

General terms and conditions

Yellax Nederland B.V. Version 2019 V01

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1. User of the General Terms and Conditions

Yellax Nederland B.V. with registered office at Edisonweg 1, 3404 LA IJsselstein, the Netherlands, hereinafter referred to as **Yellax**.

2. General provisions

These General Terms and Conditions apply to all agreements and offers for the provision of services by Yellax to third parties.

Article 1. Definitions

- 1.1. **Consultancy:** all (advice) activities Yellax performs for the Client to which Chapter 4 of these General Terms and Conditions applies.
- 1.2. **Services:** all activities to be performed by Yellax for the Client.
- 1.3. **Documentation:** descriptions, instructions for use, user manuals, (electrical) drawings and other documents belonging to the Services and/or the Software.
- 1.4. **Objective:** the result a Client seeks with a Project.
- 1.5. **IPR:** copyrights, design rights, trademark rights, patent rights, database rights and all other intellectual property rights or similar rights, such as rights to know-how or a domain name, whether or not registered.
- 1.6. **Working hours:** hours between 8.30am and 5pm (CET).
- 1.7. **Client:** the other party of Yellax in the Agreement to which these General Terms and Conditions apply.
- 1.8. **Order Confirmation:** the written notification from Yellax to the Client in which the contents of the Agreement are summarised. The Order Confirmation will usually describe the scope of the agreed delivery and the agreed prices and conditions.
- 1.9. **Agreement:** the Agreement concluded between Yellax and the Client to which these General Terms and Conditions apply. The Order Confirmation is part of the Agreement.
- 1.10. **Software:** the software or computer programs, with accompanying Documentation, developed by Yellax for the Client and/or provided to the Client.
- 1.11. **Project:** the activities, aimed at an Objective, to be performed under the ultimate responsibility of the Client, which Yellax contributes to on the basis of an Agreement on Services.

- 1.12. **Project Support:** the deployment of natural persons by Yellax at the Client for a Project, in such a manner that the employees provided will work under the supervision or guidance of the Client.
- 1.13. **Working Days:** calendar days except weekends and generally recognised Dutch holidays.

Article 2. Formation and Contents of the Agreement

- 2.1. The Agreement is concluded when one of the following events occurs: (i) acceptance by the Client of Yellax's offer, (ii) sending an Order Confirmation to the Client by Yellax, or (iii) commencement of the activities for the Client by Yellax.
- 2.2. Additions and modifications to the Agreement are only binding insofar as they have been confirmed by Yellax in writing or by e-mail.
- 2.3. All offers and/or quotes from Yellax are always without obligation and do not bind Yellax to enter into an Agreement, unless stated otherwise in those offers and/or quotes.
- 2.4. Yellax will do its utmost to perform its services with care, where appropriate in accordance with the arrangements and procedures agreed in writing with the Client. All Yellax services are performed on the basis of a best-efforts obligation, unless and insofar as Yellax has expressly promised a result in the Agreement and the result concerned has also been described with sufficient clarity and measurability. Any arrangements concerning a service level are always expressly agreed in writing.

Article 3. Efforts of Client and Yellax

- 3.1. In consultation with Yellax, the Client will provide: adequate workspace, user facilities on computer and telecommunications systems, and all the usual facilities required to carry out the work efficiently.
- 3.2. The necessary efforts of the Client, or of a person who falls under the responsibility of the Client, must be delivered with sufficient quality and on time.
- 3.3. If a party identifies that the other party does not make sufficient efforts, it will inform the other party in writing.
- 3.4. The parties agree to instruct their staff to comply with the house rules that apply on site.
- 3.5. Both the Client and Yellax will do their utmost to have the work carried out under the responsibility and supervision of one person.
- 3.6. The Client has the right to require that certain Yellax employees are deployed during the execution of the project. The names of these persons must be documented in the Order

Confirmation or Agreement. Yellax will do its utmost to make the relevant persons available for the duration of the project. Keeping these persons available cannot be required from Yellax if the execution of the work is delayed due to actions of the Client.

- 3.7. If a party is of the opinion that the other party's employees are not functioning properly or are not willing or able to perform the work properly, that party is entitled, in consultation with the other party, to require the other party to replace these employees, unless this cannot be demanded of the other party for good cause.
- 3.8. Replacement of personnel under the provisions of this Article may result in modifications to the terms agreed with Yellax. In that case, Yellax is entitled to adjust the timetable. Yellax will notify the Client of these modifications in writing.
- 3.9. In order to enable proper performance of the Agreement by Yellax, the Client will always provide all data or information reasonably requested by Yellax in a timely manner, and will at its own initiative provide Yellax with data and/or information, where Yellax's knowledge thereof is reasonably desirable. The Client guarantees the accuracy and completeness of the provided information.

Article 4. Terms and Schedule

- 4.1. Both Yellax and the Client are aware that they are jointly responsible for the terms to be achieved. Both parties will have to fulfil their obligations to attain the agreed terms. The agreed terms will be met by both the Client and Yellax, except in the case of force majeure, with due observance of the following provisions.
- 4.2. An agreed delivery term is approximate and is never a fatal term, unless explicitly agreed otherwise between the parties. Delivery terms are based on the working conditions applicable at the time of the Agreement and on timely delivery of materials. If a delay arises as a result of changes in said working conditions and/or as a result of late delivery of materials, the delivery term will be extended to the extent necessary.
- 4.3. If the progress of the work threatens to be delayed or is delayed, the parties will inform each other as soon as possible in writing, stating the cause of the delay and indicating whether or not the term will be extended.
- 4.4. If the delay is due to Yellax, it will try to undo the delay to the best of its ability.
- 4.5. If the delay is due to an act or omission of the Client, Yellax is prepared - at the request of the Client and as far as possible - to undo the delay. The Client must pay the costs Yellax incurred to remedy the delay and must compensate Yellax for any idle hours of employees of Yellax. Yellax will send the Client an invoice for this.

- 4.6. Yellax is not liable for any exceeded terms, unless there is intent or gross negligence on the part of the management board or managers of Yellax.
- 4.7. If a clear fatal deadline has been agreed, Yellax will only be in default in the fulfilment thereof, if the Client has first given Yellax notice of default in writing in the event of exceeding the deadline, in which case the Client has also set Yellax a reasonable term to remedy the failure and this reasonable term has expired. This notice of default must contain as full and detailed a description of the failure as possible in order for Yellax to respond adequately.
- 4.8. If it has been agreed that the performance of the work will take place in phases, Yellax is entitled to postpone the commencement of the activities that belong to a phase until the Client has approved the results of the previous phases in writing.

Article 5. Prices and Rates

- 5.1. The prices and rates for the Services are included in the Agreement.
- 5.2. All prices and rates are in euros, excluding Dutch turnover tax (VAT), any transaction costs and other levies imposed by the government.
- 5.3. All prices and rates are exclusive of travel and accommodation costs, unless otherwise agreed in the Agreement.
- 5.4. Yellax is entitled to pass on price changes that are implemented by third parties/suppliers to the Client in full. Yellax is also entitled to pass on price changes that affect its cost prices to the Client in full. Yellax will inform the Client of such a price change in advance in writing.

Article 6. Invoicing and Payment

- 6.1. Invoicing will take place in accordance with the invoicing schedule as included in the Agreement, failing which invoicing will be 100% in advance. All invoices must be paid by the Client in accordance with the provisions of the Agreement, or, if no payment term is included therein, within thirty (30) days of the invoice date on the bank account number indicated on the invoice.
- 6.2. In the absence of payment within the applicable payment term, the Client is in default without any notice of default being required, and the Client will owe Yellax the applicable statutory commercial interest on the outstanding amount, without prejudice to all other rights accruing to Yellax. This interest will be calculated from the due date of the relevant invoice up to and including the day of full payment. In addition, all extrajudicial and judicial collection costs to be incurred will be borne by the Client, hereby fixed at at least 15% of the invoice amount with a minimum of € 500.

- 6.3. All payments must be made without any deduction, discount or set-off.
- 6.4. Any complaints about alleged incorrect invoices must be received by Yellax in writing and within eight days of the invoice date, failing which the right to complain about the relevant invoice will lapse.

Article 7. Communication

- 7.1. Notifications or communications between the parties will be either written or electronic (for example by e-mail), on the understanding that the party who chooses to use an electronic medium bears the risk of proof if, according to the other party, a notification did not arrive or did not fully arrive.

Article 8. Intellectual Property Rights

- 8.1. All IPR related to the Software (including future updates) are and remain the full property of Yellax and can never become the property of the Client. The IPR of all modifications or improvements of the Software, regardless of whether these are the result of requests, suggestions or ideas originating from the Client, are also entirely held by Yellax, unless the parties have agreed otherwise in writing.

Insofar as the employees of Yellax carry out work upon the request of the Client on software that is the property of the Client, as a result of which IPR is created, this IPR will be the property of the Client, unless the parties have agreed otherwise in writing.

- 8.2. If Yellax has to use equipment, data files, etc. present at the Client in the context of the performance of the Agreement, the Client guarantees that third-party rights do not oppose such use and indemnifies Yellax against any claim by a third party of a breach of this warranty.

Article 9. Confidentiality and Takeover Condition

- 9.1. The parties are mutually obligated to maintain the confidentiality of reciprocal information that they can reasonably suspect is confidential.
- 9.2. The parties will also impose this obligation of confidentiality on their employees and third parties who are involved in the Agreement.
- 9.3. The parties are mutually obligated to refrain from recruiting personnel from the other party for the period of one (1) year after the last date of assignment. In the event that Yellax employees enter into employment with the Client or are employed by a third party at the Client or otherwise work for the Client within this period of one year, the Client is obligated to pay at least the annual salary of the employee concerned prior to commencing employment with the Client.

Article 10. Term, Suspension and Termination

- 10.1. The Agreement commences on the date stipulated in the Agreement or the date that Yellax commenced with the execution of the Agreement.
- 10.2. The Agreement is entered into for the duration as stated in the Agreement. An Agreement that has been entered into for a certain period of time cannot be terminated by the Client mid-term.
- 10.3. If the Agreement has been entered into for an indefinite period of time, the Client and Yellax are entitled to terminate the Agreement in writing, with due observance of a notice period of one (1) month. The Agreement can only be terminated with effect from the end of a calendar month.
- 10.4. If the Client does not or not timely fulfil an obligation arising from the Agreement and/or any related Agreement(s), or if there is good reason to believe that the Client will not be able to fulfil its contractual obligations, Yellax is entitled to suspend the performance of the Agreement and/or related Agreement(s), without Yellax being obligated to pay any damages. Suspension will not take place until after Yellax has informed the Client of this in writing and the Client has been given a reasonable period to fulfil its obligations.
- 10.5. Apart from what is stipulated elsewhere in these General Terms and Conditions:
- a. Each of the parties is entitled, without any reminder or notice of default being required, to extrajudicially dissolve the Agreement in whole or in part by means of a registered letter or through legal proceedings, if the other party fails to fulfil its obligations and this failure persists after notice of default, in which the negligent party is given a reasonable period to fulfil its obligations.
 - b. Each of the parties is entitled, without any reminder or notice of default being required, to extrajudicially dissolve the Agreement by means of a registered letter, if the other party has been granted suspension of payment; if the other party has filed for its own bankruptcy, its bankruptcy has been applied for or has been pronounced; if the other party's company is liquidated or terminated other than for the purpose of merging companies; if a substantial part of the assets of the other party is or has been seized, or if the other party is no longer deemed to be able to meet its obligations.
- 10.6. If the Client has already received services performed under the Agreement at the time of dissolution, these performances and related payment obligations will not be subject to cancellation.
- 10.7. In the event of suspension or dissolution, fees for services already performed by Yellax will be immediately due and payable, after deduction of amounts already paid by the Client.

- 10.8. If this is required by Yellax, the Client will immediately return or destroy the Software and the Documentation at the first request of Yellax after dissolution or termination, if and insofar as this is possible.
- 10.9. Obligations which by their nature are intended to continue after termination of the Agreement, remain effective. The termination of the Agreement expressly does not discharge the parties from the provisions regarding confidentiality, intellectual property, applicable law and choice of forum.

Article 11. Liability

- 11.1. The liability for an attributable shortcoming in the fulfilment of an obligation under the Agreement and any related Agreements is limited to the loss or damage that is the direct consequence of intent or gross negligence on the part of a Yellax employee.
- 11.2. Yellax is not liable for indirect damage, such as but not limited to consequential damage or loss, loss suffered, loss of goodwill, third-party damage, lost profit.
- 11.3. Yellax's liability is always limited on a case-by-case basis to an amount equal to 50% of all amounts invoiced in the twelve (12) months preceding the loss-causing event, excluding VAT. Credit invoices sent to the Client by Yellax will be deducted from the amounts referred to in this Article.
- 11.4. A condition for the existence of any right to damages is always that the Client reports the loss or damage to Yellax in writing as soon as possible after the occurrence thereof. Any claim for damages shall lapse by the mere expiration of twelve (12) months after the occurrence of the loss or damage.
- 11.5. If a fine or penalty has been agreed with the Client, the fine or penalty payable will always apply without prejudice to Yellax's right to damages if the actual loss of Yellax is higher than the fine or penalty.
- 11.6. The Client indemnifies Yellax against all third party claims due to product liability as a result of a defect in a product or system that the Client has provided to a third party and that is manufactured by means or on the basis of Software and/or Services provided by Yellax.
- 11.7. The Client indemnifies Yellax against all claims based on intellectual property rights on information and materials provided to Yellax for the purpose of creating Software or otherwise in support of the Services of Yellax for the benefit of the Client.
- 11.8. The Client bears the risk of loss, theft, embezzlement of or damage to objects, data, Documentation, Software or databases of Yellax delivered to the Client or used by the Client in the context of performing the Agreement.

- 11.9. The Client indemnifies Yellax against claims of third parties, including employees of Yellax, who suffer loss or damage in connection with the performance of the Agreement resulting from acts or omissions of the Client or unsafe situations or an unsafe working environment within the Client's organisation.

Article 12. Force Majeure

- 12.1. Neither party is obligated to fulfil any obligation if it is prevented from doing so as a result of force majeure. Force majeure includes, but is not limited to military action, government action, weather conditions, breakdowns or disruptions in telecommunication and internet connections, delays or shortcomings in the fulfilment of obligations by suppliers of Yellax and strikes.
- 12.2. The parties can only invoke force majeure if the party concerned informs the other party of this as soon as possible. The party invoking force majeure will provide proof of the situation upon the first request.
- 12.3. A party will always have the right, if the force majeure on the part of the other party lasts longer than 60 days, to extrajudicially dissolve the assignment or Agreement with immediate effect by means of a registered letter, without the parties being obligated to pay any damages.

Article 13. Transfer of Rights and Obligations and Use of Third Parties

- 13.1. Each party may only transfer rights and obligations to third parties after written permission from the other party, which permission will not be withheld on unreasonable grounds.
- 13.2. Yellax is entitled to use hired personnel in the execution of the assignment.
- 13.3. If Yellax deems it necessary to use third parties for the correct execution of the agreed activities or the provision of the agreed Services, it is authorised to do so. Insofar as this entails extra costs, these will only be charged insofar as this has been agreed in advance in writing.

Article 14. Applicable Law and Disputes

- 14.1. All Agreements between the Client and Yellax and legal relationships thereof are governed by Dutch law. The applicability of the Vienna Sales Convention is expressly excluded.
- 14.2. Disputes that may arise between Yellax and the Client in connection with an Agreement concluded between Yellax and the Client or as a result of further Agreements thereof, will be settled by the competent court in the district where Yellax has its registered office.

14.3. The parties will only appeal to the court after they have made every effort to settle a dispute in mutual consultation.

Article 15. Miscellaneous

15.1. Other general terms and conditions of the parties other than these General Terms and Conditions expressly do not apply.

15.2. Yellax reserves the right to change these General Terms and Conditions from time to time at its sole discretion. Yellax will send a notification with due observance of a reasonable period of time before the updated General Terms and Conditions take effect. If the Client does not agree with the intended changes, the Client may terminate the Agreement, but only if the change results in the Client being provided with a performance that differs substantially from the original performance. In the absence of a termination, the Client is deemed to have accepted the changed General Terms and Conditions in full.

15.3. If one of the provisions of these terms and conditions is void or is rescinded, the other provisions of these General Terms and Conditions will remain in force and the parties will consult each other to agree on a replacement provision, in which the nature of the first-mentioned provision and of these terms and conditions will be maintained insofar as acceptable.

3. Project Support

The provisions mentioned in this Chapter are, in addition to the General Provisions of these General Terms and Conditions, applicable if Yellax and the Client have concluded an agreement regarding Yellax assigning a specifically appointed employee to the Client, with the aim of having this employee carry out work under the direction and supervision or guidance of the Client (project support).

Article 1. Applicability

1.1. The Agreement never implies an employment contract between the employee and the Client.

1.2. The Agreement specifies:

- a. The name, function and qualifications of the employees to be deployed;
- b. The nature of the work;
- c. The duration of the deployment;
- d. The scope of the deployment;
- e. The rate.

1.3. The activities performed by the persons deployed by Yellax are carried out during normal Working Days and Working Hours, unless otherwise agreed.

- 1.4. The Client determines the specific activities to be carried out and is responsible for the time allocation, guidance, monitoring and results.
- 1.5. Yellax is entitled to replace persons deployed by others with the same qualifications after consultation with the Client.
- 1.6. For the hours that persons deployed are unable to perform work due to sickness, holidays and/or leave, the Client will not be liable for any compensation, except if and insofar as a replacement has been arranged in mutual consultation with the Client.
- 1.7. In the event of sickness longer than ten Working Days, holidays longer than fifteen Working Days, resignation, leave other than holidays longer than ten Working Days, unsatisfactory performance or death of the persons deployed, Yellax will ensure adequate replacement. Replacement will only take place after consultation with the Client.
- 1.8. The days on which the persons deployed may take up leave will be determined by Yellax in consultation with the Client.
- 1.9. All travel and/or accommodation costs, both within and outside of the Netherlands, of the persons deployed, related to the deployment, will be borne by the Client. The travel and accommodation costs will be further specified in the Agreement.
- 1.10. Yellax guarantees the Client that the wage tax and social security contributions due are deducted from the salary of the persons deployed and paid to the competent authorities. Yellax indemnifies the Client against claims of such authorities.

4. Consultancy

The provisions in this Chapter apply in addition to the General Provisions of these General Terms and Conditions if Yellax provides Consultancy services upon the request and for the benefit of the Client.

Article 1. Applicability

- 1.1. The Consultancy activities to be performed by Yellax for the Client may include advice, implementation, installation, configuration and/or training.
- 1.2. Yellax will do its utmost to perform Consultancy services with care, in accordance with the arrangements and procedures recorded in writing with the Client. Consultancy services will be carried out by Yellax on the basis of a best-efforts obligation, unless and insofar as Yellax expressly promised a result in the Agreement and the result in question is sufficiently described in the Agreement.

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- 1.3. All travel and accommodation costs, both within and outside of the Netherlands, will be borne by the Client. The travel and accommodation costs will be further specified in the Agreement.

5. Course and Training

The provisions in this Chapter apply in addition to the General Provisions of these General Terms and Conditions if Yellax provides courses and training services upon the request and for the benefit of the Client.

Article 1. Registration and Cancellation

- 1.1. Cancellation of the registration for training or courses can only be done in writing, or by email by sending an e-mail to trainingen@yellax.com. In case of cancellation or rescheduling the following costs are due:
- a. between 15 and 5 working days before the start: 50% of the total course/training costs.
 - b. within 5 working days before the start: 100% of the total course/training costs.
- 1.2. If a participant fails to appear at the training or course, the full course/training fee will be charged. It is possible for a substitute to participate in the same training or course at the same time. If a student does not finish the training or course after its start, there is no right to a refund of the course fee.
- 1.3. Yellax strives to always let a scheduled training or course take place, but reserves the right to cancel the training or course and/or reschedule them for a later date in the case of too few participants, sickness of the teacher or other unforeseen circumstances. Rescheduling cannot constitute a reason for the Client to dissolve the Agreement with Yellax. Yellax will never be liable for damages in such cases.