

MedScaler B.V.

Terms & Conditions

Version: 20190904



TERMS & CONDITIONS

MEDSCALER B.V.

1. Definitions

In these terms and conditions (the “**Terms and Conditions**”) the terms listed below are defined as follows:

- 1.1. **Agreement** shall mean any oral or written agreement between Service provider and Client under which Service provider has agreed to render Services to the Client, any amendment or supplement thereto and all (legal) acts in preparation and/or execution of that agreement.
- 1.2. **Client** shall mean the entity purchasing the Services from Service provider or the entity that has otherwise entered into an Agreement with Service provider subject to these Terms and Conditions.
- 1.3. **Party** shall mean the Client or Service provider, together the **Parties** that have entered into an Agreement.
- 1.4. **Service provider** shall mean MedScaler B.V., a limited liability company incorporated under the laws of the Netherlands, with its registered offices at 3011 BH Rotterdam, Schiedamse Vest 154, registered in the Chamber of Commerce under registration number 74404903.

2. Applicability

- 2.1. These Terms and Conditions govern the offering, sale and rendering of all services (the services herein referred to as the “**Services**”) from or on behalf of Service provider to Client and apply to all similar dealings between Service provider and Client, including all requests for offers and orders by the Client with respect to the purchase of Services and all legal relationships arising from the foregoing.
- 2.2. These Terms and Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the rendering of Services and shall apply in preference to and supersede any and all terms and conditions submitted by the Client. Failure of Service provider to object to terms and conditions set by the Client shall in no event be construed as an acceptance of any terms and conditions of Client.
- 2.3. Any change, addition or deviation from the quotation or offer provided by Service provider, these Terms and Conditions or any Agreement shall be valid only if agreed in writing by the authorized representatives of the Parties.
- 2.4. Any electronic communication between the Parties shall be considered to be a “writing” and/or “in writing”. The electronic communication system used by Service provider will serve as sole proof for the content and the time of delivery and receipt of such electronic communication.

3. Quotation and Agreement

- 3.1. Quotations, offers or statements of work made by Service provider in whatever form, are not binding upon Service provider and merely constitute an invitation to the Client to place an order. All quotations issued by Service provider are revocable and subject to change without notice.

Orders are not binding until accepted by Service provider in writing. Service provider shall be entitled to refuse an order without indication of its reasons.

- 3.2. An Agreement shall come into effect upon the written acceptance by an authorized representative of Service provider of (i) a Client's written acceptance of a quotation provided by Service provider or (ii) an order by a Client.
- 3.3. If, and insofar as an Agreement has not yet been concluded in accordance with Section 3.2, the Agreement will be considered as concluded under these Terms and Conditions as soon as Service provider starts rendering Services to the Client at its express written or oral request.

4. Obligations Service provider

- 4.1. Service provider shall render the Services in a professional manner, with reasonable skill and care, in conformity with good industry practice, with due observance of the applicable (inter)national laws, regulations, professional standards and in accordance with this agreement and any quotations signed.
- 4.2. Unless expressly stated otherwise in the Agreement, any times or dates for the rendering of Services by Service provider are estimates and shall not be of the essence. Service provider is entitled to render the Services as stated in the Agreement in parts and to invoice separately. In no event shall Service provider be liable for any delay in rendering the Services. Delay in rendering the Services shall not relieve the Client of its obligation to accept the Services and to pay the rate specified in the Agreement for the Services rendered.
- 4.3. Service provider will determine the manner in which the Agreement will be executed and will be entitled to engage third parties as subcontractor in the execution of the Agreement without any notice thereof to the Client.
- 4.4. The full legal and beneficial ownership of all Intellectual Property Rights (IPR) created in the course of the provision of the Services, in results and in deliverables, shall belong to the Service provider. The Client shall have a royalty free, perpetual license to use those rights to enable the Client to have the benefit of the Services for use within the Client's own business. The royalty free, perpetual license to use those rights shall not enter into force unless and until the Service provider has received payment in full for the Services rendered.

5. Obligations Client

- 5.1. The Client shall provide Service provider timely with all relevant information, documentation and data ("**Client Information**") for the rendering of the Services. Service provider is not obligated to commence the rendering of the Services before it has received the required Client Information in the agreed form within the agreed term. If Service provider receives the information later than agreed, the estimated term for the rendering of the Services will be extended by the duration of this delay.
- 5.2. The Client shall provide the Service Provider with information preferably through a secure internet connection. Service provider shall not act as a back-up provider and excludes any liability for the loss of Client Information in the transfer thereof to or at its premises.
- 5.3. The Client hereby warrants that the Client Information provided is complete, true and accurate in all material respects and that it is entitled to disclose the Client Information to Service provider and

that such disclosure, and subsequent use of the Client Information by Service provider for the rendering of the Services, shall not infringe any third-party rights.

- 5.4. The Client further warrants that the Client Information and any other information provided by the Client to Service provider shall not constitute or include personal information identifying any person as defined in Regulation (EU) 2016/679 or the Dutch Data Protection Act or any legislation or regulation replacing or succeeding such Regulation or Act.
- 5.5. The Client shall not at any time during the term of this Agreement or for a period of twelve (12) months following its expiry or termination employ or solicit for employment or engage on any basis any member of the Service provider's personnel (whether employed or engaged on some other basis by the Company).
- 5.6. The Client acknowledges the cost to the Service provider of losing and replacing any such person and the Client agrees that if it breaches the provisions of clause 5.5, the Client shall pay to the Service provider by way of liquidated damages a sum equal to the greater of (i) €50,000; and (ii) an amount equal to the person's aggregate annual gross remuneration package.

6. Acceptance and Payment

- 6.1. The Client shall within seven (7) calendar days following the receipt of (the results of) the Services complete any acceptance tests. If the Client does not notify Service provider in writing of any non-conformance of the Services in view of the Agreement, all Services rendered will be deemed accepted by the Client.
- 6.2. The Client shall pay Service provider the fees and expenses specified in the Agreement within fourteen (14) days following the date of Service provider's invoice for Services rendered, by means of transfer into the bank account mentioned on the invoice. All payments shall be made without any deduction on account of any taxes and free of set-off or other counterclaims. Prices and fees specified in the Agreement or any quotations are exclusive of value added tax (VAT) and all other taxes, which, where applicable, will be added and payable by the Client.
- 6.3. Service provider may, without prejudice to any other rights of Service provider, increase the amount of any overdue payment with ten percent (10%) with a minimum amount of one hundred (100) euros and may further charge an interest of two percent (2%) per month, from the due date computed on a daily basis until all amounts outstanding are paid in full.
- 6.4. In the event that full payment has not been received on any outstanding payment within fourteen (14) days, Service provider has the right to immediately suspend (further) execution of the Agreement until all amounts outstanding are paid in full.
- 6.5. If any facts or circumstances give Service provider good reason to fear that the Client will not fulfil its obligations under the Agreement, or will not fulfil them (or have them fulfilled) in full, the Client shall, immediately at the first request of Service provider provide sound security (in the form of pledge, surety or otherwise) for the payment(s) owed and/or make an advance payment. If the Client fails to provide such a security or advance payment, Service provider has the right to immediately suspend (further) execution of the Agreement, and all amounts owed by the Client will become immediately due and payable.

- 6.6. Any complaint with respect to the invoice must be notified to Service provider in writing within seven (7) calendar days after the date of invoice. Thereafter the Client shall be deemed to have approved the invoice.

7. Confidential Information

- 7.1. Each Party shall keep secret and shall not disclose any information of a confidential nature obtained from the other Party in relation to the Agreement or during its execution ("**Confidential Information**"), with the exception of Confidential Information that:
- i. is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public;
 - ii. was already known by the receiving Party before receiving the Confidential Information from the disclosing Party or is hereafter rightfully disclosed to the receiving Party by a third party legally permitted to make such disclosure without restriction on use or disclosure;
 - iii. is permitted to be disclosed by receiving Party pursuant to the prior express written consent of disclosing Party;
 - iv. is required to be disclosed pursuant to applicable law, however, disclosing Party shall give receiving Party prompt written notice sufficient to allow disclosing Party to take whatever action it deems necessary to protect its Confidential Information.
- 7.2. Each Party shall use the Confidential Information of the other Party solely in the context of the Agreement. Parties will impose their obligations under this Article 7 to any third party engaged by them.
- 7.3. Service provider shall process any personal information identifying any person, as defined in Regulation (EU) 2016/679 or the Dutch Data Protection Act or any legislation or regulation replacing or succeeding such Regulation or Act, in accordance with the applicable legislation. Service provider has implemented sufficient security measures to guarantee such processing as set out in the previous sentence, including procedures to contact the Client in the event of information security incidents.
- 7.4. Service provider engages itself to delete and/or modify personal data stored by Service provider if so requested by the Client.
- 7.5. The Service provider is allowed to use the name of the Client, including a short description of the Client's product and the activities performed for the Client by the Service provider, in an online portfolio, with the sole purpose of providing an overview of completed assignments, unless the Client explicitly requests the Service provider not to do so.

8. Intellectual Property

- 8.1. The Client shall retain all right, title and interest in any and all intellectual and industrial property rights in and to the Client Information and other information provided to Service provider under the Agreement.
- 8.2. Service provider shall retain and shall own all right, title and interest in any and all intellectual and industrial property rights developed or reduced to practice by Service provider (i) prior to the effective date of the Agreement or independent of the Services, and (ii) all improvements or modifications thereto developed in connection with the rendering of the Services and all new

inventions developed in connection with the Services, provided that such improvements, modifications and inventions are of general applicability and do not relate to any Confidential Information or Client Information obtained from the Client.

- 8.3. The Client hereby grants to the Service provider a perpetual, non-exclusive, royalty free license to use the Client Information and/or Confidential Information for research and development purposes, unless the Client explicitly and in writing requests the Service Provider not to do so.

9. Term and Termination

- 9.1. An Agreement is concluded for an indefinite period of time and ends upon completion of the Services, unless the Agreement is terminated earlier as provided in Article 9.2.
- 9.2. Each Party may forthwith terminate this Agreement with immediate effect and without prejudice to any of its other rights under this Agreement, and in addition to any other remedies available to it by law or in equity, by registered letter to the other Party in the event that:
 - i. the other Party fails to comply with its material obligations arising from the Agreement and, if capable of remedy, is not remedied within thirty (30) days after receipt of a written notice from the other Party by registered letter specifying the nature of the breach, and stating its intention to terminate this Agreement if such breach is not cured;
 - ii. the other Party becomes or is declared insolvent or a petition in bankruptcy has been filed against it or in the event a receiver or custodian is appointed for its business, or if a substantial portion of its business is subject to attachment or similar process and such application, assignment, commencement, filing, or corporate action continues for, and/or is not otherwise discharged or withdrawn on or before, a period of thirty (30) days.
- 9.3. If Service provider terminates the Agreement pursuant to Section 9.2 above, the Client is obliged to pay the fee for any Services rendered by Service provider until the effective date of termination. The Client shall, furthermore, reimburse to Service provider all costs that will be reasonably incurred by Service provider after the effective date of termination of the Agreement pursuant to commitments entered into by Service provider prior to the effective date of termination provided, however, that Service provider will use commercially reasonable efforts to mitigate such costs.
- 9.4. The terms of Article 6.3, 7, 8, 9.4, 10 and 13 of these General Terms and Conditions shall survive for an indefinite period of time after termination or expiration of the Agreement. In addition, any other provisions which are required to interpret and enforce the Parties' rights and obligations under the Agreement shall also survive any termination or expiration of this Agreement, but only to the extent required for the full observation and performance of the Agreement.

10. Liability and Indemnification

- 10.1. Service provider (and any third party engaged by Service provider in the execution of the Agreement) accepts no liability and hereby excludes any liability for any consequential or indirect losses, loss of profits, loss of business (opportunities), loss of data, loss of goodwill, loss of expected savings or any other form of special damages.
- 10.2. To the extent permitted by applicable law and save for gross negligence or willful misconduct of Service provider or its officers, the total aggregate liability of Service provider arising or related to (i) these Terms and Conditions, (ii) the Agreement, (iii) the law or (iv) noncontractual liability or

otherwise shall be limited to the direct damages to the extent actually suffered by the Client and shall not exceed the lowest of the following amounts: one hundred thousand (100.000) euros or the total amount of fees payable by the Client to Service provider under the Agreement.

- 10.3. The Client shall indemnify and hold Service provider (and any third party engaged by Service provider in the execution of the Agreement) harmless from and against any and all third party claims, including reasonable legal costs, arising in whatever manner from the activities carried out for the Client (including but not limited to such claims arising as a result of the Client's use of the results from the Services), unless they are a result from gross negligence or willful misconduct by Service provider (or any third party engaged by Service provider in the execution of the Agreement).
- 10.4. Any claim for compensation against Service provider shall lapse if such claim has not been notified to Service provider in writing within one year after the grounds on which the claim is based are known to the Client or could have been reasonably known to the Client.
- 10.5. The provisions in this Article 10 shall also apply for the benefit of all third parties engaged by Service provider in executing the Agreement.

11. Force Majeure

- 11.1. A Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "**Force majeure**" shall also include a situation of force majeure for Service provider's suppliers, as well as defects in objects, materials or software of third parties which the Client has required Service provider to use.
- 11.2. If a situation of Force Majeure lasts for more than ninety (90) calendar days, the Parties shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties otherwise owing each other anything

12. Miscellaneous

- 12.1. Parties may communicate with each other by electronic mail. Parties recognize the risks associated with electronic mail including, but not limited to, distortion, delays, interception, manipulation and viruses. Parties hereby declare that they shall not hold each other liable for any damage incurred by either of them as a result of the use of electronic mail. This also applies to the use of electronic communication between us and – irrespective of the form – third parties including, but not limited to the Dutch tax authorities. The parties shall do or omit all that can reasonably be expected of them to avoid such risks. If a Party should be in doubt as to the content of an electronic message received, the content of the message originating with the sender shall be decisive.
- 12.2. The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect or limit the validity or enforceability of any other provisions hereof. Any such invalid or unenforceable provision shall be replaced or deemed to be replaced by a provision that is considered to be valid and enforceable. The interpretation of the replacing provision shall be as close as possible to the intent of the invalid or unenforceable provision.

- 12.3. The Client cannot assign its obligations and rights under the Terms and Conditions, a quotation or offer by Service provider or any Agreement to a third party without the prior written consent of Service provider.
- 12.4. These Terms and Conditions, together with any quotation / statement of work, constitute the complete and exclusive agreement between the Service provider and the Client, and supersede all prior correspondence, agreements and understandings.

13. Applicable law and jurisdiction

- 13.1. These Terms and Conditions, any quotation or offer made by Service provider or any Agreement shall be governed exclusively by the laws of The Netherlands. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 13.2. All disputes arising from these Terms and Conditions, any quotation or offer made by Service provider or any Agreement, including disputes regarding its existence and validity, that the Parties cannot resolve in mutual consultation, shall be settled by the competent court in the district of Rotterdam, the Netherlands.

14. Final Provisions

- 14.1. These Terms and Conditions have been filed at the office of the Trade Register of the Chamber of Commerce in Rotterdam, the Netherlands. MedScaler is listed under registration number 74404903. These General Terms and Conditions can also be downloaded from the website of Service provider: <http://www.medscaler.com/terms-and-conditions>, and will be forwarded upon request.

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