

More Optimal Subscription Terms

Article 1 Definitions

“Authorized User” means a person from Customer’s organization who is accredited to access and use the Services, as specified in the applicable Order Form where applicable. Such Authorized Users may include Customer’s direct employees or the employees of subsidiaries, third party consultants, outsourcers, or contractors who have a business relationship with Customer that justifies their legitimate access to and use of the Services under these Subscription Terms.

“Customer Data” means Customer’s information or other data processed, stored or transmitted by, in or through the Services, including without limitation personal information relating to the Customer’s personnel, customers, and prospective customers such that the identity of such persons is apparent or can reasonably be determined from such personal information.

“Documentation” means a functional and/or technical description of the Platform.

“Customer Solution” means the customer application on the More Optimal Platform, developed for Customer by More Optimal or an approved third party.

“Effective Date” means the date the Subscription shall be active.

“Internet Browser Resources” means all resources that are part of the customers infrastructure to use the Services via an internet browser.

“Order Form” means the document that specifies which Services have been purchased by Customer and under which conditions.

“Platform” means the More Optimal modeling software, which is owned, managed and developed by More Optimal, that is able to quickly develop and deploy world-class supply chain planning solutions.

“Services” means the service to make the Platform and/or Customer Solution digitally available to Customer, as specified in the applicable Order Form. Services can be provided in the form of a Subscription.

“Statement of Work” or “SoW” means the document which defines project-specific activities and timelines to provide the Services to Customer.

“Subscription” means the right to access the More Optimal Platform during the Subscription Period.

“Subscription Fee” means the periodical fee to be paid in exchange for the Services.

“Subscription Period” means the time-period specified on the Order Form when the Subscription is valid.

“Subscription Service Provider” means More Optimal BV (“More Optimal”) or More Optimal’s designated Reseller.

“Support Services” means the technical services in relation to the availability of the Platform as specified in these Subscription Terms and the applicable Order Form, excluding any consultancy services.

“Subscription Terms” means these terms and conditions regarding the Subscription.

“Personal Data” means the definition in article 4 of the General Data Protection Regulation (“GDPR”; <https://gdpr-info.eu/art-4-gdpr/>).

Article 2 Use rights

Applicability

These Subscription Terms apply automatically if i) the Customer purchases Services through an Order Form, or if ii) Subscription Service Provider grants an Authorized User access to use the Platform as part of a) a pilot b) study purposes, c) as a dedicated partner of Subscription Service Provider, or another agreed (written) purpose.

Grant

Subscription Service Provider does not sell the Platform to Customer. Subscription Service Provider grants to Customer and Customer accepts from Subscription Service Provider, from the Effective Date and in exchange of a Subscription Fee, the right to use the Platform during the Term and solely for Customer’s internal business operations, within the scope as defined in the Order Form. All rights not expressly granted to Customer are reserved by More Optimal.

Scope

The Services are provided in accordance with these Subscription Terms. Services are available after payment has been made, in accordance with article 6 and as further specified in the applicable Order Form. Customer

is authorized to extend the Services during the term against the applicable rates in effect at the time of the Services extension.

Restrictions

Other than the rights expressly specified in these Subscription Terms and in an applicable Order Form, no other right or interest whatsoever is granted to Customer in connection with the Services. Without limiting the foregoing, Customer may not: (i) use the Service for purposes other than the purposes for which it is intended as defined in these Subscription Terms and/or the applicable Order Form; (ii) rent, lease, lend, sell, license, assign, distribute, or transfer in whole or in part the right to use the Service or any part thereof; (iii) bypass or breach any security device or protection used by the Service; (iv) input, upload, transmit, or otherwise provide to or through the Service any information or materials that are unlawful or injurious, or that contain, transmit, or activate any harmful code; (v) use the Service in any illegal manner or in any way that infringes the right of any third party. In addition, in the event the Order Form limits the usage to a certain number of Authorized Users, Customer shall ensure that the number of Authorized Users who may access and use the Services in any given calendar month, will not exceed the number specified in the Order Form.

Article 3 Availability

In order to make optimal use of the Services, Customer shall use a recent version of an internet browser (e.g. Chrome, Edge, Firefox or Safari). Additionally, Customer shall provision sufficient Internet Browser Resources to use the Services. More Optimal software usually requires a large monitor and a relatively high resolution for optimal insight.

To access and use the Services, any third-party applications might be necessary. Customer shall solely be responsible to acquire and maintain such third-party applications.

Article 4 Support services

Support Services

Support Services are available during the Subscription Period, which is further described in the applicable Order Form. Customer shall select a support level in the Order Form, which level shall apply to all Services subsequently purchased by Customer, unless the support level for each application is agreed otherwise in writing. Support Services shall be provided by Subscription Service Provider. Support shall automatically renew on an annual basis and is based on the then applicable support level, unless Customer terminates Support Services or Customer requests otherwise. Customer may order new Services and Support Services, or alter Services and Support Services, under this Subscription by using an Order Form.

Subscription Service Provider shall have no support obligations under Support Services with respect to i) malfunctions caused by the use or operation of the Platform with any hardware, software or media not authorized by Subscription Service Provider, or ii) malfunctions resulting from user error or incorrect use of the Platform or Customer Solution; or (iii) malfunctions attributable to the equipment and programs used in conjunction with the Platform or to any other reason external to the Platform.

At any time, Customer may request an increase in the level of Support Services by notifying the Subscription Service Provider by means of an Order Form. The increased level of Support Services will be available upon payment of the increased Support fee for the remainder of the term, calculated on a prorated basis. Customer may reduce the level of Support Services on any renewal date by notice to the Subscription Service Provider.

Article 5 Reseller

In case the Services shall be provided through a Reseller, Customer agrees that Reseller is responsible for pricing, payment collection, delivery and implementation of any orders it accepts. More Optimal is fully independent from any Reseller and is not responsible for the Reseller's actions or omissions.

Article 6 Fees and payment

Fees

Subscription Fees are calculated in EURO (€) and shall be invoiced upfront.

Except as otherwise specified herein or in an Order Form:

- a) all fees are based on Services purchased and not on actual usage;
- b) all payment obligations are non-cancellable, and fees paid are non-refundable;

- c) the number of Authorized Users and/or actual Services purchased cannot be decreased during the Subscription Period.

Subscription Fees may be increased annually on the basis of the Harmonized Index for Consumer Prices Euro 19 Area (HICP 19 EA, as published by Eurostat on https://ec.europa.eu/eurostat/databrowser/view/prc_hicp_aind/). Customer shall be notified of any Subscription Fee increase at least one month in advance.

All prices and fees are exclusive of VAT and other taxes or duties, which shall be added to the Subscription Service Provider's invoice at the applicable rate.

Invoicing

Unless otherwise stated in the Order Form, all invoices for the Subscription Fees will be issued in advance on a monthly basis. Customer shall pay all invoices by wire transfer within thirty (30) days from the date of invoice, unless specified otherwise in the applicable Order Form. Customer is responsible for providing complete and accurate billing and contact information in the Work Order.

Late payment

If any fees are not received from Customer by the due date, then Customer shall pay interest at the minimum statutory rate for late payment in commercial transactions under Dutch law on all sums unpaid at the due date, plus reasonable attorneys' fees and costs incurred in collecting unpaid amounts. Subscription Service Provider shall be entitled to suspend the provision of Services or Support for which related payment has not been made.

Article 7 Intellectual property

Ownership

More Optimal retains ownership in all intellectual property rights in the Platform and all modifications, enhancements or other derivative works thereof. More Optimal's Platform is licensed, not sold. No provision contained in these Subscription Terms is intended to or shall be deemed or construed to transfer any intellectual property rights to Customer or any third party. All rights not expressly granted by the Subscription Service Provider to Customer under these Subscription Terms are reserved to the Subscription Service Provider. Customer is hereby notified that "More Optimal" and any expression containing the words and/or name "More Optimal", and any product names and logos associated with the Services are trademarks of More Optimal or third parties, and no right or license is granted to Customer to use or exploit them in any way and Customer shall not use or exploit them in any way.

IP indemnification

More Optimal will defend Customer from and against any claim made by a third party against Customer to the extent the claim is based on an allegation that the Platform provided by it, infringes upon, or misappropriates a copyright in any country or a patent of the United States, Japan, or a member state of the European Patent Organization, and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by More Optimal arising out of such claim, provided (i) Customer provides More Optimal with prompt written notice of the claim, and (ii) Customer gives More Optimal sole control of the defense of the claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the claim.

Exclusions

In no event will More Optimal have any obligation or liability under this Article 7 arising from: (i) use of the Platform in a modified form or in combination with materials not furnished by More Optimal; (ii) any Customer Data; (iii) any failure by Customer to comply with Customer's responsibilities under these Subscription Terms.

Remedial Actions

In the event that the Platform or any part thereof, in More Optimal's sole opinion, is likely to, or does become the subject of an infringement claim, More Optimal may, at its option and expense: (i) procure for Customer the right to continue using the Platform (including the allegedly infringing portion/item); and if option (i) is reasonably not obtainable, then (ii) substitute a functionally equivalent non-infringing replacement for such allegedly infringing portion of the Platform or otherwise modify it to make it non-infringing and functionally equivalent; or, solely if option (i) and option (ii) are reasonably not obtainable (iii) terminate the Subscription and any outstanding Order Form and refund to Customer fees paid to More Optimal for the infringing items

in an amount prorated to reflect the period of time between the date Customer was unable to use the Platform due to such infringement claim and the remaining days in the current Term.

Sole Remedy

This Article 7 sets forth the exclusive and entire remedy of Customer with respect to any infringement claims.

Article 8 Warranty

Each party represents and warrants to the other party that the performance of its obligations under these Subscription Terms will not violate any applicable laws or regulations or cause a breach of any material contracts to which it is a party, or it is otherwise bound.

Warranty Subscription Service Provider

Subscription Service Provider represents and warrants that it is a company duly organized, validly existing and in good standing and has the full power and authority to execute and deliver the Services and to carry out its obligations hereunder. Subscription Service Provider represents and warrants that to its knowledge as of the date of these Subscription Terms, the Platform contains no malicious code or other malicious computer instructions or devices that erase data or programming, or infect, disrupt, damage, disable, or shut down a computer system or any material component of such computer system.

Warranty Customer

Customer represents and warrants that it is a company duly organized, validly existing and in good standing under the laws of the country in which it is officially registered as a business. Customer has the full power and authority to execute and deliver these Subscription Terms and to carry out its obligations hereunder. In addition to any other undertaking or responsibility of Customer as set forth in these Subscription Terms, any applicable Order Form, SoW or other applicable document, Customer shall be solely responsible and liable for, and in connection with: (i) the manner in which Customer uses the Platform and the Customer Solution (ii) Customer Data, including without limitation Customer's rights to use such data in connection with the Services; (iii) compliance by Customer with any and all applicable laws and with third parties' rights in connection with the foregoing.

Limited Warranty

More Optimal warrants that the Platform will conform to all material operational features as described in the Documentation and the applicable Order Form, and that the Platform is free of errors and defects that materially affect the performance of such features, provided that Customer promptly notifies More Optimal of any non-conformity, error, or defect.

Any minor discrepancies between the functions of the Platform and the functions described in the Documentation and the applicable Work Order shall not be considered a breach of the foregoing sentence. Customer's sole and exclusive remedy for breach of this limited warranty shall be the prompt correction of non-conforming Platform at More Optimal's expense.

Disclaimer

WITHOUT LIMITING THE FOREGOING, MORE OPTIMAL DOES NOT WARRANT THAT THE PLATFORM WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE PLATFORM WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, OR THAT THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES AND AGREES THAT MORE OPTIMAL DOES NOT HAVE CONTROL OVER THE INTERNET AND IS NOT LIABLE FOR THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE PLATFORM. THE WARRANTIES CONTAINED IN THIS ARTICLE 8 ARE EXCLUSIVE, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR ARISING BY A COURSE OF DEALING OR USAGE OF TRADE. THIS ARTICLE DOES NOT LIMIT, AND IS WITHOUT PREJUDICE TO, THE PROVISIONS OF ARTICLE 9 BELOW. THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

Article 9 Limitation of liability

Indirect liability

In no event shall the Subscription Service Provider be liable, under or in the performance of these Subscription Terms, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or

in connection with the termination of these Subscription Terms for loss of profits (whether direct or indirect) or for indirect damages such as loss of goodwill, loss of business or business opportunities or loss of anticipated saving(s), or for any special, indirect, remote or consequential damage or loss suffered by Customer.

Direct liability

Without affecting Customers payment obligation and liability in relation to the Subscription Fee, Subscription Service Provider’s aggregate liability under each Order Form shall not exceed the amount paid by Customer for the applicable Order Form, and Subscription Service Provider’s aggregate liability under these Subscription Terms shall not exceed 50% (fifty percent) of the amount of fees actually paid by Customer for the Platform and/or the Services which caused the damages in the preceding twelve (12) month-period prior to the occurrence of the cause of action giving rise to the claim.

Notwithstanding the foregoing, each party shall be liable without limitation in respect of any express indemnity obligation under these Subscription Terms for fraud or fraudulent misrepresentation or for any damage caused by willful misconduct or gross negligence by the Party’s management.

Any legal action against the Subscription Service Provider must be filed with the appropriate judicial jurisdiction within two (2) years after the applicable cause of action has arisen.

Article 10 Confidentiality

For the purpose of these Subscription Terms, “Confidential Information” means any non-public information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”), that is designated in writing as confidential or if disclosed orally – is reduced to writing and titled as “confidential” within 15 days following the disclosure and sharing with the Receiving Party. Confidential Information shall include, but is not limited to, technological information such as know-how, software, data, programs, inventions, ideas, processes, formulas, developments, designs, materials, business information such as marketing and selling, budgets, prices and costs, information about the Disclosing Party’s employees, Affiliates, suppliers and customers, and trade secrets. Confidential Information does not include information that is: (i) public knowledge at the time of disclosure or thereafter becomes generally known other than through an act of breach or negligence by the Receiving Party; (ii) already known by the Receiving Party prior to its receipt from the Disclosing Party; (iii) independently developed at any time by the Receiving Party without use of or reference to Confidential Information; (iv) rightfully obtained by the Receiving Party from other unrestricted sources.

Protection of Confidential Information

All Confidential Information delivered, made available or otherwise acquired pursuant to these Subscription Terms shall (i) not be copied, distributed, disseminated or made available in any way or form by Receiving Party without the prior written consent of the Disclosing Party; (ii) be maintained in strict confidence using the same degree of care that the Receiving Party takes to protect its own confidential information, but in no event less than reasonable care; (iii) may only be disclosed to those employees, contractors and/or service providers of Receiving Party who have a need to know in connection with purposes consistent with these Subscription Terms, and who are bound by a written obligation of confidentiality no less restrictive as those set forth herein; and (iv) shall not be used by Receiving Party for any purpose, except for the purposes of these Subscription Terms, without the prior written consent of the Disclosing Party. For the avoidance of doubt, Confidential Information including personal information collected through the use of the Services shall be used, collected, retained, processed and deleted in accordance with the provisions of Article 11.

Compelled Disclosure

If the Receiving Party is compelled by law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

Expiration

The provisions of this Article 10 shall survive the natural expiration or termination of these Subscription Terms for any reason for a period of seven (7) years.

Article 11 Privacy and Security

Privacy

Customer shall at all times remain the sole Data Controller of its Personal Data and shall be responsible for complying with all applicable Data Protection Legislation such as the General Data Protection Regulation (GDPR).

Customer shall be solely responsible for obtaining all consents and authorizations as may be required by any applicable law, for the collection, storage and processing of information and/or sensitive information.

Security

Subscription Service Provider shall make commercially reasonable efforts to implement security processes for the Services and Customer Data coherent with any applicable industry standards. More specifically, Subscription Service Provider shall have in place and shall comply with documented written policies and procedures, periodically reviewed, covering the administrative, physical and technical safeguards in place and relevant to the access, use, loss, alteration, disclosure, storage, destruction and control of information. Such policies and procedures will include encryption of data, virus detection and firewall utilization.

Customer Data

All Customer Data will remain the sole property of Customer or the Authorized Users that posted such Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and obtaining copyright permissions for all Customer Data. Customer agrees to comply with all applicable laws, statutes, ordinances, and regulatory guidance that may be applicable to Customer Data and/or to specific types of Customer Data. Subject to these Subscription Terms, Customer grants to Subscription Service Provider a non-exclusive right to use, copy, store and transmit Customer Data to the extent reasonably necessary to provide and maintain the Services. Customer acknowledges and agrees Subscription Service Provider employees and its subcontractors may have access to Customer Data in connection with the performance of these Subscription Terms. Customer shall defend Subscription Service Provider against all third party claims arising from or relating to (i) Customer's use of the Services in violation of applicable laws or regulations, and/or (ii) any violation, infringement or misappropriation of the rights of a third party resulting from the Customer Data, and shall pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Subscription Service Provider by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Customer arising out of such claim, provided (i) Subscription Service Provider provides Customer with prompt written notice of the claim, and (ii) Subscription Service Provider gives Customer sole control of the defense of the claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the claim.

Article 12 Term and termination

Term

These Subscription Terms commence on the Effective Date and will remain in effect for the Subscription Period as specified on the Order Form, unless terminated in accordance with the provisions herein.

Termination

Either Party may terminate these Subscription Terms and any Order Form thereunder:

at the end of the Term with 30 days' notice, or if

- (i) the other Party is in material breach of these Subscription Terms and fails to cure that breach within thirty (30) days after receipt of written notice; or
- (ii) the other Party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety (90) days.

Effects of Termination

In any event of termination of these Subscription Terms by either Party:

- a) all rights granted hereunder shall immediately expire and any and all use and/or exploitation by Customer and/or on its behalf of the Services, and any part thereof, shall immediately cease and expire.
- b) provisions contained in these Subscription Terms that are expressed or by their sense and context are intended to survive the termination of these Subscription Terms shall so survive the termination, including without limitation Articles 2, 5, 6, 7, 8, 9 and 10.

Suspension of Service

Subscription Service Provider reserves the right to monitor the use of the Services for security and operational purposes. Subscription Service Provider may suspend or otherwise deny Customer's or any other person's access to or use of all or any part of the Services for security reasons if Subscription Service Provider believes, in its reasonable discretion, that any third party has gained unauthorized access to any portion of the Services using any credential issued by Subscription Service Provider to Customer.

Article 13 Miscellaneous

Governing law and court

These Subscription Terms are governed by, and construed in accordance with, the laws of The Netherlands, without regard to its conflict of laws principles. Any dispute regarding the validity, interpretation, termination and performance under these Subscription Terms or any agreement will be brought before the competent courts of The Netherlands.

Severability

If any provision of these Subscription Terms is found by a court of competent jurisdiction or arbitrator to be illegal, void or unenforceable, the other provisions shall remain in full force and effect, and the affected provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to affect the original intent of the parties.

Transfer and assignment

Neither these Subscription Terms, nor the rights or obligations arising hereunder, shall be transferred or assigned to any third parties, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, the Subscription Service Provider may assign or sub-contract these Subscription Terms to any entity that controls, is controlled by or is under common control with the Subscription Service Provider without the prior written consent of Customer.

Force Majeure

Neither party hereto shall be liable for any default in the performance of its obligations under these Subscription Terms resulting from (i) a case of force majeure as defined by the law governing these Subscription Terms and the courts in such jurisdiction, or (ii) the following causes: strikes (whether previously announced or not), war (declared or not), riots, governmental action, acts of terrorism, acts of God (fire, flood, earthquake, etc.), or any electrical, utility or telecommunication outages.

Waiver

The waiver by any party of a breach of any provision of these Subscription Terms shall not be construed as a waiver of a subsequent breach of the same provision by that party or the breach of any other provision of these Subscription Terms. The delay or failure of a party to exercise any right or remedy under these Subscription Terms shall not constitute a waiver by that party of any breach of these Subscription Terms. Any waiver of any breach under these Subscription Terms must be in writing.

Language

These Subscription Terms are provided in English and may be provided, for informational purposes only, in a language other than English. The English version shall be the only binding and enforceable version of these Subscription Terms.

Headers

Headings used in these Subscription Terms are for convenience only and shall not affect the meaning or interpretation of any provision of these Subscription Terms.

Marketing

Customer authorizes Subscription Service Provider and More Optimal to include Customer's name and corporate logo as reference client for the limited purposes of providing business information and creating promotional materials. The publication by Subscription Service Provider of press releases and/or case studies about Customer's use of the Services shall be subject to Customer's prior written consent, which shall not be unreasonably withheld.