

**Terms and conditions Matterhorn Reporting Services B.V.**

**Last update: 01 January 2023**

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**I. GENERAL PROVISIONS**

**1. Offer, general provisions**

**1.1** These Terms and Conditions apply to all offers and agreements whereby Matterhorn Reporting Services B.V. delivers these goods and / or services of whatever nature to the Client, even if these goods and / or services are not (further) specified in these Conditions.

**1.2** These Terms and Conditions consist of a General Provisions (Chapter I) and SAAS section (chapter II). Depending on the goods and / or services provided by Matterhorn by Reporting Services B.V., the provisions of the special parts are applicable. In the event of any conflict between the general provisions and the special provisions the special provisions prevail. Changes and / or additions to these Terms and Conditions are only valid if expressly agreed in writing by an authorized person.

**1.3** Applicability of any purchase or other conditions of the Client and / or third parties are expressly excluded. Signing or (tacit) acceptance by Matterhorn Reporting Services B.V. documents from the Client and / or third parties (for example, printed on letterhead), shall never mean the acceptance of these conditions.

**1.4** If any provision of these Terms and Conditions and / or the contract of which these Terms and Conditions apply to, between the parties is void or unenforceable, the remaining provisions of these Terms and Conditions and / or this agreement shall remain in full force and Matterhorn Reporting Services B.V. and Client will discuss new rules to agree to replace the invalid or void provisions, as far as possible the purpose and intent of the invalid or void provision shall be respected.

**1.5** Matterhorn Reporting Services B.V. reserves the right to modify these Terms and Conditions immediately by written notice to the Client. However, this leaves the core clauses of the agreement between the parties, such as price, size and content of the Parties performance unimpeded.

**1.6** All agreements and amendments, will only be concluded by signing by both parties of an offer by Matterhorn Reporting Services B.V. or any other document, or when the client allows Matterhorn Reporting Services B.V to carry out the activities in the context of the agreement.

**1.7** Matterhorn Reporting Services B.V. reserves the right to transfer its agreements with the Client to other companies which are part of the group where Matterhorn Reporting Services B.V. is part of and / or third parties. The client will not refuse assistance or cause unreasonably delay. Matterhorn Reporting Services B.V. will notify the Client in case of a transfer.

**1.8** If these Terms and Conditions or other references to other agreed arrangements are used in communication to the client, this always refers to agreements exclusively in writing.

**2. Price and payment**

**2.1** Unless otherwise stated by Matterhorn Reporting Services B.V. the prices and tariffs in euros and are exclusive of sales tax (VAT) and other levies imposed by the government. All prices and rates are based on implementation of the agreement within the country where Matterhorn Reporting Services B.V. is offering its services and during normal office hours, which means: Monday to Friday (except general celebrated national holidays) between 8:00 and 18:00

**2.2** An interim change of statutory levies and / or changes or indexing the level of wages and costs, can be charged by Matterhorn Reporting Services B.V. to the Client. Indexing the level of wages and cost is always meant an adjustment according to the latest by the Central Bureau of Statistics published price index CAO for business services.

**2.3** Matterhorn Reporting Services B.V. is entitled to adjust the agreed prices and rates by means of a written notification to the Client for activities which, according to the agreement, will be delivered on a date at least three months after the date of this notice, unless parties have agreed in writing a fixed price. Only if the Client does not wish to agree with the adjustment of prices and rates provided in this article, the Client is entitled to cancel the agreement by the date at which the adjustment comes in effect.

**2.4** All invoices shall be paid by the Client in accordance with the payment terms indicated on the invoice or the otherwise in writing the agreed payment terms. In the absence of specific conditions, the Client shall pay within 14 (fourteen) days after the invoice date.

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**2.5** If the Client does not pay within the agreed period, the Client will without notice, owe statutory interest as specified in Article 6: 119a and 6: 120 Civil Code (statutory commercial interest) on the outstanding amount. If the client, after the notice fails to pay the claim, the claim may be passed on, in which case the client in addition will also be obliged to pay a reasonable compensation for extrajudicial and if relevant court expenses, including all costs, as provided Article 6:96 Civil Code, calculated by external experts in addition to the legally determined costs, in connection with the collection of this claim or other legal action, the amount of which is determined at least 15% of the total amount.

**2.6** in the absence of timely payment Matterhorn Reporting Services B.V. is entitled to suspend all its obligations towards the Client without being obliged to pay any compensation. Insofar Matterhorn Reporting Services B.V. carries out services during this period at the request of the Client, Matterhorn Reporting Services B.V. can charge a separate fee in accordance with its usual rates.

**3. Confidential information and clause prohibiting takeovers**

**3.1** The parties are required to maintain confidentiality in respect to all of the information they receive from each other, unless a legal obligation to disclose such information and / or data exists. The parties are not permitted without prior consent to share in any way, directly or indirectly, information and / or data to the public domain or a third party. Information shall in any event be considered confidential if it is designated as such by either party. The duty of confidentiality shall terminate one year after the termination of the contract, unless otherwise agreed.

**3.2** The Client does not use documentation, software, know-how or other goods for any purpose other than for which it was provided, nor will the client without the written permission of Matterhorn Reporting Services B.V. make it available to any third party.

**3.3** In the event of termination of the Agreement client data and information will be destroyed.

**3.4** Neither party shall, without the prior written consent of the other party, publish or advertise the Agreement, whereby the parties will not be unreasonably withheld written consent. This does not affect the right of Matterhorn Reporting Services B.V. to use the name of the Client, as well as a brief description of the service as a reference.

**3.5** Each party shall during the term of the agreement and for one year following termination thereof not ask employees, directly or indirectly, to work for them without the prior written consent of the other party.

**3.6** If the Client violates the provisions contained in paragraph 1 to 5 of this Article, it shall forfeit to the other party a fine of € 2000, - per day that the violation continues, without prejudice to the obligation to pay the actually damages. Damages shall in any case be training and recruitment costs by Matterhorn Reporting Services B.V.

**4. Intellectual property rights**

**4.1** All intellectual property rights at all under the agreement by or on behalf Matterhorn Reporting Services B.V. developed or provided goods, including, but not limited to, software, websites, databases, equipment or other materials such as analyzes, models, techniques, designs, documentation, reports, as well as preparatory material lie exclusively with Matterhorn Reporting Services B.V. Client acquires only the right to use expressly granted. The client will not reproduce or copy the software, websites, databases or other materials in any way.

**4.2** The Client is aware that the provided software, websites, databases, equipment and other materials may contain confidential and / or trade secrets of Matterhorn Reporting Services B.V. or its licensors. Client keeps, without prejudice to Article 3 (Confidentiality), this software, databases, equipment and materials confidential and does not disclose it to third parties or to give in use and will only use it for the purpose for which it was made available. Third parties also include all persons working in the organization of Client which do not necessarily need to use the software, websites, databases, equipment and / or other materials.

**4.3** The Client is not allowed use any reference to copyright, trademarks, trade names or other intellectual property rights based on the software, websites, databases, equipment or materials, including statements regarding the confidentiality and secrecy of the software.

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**4.4** Matterhorn Reporting Services B.V. or its licensor or the manufacturer are allowed to take technical measures to protect the software. If Matterhorn Reporting Services B.V. has secured the software by means of technical protection, the Client is not permitted to remove or circumvent these security measures.

**5. Liability of Matterhorn Reporting Services B.V.; disclaimer**

**5.1** Matterhorn Reporting Services B.V. accepts liability for damages to the extent that it appears from this article.

**5.2** The liability of Matterhorn Reporting Services B.V. due to culpable breach of a contract arises only if the Client notifies Matterhorn Reporting Services B.V. immediately and properly of default, stating a reasonable period to remedy the deficiency and when Matterhorn Reporting Services B.V. after that period attributable to fulfill its obligations continues to fail. The notice must contain a detailed description of the failure, so that Matterhorn Reporting Services B.V. is able to respond adequately.

**5.3** The total liability of Matterhorn Reporting Services B.V. On any grounds whatsoever, shall be limited to direct damages up to the amount of the price paid on the basis of that agreement (excluding VAT) during 1 (one) year. In no event, however, shall the total compensation for direct damage be greater than € 500.000, - (five hundred thousand). Direct damage is only:

- a) The demonstrable reasonable costs that the Client would have to make to achieve what was agreed between the client and Matterhorn Client Reporting Services B.V. This damage will not be compensated if the agreement is terminated or if the damage is due to the Client;
- b) Damage to software and equipment, which means material damages as well as defects or malfunctioning;
- c) damage to other property of the other party and / or third parties;
- d) demonstrable reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to direct damage within the meaning of these conditions;
- e) The demonstrable reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these terms.

**5.4** The total liability of Matterhorn Reporting Services B.V. for damage resulting from death or physical injury shall in no case exceed € 500.000, - (five hundred thousand) per event, a series of events is regarded as one event, with a maximum of € 1,000,000, - (one million) per year.

**5.5** Liability of Matterhorn Reporting Services B.V. for indirect damages, including consequential damages, lost profits, lost savings, loss of data and loss caused by stagnation is excluded at all times.

**5.6** Except the cases specified in Article 5.3 and 5.4 on Matterhorn Reporting Services B.V. accepts no liability for damages, regardless of the grounds on which an action for damages would be based. The maximum amounts in articles 5.3 and 5.4 do not apply when the damage is caused by intent or gross negligence of Matterhorn Reporting Services B.V.

**5.7** Condition for the existence of any right to compensation is always that Client reports the damage as soon as possible (no later than three months) in writing after the occurrence thereof to Matterhorn Reporting Services B.V.

**5.8** The limitations of liability set out in Articles 5.3, 5.4 and 5.5 shall apply mutatis mutandis to indemnifications.

**5.9** If the parties in addition to the right to compensation agree to a penalty, any forfeited contractual penalties and paid and / or payable amounts based on indemnities will be deducted from any damages in respect of the same event.

**5.10** The Client indemnifies Matterhorn Reporting Services B.V. and employees of Matterhorn Reporting Services B.V. from all claims of third parties, especially for third party claims for product liability due to a defect in a product or system delivered by the Client to a third party and which partly consists of Matterhorn Reporting Services B.V. equipment, software, websites, databases or other materials, except if and insofar as the Client proves that the damage was caused by that equipment, software, websites, databases or other materials.

**6. Force Majeure**

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**6.1** Neither party shall be obliged to perform any obligation if it is prevented from doing so due to force majeure.

**6.2** To the extent not already included, force majeure also means: blockades, embargoes, governmental action, war, revolution and / or any similar state,

**6.3** If the force majeure lasts longer than ninety days, the parties have the right to terminate the Agreement by registered mail, unless it is foreseeable that the force majeure situation will be resolved within a reasonable period. What has already been performed as part of the Agreement shall be settled proportionately in that case, without the parties owing each other anything.

**7. Applicable Law and Disputes**

**7.1** The legal relations between the parties are governed by Dutch law. The Vienna Sales Convention is expressly excluded.

**7.2** The disputes between Matterhorn Reporting Services B.V. Client which may arise from an offering by Matterhorn Reporting Services B.V., an agreement between the Client and by Matterhorn Reporting Services B.V. or as a result of further agreements that may result therefrom, shall be resolved by the competent Dutch court in Amsterdam, unless the parties agree in writing, to follow the procedures from the mini-trial rules (non-binding advice) or the Arbitration Rules of the Foundation Settlement of Automation Disputes in The Hague, without prejudice to the parties' right to request an injunction in court.

**II. SOFTWARE AS A SERVICE (SAAS)**

**Article 8 General**

**8.1** The provisions contained in this Special Provisions SaaS, in addition to the General Provisions, apply if Matterhorn Reporting Services B.V. provides services in the field or in the name of Software as a Service (SaaS).

**8.2** The Software as a Service means: providing and maintaining “remotely” Products by Matterhorn Reporting Services B.V. to the Client via the Internet or another network, without providing a physical medium with the Products to Client.

**Article 9 Delivery and Services**

**9.1** Delivery takes place by means of sending a personal login name and password by which remotely access the product can be obtained by an authorized user. Matterhorn Reporting Services B.V. will ensure that the client receives the user credentials within 2 (two) working days after signing the agreement.

The Client will treat the access and identification codes as confidential and with due care and shall only submit authorized users. Client is responsible for the confidential use of login name and password and is liable for (the consequences of) any abuse thereof. Matterhorn Reporting Services B.V. is entitled to change the access or identification codes.

**9.2** Matterhorn Reporting Services B.V. is not responsible for the purchase and / or proper operation of the infrastructure of the Client.

**9.3** Matterhorn Reporting Services B.V. will advise users by telephone or e-mail on the use and operation of the Agreement mentioned products and the use made of the SaaS service. Matterhorn Reporting Services B.V. may impose conditions on the qualifications and the number of contacts that are eligible for support. Unless otherwise agreed in writing, support shall only be provided on working days during the opening hours of Matterhorn Reporting Services B.V.

**Article 10 Implementation Services**

**10.1** Matterhorn Reporting Services B.V. will use its best efforts to perform the services with due care, where appropriate, in accordance with the arrangements and procedures agreed with the Client in writing. All services Matterhorn Reporting Services B.V. delivers are on the basis of best effort, except when results are expressly promised and the result has also been described with sufficient definiteness in the Agreement between Matterhorn Reporting Services B.V. and the client.

**10.2** Matterhorn Reporting Services B.V. performed the service only on behalf of the Client. If Matterhorn Reporting Services B.V. has to perform any activity related to data of the Client, its employees or users, due to

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an authorized order from a government agency or in connection with a legal obligation, all associated costs to the Client will be charged.

**10.3** Matterhorn Reporting Services B.V. may modify the content or scope of its service. If such modification requires a change in the process for the Client, Matterhorn Reporting Services B.V. will inform client as soon as possible and the cost of this change on behalf of the Client. In that case, the Client has the right to terminate the Agreement in writing on the date on which the amendment enters into force, unless this modification relates to changes in relevant legislation or other rules provided by competent authorities or if Matterhorn Reporting Services B.V. takes account of the costs.

**10.4** Matterhorn Reporting Services B.V. can continue the execution of the service using a new or amended version of the Products. Matterhorn Reporting Services B.V. is not held to maintain, change or add certain features or functionalities of the service or product specifically for a Client. In the case of the introduction of substitute products with comparable and / or more elaborate functionality than the existing agreed products, Matterhorn Reporting Services B.V. is allowed to migrate the Client to these replacement Products, which then apply as the agreed Products.

**10.5** Matterhorn Reporting Services B.V. can fully or partially temporarily disable its service for preventive, corrective or adaptive maintenance. Matterhorn Reporting Services B.V. will on a best effort basis ensure that the decommissioning will not last longer than necessary, and according to the circumstances, take place outside office hours and, and after notice to the Client. Matterhorn Reporting Services B.V. will scheduled planned maintenance between 20.00-24.00 CET

**10.6** Matterhorn Reporting Services B.V. is entitled to block access to the products in the event of unauthorized use or abuse of the Products by the Client and / or abuse by third-parties. Matterhorn Reporting Services B.V. will not be obliged to pay compensation to the Client in case of such a blockage of access.

### **Article 11 Service Level Agreement**

**11.1** Any agreements concerning a service (Service Level Agreement) are only expressly agreed in writing. The availability is measured disregarding admission of scheduled maintenance work or circumstances beyond the control of Matterhorn Reporting Services B.V. and measuring the compliance of the service as a whole during the term of the agreement. Unless well documented evidence is provided by the Client, the measurements taken by Matterhorn Reporting Services B.V. on availability and service shall be conclusive evidence.

#### **11.2 Availability**

The Matterhorn Reporting System is hosted by a fully certified European data center. This 'top tier' data center has an SLA availability target of 99.99%. The availability and performance of the Matterhorn Reporting System are monitored continuously. In the event of major maintenance or a fault the customer will be informed about the status via email. The Matterhorn Reporting System may not be available in the following situations:

- preventative maintenance;
- maintenance that has been agreed with the customer;
- crises as a result of natural disasters and other force majeure situations.

#### **11.3 Fail-over**

Only if expressly agreed in writing Matterhorn Reporting Services B.V. is held to have a failover center or other failover facilities. The standard hosting option Matterhorn is designed for availability of 99.99%.

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**11.4 Maintenance**

The customer will be informed at least 2 days in advance if Matterhorn Reporting System may not be available during office hours. Planned maintenance will be carried out between 20:00 and 24:00 CET or at the weekend. Hotfixes with a high urgency or severity can be carried out during office hours without prior notification.

**11.5 Recovery Time Objective (RTO) in the event of a crisis**

If the data center fails completely and the issue sustains for more than 4 hours, Matterhorn will enable a backup server and notify the clients. The RTO, the time required in order to make the alternative Reporting system available, is 8 hours.

**11.6 Support**

The support staff at Matterhorn Reporting Services resolves problems and answer questions about the reporting system. An incident can be submitted via email or by telephone. Each incident will be assigned a severity. During office hours Matterhorn targets to report back to the client within two hours about the severity and status of the issue.

**11.7 Severities and target rectification times**

<b>Problem Severity Level</b>	<b>Description</b>	<b>Target rectification time</b>
Severity Level 1	Mission critical business process(s) unable to function – The System is not functioning and there is no workaround that is acceptable to the Client, thereby preventing a department or workgroup from performing a mission critical business function(s).	Work will start immediately after reporting to Matterhorn and be resolved asap, usually within one business day.
Severity Level 2	Significant impact to Mission critical business process(s) – A major problem impedes the ability to perform mission critical business function(s) due to major functionality not working. A temporary workaround that is acceptable to the Client is available	During office hours, work will start within 4 hours after reporting to Matterhorn and targets to resolve the issue within two business days.
Severity Level 3	Not able to accomplish all functions - Minor function(s) not working causing non-critical work to back up	Work will start within one business day after reporting to Matterhorn and targets to resolve the issue within one week.
Severity Level 4	Inconvenience – The System is causing a minor disruption in the way tasks are performed, but does not stop workflow. Able to accomplish all functions, but not as efficiently as normal. May include cosmetic issues.	Work will start within one week after reporting to Matterhorn and targets to resolve the issue within one month.

**Article 12 Duration**

**12.1** The Agreement is entered into for the duration specified in the agreement, failing to state a duration the agreement is entered into for a period of one year. The term of the Agreement shall automatically be extended for the duration of the original period, unless the Client or Matterhorn Reporting Services B.V. terminates the



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Agreement in writing with a notice period of three months (in case of a one-year term) or six months (in case of a duration of three years) before the end of the period. Notice must be given by mail or email.

**Article 13 Warranty**

**13.1** Matterhorn Reporting Services B.V. does not warrant that the software which in the context of Software as a Service is made available to the Client is error-free and without interruptions. Matterhorn Reporting Services B.V. will make a best effort to repair any defects in the services within a reasonable time when reported in detail in writing to Matterhorn Reporting Services B.V.

Matterhorn Reporting Services B.V. may postpone the repair of the defects until a new version of the product is taken into use. Matterhorn Reporting Services B.V. is entitled to implement temporary solutions or program bypasses or problem-avoiding restrictions in the products.

**13.2** Matterhorn Reporting Services B.V. is not responsible for checking the accuracy and completeness of the results of the service and the use of the data generated by the service. The client will check the results of the service and the data generated by the service regularly.

**13.3** Based on the information provided by Matterhorn Reporting Services B.V. on measures to prevent and limit the consequences of failures, defects in service, or other incidents the client will identify the risks to its organization and, if necessary, take additional measures. Matterhorn Reporting Services B.V. agrees to cooperate to reasonable requests from the client for further (financial) conditions from the Client against by Matterhorn Reporting Services B.V. Matterhorn Reporting Services B.V. is not responsible for the recovery of corrupted or lost data.

**13.4** Matterhorn Reporting Services B.V. will ensure that the Software as a Service products will be promptly adapted to changes in relevant laws and regulations.

**Article 14 Processing of Personal Data**

**14.1** Matterhorn will ensure that, with the exception of the field listed in article 15.1, no data, will be transferred to the Matterhorn servers. By design, the Matterhorn software will be executed within the environment of the client and all data processing is done locally.

**14.2** The Client guarantees that all the requirements are met for the lawful processing of personal data entered by the Client in the context of Software as a Service.

**14.3** Notwithstanding the provisions of the General Provisions the Client has full responsibility for the data processed using the Software as a Service. The Client guarantees that the data is not illegal and does not infringe the rights of third parties. Client indemnifies Matterhorn Reporting Services B.V. against thirds parties, on any grounds whatsoever, in connection with the processing of this data or the execution of the Agreement.

**14.4** Based on the legislation concerning the processing of personal data (such as the Data Protection Act) the Client has obligations towards third parties, such as the obligation to provide information, as well as to allow the inspection, correction and removal of personal information of those involved. The responsibility for compliance with these obligations is fully and exclusively with the Client

**Article 15 Monitoring User license**

15.1 In order to monitor the user license of the Reporting application, the following data fields are sent by means of encryption to the servers of Matterhorn Reporting Services B.V.:

- **AIFMD:** per report date / time, username, country of reporting, AIF(M) name, national code, content types, no-reporting indicator, report year, reporting period type, number of positions, NAV & AUM.
- **MiFID2:** per report date / time, username, country of reporting, submitting entity code, number of transactions.

15.2 Matterhorn will monitor the actual reporting usage by the client on a quarterly basis. If the usage is exceeding the current license Matterhorn will inform the client and is entitled to invoice the additional amount on a pro rata basis for the remaining quarters of the license period.