

GENERAL TERMS AND CONDITIONS – Evolyn

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Version: 05-09-2025

Definitions

1. Evolyn: Evolyn; established in Amsterdam; Chamber of Commerce number: 98099280.
2. Customer: the party which Evolyn has entered into an agreement with.
3. Parties: Evolyn and Customer together.
4. Consumer: a Customer who is an individual acting for private purposes.
5. Services: the professional services provided by Evolyn, including consultancy, implementation, configuration, development, data integration, and support.
6. Deliverables: any reports, code, models, configurations, documentation, or other (partial) work products created by Evolyn in performing the Services.
7. SaaS Services: the software-as-a-service products provided by Evolyn, including hosted applications, platforms, or tools made available remotely on a subscription or usage basis, which remain the sole property of Evolyn.
8. Third Party Services: services, platforms, software, APIs, cloud or AI models provided by third parties.
9. Writing or Written: includes email and electronic signatures.

1. Applicability

1. These terms and conditions will apply to all quotations, offers, activities, orders, agreements and deliveries of Services, Deliverables, SaaS Services or products by or on behalf of Evolyn.
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.
4. In case of any conflict between these terms and conditions and the Customer's terms, these terms and conditions shall prevail. For Consumers, mandatory consumer law prevails over these terms.
5. These terms and conditions also apply to future agreements, engagements, or extensions of cooperation between Evolyn and the Customer, unless expressly agreed otherwise in Writing.

2. Offers and quotations

1. Offers and quotations from Evolyn 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.
5. Obvious errors, misprints, or clerical mistakes in offers, quotations, or price lists shall not bind Evolyn.
6. Obvious errors or typographical mistakes in offers do not bind Evolyn.
7. Offers are subject to availability of Third Party Services and SaaS Services.

3. Acceptance

1. Upon acceptance of a quotation or offer without engagement, Evolyn reserves the right to withdraw the quotation or offer within 3 days after receipt of the acceptance, without any obligations towards the Customer.
2. Evolyn may refuse acceptance in case of compliance concerns, conflicts of interest, or credit risk.
3. Verbal acceptance of the Customer only commits Evolyn after the Customer has confirmed this in Writing.
4. Electronic acceptance, including e-mail confirmation or digital signature, shall be deemed valid.

4. Prices

1. All prices used by Evolyn are in EUR, 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. Evolyn is entitled to adjust all prices for its Services, Deliverables, SaaS Services and/or products on its website or otherwise, at any time without prior notice.

3. The price with regard to Services is determined by Evolyn on the basis of the actual working hours and/or business value.
4. The price is calculated according to the usual hourly rates of Evolyn, 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 price for Services provided by Evolyn, 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. Evolyn is entitled to deviate up to 10% of the target price.
7. If the target price exceeds 10%, Evolyn must inform the Customer in due time why a higher price is justified.
8. If the adjusted target price exceeds a 10% increase, the Customer has the right to cancel that specific Deliverable that exceeds the target price by 10%.
9. Evolyn has the right to adjust prices annually.
10. Evolyn will communicate price adjustments to the Customer 1 month prior to the moment the price increase becomes effective.
11. Any Third Party Services costs, such as license fees for cloud services, APIs, or AI models, will be invoiced separately to the Customer.
12. A Consumer has the right to terminate the contract with Evolyn if he does not agree with the price increase.
13. Time tracking and hour registration by Evolyn shall be deemed conclusive evidence of Services performed.
14. Fees for SaaS Services are subscription-based or usage-based as specified in the applicable order. Such fees are due in advance for the agreed subscription term, unless otherwise specified.
15. Evolyn may increase the fees for SaaS Services at the start of each renewal term, and will notify the Customer at least 1 month in advance. If the Customer does not agree with the adjusted SaaS fees, the Customer may terminate the subscription effective at the end of the then-current subscription term.

5. Payments and payment term

1. Evolyn may, at the conclusion of the agreement, require a down payment of up to 50% of the agreed amount.
2. Invoices are due within 30 days from the invoice date, unless agreed otherwise in Writing.
3. 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 Evolyn having to send the Customer a reminder or to put him in default.
4. Evolyn reserves the right to make a delivery, including access to SaaS Services, conditional upon immediate payment or to require adequate security for the total amount of the Services, Deliverables, SaaS Services and/or products.
5. Applicable (international) bank transfer costs, transaction charges or related financial fees shall be borne by the Customer.
6. Access to SaaS Services is conditional upon timely advance payment of subscription or usage fees.
7. Subscription fees for SaaS Services are non-refundable, unless otherwise expressly agreed in Writing.

6. Consequences of late payment

1. If the Customer does not pay within the agreed term, Evolyn is entitled to charge statutory commercial interest (as set out in the Dutch Civil Code) 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 Evolyn.
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, Evolyn may suspend its obligations until the Customer has met his payment obligation.
5. Evolyn may suspend the performance of any Services, Deliverables, SaaS Services or products until all outstanding invoices have been paid in full.
6. In the event of liquidation, bankruptcy, attachment or suspension of payment on behalf of the Customer, the claims of Evolyn on the Customer are immediately due and payable.
7. If the Customer refuses to cooperate with the performance of the agreement by Evolyn, he is still obliged to pay the agreed price to Evolyn.

8. In case of late payment for SaaS Services, Evolyn may suspend or terminate access to the SaaS Services with immediate effect, without prejudice to Evolyn's right to claim outstanding fees for the entire agreed subscription term, unless otherwise agreed in Writing.

7. Suspension of obligations by the Customer

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

8. Settlement

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

9. Insurance

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

10. Guarantee

1. When Parties have entered into an agreement with Services included, these Services only contain best-effort obligations for Evolyn, not obligations of results.
2. Evolyn does not guarantee specific outcomes, compatibility, or the absence of errors in Services.
3. Evolyn is not responsible for interruptions, delays, or failures caused by Third Party Services providers such as cloud services, APIs, or AI model providers.
4. SaaS Services are provided "as is" and without warranty, except as expressly agreed in a service level agreement (SLA).

11. Performance of the agreement

1. Evolyn executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. Evolyn 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 Evolyn can start the implementation of the agreement on time.
5. If the Customer has not ensured that Evolyn can start the implementation of the agreement in time, the resulting additional costs and/or extra hours will be charged to the Customer.
6. The Customer shall reasonably cooperate and provide timely access, information, and decisions; delays or omissions may result in schedule extension and additional fees.
7. Dependencies on Third Party Services are outside Evolyn's control; unavailability constitutes force majeure as further defined below.
8. Provision of SaaS Services shall commence on the agreed start date and continue for the subscription term, provided the Customer complies with payment obligations.

12. Duty to inform by the Customer

1. The Customer shall make available to Evolyn all information, data and documents relevant to the correct execution of the agreement 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, Evolyn will return the relevant documents.
4. If the Customer does not timely and properly provide the information, data or documents reasonably required by Evolyn and the execution of the agreement is delayed because of this, the resulting additional costs and extra hours will be charged to the Customer.
5. Evolyn may rely on the accuracy of information and data provided by the Customer without independent verification, unless otherwise agreed.

13. Duration of the service agreement

1. The agreement between Evolyn and the Customer is entered into for an indefinite period of time, unless it results otherwise from the nature of the agreement or 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, unless otherwise specified, of 2 months, or if a Consumer terminates the agreement with due observance of a notice period of 1 month causing the agreement to end 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 Evolyn a Written reasonable term to terminate the activities, before it may either terminate the contract or claim damages.
4. SaaS Services are provided for the subscription term specified in the offer. Unless terminated in accordance with these terms, subscriptions renew automatically for successive terms of the same length.

14. Cancellation of the contract for an indefinite period of time

1. The Customer can terminate an agreement that has been concluded for an indefinite period at any time with due observance of a notice period of 2 months, unless otherwise specified.
2. A Consumer has the right to terminate an agreement for an indefinite period with due observance of a notice period of 1 month.

15. Intellectual property

1. The Customer shall own all rights to Deliverables created specifically for the Customer's exclusive use, including custom analyses, reports, models, and implementations that incorporate the Customer's proprietary data or business processes. Evolyn retains all rights to pre-existing intellectual property, methodologies, frameworks, algorithms, and reusable components utilized in creating Deliverables.
2. Evolyn reserves the right to apply general knowledge, skills, and experience acquired during the engagement to future projects, provided such use does not involve the Customer's confidential information or proprietary data.
3. Ownership of Deliverables transfers or vests upon full payment of all undisputed amounts due for those Deliverables.
4. The Customer may freely use, modify, and share all Deliverables internally and with third parties necessary for the Customer's business operations. The Customer is not permitted to resell, license, or otherwise commercially exploit the Deliverables to unrelated third parties, unless expressly agreed in Writing with Evolyn.
5. For any SaaS Services provided by Evolyn, no ownership is transferred to the Customer. The Customer is granted a non-exclusive, non-transferable, and revocable right to access and use such SaaS products during the term of the agreement, subject to timely payment of fees and compliance with these terms. All intellectual property rights in and to the SaaS products remain vested in Evolyn or its licensors.
6. The Customer shall not copy, modify, reverse engineer, or create derivative works of SaaS Services, except where mandatory law permits or agreed upon in Writing with Evolyn.

16. Confidentiality

1. The Customer keeps any information it receives (in whatever form) from Evolyn confidential.
2. The same applies to all other information concerning Evolyn of which it knows or can reasonably suspect that it is secret or confidential, or of which it can expect that its disclosure may cause damage to Evolyn.
3. The Customer takes all necessary measures to ensure that it 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:
 - a. 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.
 - b. 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.

17. 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 Evolyn an immediately due and payable fine of € 1.000 if the Customer is a Consumer and € 5.000 if the Customer is a company, for each violation and in addition an amount of 10% 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 Evolyn including its right to claim compensation in addition to the fine.

18. Indemnity

1. The Customer indemnifies Evolyn against all third-party claims that are related to the Services, Deliverables SaaS Services and/or products supplied by Evolyn.

19. Complaints

1. The Customer must examine Deliverables or Services provided by Evolyn as soon as possible for possible shortcomings.
2. If Deliverables or Services does not comply with what the Customer could reasonably expect from the agreement, the Customer must inform Evolyn of this as soon as possible, but in any case within 14 days after the discovery of the shortcomings.
3. Consumers must inform Evolyn of this within two months after detection of the shortcomings.
4. Complaints regarding SaaS Services must be reported without undue delay after discovery, so that Evolyn can investigate and remediate. If a service level agreement (SLA) has been agreed, the procedures and remedies under that SLA shall apply.
5. The Customer or Consumer gives a detailed description as possible of the shortcomings, so that Evolyn is able to respond adequately.
6. The Customer or Consumer must demonstrate that the complaint relates to an agreement between the Parties.
7. If a complaint relates to ongoing work, this can in any case not lead to Evolyn being forced to perform other work than has been agreed.

20. Giving notice

1. The Customer must provide any notice of default to Evolyn in Writing.
2. It is the responsibility of the Customer that a notice of default actually reaches Evolyn (in time).
3. Electronic notices by e-mail shall be deemed sufficient if sent to an official Evolyn contact address.

21. Joint and several Customer liabilities

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

22. Liability of Evolyn

1. Evolyn is only liable for any damage the Customer suffers if and insofar as this damage is caused by intent or gross negligence.
2. If Evolyn 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. Evolyn is never liable for indirect damages, such as consequential loss, lost profit, lost savings or damage to third parties.
4. If Evolyn 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.
6. Evolyn is not responsible for interruptions, delays, or failures caused by Third Party Services providers such as cloud services, APIs, or AI model providers.

7. For SaaS Services, Evolyn shall use reasonable efforts to ensure availability but does not guarantee uninterrupted access. Liability for downtime or data loss is excluded, except in cases of intent or gross negligence.

23. Expiry period

1. Every right of the Customer to compensation from Evolyn 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 Dutch Civil Code.
2. For SaaS Services, any claims relating to downtime, data loss, or unavailability must be brought within 2 months of the event.

24. Dissolution

1. The Customer has the right to dissolve the agreement if Evolyn 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 Evolyn is not permanent or temporarily impossible, dissolution can only take place after Evolyn is in default.
3. Evolyn 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 Evolyn good grounds to fear that the Customer will not be able to fulfill his obligations properly.
4. In the case of SaaS Services, Evolyn may immediately suspend or terminate access if the Customer fails to pay subscription fees or materially breaches the terms of use. Upon termination, the Customer shall cease all use of the SaaS Services.

25. Force majeure

1. In addition to the provisions of article 6:75 Dutch Civil Code, a shortcoming of Evolyn in the fulfillment of any obligation to the Customer cannot be attributed to Evolyn in any situation independent of the will of Evolyn, 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 Evolyn.
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, outages or changes by Third Party Services, 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 Evolyn cannot fulfill one or more obligations towards the Customer, these obligations will be suspended until Evolyn 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. Planned maintenance or temporary unavailability of SaaS Services shall not constitute a breach by Evolyn. If a service level agreement (SLA) applies, the remedies specified therein shall apply exclusively.
6. Evolyn 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.

26. 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.
2. Evolyn may modify features or functionality of SaaS Services from time to time, provided such modifications do not materially reduce the core functionality. Material changes will be communicated in advance.

27. Changes in the general terms and conditions

1. Evolyn 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 Evolyn 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.

28. Transfer of rights

1. The Customer cannot transfer its rights deferring from an agreement with Evolyn to third parties without the prior Written consent of Evolyn.
2. The Customer may not assign or transfer SaaS Service subscriptions to any third party without Evolyn's prior Written consent.
3. This provision applies as a clause with a property law effect as referred to in Section 3:83 (2) Dutch Civil Code.

29. 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 Evolyn had in mind when drafting the conditions on that issue.
3. The Parties will negotiate in good faith a valid replacement provision that best reflects the economic intent of the invalid provision.

30. 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 Evolyn is established is exclusively competent in case of any disputes between Parties, unless the law prescribes otherwise.