



General Terms of Escrow | version: EU-DE.SW.2501



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These are the General Terms of Escrow used by Escrow365 B.V., a company registered at the Dutch Chamber of Commerce, number 89229266, with its registered office at Kingsfordweg 241, 1043 GR Amsterdam, the Netherlands, (hereinafter referred to as "Escrow365").

Considerations

- I. Depositor has granted Beneficiary a license to utilize the Product;
- II. Depositor has agreed to provide certain services to Beneficiary, which may consist of maintenance, support and providing hosting regarding the Product;
- III. Beneficiary, in certain circumstances where Depositor is unable or fails to provide such services as further described in Clause Clause 8., may require access to the Source Code for Continuity Purposes as defined below;
- IV. Depositor may have an agreement with Escrow365 with regard to EscrowReady, for which it may already have uploaded the required Material;
- V. Insofar Depositor has not yet done this, Depositor has agreed to deposit with Escrow365 the Material, which shall be released by Escrow365 to Depositor in case of an agreed upon release event.

Clause 1 – Definitions

The following words shall have the following meaning in these General Terms of Escrow:

Annual Escrow Fee: the fees charged by Escrow365 to Depositor or Beneficiary (as appropriate) for the provision of services to Depositor and Beneficiary as agreed in the Escrow Agreement, covering a period of one year. For the Initial Term, the Annual Escrow Fee is stated in the EPL. For the Renewal Term, the Annual Escrow Fee is calculated in accordance with Clause 11.4;

Beneficiary: the legal entity or natural person who is the beneficiary of the Deposits made under the Escrow Agreement, as specified in the applicable Escrow Protection Letter;

Continuity Purposes: use of the Material strictly for purposes of maintenance, correction, modification, continuity or extension of the Product, provided that the nature of and restrictions agreed upon in the License Agreement are observed by Beneficiary.

Deposit: each transfer of the Material to Escrow365.

Depositor: the legal entity or natural person who makes Deposits under this Escrow Agreement, as specified in the applicable Escrow Protection Letter;

End Date: the expiration date of the Escrow Agreement as stated in the EPL.

EPL or Escrow Protection Letter: the document signed by Escrow365, Depositor and Beneficiary, incorporating these General Terms of Escrow and containing further details of the escrow coverage;

Escrow Agreement:

- the EPL signed between Escrow365, Depositor, and Beneficiary;
- these General Terms of Escrow; and
- if applicable: additional written agreements between all Parties;

Escrow Repository Procedure: the applicable method and frequency in which the Material (and any new Deposits of the Material) are provided by Depositor to Escrow365 as well as the method and frequency in which Escrow365 stores the Material, as specified in the EPL;

EscrowReady: the services provided by Escrow365 to Depositor, enabling Depositor the (technical) interface for making Deposits and concluding Escrow Agreements;

General Terms of Escrow: these general terms of escrow;

GIT Repository: the Escrow365 supported GIT repository of Depositor from which the Material can be Deposited;

Intellectual Property Rights: all rights of intellectual property, including but not limited to copyrights, trademarks and service marks, patents, sui generis database rights, domain names, rights to knowhow and all related rights;

Initial Term: the term of the Escrow Agreement as specified in the EPL, which starts on the Intended Start Date.

Intended Start Date: the commencement day of the Escrow Agreement as stated in the EPL, which is the same day as, or later than the Order Date. This date must be within two hundred seventy (270) days from the Order Date;

License Agreement: any agreement between Depositor and Beneficiary with regard to the Product;

Material: the Source Code, as may be changed from time to time in relation to new Deposits, containing updates of the Product;

Monitoring: the monitoring service, as provided by Escrow365 if and insofar this is agreed upon in the EPL, in accordance with these General Terms of Escrow and in so far as they can be applied to the Material;

MyEscrow365: the online platform environment provided by Escrow365 or its subsidiary, under a separate agreement;

Notice of Non-renewal: a notice sent to contract@escrow365.com or via the designated feature in MyEscrow365 informing Escrow365 about the termination of the Escrow Agreement on the day the Initial Term or Renewal Term ends. The notice is only valid if confirmed by Escrow365 and visible in the MyEscrow365 account.

Order Date: the day on which the EPL has been (digitally) signed by Beneficiary and Depositor in MyEscrow365;

Party/Parties: Escrow365, Beneficiary or Depositor; individually or collectively;

Product: all licensed computer software program(s) as defined in the EPL and as may be further specified in the License Agreement;

Release Event: the events indicated in the EPL in which Escrow365 must release the Materials to Beneficiary;

Renewal Term: a term with a duration of 1 (one) year;

Secure Drag & Drop Upload: Deposit by Depositor of the Material via MyEscrow365 via the available drag & drop feature;

Secure Deposit via GIT Repository: Deposit of the Material by Escrow365 via a 'GIT pull', enabled by Depositor, via the GIT synchronization of the GIT Repository of Depositor with MyEscrow365, as to be established via MyEscrow365 by Depositor;

Secured Online Vaults: the secured online vault, including redundant vaulting if and insofar this is stated in the EPL, in which the Material, as provided by Depositor, shall be stored by Escrow365;

Start Date: the day actual provision of the escrow services by Escrow365 start, which is

- a. the Intended Start Date; or
- b. a date after the Intended Start Date on the moment full payment has been received for the service provision by Escrow365;

whichever occurs later. However, the Start Date shall be no later than ninety (90) days after the Intended Start Date.

Source Code: the computer programming code of the Product in human readable format, including all documentation and instructions necessary to maintain, interpret, compile and install;

Clause 2 – Conclusion and applicability

- 2.1 These General Terms of Escrow apply to every Escrow Protection Letter which incorporates these General Terms of Escrow by reference.
- 2.2 Deviations and additions to the General Terms of Escrow shall only be valid if they have been agreed in writing between the Parties. In the event of contradictions between the different documents that form the Escrow Agreement, the order in which they are listed in the definitions of these General Terms of Escrow shall be the order of precedence.
- 2.3 In order to conclude the Escrow Agreement, Depositor and Beneficiary must each separately procure access to MyEscrow365.
- 2.4 The Escrow Agreement is concluded on the Order Date. However, besides the obligations of Depositor regarding deposit of Material and the obligations to pay the due fees, the rights and obligations under the Escrow Agreement only come into force on the actual Start Date.
- 2.5 Parties agree that the (digital) signature or other confirmation of the Escrow Agreement via MyEscrow365 shall be deemed to be an electronic signature that has the same legal effect as a handwritten signature, as specified in section 3:15a of the Dutch Civil Code.

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2.6 Depositor or Beneficiary (whichever is applicable) is responsible for ensuring the invite for signature is sent to the right legal entity and signatory for conclusion of the Escrow Agreement with the other Party. Escrow365 shall not perform any identification checks in relation to this. Depositor and Beneficiary each represent and warrant that the person(s) that have been indicated as signatory/signatories of the Escrow Agreement have full legal authority to represent the (legal) person concluding the Escrow Agreement. As such, Escrow365 may assume that the indicated signatories are authorized to represent the (legal) person concluding the Escrow Agreement.

2.7 Parties agree that sections 6:227b (1) and 6:227c of the Dutch Civil Code are excluded insofar as legally possible. This means that Escrow365, inter alia, is not required to provide (separate) information about the way the Agreement is concluded.

Clause 3 – Deposit of Material

3.1 Insofar Depositor has not already Deposited the Material to Escrow365 (whether or not via EscrowReady), Depositor will transfer the Material to Escrow365 within twenty (20) business days after the Start Date via one of the following two deposit methods, which are available via MyEscrow365, if and insofar as provided in the EPL:

(a) Secure Upload via GIT Repository; or

(b) Secure Drag & Drop Upload.

3.2 All Deposits shall occur in accordance with the relevant provisions regarding rules of use and personal data as contained in Depositor's agreement with Escrow365 for the provision of MyEscrow365.

3.3 Depositor will perform additional Deposits of (updated) Material, or allow Escrow365 to perform 'GIT pulls' with regard to Deposits of such Material, insofar agreed, at the frequency as described in the Escrow Repository Procedure.

3.4 The Escrow Repository Procedure does not imply the transfer of any Intellectual Property Rights with regard to the Material to Escrow365. Such rights remain vested with Depositor, its licensor(s) and/or its successor-in-title from time to time.

3.5 Escrow365 will send Depositor and Beneficiary confirmation of receipt of the Material via MyEscrow365 within five (5) business days following Deposit. Escrow365 will receive and store the Material in a customer-specific GIT repository managed by Escrow365. After receipt of the Material, Escrow365 will transfer the (encrypted) Material to its Secured Online Vault with the frequency described in the Escrow Repository Procedure.

3.6 Escrow365 will retain the three (3) latest Deposits in the Secured Online Vault for the duration of the Escrow Agreement. Escrow365 shall be entitled to destroy older Deposits without requiring prior approval from Depositor and/or Beneficiary.

3.7 Depositor grants Escrow365 the right to make a back-up copy of the Material, if and when deemed necessary by Escrow365.

3.8 Depositor alone is responsible for providing a correct version of the Material to Escrow365 and to verify whether or not the Material is correct and complete. Depositor and Beneficiary acknowledge that Escrow365 shall not perform any form of verification of the Deposited Materials, and as such, shall not be liable for any deficiencies in relation to the Deposited Materials.

3.9 Depositor represents and warrants that the Material it Deposits does not contain production data or personal data as means in the European Data Protection Regulation. Depositor indemnifies Escrow365 and holds Escrow365 harmless from all third-party claims resulting from violation of the aforementioned representation and warranty.

Clause 4 – Obligations of Escrow365

4.1 Escrow365 shall retain the Material in a safe and secure environment and shall use all reasonable endeavours to prevent unauthorised parties from having access to such environment. The Material shall be exclusively stored in the storage region as indicated on the EPL.

4.2 If relevant, Parties agree that if the storage region as applicable in relation to EscrowReady does not align with the storage region that is applicable for this Escrow Agreement, Escrow365, or its subsidiary (insofar applicable), is allowed to relocate the Material to the storage region applicable to this Escrow Agreement. Alternatively, in such a case, Escrow365 may require Depositor to re-deposit the Material in order for the Material to be stored in the correct region.

4.3 Escrow365 shall follow the ISO 27001 certified protocols and processes as reasonably may be expected from a professional provider of software escrow services.

4.4 Escrow365 shall make no use of the Material except as required in order to perform its obligations under the Escrow Agreement.

4.5 Escrow365 shall release the Material only in the scenarios and in accordance with the conditions of the Escrow Agreement.

4.6 If, despite the security measures and other precautions taken by Escrow365 damage is done to, or loss takes place of, the Material, Escrow365 shall be obliged to promptly notify Depositor of this fact and Depositor shall be obliged to promptly provide a new copy of the Material to Escrow365.

Clause 5 – Obligations of Depositor

5.1 Depositor represents and warrants that:

- 5.1.1** it is entitled to transfer the Material to Escrow365 in accordance with the provisions of the Escrow Agreement and agrees to indemnify and hold harmless Escrow365 from and against any claim by a third party in relation to the storage and/or the release of the Material in accordance with the Escrow Agreement;
- 5.1.2** the Material deposited with Escrow365 contains an accurate and complete version of the Product licensed to Beneficiary at the time of each Deposit;
- 5.1.3** the Material deposited with Escrow365 is sufficient to enable an adequately qualified person to carry out maintenance, correction, modification and compilation of the Product.

Clause 6 – Obligations of Beneficiary

6.1 Beneficiary represents and warrants that:

- 6.1.1** in case of release of the Material to Beneficiary under the Escrow Agreement, it will be used exclusively for Continuity Purposes;
- 6.1.2** in case of release of the Material to Beneficiary, the use of the Material as well as the continued use of the Product shall be based on the terms and conditions of the License Agreement, excluding any provisions that prohibit the correction, maintenance and modification;
- 6.1.3** in case Beneficiary enters into an agreement with a third party with the intention of maintenance and support of the Product, Beneficiary will ensure that such third party will act in strict compliance with the provisions of the previous subclauses.

Clause 7 – Monitoring of Deposits

7.1 If and insofar as specified in the EPL, the Monitoring of Deposits is included as part of Escrow365's services. Escrow365 shall make a report available within MyEscrow365 to Depositor and Beneficiary, with the interval specified in the EPL, including:

- the amount of GIT synchronizations that were established;
- the amount of Deposits that have taken place;
- when the last Deposit has taken place;

7.2 In the EPL, Parties may agree upon a different scope of the Monitoring services.

7.3 Depositor is and remains responsible performing the Deposits as agreed upon in the Escrow Repository Procedure. In the event that the Monitoring report shows a discrepancy between any of the requirements of the Escrow Repository Procedure and the performed Deposits, Depositor shall be held to do anything that is necessary to comply with the Escrow Repository Procedure. Escrow365 is not responsible or liable for the Deposits, other than providing access to MyEscrow365 and enabling a Git synchronization with the Git Repository as agreed upon.

Clause 8 – Release

8.1 Provided that a valid License Agreement is in force at the time of occurrence, Escrow365 must release the Material to Beneficiary if the following Release Event takes place:

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- (a) Depositor has been declared bankrupt, dissolved or liquidated under the applicable insolvency laws;

in addition to (a), if and insofar declared applicable in the EPL, Escrow365 must release the Material to Beneficiary if one of the following Release Events takes place:

- (b) Depositor ceases to carry on its business that relates to the License Agreement; and/or
- (c) The business of Depositor for its activities in relation to the License Agreement is transferred entirely or partly to a third party who is not willing to continue to perform maintenance and support with regard to the Product and/or is only willing to do so under unreasonable commercial terms;
- (d) Depositor, after having been duly given written notice of default, providing a period of a minimum of thirty (30) days to remedy the failure, and Depositor after this period is in default of its obligations under the License Agreement in such a way that its failure jeopardizes the continuity of the use of the Product by Beneficiary;
- (e) Depositor, as a result of force majeure, is unable to comply with its obligations, under the License Agreement for sixty (60) days or more in such a way that its failure to comply jeopardizes the continuity of Beneficiary's use of the Product.

8.2 If Beneficiary believes a Release Event has occurred, and requires the release of the Material because of this, Beneficiary shall send a written notice to this effect to Depositor and Escrow365 with reasonable evidence supporting such belief.

8.3 Upon reception of the notice specified in the previous subclause, Escrow365 shall, within five (5) business days, send Depositor a written confirmation of receipt of the request for the release of Material.

8.4 Starting from the date of confirmation by Escrow365, Depositor shall have ten (10) business days to object in writing to the requested release. If Depositor does not object to the release within that period, Escrow365 is entitled to immediately release the Material to Beneficiary. If Depositor is bankrupt, dissolved or liquidated then Depositor shall have no right to object under this Clause 8.4.

8.5 If Depositor objects in accordance with Clause 8.4, Escrow365 will suspend the release of the Material to Beneficiary. Depositor and Beneficiary shall immediately submit the request of whether the Beneficiary has the right to obtain the Material to an independent third party arbitrator or court, as specified in the EPL. The decision of the third party shall be final and binding on all parties and shall not be subject to appeal.

8.6 Upon release of the Material under the Escrow Agreement, Depositor grants Beneficiary the perpetual, non-transferable, non-exclusive right to use the Material for Continuity Purposes and for the use thereof only in connection with the business of Beneficiary.

Clause 9 – Confidentiality

9.1 Each Party will maintain all strict confidentiality with regard to information and documentation coming into its possession under the Escrow Agreement and will not disclose or release such information or documentation other than in accordance with the Escrow Agreement, provided such information is marked as confidential or that its confidential nature follows reasonably from its context and contents. Deposited Material shall at all times be considered confidential information.

9.2 The obligation as included in the previous paragraph does not apply to information that:

- is or becomes publicly known other than any breach of a receiving Party;
- was in the receiving Party's lawful possession before disclosure;
- becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party not under obligation to keep such information confidential; or
- is developed independently by the receiving Party.

9.3 In the event that a receiving Party becomes legally compelled to disclose any information for which the obligations as included in Clause 9.1 apply, such receiving Party will provide the disclosing Party with prompt written notice so that disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the confidentiality provisions of the Escrow Agreement.

9.4 Termination of the Escrow Agreement will not relieve any party or its employees from the obligation of confidentiality as agreed upon in the Escrow Agreement.

Clause 10 – Liability

10.1 The liability of Escrow365 towards Depositor and Beneficiary individually, for loss and/or damages or other claims resulting from an attributable failure in the performance of the Escrow Agreement (including any warranty obligations contained therein), an unlawful act or otherwise, shall, in total, be limited to the amount based on the agreed coverage as indicated on the EPL, in which context:

- "Basic Coverage" means ten times (10x) times the Annual Escrow Fee as indicated on the EPL;
- "Increased Coverage" means one hundred times (100x) the Annual Escrow Fee as indicated on the EPL;
- "Max Coverage" means € 500.000 (five hundred thousand euros)

10.2 Without prejudice to the foregoing, Escrow365 shall not be liable for any indirect damages including, but not limited to loss of profits, loss of savings, damages to business interruption and/or other consequential damages.

10.3 Escrow365 shall not be responsible for errors, if any, with respect to the completeness, accuracy or correctness of the Material insofar as such errors are attributable to Depositor.

10.4 The liability of Escrow365 due to an attributable failure in the performance of the Escrow Agreement only arises if a Party gives Escrow365 immediate and proper notice of default in writing, thereby setting a reasonable term to remedy the failure, and Escrow365 continues to attributable fail in the performance of its obligations after that term. The notice of default must contain as detailed a description as possible of the failure, so that Escrow365 is able to respond adequately.

10.5 Any limitation of liability shall not apply in case of gross negligence or wilful misconduct by the management of Escrow365, or other types of damage for which it is unlawful to limit or exclude liability.

Clause 11 – Fees and payment

11.1 For the services provided by Escrow365 under the Escrow Agreement, Escrow365 will receive a fee from Depositor and/or Beneficiary, as specified in the EPL.

11.2 All fees are to be paid in advance, unless indicated otherwise. Escrow365 is entitled to invoice digitally, including via MyEscrow365.

11.3 The payment term of an invoice is thirty (30) days from the date of the invoice, unless a different payment term is included on the invoice.

11.4 The Annual Escrow Fee for the Renewal Term is based on the fees paid for the Initial Term prorated to a period of one year. In addition, Escrow365 is entitled to adjust the Annual Escrow Fee based on the Dutch Consumer Price Index from the last full calendar year but never more than 5% per year and never more than once per year.

If this fee differs from the standard rates for a similar package with an one year term as published on MyEscrow365 on the day the Renewal Term starts, Escrow365 will charge the fee which is the lowest of the two.

11.5 The Party responsible for payment shall automatically be in default, without a notice of default being required, from the moment the applicable payment term has passed if full payment has not been received by Escrow365. That Party responsible for payment shall be due the statutory commercial interest, referred to in Section 6:119a of the Dutch Civil Code, on the outstanding amount, as well as any extrajudicial costs, including costs for lawyers, bailiffs and legal experts, without a notice of default being required.

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Clause 12 – Term and Termination

- 12.1 The Escrow Agreement will be effective from the Intended Start Date for the Initial Term. The escrow services as to be provided to Depositor and Beneficiary shall however only start at the Start Date. For the avoidance of doubt, this means that the agreed upon service term may start at a moment at which the services are not yet being provided.
- 12.2 After the Initial Term, and after each Renewal Term, the Escrow Agreement shall be tacitly renewed for the Renewal Term, unless Depositor or Beneficiary provide Escrow365 a Notice of Non-renewal at least thirty (30) days before the start of such a Renewal Term.
- 12.3 The Escrow Agreement may not be terminated except as provided for therein.
- 12.4 The terms and conditions of the Initial Term will apply to any Renewal Term, unless Escrow365 has provided a notice to Depositor and Beneficiary of any applicable amended terms and conditions at least sixty (60) days before the beginning of each Renewal Term.
- 12.5 The Escrow Agreement may be terminated by Depositor or Beneficiary, in the event that Escrow365:
- has petitioned for suspension of payment(s) and/or has been declared insolvent; or
 - has been dissolved and liquidated or closes down its businesses; or
 - is in material breach of the Escrow Agreement and such breach is not resolved within twenty (20) business days after written notice of default.
- 12.6 Beneficiary may terminate the Escrow Agreement in the interim by giving written notice of termination or using the designated feature in MyEscrow365. In such a case, Escrow365 shall provide the Party responsible for payment with pro-rated credit equal to the paid fees in relation to the time of the original term of the Escrow Agreement for which no services are received as a result of such termination. Such credits are bound to the MyEscrow365 account, are valid for twenty-four (24) months after allocation for any services of Escrow365 and are not transferable or refundable for money. Service credits may be used for procuring services. The amount due for the services shall be reduced by the amount of service credits used.
- 12.7 Depositor is not entitled to unilaterally terminate the Escrow Agreement in the interim with the exception of Clause 12.5.
- 12.8 After termination as meant in this Clause Escrow365 shall destroy all Material left on its systems.
- 12.9 In the event that the Escrow Agreement has been terminated due to an event as described in Clause 12.5, Depositor is obliged to deposit the Material with another escrow provider, for the benefit of Beneficiary, under similar terms and conditions to those in the Escrow Agreement.
- 12.10 If, at the time of termination of the Escrow Agreement for whatever reason, any Party has already performed or received performances in execution of the Escrow Agreement, these performances and related payment obligations shall, in deviation from section 6:271 et seq. of the Dutch Civil Code, not be subject to obligations to undo.

Clause 13 – Miscellaneous

- 13.1 Any reference in the Escrow Agreement to "written", "in writing" or similar, shall be understood to also include email and communication through MyEscrow365, provided that the identity of sender and the integrity of the message can be sufficiently established.
- 13.2 Depositor and Beneficiary agree the services provided by Escrow365 do not include legal advice, legal service, or any other form of legal consultancy. Except as otherwise agreed upon in the Escrow Agreement, the service is provided 'as is' without warranty or guarantee.
- 13.3 Escrow365 is allowed to use Depositor's and Beneficiary's name and logo for marketing and reference purposes.

- 13.4 If any provision, or part of a provision, of the Escrow Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or otherwise unenforceable, that provision or part-provision shall be deemed not to form part of the Escrow Agreement, and the legality, validity or enforceability of the remainder of the provisions of the Agreement shall not be affected, unless otherwise required by operation of applicable law. The Parties shall use all reasonable endeavors to agree within a reasonable time upon any lawful and reasonable variations to the provisions or part-provisions in question which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question.

- 13.5 With the exception of Clause 12.4, this Escrow Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of all Parties hereto.

Clause 14 – Assignment

- 14.1 Depositor undertakes to make the terms of the Escrow Agreement part of any transfer of ownership of the Intellectual Property Rights of the Product to a third party.
- 14.2 In the event of a transfer as described in Clause 14.1, Depositor shall provide written notification to this effect to both Beneficiary and Escrow365.

Clause 15 – Applicable Laws & Disputes

- 15.1 The Escrow Agreement and all disputes arising from or in relation to the Escrow Agreement will be governed by the laws of The Netherlands.
- 15.2 Subject to objection to release of the Material as described in Clause 8.5 all other disputes arising out of, in relation with or in connection with this Escrow Agreement or any agreements resulting from will be brought exclusively before the competent court in Amsterdam.