

General Terms and Conditions of Aexus

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General Terms and Conditions of Aexus

Article 1 Definitions

In these General Terms and Conditions (“GTC”) the following definitions will be used, unless explicitly agreed otherwise in writing:

“Aexus” means the legal entity Aexus BV and its affiliates;
“Company” means contracting party of Aexus, either acting as a natural person, a self-employed person or a legal entity;
“Contract” means the agreement between Aexus and the Company;
“Customer” means the customer of Company;
“Effective Date” means the date the Contract will be legally active. Such date shall be specified in the Contract. If no such date is specified in the Contract, it shall be the date on which the Contract is signed by the last of the two parties.
“Kick-off Date” means the date that Aexus shall effectively start with the provision of its Services.
“Materials” means all necessary information and data, measurements, requirements or performance specifications, which Aexus needs to be able to provide the Services;
“Services” means:

- marketing, business development, lead generation and sales activities on a non-exclusive basis in the Territory, as specified in the Contract;
- other Products and Services related to sales, business development and inbound marketing.

Article 2 General

- The articles and conditions of these GTC are applicable for every offer, quotation or Contract between Aexus and Company, unless the parties have explicitly agreed otherwise in writing.
- These GTC are also applicable for all agreements with Aexus for which third parties need to be involved.
- General terms and conditions of the Company, or any other terms, purchase orders, or agreements, are not applicable, unless explicitly agreed in writing that any terms of the Company are applicable, excluding these GTC.
- If any provision of these GTC is void or annulled, the other provisions of these GTC shall remain in full force.

Article 3 Offer and Contract

- A Contract between Aexus and Company is concluded after confirmation in writing by Aexus, or if Aexus has started to carry out the assignment.
- All offers and quotations that Aexus will send to (potential) customers of Company will first have to be discussed and approved by Company.
- All agreements will be concluded between Company and the customers or partners directly.

Article 4 Implementation of the Contract

- Aexus retains the right to have third parties perform (certain parts of) the implementation.
- The Company delivers all Materials in due time and before the start of the Services.
- If the Materials have not been provided to Aexus in due time, Aexus retains the right to postpone the Services.
- Aexus will, on a bi-weekly basis (or other periodical term specified in the Contract), send an overview of all activities that have been executed by Aexus with regards to the Contract, including a detailed report on the status and the progress of the various (potential) partners and customers, to Company in a format that will be provided by Company.
- Aexus will be able to get access (to a reasonable extent) to support from the various departments within Company, including technical support, product management, strategic alliances and every other department within Company that could be relevant for the execution of the activities as described in the Contract, without having to pay any charges for this.
- Aexus will be allowed to attend all relevant product training and have a reasonable number of brochures, leaflets, evaluation software etc. at its disposal without having to pay any charges for this.

Article 5 Amendment of the Contract

- If a decent implementation of the Contract requires amendment or addition of the Services, the Contract can be changed with mutual consent.
- If amendment of the Contract has financial or other consequences, and/or consequences for delivery times and/or –terms, Aexus will inform the Company immediately about it.

- Regarding amendment of the Contract, Aexus can charge the Company for the extra costs, unless the amendment or addition is the result of circumstances, which can be attributed to Aexus.

Article 6 Term and termination

- The term of this Contract shall commence on the Effective Date (the “Term”).
- The Contract shall continue indefinitely and can be terminated at any time by either party, providing written notice of at least one calendar month, which notice period shall always start after the last day of the month in which notice is provided.
- If the Kick-off date is later than the Effective Date, the Term shall commence on the Kick-off date.
- Either Party may terminate the Contract or part thereof:
 - at any time upon mutual written agreement of the other Party;
 - if the other is in breach of any of its obligations under the Contract and has failed to remedy such breach within sixty (60) days of receipt of written notice;
 - with immediate effect and without a notice of default, if the other party is granted a provisional or non-provisional suspension of payments, if a petition for bankruptcy is filed regarding the other Party or if the other Party’s business is discontinued or terminated for other reasons besides a business reconstruction or merger. Aexus shall never be obliged, on account of this termination, to refund any fees or funds already received or to pay any damages. In the event of the Company’s bankruptcy, the right to use any deliverables provided to the Company shall be terminated automatically.
- Upon the effective date of termination of all or part of the Contract, the Company shall not be entitled anymore to use such terminated Services or deliverables provided under the Contract and shall immediately destroy or return all copies of any terminated deliverables.
- The Company shall pay Aexus for all Services performed until the effective date of termination, and for all costs incurred by Aexus concerning the terminated Services.
- Any part(s) of the Contract that are/is not terminated shall continue to be active.

Article 7 Suspension

- Aexus retains the right, without legal proceedings, to suspend to fulfill its obligations under the Contract if the Company:
 - does not fulfill one or more of its obligations in the Contract;
 - applies for an official moratorium;
 - is officially in bankruptcy;
 - dishonestly uses goods or Services of Aexus;
 - disseminates information which is violating (inter)national laws and regulations.

Article 8 Prices and costs

- All prices used by Aexus are exclusive VAT and other taxes, levies or duties, unless explicitly agreed otherwise in writing.
- Aexus is entitled to annually adjust its prices without further notice, based on the Harmonized Index of Consumer Prices (HICP 20 EA, Eurostat ><https://ec.europa.eu/eurostat/databrowser/view/TEC00027/default/table?lang=en>).
- Aexus is entitled to adjust any price if the content of the Contract or assignment changes, if the Contract or assignment is prolonged, if third parties change their prices, or if the applicable laws and regulations change. In case of a term-based Contract, such price changes shall be implemented at the start of the new term.
- Price changes can be implemented without further notice to the Company.

Article 9 Commission and Bonus

- As commission / bonus, Aexus will receive a percentage (as specified in the Contract), of the revenues which are generated with accounts for which Aexus has been responsible and where Aexus has facilitated the initial introduction.
- In case the Parties have agreed on the payment of a fee per Sales Accepted Lead (SAL), the rate of such fee shall be specified in the Contract. The SAL shall be subject to (i) a meeting/call that has taken place between the Company and a relevant contact of the lead; and (ii) the Company has agreed, after the meeting, to qualify the lead as “Accepted” by the Company.
- Aexus will be entitled to receive commission on all revenues that are

generated by Company with accounts for which Aexus has been responsible until 18 months after signing of the initial customer agreement.

4. In case of termination of the Contract, Aexus will be entitled to receive commission over all revenues that are generated and received by Company from accounts where Aexus has facilitated the initial contacts until 12 months after termination of the Contract.
5. Aexus will only invoice Company for commissions after the customer payment has been received by Company. Company is obliged to timely (but at least within 14 days of receipt of said payment), inform Aexus that the customer payment has been received.
6. In case the Parties have agreed on the payment of a fee per Sales Accepted Lead (SAL), the following terms are not applicable to the agreement: 9.1, 9.3, 9.4, 9.5.

Article 10 Invoice and Payment

1. Aexus will invoice a fixed monthly fee to Company for the Services that Aexus will provide to Company as specified in the Contract.
2. The invoice date for the fixed monthly fees is the first (1st) day of the relevant month.
3. After the Effective Date of the Agreement, Aexus shall send the first invoice, which shall have a payment term of seven (7) days.
4. In case the Effective Date is not the first day of the month, the first invoice shall include the remaining days of that month and the month thereafter.
5. All other invoices for the fixed monthly fees from Aexus to Company shall be paid within 15 days after the date of invoice.
6. Travel expenses are excluded from the monthly fee. When applicable, Company shall reimburse Aexus for any and all reasonable travel-related expenses incurred by Aexus in connection with Aexus's performance of the Services set forth herein, provided, however, that all such expenses must be preapproved by Company. Reimbursable travel expenses shall include hotel expenses, automobile rental, flight tickets and other transportation expenses.
7. Where applicable, all prices used by Aexus are exclusive VAT and other taxes, levies, duties, and costs made to properly carry out the Contract, unless explicitly agreed otherwise in writing.
8. In case of liquidation, bankruptcy, seizure or moratorium of the Company, any claims of Aexus towards the Company are directly and fully recoverable without judicial intervention.
9. Aexus retains the right to deduct the payments made by the Company firstly from the costs, subsequently from the indebted interest and finally deduct the payments from the main sum and the current interest. All costs, concerning payment, including bank costs or costs concerning bills of exchange or other payment methods are for account of the Company.

Article 11 Late payment

1. The Company is, without the necessity of a written notice to pay, legally in default, if the Company did not pay within the agreed payment term. Payment has taken place if the Company has credited the bank account of Aexus.
2. If the Company has not paid within the agreed payment term and is legally in default, all:
 - a) reasonable legal, court, execution and collection costs,
 - b) costs in order to extrajudicially collect the indebted amount.
3. In case of a claim regarding a debt receivable, the Company owes a minimum of 15% in debt collection costs to Aexus, of the total amount due, with a minimum of 165 EUR.
4. The Company shall pay interest at the minimum statutory rate for late payments in commercial transactions under Dutch law on all sums unpaid at the due date, plus reasonable attorneys' fees and costs incurred in collecting unpaid amounts.

Article 12 Liability

1. Regardless of the form of action, whether the alleged liability or damages are based on contract (including without limitation, breach of warranty), tort (including without limitation, negligence), statute, or any other legal or equitable theory, Aexus' maximum liability for damages is explicitly limited to the amount of fees actually paid by the Company for the services that caused the damages in the preceding twelve (12)-month period prior to the incident that caused the rise to the claim.
2. Aexus is not liable for indirect damages, including incidental,

consequential, or punitive damages, lost profits, lost savings, lost cost reduction, loss of goodwill, mutilated or damaged data or materials, damages due to business interruptions and any claims from third parties.

3. Aexus is not liable for damage, of any kind, because Aexus used data provided by the Company, which is incorrect or incomplete, unless the incorrectness or incompleteness of the data should have been known to Aexus.
4. The Company shall report any damages to Aexus in writing as soon as possible after the damage occurred. Any claim for damages against Aexus must be filed with the applicable judicial authority within twelve (12) months after the applicable cause of action has arisen.

Article 13 Force majeure

1. Aexus is not liable for damages from events that were beyond its control and that cannot be contributed to Aexus according to the law, legal act or public legal perception.
2. Force majeure includes all anticipated or non-anticipated external causes, of which Aexus has no control and result in the fact that Aexus cannot fulfill its obligations. Events concerning internet, hosting- or network providers, or other third parties Aexus has no control over, strikes and other actions by employees of Aexus and/or its suppliers are included.
3. Both parties suspend their contractual obligations during the period of force majeure, until the time when performance is reasonably possible again.
4. Both parties are extrajudicially immediately permitted to terminate the Contract, without a notice of default and without the possibility to claim damages, if the situation of force majeure exceeds a period of three months.

Article 14 Warranty

1. Aexus warrants that all its Services shall be performed in a good and workmanlike manner.
2. Aexus will conduct business in a manner, which always reflects favorably on the products, goodwill, and reputation of Company.
3. Aexus will always use its best endeavors to promote and extend the market for the products and solutions of Company to all potential partners and End-users in the Territory (as described in the Contract) and work diligently to obtain orders, therefore.
4. Aexus will avoid deceptive, misleading, or unethical practices.
5. This warranty is in lieu of and excludes all other warranties, representations, or conditions for services, whether express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement.

Article 15 Intellectual Property

1. All intellectual property rights to any materials developed or provided by Aexus, shall be held solely by Aexus. Company shall only acquire any intellectual property rights explicitly granted in the Contract. A right of use to which Company is entitled shall be non-exclusive and non-transferable to third parties.
2. Aexus will defend Company from and against any claim made by a third party against Company to the extent the claim is based on an allegation that Aexus' intellectual property, infringes upon, or misappropriates a copyright in any country or a patent of the United States, Japan, or a member state of the European Patent Organization, and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Company by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Aexus arising out of such claim, provided (i) Company provides Aexus with prompt written notice of the claim, and (ii) Company gives Aexus sole control of the defence of the claim and any related settlement discussions and provides reasonable cooperation in the defence and settlement of the claim.
3. Any Materials provided by Company shall remain Company's sole property and Company hereby grants to Aexus a non-exclusive, fully paid-up license to use the Materials in any form or medium as needed in connection with the performing of the Services.
4. The Company represents and warrants that it owns and/ or has all necessary rights to use and have Aexus use such Materials provided to Aexus.
5. The Company is not entitled to use Aexus' trade name and/or Aexus' trademarks without Aexus' prior written consent.

Article 16 Confidential information and Personal Data

1. The Parties acknowledge that any oral or written information exchanged among them with respect to the Contract is Confidential Information. For a term of five (5) years after disclosure of Confidential Information, each Party shall maintain the confidentiality of all such information, and without obtaining the written consent of other Parties, it shall not disclose any relevant information to any third parties, except in the following circumstances: (a) such information is or will be in the public domain (provided that this is not the result of a public disclosure by the receiving party); (b) information disclosed as required by applicable laws or rules or regulations of any stock exchange; or (c) information required to be disclosed by any Party to its legal counsel or financial advisor regarding the transaction contemplated hereunder, and such legal counsel or financial advisor are also bound by confidentiality duties similar to the duties in this section. Disclosure of any confidential information by the staff members or agency hired by any Party shall be deemed disclosure of such confidential information by such Party, which Party shall be held liable for breach of the Contract.
2. Aexus is authorized to disclose the Company's Confidential Information to third parties who have entered into an appropriate confidential disclosure agreement with Aexus to the extent necessary to provide any services and/or deliverables.
3. Each Party is responsible for complying with any obligations applying to it under applicable data privacy laws and regulations. If the Parties establish that the Contract entails any processing of Personal Data, a separate Data Processing Agreement (or other applicable agreement) shall be agreed and attached as an appendix to the Contract.

Article 17 Non-Solicitation

1. Company undertakes that during the term of engagement with Aexus and for a period of twelve (12) months thereafter: (i) Company shall not, directly or indirectly, solicit, hire or retain as an employee, consultant or otherwise, any employee of Aexus (including any former employee whose employment with Aexus has ended during the term of the engagement between Aexus and COMPANY or within 12 months thereafter) or induce or attempt to induce any such employee to terminate or reduce the scope of such employee's engagement with Aexus; and (ii) COMPANY shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Consultant, service provider, agent, distributor, customer or supplier of Aexus to terminate, reduce or modify the scope of such person's engagement with Aexus, notwithstanding the Opportunity offered in the next paragraph of this article.
2. Aexus offers Company the opportunity to engage an employee, consultant or other worker of Aexus ("Opportunity") under the following conditions: a) the Opportunity is applicable for a period of 12 months after the cooperation between Aexus and Company has ended; b) prior written consent of both Aexus, Company and employee, including a written statement from Aexus that Company is released from the Non-solicitation clause with respect to the specific employee's proposed engagement; c) upon Company's acceptance of the Opportunity, Company will pay to Aexus a transfer fee in the amount of 25% of the offered annual salary of On Target Earnings (OTE). Payment of the transfer fee is made within one month after acceptance of the Opportunity; d) the parties agree that the transfer fee qualifies as reasonable compensation for the employee's recruitment and training costs incurred by Aexus plus a reasonable profit percentage.

Article 18 Miscellaneous

1. The legal relationship between the parties is that of independent contractors. These terms are not intended to create a partnership, a corporation, a joint venture or agency relationship between the parties,

and Aexus' employees shall not be deemed to be an employee of the Company.

2. Aexus will, in all correspondence and other dealings relating directly or indirectly to the distribution or any other transaction relating to Company's solutions, clearly indicate that it is acting as agent/partner of Company and not as manufacturer or developer of the solutions, products or services.
3. Neither party may assign the Contract or any of its rights or obligations without the other Party's express written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that either Party may assign i) any of its rights under the Contract to its Affiliates provided that no such assignment shall relieve an assigning Party of its obligations under the Contract, and ii) the Contract to the surviving party in a merger of that party into another entity or in an acquisition of all or substantially all its assets. No assignment becomes effective unless and until the assignee agrees in writing to be bound by all the assigning party's obligations in the Contract. Except to the extent forbidden in this Article, the Contract will be binding upon and inure to the benefit of the parties' respective successors and assigns.
4. Subject to applicable law, each of the Parties covenants and agrees that, during the Term of the Contract and for a period of five (5) years thereafter, each Party, or any of its agents, subsidiaries, controlled affiliates, successors, assigns, partners, members, officers, key employees or directors, shall not in any way publicly criticize, disparage, call into disrepute or otherwise defame or slander the other Party, either orally or in writing (including all electronic communications), in any manner that would reasonably be expected to damage the business or reputation of the other Party, their businesses, products or services or their subsidiaries, affiliates, successors, assigns, officers (or former officers), directors (or former directors), employees, stockholders, agents, attorneys or representatives.
5. The law of the place of business of Aexus shall apply to the Agreement, to the exclusion of the rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) (the Vienna Sales Convention). Aexus reserves the right to bring the dispute to another competent court.
6. The parties agree to make demonstrable efforts (possibly through mediation) to resolve all disputes arising out of or in connection with this Agreement amicably and in good faith within 30 calendar days. If the dispute is not finally resolved amicably, the parties shall refer the dispute for definitive settlement by the competent court of the place of business of Aexus.
7. If any provision of the GTC or the Contract is found by a court of competent jurisdiction or arbitrator to be illegal, void or unenforceable, the other provisions shall remain in full force and effect, and the affected provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to affect the original intent of the parties.
8. Unless otherwise agreed in writing, Aexus is permitted to use the name and logo of the Client solely for marketing and reference purposes, such as on its website and promotional materials. Such use shall not imply any endorsement by the Client. The Client may withdraw this consent at any time by notifying Aexus in writing.
9. These GTC are compiled in the English language and may be provided, for informational purposes only, in a language other than English. The English version shall be the only binding and enforceable version of these terms.
10. These GTC supersede all prior and contemporaneous proposals, agreements, understandings, representations, purchase orders and communications, whether oral or written. If there is a discrepancy, inconsistency, or contradiction between these GTC and any Contract, these GTC shall prevail.
11. Articles 6, 9, 10, 11, 13, 15, 17 and 18 shall survive termination of these GTC or termination of any Contract applicable under these GTC.