

# Terms and Conditions

As of *january 1, 2024*





On all legal relationships between

Plainwise registered with the Chamber of Commerce under **GewoonAI B.V.** with number 92513921, located and having its office in the Netherlands at Woudenbergseweg 19 C13, 3707HW in Zeist, hereinafter: '**Plainwise**',

and

**Customer**, hereinafter collectively referred to as '**Parties**',

only these General Terms and Conditions shall apply.

Conditions or provisions deviating from or supplementing the present General Terms and Conditions of a counterparty are expressly not valid between the parties, unless GewoonAI itself stipulates deviating conditions or provisions or has agreed in writing.

If any provision of the General Terms and Conditions is null and void or is annulled, the other provisions shall remain in full force and effect.

## Article 1. Definitions

1.1 **Plainwise:** Plainwise as GewoonAI B.V. registered with the Chamber of Commerce under number 92513921.

1.2 **Customer:** the legal entity entering into an Agreement with Plainwise and/or the (end) user of the Service.

1.3 **Service:** the use of the series of technologies and software solutions provided by Plainwise. These include digital assistants and automation systems, designed to facilitate and manage customer service interactions.

1.4 **Intellectual Property:** all intellectual and industrial property rights, in any form, whether registered or not.

1.5 **Product:** the subscription offered by Plainwise, which provides customers access to our software-as-a-service (SaaS). This subscription offers access to various digital tools and solutions for customer service.

1.6 **Agreement:** the agreement between Plainwise and the Customer in connection with the Service and/or the Product.

1.7 **Fair Use Policy (FUP):** a policy framework established by Plainwise, intended to ensure that all Customers have an optimal service experience. The FUP defines the terms for reasonable and acceptable use of the Service to prevent overloading or disproportionate use that could affect the provision of service for other Customers.

1.8 **Party:** any party to the Agreement.

1.9 **Website:** “plainwise.com” or “xxxx.plainwise.com”.

1.10 **General Terms and Conditions:** the present general terms and conditions of Plainwise.

## **Article 2. Applicability and Execution**

2.1 These General Terms and Conditions apply to the Service to be provided by Plainwise and/or the Product to be sold, and shall apply to all quotations, offers, instructions, order(s) (confirmations), Agreements, and deliveries from Plainwise.

2.2 General terms and conditions of the Customer or third parties are explicitly rejected and shall not apply to the Agreement, and/or the Services to be provided by Plainwise and/or the Products to be sold.

2.3 Plainwise reserves the right to unilaterally amend or supplement these General Terms and Conditions. The amended General Terms and Conditions will be communicated in writing to the Customer at least two months before they become effective. The Customer has the right to terminate the Agreement as of the date the amended General Terms and Conditions take effect, subject to a notice period of one month.

2.4 Plainwise will endeavor to the best of its knowledge to fulfill its obligations under the Agreement and/or the General Terms and Conditions. The obligations under the Agreement and/or the General Terms and Conditions constitute an obligation to make efforts and in no way an obligation to achieve a result, unless and insofar as Plainwise has explicitly promised a result and the respective result has been sufficiently defined.

## **Article 3. Formation of Agreement**

- 3.1 The Customer enters into the Agreement related to the Service and/or Product with Plainwise in writing, whether directly or indirectly through a third party (e.g., a contractor or maintenance company). The Agreement is established at the time of dispatch of the order confirmation by Plainwise to the Customer.
- 3.2 The term and/or date mentioned in the Agreement is not a deadline in the sense of Article 6:83 of the Dutch Civil Code. Therefore, exceeding such term or date does not automatically place Plainwise in default.

## Article 4. Pricing and Invoicing

- 4.1 All prices are in euros and exclusive of value-added tax and other levies imposed by the government.
- 4.2 The prices on the Website, in quotations, offers, brochures, and newsletters are subject to obvious typographical and calculation errors.
- 4.3 Plainwise has the right to index its prices annually in accordance with the CPI (Consumer Price Index). In addition, Plainwise has the right to change the prices of the Service and/or Product. Changes will be communicated in writing to the Customer at least two months before they take effect. A Customer has the right to terminate the Agreement from the date the price changes take effect, subject to a notice period of one month.
- 4.4 Plainwise invoices the Customer monthly on the first day of the month for the Service, unless otherwise agreed in writing in the Agreement.
- 4.5 Payments related to the Service are made by direct debit, unless otherwise agreed in writing in the Agreement. The Customer must ensure there are sufficient funds in the relevant account. Plainwise is entitled to charge additional administrative costs if a payment method other than direct debit is agreed upon.
- 4.6 The Customer is obligated to pay the invoice related to the Product within the payment term agreed in the Agreement. If no payment term is agreed in the Agreement, a term of 14 calendar days from the invoice date applies.
- 4.7 The Customer is not entitled to suspend its payment obligation under the Agreement or to offset any outstanding claim.
- 4.8 If the Customer fails to make payment within the agreed term, in addition to the due amount and statutory trade interest, the Customer is obligated to fully compensate for both extrajudicial and judicial collection costs, including the costs for lawyers, bailiffs, and collection agencies.

## Article 5. Fair Use Policy (FUP)

- 5.1 Plainwise is committed to providing all Customers with high-quality Services. For this purpose, Plainwise implements a Fair Use Policy (FUP), which applies to the use of the Service. This FUP is intended to promote reasonable use of the Service and prevent excessive use that can negatively impact the experience of other Customers.
- 5.2 Normal use of the Service is defined as usage within the limits of the Product chosen by the Customer. For each Product, Plainwise establishes a fair use target number that is representative of the expected number of calls per month.
- 5.3 If a Customer exceeds the fair use target by more than 10%, Plainwise reserves the right to charge a surcharge of 1 euro (excluding VAT) per additional call to the Customer.
- 5.4 In the event that the fair use limit is exceeded twice within a period of six months, Plainwise is entitled to terminate the Agreement, unless the Customer agrees to switch to a Product that, according to Plainwise, better suits their usage pattern.
- 5.5 The Customer retains the right not to switch to another Product. In such cases, Plainwise retains the right to continue applying the surcharge of 1 euro (excluding VAT) per call for each month in which the limit is exceeded.
- 5.6 Plainwise aims to promptly inform the Customer upon reaching or exceeding the fair use target. This enables Customers to evaluate their usage and make timely decisions to avoid additional costs. Plainwise is not liable for costs incurred due to the failure of timely Product changes by the Customer.
- 5.7 Plainwise reserves the right to modify the FUP. Customers will be informed at least two months before such changes take effect. Customers then have the right to terminate the Agreement effective from the date the new terms come into force.



5.8 In the event of termination of the Agreement due to a violation of the FUP, the provisions that are intended to continue after the end of the Agreement remain in effect, in accordance with Article **Error! Reference source not found.** of these terms.

## Article 6. Liability

6.1 Plainwise's liability for direct damage suffered by the Customer as a result of a culpable failure to perform by Plainwise in fulfilling its obligations under the Agreement, this explicitly includes any failure to meet a warranty obligation agreed with the Customer, or by an unlawful act of Plainwise, its employees, or third parties engaged by it, is per event or a series of related events limited to an amount (excluding VAT), (i) for Services, the fees due per year under the Agreement for the respective Service(s), and (ii) for Products, the purchase amount of the respective Product(s) from which the liability arises. In no case shall the total compensation for direct damage exceed 1,000 euros (excluding VAT).

6.2 The total liability of Plainwise for damage caused by death or physical injury or for material damage to goods shall in no event exceed 50,000 euros per damaging event, where a series of related events is considered one event.

6.3 Liability of Plainwise for indirect damage, including but not limited to consequential damage, lost profits, costs to determine damage and liability, legal advice and attorney fees, loss of opportunities and missed savings, contractual penalties, loss of goodwill, business and delay damage, costs related to adjustments to the Customer's own software, and damage resulting from the unavailability of the Service, missed savings, mutilation or loss of (business) data and data, damage due to business interruption, incorrect conversion of scanned or entered documents, is excluded.

6.4 Plainwise is not liable for any damage to the extent that this damage is (partly) due to the Customer, an employee of a Customer, or a third party engaged by the Customer, including but not limited to, work related to the installation of the Service and/or the Product.

- 6.5 The exclusions and limitations referred to in Article 6, paragraphs 1 to 4, shall lapse if and insofar as the damage is the result of intent or deliberate recklessness of the management of Plainwise.
- 6.6 The liability of Plainwise for a culpable failure to perform the Agreement only arises if the Customer immediately issues a written default notice to Plainwise, in which Plainwise is given a reasonable period to remedy its failure, and Plainwise continues to fail in its obligations after that period. The notice of default must contain a description of the failure in as much detail as possible so that Plainwise can respond adequately.
- 6.7 Plainwise is not liable for damage caused by force majeure.
- 6.8 A prerequisite for the creation of any right to compensation in connection with the Products is always that the Customer reports the damage within the period referred to in Article 19 after its occurrence or after receiving the Product in writing to Plainwise, which notification must have been received by Plainwise.
- 6.9 The Customer shall take out adequate insurance to cover any liabilities arising from the Agreement. At the first request of Plainwise, the Customer shall provide a copy of its policy. Any payout to the Customer under an insurance agreement concluded by the Customer reduces their right to compensation from Plainwise, to the extent that it does not exceed the payout.
- 6.10 The Customer indemnifies Plainwise against claims by third parties for compensation of any costs and/or damage. These third parties also include employees of the Customer.

## Article 7. Force Majeure

7.1 Force majeure in the sense of Article 6:75 of the Dutch Civil Code is understood to include at least the following: disruptions in the telecommunications infrastructure (internet), hacking of Plainwise's system, malware within Plainwise's system, domestic unrest, mobilization, war, transport impediments, strikes, operational disruptions within Plainwise, fire, natural disasters, import and export restrictions, and in the event that Plainwise is prevented from delivering by its own suppliers, for whatever reason, such that fulfillment of the Agreement cannot reasonably be demanded of Plainwise.

7.2 In the event of force majeure, the execution of the Agreement will be suspended for a period of 60 (sixty) days. If after this period of 60 (sixty) days, Plainwise is unable to fulfill its obligations, the Customer has the right to terminate the Agreement, without any right to compensation.

## Article 8. Rights of (Intellectual) Property

- 8.1 All Intellectual Property Rights related to the Service and/or the Product, including – but not limited to – any documentation, manual, design/layout, and/or functionality of the user interface of the online portal in connection with the Service and/or Product, reside exclusively with Plainwise. These Intellectual Property Rights may only be used to the extent agreed under the Agreement. The Customer shall not reproduce, make available to third parties, or otherwise use these Intellectual Property Rights.
- 8.2 The Customer obtains only a right of use regarding the Service during the term of the Agreement, which is non-exclusive and non-transferable, under the rights and obligations as set out in the Agreement.
- 8.3 To the extent that the Parties agree to jointly develop a Service and/or Product, all Intellectual Property Rights on this developed Service and/or Product, including any documentation related to this Service and/or Product, shall reside exclusively with Plainwise.
- 8.4 If a further deed is required for the transfer of the Intellectual Property Rights to Plainwise obtained or acquired during the development of the Service and/or Product, the Customer hereby irrevocably authorizes Plainwise to prepare such a deed and to sign it on behalf of the Customer, without setting further conditions. The Customer also authorizes Plainwise to perform any act on behalf of the Customer related to the establishment, registration, or enforcement of the Intellectual Property Rights belonging to or transferred to Plainwise, both during and after the termination of this agreement.
- 8.5 In this context, the Customer also hereby waives, to the extent legally possible, any personality rights arising from the Intellectual Property Rights obtained or acquired during the development of the Service and/or Product, and will not invoke them.

8.6 To the extent that instructions, materials, or other aids are provided by Plainwise to the Customer under the Agreement, these remain the property of Plainwise. The Customer is obliged to mark the aids referred to in the previous paragraph as recognizable property of Plainwise, to keep them in good condition, and to insure them at their own expense against all risks as long as the Customer is the holder of those aids.

8.7 The aids provided under the Agreement will be made available to Plainwise or returned at the first request of Plainwise.

## Article 9. Confidentiality

9.1 The Parties shall not disclose confidential information related to the other Party, the Agreement, the Service, and/or the Product to any third party, unless required by law, a court ruling, an instruction from a regulatory body or governmental authority, or necessary in connection with the exercise of rights under the Agreement, in which cases the Parties shall coordinate the manner of disclosure in advance.

9.2 The foregoing does not apply to confidential information and/or documentation:

- i) where the disclosing Party can demonstrate in writing that it was already publicly known at the time of its receipt or thereafter, other than by breach of the confidentiality obligation mentioned in this article;
- ii) which must be disclosed under a legal obligation; and
- iii) which is obtained from entitled third parties without confidentiality. Confidential information and documentation, including all copies thereof, shall be destroyed at the first request of Plainwise to the extent technically possible, or returned.

9.3 The Customer shall not reproduce confidential information or make copies of it.

9.4 The Customer guarantees that its employees and any third party involved in (the execution of) the Agreement and/or activities related to the Service and/or the Product will comply with the obligations under this article.

## Article 10. Data

- 10.1 The Customer is responsible for the information and/or data that is stored, generated, and/or exchanged using the Service and/or Product. The Customer guarantees that this data and/or information is lawful and does not infringe the rights of third parties.
- 10.2 The Customer indemnifies Plainwise against claims by third parties based on the assumption that the information and/or data stored, generated, and/or exchanged by the Customer using the Service and/or Product is unlawful, or infringes the rights of the relevant third party.
- 10.3 If Plainwise becomes aware that information and/or data stored and/or exchanged by the Customer using the Service and/or Product is unlawful, Plainwise has the right to immediately remove this information and/or data and/or block the Customer's access to the Service and/or Product.
- 10.4 Plainwise has the right to use the information and/or data stored, generated, and/or exchanged using the Service and/or Product for business intelligence purposes and for providing and improving the Services and Products.
- 10.5 Plainwise will make the information and data of the Customer available after termination of the Agreement according to the terms agreed in the Agreement. The Customer has the right to request Plainwise to delete its data related to this Agreement, the Service, and/or the Product through a written request signed by the Customer, to be received by Plainwise no later than the date the Agreement ends.
- 10.6 The Customer is responsible for complying with all legal administrative and retention obligations incumbent upon them.



## Article 11. Duration and Termination

11.1 The Agreement is entered into for a term specified in the Agreement. The Parties cannot terminate the Agreement prematurely. The Agreement will be tacitly renewed for a period of 12 months after the expiry of the term specified in the Agreement, unless terminated by one of the Parties in accordance with paragraph 2.

11.2 Either Party may terminate the Agreement in writing at the end of a term, subject to at least one (1) month's notice, by means of a registered letter.

11.3 Notwithstanding the provisions of Article **Error! Reference source not found.**, Plainwise may terminate the Agreement immediately, without further notice of default, thereby making outstanding claims immediately due and payable, by means of written notification in the event:

- i) the Customer has applied for or has been granted a suspension of payments;
- ii) a substantial part of the Customer's business is seized;
- iii) there is insolvency or bankruptcy of the Customer, or if bankruptcy has been applied for by the Customer;
- iv) the Customer has committed, or is committing, fraud;
- v) the Customer ceases its business operations; and
- vi) the Customer transfers its business wholly or partly to a third party, or otherwise transfers ownership or control of that business wholly or partly to another party.

11.4 In the event the Agreement ends, the provisions which by their nature are intended to continue, shall remain in effect after the end of the Agreement including, but not limited to, confidentiality obligations, provisions regarding liability, and Intellectual Property, applicable law, and competent court.

## **Article 12. Applicable Law, Competent Court, and Other General Provisions**

12.1 The Agreement is governed by Dutch law. The applicability of (i) the Vienna Sales Convention 1980 (CISG) and (ii) title 1 of book 7 of the Dutch Civil Code are excluded.

12.2 The court of Midden-Nederland (location Utrecht) is authorized to hear disputes between the Parties related to the Agreement, the Service, and/or the Product, after the Parties have attempted to resolve the dispute and have failed to do so within 15 days after the dispute arose.

12.3 The version of any communication received or stored by Plainwise, measurements made and monitoring by Plainwise, are deemed authentic, unless proven otherwise by the Customer.

12.4 If a provision of the Agreement and/or the General Terms and Conditions is found to be void, this does not affect the validity of the entire Agreement/General Terms and Conditions. Plainwise will replace the void or unenforceable provisions as much as possible with a provision that is binding and valid and whose intent/effects are as close as possible to those of the provision(s) being replaced.

12.5 The Customer is not entitled to transfer or encumber its rights and/or obligations under an Agreement to any third party without prior written consent from Plainwise. Plainwise is entitled to attach conditions to this consent. Plainwise is at all times entitled to transfer the rights and/or obligations from an Agreement to a third party, and the Customer commits itself - as far as possible - in advance to cooperate and/or give its consent for this.

12.6 In the event of a contradiction between (the contents of) these General Terms and Conditions and the Agreement, the contents of the Agreement shall prevail.

12.7 In the event of a discrepancy between the Dutch text and the English translation, the Dutch text shall prevail.

## Article 13. Access and Use of the Service

- 13.1 Plainwise will provide the Customer with the Service during the term of the Agreement in accordance with what is specified in the Agreement and the applicable General Terms and Conditions.
- 13.2 Plainwise will provide the Customer with a username and password, which will grant the Customer access to the Service from the date of the Agreement. Plainwise can only facilitate access to the service if the Customer uses a recent internet browser. The Customer ensures that it uses an internet browser that has been released no more than 3 years ago (at the time of using the Service).
- 13.3 The Customer is responsible for providing, or having Plainwise provide, a telephone number that is compatible with the Service. The Customer must ensure that this telephone number is not used for unauthorized or fraudulent purposes. In case of misuse of the telephone number, Plainwise may immediately terminate the Agreement, without further notice of default, making outstanding claims immediately due and payable, through written notification.
- 13.4 The Customer will handle the usernames and passwords with care, and ensures that (i) its employees handle the usernames and passwords with care, (ii) the usernames and passwords will only be used for the Service, and (iii) only the Customer's employees who need access to the usernames and passwords for using the Service will have access.
- 13.5 The Customer will immediately inform Plainwise electronically of any changes in name, email addresses, and other details that are important for the execution of the Service by Plainwise, but at least 14 days before Plainwise needs to make any changes regarding the usernames and/or passwords in the context of the Service.
- 13.6 The Customer will not allow more users to access the Service than the number of usernames obtained from Plainwise, and to which the Customer is entitled under the Agreement.

13.7 The Customer will immediately notify Plainwise of any (suspected) improper use and/or unauthorized access to the usernames and passwords.

13.8 The Customer may only offer the Service to third parties (whether through subcontracting or not) if the Customer is not the end user of the Service, and after Plainwise has been informed in writing, or this reasonably follows from the Agreement.

13.9 Plainwise has the right at all times to take measures that Plainwise deems desirable or necessary for the security of (the software of) (the access to) the Service, which may temporarily restrict the Customer's access to the Service, without further liability to the Customer.

13.10 The usernames and passwords provided by Plainwise to the Customer are subject to Article 9 of the General Terms and Conditions.

## Article 14. Maintenance

14.1 Plainwise has the right to temporarily suspend the Service for maintenance, adjustment, or improvement of the Service and/or web servers of Plainwise, without further liability to the Customer. Plainwise will endeavor to schedule such suspensions outside of business hours as much as possible and to notify the Customer in advance of a planned suspension.

14.2 Plainwise is not obligated to maintain, update, modify, or add specific features or functionalities of the Service for a particular Customer and has the right to (the software and components of) the Service:

- i) adjust to improve functionality and/or correct errors;
- ii) no longer provide updates; and
- iii) no longer keep available in the application of the Service, without further liability to the Customer.

14.3 If an adjustment to (the software of) the Service leads to a substantial change in (the software of) the Service, Plainwise will inform the Customer via Release Notes, which may be published on the Plainwise website and will be visible to the Customer on their personal website after logging in.

14.4 If the Customer wishes to make links between the Service and third-party services, the Parties will make further arrangements about this in the Agreement.

## **Article 15. Service Levels and Availability of the Service**

15.1 Plainwise is committed to providing reliable and continuous service. We believe in maintaining a high standard of service availability without the need for a separate Service Level Agreement (SLA).

15.2 At Plainwise, we do not believe in charging customers separately for SLAs. Our goal is to consistently maintain high uptime that exceeds industry standards, at no additional cost to our customers. We believe that excellent service should be the standard. Therefore, we have invested in advanced infrastructure and technologies to offer a robust and reliable service.

15.3 If the Customer acts as a reseller, it is the Customer's responsibility to maintain the high standard of service provided by Plainwise. The Customer will be liable for meeting any service expectations of the end user, in accordance with our core values of reliable and accessible service.

## Contact Information

If you have any questions, complaints, or comments about these General Terms and Conditions after reading them, please feel free to contact us in writing or by email ([contact@plainwise.com](mailto:contact@plainwise.com))

### **GewoonAI B.V.**

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