

General Terms and Conditions of Smartbooks AI B.V. a company incorporated under the laws of the Netherlands, with its registered address at Joop Geesinkweg 901 - 999, 1114 AB Amsterdam-Duivendrecht, the Netherlands, registered with the Chamber of Commerce under number 89636171.

1. DEFINITIONS

"**Article**" an article in these General Terms.

"**Agreement**" the agreement between Smartbooks and Customer for the provision of Subscription Services, as confirmed by the Order Confirmation, which is subject to these General Terms.

"**Authorised Users**": those employees, independent contractors and Beneficiaries of the Customer who are entitled to use the Smartbooks Software through the Subscription Services under this Agreement.

"**Beneficiary**" any relation of Customer on behalf of which Customer is using the Smartbooks Software e.g. as Accountant, Fractional CFO and/or VC.

"**Business Day**": any day which is not a Saturday, Sunday or public holiday in the Netherlands.

"**Confidential Information**": information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Article 12.5 or Article 12.6.

"**Customer Data**": the data included into the information fields of the Software by the Customer, by Authorised Users, or by Smartbooks on the Customer's behalf.

"**Documentation**": Smartbooks' electronic or other documentation pertaining to the Smartbooks Software.

"**Effective Date**": the date on which the Order Confirmation was sent by Smartbooks.

"**Fees**": the fees payable to Smartbooks, as described in Order Confirmation.

"**General Terms**": These general terms and conditions.

"**Order Confirmation**": the acceptance by Smartbooks of an order for the Subscription Services that is placed by Customer.

"**Smartbooks Software**": Smartbooks' proprietary software in machine-readable object code form only, consisting of the financial management reporting software as made available by Smartbooks on its Website including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this Agreement.

"**Subscription Services**": the services that Smartbooks provides to Customer in order to allow Authorised Users to access and use the Smartbooks Software.

"**Third-Party Components**": a piece of software, software component, collection of components, or an API interface to a library (for example, a .dll interface), developed by a third party and used by Smartbooks in its Smartbooks Software.

"**Virus**": any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

"**Website**" the website of Smartbooks ([https:// www.smartbooks.ai](https://www.smartbooks.ai))

2. GENERAL TERMS; ORDER PROCEDURE

2.1 All offers or quotations of Smartbooks regarding the Subscription Services on the Website or issued otherwise are non-binding and revocable, and are legally qualified as an invitation to tender. Customer may place orders for Subscription Services with Smartbooks through the Website. Each of Customer's orders is subject to Smartbook's acceptance thereof. Smartbooks may accept or reject any order at its sole discretion. The Agreement is only concluded between Smartbooks and the Customer on the date that Smartbooks sends its Order Confirmation, and/or Smartbooks provision of the Subscription Service, whichever is earliest.

2.2 The General Terms apply to all such orders, Order Confirmations as well as to the Agreement. Customer's terms and conditions do not apply to the order and/or Agreement and Parties specifically agree that any subsequent reference thereto shall be ineffective.

2.3 Smartbooks reserves the right, at its sole discretion, to fully or partially amend the General Terms from time to time. In such case, Smartbooks will give reasonable prior notice through the Website or otherwise. If the Customer does not agree with such changes, they may terminate the Agreement within 30 days after notification.

2.4 Customer agrees that the Smartbooks Software may contain Third-Party Components to which additional licence conditions may apply. By concluding the Agreement, Customer agrees to fully comply with all such terms.

3. SUBSCRIPTION SERVICES; MAINTENANCE

3.1 Smartbooks shall perform the Subscription Services and will perform reasonable efforts to ensure optimal availability of and access to the Smartbooks Software.

3.2 Smartbooks may at any time change or discontinue the Subscription Services, in whole or in part. If the Customer does not agree with the intended changes, the Customer may terminate the Agreement in accordance with Article 15.3 terms. Where Customer does not provide such notice, parties agree such will qualify as an acceptance of the amended Subscription Services.

3.3 In relation to Authorised Users:

- (a) the Customer's access to the Subscription Services shall be limited to the individual Authorised Users, as indicated in the order confirmation;
- (b) the Customer shall ensure that each Authorised User keeps a secure password for their use of the Software and that each Authorised User keeps the password confidential;
- (c) Smartbooks may audit the Software regarding the name and password for each Authorised User. Such audit may be conducted no more than once per quarter, at Smartbooks' expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business; and
- (d) if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to Smartbooks' other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals.

3.4 In relation to the Smartbooks Software, for the duration of the Agreement:

- (a) Smartbooks hereby grants to the Customer subject to the terms and conditions of this Agreement a non-exclusive, non-transferable right to allow Authorised Users to access the Smartbooks Software through the Subscription Services and to use the Smartbooks Software solely for the Customer's internal business purposes;
- (b) the rights provided under this Article 3.4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, unless specifically agreed otherwise in the Order Confirmation;
- (c) the Customer shall not and shall ensure that Authorized Users shall not:
 - (i) use the Software in excess of contractual limitations on usage or in a manner that circumvents the limitations on usage or the technological measures to control access;

(ii) store, distribute or transmit any Virus, or any material through the Subscription Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

(iii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or timeshare or otherwise make any of the Software available for access by third parties except as otherwise expressly provided in the Agreement;

(iv) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by Agreement between the Parties; or

(v) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable mandatory law which is incapable of exclusion by Agreement between the Parties; or

(vi) access all or any part of the Software or Subscription Services in order to build a product or service which competes with the Software and/or the Services

(vii) use the Software or Subscription Services to provide services to third parties, except as specifically allowed under this Agreement; or

(viii) transfer, temporarily or permanently, any of its rights under this Agreement, or

(ix) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Article 3.4(c); and

(d) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify Smartbooks promptly of any such unauthorised access or use.

3.5 Smartbooks does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free, and disclaims responsibility and liability in that respect. Where determined to be needed in Smartbooks sole discretion, Smartbooks shall perform maintenance to the Software, during which the Software may not be accessible (in full). Furthermore, Smartbooks may without prior notice, permanently or temporarily block or disable access to the Smartbooks Software or restrict its use to the extent this is reasonably necessary from time to time:

a) to perform preventive or regular maintenance or upgrade work;

b) if an actual or suspected security breach occurs; and/or

c) if another emergency occurs; all without the Customer being entitled to claim any damage, cost or compensation from Smartbooks. Smartbooks will, where practically possible, perform best efforts to inform the Customer in due time.

3.6 The Customer accepts sole responsibility for choosing the Subscription Services to achieve Customer's intended results and acknowledges the Subscription Services has not been developed to meet individual requirements of Customer.

4. BENEFICIARIES

4.1 To the extent that Customer is e.g. an Accountant, Fractional CFO or VC, Customer may use the Smartbooks Software for Beneficiaries. For this purpose, the Customer may request from Smartbooks to purchase a specific user account for Beneficiaries, which those Beneficiaries can use to perform certain actions relating to their administration in the Customer's part of the Smartbooks Software themselves.

4.2 Smartbooks will determine, at its sole discretion: i) the availability of specific user accounts, ii) the rights granted to the Customer and/or Beneficiary under that account, and iii) whether the Customer and/or Beneficiary are eligible for ongoing use of such an account, all of which may be subject to change by Smartbooks.

4.3 The Customer remains fully responsible and liable towards Smartbooks for the access to and/or use of the Smartbooks Software by the Beneficiaries, in particular regarding the rules of use as stipulated in Article 3.4(c). Prior to the Beneficiary's access to or use of the Smartbooks Software, the Customer will familiarise the Beneficiary with and have the Beneficiary consent access to and/or use of the Smartbooks Software subject to these General Terms.

5. CHARGES AND PAYMENT

5.1 In case the Agreement is concluded where Customer placed its order for Subscription Services with Smartbooks through the Website, the use of the Subscription Services will not be charged for the first 30 days as of the Effective Date. Thereafter, the Customer shall pay for the Subscription Services as set out in these General Conditions.

5.2 The Customer shall pay the Subscription Fees – invoiced in one instalment at the beginning of a contract year - set out in the Order Confirmation for use of the Smartbooks Software, in one annual payment, in advance.

5.3 All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to Smartbooks' invoice(s) at the appropriate rate.

5.4 At contract renewal, Smartbooks is entitled to adjust the Subscription Fees with a maximum of 5%. If the Customer does not consent to the increased fees, Customer may terminate the Agreement in accordance with Article 15.3.

5.5 Smartbooks shall invoice the Customer annually in advance for all Services performed by Smartbooks. Each invoice is due and payable 30 days after the invoice date. If Smartbooks has not received payment within five days after the due date, and without prejudice to any other rights and remedies of Smartbooks:

(a) Smartbooks shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue automatically on a daily basis on such due amounts at the rate of the statutory interest rate as meant in article 6:119a Dutch Civil Code, without Smartbooks having to send any notice of default.

5.6 Notwithstanding Smartbooks' other rights and defences, Smartbooks may, without liability, suspend its obligations and/or block a Customer's access to the Subscription Services with immediate effect, if that Customer fails to duly fulfil its payment obligations.

6. SMARTBOOKS OBLIGATIONS

6.1 Smartbooks shall perform commercially reasonable efforts to provide the Smartbooks Software through the Subscription Services materially in accordance with the Documentation. If there is any material fault, defect or non-conformity in the Subscription Services that is materially adverse to the working thereof and such persists without relief more than thirty (30) days after written notice to Smartbooks, then Customer may terminate the affected Subscription Services and Smartbooks shall refund to Customer any prepaid Subscription Fees covering the remainder of the term of the affected Subscription Services after the date of termination. This Article 6.1 sets forth Customer's sole and exclusive right and remedy (and Smartbooks' sole liability) in connection with any breach to provide the Subscription Services. Notwithstanding the foregoing, Smartbooks does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.

- 6.2 Except for any warranties expressly stated in this Agreement, to the maximum extent allowed by law, Smartbooks disclaims all warranties of any kind, express or implied, oral or written, including warranties arising under statute, warranties of merchantability, accuracy, title, non-infringement or fitness for a particular purpose or any warranties arising from usage of trade, course of dealing or course of performance. Without limiting the generality of the foregoing, Smartbooks specifically does not warrant that the Subscription Service, Software, Configuration Services, Documentation, or Deliverables will meet the requirements of Customer or others or that they will be accurate or operate without interruption or error. Customer acknowledges that in entering this Agreement it has not relied on any promise, warranty or representation not expressly set forth herein.
- 6.3 This Agreement shall not prevent Smartbooks from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

7. CUSTOMER OBLIGATIONS

- The Customer shall, and shall ensure that its Authorized Users shall:
- (a) use the Software and the Service in full compliance with the terms and conditions of this Agreement;
 - (b) provide Smartbooks with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by Smartbooks, in order for Smartbooks to render the Services, including but not limited to Customer Data;
 - (c) provide such personnel assistance, as may be reasonably requested by Smartbooks from time to time;
 - (d) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
 - (e) carry out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Smartbooks may adjust any timetable or delivery Schedule set out in this Agreement as reasonably necessary.

8. CUSTOMER DATA

- 8.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer Guarantees that it and/or the applicable Authorized Users have all rights to any and all data that is generated or uploaded by the authorized Users, and Customer will indemnify Smartbooks in full with respect to any third party claim and liability in that respect.
- 8.2 Customers can use the Smartbooks Software functions to create their own formulas, lists, reports and dashboards that together can be useful to other customers of Smartbooks. Customer hereby allows Smartbooks to reuse the ideas behind these settings as inspiration for product and user interface improvement and ease of implementation. Customer will not be entitled to any Intellectual Property rights from formulas, lists, reports or dashboards that they have set up with Smartbooks Software.
- 8.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Smartbooks to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Smartbooks. Smartbooks shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third Party.

9. THIRD PARTY COMPONENTS

- 9.1 The Customer acknowledges that the Smartbooks Software contain Third-Party Components, such as a software component, collection of components, or an API interface to a library, developed by a third party and used by Smartbooks in its Smartbooks Software, used e.g. to communicate with third party software programs. Whenever any such Third Party Components become unavailable for whatever reason, the Smartbooks Software may not be able to communicate to the relevant software programs. In such case, Customer may terminate the Agreement in accordance with Article 15.3. The costs for the use of third party API's in the Subscription Services is not included in the Subscription Fees.
- 9.2 Smartbooks does not provide any further warranty with regard to the existence, availability or functioning of those Third-Party Components and Smartbooks accepts no liability for any damage whatsoever arising from the Customer's use of these Third-Party Components.

10. ARTIFICIAL INTELLIGENCE

- 10.1 Customer can select to share their data through the Smartbooks platform with third-party AI providers such as OpenAI Inc. (processed by ChatGPT), Copilot from Microsoft Inc. or similar AI models. Customers' financial data then may be used by third-party providers to enhance, improve, personalize, and provide Smartbooks' services and functionalities.
- 10.2 These third-party AI models handle Customer data under their privacy policy and are subject to their general terms of service. Customer acknowledges that AI processing may involve certain inherent risks and that processing Customer data by Third Party Components takes place at the sole risk of Customer while Smartbooks accepts no liability for any damage whatsoever.

11. PROPRIETARY RIGHTS

- 11.1 The Customer acknowledges and agrees that Smartbooks and/or its licensors own all intellectual property rights in the Software and the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related Documentation.
- 11.2 Smartbooks confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. CONFIDENTIALITY

- 12.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
 - (b) was in the other Party's lawful possession before the disclosure; or
 - (c) is lawfully disclosed to the receiving Party by a third Party without restriction on disclosure; or
 - (d) is independently developed by the receiving Party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third Party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

- 12.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third Party.
- 12.5 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute Smartbooks' Confidential Information.
- 12.6 Smartbooks acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.8 This Article 12 shall survive termination of this Agreement, however arising.

13. INDEMNITY

- 13.1 The Customer shall defend, indemnify and hold harmless Smartbooks against (third party) claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services, including with respect to any data that is generated or uploaded through the Software, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) Smartbooks provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 13.2 Smartbooks shall defend the Customer, its officers, directors and employees against any claim that the Software infringes any copyright in the Netherlands, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Smartbooks is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to Smartbooks in the defence and settlement of such claim, at Smartbooks' expense; and
 - (c) Smartbooks is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of the claim, Smartbooks may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available at reasonably commercial terms (in the sole discretion of Smartbooks), terminate this Agreement without liability to the Customer. Smartbooks shall have no liability if the alleged infringement is based on:
- (a) a modification of the Software by anyone other than Smartbooks; or
 - (b) the Customer's use of the Software in a manner contrary to the instructions given to the Customer by Smartbooks; or
 - (c) the Customer's use of the Software after notice of the alleged or actual infringement from Smartbooks or any appropriate authority.
- 13.4 The foregoing states the Customer's sole and exclusive rights and remedies, and Smartbooks' entire obligations and liability, for copyright infringement.

14. LIMITATION OF LIABILITY

- 14.1 This Article 14 sets out the entire liability of Smartbooks (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this Agreement, tort or otherwise;
 - (b) in respect of any use made by the Customer of the Services, the Smartbooks Software or any part of them; and
 - (c) in respect of any representation, misrepresentation, guarantee, statement or tortious act or omission, arising under or in connection with this Agreement.
- 14.2 Except as expressly and specifically provided in this Agreement:
- (a) The Subscription Services are provided on an "as is," and "as available" basis with all defects. Smartbooks make no warranty that the Subscription Services will be uninterrupted, secure, or error free, or that defects will be corrected;
 - (b) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. Smartbooks shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Smartbooks by the Customer in connection with the Services, or any actions taken by Smartbooks at the Customer's direction; and
 - (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law, including any implied warranty of merchantability, fitness for a particular purpose, non-infringement, or otherwise are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 14.3 Nothing in this Agreement shall limit or exclude the liability of Smartbooks for:
- (a) damage resulting from intent or wilful recklessness (in Dutch: *opzet of bewuste roekeloosheid*) of a Party or its managerial personnel; or
 - (b) mandatory liability arising under the applicable product liability laws.
- 14.4 Without prejudice to Article 14.3, Smartbooks shall not be liable to the Customer, whether due to a breach of a warranty, breach of contract, or tort for any loss of profit, goodwill, business or business opportunity, corruption of data or information, anticipated saving or special, indirect or consequential damage, suffered by the Customer under or in connection with this Agreement.
- 14.5 Without prejudice to Article 14.3, Smartbooks' total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to 50% of the amount paid under the Agreement in the 12 months prior to the event causing the liability, or EUR 10.000,-, whichever amount is lower.

15. TERM AND TERMINATION

- 15.1 Unless agreed otherwise in the Order Confirmation, this Agreement shall commence on the Effective Date and shall continue for the period of one year, unless otherwise terminated as provided in this Article 15. After one year, this Agreement shall automatically renew for subsequent one year periods, unless either Party notifies the other, in writing, at least 30 days before the end of the then current term.

15.2 Only during the first 30 days (free trial period) as of the Effective Date the Customer may terminate this Agreement by email and/or written notice for any or no reason and without being liable for Subscription Fees, damages or costs.

15.3 Irrespective of the foregoing, within 30 days of the following events the Customer may terminate the Agreement on a 1 month written notice:

- (a) Where Smartbooks changes or discontinues the Subscription Services, which has a material adverse effect on the use by the Customer; and,
- (b) Where certain Third Party Components become unavailable, which has a material adverse effect on the use by the Customer, or are available at a substantially higher cost.

15.4 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;
- (b) the other Party commits a breach of any other term of this Agreement that justifies the termination of the Agreement and its consequences ("**material breach**") which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a reasonable period of at least 15 days after being notified in writing to do so;
- (c) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of the Dutch Insolvency Act;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);
- (f) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.5 On termination of this Agreement for any reason:

- (a) all rights and licences granted under this Agreement shall immediately terminate;
- (b) each Party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party;
- (c) Smartbooks may destroy or otherwise dispose of any of the Customer Data in its possession, unless Smartbooks receives no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Smartbooks shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Smartbooks in returning or disposing of Customer Data;
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced; and

- (e) no obligation of either Party will come into existence to re-perform (undo) any and all obligations that have already been performed by either Party before the termination of the Agreement (in Dutch: *ongedaanmakingsverplichting*), as meant in article 6:271 Dutch Civil Code.

16. FORCE MAJEURE

16.1 If either Party is affected by force majeure as meant in article 6:75 Dutch Civil Code, it shall immediately notify the other Party of the matters constituting the force majeure and shall keep that Party fully informed of the continuance of the force majeure and of any relevant change of circumstances whilst such force majeure continues.

16.2 If the force majeure continues for longer than 30 days, either Party may at any time while such force majeure continues immediately terminate this Agreement and any by notice.

17. ENTIRE AGREEMENT

17.1 This Agreement, together with any documents referred to in it, constitutes the complete Agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, Agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. General terms and conditions of Customer are expressly excluded. Such general terms and conditions do not apply and are not incorporated into the Agreement, even if subsequent documentation should make reference to any such general terms and conditions. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. ASSIGNMENT

18.1 Neither party shall assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. However, either party may assign this Agreement in connection with a merger, acquisition, or sale of substantially all of its assets without such consent, provided that the assignee agrees to be bound by the terms of this Agreement.

19. GOVERNING LAW AND CHOICE OF FORUM

19.1 This Agreement shall be governed by the laws of Netherlands with exclusion of the United Nations Convention on Contracts for the International Sale of Products (CISG) and regardless of the conflict of law principles.

19.2 Any disputes arising from or in connection with this Agreement, tort, or otherwise shall be exclusively adjudicated by the competent court of Amsterdam, the Netherlands.