



# **GENERAL TERMS AND CONDITIONS WE CAN MARKETING**

version 1.1  
dated 7.2.2023





## TABLE OF CONTENTS

PART 1.	GENERAL PART .....	5
Article 1.1.	Definitions.....	5
Article 1.2.	Quotation, Agreement and applicability of General Terms and Conditions .....	6
Article 1.3.	Cooperation .....	6
Article 1.4.	Prices and hourly rates.....	7
Article 1.5.	Billing and payment .....	8
Article 1.6.	Warranty.....	9
Article 1.7.	Secrecy and security .....	9
Article 1.8.	Duration, suspension and termination .....	10
Article 1.9.	Liability.....	11
Article 1.10.	Force Majeure.....	12
Article 1.11.	Assignment and subcontracting .....	13
Article 1.12.	Applicable law and disputes .....	13
Article 1.13.	Miscellaneous .....	13
PART 2.	PROVISION OF SERVICES AND ITEMS.....	1
Article 2.1.	Definitions.....	1
Article 2.2.	Campaign support and direction .....	2
Article 2.3.	Training .....	3
Article 2.4.	Development Websites, Software, APIs and Apps .....	3
Article 2.5.	Support for use of Software, Websites and Apps.....	4
Article 2.6.	SCRUM.....	5
Article 2.7.	Consultancy.....	6
Article 2.8.	Hosting.....	6
Article 2.9.	Use of Hosting.....	7
Article 2.10.	Fees Hosting.....	7
Article 2.11.	Termination of Hosting.....	8
Article 2.12.	Intellectual property rights .....	8



Article 2.13.	(mail) marketing, campaign management, loyalty program management and data processing	8
Article 2.14.	Search Engine Marketing	9
Article 2.15.	CONTENT CREATION AND COMMUNITY MANAGEMENT	9
Article 2.16.	Acceptance test	10
Article 2.17.	Processing of Personal Data	11
Article 2.18.	Delivery of goods, storage of goods and retention of title	11
Article 2.19.	Deadlines and scheduling	12
Article 2.20.	Tests and deviations	12
PART 3.	INTERIM SERVICES	14
Article 3.1.	Definitions	14
Article 3.2.	Making available	14
Article 3.3.	Work and changes	14
Article 3.4.	Termination	15
Article 3.5.	Working days, working hours and location	15
Article 3.6.	Cooperation of Client	15
Article 3.7.	Obligations We Can Marketing	16
Article 3.8.	Training, expertise and experience	16
Article 3.9.	Replacement Employee, illness and leave of absence	16
Article 3.10.	Fees and expenses	17
Article 3.11.	Invoicing, payment and timekeeping	18
Article 3.12.	Secrecy	18
Article 3.13.	Intellectual Property Rights	18



**- GENERAL TERMS AND CONDITIONS WE CAN MARKETINGWE CAN  
MARKETING B.V. -**

**PART 1. GENERAL PART**

*These General Terms and Conditions consist of this General Part and one or more addenda. A section applicable between the parties is integral and inseparable from the General section of these Terms and Conditions as if the provisions of that section were included in this General section of these Terms and Conditions. In the event of a conflict between a provision in the General Part and a provision in a section, the provision in the section shall prevail. In the event of a conflict between addenda, the provision of the part that is most closely related to the nature of the performance to which the Agreement relates will apply, at We Can Marketing's discretion.*

**ARTICLE 1.1. DEFINITIONS**

Terms used in the General Conditions and/or Agreement, in singular or plural, and beginning with a capital letter, have the meaning defined in this article or in any part applicable between the parties. Additional and different definitions may be included in the Agreement and/or SLA which will then apply to that particular Agreement and/or SLA.

- 1.1.1. *General Part*: this is the general part of the General Terms and Conditions.
- 1.1.2. *General Terms and Conditions*: these general (delivery) terms and conditions of We Can Marketing including any addend, which are applicable between the parties.
- 1.1.3. *API*: application programming interface, functionality of software that can be used remotely through the Internet by Apps, Software and Websites.
- 1.1.4. *Apps*: software to be provided by We Can Marketing that is specifically developed, for use on mobile devices (such as smartphones, tablets and wearables, for example).
- 1.1.5. *Appstore*: An online store for a specific mobile platform or operating system, where Apps can be downloaded for a fee..
- 1.1.6. *Annex*: annex to an Agreement which is an integral part of that Agreement.
- 1.1.7. *Ancillary Supplier*: another supplier with whom Client enters into or has entered into an agreement with and is related to Services and/or Software.
- 1.1.8. *Service*: work to be performed by We Can Marketing on behalf of the Client and performances to be provided in the context thereof.
- 1.1.9. *Discontinuity*: Situation in which one of the parties finds itself, being an application for bankruptcy filed by the party in question and/or another party in good faith, or being in a state of bankruptcy, situation of an application for suspension of payment filed either by the party in question and/or another party in good faith, or being in a state of suspension of payment, situation of seizure of the goods, Software, and/or software involved in the execution of the Agreement which underlies (the) MSP service(s), or the termination by the party in question of business activities relevant to this.
- 1.1.10. *Hosting*: Service consisting of making Software, data (such as images), APIs and/or Websites accessible remotely, via the Internet, to Customer by Implementation thereof on a centrally located physical or virtual server.
- 1.1.11. *Client*: other party to We Can Marketing in an Agreement.



- 1.1.12. *Training*: form of knowledge transfer to be provided by We Can Marketing aimed at use of items, Software, Websites to be supplied or delivered by We Can Marketing.
- 1.1.13. *Agreement*: agreement, including an agreed offer, of which the General Terms and Conditions are an integral part.
- 1.1.14. *We Can Marketing*: designation for the other party of the Client, being We Can Marketing B.V. or a trade name under it , which uses these General Terms and Conditions.
- 1.1.15. *Software*: the software to be provided by We Can Marketing for the benefit of the Client.
- 1.1.16. *Website*: being (a) location and/or functionalities accessible on the Internet via a URL, whether protected or not, belonging to Client.
- 1.1.17. *Working days*: calendar days excluding weekends and generally recognized Dutch holidays, with the understanding that May 5 is considered a working day each year.
- 1.1.18. *Working Hours*: the hours between 09:00 and 17:00 during Workdays, or - in the case of interim services - eight consecutive hours between 08:00 and 18:00.

## **ARTICLE 1.2. OFFER, AGREEMENT AND APPLICABILITY OF GENERAL TERMS AND CONDITIONS**

- 1.2.1. The General Terms and Conditions apply to all offers of We Can Marketing, as well as all Agreements and any resulting Agreements between We Can Marketing and the Client. Applicability of general purchase, delivery or payment terms or other general or special conditions of the Client is expressly excluded.
- 1.2.2. All offers made by We Can Marketing are without obligation, unless stated otherwise. If a deadline is mentioned in the offer, it will only concern the validity of the offer and does not affect the non-bindingness.
- 1.2.3. An Agreement between We Can Marketing and Client is established by acceptance by said Client. Acceptance is made by the signing by Client of the order confirmation.
- 1.2.4. A deviating order confirmation of an offer, constitutes an invitation to We Can Marketing to issue a new offer. Such a new quotation may be accepted by the Client in the same manner as stated in Article 1.2.3.
- 1.2.5. An Agreement may also be established by the signing of a document prepared by We Can Marketing, by . This document specifies which items, Software and/or Services will be purchased by the Client and at what prices and rates, as well as any other relevant details.

## **ARTICLE 1.3. COOPERATION**

- 1.3.1. We Can Marketing shall deliver goods and/or Software to the Client and/or perform Services for the Client, all agreed upon in the Agreement. The Client hereby agrees to We Can Marketing to accept the deliveries and/or Services to be performed, in accordance with these General Terms and Conditions and the Agreement in order to provide the anticipated cooperation and to pay the fees due.



- 1.3.2. Client shall provide We Can Marketing with all information and data necessary for the execution of the Agreement, including technical data, applications, files, documentation, test data, work descriptions and/or other relevant information, in a timely manner and free of charge. Client is responsible for and accepts the risk of any problems arising from errors, inaccuracies, incompleteness and inconsistencies of all such data, materials and information provided by Client.
- 1.3.3. If We Can Marketing is provided with works by the Client in the context of the work to be performed, the Client guarantees that the Client owns the intellectual property rights, or at least has obtained such a license to the works that We Can Marketing is permitted to perform actions with respect to these works within the framework of the Agreement. Client indemnifies We Can Marketing against all claims made by third parties relating to infringement of intellectual property rights as aforementioned.
- 1.3.4. We Can Marketing shall comply with procedures, rules and practices of the Client, provided that such procedures, rules and practices are made known to We Can Marketing in a timely manner in advance in writing and such procedures, rules and practices are not unreasonable or interfere with We Can Marketing's delivery of items, Software and/or provision of Services.
- 1.3.5. The parties recognize that good communication is an essential condition for good cooperation. Both the Client and We Can Marketing shall appoint contact persons and substitute contact persons, who are authorized to represent their own party with respect to the execution of the Agreement(s). The names of the contact persons as well as the extent of their powers, will be stated in the Agreement. The contact persons shall at least ensure mutual communication and supervision of the progress of the execution of the Agreement.
- 1.3.6. We Can Marketing and Client will mutually strive to the maximum extent possible to have the execution of the Agreement performed by or under the responsibility and supervision of one permanent contact person.
- 1.3.7. The Client will ensure suitable personnel with sufficient quality to be involved in the execution of the Agreement. If We Can Marketing observes that the Client's personnel has insufficient quality, it will report this to the Client. The Client is obliged to bring the level of knowledge of these personnel up to an adequate level as soon as possible. The execution of the relevant Agreement may be suspended by We Can Marketing in this regard without being liable to pay any compensation to the Client.
- 1.3.8. If a party identifies that the other party is not making sufficient efforts, it will inform the other party in writing.
- 1.3.9. If Client fails to fulfill its obligations in any way, We Can Marketing has the right to suspend the fulfillment of its obligations without being bound to any compensation to Client. We Can Marketing is entitled to charge the Client for any additional costs incurred in this regard.

**ARTICLE 1.4. PRICES AND HOURLY RATES.**

- 1.4.1. Invoicing shall at all times be on an after-the-fact basis, unless expressly agreed upon otherwise.



- 1.4.2. All prices and rates are indicated in euros, excluding sales tax and excluding other government mandated charges.
- 1.4.3. Travel expenses, as well as any lodging costs, will be charged separately.
- 1.4.4. Costs for royalties, licenses and/or (usage) fees in respect of images, fonts and the like, will be charged separately. In that case, the terms and conditions of the Secondary Supplier of that material shall apply to the Client. It is the responsibility of the Client to monitor (periodically) whether the conditions are still met. The Client indemnifies We Can Marketing for claims by the Client or the Secondary supplier of the material as referred to above, regarding non-compliance with the conditions related to the use of the material.
- 1.4.5. Performance of Services or other work outside of Work Hours is subject to a surcharge as set forth in the Agreement and/or quote.
- 1.4.6. We Can Marketing is entitled to increase the agreed prices and rates annually with a percentage of at least equal to the, when We Can Marketing determines the price increase, by the most recently published CBS service price index figure "all CPA sections, 2015 = 100" of the previous year. Price and rate changes shall only take place on January 1 and will be communicated in writing to the Client by We Can Marketing no later than one (1) month prior to the effective date. For those portions of the service purchased by We Can Marketing, and supplied to Client, We Can Marketing shall have the right to pass on to Client the price and rate changes implemented by We Can Marketing's suppliers.

#### **ARTICLE 1.5. BILLING AND PAYMENT.**

- 1.5.1. We Can Marketing will indicate on the invoices: the invoice date, the specification, the amount due in euros, the VAT based on the applicable percentage and the account number where payment is to be made.
- 1.5.2. Invoicing of Services is done in advance, unless explicitly agreed otherwise.
- 1.5.3. The execution of additional Services, which were not foreseen or agreed upon at the time of the original assignment, shall be considered additional work and will be delivered or performed after notification by We Can Marketing to the Client in accordance with We Can Marketing's then current rates for such work. Client accepts that delivery or performance of additional work may affect delivery deadlines, lead time and/or costs.
- 1.5.4. All invoices must be paid by the Client, without any set-off, within fourteen (14) days of the invoice date. If payment is not made within the payment term, the Client will owe We Can Marketing, without any notice of default being required, the then current statutory commercial interest rate plus two percent (2%) over the invoice amount. If the Client continues to fail to pay the amount due, even after notice of default, whereby a reasonable period for payment has been granted, We Can Marketing may, in addition to the statutory commercial interest due, claim compensation for the extrajudicial costs, the amount of which is set at a minimum of fifteen percent (15%) of the total principal amount due with a minimum of €500 (five hundred euros).
- 1.5.5. Any complaints based on alleged incorrect invoices or (alleged) defects in the execution of Services must be made in writing within five (5) days of the invoice date





respectively execution to have been received by We Can Marketing, failing which the right to complain on the invoice in question shall lapse.

- 1.5.6. We Can Marketing is always entitled to ask Client to provide adequate security for the fulfillment of its payment obligations and to suspend the execution or further performance of the contract until the requested security has been provided.

#### **ARTICLE 1.6. WARRANTY**

- 1.6.1. We Can Marketing provides no warranties other than those provided by these Terms and Conditions.
- 1.6.2. We Can Marketing warrants, with respect to Services and Training that:
- a. We Can Marketing is authorized to carry them out;
  - b. these will be performed competently;
  - c. their results meet the agreed qualifications;
  - d. for the duration of the current Agreement, employee(s) of We Can Marketing with sufficient qualifications remain available to perform the agreed Services.
- 1.6.3. Client shall at all times strictly comply with any preconditions contained in an SLA at the expiration of any claim for performance by We Can Marketing of any obligation of We Can Marketing contained in that SLA.
- 1.6.4. We Can Marketing cannot make any guarantees, when it comes to the products and services of Ancillary Suppliers, even if directing Ancillary Suppliers is as part of the Agreement.
- 1.6.5. Upon acceptance as referred to in Clause 2.16 or failing which, Company-ready delivery, We Can Marketing guarantees for a period of three (3) calendar months to continue to support the Delivered, or at least, if Client has a request for an adjustment, such adjustment will be considered and responded to by quotation.

#### **ARTICLE 1.7. CONFIDENTIALITY AND SECURITY.**

- 1.7.1. Information is confidential if it is either designated as such by one party or if the other party knows or has reason to suspect that information is confidential.
- 1.7.2. Parties shall use confidential information obtained from or made available by the other party only in accordance with the provisions of the Agreement and shall not directly or indirectly disclose, or authorize third parties to do so, without the prior written consent of the other party. Parties shall further take all necessary precautions to protect it from unauthorized use and disclosure.
- 1.7.3. The provisions of this Article shall not apply if a party is required to disclose confidential information pursuant to a court order or governmental order.
- 1.7.4. Client is obliged to take measures to prevent unauthorized persons from accessing or being able to access the Services and data. We Can Marketing will not be able to be held liable for damages suffered by Client due to unauthorized or unlawful use of Software and/or Service(s) by third parties.
- 1.7.5. Parties will make every reasonable effort to adequately secure the data or information provided to them by the other party. Parties undertake not to use information obtained from the other party for other purposes or in any other way



use than for the purpose and manner in which the information was left or became known to it in the performance of the Agreement.

## **ARTICLE 1.8. TERM, SUSPENSION AND TERMINATION**

- 1.8.1. An Agreement is entered into for the term as stated therein.
- 1.8.2. If an Agreement has no specified end date, the agreement will be considered to be valid for an indefinite period, unless the nature of the Agreement dictates otherwise. In the latter case, the Agreement itself will indicate when it ends.
- 1.8.3. If an Agreement has an indefinite duration, the Client and We Can Marketing are entitled to terminate it by means of a registered letter to the other party. Parties will give the other party a three (3) months' notice. Termination may not occur until after the Agreement has lasted for at least one (1) year.
- 1.8.4. If an Agreement, concerning Services of a continuing nature is entered into for a period of one (1) year or longer, this Agreement may be terminated by a registered letter to the other party, subject to three (3) months' notice. If notice of termination is not given, the Agreement shall be extended each time by operation of law for a period of one (1) year after the expiry of the (initial) term under the same terms and conditions, but with due observance of the provisions of Article 1.4.6.
- 1.8.5. A cancellation can only be made by the end of a calendar month.
- 1.8.6. Apart from what is stipulated elsewhere in these General Terms and Conditions or in the relevant Agreement, each of the parties is entitled, without any reminder or notice of default being required, to dissolve the Agreement as a whole or in part, out of court with immediate effect by registered letter:
  - a. if the other party fails in the fulfillment of its obligation and persists in doing so even after notice of default in which it has been given a reasonable time to fulfill its obligations, unless a fatal deadline has been exceeded, as a result of which the other party is in default by operation of law and one party may rescind the contract by return of post in accordance with this provision;
  - b. If either party is in a state of Discontinuity.
- 1.8.7. If, at the time of dissolution of an Agreement, the parties have already performed and received performance in execution thereof, such performance and related payment obligations shall not be subject to undoing.
- 1.8.8. If the Client fails to fulfil any obligation arising from an Agreement, or fails to do so on time, or if there is good reason to fear that the Client will not be able to fulfil any obligation stemming from the Agreement, We Can Marketing has the right to suspend the execution of the Agreement, without the obligation to pay any compensation. Suspension will not take place until We Can Marketing has informed the Client in writing and the Client has been granted a reasonable period to still fulfil its obligations.
- 1.8.9. The parties shall, within fifteen (15) days after termination of an Agreement, return to the rightful owner all Confidential Information located among them, regardless of form.



- 1.8.10. Obligations which by their nature are intended to continue even after termination of the Agreement shall continue. The termination of the assignment expressly does not release the parties from the provisions relating to: confidentiality, prohibition of acquisition of personnel, intellectual property, applicable law and competent court.

## **ARTICLE 1.9. LIABILITY**

- 1.9.1. A party's liability for attributable failure in the performance of an Agreement shall in all cases arise only if one party gives the defaulting party immediate and proper notice of default in writing, setting a reasonable time to remedy the failure, and the defaulting party continues to fail imputably in the performance of its obligations even after that time. This also applies to the exceeding of deadlines, regardless of whether these deadlines are fatal. The notice of default must contain as complete and detailed a description of the failure(s) as possible, so that the defaulting party is able to respond adequately.
- 1.9.2. The total liability of We Can Marketing due to an attributable failure in the performance of an Agreement ("toerekenbare tekortkoming in de nakoming van een overeenkomst"), including a failure to perform an agreed warranty obligation, or a failure for any other reason, such as, for example, tort, is limited to compensation for direct pecuniary loss up to a maximum of the amount of payments (excluding VAT) received by We Can Marketing from the Client for that Agreement in connection with the performance of Services, less the expenses incurred by We Can Marketing to (sub)suppliers in the context of the performance of the Agreement. This total liability of We Can Marketing can never exceed € 25,000 (twenty-five thousand euros). If the Agreement is primarily a continuing performance agreement with a term of one (1) year or longer, then liability is limited to compensation of direct financial loss up to the maximum amount received by We Can Marketing from the Client in the six (6) months preceding the event causing the damage for the execution of that continuing performance agreement in respect of the relevant Service (excluding VAT), less the expenses incurred by We Can Marketing to (sub)contractors in the context of the execution of the Agreement. This total liability can never exceed € 50,000 (fifty thousand euros).
- 1.9.3. Direct property damage referred to in Article 1.9.2 means exclusively:
- a. reasonable costs that the Client would have to incur to have We Can Marketing's performance comply with the Contract; however, such substitute damage will not be compensated if the Contract in question is or has been dissolved by or at the request of the Client;
  - b. reasonable costs incurred by the Client for keeping its legacy system or systems and related facilities operational for a longer period of time, then intended, due to We Can Marketing's failure to deliver by a deadline binding on it, less any savings resulting from the delayed delivery;
  - c. reasonable costs incurred in determining the cause and extent of the damage, insofar as the determination relates to direct damage within the meaning of this article;
  - d. reasonable expenses incurred to prevent or limit damage, to the extent that the Client proves that these expenses resulted in limiting direct damage within the meaning of this Article;



- 1.9.4. The Liability of We Can Marketing for all forms of damages other than those reported in Article 1.9.3 is excluded, which expressly includes consequential damages, lost profits, lost savings, diminished goodwill, mutilation or loss of data files and damages related to the engagement of ancillary suppliers or subcontractors prescribed to We Can Marketing by the Client.
- 1.9.5. The limitation of liability contained in Article 1.9.2 shall lapse:
- a. in the event of intentional or deliberate recklessness on the part of the management of the party causing the damage;
  - b. in the event of third-party claims for damages resulting from death or injury.
- 1.9.6. A prerequisite for the creation of a right to compensation in each case is that the injured party reports the damage in writing to the party causing the damage as soon as possible after its occurrence.
- 1.9.7. If and to the extent that the Client's damages are (entirely) related to a failure of a supplier of We Can Marketing, with whom We Can Marketing has had little or no opportunity to negotiate prior to the conclusion of the agreement with it, including but not limited to a party such as Facebook, Microsoft, Google, Adobe, Amazon or IBM, then We Can Marketing's liability is limited to what We Can Marketing has actually been able to recover from the relevant supplier. Upon first request, We Can Marketing shall assist in assigning (if and to the extent possible) the claims against the aforementioned supplier.
- 1.9.8. Any claim for damages against We Can Marketing shall expire by the mere expiration of three (3) months from its occurrence, or so much sooner pursuant to law.

#### **ARTICLE 1.10. TRANSFER**

- 1.10.1. Neither party shall be bound to fulfill any obligation if prevented from doing so as a result of force majeure. The parties may only invoke force majeure against each other if the party invoking force majeure notifies the other party in writing as soon as possible, submitting the necessary documentation as for evidence.
- 1.10.2. Force majeure includes in any case the inability of We Can Marketing to properly fulfill its obligations as a result of (long-term) illness of its staff, strikes, calamities (such as fire) traffic congestion, weather conditions, late delivery or unsuitability of materials or software whose use is prescribed by the Client to We Can Marketing and whether or not attributable shortcomings in the fulfillment of obligations of ancillary suppliers or subcontractors to We Can Marketing. In Agreement and/or SLA the parties may include other force majeure situations in addition to the examples mentioned in this paragraph.
- 1.10.3. If a force majeure situation has lasted longer than sixty (60) days, the parties shall be entitled to dissolve the Agreement with immediate effect out of court by registered letter, without the parties being liable for any compensation. That which has already been performed under the Agreement shall then be settled pro rata.



#### **ARTICLE 1.11. ASSIGNMENT AND SUBCONTRACTING.**

- 1.11.1. Client is not entitled to transfer rights and obligations to a third party without prior written consent of We Can Marketing. This consent will not be withheld on unreasonable grounds, but We Can Marketing may attach conditions to the consent given.
- 1.11.2. We Can Marketing is entitled to make use of third parties in the execution of the assignment, whether on the basis of subcontracting or hiring of personnel. This does not affect We Can Marketing's responsibility and liability for the fulfillment of its obligations under the Contract(s), as well as its obligations under tax and social security legislation.
- 1.11.3. We Can Marketing acts as a coordinator in its relationship with Ancillary Suppliers, which implies that Client may contact We Can Marketing for questions and information regarding the Software or Services and We Can Marketing will then contact that particular Ancillary Supplier. We Can Marketing is not responsible for the performance and fulfillment of Ancillary Suppliers' obligations under their agreement(s) with Client.

#### **ARTICLE 1.12. APPLICABLE LAW AND DISPUTES.**

- 1.12.1. All offers, Agreements and agreements resulting from Agreements are governed by Dutch law.
- 1.12.2. In the event of a dispute, the prevailing party shall give written notice to the other party of the existence of a dispute and a summary statement of what that party believes to be the subject of the dispute.
- 1.12.3. Only the court in Rotterdam is competent to take cognizance of a dispute arising from the Agreement and Agreements arising from the Agreement, unless under the law the Subdistrict Court has jurisdiction, in which case the law prevails.

#### **ARTICLE 1.13. MISCELLANEOUS**

- 1.13.1. Changes or amendments to the Agreement shall be valid only to the extent agreed in writing.
- 1.13.2. Headings and other designations of articles have the sole purpose of increasing the readability of these General Terms and Conditions and as such do not limit the scope of the articles .
- 1.13.3. Notices which the parties give to each other pursuant to these General Terms and Conditions or an Agreement in writing may also, unless expressly required by the relevant provision to be in writing, be given digitally (i.e., by fax or e-mail), provided that the party electing to use an electronic medium shall bear the evidentiary risk if, in the opinion of the other party, a notice would not have arrived or would not have arrived properly.
- 1.13.4. The failure by a party to demand performance of any provision within a period specified in the Contract or these General Terms and Conditions shall not affect the right to still demand performance, unless the party concerned has expressly agreed in writing to the non-performance and to the extent that no more than twelve (12) months have elapsed since the expiration of that period.



- 1.13.5. In case of any conflict between the provisions of the Agreement and the provisions of these General Conditions, the provisions of the Agreement shall prevail.
- 1.13.6. The Agreement shall at all times prevail over any Attachment thereto. Prevalence of Attachments to an Agreement may be stipulated in the Agreement itself, in the absence of such prevalence provision, the Attachment with the lowest number shall prevail (i.e. Attachment 1 shall prevail over Attachment 2, Attachment 2 shall prevail over Attachment 3, et cetera).
- 1.13.7. If one of the provisions of these General Terms and Conditions is null and void or annulled, the other provisions of these General Terms and Conditions shall remain in force and the parties shall consult to agree on a substitute provision, whereby the purport of the first-mentioned provision and of these General Terms and Conditions as a whole shall be maintained as far as possible.
- 1.13.8. In the cases not provided for in these General Terms and Conditions as well as in the Agreement, the parties will enter into consultation to this end as soon as possible.



- GENERAL TERMS AND CONDITIONS WE CAN  
MARKETING -

## PART 2. PROVISION OF SERVICES AND ITEMS

*These General Conditions consist of a General Part and one or more addenda such as the present part. This part is integral and inseparable from the General part of the Terms and Conditions as if the provisions of this part were included in the General part of the Terms and Conditions. In case of contradiction between a provision in the General Part and a provision in this part, the provision of the part shall prevail. In case of contradiction between addenda, the provision from the part that is most related to the nature of the performance to which the Agreement relates, at the discretion of We Can Marketing, shall prevail.*

### ARTICLE 2.1. DEFINITIONS

In addition to PART 1 (General), the terms below when used in the General Conditions and/or Agreement, in singular or plural, and starting with a capital letter, also have the meaning as defined in this Article. Additional and different definitions may be included in the Agreement and/or SLA which will then apply to that particular Agreement and/or SLA.

- 2.1.1. *Acceptance Test*: a test by which Client can examine whether the Services meet the agreed Functional Specifications.
- 2.1.2. *Delivery*: the actual provision of items and/or Software and/or Services via any medium, including the Internet.
- 2.1.3. *Turnkey delivery*: the completion of the entire Implementation.
- 2.1.4. *Availability*: the percentage of time during Work Hours in which Client can use a Service.
- 2.1.5. *Content Creation*: a Service that consists in whole or in part of developing photos, images, illustrations, videos and/or texts, for the purpose of sharing them on social media and/or online platforms as part of Community Management.
- 2.1.6. *Community Management*: a Service that consists in whole or in part of carrying out activities for a brand or company of the Client, whether or not together with the Client, in order to profile the brand or company on various social networks and/or online platforms.
- 2.1.7. *Functional Specifications*: the written specifications, contained in a document describing the functions and data to be included in the Software and/or to be met by the Software and/or associated Services.
- 2.1.8. *Defect*: an imperfection in the business, Software, Website, Hosting or MSP service as a result of which it does not meet the agreed Functional specifications, or which occurs during its use.
- 2.1.9. *Data enrichment*: Service consisting of verifying and enhancing data files based on agreed rules.
- 2.1.10. *Implementation*: Service consisting of introducing, making operational, setting up, arranging, parameterizing and preparing the Software and/or Websites for the purpose of commissioning it and familiarizing, not being a Training, the User with the functionality.



- 2.1.11. *Product Owner*: role within SCRUM, responsible to Client for decisions about functionality.
- 2.1.12. *Proofs*: copies or examples of (part of) the goods to be developed by We Can Marketing, including but not limited to printing and/or typesetting proofs, test files and/or prototypes of websites and/or CD-ROMs, which enable the Client to ascertain whether what has been or will be manufactured by We Can Marketing or a third party engaged by it, complies with the agreements made by the parties in this regard.
- 2.1.13. *Requirements*: collection of requirements as made known to We Can Marketing in advance by the Client to which the deliverable must comply at the time of the conclusion of the Agreement.
- 2.1.14. *Scope*: the set of User Stories that the Delivered must meet at the time of entering into the Agreement, parties may continuously change the scope going forward the project - in accordance with Article 2.6.3 of these General Terms and Conditions.
- 2.1.15. *Sprint*: a number of User Stories to be completed by We Can Marketing within a certain time frame, each sprint delivers a working product at the end.
- 2.1.16. *SLA (Service Level Agreement)*: document in which agreements can be made between the parties about the contents and quality of the service(s) to be provided, including agreements about how this service will be managed. An SLA will function as an Annex to an Agreement.
- 2.1.17. *SCRUM*: an iterative and incremental *agile* development methodology.
- 2.1.18. *User Story*: one or more Client Requirements converted into a (functional) description in accordance with SCRUM methodology.
- 2.1.19. *Search Engine Marketing*: A Service consisting in whole or in part of SEO (search engine optimization), SEA (search engine advertising), SA (social advertising), and/or link building.

## **ARTICLE 2.2. CAMPAIGN SUPPORT AND DIRECTION.**

- 2.2.1. If and to the extent agreed upon, We Can Marketing supports Client in the execution of its marketing campaigns and We Can Marketing directs that campaign, all based on the specification included in the relevant SLA.
- 2.2.2. The intensity of campaign support and direction depends on the service package chosen by the Client. Upgrades in the service package (e.g. from silver to gold) are possible at all times and as of a date to be agreed upon in consultation between the parties, as of which date the Client will be charged the rate belonging to the expanded service package. Downgrades (e.g. from gold to silver) have - unless expressly agreed in writing - a request period of at least six months, after which, as of a date to be agreed upon in consultation between the parties, the Client will be charged the rate corresponding to the less extensive services. Requests for upgrades and downgrades must be made in writing or digitally to We Can Marketing in accordance with the provisions of Article 1.13.2.
- 2.2.3. Direction by We Can Marketing never implies We Can Marketing's responsibility for activities to be performed by suppliers other than We Can Marketing in the marketing campaign. Even if We Can Marketing indicates an expected lead time for a marketing campaign, We Can Marketing is not liable for any damages resulting from delays in the execution of the campaign that are directly or indirectly the result of an act or omission of (a supplier of) the Client.





### **ARTICLE 2.3. TRAINING**

- 2.3.1. If and to the extent that the provision of Training has been agreed upon, the Agreement will specify in more detail the Training to be provided, as well as the location at which it will be provided, at what rate and according to what performance schedule, if any.
- 2.3.2. We Can Marketing guarantees that the instructors to be used have sufficient knowledge of the subject matter and sufficient teaching skills to properly deliver the Training.
- 2.3.3. We Can Marketing provides each student with adequate course materials for his/her own use. Copyright in the course materials does not pass to Client. We Can Marketing provides a revocable, non-exclusive and non-transferable license to Client for Client's own use of the course materials.
- 2.3.4. The Client shall be entitled to cancel a Training before it begins without incurring any charges. However, if the Client cancels within two (2) weeks before the start of the Training, the Client shall owe in full the costs charged or to be charged for the Training in question.
- 2.3.5. Cancellation of the Training by We Can Marketing up to no later than two (2) weeks prior to the commencement shall not entail reciprocal reimbursement of costs. Amounts already paid by the Client shall be refunded without delay.

### **ARTICLE 2.4. DEVELOPMENT OF WEBSITES, SOFTWARE, API'S AND APPS**

- 2.4.1. If a Website, Software, API or App is developed using open source software and/or frameworks, the relevant open source license(s) shall apply to the Client. If and insofar as the open source license is in conflict with what is stipulated in the General Terms and Conditions or Agreement regarding intellectual property rights and/or license conditions, what is stipulated in the open source license shall prevail. The Agreement specifies which open source software will be used. We Can Marketing is not responsible for patching, upgrading and/or updating open source software and/or frameworks, if and insofar as the Client and We Can Marketing have not entered into a maintenance agreement and/or SLA for this, which agreement and/or SLA explicitly provides for patching, upgrading and/or updating. We Can Marketing is except in case of intent and conscious recklessness of the management of We Can Marketing not liable for claims by third parties regarding infringements of intellectual property rights on the open source software and/or frameworks deployed by We Can Marketing, therefore, given the nature of open source, We Can Marketing cannot guarantee that the open source software and/or frameworks do not infringe on the rights of third parties.
- 2.4.2. We Can Marketing cannot guarantee that the Website or App will always work as foreseen in every browser respectively every mobile device. For Websites, the Agreement will state in which browsers the Website will work as foreseen, in the absence of which the Client may assume that the Website will work as foreseen in the two (2) browsers most commonly used in the Netherlands at the time of Delivery in Business as Usable. For Apps, the Agreement specifies the operating systems (including versions) for which the App will be developed. We Can Marketing does not guarantee that the App will in all cases work as foreseen on a non-portable device equipped with a version of the operating system for which the App was developed.



- 2.4.3. If We Can Marketing uses third-party APIs for the functionality of a Website, Software or App, the (usage) conditions of that API also apply to the Client. The Agreement specifies which third-party APIs come from. We Can Marketing can never guarantee the availability of third party APIs, unless explicitly agreed otherwise.
- 2.4.4. To the development of Websites, Software, Apps and APIs is what is stipulated in Article 2.16 of this section concerning Acceptance, shall apply mutatis mutandis.

## **ARTICLE 2.5. SUPPORT FOR USE OF SOFTWARE, WEBSITES AND APPS**

- 2.5.1. If the Customer enters into an Agreement relating to the performance of support for Software, Websites or Apps, it shall be entitled to support as referred to in this article. The Agreement will specify which rights the Customer is entitled to, under which conditions and at which prices and rates.
- 2.5.2. Support may include the following:
  - a. Providing assistance or information by telephone or e-mail regarding the use of, or relating to technical problems with, the Software, Websites and/or Apps;
  - b. The analysis, verification and, if possible, repair of a Defect by telephone and/or Internet following a notification from the Client.
- 2.5.3. If possible, We Can Marketing will perform remote work after reporting a Defect to the helpdesk. If Software and/or Website(s) are used on location with the Client, the Client will ensure an adequate connection to We Can Marketing so that We Can Marketing can perform its work. By signing the Agreement, the Client hereby grants permission for the execution of support via connection(s).
- 2.5.4. If so decided after joint consultation, We Can Marketing will provide support on the Client's location. Performance of work on location of Client will be on the basis of subsequent calculation at the then current rates.
- 2.5.5. The determination of whether and to what extent the work is to be performed outside Work Hours shall be made by mutual agreement. Article 1.4.5 shall apply mutatis mutandis.
- 2.5.6. Support requests may be made by employees of the Client trained and/or designated in the Agreement for that purpose during Work Hours. Notification shall be made in accordance with the applicable procedure as set forth in the Agreement. For Apps, Client acts as first-line support, and We Can Marketing as second-line support. This therefore means that the Client will never allow an end user to call on agreed support, unless this has been explicitly agreed by the parties, or unless We Can Marketing, in the context of detecting technical problems or Defects, has given permission in a specific case.
- 2.5.7. If a request for support involves the notification of a Defect, such notification will only be considered by We Can Marketing if the Defect is demonstrable and reproducible.
- 2.5.8. The parties may enter into an additional Service Level Agreement (SLA) with respect to Support and designate officers in such SLA who are authorized to change the content of the SLA. By its nature, an SLA contains an operationalization of the deliverables. Provisions relating to Liabilities, Indemnities,



warranty terms, intellectual property rights and the like are out of place in an SLA and therefore void.

- 2.5.9. We Can Marketing will pass on notification of a Defect to the Subsidiary Supplier if the Defect is attributable to Software not licensed by We Can Marketing itself. For Software as referred to above, the provisions in this article regarding support do not apply.
- 2.5.10. Defects in Apps, the Software and/or Website(s) caused by:
- a. injudicious use by (users of) Client;
  - b. gross negligence by (users of) Client;
  - c. use not in accordance with the intended use;
  - d. causes in systems and/or software, website(s) not supplied and maintained by We Can Marketing;
  - e. working with use, and consumables that do not meet the specifications approved in advance by We Can Marketing;
  - f. mutations or repairs made to the Software and/or Websites by the Client or third parties without the prior consent of We Can Marketing,
  - g. do not fall within the maintenance or support obligation of We Can Marketing. Repair of such Defects will, if performed by We Can Marketing, be based on the rates charged by We Can Marketing.
- 2.5.11. Recovery of mutilated or lost data is also not covered by We Can Marketing's maintenance and/or support obligation.
- 2.5.12. The Client shall provide We Can Marketing with the Software, Websites and/or data files required for maintenance and support for a sufficient number of consecutive hours free of charge.
- 2.5.13. Client will take appropriate measures to prevent damage to Software, Websites and/or data files that may occur as a result of work to be performed by We Can Marketing, for example by making a backup (regularly), unless this last obligation under an Agreement lies with We Can Marketing.
- 2.5.14. At least one (1) relevant expert and employee of Client shall be present during the performance of the work at Client's location.
- 2.5.15. Client will ensure that the knowledge level of its users and administrators is and remains at an adequate level. If We Can Marketing believes that this knowledge level is insufficient, the Client is obliged to have users and/or administrators attend certain Training(s) at the then current prices and conditions. Failure by the Client to comply with this obligation may be a reason for We Can Marketing to suspend the Services or - if reasonable - to dissolve the Agreement.

## **ARTICLE 2.6. SCRUM**

- 2.6.1. Subsequent paragraphs of this article apply if it has been explicitly agreed that what has been agreed will be developed on the basis of SCRUM.
- 2.6.2. After each completed Sprint, the Client shall grant its approval in accordance with the principles of SCRUM. This approval shall be considered an acceptance (as referred to in Clause 2.16) for that particular Sprint.
- 2.6.3. By using the SCRUM development method, the parties recognize that changes during software development are more the rule than the exception. Therefore, Client is free to request, Client to make changes in the Scope.



- perform. Client acknowledges that this may affect any indicated delivery schedule.
- 2.6.4. For a requested change as outlined in the preceding paragraph, the procedure is that We Can Marketing issues an estimate for the change after receiving the request. Thereafter, Client may choose to exchange the change for User Stories or Requirements not yet realized that collectively have an equal size, or add the change to the Scope, without exchanging anything, with Client then accepting the additional estimated cost.
- 2.6.5. Client will provide a Product Owner, this Product Owner must have adequate knowledge and experience with regard to SCRUM. We Can Marketing assumes that the Product Owner can bind the Client. If the Client does not provide a Product Owner, We Can Marketing is prepared to supply a Product Owner, in which case the Product Owner will be charged separately on the basis of subsequent calculation.
- 2.6.6. A SCRUM project is always conducted on an after-the-fact basis. If a proposal or project letter from We Can Marketing defines a number of Sprints, this is only an estimate.

## **ARTICLE 2.7. CONSULTANCY**

- 2.7.1. We Can Marketing may perform consulting work for the Client pursuant to an Agreement.
- 2.7.2. Performance of the work referred to in Article 2.7.1 may, at We Can Marketing's discretion, take place at its own location or at the Client's location. In the latter case, the Client will ensure an adequate and safe workplace for the Employee in accordance with the applicable Occupational Health and Safety Act/Arbowet legislation.
- 2.7.3. We Can Marketing will determine which consultant will be used to execute the Agreement. If the Client makes a request for the use of a particular consultant then We Can Marketing may comply, but this is at the discretion of We Can Marketing.
- 2.7.4. We Can Marketing is entitled to replace a consultant with another consultant during the term of the Agreement, without being liable for any compensation and/or compensation for costs.
- 2.7.5. Client has the right to request replacement of a consultant with reasonable cause. The costs of induction of replacement personnel shall be borne by the Client, unless the request for replacement was based on non-performance or inadequate performance of the consultant in question.
- 2.7.6. Consultancy will be charged on an hourly basis in arrears. Cancellation of scheduled consultancy day parts within two (2) days prior to the scheduled date will be due in full.

## **ARTICLE 2.8. HOSTING**

- 2.8.1. We Can Marketing may provide Hosting for the Client pursuant to an Agreement. The contents of the Hosting and rates are described in the relevant Agreement.
- 2.8.2. We Can Marketing will Host the software, Software and/or Website(s) as stated in the SLA on one of its servers or from a third party. In the absence of an SLA, We Can Marketing does not guarantee that the Software and/or Website(s) will always be Available,



yet We Can Marketing strives for an Availability of 99.5% per year. If any unavailability does not continue for more than four (4) consecutive hours, the Service will be considered full and uninterrupted.

2.8.3. Client warrants that all materials, data and/or instructions provided by Client for Hosting are accurate and complete and that all data and data storage media meet the specifications provided by We Can Marketing.

2.8.4. In principle, We Can Marketing ensures that Client's data is not stored outside a member state of the European Union. However, it may happen that Client's data is stored with U.S. companies, in which case We Can Marketing will ensure that such storage is only done with U.S. companies working with *EU model clauses*, and/or (successor(s) of) Privacy Shield certified.

## **ARTICLE 2.9. USE OF HOSTING**

2.9.1. To the extent that Client requires telecommunications facilities for the use of the Services, Client shall be responsible for the timely selection and acquisition of suitable facility(ies). Client shall ensure that he obtains any necessary permission(s) and he shall comply with all related conditions of suppliers of telecommunication facilities and any other third parties in this regard

2.9.2. Client shall act as a professional user in connection with the purchase of the Hosting and in that context shall in any case:

- a. not make improper, unauthorized, unlawful or improper use or use not in accordance with the purpose of use of We Can Marketing's Hosting;
- b. Not post any data on We Can Marketing's servers that violates the rights, including intellectual property rights, of We Can Marketing or third parties;
- c. infringe any intellectual property rights of We Can Marketing or third parties;
- d. not spread viruses;
- e. not use equipment other than that recommended by We Can Marketing and otherwise follow We Can Marketing's instructions regarding boundary conditions for use, as set forth in the SLA;
- f. not allow third parties to use the Hosting without the prior express written consent of We Can Marketing;
- g. not further configure or parameterize the Hosting, including software, Software and/or Website(s), in such a way as to substantially increase the system load or reduce the stability of functionality;
- h. not cause disruption to the functioning of We Can Marketing's ICT infrastructure, third party infrastructure and/or links between infrastructures due to (the content or intensity of) data traffic or due to the actions and/or omissions of the Client.

## **ARTICLE 2.10. HOSTING FEES**

2.10.1. Notwithstanding the provisions of Article 1.5.2 (General Section), fees for (maintenance and support with respect to) Hosting are due in advance for four (4) weeks and for the first time on the effective date specified in the Agreement. Maintenance and support on hosting added to the Agreement in the interim.



functionality to any additional Software under Hosting will be billed pro rata from the time of addition until the next invoice date.

- 2.10.2. Delivery of added functionality to in the context of Hosting and/or performance of additional associated Services, which were not anticipated or agreed upon in the original assignment, shall be considered additional work and shall be delivered or performed upon notification by We Can Marketing to the Client in accordance with We Can Marketing's then current rates for such.

#### **ARTICLE 2.11. TERMINATION OF HOSTING**

- 2.11.1. In the context of the continuity of the Customer's provision of information, in the event of termination of the Hosting, the parties will consult forthwith regarding the transfer of data, the provision of services and/or other management measures required for the Customer's uninterrupted use of its data, Software.
- 2.11.2. In the context of Hosting, We Can Marketing will enable Client to make any transition to another party or environment. However, We Can Marketing can only enable the transition to a party that has or can provide an infrastructure identical to that of We Can Marketing. We Can Marketing shall not be liable for any damages resulting from such transition.
- 2.11.3. All work performed by We Can Marketing under this article shall be charged on an after-the-fact basis at the then current rates.

#### **ARTICLE 2.12. INTELLECTUAL PROPERTY RIGHTS**

- 2.12.1. All intellectual property rights, including copyright, database, trademark and patent rights, to the Software belong to We Can Marketing, its licensors or Ancillary Suppliers. The Client only acquires those rights of use explicitly stated in the Agreement, or in separate license agreement(s) with Ancillary Suppliers.
- 2.12.2. All intellectual property rights to works other than Software belong to We Can Marketing or its licensors. The Client only acquires a right of use that is explicitly stated in the Agreement, in the absence of which, the right will entail no more than that for acts relating to the works as referred to above may only be performed by the Client if and to the extent reasonably necessary for the agreed purpose.
- 2.12.3. Client is not entitled to remove or alter any notice relating to intellectual property rights, including notices regarding the confidential nature of the works.

#### **ARTICLE 2.13. E-(MAIL) MARKETING, CAMPAIGN MANAGEMENT, LOYALTY PROGRAM MANAGEMENT AND DATA PROCESSING.**

- 2.13.1. The accuracy of data made available by the Client in the context of Agreements regarding e-marketing, campaign management and/or loyalty program management and/or the resulting Data Enrichment, is guaranteed by the Client. Client indemnifies We Can Marketing against all claims of



third parties, including but not limited to claims regarding unsolicited e-mail and/or SMS and/or push notification.

- 2.13.2. The Client is aware of the fact that the quality of We Can Marketing's Services depends in part on the quality of the data provided by the Client (including conformance to pre-agreed specifications) and, therefore, the omission or limited performance of Data Enrichment at the request of the Client may adversely affect the quality of We Can Marketing's Services.
- 2.13.3. The provisions of Article 2.19 shall apply mutatis mutandis to the provision of Services mentioned in this Article.
- 2.13.4. The Client warrants that it will always act in accordance with the relevant regulations and/or industry-specific guidelines, including, but not limited to, the SMS Service Provision Code of Conduct and the Telecommunications Act, in particular Chapter 11 of that Act, and indemnifies We Can Marketing against damage resulting from acting in violation of these regulations and guidelines.

#### **ARTICLE 2.14. SEARCH ENGINE MARKETING**

- 2.14.1. Client acknowledges that the work in the context of Search Engine Marketing will always be performed on the basis of an obligation of effort. Since We Can Marketing is dependent on external factors in the execution of the work, such as continuously changing search engine algorithms, We Can Marketing cannot give any guarantee of a result to be achieved.
- 2.14.2. Notwithstanding the provisions of Article 1.9, We Can Marketing does not accept liability in the execution of the work in the context of Search Engine Marketing, except for intentional and deliberate recklessness on the part of We Can Marketing's management, if it turns out that the practices that We Can Marketing has applied for the Client have resulted in a deteriorated result, or even a search engine penalty.
- 2.14.3. If the Service to be provided consists of search engine advertising and/or social advertising, the Client grants a special power of attorney during the term of that relevant Agreement to place advertisements on its behalf. The extent of the power of attorney is apparent from the quotation and/or Agreement approved by the Client and the activities listed therein. The Client itself is responsible for the advertising budget and keeping it up to date.

#### **ARTICLE 2.15. CONTENT CREATION AND COMMUNITY MANAGEMENT.**

- 2.15.1. If Content Creation involves the use of images that are subject to third party rights, for example stock photos, videos, music, We Can Marketing will inform Client in a timely manner. Article 1.4.4 shall apply accordingly.
- 2.15.2. Client, by purchasing Community Management, grants We Can Marketing a special power of attorney to perform actions on its behalf on the social networks for which the Agreement is entered into, including the sharing of content. The power of attorney is revocable, non-private and for the duration of the Agreement.
- 2.15.3. Client acknowledges that Community Management will always be performed on a best-efforts basis. We Can Marketing cannot give any guarantee of a result to be achieved.





- 2.15.4. Client hereby realizes and acknowledges that sharing content on social media and/or online platforms is to some extent irreversible in terms of any negative or positive consequences.
- 2.15.5. The Client shall indemnify We Can Marketing against all third party claims regarding Community Management. Notwithstanding the provisions of Article 1.9, We Can Marketing does not accept any liability for damages related to the performance of Community Management, except in the case of intentional or deliberate recklessness on the part of We Can Marketing's management. Consequently, We Can Marketing is for example, not liable for any image damage.
- 2.15.6. Client realizes and acknowledges that social media and online platforms have their own terms of use when it comes to sharing content. Client hereby declares to take timely notice of any terms (of use) and further declares to be bound by those terms (of use). The Agreement shows on which social media and/or online platforms the content is shared or placed.

#### **ARTICLE 2.16. ACCEPTANCE TEST**

- 2.16.1. If the parties agree that the Client I, after the Delivery of the Services in Business Ready condition, will conduct an Acceptance Test, such Acceptance Test shall take place within ten (10) Business Days after the date of Completion in Working order takes place.
- 2.16.2. The Acceptance Test may relate to the Services, hereinafter referred to as the subject of acceptance.
- 2.16.3. During the Acceptance Test, We Can Marketing will assist Client upon request at the then current rates.
- 2.16.4. Within five (5) Business Days after the Acceptance Test has taken place, the Client will send We Can Marketing a dated report of the Acceptance Test. This report will record any Defects found and will indicate whether everything We Can Marketing delivered works properly. It will also state whether or not the Services have been accepted. Should We Can Marketing not have received the results of the Acceptance Test by the end of this period, We Can Marketing will consider the Services accepted.
- 2.16.5. Minor Defects, which includes Defects that, due to their nature and/or number, do not reasonably impede operational use, will not be grounds for withholding acceptance, without prejudice to We Can Marketing's obligation to repair such Defects, insofar as possible, as referred to in the following paragraph.
- 2.16.6. If and to the extent possible, We Can Marketing shall, within twenty (20) Working Days after receipt of the report referred to in this article, remedy to the best of its ability the Defects recorded in that report. If the Agreement is entered into on the basis of a fixed price, such remedy shall be made free of charge; in all other cases, such work shall be charged on the basis of subsequent calculation.
- 2.16.7. With regard to Services of a Subsidiary Supplier, We Can Marketing will immediately communicate the Defects found during the Acceptance Test to this Subsidiary Supplier, which will then deal with the Defects on the basis of the applicable conditions. If possible, We Can Marketing is prepared to make an effort to provide a temporary problem solution during the time it takes the Secondary Supplier to remedy the Defect. Said temporary troubleshooting will be charged to Customer on an after-the-fact basis.





- 2.16.8. If the Client has not accepted the Services upon performance of the Acceptance Test, the Acceptance Test shall be repeated in accordance with the provisions of this Article no later than ten (10) Business Days after the identified Defects have been remedied.
- 2.16.9. If the Services are accepted by the Client, the date on which the relevant report is signed by the Client shall constitute the date of acceptance.
- 2.16.10. If, at Client's option, no or only a partial Acceptance Test takes place and/or Client puts the Ready-to-Use Delivered in use for acceptance, including having an App uploaded to an Appstore, the date of Ready-to-Use Delivered shall be the date of acceptance.
- 2.16.11. Provided it has been agreed, Client has the right to subject parts of Services already delivered to a provisional Acceptance Test in the manner provided for in this article, on the understanding that the date of Completion Ready for Operation must be read as the date on which the partial delivery took place. Client retains the right at all times to perform an integral Acceptance Test after preliminary Acceptance Tests.
- 2.16.12. If the subject of Acceptance is an App or API, then for a period of four (4) weeks after Acceptance of that App or API, Defects in the App or API will be fixed by We Can Marketing free of charge. Thereafter, Defects will be resolved within a maintenance agreement and/or SLA.

#### **ARTICLE 2.17. PROCESSING OF PERSONAL DATA**

- 2.17.1. Parties mutually undertake to act in accordance with the General Data Protection Regulation and other privacy-related laws and regulations.
- 2.17.2. If and to the extent personal data will be processed by the parties, the parties will enter into a processor agreement. We Can Marketing will provide its standard processor agreement to the Client for this purpose.
- 2.17.3. We Can Marketing cannot vouch for the manner in which a third party with whom Client maintains a relationship, and with which third party, or online tools of this third party, We Can Marketing should (cooperate). We Can Marketing advises Client to take note of the privacy policies and/or conditions regarding the processing of personal data, of those third parties. In particular, this concerns third parties such as Facebook, Twitter, LinkedIn and Google.

#### **ARTICLE 2.18. DELIVERY OF GOODS, STORAGE OF GOODS AND RETENTION OF TITLE**

- 2.18.1. If and to the extent that goods are delivered around the services, such delivery is made under retention of title until Client has paid all that it is bound to pay under the Contract and/or other agreements with We Can Marketing, including interest and costs.
- 2.18.2. Delivery in the Netherlands by We Can Marketing of the goods referred to in the previous paragraph is "carriage paid". Delivery elsewhere than as referred to above is "ex works" in accordance with the Incoterms in force.
- 2.18.3. The receipt of goods made or processed by We Can Marketing, or (a) third party(ies) engaged by it, by the Client and/or a carrier engaged by it, is proof that they were in externally good condition when received, unless the contrary appears from the transport document or receipt.



- 2.18.4. The Client is required to examine after delivery whether We Can Marketing has properly fulfilled the Contract and is further required to notify We Can Marketing in writing as soon as the contrary is apparent.
- 2.18.5. The Customer must make the examination referred to in the preceding paragraph of this article, the relevant notification and the return of corrections with due haste, but at the latest within three (3) working days after delivery. After expiry of the aforementioned period, the delivered goods shall be considered sound. Furthermore, the goods shall be considered sound if and insofar as the goods have been taken into use and/or processed in whole or in part by the Client.
- 2.18.6. If the holding of stock by We Can Marketing whereby the work is performed on a unit price basis is expressly part of the Agreement, the stock must be purchased by the Client at the agreed unit price within a period of 30 (thirty) days upon the discontinuation of the Services purchased. After payment, We Can Marketing shall transfer the aforementioned items to the Client. This also applies to the situation where the Client wishes to change the specifications for the assembled final product, leaving unusable stock.
- 2.18.7. We Can Marketing is not responsible for the storage of the goods to be delivered, unless storage has been expressly agreed upon. If storage takes place, this will take place at the expense and risk of the Client, unless expressly agreed otherwise, in which case the Client will ensure adequate insurance of such goods for the risk of fire, theft, etc.

#### **ARTICLE 2.19. DEADLINES AND SCHEDULING.**

- 2.19.1. All delivery dates given or to be given at any time by We Can Marketing are always approximate and are never fatal. Indications of delivery times are based on the working conditions prevailing at the time of the Agreement and timely delivery of materials. If delay occurs as a result of changes in said working conditions and/or as a result of untimely delivery of materials from the Client and ancillary suppliers used by We Can Marketing, the delivery term will be extended to the extent necessary.
- 2.19.2. If the progress of the work is likely to be delayed or has been delayed, We Can Marketing will notify the Client as soon as possible, indicating the cause of the delay and, if possible, how it is expected to affect the approximate delivery date.
- 2.19.3. If the delay is due to an act or omission by the Client, such as insufficient cooperation, the Client must compensate We Can Marketing's employees for their idle hours. At the request of the Client and to the extent possible, We Can Marketing will make every effort to undo the delay, if possible by freeing up additional capacity and deploying additional employees. The Client shall reimburse We Can Marketing for all costs associated with this.

#### **ARTICLE 2.20. TESTS AND DEVIATIONS**

- 2.20.1. Approval of Tests by the Client is deemed to be recognition that We Can Marketing has correctly performed the work that preceded the Tests. Approval also leads to discharge for the work referred to above.



- 2.20.2. Deviations between goods delivered by We Can Marketing and the Trial/Trials, do not constitute grounds for rejection, discount and/or dissolution of the Contract and/or compensation if they are only of minor significance. The minor significance as referred to above include deviations that do not (substantially) affect the use value and/or (use) possibilities of the delivered goods.
- 2.20.3. In assessing whether or not deviations in the total of the items delivered by We Can Marketing are to be considered minor, a representative sample by We Can Marketing of the items will be taken into account. Unless by the nature of the items a check of each individual item is reasonably possible and meaningful, at We Can Marketing's discretion.
- 2.20.4. More or less delivery in relation to the agreed number of items is permitted if the deviation percentage is no more than 10% above or below the agreed number of items. The prices due for more or less goods delivered shall always be charged or set off against amounts already paid.
- 2.20.5. If, to the extent that fixed unit prices have been agreed upon, and rising raw material prices put that fixed unit price under pressure, the Parties will consult to determine jointly whether rising raw material prices will be (temporarily) passed on in the unit price, or whether to switch to another raw material or to another material.



- GENERAL TERMS AND CONDITIONS WE CAN MARKETING B.V. -

### **PART 3. INTERIM SERVICES**

*These General Conditions consist of a General Part and one or more addenda such as the present part. This part is integral and inseparable from the General section of the Terms and Conditions as if the provisions of this part were included in the General section of the Terms and Conditions. In case of contradiction between a provision in the General Part and a provision in this part, the provision of the part shall prevail. In case of contradiction between addenda, the provision from the part that is most related to the nature of the performance to which the Agreement relates, at the discretion of We Can Marketing, shall prevail.*

#### **ARTICLE 3.1. DEFINITIONS**

In addition to PART 1 (General part), the terms below when used in the General Conditions and/or Agreement, in singular or plural, and starting with a capital letter, also have the meaning as defined in this Article. Additional and different definitions may be included in the Agreement and/or SLA which will then apply to that particular Agreement and/or SLA.

- 3.1.1. *Employee*: the natural person, not being personnel of the Client, who is made available to the Client by We Can Marketing under a relevant Agreement with the Client to perform work for the Client.

#### **ARTICLE 3.2. PROVISION**

- 3.2.1. If We Can Marketing makes one or more Employees available to the Client to perform certain work for the Client during an agreed-upon period under the management and supervision of the Client, the parties will enter into an Agreement to that effect. In each case it will be indicated which Employee(s) will be made available, during which period the work will be performed and at which hourly rate.
- 3.2.2. The parties never intend that the posting of an Employee should create an employment relationship between the Client and that Employee.

#### **ARTICLE 3.3. WORK AND CHANGES.**

- 3.3.1. The work to be performed by the Employee shall be described in the Agreement.
- 3.3.2. Client determines the work to be performed in consultation with We Can Marketing. Client is responsible for the time commitment. The work is performed under the direction and supervision of Client.
- 3.3.3. In addition to the work described in the Agreement, additional work may be performed by the Employee on behalf of Client.



- 3.3.4. If the occasion arises, the parties will consult whether and how such work can be performed in parallel with the work referred to in Article 3.3.1 if possible, or in what (different) time period. Agreements concerning such additional work shall be recorded in writing as part of the Agreement.
- 3.3.5. The Client is not entitled to have the Employee perform any work other than that stipulated in the Agreement or in a part referred to in the previous paragraph, or to have work performed outside the Netherlands, or to lend the Employee to a third party, without the prior written consent of We Can Marketing.
- 3.3.6. The parties may by mutual agreement change the nature, content and/or duration of the assignment during the term of the Agreement.
- 3.3.7. If and as soon as either party becomes aware of problems arising in the performance of the work, as well as other matters arising and of importance to the performance of the Agreement, the parties will inform each other. The Client will inform We Can Marketing, among other things, if:
- a. the Agreement changes in nature or character;
  - b. Client requires an Employee to perform work for another part of the company, insofar as that was not the original Agreement;
  - c. change the agreed locations where the work is to be performed;
  - d. Client and an Employee disagree as to how the work should be performed.

#### **ARTICLE 3.4. WITHDRAWAL**

- 3.4.1. Notwithstanding both Article 1.8.3 (General Section) and Article 1.8.4 (General Section), notice of termination in said cases may be given mutually subject to a notice period of one (1) month instead of the three (3) months specified in the aforementioned Articles.

#### **ARTICLE 3.5. WORKING DAYS, WORKING HOURS AND LOCATION**

- 3.5.1. The Employee will perform the work in question for a number of days per week to be included in the Agreement. We Can Marketing warrants that the Employee will be at the Client's full disposal for the agreed number of days.
- 3.5.2. The parties will specify the days and Hours of Work to be worked by mutual agreement and in consultation with the Employee.
- 3.5.3. The work will be performed at location(s) to be specified by (a) Client, which locations must be known to We Can Marketing in advance in good time. If the agreed locations are changed, Article 3.3.7 comes into effect.

#### **ARTICLE 3.6. COOPERATION OF CLIENT**

- 3.6.1. The Client shall ensure an adequate and safe workplace for the Employee in accordance with the applicable Occupational Health and Safety/Arms legislation.
- 3.6.2. Client shall always promptly provide Employee with all information, useful and necessary data and intelligence required for proper performance of the work by Employee.



- 3.6.3. If work is performed on the premises of the Client, the Client will provide We Can Marketing with the following free of charge for the period necessary for the execution of the Agreement: adequate work space, user facilities on computer systems, adequate telecommunication facilities, such as telephone, fax and Internet access without restrictions and of sufficient speed, as well as any other facilities requested by We Can Marketing in a timely manner.
- 3.6.4. Client is obliged to take such measures and provide such instructions as are reasonably necessary to prevent the Employee from suffering damage in the performance of the work and is aware of the liability referred to in Article 7:658 paragraph 4 of the Dutch Civil Code.
- 3.6.5. Client indemnifies We Can Marketing against any claims (by Employee) under Article 7:658 paragraph 4 of the Dutch Civil Code (industrial accidents).
- 3.6.6. Client shall indemnify We Can Marketing against any claims made by the Employee in connection with damages suffered by the Employee as a result of any property belonging to the Employee being damaged or destroyed in the performance of work for Client.

### **ARTICLE 3.7. OBLIGATIONS WE CAN MARKETING**

- 3.7.1. We Can Marketing shall ensure that its Employee conforms to the Client's (standard) procedures and/or house rules or regulations within the framework of the execution of the work. The Employee is therefore fully aware of this and, to the extent possible, receives/receives a copy of these (standard) procedures and/or house rules or regulations in good time prior to the execution of the work.
- 3.7.2. We Can Marketing or its Employee is not authorized to legally bind Client in any way in connection with the performance of the Agreement.

### **ARTICLE 3.8. TRAINING, EXPERTISE AND EXPERIENCE.**

- 3.8.1. We Can Marketing warrants to the Client that in terms of level of education, expertise and experience, the Employee is/is able to adequately pick up and perform the anticipated work.
- 3.8.2. If Client reasonably believes that the Employee lacks one or more of the qualifications mentioned in Article 3.8.1 or, in Client's opinion, fails to perform the work properly, Client shall be entitled to demand replacement of the Employee. Article 3.9 shall apply accordingly.
- 3.8.3. Articles 1.6.2c and 1.6.2d (General section) do not apply.

### **ARTICLE 3.9. REPLACEMENT EMPLOYEE, SICKNESS AND LEAVE**

- 3.9.1. We Can Marketing is entitled to replace an Employee with another Employee during the term of the Agreement, without being liable for any compensation and/or compensation for costs.
- 3.9.2. If (it is foreseeable that) the Employee is unable to perform work on behalf of the Client for a period longer than ten (10) Business Days due to illness or any other cause, We Can Marketing will provide a replacement Employee as soon as possible, with or without equivalent qualifications.
- 3.9.3. In the event of illness, the Employee will notify We Can Marketing. We Can Marketing will promptly communicate this notification to the Client.



- 3.9.4. If the Employee wishes to take vacation under the terms of her (employment) agreement with We Can Marketing, this will be determined by mutual agreement between the Employee, We Can Marketing and the Client. The Client cannot unreasonably refuse to cooperate with the Employee's vacation, but may require that We Can Marketing deploy a replacement Employee, with or without similar qualifications.
- 3.9.5. If a Party believes that personnel of the other Party are not functioning properly or are unwilling or unable to perform the work properly, such Party shall be entitled to require the other Party to replace such personnel, unless such replacement cannot reasonably be required of the other Party due to unreasonable circumstances.
- 3.9.6. The cost of induction of replacement personnel shall be borne by the party requesting the replacement, unless the request for replacement was based on non-performance or inadequate performance of personnel.

**ARTICLE 3.10. FEES AND EXPENSES.**

- 3.10.1. Travel time and travel and accommodation expenses regarding commuting for the Employee between the location(s) where he/she will perform the work will be reimbursed by the Client in accordance with Article 1.4.3 (General part), unless otherwise agreed.
- 3.10.2. The Client shall not owe We Can Marketing any compensation for the period during which the Employee was unable to perform the agreed work due to illness, vacation or for any other reason, unless a replacement Employee is deployed by We Can Marketing pursuant to clause 3.9.4.
- 3.10.3. If and to the extent that, in the opinion of the Client, it is necessary for the Employee to work additional hours outside Work Hours, this will be coordinated in advance in proper consultation with Employee, We Can Marketing and the Client. With regard to these hours outside Work Hours, Article 1.4.5 (General part) shall apply accordingly.
- 3.10.4. We Can Marketing is - in addition to what is stated in article 1.4.6 (General part) - also entitled to adjust the agreed prices and rates in case of an increase in the Employee's labor costs as a result of (a change in) a governmental measure, or other binding regulation, or as a result of (a change in) social security contributions or tax legislation.



### **ARTICLE 3.11. BILLING, PAYMENT AND TIMEKEEPING.**

- 3.11.1. The hours to be charged by We Can Marketing will be determined on the basis of the hours recorded in We Can Marketing's timekeeping system. Any time sheet offered by the Client must be consistent with this with the understanding that in the event the latter does not correspond to the information contained in We Can Marketing's timekeeping system, We Can Marketing's timekeeping system shall prevail.
- 3.11.2. An invoice will be issued by We Can Marketing for each Employee for each calendar month. Upon We Can Marketing's first request, We Can Marketing will provide a written summary of timekeeping records.
- 3.11.3. We Can Marketing guarantees Client that it will withhold and remit all wage tax and social security contributions owed by it in relation to the Employee to be deployed by it to the appropriate authorities. We Can Marketing indemnifies the Client against all claims or demands of third parties that may arise in relation to the above-mentioned wage tax and social security contributions.

### **ARTICLE 3.12. CONFIDENTIALITY**

- 3.12.1. We Can Marketing guarantees that during the term of the Agreement referred to in this chapter and after the termination of this Agreement it will at all times maintain secrecy towards third parties with regard to confidential information concerning (the business operations of) the Client and the (business operations of) clients of the Client and other information that can reasonably be qualified as confidential. We Can Marketing will also impose this obligation on the Employee. At the first request of the Client, We Can Marketing will provide the Employee with a signed confidentiality agreement.
- 3.12.2. Upon termination of the Agreement referred to in this section, We Can Marketing shall provide Client with possession of all items that its Employee of the relevant Agreement received from Client or manufactured for Client's benefit in the course of performing the work.

### **ARTICLE 3.13. INTELLECTUAL PROPERTY RIGHTS**

- 3.13.1. If and to the extent that Employee, in the performance of his work, as referred to in this chapter, creates for the benefit of Client, whether or not together with others, a work or otherwise something on which intellectual property rights are or may be vested, We Can Marketing grants an unrestricted and irrevocable license and We Can Marketing will immediately provide all necessary cooperation at the first request of Client to achieve the transfer of relevant intellectual property rights. We Can Marketing shall furthermore provide all necessary cooperation if any action by it is necessary to create an intellectual property right and/or have it transferred to the Client.
- 3.13.2. We Can Marketing guarantees that the works produced by the Employee in the performance of his work for the Client do not infringe any intellectual property rights of third parties. We Can Marketing indemnifies Client for claims of third parties regarding an infringement committed by Employee in the performance of work for Client.





\*\*\*