

General Terms and Conditions

SmartNow B.V.

Version: October 2023

1. Definitions

In these General Terms and Conditions (the Terms), the terms have the following meaning:

Agreement means the agreement between Parties, including applicable annexes.

Business Hours means any time between 09:00 and 17:00 hours CET from Monday to Friday, excluding any bank holidays in the Netherlands.

Confidential Information means any information that is not public knowledge and which is obtained from the other Party in connection with the Agreement. SmartNow's Confidential Information includes its Intellectual Property Rights.

Customer means the (legal) person engaging SmartNow to provide the Services under the Agreement.

Customer Data means data, which is uploaded to the SmartNow Portal.

DCC means the Dutch Civil Code.

Generated Data means data generated with the Services.

Hardware means all (hardware) equipment delivered by SmartNow.

Intellectual Property Rights means all intellectual property rights, including copyrights, registered and unregistered trademark rights, trade secrets, granted and applied for patents, domain names, registered and unregistered design rights, database rights, know-how, rights with the same and similar purport or nature as the preceding rights and other rights which arise from the Services, including the Software and including the Generated Data.

Machines means the machines used by Customer that are connected to SmartNow products.

Offer means every written offer or quotation by SmartNow to provide Services.

Party means either SmartNow or Customer.

Service(s) means any service provided by SmartNow to Customer under this Agreement.

Software means the software developed and/or hosted by SmartNow and/or third parties to provide such Services, including the SmartNow Portal.

Support is the support delivered by SmartNow to Customer as defined in clause 4.

Supported Hardware means all Hardware provided by SmartNow that is supported with Support.

SmartNow means SmartNow B.V., a company with limited liability, having its principal place of business at Zijlweg 148-A, 2015 BJ Haarlem, the Netherlands, and registered with the Commercial Register of the Dutch Chamber of Commerce under number 63620162.

SmartNow Portal means the web portal provided by SmartNow to Customer.

User Account means the personal digital environment of Customer within the Services, to which Customer has access by using the available authentication methods and the authentication data provided.

In these Terms references to **Personal Data** and **Processing**, will have the meanings as defined in the General Data Protection Regulation (GDPR).

2. Scope and applicability

- 2.1 The Terms govern all legal acts between Parties, including Offers, the Agreement, subsequent agreements, and any agreed service level agreements.
- 2.2 Deviations from these Terms are only effective to the extent agreed in writing by SmartNow, explicitly referring to the clause it deviates from.
- 2.3 The following hierarchy of the documents shall apply if any clause in these Terms conflicts with the Agreement and/or any other document: (1) Agreement, (2) SLA, (3) these Terms.

3. Offers

- 3.1 All Offers shall be valid for 14 days and without any obligation. Each Offer may be revoked by SmartNow at any time until 30 calendar days after receipt of Customer's acceptance, in which case no agreement is effected between Parties. Any orders shall only be considered effective when executed or confirmed in writing by SmartNow.

4. Services

- 4.1 The Services consist of SmartNow providing certain Hardware and/or a non-exclusive, non-transferable license to Customer to use of the Software with the purpose of (i) enabling Customer to collect Generated Data from connected Machines (ii) process this Generated Data into information and/or (iii) send data to connected Machines. Upon request, installation on site can be performed by SmartNow against an additional fee.
- 4.2 Functionality of third-party applications or software and services provided by third parties are out of scope, unless agreed otherwise in writing.
- 4.3 The Services and the Software are provided as they are ("as is" and "as available"). The unavailability and/or non-performance (or not correct performance) of the Services, and/or provide Information and/or the not optimally functioning thereof, for whatever reason, shall not constitute a ground for liability.
- 4.4 The Services and Supported Hardware are only available for, and may only be used with, SmartNow's certified Machines with SmartNow's certified software versions. Customer will inform SmartNow of changes in hardware or software it intends to use in combination with the Services and/or Supported Hardware. Any such changes without can result in a loss of functionality.
- 4.5 SmartNow is entitled to (temporarily) pause the Services to carry out maintenance work without any further liability.
- 4.6 SmartNow's obligations shall have the nature of a best efforts obligation. Deadlines shall never be considered fatal deadlines. The mere exceeding of the delivery time shall not constitute a failure in the performance. Delays shall never entitle Customer to terminate the Agreement or to damages.
- 4.7 The risk of loss, theft or damage to items that are the subject of the Agreement transfers to Customer at the moment when they are placed in the actual possession of Customer or an auxiliary person of Customer. If a carrier is used for the delivery, whether or not at the request or instruction of Customer, the risk of loss, theft and damage to the item will already pass to Customer at the time of delivery of the goods to the carrier.
- 4.8 Customer must inspect delivered items upon delivery. Visible defects or omissions must be reported to SmartNow in writing immediately but at the latest within 24 hours after delivery, failing which Customer is deemed to have accepted the delivered items without reservation.
- 4.9 Customer accepts in advance any changes made to or in the Hardware or Services by a manufacturer and/or SmartNow to improve their proper functioning.
- 4.10 Any research and development Services will be performed at a location of SmartNow's choice and Customer shall allow SmartNow access to those premises and Machines and such information as reasonably necessary for SmartNow to perform its Services.

5. Support

- 5.1 SmartNow shall provide Customer with Support during Business Hours and in accordance with the agreed service levels to the extent applicable.
- 5.2 Only incidents reported via (i) support@smart-now.com or (ii) telephone number +31 20 8943777 will be resolved by SmartNow. Customer shall provide sufficiently detailed information about the incident and all relevant circumstances for SmartNow to resolve the issue.

6. Customer Obligations

- 6.1 Customer is:
- (a) responsible for choosing the correct resources required for the use of Services, including computers, data and a functioning internet connection; and

- (b) fully and solely responsible for the use of the User Account, Software, Services and Generated Data. Customer shall immediately inform SmartNow when it establishes or suspects abuse of user name and password of the User Account, in which case Customer shall take immediate action.

6.2 Customer shall:

- (a) only use the Services in combination with Supported Hardware and software in accordance with the instructions of SmartNow;
- (b) be responsible for the tests of its own (reporting) system(s);
- (c) not offer or resell any of the Services or Supported Hardware in any way, either as a standalone or integrated (white labeled) solution and it shall indemnify SmartNow for any claims of third parties to which the Customer has (re)sold the Hardware;
- (d) ensure that all information required by SmartNow for the performance of the Services shall be issued to SmartNow in a timely, correct and complete manner;
- (e) not copy or replace any Supported Hardware or in any other way compete with SmartNow, nor shall it make changes to the Supported Hardware or Software without prior written approval from SmartNow;
- (f) prevent excessive system load or network load measures[;
- (g) use SmartNow's software in accordance with the applicable fair use policies; and
- (h) (allow third parties to) use the Services in such a way that the name or reputation of SmartNow is damaged.

6.3 SmartNow is entitled to suspend the performance without any liability of its Services as long as Customer does not fulfill the obligations. Any additional hours and/or extra costs incurred by SmartNow and any other current or future damages incurred by SmartNow resulting from Customer not (timely) fulfilling its obligation to provide information, shall be charged to Customer in accordance with the customary rates at that time.

6.4 Customer warrants that:

- (a) it shall comply with all applicable laws to which its activities are subject;
- (b) it (shall procure that any third parties engaged by it) shall not use the Services for any other purpose than for which they were issued;
- (c) the Data is processed and provided by Customer to SmartNow in compliance with applicable laws;
- (d) it shall not perform or contribute to any activities which could be labeled unethical marketing, deception, unfair trade practices or fraud;
- (e) it shall not (try to) gain access to servers managed by SmartNow; and
- (f) it and any third parties engaged by Customer shall not (try) to interrupt, disrupt or otherwise hinder the functionalities of the Services.

6.5 Customer acknowledges that SmartNow has no control over Customer Data and the Generated Data that is processed through the Services. Customer indemnifies SmartNow against any third-party claims arising from the processing of Customer Data and Generated Data.

7. Intellectual Property Rights

7.1 All Intellectual Property Rights, results of the Services, user information and databases generated through Customer's use of the Services are held by SmartNow or its licensors, with the exception of Customer Data and Generated Data.

7.2 Subject to Customer's compliance with these Terms, Customer's use of the Intellectual Property Rights is limited to the non-exclusive, non-sublicensable and non-transferable right to use the Software within the purposes of the Services for the duration of the Agreement.

7.3 Nothing in the Agreement or any other actions by SmartNow is intended to transfer the Intellectual Property Rights or in any other way assign any other rights to Customer, unless otherwise explicitly set out in the Agreement.

7.4 Customer shall not:

- (a) decrypt, adjust, alter or develop derivative products or in any other way frame, mirror or simulate the appearance and the function of the Software;
 - (b) make any adjustments to the Services, explicitly including the Supported Hardware (or have any adjustments made by third parties) without the prior written consent of SmartNow.
- 7.5 Customer indemnifies SmartNow against all damages and/or third party claims caused by any other use than the agreed on use of the Services and/or any adjustments made to the Supported Hardware by, or on behalf of, Customer.
- 7.6 Customer grants to SmartNow the right to (i) copy, remove, store, reproduce, analyse, in aggregate or in any other way use Customer Data and Generated Data for the performance of the Services for Customer and (ii) use Customer Data and Generated Data in anonymized form for any other purpose.
- 7.7 If a court establishes that the Services or their results infringe the Intellectual Property Rights of a third party, SmartNow shall – at its expense and discretion – as a sole remedy either attempt to (i) acquire the rights to continue the use of the Services for the remainder of the Agreement, or (ii) replace the Services by other services which do not cause an infringement, or (iii) alter the Services in such a way that they do no longer infringe the rights of third parties.
- 7.8 Customer shall immediately notify SmartNow if it identifies an infringement on SmartNow's Intellectual Property Rights and shall provide all reasonably required assistance in relation to SmartNow's defense against such infringement.

8. Fees, invoicing and payment

- 8.1 Customer shall pay SmartNow the fees as further specified in the Agreement for the use of the Software, the purchase of Supported Hardware and Support. In addition, SmartNow may charge Customer its hourly rates for any support services provided outside the agreed scope work, which shall be based on the applicable hourly rate(s).
- 8.2 All prices and rates quoted are in euros and exclusive of VAT and other government levies.
- 8.3 Invoices shall be due 30 days after the date of the invoice. Customer may not suspend or set off any amounts payable to SmartNow.
- 8.4 In the event that special circumstances arise as a result of which SmartNow incurs subsequent costs (even after Parties have executed the Agreement), SmartNow shall notify Customer and SmartNow shall be entitled to charge these subsequent costs to Customer.
- 8.5 Once every year, SmartNow has the right to increase its fees for its Services in line with the Services Prices; Producer Price Index (SPPI) (*Dienstprijzen; commerciële dienstverlening en transport 2015=100*) of the Statistics Netherlands (*Centraal Bureau voor de Statistiek*) or any successive or equivalent index if this index is not published anymore.
- 8.6 In addition to its right to increase its fees for its Services in accordance with clause 8.5, SmartNow may increase its fees for its Services at any time at its sole discretion with three months' notice, in which case Customer shall be entitled to terminate (*opzeggen*) the Agreement within 30 days of receipt of such notice.
- 8.7 SmartNow may charge Customer with the statutory commercial interest as defined in section 6:119a DCC over the overdue amount (including VAT), without any demand or notice of default being required. SmartNow may pass on a claim for collection, in which case Customer shall be obliged to pay the total outstanding amount as well as compensation for the judicial and extrajudicial costs.

9. Liability

- 9.1 SmartNow's liability towards Customer, including any payment obligation under sections 6:230 DCC and 6:271 DCC shall at all times be limited to the amount paid out under SmartNow's applicable insurance policy.
- 9.2 In no event shall SmartNow be liable for:
- (a) lost profits, lost income, lost turnover, lost savings or loss due to business interruption or corruption, quality, inconsistency or loss of data;
 - (b) any losses or damages caused by connectivity issues.

- 9.3 Customer must immediately, and in any case within 30 days after occurrence of the damages, report any damages to SmartNow. Each claim for compensation against SmartNow shall be barred by the mere expiry of a period of 6 months following the inception of the claim unless Customer has instituted a legal action for damages prior to the expiry of this period.
- 9.4 If Customer consists of one or more (legal) persons, each of these (legal) persons is jointly and severally liable.

10. Indemnification

- 10.1 Customer shall be fully liable and at its own expense, fully defend, indemnify and hold SmartNow harmless from and against any damages, expenses, losses or costs that SmartNow suffers from or in connection with Customer's performance of, or failure to perform, its obligations under the Agreement and/or the uploading of Personal Data to the Software and/or the non-compliance of the applicable laws by Customer, irrespective of whether such damages, expenses, losses or costs were caused by Customer, its employees, staff or another (legal) person or company for which Customer is liable by law.
- 10.2 Each Party shall provide to other all available information as may be reasonably necessary to defend a charge, claim or litigation.

11. Insurance

- 11.1 Customer shall have adequate insurance in order to cover the risks in these Terms. Customer shall immediately provide the relevant and up-to-date insurance certificates upon request of SmartNow. Customer shall always bear the cost of any policy excess.
- 11.2 Customer must ensure that any insurance payments shall be made out to SmartNow directly. Any insurance payment to SmartNow based on an insurance agreement taken out by Customer does not impair SmartNow's right to claim damages from Customer to the extent that those exceed the insurance payment.

12. Force Majeure

- 12.1 Each Party may defer the date the performance of its obligations (explicitly excluding Customer's obligation to pay its invoices) if it is prevented from, or delayed in, carrying on its business by events, circumstances or causes beyond its reasonable control, including any war, terrorism, legislative or regulatory acts of any state, government, utility failures, fires, floods, explosions, the elements, epidemics, quarantine restrictions, illegal strikes, blackouts, plant shutdowns, material shortages, embargoes, delays in transportation or regulations, administrative or government acts or measures, in each case, which affect the affected Party or its (sub)contractors.
- 12.2 In any such case, the performance of the affected Party's obligations, to the extent affected by the cause, shall be suspended during the period that the cause persists. If performance is not resumed within thirty (30) days after that notice, the other Party may terminate (*opzeggen*) this Agreement immediately by written notice to the affected Party.

13. Term and termination

- 13.1 The Agreement shall be entered into for a period of five years and will be automatically extended with 5 year periods, unless terminated for convenience (*opgezegd*) by Customer against the end of such period with three months' notice. SmartNow may terminate the Agreement for convenience at any time with three months' notice.
- 13.2 If SmartNow has proper grounds to assume Customer shall fail in the fulfillment of its obligations, SmartNow may suspend its obligations under the Agreement with immediate effect.
- 13.3 Without notice of default being required and in addition to its rights under section 6:265 DCC, SmartNow is entitled to terminate (*ontbinden*) the Agreement without any further liability with immediate effect when:
- (a) in the opinion of SmartNow, Customer damages the reputation of SmartNow;
 - (b) Customer does not, not fully or not timely fulfill any of its obligations under applicable laws;

- (c) circumstances brought to the attention of SmartNow give SmartNow ground to fear that Customer cannot meet its obligations and/or when SmartNow has reasonable ground to assume that the current or future claims cannot be secured; or
 - (d) SmartNow can no longer reasonably be expected to fulfill the Agreement.
- 13.4 In addition to its rights under section 6:265 DCC, each Party will be entitled to terminate (*ontbinden*) the Agreement with immediate effect in writing in the following events:
- (a) the other Party has ceased to exist or has been dissolved (*ontbonden*);
 - (b) the other Party has been declared bankrupt (*failliet verklaard*), or has been granted suspension of payments (*surseance van betaling*), on a temporary basis or otherwise; or
 - (c) the other Party has offered its creditors a composition (*schuldeisersakkoord*) in, or outside a bankruptcy or suspension of payments.
- 13.5 Termination of the Agreement does not affect either Party's rights and obligations accrued before the termination date. In no event shall termination of the agreement result in SmartNow being required to pay any restitution of (pre)paid fees or liable for compensation of damages.
- 13.6 Upon termination of the Agreement,
- (a) all claims from SmartNow shall become immediately due and payable; and
 - (b) the following clauses shall survive termination: clause 7 (Intellectual Property Rights), clause 9 (Liability), clause 10 (Indemnification), clause 13.6, clause 14 (Privacy), clause 16 (Confidentiality and Publicity), clause 17.4 and clause 18 (Applicable law and jurisdiction).

14. Privacy

Customer shall not transmit any Personal Data via the Services. If any Personal Data is processed as part of this Agreement or the Services, Parties shall enter into a separate data processing agreement to be provided by SmartNow.

15. Warranties

- 15.1 SmartNow gives a 12 months carry in warranty for Supported Hardware, subject to exclusions in clause 15.2, which covers faulty material and production errors of any kind which occur in normal use. Warranty claims must be submitted to support@smart-now.com, after which Customer will receive information regarding the handling of the warranty. Returned hardware must be correctly and safely packed. Customer bears the costs and risks for transport.
- 15.2 The warranty does not apply:
- (a) to defects and damage caused by external influences, accidental damage, improper use, alterations, extensions, use of foreign parts, neglect, improper transport, improper packaging, improper installation or loss when returning the product;
 - (b) if malfunction is caused by maintenance or repair performed by anyone other than by SmartNow;
 - (c) if stickers or serial numbers of the instrument or parts of the Hardware are altered or obscured;
 - (d) to batteries or accumulators and consumables, i.e. parts that must be replaced periodically during use of the device.
- 15.3 SmartNow may determine at its sole discretion to repair or replace Hardware. SmartNow may replace the Hardware by an equivalent, fully reconditioned unit of the same quality. Any costs relating to repairs and/or replacements outside the scope of the warranty shall be charged to Customer. SmartNow shall provide Customer with an invoice stating the costs incurred by SmartNow for the out-of-scope repairs and/or replacements.
- 15.4 SmartNow does not provide any warranties in respect of access to the Services or Software other than as explicitly agreed in writing.

16. Confidentiality and Publicity

- 16.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry of this Agreement, disclose to any person any confidential

information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs (explicitly including the (commercial) details of this Agreement), except as permitted by clause 15.2.

- 16.2 Confidential information shall not include information that:
- (a) is in or which comes into the public domain other than as a result of a breach of the obligations imposed by this Agreement or any other duty of confidentiality obligations by any person to whom disclosure of information is made as permitted under this Agreement;
 - (b) is received from a third party which is under no confidentiality obligation;
 - (c) is independently developed by a Party without use of any information; or
 - (d) the disclosing Party has agreed in writing may be disclosed.
- 16.3 Except to the extent that a Party has ongoing rights to use Confidential Information, a Party must, at the request of the other Party following the expiry or termination of the Agreement, promptly return to the other Party or destroy all Confidential Information of the other Party in the recipient Party's possession or control.
- 16.4 Customer hereby grants SmartNow the right to use its name and logo for publicity and marketing purposes. The use of Customer's name shall be limited to identifying Customer as a Customer or user of the SmartNow products or services, unless agreed otherwise.

17. Other provisions

- 17.1 If any part of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 17.2 SmartNow may engage third parties to provide its Services. These third parties may rely on these Terms.
- 17.3 Customer cannot (partially) transfer its rights and/or obligations arising from the Agreement to a third party. SmartNow may assign and transfer its rights and/or obligations arising from the Agreement to third parties and sell its entitlement to payment to a third party. Customer hereby grants its prior consent for such assignment or transfer.
- 17.4 The documents and information from SmartNow's administration or systems shall be considered conclusive evidence of the Service provided by SmartNow and the amounts payable by Customer, without prejudice to Customer's right to submit evidence to the contrary.
- 17.5 Legal notices given by a Party must be in writing and delivered at the other Party's last known physical address, effected by way of registered letter and acknowledgment of receipt.
- 17.6 A person who is not a "party" to the Agreement may not enforce any rights pursuant to sections 6:253 and 6:254, paragraph 2 of the DCC. If a person who is not a party wishes to enforce any right deriving from the Agreement, SmartNow shall have the right to and may at all times agree to revoke or limit such third party stipulation (*derdenbeding*). In the event any third party stipulation is accepted by a third party, such third party will not become a party to the Agreement.
- 17.7 SmartNow may revise these Terms at any time by notifying Customer.

18. Applicable law and jurisdiction

- 18.1 The Agreement and any claims and/or disputes arising out of, or relating to the Agreement, shall be exclusively governed by, and construed in accordance with, Dutch law. The Vienna Sales Convention (CISG) is expressly not applicable to the Agreement.
- 18.2 The Parties irrevocably agree that the courts of Haarlem, the Netherlands are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any proceedings arising out of or in connection with this Agreement shall be brought in such courts. Each of the Parties irrevocably submits to the jurisdiction of such courts and waives any objection to proceedings in any such court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum.