

General Conditions LegionellaDossier

Chapter I: General provisions

Article 1. Definitions

In these General Conditions is intended by:

1. LegionellaDossier: the private limited liability company vSmart B.V., also acting under the name LegionellaDossier, with registered seat in Amersfoort and offices in (3526 AR) Utrecht at the address Kaap de Goede Hooplaan 7, listed in the trade register of the Chamber of Commerce under number 57957851.
2. Client: the client entering into an Agreement with LegionellaDossier.
3. Agreement: the agreement that is adopted between LegionellaDossier and the Client for the purpose of the use of the Application and/or the purchase of Materials.
4. Written: by e-mail or regular mail.
5. Application: the application that is offered as a Software-as-a-Service (SaaS) by LegionellaDossier to the Client.
6. Products: all results and findings that are delivered through the Application to the Client, such as reports, studies, basic scenarios, drawings, manuals, procedures, and recommendations.
7. Materials: all materials offered, to be delivered, or delivered on grounds of the Agreement by LegionellaDossier to the Client, such as Clip'R, Bluetooth thermometer, or gateway.
8. Intellectual Property rights: all rights of intellectual property and associated rights, also including, though not limited to, copyrights, databank rights, domain-name rights, trade-name rights, brand rights, model rights, neighbouring rights, patent rights, as well as rights to know-how.
9. Website: the website published on the domain name legionelladossier.nl (or with another domain name and/or extension) that is issued by and is the property of LegionellaDossier.
10. General Conditions: the underlying set of general conditions that were registered at the Chamber of Commerce under number 57957851.

Article 2. Applicability

1. These General Conditions are applicable to all quotations of and Agreements with LegionellaDossier.
2. The applicability of (any possible) conditions of the Client are expressly rejected by LegionellaDossier and therefore are not applicable, unless LegionellaDossier expressly indicates otherwise in Writing.
3. It may occur that LegionellaDossier does not always demand strict compliance with the General Conditions. This does not mean, however, that the provisions are not applicable or that LegionellaDossier loses the right to demand strict compliance with the General Conditions in other cases.
4. Were any provisions of these General Conditions to be void or annulled, then the other provisions will remain fully effective. In addition, the void or annulled provision will be replaced by a new provision, whereby the purpose and tenor of the void or annulled provision will be observed as much as possible.
5. All articles mentioned in chapter I (General provisions) of these General Conditions are integrally applicable to chapter II (Application) and chapter III (Materials) of these General Conditions.

Article 3. Modifications

1. LegionellaDossier has the right to (intermediately) modify and/or supplement the General Conditions, also including the prices.
2. The modified and/or supplemented General Conditions enter into effect for the Client at the moment that the term of the current Agreement has ended and the Agreement is extended or adopted for a new period.
3. If the Client does not accept the modified and/or supplemented General Conditions, then the Client can cancel the Agreement until the date of entry into effect. Use of the Application after the date of entry into effect counts as acceptance of the modified and/or supplemented General Conditions.

Article 4. Quotations

1. Quotations are issued by LegionellaDossier verbally or in Writing.
2. A quotation of LegionellaDossier is valid for 30 days, unless indicated otherwise in the quotation.
3. A quotation lapses if Materials that the quotation is in regard to have become unavailable in the meantime.

4. Were an error to be stated in the quotation of LegionellaDossier, then the Client is unable to hold LegionellaDossier to such error if the Client knew or could have known that it regarded an error or typing mistake.
5. The prices listed in a quotation are exclusive of VAT, other levies that are imposed by the authorities, and other costs to be incurred in the context of the Agreement.
6. If the quotation is based on information provided by the Client and this information turns out to be incorrect or incomplete, then LegionellaDossier has the right to adjust the prices listed.

Article 5. Payment

1. The Client is obligated to pay invoices within 30 days after invoice date to LegionellaDossier.
2. If the Client has not paid in full within 30 days after invoice date, the Client falls into default. In such case, the Client must pay the statutory collection costs and interest to LegionellaDossier. In addition, all costs, both judicial and extrajudicial, that LegionellaDossier must incur to collect what the Client leaves unpaid illegitimately, are borne by the Client.
3. If the Client is in default, then LegionellaDossier has the right to block the account of the Client. The preceding leaves unaffected the payment obligations of the Client.
4. Objections against (the amount of) an invoice must be reported by the Client within 14 days after invoice date in Writing to LegionellaDossier. Each report must contain a description of the complaint with the greatest possible detail, so that LegionellaDossier is able to respond adequately. Objections against the amount of the invoice do not suspend the payment obligation of the Client.
5. Payments made by the Client always serve in the first place to settle all interest and costs due and in the second place to settle payable invoices.
6. The Client agrees with electronic invoicing by LegionellaDossier.

Article 6. Suspension and rescission

LegionellaDossier has the right, without prejudice to its legal powers of rescission and suspension, to unilaterally rescind the Agreement entirely or partially with immediate effect and/or to completely or partially suspend the implementation of the undertakings flowing for it from the Agreement with immediate effect if one of the following events becomes effective:

- a. the Client acts in violation of these General Conditions;
- b. a request for the granting of – provisional – suspension of payments has been filed for the benefit of the Client;
- c. an application for the filing for bankruptcy has been submitted for the benefit of the Client;
- d. an attachment has been levied at the charge of the Client;
- e. a decision stipulating the dissolution and/or liquidation of the Client has come about.

The Client is obliged to immediately inform LegionellaDossier of the entry into effect of an event intended in sub b through e.

Article 7. Intellectual Property Rights

1. The Application, the associated software, the Products, as well as all content on the Website is the Intellectual Property of LegionellaDossier. Nothing in the Agreement is intended to transfer any Intellectual Property Rights to the Client.
2. The exercise of the Intellectual Property Rights – thereby also intended the disclosure or transfer of data – is expressly and exclusively reserved, both during and after the end of the implementation of the Agreement, to LegionellaDossier.
3. The Client exclusively obtains the right of use of the Intellectual Property Rights.
4. LegionellaDossier has the right to deploy the information that is stored and/or processed through the (software of the) Application or Website for the resolution of malfunctions, the (further) development of the Application and for other purposes to the extent no confidential information of the Client is thereby provided to third parties. If information has been anonymized, then the information is qualified as non-confidential at all times.
5. If the Client sends LegionellaDossier information for the purpose of, for example, feedback or a suggestion, then the Client grants LegionellaDossier an unlimited and eternal right of use with regard to such information.

Article 8. Privacy

The privacy statement as published in the Application and on the Website is an integral part of these General Conditions.

Article 9. Force majeure

1. None of the parties is bound to comply with any obligation if it is prevented from doing so as a result of force majeure, nor will the one party be liable towards the other party in case such party is unable to comply with its obligations on grounds of the Agreement – with the exception of payment obligations – due to Force Majeure.
2. By force majeure is also intended the force majeure of licensors or suppliers of LegionellaDossier, the not properly complying with obligations by suppliers of LegionellaDossier, as well as the defectiveness of matters, devices, software, or materials of third parties, government measures, power malfunctions, malfunction of the internet, data network of telecom facilities, war, epidemics or pandemics and general transport issues.
3. If a situation of Force Majeure lasts longer than 90 days, parties have the right to rescind the Agreement in Writing. Performances already delivered on grounds of the Agreement will in such case be billed proportionately, without parties owing each other something otherwise.

Article 10. Other provisions

1. To these General Conditions, Netherlands legislation is applicable.
2. Unless the law prescribes otherwise in a mandatory manner, all disputes between LegionellaDossier and the Client are submitted to the competent court of the district where LegionellaDossier is established.
3. LegionellaDossier has the right to transfer its rights and obligations from the Agreement to a third party taking over the relevant business activity from LegionellaDossier.

Chapter II: the

Application Article 11.

Applicability

Chapter II is additionally applicable to chapter I (General provisions) as soon as the Client makes use of the Application.

Article 12. Adoption, duration, and cancellation of the Agreement

1. The Agreement is adopted at the moment that the Client has accepted the quotation of LegionellaDossier or makes use of the Application.
2. The Agreement is adopted for the duration of 12 months.
3. The Client has the right to cancel the Agreement against the end of the term, with due regard for a notice period of one month. If the Client does not and/or does not timely give notice, the Agreement is extended with a duration of 12 months. Notice must be given in Writing.

Article 13. Use of the Application

1. The Application is offered by LegionellaDossier to Client by way of a Software-as-a-Service (SaaS).
2. The Client can download the Application from the app store, such as in Google Play or the App Store.
3. In order to use the Application, the Client must register and create an account. During the registration procedure, the Client chooses a username and password with which he can log in in the Application following registration. The Client is responsible himself for choosing a sufficiently reliable password.
4. The Client must keep his login information (username and password) strictly secret. LegionellaDossier is not liable for abuse of the login information and may always assume that a Client registering in the Application effectively is that Client. Everything that occurs through the account of the Client falls under the responsibility and risk of the Client.
5. If the Client knows or suspects that his login information has fallen into the hands of unauthorised parties, he must change his password as soon as possible and/or inform LegionellaDossier accordingly, so that LegionellaDossier can take appropriate measures.

Article 14. Availability, functionality, and maintenance

1. LegionellaDossier exerts itself to let the Application be available for 24 hours a day and 7 days a week, but does not guarantee its uninterrupted availability.
2. LegionellaDossier cannot guarantee that the Application or the content is always available or is free from errors, defects, malware, of viruses.
3. LegionellaDossier has the right to modify the functionality and design of the Application from time to time.
4. LegionellaDossier actively services the Application. Maintenance on the Application in the form of interruptions will preferably occur outside office hours. Maintenance announced beforehand is possible. The Client is responsible himself for keeping the Application up to date by controlling whether a new

version is available in the

app store.

5. LegionellaDossier may modify the functionality of the Application from time to time. The feedback and the suggestions of Client are thereby welcome, but ultimately LegionellaDossier itself decides what modifications are or are not implemented.

Article 15. Rules of Use Application

1. It is not permitted to the Client without the permission of LegionellaDossier to disclose, multiply and/or process information from and about the Application.
2. The Client is responsible for the diligent use of the Application. The Client must refrain from unauthorised or careless use of the Application. The Client must especially:
 - a. fill out and submit the contact and payment information truthfully;
 - b. make sure that the (internet and/or telecom) services, devices, and programs used by the Client are suitable and safe for the use of the Application;
 - c. not use the Application for actions and/or behaviour that violate applicable legislation or regulations or third-party rights.
 - d. not make use of the Application in such a manner that the (correct) functioning thereof is prevented, the security thereof is violated, or damage is caused to LegionellaDossier, the Application, or third parties.
 - e. not spread any viruses through the Application, nor to disrupt devices or systems of LegionellaDossier or other users of the Application in other manners.
3. If in the opinion of LegionellaDossier there are indications that the Client acts in violation of these General Conditions, then LegionellaDossier has the right to take all measures it deems necessary. Such as (i) the suspension or termination of access to the Application or the registration of the Client and/or (ii) the claiming of any possible damage or costs.

Article 16. Fee

1. For the use of the Application and the Products, the Client owes fees to LegionellaDossier.
2. The amount of the fee per building depends on the number of water outlets. The amount of the fee is indicated in the Agreement.
3. The fee paid by the Client depends on the number of water outlets per building. The Client therefore is obligated to communicate the correct number of water outlets to LegionellaDossier. If LegionellaDossier doubts whether the number of water outlets communicated is correct, then LegionellaDossier has the right to (let) carry out an audit to control whether the number of water outlets communicated by the Client is correct. The Client is obligated to provide his full cooperation for such an audit. LegionellaDossier will announce the audit at least 7 days before the start to the Client.

Article 17. Liability

1. LegionellaDossier is not liable for damage that has occurred as a result of force majeure (article 9).
2. LegionellaDossier is not liable for damage that has occurred because is LegionellaDossier based itself on incorrect and/or incomplete information provided by or on behalf of the Client.
3. LegionellaDossier is not liable for any damage or costs as a result of:
 - a. the use of the Application;
 - b. impossibility of use of the Application or the content;
 - c. the (temporary) full or partial ceasing of access to the Application as a result of necessary maintenance and/or modifications.
4. LegionellaDossier is not liable for indirect damage, also including consequential damage, loss of profit, missed savings, and damage due to operational stagnation.
5. LegionellaDossier can exclusively be liable for direct damage caused by an attributable shortcoming in compliance with obligation(s) flowing from the Agreement. By direct damage is exclusively intended the reasonable costs to determine the cause and the scope of the damage, such reasonable costs as may have been incurred to render the defective performance of LegionellaDossier compliant with the Agreement, and reasonable costs incurred to prevent or mitigate damage.
6. Were LegionellaDossier to be liable for any damage, then the liability of LegionellaDossier is limited at all times to the amount that is disbursed in the relevant case on account of the liability insurance of LegionellaDossier.

7. If the insurer does not disburse for any reason, then the liability of LegionellaDossier per event is limited, whereby a connected series of events counts as a single event, to the amount equal to the price for the Agreement, which is invoiced in the period of 12 months immediately preceding the damage-causing event.

Chapter III: Materials

Article 18. Applicability

Chapter III is additionally applicable to Chapter I (General provisions) in case of Agreements regarding the purchase of Materials.

Article 19. Adoption Agreement

The Agreement is adopted at the moment that the Client has given his verbal or written approval for the quotation of LegionellaDossier or at the moment that LegionellaDossier has started with the carrying out of the deliveries.

Article 20. Compensation

1. The amount of the compensation for the purchase of Materials flows from the Agreement and/or quotation.
2. LegionellaDossier has the right to demand a down payment prior to delivery of the Materials. As long as the Client has not timely and fully settled the advance invoice, LegionellaDossier has the right to suspend the delivery of the Materials.
3. LegionellaDossier is authorised to increase established prices without the Client being able to rescind the Agreement, if the increase of the price flows from an authorisation or obligation on grounds of legislation or regulations.

Article 21. Delivery

1. If a term has been established or submitted for the delivery of Materials, then this is not a strict time limit. Upon overrunning a term, the Client must declare the default of LegionellaDossier in Writing. This means that the Client must grant LegionellaDossier a reasonable term to still be able to comply with its obligations.
2. Delivery occurs by making available the Materials at the company building of LegionellaDossier in accordance with the Incoterms 2020: Ex Works (Ex Factory), unless established otherwise in Writing.
3. The shipping costs are borne by the Client, unless parties have established otherwise in Writing.
4. The Client is obliged to accept the Materials at the moment they are made available to him. If the Client fails to do so – for whatever reason – then LegionellaDossier has the right to store the Materials at the risk of the Client. The costs that arise as a result – such as transport and storage costs – are borne by the Client.
5. If the Client has purchased multiple Materials, then LegionellaDossier has the right to deliver in batches, whereby LegionellaDossier can invoice each batch separately.

Article 22. Retention of title

1. All Materials delivered by LegionellaDossier in the context of the Agreement are delivered under retention of title. This means that the delivered Materials remain the property of LegionellaDossier until the Client has complied with all his (payment) obligations from the Agreement.
2. The Client may not resell, pawn, or encumber in another manner the Materials delivered under retention of title.
3. The Client must always do everything that can reasonably be expected of him to secure the property rights of LegionellaDossier.
4. If third parties levy an attachment on the Materials delivered under retention of title or wish to establish or exercise other rights thereon, then the Client is obliged to immediately inform LegionellaDossier accordingly.
5. If LegionellaDossier wishes to exercise its property rights as intended in this article, the Client grants unconditional and irrevocable permission beforehand to LegionellaDossier to access all those areas where the property of LegionellaDossier is located and to recover those Materials.

Article 23. Investigation and complaints

1. The Client is obliged to investigate the delivered Materials immediately after they have been provided to him. The Client must thereby investigate whether the quality and/or quantity of what was delivered corresponds with what was established.

2. Any possible visible defects must be reported within 2 days after delivery in Writing to LegionellaDossier. Any possible invisible defects must be reported no later than within 2 days after the defect is discovered or could have been discovered in Writing to LegionellaDossier. Every report must contain a description of the defect with the greatest possible detail, so that LegionellaDossier is able to respond adequately.
3. If a defect is reported later than as stated in section 2, then the Client is no longer entitled to restoral, replacement, or indemnification, as a result of which LegionellaDossier has the right not to take handle the complaint.
4. The Client must provide LegionellaDossier with the opportunity to investigate the complaint. The Client must, therefore, return the relevant Materials at own expense and risk to LegionellaDossier.
5. Minor deviations in, for example, quality, dimensions, and colour of Materials delivered by LegionellaDossier do not constitute grounds for the withholding of approval by the Client.
6. If the Client timely files a complaint, this does not suspend his payment obligation.
7. If LegionellaDossier holds that Materials are defective and the Client has timely filed a complaint, then LegionellaDossier will – at the option of LegionellaDossier – replace or restore the defective Materials, or pay a compensation for such to the Client. In case of replacement, the Client is obliged to return the replaced Materials to LegionellaDossier and to transfer the property thereof to LegionellaDossier, unless LegionellaDossier indicates otherwise in Writing.
8. If LegionellaDossier holds that a complaint is unfounded, then the costs that have arisen on the part of LegionellaDossier as a result – also including the costs of investigation – are borne by the Client.

Article 24. Liability

1. LegionellaDossier is not liable for damage that has arisen as a result of force majeure (article 9).
2. LegionellaDossier is not liable for damage that has arisen because LegionellaDossier based itself on incorrect and/or incomplete information provided by or on behalf of the Client.
3. LegionellaDossier is not liable for damage that has arisen through:
 - a. inexpert and/or inappropriate use of Materials;
 - b. wear through normal use of Materials;
 - c. incorrect maintenance of Materials;
 - d. changes that were applied to Materials.
4. LegionellaDossier is never liable for indirect damage, also including consequential damage, loss of profit, missed savings, and damage due to operational stagnation.
5. LegionellaDossier can exclusively be liable for direct damage, caused by an attributable shortcoming in compliance with the obligation(s) flowing from the Agreement. By direct damage is exclusively intended the reasonable costs to determine the cause and scope of the damage, any possible reasonable costs incurred to render the defective performance of LegionellaDossier compliant with the Agreement, and reasonable costs incurred to prevent or mitigate damage.
6. If LegionellaDossier were to be liable for any damage, then the liability of LegionellaDossier is limited at all times to the amount that is disbursed in the relevant case on account of the liability insurance of LegionellaDossier.
7. If for whatever reason no disbursement is provided pursuant to the aforementioned insurance, it applies that any liability is limited to a maximum of the amount that was invoiced for the Agreement, or rather for such part of the Agreement that the liability is in regard to.