

# General conditions

General terms and conditions for Metrisquare BV products and services  
Last update on 30 May 2019



## Article 1. General

- I. These conditions are applicable to every offer, quotation and agreement between Metrisquare BV and a Client to which Metrisquare BV has declared these conditions applicable, to the extent these conditions are not expressly deviated from by parties in writing. The applicability of any possible purchasing or other conditions of Client is expressly rejected.
- II. The underlying conditions are also applicable to agreements with Metrisquare BV for the implementation of which third parties must be engaged.
- III. If one or more provisions in these general conditions were at any time to be void or annulled, then the remainder of what is stipulated in these general conditions remains fully applicable. In such case, Metrisquare BV and the Client will enter into consultations in order to establish new provisions to replace the void or annulled provisions, whereby the purpose and tenor of the original provisions are observed as much as possible.
- IV. In case of ambiguity regarding the interpretation of one or more provisions of these general conditions, then the interpretation must take place 'in the spirit' of these provisions.
- V. If a situation occurs between parties which is not provided for in these general conditions, then such situation must be assessed in the spirit of these general conditions.
- VI. If Metrisquare BV does not always demand strict observance of these conditions, this does not mean that the provisions thereof are not applicable, or that Metrisquare BV were to lose the right to any degree to demand the strict observance of the provisions of these conditions in other cases.

## Article 2. Quotations and offers

- I. All quotations and offers of Metrisquare BV are non-committal, unless a term for acceptance is established in the quotation. If no term for acceptance is established, no rights can be derived in any manner from the quotation or offer if the product or the service which the quotation or offer is in regard to is no longer available.
- II. Metrisquare BV cannot be held to its quotations or offers if the Client can reasonably understand that the quotations or offers, or a part thereof, contain an apparent mistake or writing error.
- III. The prices listed in a quotation or offer are exclusive of VAT and other government-imposed levies, any such expenses as may be incurred in the context of the agreement, also including travel, accommodation and administrative costs, unless indicated otherwise.
- IV. If the acceptance (whether or not on minor points) deviates from the proposal included in the quotation or offer, then Metrisquare BV is not bound by it. The agreement will then not be adopted in accordance with this deviating acceptance, unless Metrisquare BV indicates otherwise.
- V. A compound price quotation does not oblige Metrisquare BV to carry out a part of the assignment against a corresponding part of the quoted price. Offers or quotations do not automatically apply to future assignments.

## Article 3. Contract duration

- I. The agreement between Metrisquare BV and the Client is adopted for an unlimited time, unless it flows differently from the nature of the agreement or if parties expressly establish otherwise in writing.
- II. If a term has been established or indicated for the implementation of certain activities or for the delivery of certain matters, then this never regards a strict and fatal time limit. In case of the overrunning of a term, the Client must therefore declare the default of Metrisquare BV in writing. Metrisquare BV must thereby be offered a reasonable term to still implement the agreement.
- III. Metrisquare BV will carry out the agreement to the best of its understanding and capabilities and in accordance with the requirements of good workmanship. All matters based on the state of the art at such time.
- IV. Metrisquare BV has the right to have certain activities carried out by third parties. The applicability of article 7:404, 7:407 section 2 and 7:409 BW (Civil Code) is expressly excluded.
- V. If activities are conducted by Metrisquare BV or by third parties deployed by Metrisquare BV in the context of the assignment at the location of the Client or at a location designated by the Client, the Client is responsible for providing those collaborators free of charges with the facilities they want.
- VI. Delivery takes place ex works of Metrisquare BV. The Client is obliged to accept the matters at the moment they are made available to him. If the Client refuses to take them or is negligent with the provision of information or instructions which are required for delivery, then Metrisquare BV has the right to store the matters at the expense and risk of the Client. The risk of loss, damaging, or reduction of value passes to the Client at the moment when the matters are available to the Client.
- VII. Metrisquare BV has the right to carry out the agreement in various stages and to separately invoice the part thus implemented.
- VIII. If the agreement is carried out in stages, Metrisquare BV can suspend the implementation of those parts which belong to a subsequent stage until the Client has approved the results of the preceding stage in writing.
- IX. The Client makes sure that all information for which Metrisquare BV indicates that it is necessary or of which the Client should reasonably understand that it is necessary for the implementation of the agreement is timely provided to Metrisquare BV. If the information required for the implementation of the

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agreement is not timely provided to Metrisquare BV, Metrisquare BV has the right to suspend the implementation of the agreement and/or to bill the additional costs flowing from the delay against the rates which are customary at such time to the Client. The implementation term does not commence until after the Client has provided the information to Metrisquare BV. Metrisquare BV is not liable for damage, of whatever nature, due to the fact that Metrisquare BV relied on incorrect and/or incomplete information provided by the Client.

- X. If it turns out during implementation of the agreement that it is necessary for the proper implementation thereof to modify or supplement it, then parties will timely and through mutual consultation proceed with the modification of the agreement. If the nature, scope, or content of the agreement, whether or not upon request or indication of the Client, of the competent authorities, et cetera, is altered and as a result the agreement is changed in a qualitative and/or quantitative sense, then such may have consequences for what was originally established. As a result, the amount originally established may also be increased or reduced. Metrisquare BV will provide prior price quotation thereof as much as possible. Through the modification of the agreement, furthermore, the term for implementation originally indicated can be altered. The Client accepts the possibility of modification of the agreement, also including the alteration of price and implementation term.
- XI. If the agreement is modified, also including by a supplement, then Metrisquare BV has the right to only proceed with its implementation after approval has been given for it by the person competent to that effect within Metrisquare BV and the Client has agreed with the price and other conditions indicated for the implementation, also including the time which is to be established in such case when these matters will be implemented. Not or not immediately implementing the modified agreement does not constitute malpractice on the part of Metrisquare BV and is not grounds for the Client to cancel or annul the agreement.
- XII. Without falling into default as a result, Metrisquare BV can refuse a request for the modification of the agreement if it may have consequences at a qualitative and/or quantitative level for, for example, the activities to be conducted or the matters to be delivered in that context.
- XIII. If the Client were to fall into default in the proper fulfilment of the matters he is bound to vis-a-vis Metrisquare BV, then the Client is liable for all damage on the part of Metrisquare BV which has arisen as a direct or indirect result.
- XIV. If Metrisquare BV establishes a fixed fee or fixed price with the Client, then Metrisquare BV nevertheless has the right at all times to increase this fee or this price without the Client being authorised in such case to rescind the agreement on these grounds, if the increase of the price flows from a competency or obligation pursuant to legislation or regulations which finds derives from an increase of the price of raw material, wages, et cetera, or on other grounds which were not reasonably foreseeable at the moment of adoption of the agreement.
- XV. If the price increase otherwise than as a result of a modification of the agreement amounts to more than 10% and takes place within three months after conclusion of the agreement, then exclusively such Client who is entitled to an appeal to title 5 department 3 of Volume 6 BW (Civil Code) is authorised to rescind the agreement by way of a written statement, unless Metrisquare BV (i) is willing after all in such case to implement the agreement on the basis of what was originally established; (ii) if the price increase flows from a competency of or an obligation lying with Metrisquare BV pursuant to the law; (iii) if it has been stipulated that the delivery will take place more than three months after the adoption of the agreement; (iv) or, in case of delivery of a matter, if it has been stipulated that the delivery will take place more than three months after the purchase.

## Article 4. Suspension, rescission, and intermediate cancellation of the agreement

- I. Metrisquare BV is authorised to suspend fulfilment of the obligations or to rescind the agreement if the Client does not, does not fully, or does not timely fulfil the obligations from the agreement, if circumstances which come to the knowledge of Metrisquare BV after conclusion of the agreement provide legitimate grounds to fear that the Client will not comply with the obligations, if the Client upon conclusion of the agreement is asked to lodge security for the fulfilment of his obligations from the agreement and this security fails to be provided or is insufficient or if due to the delay on the part of the Client it can no longer be demanded from Metrisquare BV that he will comply with the agreement against the conditions which were originally established.
- II. Metrisquare BV is furthermore authorised to rescind the agreement if circumstances occur which are of such a nature that compliance with the agreement is impossible or if circumstances occur otherwise which are of such a nature that maintaining the agreement unaltered cannot reasonably be demanded from Metrisquare BV.
- III. If the agreement is rescinded, the claims of Metrisquare BV on the Client are immediately payable. If Metrisquare BV suspends fulfilment of the obligations, they retain their entitlements pursuant to the law and the agreement.
- IV. If Metrisquare BV proceeds with suspension or rescission, they are not bound in any manner to compensate damage and costs which arise as a result in any manner.
- V. If the rescission is attributable to the Client, Metrisquare BV is entitled to the reimbursement of the damage, also including the costs, which have arisen as a direct and indirect result.

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- VI. If the Client does not fulfil his obligations which flow from the agreement and this non-compliance justifies rescission, then Metrisquare BV has the right to immediately rescind the agreement with immediate effect without any obligation on their part to pay any compensation of damages or indemnification, while Client, on account of malpractice, is obliged on the other hand to pay compensation of damages or indemnification.
- VII. If the agreement is cancelled intermediately by Metrisquare BV, Metrisquare BV will take care, through consultations with the Client, of the transfer of the activities still to be conducted to third parties. This, unless the cancellation is attributable to the Client. If the transfer of the activities entails additional costs for Metrisquare BV, then these are billed to the Client. The Client is obliged to settle these costs within the term mentioned for this, unless Metrisquare BV indicates otherwise.
- VIII. In case of liquidation, of (filing for) suspension of payments or bankruptcy, of attachment – if and to the extent the attachment is not lifted within three months – at the charge of the Client, of debt restructuring or of another circumstance as a result of which the Client can no longer freely dispose of his assets, Metrisquare BV is at liberty to forthwith and with immediate effect cancel the agreement or otherwise to annul the order or agreement, without any obligation on their part to pay any compensation of damages or indemnification. The claims of Metrisquare BV on the Client in such case are immediately exigible.
- IX. If the Client annuls a placed order completely or partially, then the activities which were carried out and the matters ordered or prepared for this, increased by such shipping, disposal, and delivery costs thereof as well as the working time reserved for the implementation of the agreement will be integrally billed to the Client.

## Article 5. Force majeure

- I. Metrisquare BV is not bound to comply with any obligation towards the Client if they are prevented from doing so as a result of a circumstance which cannot be blamed on fault and which, neither pursuant to the law, a legal transaction, or commonly held opinion, can be considered their responsibility.
- II. By force majeure is intended in these general conditions, besides what is defined such in legislation and jurisprudence, all external causes, foreseen or unforeseen, on which Metrisquare BV cannot exert any influence, but as a result of which Metrisquare BV is unable to fulfil its obligations. Work strikes at the company of Metrisquare BV or those of third parties also included. Metrisquare BV also has the right to appeal to force majeure if the circumstance which prevents (further) compliance with the agreement enters into effect after Metrisquare BV should have honoured its undertaking.
- III. During the period that the force majeure continues, Metrisquare BV can suspend the obligations from the agreement. If this period lasts longer than two months, then each of the parties has the right to rescind the agreement, without any obligation to compensate damage to the other party.
- IV. To the extent Metrisquare BV at the time of the entry into effect of force majeure has already partially fulfilled its obligations from the agreement or will still be able to do so, and the part fulfilled or to be fulfilled respectively an independent value can be attributed, Metrisquare BV has the right to separately invoice the part already fulfilled or still to be fulfilled respectively. The Client is bound to settle this invoice as if it regarded a separate agreement.

## Article 6. Payment and collection costs

- I. Payment must always take place within 14 days after invoice date, in a manner to be indicated by Metrisquare BV, in the currency in which the invoice was prepared, unless indicated otherwise by Metrisquare BV in writing. Metrisquare BV has the right to invoice periodically.
- II. If the Client remains negligent with regard to the timely payment of an invoice, then the Client falls legally into default. In such case, the Client owes an interest of 1% per month, unless the statutory interest is higher, in which case the statutory interest is owed. The interest over the exigible amount will be calculated from the moment that the Client is in default until the moment of settlement of the entire owed amount.
- III. Metrisquare BV has the right to let serve the payments made by Client primarily to be deducted from the costs, subsequently to be deducted from the matured interest, and finally to be deducted from the principal and current interest. Metrisquare BV can, without falling into default as a result, refuse a proposal for payment, if the Client designates another order for the allocation of the payment. Metrisquare BV can refuse full settlement of the principal, if the matured interest and collection costs are thereby not settled as well.
- IV. The Client never has the right to set off what is owed by him to Metrisquare BV. Objections against the amount of an invoice never suspend the payment obligation. The Client who is not entitled to an appeal pursuant to department 6.5.3 (the articles 231 through 247 volume 6 BW – Civil Code) does not have the right either to suspend the payment of an invoice on other grounds.
- V. If the Client is negligent or in default in the (temporary) fulfilment of his obligations, then all reasonable costs to obtain satisfaction extrajudicially are borne by the Client. The extrajudicial costs are calculated on the basis of what is customary in Netherlands collection practice, currently the calculation method as established in the relevant guideline 'Rapport Voorwerk II'. If Metrisquare BV, however, has incurred higher costs for collection which were reasonably required, the costs effectively incurred are eligible for compensation. Such judicial and execution costs as may have been incurred will also be claimed from the Client. The Client also owes interest over the collection costs owed.

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## Article 7. Retention of property

- I. What is delivered by Metrisquare BV in the context of the agreement remains the property of Metrisquare BV until the Client has clearly complied with all obligations from the agreement(s) concluded with Metrisquare BV.
- II. What is delivered by Metrisquare BV which, pursuant to section 1., falls under the retention of property, may not be resold and may never be used as a means of payment. The Client is not authorised to pawn or in any other manner encumber what is subject to the retention of property.
- III. The Client must always do all those things which can reasonably be expected of him to secure the property rights of Metrisquare BV. If third parties seize what was delivered subject to retention of property or wish to establish or exercise rights thereto, then the Client is obliged to immediately inform Metrisquare BV accordingly. The Client furthermore commits himself to insure and keep insured what was delivered subject to retention of property against fire, explosion and water damage, as well as against theft and to present the policy of this insurance upon first request to Metrisquare BV for perusal. In case of a possible disbursement by the insurance, Metrisquare BV is entitled to these funds. To the extent necessary, the Client commits himself towards Metrisquare BV beforehand to grant his collaboration to everything which may (turn out to) be necessary or desirable in that context.
- IV. In the event Metrisquare BV wishes to exercise his property rights as indicated in this article, the Client grants his unconditional and irrevocable permission beforehand to Metrisquare BV and to third parties to be designated by Metrisquare BV to enter all those areas where the property of Metrisquare BV is located and to take it back.
- V. In the event Client violates any intellectual or industrial property right as described in this article, Metrisquare BV can claim entitlement to an immediately and directly exigible fine, not eligible for set-offs, in the amount of € 250,000 per violation and for every day that such violation continues, without prejudice to the right of Metrisquare BV to full compensation of damages.

## Article 8. Guarantees, investigation and complaints, limitation period

- I. The matters to be delivered by Metrisquare BV meet the customary requirements and standards which may reasonably be set for them at the moment of delivery and for the normal use in the Netherlands they are intended for. The warranty mentioned in this article is applicable to matters which are intended for use within the Netherlands. In case of use outside the Netherlands, the Client must verify himself if the use thereof is suitable for use there and whether they meet the conditions which are established for them. In such case, Metrisquare BV can establish different warranty and other conditions in the matter of the matters to be delivered or the activities to be conducted.
- II. The warranty mentioned in section 1 of this article is applicable for a period of 3 months after delivery, unless it flows differently from the nature of the delivered matters or parties have established otherwise. If the warranty provided by Metrisquare BV regards a matter which was manufactured by a third party, then the warranty is limited to such as is provided by the manufacturer of the matter for it, unless stated otherwise.
- III. Any form of guarantee will come to lapse if a defect has arisen as a result of or it flows from the inexpert or inappropriate use thereof, or the use after the expiry date, incorrect storage or maintenance of it by the Client and/or third parties in case the Client or third parties, without the written consent of Metrisquare BV, have applied changes to the matter or have tried to do so, if other matters were attached to them which should not be attached there, or if they were processed or adapted in another manner than the one prescribed. The Client is not entitled to warranty either if the defect has arisen due to or as a result of circumstances on which Metrisquare BV cannot exert any influence, also including weather conditions (such as, for example, though not limited to extreme precipitation or temperatures) et cetera.
- IV. The Client is bound to (let) investigate the delivered matters, immediately at the moment when the matters are provided to him or the relevant activities have been conducted respectively. The Client should thereby investigate whether the quality and/or quantity of the delivered matters corresponds with what was established and meets the requirements which parties have established concerning. Any possible visible defects must be reported within seven days after delivery in writing to Metrisquare BV. Any possible invisible defects must be reported forthwith though in any case no later than within fourteen days after the discovery thereof to Metrisquare BV in writing. The report must provide a description of the defect with the greatest possible detail, so that Metrisquare BV is able to respond adequately. The Client must enable Metrisquare BV to (let) investigate a complaint.
- V. If the Client files complaint timely, this does not suspend his payment obligation. The Client remains bound in such case to purchase and pay the ordered matters and what he has ordered Metrisquare BV to do.
- VI. If a defect is reported later, then the Client is no longer entitled to restoral, replacement, or indemnification.
- VII. If it has been established a matter is defective and a complaint concerning has been timely filed, then Metrisquare BV will either, at the option of Metrisquare BV, replace the defective matter within a reasonable term after receiving it back or, if returning it is not reasonably possible, after the written notification in the matter of the defect by the Client, or take care of its restoral or otherwise pay a replacement compensation for it to the Client. In case of replacement, the Client is bound to return the

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- replaced matter to Metrisquare BV and to provide the property thereof to Metrisquare BV, unless Metrisquare BV indicates otherwise.
- VIII. If it is established that a complaint is illegitimate, then the costs arising as a result, also including the investigation costs, incurred on the part of Metrisquare BV as a consequence, are integrally borne by the Client.
- IX. After expiry of the warranty term, all costs of restoral or replacement, including administration, shipping, and calling costs, will be billed to the Client.
- X. In derogation to the statutory limitation periods, the limitation period of all claims and rebuttals towards Metrisquare BV and the third parties involved by Metrisquare BV in the implementation of an agreement, amounts to one year.

## Article 9. Liability

- I. If Metrisquare BV were to be liable, then such liability is limited to what is arranged for in this clause.
- II. Metrisquare BV is not liable for damage, of whatever nature, which has arisen because Metrisquare BV based itself on incorrect and/or incomplete information supplied by or on behalf of the Client.
- III. If Metrisquare BV were to be liable for any damage, then the liability of Metrisquare BV is limited to a maximum of twice the invoice value of the order, or rather to that part of the order which the liability is in regard to.
- IV. The liability of Metrisquare BV is always limited in any case to the amount of the disbursement of his insurer in such case as may occur.
- V. Metrisquare BV is exclusively liable for direct damage.
- VI. By direct damage is exclusively intended the reasonable costs to determine the cause and the extent of the damage, to the extent the determination regards damage in the sense of these conditions, such reasonable costs as may be incurred to render the defective performance of Metrisquare BV compliant with the agreement, to the extent these can be attributed to Metrisquare BV, and reasonable costs incurred to prevent or mitigate damage, to the extent the Client proves that these costs have led to the limitation of direct damage as intended in these general conditions. Metrisquare BV is never liable for indirect damage, also including consequential damage, lost profit, missed savings, and damage due to operational stagnation.
- VII. The limitations of liability included in this article do not apply if the damage can be blamed on the wilful intent or gross fault of Metrisquare BV or their managing subordinates.

## Article 10. Safeguard

- I. The Client safeguards Metrisquare BV against any possible claims by third parties which incur damage in connection with the agreement and the cause of which is attributable to others than to Metrisquare BV. If Metrisquare BV were to be addressed on such account by third parties, then the Client is bound to assist Metrisquare BV both extrajudicially and judicially and to forthwith take all such actions as may be expected of him in such case. Were the Client to be negligent in the taking of adequate measures, then Metrisquare BV has the right, without any default notice, to proceed to do so itself. All costs and damage on the part of Metrisquare BV and third parties occurring as a result are at the integral risk and expense of the Client.

## Article 11. Intellectual property

- I. Metrisquare BV reserves itself the rights and powers which lie with it pursuant to copyrights legislation and other intellectual legislation and regulations. Metrisquare BV has the right to use the knowledge accumulated on its part through the implementation of an agreement for other purposes as well, to the extent strictly confidential information of the Client is not thereby brought to the knowledge of third parties.
- II. Exclusively Metrisquare BV (and its licensors) possess(es) all rights, claims, and stakes, including all associated intellectual property rights in and to the technology, content and service of the applications. The commercial property right to any possible suggestions, ideas, requests for improvement, feedback, recommendations or other information which Client or any other party has submitted in connection with the Applications falls to Metrisquare BV. The agreement between Metrisquare BV and Client is not a purchase agreement and does not grant Client any property rights to or in connection with the Applications, technology, tests, or intellectual property rights of the Applications. The name Metrisquare BV, the logo of Metrisquare BV, and the product names related to the applications are trademarks and/or trade names of Metrisquare BV and for their use no right or license is granted.
- III. The user right is non-transferable. It is not permitted to Client, barring the written and express consent of Metrisquare BV, to (i) (sub-)license the applications, to sell, to let, to dispose of them or to grant limited rights thereto or to make them available to a third party in whatever manner or for whatever purpose (ii) grant a third party access, whether or not at a distance, to the Applications or to have the Applications hosted by a third party, not even if the third party in case exclusively uses the Applications for the benefit of Client, (iii) make derived works of the Applications or the content, (iv) create 'web links' to the application or to make a 'frame' or 'mirror' of it on a server or a wireless or internet-based device, or (v) apply reverse-engineering to the application or to open the Applications in order to (i) develop competing goods or Services, (ii) develop products in which the same ideas, facilities, functions, or pictures as those of the

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Applications of Metrisquare BV are used, or (iii) copy ideas, facilities, functions, or pictures of the Applications of Metrisquare BV.

## Article 12. Use of website, software, and related services, modules, and tools

- I. Client/User guarantees towards Metrisquare BV to be authorised to make use of the website, applications, goods and/or services of Metrisquare BV and to act in accordance with the provisions from the agreement and these conditions.
- II. The activities conducted by User in the context of the use of the Website, Applications, goods and/or Services of Metrisquare BV may never (i) be based on untruths or be misleading, (ii) breach rights of Metrisquare BV and/or third parties, including copyrights, neighbouring rights, brand rights, or any other intellectual property rights or rights regarding the protection of privacy, (iii) be in conflict with laws, treaties, prescriptions, directives, or regulations, (iv) have a commercial character, unless Metrisquare BV has given written consent for this, or (v) be unlawful otherwise in any other manner towards Metrisquare BV and/or third parties.
- III. Client/User guarantees the correctness, completeness, and reliability of the information and data provided by or on behalf of him to Metrisquare BV for the purpose of the use of the website, applications, goods and/or services. User agrees that his data is processed and stored for the purpose of the use of the Website, Applications, goods and/or Services of Metrisquare BV and the implementation of the agreement. The privacy regulation of Metrisquare BV can be requested from Metrisquare BV and can also be found on the website of Metrisquare BV.
- IV. Metrisquare BV grants Client/User a non-exclusive right to use the applications in accordance with the provisions from the agreement and these conditions. Without prejudice to what is stipulated in these conditions, the right of use of Client/User exclusively comprises the right to load and execute the application.
- V. Client/User expressly declares to be aware of the fact that results of the Applications and/or Services and/or outcomes of the information and/or data exclusively serve to support the (screening) diagnostics and/or treatment, or otherwise for scientific research. Results and/or outcomes must always be assessed against other sources of (clinical) information, such as, though not limited to, contact with clients.
- VI. Client/User may only let the applications and/or services be used by professional users who are entitled as well as authorised and competent for the use and the interpretation of the (results and/or outcomes of) the applications and/or services. The Client will act and make use of the products and/or services in conformity with the national or international professional standards and professional ethics. Client will act and make use of the products and/or services in conformity with national or international legislation and regulations, instructions and guidelines and all other applicable government or semi-government rules.
- VII. Metrisquare BV is never liable for any diagnosis or decision whatsoever which is based on the (results and/or outcomes of) the applications and/or services. Client indemnifies Metrisquare BV with regard to such diagnoses or decisions and/or outcomes of the data and/or information.
- VIII. Client will always strictly observe the user limitations established between parties. All rights which are not expressly granted to Client are reserved by Metrisquare BV, its licensors or its suppliers.
- IX. Client may let the Service be used by the Users inside or outside the organisation for the internal objectives of the organisation. All individual Users must be generated and registered separately as a "user" in the Applications.
- X. Client is obliged to take and follow all measures and indications which must be observed upon the use of the Services of Metrisquare BV. Client is also obliged to clearly and explicitly communicate the usage requirements which Metrisquare BV establishes to third parties which make use of the website, applications, goods and/or the services.
- XI. In such case as may occur, rights are always granted to Client under the condition that Client timely and fully settles the fees agreed upon and established in the agreement for them.
- XII. Client/User may only use the applications for internal purposes and must refrain from (i) the sending or storing of offensive, obscene, threatening, slanderous, or otherwise unlawful material, also including material which is harmful to children or which violates the right to privacy of third parties, (ii) the sending or storing of material which contains software viruses, worms, Trojan horses or other harmful computer codes, files, scripts, agents or programs, (iii) the disturbance or impairment of the integrity of the performances of the Applications or the data stored in them, or (iv) attempting to gain unauthorised access to the Applications or the ancillary systems or networks.
- XIII. User is responsible himself for all activities which take place under his user accounts and must observe at all times all applicable local, provincial, national, and international laws, treaties, requirements, and regulations in connection with the use of the Applications and the implementation of the agreement, including laws, treaties, and requirements regarding data privacy, international communications, and the forwarding of technical or Personal Data.
- XIV. User must (i) inform Metrisquare BV immediately of any unauthorised use of the log-in data (username and password), (user) accounts or another known or suspected violation of security, (ii) immediately inform Metrisquare BV and take all reasonable measures to immediately stop the copying or distribution of content as soon as such becomes known to or suspicions with regard to it exist at User, and (iii) not pose

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- as another user of the Applications or provide incorrect identity information to gain access to the Applications or to use them.
- XV. Metrisquare BV is not the owner of User data.
- XVI. User is the party which determines the purposes for which and the manner in which the User data is or will be processed. Metrisquare BV acts as data processor on behalf of User with regard to the User data and other Personal Data.
- XVII. Within the framework of what is stipulated in the preceding section of this article, Metrisquare BV will exclusively process User data in accordance with the indications of User or in another manner if such is required to be able to provide the services. Metrisquare BV has taken technical and organisational measures against the unauthorised or unlawful processing of User data and against the unintended loss, destruction, or damaging of User data from the database.
- XVIII. After a legitimate termination of the agreement, the right of User to open or use User data lapses immediately and Metrisquare BV is not obliged to maintain User data.
- XIX. Upon the placing of a first order, or upon the first (request to) use of the website, applications, goods and/or services of Metrisquare BV, for certain products which comprise tests, qualification for the taking of such test(s) may require that User is assessed by Metrisquare BV by way of copies of diplomas and possibly diagnostic notes forwarded by User. Metrisquare BV reserves itself the right to consult publicly available information to control the proficiency of the user for the assurance of the quality and integrity of the products and services of Metrisquare BV.
- XX. Client safeguards Metrisquare BV against claims of persons whose (personal) data is registered or processed in the context of the registration of a person kept by Client or for which Client is otherwise responsible on account of the law or any agreement, unless Client proves that the facts on which the liability is based are exclusively attributable to Metrisquare BV.
- XXI. It is not permitted to Client to sell, provide for perusal, supply, transfer, or otherwise make available to third parties which do not qualify for the quality requirements applicable for them and established by Metrisquare BV, products comprising tests, manuals, or parts thereof, or copy/copies of the test(s), unless the express written consent has been obtained for this from Metrisquare BV.
- XXII. Upon the implementation of the agreement and the use of the Applications, goods and/or Services, Metrisquare BV allocates access and identification-codes (log-in codes) to User. Metrisquare BV can change the access or identification-codes allocated to User. User handles the log-in codes with confidentiality and care.
- XXIII. Metrisquare BV is never liable for damage or costs which are the result of abuse which is made of log-in codes or of the incorrect or illegitimate use of the Applications, goods and/or Services.
- XXIV. Metrisquare BV is never liable for any clinical diagnosis or decision whatsoever based on (results and/or outcomes of) the Services and/or Applications.
- XXV. Even though Metrisquare BV dedicates much care to the quality and availability of its products and services, Metrisquare BV does not provide any guarantee that the products and services and the content of the websites are or will be available without interruption, timely, safely, completely, or free from errors or malfunctions.
- XXVI. Client bears the risk of the selection, the use, and the application at his company or organisation of the Website, Applications, information, tests, data files and other goods and materials and of the Services to be provided by Metrisquare BV, and is also responsible for the control, privacy, and security procedures and an adequate system management. If Client is not satisfied with the manner in which Metrisquare BV implements or has implemented the agreement, Client can report his completely and clearly described complaint within a reasonable term to Metrisquare BV. The complaints regulation of Metrisquare BV can be consulted on the Website. Client can take recourse to the help desk of Metrisquare BV with any possible questions and/or complaints with regard to the Website and Applications made available, goods delivered and/or Services provided by Metrisquare BV. Metrisquare BV can be reached by e-mail or telephonically on business days from 9.00 AM to 5.00 PM, barring national holidays.
- XXVII. Complaints submitted to Metrisquare BV are answered within a term of fourteen days following the day of receipt thereof by Metrisquare BV. If a complaint requires a foreseeably longer response time, a confirmation of receipt of the complaint is sent to Client by Metrisquare BV within said term. That message also includes an indication of the term within which Client can expect a more elaborate message.

## Article 13. Privacy and processor agreement

- I. A Client who uses the products and services of Metrisquare BV to process third-party Personal Data with them is designated as Data Controller in the sense of the General Data Protection Regulation (GDPR). In this relationship, Metrisquare BV is Processor or Sub-processor in the sense of the GDPR which processes Personal Data by order and instruction of Client. Unless established otherwise in writing, in such case the standard processor agreement of Metrisquare BV applies, which is included as an appendix to these conditions and is an inseparable part of these general conditions, unless explicitly established otherwise mutually.
- II. Client guarantees towards Metrisquare BV that Client in his collaboration with Metrisquare BV will strictly observe all applicable legislation and regulations in the field of privacy and the protection of Personal Data,

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including, though not limited to, data protection legislation ('Wbp') and the GDPR, and safeguards Metrisquare BV against any claim by any third party in the matter. Within the scope of this safeguard falls in any case any person who makes use of the products and/or services of Metrisquare BV on behalf of Client.

- III. Metrisquare BV reserves itself the right to use information of Client and Users in an anonymized manner for the further development and/or improvement of the services and products.

## Article 14. **Applicable law and disputes**

- I. To all legal relationships to which Metrisquare BV is a party, Netherlands legislation is exclusively applicable, also in the event an undertaking is entirely or partially executed abroad or if the party involved in the legal relationship has its domicile there. The applicability of the Vienna Commercial Convention is excluded.
- II. The court of law in the place of establishment of Metrisquare BV is exclusively authorised to hear disputes, unless the law prescribes differently in a mandatory manner. Metrisquare BV nevertheless has the right to submit the dispute to the legally competent court of law.
- III. Parties will only appeal to the court after they have exerted themselves to the utmost to resolve a dispute through mutual consultation.



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## Appendix Processor agreement

- I. This processor agreement is an appendix to the General Conditions. This processor agreement is a part of the General Conditions and of all Agreements between Metrisquare BV and its Clients. If so requested, Clients can receive a signed and dated version. This processor agreement is valid unless a specific processor agreement is concluded. This processor agreement stipulates the Processing of Personal Data by Metrisquare BV, by order of Client, in the following also referred to as “Data Controller”.
- II. Data controller provides Metrisquare BV with an order and instructions to process Personal Data on behalf of the Data Controller. The Data Controller has and retains independent control over the (establishment of the) purpose and the means of the Processing of the Personal Data.
- III. Data Controller inquires from Metrisquare BV what products and services Metrisquare BV provides, and what types of processing can be carried out. The information provided enables the Data Controller to understand what processing is inextricably connected to an offered product or service and for what types of processing Data Controller can make a choice for such optional products and services as may be proposed.
- IV. Data Controller guarantees that the content, the use, and the order to process the Personal Data as intended in this agreement are not illegitimate and do not violate any right of Third Parties. Data Controller guarantees that the processing of Personal Data is covered by one of the foundations and/or exemptions under the GDPR and that the correct permissions have been obtained if and to the extent they are required. If applicable, Data Controller makes sure that he is compliant with local legislation or regulations.
- V. Data Controller bears full responsibility for the established purpose of processing and the content of the Personal Data inserted or supplied otherwise by or on behalf of him. Data Controller is aware that the input of data of his clients is bound by legislation and regulations and in case of doubt will not insert such data in (component) systems of Metrisquare BV.
- VI. Data Controller and Metrisquare BV mutually provide each other with all information required to enable proper compliance with the Applicable legislation and regulations regarding the processing of Personal Data.
- VII. Metrisquare BV will not use the Personal Data obtained from Data Controller for other purposes or in another manner than for the purpose and in conformity with the manner for which the data was provided or has become known to him.
- VIII. Data controller is familiar with the Privacy Policy of Metrisquare BV and declares to agree with it. Metrisquare BV will inform Data Controller, upon the latter’s request, about the measures taken regarding his obligations under this processor agreement, the GDPR and/or other legislation and regulations applicable to this. The obligations of Metrisquare BV which flow from this processor agreement also apply to those who process Personal Data under the authority of Metrisquare BV.
- IX. Data Controller grants permission to Metrisquare BV to deploy Sub-processors within the European Economic Area at own discretion. If the Sub-processor is established in a country outside the European Economic Area, Metrisquare BV will request written consent from Data Controller beforehand, which consent Data Controller will not withhold on unreasonable grounds. Metrisquare BV will inform Data Controller upon his first request regarding the identity and place of establishment of the Sub-processors deployed by them. Metrisquare BV will impose the same obligations regarding data protection on a Sub-processor as those which are included in this processor agreement, unless a processor agreement must be concluded between this Third Party and Data Controller directly in the matter. Data Controller has the right to object against the deployment of a Sub-processor. This objection must be submitted in writing and must include substantiation. Metrisquare BV is no longer obliged in such cases to deliver the services and products and has the right to terminate the agreement with immediate effect, without any compensation or refund to Data Controller.
- X. Metrisquare BV will only process the Personal Data within the European Economic Area. Only with the permission of Data Controller may Metrisquare BV transmit the Personal Data to countries outside the European Economic Area. Parties will then see to it that this only takes place in conformity with legal requirements and any possible obligations which Data Controller is subject to in this connection.
- XI. Taking into account the state of the art, implementation costs, nature, extent, context and the processing purposes and the risks varying according to probability and gravity, Metrisquare BV has taken appropriate technical and organisational measures with regard to the Processing of Personal Data to be conducted, against loss or any form of illegitimate processing and will continue to evaluate and further develop these measures in a constant process.
- XII. Metrisquare BV does not guarantee that the security is effective under all circumstances. Metrisquare BV will exert itself to render the security compliant with a level which, taking into account the state of the art, the sensitivity of the Personal Data and the costs associated with the provision of the security, is not unreasonable.
- XIII. If Data Controller or Metrisquare BV identifies a data leak, that is, a breach of the security of the Personal Data, then they will inform Data Controller accordingly without any unreasonable delays as soon as they have taken cognisance of that data leak. Data Controller is responsible himself at all times for the reporting of a data leak to the monitoring authorities at ‘Autoriteit Persoonsgegevens’ and/or data subjects. In order to enable Data Controller to comply with his legal obligations, Metrisquare BV informs the Data Controller of a Data Leak. Metrisquare BV does so within 24 hours after Metrisquare BV has discovered the data leak

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- or has been informed concerning by a Sub-processor. Metrisquare BV will thereby provide the Data Controller with the information which is reasonably required to make, if necessary, a correct and complete report to 'Autoriteit Persoonsgegevens' and possibly the data subjects in the context of the Reporting Obligation Data Leaks or other legislation and regulations which are applicable to this.
- XIV. In case a data subject wishes to exercise a right falling to him pursuant to GDPR, Metrisquare BV will forward the request to Data Controller, and Data Controller will further process the request. Metrisquare BV may inform the data subject accordingly. If it turns out that the Data Controller requires help from Metrisquare BV for the implementation of a request of a data subject, then Metrisquare BV has the right to bill the costs involved to Data Controller.
- XV. Metrisquare BV will handle all Personal Data with strict confidentiality vis-a-vis third parties, including government institutions. Metrisquare BV makes sure that whomever they involve in the Processing of Personal Data, including their staff, representatives and/or Sub-processors, treat this data as confidential. Metrisquare BV assures that a non-disclosure agreement or clause has been concluded with the persons authorised to process the Personal Data, or that they are bound by a legal obligation of non-disclosure. This non-disclosure obligation does not apply if: (i) Data Controller has expressly granted permission to provide the Personal Data to a Third Party; (ii) if the provision of the Personal Data to a Third Party is required in view of the nature of the services to be provided by Metrisquare BV to Data Controller; or (iii) if Metrisquare BV on grounds of a provision of Union law or of member-state law or of a court ruling, to the extent no further appeal is possible against it, is obliged to provide such. Metrisquare BV makes sure that collaborators operating under their authority exclusively have access to Personal Data to the extent required for the conducting of their activities.
- XVI. If there are objective grounds for such, Data Controller has the right, through consultations with Metrisquare BV and with due regard for a reasonable term, to have the security measures taken by Metrisquare BV, no more often than twice a year, assessed by a certified and independent auditor deployed by Data Controller. The costs of this audit and the compensation for the time which Metrisquare BV and any possible Sub-processors dedicate(s) to this audit are borne by Data Controller. The results and any possible other documentation of the audit investigation will be handled by Data Controller and the auditor with confidentiality and will only with the prior consent of Metrisquare BV be permitted to be rendered accessible to a Third Party, which consent will not be denied on unreasonable grounds. Consent is not required in case provision to a Third Party takes place pursuant to a legal obligation and/or a legitimate request of a competent authority. Data Controller will make sure that the investigation will be conducted in such a manner that Metrisquare BV will experience as little disturbance as a result as possible and under the condition that the protection of the Personal Data of third parties is assured, as well as the confidentiality of data of third parties which by their nature are confidential. Data Controller will make sure that the control is limited to what is necessary to determine on the basis of objective criteria whether Metrisquare BV is compliant with its obligations under the processor agreement.
- XVII. Data Controller will provide Metrisquare BV as soon as possible with a complete and unaltered copy of the investigation results in a sustainable format which is easy to read for Metrisquare BV, to the extent the results of the investigation regard Metrisquare BV and its possible Sub-processors.
- XVIII. After an audit or after receipt of an order or (binding) instruction of the competent monitoring agency to make adjustments to the organisational and security measures, Data Controller and Metrisquare BV will enter into consultations so as to take the necessary measures to comply with the instruction and to determine who will bear which costs thereof.
- XIX. In case of a legal amendment to the applicable legislation for the protection of Personal Data, Parties will enter into consultations as soon as possible in order to implement such modifications as are necessary to the organisational and security measures and/or this processor agreement as a result of the modification and to determine who will bear which costs thereof.
- XX. Data Controller will adequately inform Metrisquare BV about the retention periods which are applicable to the Processing of Personal Data by Metrisquare BV. Metrisquare BV will not Process the Personal Data for any longer than in accordance with these retention periods.
- XXI. After conclusion of the duration of the Processor Agreement, Metrisquare BV will, without any unnecessary delays, at the option of Data Controller and barring any deviating legal obligation: (i) upon request and at the expense of Data Controller grant his assistance to the rendering within a reasonable term after the end of the agreement of the Personal Data as they are located on the system (under the control) of Metrisquare BV, to Data Controller, through the provision of a back-up thereof in a standard format, readable under such circumstances, on a current medium; (ii) upon request and at the expense of Data Controller delete the Personal Data which are located on the system (under the control) of Metrisquare BV as soon as possible. Data Controller must make his choice known to Metrisquare BV in writing timely before the end of the agreement, unless such cannot reasonably be expected of Data Controller, in which case the request thus motivated must have been received no later than within 14 days after the end of the agreement by Metrisquare BV.
- XXII. Metrisquare BV will inform all Sub-processors who are involved in the processing of the Personal Data if a termination of the Processor Agreement and will assure that all Sub-processors render or (let) destroy the Personal Data.

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- XXIII. It is permitted to Metrisquare BV to keep results and data which cannot be traced back to persons. Metrisquare BV uses this data for, amongst others, scientific research and the sustaining of its provision of services.
- XXIV. To this processor agreement, Netherlands legislation is applicable, the Netherlands court of law is competent to hear all disputes which flow from or are related to this agreement. In case Data Controller applies general (purchasing) conditions, then these are not applicable to this processor agreement.
- XXV. If one or more provisions in this agreement turn out not to be valid, then this does not affect the validity of the other provisions in this agreement. In such case, Metrisquare BV enters into consultations with Data Controller in order to jointly draw up a new provision. This provision will be in the spirit of the invalid provision as much as possible, but of course formulated in such a manner that the provision is valid nevertheless.
- XXVI. The object, nature, and purpose of the processing is determined by the Data Controller. Data Controller makes choices at his own discretion regarding the use or not of component-systems and tools within the offered services and products. Data Controller thereby determines under his own responsibility what data is inserted, or not, in the systems which are offered or maintained by Metrisquare BV. Data subjects, those whom the Personal Data regard, are collaborators or hired workers of Data Controller, as well as clients of Data Controller.
- XXVII. The following data can be collected, depending on the component systems used by Data Controller: (i) Account data, such as username, name of the institution and a password. (ii) Contact details, where necessary to reach Data controller if this is necessary in the context of the solution applied, as well as for accounting aspects such as invoicing. (iii) Psychometric data: The measuring instruments which are offered within our services and products render it possible to carry out psychological tests. This entails that answers to questionnaires, for example, reaction times on certain cognitive tests, the number of partial tests carried out correctly or incorrectly, scores on various scales etc. are collected. (iv) Other personal information: Depending on the application selected by Data Controller, also demographical data can be collected, such as gender and date of birth. For specific instruments, information is also stored about educational and training level. (v) Technical data: For the guarding of the security of the products and services, Metrisquare BV keeps the technical data, such as the IP-address of computers which are used to approach our systems, as well as features of those systems if such is required to improve or investigate the security and availability of the systems, and to carry out maintenance on the systems and measuring instruments.