

Client: the counterparty of Webkracht. Agreement: the agreement concluded between Webkracht and the Client.

Article 2. General

The Agreement is formed by the present general terms and conditions together with the order confirmation signed by the Client and Webkracht. These general terms and conditions apply to every offer, quotation and Agreement between Webkracht and the Client, insofar as the parties have not expressly deviated from these terms and conditions.

The applicability of any purchasing and/or other conditions of the Client is expressly rejected. If one or more provisions of these general terms and conditions are at any time wholly or partially annulled or declared null and void by the court, this will not affect the operation of the other provisions.

Article 3. Quotations and offers

All quotations and offers from Webkracht are without obligation, unless a term for acceptance has been set in the quotation or offer. If no acceptance period has been set, no rights can be derived in any way from the quotation or offer. Quotations from Webkracht are based on the information provided by the Client.

The Client guarantees that he/she has provided all essential information for the design, execution and completion of the assignment to Webkracht in a timely and truthful manner. Webkracht cannot be held to a quotation or offer if the Client can reasonably understand that (part of) the quotation and offer contains an obvious mistake or error.

A composite quotation and offer does not oblige Webkracht to perform part of the quotation and offer against a corresponding part of the stated price. Quotations and offers do not automatically apply to future orders.

Article 4. Prices

All prices are in euros, exclusive of VAT and other government levies, as well as any costs to be incurred in the context of the Agreement, such as travel and other expenses, including but not limited to invoices from third parties engaged. The aforementioned costs are for the account of the Client. If Webkracht agrees a fixed price with the Client, then Webkracht is entitled to increase this price, without the Client being entitled in that case to dissolve the Agreement for that reason, if the increase in the price results from a power or obligation under the law or regulations or is caused by an increase in cost-determining factors such as the price of raw materials, wages, etc. or on other grounds that were not reasonably foreseeable when the agreement was entered into.

If the price increase other than as a result of an amendment to the Agreement amounts to more than 20%, the Client has the right to cancel the Agreement, provided this is done in writing within 14 days after receipt of the adjusted price, unless Webkracht is still willing to make the to perform the Agreement on the basis of what was originally agreed, the price increase arises from a power or an obligation resting on Webkracht under the law or if it has been stipulated that the delivery will take place more than three months after the Agreement. A cancellation as stated in the previous paragraph does not entitle the Client to compensation for any damage. In the event that the Client cancels the Agreement, Webkracht is entitled to charge the Client for costs already incurred.

Article 5. Agreement

The Agreement is deemed to have been concluded from the day of signing by Webkracht, or the day of sending the written order confirmation by Webkracht to the Client. The Agreement is entered into for an indefinite period, unless it follows from the content, nature or purport of the Agreement that it has been entered into for a definite period.

Article 6. Performance of the Agreement

Webkracht shall observe the care of a good Webkracht in the performance of his/her work. Webkracht assumes a best efforts obligation with the Agreement and therefore does not provide any guarantee regarding the results of the assignment, unless expressly stipulated otherwise. Webkracht has the right, insofar as the proper execution of the Agreement requires this, to have the Agreement partially executed by third parties. Webkracht will only proceed to do so after consultation with the Client.

The applicability of Articles 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code is expressly excluded. If a term has been agreed within the term of the assignment for the completion of certain work, this is never a strict deadline for Webkracht. If the term of execution is exceeded, the Client must give Webkracht written notice of default.

Article 7. Changes to the assignment

Changes to the Agreement by the Client that could not be foreseen by Webkracht and that cause additional work, will be passed on to the Client by Webkracht in accordance with the rate agreed in the Agreement. There is also talk of additional work if, as a result of the provision of incorrect or incomplete data by the Client, Webkracht has to reorganize the planned work. Webkracht is entitled to charge the costs for additional work to the Client on the basis of subsequent calculation.

Changes in the performance of the Agreement still desired by the Client after the assignment has been given must be notified to Webkracht in a timely manner and in writing. A change or addition to the Agreement only applies if it has been accepted (preferably in writing) by both Webkracht and the Client. Changes made to an order that has already been given may result in Webkracht exceeding the originally agreed delivery time.

Article 8. Cooperation of the Client

Client will always, solicited and unsolicited, provide Webkracht with all relevant information that he/she needs for the correct execution of the assignment given to him/her. If information necessary for the execution of the agreed assignment has not been made available by the Client, has not been made available on time or has not been made available in accordance with the agreements made, or if the Client has not fulfilled its (information) obligations in any other way, Webkracht is authorized to suspend the performance of the Agreement.

In order to ensure that the assignment is carried out properly and as far as possible according to the schedule, the Client will make employees of his/her own organization available in a timely manner, unless the nature of the assignment dictates otherwise. The Client must ensure that his/her staff has the right skills and experience to be able to perform the work. If and insofar as requested by Webkracht, the Client will provide Webkracht at its location free of charge with its own workspace with a telephone connection and, if desired, a fax and/or data network connection, unless the nature of the assignment dictates otherwise. If additional costs arise for Webkracht as a result of not, not timely or not properly making personnel, requested data, documents and facilities available by the Client, then these costs will be borne by the Client.

Webkracht may use the Client's website for promotion and/or publicity purposes. The usual form for this is a small link in the footer of the website with the text: 'Website made by Webkracht'. In addition, Webkracht may use all works developed for the Client, as well as the Client's name and logo, for promotion and/or publicity purposes, being, but not limited to, its own website webkracht.nl, in newsletters and on social media

Article 9. Delivery

The client is obliged to take delivery of the goods at the moment that they are made available to him/her. If the Client refuses to take delivery or is negligent in providing information or instructions that are necessary for the delivery, Webkracht is entitled to store the goods at the expense and risk of the Client.

Webkracht is entitled to perform the Agreement in different phases and to invoice the part thus performed separately. The client is obliged to inspect the delivered goods or have them inspected immediately after the goods have been made available to him/her. The risk of loss, damage or depreciation is transferred to the Client at the moment when goods are delivered to the Client or third parties engaged by it.

Article 10. Retention

All goods delivered by Webkracht remain the property of Webkracht. A transfer is possible for certain delivered goods in consultation. Any additional costs are for the account of the Client. Items subject to retention of title may not be resold or used as a means of payment. The Client is also not authorized to pledge or encumber in any other way the goods subject to retention of title.

Article 11. Termination

Both parties can terminate the Agreement early in writing at any time with due observance of a notice period of 30 days, unless the parties have agreed otherwise. If the Client proceeds to premature termination, Webkracht is entitled to compensation due to the loss of capacity that has arisen and can be made plausible, whereby the average monthly invoice amount until then is used as a starting point, unless the cancellation is based on facts and circumstances that are beyond Webkracht. are attributable. The provisional results of the work performed up to that point will be made available to the Client with reservation.

In the event that one of the parties becomes bankrupt, applies for suspension of payments or ceases operations, the other party has the right to terminate the Agreement prematurely without observing a notice period.

In the event of premature termination by Webkracht, the Client is entitled to cooperation from Webkracht with regard to the transfer of work still to be performed to third parties. If the transfer of the work entails additional costs for Webkracht, these will be charged to the Client.

Article 12. Dissolution and/or suspension

1. Webkracht is authorized to suspend the fulfillment of its obligations or to dissolve the Agreement, if: Webkracht has good reason to fear that the Client will fail in those obligations; b. When concluding the Agreement, the Client has been requested to provide security for the fulfillment of his/her obligations under the Agreement and this security is not forthcoming or is insufficient; c. there is (an application for)

liquidation of the Client, the Client has been granted suspension of payments, the Client has been declared bankrupt, the Natural Persons Debt Rescheduling Act has been declared applicable to the Client or the Client has been placed under guardianship, the Client has free disposal loses all or part of his/her assets or income, the Client sells his/her company or if an attachment is levied against the Client and this attachment is not lifted within 3 months.

2. Webkracht is also authorized to dissolve the Agreement if circumstances arise of such a nature that fulfillment of the Agreement is impossible or if other circumstances arise that are of such a nature that unaltered maintenance of the Agreement cannot reasonably be enforced by Webkracht. are required.

3. If Webkracht proceeds to suspension or dissolution, it is in no way obliged to pay compensation for damage or costs incurred in any way as a result.

4. If Webkracht proceeds to dissolve the Agreement, the claims of Webkracht against the Client are immediately due and payable.

5. If the dissolution is attributable to the Client or if Webkracht must suspend the performance of the Agreement as stated in this article and/or under Article 8.2 of these general terms and conditions, the Client is obliged to pay the resulting direct and indirect damage and costs to Webkracht. to reimburse.

6. Webkracht may at all times require further security, failing which Webkracht may suspend the performance of the Agreement. If this request is not complied with to the satisfaction of Webkracht, Webkracht is entitled to suspend or refuse the performance of all Agreements with the Client, without being obliged to pay any compensation itself and without even waiving its other rights under this Agreement or the law.

Article 13. Terms of payment

Payment is made within 14 days of the invoice date in a manner to be indicated by Webkracht in euros, unless expressly agreed otherwise. If the Client fails to make timely payment, he/she is in default by operation of law and the Client owes the statutory (commercial) interest. In that case, the Client owes interest on each month or part of the month, whereby part of the month is regarded as the whole month. The interest on the due and payable amount will be calculated from the moment that the Client is in default until the moment of payment of the full amount due.

From the moment that the Client is in default, the Client is also obliged to reimburse all judicial and extrajudicial costs and execution costs incurred in connection with the collection of the invoiced amounts. The extrajudicial costs are set at 15% of the principal sum, with a minimum of € 40.00 excluding VAT, unless the law stipulates otherwise.

Payments first serve to reduce the costs, then to reduce the interest due and finally to reduce the principal sum and the accrued interest. Webkracht can, without being in default, refuse an offer of payment if the Client designates a different order for the allocation of the payment. Webkracht can refuse full repayment of the principal sum, if the outstanding and accrued interest and collection costs are not also paid.

Complaints regarding the amount of the invoice must be submitted in writing within 8 days after the invoice date. After that period, complaints will no longer be processed and the Client's right to complaints will lapse. The Client is never entitled to set off what it owes Webkracht.

Article 14. Complaints and investigation

If the Client does not complain to Webkracht in writing within 8 days after he/she has discovered or should have discovered a defect in the performance of Webkracht, the Client can no longer invoke this defect. The Client is not entitled to suspend his/her (payment) obligations if the Client believes it has any right to complain.

The Client must give Webkracht the opportunity to investigate a complaint or have it investigated. In the event of well-founded and timely complaints, Webkracht will, at its option, either repair or replace the delivered goods against return of the originally delivered goods, or pay a replacement fee to the Client or credit a proportionate part of the invoice. If it is established that a complaint is unfounded, the costs incurred by Webkracht in this respect will be borne in full by the Client.

Article 15. Force majeure

If Webkracht cannot, not timely or properly fulfill its obligations under the Agreement as a result of a cause that cannot be attributed to it, those obligations will be suspended until the moment that Webkracht is still able to perform them at the agreed time. way to achieve.

Force majeure is in any case understood to mean illness on the part of Webkracht. If the period in which fulfillment of Webkracht's obligations is not possible due to force majeure lasts longer than two months, the parties are entitled to dissolve the Agreement without the Client having any right to compensation. What has already been performed under the Agreement will then be settled pro rata.

Article 16. Liability

Webkracht is not liable for damage of any nature whatsoever, caused by Webkracht based on incorrect and/or incomplete data provided by or on behalf of the Client. If Webkracht should be liable for any damage, then Webkracht's liability is limited to a maximum of the invoice amount, or at least to that part of the amount to which the liability relates.

The liability of Webkracht is in any case always limited to the amount of the payment from his/her insurer where applicable. Webkracht is only liable for direct damage.

Direct damage is exclusively understood to mean the reasonable costs to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to remedy the defective performance of Webkracht on the agreement answer, insofar as these can be attributed to Webkracht and reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to limitation of direct damage as referred to in these general terms and conditions. Webkracht is never liable for indirect damage, including consequential damage, lost profit, missed savings and damage due to business interruption.

Article 17. Confidentiality

The Client and Webkracht will maintain the confidentiality of all confidential information that they have obtained from each other or from another source in the context of the Agreement. Information is considered confidential if this has been reported by the other party or if this ensues from the nature of the information.

If Webkracht is obliged to provide confidential information to third parties designated by law or the competent court on the basis of a statutory provision or a court decision and Webkracht cannot invoke a right of nondisclosure in this respect, then Webkracht is not obliged to pay damages or compensation and the Client is not entitled to dissolve the assignment on the basis of any damage caused by this. The Client and Webkracht will impose their obligations under this article on any third parties they may engage.

Article 18. Intellectual property

All models, works and/or inventions developed by Webkracht for the Client are and remain the property of Webkracht. This also includes all intellectual property rights, including, but not limited to, copyrights, design rights and/or patent rights. All documents provided by Webkracht for the Client, such as reports, computer programs, system designs, working methods, advice and contracts, can be used by the Client and can be multiplied by the Client for its own use in its own organization.

Documents provided by Webkracht may not be made public, reproduced or exploited or brought to the attention of third parties by the Client without prior written permission from Webkracht, unless the nature of the documents provided dictates otherwise.

Article 19. Indemnification of third parties

The Client indemnifies Webkracht against possible claims from third parties who suffer damage in connection with the performance of the Agreement and the cause of which can be attributed to others than Webkracht. The Client is obliged to assist Webkracht both in and out of court if Webkracht is held liable on the basis of the first paragraph of this article and to immediately do everything that may be expected of her/him in that case.

If the Client fails to take adequate measures, Webkracht is entitled, without notice of default, to proceed to do so itself. All costs and damage on the part of Webkracht and third parties arising from this are fully for the account and risk of the Client.

Article 20. Expiry

Contrary to the statutory limitation periods, the limitation period for all claims and defenses of the Client against Webkracht is one year.

Article 21. Contract takeover

The Client is not entitled to transfer any obligation under the Agreement to third parties without written permission from Webkracht. Insofar as Webkracht has already given written permission for a contract takeover, the Client will at all times remain liable, in addition to this third party, for the obligations under the Agreement of which these general terms and conditions form part.

Article 22. Applicable law

All Agreements between Webkracht and the Client are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention is excluded. Without prejudice to Webkracht's right to submit a dispute to the competent court according to the law, disputes between the parties will in the first instance be submitted to the competent court in Webkracht's place of business, unless the law prescribes otherwise.

APPENDIX 1: PROCESSING OF PERSONAL DATA

If Webkracht processes personal data for the benefit of the Customer during the performance of the Agreement, the following conditions apply in addition to the General Terms and Conditions.

Article 1. General

1. The terms in this Appendix that are defined in the General Data Protection Regulation (hereinafter: "AVG") have the meanings assigned to them in the GDPR.
2. When processing personal data, the Customer can be regarded as the controller, or if the Customer processes the personal data on behalf of a third party, as a processor. Webkracht (depending on the capacity in which the Customer processes the personal data) fulfills the role of processor or sub-processor.

Article 2. Purposes of the processing

1. Webkracht undertakes to process personal data under the conditions of the Agreement on behalf of the Customer. The processing will only take place in the context of the execution of the Agreement, plus those purposes that are reasonably related thereto or that are determined with further consent.
2. Given the nature of the Services, Webkracht will process all personal data of all categories of data subjects under the Agreement that are stored using the Services, or that are otherwise provided to Webkracht for processing via the Services. If special personal data are processed when using the Services, the Customer must report this to Webkracht in advance and the Parties will assess in consultation whether additional measures must be taken in this context.
3. Webkracht has no control over the purpose and means of processing personal data. Webkracht does not make independent decisions about the receipt and use of personal data, the provision to third parties and the duration of storage.
4. The Customer guarantees that, if required under the GDPR, it will keep a register from 25 May 2018 regarding the data processing operations carried out under the Agreement. The Customer indemnifies Webkracht against all claims and claims related to non-compliance or incorrect compliance with this registration obligation.

Article 3. Division of responsibility

1. Parties will ensure compliance with applicable privacy laws and regulations. The permitted processing will be carried out by Webkracht within a (semi) automated environment.
2. Webkracht is solely responsible for the processing of the personal data under the Agreement, in accordance with the instructions and the explicit (final) responsibility of the Customer.
3. For all other processing of personal data, including in any case but not limited to the collection of personal data by the Customer, processing for purposes that have not been reported to Webkracht by the Customer, processing by third parties or for other purposes, Webkracht is not responsible. The responsibility for these processing operations rests with the Customer.
4. The Customer guarantees that the content, the use and the order to process personal data are not unlawful and do not infringe any right of third parties. Business Customer indemnifies Webkracht against all third-party claims arising from Customer's failure to comply with the aforementioned guarantee.

Article 4. Obligations of the parties

1. With regard to the processing operations carried out under the Agreement, Webkracht will ensure compliance with the conditions set under the GDPR for the processing of personal data by Webkracht in its role.
2. Webkracht will inform the Customer at its first request within a reasonable period of time about the measures it has taken regarding its obligations under the GDPR and any other applicable privacy laws and regulations.
3. Webkracht will, insofar as it is within its power, provide assistance to the Customer for the purpose of conducting a data protection impact assessment (also referred to as a 'Data Protection Impact Assessment' or 'DPIA'). The costs reasonably incurred or to be incurred by Webkracht in connection with the aforementioned assistance will be reimbursed by the Customer.

Article 5. Transfer of personal data

1. Webkracht processes personal data in countries within the European Union. The Customer also gives Webkracht permission to process personal data in countries outside the European Union, with due observance of the applicable laws and regulations.
2. Webkracht will inform the Customer on request to which country or countries the personal data will be transferred.

Article 6. Engaging sub-processors

1. The Customer hereby gives Webkracht permission to engage third parties (sub-processors) in the context of the Agreement and the data processing referred to in this Annex. Webkracht will inform the Customer on request about which sub-processors it engages.

Article 7. Security

1. Webkracht will make every effort to take appropriate technical and organizational measures to protect personal data against loss or against any form of unlawful processing (such as unauthorized access, damage, alteration or provision of personal data).
2. The Customer decides for itself which personal data will be processed by Webkracht and only makes personal data available to Webkracht for processing if the Customer has ensured that the security measures required by the Customer have been taken.

Article 8. Data leaks

1. In the event of a personal data breach, Webkracht will make every effort to inform the Customer about this immediately, but no later than within 72 hours, as a result of which the Customer assesses whether it can inform the supervisory authorities and/or data subjects. will inform or not. Webkracht makes every effort to provide complete, correct and accurate information.
2. A personal data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorized disclosure of, or unauthorized access to, transmitted, stored or otherwise processed data.
3. The Customer will ensure compliance with any (statutory) reporting obligations. If required by law and/or regulations, Webkracht will cooperate in informing the relevant authorities and any parties involved.
4. The duty to report in any case includes reporting the fact that there has been a breach, as well as (insofar as this information is available):

- a. what the (alleged) cause is;
- b. what the (as yet known and/or expected) consequence is;
- c. what the (proposed) solution is;
- d. contact details for following up the report;
- e. who has been informed (such as the person concerned and/or the supervisor); and
- f. what are the measures already taken.

Article 9. Requests from data subjects

1. If a data subject sends a request about his personal data to Webkracht, Webkracht will forward the request to the Customer. Webkracht may inform the data subject thereof.
2. Webkracht will provide the Client with the reasonably possible, necessary cooperation in handling the request. If it appears that the Customer needs help from Webkracht for the execution of a request from a data subject, Webkracht can charge costs for this.

Article 10. Confidentiality

1. All personal data that Webkracht receives from the Customer or collects itself during the performance of the Agreement is subject to a duty of confidentiality towards third parties. Webkracht will not use this information for any purpose other than for which it was obtained, unless it has been brought into such a form that it cannot be traced back to those involved. This duty of confidentiality does not apply:
 - a) insofar as the Customer has given explicit permission to provide the information to third parties;
 - b) if providing the information to third parties is logically necessary for the performance of the Agreement;
 - c) if there is a legal obligation to provide the information to a third party; or
 - d) if personal data is provided to third parties in their capacity as sub-processor.

Article 11. Termination of the Agreement

1. After termination of the Agreement, Webkracht will remove the personal data received from the Customer as soon as possible, unless the parties agree otherwise or any legal obligation opposes this.