

Portwise B.V. – Terms of Business

1. These terms of business apply to all services provided by Portwise B.V. ("Portwise") to our client(s) ("the Client"), unless agreed otherwise in writing. By instructing Portwise to provide services, the Client accepts these terms of business. The proposal of Portwise (in writing, in electronic form or proposed via its website), any (online) acceptance hereof by the Client and these terms of business shall constitute the agreement between the Client and Portwise ("the Agreement"). No other terms and conditions expressed in any of the Client's documents shall be a part of this Agreement and such terms and conditions are specifically excluded.
2. Portwise will exercise reasonable skill and care in the performance of the services to the Client under the Agreement.
3. The Client shall provide Portwise without charge and in such reasonable time so as not to prevent, delay or disrupt the performance of the services all data, information, records and goods which are reasonably requested from time to time by Portwise. The Client shall give Portwise such assistance as Portwise may reasonably require in connection with the performance of the services.
4. If any work is carried out or additional costs are incurred by Portwise because of (i) any variation to the services by the Client, (ii) any delay by the Client, (iii) any delay by third parties, (iv) other reasons beyond the reasonable control of Portwise, Portwise shall be entitled to additional payment.
5. Contrary to the provisions of Sections 7:404 and 7:407(2) of the Dutch Civil Code any and all assignments are deemed to have been given to and accepted by Portwise, even if it is the intention that an assignment will be carried out by a specific person. The applicability of Section 7:404 and 7:407 (2) of the Dutch Civil Code is excluded.
6. To the maximum extent permitted by law, the total liability of Portwise under or in connection with the Agreement, whether in contract, tort, negligence or for breach of statutory duty or otherwise, shall be limited to the total amount of the fee actually received by Portwise under the Agreement, provided always that the total liability of Portwise shall not exceed in aggregate € 1,000,000 (one million Euros). If the Agreement is mainly a continuing performance agreement with a term of more than twelve months, the total liability of Portwise will be limited to the fees actually received by Portwise in the twelve (12) months directly preceding the event (or first of series of events) which gave rise to the claim(s), provided always that the total liability of Portwise shall not exceed in aggregate € 1,000,000 (one million Euros).
7. To the maximum extent permitted by law, neither party hereto shall have any liability to the other for any lost revenues, lost profits, cost of capital, or any special, indirect, consequential or punitive damages suffered, sustained, paid by the other party hereto or any third party, and whether or not foreseeable at the time of entering into this Agreement.
8. Portwise will maintain professional indemnity insurance in an amount not less than € 1,000,000 (one million euros) for any one occurrence and in the aggregate.
9. Portwise's liability is limited to a period of one (1) year after Portwise has completed its services or upon the termination of the services under the Agreement (if earlier). The said one year period is an expiration term ("vervaltermijn").
10. Unless agreed otherwise in writing between the parties, Portwise shall have no obligation or duty to advise the Client on: (i) the actual or possible presence of pollution or contamination or as to the risks of such matters having occurred, being present or occurring in the future ("pollution and contamination matters"), (ii) matters which wholly, partly, directly or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) ("asbestos matters"), (iii) designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism ("terrorism matters"). The liability of Portwise under or in connection with the Agreement, whether in contract, tort, negligence, breach of statutory duty or otherwise, for any claim which may arise out of or in connection with pollution and contamination matters, asbestos matters or terrorism matters as the case may be is excluded.
11. Each party shall have the right to early terminate the Agreement upon thirty (30) days written notice if the other party is in breach of an obligation under this Agreement and, in the case of any such breach capable of remedy, has failed to remedy the breach within a period of thirty (30) days after receipt of written notice to do so. Termination of the Agreement shall not prejudice or affect the accrued rights or claims of either party to the Agreement.
12. The parties shall not be liable for failures or delay in performing any obligations whatsoever under this Agreement arising from any cause beyond their reasonable control, generally called "force majeure". In case the Client wishes to early terminate the Agreement due to a force majeure event, the Client shall compensate Portwise for the services undertaken and costs incurred up until the termination date. If the period of delay or non-performance continues for one hundred eighty (180) days, either party may terminate this Agreement by giving fourteen (14) days' written notice to other party.
13. Confidential Information is all information that is proprietary or confidential and is either clearly labelled as such or which should be deemed as confidential by its nature. Portwise will not, except if required to perform the services to the Client, disclose Confidential Information to a third party or exploit in any way any matter concerning this Agreement or the business of the other party. This clause shall not apply where Confidential Information (i) properly enters the public domain, or (ii) prior to disclosure, was lawfully in the possession of the receiving party or its employees, and which was not acquired directly or indirectly from the Client, or (iii) is in Portwise's possession longer than two years after disclosure of the Confidential Information, or (iv) is required to be disclosed by law or court/arbitration. Portwise is entitled to refer to the services for marketing and reference purposes.
14. All intellectual property rights related to, without limitation, software codes, algorithms, reports, drawings, specifications, bills of quantities, calculations and other similar documents prepared and provided by Portwise under the Agreement remain vested in Portwise. The Client is hereby granted a non-exclusive, revocable non-transferable license without the right to sublicense, to copy and use Portwise's intellectual property rights for the purpose for which the services are provided under and in accordance with the Agreement. If the Client is in default of payment of any fees due under the Agreement Portwise may revoke the license granted herein on seven (7) calendar days' written notice. Portwise shall not be liable for the use by any person of such documents for any purpose other than that for which the same were prepared by or on behalf of Portwise.
15. Portwise is entitled to anonymise the data which have been or will be generated as a result of the performance of the services ("Aggregated Data"), and to use such Aggregated Data to provide, manage, support and improve Portwise's services. Aggregated Data shall not be considered Client data.
16. Portwise retains its rights to use, in any way it sees fit, and disclose to its other customers, any generic knowledge, skills, and expertise

- retained in the memories of Portwise personnel, and any programming tools, problem-solving methodologies, or associated checklists, templates, or forms developed during the performance of the Services which may have general application in the fields of consulting or engineering services.
17. Both parties shall comply with all applicable requirements of the General Data Protection Regulation GDPR (EU) 2016/679 and all other legislation and regulatory requirements in force from time to time which may apply to a party relating to the use of personal data, as amended from time to time.
 18. Unless agreed otherwise, Portwise will invoice the Client monthly for the performance of services. Payment shall be made in Euros, unless agreed otherwise in writing. Payments shall be made within thirty (30) days of the invoice date ("Due Date"). The Client shall pay the invoices on or before the Due Date in consideration for the services rendered by Portwise. Value added tax (VAT) shall be added to the amounts payable if required by law.
 19. The Client may not withhold any amount after the final date for payment unless the Client gives Portwise not later than seven (7) calendar days before such final date for payment a notice specifying the amount proposed to be withheld and the ground for withholding payment, or if there is more than one ground each ground and the respective amounts attributable to it.
 20. Where payment is delayed by the Client, Portwise reserves the right to charge interest from the final date for payment until the date of payment calculated at a rate of 3% over the Dutch statutory interest rate for commercial transactions.
 21. Where a sum due under the Agreement is not paid in full by the final date for payment and no effective notice to withhold payment has been given, Portwise shall, by giving seven (7) days written notice to the Client, be entitled to withhold delivery of any documents and reports it is required to deliver to the Client as part of the services and/or suspend the services until all outstanding payments have been made in full. Portwise reserves the right to refuse to exercise any (further) services at any time based upon an unfavourable client credit report, to be determined at Portwise's sole and reasonable discretion.
 22. This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
 23. The parties shall: (i) comply with all applicable laws, statutes, regulations, codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 ("the Relevant Requirements"); (ii) comply with Haskoning's Code of Conduct as may be updated from time to time (<https://www.haskoning.com/en/about-us/integrity>) ("the Relevant Policies"); and, (iii) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures required under the UK Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and shall carry out periodic monitoring of its compliance with such policies and procedures.
 24. Both parties warrant they will not (directly or indirectly) offer, pay or accept a bribe and both parties will comply with all the Relevant Requirements. Breach of the Relevant Requirements or the Relevant Policies, as the case may be, by one party will entitle the other party to terminate this Agreement and any and all other agreements with immediate effect.
 25. Portwise's fee under this Agreement is exclusive of any value added tax (VAT) and Taxes outside Portwise's home country (The Netherlands).
- Client shall pay all Taxes that might apply outside Portwise's home country, which might become due in connection with the assignment and the services to be provided under this Agreement. 'Taxes' means any and all direct or indirect taxes, such as but not limited to corporate income tax, withholding tax, value added tax, registration, custom, excise or stamp tax and duty, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority with respect thereto. Client shall indemnify, protect, defend and hold Portwise harmless against any claims, losses or damages whatsoever in connection with taxes.
- Should for any reason this indemnification have no force or effect, it is agreed that Portwise's fee under this Agreement shall be increased to include the amount of the taxes to be levied on it.
26. All services and/or deliverables prepared and provided by Portwise under the Agreement will be prepared by Portwise solely for its Client in accordance with the terms and conditions of the Agreement, the methodology, qualifications, assumptions and constraints as set out in such deliverable and may not be relied upon by any other party for any use whatsoever without prior written consent from Portwise. Portwise accepts no responsibility or liability for the consequence of such deliverable being used for a purpose other than the purposes for which it was commissioned. Portwise accepts no responsibility or liability for its services and/or deliverables to any party other than its Client.
 27. Services and/or deliverables prepared and provided by Portwise under the Agreement may contain certain forward-looking statements, including estimates, forecasts and projections, which (i) reflect various assumptions concerning future industry performance, general business, economic and regulatory conditions, market conditions and other matters, which assumptions may or may not prove to be correct and (ii) are inherently subject to significant contingencies and uncertainties, many of which are outside the control of Portwise and difficult to predict. Actual results can be expected to vary and those variations may have a material impact on analyses, projections or estimates. Portwise expressly disclaims any liability for the realisation of any forward-looking statements, estimates, forecasts and projections.
 28. The Agreement shall be construed in accordance with and governed by Dutch Law. All disputes arising in connection with the Agreement, which cannot be solved between the parties in an amicable manner, shall be finally settled by the competent court in Utrecht. Title 1 of Book 7 of the Civil Code and the United Nations Convention on Contracts for the International Sale of Goods with regard to Movable Property (the "Vienna Sales Convention") shall not apply to the Agreement.