

GENERAL TERMS AND CONDITIONS ENERVALIS

1 Definitions

“**Customer**” is the natural person or legal person pursuing an economic goal in a durable manner, who concludes an agreement with Enervalis;

“**Enervalis**” is a limited liability company, incorporated under the laws of Belgium with registered office at Centrum-Zuid 1111, 3530 Houthalen-Helchteren, with company number 0509.978.587;

“**Hardware**” means the hardware or equipment which can be purchased by the Customer from Enervalis;

“**License**” means the non-exclusive, non-transferable and sub-licensable right granted to the Customer to use the Software, subject to the payment of a license fee and subject to the license terms;

“**Product(s)**” means the product(s) that are offered by Enervalis to the Customer, which can include Hardware, Software and/or parts;

“**Proprietary Rights**” means patent rights, trademarks, design and models, copyrights (including rights in software source code), rights in databases, proprietary rights in know-how, including trade secrets and other confidential information, and any other form of legally protectable intellectual or industrial property rights under any jurisdiction whatsoever;

“**Services**” means any (pre-)installation, setup, support, demonstrations, or other professional services ordered by the Customer that relates to the Products provided by or through Enervalis;

“**Software**” means the computer programs developed by or licensed by Enervalis, which can be licensed to the Customer;

“**Third Party Product**” means third party software or third party hardware.

2 General Terms and Conditions, offer, proposal, quotation, agreement and delivery

2.1 These General Terms and Conditions apply to all offers, proposals, quotations, orders and agreements for the sale, licensing and delivery of Products and/or Services by Enervalis to the Customer.

2.2 Deviations, additions or modifications of these General Terms and Conditions are only binding for Enervalis if expressly accepted in writing by Enervalis.

2.3 All offers, proposals and quotations are free of obligation, unless the offer, proposal or quotation expressly states otherwise in writing. The Customer guarantees the accuracy and completeness of the information provided to Enervalis by or on behalf of itself, upon which Enervalis has based its offer. Only written confirmation (e-mail is allowed) by Enervalis counts as acceptance of the order and conclusion of the agreement.

2.4 Within a reasonable period of time after the acceptance of the order and after receipt of the advance payment (if applicable) Enervalis shall deliver the Product and/or the Service. Software shall be delivered by providing access to the cloud platform. The Customer shall receive a login and password to that end. Hardware will be delivered Ex Works, at Enervalis' premises.

2.5 The Customer agrees that its own purchase conditions do not apply to any agreement with Enervalis.

2.6 If any provision of these General Terms and Conditions is wholly or partially invalid or revoked, the remaining provisions of these General Terms and Conditions will remain in full force.

3 License to use the Software

3.1 Enervalis grants the Customer a License. The Customer acknowledges that all the Proprietary Rights on the Software are owned by Enervalis.

3.2 The Customer may grant a sub-license to use the Software to end users, but only if the end user and Enervalis have concluded a separate end user license agreement. The Customer acknowledges that Enervalis may terminate its License upon evidence of failure to comply with any of these Terms and Conditions.

3.3 In exchange for the License and Services, the Customer shall pay to Enervalis a license fee in accordance with the conditions of the agreement. The license fee is payable during the entire term of the agreement, even if the Customer does not use the Software.

3.4 By installing, downloading, subscribing or registering for the Software, the Customer agrees to be bound by these Terms and Conditions and any supplemental license terms accompanying the Software.

3.5 The Customer agrees not to: (a) decompile, disassemble, or reverse engineer the Software, unless to the extent permitted by rules of mandatory application; (b) except as permitted in the agreement, distribute, sell, rent or lease the Software on behalf of third parties; (c) remove any proprietary notices contained in the Software; or (d) modify or create a derivative work of the Software.

4 Price and payment

- 4.1 The prices for the Products and Services are listed in a price list, which will be provided to the Customer upon request. The prices and information contained in the price list are solely by way of a guide and shall only be binding on Enervalis after written confirmation.
- 4.2 All prices in the price list are exclusive of any and all applicable levies, duties, import and export duties, fees, assessments, taxes (including Value Added Tax (VAT) and other levies imposed by the government), as well as other similar charges and contributions payable.
- 4.3 The Customer shall also be liable for payment of: handling and packing charges in relation to shipment of the Products, carriage (including loading and unloading of the Products) and insurance of the Products during transit.
- 4.4 Enervalis is entitled to adjust its prices and rates yearly on the anniversary of the start of the services. In the event the Customer does not agree with the new prices, it will be entitled to terminate the agreement with a 6 months' notice.
- 4.5 Payments are made in euro by bank transfer to the bank account (number is specified on the invoice of Enervalis) mentioning the required references.
- 4.6 All invoices will be paid by the Customer within thirty days after the invoice date, unless otherwise agreed upon in writing.
- 4.7 The Customer is not entitled to apply a set-off on amounts Enervalis would owe the Customer.
- 4.8 In case of non-payment of invoices by their due date, default interest of 1% per month will be due, automatically and without prior written notice, on the outstanding balance of the invoices, plus a fixed compensation of 10% of the outstanding balance with a minimum of 95 euro per invoice, from the due date of the invoice until full payment, with each month started counting as a full month. In the event of late payment, all amounts due become payable immediately, automatically and without prior notice, regardless of the agreed payment terms.
- 4.9 In the event of payment arrears on the part of the Customer, even partial, of more than thirty (30) calendar days, Enervalis reserves the right to terminate or suspend the agreement between the parties in accordance with these General Terms and Conditions, without prejudice to the right to demand payment of all amounts owed by the Customer, including the various costs incurred due to late payment, and without prejudice to any other rights of Enervalis under the agreement and/or applicable law. Any late payment shall automatically render all other instalments due and payable immediately.
- 4.10 If the solvency of the Customer shows a negative trend, such as the non-payment of invoices, Enervalis has the right to payment in advance or a suitable guarantee (at the discretion of Enervalis) for continuing to execute contractual services, failing which Enervalis is entitled to terminate the agreement in accordance with these General Terms and Conditions.
- 4.11 The lack of written protest of an invoice within 7 working days of its sending means the irrevocable acceptance of the invoice and the amounts, Products and Services referred to therein.

5 Confidential information and non-recruitment

- 5.1 All information provided by one party to the other party that is expressly designated as confidential or should reasonably be considered confidential, in whatever form this information is delivered or communicated (oral, written and/or electronic), including in any case all information about the Products made available to the Customer under the agreement, shall be considered Confidential Information. The party receiving Confidential Information (further: "Receiving Party") shall only use this information for the purpose for which it was provided.
- 5.2 Regarding Confidential Information, the Receiving Party in particular shall
- (i) use such only to meet its obligations under the agreement;
 - (ii) store it with at least the same degree of care it uses to store its own Confidential Information, and in no event less than a reasonable level of care; and
 - (iii) not disclose it to any third party.
- The above obligations may only be waived if the Receiving Party has received written consent for this from the Party that submitted or communicated its Confidential Information to the other Party (further: "Disclosing Party").
- 5.3 The obligations of confidentiality stipulated in this article 5 do not apply to Confidential Information that:
- (i) is publicly known other than by a breach by the Receiving Party of its obligations under the Agreement;
 - (ii) was communicated by a third party to the Receiving Party as non-confidential and for which the Receiving Party was of the opinion that, in the absence of an obligation in favour of the other Party, it was not unlawful to disclose the information;
 - (iii) was developed by the Receiving Party independently of the Disclosing Party, or that the Receiving Party was already aware of before this information was communicated by the Disclosing Party; and/or
 - (iv) was disclosed with the written consent of the Disclosing Party.

- 5.4 If the Receiving Party must communicate Confidential Information on the orders of a competent court and/or administrative or government agency or on the basis of a law, regulation or any other administrative or legal proceedings, it will inform and consult with the Disclosing Party about this in advance.
- 5.5 Notwithstanding the provisions of this article, the Receiving Party may communicate the Confidential Information of the Disclosing Party to its employees, consultants and suppliers who are directly involved with and/or must be informed of such Confidential Information for implementation of the agreement.
- 5.6 If the Receiving Party no longer needs the Confidential Information for fulfilment of its obligations under the agreement or if the agreement is terminated, the Receiving Party undertakes to return or destroy the Confidential Information (along with each copy and summary thereof) to the Disclosing Party, at the discretion of the Disclosing Party. However, Enervalis will be entitled to retain a copy of the project documentation after expiry of the Agreement for reasons related to archiving or quality control.
- 5.7 During the term of the agreement and for one year following termination thereof, without the written consent of Enervalis, the Customer shall not in any way hire employees of Enervalis who were involved in execution of the agreement, either directly or indirectly (with companies in which the Customer has direct or indirect interests), or in any way allow them to work for it or approach them do so or recommend them to third parties for employment.
- 5.8 If this prohibition is violated by the Customer, the Customer will be liable to pay a lump sum indemnity to Enervalis (among others for recruitment and selection costs, training costs, damages resulting from the non-fulfilment of the plan established for the employee in question ...) equal to the gross remuneration of the employee in question for a period of 12 months.

6 Retention of title and rights of use

- 6.1 All Hardware delivered to the Customer remains the property of Enervalis until all amounts that the Customer owes for the items or work provided or to be provided under the agreement, including interest and fixed compensation, have been paid in full to Enervalis.
- 6.2 Rights of use to the Hardware delivered will always be granted to the Customer, or, as the case may be, transferred, on the condition that the Customer pays the agreed compensation promptly and fully, and after the amounts specified in article 5 of these General Terms and Conditions of Enervalis have been paid.

7 Transfer of Risk

- 7.1 The risk of loss or damage to the Hardware that are the object of the agreement shall pass to the Customer at the time the Hardware are actually made available to the Customer or its appointee.

8 Third Party Products

- 8.1 If and insofar as Enervalis makes Third Party Products available to the Customer, for these products, the terms and conditions (including third party license terms) of these third parties apply, to the exclusion of the provisions of these General Terms and Conditions. Where appropriate, Enervalis will communicate the terms and conditions of the third party to the Customer no later than the time the agreement is concluded. The Customer accepts these terms and conditions of third parties.
- Third party software may include open source software and be subject to open source software license terms. Enervalis makes no warranty and has no responsibility or liability for any third party software and the consequences of the use of such software.
- 8.2 In the relationship between the Customer and Enervalis, if and insofar as these terms and conditions of third parties are deemed not to apply or are declared inapplicable for whatever reason, the provisions in these General Terms and Conditions apply.
- 8.3 Enervalis' liability for Third Party Products will in no case exceed that which is recoverable from the third party/parties in question.

9 Intellectual or industrial property rights

- 9.1 All Proprietary Rights to all Products developed or made available under the agreement belong exclusively to Enervalis.
- 9.2 Enervalis will defend the Customer at its own expense against any claims from third parties that are based on the assertion that the Products constitute a breach of a Belgian intellectual property right, and Enervalis will indemnify or reimburse the Customer as specified below. This obligation is subject to the following conditions:
- (i) For insurance reasons, each claim must be notified in writing to Enervalis by the Customer immediately, and in any case within ten working days after taking cognisance thereof, under penalty of forfeiture.

- (ii) The Customer must provide Enervalis with the necessary powers of attorney, information and cooperation in order, if necessary, to defend the Customer in the above-mentioned actions, and the Customer will grant exclusive control of the amicable settlement and/or proceedings to Enervalis.
- (iii) The infringement may not be related to changes to the products made by the Customer, or allowed to be made by third parties.

If a court via a *res judicata* decision determines that the Products infringe any Belgian intellectual property rights of a third party or where there is a good chance in the opinion of Enervalis that these Products are the object of a relevant claim, the Customer confers on Enervalis the right, according to its choice and at its own expense:

- (i) to obtain the right for the Customer to use the developed and delivered Product,
- (ii) to replace the Product with a similar product that does not constitute an infringement,
- (iii) to modify the Product in such a manner that it no longer infringes and is still equivalent, or
- (iv) to reimburse the initial compensation for the infringing products (minus a fee for use based on a 5-year amortisation period).

Any other or further liability or indemnification obligation of Enervalis for infringement of Property Rights of third parties is excluded, including liability and indemnification obligations of Enervalis for infringements caused by the use of the Products supplied in a non-Enervalis modified form, or use in conjunction with goods or products not delivered by Enervalis or in any other way than that for which the products were developed or intended.

- 9.3 The Customer guarantees that no rights of third parties oppose the making available to Enervalis of equipment, software or materials for the purpose of use or processing, and the Customer will indemnify Enervalis against any action based on the claim that such making available, use or processing infringes any right of third parties.

10 Cooperation of the Customer

- 10.1 The Customer shall always provide Enervalis in a timely manner all the data or information necessary for, and cooperate fully in, the proper performance of the agreement.
- 10.2 The Customer is solely responsible for the use and application in its organisation of Products and Services provided by Enervalis and for the monitoring and security procedures and proper system management.
- 10.3 If data necessary for execution of the agreement is not made available to Enervalis in a timely manner or in accordance with the arrangements, or if the Customer otherwise does not fulfil its obligation, Enervalis in any case has the right to suspend implementation of the agreement and has the right to charge the costs incurred at its usual rates.
- 10.4 In the case that employees or subcontractors of Enervalis perform work on location at the Customer, the Customer will provide these employees or subcontractors with reasonably necessary facilities free of charge, such as - if applicable - working space with telecommunication facilities etc. The Customer will indemnify Enervalis from claims of third parties, employees or subcontractors of Enervalis that suffer any damage in connection with execution of the Agreement resulting from the acts or omissions of the Customer or of unsafe situations in its organisation.

11 Delivery times

- 11.1 All (delivery) periods specified by Enervalis are a best-effort estimate determined on the basis of the information communicated or that was known to Enervalis at the conclusion of the agreement, and these will be respected as far as possible; the mere fact that a (delivery) period is exceeded does not result in negligence on the part of Enervalis. Enervalis is not bound by (delivery) deadlines that cannot be met due to circumstances beyond its control that occurred after the conclusion of the agreement. If an infringement of any deadline threatens, Enervalis and the Customer shall consult as quickly as possible.

12 Dissolution and suspension

- 12.1 The agreement is concluded for 36 months, commencing as of the date of signature of the agreement by the parties, and can be terminated by either party with at least three months prior written notice effected by registered letter.
- 12.2 Each party is entitled to terminate the agreement with immediate effect, in whole or in part, without judicial intervention, by registered letter, if
- (i) the other party fails to comply with one or more of its contractual duties to the extent that this party has not remedied the breach within a period of thirty (30) calendar days after notice of default;
 - (ii) bankruptcy of the other party has been applied for or declared;

- (iii) the other party, due to seizure, winding up of its business or liquidation of its assets, being placed under guardianship or otherwise loses the power to dispose of its assets or substantial parts thereof.
- 12.3 Enervalis is entitled to wholly or partially suspend its contractual performance without judicial intervention if the Customer compromises, or threatens to compromise, Enervalis' rights and/or the services provided to Enervalis' customers.
- 12.4 Enervalis is also entitled to suspend its contractual performance with immediate effect without judicial intervention, wholly or partially, if the Customer, after notice of default, fails to comply with one or more obligations of the Agreement.

13 Liability of Enervalis and indemnity

- 13.1 All contractual obligations of Enervalis are best effort commitments. Enervalis does not give any express or implied warranty relating to the Products or Services, including any guarantee for fitness to a particular purpose or marketability, or that the Products are free from errors or operates without interruption, whether by reason of material, workmanship or otherwise.
- 13.2 During the warranty period, as indicated in the agreement, and provided that the Customer notified Enervalis in writing of a defect within 3 working days of delivery of the Hardware, Enervalis shall at its own option, and as its sole liability repair or replace any defective Hardware, or component thereof, at no charge to Customer, provided, however, that Customer shall pay the cost associated with returning the relevant Hardware, or component thereof, to Enervalis and Enervalis shall pay shipping costs to return the replacement or repaired item to Customer. The warranty shall not extend to any Hardware, which has been subject to misuse, neglect, accident, improper or unapproved installation or maintenance, or to Hardware to which modifications have been made whether by Customer or any third party, nor is the warranty given in respect of spare parts. The parties agree that the Customer may only rely on the warranty if it has satisfied all payment terms.
- 13.3 During the warranty period, as indicated in the agreement, and provided that the Customer notified Enervalis in writing of a defect within 3 working days of delivery of the Software, Enervalis shall provide defect-related support at no charge to Customer, provided that Customer properly installed and used the Software or correctly registered onto the platform for the duration of the warranty period. For any third party software that is included in or provided with the Software, Enervalis makes no claims or warranties and has no liability whatsoever. The parties agree that the Customer may only rely on the warranty if it has satisfied all payment terms.
- 13.4 Enervalis liability is excluded for indirect or unforeseeable damages, including consequential damages, lost profits, lost savings, loss of business, goodwill, loss due to business interruption and loss of data arising from the agreement.
- 13.5 The total liability of Enervalis is limited to compensation of direct damages up to the amount of the agreed contract price (excluding VAT, and to the extent that such price was actually paid to Enervalis) for the Products to be delivered by Enervalis and the Service to be done. If the agreement is a continuing performance contract, the total liability of Enervalis is limited to the total fees (excluding VAT) for the Products to be delivered and the Services to be performed by Enervalis for one year. In any event, total liability for direct damages is limited to a maximum of € 125,000 (one hundred twenty five thousand euro).
- 13.6 To the extent not excluded by other provisions of these General Terms and Conditions, in the event of damage due to death or bodily injury, the total liability of Enervalis is limited to a maximum of € 125,000 (one hundred twenty five thousand euro) per event, with a series of related events being regarded as a single event.
- 13.7 The Customer indemnifies Enervalis against all claims from third parties for product liability due to a defect in a Product or system that is delivered to a third party by the Customer and that partly consisted of Products supplied by Enervalis, except if and insofar as the Customer proves that the damage was caused by those products, in which case the liability of Enervalis is excluded and/or limited in accordance with the other provisions of these General Terms and Conditions.

14 Data privacy

- 14.1 Enervalis shall adhere to all rules of law in respect of the protection of personal data, including, as from 25 May 2018, the REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("GDPR").
- 14.2 All the information received from the Customer by Enervalis in connection with the agreement, that relates to an identified or identifiable living individual (= "Personal Data") is and will remain the property of the Customer. The agreement provides the legal basis for the processing of Personal Data conducted in order to enable Enervalis to fulfil its obligations to the Customer under the agreement. Enervalis only processes Personal Data which is necessary for the purpose of performing of the agreement (e.g. in order to deliver the Services). Upon termination

- of the agreement, all Personal Data shall be returned to the Customer and Enervalis shall not keep a copy thereof in any form whatsoever.
- 14.3 All Personal Data are confidential. Enervalis shall not disclose Personal Data to third parties, save prior express written consent of the Customer and the data subject (if applicable), in which event Enervalis shall only disclose such Personal Data to the extent and under the conditions and restrictions given with such consent.
- 14.4 Enervalis shall use the Personal Data only for the purpose as described in its Privacy Policy (which can be consulted on the website: www.enervalis.com), in accordance with the instructions of the Customer. If Enervalis cannot provide such compliance, for whatever reasons, it agrees to promptly inform the Customer of its inability to comply. Enervalis guarantees that the Personal Data will not be used for any other purpose, among others commercial purposes, surety, or (commercial) use of address particulars and shall only act upon written instruction of the Customer.
- 14.5 Enervalis warrants to take all possible measures and/or actions necessary, in accordance with the industry standards available from time to time, in order to prevent unauthorized access to the Personal Data by any and all third parties, theft of Personal Data, security breach or loss of Data of any kind, whether directly or indirectly and regardless the means usable to gain access.
- 15 Force majeure**
- 15.1 Enervalis is not obliged to fulfil any agreed obligation if prevented from doing so by force majeure. The agreed obligations in such a case are totally or partially suspended for the duration of the force majeure, without Enervalis being liable for any damages with respect to the Customer. By force majeure is understood: strikes, total or partial interruption of transport, electricity and telecommunications problems, business interruptions, breach of contract and/or force majeure on the part of suppliers, licensing requirements and other legal and regulatory requirements, the death of an involved employee, serious illness of an involved employee, prohibitions or orders from the authorities.
- 15.2 If the situation of force majeure lasts more than fifteen days, Enervalis has the right to terminate the agreement in writing by registered letter without prior recourse to a judge and without damage compensation. In such a case, Enervalis is entitled to payment by the Customer for any goods or services already provided and the costs that have already been made with a view to the future implementation of the agreement.
- 15.3 The failure by Enervalis to fulfil its contractual obligations as a result of such force majeure is not a ground for termination, dissolution or suspension of execution of the agreement by the Customer.
- 16 Applicable law and disputes**
- 16.1 Agreements between Enervalis and the Customer, and these General Terms and Conditions shall be governed by and construed in accordance with Belgian law, excluding the provisions on conflicts of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.2 Disputes between Enervalis and the Customer that might arise from an agreement concluded by Enervalis with the Customer or as a result of further agreements resulting therefrom, may only be settled by the courts of the judicial district of Antwerp, Hasselt division.
- 17 Miscellaneous**
- 17.1 Enervalis reserves the right to call upon the services of subcontractors to execute the agreement.
- 17.2 The fact that a right is not enforced or is not used, the fact that a penalty or procedure is not applied, or the failure to bring a claim by Enervalis does not imply a renunciation or waiver of rights.