

ACHERON GENERAL TERMS AND CONDITIONS

1 About Acheron

- 1.1 Acheron B.V. is a private limited company under Dutch law, with its registered office at Tulpstraat 41, 5342 BD in Oss, The Netherlands, and registered with the Chamber of Commerce under number 771845572. Acheron's VAT number is NL 860926746B01.
- 1.2 To contact Acheron, please send an email to the email address: info@acheron.cloud.

2 Definitions and interpretation

- 2.1 The definitions used in these General Terms have the following meanings:

Acheron:	Acheron B.V.
Agreement:	the agreement between Parties that is concluded in accordance with clause 3.
Calculations:	has the meaning as referred to in clause 5.3.
Client:	the legal entity or natural person who enters into the Agreement with Acheron.
Confidential Information:	all information in whatever form (written, visual, electronic or otherwise), including but not limited to the Documentation and of whatever nature, which the receiving Party knows or reasonably ought to know to be confidential in nature, including business secrets and the content of the Agreement.
Consultancy Services:	the advice, consultancy and support services to be provided by or on behalf of Acheron on the basis of subsequent calculation as set out in the Agreement.
Direct Damages:	means exclusively: <ul style="list-style-type: none">a) the reasonable costs that Client would have to incur to have Acheron's performance comply with the Agreement, in which respect these costs are not reimbursable if the Agreement has been terminated (<i>ontbonden</i>) in whole or in part by Client;b) the reasonable costs incurred in determining the cause and extent of the loss, insofar as the determination relates to damages as referred to under a);c) the reasonable costs incurred to prevent or limit the damages referred to under a); andd) the reasonable costs incurred to obtain a settlement, in or out of court, for loss as referred to under a) up to and including c).
Documentation:	the description of functionality and potential uses of the Software made available to Client by Acheron.
Fees:	the fees payable by Client as stipulated in the Agreement, which in any case include the Licence Fee.
Force Majeure:	has the meaning set out in article 6:75 of the Dutch Civil Code, on the understanding that force majeure on the part of Acheron includes: (i) failure or force majeure of Acheron's suppliers; (ii) failure of electricity, internet, data network or telecommunications facilities; (iii) government measures; and (iv) defects in content, software or materials of third parties, the use of which is prescribed by Client to Acheron.
General Terms:	these Acheron general terms and conditions.
Imperfections:	minor defects that do not reasonably prevent operational or productive use of the Software.

Intellectual Property Rights:	all copyrights, neighbouring rights, database rights, patent rights, trademark rights, trade name rights, rights in domain names, design rights, portrait rights, rights in confidential information (including know-how and business secrets) and all other intellectual property rights, whether or not such rights are registered and including all claims to, applications for or entries or registrations of such rights, all dependent or ancillary rights and priority rights attached thereto, and all similar rights or forms of protection anywhere in the world.
Licence Fee:	the annual fee payable by Client to Acheron for the Licence per Repo.
Licence:	has the meaning as referred to in clause 5.1.
Order:	Acheron's offer for the provision of the Software and/or the provision of the Consultancy Services.
Parties:	Acheron and Client jointly, each separately also referred to as Party .
Repo:	a software repository of, or available to, Client.
SLA:	Acheron's support services policy, which forms part of the Agreement.
Software:	Acheron's computer software as set out in the Documentation.
Specifications:	the functional or technical specifications of the Software expressly stated in writing by Acheron.

2.2 Unless otherwise agreed:

- a) **written** or **in writing** also means communication by email;
- b) definitions in the singular also include the plural and vice versa;
- c) time limits with respect to Acheron's performance are indicative and are not considered to be strict deadlines (*fatale termijnen*);
- d) references to **clause** are references to clauses in these General Terms; and
- e) a reference to the **Agreement** also constitutes a reference to these General Terms.

2.3 In the event of a conflict between a provision in the Agreement (without the General Terms) and a provision in these General Terms, the provision in the General Terms will prevail.

2.4 The SLA forms an integral part of the Agreement. In the event of a conflict between a provision in the Agreement (without the General Terms) and a provision in the SLA, the provision in the SLA will prevail.

2.5 All of Acheron's obligations under the Agreement are to be considered as best-efforts obligations (*inspanningsverbintenissen*).

2.6 The applicability of Sections 7:404 and 7:407(2) and 7:408(1) of the Dutch Civil Code to the Agreement is excluded.

3 Agreement

3.1 All offers by Acheron are without obligation unless otherwise specified in writing by Acheron.

3.2 The Agreement is concluded by Client's written acceptance of the unmodified Order.

3.3 If Client makes any changes to the Order, the Agreement will not be concluded until such changes have been accepted by Acheron in writing.

4 Software

- 4.1 Acheron shall make the Software available to Client in the manner specified in the Agreement or, in the absence thereof, a manner to be determined by Acheron.
- 4.2 Acheron shall only install or implement the Software if this has been explicitly agreed in the Agreement.
- 4.3 Parties shall perform the acceptance test with respect to the Software as agreed in the Agreement. If an acceptance procedure has not been expressly agreed in the Agreement, Client will accept the Software “as is” at the time of delivery in accordance with clause 4.1, at which time the acceptance takes place.
- 4.4 If an acceptance procedure has been agreed, Client is obliged to verify whether the Software complies with the Specifications. Without prejudice to Acheron's obligation to remedy any Imperfections free of charge within a reasonable period, Client is not entitled to refuse acceptance of the Software due to Imperfections.
- 4.5 Except in the event where acceptance has already taken place pursuant to clause 4.3, the Software is to be considered as accepted upon operational use of the Software by Client.
- 4.6 Acceptance results in Acheron having fulfilled its obligations with respect to the provision, delivery and (if applicable) installation and/or implementation of the Software, without prejudice to Acheron's obligations to remedy any Imperfections.

5 Licence

- 5.1 Under the condition of payment of the Licence Fee, Acheron grants Client a non-exclusive, non-transferable right to use the Software for the duration and subject to the Agreement, without thereby granting Client the right to sublicense the Software (the **Licence**).
- 5.2 The Licence only applies to the object code of the Software. Acheron has no obligation to make the source code of the Software available to Client or any third party.
- 5.3 The Licence is valid per Repo and Client is obliged to purchase a Licence for each Repo. For the avoidance of doubt, it should be noted in this regard that the provisions of the Agreement apply to each Repo.
- 5.4 Within the Licence, different packages of the Software can be purchased by Client. The maximum number of calculations that can be performed by the Software (the **Calculations**) differs per package.
- 5.5 Acheron shall notify Client as soon as the maximum number of Calculations within the purchased package of the Licence is in sight. On payment of an additional Licence Fee, Client has the right to upgrade the purchased package within the Licence as set out in the SLA.
- 5.6 Client is responsible for selecting the Software package it expects to need based on the number of Calculations expected.
- 5.7 Client is prohibited from:
 - a) renting out, alienating, decompiling, reverse-engineering, modifying or adapting the Software, and from encumbering the Software with limited rights;
 - b) removing or circumventing technical provisions intended to protect the Software, and from having these removed or circumvented;

- c) using the Software for any purpose other than its intended use for its own business or organisation; and
 - d) making the Software available to third parties, for example "as a Service".
- 5.8 Client is aware that violation of an agreed restriction of use constitutes both an attributable failure to perform the Agreement and an infringement of the Intellectual Property Rights of Acheron and/or its licensors.
- 5.9 All Intellectual Property Rights attached to or contained in the (components of the) Software, or to the results of the Consultancy Services, are exclusively vested in Acheron and its licensors.
- 5.10 To the extent that any Intellectual Property Rights in respect of the Software or results of the Consultancy Services become vested in Client, Client shall, immediately upon each written request (including email) from Acheron, perform, or have performed, any act for the purpose of transferring the Intellectual Property Rights to Acheron, including but not limited to signing, or having signed, a written deed of transfer or any other document that has the purpose of transferring the Intellectual Property Rights to Acheron.

6 Consultancy Services

- 6.1 Under the Licence, Acheron provides basic support services with respect to the Software as set out in and subject to the SLA.
- 6.2 Client acknowledges that all other services provided by Acheron to or for the benefit of Client are considered to be Consultancy Services.
- 6.3 Acheron will make every effort to provide the Consultancy Services to the best of its ability and with due care. The Consultancy Services are performed exclusively on Acheron's usual working days and working hours, which have been made known to Client in writing.
- 6.4 Client will provide the cooperation required by Acheron for the Consultancy Services, which includes temporarily ceasing to use the Software. If Client does not cooperate or does not cooperate in time, Acheron will be entitled to suspend the Consultancy Services.
- 6.5 The result and turnaround time of the Consultancy Services depends on the quality of Client's IT environment, the quality of the data and information provided by Client and the cooperation Acheron receives from Client.
- 6.6 If the provision of the Consultancy Services has been agreed with a view to the performance of the Agreement by a particular person, Acheron will strive to have that person perform the Consultancy Services. Nevertheless, Acheron will remain entitled to replace this person with one or more persons with equal or similar qualifications.

7 Fees and payment

- 7.1 Client must pay the Fees in accordance with the provisions of the Agreement. For the avoidance of doubt, it should be noted in this regard that the Licence Fee is payable per Repo.
- 7.2 Any estimates, preliminary calculations and budgets provided by Acheron are only indicative, unless Acheron has expressly agreed otherwise in writing.
- 7.3 Unless otherwise agreed in the Agreement, Acheron is entitled to invoice the Licence Fee annually in advance, for the first time at the time of acceptance as provided in clause 4 and thereafter at the beginning of each extension.

- 7.4 The fee for the Consultancy Services is calculated on the basis of time and materials. Acheron shall invoice this fee monthly in arrears.
- 7.5 Unless expressly stated otherwise in the Agreement, the Fees are exclusive of turnover tax (VAT) and other governmental levies that have been or will be imposed.
- 7.6 Client shall pay invoices within thirty days at the latest. This payment term is to be considered as a strict deadline. Client's right to (partial) suspension or set-off is expressly excluded.

8 Term and termination

- 8.1 The Licence is granted for the term specified in the Agreement, or in the absence thereof, for the term of twelve months after which it is automatically extended for subsequent twelve-month periods, unless terminated (*opgezegd*) by either Party subject to a three months' written notice prior to the end of the initial term or any extension thereof. The foregoing also applies to the termination of a Licence with respect to a Repo that Client no longer has (at its disposal).
- 8.2 On payment of an additional Licence Fee, Client has the right, during the contract period, to upgrade the Licence to a variant of the Software in which more Calculations can be delivered.
- 8.3 Scaling down to a variant of the Software in which fewer Calculations can be delivered may only be done towards the end of the initial term or any extension thereof with due observance of the term mentioned in clause 8.1.
- 8.4 Client is not entitled to terminate the Licence in the interim (*tussentijds op te zeggen*) and is therefore not entitled to a refund of the paid Licence Fee.
- 8.5 The Agreement for the provision of Consultancy Services will end, unless otherwise agreed in writing between Parties, upon completion of the relevant assignment.
- 8.6 Parties have the right to terminate (*ontbinden*) the Agreement in whole or in part with immediate effect in the event:
- a) the other Party applies for or is granted a suspension of payment, or if the other Party files a winding-up petition or is put into liquidation, or if the other Party files for bankruptcy or is declared bankrupt; and
 - b) of an attributable failure to perform an essential obligation under the Agreement which - if the default has not already occurred by operation of law - has not been cured by the defaulting Party within a reasonable period of thirty days after a detailed notice of default. In any event, Client's restrictions of use and payment obligations are always to be considered as essential obligations.
- 8.7 Parties agree that in the event of full or partial termination (*ontbinding*), the performance already received under the Agreement are not subject to reversal (*geen voorwerp van ongedaanmaking*) within the meaning of article 6:271 et seq. of the Dutch Civil Code.
- 8.8 In the event the Agreement ends for whatever reason:
- a) Parties shall return the Confidential Information and the copies made thereof, or to delete and/or destroy it on the instructions of the other Party. These obligations do not apply to copies made for backup purposes on the basis of statutory regulations or certification purposes; and
 - b) provisions which by their nature are intended to continue even after the end of the Agreement will remain in force even after the end of the Agreement.

9 Limitation of liability

- 9.1 Acheron's liability on the basis of an attributable failure to perform the Agreement, wrongful act or otherwise (including any claim on account of defects in the Software) is limited to the amount paid to Acheron by Acheron's insurer in the relevant case.
- 9.2 If, for whatever reason, no indemnification is made under Acheron's insurance policy, Acheron's total liability, on whatever ground, shall at all times be limited to Direct Damages up to a maximum of the Fees paid by Client to Acheron (excluding VAT) during the six months preceding the (first) damage-causing event with a maximum of EUR 50,000. In this regard, a series of related events is considered to be one single event.
- 9.3 Acheron is not obliged to pay compensation for damages up to the amount of (i) any insurance payment that Client - having made every effort to that end - has received in respect of the event that forms the basis of the claim for compensation against Acheron, (ii) any tax benefit that Client enjoys as a result of the event that forms the basis of the claim for compensation against Acheron and (iii) the loss for which a third party (other than a person affiliated with or engaged by Acheron) can be successfully held liable by Client - having made all efforts to that end.
- 9.4 Acheron's liability for other damages or losses other than Direct Damages is excluded.
- 9.5 The exclusions and limitations of liability in the Agreement:
- a) will lapse if the damages are the result of intent (*opzet*) or wilful recklessness (*bewuste roekeloosheid*) on the part of Acheron or its managerial staff (*bedrijfsleiding*); and
 - b) also apply in favour of persons whose services Acheron uses in the performance of the Agreement. This clause is to be considered as an irrevocable third-party clause for the benefit of each of the aforementioned persons.
- 9.6 Any claim by Client will lapse by the mere expiry of one year after the claim arose.

10 Confidentiality

- 10.1 Parties shall keep the Confidential Information strictly confidential and will not share, or otherwise provide, the Confidential Information, in whole or in part, to third parties without the prior written consent of the disclosing Party.
- 10.2 Parties shall only disclose the Confidential Information to employees of the receiving Party, and other third parties (auxiliary persons) engaged by it, who need to be aware of it in the context of executing the Agreement and who do not use the Confidential Information for any purpose other than the aforementioned purpose.
- 10.3 The obligations set out above in this clause will not apply to Confidential Information of which the receiving Party proves that this Confidential Information:
- a) was already known to that Party before it was provided to it by the disclosing Party;
 - b) had to be disclosed pursuant to a court order or at the request of a government agency or a statutory duty;
 - c) was publicly known earlier than it was provided by the disclosing Party to the receiving Party, or at least was publicly available prior to the provision of the relevant information to the receiving Party by the disclosing Party;
 - d) became publicly known or available - without the receiving Party or its auxiliary person being directly or indirectly responsible for this - on or after the date on which the receiving Party received the relevant information from the disclosing Party; and/or
 - e) must be disclosed in court to enforce or defend its rights.

11 Miscellaneous

- 11.1 Parties are not obliged to perform any obligation under the Agreement if they are prevented from doing so by Force Majeure.
- 11.2 Client is not entitled to transfer the rights and obligations under the Agreement to a third party without Acheron's prior written consent. Such consent may not be withheld without reasonable grounds. However, Acheron is entitled to attach conditions to the granting of this consent.
- 11.3 The Agreement and the rights and obligations thereunder may be transferred by Acheron to third parties without Client's prior consent. To the extent necessary, Client hereby gives its consent in advance to a contract transfer (*contractsoverneming*) by a third party.
- 11.4 Acheron has the right to unilaterally amend these General Terms and the SLA. The amended General Terms and/or SLA will be communicated to Client in writing (including email). Unless otherwise provided by Acheron, the amended General Terms and/or SLA will apply from the time of receipt of the amended version.
- 11.5 If one or more provisions of the Agreement are void or voidable by reason of statutory provisions, Parties undertake to replace such provisions, at Acheron's request, with permissible provisions that approach Parties' intention as closely as possible. The aforementioned situation will not affect the validity of the other provisions of the Agreement.

12 Applicable law and disputes

- 12.1 The Agreement is governed by and construed in accordance with the laws of The Netherlands.
- 12.2 All disputes arising from or related to the Agreement will be submitted exclusively to the competent court in Den Bosch, The Netherlands.