

## General Terms and Conditions **Den Draak Spraakherkenning**

also trading under the name of **LearnSpeechRecognition** and **Learn Dragon Online**

### Article 1. Definitions

In these General Terms and Conditions the following terms have the following meanings:

- a. Account: the login account of Client and/or User on the Website, which gives access to the Services and/or Products;
- b. General Terms and Conditions: this present set of General Terms and Conditions, which is deposited with the Chamber of Commerce under dossier number 09220012;
- c. Cooling-off period: the period during which the Consumer can make use of his/her right of withdrawal;
- d. Consumer: the Client who is a natural person and is not acting in the course of a profession or business;
- e. Course: all (online) learning modules provided or organised by or on behalf of Den Draak, consisting of theory, exercises, live instructions and instruction videos;
- f. Services: the services supplied by Den Draak, expressly understood to include: courses, webinars, coaching and guidance whether or not via the Website, together with training and coaching on location at the premises of the Client;
- g. User: the natural person who has been granted access to an Account on the basis of a Contract in order to make use of Den Draak's Services;
- h. Den Draak: the sole proprietorship Den Draak Spraakherkenning, also trading under the name of **Learn Dragon Online** and **LearnSpeechRecognition**, (also contractor) Trades Registry number: 09220012, established at Groesbeekseweg 246 A, 6523 PJ, Nijmegen;
- i. Client: the counterparty (natural or legal person) who has given the order to perform Services or has been given access to the Services, or the counterparty who purchases Products from Den Draak;
- j. Contract: the (Distance) Contract c.q. (online) order on the basis of which Den Draak supplies Products and/or Services to Client;
- k. Products: all matters offered, supplied or to be supplied by Den Draak on the basis of a Contract, which shall also be understood to include software;
- l. Parties: Den Draak and Client together;
- m. Website: the website which is operated by and belongs to Den Draak.

### Article 2. Applicability

1. These General Terms and Conditions are applicable to all offers by Den Draak and to all Contracts and other legal relations whereby Den Draak supplies Products and/or Services to the Client, and they therefore also form part of any such Contract. Parties may (partly) deviate from these General Terms and Conditions by way of contract.
2. The applicability of any General Terms and Conditions used by the Client is explicitly excluded.
3. The General Terms and Conditions are also applicable to all contracts involving third parties in their performance.
4. Should any provision of these General Terms and Conditions be void or nullified then the other provisions will continue to be fully enforceable and the void or nullified provision(s) of these General Terms and Conditions will be replaced by (a) new lawfully admissible provision(s) which will reflect the intention and the scope of the void or nullified provision(s) as closely as possible.

### Article 3. Contract

1. All offers and quotations made by Den Draak are without obligation. A quotation issued by Den Draak is valid for 30 days following issue. If Client accepts an offer Den Draak reserves the right to withdraw the offer within 3 working days of receipt of the acceptance.
2. Den Draak will not be bound by quotations or offers which contain an evident mistake or typographical error.

3. If an offer or quotation from Den Draak is based on requirements, wishes or other data provided by the Client, Client warrants the accuracy and completeness of the data supplied by him/her to Den Draak, upon which Den Draak has based its offer or quotation.
4. If the acceptance, whether or not in respect of minor points, deviates from the terms offered in the quotation or offer then Den Draak will not be bound by it. The contract does not then come into existence in accordance with this irregular acceptance, unless otherwise stated by Den Draak.
5. The Distance Contract is formed at the moment of acceptance by the Client of the offer and the satisfaction of the conditions stated therein.
6. The Contract also comes into existence at the moment when an order confirmation is sent by Den Draak to the Client, or when the Parties have given their reciprocal agreement to the Contract.
7. Den Draak is entitled at any time to amend or add to the General Terms and Conditions. Amendments take effect 30 days after notice is given to the Client. If the Client is a Consumer, Den Draak will refer the Consumer to the right to cancel (the relevant part of) the contract with effect from the date of coming into force of the amendment. The cancellation must be received by Den Draak no later than the date of coming into effect of the amendment.
8. If Parties enter into a contract for a period of time the contract is entered into for a period of one year unless it is apparent from the content, nature or scope of the assignment that the contract is for a different duration.

### Article 4. Performance and delivery

1. Den Draak shall determine the way in which the Services shall be performed, and by whom they shall be performed, but will take into account any wishes made known by the Client as far as possible.
2. If, and to the extent the proper performance of the Contract requires it, Den Draak is entitled to cause certain Services and/or Products to be supplied by one or more third parties.
3. All Services supplied by Den Draak are performed to the best of its ability and understanding in accordance with the requirements of good workmanship. Contracts with Den Draak are only to be defined as an obligation of best effort and can never comprise an obligation to achieve a particular result.
4. The place of supply of Products shall be deemed to be the address that Client has made known to Den Draak.
5. All Products supplied by Den Draak under the Contract are supplied subject to reservation of title.
6. In supplying the Products and/or Services Den Draak bases itself on the information, data or files provided by the Client. The accuracy of this information and these files is therefore also the responsibility of Client. Client is bound to inform Den Draak immediately of any facts and circumstances which have changed, and which may be of importance for the performance of the Contract.
7. Client is also bound to make available to Den Draak all information, data and files which Den Draak, in its judgement, needs for the proper performance of the Services in good time and in the manner desired by Den Draak. Any (extra) costs incurred in order to obtain information, data or files shall be borne by the Client.
8. Any extra costs arising from delay in the performance of the Contract due to the failure to provide the required information, data or files properly or in good time shall be borne by the Client.
9. Den Draak is entitled at all times to expand, adapt or remove (parts of) the offer and the contents of its Products and/or Services. In that case Client has no right of restitution of amounts paid, or reduction of future amounts payable to Den Draak.
10. References in the Contract to a period of time for the performance of certain Services are in all cases indicative in nature and can never represent a fundamental term.

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11. If Den Draak, regardless of the circumstances and causes, expects that a period of time shall be exceeded, Den Draak shall inform the client of this as soon as possible.
12. Den Draak gives no guarantee of the suitability of the Products and/or Services for any particular purpose.

**Article 5. Right of withdrawal and cooling-off period**

1. Only a Consumer can cancel a Distance Contract (i.e. via the Website) relating to the purchase of a Product and/or Services during a Cooling-off period of fourteen (14) days by giving notice without stating any reason, subject to the conditions set out in this article.
2. During the Cooling-off period the Consumer will treat the Product and the packaging carefully. He/she will only unpack the product or use it to the extent necessary in order to assess whether he/she wishes to keep the Product.
3. As soon as possible, but in any case within fourteen (14) days from the day following the notification within the meaning of clause 1, the Consumer shall send the Product back, or shall hand it over to Den Draak. The Consumer has in any case complied with the Cooling off period if he/she returns the Product prior to the expiry of the Cooling off period.
4. The Consumer returns the Product together all items supplied, if reasonably possible in its original condition and packaging, and in accordance with clear instructions supplied by Den Draak.
5. The risk and burden of evidence of correct and timely exercise of the right of withdrawal lies with the Consumer.
6. The Consumer bears the direct costs of returning the Product.
7. In the case of a Contract for the performance of Services the right of withdrawal expires if performance has commenced following the express prior agreement of the Consumer, if the Consumer has waived his/her right of withdrawal, or as soon as Den Draak has performed its obligations under the Contract.
8. The following are excluded from the right of withdrawal as described in this article: packaged Products which are unsuitable for hygiene reasons for being returned, and of which the seal (packaging) is broken following delivery, such as headsets and microphones, together with Products comprising computer programs (software).

**Article 6. Courses**

1. If the provisions of this article deviate from the other provisions of these General Terms and Conditions, the provisions of this article prevail, however only with regard to Courses.
2. Den Draak is entitled to refuse a request for the provision of a Course without giving reasons.
3. Den Draak endeavours to provide high-quality Courses. In the event of any complaints, article 17 is applicable.
4. Den Draak can revise the programme announced for the Course, its timing, and the way in which the Course is offered.
5. Den Draak can replace the stated coach, guide or trainer with another person having the same level of knowledge.
6. Den Draak can cancel a Course or combine study groups in the event of insufficient enrolments.
7. Den Draak shall inform the Client in good time of the changes referred to in clauses 2 to 6.
8. A User who participates in a Course may not arrange for him/herself to be replaced by another participant.
9. If the Client and/or User submits a request to Den Draak for the date and/or time of the Course to be amended three (3) working days or less prior to the commencement of the Course, Den Draak shall be free, – entirely without obligation – to consent to this, in which case Den Draak will charge the Client a surcharge of 25%.
10. Notwithstanding the provisions of article 8, the Contract relating to a Course must be paid for in advance.

11. Notwithstanding the provisions of article 13, the Client is not permitted to develop or to give a similar Course or training based on the courses, the study plans and course material provided by Den Draak in the absence of the express written consent of Den Draak.
12. If exams are to be taken, Den Draak will use its best endeavours to inform Clients of the exam requirements in good time.

**Article 7. User and Account**

1. The use of the (online) Services on the Website is reserved for the User. User undertakes to use the associated documentation and resources solely for the period of time and within the limits of the provisions of the Contract, these General Terms and Conditions, and the applicable legislation and regulations.
2. Each User is required to open an Account on Den Draak's Website. User will keep the details and the password of the personal Account, together with the content of the Services, secret at all times and will not allow third parties to have access to the Services.
3. A personal Account may not be used by more than 1 User. If it reasonably suspects an infringement of this provision Den Draak is entitled to block the relevant Account immediately and without notification. In the event of repeated infringement Den Draak is entitled to suspend or terminate the Contract immediately and without notification. In such a case Client/User/ has no entitlement to restitution of payments already made.
4. If Client is acting in the course of a profession or business he/she will not allow third parties, not forming part of Client's personnel, to have access to the Services and will keep the contents of the Services secret. Client shall take all technical and organisational security measures necessary in order to prevent theft or unlawful access to the Services and/or Account(s).
5. In the event of (possible) theft or unlawful access to the Services and/or Account(s), Client shall immediately inform Den Draak and – at its own expense – take all possible measures to prevent further unlawful use and/or to remedy the unlawful use that has already taken place.
6. In the absence of express prior written permission from Den Draak Client is not permitted to lease, sell or sublicense the Services and related information (in whole or in part) or in any other way to make these available to third parties or to exploit them for commercial purposes.

**Article 8. Prices**

1. If a fixed price is agreed for the performance of Services and the performance of those services requires extra work or activities which cannot reasonably be deemed to have been included in the fixed-price Den Draak will inform the Client in advance either in writing or via email of the financial consequences of the extra work, services or activities.
2. All prices charged by Den Draak, together with the prices stated in quotations and correspondence, exclude 21% BTW and any other government levies, and they also exclude any additional costs incurred under the Contract, unless otherwise stated.
3. In the event of the cross-border supply of Services and/or Products Den Draak will include in its charges any government levies and/or BTW in accordance with applicable (international) law and regulations.

**Article 9. Invoicing and payment**

1. Den Draak is entitled to request an advance payment from the Client prior to the performance of the Contract. An advance payment will be deducted from the final invoice. Advance payments must be made within the stated payment term.

2. Payment of invoices is to be made within thirty (30) days of invoice date, in euros, by means of deposit or bank transfer to a bank or giro account designated by Den Draak, unless otherwise agreed. An objection to the amount of invoices submitted does not suspend the obligation to make payment.
3. Payments made by Client will be first applied in settlement of all interest and costs payable, and then secondly in the payment of the longest outstanding invoices, regardless of whether Client indicates that the payment relates to a later invoice.
4. Den Draak is entitled to suspend or terminate the supply of Products and/or Services if Client is in default of his/her payment obligations.
5. The Client is in default if he/she has not made payment within the term described in clause 2.
6. If Client is in breach or default in the performance of his/her payment obligations all reasonable costs incurred in obtaining recovery – in and out of court – will be borne by Client. In any case Client, in the case of a claim for recovery of money, is liable to pay recovery costs, being 15% of the agreed price of the contract, subject to a minimum of € 150. If Den Draak has incurred higher costs which were reasonably necessary, these will also be borne by Client, together with any legal and execution costs.
7. In derogation from clauses 5 and 6, in the case of a Consumer the following applies. If the Consumer does not meet his/her payment obligations in good time, after having been reminded by Den Draak that payment is overdue and if Den Draak has granted the Consumer a period of fourteen (14) days in order to meet his/her payment obligations, and if payment is not made within this 14 day period, the statutory rate of interest will be charged on the outstanding amount and Den Draak is entitled to claim for costs in accordance with the Scale of Extrajudicial Recovery costs (*Staffel Buitengerechtelijke Incassokosten - BIK*).
8. In the event of the Client's bankruptcy, liquidation, deferral of payment to creditors or debt restructuring under the relevant law (*WSNP*) all claims Den Draak has against Client and the obligations of Client in favour of Den Draak become immediately enforceable.
9. Den Draak has the right of retention of all data, papers and other matters in its possession up until the point in time when Client has made payment to Den Draak of all amounts owed by him/her.
10. If in Den Draak's opinion the financial position or the payment behaviour of Client justifies it, Den Draak is entitled to demand from Client that he/she should immediately provide (additional) security in a form to be determined by Den Draak and/or make an advance payment.
11. In the event of the liquidation, bankruptcy or deferral of payment to creditors on the part of Client all claims on the part of Den Draak and all obligations on the part of the Client in favour of Den Draak become immediately enforceable.
12. Den Draak is entitled to terminate the (further) performance of the contract if Client does not adhere to the payment conditions or in some other way fails to comply with his/her obligations, this being without prejudice to Den Draak's right to claim compensation for damage.

#### **Article 10. Termination/dissolution**

1. The Client waives all rights to terminate the contract under article 6:265 et seq. of the Civil Code or other statutory provisions, unless cancellation is agreed in accordance with this article.
2. Clause 1 is not applicable if the Client is a Consumer.
3. Either of the Parties can terminate the contract in writing, in whole or in part, without notice of breach and with immediate effect, if the counterparty – whether or not provisionally - is granted suspension of payment to creditors or debt restructuring under the relevant law (*WSNP*), if bankruptcy is applied for with regard to the counterparty,

or if the counterparty's business is liquidated or terminated otherwise than in the course of reconstruction or merger of businesses. Den Draak shall never be liable to make restitution of money previously paid or pay compensation for damage as a result of this termination. In the event of bankruptcy on the part of the Client the right of use of all programs (software) placed at Clients disposal will terminate automatically.

#### **Article 11. Confidentiality and privacy**

1. The Parties are not permitted to disclose information, which is or could be confidential in nature, to third parties, or to apply information for any other purpose than that for which they have obtained it. A duty of secrecy applies to all parties with regard to such information. Information shall be deemed to be confidential if stated to be so by one of the parties or if this flows from the nature of the information.
2. Den Draak respects Client's privacy and will at all times handle the personal information provided confidentially and in accordance with the Data Protection Act (*Wet bescherming persoonsgegevens*).
3. The Client and/or User hereby grants to Den Draak express permission to process the personal data supplied by him/her, to use it for the purposes of Den Draak, and to record it in the data file that Den Draak creates in the course of the provision of its Services and/or the Contract. This data will always be stored and managed in accordance with the applicable statutory regulations.
4. The Client and/or User may at all times ask to inspect the data about him/her that is stored in Den Draak's data file.
5. Den Draak will make every effort to take suitable technical and organisational measures in order to protect personal data from loss or any form of unlawful use. These measures provide, taking account of the state of technology and the cost of implementation, a suitable level of protection in the light of the risks which the processing and the nature of the data bring with them.
6. If the assignment includes the processing of personal data, a processing contract proposed by Den Draak forms an integral part of the contract(s) with Den Draak. This processing contract contains additional agreements relating to the processing and security of personal data. In this situation Den Draak acts in the role of the processor and the Client acts as the responsible party, in accordance with the General Data Protection Regulation (*Algemene Verordening Gegevensbescherming - AVG*).
7. Client is bound to comply with the processing contract (see above), the AVG and accompanying legislation and regulations with regard to the personal data provided by him. If Client fails to comply with these duties he is liable for the resulting damage suffered by Den Draak. Damage shall in any case be deemed to include: (remedial) costs, fines, penalties and other costs of legal representation.
8. If Den Draak is bound to disclose confidential information to third parties by virtue of a statutory provision or a court order, and Den Draak is unable to invoke a right to refuse to give evidence, then Den Draak will not be liable to pay damages or compensation to Client.
9. The duties under this article remain in force following the termination of the contract.
10. Den Draak is entitled to use the name and logo of Client as a reference, if the Client is acting in the course of a profession or business.

#### **Article 12. Website**

1. Client is required to provide apparatus and facilities giving access to a network. This network must enable Client to receive the Services provided by Den Draak via the Website. Client is personally responsible for the communication costs incurred.
2. Den Draak will make every effort to ensure the Website functions properly and is permanently accessible. Many factors play a



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significant role in this for Den Draak, including dependence on external parties. Den Draak cannot guarantee that the Website will be permanently accessible or function properly.

- Den Draak endeavours to keep its Website accessible 24 hours per day, 7 days per week (with the exception of planned downtime due to maintenance and related activities), but cannot guarantee this.
- Den Draak will issue updates from time to time in connection with the optimisation of the Website .
- Client accepts that Den Draak's Products and/or Services are supplied on the Website as they are, without additional services from Den Draak.
- Den Draak gives no guarantees relating to the effect of the Services on the Client's or User's computer (operating) systems.

### **Article 13. Intellectual property**

- Den Draak reserves all rights – including patent rights and copyrights – relating to Services that it offers, develops and/or designs in the course of the performance of the Client's assignment c.q. the Contract, insofar as these rights arise under the law. All other and more extensive rights of Client are excluded.
- Client indemnifies Den Draak for third-party claims relating to intellectual property rights.
- Client is not permitted to publish and/or reproduce in whatever form information gained from Services. Among other things this includes processing, selling, making available, distributing and – whether or not following processing – integrating information in networks and/or in programmes.
- Publishing, in whatever manner, may only occur following receipt of written consent from Den Draak. In the event of termination of the contract the above is similarly applicable.

### **Article 14. Force majeure**

- Den Draak is not bound to perform any of its obligations in favour of Client if it is hindered from doing so as a result of circumstances which cannot be attributed to fault on its part and which cannot be said to be its responsibility either under the law, precedent, or generally accepted standards (force majeure).
- Force majeure, as described in clause 1, shall be deemed to include, though without limitation to: the failure by suppliers to properly perform their obligations, disruption or breakdown of power and/or telecommunication facilities/Internet, data leaks, hacks, lack of items, materials and programs (software) from third parties which Den Draak uses, including a failure on the part of external (hosting) providers.
- Den Draak may suspend performance of its obligations under the Contract during the period of force majeure. If this period lasts longer than sixty (60) days then both parties are entitled to dissolve the Contract, without any obligation to pay compensation for damages to the other party, subject to accounting for the duration of services provided until then.
- If a situation arises as referred to in the previous clause and the contract has been partly performed, Client is bound to meet its obligations in favour of Den Draak up to that point in time. Den Draak is therefore entitled to invoice separately for the part already performed or to be performed. Client is bound to pay this invoice as if it were a case of a separate (part) contract.

### **Article 15. Liability and indemnity**

- Den Draak is only liable to the extent stated by this article. The same applies in the case of third parties engaged by Den Draak for the performance of the Contract.
- The limitations on the liability of Den Draak included in these General Terms and Conditions do not apply if the damage is attributable to

the intentional act or gross negligence of Den Draak and/or its subordinate(s).

- Den Draak is not liable for any damage(s) in the case of force majeure.
- Den Draak is not liable for any damage resulting from the use of the Website and/or the reduced or temporary non-functioning of the Website.
- Liability on the part of Den Draak for indirect damage, consequential damage, loss of profits, lost savings,, reduced goodwill, damage due to business interruption, damage resulting from claims by the Client's customers, corruption or loss of data, damage relating to the use of items recommended by Client to Den Draak, materials or software of third parties, damage relating to the engagement of suppliers recommended by Client to Den Draak and all forms of damage whatsoever other than as described in clauses 6, 7 and 8 of this article, is excluded in the absence of intent or gross negligence.
- If an error is made because Client has supplied inaccurate or incomplete information to Den Draak, Den Draak is not accountable for the damage arising. If Client demonstrates that he/she has suffered damage due to a fault which Den Draak should have prevented if it had acted with due care and attention, Den Draak is liable for this damage up to the amount of the payments that Den Draak has received for the Services under the Contract.
- Den Draak can only be held liable for direct damage, caused by an attributable failure in the performance of its obligations arising under the Contract. Den Draak's liability is at all times limited to the amount paid out with regard to the relevant incident by Den Draak's professional liability insurance, whilst all liability is limited to the maximum that has been invoiced for the Services and/or Products which have given rise to the damage, in any case for that part of the Contract to which the liability relates.
- Direct damage shall be deemed to include exclusively:
  - reasonable costs which the Client is obliged to incur in order to cause Den Draak to answer for its performance of the Contract; this alternative damage will not however be compensated for if the contract is dissolved by or at the request of Client;
  - reasonable costs incurred in order to establish the cause and extent of the damage, insofar as this relates to direct damage within the meaning of these conditions;
  - reasonable costs incurred in order to prevent or limit damage insofar as Client demonstrates that these costs have led to the limitation of direct damage within the meaning of these conditions.
- Den Draak's liability for damage due to death or physical injury, or due to material damage to goods will never exceed a total of € 1,250,000 (one million two hundred and fifty thousand euros).
- The existence of any right to compensation for damages is at all times conditional on the Client notifying Den Draak in writing as soon as possible after it arises. All claims for compensation for damage against Den Draak expire at the end of the period of 12 (twelve) months following the coming into existence of the claim.

### **Article 16. Suspension and termination**

- Den Draak is entitled to suspend the (further) performance of the Contract if Client fails to adhere to the payment conditions or in any other way fails to comply with its obligations, this being without prejudice to Den Draak's right to claim for compensation for damage.
- Contracts, whether or not in the form of a Course, may be cancelled with the consent of Den Draak and in accordance with the provisions of this article.
- In the event of early termination of a Contract Den Draak reserves the right to claim for payment of invoices.

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4. In the event of liquidation, (request for) suspension of payment to creditors, bankruptcy, seizure of goods on the part of Client – if and to the extent that the seizure is not lifted within one (1) month – debt restructuring or any other circumstances whereby Client is no longer freely able to dispose of its assets, Den Draak is free to immediately terminate the Contract with immediate effect or to annul the order or Contract, without any obligation on the part of Den Draak to pay damages or compensation. Legal intervention and/or notice of breach is not required for this. All claims by Den Draak on the Client are then immediately enforceable.

**Article 17. Claims and complaints**

1. All claims and complaints relating to Services provided and/or invoicing must be made known in writing to Den Draak within fourteen (14) days of performance of the Service, or within fourteen (14) days of the discovery of the defect, if Client demonstrates that he/she could not reasonably discover the defect earlier. After the expiry of the above term Client shall be deemed to have accepted the Products and/or Services and/or invoices supplied and complaints will no longer be admissible.
2. If the Client wishes to submit a written complaint this should be sent via email to [info@dendraakspraakherkenning.nl](mailto:info@dendraakspraakherkenning.nl) and via the mail to Den Draak's address (article 1).
3. Den Draak will make its position known to the complainant no later than fourteen (14) days following receipt of the complaint. This will also occur in writing, supported by an explanation.
4. Claims and complaints do not suspend the obligation to make payment or other obligations of Client under the Contract.
5. In the case of a justified claim or complaint Den Draak may choose between adjusting the tariff charged, remedying free of charge or supplying a replacement for the rejected Products and/or Services, or for the partial cessation of (further) performance of the Contract in return for restitution of a proportion of the tariff already paid by Client. If the further supply of the Products and/or Services is no longer possible or sensible, the liability of Den Draak will be limited in accordance with the provisions of article 15.

**Article 18. Other matters**

1. If these General Terms and Conditions are drawn up in a different language, the Dutch version shall prevail in the event of any lack of clarity, imperfection or conflict of meaning in/due to the translation.
2. Dutch law is applicable to all Contracts and legal relations between Den Draak and Client, including any case where an undertaking is performed entirely or partially outside the Netherlands or if the Client is resident there.
3. All disputes between Den Draak and Client which may arise, and which cannot be resolved by mutual consultation, will be exclusively subject to the jurisdiction of the competent member of the judiciary in Nijmegen in the Netherlands.
4. Any legal proceedings shall be conducted using the Dutch language.
5. Parties will only take a claim to court after they have made their best efforts to resolve a dispute in mutual consultation.