
General terms and conditions *last update: 01/2024*

1. Definitions

For the purposes of these General Terms and Conditions, as well as for the interpretation and performance of any agreement between Bingli and the Customer, the following terms, when capitalised, shall have the following meanings (unless expressly stated otherwise or if the context clearly requires otherwise):

1.1 General Terms and Conditions: these general terms and conditions.

1.2 Bingli: the public limited company BINGLI, incorporated under Belgian law and registered in the Crossroads Bank for Enterprises under the number 0675.758.517 and known to the Belgian VAT administration under the number BE 0675.758.517, with its registered office at Lange Gasthuisstraat 29 bus 12, B-2000 Antwerp, Register of Legal Entities Antwerp, Antwerp Division.

1.3 Authorised User: the employees and independent contractors of the Customer who are authorised by the Customer to use the Service.

1.4 Agreement: the offer, signed in writing or electronically, of which these General Terms and Conditions and the Data Processing Agreement form an integral part.

1.5 Service(s): the online medical questionnaire, including intake and screening questionnaires, offered by Bingli to the Customer for use by the Customer and the Authorised Users, as detailed in the Agreement.

1.6 Unforeseen Circumstances: any circumstances that arise which make the performance of the Agreement financially or otherwise excessively more burdensome or difficult for Bingli than could reasonably have been foreseen at the time the Agreement was entered into, and cause an imbalance in terms of performance between the Parties.

1.7 Intellectual Property Rights: any intellectual, industrial and other proprietary rights (whether or not registered), including, but not limited to, copyrights, related rights, trademarks, trade names, logos, drawings, models or applications for registration of drawings or models, patents, patent applications, domain names, know-how, as well as database rights and rights to software, including, but not limited to, word marks and logos of Bingli.

1.8 Customer: any natural or legal person who purchases Services from Bingli in the context of their professional activity.

1.9 Force majeure: any circumstances that are unforeseeable or unavoidable at the time at which the Agreement is concluded and that (temporarily) make it impossible for Bingli to perform the Agreement, such as, without limitation: riots, (civil) war, invasion, hostilities, fire, earthquakes, floods, other physical natural disasters (other than adverse weather conditions), (acts of) terrorism, pandemics, information, Internet or telecommunications failures, hacking, epidemics, government actions, general strikes or labour disputes.

1.10 Party/ies: Bingli and the Customer are each individually referred to as the Party and jointly as the Parties.

1.11 Fault: an error, defect or malfunction in a computer programme or system that causes it to produce an incorrect or unexpected result, or to behave in an unintended manner.

1.12 Data Processing Agreement: the agreement referred to in Article 14.

1.13 Questionnaires: the intake and screening questionnaires available in the Service.

2. Scope of application

2.1 Unless otherwise expressly agreed in writing, the General Terms and Conditions shall apply to all offers and Services provided by Bingli to the Customer. Any derogations from the General Terms and Conditions expressly accepted in writing shall be valid only for the specific Agreement to which they relate and cannot be invoked in any other, even similar, agreements. By entering into the Agreement, the Customer confirms having taken note of these General Terms and Conditions and expressly agrees to their application to the Agreement.

2.2 Any cooperation between Bingli and the Customer shall be governed by the following provisions (in descending hierarchical order, the next in the absence or silence of the previous):

- The offer, signed in writing or electronically;
- The Data Processing Agreement;
- These General Terms and Conditions;
- The laws of Belgium.

2.3 Bingli shall be entitled to supplement and/or amend the General Terms and Conditions at any time. Such amendments shall also apply with respect to Agreements already entered into. If such amendments include essential elements of the Agreement, they shall always be made subject to objective justification. Any amendments shall always be communicated to the Customer in advance. Unless expressly stated otherwise, amendments shall take effect ten (10) calendar days after notification. If the Customer formulates comments, the Parties shall enter into negotiations regarding these comments.

3. Conclusion of the Agreement

3.1 Any proposal on a website, flyers, catalogues, leaflets or any other publicity announcements shall be merely informative and not binding. An offer shall only apply to the specific Services mentioned therein and shall therefore not apply automatically to subsequent (similar) Services, unless expressly stated otherwise. Furthermore, an offer shall only be valid for the duration specified in the offer. If no duration is stated in the offer, the period of validity of the offer shall be limited to thirty (30) calendar days. Obvious mistakes and/or errors in the offer shall not be binding on Bingli.

3.2 The Agreement between the Parties comes into effect only after the signing, in writing or electronically, of the offer, and in any case at the time Bingli starts to execute the Agreement after confirmation, written or otherwise, from the Customer.

4. Relationship between the Parties

The relationship between the Parties is that of individual contracting parties. Neither Party has the power or authority to bind or obligate the other Party in any way without the prior written consent of the other Party, or to use the name of the other Party in any manner not specifically permitted in this Agreement. No statement by either Party shall be binding on the other Party without the prior written consent of the other Party. Under no circumstances can the relationship between the Parties be considered a partnership, joint venture or principal and agent relationship.

5. Authorised Users and patients

5.1 The Customer shall be entitled, on their own responsibility:

- to designate employees and/or independent contractors (such as doctors and nurses) as Authorised Users to access and use the Service in accordance with its intended purpose;
- to allow patients to access the Service to complete the Questionnaires.

5.2 The Customer shall provide Bingli with the necessary details of the Authorised Users to enable Bingli to create and deliver the personal login credentials for the Authorised Users. The Customer agrees to always immediately notify Bingli of any change of an Authorized User so that it may delete or change the account and associated login credentials.

5.3 The Customer warrants that they and the Authorised Users will abide by the terms of use (hereinafter the 'Terms of Use') available in the Service.

6. Maintenance, support and training

6.1 The following support and maintenance are included with the use of the Service: (i) support on business days (excluding Belgian public holidays) between 9am and 5pm: by telephone, email or remote connection, only for issues related to the operation of the Service; and (ii) automatic updates to ensure the proper operation of the Service.

6.2 To enable Bingli to provide support and maintenance, the Customer shall (i) report any errors, Faults or defects in the Service in a timely manner, accompanied by all reasonable information available to them; (ii) provide all reasonable information and cooperation, including, where appropriate, providing access to the necessary systems (remote or on-site) and the Customer's infrastructure or premises.

6.3 Bingli shall have no obligation to provide support and maintenance if the Customer and/or an Authorised User:

has used the Service in conjunction with non-compliant software and/or hardware (including when such software or hardware has caused errors, faults or defects in the Service);

- has made changes to the Service without permission or in violation of the Agreement or allowed third parties to make changes or modifications;
- has used the Service in an incorrect or inappropriate manner;
- has failed to install the updates required by Bingli within the time frame specified by Bingli.

6.4 Support outside normal business hours and customised developments are not included in the fee for the Service and may be provided at the Customer's request, if necessary, subject to an additional fee in accordance with the hourly and/or monthly rates then in effect.

6.5 If the Agreement provides for training and/or training materials for the Customer regarding the use of the Service, the Customer shall, according to the train-the-trainer principle, after attending a training course or receiving training materials, continue to train the Authorised Users of the Service themselves, unless otherwise agreed.

7. Limitation of warranties

7.1 Bingli shall perform the Agreement and the Services to the best of its ability as would reasonably be expected of a service provider experienced in providing services of a similar nature, scope, complexity and size.

7.2 The Service is provided to the Customer 'AS IS', meaning that the Customer confirms that they do not base their reliance on the Service on the development of any future functionality or features.

7.3 The provision of the Service is to be regarded as an obligation of means, and in no way implies an obligation of result. The Customer acknowledges that the results of the Service depend on how they use the Service and on the information entered by them, Authorised Users and patients. Bingli therefore cannot guarantee that the Services will achieve the exact or specific result intended by the Customer. The Customer cannot derive any rights from any estimates made by Bingli, nor shall Bingli be liable if the estimates made by the Customer are not realised.

7.4 The Service is not a substitute for diagnostic or medical treatment, as performed by physicians, nurses or other medical providers, nor does the Service aim to or can it be equated with such. The Customer should use the Service purely as a supporting tool.

8. Term and termination

8.1 The Agreement is entered into for the term as mentioned in the Agreement.

8.2 Unless otherwise expressly agreed in the Agreement, the Agreement shall be automatically renewed annually on the expiration date for a successive period of one (1) year, except in case a written notice of termination has been sent by registered mail no later than three (3) months prior to the annual expiration date of the Agreement.

8.3 Bingli may unilaterally terminate the Agreement with immediate effect by written notice by registered mail in the event of: (i) bankruptcy or insolvency of the Customer, (ii) dissolution and/or liquidation of the Customer, (iii) a force majeure situation that lasts for more than three (3) months, (iv) execution or attachment of part or all of the assets of the Customer or other executive or protective measures taken, (iv) to the extent that the Customer is a legal entity: if there is a significant change in the shareholding structure of the Customer or the control of the Customer changes hands, (v) the use of the Service by the Customer for fraudulent or illegal purposes, and (vi) a material breach of the Agreement by the Customer where such breach is not remedied within a period of fifteen (15) calendar days after being served with a notice of default by registered mail. A material breach on the part of the Customer includes, but is not limited to, the non-payment or late payment of any fee, violation of Articles 12, 13 and 17 relating to Intellectual Property, confidentiality and non-solicitation.

8.4 The Customer has the right to unilaterally terminate the Agreement with immediate effect by giving written notice by registered mail to Bingli in the event of a material breach of the Agreement by Bingli, provided that the breach is not remedied within a period of thirty (30) calendar days after Bingli has been given notice of such breach by registered mail.

8.5 Upon termination of the Agreement for any reason, the Customer shall pay Bingli for any services rendered up to the effective date of termination.

9. Prices and payment

9.1 All fees payable to Bingli are exclusive of VAT and other taxes or duties of any kind. The Customer must always pay in euros.

9.2 The licence fee, which is agreed in the Agreement, includes the use of the Service and the included maintenance and support as stated in Article 6.1.

9.3 Each year on the anniversary of the Agreement, Bingli shall be entitled to change up to 80% of the fees payable by the Customer, in accordance with the following formula: $P = P_0 \times (0.2 + W_1 / W_0 \times 0.8)$. Where: P = new price, P₀ = original price (base year), W₁ = wage cost in a given year (year of indexation) (cf. reference wages Agoria) and W₀ = original wage cost (base year - wage index in force in the month prior to the entry into force of the Agreement).

9.4 The Customer shall pay the fee for use of the Service annually in advance, unless otherwise expressly agreed in the Agreement.

9.5 Payment by the Customer must be made within a period of thirty (30) calendar days from the invoice date.

9.6 Any complaints relating to billing must be formulated within eight (8) calendar days of receipt of the invoice. After this period, the invoice shall be deemed irrevocably accepted.

9.7 In the event of non-payment, late payment or incomplete payment of an invoice by the due date, the Customer shall owe Bingli, by operation of law and without notice of default, (i) interest on the outstanding amount based on the applicable statutory interest rate in accordance with the Act of 2 August 2002 on Combating Late Payment in Commercial Transactions, calculated from the due date of the invoice until the day of full payment, and (ii) lump sum compensation, in accordance with the aforementioned Act, for Bingli's collection costs, without prejudice to Bingli's right to claim and prove higher damages.

9.8 Bingli shall have the right to suspend all or part of the Customer's and/or Authorised Users' access to the Service until the outstanding late payments are made if the Customer fails to correct such default within a period of fifteen (15) calendar days after having been given written notice to that effect.

9.9 If the Customer fails to pay two or more invoices by the due date, all sums owed by the Customer to Bingli, including those for which a longer payment period may have been agreed, shall be automatically payable.

9.10 Partial payments shall be accepted without any prejudice and shall be charged (in respective order) to (i) interest due, (ii) damages, and (iii) only then to principal sums.

9.11 The temporary unavailability of the Service due to, among other things, maintenance and support work, shall not affect the Customer's payment obligations to Bingli and therefore does not entitle the Customer to suspend or reduce payment.

10. Liability

10.1 Bingli's liability shall at all times be limited to compensation for damages in an amount not exceeding the total of the fees paid over the last 12 months preceding the claim or, if liability arises during the first 12 months of the Agreement, the total of the fees paid up to the time of the claim.

10.2 Except in the case of intent or serious misconduct on the part of Bingli, Bingli shall in no event be liable for:

- consequential and indirect damage, including, but not limited to, loss of profits, damage to image, loss of income and damage to third parties;
- damage resulting from incorrect and/or incomplete information entered into the Service or transmitted to Bingli by the Customer and/or an Authorised User;
- damage resulting from an incorrect or inadequate use of the Service;
- damage caused by further use or implementation by the Customer after a Fault has been detected;
- damage resulting from the Customer's failure to comply with legal and/or other obligations to which they are subject;
- damage resulting from defects in the Customer's network communication, devices, hardware or infrastructure;
- damage caused by Force Majeure or Unforeseen Circumstances;
- damage indirectly or directly caused by an act of the Customer, third party and/or Authorised Users, whether caused by error, negligence or carelessness;
- damage resulting from the failure of the Customer and/or Authorised Users to comply with the Terms of Use.

10.3 Bingli does not assume any decision-making responsibilities in connection with the Service and is not responsible for the use or implementation by the Customer and Authorised Users of the output of the Service. The Service is designed exclusively as a digitised medical questionnaire and the making of decisions regarding diagnoses, administrative and organisational actions, among other things, is the sole responsibility of the Customer and the Authorised Users.

11. Faults

11.1 If the Customer experiences a Fault in the Service, they shall immediately stop using the Service, immediately notify Bingli of the Fault in writing with a detailed description of the Fault, and take all reasonable steps to avoid (further) damage.

11.2 Such notification must be made in writing and no later than five (5) calendar days after the discovery of the Fault. In the event of failure to do so, the Customer shall be liable for any damage caused by the Fault.

11.3 Bingli shall investigate the notification and the Fault within a reasonable period of time after receiving the notification and remedy the Fault where necessary and possible.

11.4 Although Bingli endeavours as much as possible to minimise disruption to Service availability for correcting Faults and other maintenance and support work by, among other things, performing the work during non-peak times and limiting the unavailability in time, temporary unavailability cannot be avoided. Bingli shall make every effort, where possible, to provide prior notice to the Customer of Service unavailability.

12. Intellectual Property

12.1 Bingli grants the Customer, for the duration and in the territory specified in the Agreement, a non-exclusive, personal, non-sublicensable and non-transferable right to access and use the Service, as described in the Agreement, for the Customer's professional purposes.

12.2 Nothing in the Agreement is intended or shall be deemed a sale or transfer of Bingli's Intellectual Property Rights. Bingli's Intellectual Property Rights and the Service (including any new versions, updates, modifications, enhancements made to the Service during the Agreement) are and shall remain the property of Bingli and/or its licensors.

12.3 The Customer shall ensure that they and the Authorised Users recognise and respect these Intellectual Property Rights. Specifically, the Customer and Authorised Users are prohibited from:

- modifying, copying, distributing, publishing or otherwise transferring the Intellectual Property Rights and the elements they contain to a third party;
- allowing access to the Intellectual Property Rights and the Service to unauthorised third parties;
- using the Intellectual Property Rights and the Service for illegal purposes or any other purposes that may harm the rights of Bingli and/or its licensors;
- using any Faults and/or errors in the Service, whether or not known to Bingli, for their own benefit or for the benefit of third parties;
- decompiling, disassembling or reverse engineering the Service and the Intellectual Property Rights and elements in the Service;
- removing the brands, trademarks or any other Intellectual Property marks of Bingli within the Service.

12.4 Bingli warrants that, to the best of its knowledge, the Service it provides does not infringe the intellectual property rights of third parties, and that it will take all reasonable measures to prevent such infringements.

12.5 The Customer shall immediately notify Bingli of any claim it receives regarding an alleged infringement of a third party's intellectual property rights. Upon Bingli's request, the Customer shall provide Bingli with reasonable cooperation in its defence against the claim.

13. Confidentiality

13.1 Each Party shall keep confidential all information it receives with respect to the other Party prior to the conclusion of the Agreement, during and within the framework of the Agreement, including but not limited to its technical and operational structure, its services and products, its financial information, its personal data, its intellectual property, the Service and the (personal) data of Authorised Users and patients using the Service and Questionnaires.

13.2 All information exchanged may only be used for the performance of the Agreement and may only be shared with employees, subcontractors, directors and independent contractors within a Party's organisation who have a reasonable need to know such information. Each Party warrants that the aforementioned persons are bound by at least equivalent confidentiality obligations. Neither Party shall be entitled to disclose confidential information to a third party without the prior written consent of the other Party. Both Parties undertake to take reasonable measures to protect the confidential information of the other Party, which in any case shall be no less stringent than the measures it takes for its own confidential information.

13.3 Notwithstanding the confidentiality obligations in this Article, Bingli shall have the right to use and/or commercialise any ideas, input and feedback received from the Customer that may serve to improve and/or expand Bingli's services.

13.4 The following types of information shall not be considered confidential information:

- information lawfully obtained from a third party;
- information lawfully known to a Party prior to entering into the Agreement;
- information that is or becomes generally available to the public (other than as a result of a violation of this Article 13);
- information independently developed without violating the Agreement, as evidenced by written records.

13.5 If a Party is required by a law or decision of a regulatory, administrative or otherwise competent authority to disclose confidential information, that Party shall notify the other Party of such a request, if permitted, in order to enable that Party to take the necessary measures to prevent or limit disclosure. If the Party required to disclose the information is not entitled to inform the other Party, the disclosure of confidential information shall be limited to what is strictly necessary for that Party to comply with this requirement, and it shall notify the other Party that it has disclosed the information as soon as permitted.

13.6 The confidentiality obligations in this Article shall remain in place for a period of five (5) years after termination of the Agreement for any reason.

14. Personal data

14.1 The terms 'personal data', 'processing', 'processor' and 'data controller' in this Agreement shall have the same meaning as in the European General Data Protection Regulation EU 2016/679 (hereinafter the 'Data Protection Legislation').

14.2 The collection and processing of personal data of the Customer and the Authorised Users or any other employees involved in the performance of the Agreement shall take place in accordance with the provisions of Bingli's privacy statement available on its website [<https://www.bingli.eu/privacy/>]. In connection with these processing operations, Bingli acts as a data controller. The Privacy Statement contains information about the personal data collected by Bingli, as well as the manner in which this personal data is processed.

14.3 The Customer acknowledges that, with respect to the processing of personal data entered and uploaded into the Service by the Customer, Authorised Users and patients, the Customer acts as a data controller and Bingli as a processor. All agreements made between the parties in this regard shall be governed solely by the Data Processing Agreement.

15. Force Majeure and Unforeseen Circumstances

15.1 In no event shall Bingli be liable for any failure to perform its obligations under the Agreement if such failure is the result of Force Majeure or Unforeseen Circumstances.

15.2 In the event of Force Majeure, Bingli may, at its discretion and as it sees fit, without prior notice of default or judicial intervention being required, and without any right of recourse against Bingli: (i) temporarily suspend the performance of its obligations; and (ii) dissolve the Agreement out of court by giving notice by registered mail, if the Agreement cannot be performed for a period exceeding three (3) months due to force majeure.

15.3 In the event of Unforeseen Circumstances, the Parties shall, at Bingli's first request, renegotiate the conditions under which the Agreement is executed in order to jointly reach a fair solution for the continuation of the Agreement. If the Customer refuses to renegotiate, fails to participate in good faith in such renegotiations, or the Parties fail to reach an agreement no later than one (1) month after Bingli's request for renegotiation, Bingli may, at its option, either terminate the Agreement immediately out of court through a notification by registered mail, without being obliged to pay compensation or give notice, or request the competent court to determine new contract terms and/or order the Customer to pay damages. Bingli shall be entitled to suspend its obligations from the time of the request for negotiations and throughout their duration.

16. Changes

Bingli reserves the right to change, update or upgrade its Service at any time during the Agreement.

17. Non-solicitation

The Customer agrees not to employ any employees, independent contractors or directors, either directly or indirectly, if such persons have been involved in providing the Service or have otherwise been involved in the Agreement during the twelve (12) months preceding such action, except where such person is responding to a general recruitment campaign. This non-solicitation clause shall apply throughout the term of the Agreement and for six (6) months after the end of the Agreement. If the Customer violates the aforementioned prohibition, the Customer shall pay Bingli compensation equivalent to half the gross annual salary of the employee or half the gross annual fee of the independent contractor concerned.

18. Miscellaneous

18.1 Bingli shall be entitled to have the Service, or any portion thereof, performed by a subcontractor or supplier, without prior notice to or prior consent from the Customer being required. Subcontractors or suppliers that can be considered a sub-processor within the meaning of the Data Protection Legislation will be engaged as agreed in the Data Processing Agreement.

18.2 The Agreement supersedes any prior written or oral agreement, understanding or communication regarding its subject matter.

18.3 Except where the Agreement expressly provides for unilateral amendment of certain parts of the Agreement, no amendment to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both Parties.

18.4 Any notice, request, acknowledgement of receipt or other communication to be given or made under the terms of this Agreement or otherwise by either Party (other than day-to-day operational communications), unless otherwise expressly stated, must be in writing: (i) by registered mail, (ii) by nationally recognised courier service, or (iii) by email, to the (email) address specified in the Agreement. Written notices shall be deemed received three (3) business days after being sent, and email notices one (1) business day after being sent.

18.5 If any provision or part of a provision in the Agreement is deemed illegal, invalid or unenforceable for any reason, those provisions shall be deleted and the remaining parts or provisions shall remain unaffected, valid and enforceable. Such parts of or entire provisions shall automatically be replaced by a provision that, as far as legally possible, most closely matches the intent of the Parties in the part or provision in question.

18.6 Any failure or delay on the part of Bingli in exercising any right under an Agreement with the Customer, any single or partial exercise of any right under such an Agreement, or any partial response or failure to respond by Bingli in the event of a breach by the Customer of one or more provisions of such an Agreement shall not be construed as a waiver (express or implied, in whole or in part) of Bingli's rights under an Agreement, nor shall it preclude the further exercise of such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver of a right following a specific shortcoming on the part of Bingli, such waiver cannot be invoked by the Customer against a new shortcoming, similar to the previous one, or against any other type of shortcoming.

18.7 This Agreement and the rights and obligations arising therefrom for the Customer may not be transferred, either directly or indirectly, without the prior written consent of Bingli.

19. Applicable law and competent court

19.1 This Agreement shall be exclusively governed by and interpreted according to Belgian law.

19.2 In the event of any dispute in connection with this Agreement, the Parties shall first endeavour to resolve it amicably among themselves.

19.3 If no amicable settlement is reached within one (1) month after the dispute arises, the courts with jurisdiction over Bingli's registered office shall have exclusive jurisdiction to settle the dispute related to the existence, interpretation and/or performance of this Agreement.
