

Transsmart BV

Terms and conditions | December 2019

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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 (also referred to hereinafter as us/we), as well as any offers made by Transsmart and all agreements Transsmart enters into with its Customers. The term 'Customer' is understood to mean any natural person or legal person who enters into or is in a contractual relationship of any kind whatsoever with Transsmart, with the exception of its suppliers and partners.
- 1.2. In addition to these terms and conditions, additional conditions may apply to certain services and/or products of Transsmart 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.
- 1.3. If these terms and conditions are once applied to a quotation, offer and/or agreement, then they shall also be applied 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. The general terms and conditions of The Customer of Transsmart shall not be applicable unless this is expressly agreed in writing by Transsmart.
- 1.6. Transsmart reserves the right to modify or supplement the terms and conditions.
- 1.7. Transsmart is authorised to make use of third parties during the performance of agreements with The Customer. In such a situation, these terms and conditions apply.
- 1.8. 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 evidence thereof, unless The Customer can prove otherwise.
- 1.9. The Customer may not resell services or information, fully or partly generated by use of the Service, to any unauthorised third party or give such third-party access to the Service for similar purposes, without Transsmart's prior written consent.

2. Quotation, Offer and Agreement

- 2.1. All quotations and offers 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 drawing 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 work and/or delivery is to take place outside the Netherlands, to inform Transsmart in writing of the rules of a mandatory nature in the country where the contract 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.
- 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 us 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 our quotations, offers and agreements are not binding on us; we are always entitled to revise these issues.

3. Changes to the quotation or order

- 3.1. If The Customer wishes to change the original contract or agreement, 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 constitute part of the contract.
- 3.2. If, after the quotation has been sent by Transsmart, additional essential information is obtained by Transsmart from The Customer, or unforeseen circumstances arise before the performance of the order, the original offer shall expire and Transsmart shall send a new quotation to The Customer.
- 3.3. If, after the quotation has been sent by Transsmart, or after the agreement has been concluded, additional essential information is obtained by Transsmart from The Customer, or unforeseen circumstances arise before the performance of the order, then Transsmart shall be entitled to charge any extra costs that must be made as a result of this to The Customer.
- 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 service or product becoming available to The Customer at a date other than that which was originally agreed.

4. Performance of the agreement and processing of personal data

- 4.1. Transsmart shall execute the contract 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, are 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. If a date is stated or agreed upon for the performance of work for the implementation of the delivery of services and/or items, this shall under no circumstances be considered to be a definitive deadline. If a term is exceeded, The Customer must offer Transsmart a reasonable term within which Transsmart can complete performance of the agreement.
- 4.4. Transsmart reserves the right to use personal data that the Customer submits in connection with the use of the Service 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 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, 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 undetermined period, unless the parties agree otherwise explicitly and in writing, or the nature of the agreement dictates otherwise. If the agreement is concluded for an indefinite period, either party may terminate it at any time by notice, taking into consideration a notice period of 3 (three) months.
- 5.2. If the parties agree that the agreement is for a definite period, and The Customer decides to terminate the agreement before the end of this term in any way whatsoever, then Transsmart reserves the right to compensation for any damages suffered by Transsmart as a result of the termination, unless The Customer terminates the contract on the basis of serious reasons.

6. Suspension and rescission

- 6.1. If The Customer fails to comply, comply properly or comply in time with any obligation that is the result of any agreement made with us, of which these terms and conditions are an integral part, or if Transsmart has any reason to believe that The Customer shall not comply, comply properly or comply in time with any obligation that is the responsibility of The Customer and arises from an agreement concluded between Transsmart and The Customer, such reasons being, but not limited to, the granting of suspension of payment, the filing of a bankruptcy petition against the principal, or The Customer's company is shut down or liquidated, then The Customer shall be deemed to be legally in default without further notice of default, and we shall be entitled, without judicial intervention, to fully or partially suspend the performance of any agreement with The Customer, or to fully or partially rescind any agreement with a statement worded for the purpose, where we cannot be held liable for any compensation for damages or guarantee whatsoever in this respect, all the aforementioned without prejudice to any other rights to which we are entitled, as well as the right to full compensation for damages.
- 6.2. If we suspend the performance of the agreement, or partially or wholly rescind the agreement, then we shall send The Customer an invoice for the work and/or services delivered up to that moment in time.
- 6.3. In all the cases mentioned in the first paragraph of this article, our claims against The Customer and/or the claims that we shall obtain against The Customer shall become immediately payable.

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. Subscriptions will be invoiced yearly in advance before the subscription period commences.
- 7.3. In order to let The Customer grow without interruptions in its business, Transsmart automatically upgrades The Customer's licence to the next higher applicable licence level when The Customer exceeds the number of units included in its current licence (e.g., users, carriers, parcels, etc.). For the next subscription this is the new licence level. Any difference between starting fees and onboarding cost of the previous and the upgraded licence must be paid by The Customer.
- 7.4. The Customer is expressly not allowed to set outstanding invoices off against any claim whatsoever vis-à-vis us, nor is The Customer entitled to impose an attachment against itself to our detriment.
- 7.5. If The Customer has not paid the invoice within the specified period, The Customer shall be deemed to be in legal default, and we 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 we are entitled.
- 7.6. 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.

- 7.7. The Customer owes Transsmart all judicial and extrajudicial costs and collection costs made by us or that we have to make in connection with seeking compliance, rescission or compensation for damages in respect of the agreement, whether in a court of law or otherwise, or to defend ourselves if called to account by The Customer.
- 7.8. In the event The Customer fails to comply with any obligation under this agreement, including but not limited to late payment, Transsmart will be authorized to suspend the service, 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.
- 7.9. Transsmart is not liable to repay any fees to The Customer upon termination of this contract. This also applies to any unutilised part of the licence fee.
- 7.10. Transsmart is entitled to charge an invoicing fee of up to 6 (six) EUR per invoice.

8. Guarantees and advances

- 8.1. We are, before proceeding to perform the confirmed order or continuing the already partially started performance, 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, or, at our discretion, a security deemed suitable by customary banking practices and to our satisfaction.
- 8.2. If The Customer refuses to pay an advance as referred to in the preceding sentence or to provide a security at our request, we are entitled to rescind the agreement with immediate effect by a statement worded for the purpose, without prejudice to any other grounds for rescission set out in these terms and conditions and without prejudice to our right to damages as a result of the rescission carried out by us.

9. Complaints

- 9.1. Complaints from The Customer about implementation performed by Transsmart must be reported in writing to Transsmart within 14 (fourteen) days of completion of the implementation. 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 or compensation for the damages.
- 9.2. Complaints that arise as a result of improper use of the service and/or product supplied can under no circumstances lead to a 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 us, in particular The Customer has no right

to suspend payment of the invoice relating to the delivery of the products 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 our part.
- 10.2. 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. If Transsmart, for any reason whatsoever, is liable for direct damages, then this liability shall at all times be limited to the amount of the sum to be paid by the insurer to Transsmart for such an event.
- 10.8. If Transsmart, for whatever reason, is obliged to compensate any damages, and liability insurance does not provide cover, the compensation shall never be higher than an amount equal to the invoice value that relates to the service or product that caused the damages.
- 10.9. 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 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 the force majeure is assessed as being of a permanent nature, we are entitled to partially or completely rescind an agreement by a written statement worded for the purpose, without The Customer being entitled to compensation for damages.

12. Intellectual Property Rights

- 12.1. We retain ownership of all industrial and/or intellectual property rights of all of our products, services 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 products to be delivered by Transsmart and services to be provided by Transsmart belong or will belong to Transsmart. The Customer is forbidden to remove or modify any indication regarding intellectual property rights on or in the products 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 start 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 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, 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. 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 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 unauthorised 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 us will be brought before the competent Dutch court in the district of our registered address.