

# **ECC Sprint Europe B.V. GENERAL TERMS AND CONDITIONS**

**January 2023**

## **Article 1: General**

**1.1** These general terms and conditions apply to all offers and quotations submitted by ECC Sprint Europe B.V. with its registered office in Hoensbroek (hereinafter referred to as ECC), and to all agreements concluded between ECC and any natural person or legal entity (hereinafter referred to as the other party) to which ECC has declared the terms and conditions applicable, insofar as the parties have not explicitly deviated from these terms and conditions in writing.

**1.2** Any general purchase conditions of the other party shall only apply if it has been explicitly agreed in writing that such conditions shall apply to the agreement between the parties to the exclusion of the present terms and conditions.

**1.3** If any provision of these terms and conditions is null and void or is voided, the other provisions shall remain fully in effect. ECC shall draw up new provisions to replace the void or voided ones, taking into account the purpose and meaning of the original provisions as far as possible.

**1.4** In the event of any uncertainty regarding one or more provisions of these general terms and conditions, such clauses should be interpreted according to the spirit of these provisions.

**1.5** If a situation arises between the parties that is not provided for in these general terms and conditions, the situation should be assessed according to the spirit of these general terms and conditions.

**1.6** These terms and conditions also apply to agreements with ECC for the performance of which ECC must engage the services of third parties.

**1.7** If ECC does not always require the strict observance of these terms and conditions, this does not mean that the provisions thereof are not applicable, or that ECC waives its right to require strict observance of the provisions of these terms and conditions in other cases.

## **Article 2: Offers and quotations**

**2.1** The submission of a quotation, estimate, delivery times or similar information, whether or not designated as an offer, shall not entail an obligation on the part of ECC to enter into an agreement with the other party.

**2.2** All offers, quotations and estimates submitted by ECC are non-binding unless explicitly stated otherwise in writing or a period for acceptance is stipulated, and can only be accepted without any deviations. An offer shall in any case be deemed to have been rejected if it is not accepted within one month.

**2.3** If a non-binding offer or quotation submitted by ECC is accepted by the other party, ECC shall be entitled to withdraw the offer within 5 days of receiving the acceptance.

**2.4** ECC cannot be held to its quotations or offers if the other party could reasonably have been expected to understand that the quotations or offers or any part thereof contain an obvious mistake or error.

### Article 3: Price

**3.1** All prices are quoted in euros and exclude turnover tax (VAT) and duties levied by the government, unless agreed otherwise in writing.

**3.2** The price ECC has quoted for the goods or services to be provided applies exclusively to the goods or services according to the agreed specifications.

**3.3** If the other party is required to make regular payments, ECC is entitled to adjust the applicable prices and rates in writing subject to a minimum of one month's notice. If the other party does not wish to agree to such an adjustment, the other party shall be entitled to terminate the agreement within 30 days of receiving notice, with effect from the date on which the adjustment would come into force.

**3.4** A combined offer does not oblige ECC to supply part of the total goods or services for the sum quoted for this part in the offer or for a corresponding proportion of the total quoted price.

**3.5** ECC reserves the right to increase all prices and rates. ECC also has the right to regularly adjust its prices according to the Consumer Price Index. It should be explicitly noted that price increases do not constitute grounds for early termination. Price increases and indexation are an integral part of the agreed price. For carriers with flexible fuel surcharges the prices are updated on a monthly base.

### Article 4: Payment

**4.1** Unless agreed otherwise, the other party must pay the price and other amounts due pursuant to the agreement within 14 days of the invoice date. The other party is under no circumstances entitled to set off, suspend and/or apply a discount to any payment due to ECC Sprint Europe B.V. In the event of failure to pay on time, the other party shall be in default without further notice of default being required from ECC.

**4.2** If the other party disputes all or part of the invoice, the other party must notify ECC in writing, stating reasons, within 5 days after receiving the invoice under penalty of forfeiture of rights. Disputing all or part of the invoice shall not suspend the other party's payment obligation.

**4.3** If partial deliveries have been agreed, after delivery of the first part ECC shall be entitled to demand not only payment of this part but also of the costs incurred for the entire delivery.

**4.4** The other party shall be obliged, at all times and regardless of the payment terms agreed, to provide security for the payment of the amounts due to ECC pursuant to the agreement at the first request of ECC. The security provided must be such that the amount owed, plus any interest thereon and associated costs, is adequately covered and that ECC will be able to recover from the security without difficulty. Any security that subsequently becomes inadequate shall be supplemented up to an adequate security at the first request of ECC.

**4.5** ECC is entitled to ask the other party to make an advance payment for the work it is to carry out and shall subsequently only be obliged to continue this work once the other party has made this advance payment.

**4.6** If the other party fails to pay in good time as referred to in paragraph 1 of this article, it shall, as of the invoice date and without any demand or notice of default being required, owe interest on the amount owed at an interest rate of 1% per month.

**4.7** In the event of failure to pay on time as referred to in paragraph 1 of this article, the other party shall be obliged to pay any and all judicial and extra-judicial collection costs in addition to the amount payable and the relevant interest due. The extrajudicial costs are set at 15% of the amount due, with a minimum of € 150.00 per case.

**4.8** Regardless of any designation, payments shall in the first instance be deemed to have been made in satisfaction of the interest and costs owed, and subsequently in satisfaction of the longest outstanding invoice.

**4.9** ECC shall at all times be entitled to offset the outstanding invoices, or other amounts payable that it can claim from the other party, against any counterclaims the other party has against ECC, of whatever nature.

## **Article 5: Confidential data and privacy**

**5.1** Both the other party and ECC shall guarantee that all data received from either party that is known or should be known to be of a confidential nature remains confidential, unless there is a statutory obligation to disclose such information. The party receiving the confidential data shall use this data exclusively for the purpose for which it has been provided. Information shall in any event be considered confidential if any party has designated it as such.

**5.2** The other party indemnifies ECC against claims by individuals whose personal data has been recorded or is processed in the context of personal data records held by the other party or for which the other party is otherwise responsible under the law.

## **Article 6: Reservation of title and rights, right of retention and right of pledge**

**6.1** All goods supplied to the other party shall remain the property of ECC until all amounts owed by the other party in respect of the goods supplied or to be supplied or services provided or to be provided under the agreement, and all other amounts

owed by the other party as a result of failure to meet its payment obligations have been paid to ECC in full.

**6.2** Where relevant, rights shall in all cases be granted or transferred to the other party on condition that the other party pays the agreed amounts on time and in full.

**6.3** ECC may retain the received or generated goods, products, property rights, data, documents, databases and final and interim results of the services provided by ECC in the context of the agreement, despite any obligation to surrender, until such time as the other party has paid all amounts owed to ECC.

**6.4** The other party is obliged to establish a right of pledge on (i) any movable items of which it is the owner and (ii) the conditional ownership of any movable items of which it is the title-holder, in the event that it surrenders any such movable items to (according to the legal terminology: 'brings under the control of') ECC.

**6.5** The right of pledge referred to in this article shall be established by means of surrendering the property to ECC.

**6.6** The right of pledge referred to in this article shall serve as security for any and all amounts owed by the other party to ECC now or in the future.

**6.7** The other party declares that it has not established any rights of pledge, in relation to any party other than ECC, on the movable items or the conditional ownership of movable items it surrenders to ECC and undertakes to refrain from establishing any right of pledge in relation to any party other than ECC after the items have been surrendered to ECC.

**6.8** ECC undertakes to only sell the pledged items in the event that the other party is put into liquidation, granted a provisional or definitive suspension of payment, or if the statutory debt restructuring scheme is declared applicable to it, or if the court has ruled that the client is in default.

**6.9** The other party is obliged to notify ECC immediately in writing if a third party lays claim to (i) a movable item belonging to the other party to which ECC has been granted retention of title or (ii) a movable item or the conditional ownership of a movable item to which ECC has been granted right of pledge.

## **Article 7: Transport, storage and risk**

**7.1** Unless agreed otherwise in writing, the method of transport, shipment, packaging etc. shall be determined by ECC. The foregoing shall in all cases take place at the expense and risk of the other party; including where delivery carriage paid has been agreed and also where a distributor has stipulated that all transport damage shall be at the expense and risk of ECC. ECC shall therefore under no circumstances be liable for damage, of any kind and in any form, related to transport to delivery.

**7.2** ECC shall not be responsible for storing the goods to be supplied, unless explicitly agreed otherwise in writing. Any storage carried out by ECC shall take place at the expense and risk of the other party.

**7.3** The goods to be processed and/or supplied by ECC shall remain at the expense and risk of the other party. ECC is therefore not liable for any damage relating to the goods stored. The other party is obliged to arrange adequate insurance cover in this situation.

## Article 8: Delivery date

**8.1** Any delivery date specified by ECC shall always be an indication only, unless it is expressly stated in writing that the date is a final delivery date. ECC shall only be considered to be in default, also with respect to an agreed final delivery date, after the other party has declared it to be in default in writing. In this case ECC must be granted a reasonable period in which to implement the agreement.

**8.2** ECC shall no longer be bound by an agreed delivery date, final or otherwise, if the other party makes or wishes to make any changes to the work specifications.

**8.3** During the performance of the agreement by ECC, the other party is obliged to do everything that is reasonably required and desired to ensure that ECC is able to deliver on time.

**8.4** If the other party fails to comply with the provisions of the previous paragraph of this article and paragraph 4 of article 4 (with regard to the provision of security), any agreed final delivery date shall no longer be binding and the other party shall be in default without written notice of default being required from ECC. In that case ECC shall, without prejudice to the rights to which it is entitled pursuant to the law, be entitled to suspend the performance of the agreement until such time as the other party has cured this default. ECC shall then implement the agreement within a reasonable period of time.

## Article 9: Intellectual or industrial property rights

**9.1** All intellectual and industrial property rights to software, databases, hardware or other materials such as designs or documentation, including preparatory materials, developed or provided pursuant to the agreement shall be vested exclusively in ECC, its licensors or its suppliers. The other party shall only acquire the rights of use explicitly granted under these terms and conditions and the law. Any other or further rights of the other party to reproduce software, websites, databases or other materials are excluded. Any right of use granted to the other party shall be non-exclusive and non-transferrable to third parties.

**9.2** If, contrary to the previous paragraph, ECC is willing to undertake to transfer an intellectual or industrial property right, such an undertaking can in all cases only be entered into explicitly in writing. If the parties explicitly agree in writing that intellectual or industrial property rights in relation to software, databases, hardware or other materials developed specifically for the other party shall be transferred to the other party, this shall not affect ECC' entitlement to use and exploit any components, designs, documentation, works, programming languages and the like underlying that development without any restriction for other purposes, either for itself or for third parties. Any transfer of intellectual or industrial property rights shall also not affect the right of ECC to undertake, for its own benefit or that of a third party,

developments that are similar to those that have been or are undertaken for the other party.

**9.3** The other party is not permitted to remove or alter any notices regarding the confidential nature or regarding copyright, brands, trade names or other intellectual or industrial property rights from the software, websites, databases, hardware or materials.

**9.4** ECC is permitted to take technical measures to protect the software or to enforce the agreed duration of the right to use the software. The other party is not permitted to remove or bypass any such technical measures. If security measures prevent the other party from making a back-up copy of software, ECC shall provide a back-up copy upon request.

**9.5** Unless ECC provides the other party with a back-up copy of the software, the other party may make one back-up copy of the software, which may only be used to protect against involuntary loss of possession or damage. The back-up copy shall only be installed following involuntary loss of possession or damage. Any back-up copy must bear the same copyright labels and notices as the original version (see paragraph 3).

**9.6** With due observance of the other provisions of these general terms and conditions, the other party is entitled to repair faults in the software made available to it if this is necessary for the intended use of the software. Any reference in these general terms and conditions to 'faults' shall be understood to mean the substantial failure to meet the functional or technical specifications declared in writing by ECC and, in the case of tailor-made software and websites, the functional or technical specifications explicitly agreed between the parties in writing. A fault only exists if the other party is able to demonstrate the fault and if it is reproducible. The other party is obliged to immediately report any faults to ECC.

**9.7 a)** The other party indemnifies ECC against any third-party claims based on the assertion that software, websites, databases, hardware or other materials developed by the other party infringe any existing intellectual or industrial property right that is applicable in the Netherlands, on the condition that ECC immediately informs the other party in writing about the existence and content of such legal action, and leaves the handling of the case, including any settlements, entirely to the other party.

To this end, the other party shall grant ECC the necessary authorisations, information and cooperation to defend itself, if necessary in the name of the other party, against these legal actions. This obligation to indemnify shall cease to exist if and insofar as the infringement concerned relates (i) to materials made available by the other party to ECC for the purpose of use, adaptation, processing or incorporation, or (ii) to changes made by the other party or by a third party on its behalf to the software, website, databases, hardware or other materials.

**9.7.b)** In the event that it is judicially and irrevocably established that the software, websites, databases, hardware or other materials developed by ECC infringe any intellectual or industrial property right belonging to any third party or if ECC believes

that there is a reasonable chance that such infringement may occur, ECC shall where possible ensure that the other party can continue to use the supplied or other, functionally equivalent, software, websites, databases, hardware or other relevant materials without disruption, for example by modifying the infringing components, or by acquiring a right of use for the other party.

**9.7.c)** Where ECC, at its sole discretion, cannot ensure the undisturbed use by the other party of the delivered items or can only ensure such use in a manner unreasonably onerous to ECC, financially or otherwise, ECC shall take back the items supplied and credit the acquisition costs less a reasonable usage fee. ECC shall always consult the other party prior to reaching a decision in this regard.

**9.7.d)** Any other or more extensive liability or indemnification obligation on the part of ECC due to the infringement of intellectual or industrial property rights of a third party shall be wholly excluded, including liability and indemnification obligations on the part of ECC in respect of infringements caused by using the software, websites, databases, hardware and/or materials supplied (i) in a form modified by any party other than ECC, (ii) in combination with goods or software not supplied or provided by ECC or (iii) in any way other than that for which the hardware, software, websites, databases and/or other materials were developed or intended.

**9.8** The other party guarantees that the provision of hardware, software, materials intended for websites, databases or other materials, including design materials, to ECC for use, adaptation, installation or incorporation (for example, in a website) is not incompatible with any rights of third parties pursuant to the national and international laws and regulations. The other party shall indemnify ECC against any legal proceedings based on the assertion that such provision, use, adaptation, installation or incorporation infringes a third-party right.

#### Article 10: Ownership of the means of production etc.

**10.1** All items produced by ECC such as information carriers, computer software, databases and peripheral equipment, shall remain the property of ECC, even if they have been stated as separate items on the quotation, in the offer or on the invoice.

**10.2** ECC is not obliged to deliver the items referred to in paragraph 1 to the other party.

**10.3** ECC is not obliged to store the items referred to in paragraph 1 of this article for the other party. If ECC and the other party agree that these items shall be stored by ECC, this shall take place for a maximum period of one year and without any guarantee from ECC that the items are suitable for repeated use.

#### Article 11: Suspension, termination and early termination of the agreement

**11.1** ECC is entitled to suspend the fulfilment of its obligations or to terminate the agreement, if:

- the other party has failed to fulfil the obligations stipulated in the agreement in full, adequately or on time;

- following the conclusion of the agreement, ECC becomes aware of circumstances that give good cause for concern that the other party will fail to fulfil its obligations;
- on conclusion of the agreement the other party was asked to furnish security for the due performance of its obligations under the contract, and such security has not been forthcoming or is inadequate;
- if, due to delay on the other party's side, ECC can no longer be required to fulfil the agreement under the terms and conditions originally agreed.

**11.2** ECC is also entitled to terminate the agreement if circumstances occur which are such that fulfilment of the agreement is rendered unfeasible, or if any other circumstances occur which are such that unaltered maintenance of the agreement cannot reasonably be required of ECC.

**11.3** Upon termination of the agreement, any claims of ECC against the other party shall become immediately due and payable. If ECC suspends fulfilment of the obligations, this shall not affect its statutory rights or any entitlements under the agreement.

**11.4** If ECC suspends or terminates the agreement, it shall not be under any obligation to compensate any losses or costs ensuing from this in any way.

**11.5** If the termination is attributable to the other party, ECC shall be entitled to compensation for the losses, including direct and indirect costs.

**11.6** If the other party fails to meet its obligations arising from the agreement and such failure justifies termination of the agreement, ECC shall be entitled to terminate the agreement at once and with immediate effect, without any obligation on the part of ECC to pay any compensation or damages, whereas the other party shall be obliged to pay compensation or damages due to breach of contract.

**11.7** In the event of liquidation, an application for a suspension of payment or the filing of a winding-up petition, if an attachment is made - if and insofar as the attachment is not lifted within three months - against the other party, or in the case of debt restructuring or another circumstance as a result of which the other party can no longer freely dispose of its assets, ECC shall be entitled to terminate or cancel the agreement at once and with immediate effect, without any obligation to pay any compensation or damages. Any claims of ECC against the other party shall in that case become immediately due and payable.

**11.8** If the other party cancels all or part of an order placed, it shall be charged in full for the goods ordered or prepared plus any associated supply, removal and transportation costs and for the working hours reserved for the execution of the agreement.

## Article 12: Force majeure

**12.1** Failure by ECC (and/or by third parties/suppliers engaged for the execution of the agreement) to perform the agreement cannot be ascribed to ECC if such failure



is due to a cause for which ECC is not to blame or is not accountable by law, by this agreement, or according to generally accepted standards.

**12.2** Force majeure is defined as all external causes, foreseeable or non-foreseeable, that ECC is unable to influence and that prevent ECC from fulfilling its obligations. Force majeure includes, but is not limited to: fire, labour shortages, workers' strikes within ECC or third parties, the hacking of a server, external attacks on the IT network or the hosting environment, inaccessibility of a server, unavailability and/or disruption in the supply and/or barriers to the transport of goods and other obstacles (occurring both inside and outside the company), war, mobilisation, epidemics, natural disasters, import or export bans, energy shortage and uprising.

**12.3** In the event of force majeure ECC is entitled to terminate or suspend the agreement in full or in part without judicial intervention, and without any obligation to pay compensation.

**12.4** If at the time the situation of force majeure commences ECC has fulfilled or will be able to fulfil part of its obligations under the agreement, and the part fulfilled or to be fulfilled is of independent value, ECC shall be entitled to invoice the part fulfilled or to be fulfilled separately.

#### Article 13: Liability of ECC, indemnification

**13.1** The total liability of ECC for culpable non-compliance with provisions of the agreement shall be limited to compensation for direct damage or loss up to a maximum of the amount of the price stipulated for the agreement (excluding VAT, and exclusive of any amounts owed for services performed by third parties and charged on to the other party, such as shipping costs). If the agreement is primarily a continuing performance contract with a term of more than one year, the price stipulated for the agreement will be set at 50% of the fees paid or accrued by the other party to ECC (excluding VAT, and exclusive of any amounts owed for services performed by third parties and charged on to the other party, such as shipping costs) with respect to the Agreement giving rise to such liability during the twelve (12) months prior to the event giving rise to such liability.

**13.2** ECC shall not be liable for indirect loss, including consequential loss, lost profits, lost savings, loss of goodwill, loss due to business interruption, loss due to claims by the other party's customers, corruption or loss of data, loss in connection with the use of third-party goods, materials or software prescribed by the other party to ECC, loss in connection with the use of suppliers prescribed by the other party to ECC and all other forms of loss not referred to in paragraph 1 of whatever nature.

**13.3** The exclusions referred to in the foregoing paragraphs of this article shall not apply if and insofar as the loss is the result of gross negligence or a deliberate act or omission on the part of ECC or its managerial staff.

**13.4** With regard to the performance of ECC' activities arising from the agreement to which these terms and conditions apply, the other party is responsible for proper compliance with all applicable national and international laws and regulations (for

example in relation to the payment of VAT). ECC accepts no liability whatsoever for any direct or indirect loss arising from the other party's failure to comply with such laws and regulations.

**13.5** In all cases, ECC can be held liable for an attributable breach of an agreement only if the other party promptly gives ECC proper notice of default in writing, stating a reasonable time period in which to remedy the breach, and ECC continues to attributable breach its obligations even after that period. The notice of default must contain a description of the breach that is as complete and detailed as possible, so that ECC can respond adequately.

**13.6** Any right to claim compensation will at all times be subject to the condition that the other party notifies ECC of the loss in writing as soon as possible after it arises. Any claim for damages against ECC shall be barred by the mere expiry of a period of 3 months from the date on which the claim arose.

**13.7** The other party indemnifies ECC against third-party claims for loss in connection with or arising from the assignment carried out by ECC and is obliged to compensate ECC for the reasonable costs of defending itself against such claims.

**13.8** The provisions in this article shall also apply for the benefit of all legal and natural persons utilised by ECC in the performance of the agreement.

#### Article 14: Licence

By posting/publishing information and other materials (including the other party's name and logo) on the website (or otherwise supplying information and other materials to ECC), the other party automatically grants an irrevocable licence to ECC. This licence applies among other things (but is not limited) to the posting of the other party's name and logo on the ECC website.

#### Article 15: Performance of the agreement

**15.1** The other party shall bear the risk of misunderstandings with regard to the content and performance of the agreement where such misunderstandings are due to the fact that ECC has received incorrect, late, incomplete or no specifications or other communications made verbally or by a person designated by the other party or transmitted by any technical means such as telephone, computer and similar transmission media.

**15.2** ECC shall make every effort to carry out the service with due care, where appropriate in accordance with the agreements and procedures laid down in writing with the other party. All services of ECC shall be performed on the basis of a best efforts obligation, unless and insofar as ECC has explicitly committed itself to a result in the written agreement and the result in question has also been described in a sufficiently precise manner. Any agreements regarding a service level shall always be explicitly agreed in writing.

**15.3** If it has been agreed that the service will be provided in stages, ECC shall be entitled to postpone the start of the services that are part of a stage until the other party has approved the results of the previous stage in writing.

**15.4** In performing the services, ECC shall only be obliged to follow timely and sensible instructions of the other party if this has been explicitly agreed in writing. ECC shall not be obliged to follow instructions that change or supplement the content or scope of the agreed service; if such instructions are followed, however, the work in question shall be compensated in accordance with article 16.

**15.5** If a service agreement has been entered into with a view to performance by a specific person, ECC shall at all times be entitled to replace this person, after consulting the other party, with one or more other persons with the same qualifications.

#### Article 16: Changes and additional work

**16.1** If, at the request or with the prior consent of the other party, ECC has delivered work or other performances that fall outside the content or scope of the agreed services, such work or performances shall be charged to the other party at ECC' usual rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. ECC shall under no circumstances be obliged to comply with such a request, and may demand that a separate agreement be formed to that end.

**16.2** The other party accepts that work or performances as referred to in the previous paragraph of this article may affect the agreed or anticipated time of completion of the services and the mutual responsibilities of the other party and ECC. The fact that additional work (or the demand for it) arises during performance of the agreement shall under no circumstances constitute grounds for the other party to dissolve or terminate the agreement.

**16.3** Insofar as a set price has been agreed for the services, ECC shall, upon request, inform the other party in advance and in writing of the financial consequences of such additional work or performances.

#### Article 17: No-takeover of personnel

During the agreement and for a period of six months following termination of the agreement, the other party is not permitted to engage, directly or indirectly, employ or negotiate in that context with employees of ECC who are or were involved in the performance of the work, other than in consultation with the other party.

#### Article 18: Applicable law and settlement of disputes

**18.1** The agreement between ECC and the other party to which these terms and conditions apply shall be governed exclusively by Dutch law, even if all or part of an obligation is carried out abroad or if the party involved in the legal relationship has its residence outside the Netherlands, unless mandatory rules of law provide otherwise.

**18.2** The applicability of the 1980 Vienna Sales Convention is excluded.

#### Article 19: Location and amendments to the general terms and conditions

**19.1** These general terms and conditions can be viewed on and downloaded from the ECC website.

**19.2** The version that applied at the time the legal relationship was entered into with the other party shall apply, but ECC reserves the right to unilaterally change these general terms and conditions at any time. In that event, ECC will notify the other party of this no later than thirty (30) days prior to the changes taking effect. If the other party disagrees with these changes, it may terminate the Agreement without any further compensation, by registered mail addressed to ECC no later than twenty (20) days after ECC's notification of the change. Such early termination by the other party will take effect on the last business day of the month in which the other party has announced the early termination based on this provision.

**19.3** The Dutch text of these general terms and conditions shall always be decisive in the interpretation thereof.

**19.4** The legal relationship between ECC and the other parties is exclusively governed by the laws of The Netherlands, also if an agreement is wholly or partly executed in another country. All disputes that may arise as a result of the agreement, or further agreements that may be the result thereof, and that cannot be settled amicably, will be submitted to the competent court in Amsterdam, The Netherlands.