



Motion10

Terms and Conditions

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1. Definitions

1.1. In these general terms and conditions, the capitalised terms are defined as follows:

Motion10	The private limited company Motion10 B.V., with its registered office in Capelle aan den IJssel and its principal place of business at Wilhelminakade 175 in (3072 AP) Rotterdam
Party	Motion10 or the Client
The Parties	Motion10 and the Client
Client	The legal entity to whom Motion10 makes an offer or with whom Motion10 concludes an Agreement
Agreement	Everything that has been agreed on in writing between Motion10 and the Client, including the accompanying appendices.

2. Applicability

- 2.1. These general terms and conditions apply to all offers from Motion10 and to all agreements it concludes with the Client.
- 2.2. In the event of a conflict between the content of the Agreement and the content of these general terms and conditions, the provisions of the Agreement will prevail.
- 2.3. Deviations from these general terms and conditions are valid only when agreed on by the Parties in writing. Motion10 has the right to unilaterally amend these general terms and conditions. The latest version of the general terms and conditions will always apply between Motion10 and the Client. The most recent version will always be traceable on the Motion10 website.
- 2.4. In cases that an offer from Motion10 or the Agreement does not provide for, or if changes to an offer or the Agreement are necessary, the Parties will consult in order to arrive at a reasonable addition or change. Changes to an off or the Agreement are valid only when agreed between the Parties in writing.
- 2.5. Any purchase or other terms and conditions of the Client do not apply and are explicitly rejected.
- 2.6. If any provision of these general terms and conditions is void or voided, the remaining provisions of these general terms and conditions will remain in full force and effect and the Parties will consult to agree on new provisions to replace the void or voided provisions, taking the objective and purport of the void or voided provisions into account to the greatest possible extent.



3. Performance of the Agreement

- 3.1. Unless otherwise agreed, the employees of Motion10 can only be deployed for full working days at the Client.
- 3.2. The performance of the Agreement can take place at Motion10's office in Rotterdam, at a location of the Client or a combination of both. Insofar as performance of the Agreement takes place at a location of the Client, the Client makes sure the employees of Motion10 can perform their work, that they have the necessary (facility) resources and - where applicable - that the Client's employees are available in accordance with the agreed schedule.
- 3.3. The Client is prepared to act as a reference for Motion10. The content of communications is coordinated with the Client prior to publication.
- 3.4. Unless otherwise agreed, the terms applicable to Motion10 from the Agreement are target dates.
- 3.5. If the Client provides Motion10 with information, Motion10 may assume its correctness and completeness in the performance of the Agreement.
- 3.6. Insofar as the Parties process personal data in the context of the performance of the Agreement, they will process, manage and secure it with the greatest care and comply with the requirements of the General Data Protection Regulation (GDPR) and national legislation in that regard.

4. Agreements about hiring employees

- 4.1. During the term of the Agreement and for one year after its termination, none of the Parties will directly or indirectly approach employees of the other Party, who are or have been involved in the performance of the Agreement, to (a) employ them or (b) to work for it, directly or indirectly. The Party that violates the prohibition included in this paragraph will owe the other Party an immediately due and payable fine of €50,000 for each violation. This fine does not affect the possibility to claim compensation (insofar as this exceeds the amount of the fine). The same applies to the fee referred to in paragraph 2 of this article.
- 4.2. Insofar as there is no situation as referred to in paragraph 1 of this article, and an employee of Motion10 referred to therein enters the employment with the Client during the term of the Agreement or for a year after its termination, the Client owes Motion10 a one-off fee. This fee is equal to 25% of the value of the most recent Agreement, calculated on an annual basis and subject to a minimum of €12,250.00. The value is thus determined on the total amount owed by the Client under the Agreement if that Agreement would have a term of one year.
- 4.3. In a situation as referred to in paragraph 2 of this article, the Client is obliged to take over any obligations entered into by Motion10 for the benefit of the employee in question (such as, among other things, training and lease car obligations) and to bear the remaining costs.



5. Intellectual property

- 5.1. Unless otherwise indicated, Motion10 retains the copyrights and all industrial property rights to all designs, images, drawings, models, software, quotations, programs and other works and materials, in the broadest sense of the word.
- 5.2. Without the explicit written permission of Motion10, the Client is not permitted to alienate or show all or part of the work referred to in the first paragraph of this article or to allow third parties to use it.
- 5.3. If and insofar as Motion10 develops (software) products specifically for the Instruction, the Client will receive the related source codes, including associated documentation.
- 5.4. Motion10 at all times reserves the right to use knowledge and experience acquired at the Client, as well as products developed for the Client for the benefit of itself or other clients.

6. Confidentiality

- 6.1. Neither Party will disclose the information it receives (in whatever form) from the other Party or any other information about the other Party that it knows or can reasonably suspect to be secret or confidential or which it can expect to cause damage to the other Party when disseminated.
- 6.2. The Client ensures and guarantees that the employees involved in the performance of the Agreement and third parties engaged by the Client are aware of the confidentiality obligations as set out in this article and are contractually bound by the confidentiality obligations.
- 6.3. In the event of termination of the Agreement, for whatever reason and in any way whatsoever, the confidentiality obligations as set out in this article will remain in full force.

7. Liability

- 7.1. Any liability of Motion10, on whatever basis, in connection with the performance of an Agreement, is limited to a maximum of 25% of the total invoice amount (excluding VAT) charged by Motion10 in connection with the Agreement related to the damage-causing event. In the case of continuing performance contracts, the liability is limited to a maximum of 25% of the invoice amounts (excluding VAT) charged by Motion10 prior to the damage-causing event in connection with the aforementioned Agreement. In no event is Motion10 liable for an amount greater than the amount that its liability insurer pays out in a particular case.
- 7.2. The following do not qualify for compensation:
 - a consequential damage. Consequential damage includes, among other things, business interruption loss, production loss, lost profit and fines;
 - b damage as a result of intent or wilful recklessness by auxiliary staff or non-managerial subordinates of Motion10.
- 7.3. The Client indemnifies Motion10 against all third-party claims related to the use of products or services supplied by Motion10 in the context of the performance of the Agreement.

8. Force majeure

- 8.1. In addition to the provisions of Section 6:75 of the Dutch Civil Code, a failure on the part of Motion10 in the fulfilment of any obligation towards the Client cannot be attributed to Motion10 in the event of a circumstance independent of Motion10's will, as a result of which the fulfilment of its obligations towards the client is wholly or partially prevented or as a result of which the fulfilment of its obligations cannot reasonably be expected from Motion10. These circumstances include, but are not limited to war or imminent war, terrorism, riots, strikes, work stoppages, epidemics, water damage, flooding, fire, natural disasters, government measures, entry restrictions and bans on leaving imposed by authorities, computer viruses, long-term cloud outage and failure of suppliers or other third parties.
- 8.2. If a situation as referred to in the first paragraph of this article arises as a result of which Motion10 cannot fulfil its obligations, both Parties have the right to dissolve the agreement in writing in whole or in part. In that case, Motion10 is not obliged to pay compensation for any damage, even if Motion10 enjoys any advantage as a result of the force majeure situation.

9. Licences

- 9.1. Insofar as Motion10 acts towards the Client as a reseller of a licence supplier, the general terms and conditions of the relevant licence supplier apply to the Agreement.
- 9.2. Motion10 charges the Client for the costs associated with the licences referred to in paragraph 1 on a monthly basis by means of an invoice. This invoice contains:
- a an advance payment for expected use of the licence for the coming month and additional costs;
 - b supplementary payment or settlement in connection with the actual use of the licence over the past month.

10. Fees and invoicing

- 10.1. Motion10 has the right to adjust its prices and rates in the following situations and at the following times:
- a annually, with effect from 1 January based on the consumer price index (CPI Price Index) of Statistics Netherlands (2015=100);
 - b at any other time, if Motion10 believes circumstances make this necessary.
- 10.2. If an employee of Motion10 who is involved in the performance of the Agreement is at any time is promoted to a different job level within Motion10 (for example, but not exclusively, because of the progression from junior to senior), Motion10 is also entitled to increase its prices and rates unless the Client, within the term referred to in the following paragraph, indicates that it prefers the employee in question to be replaced with a (possibly less experienced) employee with a (more or less) equal job level.
- 10.3. Motion10 will notify the Client of a price or rate increase no later than two weeks in advance. If the Client does not wish to agree to an increase announced by Motion10, it must inform Motion10 of this within five working days of the announcement.



10.4. The work to be performed by Motion10 in the context of the Agreement will be invoiced per month on the basis of subsequent calculation, unless otherwise agreed. Any additional work will be invoiced monthly in arrears on the basis of subsequent calculation. The client will assess and approve the hours claimed monthly afterwards, always within one week of the end of the month. The approved timesheet is sent as an attachment with the invoice. If the Client fails to notify any objections with regard to the timesheet within the aforementioned period, the approval will be deemed to have been granted. This term is an expiry period.

- 10.5. All prices and rates used by Motion10 are:
- a inclusive of travel costs to and from the agreed place of employment within the Netherlands;
 - b exclusive of costs for licences or set-up of any required development, test, acceptance and production environments;
 - c exclusive of turnover tax (VAT) or other government-imposed levies unless otherwise agreed.

11. Work outside office hours

11.1. Motion10 applies the following percentages of the hourly rates for work outside office hours (08:30 to 17:30):

Working hours	Percentage
Hourly rate for deployment outside office hours on Monday to Friday	150%
Hourly rate for deployment on Saturday	150%
Hourly rate for deployment on Sundays and public holidays	200%

11.2. For standby Motion10 employees outside office hours, one-third of the regular hourly rate for deployment is charged per hour. When work is actually carried out, the provisions in the table above apply. Agreements about being on stand-by can only be made in writing after consultation with the employee concerned and Motion10. This condition does not apply to managed services.

12. Payment (term)

12.1. Unless otherwise indicated in writing by Motion10, invoices must be paid within 30 days of the invoice date. This term is a final deadline.

12.2. The Client is not entitled to set off a claim or to suspend a payment or other obligation.

12.3. If the Client does not pay within the agreed payment term, Motion10 has the right to suspend the work associated with the Agreement.

12.4. If payment has not been made within the agreed payment term, the Client will immediately owe the statutory commercial interest and will be obliged to pay full compensation for the extrajudicial collection costs. The extrajudicial costs amount to 15% of the principal sum, including interest. The extrajudicial collection costs effectively incurred are owed if these are higher than those resulting from the above calculation.

- 12.5. If during legal proceedings the decision is made in favour of Motion10, all costs incurred by it in relation to these proceedings will be payable by the Client.

13. Term and termination

- 13.1. Unless otherwise agreed, the Agreement is entered into for an indefinite period and each of the Parties is at all times entitled to terminate the Agreement with effect from the end of the month, subject to a notice period of one month.
- 13.2. If the Agreement has been entered into for a fixed period of time and neither of the Parties has notified Motion10 in writing no later than one month before the expiry of the term that they wish to terminate the Agreement as of the agreed date, the Agreement will be tacitly extended by one month. Subsequently, the Agreement is always extended by one month, until one of the Parties terminates the Agreement with effect from the end of the month, subject to a notice period of one month.
- 13.3. If the Client terminates the Agreement within one month prior to the start date of the agreed work, it owes 75% of the total agreed contract amount for the first month of the Agreement, irrespective of the manner in which the Agreement is terminated. If the contract sum is calculated other than per month, the total contract sum for the first month will be calculated proportionally.
- 13.4. In addition to the statutory termination options, the Parties may immediately dissolve the Agreement by means of a written statement, if:
- a a winding-up petition has been filed for the other Party or its liquidation has been ordered;
 - b the other Party has applied for or has been granted a moratorium;
 - c the other Party's business is liquidated or otherwise effectively terminated, other than for the purpose of reconstruction or amalgamation of businesses;
 - d the tax authorities exercise their rights under the Collection of State Taxes Act against the other Party.
- 13.5. The termination or dissolution of the Agreement does not discharge the parties from their obligations under the agreement that continue to apply by their very nature, such as, but not limited to, the provisions in respect of observing secrecy, liability, intellectual property, applicable law and the court with territorial jurisdiction and rights of use.

14. Privacy and confidentiality

- 14.1. Insofar as the Parties process personal data in the context of the performance of the Agreement, they will process, manage and secure it with the greatest care and comply with the requirements of the General Data Protection Regulation (GDPR) and national legislation in that regard.
- 14.2. Neither Party will disclose the information it receives (in whatever form) from the other Party or any other information about the other Party that it knows or can reasonably suspect to be secret or confidential or which it can expect to cause damage to the other Party when disseminated.
- 14.3. The Client ensures and guarantees that the employees involved in the performance of the Agreement and third parties engaged by the Client are aware of the confidentiality obligations as set out in this article and are contractually bound by the confidentiality obligations.

- 14.4. Within the framework of the provisions of this article, Motion10 takes the following measures:
- a upon joining Motion10, each employee signs a Non Disclosure Agreement (NDA);
 - b occasionally, additional NDAs can be agreed upon at the request of a Client, for example, in the event that highly confidential or sensitive information is used;
 - c Motion10 has an internal privacy policy. This policy contains a procedure for dealing with sensitive information, personal data and (potential) data breaches.
 - d In the event of termination of the Agreement, for whatever reason and in any way whatsoever, the obligations set out in this article will remain in full force and effect.

15. Applicable law and competent court

- 15.1. The Agreement and all associated legal acts are governed exclusively by Dutch law.
- 15.2. All disputes arising from or relating to the Agreement will be submitted to the competent court in Rotterdam, the Netherlands.