

GENERAL TERMS AND CONDITIONS OF CALIOPE

1 DEFINITIONS

In these General Terms and Conditions, the following terms are defined as detailed below and used in both singular and plural:

1. Buyer: Every party who enters into an Agreement with Caliope or requests an offer from Caliope;
2. Subscription: Agreement for the periodic supply of Products and/or Services;
3. General Terms and Conditions: These general terms and conditions of Caliope;
4. Services: All services offered by Caliope that are the subject of a tender, offer, Agreement or other legal act between Caliope and the Buyer, including - but not limited to - Training Courses, Online Products and the installation and implementation of Software.
5. User: A natural person, working at the organisation of the Buyer, who pursuant to the Agreement or the General Terms and Conditions has the right to access and use (parts) of the Online Products and/or Software;
6. IP rights: All rights of intellectual property and related rights, such as copyrights, trademark rights and database rights; Login Details: The username and password provided by Caliope giving the Buyer and Users access to the Online Products;
7. Caliope: The private company with limited liability, Caliope Nederland B.V., registered in the Commercial Register of the Chamber of Commerce under file reference number 34176019;
8. Agreement: Every agreement regarding the supply of Products and/or Services between Caliope and the Buyer, including any amendments and additions thereto. The Agreement does in any case include these General Terms and Conditions;
9. Parties: Caliope and the Buyer;
10. Products: All items offered by Caliope that are the subject of a tender, offer, quote, agreement or other legal act between Caliope and the Buyer.
11. In writing: Communication on paper, via e-mail or other electronic ways;
12. Software: The software developed by Caliope;

2 GENERAL

These General Terms and Conditions are applicable to and form an integral part of all Agreements and all offers or tenders issued by Calioppe and exclude any (general) purchase or other conditions of the Buyer. These General Terms and Conditions at all times prevail should, in spite of the above, any (general) purchase or other conditions of the Buyer apply.

2.1 APPLICABILITY

Once these General Terms and Conditions have been applicable to a legal relationship between Calioppe and the Buyer, the Buyer is deemed to have consented in advance to the applicability of these General Terms and Conditions to Agreements entered into and to be entered into thereafter.

2.2 CHANGES OF GENERAL TERMS AND CONDITIONS

Calioppe is entitled to change these General Terms and Conditions. The Buyer will be notified of any changes in writing. The changed version of the General Terms and Conditions forms part of every Agreement entered into after the moment of change.

3 AGREEMENT

An Agreement can only be formed by

1. acceptance in writing by Buyer of a quote offer or tender,
2. by both Parties signing an Agreement.

4 GENERAL TERMS AND CONDITIONS OF CALIOPE

4.1 OFFERS, QUOTES AND TENDERS

Offers, quotes and tenders of Calioppe are revocable, subject to contract and valid for the term indicated therein. If no term has been given, the offer or tender is valid for up to thirty (30) days after the date on which the offer or tender was issued. If an offer or tender of Calioppe is accepted by the Buyer, Calioppe has the right to revoke the offer or tender within two (2) working days of having received the acceptance notification.

4.2 CHANGES TO THE AGREEMENT

Notwithstanding the provision of article 2.2, supplements and changes to the Agreement can only be agreed on between Caliope and the Buyer in writing. Where applicable, Caliope is at all times entitled to change, reduce and/or remove the volume, contents and functionalities of the Content, Services and/or Products. If, in the opinion of Caliope, there is a substantial change, Caliope will notify the Buyer of that change in advance. If, in the opinion of Caliope, the change gives rise thereto, Caliope will enter into consultation with the Buyer about a possible reduction in the price agreed for the Content, Services and/or Products.

5 PRICES AND PAYMENT TERMS

5.1 PRICES

The prices applied by Caliope are exclusive of turnover tax and other government levies and exclusive of administration, installation, transport and dispatch costs, unless stated otherwise.

5.2 PAYMENT

Payment of orders is effected on the basis of an invoice sent by Caliope.

5.3 TERMS

Payment of an invoice must be effected within thirty (30) days of the invoice date, unless otherwise agreed in writing. Caliope is entitled to demand payment in advance, cash payment and/or security for payment from the Buyer.

5.4 DEDUCTIONS

All payments made by the Buyer to Caliope will be deducted from invoices to the Buyer that are outstanding longest.

5.5 LATE PAYMENT

The payment terms are final deadlines. In the event of late payment, the Buyer, without a demand or notice of default being required, will automatically be in default of payment and obliged to pay interest of 1% per month or part thereof on the outstanding amount, explicitly in addition to the extrajudicial costs, which are 15% with a minimum of € 150 exclusive of VAT, to be calculated on the basis of the principal sum, increased by interest.

Insofar as the Buyer does not act in the exercise of a profession or business, the Buyer, in addition to interest, owes compensation equal to the maximum compensation for extrajudicial collection costs permitted under law.

5.6 SUSPENSION

The Buyer is not permitted to suspend or set off payments on account of (alleged) shortcomings on the part of Caliope.

5.7 CHANGE PRICES

Caliop is entitled to change the prices for Services and/or Products. Price changes are effective immediately, unless otherwise agreed.

6 RENTALS OR SUBSCRIPTIONS

6.1 TERMS

Rentals or Subscriptions have a term of twelve (12) months, unless otherwise agreed.

6.2 START RENTAL PERIOD

The rental period will start 30 days after the quote has been approved. These 30 days period will be considered as a trail period. Client can unilaterally terminate the contract anytime during and up to this 30-day period without cause.

6.3 INVOICES

Caliop charges the rental prices to the Buyer monthly, quarterly or annually, in advance. An invoice will be sent 30 days before the new period starts.

6.4 RENEWALS

Following expiry of the period referred to in article 6.1, the Subscription is tacitly renewed by periods of twelve (12) months, unless the Buyer terminates the Subscription in writing, with due observance of a notice period of one (1) month before the end of the current subscription period.

6.5 SWAPPING RENTAL OR SUBSCRIPTION TO ONE-TIME BUY OFF

During the rental period the Buyer is allowed to swap to a one-time buy off fee which grants the Buyer the right to use the software without further paying the rental or subscription fee. The obligations of rentals or subscriptions will end as soon as Caliope and Buyer have signed a one-time buy-off quote or agreement in regards to the further use of the software.

6.6 DISCOUNT WHEN SWAPPING TO ONE-TIME BUY OFF FEE

All paid rental or subscription fees will be for 50% deducted from the one-time off fee. The total discount on the one-time off fee can never succeed 50% of the original one-time buy off fee.

7 DELIVERY PERIODS

7.1 DELIVERY

None of the (delivery) periods stated or agreed by Caliope are final deadlines. Caliope will make a proper effort to honour the (delivery) periods as much as possible.

7.2 SUSPENSION

Caliop is entitled to suspend fulfilling its obligations under an Agreement in the event that the Buyer fails to fully meet his (payment) obligations and/or fails to do so in time. Any adverse effects due to the suspension will be for the expense of the Buyer.

8 COMPLAINTS AND RETURNS

8.1 COMMENTS OR COMPLAINTS

Comments or complaints about Services and/or Products must be submitted to Caliope within fourteen (14) days of receipt of the relevant Services and/or Products. In the absence of such a notification, any claim against Caliope in relation to faults in the Services and/or Products lapses.

9 EXECUTION OF SERVICES

9.1 BEST EFFORT

Calioppe performs all Services on the basis of a best-efforts obligation.

9.2 CHANGES OR ADDITIONS CAUSING THE SCOPE OR VOLUME

In the event of changes or additions causing the scope or volume of the agreed Services to change, for example as a result of contract extras, the charges payable for the additional work arising from it shall be determined in accordance with the rates of Calioppe applicable the moment this additional work is performed.

9.3 PHASES

In the event that Calioppe provides the Service in phases, Calioppe will be entitled to postpone the work for a phase until the Buyer has approved the results of the previous phase in writing.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 IP RIGHTS

All IP rights vested in the Services and/or Products provided within the framework of the Agreement and in the Content are held only by Calioppe and/or its licensors, unless explicitly agreed otherwise in writing. The provision in this article is a reservation within the meaning of Section 15, Subsection 1, of the Dutch Copyright Act.

10.2 TRANSFER OF IP RIGHTS.

No part of these General Terms and Conditions implies a transfer of IP rights.

10.3 REMOVE OR CHANGE NOTICES

The Buyer is not permitted to remove or change any notices regarding IP rights vested in the Products and/or the (results of the) Services.

10.4 WAIVE

Calioppe explicitly does not waive the personality rights referred to in Section 25 of the Dutch Copyright Act.

10.5 THIRD PARTIES

If the IP rights to (a part of) the Services, Products and/or Content are vested in the licensors of Calioppe, the Buyer may have to accept the licence provisions and conditions of these third parties in order to use (all functions of) the Services and/or Products. If the Buyer does not want this, the Buyer will forfeit any relevant claim it may have against Calioppe.

10.6 INFRINGEMENT

In the event that it has been irrevocably established in court that the Services, Products and/or Content provided by Calioppe infringe any IP right of a third party, or in the event that, in the opinion of Calioppe, there is fair chance of such infringement occurring, Calioppe, if possible, will ensure that the Buyer can continue to use the Service and/or Product (or anything that is functionally equivalent), without interruptions. Any other or further liability or obligation to indemnify on the part of Calioppe on account of infringement of IP rights of a third party is entirely excluded.

11 WARRANTY AND INDEMNIFICATION

11.1 USE

Every use of the Services and/or Products is at the risk and responsibility of the Buyer.

11.2 GUARANTEES

1. The Buyer guarantees that he will refrain from using the Services and/or Products:
2. in a way that infringes the rights of Calioppe or of third parties or in another unlawful manner, including the IP rights and privacy protection rights;
3. contrary to applicable laws or regulations; and/or contrary to a provision of the Agreement.

11.3 THIRD-PARTY CLAIMS

The Buyer indemnifies Calioppe against all third-party claims, damage and costs arising from and/or in connection with and/or which are the result of a breach of the aforesaid guarantee by the Buyer.

12 LIABILITY

Within the framework of the formation and/or execution of the Agreement, Caliope cannot be held liable for damage or loss by virtue of an (attributable) failure in the performance of the Agreement, unlawful act or other ground, except as provided for in the paragraphs of this article below.

12.1 TOTAL LIABILITY

The total liability of Caliope on account of attributable failure in the performance of the Agreement, an unlawful act or otherwise, which explicitly includes every failure in the performance of a warranty obligation agreed with the Buyer, will be limited to compensation of the direct damage, subject to the maximum amount paid, or should have been paid, to Caliope for the relevant Product or the relevant Service.

12.2 DIRECT DAMAGE OR LOSS

Direct damage or loss is solely taken to mean:

1. reasonable costs incurred by the Buyer in order to ensure that the performance of Caliope meets the requirements of the Agreement;
2. reasonable costs incurred to prevent or limit the direct damage or loss which could be expected as a result of the event on which the liability rests; and reasonable costs incurred to establish the cause of the damage, the liability, the direct damage or loss and the method of remedy.

12.3 EXCLUSION

Every liability of Caliope for damage or loss other than direct damage or loss, such as consequential damage or loss, derivative loss and immaterial damage are fully excluded. Within this context, consequential damage or loss in any case includes: lost profits, lost savings, reduced goodwill, damage due to business interruptions, losses, costs incurred to prevent or establish consequential damage or losses, the loss of, exchange of or damage to electronic data and/or damage due to delays in the transport of data traffic.

12.4 LIMIT OF LIABILITY

This article does in no way limit the liability of Caliope for damage or loss as a result of intent or wilful recklessness on the part of Caliope itself.

12.5 COMPENSATION

Condition to the right to any compensation of damage will at all times be that the Buyer notifies the existence thereof as soon as possible after it has occurred and that Caliope will be given a reasonable term to remedy the situation. Every right to compensation of damage by virtue of this article lapses if the Buyer, within three (3) months of the moment on which the damage manifested itself for the first time, has failed to unambiguously claim compensation for damage, in writing.

13 TERMINATION

13.1 TERMINATE

The Buyer cannot terminate or dissolve the Agreement on grounds other than those set out in the paragraphs below.

13.2 TERMS OF TERMINATION

Either Party, without a notice of default in writing or judicial intervention being required and without being obliged to pay any damages or compensation, is entitled to partially or fully terminate the Agreement in writing with immediate effect, in the event that the other Party applies for a moratorium on payments, files its own petition for bankruptcy, a petition for bankruptcy has been filed against the other Party or the other Party has been declared bankrupt, the company of the other Party is wound up or discontinued for reasons other than a merger of companies, a substantial part of the assets of the other Party has or will be seized, or in the event the other Party must no longer be deemed able to fulfil its obligations.

13.3 FULL TERMINATION

Both Caliope and the Buyer are entitled to partially or fully terminate the Agreement in the event that the other Party attributably fails in the performance of his obligations under the Agreement and, following a proper, notice of default in writing with as much detail as possible, issued by registered post with a reasonable term of at least 30 (thirty) days to remedy the situation, continues to attributably fail in the performance of his obligations under the Agreement.

13.4 TERMINATION OF THE AGREEMENT

Calioppe is entitled to terminate the Agreement, partially or otherwise, if and from the moment that the Service or the Product which delivery is subject of the Agreement is no longer available, has been taken off the market or has otherwise become (permanently) unavailable.

13.5 UNDO

In the event that, from the moment of termination as referred to in this article, performances have already been delivered to the Buyer as part of the execution of the Agreement, these performances and related payment obligations cannot be undone, unless Calioppe is in default with regard to those performances. Amounts invoiced by Calioppe prior to the termination in connection with any performance or delivery as part of the execution of the Agreement continue to be payable and become immediately due and payable from the moment of termination.

13.6 REMAINDERS

Articles that, with a view to their nature, are intended to continue to apply after the end of the Agreement remain in full force upon termination of the Agreement.

14 MISCELLANEOUS

14.1 DUTCH LAW

The General Terms and Conditions, the Agreement and every use of Products and/or Services are governed by Dutch law.

14.2 DISTRICT

Disputes between Calioppe and the Buyer will exclusively be submitted to the court that has jurisdiction within the district of Amsterdam.

14.3 VOID

In the event that any provisions in these General Terms and Conditions are void or voided, the remaining provisions will remain unimpaired. In that case, Calioppe will decide on a new provision to replace the

void/voided provision, the purport and meaning of this replacement provision will be as close to the original provision as possible.

14.4 ENGAGE THIRD PARTIES

Calioppe will be entitled to engage third parties for the execution of the Agreement.

14.5 (SUB)LICENSED OR TRANSFERRED BY BUYER

The rights and obligations under the Agreement cannot be (sub)licensed or transferred by the Buyer to a third party, unless Calioppe has granted its explicit approval to do so in writing. Calioppe will not withhold this approval without reasonable grounds.

14.6 (SUB)LICENSED OR TRANSFERRED BY CALIOPE

Calioppe can (sub)license or transfer the rights and obligations under the Agreement to a third party, without the approval of the Buyer.

14.7 WAIVE

Calioppe at any one time failing to invoke a right or power it is entitled to under the Agreement or by virtue of the law does not mean that Calioppe waives this right or power.