
Terms and Conditions

Release 1.0

Klaas Nienhuis

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Please read the following terms and conditions carefully before you install or use any software or enter into any agreement regarding the use of any product or service. By clicking on the “agree” button or by installing, copying or using the software you indicate that you have read and understand these terms and conditions and that you accept and are bound by the same. These terms and conditions are applicable to all sales and all services and transactions entered into with KLAAS NIENHUIS and include the conditions regarding the use of the software, hereinafter referred to as: the “software”.

OFFERS

1.1 .

All offers, rendered services and other statements shall be subject to these general terms.

1.2 .

You guarantee that the information that you have provided on which the offer is based is accurate and complete.

1.3 .

Cost estimates or budgets are non-binding unless agreed otherwise in writing.

PAYMENT**2.1 .**

Unless indicated otherwise, all prices, including the fees of KLAAS NIENHUIS are expressed in EUR and excluding VAT and possible other duties pursuant to statutory regulations. KLAAS NIENHUIS is authorised to increase the fees applied by the same, all in consideration of possibly existing statutory regulations. The licence fee is payable regardless of the fact as to whether you start using the software.

2.2 .

Unless agreed otherwise in writing, any currency movement of foreign currencies with regard to the EUR and banking costs shall be for the risk and account of the customer.

2.3 .

If KLAAS NIENHUIS does not receive full payment in a timely fashion, and without prejudice to all other rights and legal remedies of KLAAS NIENHUIS, KLAAS NIENHUIS will be authorised to, without any liability vis-à-vis you, deny you the password, account and access to all or a part of the software, regardless if the access was (already) granted..

2.4 .

You shall furthermore owe statutory interest for commercial contracts as determined by De Nederlandse Bank increased with 2% on the outstanding amount without a demand for payment or a notice for default being required. If the customer fails to pay the amount due after a demand for payment, the debt shall be collected in which case all judicial and extrajudicial costs shall be borne by you.

2.5 .

None of the amounts and fees specified in these terms and conditions can be cancelled or refunded.

2.6 .

All prices or rates of periodic payment obligations may be adjusted with due observance of a term of at least [three] months. Should you not agree with the new prices/conditions you may terminate the contract within 14 days after such notification against the date on which the new prices/conditions would take effect.

2.7 .

You may not suspend any payment nor set off any amounts owed.

DURATION OF AN AGREEMENT

3.1 .

In case of a continuing performance contract, such as a licence agreement, the duration of the contract shall be one year unless agreed otherwise.

3.2 .

Unless terminated in writing with observance of a notice period of three months prior to the end of the current term, the contract shall be renewed with the same duration.

DELIVERY

4.1 .

All dates and time schedules shall be non-binding and shall be indicative.

4.2 .

If a term is likely to be exceeded, parties shall consult with each other regarding the further planning and the consequences of any delay.

4.3 .

In case of deadlines and delivery periods that are final and agreed in writing, KLAAS NIENHUIS shall only be in default, if a reasonable term is granted to remedy the breach. The notice of default must clearly and in detail state the breach in order to give KLAAS NIENHUIS the opportunity to act upon the notice.

4.4 .

In case of any changes to the work/project, the set dates or delivery period shall not apply. The same applies in case you fail to meet any of your obligations toward KLAAS NIENHUIS.

4.5 .

Additional work shall not entitle you to terminate or rescind the agreement.

SOFTWARE DEVELOPMENT

5.1 .

KLAAS NIENHUIS shall develop the software with due care. All services shall be performed on the basis of an obligation to use best endeavours.

5.2 .

Before commencing the development KLAAS NIENHUIS may require your written and unconditional agreement to the specifications or the design. KLAAS NIENHUIS shall be entitled to suspend his activities until such declaration of approval to the specifications or design. All development is carried out on the basis of a best efforts obligation.

5.3 .

If it has been agreed that the development of the software will take place in stages or on phased implementation, KLAAS NIENHUIS shall be entitled to delay until written approval of the previous stage.

5.4 .

If the software is delivered and tested in stages or parts, the non-acceptance of a specific stage or part shall not affect the acceptance of a previous stage or part.

5.5 .

Any software is offered to you under licence. You do not become the owner of the software by purchasing, downloading and/or using the software. It regards a revocable, non-exclusive and non-transferable licence to use the software and to install (have installed) the software once after payment of the licence fee/agreed contract price, unless explicitly agreed otherwise. With the acceptance of the software provided by KLAAS NIENHUIS you accept the applicable licence terms and conditions and you will always act as befits a good licensee.

5.6 .

If you have agreed to restrictions on use, you shall strictly comply with these agreed restrictions in all cases. The agreed restrictions may relate to: (i) the kind of hardware the software is intended for, (ii) the maximum number of units that the software is intended for, (iii) specific individuals or maximum number of users who may use the software within your organisation, (iv) the location of use of the software, (v) specific forms or purposes of use restricted to a certain project and (vi) any other restriction of any kind.

5.7 .

You may only use the software with regard to the specific project agreed upon. If you do not agree with the present provisions then you should not use and/or install the software.

5.8 .

The software is made available “as is” and “where is”. You bear the risk of the use of the software upon delivery/installation. The software is expressly made available without any warranty. This applies to each and every explicit or implicit warranty, including but not limited to each and every (implicit) warranty of saleability, suitability for a specific objective or observance of the rights of third parties, expressly including uninterrupted use or compliance with the copyrights of third parties. KLAAS NIENHUIS does not provide any warranty concerning the performances of the software or the results that you obtain with the software. KLAAS NIENHUIS does not warrant that the software complies with your needs or that the operation of the software will be uninterrupted, free from errors or free from viruses.

5.9 .

Unless agreed otherwise, KLAAS NIENHUIS shall not be obligated to perform maintenance of the software or to provide support to the users of the software. If requested to do so, this shall be invoiced separately. New versions of the software shall only be made available if agreed to in writing.

5.10 .

Decision-making based on shown results will at all times fully fall under your own responsibility.

5.11 .

You should regularly make a backup of all data files that are generated, used and/or applied with the help of the software. KLAAS NIENHUIS is by no means liable for costs associated with the reproduction of mutilated or lost data. If KLAAS NIENHUIS created a backup then it is usually available for a period of two months and this information can be retrieved upon payment of the hourly fee.

ACCESS TO AND RIGHT TO USE THE SOFTWARE

6.1 .

You are only entitled to receive the software object code. The software source code shall not be made available to you, nor shall the technical documentation be made available during the development, unless this has been agreed explicitly in writing.

6.2 .

KLAAS NIENHUIS is authorised to without prior notice (temporarily) decommission the system or to limit the use thereof to the extent that this is required for the reasonably required maintenance or required adjustments or improvements of the system to be performed by KLAAS NIENHUIS, without you, as a user, and/or third parties being liable to compensation vis-à-vis KLAAS NIENHUIS. KLAAS NIENHUIS is at all times authorised to make changes in the login procedure, in the account and in the email addresses, without you, as a user, and/or third parties being liable to compensation vis-à-vis KLAAS NIENHUIS. As the occasion arises KLAAS NIENHUIS will inform you of the changes as soon as possible.

6.3 .

You are not allowed to change, decompile, reverse engineer, disassemble or reproduce the software or any part thereof. You are not allowed to sell, rent or make the software available to third parties. If so requested by KLAAS NIENHUIS you shall grant access to your premises in order to determine the compliance with the restrictions of use.

6.4 .

Unless explicitly permitted by KLAAS NIENHUIS in writing, the right to use the software will be non-transferable and you will not be allowed to make the software of, or copies thereof or addition thereto, available to third parties or to surrender the use thereof for any reason whatsoever. If you are explicitly allowed to grant sublicences, you shall guarantee that all sublicensees shall execute and be subject to a sublicensing agreement, with terms that are in accordance with these general terms and conditions. You shall be liable for sublicensee conduct that is prohibited under this agreement and sublicensee conduct that would have constituted breach of this agreement if it had been engaged it by you.

6.5 .

In terms of the software and the services KLAAS NIENHUIS has made every effort to observe the utmost care with regard to both quality and promptness.

6.6 .

KLAAS NIENHUIS will provide for the availability of the software. KLAAS NIENHUIS will to the best of its ability pursue the highest possible availability percentage. This regards a best efforts obligation. KLAAS NIENHUIS is not subject to any obligations in terms of the availability, reliability or performance requirements of telephone lines, the internet and/or other networks and facilities deriving there from.

6.7 .

Unless agreed otherwise in writing, the software does not recognise non-Western script, i.e. non-Latin script. Hence the software does not read, inter alia, Greek, Cyrillic or Arabic

TERMINATION/CANCELLATION

7.1 .

An agreement may only be rescinded in case of an attributable failure in the performance of the contract by the other party, insofar as a written notice of default granting a reasonable term to remedy the breach has been issued, and the party in breach fails to remedy the breach. The notice of default shall be as detailed as possible.

7.2 .

A contract that is entered into for an indefinite period of time, may be terminated by either party in writing after consultation and with reason for termination. Parties shall terminate observing a reasonable notice period.

7.3 .

KLAAS NIENHUIS shall in no way be held to pay any compensation due to termination or repay any amounts received.

7.4 .

Agreements that were entered into for a definite period of time may not be terminated early.

7.5 .

In case of any bankruptcy you are no longer entitled to use the software, and shall be denied any access to it.

LIABILITY; RESTRICTIONS ON LIABILITY

8.1 .

If you have any ground to recover damages from KLAAS NIENHUIS then the total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, including failure to fulfil a warranty obligation, shall be limited to compensation for direct loss up to the price stipulated for the agreement concerned (excl. VAT). In case of a continuing performance with a term of more than one year, the limitation of liability shall be set on the total amount of payments stipulated for one year. Therefore you can only recover direct damages up to the amount that you paid for the use of the software or for the rendered services. All liability shall be limited to Euro 15.000 or up to the amount that is, as the occasion arises, paid out by the insurer.

8.2 .

In no instance whatsoever will KLAAS NIENHUIS be liable for trading losses, including damages due to lost profit or lost savings, or other indirect or consequential damages resulting from the use, the operation or the delivery of the software.

8.3 .

You indemnify KLAAS NIENHUIS, its officers and directors, against any and all claims, actions, losses, damages, liabilities, costs and expenses (including but not limited to reasonable lawyer's fees and disbursements that are incurred by KLAAS NIENHUIS) deriving from or connected with your use of the software, whether or not in combination with material or content that you save or send if your use thereof: (a) infringes the intellectual property or publicity / privacy rights of third parties, (b) is in breach of the legislation or regulations, (c) is defamatory, libellous or unlawful, (d) is obscene or detrimental to minors, (e) contains viruses, Trojan horses, worms, time bombs, cancel bots or other computer software routines that are meant to cause damages or damaging influences, or (f) is essentially incorrect, inaccurate or misleading.

8.4 .

KLAAS NIENHUIS does not guarantee that the software is free of errors and functions without interruptions. Efforts shall be made to fix any errors within a reasonable time after written notification, but no guarantee can be given. If the software was developed on the instruction of you, KLAAS NIENHUIS may charge for the costs of fixing the errors against the usual hourly rates.

8.5 .

KLAAS NIENHUIS shall never be held to recover data that has been lost.

INTELLECTUAL OR INDUSTRIAL PROPERTY RIGHTS

9.1 .

All intellectual property rights are the inalienable property of KLAAS NIENHUIS. You will be granted the right of use, that shall be non-exclusive, non-transferrable and that may not be sublicensed or pledged.

9.2 .

Transfer of ownership of intellectual property from KLAAS NIENHUIS shall be express and in writing. Any such transfer shall be without prejudice to KLAAS NIENHUIS' right or option to use without any restriction the general principles, ideas, designs, programming languages, protocols, documentation etc. of which the developments referred to are based on for other purposes. KLAAS NIENHUIS shall be entitled to complete developments for other customers that are similar or derived from developments that were or are being completed.

9.3 .

In no instance whatsoever will you proceed with the registration of any intellectual property of KLAAS NIENHUIS, including the indication KLAAS NIENHUIS and any related indication, any indication deriving there from or corruptions. You shall not be entitled to remove or alter any indication regarding the indication of the products.

9.4 .

KLAAS NIENHUIS is allowed to take technical measures to secure the software. If KLAAS NIENHUIS has secured the software by means of technical security then you are not allowed to remove or circumvent this security. You cannot surrender the software or otherwise dispose of the same and you cannot change, adjust, translate, rent, lease, resell, distribute or use the software in a network and you cannot create or have created derivative products on the basis of the software or a part thereof.

CLOSING PROVISIONS

10.1 .

You are responsible for compliance with your local legislation and regulations concerning the import, export or reimport of the software and you commit to comply with the restrictions and not to export or re-export the software if this has been prohibited by applicable local legislation. By downloading, installing or otherwise using the software you indicate that you are not a natural or legal person in respect of whom said export has been prohibited.

GOVERNING LAW; DISPUTE RESOLUTION

11.1 .

The laws of the Netherlands are exclusively applicable to this agreement with the exclusion of the applicability of the Vienna Sales Convention (the UN Convention on the Law Applicable to Contracts for the International Sale of Goods from 1980), also if a contract is fully or partly carried out abroad or if you are established abroad.

11.2 .

If you are established in the European Union then all disputes that arise between the parties as a result of this agreement or that are directly or indirectly related to the same will in the first instance be settled by the competent court in Amsterdam. If you are established outside of the European Union then all disputes that arise between the parties as a result of this agreement or that are directly or indirectly related to the same will be settled through arbitration. The rules of the Netherlands Arbitration Institute (NAI) will be applicable to the arbitration. One arbitrator will be appointed and the arbitration will be held in Amsterdam. You hereby expressly and irrevocably submit to the exclusive jurisdiction of the aforementioned court and arbitrator, respectively, and you waive the submission of a defence regarding lack of jurisdiction of the Dutch courts and the arbitration committee, respectively.



Yes, this is Klaas nienhuis