

Terms and Conditions – Smilo Platform B.V.

These are the terms and conditions of Smilo Platform B.V. (**Smilo Platform B.V.**). Smilo Platform B.V. is located at Lusthofstraat 17 B 3062 WB Rotterdam, registered with the Chamber of Commerce (*Kamer van Koophandel*) under number: 70878781.

If you have any questions, you can contact us via info@smilo.io or by mail: Lusthofstraat 17 B.

Smilo Platform B.V. reserves the right to change these terms and conditions. You agree that the most recent version of these terms and conditions apply. Parties may deviate from these Terms and Conditions in writing.

Article 1 - General

These terms and conditions apply to every offer, proposal and assignment between Smilo Platform B.V. and you (**Client**). On request, Smilo Platform B.V. shall send these terms and conditions to you, free of charge. They are also available on <https://smilo.io/>.

Article 2 - Establishment of the Assignment

The assignment shall be deemed established when Contractor receives a confirmation in writing from Client.

Article 3 - Proposals and Offers

1. All offers and proposals from Smilo Platform B.V. are non-binding, unless agreed otherwise in writing. An offer or proposal only applies to the assignment specified therein (and not to possible future assignments).
2. If the Client provides Smilo Platform B.V. with certain information, Smilo Platform B.V. may assume that the provided information is correct and will base the proposal on that information.

Article 4 - Pricing

1. Smilo Platform B.V. can raise the price in the interim in the case of unforeseen and cost price increasing circumstances, if these circumstances occur after the establishment of the assignment.
2. An offered price does not include expenses for Smilo Platform B.V. and does not include taxes or levies by the authorities.

Article 5 - Payment and Collection Charges

1. Client must pay within fourteen days after the invoice date.
2. If the payment by Client is due, he will automatically be in default (*verzuim*), without a notice of default (*ingebrekestelling*) being required. In case of default, Client owes

Smilo Platform B.V. the statutory commercial interest. The interest on the payable amount is calculated from the moment that the payment is due, until the moment that the payable amount has been paid by Client in full.

3. Any outstanding amounts by the Client are immediately payable in the following cases:
 - a. Client fails to pay within the payment term;
 - b. Client is bankrupt or applied for a suspension of payment or any other insolvency procedure;
 - c. Client (company) is dissolved or liquidated;
 - d. Client (private individual) is placed under guardianship or deceased.
4. If Client does not pay in time, he shall immediately be in default. He will then be due to the Supplier all extrajudicial costs. In case of an invoice amount to € 267, these costs will be € 40. In case of a higher invoice amount, the maximum collection fees are as follows:
 - a. 15% on the first € 2,500;
 - b. 10% on the part that remains thereafter, up to € 5,000;
 - c. 5% on the part that remains thereafter, up to € 10,000;
 - d. 1% on the part that remains thereafter, to € 200,000;
 - e. 0.5% on the remaining part.

Article 6 - Duration

Client and Smilo Platform B.V. enter into the contract for an indefinite period of time, unless Parties agree otherwise.

Article 7 - Execution Time

1. If Client owes Smilo Platform B.V. a prepayment or if Smilo Platform B.V. needs Client to provide certain information or materials, the term within which Smilo Platform B.V. shall execute the activities (the execution time), shall not begin to run until the prepayment, information or material is received by Smilo Platform B.V..
2. If parties, before execution, have agreed on a term for the fulfillment of the services, the final date shall never be regarded as a deadline. When the term is due, Client shall send a notice of default to Smilo Platform B.V..
3. Client cannot terminate the agreement if Smilo Platform B.V. exceeds a term. This does not apply when execution of the activities is permanently impossible or if Smilo Platform B.V. does not execute the activities within a new term for execution. Such new term should be given in writing.

Article 8 - Third Parties

Smilo Platform B.V. may involve third parties to (partially) perform the activities. The following articles of the Dutch Civil Act (*Burgerlijk Wetboek*) do not apply:

- 7:404 (execution by a certain person);
- 7:407 sub 2 (joint and several liability);
- 7:409 (death of a certain person).

Article 9 - Execution of the Assignment

1. Smilo Platform B.V. shall execute the assignment at the best of its knowledge and abilities and according to the requirements of professional practice.
2. Smilo Platform B.V. may execute the assignments in different phases and send separate invoices on the different phases.
3. If Smilo Platform B.V. performs the assignment in different phases, Smilo Platform B.V. may suspend any activities on the next phase until Client approved the execution of the last phase in writing.
4. Client shall timely provide Smilo Platform B.V. with all information or material, required for the execution of the assignment.
5. If Client does not provide the material or information in time, Smilo Platform B.V. may suspend the execution of the assignment and charge the additional costs, resulting from the delay. Smilo Platform B.V. is not liable for any damages, resulting from incorrect or incomplete information, provided by Client.

Article 10 - Changes of the Assignment

1. If it proves to be necessary to change the assignment during the activities in order to guarantee a decent execution of the assignment, parties shall negotiate the required changes and agree on them in writing.
2. If parties agree on altering the assignment, Smilo Platform B.V. may raise or lower the price. If possible, Smilo Platform B.V. shall provide a quotation to Client in advance. The execution time may change with a change of the assignment. Client agrees on the possibility to change the assignment, the pricing and the execution time.
3. Smilo Platform B.V. may refuse a request, made by Client, to change the assignment if such changes could affect the quality or quantity of the activities.

Article 11 - Suspension, Dissolution

1. Smilo Platform B.V. may temporarily suspend the execution of the activities if he cannot comply because of *force majeure*.
2. If the execution of the assignment is permanently impossible parties may cancel the assignment for the part that has not been fulfilled.
3. Smilo Platform B.V. may suspend or cancel the assignment if Client fails to meet its obligations, partially, completely or in time. In such cases, Client shall compensate Smilo Platform B.V. for damages.

Article 12 - Termination in the Interim

1. If Smilo Platform B.V. cancels the assignment in the interim, Smilo Platform B.V. shall ensure a handover of the work yet to be performed to a third party, unless the termination is imputable to Client. If the handover of the activities leads to additional costs for Smilo Platform B.V., these costs shall be borne by Client.
2. Smilo Platform B.V. may immediately cancel the assignment (and is not liable for any damages doing so) in one of the following events:
 - a. Client fails to pay within the payment term;

- b. Client is declared bankrupt or applied for suspension of payments, or applied or becomes subject to any other insolvency procedure;
- c. Client (the company) is dissolved or liquidated;
- d. The occurrence of circumstances in which Client can no longer freely dispose of his capital.

Article 13 - Force Majeure

1. Smilo Platform B.V. is not obliged to comply in the event of *force majeure* .
2. Smilo Platform B.V. may suspend the obligations, coming from the assignment, for as long as the force majeure continues.
3. If Smilo Platform B.V. complied with a part of its obligations, and that part has an independent value, Smilo Platform B.V. may charge that part to Client.

Article 14 - Retention of title

1. Everything supplied by Smilo Platform B.V. shall remain the property of Smilo Platform B.V. until Client has fully fulfilled all its obligations.
2. Client must do everything he can reasonably do to secure the properties of Smilo Platform B.V..
3. If Smilo Platform B.V. wishes to exercise its property rights, Client gives unconditional and irrevocable consent to Smilo Platform B.V. to enter all places where the properties are located, so that Smilo Platform B.V. can take them back.

Article 15 - Guarantees

1. Smilo Platform B.V. warrants that all deliveries shall be in compliance with the usual requirements and standards that may be stipulated in this respect at the time of delivery.
2. This does not apply if a defect occurs to the goods delivered, as a result of Client's fault.
3. This guarantee also does not apply if the defect is being caused by circumstances beyond Smilo Platform B.V.'s control.

Article 16 - Examination

1. Client shall examine the result of the assignment when the assignment is finished. Client shall examine if the quantity and the quality of the result is in accordance with the agreement.
2. Client shall notify Smilo Platform B.V. in writing within fourteen days after completion of the assignment, of any visible defects or shortcomings. Client shall notify Smilo Platform B.V. in writing within thirty days on shortcomings or defects that are invisible at first sight. The notification must contain a detailed description of the shortcoming.

Article 17 - Complaints

1. Client shall notify Smilo Platform B.V. in writing of any complaints within one month days after detection (or –on invisible shortcomings– after he could have detected it).

2. A timely notified complaint does not suspend or cancel any payment obligation resting on Client.
3. If Client does not notify Smilo Platform B.V. timely, Client is not entitled to any recovery, replacement or compensation.
4. If it is established that the complaint is justified and the notification by Client thereof was timely delivered, Smilo Platform B.V. shall recover, replace or compensate it's work within a reasonable term after returns thereof from the Client.
5. If it is established that a complaint is not justified, Client shall compensate Smilo Platform B.V. for made expenses (like research costs).

Article 18 - Liability

1. Smilo Platform B.V. is only liable for direct damages suffered by Client as a direct consequence of a shortcoming by Smilo Platform B.V..
2. Smilo Platform B.V. is not liable for any damages resulting from Smilo Platform B.V. relying on incorrect or incomplete information provided by Client.
3. The liability of Smilo Platform B.V. shall never exceed the amount paid by its insurer.
4. If Smilo Platform B.V.'s professional liability insurer does not cover the damages, Smilo Platform B.V.'s liability is limited to the amount paid by Client. Under no circumstances can this liability exceed the amount of €11,00.
5. The limitations set out in this article do not apply if the damages are the result of a deliberate act or gross negligence.

Article 19 - Limitation Period

The limitation period on all claims and defences against Smilo Platform B.V. is one year.

Article 20 - Indemnification

1. Client indemnifies Smilo Platform B.V. from any claims by third parties, who suffer damages, resulting from the execution of the assignment but cannot be attributed to Smilo Platform B.V..
2. If third parties address Smilo Platform B.V. to be liable for damages resulting from the execution of the assignment, Client shall support Smilo Platform B.V. both judicial and extrajudicial and Client shall do what may be expected from him.
3. If Client does not provide the support described in paragraph 2, Smilo Platform B.V. may take the actions it deems required. All expenses and damages made by Smilo Platform B.V. in this respect shall be borne by Client.

Article 21 - Intellectual Property

1. All the plans, documents, pictures, drawings, programming, creations and related information, made by Smilo Platform B.V., remain property of Smilo Platform B.V.. This also applies if related expenses are charged or when these are improved, later on.
2. Client can only copy the aforementioned properties if it is for internal use within Client's company and cannot show the properties to third parties or put the properties at disposal in a different manner than originally intended by Smilo Platform B.V..

3. Client and Smilo Platform B.V. shall agree on more detailed arrangements, in separate agreements, on certain licenses, given to Client by Smilo Platform B.V.. If parties do not agree on further terms concerning the licenses, Smilo Platform B.V. grant Client a non-transferrable license to use the works, made by Smilo Platform B.V. (like: software, designs, illustrations or any other creation), for an indefinite period of time.

Article 22 - Non-Disclosure

1. Smilo Platform B.V. shall not disclose any of Client's information to third parties, unless Smilo Platform B.V. is required by a statutory or professional obligation to disclose the information.
2. Smilo Platform B.V. shall not use any information, obtained from Client, in a different manner than originally intended, except that the information may be used in a legal procedure that involves Smilo Platform B.V. and the information can be of importance.
3. Client shall not disclose the contents of agreements, confirmations, offers, reports, advices or other expressions from Smilo Platform B.V., whether they are in writing or not.

Article 23 - Nullity

If any part of these conditions is void or voidable, this does not alter the validity of the remainder of these conditions. The invalid or unenforceable part shall be replaced by a provision that most closely follows the content of the invalid provision.

Article 24 - Conflicting Provisions

If any of the provisions from these terms and conditions are in conflict with a provision from an agreement, the agreement prevails.

Article 25 - Applicable Law

Dutch law.

Article 26 - Competent Court

The Court of Rotterdam.