

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. Subscription: Agreement for the periodic supply of Products and/or Services;
2. Buyer: Every party who enters into an Agreement with Caliope or requests an offer from Caliope;
3. General Terms and Conditions: These general terms and conditions of Caliope;

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.

4. 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;
5. 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;
6. Caliope: The private company with limited liability, Caliope Nederland B.V., with its registered office in Steenwijk, at Pluggematen 2, registered in the Commercial Register of the Chamber of Commerce under file reference number 34176019;
7. 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.
8. Parties: Caliope and the Buyer.
9. 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.
10. In writing: Communication on paper, via e-mail or other electronic ways.
11. 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 Caliope and exclude any (general) purchase or other conditions of the Buyer. These General Terms and Conditions always 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 Caliop 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

Caliop 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 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 Caliop 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 Caliop is accepted by the Buyer, Caliop 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 Caliop and the Buyer in writing. Where applicable, Caliop 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 Caliop, there is a substantial change, Caliop will notify the Buyer of that change in advance. If, in the opinion of Caliop, the change gives rise thereto, Caliop will enter 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 Media Software 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. The commencement date coincides with the start of the Subscription period as stated in the quote. If no start date is indicated in the quote, then the start date will be the first day of the month following the signing date of the quote.

6.2 PERIOD

Caliop charges the Subscription prices to the Buyer monthly, quarterly or annually, in advance.

6.3 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.

6.4 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 Caliop and Buyer have signed a one-time buy-off quote or agreement in regard to the further use of the software.

6.5 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 Caliop are final deadlines. Caliop 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

Caliop performs all Services based on 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 Caliope applicable the moment this additional work is performed.

9.3 PHASES

In the event that Caliope provides the Service in phases, Caliope 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 Caliope 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 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, Calioppe 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 because 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 because of intent or wilful recklessness on the part of Caliope itself.

12.5 COMPENSATION

Condition to the right to any compensation of damage will always 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

Caliop Media Software 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 Caliope is in default with regard to those performances. Amounts invoiced by Caliope 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 TERMS FOR SUPPORT AND MAINTENANCE

14.1 SUPPORT CONTRACT

In order to be able to make use of support & maintenance it is required to have a valid support contract. Every client will receive a yearly invoice for support & maintenance. A fully paid invoice for support & maintenance will act as a valid contract for support & maintenance. The terms in this document will serve as agreed terms and conditions for support & maintenance.

14.2 PERIOD

A support & maintenance contract will always be valid for a period of one (1) year. Support & maintenance must be paid in advance. Restitution will never be granted.

14.3 UPDATE OF THE SOFTWARE WITHOUT A SUPPORT CONTRACT

It is not possible to update the software without a support contract. If a client chooses not to make use of the support contract for one or more years, the client must update to latest version of the software before renewing the support contract. The price of the update depends on the number of years the software was used without a support contract:

- 1 year: 50 % of the price of the full version
- 2 years: 75 % of price of the full version
- 3 or more years: 100% of the price of the full version

14.4 SUPPORT & MAINTENANCE DEFINITIONS

A valid support & maintenance contract entitles the client to:

1. All updates of the software
2. New versions of the software
3. Unlimited support by phone / Skype etc. during office hours (CET)
4. Remote support with remote support software like TeamViewer or Anydesk

14.5 TYPES OF SUPPORT CONTRACTS

All client can choose between 2 types of support contracts: a standard support contract and a 24/7 support contract.

14.6 TIME WINDOW STANDARD SUPPORT CONTRACT

Support & maintenance will be available on working days between 9:00 until 17:30 CET.

14.7 TIME WINDOW 24/7 SUPPORT CONTRACT

Support & maintenance will be available on all days, 24 hours a day.

14.8 SUPPORT OUTSIDE THE TIME WINDOW

In case of an urgency and support is necessary outside of the time window of the support contract, support might be given at a special rate. This rate will be indicated on the yearly support invoice. The minimum amount of time that will be billed is always 1 hour. Support outside the time window will only be given when the support is in an unworkable state.

14.9 WAY OF SUPPORT

Support will be given by any means available like mail, telephone, Skype, Teams, Zoom etc. When necessary, Caliope will log in at the client's computers with 'remote support software' like TeamViewer or Anydesk. The client needs to install the remote support software as is indicated by Caliope support. It will not be possible for Caliope to support with remote support software if the indicated remote software is not installed on the client's pc.

14.10 ACCEPTANCE OF ISSUES

All issues which do not require immediate response need to be sent to the support mail address of Caliope. (support@caliope.media). It is also possible to raise tickets in the support portal of Caliope (<https://support.caliope.media>). Requests for support by any other means (telephone, Skype, WhatsApp, Messenger etc.) will not be put into the support system of Caliope and hence will not be dealt with.

All mails or tickets shall contain only one (1) issue. If a ticket contains more than 1 issue, Caliope will notify the client and request the client to change the ticket. Unless the ticket is changed, it will be cancelled.

Clients with a 24/7 support contract will be given a special phone number or WhatsApp account that can be contacted in a case of emergency.

14.11 CLASSIFICATION OF ISSUES

Every issue will be categorized in one of the 6 available categories:

- 1 Open (Received, no action yet)
- 2 In progress (Caliope is working on a solution)
- 3 Pending (Waiting for more information)
- 4 Completed (Solved)
- 5 Closed (Closed)
- 6 Cancelled (No further action will be taken)

Every issue that is in progress will get one of the following classifications:

- 1 Blocker
- 2 High
- 3 Medium
- 4 Low
- 5 Minor

14.12 DEFINITIONS OF THE CLASSIFICATIONS

- 1 Blocker: A severe issue that makes it impossible to work with the software. No work-around exists
- 2 High: an issue that makes it difficult to work with the software. A work-around exists or will be provided
- 3 Medium: A issue that once solved will highly improve the software
- 4 Low: A request for improving the software or to add new functionality. This improvement will be beneficial for all clients.
- 5 Minor: A request for improving the software that will only be beneficial for the requestor or only a few clients.

The classification of the issues will be done by Caliope.

14.13 CLASSIFICATION ACTIONS

- 1 Blocker: Caliope will immediately make support available and solve the issue as soon as possible or suggest a work-around
- 2 High: Within 2 working days an answer will be provided in which it is stated what will be done and in which version a solution can be expected.
- 3 Medium: Within 5 working days an answer will be provided in which it is stated what will be done and in which version a solution can be expected.
- 4 Low: Within 5 working days an answer will be provided in which it is stated what will be done and in which version a solution can be expected.
- 5 Minor: Within 5 working days an answer will be provided in which it is stated what will be done and in which version a solution can be expected. If necessary, the client will get a quote for the work to be done.

15 MISCELLANEOUS

15.1 DUTCH LAW

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

15.2 DISTRICT

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

15.3 VOID

If any provisions in these General Terms and Conditions are void or voided, the remaining provisions will remain unimpaired. In that case, Caliope 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.

15.4 ENGAGE THIRD PARTIES

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

15.5 (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 Caliop has granted its explicit approval to do so in writing. Caliop will not withhold this approval without reasonable grounds.

15.6 (SUB)LICENSED OR TRANSFERRED BY CALIOPE

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

15.7 WAIVE

Caliop 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 Caliop waives this right or power.