

CSI tools 2014 Licensing Schedule and Structure CSI tools General Terms and Conditions

CSI tools bvba
Geldenaaksebaan 329
3001 Heverlee (Belgium)
BCE/KBO 0881 506 009

1. Applicability

These general terms and conditions apply to all agreements between CSI tools bvba (**CSI**) and its customers (the **Customer**), and, in a general manner, to all their business relations. If required, they are completed by special terms and conditions (together the **Conditions**).

The Conditions can only be amended by CSI's explicit, written agreement. They are deemed as accepted by the Customer by the simple fact of placing an order, even if they are in contradiction with its own general or special terms and conditions. The terms and conditions of the CSI tools License Agreement also apply to the Products as defined below.

2. Definitions

CSI Products: All products, services and, as the case may be, their documentation, upgrades or updates delivered by CSI, and the resulting provisions and related activities which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights of which CSI is the exclusive licensee.

Third Party Products: All products and services delivered by CSI, the resulting provisions and related activities which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by CSI.

Products: All CSI Products and/or Third Party Products.

3. Authority

The Customer is bound by every order he places. His employees, sales representatives, agents or intermediaries are indisputably deemed to be vested with the necessary authority for committing the latter.

The employees, sales representatives, agents or intermediaries are not vested with the authority to bind CSI. The offers, purchase orders and purchase order confirmations signed by them only commit CSI after written ratification by a director or a manager duly authorized to this effect, except for instances where delivery or service has already been performed. CSI reserves the right either to revoke an order that has not been so ratified or to ratify such an order at any time.

4. Information and cooperation of Customer

Before signing an agreement, the Customer is to make sure the products and/or the services meet both his needs and the use he intends to make of them. CSI accepts no liability resulting from an error of choice or appreciation of the Customer.

All assignments are carried out by CSI on the basis of data, information, requests and/or requirements provided by the Customer. The Customer shall ensure the accuracy and completeness of the data or other information.

If the necessary data or other information are not, and/or not in time, and/or not in accordance with the agreements, made available to CSI, or if Customer fails to meet its obligations in any other way, CSI is entitled to terminate or dissolve or to suspend the execution of the agreement and to charge the costs incurred at its usual rates.

If changes and/or new facts arise in regard to data or information provided earlier, CSI shall always be entitled either to adjust the agreement or to terminate or dissolve the agreement.

5. Evaluation period

CSI may at its discretion grant Customer an evaluation period for the Products (the **Evaluation Period**).

Unless agreed otherwise, the Evaluation Period shall have a duration of 30 days as from the delivery. During the Evaluation Period, the use of the Products is at the sole risk and expense of Customer and CSI shall not have any responsibilities or obligations.

6. Delivery

CSI shall commence execution of an agreement only after having received a signed copy of the agreement drawn up by CSI and/or having received payment of all amounts due fully and on time. Should CSI commence execution of the agreement prior to these conditions being fulfilled, CSI reserves the right to suspend execution of the agreement. In addition, when a Customer has signed an agreement with CSI, Customer commits to send any related purchase order in a reasonable period of time after the signature of the agreement and at the latest 2 (two) working days before the planned date

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of the delivery agreed between CSI and the Customer under their agreement.

Delivery dates, if any, shall only be considered as a time period within which CSI shall strive with reasonable efforts to deliver what has been agreed to. A delay in delivery or service may not in any circumstances give rise to the cancellation of an order or to any indemnity, unless intentional fault.

Delivery of Products takes place in accordance with the agreement between CSI and the Customer and when they are made available to Customer on CSI website.

The Products shall be considered by both parties as accepted (i) upon delivery when no Evaluation Period is applicable, or (ii) when an Evaluation Period is applicable after its completion, provided that the Products have not been returned to CSI and received by CSI before completion of the Evaluation Period.

Delivery of the Products does not imply further products and/or services (e.g. training) other than Products agreed between CSI and Customer.

The performance of services only creates an obligation of means on the part of CSI, with the explicit exclusion of any obligation of result.

7. Warranty

CSI does not warrant that the Products shall function without interruption or without errors, are suitable for every intended use and/or shall lead to results desired by Customer.

Error(s) means the failure to fulfill the functional specifications set down in writing by CSI and, in cases of developing custom work CSI Products, to the functional specifications expressly agreed upon in writing (the **Error**). The Customer is required to immediately report any possible Error which must be demonstrated and reproduced.

CSI shall strive to repair any Errors, to the best of its ability, provided that (i) the Products have not been altered in any way or form and (ii) the Errors have been reported in detail in writing to CSI. At its sole discretion CSI is entitled to repair, modify or replace the Products. In the event Errors are a result of a service CSI shall provide alternative services. The repair shall take place at the location to be determined by CSI who is entitled to install temporary solutions, emergency solutions, detours and/or other problem avoiding restrictions in the Products.

CSI may require the Customer to use the most recent versions of the Products.

CSI is entitled to invoice its usual prices and the costs for repair, modification or replacement of the Products if the Error results from mistakes made by the Customer, improper and non-careful use, of other causes that may not be attributed to CSI or if Customer could have reasonably detected the Error before acceptance.

The warranty does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information.

The Warranty provided on Third Party Products is limited to the third party general conditions as maintained by the supplier of Third Party Products.

8. Liability

CSI undertakes to perform its contractual obligations with all reasonable care according to usual professional practices.

In no circumstances can CSI's liability be engaged for damage, regardless of its nature, caused to persons or goods other than the Products or caused by Customer to any third party through the use of the Products. CSI shall have no liability to Customer for any indirect or consequential damages whether or not arising from or in connection with (i) a breach of this Agreement or (ii) its negligence in the performance of its obligations under this Agreement, except for such losses or damages which are caused by CSI's fraud and/or willful misconduct. Matters particularly considered as indirect damage include any loss or deterioration of data, profit losses, customer base losses, etc. It is consequently the Customer's responsibility to make regular back-up copies – and in any event prior to any technical intervention – of his operating systems, applications and data. The Customer shall be liable for all direct, indirect damage caused to a third party by the Customer or its employees and arising from the use of the Products.

CSI's liability under this Agreement shall in any case be limited to the license fees actually paid to CSI by the Customer during the previous year with a maximum of EUR 100.000.

CSI's liability exists solely when Customer immediately and appropriately notifies CSI of the deficiency in writing and at the latest within ten working days after occurrence of the damage.

CSI shall not be liable for any damage regardless of

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its nature caused by Third Party Products. If possible CSI shall assign its rights vis-à-vis the supplier of the Third Party Product to Customer.

9. Prices and payments

Price lists, offers, quotations and the like are supplied for information only and can be amended by CSI without notice as long as the agreement has not been concluded. All prices are VAT exclusive ex operational headquarters, with charges and taxes in addition. All invoices are drawn up in euro unless agreed upon otherwise in writing.

CSI shall invoice the amount, appropriately itemized, owed by Customer. Customer shall pay all amounts indebted within 30 days of the invoice date. These payments shall not be subject to any compensation or deduction.

The right to use the licensed Products shall be effective after Customer has made the required payments of the fees (and incidental costs, if any) relating to the licensing schedule (e.g. yearly fees) and structure (e.g. license, server, user) of CSI, has fulfilled its other obligations and as long as Customer pays all fees in time to CSI.

Customer shall at all time refrain from disposing of the delivered Products, and especially from any transfer of title, pledge or putting them up for security or privilege of any kind. If needs be, the preceding clause is deemed to be repeated prior to each delivery. Furthermore, the Customer undertakes to advise CSI without delay by registered mail of any seizure carried out by a third party.

Any claim relating to an invoice, must be sent to by registered mail within five working days of its receipt, which is presumed to be effective three working days after the date of the invoice. After this period, no further claim shall be taken into account. A claim may in no circumstances justify suspension of payment.

Should Customer fail to fulfill any obligation upon written notification of breach by CSI, CSI reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of EUR 500. Finally, any failure to pay an invoice at maturity, any protest of an unaccepted bill of exchange, any request for an amicable or judicial composition, any suspension of

payment or any other fact that could imply the Customer's insolvency, shall by right and without summons entail the immediate payment of all outstanding invoices and Customer shall be charged interest on a monthly basis, at the legal percentage rate, on all outstanding debts starting from the date of failure to pay. Furthermore, these situations shall vest CSI with the authority to suspend its own obligations and to cancel all or part of the contracts in progress without any other formality than a notification by registered mail, and without indemnity.

Compensation for any annual or periodic amounts are due in advance, and shall be invoiced to Customer, appropriately and itemized prior to each year or any other period during which the agreement between parties continues.

Without prejudice to fixed price agreements, the indebted amount may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of CSI's office. In the event that activities need to take place outside of CSI's office, hourly rates, travel and waiting- time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services can be charged. The travel and waiting- time compensation amounts to 50% of the current hourly rate. The means of transportation shall be determined by CSI.

The prices are among other things based on the costs of salaries, social premiums, materials, and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement.

Prices are subject to indexation that will be applied in accordance with the Belgian laws. With the exception of fixed price agreements, CSI is authorized in case of changes to one or more of the cost items and changes in the rate of exchange, to adjust the prices to these changes.

When invoices are to be based on a fixed price, this means that activities shall be performed on the basis of a prior agreed upon price. Price is fixed according to variables applicable at the time of closing of the agreement.

When invoices are to be based on subsequent calculation, this means that a global cost estimate of the activities can be made. On conclusion of the activities carried out, all costs actually incurred related to the activities shall be calculated and

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charged. The Customer is, then, aware that there is a possibility that the estimate made earlier could be lower than the costs actually incurred.

If no specific agreement has been made regarding billing, activities shall be performed on the basis of subsequent calculation.

CSI has the right to charge down payments which are deducted from the purchase order price. Down payments constitute the start of the fulfillment of the agreement and not a deposit that the Customer may surrender in order to free himself from his obligations.

10. Intellectual property rights

Except where Third Party Products are concerned, all intellectual property rights, industrial property rights and other rights resulting from all activities carried out by CSI regardless of where and when carried out, and regardless of whether it concerns the delivery of an existing Product or a still-to-be-developed Product, reside with CSI. Customer shall, at CSI's request and cost, but without any other consideration, execute all documents and do all acts necessary or desirable to confirm in CSI all right, title and statutory protection.

The Customer is scrupulously required to respect the confidentiality of the delivered software notably regarding its components, techniques, coding, data, etc.. He shall refrain from counterfeiting the delivered software, allowing them to be counterfeited or encouraging their counterfeiting in any way whatsoever.

Without the express prior and written consent and related conditions of CSI, the Customer may not, in any manner whatsoever, dispose of his licenses, pledge them, alienate them, communicate them, transfer or assign them or lend them either subject to payment or free of charge or use any method, technique, solution, etc. that circumvents or allows to circumvent the restrictions related to the right(s) granted under the CSI's licenses (e.g. cloud, SaaS, virtualization, consolidation solutions).

11. Infringement warranty

CSI shall defend and hold harmless Customer from any allegation that the CSI Products infringe a patent, copyright or similar right.

CSI shall pay the damages, expenses, and court costs that Customer is ordered to pay by the

final court ruling, provided that Customer (i) notifies CSI immediately, but no later than within 10 days, after Customer becomes or could have become aware of the infringement in writing of the existence of the allegation of infringement, and (ii) provides CSI sole authority to defend or settle the claim.

If CSI Products become the subject of such claim, CSI shall, at its own expense and its own option (i) obtain the right to continue using the CSI Product, or (ii) modify or replace the CSI Product so that it becomes non-infringing, or (iii) if the above remedies are not available, CSI shall pay back Customer against the CSI Product return.

CSI shall have no liability for any claim based on the fact that (i) the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right valid, (ii) Customer has made a change or addition in or to the Product, or (iii) Customer has used the Product in violation of the agreement or these Conditions.

If CSI and Customer agree that the intellectual or industrial property rights or any other rights of a CSI Product, or a part thereof, shall be transferred to Customer, Customer shall indemnify CSI against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual or industrial property right or any other right belonging to a third party.

12. Force majeure

Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and by law, legal act, or generally accepted practices can not be held accountable for. CSI reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

When force majeure is of a temporary nature CSI has the right to suspend its commitments without any form of damage compensation. In the event that force majeure exceeds three-month each party has the right to terminate the agreement without any form of damage compensation.

13. Confidentiality

CSI and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, each other's

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clients, files, and Products, which they become aware of while working for each other or for Customer's clients.

14. Varia

Customers may not assign any of its rights and obligations resulting from its relationship with CSI to a third party without CSI's prior written consent.

If one or more terms of the Conditions are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms shall remain in force undiminished. In regard to terms that are nullified, that are declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement in such a way that the parties shall strive for the maintenance of the Conditions in their totality.

All agreements between CSI and Customer, including the Conditions, are governed by Belgian law. Any dispute arising out of or in connection with agreements between CSI and Customer shall be for the exclusive jurisdiction of the Brussels courts.