

## **GENERAL TERMS AND CONDITIONS OF PHYSIXFACTOR.**

### **Article 1: Definitions**

The following definitions shall be effective under these general terms and conditions:

- Physixfactor is established at Parkzoom 25, 6525PC in Nijmegen, The Netherlands;
- The customer is the natural person or legal entity that has concluded an agreement with Physixfactor for the services to be provided or the goods to be supplied by Physixfactor;
- Agreements means any agreements concluded between the customer and Physixfactor, related to the services provided or goods supplied by Physixfactor;
- Prices mean the rates for the provision of services or supply of goods.

### **Article 2: General**

1. These general terms and conditions apply to any agreements, offers and negotiations with regard to the services to be provided or the goods to be supplied by Physixfactor.
2. Agreements need not be concluded or evidenced by a written document. If Physixfactor have established or confirmed the agreement e.g. through an order confirmation, then such document shall be the required full evidence between the parties, subject to evidence to the contrary.
3. Actions and/or verbal agreements of persons representing Physixfactor without authorisation shall not bind Physixfactor, unless Physixfactor have confirmed such agreements in writing through persons authorised to this purpose.
4. The nullity or cancellation of one or several provisions in these terms and conditions shall leave the validity of the other clauses in tact. Physixfactor and the customer shall in such case consult in order to replace the null or cancelled clauses of these terms and conditions with clauses that must as much as possible be in keeping with the purpose and purport of the null or cancelled clauses.

### **Article 3: Establishment of the agreement**

1. Any verbal or written offer from Physixfactor will be free of obligations. The offer is also free of obligations if a fixed time limit is stated in the offer for acceptance, unless Physixfactor have expressly stated in the offer, in addition to the fixed time limit for acceptance, that the offer is irrevocable.  
Should such a time limit not be stated in a written offer, Physixfactor may consider the offer cancelled after 4 weeks following the date the offer was made, without the requirement of any further notification by Physixfactor.
2. The agreement shall not be established until Physixfactor have received the acceptance of the offer within a period of 4 weeks. Dispatch of the acceptance within 4 weeks shall not be adequate for the establishment of the agreement.
3. Acceptance, whether or not in the form of an order confirmation on the part of the customer, containing substantial supplements, restrictions or other amendments regarding the offer, shall be considered as a new offer and a cancellation of the original offer.
4. Substantial supplements, restrictions or other amendments within the meaning of article 3.3 include supplemental, restricting or otherwise deviating terms and conditions with respect to items such as the price, payment, the period in which Physixfactor's services must have been provided or the goods must have been supplied, the extent of liability of one of the parties and the method of dispute settlement.
5. The acceptance, whether or not in the form of an order confirmation, not containing any substantial supplements to or deviations from the offer, shall cause the agreement to be established, unless Physixfactor should forthwith object to such differences.
6. Referral by the customer to other terms and conditions on acceptance shall not be effective and only Physixfactor's general terms and conditions at issue shall be applicable.  
In the case of referral by the customer to other terms and conditions on acceptance stating that the applicability of Physixfactor's terms and conditions is expressly not accepted, article 3.3 shall apply and the offer shall be considered refused while this situation concurrently constitutes a counteroffer.

### **Article 4: Contents of the agreement**

1. The contents and the extent of the agreement concluded with Physixfactor are first of all determined by the description of the work adopted in the accepted offer, including any changes Physixfactor and the customer should subsequently agree to in writing. The offer must state the required result of Physixfactor's work: written advice, a report, a model (prototype) etc.
2. In the case that the agreed work consists of research or analysis or the provision of advice or the production of a model (prototype), only a commitment to make an effort shall stem for Physixfactor from the agreement (and not a commitment to produce a result). In the implementation of the agreed work, Physixfactor shall endeavour to achieve a result that serves the customer's purpose.
3. The commitment to produce a result shall be attaching to Physixfactor in the case that the agreed work consists of the supply of goods.
4. Supplements and alterations to the services to be provided or the goods to be supplied by Physixfactor shall only be binding if agreed between the parties in writing.

5. The investigation into the existence of titles to intellectual property of third parties or the possibility of taking out a patent for the result of the work to be carried out by Physixfactor is expressly not part of Physixfactor's activities.
6. Physixfactor will carry out their activities within the period agreed between the parties. Such period is not a deadline, and consequently Physixfactor shall not be in default if this period should be exceeded. If during the implementation of the work it should become apparent that the work cannot be completed within the set period, Physixfactor will as soon as possible, however not later than 3 workdays before the expiry of the period, notify the customer thereof. Physixfactor and the customer shall subsequently determine a new time limit in consultation.
7. In the case that during the term of the agreement concluded between Physixfactor and the customer circumstances change affecting the implementation of the order by Physixfactor, the customer shall be committed to notify Physixfactor immediately with respect to this.
8. The customer shall provide to Physixfactor, timely and in the required format, any data and information the customer holds which Physixfactor requires for the proper implementation of the order.
9. Physixfactor shall not accept any liability with respect to damage caused to the customer as a result of the fact that the time limit has been exceeded.
10. Physixfactor must be notified in writing of any complaints with respect to the implementation of services or supply of goods within 30 days at the most following the completion of the order, and not later than 8 days following the moment the complaint was caused.

#### **Article 5: Confidentiality**

1. For the duration of one year following the termination of the agreement concluded between the parties, Physixfactor and the customer guarantee that third parties will not be able to take cognisance of confidential information supplied by or obtained from the other party and/or stemming from the implementation of the agreement due to their actions and/or failure of action and/or that of their employees/assistants.
2. The customer is committed to secure the information to such extent, that this information shall be protected from the risks of situations such as but not thereto limited, unauthorised access, alterations, mutilation, nullification or loss, as well as to verify the origin and the identity of the parties, and guarantee the integrity and confidentiality of messages. In the case the above requirement has not been met, only the registration of Physixfactor shall be valid evidence.
3. In the case of the customer's infringement of the obligations attaching to him pursuant to the previous clauses, the customer shall be due to Physixfactor a penalty payable on demand amounting to € 5,000.00 for each infringement and for every day or part of the day such infringement continues.

#### **Article 6: Right to results**

1. The customer holds the full and free user right to the results of the order delivered by Physixfactor to the customer, in compliance with the provisions in article 7 and 8. This user right is exclusive during the period of confidentiality mentioned in article 5.1, or the period the parties have agreed as a deviation thereof. After the end of the aforementioned period, Physixfactor shall also be entitled to (cause to) use the results for the purpose of third parties.
2. Physixfactor are entitled to use the following information for themselves and/or to have it used for and/or by third parties:
  - a. the knowledge and experience available at Physixfactor at the moment the agreement with the customer is established;
  - b. the knowledge and experience obtained during the implementation of the agreement concluded with the customer, insofar it is outside the scope of the order;
  - c. computing methods, software and experimental methods, resulting from the implementation of the order, insofar the development thereof is not the primary object at the moment the order is given;
3. Reports, drawings and other material matters, which are the result of the ordered work, shall accrue to/shall be the property of the customer, without prejudice to the provisions in articles 7 and 8.

#### **Article 7: Intellectual property**

1. Any titles to intellectual property with respect to products accomplished or supplied by or on behalf of Physixfactor and/or used by the customer by virtue of and/or under the terms of the agreement – such as computer software, texts, drawings, analyses, reports, methods, technology, data bases and documentation – shall only be vested with Physixfactor and/or third parties used by Physixfactor.
2. The customer shall not disclose, multiply and/or modify the products mentioned above in this article, nor shall the customer conduct or act as the producer and/or party entitled (copy and/or patent right). The customer shall not remove from or alter indications on the aforementioned products with regard to the titles to intellectual property.

#### **Article 8: Patent**

1. To the extent the implementation by Physixfactor of the agreement with the customer may lead to results that are eligible for patents, the customer shall not be permitted to apply for a patent, subject to the express written consent of Physixfactor.

2. Subject to the exception referred to in the previous section, Physixfactor are at any time permitted to apply for a patent in their own name and for their own account. Physixfactor shall observe their commitment of confidentiality referred to in article 5 with respect to this.
3. If one of the parties applies for a patent in accordance with the previous sections, the applicant/patent holder shall grant a licence to the other party upon the other party's request made within six months following the patent application, to the extent required for the implementation of the agreement concluded between the parties.
4. Physixfactor and the customer shall notify each other of:
  - a. the fact that they suspect that matter eligible for a patent has been found;
  - b. the fact that a patent application has been filed;
  - c. the subject of the application.Further to this the parties shall provide any required assistance to each other with respect to the patent application.
5. The application/patent holder shall at any time be at liberty to withdraw a patent application or to cancel a granted patent. If the customer or Physixfactor have been granted a patent, he/they will be the first to be given the opportunity to have the patent application registered in his/their name, or to have the patent transferred to him/her.

#### **Article 9: Price and payment**

1. Physixfactor may charge a fixed price as well as a price based on costing. In the case a fixed price is to be charged, this must be expressly set down in the order confirmation and the provisions in article 10 below shall be applicable.
2. Unless a different payment method has been agreed in writing, Physixfactor shall send invoices on a monthly basis. The amounts mentioned in Physixfactor's invoices are to be paid in full. Partial payment or payment in instalments requires Physixfactor's written consent.
3. Any payments are to be settled in euros, unless agreed otherwise in writing.
4. Payment is to be made within 30 days after the date of the invoice. Should the customer not or not timely or fully comply with his payment commitments, Physixfactor shall be entitled to suspend the provision of services or the supply of goods and not deliver the results of previous work to the customer.
5. If an invoice has not been paid within 30 days following the date of the invoice, the other party shall be due an interest of 1.5% on the outstanding amount, for each month or part of the month that the payment period has been exceeded. Further to this, any agreed discount arrangement shall no longer be applicable after the aforementioned 30 days, resulting in the fact that the customer shall be due the full original amount (i.e. before the discount was granted).
6. All payments shall only be intended and be used for the payment of the longest outstanding invoices. Physixfactor are entitled to first use the customer's payments to pay the claims not stemming from the agreements and claims stemming from the customer's defaults under the terms of commitments emanating for the customer from the agreement.
7. If the customer should not pay within 8 days after the deadline referred to in article 9.4, he is considered to be in default by law, while a proof of default or other action shall not be required. Physixfactor are entitled to claim from the customer any costs caused by his default. Such costs shall include the costs incurred both within and outside the court.
8. If the customer should be defaulting in his obligation to pay, Physixfactor may use the assistance of third parties for the collection of the outstanding invoice. The out-of-court collection costs involved shall be fully for the account of the customer. The out-of-court costs are established at 15% of the amount claimed to a minimum of € 5,00.00 exclusive of turnover tax.
9. Physixfactor reserve the right to claim a partial advance payment from the customer prior to the implementation of the agreement.
10. The customer is not permitted to offset any amounts or appeal to a right of suspension with respect to Physixfactor.
11. The customer is not at any time permitted to transfer or pledge his rights from an agreement with Physixfactor to third parties, unless Physixfactor have given their express and written consent.

#### **Article 10: Additional work**

1. Physixfactor reserve the right to charge to the customer any additional work carried out by Physixfactor, provided that the referred-to work is required in the interest of the customer and/or the proper implementation of the order given by the customer. The customer shall as soon as possible be notified of the necessity of the implementation of such additional work. Prior to the commencement of the additional work, Physixfactor shall consult with the customer with respect to this.
2. If at the request of or with the prior consent of the customer, Physixfactor have carried out work that is not included in the contents and/or the scope of the agreement, the customer shall be due to Physixfactor an additional payment to be established by Physixfactor on the basis of the rates used by Physixfactor. Physixfactor are not committed to carry out work not included in the contents and/or scope of the agreement; Physixfactor may require a separate agreement for that purpose.

#### **Article 11: Providing security**

1. Irrespective of the agreed terms of payment, Physixfactor shall at any time be entitled to suspend their commitments if Physixfactor have reasonable doubt about the customer's capacity or willingness to pay. Physixfactor are entitled to alter the terms of payment, as referred to in article 9 and 10, and commit the customer to provide security to Physixfactor for the

compliance with all of the customer's commitments. Such security may be provided by depositing money in cash, providing a bank guarantee, granting a right of lien or mortgage to goods that are the customer's property.

2. In the case that Physixfactor are caused damage resulting from the circumstances referred to in the previous section, the customer will be liable for such damage.

#### **Article 12: Customer's default in the discharge of his obligations**

1. The customer shall be in default by law, if:
  - the customer does not, not timely or not properly fulfil his obligations with respect to Physixfactor;
  - the customer is in a state of bankruptcy or has been granted a moratorium, or comes within the scope of the act on debt restructuring for natural persons;
  - the customer no longer operates his regular business activities for other reasons;
  - the customer refuses to provide security, which Physixfactor has requested by virtue of article 11;
  - a writ of attachment has been levied against Physixfactor.
2. Without prejudice to any other rights or claims accruing to Physixfactor, Physixfactor may dissolve the agreement in the cases mentioned in article 12.1 without a prior proof of default and without court intervention.
3. Any claim by Physixfactor against the customer shall be payable on demand in the cases mentioned in article 12.1.

#### **Article 13: Physixfactor's default in the discharge of their obligations**

The customer can only properly dissolve the agreement with Physixfactor after the customer has held Physixfactor in default immediately upon the moment any alleged fault has been observed, through a letter sent by registered post, and has given Physixfactor the opportunity to rectify the alleged fault during a reasonable period.

#### **Article 14: Liability**

1. Physixfactor are not liable for any damage caused by the services provided or the goods supplied by Physixfactor to the customer or third parties, except in the case of intent or reckless deed from the members of the board of (executive) staff of Physixfactor who caused the damage.
2. The customer shall indemnify Physixfactor against claims from third parties – including staff and (other) assistants – stemming from and/or in relation to services provided or goods supplied by Physixfactor pursuant to the agreement, except in the case of intent or reckless deed from the members of the board and/or (executive) staff of Physixfactor.

#### **Article 15: Damages**

1. With respect to the customer's material loss and transaction loss, in any way related to or caused by the non, not timely or not proper compliance with an agreement by Physixfactor, Physixfactor's liability shall be limited to the amount Physixfactor are insured with respect to this, not including the total amount for own risk which is for Physixfactor's account by virtue of the insurance contract.
2. Physixfactor shall not at any time be liable for consequential loss. The customer shall at any time be committed to cut the loss as much as possible. Physixfactor shall at any time be entitled, if and to the extent possible, to rectify the customer's damage, in a manner other than by the payment of damages.
3. In the case that Physixfactor should temporarily not be able to fulfil their obligations on account of the agreement as a result of force majeure, Physixfactor shall be entitled to either wholly or partially suspend compliance, as long as the force majeure situation exists. In the case that Physixfactor should permanently be unable to fulfil their obligations from the agreement due to force majeure, they will be entitled to wholly or partially cancel the agreement immediately. Force majeure means, however not exclusively, defaults by Physixfactor's suppliers and/or (other) assistants, production failures, work strikes, and excessive absenteeism by employees and extreme weather circumstances.
4. During the period Physixfactor are unable to fulfil their obligations from the agreement due to force majeure, the customer shall not be able to claim implementation of the agreement, dissolve the agreement and/or claim damages.

#### **Article 16: Final clauses**

1. The customer shall keep Physixfactor updated about the correct address details of the customer, and immediately notify Physixfactor in writing of any changes in such details.
2. Dutch law applies to all the agreements, offers and negotiations with regard to the services to be delivered and the goods to be supplied by Physixfactor. Only the court in the court district of Arnhem is competent to become acquainted with any disputes directly or indirectly stemming from the agreement.
3. In the case Physixfactor should be using a non-Dutch version of these general terms and conditions and there should be any discrepancies between the Dutch and non-Dutch versions, only the Dutch version shall be valid and decisive for the interpretation of the provisions from these general terms and conditions.