



B-lay General Terms and Conditions, version 20190131

1. General

- 1.1. These General Terms and Conditions (GTC) apply to all Quotations and Agreements whereby B-lay supplies Services of whatever nature and under whatever name to Client. If the GTC are contrary or incompatible with special provisions explicitly agreed between B-lay and Client, these special provisions in the relevant Order and Description of Services will prevail.
- 1.2. Deviations and additions to the GTC are only valid if agreed in writing between the parties.
- 1.3. The automatic applicability of purchase- or other terms and conditions from Client is explicitly rejected.
- 1.4. If any provision of the GTC is held invalid or unenforceable, the other provisions of the GTC will remain valid and enforceable. In that case, B-lay and Client will agree upon new provisions to replace the invalid or unenforceable provisions, whereby the purpose and intent of such previous provisions will be taken into account as best as possible.
- 1.5. B-lay is entitled to change the GTC. B-lay will publish the amended GTC at least one month before it will become effective. Parties are bound to the amended GTC from the day it takes effect.
- 1.6. Definitions as described in Exhibit A apply to all terms in the GTC starting with a capital letter.

2. Tender process, Quotations, Delivery terms and Contracting

- 2.1. All Quotations and other communication by B-lay are non-binding, unless B-lay has indicated otherwise in writing.
- 2.2. Client guarantees the correctness and completeness of Client Data provided direct or indirect to B-lay on which Data B-lay has based its tender/Quotation. Client always takes the utmost care to provide complete and correct documents, spreadsheets, answers to questions and script outputs required by B-lay to provide the Services.
- 2.3. An Agreement between the parties consists of the GTC in combination with an Order and a Description of Services. Agreements are realized through written -including by e-mail- confirmation by B-lay of an accepted Quotation by Client, or by completion by Client of an online ordering process.
- 2.4. B-lay has the right to refuse to enter into an Agreement with Client.
- 2.5. All delivery dates mentioned or agreed by B-lay have been determined to the best of its knowledge on the basis of the information known when the Agreement was entered into. B-lay shall make reasonable efforts to comply with delivery dates.
B-lay is not bound by a delivery date, whether final or not, which can no longer be met due to circumstances beyond its control (e.g. delayed delivery of data by client) that occur after the conclusion of an Agreement. B-lay is not bound by a delivery date if parties change the content or scope of the Services (additional work, changes to specifications, etc.) or make a change to the execution of the Services. If there is a risk of exceeding any term, B-lay and Client will consult to discuss the consequences.
The mere exceeding of a delivery date will not result in B-lay being in default. In all cases - therefore also in case parties have explicitly agreed on a final delivery date in writing - B-lay will only be in default after Client has given notice of such default to the management of B-lay by registered letter. The notice of default must contain a complete and detailed description of shortcomings by B-lay, so that B-lay management is given the opportunity to respond adequately.



3. Pricing and Payment

- 3.1.** Unless otherwise stated, all prices and rates are exclusive of value added tax (VAT), sales, use or similar taxes. All amounts invoiced pursuant to an Agreement are payable in full and without reduction for taxes. All applicable taxes will be stated separately in the applicable invoice(s) and paid for by Client.
- 3.2.** Except as otherwise stated in the applicable Agreement, all fees are quoted and payable in Euros and shall be due and payable within thirty (30) days of the invoice date. Client shall provide B-lay with complete and accurate billing and contact information including a valid email address for receipt of invoices. Client shall reimburse B-lay for all reasonable and necessary travel and living expenses incurred in providing Services pursuant to an Agreement.
- 3.3.** Any payment not received from Client by the due date under each applicable Agreement may accrue (except with respect to charges then under reasonable and good faith dispute), at B-lay's discretion, late payment charges at the rate of 1% of the outstanding balance per month, or the maximum statutory business-to-business interest rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 3.4.** With regard to the Services performed by B-lay and the amounts owed by Client, the relevant documents and data from the records or systems of B-lay will provide full proof, without prejudice to the Client's right to provide proof to the contrary. Client is not entitled to suspend any payment or to offset amounts due.
- 3.5.** If Client's account is more than thirty (30) days overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any other rights or remedies it may have under the GTC, any Agreement or by law, B-lay reserves the right to provide a fifteen (15) days notice and after expiration of such notice period suspend providing Services to Client, without liability to Client, until such amounts are paid in full.
- 3.6.** If Client, despite due notice as stated under clause 3.5 above, still fails to pay the amounts due or otherwise defaults in his obligations under the GTC or any Agreement, B-lay is entitled to: terminate the relevant Agreements immediately without legal proceedings, and stop providing Services to Client altogether whereby any amounts owed by Client remain due and payable.

4. Confidentiality, Compliance, Privacy, Data Processing and Security

- 4.1.** Prior to the provisioning of the Services, Parties will sign a Mutual Confidentiality Agreement as provided by B-lay. The terms and conditions of this Mutual Confidentiality Agreement and the rights and obligations contained therein regarding Confidential Information will apply to all Services provided under the GTC. B-lay may process Personal Data as instructed by Client but only in order to achieve the specific, explicitly defined and legitimate purposes as agreed. Additional terms and conditions will apply to all processing of Personal Data as described in B-lay's Processing Annex.
- 4.2.** Client and B-lay shall ensure that all data received from the other party that is known or should reasonably be known to be of a confidential nature remain secret. The party that receives confidential data will only use it for the purpose for which it was provided. Information shall in any case be regarded as confidential if it has been designated as such by one of the Parties. B-lay's Privacy Policy will apply.
- 4.3.** B-lay agrees that neither it nor any of its employees, agents, or any other persons associated with B-lay will, directly or indirectly, in connection with the performance of Services under the GTC for Client, commit any act or omission in violation of any applicable regulation, law, rule or custom having the effect of law, nor shall B-lay, directly or indirectly, offer, pay, request or accept bribes, or any other favours for the purpose of acquiring or bestowing any improper business, financial or personal advantages.



- 4.4. Client indemnifies B-lay against claims from persons whose Personal Data are registered or processed in the context of a personal registration held by Client or for which Client is otherwise responsible by virtue of the law, unless Client proves that the facts on which such a claim is based are the sole responsibility of B-lay.
- 4.5. The responsibility for the data processed using Services provided by B-lay lies solely with Client. Client warrants to B-lay that the content, the use and / or the processing of such data is not unlawful and does not infringe any rights of a third party. Client indemnifies B-lay against any legal claim by third parties, on any grounds whatsoever, in connection with this data or the performance of Services under the GTC.
- 4.6. If B-lay is obliged to provide a form of information security, that security shall comply with the specifications concerning security as agreed between Parties in writing. B-lay never guarantees that information security is effective under all circumstances. If an explicitly described security instruction by Client is lacking, the security will comply with a level that, in view of the state of the technology, the sensitivity of the data and the costs associated to warrant the security is not unreasonable.
- 4.7. B-lay is entitled to suspend the delivery of Services to Client if (i) Client's equipment is attacked or hacked, (ii) the stability of the Services to other customers of B-lay is threatened, (iii) Services are used to attack B-lay's infrastructure, or (iv) the actual use of Services is significantly higher than the consumption space allocated in accordance with the Agreement and this shall lead to significant damage for B-lay and / or Client.

5. Intellectual Property Rights

- 5.1. All right, title and interest to all recommendations, ideas, techniques, know-how, designs, programs, development tools, processes, integrations, enhancements, and other technical information developed by B-lay in the course of performing the Services, or co-developed by the Parties hereunder, including all trade secrets, copyrights and other intellectual property rights pertaining thereto (together the "B-lay Intellectual Property") exclusively vests in B-lay. Nothing contained in the GTC or in the relevant Agreement shall be construed as transferring any such rights to Client or any third party except as expressly set forth herein and further documented in writing.
- 5.2. Subject to clause 5.1 above, B-lay grants to Client a royalty-free, non-exclusive, non-transferable and non-assignable term license to access and to use B-lay Intellectual Property that B-lay incorporates into a program provided to Client in combination with the Services provided hereunder. Client may only use such program in connection with the Services and only during the Term set forth in the relevant Agreement.
- 5.3. Client is not permitted to remove or change any markings concerning confidentiality or concerning copyrights, trademarks, trade names or any other intellectual property right from the software, websites, data files, equipment or any other materials.
- 5.4. All Client Confidential Information, including Client Data, shall be, and remain, the property of Client.
- 5.5. B-lay indemnifies Client against any legal claim by a third party that is based on the assumption that software, websites, data files, equipment or other materials developed by B-lay infringe an intellectual property right of that third party, under the condition that Client shall immediately notify B-lay in writing, informs B-lay about the existence and content of the legal claim and give B-lay sole control of the defence of the case, including settlements.
- Client will grant the necessary powers of attorney and provide information and cooperation to B-lay to defend itself against these legal claims, if necessary on behalf of Client. Notwithstanding the foregoing, B-lay shall not be required to indemnify Client in the event the alleged infringement: (a) is based on information, materials or requirements provided by Client, (b) is the result of a modification made by Client or by a third party on its behalf, or (c) arises from use by Client in combination with any other product or service not provided by B-lay.



If it is established in a final court decision that Client is prohibited from using Services or products or B-lay reasonably believes Client will be prohibited in such use, B-lay shall have the right, at its sole option, to obtain for Client the right to continue use of such Services or products or to replace or modify so that it is no longer infringing. If neither of the foregoing options is reasonably available to B-lay, then the relevant Agreement may be terminated at the option of B-lay and B-lay's sole liability shall be to pro-rata refund any fees paid by Client for such infringing Services and/or products.

- 5.6.** Client guarantees that no rights of third parties oppose to the making available to B-lay of equipment, software, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including design material, with the aim of use, processing, installation or incorporation (e.g. in a website). Client indemnifies B-lay against any claim by a third party that is based on the assertion that such making available, use, processing, installation or incorporation infringes any right of that third party.

6. Warranties

- 6.1.** In performing the Services B-lay warrants that it shall exercise all the reasonable skill, care and diligence to be expected of an appropriate qualified and competent consultant in carrying out equivalent services and shall perform the obligations described in each Agreement in a professional and workmanlike manner.
- 6.2.** As Client's exclusive remedy and B-lay's sole liability for breach of the foregoing warranty, B-lay shall (a) correct the non-conforming Services at no additional charge to Client or (b) in the event B-lay is unable to correct such deficiencies after good-faith efforts, refund Client prorated amounts paid for the defective Services. To receive warranty remedies, Client must promptly report deficiencies in writing to B-lay, but no later than thirty (30) days after the deficiency is first identified by Client.
- 6.3.** Except as expressly provided herein and to the maximum extent permitted by applicable law, B-lay makes no warranties of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose with respect to the Services. B-lay does not warrant that the Services will be error free or uninterrupted. The limited warranties provided herein are the sole and exclusive warranties provided to Client in connection with the provision of the Services.

7. Co-operation Obligations

- 7.1.** The parties acknowledge that the success of services in the field of software asset management is generally dependent on proper and timely cooperation. In order to enable B-lay to properly execute Services, Client shall always timely provide all data or information that is useful, necessary and desirable for B-lay and provide full cooperation. Client confirms its personnel and staff will have the necessary knowledge, expertise and experience.
- 7.2.** If Client does not make data, documents, equipment, software, materials or agreed employees available to B-lay, timely, not or not in accordance with the Agreement, or if Client does not fulfil its other obligations, B-lay has the right to suspend the execution of the Services in whole or in part and B-lay is also entitled to charge the resulting costs according to its usual rates, without prejudice to B-lay's right to exercise any other legal and / or agreed rights.
- 7.3.** In the event that employees of B-lay carry out work at the location of Client, Client shall provide, free of charge, the facilities reasonably desired by those employees, such as a workspace with computer, data and telecommunications facilities. The workspace and facilities will comply with all statutory and otherwise applicable requirements regarding working conditions. Client shall provide applicable house and security rules within his organization to B-lay before the Services start.



8. Limitation of Liability

- 8.1.** B-lay's maximum liability for any action, regardless of the form of action, whether in tort or contract, arising under the GTC or an Agreement shall be limited to a.: re-performance of the non-conforming Services, or b.: the fees paid by Client under the specific Agreement. The Services provided by B-lay are advisory only and no specific result is assured or guaranteed.
- 8.2.** Except with respect to Client's payment obligations and Client's infringement of B-lay's Intellectual Property Rights, in no event shall either party have any liability to the other party for any indirect, special, incidental, punitive, or consequential damages, however caused, or for any lost profits, loss of data or use, cost or procurement of substitute goods or services, whether in contract, tort or otherwise, arising out of, or in any way connected with the Services, even if the party from which damages are being sought or such party's licensors or contractors have been previously advised of the possibility of such loss or damages.

9. Termination for Cause

- 9.1.** Either party may terminate an Agreement for cause: (i) upon thirty (30) days prior written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event the other party - whether or not provisionally - becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, if the enterprise of the other party is liquidated or terminated other than for the purpose of reconstruction or merger of companies, or if the decisive control over Client's business changes.
- 9.2.** Except as set forth in an Agreement, B-lay may cancel an Agreement by giving Client thirty (30) days prior written notice in the event: (i) Client repeatedly fails to perform its obligations under the GTC or an Agreement, resulting in the inability of B-lay to meet its obligations and time frame commitments, or (ii) it is determined that the information provided by Client to B-lay is materially inaccurate or lacking.
- 9.3** In the event that an Agreement is terminated, B-lay shall immediately cease performance of all Services and Client shall pay B-lay, within thirty (30) days after the date of termination, for all Services performed and all travel & living expenses incurred up to the cessation of such Services.
- Services already performed at the time of termination as referred to in clause 9.1, will not be subject to cancellation, unless Client proves that B-lay is in default under the GTC or an Agreement. In the event of bankruptcy of Client, the right to use software, websites and the like made available to Client lapses by operation of law.

10. Termination for convenience

- 10.1.** Except as set forth in an Agreement, Client may terminate an Agreement for convenience at any time, by giving B-lay, ninety (90) days prior written notice.
- 10.2.** Termination for convenience can only be done in writing.
- 10.3.** Client is never entitled to termination for convenience in situations where work under an Agreement for Services has already started and/or where such Services have been entered into for a defined period of time.

11. Use of Subcontractors.

In the course of providing Services under this Agreement, B-lay may draw on the resources of and subcontract to an Affiliate or third parties. In such instances, Client agrees that B-lay may provide information it receives to the applicable Subcontractors on a need-to-know basis. Additionally, excluding claims for bodily injury or death of any person or damage to real and/or tangible personal property caused by negligence and/or wilful misconduct by Subcontractors, Parties have agreed not to bring or enforce a claim of any nature relating to the Services against any of the Subcontractors, nor



any partner, principal or personnel of such Subcontractor. All such claims shall be addressed directly at B-lay who will indemnify Client fully for all such actions or lack thereof by its Subcontractors.

12. Relationship of the Parties.

The parties are independent contractors. The GTC or the Agreements do not create nor are they intended to create a partnership, franchise, joint venture or agency, fiduciary or employment relationship between the Parties. There are no third-party beneficiaries to the GTC or the Agreements. B-lay is entitled to use Client's company as a customer reference in its public relation material or its customer relations database.

13. Staff takeover

Each of the Parties will, during the term of the Services engagement, as well as two years after the end thereof, only with the prior written consent of the other Party, employ employees of the other party who are or have been involved in the execution of the Services. Conditions may be attached to this permission.

14 Access rights.

If while performing Services B-lay requires access to other vendors' products that are part of Client's IT system, Client will be responsible for acquiring access rights to all such products and the appropriate license rights necessary for B-lay to use and/or access such products on Client's behalf.

15. Notices.

All notices between parties shall be in writing using registered mail and shall be deemed to have been given on the third business day after registration of such mail. Notices to B-lay shall be sent to the attention of its management at the address mentioned in the relevant Agreement. Notices to Client shall be addressed to Client's appointed representative in the relevant Agreement.

16. Waiver and Cumulative Remedies.

No failure or delay by either party in exercising any right under the GTC or an Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

Except for actions for non-payment or breach of B-lay's Intellectual Proprietary Rights, no action, regardless of form, arising out of or relating to an Agreement may be brought by either Party more than one year after the cause of action has accrued.

17. Force Majeure

17.1. Neither party shall be liable for any failure or delay in performance of any obligation under the GTC, or an Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, government measures, flood, fire, earthquakes, war, civil unrest, acts of terror, workforce strikes or other labour problems (other than those involving B-lay or Client employees, respectively), power failure, internet failure, failure of the computer network or telecommunication facilities, computer attacks or malicious acts, such as attacks on or through the Internet, through any Internet service provider, telecommunications or hosting facility.



- 17.2.** Dates by which performance obligations are scheduled will be extended for a period of time equal to the time lost due to any delay so caused. Parties both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than ninety (90) days, parties may cancel unperformed Services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Client's obligation to pay for Services provided.
- 18. Assignment.**
Neither party may assign any of its rights or obligations under the GTC or an Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign the GTC including all relevant Agreements without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the GTC and all Agreements and all past due fees are paid in full, except that Client shall have no right to assign to a direct competitor of B-lay. Any attempt by a party to assign its rights or obligations in breach of this section shall be void and of no effect. Subject to the foregoing, the GTC shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 19. Export**
Export laws and regulations of the European part of the Netherlands and any other relevant local export laws and regulations apply to Services and/or product deliverables. Client agrees that such export control laws govern his use of Services and/or product deliverables (including technical data) and Client agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations).
Client agrees that no data, information, program and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.
- 20. Change Order Process and additional work**
- 20.1.** During a project as referred to in an Agreement, new information may surface that may require a change in business requirements resulting in a change in project scope and, therefore, changes in the estimated level of effort, project timeline, or Services features. Upon Client's request, such changes, and the associated fees for additional Services to be provided, will be described in a new Quotation, further referred to as a Change Order. Due to the complexity of some Change Orders, B-lay may bill the Client for the time required to scope and estimate the requested change. B-lay will advise Client upfront of the cost estimate if such a charge will apply.
A completed Change Order includes the requested change, the impact on the current engagement under the applicable Agreement, and the estimated resources and time to complete the Services for the work described in the Change Order. B-lay will submit the Change Order to Client for review and approval. Proposed Change Orders will remain valid for a period of ten (10) business days from the date of submission. If Client does not approve the Change Order within the ten (10) business days, and B-lay has not extended the period of validity in writing, the Change Order will automatically expire. Upon receipt of written approval, B-lay will begin performing the Services described in the Change Order according to the agreed-upon schedule under the applicable Agreement as modified by the Change Order



20.2. Client accepts that work or performance as referred to in this article may affect the agreed or expected time of completion of the Service and the mutual responsibilities of Client and B-lay. The fact that during the execution of a project under an Agreement (the demand for) additional Services occur, is never the reason for Client to terminate or dissolve an Agreement.

21. Governing Law and Jurisdiction

The GTC and all Agreements under it and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed exclusively by, and construed in accordance with the substantive and procedural laws of the European part of the Netherlands and the parties irrevocably submit to the exclusive jurisdiction of the relevant Dutch court.



Exhibit A: Definitions

1. **"Affiliate"** means each and every subsidiary or holding company of any tier or any business entity from time to time Controlling, Controlled or under common Control with Client or B-lay.
2. **"Agreement"** means a negotiated and legally enforceable understanding between B-lay and Client consisting of the GTC, an Order and the relevant Description of Services.
3. **"B-lay"** means B-lay B.V. having its registered office at Maliebaan 79, in Utrecht , the Netherlands, and/or an affiliated company as stated in the Agreement.
4. **"B-lay Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
5. **"Change Order"** means a Quotation for the changes to the relevant Services as requested by Client and fully accepted by both Client and B.lay.
6. **"Client Data"** means information in the form of representations of facts, concepts or instructions that are created by and/or owned by Client.
7. **"Confidential Information"** means Personal Data and each Party's business or technical information, including but not limited to any information relating to software plans, designs, documentation, training materials, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing Party as "confidential" or "proprietary" or the receiving Party knows or should reasonably know is confidential or proprietary as further detailed in the Mutual Confidentiality Agreement.
8. **"Deliverables"** means the training, specifications, configurations, implementation, data conversions, workflow, custom developed programs, performance capabilities, and any other activity or document to be completed during the course of Services for delivery to Client.
9. **"Description of Services"** means a written or on-line provided specification of the relevant Services provided by B-lay to Client, forming part of the Agreement.
10. **"Documentation"** means instructions and manuals supplied with the Product(s) and/or Service(s), whether intended for support/technical staff or for end-users, and whether in printed or in electronic form.



11. **“Effective Date”** means the commencement date of the Agreement, being the date of final signature unless specified otherwise in the Agreement.
12. **“Order”** means a Quotation for the relevant Services fully accepted by both Client and B.lay.
13. **“Party/Parties”** means either B-lay or Client as an individual entity or Client and B-lay together referred to as Parties.
14. **“Personal Data”** means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
15. **“Personnel”** means a person or persons actively employed by either B-lay or Client.
16. **“Product”** means any Software license, Hardware or Telecommunications product. Where a distinction between the types of Products is intended, it shall either be explicit, by the use of one of the three categories, or it may be implicitly deduced from the context of the Agreement
17. **“Quotation”** means the quote issued by B-lay to Client to provide Services containing the specifications and requirements thereof.
18. **“Services”** means all work related to information technology, such as (but not limited to) license management services, tool management, training, consultancy, removal, logistics, integration work, engineering, development, maintenance and writing of documentation, as further described in the relevant Agreement.
19. **“Subcontractor”** means an Affiliate or third party used by B-lay to provide Products and/or Services under this Agreement to Client.
20. **“Term”** means the duration in time of the Agreement from the Effective Date.
21. **“Third Party IP”** means any Intellectual Property that is owned by a person that is not a Party or an Affiliate of a Party.