

Transsmart BV

Terms and conditions | December 2020

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1. General

- 1.1. These general terms of conditions of sale, delivery and payment ('the terms and conditions') apply to and form an essential element of all quotations issued by Transsmart, as well as any offers made by Transsmart and all agreements Transsmart enters into with its Customers.
- 1.2. In addition to these terms and conditions, additional conditions may apply to certain services and/or products Transsmart performs and/or delivers if expressly indicated in writing. In the event of discrepancies between the additional conditions and these terms and conditions, the provisions of the additional conditions will prevail over these terms and conditions, unless otherwise provided in writing. Specific provisions in the Agreement that expressly derogate from applicable general terms and conditions, prevail over those general terms and conditions. Unless expressly accepted by Transsmart in writing, any general terms and conditions of The Customer or any other party are expressly rejected.
- 1.3. Once these terms and conditions are applied to a quotation, offer and/or agreement, they shall also be applicable without further explanation of applicability to all new or subsequent quotations, offers and/or agreements between the parties, unless expressly agreed otherwise in writing.
- 1.4. If any provision of these terms and conditions is void, declared void or declared inapplicable in any other way, the remaining provisions of these terms and conditions shall remain in full force and effect and, to replace the provision that is void, declared void or declared inapplicable, the Parties shall agree on an alternative provision that as far as possible complies with the object and purpose of the provision that is void, declared void or declared inapplicable.
- 1.5. Transsmart reserves the right to unilaterally modify or supplement the terms and conditions.
- 1.6. Transsmart is authorized to engage third parties during the performance of agreements with The Customer. These terms and conditions shall remain applicable unconditionally.
- 1.7. All communication between The Customer and Transsmart may be conducted electronically, except to the extent that these terms and conditions and/or the Agreement and/or the law determine otherwise. The version of the relevant communication stored by Transsmart applies as conclusive evidence thereof, unless The Customer can prove otherwise.
- 1.8. Definitions:
 - Transsmart** – the private limited company Transsmart B.V., Ellen Pankhurststraat 1C, 5032 MD Tilburg (The Netherlands), Dutch Chamber of Commerce nr. 62193856, or any of its subsidiaries.
 - The Customer** - a legally competent individual or corporate entity that concludes or intends to conclude an Agreement with Transsmart.
 - Parties** – The Customer and Transsmart.
 - Agreement** - the separate agreement between Transsmart and The Customer for the provision by Transsmart of Services and/or Licenses and/or Subscriptions, together with all written amendments and/or additions thereto.
 - Services** - the services that Transsmart provides and/or will provide under the Agreement, including, but not limited to support and advisory and consulting services for setting up and configuring the Subscription as granted under the Agreement.
 - Subscription (License)** – a non-exclusive and non-transferable right (license) to the use, worldwide within the scope of The Customer's normal internal business operations, on payment of a Subscription Fee, of a software application provided as SaaS (Software-as-a-Service), meaning a software distribution method in which Transsmart as a service provider gives The Customer access through the internet to applications, developed and owned by Transsmart.
 - Subscription Fee** - a fee for the use of the SaaS (Software-as-a-Service) as defined under "Subscription" above. Unless expressly agreed otherwise between the Parties the Subscription Fee shall be in accordance with Transsmart's price list applicable at the time. Statutory value added tax and other general taxes or fees and any delivery charge will be added to the Subscription Fee.
 - Chargeable Period** – the agreed subscription period after subsequent expiration whereof a Subscription Fee will be charged to The Customer.

2. Quotation, Offer and Agreement

- 2.1. All quotations and offers issued or made by Transsmart are without obligation, unless otherwise agreed in writing, and are based on information supplied by or on behalf of The Customer. The Customer shall ensure that all information deemed necessary by Transsmart, or which The Customer should in all reasonableness understand to be necessary for up the quotation, are submitted to Transsmart in good time. The Customer is also responsible for the accuracy and completeness of the information submitted.
- 2.2. Quotations and offers are valid for four weeks, unless a different period is stated in the quotation or offer.
- 2.3. The Customer is obliged, if the performance of the Service and/or the Subscription is to take place outside the Netherlands, to inform Transsmart in writing of the rules of a mandatory nature in the country where the Agreement is to be performed, and to supply this information in any case before Transsmart issues its quotation, failing which, and in the event of non-compliance with the mandatory rules referred to, Transsmart does not and will not accept any liability whatsoever, regardless of the regulations of the country concerned. In such event Transsmart is allowed to terminate the Agreement immediately and unconditionally without Transsmart having any remaining legal obligations towards and without prior notice to The Customer. In case Transsmart already started performance under the Agreement i.e. performing Services and/or granting the Subscription, Transsmart is entitled to charge the costs made by Transsmart related thereto.
- 2.4. An Agreement enters into effect after Transsmart receives by return the Agreement signed by The Customer. This signed Agreement supplements the quotation and constitutes an inseparable part of it. To the extent that there are discrepancies between the text of the Agreement and the text of the quotation, the text of the Agreement shall prevail.
- 2.5. The prices quoted by Transsmart are always in Euros (€), unless otherwise expressly agreed, and always exclude sales tax (VAT) and other similar duties.
- 2.6. Obvious errors and misprints in Transsmart's quotations, offers and agreements are not binding on Transsmart; Transsmart is always entitled to revise these issues.
- 2.7. Transsmart shall be entitled, but not obliged, to adjust the Subscription Fee during the term of the Agreement. Transsmart shall inform the Customer of any such adjustment thirty days at the latest before the change coming into force. If, within 14 days of such information being issued, the Customer informs Transsmart in writing of its disapproval of the adjustment, Parties will start negotiating in good faith about further continuation of the Agreement and the provisions thereof. If the Customer does not provide Transsmart with a written notification of its disapproval of the adjustment within the aforementioned time limit, the Customer shall be considered to have accepted the new Subscription Fee.

3. Changes to the quotation or order

- 3.1. If The Customer wishes to change the request for quotation Transsmart based its original quotation/offer on, The Customer must make Transsmart aware of these changes promptly and in writing using clear language and/or descriptions. After written consent is provided by Transsmart, these changes shall become part of the quotation/offer.
- 3.2. If, after the quotation has been sent by Transsmart, additional essential information is obtained by Transsmart from The Customer, and/or unforeseen circumstances arise before the conclusion of the Agreement, the original quotation/offer shall expire immediately and Transsmart shall send a new quotation to The Customer.
- 3.3. If, after the Agreement has been concluded, additional information, essential for the performance under the Agreement and/or a request for changes is obtained by Transsmart from The Customer, then Transsmart shall be entitled to charge any extra costs that must be made as a result of this to The Customer. In case of unforeseen circumstances after parties have come to conclude an Agreement, Parties shall enter into reasonable discussions to come to conclusion of a further Agreement with due regards for the aforementioned unforeseen circumstances.

- 3.4. Implementation of oral changes to an issued order is entirely at the risk and expense of The Customer.
- 3.5. Changes to an order already issued may lead to a delay in the performance of the Agreement i.e. the Service and/or the Subscription granted for which Transsmart is not liable on any ground whatsoever.

4. Performance of the Agreement and processing of personal data

- 4.1. Transsmart shall execute the Agreement with the due care that can reasonably be expected of a good contractor. The content of the Agreement, as well as the arrangements for performing the Agreement, are further specified in the quotation and the Agreement.
- 4.2. The Customer shall ensure that all information deemed necessary by Transsmart, or which The Customer should in all reasonableness understand to be necessary or relevant for the performance of the Agreement, shall be submitted to Transsmart in good time. The Customer is responsible for the accuracy and completeness of the information submitted. Transsmart is under no circumstances liable for damages resulting from incorrect or incomplete information provided by The Customer.
- 4.3. Unless expressly agreed otherwise in the Agreement, all (delivery) times, time schedules and/or periods for performance by Transsmart specified in the Agreement or a variation thereof or otherwise agreed between the Parties, will merely be an estimate and will not be binding on Transsmart.
- 4.4. Transsmart reserves the right to use personal data that The Customer submits in connection with the use of the Service and/or the Subscription and which is necessary for Transsmart to process in order for Transsmart to be able to fulfil the Agreement, fulfil its legal obligations, or which is in the legitimate interests of The Customer or Transsmart in being able to provide or make use of the Service and/or Subscription on reasonable commercial terms and conditions. The personal data may be used to the same extent as other customer information. However, the personal data will always be handled in accordance with the applicable legislation (e.g. GDPR, the European General Data Protection Regulation), good practice and with respect to personal privacy. Transsmart's processing of personal data on behalf of The Customer is set forth in the Transsmart Data Processing Agreement (<https://www.transsmart.com/en/processing-contract>). In the event of any conflict, discrepancy, error or omission the Data Processing Agreement shall take precedence over the Agreement.

5. Duration of the Agreement

- 5.1. The agreement is concluded for an indefinite period of time. The Customer and Transsmart have a mutual right to cancel the Agreement at one month notice, unless otherwise agreed in writing. Cancellation shall be in writing. Any written cancellation by The Customer must be received by Transsmart at least one month before the start of the subsequent Chargeable Period. If the cancellation is received by Transsmart later than that date, Transsmart will be entitled to charge The Customer for a further subsequent Chargeable Period.

6. Suspension and termination

- 6.1. Transsmart may temporarily suspend its performance in whole or in part if The Customer has failed to fulfil one or more of its obligations or has ceased to fulfil one or more of its obligations, including payment of any amount due, and/or if The Customer is in default in some other way, without any prior announcement or notice of default being necessary.

- 6.2. Transsmart will be entitled to terminate the Agreement with immediate effect, without recourse to the courts or arbitrators and without being obliged to pay any compensation to The Customer, in each of the following circumstances: a) in the cases and circumstances referred to in paragraph 6.1, after The Customer in default has been given notice to remedy the default and 14 (fourteen) working days have passed without the default having been remedied (and therefore without the notice to remedy/notice of default having been complied with); b) if the (majority) control of the business of The Customer is directly or indirectly transferred to a third party; c) if The Customer is declared bankrupt, applies for or obtains (provisional) court protection from creditors (moratorium) or otherwise loses the unfettered control of its business or assets, without any prior notice being necessary.
- 6.3. In all the cases mentioned in this article, Transsmart's claims against The Customer and/or the claims that Transsmart shall obtain against The Customer shall become immediately payable without any prior notice.

7. Payments

- 7.1. Unless other payment terms have been expressly agreed in writing, The Customer must settle an invoice in full within 14 days of the invoice date. Any objections against the amount of the invoices do not suspend the payment obligation of The Customer.
- 7.2. Subscription Fees will be invoiced in advance before the Chargeable Period commences. The Chargeable Period is at least a period of 12 months.
- 7.3. In order to let The Customer grow without interruptions in its business, Transsmart automatically upgrades the Customer's Subscription (license) to the next higher applicable Subscription level when The Customer exceeds the number of units included in its current Subscription (e.g., users, carriers, parcels, etc.). For the next subscription this is the new Subscription level. Any difference between starting Subscription Fees and onboarding cost of the previous and the upgraded Subscription must be paid by The Customer.
- 7.4. In case of underconsumption within the Subscription in the applicable subscription period The Customer has no right to refunds and no credit note will be generated.
- 7.5. It is the Customer's own responsibility to downgrade the subscription to a lower subscription level in the case that the volume is lower than the valid subscription. This has to be done in writing by Customer at one month written notice before expiration of the Chargeable Period.
- 7.6. The Customer is expressly not allowed to set off outstanding invoices against any claim whatsoever vis-à-vis Transsmart, nor is The Customer entitled to impose an attachment against itself to Transsmart's detriment.
- 7.7. If The Customer has not paid the invoice within the specified period, The Customer shall be deemed to be in legal default, and, notwithstanding Article 6 of these conditions, Transsmart shall be entitled, without any summons or notice of default being required, to charge The Customer interest of 1.5% per month from the date on which the invoice was due, which shall continue until the invoice is settled in full, whereby a part of a month shall be calculated as a whole month, and without prejudice to any other rights to which Transsmart is entitled to.
- 7.8. Payments made by The Customer shall be processed in accordance with Article 6:44 of the Dutch Civil Code, therefore payments will firstly be used to settle any costs, secondly to settle any forfeited interest and finally to reduce the principal amount owed.
- 7.9. The Customer owes Transsmart all judicial and extrajudicial costs and collection costs made by Transsmart or that Transsmart have to make in connection with seeking compliance, termination, rescission or compensation for damages in respect of the Agreement, whether in a court of law or otherwise, or to defend itself if called to account by The Customer.
- 7.10. In the event The Customer fails to comply with any obligation under the Agreement, including but not limited to late payment, Transsmart will be authorized to suspend the Service and/or Subscription, without prejudice to Transsmart's right to compensation of loss or damage, lost profit, right to payment for the Subscription, or interest. The Customer is not entitled to any compensation of loss or damage that may arise from this.

- 7.11. Transsmart is not liable to repay any fees to The Customer upon termination of the Agreement. This also applies to any unutilized part of the Subscription.
- 7.12. Transsmart is entitled to charge an invoicing fee of up to 6 (six) EUR per invoice.

8. Guarantees and advances

- 8.1. Transsmart is, before proceeding to perform the confirmed order or continuing the already partially started performance of the Agreement, entitled at all times to require that The Customer, as a result of the payment obligations of The Customer under the terms of the agreement, pays an advance of the amount payable by The Customer under the terms of the Agreement, and/or, at Transsmart's discretion, a security deemed suitable by customary banking practices and to Transsmart's satisfaction.
- 8.2. If The Customer refuses to pay an advance as referred to in the preceding sentence or to provide a security at Transsmart's request, Transsmart is entitled to terminate the Agreement with immediate effect by a statement worded for the purpose, without prejudice to any other grounds for termination set out in these terms and conditions and without prejudice to Transsmart's right to damages as a result of the termination carried out.

9. Complaints

- 9.1. Complaints from The Customer about implementation i.e. Service performed by Transsmart must be reported in writing to Transsmart within 14 (fourteen) days of completion of the Service. Other complaints must be reported in writing to Transsmart within 14 (fourteen) days of arising. If a complaint is not reported timely or correctly, then the complaint will not be taken into consideration by Transsmart and there will be no entitlement to redress.
- 9.2. Complaints that arise as a result of improper use of the Service and/or the Subscription shall under no circumstances lead to any claim by The Customer against Transsmart.
- 9.3. Under no circumstances does a complaint give The Customer the right to suspend complying with The Customer's obligations under all Agreements entered into with Transsmart, in particular The Customer has no right to suspend payment of the invoice or to set off any invoice relating to the Service and or Subscription to which the complaints refer or any other invoices.
- 9.4. The right to redress or compensation for damages shall in any case lapse in respect of all Agreements governed by these terms and conditions twelve months after the date of the invoice which relates to the service or product which caused the damages.

10. Liability

- 10.1. Under no circumstances can Transsmart be obliged to pay compensation for damages to The Customer, unless the damages are caused by intent or gross negligence on Transsmart's part.
- 10.2. In the unlikely event Transsmart is to be held liable, Transsmart's liability is limited to direct damages only and to the amount which is paid out under Transsmart's professional liability policy in the matter concerned, plus the amount of the excess which under the policy conditions is not borne by the insurer. Transsmart does not recognise, under any circumstances, any liability whatsoever for consequential damages, operational losses, indirect damages, lost savings, lost profits, loss of business or otherwise caused by Transsmart.
- 10.3. Transsmart is not liable for damages of The Customer and/or third parties that are a consequence of a defect or malfunction of the software, applications, connections, services and/or products delivered by Transsmart, nor is Transsmart liable to The Customer for any damages resulting from improper implementation, unless the damages are caused by intent or gross negligence on the part of Transsmart.
- 10.4. Under no circumstances is Transsmart liable for any damages relating to or arising from any third party software, applications, connections, services and/or products.
- 10.5. Under no circumstances is Transsmart liable for damages caused by, or as a consequence of, The Customer and/or third parties personally making changes to the applications, software and/or connectivity, or improper use by The Customer and/or third parties.

- 10.6. Transsmart accepts no liability for any loss of data belonging to The Customer.
- 10.7. The Customer will indemnify Transsmart for all claims of third parties in respect of other damages that result from a defect in a product supplied by Transsmart product and/or a service incorrectly carried out by Transsmart.

11. Force Majeure

- 11.1. Transsmart is not obliged to fulfil any obligation if it is prevented from doing so due to a circumstance, including but not limited to pandemics like (but not only) COVID-19, which cannot be attributed to gross negligence and which is also not for its account pursuant to the law, a judicial act or generally prevailing opinion.
- 11.2. In the event of force majeure, Transsmart is entitled to suspend the performance of the agreement, without The Customer being entitled to compensation for damages.
- 11.3. If it concerns force majeure and fulfilment is or becomes permanently impossible, or the temporary force majeure circumstances have lasted for more than six months, Transsmart is entitled to terminate the agreement with immediate effect either entirely or in part. In those cases, The Customer is entitled to terminate the agreement with immediate effect, but only for that part of the obligations that Transsmart has not yet fulfilled.

12. Intellectual Property Rights

- 12.1. Transsmart retains ownership of all industrial and/or intellectual property rights of all of its products, services, SAAS products, brandnames etc., whether or not specifically developed for The Customer.
- 12.2. By entering into the Agreement, The Customer unconditionally declares that The Customer agrees with the fact that all intellectual property rights to Services and Subscriptions to be delivered and/or granted by Transsmart belong or will belong solely to Transsmart. The Customer is forbidden to remove or modify any indication regarding intellectual property rights, such as brandnames, on or in the products and/or services supplied by Transsmart.
- 12.3. Regarding the copyright, model rights or any other intellectual property right that was already in the hands of The Customer before the execution of the Agreement, Transsmart shall be given the right to use the property right during the term of the Agreement, to the extent that it is necessary for the performance of the Agreement.
- 12.4. The Customer shall obtain no intellectual property right whatsoever relating to software and models. The Customer is not allowed to change, remove or copy any brand marks or identification marks in the software or models thereof, nor to reverse engineer any software or product, subject to being charged an immediately payable penalty not open to judicial moderation of € 25,000 and a penalty of € 500 for each day that the breach continues. The Customer is also not allowed to use any brand marks or identification marks without the prior permission of Transsmart.
- 12.5. Any products and/or services, information generated and data provided by Transsmart on behalf of The Customer are and will continue to be the property of Transsmart. Transsmart is free to use this information and data anonymously for purposes beyond products delivered to and/or services performed for The Customer.

- 12.6. Transsmart will add specific data (“Transsmart Data”) to transport information provided by the Customer in connection with the Service and/or Subscription. Transsmart Data may, inter alia, include the following information:
- routing information.
 - transport service specific information.
 - information about carriers’ pickup points or terminals.
 - unique package and/or shipment identifiers.
 - shipment status information.

Transsmart Data is developed or otherwise acquired by Transsmart at substantial investment costs and Transsmart reserves any and all rights thereto. The Customer may only use Transsmart Data in connection with the Service and/or Subscription within the scope of The Customer’s normal business activities and may not sell or otherwise transfer all or any part of Transsmart Data, whether in combination with information originally provided by The Customer or not, to unauthorized third parties or in any other way give such third parties access to any part of Transsmart Data without Transsmart’s prior written consent.

13. Disputes and applicable law

- 13.1. All the quotations, offers and agreements governed by these terms and regulations are subject to Dutch law.
- 13.2. All disputes relating to or arising from the quotations, offers and/or Agreements concluded with Transsmart will be brought before the competent Dutch court in the district of Transsmart’s registered address.