

Article 1 Definitions

In these TinQwise General Terms & Conditions, TinQwise License Terms, TinQwise Service Terms, Order Confirmation and (optional) TinQwise Follow-up Assignment(s), the following definitions are used with a capital letter.

- 1.1. **Administrator:** a User of the LXP who is authorized and has access to the control environment of the LXP and to the CMS.
- 1.2. **Agreement:** the Order Confirmation with all of its Provisions and all subsequent Follow-up Assignments between Client and Contractor.
- 1.3. **Appendix:** an addendum to the Agreement which forms part of the Agreement.
- 1.4. **(TinQwise) General Terms & Conditions:** this present document with all of its provisions which apply to and form an integral part of the Agreement.
- 1.5. **Client:** the customer of the Contractor, as defined in the Order Confirmation, who has an Agreement with Contractor.
- 1.6. **Content Builder (CMS):** The part of the SAAS application, in which an (online) course can be created, modified and generated (by an Administrator) to be used by a User in the LXP.
- 1.7. **Contractor:** the party, TinQwise, who offers and actually provides Services.
- 1.8. **(TinQwise) Data Processing Terms:** the document in which the terms are laid down about the way in which the role of Processor and Controller is fulfilled, within the meaning of the General Data Protection Regulation, which apply to and form an integral part of the Agreement.
- 1.9. **Effective date:** The date on which the Parties have agreed that the signed Order Confirmation with associated Provisions will take effect legally as set in the Order Confirmation.
- 1.10. **Escrow Arrangement:** An optional custody arrangement specific to the source code of the SAAS application whereby the latest version of the software code is (automatically) deposited with an Escrow agent (the custodian) and made available to the Client if the Contractor or a relevant subcontractor goes bankrupt.
- 1.11. **(TinQwise) Follow-up Assignment:** an additional agreement, signed by both Parties, in the context of the provision of Services by the Contractor and with a reference to this Agreement;
- 1.12. **Initial Period:** The period beginning on the Effective Date and ending on the first day after one year after the Effective Date.
- 1.13. **(TinQwise) License Terms:** the provisions in which the agreements are laid down about the licenses to Services of the Service Provider, which apply to and form an integral part of the Agreement.
- 1.14. **Learning Experience Platform (LXP):** The SAAS application, to which a User has access, and in which, among other things, an (online) course can be played.
- 1.15. **Offer:** an offer, with a limited period of validity, that the Contractor makes to perform Services for the Client under this Agreement, in response to a request for quotation.
- 1.16. **(TinQwise) Order Confirmation:** the confirmation of order between the Contractor and the Client, which, together with all the Provisions and any Follow-up Assignment, form the Agreement, on the basis of which the Contractor entered into the Agreement with Client and under which the Contractor will issue orders for the provision of Services.
- 1.17. **Party / Parties:** Client and/or Contractor, depending on the context.
- 1.18. **Personnel of the Client:** the staff members and/or auxiliary persons to be engaged by the Client for the performance of the Agreement not being Personnel of the Contractor.
- 1.19. **Personnel of the Contractor:** the personnel and/or auxiliary persons to be engaged by the Contractor for the implementation of the Agreement, who will work under its responsibility under the Agreement not being Personnel of the Client.
- 1.20. **Professional Misconduct:** shortcomings, such as mistakes, negligence, omissions, incorrect advice, which a competent and careful Contractor should avoid under the given circumstances with due observance of normal attention and with normal professional knowledge and normal professional practice.
- 1.21. **Program:** A learning program predefined by the Contractor that consists of content, learning paths and layouts of the LXP aimed at teaching a specific learning goal. The Client has the option of making its own adjustments (whether or not carried out by the Contractor) to a Program that is installed on the TinQwise LXP for which licenses are purchased by the Client.
- 1.22. **Provisions:** all terms, i.e. Order Confirmation, General Terms & Conditions, License Terms, Data Processing Terms, Service Terms and (optional) Follow-up Assignment, that are applicable to and forming an integral part of the Agreement.
- 1.23. **SAAS-Application:** The software application with which the Contractor provides the service to the Client. The software consists of a so-called LXP - in which users can communicate and access learning content. The SAAS application also has a management environment and a Content Builder in which an Administrator can develop content, which can be presented to the Users through the LXP or any other learning platform.
- 1.24. **(TinQwise) Service Terms:** the terms in which the arrangements are laid down about the way in which the Services of the Contractor are provided, about the service levels and other operational agreements, which apply to and form an integral part of the Agreement.
- 1.25. **Service:** the work to be performed by the Contractor on the basis of the Agreement for the Client, including the provision of the SAAS application, Programs and associated other services.
- 1.26. **User:** A person who is registered in the LXP as a user. See the License Terms for the implementation of and the possible states of a user in the LXP.
- 1.27. **Working Day:** calendar day, except for weekends and generally recognized public holidays within the meaning of Article 3, paragraph 1, of the Dutch General Time Limits Act.

Article 2 Application

- 2.1. Changes or additions to the Agreement or deviations of (parts of) the Provisions are only binding if agreed in writing between Parties and included in a separate attachment to the Order Confirmation or Follow-up Assignment.
- 2.2. In case of unconformity between the Dutch text of the Provisions and translations thereof, the Dutch text will prevail.

Article 3 Assurances Contractor

- 3.1. Contractor guarantees that his Services, or Services carried out on behalf of him, meet the demands as described in the Agreement.
- 3.2. Contractor guarantees that his services, or Services carried out on behalf of him, will be carried out in a professional manner.

Article 4 Review and acceptance

- 4.1. Client reviews the result of the Services within 30 days of delivery. If Client rates the results as sufficient, he will accept these by notifying Contractor.
- 4.2. If Client rates the results of the Services insufficient, he will notify Contractor of non-acceptance.
- 4.3. Client can have the results of the Services looked at by a third party, for which the cost will be borne by Client.
- 4.4. If Client doesn't comment on the Services within 30 days of delivery, the results of the Services will be assumed to be accepted.

Article 5 Time and place of work

- 5.1. The work, related to the Services as specified in the Order Confirmation or Follow-up Assignment, will be carried out at the location(s) specified in the Order Confirmation or Follow-up Assignment.
- 5.2. Parties are obliged to grant Personnel of the other Party access to the location where the work, related to the Services as specified in the Order Confirmation or Follow-up Assignment, must be carried out, as well as enabling Personnel to carry out the work under usual working conditions during regular office hours.
- 5.3. Parties are obliged to instruct their Personnel to adhere to the house rules of the location where the work is carried out.

Article 6 Replacement of people

- 6.1. Contractor can replace people charged with carrying out the Services of Client temporarily or permanently. The tariff, applicable to the original people, may be increased upon replacement, by mutual agreement.
- 6.2. If Client requests replacement of people charged with carrying out the Services, because he believes this is necessary or desirable for a good execution of the Agreement, the Contractor will act upon this request.
- 6.3. When replacing people, charged with carrying out the Agreement, Contractor will provide people at least equal in expertise, education and experience to the people to be replaced, or meet the requirements as stated by Parties regarding these people.

Article 7 Use of property of Client

Parties can agree that Contractor can use property of Client when carrying out Services, and for that purpose can use the property on loan.

Article 8 Subcontracting

Whilst carrying out the Agreement, Contractor will use services of third parties, without consent, as is agreed regarding Sub-processors in the Data Processing Terms.

Article 9 Progress Report

Contractor reports the progress of the work to Client as often and in a manner as specified in the Agreement or as Contractor deems necessary.

Article 10 Contact person

- 10.1. Both Parties will assign a contact person, who will maintain contact about the implementation of the Agreement. Parties inform each other who they have assigned as contact person.
- 10.2. Contact persons can only represent and bind Parties regarding the execution of the Agreement. They are not entitled to change the Agreement.

Article 11 Steering group

The Agreement can provide for the installation of a steering group. The tasks, responsibilities, possible fees, as well as the composition of the steering group will be agreed upon in the Order Confirmation or Follow-up Assignment within the Agreement.

Article 12 Communication

- 12.1. Announcements, including an understood commitment or (further) agreements, from one Party to another, which are of importance to carrying out the Agreement, are only binding if done or confirmed in writing by an authorized person.
- 12.2. 'In writing' also includes 'electronically', whereby:
 - i) the notification is accessible by recipient,
 - ii) the authenticity of the notification is ensured sufficiently, and
 - iii) the identity of the notifier can be determined with sufficient certainty.

Article 13 Confidentiality

- 13.1. Parties will treat all information (classified or reasonably suspected to be classified) they get when carrying out the Agreement in a confidential way, except when a legal requirement or court order requires disclosure.
- 13.2. Parties and Personnel are obliged and guarantee to comply with duty of confidentiality.
- 13.3. Contractor is not allowed to share the results of carried out Services in any way to a third party, nor inform a third party about this, without explicit consent of the Client. Client can impose conditions on the consent.
- 13.4. After termination of the Agreement, Contractor will keep data, acquired for carrying out the Agreement, available for Client for one month, except for data Contractor is required to keep by statutory obligations and/or professional regulations applicable to Contractor.

Article 14 Processing personal data

- 14.1. When Contractor, in the role of processor according to the General Data Protection Regulation, is processing personal data for the Client when carrying out the Agreement, Contractor guarantees to use fitting technical and organisational measures, to meet the demands of the General Data Protection Regulation to ensure protection of the parties concerned. Contractor will only process personal data on behalf of Client, based on written instructions, except for deviating legal provisions.
- 14.2. Parties have agreed upon processing personal data by Contractor for the needs of the Client in the Data Processing Terms as part of the Agreement.

Article 15 Security

- 15.1. Contractor instructs Personnel of Contractor, involved in carrying out the work, as far as this work is carried out on Clients premises, to adhere to safety procedures and house rules of the Client. Client will inform Contractor about these procedures and rules in a timely manner.
- 15.2. Client can demand that Contractor provides certificates of good conduct for Personnel of Contractor, no later than three Working days before commencing the work.
- 15.3. Client can subject Personnel of Contractor to a safety investigation, in accordance with the usual rules applicable to Client, and for cost of Client. Contractor cooperates fully with this investigation. Client can refuse deployment of person involved for carrying out the Agreement, based on the outcome of the safety investigation, without further reason.

Article 16 Fee, additional work and less work

- 16.1. Client pays Contractor fee for actual costs and hours, unless a fixed price or licence fee is agreed upon in the Agreement.
- 16.2. If, because of additional wishes or changed insights of Client, or because of a change in legal requirements related to the services to be provided, the services which Contractor must carry out based on the Agreement, are proven to be increased or expanded, this will incur additional work, which is eligible for an additional fee. Additional work does not include extra work or changed insights which Contractor should have known about when entering into the Agreement. If a Party believes there to be additional work, he will notify the other Party as soon as possible.
- 16.3. Contractor will not start additional work before written instruction of Client. Contractor will provide a written quotation regarding the additional work and the related timeframe and cost. The terms and conditions of the Agreement, including the fees and applicable discounts, unless they are changed by a Follow-up Assignment, apply to the additional work to be carried out by the Contractor.
- 16.4. If, because of changed insights of Client, or because of a change in legal requirements related to the services to be provided, the services which Contractor must carry out based on the Agreement, are proven to be reduced or diminished, there will be less work, which will be eligible for a set-off. If a Party believes there to be less work, he notifies the other Party in writing as soon as possible. If a fixed price was agreed upon, Parties decide on the amount of less work by mutual agreement and will set this off against the fee to be paid.

Article 17 Invoicing

- 17.1. Contractor will send invoice electronically, so it can be received and processed in accordance with the specifications given by the Client.
- 17.2. Contractor will send invoice to Client, stating date and number of Agreement, as well as other data required by Client as mentioned in the Order Confirmation or Follow-up Agreement.
- 17.3. If payment is due on post-calculation, Contractor will specify the invoice in a manner requested by the Client. In the invoice, Contractor will include details about the actual and necessary number of days or hours and dates spent and will give a brief description of the work done, as well as a description of any costs for travel or accommodation, in the case of these costs not being included in the daily or hourly rate as based on the Agreement.
- 17.4. Additional work will be invoiced separately by Contractor, after completion of the additional work and acceptance by the Client, unless otherwise agreed.

Article 18 Payment and control

- 18.1. Client will settle the outstanding balance, based on the Agreement, no later than 14 days after receiving the invoice if it meets requirements as stated in the Agreement.
- 18.2. If Client doesn't settle the outstanding balance within the period as stated in the above paragraph, without valid reason, he will be lawfully due to pay:
 - i) a cost reimbursement as stated in article 6:96 paragraph 4 of the Dutch Civil Code
 - ii) the statutory interest as stated in article 6:119b paragraph 1 of the Dutch Civil Code.The cost reimbursement and statutory interest will be paid upon claim from the Contractor.

- 18.3. In case of exceeding the payment term by Client or non-payment of an invoice based on suspected inaccuracy of such or based on inadequacy of the invoiced Services, Contractor has the right to postpone or end his activities.

Article 19 Liability

- 19.1. When one of the Parties fails to fulfil their obligations resulting from the Agreement, the other Party can declare them in default. However, the negligent Party will be in default immediately if fulfilling the relevant obligations, other than through odds, is permanently impossible during the agreed term. The notice of default will be done in writing, giving the negligent Party a reasonable term to still fulfil their obligations. This term is a fatal term. If a lack of fulfilment remains, the negligent Party is in default.
- 19.2. The notice of default, as stated in the above paragraph, is not required if the term in which the agreed Services should have been carried out, was prolonged before expiry. If the fulfilment, as meant in the above paragraph, has again not taken place before the end of the prolonged term, the negligent Party is immediately in default from that moment.
- 19.3. The Party who is accountable for failing to fulfil their obligations to the other Party, is liable for the loss incurred or to be incurred, bearing in mind the liability is limited to:
- i) for orders less than or equal to € 50.000:
€ 100.000 per event and € 200.000 per contract year or part thereof for which Agreement is in place;
 - ii) for orders more than € 50.000 but less than or equal to € 100.000:
€ 200.000 per event and € 400.000 per contract year or part thereof for which Agreement is in place;
 - iii) for orders more than € 100.000 but less than or equal to € 150.000:
€ 300.000 per event and € 600.000 per contract year or part thereof for which Agreement is in place;
 - iv) for orders more than € 150.000 but less than or equal to € 500.000:
€ 750.000 per event and € 1.500.000 per contract year or part thereof for which Agreement is in place;
 - v) for orders more than € 500.000:
€ 1.000.000 per event and € 2.000.000 per contract year or part thereof for which Agreement is in place;
- Connected events will be marked as one event.
- 19.4. The limitation of liability as meant above will dropped:
- i) if a third-party claims compensation because of death or injury;
 - ii) if there is intent or grove negligence on the part of the other Party or the Personnel of the Contractor or the Personnel of the Client;
 - iii) in case of violation of intellectual property rights as meant in Article 22
 - iv) in case of Provisions between Parties based on Article 14.2 in respect of claims of compensation, including fines imposed by supervisory authorities, relating to failure to fulfil the Agreement.
- 19.5. When Contractor uses property of Client, as meant in Article 7 for carrying out Services, Contractor is liable for damages to this property. The liability limitations mentioned in paragraph 3 are applicable.
- 19.6. If Contractor or third parties suffer damages in any way, as a result of usage of property of Client as meant in Article 7 Contractor bears cost and risk. The liability limitations mentioned in paragraph 3 are applicable.
- 19.7. All obligations concerning Personnel of Contractor, including tax-related legislation and social security insurance, are borne by Contractor. Contractor indemnifies Client of all liabilities in this respect. The liability limitations mentioned in paragraph 3 are not applicable.

Article 20 Cancellation and termination

- 20.1. Notwithstanding the other provisions of the Agreement, each of the Parties can annul the Agreement extrajudicially, fully or partially, by recorded mail, when the other Party is in default, or when fulfilment is temporarily or permanently impossible, unless it is a shortcoming which doesn't justify annulment because of its exceptional nature or minor significance.
- 20.2. When one of the Parties cannot fulfil their obligations of the Agreement due to something beyond control, the other Party has the right to annul the Agreement extrajudicially, fully or partially, by recorded mail, taking a reasonable term into account, without creating the right to damages, but no sooner than 15 Working days from the date on which the circumstance did arise.
- 20.3. Circumstance beyond control does not include: shortage of personnel, strikes, illness of personnel, shortage of materials, problems in transport, late arrival or unsuitability of materials needed to carry out the work, liquidity or solvability problems on the part of the Contractor or falling short of a third party hired by him.
- 20.4. Parties can, without any warning or notice of default, immediately annul the Agreement extrajudicially, by recorded mail, if Contractor has applied for (provisional) suspension of payment or has been granted (provisional) suspension of payment, Contractor files for bankruptcy or has been declared bankrupt, the company of Contractor is being liquidated, Contractor stops his business, a substantial part of assets of Contractor are repossessed, Contractor merges or splits or is dissolved, or Contractor can no longer be deemed responsible to carry out the obligations of the Agreement in any other way.
- 20.5. Parties can furthermore annul the Agreement at all times, by recorded mail, in accordance with the agreed notice period. Settlement between Client and Contractor will then take place based on Services carried out for the current task and reasonable cost made for this and based on future commitments for carrying out the task already made. Client shall not indemnify Contractor in any other way for results of cancelling the Agreement.

Article 21 Right to demand fulfilment

Failure to demand fulfilment of any provisions within a term specified in the Agreement, by one of the Parties, does not exclude them from the right to demand fulfilment at a later stage, unless the relevant Party has agreed to non-fulfilment explicitly and in writing.

Article 22 Intellectual rights of ownership

- 22.1. Unless otherwise agreed upon, the copyright of the Services carried out – solely of the custom-made content, so never software, belongs to Client wherever and whenever. These intellectual rights of ownership, when originated, will be carried over from Contractor to Client, based on the Agreement, with Client accepting these now for then.
- 22.2. All database rights, based on the results of the Services carried out, belong to the Client, wherever and whenever.
- 22.3. When the results of the Services carried out are (partly) based on already existing intellectual rights of ownership, not to be carried over to the Client, Contractor will provide a non-exclusive, though terminable right of use for a specified term.
- 22.4. If Parties don't agree on the intellectual rights of ownership as meant in article 22.1 and 22.2, concerning the results of the Services carried out, rights will belong to Contractor, unless otherwise proven.
- 22.5. Client indemnifies Contractor of all third-party claims with regard to (assumed) breach of intellectual rights of ownership of that third-party, comparable claims regarding knowledge, unlawful competition, and such included, is obliged to take all measures to prevent stagnation and to limit the extra cost and/or possible damages as a result of such breach, at his cost.
- 22.6. Notwithstanding the above mentioned, Contractor can annul the Agreement extrajudicially, fully or partially, without affecting his further rights against Client, including but not limited to the right to compensation, when a third party holds Contractor responsible for breach of intellectual rights of ownership. Contractor will not use his right to annulment of the Agreement without first consulting Client.

Article 23 Transfer rights and obligations

- 23.1. Parties are not allowed to transfer de rights and obligations arising from the Agreement to a third party, without consent of the other Party. Consent will not be refused without reasonable cause. Parties can attach conditions to this.
- 23.2. The first paragraph does not apply to establishing limited rights, such as right of pledge.

Article 24 Insurance

- 24.1. Contractor is insured in a fitting and usual way and is therefore insured for the following risks:
 - i) professional liability (risks coming from Professional Misconduct);
 - ii) company liability (including liability for damages to people or property of Client);
 - iii) loss of or damages to business inventory (including fire or theft), including property of Client;
 - iv) cybersecurity liability.
- 24.2. Contractor provides, upon Client's request, without delay, policies and proof of premium payment of insurance as meant in the first paragraph, or a statement of insurer of existence of these insurances and payment of premium. The insurance premium of Contractor is assumed to be included in the agreed fees and tariffs.

Article 25 Working conditions

- 25.1. Contractor conforms to laws and regulations applicable to working conditions and to the collective labour agreement applicable to him and his employees when carrying out Services.
- 25.2. Contractor provides access to these working conditions for relevant authorities, upon request and without delay and cooperates with checks, audits or validation.

Article 26 Invalid or voided provisions

If one or more provisions of the Agreement are proven to be invalid or are voided by a judge, the remainder of the provisions of the Agreement shall not be affected. Parties will consult about the invalid or voided provisions as to come to an alternative arrangement. The alternative arrangement will not affect the purpose and scope of the General Terms and Conditions or the Agreement.

Article 27 Notification in publications or advertisements

Contractor will not mention the assignment or use the name of the Client as a reference, implicitly or explicitly, in any publication (including a press-release) or advertisement, unless Client has granted permission.

Article 28 Continuous provisions

Provisions which remain in place after termination of the Agreement, due to their nature, remain effective. These provisions include in any event the provisions regarding assurances (Article 3), confidentiality (Article 13), liability (Article 19), intellectual rights of ownership (Article 22) and applicable law and dispute resolution (Article 29).

Article 29 Applicable law and dispute resolution

- 29.1. Each dispute between Parties regarding the Agreement will be submitted to the exclusive jurisdiction of the competent court in Utrecht, unless Parties agree to a different form of dispute resolution.
- 29.2. The Agreement is governed by Dutch law.