

Delivery Terms and Conditions of Createq B.V.

| | |
|---------------------------------------------------------------|----|
| Article 1 – Definitions | 3 |
| Article 2 – Applicability | 3 |
| Article 3 – Offers and Quotations | 3 |
| Article 4 – Acceptance..... | 4 |
| Article 5 – Prices | 4 |
| Article 6 – Payments and Payment Terms | 5 |
| Article 7 – Consequences of Late Payment..... | 5 |
| Article 8 – Right of Reclamation | 5 |
| Article 9 – Right of Retention..... | 6 |
| Article 11 – Set-Off | 6 |
| Article 12 – Retention of Title | 6 |
| Article 13 – Delivery..... | 6 |
| Article 15 – Actual Delivery | 7 |
| Article 17 – Packaging and Shipping | 7 |
| Article 18 – Insurance..... | 7 |
| Article 19 – Storage | 8 |
| Article 20 – Assembly and/or Installation..... | 8 |
| Article 21 – Withdrawal of the Assignment..... | 8 |
| Article 22 – Obligation to Complain..... | 8 |
| Article 23A – Third-Party Dependencies and Compatibility..... | 8 |
| Article 23 – Warranty | 9 |
| Article 24 – Execution of the Agreement | 10 |
| Article 25 – Information Provided by the Client | 11 |
| Article 26 – Duration of the Agreement (SLA) | 11 |
| Article 27 – Termination of a Fixed-Term Service | 11 |
| Article 28 – Intellectual Property | 11 |
| Article 29 – Confidentiality..... | 11 |
| Article 30 – Penalty Clause | 12 |
| Article 31 – Indemnification | 12 |
| Article 32 – Complaints | 12 |
| Article 33 – Notice of Default | 13 |
| Article 34 – Client Liability | 13 |
| Article 35 – Liability | 13 |



| | |
|----------------------------------------------------------------|----|
| Article 36 – Limitation Period | 13 |
| Article 37 – Termination | 13 |
| Article 38 – Force Majeure | 14 |
| Article 40 – Changes to the General Terms and Conditions | 14 |
| Article 41 – Transfer of Rights | 15 |
| Article 42 – Severability | 15 |
| Article 43 – Applicable Law and Competent Court..... | 15 |

Delivery Terms and Conditions of Createq B.V.

Article 1 – Definitions

- 1. Createq B.V.**
The company, based in Enkhuizen and registered with the Chamber of Commerce under number 66469678.
 - 2. Client**
The business party with whom an agreement has been concluded.
 - 3. Parties**
Createq B.V. and the Client jointly.
 - 4. Warranty**
The standard carry-in product warranty provided by Createq B.V. on the hardware products it supplies, as described in Article 23.
 - 5. Service Level Agreement (SLA)**
A separate written agreement between Createq B.V. and the Customer in which additional service and support levels, response times, availability, and on-site services are laid down.
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Article 2 – Applicability

1. These terms and conditions apply to all quotations, offers, work, orders, agreements, and deliveries, as well as all services or products provided by or on behalf of Createq B.V.
 2. Deviations from these terms are only valid if agreed upon in writing.
 3. General terms and conditions of the Client or third parties are expressly excluded.
 4. For ongoing maintenance and support services (including but not limited to monitoring, (remote) support, periodic maintenance and on-site interventions), in addition to these delivery terms, only the provisions of a separate Service Level Agreement (SLA) concluded between the Parties shall apply. In the event of any conflict between these delivery terms and an applicable SLA, the provisions of the relevant SLA shall prevail.
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Article 3 – Offers and Quotations

1. All offers and quotations issued by Createq B.V. are non-binding, unless expressly stated otherwise.
2. All prices stated in quotations are denominated in euros (EUR) and are based on the cost prices and exchange rates applicable at the time the quotation is issued.
3. As Createq B.V. conducts a substantial portion of its procurement in United States dollars (USD), it reserves the right to adjust the quoted price if the USD to EUR exchange

rate increases by more than **5%** compared to the rate applicable at the time the quotation was issued.

4. If such an exchange rate change occurs prior to the conclusion of the agreement, Createq B.V. shall inform the Client in writing and communicate the adjusted price accordingly.
 5. An offer or quotation is valid for a maximum period of 30 days, unless stated otherwise.
 6. If the Client does not accept the offer or quotation within the applicable validity period, the offer or quotation shall automatically lapse.
 7. Offers and quotations do not apply to repeat or subsequent orders unless expressly agreed in writing.
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Article 4 – Acceptance

1. Upon acceptance of a non-binding offer or quotation, Createq B.V. reserves the right to revoke it within 3 days of receipt of the acceptance, without the Client deriving any rights from it.
 2. Oral acceptance by the Client is only binding after written or electronic confirmation by Createq B.V. and acceptance by the Client.
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Article 5 – Prices

1. All prices are denominated in euros (EUR), exclusive of VAT and any additional costs, including but not limited to administration, transportation, insurance, import duties, and installation costs, unless agreed otherwise in writing.
2. Createq B.V. reserves the right to amend its price list and/or rates at any time. Amended prices shall apply exclusively to new agreements, unless agreed otherwise in writing.
3. Quotations and agreed prices are based on the cost prices of essential materials and components applicable at the time of issuance.
4. If, before or after the conclusion of the agreement, exceptional and unforeseeable cost-increasing circumstances arise beyond the reasonable control of Createq B.V., including but not limited to price increases or shortages of semiconductors, chips, memory components, printed circuit boards, or other essential electronic components, and such circumstances result in a demonstrable cost increase of more than **10%** of the relevant essential components, Createq B.V. shall be entitled to adjust the agreed price proportionally.
5. In the event of a price adjustment as referred to in this article, Createq B.V. shall notify the Client in writing. The parties shall consult in good faith regarding any necessary adjustment of price, specifications, or planning.

Article 6 – Payments and Payment Terms

1. Payment upon assignment: Unless otherwise agreed in writing, 100% of the agreed amount must be paid upon assignment.
 2. If a different payment term or structure has been agreed, it must be explicitly recorded in writing.
 3. Payment terms are considered strict deadlines. If payment is not made on time, the Client is automatically in default without the need for a formal notice.
 4. If payment is not received on time, the Client is obliged to pay statutory interest, plus a penalty interest of 1.5% per month on the outstanding amount, calculated from the day after the due date.
 5. Createq B.V. reserves the right to suspend performance of the agreement and/or request a security deposit for the total amount of services or products provided.
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Article 7 – Consequences of Late Payment

1. If the Client fails to pay within the agreed term, statutory interest will be charged monthly from the date of default, with any part of a month counted as a full month.
 2. In addition to the statutory interest, the Client owes a penalty of 1.5% of the outstanding amount per month (pro rata) for the delay.
 3. In the event of default, extrajudicial collection costs and any compensation for damages are also payable by the Client.
 4. Collection costs are calculated in accordance with the Dutch decree on reimbursement of extrajudicial collection costs.
 5. If the Client fails to pay on time, Createq B.V. reserves the right to suspend its obligations until full payment is received.
 6. In the event of liquidation, bankruptcy, seizure, or suspension of payment of the Client, all claims become immediately due and payable.
 7. If the Client refuses to cooperate with the performance of the agreement, they remain obligated to pay the agreed amounts.
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Article 8 – Right of Reclamation

1. If the Client is in default, Createq B.V. may exercise its right of reclamation on the unpaid delivered products.
2. This right is exercised through written or electronic notice to the Client.
3. Upon notification of the exercised right of reclamation, the Client must immediately return the relevant products, unless otherwise agreed.

4. The costs for returning or collecting the products are borne by the Client.
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Article 9 – Right of Retention

1. The Client waives any right of retention, unless sufficient security has been provided for the relevant costs.
 2. The right of retention also applies based on earlier agreements under which the Client still owes a sum.
 3. Createq B.V. is not liable for any damage the Client may suffer due to the exercise of the right of retention.
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Article 11 – Set-Off

1. The Client waives the right to set off a debt to Createq B.V. against a claim against Createq B.V.
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Article 12 – Retention of Title

1. Createq B.V. retains ownership of all delivered products until the Client has fully paid all outstanding invoices, including any claims due to non-fulfillment.
 2. Until that time, Createq B.V. reserves the right to reclaim the delivered products.
 3. Before ownership is transferred, the Client may not pledge, sell, transfer, or otherwise encumber the products.
 4. Exercising the retention of title does not affect Createq B.V.'s right to claim damages, lost profits, and interest.
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Article 13 – Delivery

1. Delivery takes place while stocks last.
2. Delivery occurs at the agreed address unless otherwise arranged.
3. Online orders are delivered to the address provided by the Client.
4. If the Client fails to pay the agreed amounts in full or on time, Createq B.V. reserves the right to suspend execution.
5. Late payment does not automatically cancel the delivery unless agreed in writing.
6. The delivery period starts once the signed quotation has been received in writing or electronically (by email or portal) by Createq B.V.
7. In the case of product delivery, exceeding the agreed period does not entitle the Client to compensation or termination of the agreement, unless agreed otherwise in writing.

8. For custom work, delivery times are indicative due to the complexity of the assignment. Any cancellation of custom work must take place in consultation. All costs incurred up to the time of cancellation are fully at the Client's expense.
9. If specific electronic components or materials are not available or not available in a timely manner due to market shortages, supply chain disruptions, or discontinuation of production, Createq B.V. shall be entitled to apply technically equivalent or functionally comparable alternatives, provided that the agreed functionality and performance are reasonably maintained.

Such modification shall not entitle the Client to terminate the agreement or claim damages, provided that the essential characteristics of the product are not materially affected.
10. If delays in delivery are caused by shortages, delayed availability, or supply issues relating to electronic components or materials, agreed delivery times shall be deemed indicative only. In such cases, the Client shall not be entitled to claim damages, terminate the agreement, or suspend its obligations, unless otherwise agreed in writing.

Article 15 – Actual Delivery

1. The Client must ensure that actual delivery of the ordered products can take place on time.
2. Transport costs are borne by the Client unless otherwise agreed in writing.

Article 17 – Packaging and Shipping

1. If the packaging of a delivered product is opened or damaged, the Client must have this noted by the carrier before accepting the delivery. If not, the Client cannot later claim compensation.
2. If the Client arranges transport independently, any visible damage to products or packaging must be reported to Createq B.V. in writing prior to transport. If not, Createq B.V. cannot be held liable for any damage.

Article 18 – Insurance

1. The Client must adequately insure and keep insured the following against fire, explosion, water damage, and theft:
 - Products required for execution of the agreement,
 - Items located at the Client's premises,
 - Products delivered under retention of title.
2. Upon request, the Client must provide Createq B.V. with access to the insurance policy.

Article 19 – Storage

1. Any additional costs, including but not limited to storage and insurance costs, due to premature or delayed acceptance, are fully borne by the Client.
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Article 20 – Assembly and/or Installation

1. Deliveries by Createq B.V. are by default made without assembly and/or installation. Assembly and/or installation work will only be carried out if the Parties have expressly agreed this in writing, and in such case will be quoted and invoiced separately.
 2. Createq B.V. will use its best efforts to carry out the assembly and/or installation work as carefully as possible, in accordance with the requirements of good workmanship. Liability is limited to cases of intent or gross negligence.
 3. Any aftercare, breakdown service, periodic maintenance and other on-site service activities do not form part of the assembly and/or installation work and are only provided if and insofar as the Parties have entered into a separate SLA in respect thereof.
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Article 21 – Withdrawal of the Assignment

1. The Client is always entitled to terminate the assignment to Createq B.V.
 2. If the assignment is withdrawn, the Client must pay the agreed fee and accept any products specifically produced, developed, or ordered for the Client, as well as all internal and external costs incurred by Createq B.V.
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Article 22 – Obligation to Complain

1. The Client must immediately report any complaints about the product and services performed to Createq B.V. in writing. The complaint must include a detailed description of the shortcoming so that Createq B.V. can respond adequately.
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Article 23A – Third-Party Dependencies and Compatibility

1. The products and solutions supplied by Createq B.V. may depend on hardware, firmware, software, connectivity standards, operating systems, security protocols, or other technical specifications provided by third-party manufacturers.
2. Createq B.V. has no control over and accepts no responsibility for modifications, updates, discontinuations, or changes implemented by such third parties, whether before or after delivery.
3. Continued compatibility, interoperability, or functionality in combination with third-party products, systems, or standards is not guaranteed.

4. Any adjustments, reconfiguration, reprogramming, redevelopment, firmware updates, hardware modifications, or technical adaptations required as a result of third-party changes shall be considered additional work and shall be charged separately, unless explicitly included in a written SLA.
 5. The Client acknowledges that technological standards and manufacturer specifications may evolve over time and accepts that such developments may require technical adjustments outside the scope of the original agreement.
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Article 23 – Warranty

1. Createq B.V. provides a standard carry-in product warranty on the hardware products it supplies for a period of 12 months after delivery, unless a different term is stated in the offer or agreement.
2. The standard carry-in warranty means that the Customer is responsible for dismantling (or having dismantled), packaging and, at its own expense, delivering or returning the defective product to a location designated by Createq B.V. After repair or replacement, Createq B.V. will arrange shipment back to the Customer, unless agreed otherwise in writing.
3. The warranty covers only the repair or replacement of the defective product. Costs for on-site (de)installation, travel and accommodation expenses, on-site diagnostics and other on-site activities are not covered by the standard carry-in warranty and will be invoiced separately to the Customer, unless the Parties have entered into an SLA that provides otherwise.
4. The standard warranty does not include specific service levels, such as maximum response times, repair times, availability percentages or the structural availability of spare parts. Such arrangements regarding service and support levels are laid down exclusively in a separate SLA.
5. On-site interventions, preventive maintenance, availability, remote monitoring and other additional services are provided only on the basis of a separately agreed SLA and against the fees specified therein.
6. If the agreement is of a service-oriented nature, the warranty constitutes a best-efforts obligation and not an obligation to achieve a specific result.
7. The warranty on products applies only to defects caused by faulty manufacturing, design or materials.
8. The warranty does not apply in cases of:
 - Normal wear and tear,
 - Damage from accidents,

- Damage due to modifications to the product,
 - Damage due to negligence or improper use by the Client,
 - Cause of the defect cannot be adequately determined.
9. The risk of loss, damage, or theft of products passes to the Client as soon as the products leave the premises of Createq B.V., in accordance with the Ex Works (EXW) delivery conditions. This means risk is transferred upon delivery to the first carrier for transport to the Client. Createq B.V. is not liable for damage or loss of the products after delivery to the carrier.
10. The warranty does not cover compatibility issues, loss of functionality, or integration problems arising from modifications, updates, or changes made by third-party manufacturers, including but not limited to hardware specifications, firmware updates, software updates, connectivity standards, operating systems, or security protocols.

Article 24 – Execution of the Agreement

1. Createq B.V. will execute the agreement to the best of its knowledge and ability and in accordance with good craftsmanship.
2. Createq B.V. reserves the right to subcontract all or part of the agreed services to third parties.
3. Execution begins only after written confirmation and receipt of full payment, unless agreed otherwise in writing.
4. The Client must ensure that the execution of the agreement can start on time and that all required information is provided in a timely manner throughout the project.
5. If the Client does not cooperate in time, any additional costs incurred will be charged to the Client.
6. If work is performed on-site, the Client must ensure that the workspace is adequately prepared so that work can begin immediately at the scheduled time. Any waiting time due to unprepared conditions will be considered additional work and invoiced separately at the agreed hourly rate.
7. Acceptance and Validation: If compatibility tests, pilot installations, demonstrations, or validation procedures are carried out and approved by or on behalf of the Client, such approval shall constitute full and unconditional acceptance of the functional integration at the time of delivery.

Subsequent changes in third-party hardware, firmware, software, standards, configurations, or operating environments shall not invalidate such acceptance and shall not constitute a defect in the delivered products.

Createq B.V. performs its services on the basis of a best-efforts obligation and does not guarantee uninterrupted, error-free, or permanently compatible operation in environments influenced by third-party systems.

Article 25 – Information Provided by the Client

1. The Client must make all information, data, and documents necessary for the execution of the agreement available to Createq B.V. on time and in the required form.
 2. The Client guarantees the accuracy and completeness of the provided information, even if it originates from third parties.
 3. Upon request, the Client shall return the relevant documents.
 4. If the Client fails to provide the required information in time or in full, any resulting additional costs and delays are borne by the Client.
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Article 26 – Duration of the Agreement (SLA)

Ongoing maintenance and support services, in addition to the delivery of products and the standard carry-in warranty, are provided solely on the basis of a separate Service Level Agreement (SLA). Depending on the nature of the services, the term of this agreement is specified in the relevant SLA. The specific conditions are as follows:

1. **Agreement for an indefinite period:** Can be terminated by either party with 2 months' notice, unless otherwise agreed.
 2. **Agreement for a fixed term:** Can only be terminated in accordance with the terms specified in the SLA.
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Article 27 – Termination of a Fixed-Term Service

1. If the agreement is for a fixed-term service, early termination is only possible under the terms specified in the agreement.
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Article 28 – Intellectual Property

1. Createq B.V. retains all intellectual property rights to all designs, drawings, documents, databases, information, quotations, images, sketches, models, and mock-ups, unless otherwise agreed in writing.
 2. The Client may not use, disclose, or make these rights available to third parties without prior written consent from Createq B.V.
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Article 29 – Confidentiality

1. The Client must keep all information received from Createq B.V. confidential.
2. This also applies to all other information that the Client can reasonably suspect is confidential or may cause damage if disclosed.

3. The Client must take all necessary measures to ensure confidentiality.
 4. The obligation of confidentiality does not apply to information that:
 - Was already public before receipt,
 - Becomes public without violating this obligation,
 - Must be disclosed due to legal obligations.
 5. This obligation remains in effect during the term of the agreement and for 5 years after its termination.
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Article 30 – Penalty Clause

1. If the Client breaches the provisions regarding confidentiality or intellectual property, they shall owe an immediately payable penalty of €25,000 per violation.
 2. The penalty must be paid without notice of default or legal proceedings.
 3. In addition to the penalties, Createq B.V. reserves the right to claim compensation for damages.
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Article 31 – Indemnification

1. The Client indemnifies Createq B.V. against all third-party claims related to the delivered products and services.
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Article 32 – Complaints

1. The Client must inspect delivered products or services as soon as possible for any deficiencies.
 2. If a product or service does not meet what the Client could reasonably expect, the Client must notify Createq B.V. in writing within one month of discovery.
 3. The complaint must contain a detailed description of the deficiency so that Createq B.V. can respond adequately.
 4. The Client must demonstrate that the complaint concerns custom-made services or products as outlined in the briefing and project document describing the specific product development or service. If the complaint concerns an SKU, a written description of the defect is required and will only be accepted if the complaint pertains to the product as originally delivered, without alterations made by the Client.
 5. If a complaint relates to ongoing work, the Client cannot demand that work already performed be undone.
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Article 33 – Notice of Default

1. The Client must notify Createq B.V. in writing of any notice of default.
 2. The Client is responsible for timely dispatch to ensure receipt on time.
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Article 34 – Client Liability

1. If an agreement is entered into with multiple Clients, all involved parties are jointly and severally liable for compliance with the obligations.
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Article 35 – Liability

1. Createq B.V. is only liable for damage suffered by the Client if it is caused by intent or deliberate recklessness.
 2. If Createq B.V. is liable, this only applies to direct damage related to the execution of the agreement.
 3. Createq B.V. is not liable for indirect damage, such as consequential loss, lost profit, or damage to third parties.
 4. If Createq B.V. is liable, liability is limited to the amount paid out by a (professional) liability insurance. If no insurance is in place or no payout is made, liability is limited to (the part of) the invoice amount to which the liability relates.
 5. All images, photos, colors, drawings, and descriptions on the website or in a catalog are indicative and do not constitute grounds for compensation, dissolution, or suspension.
 6. Third-Party Exclusion: Createq B.V. shall not be liable for any damage, loss of functionality, incompatibility, business interruption, loss of revenue, or other consequences resulting from changes, updates, failures, or discontinuations of third-party hardware, firmware, software, connectivity standards, operating systems, or external systems.
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Article 36 – Limitation Period

1. Any right of the Client to claim compensation expires 12 months after the event from which the liability directly or indirectly arises, notwithstanding the provisions of Article 6:89 of the Dutch Civil Code.
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Article 37 – Termination

1. The Client may terminate the agreement if Createq B.V. fails to fulfill its obligations.
2. If the shortcoming is attributable to Createq B.V. and can be remedied, termination may only occur after Createq B.V. is in default.

3. Createq B.V. may terminate the agreement if the Client does not fulfill their obligations fully or on time, or if there are indications that the Client will not fulfill their obligations in the future.
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Article 38 – Force Majeure

1. In addition to Article 6:75 of the Dutch Civil Code, Createq B.V. is not liable if failures are due to force majeure.
 2. Force majeure includes, but is not limited to:
 - Emergencies such as civil war or natural disasters,
 - Failure or force majeure of suppliers, couriers, or third parties,
 - Power, electricity, internet, computer or telecom failures,
 - Computer viruses,
 - Strikes,
 - Government measures,
 - Transportation issues,
 - Severe weather conditions,
 - Work stoppages.
 3. If a force majeure situation arises that prevents Createq B.V. from fulfilling its obligations, those obligations will be suspended until the situation is resolved.
 4. If the force majeure situation lasts for at least 30 calendar days, both the Client and Createq B.V. have the right to partially or fully terminate the agreement in writing.
 5. In a force majeure situation, Createq B.V. is not obliged to pay any compensation to the Client.
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Article 40 – Changes to the General Terms and Conditions

1. Createq B.V. reserves the right to amend the general terms and conditions.
 2. Minor changes may be made at any time without prior notice.
 3. Substantial changes will be discussed with the Client in advance if possible.
 4. The amended terms take effect upon being published on the website, unless otherwise agreed.
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Article 41 – Transfer of Rights

1. The Client is not permitted to transfer rights from the agreement to third parties without prior written consent from Createq B.V.
 2. This provision has legal effect under property law, in accordance with Article 3:83 paragraph 2 of the Dutch Civil Code.
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Article 42 – Severability

1. If one or more provisions of these general terms and conditions are null and void or annulled, the validity of the remaining provisions shall remain unaffected.
 2. A void or annulled provision will be replaced by a provision that best aligns with the original intent of Createq B.V.
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Article 43 – Applicable Law and Competent Court

1. These general terms and conditions are governed by Dutch law.
 2. All disputes between the Client and Createq B.V. shall be submitted to the competent court in the district where Createq B.V. has its registered office, unless mandatory law dictates otherwise.
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