



Terms & Conditions

Sparkwise BV

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Sparkwise Terms & Conditions

These Terms and Conditions (hereinafter referred to as: 'Terms') together with either (A) the signing page of a master agreement and its other exhibits, including Order Form, or (B) the applicable Order Form submitted by Customer via Sparkwise's website or other electronic means provided by Sparkwise comprise the entire terms and conditions under which Sparkwise will make available to Customer certain access and rights of use to SaaS and Other Services as defined hereunder, and under which any and all of the relationships between Parties are governed.

1. DEFINITIONS

The following notions in these Terms and related documents will have the following meaning.

'Agreement': any agreement or legal relationship(s) of any nature between Parties in respect of the Services or otherwise related to the making available of certain access and rights of use to SaaS and provision of Other Services, any amendment thereof or supplement thereto, as well as all acts related to performance of the Service(s);

'Business Day': a calendar day from 08.30 until 17.00 local time at the offices of the Sparkwise entity with which Customer has entered into an Agreement, except for weekends and national holidays in such country;

'Customer': any person or legal entity with whom Sparkwise wishes to enter into, enters into or has entered into a legal relationship;

'Documentation': official Sparkwise user manuals, release notes and other official Sparkwise policies with respect to the SaaS respectively Other Services, if and as made available by Sparkwise from time to time, either on its website or otherwise;

'Fee': the fee(s) due and owed by Customer to Sparkwise as consideration arising from the Agreement, Order Form or as otherwise described in these Terms;

'Order Form': any request or form submitted via the website or other electronic means by Customer to Sparkwise to enter into an Agreement;

'Other Services': all services of whatever nature, such as, but not limited to consultancy, consultancy subscription arrangements, Support and other services that are not SaaS, provided or to be provided by or on behalf of Sparkwise to Customer;

'Party' or 'Parties': Customer or Sparkwise, respectively Customer and Sparkwise;

'Proposal': any proposal or other offer by Sparkwise to Customer concerning making available certain access and rights of use to SaaS and the provision of Other Services, as well as matters relating thereto;

'SaaS': all software-as-a-service to define, build, test, implement and improve digital business operations and integrations, made available or to be made available by Sparkwise to Customer in any way via the internet (not being Other Services), solely for the normal operating of business of Customer and under the conditions as stated in these Terms;

'Services': SaaS as well as all Other Services to be made available in any way by or on behalf of Sparkwise or activities to be carried out, of whatever nature for Customer;

'Sparkwise': a private company under the laws of the Netherlands, Sparkwise B.V. and its affiliates, having its registered offices in Den Bosch (Dutch Chamber of Commerce number: 81478054) with which Customer has entered or is entering into an Agreement;

'Support': part of Other Services, concerning first line support which Customer may initiate questions and queries through the support knowledge channel made available by Sparkwise, as well as through a status monitor page and a live chat. Support is made available during Business Days. Any second line support will be made available through the partner network, as agreed upon;

'Term': the initial fixed period for the use of the SaaS as set forth in the relevant Order Form, and any respective renewals thereafter.

2. TERMS & AGREEMENT

- 2.1 These Terms shall apply to all Proposals, Order Forms and Agreements. Parties agree and recognize explicitly that no other general terms of purchase, delivery or otherwise are applicable except for these Terms.
- 2.2 All Proposals shall be without engagement and shall consequently only be deemed to be an invitation to place an Customer Order. The previous sentence shall not apply if a term of validity is expressly stated in the Proposal.
- 2.3 An Agreement shall only be considered as valid and concluded when and after acceptance of these Terms prior to the commencement of any use of the Services, or when Sparkwise has expressly, authorized and signed said Order Form and Agreement, and communicated such by mail or customary means of electronic communication.
- 2.4 If the Agreement is a master (framework) agreement and is entered into for an indefinite period of time as per the Effective Date set forth therein. As per the nature of this master (framework) agreement the Agreement cannot be terminated if any pending SaaS Order Form or Other Services Order Form or related contractual arrangements between Parties are still current.

3. SAAS

- 3.1 From the date of payment of the applicable Fees (hereinafter to be referred to as: 'Start Date'), Sparkwise will make available the SaaS on an as-is basis except if explicitly set forth otherwise in the then current Documentation. Thereafter, Customer has the right to access the SaaS and is entitled to onboard by creating user account(s). Once Customer has created user accounts, Customer is entitled to use the SaaS in accordance with the Order Form, the Agreement, and these Terms (even if the user is using the SaaS on behalf any kind of Customer).
- 3.2 All SaaS shall be made available on an 'as-is' basis and considered to be accepted unconditionally at the respective Start Date. During the applicable Term for the SaaS, Sparkwise will make commercially

reasonable efforts to provide SaaS as set forth herein in general and the applicable Order Form and related Documentation in particular. Sparkwise aims at achieving availability of SaaS of twenty-four (24) hours a day, seven (7) days a week, except the planned (maintenance and related) 'down-time' of the SaaS. Any planned maintenance by Sparkwise will where possible be announced by Sparkwise, and where possible, take place outside of normal Business Days. In any way Sparkwise is entitled to perform any necessary maintenance at any time at the discretion of Sparkwise. However, except as explicitly otherwise set forth in said Documentation, Customer's obligation to pay the Fees shall always remain in full force, notwithstanding actual availability.

- 3.3 The warranty set forth in Clauses 3.1 and 3.2 is the only warranty made by Sparkwise. Sparkwise expressly disclaims and Customer hereby expressly waives, all other warranties, express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. Sparkwise does not warrant the availability of, access to, or use of the SaaS and specifically disclaims any representations and liability that the SaaS shall meet Customer's requirements or that the operation of the Services or its use shall be uninterrupted without delay or error-free, omission-free or free of viruses or that errors or other defects in the SaaS, if any, shall be corrected. Sparkwise's limited warranty set forth herein is in lieu of all liabilities or obligations of Sparkwise for damages arising out of or in connection with the use of the SaaS or related Other Services. Except for the abovementioned limited warranty, the entire risk as to the use, quality and performance of the SaaS are with Customer, who explicitly acknowledges that the SaaS is made available to Customer on an 'as is' basis. Any use of the SaaS by or on behalf of Customer and any direct or indirect consequences thereof are at the risk and expense of Customer.
- 3.4 Customer is responsible for its own appropriate, diligent, and correct use of the Services. Sparkwise at all times has the right to update and otherwise alter the Services without further notice. Sparkwise also reserves the right to revise (any part of) the Services or withdraw access to it at its discretion at any time. However, Sparkwise will notify Customer via prominent notification on its website or by email about any major changes that would negatively impact Customer's use in connection with the Services. Sparkwise at all times has the right to suspend or terminate Customer's account without further notice, with cause as well as without cause. If Customer breaches these Terms or applicable law, Sparkwise may take action against Customer including but not limited to terminating the Agreement. Upon termination, Customer's right to access or use the Services immediately ceases, and Sparkwise shall have no obligation to maintain the Services. Customer herewith acknowledges that Sparkwise has no obligation to, and will not, reimburse or refund Customer for any Services lost due to any related suspension or termination of the Agreement for cause.

4. OTHER SERVICES

- 4.1 If agreed upon by signing or in a later stage, Other Services will be provided by or on behalf of Sparkwise to Customer, all this in accordance with the provisions in the Agreement, these Terms and the specifications as mentioned in the relevant Order Form. Customer will owe the related Fees as described in such Order Form, these Terms, and Agreement. The Services will be rendered remotely on a case-by-case basis after permission of Customer or at a location to be determined by Sparkwise when required by Customer, unless it has been agreed otherwise in writing between Parties.

4.2 Sparkwise will make commercially reasonable efforts to provide Other Services. All schedules and terms mentioned by or agreed with Sparkwise have been described and planned to the best of their knowledge on the basis of Customer information and circumstances known to Sparkwise when the related Other Services Order Form was concluded. The occasional exceeding of such term or schedule shall not be considered an attributable shortcoming of Sparkwise. In the case that there is a risk of exceeding such term or it has already been exceeded, Parties shall consult as soon as possible.

4.3 Customer acknowledges that communication by Sparkwise will generally be on Business Days.

5. FEE AND PAYMENT

5.1 Customer shall owe Fees according to the rates and prices established and annually updated by Sparkwise on its website or within the SaaS. Fees shall be expressed in EUR (Euro) or currency as explicitly otherwise mentioned in the relevant Order Form. All rates, prices and other Fees are net and shall be exclusive of VAT as well as withholding and other taxes and levies due under applicable law.

5.2 The subscription Fees regarding SaaS are due and payable each month in advance and will be paid at the commencement on the respective Start Date of the Term and on any anniversary thereafter.

5.3 If Sparkwise or on behalf of Sparkwise will render certain Other Services to Customer, Customer will owe the related Fees which will be paid periodical or as otherwise agreed upon, as described in such Order Form or within the SaaS, these Terms and the Agreement. Customer undertakes to pay all Fees and travelling, hotel and incidental expenses reasonably incurred by Sparkwise in carrying out the Services, if remote access is not possible.

5.4 Payment shall take place without any set-off, deduction or suspension. All rates, prices and fees of Sparkwise will be paid integrally in accordance with the terms of payment and other financial (digital) transaction terms which are available, for example including but not limited to credit card and other payment services.

5.5 Sparkwise is authorized to adjust the applicable Fees, rates and prices each year within reasonable limits, after the first contractual Term of respective Order Form. Sparkwise will publish the increase on its website or within the SaaS not later than thirty (30) calendar days prior to take effect.

5.6 If Customer does not pay the amounts due within the period as referred to in Clauses 5.2 and 5.3, then Customer shall be in default. In the event of a default (i) Customer shall be due and pay to Sparkwise the amount due accumulated with interest of at least one and a half percent (1.5%) per month, as well as debt collection costs, and (ii) Sparkwise (in addition to its other rights to which it is entitled under the Agreement) will be authorized to suspend the respective Services or part thereof after prior notification by Sparkwise.

6. CUSTOMER OBLIGATIONS

6.1 The relevant systems of Customer related to the SaaS must meet the system requirements as set forth in the most current Documentation, which requirements may be updated from time to time by Sparkwise

without any preliminary announcement. Customer is responsible for the required connections, environment, installing and storage facilities for the use of the Services, including the internet, as well as where it concerns the choice of infrastructure and their timely and complete availability. If and to the extent, Sparkwise will made available to Customer the SaaS, including the infrastructure and landing zones, Sparkwise will do this explicitly on an 'as-is' basis.

- 6.2 Customer represents and warrants that any data and information made available or provided by Customer is correct and accurate. Customer has the obligation to advise Sparkwise immediately of any material or other relevant changes in such information. Parties will work together in good consultation and support each other in order to carry out the Agreement.
- 6.3 Customer has the obligation to only use the Services within the boundaries of the Agreement, these Terms and the applicable laws. Customer shall be exclusively responsible for the selection, (fair) use, generated software, security, back-up action, and its use of the Services made available by Sparkwise within Customer's organization or outside, unless explicitly and specifically agreed between Parties in writing. Customer and its users are not entitled to misuse or to perform any disproportionate behavior or excessive capacity use in connection with the Services, and to comply with the applicable laws and regulations.
- 6.4 The Services under the Agreement and these Terms shall be exclusively for the benefit of the Customer. Customer herewith indemnify and hold Sparkwise harmless from and against any and all claims of third parties, including any damages, losses, costs and expenses, relating to or arising in whatsoever manner from any use of the Services.
- 6.5 If Customer does not adequately and timely comply with the provisions of Clauses 6.1 through 6.4 Sparkwise is entitled to suspend execution of the relevant part of the Agreement and to charge for the costs thereby incurred according to the current prices and fees valid at that time.

7. CONFIDENTIALITY

- 7.1 Both Sparkwise and Customer will treat all data and information that each obtains from the other Party with respect to the Services as well as commercial, strategic, technical data, knowledge or other information connected with that other Party strictly confidential. For the avoidance of doubt, any data or information uploaded by Customer in the SaaS is considered confidential information of Customer. Also, each Party will not make announcements about this to third parties, except as otherwise agreed upon.
- 7.2 It is only allowed to deviate from the provisions in Clause 7.1 if (i) the relevant deviation has been explicitly provided for in the Agreement, (ii) the related information was already generally known without any breach of confidence by a Party or any third party before the Agreement was realized, (iii) the prior written permission of the Party concerned was obtained, or (iv) the related information must be made public to satisfy a mandatory decision to that extent of a legal authority, in which case the Party concerned will inform the other Party in advance.

8. INTELLECTUAL PROPERTY RIGHTS & DATA

- 8.1 All rights of intellectual property of Customer to data and information of Customer are and will remain the property of Customer. Sparkwise and its suppliers and licensors are the exclusive owner(s) of all rights and title of all segments of the Services, including the intellectual property rights and the functionality thereof. Customer shall acquire no rights whatsoever other than explicitly described in these Terms or the Agreement.
- 8.2 Sparkwise holds Customer indemnified against any claims based on the substantiated allegation of a third party that the SaaS infringe intellectual property rights valid in the Netherlands and other member states of the European Union, as well as other countries of the Berner Convention. In such case, Customer shall inform Sparkwise thereof immediately in writing, in detail, and further offer its cooperation to Sparkwise. In the case of aforementioned claims by third parties Sparkwise may at its discretion replace or change the SaaS entirely or partially if necessary, or terminate the Agreement entirely or partially.
- 8.3 Customer is responsible for any (personal) data or other information that Customer sends to Sparkwise or otherwise shares or discloses before or during its use of the Services. For example, when Customer will create a user account, Sparkwise need to process (personal) data for the purposes to identify and give Customer access to the Services. Furthermore, Customer is responsible for all user account(s) and to choose a strong and secure password, keep user account's password secure, confidential and maintaining due care.
- 8.4 In order to operationalize the SaaS which is end-to-end encrypted, therefore, Customer understands and agrees that the technical processing and transmission of Customer's data is fundamentally necessary in order to run, monitor or perform the SaaS. Sparkwise will take commercially reasonable efforts to implement and maintain to the extent necessary appropriate technical and organizational security measures in accordance with the ISO27001 certificate, and other relevant security certification standards. Customer expressly consents to Sparkwise's processing, analysing and storage of Customer's technical process data or telemetric data, and Customer acknowledges and understands that this will involve transmission over the internet and over various networks. However, Sparkwise does not control or have any insight into the data traffic from or to the SaaS, and does not give any warranties with regard to content of data, including but not limited to reliability and completeness.
- 8.5 Customer is entitled to upload and download its data and information in the SaaS through a secure protocol as and to the extent provided by Sparkwise from time to time. Customer is responsible for the protection of (personal) data being sent or processed by the SaaS on behalf of Customer. Sparkwise strongly recommend not to process, use and store any personal data in the SaaS in case Sparkwise will made available the SaaS, including the infrastructure and landing zones to Customer. Customer will comply with any applicable laws and regulations pertaining to the safeguarding of such data. Customer indemnifies Sparkwise for all claims for any breach of applicable privacy laws. Sparkwise may be required by mandatory law to provide certain (personal) data, also but not limited to Clause 7.2(iv). If this is the case, Customer will be informed by Sparkwise insofar as the law permits.

- 8.6 Sparkwise will only on behalf of Customer process, store and use personal data for the purposes within its normal activities under the Agreement in order to provide Customer access to the SaaS or to give some assistance for using the SaaS and Other Services, and for that Sparkwise needs to process Customer's contact details. Regarding support, only authorized users are allowed to contact the support desk. Such personal data will be processed by Sparkwise on behalf of Customer in a proper, careful and safe manner by using the GDPR principles of privacy and security by design and by default, and within the limits of the statutory regulations and the rightful objectives of Sparkwise and Customer respectively. In case Customer discovers any security or other notable breach, Customer will notify Sparkwise immediately.
- 8.7 Personal data in combination with the technical information as browser or device ID is necessary to verify a user and to create a unique ID in order to setup and maintain the end-to-end encrypted connection of the SaaS to enable Customer to use the SaaS. All this in accordance with privacy and security by design and by default principles. Further, any personal data regarding any user account will be stored as long as Customer will have an active user account(s) and using the Services, at its discretion. Further, no cookies will be set, except for the essential functional cookies for verification purposes as set above.
- 8.8 Beyond the normal business activities of Sparkwise, Sparkwise shall otherwise not process any personal data of any nature and/or provide these to third parties other than with the prior and unambiguous permission of Customer and/or to the extent that the law provides otherwise. Each Party shall arrange for its own appropriate technical and organizational measures to protect personal data from loss or from any form of unlawful processing.
- 8.9 Sparkwise reserves the right to withhold, remove, discard or otherwise dispose any data or data set without notice for any breach including, without limitation, Customer's non-payment of fees. Upon termination for cause, Customer's right to access or use the Services immediately ceases, and Sparkwise shall have no obligation to maintain any data. However, Customer is entitled to download any of its data up to fourteen (14) Business Days after the date of termination, which Sparkwise will make available in a generally available format if and to the extent used by Sparkwise at that time.
- 8.10 If Sparkwise processes any personal data on Customer's behalf when performing its obligations under this Agreement, Parties hereby agree that Customer shall be the data controller and Sparkwise shall be a data processor for Customer in any such case: (a) Customer shall ensure that Customer is entitled to (cross-border) transfer the relevant personal data to Sparkwise so that Sparkwise may lawfully use, process and transfer the personal data in accordance with this Agreement on Customer's behalf; and (b) Customer shall ensure that the relevant third Parties have given their consent to such use, processing, and transfer of all personal data supplied by Customer as required by all applicable data protection legislation.

9. LIMITATION OF LIABILITY

- 9.1 Except for breaches of the Agreement due to intent or gross negligence of the management of Sparkwise, Sparkwise will not be liable for any damage that Customer suffers by any acting or refraining from acting of Sparkwise, except for any direct damage on account of an attributable shortcoming of Sparkwise.
- 9.2 In any event, Sparkwise's aggregate liability for any reason and upon any cause of action or claim, including, without limitation, Sparkwise's obligation to indemnify and hold harmless under the Agreement, shall never amount to more than the amount equal to the relevant Fees invoiced by and paid to Sparkwise by Customer hereunder (exclusive VAT/taxes) in the six (6) months period immediately prior to the event causing the damage. Direct damage will be understood to mean in this Clause: damage, except indirect damage such as (amongst others) consequential damage, lost profit, missed savings, damage through business stagnation and damage on account of corrupted or lost data. If and insofar any damage is caused because Sparkwise is culpably in default on account of intent or gross negligence of the management of Sparkwise in its responsibilities, Sparkwise will be maximally liable for an amount of EUR 10,000 (ten thousand Euro) per event, at which a series of connected events will apply as one event. The limitations set above apply to all causes of action or claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentations, and other torts.
- 9.3 A right of Customer to compensation will only arise if Customer has informed Sparkwise accordingly in writing within thirty (30) days or immediately after Customer could discover in reason the arising thereof.
- 9.4 Sparkwise will not be liable for entire or partial non-observance of any obligations or partial non-observance of or on behalf of Sparkwise on account of the Agreement, if the non-observance concerned or other delay or failure to perform hereunder is due to (a) Customer's delay in supplying or in failing to supply approvals, information, documentation, goods or services reasonably requested by or necessary for Sparkwise to execute the Agreement, or (b) causes beyond the control of Sparkwise, including, but not limited to force majeure, acts of any government or political division of government, fires, floods, epidemics, quarantine restrictions, strikes, under which any non-attributable shortcoming of Supplier(s) are included.

10. TERMINATION

- 10.1 Each Party may terminate the Agreement without cause when there are no outstanding Order Forms of any kind. An Order Form, regarding SaaS, can be terminated by written notice to the other Party served at least thirty (30) days prior to the expiry of the initial Term, or after any renewals thereof.
- 10.2 Each Party will be entitled to terminate the Agreement with immediate effect, without any further declaration of default and without any prior legal intervention, by written notice if the other Party (i) becomes insolvent, enters into liquidation (whether voluntary or otherwise), becomes unable to pay its debts as they fall due or any event similar to any of the foregoing occurs to that other Party or (ii) ceases or threatens to cease carrying on its business.

- 10.3 Upon termination related to Other Services, Customer shall be immediately due the full payment under and as set forth in the respective Order Form. The Agreement or an Order Form can be terminated however in writing by Sparkwise, without any further declaration of default to Customer and without any legal intervention, solely if Customer fails in timely observing any obligation on account of the Agreement or Order Form (including but not limited to payment of amounts due by the Customer) and after fourteen (14) days have passed after the date of a written declaration of default to Customer, all this without prejudice to the other rights Sparkwise is entitled to.
- 10.4 Any term(s) or condition(s) of this Agreement, which by their nature extend beyond any termination of this Agreement shall survive and remain in effect, without prejudice to any termination of the Agreement.

11. MISCELLANEOUS

- 11.1 Sparkwise is entitled to subcontract or otherwise assign the rights or obligations arising from the Agreement. Customer is not permitted to assign the Agreement or any of its rights or obligations in this matter, without express prior written permission from Sparkwise.
- 11.2 These Terms, the Agreement and related matters hereto shall be governed by the laws of the Netherlands, without giving effect to the principles of conflict of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 is hereby explicitly excluded.
- 11.3 Without prejudice to the right of each Party to apply for disposition by summary proceedings, all disputes arising in connection with the Agreement, these Terms and related matters ('Disputes'), and which cannot be solved through amicable negotiations, shall be exclusively and finally settled (A) by the competent court of Amsterdam if both Parties hereto are based in the European Union, or (B) if one of the Parties is based outside the European Union, by binding arbitration administered by the World Intellectual Property Organization ('WIPO'), pursuant to the Expedited Rules of WIPO in effect at the time of submission. Such arbitration shall be held in Amsterdam, the Netherlands, before a single neutral arbitrator with a minimum of ten (10) years' experience concerning commercial agreements. The official language of the arbitration shall be English, and all evidence shall be submitted in English, or in a certified English translation. The arbitrator's award shall be a final and binding determination of all Disputes and related claims and counterclaims that are presented to the arbitrator.
- 11.4 Headings have been inserted into the Agreement for convenience only and shall not affect the interpretation of the Agreement.