

## **TRUQU GENERAL TERMS AND CONDITIONS\***

\* In this translation an attempt has been made to be as literal as possible without jeopardizing the overall continuity. In the event of discrepancies or ambiguity between the original Dutch version of the General Terms and Conditions of TruQu and this translation, the Dutch text shall prevail.

### **Article 1 Definitions**

In these Terms and Conditions the following terms, either singular or plural, commencing with capital letters, are attributed the meanings as defined in this article:

- 1.1. *Connection Agreement*: if applicable, the document stating specific agreements between TruQu and Client on accessing and using the Platform and purchasing of Services;
- 1.2. *Account*: the account created by Client on the website, which provides Client access to the Platform and enables Client to make use of the Services;
- 1.3. *Services*: all services delivered to Client by TruQu, as described on the Website, the Platform, in the Connection Agreement and in these Terms and Conditions;
- 1.4. *Intellectual Property rights*: all intellectual property rights and the rights related thereto, including but not limited to: copyrights, trademark rights, trade name rights and database rights, as well as rights to know-how;
- 1.5. *Client*: the (legal) entity with whom TruQu enters into the agreement;
- 1.6. *Agreement*: the agreement between TruQu and Client on the use of the Platform and the purchase of Services;
- 1.7. *Platform*: the platform offered by TruQu, and on which Services are delivered to Client;
- 1.8. *TruQu*: the company with limited liability, TruQu B.V., with its registered office in Amsterdam and its principal place of business in (1066 VH) Amsterdam at Johan Huizingalaan 763A;
- 1.9. *Conditions*: these general terms and conditions of TruQu;
- 1.10. *Website*: the website of TruQu on which an account is created and Services can be requested, accessible, amongst others, on the domain [www.truqu.com](http://www.truqu.com).

### **Article 2. Agreement and application**

- 2.1 This Agreement is applicable upon the offer and acceptance of the Connection Agreement.
- 2.2 These Conditions shall apply to all Services, any use of the Platform, any offer and quote made by TruQu with respect to the Services and to the Agreement, and shall form an integral part of the Agreement.
- 2.3 The Conditions shall also apply to the Services, in part or in full, for which TruQu has contracted a third party.
- 2.4 TruQu explicitly rejects the applicability of any general (procurement) conditions of Client. In the event and to the extent that other conditions than these Conditions may apply, the provisions of these Conditions shall prevail.
- 2.5 TruQu shall be entitled to change or extend these Conditions at any time.
- 2.6 The latest Conditions are available on the Platform. If a change to or extension of the rights or obligations of Client are significantly impacted, TruQu shall inform Client explicitly thereof, or publish the changes so that they are clearly visible on the Platform.

### **Article 3 The Services**

- 3.1 The Services comprise the ability for Client to create an Account on the Website or by means of login details provided by TruQu, with this can add users (who choose their own password) and makes it possible for users to receive and ask for feedback.
- 3.2 With the Account, the Client is able to use the Platform. The Platform offers advanced functionalities that makes it possible for the Client to continuously ask for feedback and receive feedback from employees.
- 3.3 Services are described further on the Website. The Platform and the Services are provided "as is".
- 3.4 TruQu shall provide the Platform and the Services to the best of its ability. Unless otherwise expressly determined, TruQu and/or its licence providers give no guarantee whatsoever on the basis of which they can be held liable, including but not limited to guarantees, commitments and indemnifications in respect of the quality, security, fairness, integrity and accuracy of the Services.

### **Article 4 Password policy Account**

- 4.1 Client is responsible for keeping the password secret. Client is also responsible for everything that the Account on the Platform is used for. TruQu may assume that Client is actually the person who has accessed his Account. As soon as Client knows or has reason to suspect that a password has got into the hands of unauthorised persons, Client is required to inform TruQu of this, without prejudice to the requirement of Client to take immediate appropriate measures, such as for example changing the password.
- 4.2 For safety measures, the password should be changed at least once per year. The users will receive an automatic request for this.
- 4.3 TruQu reserves the right to change the login procedure and passwords in the event that this is deemed necessary in the interest of the functioning of the Services.

### **Article 5 Use of the Platform**

- 5.1 Client shall accept to be solely responsible for the purchase and appropriate functioning of the infrastructure which is required to use the Platform.

- 5.2 Client shall accept and assume responsibility and liability for the use of the Platform through the Account and shall indemnify TruQu for any damages or costs related thereto.
- 5.3 Client shall not be permitted to; use the Platform in such a way that it can or will damage the interests and/or reputation of TruQu or one of its licensors; crawl, spider or scrape the contents of the Platform; use the Platform in a way which may lead to unauthorised or unwanted advertising, junk, spam, bulk e-mail, swindle or phishing; use the Platform in a way which infringes Intellectual Property rights or any other rights; use the Platform in a way which violates these Terms and Conditions and/or the Agreement and/or the applicable laws and regulations.
- 5.4 If Client becomes aware of the use of the Platform which breaches this Article, or, if any problems, errors or technical issues are identified, Client shall notify TruQu of this immediately.
- 5.5 Client guarantees towards TruQu that Client is entitled and authorised to make use of the Service and shall act in accordance with these Terms and Conditions. Client guarantees that Client shall not misuse the Service in any way.
- 5.6 Client guarantees that in making use of the Service, Client shall (i) not use any robots, spiders, scrapers or other applications, (ii) not perform any actions which may monopolise the Service unreasonably and/or disproportionately and/or impede the functionality of the Service, and/or (iii) not use any applications that monitor the Service and/or copy parts of the Service.
- 5.7 Client shall indemnify TruQu against any claims of third parties based on the assumption that the activities performed by Client with the aid of the Service are unlawful in any way.

## **Article 6 Support and Maintenance**

- 6.1 Client shall accept that (i) functional, procedural or technical changes or improvements could be made to the Platform at any time; (ii) the Platform could be (temporarily) taken out of service, or that the use of the Platform could be restricted at any time, without resulting in any liability for TruQu. TruQu takes into account the interests of the Customer, and the Customer can contact TruQu with questions.
- 6.2 Client shall notify TruQu immediately of any problems with the Platform and which require the assistance of TruQu or which restrict TruQu in the delivery of the Platform.
- 6.3 TruQu shall notify Client of any planned work at its earliest convenience.
- 6.4 TruQu does not guarantee that the Platform or the Services are accessible at all times and without interruptions or breakdowns. Breakdowns can, although not exclusively, occur as a result of breakdowns in the internet or telephone connection or because of viruses or faults/defects. TruQu cannot be held liable or liable to pay compensation, for any damage arising from the (temporary) unavailability or (temporary) interruption of the Service.

## **Article 7 Payment**

- 7.1 Client shall pay the prices for the Services, as specified on the Platform and/or in the Connection Agreement. All prices are denominated in euro and exclusive of value added tax (VAT), reimbursement of expenses, rights and other government levies which have been or will be imposed, unless agreed otherwise.
- 7.2 TruQu is entitled to adjust the prices that she charges for the Services. Any adjustment will be announced in advance. In the event of an increase during the duration of the Connection Contract, the Customer will not be obliged to take Services at higher prices.
- 7.3 Payments due shall be made by Client in accordance with the payment conditions agreed in the Connection Agreement or stated on the invoice. TruQu shall be entitled to invoice amounts in advance or charge them afterwards. In the absence of a specific payment provision, Client shall settle the invoices within 30 days after the invoice date.
- 7.4 Payment dates are firm dates.
- 7.5 Client shall not be permitted to suspend or offset any payments.
- 7.6 TruQu is entitled to settle an amount owed to the Customer in accordance with the statutory provisions with a demandable claim against the same Customer. If the Customer is in default, any subsequent declarations or claims without notice of default are due and payable in full at once.
- 7.7 All claims of TruQu on the Customer are immediately due and payable if the Customer – whether or not provisionally – is granted suspension of payments, when the Client is filed for bankruptcy, the Customer is placed under guardianship or when the Client dies, is in liquidation or is dissolved or in the case of the Debt Reorganization Scheme for Natural Persons or in any other way lose the free management of its assets.
- 7.8 If Client does not pay the amount(s) due after a summons or notice of default, TruQu can pass on the claim for collection, in which case Client shall, in addition to the total amount due, be obliged to pay for all out-of-court expenses, including expenses charged by external experts in addition to the costs determined by law.
- 7.9 In any event, without prejudice to the above, TruQu shall, in the event that Client does not meet its payment obligations, be entitled to dissolve the Connection Agreement and/or suspend or terminate the access to the Platform and/or the results of the Services.

## Article 8 Privacy

- 8.1 By making use of the Platform, Client may possibly process personal data. The personal data is saved by TruQu on behalf of and commissioned by Client. Customer expressly determines the purpose and means of the processing and qualifies as 'weathering manager' as referred to in the privacy legislation and TruQu acts as a 'processor' as TruQu does the processing on behalf of the Customer and is not under the direct authority of the Customer.
- 8.2 Processing by TruQu (the storage of the personal data) will only take place exclusively to implement the Connection Contract. TruQu will not process the personal data for any other purpose than determined by Customer. It will only concern the following personal details of employees and external givers of feedback: full name, business personal e-mail addresses and given and received feedback.
- 8.3 TruQu guarantees that it complies with the applicable laws and regulations regarding privacy of personal data.
- 8.4 The Client guarantees that it is entitled to designate TruQu as the processor of the personal data and also complies with the applicable laws and regulations relating to the privacy of personal data.
- 8.5 TruQu is not liable for damage resulting from Customer not complying with obligations from applicable laws and regulations and the careless handling of access to the Platform by the Customer and its employees.
- 8.6 The Customer indemnifies TruQu against claims from third parties that relate to (or ensue from) the processing of personal data by TruQu and/ or that are caused by a breach of warranty by the Customer as stated in this article.
- 8.7 TruQu will in all reasonableness cooperate with requests that the customer receives from the parties involved. This is in principle free of charge, unless this takes places systematically. Requests that are directly addressed to TruQu will be forwarded to Customer.
- 8.8 When customer runs a DPIA and is requesting cooperation from TruQu, TruQu will provide for this as far as it is reasonable.
- 8.9 TruQu has implemented appropriate technical and organizational measures to protect personal data against loss or against any form of unlawful processing. These measures ensure, taking into account the state of the art and the costs of implementation, an appropriate level of security in view of the risks involved in the processing and the nature of data to be protected. The measures are also aimed at preventing unnecessary collection and further processing of personal data.
- 8.10 The customer has the right to have an audit carried out at TruQu annually, after two weeks of prior notice. This audit only takes place after the Client has retrieved the audit reports present at TruQu, assessed them and makes reasonable arguments that justify an audit initiated by the responsible party. Such an audit is justified when the similar audit reports available at TruQu give no or insufficient information about the compliance with TruQu's obligations regarding the processing of personal data.
- 8.11 Customer authorizes TruQu to engage third parties (sub-processors) if necessary for the performance of the Connection Contract and with due observance of the legal obligations.
- 8.12 The Customer hereby authorizes TruQu to process personal data via third parties outside the European Union, provided that the legal conditions are met.
- 8.13 In case of discovery of a data breach, TruQu will inform the Customer about this as soon as possible, but no later than within 48 hours from the moment of discovery and provide the information that the Customer needs to report to the Dutch Data Protection Authority and possibly to those involved.
- 8.14 If TruQu has implemented appropriate technical and organisational measures to protect personal data against loss or against any form of unlawful processing and despite these measures a security breach as referred to in Article 8.9 occurs, TruQu is not liable for the damage that may result from this security breach. This does not apply if the damage is caused by intent or conscious recklessness on the part of TruQu or its management.
- 8.15 If TruQu has executed appropriate technical organizational measures to secure personal data against loss or against any form of it being unlawfully processed and in spite of these measures a violation of the security takes place as referred to in Article 8.10, TruQu is not liable for the damage that may occur from this security breach. This does not apply if the damage is caused by intent or deliberate recklessness on the part of TruQu or her management.
- 8.16 Upon termination of the Connection Contract, the processing by TruQu will cease and the personal data that are being processed by TruQu will be permanently removed a month after the end date. In case those involved in the Customer, request the return of personal data, TruQu can provide support. For this purpose, the request must be send per e-mail one month before the end date to [info@truqu.com](mailto:info@truqu.com)

## Article 9 Duration and Termination

- 9.1 In case of a Connection Agreement, the duration of the Agreement is stipulated therein. Unless agreed otherwise, after the initial period agreed in the Connection Agreement, the Agreement shall be automatically renewed by consecutive periods of one (1) year, unless one of the Parties terminates the Agreement towards the end of the current period with due observance of a notice period of two (2) months. Unless agreed otherwise, the Agreement cannot be terminated early by Client.

- 9.2 In addition to the other (legal) remedies available to TruQu, TruQu shall at all times and without giving reasons and without prior explanation, be entitled to (temporarily) restrict, suspend or deactivate the activities of Client in connection with the Service, to (temporarily) terminate and/or remove the Account, to send out a warning, to terminate the Services or to refuse to provide the Services to Client, in particular - but not limited to – if Client breaches these Terms and Conditions. For this TruQu shall never be liable for any damages or compensation whatsoever.
- 9.3 Each of the Parties shall be entitled to rescind the Agreement if the Other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which the Party in default has been given a reasonable time period to remedy the breach.
- 9.4 Each of the Parties shall be entitled to partly or fully terminate the Agreement in writing with immediate effect and without a notice of default if the Other Party has been granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the Other Party or if the Other Party's business is wound up or terminated for reasons other than a business reconstruction or merger.
- 9.5 TruQu shall be entitled to partly or fully terminate the Agreement with immediate effect and without a notice of default, without being liable to Client, in the event that the control over Client's organisation is changed or articles 5, 8 and/or 10 are breached by Client.
- 9.6 If, at the time of the rescission referred to in this Article 9, TruQu has already undertaken performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled. Amounts which have been invoiced before the rescission on behalf of TruQu in connection with what it has already properly performed or delivered under the Agreement shall continue to be owed in full and shall be immediately payable at the time of rescission.
- 9.7 If the Agreement is terminated for whatever reason, (i) TruQu shall reserve the right to cancel (further) access to the Platform, (ii) rights and licences granted to Client shall be cancelled automatically, and (iii) outstanding invoices shall be immediately payable.
- 9.8 All rights or obligations which, by their nature, are intended to continue to apply after termination of the Agreement, shall continue to apply after the termination of the Agreement.

## **Article 10 Intellectual property**

- 10.1 All Intellectual Property rights to the Platform and/or the (results of the) Services and all materials and information delivered to Client by TruQu or its licensors shall solely be held by TruQu or its licensors. Client shall only acquire the rights of use expressly granted in these Terms and Conditions. Nothing in the Agreement shall be taken to mean or interpreted as a transfer of Intellectual Property rights to Client by TruQu.
- 10.2 Under the conditions stipulated in the Agreement, TruQu provides to Client herewith a non-exclusive, non-transferrable, non-sub-licensable, revocable and limited licence to make use of the Platform for the duration stipulated in the Agreement.
- 10.3 Client is not permitted to (re)sell, publish, rent out, alienate or make available (access to) the Platform to third parties in a different manner or for a different purpose than stipulated in the Agreement.
- 10.4 Client is not permitted to adapt, reproduce, reverse engineer or decompile the Platform.
- 10.5 TruQu shall indemnify Client against any third-party cause of action based on the claim that the Platform infringes an intellectual property right of that third party, on the condition that Client shall immediately notify TruQu in writing about the existence and substance of the cause of action and let TruQu handle the matter completely, including with respect to agreeing to any settlement.  
For this purpose, Client shall herewith grant a power of attorney to TruQu, and undertake to provide the information and cooperation required to defend, if necessary in Client's name, against these claims.
- 10.6 This indemnification obligation of TruQu shall not be applicable if the alleged infringement relates to (i) materials made available to Client by TruQu for the use, adaptation, processing or incorporation, or (ii) changes Client has made or caused third parties to make to the Platform and/or the (results of the) Services or other materials, without prior written approval of TruQu.
- 10.7 If it has been established in court as an incontrovertible fact that the part of the Platform developed by TruQu itself infringes any intellectual property right of a third party or if, in TruQu's judgment, it is likely that such an infringement may occur, TruQu shall, if possible, make every effort to ensure that Client is able to continue to use the Platform or a functionally equivalent programme. Any other or more extensive liability or indemnification obligation on TruQu's part shall be completely excluded.
- 10.8 The Intellectual Property rights on the content of Client shall remain with Client. Client shall grant herewith a licence to TruQu for the use of the content of Client insofar as this is necessary for the provision of the Services.
- 10.9 Nothing in the Agreement shall restrict TruQu's right to use and publish acquired skills, knowledge and know-how under the performance of the Agreement.

## **Article 11 Confidential information**

- 11.1 Information provided or published by Party to Other Party of which the receiving Party may reasonably understand that it is confidential, shall be treated by the receiving Party strictly confidentially.

- 11.2 The obligations of confidentiality stipulated in this Article shall not apply if the receiving Party is able to demonstrate that the information is not confidential, because it was: (1) already known at the receiving Party at the time that it was provided by the disclosing Party, or (2) already publicly available at the time of the disclosure to the receiving Party. In addition, the confidentiality obligations shall not apply for information which: (1) becomes known as a result of an action by the providing Party, (2) is received legally by the receiving Party from a third party, without violating these confidentiality obligations, (3) is developed by the receiving Party, fully independently from the provision by the providing party; or (4) is made public with the approval of the providing Party.
- 11.3 With respect to confidential information, Parties shall undertake to adhere to at least the same duty of care and guarantees applicable with respect to their own confidential information. TruQu shall be entitled to disclose confidential information to third parties, such as technical sub-contractors, to the extent that this is deemed strictly necessary in order to perform the Agreement. TruQu guarantees that these third parties shall assume the same duty of care in respect of the confidentiality of the confidential information as set out in this article.

## **Article 12 Liability**

- 12.1 Unless agreed otherwise in the Connection Agreement, this provision sets out TruQu's full liability to Client for failing to perform this Agreement and/or any other liability arising from or relating to the Services.
- 12.2 TruQu's liability as a result of an imputable shortcoming in the performance of the Agreement or for any other reason, shall be limited to compensating direct damages up to a maximum of the amount which Client has effectively paid to TruQu in the last twelve (12) months.
- 12.3 Liability for damages other than stipulated in article 12.2, on any account whatsoever, including but not limited to consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, shall be explicitly excluded. The limitations mentioned in articles 12.1 up to and including 12.3 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by TruQu or its managers.
- 12.4 Unless performance is rendered permanently impossible, TruQu's liability because of an imputable failure to perform the Agreement shall in all cases only arise if Client immediately and properly provides TruQu with a written notice of default, as referred to in article 9.4. Any claim for damages against TruQu shall be extinguished by the mere lapse of twelve (12) months after the claim has arisen.

## **Article 13 Force Majeure**

- 13.1 Parties shall not be liable for any delay or shortcoming in the performance of the Agreement as a result of circumstances beyond the reasonable control of that Party, including but not limited to force majeure, terrorism, earthquakes, government interventions, labour conflicts, failing aid programmes, deficit in reserves, riots, war, fire, epidemics or delays by suppliers.

## **Article 14 Applicable law**

- 14.1 Unless Agreed otherwise in the Connection Agreement, these General Terms and Conditions and the Agreement are governed by Dutch law.
- 14.2 All disputes and claims arising from or relating to these Terms and Conditions and/or the Agreement, or any breach thereof, which are not settled amicably between Parties, shall be submitted solely to the competent court of the location of TruQu.

## **Article 15 Other provisions**

- 15.1 Client shall not be authorised to transfer the Agreement and/or the rights and obligations ensuing from the Agreement, including the licence granted, to a third party without prior written approval by TruQu.
- 15.2 TruQu shall have the right to transfer (part of) the Agreement and/or any rights ensuing therefrom to an entity affiliated with TruQu.
- 15.3 If any of the provisions of these Terms and Conditions or the Connection Agreement prove wholly or partially null and void and/or invalid and/or unenforceable, this shall not affect the validity of any of the other provisions. Parties shall in this event consult each other as soon as possible to agree on a new provision which approaches the nature and scope of the provision deemed non-applicable as closely as possible.
- 15.4 Additions to and/or deviations from these Terms and Conditions shall only be valid and applicable if they have been agreed in writing between Parties.