



# **General Terms and Conditions**

## **Motion10**

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## 1 Definitions

1.1 The capitalised words in these general terms and conditions will be defined as follows:

Motion10	The private company with limited liability Motion10 B.V., with registered offices in Capelle aan den IJssel, and with offices in (3072 AP) Rotterdam at Wilheminakade 175
Party	Motion10 or the Client
Parties	Motion10 and the Client
Client	The legal entity to which Motion10 makes an offer and with which Motion10 concludes an Agreement
Agreement	All which has been agreed on between Motion10 and the Client in writing, including any associated annexes.

## 2 Applicability

- 2.1 These general terms and conditions govern all offers made by Motion10 and all agreements it concludes with the Client.
- 2.2 In case of any conflicts between the contents of the Agreement and the contents of these general terms and conditions, the provisions of the Agreement will prevail.
- 2.3 Any deviations from these general terms and conditions will only apply if accepted in writing between the Parties. Motion10 has the right to unilaterally amend these general terms and conditions. The last version of the general terms and conditions will always apply between Motion10 and the Client. The most recent version can always be found on the Motion10 website.
- 2.4 The Parties will consult each other to come to a reasonable addition or amendment in any situation not arranged by an offer of Motion10 or the Agreement, or if an offer or the Agreement must be amended. Any amendments to an offer or the Agreement will only be valid insofar as these have been agreed between the Parties in writing.
- 2.5 Any purchase or other conditions of the Client will not apply and are expressly rejected.
- 2.6 If any provision of these general terms and conditions is invalid or destroyed, the other provisions of these general terms conditions will remain in full force and effect, and the Parties will discuss new provisions to replace the invalid or void provisions, in which context the purpose and intent of the invalid or destroyed provision will be observed to the greatest extent possible.

## 3 Implementation of the Agreement

- 3.1 Unless agreed otherwise, the employees of Motion10 can only be deployed at the Client for complete business days.
- 3.2 The implementation of the Agreement can take place at the offices of Motion10 in Rotterdam, at a location of the Client, or a combination of both. Insofar as the implementation of the Agreement takes place at a location of the Client, the Client will ensure that the employees of Motion10 will be able to perform their work, that they are in the possession of the necessary

(facility-related) resources, and – insofar as applicable – that the employees of the Client will be available in accordance with the agreed schedule.

- 3.3 The Client is willing to serve as a reference for Motion10. The contents of any public statements will be coordinated with the Client prior to their publication.
- 3.4 Unless otherwise agreed, the terms applicable to Motion10 from the Agreement are target dates.
- 3.5 If the Client provides information to Motion10, Motion10 may rely on its completeness and accuracy during the implementation of the Agreement.

## **4 Agreements on hiring employees**

- 4.1 During the effective period of the Agreement and for a period of one year after termination thereof, neither Party will directly or indirectly approach employees of the other Party (previously) involved in the implementation of the Agreement to (a) enter into an employment relationship or (b) to, directly or indirectly, perform work for it. The Party which violates the clause set out in this article will owe an immediately exigible fine of € 50,000.00 to the other Party for each violation. This fine is without prejudice to the option of claiming compensation for damages (insofar as this exceeds the amount of the fine). The same applies to the compensation referred to in paragraph 2 of this article.
- 4.2 Insofar as no situation as referred to in paragraph 1 of this article exists, and an employee of Motion10 as referred to in this paragraph is hired by the Client during the effective period of the Agreement or during a period of one year following the termination thereof, the Client will owe Motion10 a non-recurring fee. This fee is equal to 25% of the value of the most recent Agreement on an annual basis with a minimum of € 12,250.00. The value will be determined based on the total amount due by the Client based on the Agreement if this Agreement would have an effective period of one year.
- 4.3 In a situation as referred to in paragraph 2 of this article, the Client is required to take over any obligations accepted by Motion10 for the benefit of the employee in question (such as training and lease vehicle obligations) and bear any remaining costs.

## **5 Intellectual property rights**

- 5.1 Unless indicated otherwise, Motion10 will reserve all copyrights and all industrial property rights on all designs, images, drawings, models, software, quotations, programs, and other works and materials, everything in the broadest sense of the word.
- 5.2 Without the express written permission of Motion10, the Client may not fully or partially dispose of the works as referred to in the first paragraph of this article to third parties, to showcase them, or to otherwise make them available for use.
- 5.3 If and insofar as Motion10 develops (software) products specifically in the context of the contract, the Client will receive the corresponding source code including the associated documentation.
- 5.4 Motion10 will always reserve the right to use the knowledge and experience accrued at the Client, as well as any products developed for the Client, for the benefit of itself and other clients.

## **6 Privacy & Confidentiality**

- 6.1 Insofar as the Parties process personal data in the context of the implementation of the Agreement, they will process, manage, and secure these data with the utmost diligence, and comply with the requirements imposed by the General Data Protection Regulation (GDPR) and national legislation in this respect.
- 6.2 Each of the Parties will observe the confidentiality of any information which it receives from the other Party (in any form) and all other information concerning the other Party of which confidentiality it is aware or which confidentiality it could reasonably suspect, or of which it could suspect that its disclosure would harm the other Party.
- 6.3 The Client will ensure and guarantee that any employees involved in the implementation of the Agreement and any third parties engaged by the Client are aware of the confidentiality obligations as set out in this article and that they will be contractually bound to the confidentiality obligations.
- 6.4 In the context of the provisions of this article, Motion10 takes the following measures:
- a. upon joining Motion10, every employee signs a Non Disclosure Agreement (NDA);
  - b. in incidental cases, additional NDA's 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 process for dealing with sensitive information, personal data and (potential) data leaks.
- 6.5 If the Agreement is terminated for any reason and in any manner, the confidentiality obligations as set out in this article will remain in full force and effect.

## **7 Liability**

- 7.1 Any liability of Motion10 on whatever grounds related to the implementation of an Agreement will be limited to no more than 25% of the overall invoice amount (excluding VAT) charged by Motion10 in relation to the Agreement to which the damage event relates. In case of long-term contracts, the liability will be limited to no more than 25% of the invoice amounts (excluding VAT) which Motion10 has charged in relation to the aforementioned Agreement prior the damage event. Motion10 will never be liable for any amounts higher than the amount paid by its liability insurer for the specific event.
- 7.2 The following will never be eligible for compensation:
- a. consequential damage. Consequential damage includes losses due to standstill, production losses, loss of profits, and fines;
  - b. damage caused by the intent or gross negligence of auxiliary persons or non-executive subordinates of Motion10.
- 7.3 The Client will indemnify Motion10 against all claims by third parties related to the use of the products or services provided by Motion10 in the context of the implementation of the Agreement.

## **8 Force majeure**

- 8.1 In addition to the provisions of Article 6:75 DCC, a shortcoming of Motion10 in the fulfilment of any obligation vis-à-vis the Client will not be attributable to Motion10 in case of a

circumstance beyond the control of Motion10 due to which the fulfilment of its obligations vis-à-vis the Client is fully or partially obstructed, or due to which the fulfilment of its obligations cannot reasonably be demanded from Motion10. These circumstances include, but are not limited to, war or the threat of war, terrorism, riots, strikes, work interruptions, epidemics, water damage, floods, fire, natural disasters, government measures, travel restrictions imposed by the government, computer viruses, and shortcomings of suppliers or other third parties.

- 8.2 If a situation as referred to in the first paragraph of this article occurs due to which Motion10 is unable to fulfil its obligations, both Parties have the right to fully or partially dissolve the Agreement in writing. In this case, Motion10 will not be required to pay any form of compensation for any damage, even if Motion10 enjoys benefits from the situation of force majeure.

## 9 Licences

- 9.1 Insofar as Motion10 acts as the reseller of a licence vendor vis-à-vis the Client, the general terms and conditions of the licence vendor in question will govern the Agreement.
- 9.2 Motion10 will charge a monthly fee to the Client by means of an invoice concerning the licences referred to in paragraph 1. This invoice will consist of:
- an advance for the expected use of the licence for the next month and the associated costs;
  - a subsequent payment or settlement related to the actual use of the licence for the past month.

## 10 Fees and invoicing

- 10.1 Motion10 has the right to change its fees and rates in the following situations and at the following times:
- annually with effect from January 1<sup>st</sup> based on the consumer price index (CPI Price Index) of the Netherlands Bureau of Statistics (2015=100);
  - at any other time if circumstances require, such at the discretion of Motion10.
- 10.2 If an employee of Motion10 who is involved in the implementation of the Agreement at Motion10 is promoted to another position level (such as, but not limited to, a promotion from junior to senior), Motion10 also has the right to increase its fees and rates, unless the Client within the period stated in the following paragraph indicates that it prefers replacing the employee in question with a(n) (potentially less experienced) employee with a (more or less) equal position level.
- 10.3 Motion10 will inform the Client of a fee or rate increase no later than two weeks in advance. If the Client does not wish to accept an increase announced by Motion10, it must inform Motion10 within five business days of the date of the announcement.
- 10.4 The activities to be performed by Motion10 in the context of the Agreement will be invoiced monthly on the basis of time & material, unless otherwise agreed. Any additional work will be invoiced monthly in arrears based on time & material. Client will assess and approve the written hours monthly afterwards, always within one week after 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. The term is an expiration term.

- 10.5 All fees and rates charged by Motion10:
- a. include travel costs from and to the agreed place of work within the Netherlands;
  - b. exclude costs for licences or the configuration of potentially necessary development environments, test environments, acceptance environments, and production environments;
  - c. exclude turnover tax (VAT) or other government levies, unless agreed otherwise.

## 11 Work outside of office hours

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

Working hours	Percentage
Hourly rate for work outside of office hours on Monday to Friday	150%
Hourly rate for work on Saturday	150%
Hourly rate for work on Sunday and public holidays	200%

- 11.2 A rate of 1/3 of the regular hourly rate will be charged for a stand-by shift of a Motion10 employee outside of office hours. If actual work is performed, the provisions in the table set out above apply. Agreements on stand-by shifts can only be concluded in writing after consulting the employee in question and Motion10. This condition does not apply to so-called Managed Services.

## 12 Payment (period)

- 12.1 Unless indicated otherwise in writing by Motion10, invoices must be paid within 30 days of the invoice date. This period is a deadline.
- 12.2 The Client does not have the right to settle a claim or to suspend a(n) (payment) obligation.
- 12.3 If the Client fails to complete the payment within the agreed payment period, Motion10 has the right to suspend the work related to the Agreement.
- 12.4 If the payment has not taken place within the agreed payment period, the Client will immediately owe the statutory commercial interest and will be required to fully bear all extrajudicial collection costs. The extrajudicial collection costs amount to 15% of the principal including interest. The actual extrajudicial collection costs incurred will be due if these are higher than the result of the calculation above.
- 12.5 If Motion10 is found to be correct in legal proceedings, all costs it has incurred in relation to these proceedings will be borne by the Client.

## 13 Duration and termination

- 13.1 If not agreed otherwise, the Agreement will be concluded for an indefinite period, and each of the Parties will always have the right to terminate the Agreement with effect from the end of the month with due observance of a notice period of one month.
- 13.2 If the Agreement has been concluded for a definite period and neither of the Parties informs Motion10 in writing no later than one month before the expiry of the effective period that it

- intends to terminate the Agreement with effect from the agreed date, the Agreement will be tacitly renewed by one month. The Agreement will subsequently always be renewed by one month until one of the Parties terminates the Agreement with effect from the end of the month with due observance of a notice period of one month.
- 13.3 If not agreed otherwise, after the Agreement has been concluded and the planning of work has been established between the Parties, hours will be charged by Motion10 to the Client as soon as the schedule is deviated because of idle time or other reasons on the part of the Client.
- 13.4 If the Client terminates the Agreement within one month prior to the effective date of the agreed work, it will owe 75% of the agreed overall contract fee for the first month of the Agreement, irrespective of the manner in which the Agreement is terminated. If the contract fee is not determined on a monthly basis, the overall contract fee for the first month will be calculated pro-rata.
- 13.5 In addition to the statutory dissolution options, the Parties can also dissolve the Agreement with immediate effect by means of written notice if:
- a. the bankruptcy of the other Party has been requested or rendered;
  - b. the other Party has applied for or is granted suspension of payments;
  - c. if the company of the other Party is liquidated or ends otherwise, except for the purposes of restructuring or a merger of companies;
  - d. the Dutch Tax and Customs Administration exercises its rights arising from the Dutch Collection Act vis-à-vis the other Party.
- 13.6 The termination or dissolution of the Agreement does not release the Parties from the obligations arising from the Agreement which by their nature must continue, such as, but not limited to, the provisions on confidentiality, liability, intellectual property, applicable law, competent court, and usage rights.

## 14 Applicable law and competent court

- 14.1 The Agreement and all associated legal transactions are governed exclusively by the laws of the Netherlands.
- 14.2 All disputes arising from or related to the Agreement will be submitted to the competent Dutch Court in Rotterdam.