

## 1 Application

- 1.1 All of Edwin van de Ven's deliveries, services and offers shall be made exclusively on the basis of these General Terms & Conditions. These General Terms & Conditions shall form part of all agreements entered into between Edwin van de Ven and its contractual partners (hereinafter also referred to as "Customer") with regard to deliveries or services offered by Edwin van de Ven. They shall also apply to future deliveries, services or offers to the Customer, even if not being referred to explicitly.
- 1.2 By using Edwin van de Ven's services or accepting deliveries, Customer implicitly agrees to these terms and conditions.
- 1.3 Customer's general terms & conditions shall not apply unless Edwin van de Ven has explicitly agreed to their applicability in writing. Edwin van de Ven's General Terms & Conditions shall also apply if Edwin van de Ven unconditionally effects deliveries or services to Customer even aware that Customer's terms and conditions conflict with or deviate from its own.

## 2 Applicable law, jurisdiction

- 2.1 The laws of the kingdom of The Netherlands are exclusively applicable for any delivery, contract, service or offer provided by Edwin van de Ven.
- 2.2 Maastricht, Netherlands shall be stipulated as the exclusive place of jurisdiction for disputes resulting from or relating to this contract insofar as the Customer has a general place of jurisdiction in The Netherlands and is a businessman, corporate entity operating under public law or a public separate-assets firm.
- 2.3 This place of jurisdiction also applies if the Customer has no general place of jurisdiction (i.e. residence) in the Netherlands and is not a user who falls under the general jurisdiction of the European Union.
- 2.4 In principle the place of jurisdiction for obligations arising from this agreement is Maastricht, Netherlands. Statutory regulations on jurisdiction are not affected.
- 2.5 Customer agrees not to start or join class action against Edwin van de Ven in any way.
- 2.6 In case one or multiple statements in these terms and conditions are declared invalid, all other statements remain fully applicable.
- 2.7 In case of any discrepancy about the explanation of any of the statements in these terms and conditions, the statement or statements should be interpreted in the spirit of these general terms and conditions
- 2.8 In case a situation occurs which is not covered in these terms and conditions, the situation should be judged in the spirit of these terms and conditions.
- 2.9 Edwin van de Ven is liable to allow a third party to do part of the duties specified in the contract. The application of articles 7:404, 7:407-2 and 7:409

(Burgerlijk Wetboek) is explicitly excluded.

- 2.10 In case Customer intends to assert a claim against Edwin van de Ven in accordance with the preceding provisions, it shall promptly notify Edwin van de Ven hereof, provide comprehensive information and consult with Edwin van de Ven. Customer shall give Edwin van de Ven the opportunity to examine the case of loss. The parties to the contract agree to consult each other on the measures to be implemented, particularly in settlement negotiations. Before any case is taken to a court, both parties must have made utmost effort in settlement negotiations.

## 3 Start and conclusion of contracts

- 3.1 All offers made by Edwin van de Ven are subject to change without notice and non-binding unless explicitly designated as binding or specifying a fixed time frame for acceptance. No contract shall enter into force until Edwin van de Ven has provided a written or electronic order confirmation. The written or electronic order confirmation shall determine the scope of delivery. All ancillary agreements and amendments have to be confirmed in writing or electronically by Edwin van de Ven to be valid.
- 3.2 Unless specified otherwise all offers made by Edwin van de Ven are excluding VAT and do not include any taxes or charges that might be imposed by any government or regulatory body.
- 3.3 If Edwin van de Ven explicitly warrants or has agreed on a fixed delivery period or date the order confirmation shall govern the applicable delivery periods. In any other cases all periods and dates mentioned by Edwin van de Ven have to be understood as determining the date of delivery merely approximately. The delivery period shall not commence until Customer has furnished all documents, permits and approvals to be procured if required and until any agreed advance payments have been received.
- 3.4 Edwin van de Ven is never liable for any damage, direct or indirect, caused by the usage of incorrect or incomplete information provided by Customer.
- 3.5 Edwin van de Ven is eligible to withdraw from a contract in case Customer fails to provide any required documents, permits, approvals or advance payments in a timely manner.
- 3.6 If Edwin van de Ven is unable to deliver the agreed upon services, Customer shall be notified immediately and eligible to withdraw from the contract immediately without any charges. Customer shall not be eligible to claim any compensation for direct or indirect damages resulting from this.
- 3.7 All hosting contracts are of infinite duration unless explicitly specified otherwise.
- 3.8 If a hosting contract is ended within 3 months after the starting date, a fee of 3 times the monthly fee excluding VAT will be charged to cover installation

expenses.

- 3.9 Hosting contracts can be ended with a one month term of notice in writing before the 15th of the preceding month.
- 3.10 In case Customer fails to provide timely payments for any reason, Edwin van de Ven reserves the right to withdraw from a contract when the due amount hasn't been paid one month after the original invoice due date and after at least two written payment reminders have been issued. For a hosting contract this will mean the hosting service will be terminated. For a maintenance contract this will mean no further service will be provided until payment is received. A database dump file containing all information can be provided at a charge of three times the monthly fee excluding VAT. This dump file will be provided only after receiving the corresponding payment.
- 3.11 After ending a contract, Customers' data will be kept for a at most four months. After this period Edwin van de Ven is eligible to remove Customers' data.
- 3.12 Prices of an agreed upon service may only be raised after prior notice. In case prices are raised for a service used by customer, customer has the right to immediately end the contract without any additional costs with the exception of requesting a database dump file. A database dump file containing all information can be provided at a charge of 3 times the monthly fee excluding VAT. This dump file will be provided after receiving the corresponding payment.
- 3.13 In the event of strong suspicion that infringements are arising during Customer access to Edwin van de Ven's servers, Edwin van de Ven reserves the right to suspend its delivery of the service to Customer immediately. Customer shall immediately be informed thereof.

#### 4 Hosting Services

- 4.1 Hosting services are provided with a 95% uptime guarantee on a yearly basis. Planned and announced downtime for maintenance and defects in the hosted software do not affect the yearly counted uptime.
- 4.2 If the yearly uptime of 95% is not met, Customers are eligible to request a refund. The refund will be calculated by calculating the average daily cost of the service based on the monthly payments by Customer and then multiplying this amount by the amount of days the service was not available above the allowed number by the 95% guaranteed uptime.  
Edwin van de Ven is not liable to offer and Customer is not eligible to request compensation for loss of revenue or other indirect damage to Customer's business.
- 4.3 Edwin van de Ven is liable to create daily backups of Customer's data.
- 4.4 In case backups are not available when a restore is due, Customer is eligible to request a compensation equal to a maximum of 3 (three) times the monthly

payment for the hosting services paid by Customer to Edwin van de Ven. Edwin van de Ven shall in no case bear any additional liability for any loss of data and shall not be liable to offer any other compensation to Customer for direct or indirect damages resulting therefrom.

- 4.5 In case the back-up to be restored is not available due to technical failure on the side of the hosting provider used by Edwin van de Ven, Edwin van de Ven shall in no case bear any liability for any loss of data and shall not be liable to offer any compensation to Customer for direct or indirect damages resulting therefrom.
- 4.6 Edwin van de Ven is eligible to update Customers' software to a later version without Customers' permission if keeping the older version is a security risk or creates increased effort in maintenance. Customer will be notified before the update takes place and cannot be billed for any work done under this point if no permission was given in writing.
- 4.7 In case open source software is hosted, the software is provided to customer "AS-IS", without warranty of any kind, expressed or implied, including but not limited to, warranties of quality, performance, non-infringement, merchantability or fitness for a particular purpose. Further Edwin van de Ven does not warrant that the software or any related service will always be available. Customer assumes all risk associated with the installation and use of the software and in no event shall the author(s) of the content or copyright holders of the software be liable for claims, damages or other liabilities arising from, out of, or in connection with the software. Users of the software are solely responsible for determining the appropriateness of use and assume all risks associated with it's use, including but not limited to the risks of program errors, damage to equipment, loss of data or software programs or unavailability or interruption of operations.

#### 5 Liability

- 5.1 Customer is liable for maintaining security on his or her device used to access the service offered by Edwin van de Ven and will access the service at his or her own risk when using insecure connections.
- 5.2 Customer is liable to ensure compliance to all applicable laws while using software and services offered by Edwin van de Ven
- 5.3 Customer is liable to ensure compliance to local privacy laws and regulations
- 5.4 Customer is liable for ensuring the availability of suitable equipment to make use of the service offered by Edwin van de Ven.
- 5.5 For OpenStudio the officially supported browser is the latest version of Google Chrome. Issues in other browsers might not be resolved, in case they don't exist in Google Chrome.
- 5.6 Customer is liable for the maintenance of the

equipment used to make use of the service offered by Edwin van de Ven.

- 5.7 Customer is liable to inspect any delivered goods and/or services on delivery. In case of any discrepancies between Edwin van de Ven's offer and the delivery, Customer should notify Edwin van de Ven in writing within 7 days. When a timely solution is offered, customer should pay as specified on the original invoice without any additional delay.
- 5.8 In case a discrepancy between the delivered goods and/or services is reported after the aforementioned period, Customer is not entitled to receive any solution free of extra charge.
- 5.9 In case a complaint proves to be invalid, Customer is liable for all costs, including research, incurred by Edwin van de Ven. These costs will be calculated using Edwin van de Ven's standard rates at the time of responding.
- 5.10 Edwin van de Ven is not liable for direct or indirect damage arising from unauthorized access, denial of service attacks, or any other actions carried out against the hosting platform by a third party that may endanger the meeting of specified service levels and safety of data.
- 5.11 Edwin van de Ven is liable for damage arising as a result of a software defect only if the defect in question has been deliberately concealed by Edwin van de Ven and Customer is using the latest version available of the software.
- 5.12 Edwin van de Ven's liability for infringements of contractual obligations and in tort is limited to willful intent and gross negligence.
- 5.13 In no case is Edwin van de Ven liable for any indirect damages. This includes consequential damage, lost revenues, missed cost savings and interruption of business.
- 5.14 Customer is liable to send timely payment(s) to Edwin van de Ven for any invoices sent by Edwin van de Ven.
- 5.15 In case Customer fails to provide timely payment(s), Edwin van de Ven is eligible to send two reminders. One from the 1<sup>st</sup> day after the due date of the invoice, where Customer incurs an administrative fee of €12.50 and a second one from 14 days after the invoice due date where Customer incurs an additional administrative fee of €25. There will be a gap of at least 13 days between the first and second reminder. All administrative fees exclude any applicable taxes.
- 5.16 In case Customer fails to provide payment for an invoice within 28 days after the invoice due date, payment collection can be handled by a collection agency at Edwin van de Ven's discretion.

## 6 Confidentiality

- 6.1 By using the hosting service Edwin van de Ven may procure information related to Customer's business. This information is to be treated with strict

confidentiality and shall not be disclosed unless Customer has agreed to the disclosure in writing.

- 6.2 If Edwin van de Ven is required by any court or regulatory body to provide information or to produce documents relating in any way to the Services or Customer's data Edwin van de Ven will comply fully to the request.

In any proceedings or forum in which Edwin van de Ven is not a party or participant, Customer shall pay Edwin van de Ven's costs incurred in responding to any such requirement at Edwin van de Ven's standard rates applicable at the time of responding, together with outlays including legal expenses, and VAT thereon (where appropriate).

- 6.3 Customer is liable to maintain secrecy and security of passwords and keys used to access services offered by Edwin van de Ven. These passwords and keys should never fall into the public domain. In case Edwin van de Ven finds that passwords or keys have been compromised, Edwin van de Ven is eligible to deactivate them immediately to maintain security. Customer shall immediately be informed thereof.

## 7 Circumstances beyond control

- 7.1 Neither Edwin van de Ven nor Customer shall be in breach of their contractual obligations or incur any liability to the other if Edwin van de Ven or Customer are unable to comply with a Services Contract as a result of any cause beyond Edwin van de Ven's or Customer's reasonable control. In the event of any such occurrence affecting one of them, that one shall be obliged as soon as reasonably practicable to notify the other, who shall have the option of suspending or terminating the operation of the Services Contract on notice taking effect immediately on delivery.

## 8 Third parties

- 8.1 If Customer breaches any of his/her obligations under the Services Contract and there is any claim made or threatened against Edwin van de Ven by a third party, Customer shall compensate Edwin van de Ven and reimburse Edwin van de Ven for and protect Edwin van de Ven against any loss, damage, expense or liability incurred by Edwin van de Ven which results from or arises from or is connected with any such breach and any such claim. If any payment is made by Customer under this clause Customer shall not seek recovery of that payment from Edwin van de Ven at any time.
- 8.2 Customer safeguards Edwin van de Ven from any claims from any third party Customer has contractual obligations to.

## 9 OpenStudio hosting storage space

- 9.1 Included in the contract is 5GB of file storage space. Edwin van de Ven is required to provide adequate backups of this data to the same standard as the database backups.
- 9.2 In case more than 5GB of storage is required, additional space can be rented with 10GB increments.

9.3 Edwin van de Ven is allowed to change the price for this additional space at any time. At a price change, Edwin van de Ven notifies Customer and Customer is permitted to cancel the contract without additional fees.

9.4 Additional rented space can be downgraded on a monthly basis, when requested before the 15<sup>th</sup> of the preceding month. Increasing the allowed storage can be done at any time.

#### **10 OpenStudio payment providers**

10.1 The default payment provider for the shop in OpenStudio is Mollie B.V.  
KvK-nummer: 302.04.462  
Keizersgracht 313  
1016EE Amsterdam  
The Netherlands  
(Hereinafter referred to as “Mollie”)

10.2 When using the online shop in OpenStudio, Customer agrees that Edwin van de Ven will be a reseller for Mollie. Edwin van de Ven will receive a small fee for each transaction made to Customer through the services Mollie from Mollie and Customer will retain the transaction pricing specified on the website Mollie.

#### **11 Copyright**

11.1 Edwin van de Ven retains the copyright on all his work, unless specified otherwise by contract. No copyright is ever transferred to Customer by default in any way, under any circumstance, at any time.