

General Terms and Conditions

1. Definitions

“Agreement” means the written agreement between Client and eLEAF that is the subject matter of the transaction between Client and eLEAF and to which these General Terms and Conditions are attached. Client and eLEAF may be referred to herein individually as “Party” and collectively as “Parties”.

“Client” means any individual, legal entity or government agency that enters or intends to enter into a binding agreement with eLEAF to obtain Products and/or Services.

“Confidential Information” means all information related to the subject matter of the transaction between the Parties provided by a disclosing Party to a receiving Party, that (a) is marked “confidential”, “proprietary” or “vertrouwelijk”; (b) is disclosed verbally and declared “confidential”, “proprietary” or “vertrouwelijk” at the time (with written confirmation within thirty (30) days of such verbal disclosure); or (c) a reasonable person would consider to be confidential under the circumstances. Confidential Information does not include any material that (a) was in the receiving Party’s possession without restriction before receipt from the disclosing Party; (b) is in or subsequently enters the public domain; (c) the receiving Party generates independently (as demonstrated by documentary evidence) without access to the other Party’s Confidential Information; (d) the receiving Party acquires from a third party that is not known by the receiving Party to be under a confidentiality and non-disclosure agreement with the disclosing Party; or (e) is disclosed by the receiving Party pursuant to the disclosing Party’s prior written approval.

“eLEAF” means eLEAF B.V..

“Product” means any imagery, data, product, value-added product, service or work supplied by eLEAF, including, without limitation, information products and digital data sets, as further specified in the Agreement.

“Service” means any information product or valued-added product developed by eLEAF or by eLEAF in cooperation with Client, as further specified In the Agreement.

“Value-Added Product” Any product generated by Client that contains source data from the Product (including a reasonable facsimile thereof) and by modifying the Product through higher processing, technical manipulations and/or the integration of additional data.

“Derivative Product” Any product or information derived and developed by Client from the Product that does not contain any source data from the Product (including a reasonable facsimile thereof) and is irreversibly modified and uncoupled from the Product.

2. General Provisions

These General Terms and Conditions govern the legal relationship between Client and eLEAF for the provision of Products and/or Services. They are an essential part of the Parties' Agreement and govern the rights and obligations of the Parties with respect to the transaction described therein.

Client and eLEAF are deemed to have accepted these General Terms and Conditions which are incorporated into the Agreement by reference. They form the basis of the contractual relationship between the Parties and apply exclusively. Conflicting conditions of Client or conditions of Client differing from those indicated in these General Terms and Conditions are invalid, unless approved by eLEAF in writing. In the event these General Terms and Conditions conflict with the terms of the Agreement between the Parties, the terms of the Agreement will prevail.

3. Price

The price for the Products and/or Services supplied by eLEAF to Client will be the price specified by the Parties in the Agreement.

4. Delivery

Products and/or Services will be delivered in accordance with terms specified by the Parties in the Agreement.

5. Payment

Any and all payments will be made in accordance with the terms of the Agreement. Unless otherwise termed in the Agreement, invoices are due and payable within net thirty (30) days from the date of receipt of the invoice. All amounts payable by Client to eLEAF are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction. Any late payment will accrue interest in the amount of ten (10) percent per year.

6. Confidentiality

The Agreement for the supply of Products and/or Services by eLEAF to Client, including all information and discussions related thereto, is confidential to both Parties. The Parties acknowledge that Products and/or Services supplied by eLEAF, and information provided by Client in relation to a purchase hereunder, may contain Confidential Information and that the Parties may receive or have access to other proprietary or Confidential Information disclosed hereunder. Both Parties agree to use the Confidential Information solely and exclusively for the performance of the Parties' obligations hereunder. Except for the above, neither Party shall disclose or make available any Confidential Information to a third party and shall take all precautions necessary to ensure strict confidentiality.

The Parties agree not to use Confidential Information in any way other than to the extent necessary to fulfil the Parties' obligations. Each Party shall use the same degree of care to prevent and protect the Confidential Information from disclosure to a third party as the Party uses to protect its own Confidential Information, but in no event less than a reasonable degree of care. All Confidential Information disclosed will remain the sole and exclusive property of the disclosing Party. The disclosure of any Confidential Information will not cause the receiving Party to have any rights for use of such Confidential Information other than as contemplated by the Agreement. No license, interest in, or other proprietary right under any intellectual property instrument is granted, expressly or impliedly, to the receiving Party by the disclosure of any Confidential Information.

Upon termination of the Agreement, the receiving Party shall return to the disclosing Party all items of Confidential Information provided. The receiving Party shall expunge all Confidential Information provided by the disclosing Party, including all copies, in electronic form on its computers or electronic devices. Notwithstanding the termination of this Agreement, the obligations of confidentiality, secrecy and non-disclosure remain binding as long as Confidential Information is not within the public domain, for which the receiving Party shall bear the burden of proof. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties.

7. Intellectual Property

Intellectual property includes, without limitation, all published or unpublished, written or unwritten discoveries, improvements, ideas, patents, patent applications, copyrights, copyright applications, database rights, industrial design, industrial design applications, trademarks, trademark applications, trade names, logos, data, systems, confidential information, trade secrets, know-how, business plans, goodwill and the like, in each case residing with each Party or its licensors.

The ownership of intellectual property, including all patents, patent rights, copyrights, database rights, trade secrets, trademarks, and other proprietary rights in or related to data, products and/or services furnished by one Party to the other are and will remain the exclusive property of the relevant Party or its licensors, whether or not specifically recognized or perfected under the laws of the Parties' territories. The other Party will not acquire any right in the data, services and/or products, unless specified by written agreement.

The ownership of all patents, patent rights, copyrights, database rights, trade secrets, trademarks, and other proprietary rights in or related to any data, products and/or services jointly developed by the Parties under the Agreement will be vested to one or both Parties under the terms specified in the Agreement.

8. Licensing

eLEAF provides Products and Services under license rather than transferring title. Unless expressly termed otherwise in the Agreement, Client acknowledges that, as between Client and eLEAF, eLEAF or its licensor retains ownership of the Products and/or Services. Client has a non-exclusive, non-transferable right to use the Products and/or Services under the terms of the Agreement and the End User License Agreement ("EULA") that will be a part of the Agreement. Client is authorized to use the Products and/or Services as expressly specified in the Agreement and the EULA. In the event that Client makes the Products available to any end user in conformity with the terms of the EULA, it shall ensure that such end user accepts the terms of the EULA.

9. Warranty and Liability

eLEAF warrants it has sufficient rights in the data and Products to make these available to Client. eLEAF makes no warranties as to the suitability of the data and/or Products or their fitness for the Client's requirements or intended purposes. eLEAF makes no warranties that the data and Product are free of errors, defects or omissions, or that the operation and use of the data and Product will be free of errors, or that all non-conformities can or will be corrected. Except for the above express limited warranty, eLEAF disclaims all other warranties of any kind, express or implied, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, non-interference and system integration. eLEAF does not warrant that the products will meet the end user's needs or expectations, or that operations of the products will be free of errors or uninterrupted.

In case of breach of warranty, eLEAF shall correct or replace the defective Products and/or Services or, if eLEAF determines that such remedies are not practicable, refund to Client the amount that the Client paid for such Products and/or Services. These remedies are Client's sole remedies and eLEAF's only obligation in case of breach of warranty and/or defects in Products and/or Services.

In case of intentional harm or gross negligence on the part of either Party or either Party's agents in performance of its obligations under the Agreement, such Party is liable without any limitation according to the provisions of applicable law. The same applies in case of breach of Section 6, 7 and 8 of these terms.

Except as provided above, under no circumstances will either Party, or its licensors or associated persons, be liable for consequential damages, including indirect, special, punitive and/or incidental damages and lost profits, foreseeable or unforeseeable, based on claims of the other Party, its agents, associated persons and/or customers. The Parties expressly waive the right to claims for such damages, which may include but are not limited to, claims for loss of data, goodwill, use of funds or products, interruption in use or availability of data, stoppage of work or impairment of assets.

To the extent (i) the breach of contract is unintentional or without gross negligence; and (ii) is not a breach of Section 6, 7 or 8 of these terms, the breaching Party's liability for any other damages than the consequential damages set out above, will be limited to the damage reasonably predictable and directly resulting from such breach, with a maximum of 50 % of the price paid by Client under the Agreement.

Each Party's liability for culpable damage to life, body or health, as well as each Party's liability under the Dutch Product Liability Act remains unaffected.

Any liability not expressly provided for above is disclaimed.

10. Term and Termination

The Agreement will be effective as of the date of signature by both Parties. The Agreement will remain in full force and effect for a period as provided in the Agreement. In case of a material breach of these General Terms and Conditions by one Party, the other Party may cancel or terminate the Agreement with thirty (30) days written notice provided that the breaching Party has not cured the breach during such thirty (30) day period.

Client or eLEAF may cancel or terminate the contractual relationship immediately by written notice in the following circumstances: If Client or eLEAF becomes insolvent, makes any assignment for the benefit of its creditors, or is placed in receivership, liquidation, bankruptcy or any similar proceeding;

In case of a change of the direct or indirect control of Client or eLEAF ; and/ or In the event of a default by Client or eLEAF that is material and results from intentional misconduct or grossly negligent acts or omissions.

Upon termination by either Party, Client shall immediately remove from its computer systems or other storage media all proprietary and Confidential Information within Client's possession or control. Notwithstanding the foregoing, Client may retain proprietary and Confidential Information to the extent required to fulfill any obligations to its customers that are dependent upon Products and/or Services provided under this Agreement.

Final Provisions

If any provision of these General Terms and Conditions becomes invalid or unenforceable, the remaining provisions will not be affected. The Parties agree to replace the invalid or unenforceable provision with a valid and enforceable provision reflecting as close as possible the spirit and objective of the unenforceable or invalid provision.

Client shall not assign, delegate, subcontract, or otherwise transfer any of its rights or obligations under the Agreement to any third party without eLEAF's prior written consent.

This Agreement is governed by the laws the Netherlands, excluding conflicts of laws, principles, and the United Nations Convention on Contracts for the International Sale of Goods. Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement will be 's-Hertogenbosch, the Netherlands.

Unless otherwise agreed, all correspondence and communications required or desired to be given in connection with the supplying of Products and/or Services will be in the English language.

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral negotiations and agreements between the Parties. This Agreement may be amended only in writing signed by both Parties.

This Agreement will not constitute, create, give effect to, or imply a joint venture, pooling arrangement, agency, employer-employee relationship, partnership or formal business organization of any kind.

The Parties' Agreement may be executed in one or more counterparts, including by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument.