



CERTO ESCROW

## General Terms and Conditions Certo Payment Solutions

November 2016

### 1. Definitions

In the General Terms and Conditions Certo Payment Solutions, the terms written with a capital letter will have the meanings defined below (the meanings of the definitions in the singular will include the plural and vice versa):

<b>Purchase Agreement</b>	the agreement between the Client and the Purchaser for the supply of a product or service in which respect Certo facilitates the Payment by means of Certo Payment Solutions;
<b>Purchaser</b>	a natural or legal person with whom or which the Client has concluded a Purchase Agreement;
<b>General Terms and Conditions Payment</b>	these general terms and conditions of Certo; the monies to be paid by the Purchaser to Certo pursuant to the Purchase Agreement;
<b>Method of payment</b>	a method of Payment facilitated by Certo for the Client in accordance with the Contract;
<b>Certo</b>	Certo Escrow B.V., having its registered office in Veldhoven and registered in the Commercial Register of the Chamber of Commerce under number: 61013927; the owner and provider of Certo Payment Solutions;
<b>Certo Payment Solutions</b>	facilitation of the Payment on behalf of the Client by Certo through the receipt, holding in escrow and release of the monies as described in the Contract, the General Terms and Conditions and in any other documents made available by Certo to the Client;
<b>Client</b>	a natural or legal person purchasing Certo Payment Solutions;
<b>Escrow Account</b>	the bank account in the name of the Stichting (foundation) in which the monies of Clients are held in escrow as administered by means of the Client Account;
<b>EUR</b>	the euro, the legal means of payment of the European Monetary Union;
<b>Contract</b>	the contract concluded between the Client and Certo with regard to Certo Payment Solutions used by the Client;
<b>Client's Account</b>	the Stichting's administrative accounts with regard to the processing of a Payment;
<b>Written/In Writing</b>	by letter, email or fax and insofar as this relates to the provision of information by Certo to the Client by invoice or the Website;
<b>Stichting</b>	the Stichting Derdengelden Certo Escrow, having its registered office in Veldhoven and registered in the Commercial Register of the Chamber of Commerce under number: 52209520;
<b>Contra Account</b>	a payment account in the name of the Client into which the Stichting pays monies into pursuant to the Contract on instruction by Certo;
<b>Website</b>	the website of Certo; <a href="http://www.certo-escrow.com/">www.certo-escrow.com/</a> ;
<b>Working day</b>	a day on which the banks in the Netherlands process payment transactions; and
<b>Wft</b>	the Dutch Financial Supervision Act ( <i>Wet op het financieel toezicht</i> ), hereinafter referred to as the 'Wft', as applicable from time to time.

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- 1.1 References to articles are references to articles in the General Terms and Conditions Certo Payment Solutions, unless stated otherwise.

## **2. Applicability General Terms and Conditions**

- 2.1 The General Terms and Conditions apply to all offers, legal relationships, agreements and contracts relating to or ensuing from the provision of Certo Payment Solutions.
- 2.2 The Contract and the General Terms and Conditions form one integrated whole.
- 2.3 Deviations from or additions to the General Terms and Conditions or the Contract—including oral agreements—only apply if they have been confirmed In Writing by Certo.
- 2.4 If any provision of the General Terms and Conditions or the Contract is declared void, or voidable or otherwise invalid or inapplicable, this will not affect the remaining provisions of the General Terms and Conditions and the Contract. In that case, the parties will consult with each to agree a new provision to replace the invalid provision and in doing so will take account of the object and purpose of the invalid provision as far as possible.
- 2.5 Certo reserves the right to amend the General Terms and Conditions. Certo will inform the Client In Writing of the amendment before it takes effect.
- 2.6 Without prejudice to the provisions in paragraph 5 of this article, any amendment made to the General Terms and Conditions by Certo will, directly after notification thereof, bind Certo and the Client if that amendment - in Certo's opinion - relates to or ensues from an amendment to rules or legislation, a court judgment, instruction or binding advice to which Certo is bound or considers itself bound, or if the amendment is purely of a practical nature.
- 2.7 In the event of any consistency between additional agreements confirmed In Writing by Certo within the meaning of paragraph 3 of this article and the Contract and the General Terms and Conditions, the following ranking order applies: (1) additional agreements confirmed by Certo In Writing; (2) the Contract; and (3) the General Terms and Conditions.

## **3. Conditions precedent**

- 3.1 The Contract is formed subject to the condition precedent that Certo has accepted the potential Client. Acceptance takes place after:
  - the potential Client has been identified by Certo in accordance with the statutory provisions; and
  - the potential Client has been accepted by Certo in accordance with its acceptance policy;
- 3.2 To enable Certo to identify the Client as laid down in paragraph 1 of this article, the Client and its representatives are obliged to lend Certo every cooperation and to provide Certo with the information requested in order to establish and verify their identity. If the Client is a legal person or a joint venture, the Client is obliged to provide insight into the ownership and control structure of the legal person or the joint venture in conformity with the UBO (ultimate beneficial ownership) form which Certo will provide the Client with.
- 3.3 Certo is entitled to refuse acceptance of a potential Client without stating reasons.
- 3.4 Certo strives to inform the potential Client In Writing as quickly as possible, but no later than four (4) weeks after receipt by Certo of the Contract signed by the potential Client, about the outcome of the acceptance process.



#### **4. How Certo Payment Solutions work**

- 4.1 Certo arranges the receipt, holding in escrow and release of the Payment for the Client.
- 4.2 The Client may not use Certo Payment Solutions for activities that adversely affect the interests or the brand of Certo or of the Stichting.
- 4.3 In order to protect the Client's rights in the event of Certo's bankruptcy and in implementation of Article 3:29a of the Wft, the Stichting will receive, hold in escrow and release the Payment on instruction by Certo. The Stichting is not obliged to separate funds held in escrow.
- 4.4 The claims administered on the Client's Client Account are (conditional) obligations on the part of the Stichting towards the Client administered in EUR.
- 4.5 The Stichting will only carry out acts of disposition on instruction by Certo or on further instruction by the Client as laid down in article 18 of the General Terms and Conditions or to prevent obvious loss for the Client with regard to the Client Account.
- 4.6 The Client Account cannot have a (negative) debit balance.
- 4.7 If, because the Client has not given any clear instruction, Certo fails to instruct the Stichting, or gives a late instruction to process a Payment, Certo is not liable for this.

#### **5. Information provision**

- 5.1 Certo provides the Client with information about the movements in the Client Account by email and expressly not by post. The Client grants Certo permission to do so in advance. Certo is entitled to change this method of providing information.
- 5.2 The Client will check the information referred to in paragraph 1 of this article as quickly as possible after such information has been made available by Certo. If the Client establishes an error with regard to the processing of a Payment, it must immediately inform Certo In Writing of this.
- 5.3 If a Client fails to challenge a movement as referred to in paragraph 1 of this article In Writing within two (2) months after the information as referred to in paragraph 1 has been made available by Certo, then the content of the information will be deemed to have been approved by the Client.

#### **6. Processing of a Payment**

- 6.1 The Client is only allowed to instruct Certo to process a Payment in EUR.
- 6.2 Certo is entitled to refuse to carry out the instruction to process a Payment if:
  - this is incomplete or unclear;
  - Certo is not allowed to process the Payment by reason of a statutory regulation;
  - Certo suspects fraud, abuse or other irregularities;
  - The Client fails to adhere to the Contract or some other agreement that it entered into with Certo;
  - Certo has some other good reason for refusal.
- 6.3 If Certo refuses to process a Payment, it will inform the Client hereof by email, stating the reason if possible. It will do so by no later than the next Working Day after the time of receipt of the Payment.
- 6.4 If the refusal referred to in paragraph 3 of this article has been caused because the Payment contained incorrect or incomplete information, the Client will, if possible, be informed about the procedure to correct this or have it corrected.
- 6.5 If, after refusal as referred to in paragraph 3, Certo does not receive the necessary additional information to enable the successful processing of a Payment, then Certo will immediately return this Payment.



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- 6.6 If the Client has wrongly received monies from the Stichting, the Client is obliged to repay these monies as quickly as possible by way of transfer to the Trust Account.
- 6.7 Prior to the Client delivering a performance in accordance with the Purchase Agreement, the Client must verify the status of the Payment. If the Payment has not been given the status: 'successful', the risk of monies not received lies with the Client. Certo is never liable for any non-payment by a Purchaser for the products and/or services purchased from the Client, nor for any costs incurred by the Client to collect the monies from the Purchaser.

### **7. Effecting a release**

- 7.1 Certo will instruct the Stichting—only in accordance with the Purchase Agreement—to pay out monies received from a Purchaser to the Client or a third party.
- 7.2 Certo will arrange for payment of the monies by the Stichting—whether or not after deduction of a fee and any other costs—within one (1) Working Day after the condition for release as determined in the Purchase Agreement, has been met.
- 7.3 If:
  - the Purchaser or the Client is bankrupt;
  - the Purchaser or the Client has been granted a moratorium;
  - a statutory debt management scheme is declared applicable to the Purchaser or the Client; or
  - the status of the Purchaser or the Client under foreign law is similar to the status referred above,Certo will only instruct the Stichting to release the relevant monies pursuant to and in accordance with a joint Written request by both parties, or an irrevocable decision given by a competent court.
- 7.4 The costs incurred by Certo (including the costs for the engagement of a lawyer) with regard to a situation as referred to in paragraph 3 of this article, will be for the account of the Client.

### **8. Dispute about a Payment**

- 8.1 In the event of a dispute between the Client and the Purchaser with regard to the Payment, the Stichting will, on instruction by Certo, hold the monies received in escrow until such time as the Purchaser and the Client have jointly informed Certo In Writing on the manner of termination of the dispute, or until such time as a competent court has rendered an irrevocable decision on the manner of termination of the dispute.
- 8.2 If a situation arises as referred to in paragraph 1 of this article, Certo will instruct the Stichting to pay out the relevant monies in accordance with the joint Written instructions of the Purchaser and the Client, or in accordance with the irrevocable court decision as referred to in paragraph 1 of this article.
- 8.3 The costs incurred by Certo (including the costs for the engagement of a lawyer) in connection with a dispute as referred to in paragraph 1 will be for the account of the Client.

### **9. Performance of the Contract**

- 9.1 Certo will do its utmost to fulfil its obligations under the Contract. Certo cannot guarantee that Certo Payment Solutions will always function without restriction, interruption or breakdown.
- 9.2 Certo strives to avoid a restriction, interruption or breakdown in Certo Payment Solutions within reasonable boundaries to the extent this lies within its control, or to otherwise ensure the restriction, interruption or breakdown is resolved within a reasonable period of time.



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- 9.3 Certo reserves the right, without this entitling the Client to compensation, to implement a change to Certo Payment Solutions that it deems useful or necessary. The Client undertakes to accept this change, and to follow the instructions given by Certo with regard to the implementation thereof.
- 9.4 Certo may, in executing Certo Payment Solutions, engage third parties and outsource or partly outsource activities.
- 9.5 The Client vouches for the expert use and monitoring of the use of Certo Payment Solutions, and will use these in conformity with the purpose, the applicable user instructions and the prevailing statutory provisions in this regard.
- 9.6 Certo is always entitled to not perform or to limit performance of the Contract if:
- Certo becomes aware of a circumstance relating to the Client, as a result of which it seems plausible to Certo that it is uncertain as to whether the Client will be able to fulfil its obligations under the Contract;
  - it seems plausible to Certo that the Client is acting contrary to paragraph 5 of this article;
  - it later on becomes clear to Certo that the Client, when entering into the Contract, provided incorrect or incomplete information, and knowledge of the correct and complete information would have been reason to not accept the Client;
  - Certo knows or suspects that the Client will not fulfil one or more of the obligations under the Contract;
  - one of the situations as described in article 9 paragraph 3 et seq. or article 10 of the General Terms and Conditions arises; and/of
  - some other circumstance arises giving Certo reason to not perform or to limit performance of the Contract.

### **10. Client's obligations to notify**

- 10.1 The Client must notify Certo of any changes regarding its business that affect the performance of the Contract, no later than four (4) weeks prior to the date on which this change takes effect. This applies, in any event but not exclusively, to the following situations:
- alienation, pledging or any other form of transfer, division or termination of the Client's business;
  - changes to or the closing of the Contra Account;
  - changes to the products and/or services offered by the Client;
  - changes in the nature of the Client's business operations; and
  - any other changes to the Client's details as provided to Certo.
- 10.2 Even if they have been entered in the public registers, any changes made to the Client's authority, its representatives or its agents, in respect of Certo are in force only after Certo has been notified thereof by or on behalf of the Client in accordance with paragraph 1 of this article.

### **11. Availability, administration and maintenance**

- 11.1 Certo is entitled to temporarily interrupt Certo Payment Solutions for the purpose of administration and maintenance. Certo accepts no liability for any consequences resulting from a temporary interruption that could prejudice the Client.
- 11.2 The availability, administration and maintenance of the payment method iDEAL is beyond Certo's control. Certo accepts no liability for any consequences resulting from a temporary interruption that could prejudice the Client.



- 11.3 The Client will be informed by Certo in advance about the interruption of Certo Payment Solutions, to the extent Certo can reasonably be required to do so, and only insofar as the interruption has significant consequences for the Client. Certo strives to ensure that the interruption will not take place on Working Days between 09:00 and 17:00 hours.

## **12. Retention obligation and proof**

- 12.1 An extract from the Client Account serves as proof for the Client, subject to contrary proof produced by the Client. Neither Certo nor the Stichting are obliged to keep their administrative accounts for longer than the statutory retention period.

## **13. Liability of Certo**

- 13.1 Certo is solely responsible for the administration of the Client Account and the Escrow Account.
- 13.2 Certo's liability under paragraph 1 of this article or with regard to its services under the Contract is limited to direct loss suffered by the Client, caused by an attributable failure in the performance of the Contract on the part of Certo.
- 13.3 Certo's liability within the meaning of paragraph 1 of this article is limited to EUR 5,000 per event or EUR 10,000 per series of events with a common cause.
- 13.4 Any liability on the part of Certo for indirect or consequential loss is excluded.
- 13.5 The liability limitations referred to in the previous paragraphs of this article do not apply if the loss suffered by the Client is the result of intent or deliberate recklessness on the part of Certo.
- 13.6 A right to compensation of loss does not exist unless the Client informs Certo In Writing of the loss as quickly as possible, but no later than within one (1) month after the Client could reasonably have been aware of such loss.
- 13.7 The Client will indemnify Certo against all claims by third parties for loss caused by the fact that Certo, or any other person for whom it is responsible under the law, fails to perform the Contract or for any other reason whatsoever.
- 13.8 Certo is not responsible for any third parties engaged by it for the performance of the Contract,
- 13.9 If a circumstance as referred to in paragraph 2 of this article arises, Certo will take the measures that can reasonably be required from it, in order to limit the adverse effects resulting therefrom for the Client.
- 13.10 The Client acknowledges its duty to mitigate loss and will do all that is reasonably possible to minimize any loss.
- 13.11 If the Client fails to limit its loss in due time, the Client will acknowledge and accept the fact that all loss that has arisen from the time it could have limited its loss, is for its own account and risk. Certo is not obliged— at the time the Client must limit its loss—to remind the Client of the existence of its duty to mitigate loss.

## **14. Liability of the Client**

- 14.1 If the Client has acted fraudulently or has violated one or more of the obligations under the Contract, General Terms and Conditions and/or other safety requirements, intentionally or with gross negligence, the Client is fully liable for the loss suffered by it, Certo, the Stichting and third parties as a result of its actions.



## 15. Fees

- 15.1 The Client will owe Certo a fee for Certo Payment Solutions in accordance with the Contract concluded.
- 15.2 Certo is at liberty to make the Client an offer for the long-term use of Certo Payment Solutions. If applicable, Certo will communicate this option to the Client on registration.
- 15.3 If the Contract is terminated In Writing, no repayment will be made on an offer for long-term use as described in paragraph 2.
- 15.4 Certo may change its fees once (1) per calendar year. Certo will inform the Client of this change within four (4) calendar weeks prior to a fee change.

## 16. Payment

- 16.1 The prices and fees referred to in the Contract exclude VAT and are payable at the time that the Purchaser accepts the use of Certo Payment Solutions via the Website.
- 16.2 Any amounts owed by the Client to Certo and/or the Stichting under the Contract will be withheld by the Stichting at the time of release to the Client or to a third party of monies held by Certo on behalf of the Client.
- 16.3 The Client will receive an invoice from Certo within four (4) days before the it is debited as referred to in paragraph 2 of this article.
- 16.4 Insofar the invoice cannot be debited from the account as referred to in paragraph 2 of this article, the Client must pay the invoice referred to in paragraph 3 of this article within fourteen (14) days after it has been made available.
- 16.5 Any fixed monthly costs will be payable by the Client in advance before the beginning of the relevant calendar month. Certo will make an invoice available for this by e-mail on a monthly basis.
- 16.6 If, after the expiry of the payment terms within the meaning of this article, the Client owes at least two (2) invoices, Certo is entitled block the Client's access to Certo Payment Solutions.
- 16.7 Interruption of Certo Payment Solutions as referred to in paragraph 6 of this article will not release the Client from performing its obligations under the Contract.
- 16.8 The block on Certo Payment Solutions can be lifted once the Client has fulfilled its obligations under the Contract. The cost of unblocking amounts to EUR 100.
- 16.9 The Client will owe an annual 5% interest on a claim that Certo has against the Client that has not been paid after the expiry of the terms referred to in paragraphs 4 and/or 5 of this article. The Client will also owe collection costs.

## 17. Duration, renewal and termination of this Contract

- 17.1 Certo is entitled to terminate the Contract with immediate effect without any notice of default or other formality being necessary, to block the Client Account and to claim repayment by the Client of all amounts with immediate effect, if the Client:
  - (i) is declared bankrupt, applies for a moratorium or (if the Client is a natural person) if a statutory debt management scheme is declared applicable to the Client;
  - (ii) passes away (if the Client is a natural person) or is dissolved or terminated (if the Client is a legal entity);
  - (iii) provided incorrect information on entering into the Contract;
  - (iv) in any way fails towards Certo in the performance of one or more of its obligations arising from any contract with Certo; or
  - (v) Certo suspects fraud, abuse or other irregularities.



- 17.2 Subject to paragraph 1 of this article, Certo reserves the right to terminate the Contract with immediate effect and without notice of default or other formality if Certo's risk-based procedures, within the meaning of the Wft (Money Laundering and Terrorist Financing (Prevention) Act), show that Certo Payment Solutions will create a risk for the Client of money laundering and terrorist financing higher than was the case on entering into the Contract.
- 17.3 After termination of the Contract, any payment processing orders still outstanding and the other matters will be settled as soon as possible. During the settlement, the further arrangements that have been confirmed by Certo In Writing, the Contract and the General Terms and Conditions will remain in force.

## **18. Transfer and encumbrance**

- 18.1 The Client's rights and obligations arising from and/or associated with Certo Payment Solutions cannot be transferred to other parties without Certo's prior written permission.
- 18.2 The Client may not pledge or encumber its balance on the Client Account with other limited rights.
- 18.3 With paragraphs 1 and 2 of this article, the parties envisage limiting the transferability of the Client's claims against the Stichting within the meaning of Article 3:83(2) of the Dutch Civil Code.

## **19. Bankruptcy**

- 19.1 If Certo has been declared bankrupt, the Stichting will independently act on further instruction by the Client, arrange for the release of monies as referred to in article 9 of the General Terms and Conditions, whereby Certo's rights towards the Client under the Contract will pass to the Stichting.

## **20. Attachment**

- 20.1 The Client, the Purchaser and Certo expressly agree that neither the Client nor the Purchaser will attach the monies held in escrow by the Stichting.
- 20.2 If the Client or the Purchaser nonetheless attaches the monies held in escrow, despite of what is described in paragraph 1, the Client and the Purchaser will jointly and each separately grant Certo an irrevocable power of attorney with the mandate to separate monies held in escrow in such manner that the attachment relates only to the monies held in escrow pursuant to the Purchase Agreement.
- 20.3 Furthermore, the power of attorney described in paragraph 2 includes Certo's power to arrange for a bank guarantee, whereby the monies held in escrow serve as security, with the aim of lifting the attachment. The said power also includes the power to deduct the costs associated with the lifting of the attachment from the monies held in escrow.

## **21. Confidentiality**

- 21.1 Certo and the Client are obliged to observe the confidentiality of all the information they obtain in the performance of this Contract and of which parties know or reasonably should know is confidential.
- 21.2 Confidential information within the meaning of paragraph 1 of this article is in any event understood to mean all the details relating to Certo or any third parties engaged or designated by Certo, including financial and technical details, which come to the Client's knowledge in the performance of the Contract, the software and all information that Certo has provided to the Client within the framework of the use of Certo Payment Solutions (such as access codes, passwords, etc.) and, where applicable, the details of the Purchasers which Certo and the Client have become aware of.





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## **22. Privacy**

22.1 The Client declares that it is aware of and agrees to Certo's Privacy Statement. The Privacy Statement can be downloaded from Certo's Website.

## **23. Notices**

23.1 Any notices relating to the Contract will be sent by Certo to the email address specified by the Client.

23.2 The Client agrees that access to reports and any notices and/or invoices will be sent to it by e-mail.

## **24. Applicable law**

24.1 The Contract and any agreements and documents arising therefrom are governed by Dutch law.

24.2 Any disputes arising from the Contract must be submitted to the competent court in 's-Hertogenbosch, the Netherlands.