



GENERAL TERMS & CONDITIONS / Version 1.3 / 12 December 2019

These General Terms & Conditions (hereafter the “GTCs”) apply to all offers, quotations or agreements in terms of which Burst performs work or provides services for a Client.

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Clause 1. Definitions

- 1.1. Burst: the private limited liability company Burst B.V., or any of its affiliated companies using these GTCs.
- 1.2. Deliverables: the work accomplished by Burst for the Client pursuant to the Agreement, including – for example, but not limited to – concepts, designs, advice and software.
- 1.3. Continuing Performance Agreement: an Agreement concluded between the Parties for a definite or indefinite period in terms of which Burst continually provides one (1) or more services to the Client at agreed prices and rates.
- 1.4. Defect: a substantial failure by Burst to perform the specifications explicitly agreed between the Parties in Writing; there is only a Defect if the Client can prove this and if it can be reproduced by Burst.
- 1.5. Additional work: all work, including support time such as, for instance, project management, not quoted for by Burst and therefore not forming part of the agreed work or services.
- 1.6. Quotation: a Written offer by Burst to provide services or perform work, sent to the Client.
- 1.7. Client: Burst's counterparty to the Agreement.
- 1.8. Agreement: the Quotation and GTCs together, agreed by the Client, or any other document agreed in Writing stating that it is subject to these GTCs, such as, for example, a framework agreement.
- 1.9. Parties: Burst and the Client.
- 1.10. Platform Management: an element of the Agreement in which the Parties have made arrangements on the quality of the agreed service as regards management, support, updates and/or continuing development, by way of Service Levels to be attained by Burst.
- 1.11. Written, in Writing: by letter or by email.
- 1.12. Service Levels: standards and/or frameworks, including tolerances, that must be met by the agreed services, expressed in values, times, percentages and/or other units.
- 1.13. Working Day: a calendar day from 09:00 until 17:00 hours, excluding weekends and generally recognised public holidays as defined in Section 3(1) of the Dutch General Extension of Time Limits Act [Algemene Termijnenwet].

Clause 2. Applicability of the GTCs, offer and finalisation of the Agreement

- 2.1. Burst hereby explicitly rejects the application of any general or specific (procurement) conditions used by the Client.
- 2.2. All Quotations and other proposals made by Burst are non-binding.
- 2.3. If the Quotation includes a time limit (for acceptance), the time limit will only affect the validity of the Quotation and has no impact on the non-binding nature of the Quotation.
- 2.4. If the Quotation does not include a time limit, it will be valid for fifteen (15) days, with this time limit again not affecting the non-binding nature of the Quotation.
- 2.5. Actual commencement of performance of the Agreement on the part of the Client, including but not limited to the payment of invoices sent out by Burst, operates as acceptance of the GTCs.

Clause 3. Duration and termination of the Agreement

- 3.1. The duration of a Continuing Performance Agreement is as agreed in the Agreement, or one (1) year if this has not been agreed in the Agreement. After the expiry of the initial or extended duration, the Continuing Performance Agreement will be tacitly extended for a period equivalent to the initial duration, unless the Client terminates the Continuing Performance Agreement in Writing before the end of the (extended) duration, subject to a notice period of at least three (3) months prior to the end of the (extended) duration.
- 3.2. All other Agreements come to an end by operation of law as soon as the Parties have fulfilled their reciprocal obligations.
- 3.3. Without prejudice to the provisions in the Agreement, the Parties are entitled to dissolve the Agreement in full or in part with immediate effect by issuing a statement in Writing, without prior notice of default or other notification:
 - if the Party dissolving the Agreement is satisfied that the other Party is either unwilling or unable to fulfil its obligations;

- if the other Party has applied for or ends up in a suspension of payments, applies for or is declared bankrupt, proceeds with a liquidation of its business, discontinues its operations or appears to be insolvent in any other way;
 - if the Party dissolving the Agreement sustains loss of reputation through the collaboration with the other Party or if further continuation of the collaboration with the Client will cause loss of reputation for Burst.
- 3.4. Burst is never obliged to pay any form of compensation in the event of dissolution as specified in the previous sub-clause.
- 3.5. In the event of dissolution as specified in Clause 3.3, the Client is obliged to pay all costs incurred by Burst (Burst's time and also out of pocket expenses) immediately, without prejudice to Burst's right to claim full compensation.
- 3.6. If the Parties have already performed and received work in terms of the Agreement at the point when it is dissolved, that work and the associated obligations of payment will not be cancelled along with the Agreement. Invoices sent by Burst to the Client become immediately payable on the date of dissolution.
- 3.7. Obligations that by their nature are intended to survive the termination of the Agreement will continue in full force and effect. This also applies to termination based upon a culpable failure by Burst to comply with an Agreement.

Clause 4. Performance of the Agreement

- 4.1. In connection with the continuity of work in the context of the performance of the Agreement, the Client will appoint one or more contacts who will represent the Client in that capacity for the duration of the work and/or services provided by Burst. The Client's contacts will have the requisite experience, specific knowledge of materials, power to make decisions and an understanding of the Client's desired objectives.
- 4.2. The Client must provide Burst with all information, data, works and documents that are required for the performance of the Agreement. The Client warrants and guarantees that the said information and materials are correct.
- 4.3. If the Client fails to comply or to comply fully with the provisions in the foregoing sub-clause, Burst is entitled to charge the Client 100% (one hundred per cent) for the next week when the Burst team is scheduled for the agreed work, whether the work is done on the basis of fixed price or retrospective calculation. The foregoing will not apply if the situation giving rise to the Client's inability or partial inability to comply is notified to Burst in Writing at least ten (10) Working Days before the next date when the Burst team is scheduled for the work.
- 4.4. All timings indicated by Burst at any point are always approximate and may never be regarded as final deadlines.
- 4.5. Indications of delivery dates are based on the work situation at the time of concluding the Agreement and the prompt supply of materials, documents and/or working instructions by the Client. Should any delays arise as a result of progressive insight, changes in the said circumstances and/or delayed supply of materials, documents and/or working instructions by the Client or by suppliers used by Burst or the Client, the delivery date will be extended as required.
- 4.6. Work schedules and work are based on the assumption that Burst will carry out the work on Burst's normal Working Days and within Burst's normal working hours, unless otherwise specifically agreed with the Client.
- 4.7. If and in so far as any element of the Agreement has been agreed at a fixed price, only the agreed work will be carried out.

Clause 5. Amendment of the Agreement and Additional Work

- 5.1. Burst reserves the right to issue a supplementary Quotation for Additional Work and the work in question will not be performed until the Client has agreed to it.
- 5.2. The Client understands and accepts that Additional Work may have an impact upon the agreed or anticipated date for completion of the agreed service provision and also upon the reciprocal obligations of the Client and Burst.

- 5.3. The fact that (the request for) Additional Work arises during performance of the Agreement will never justify cancellation or dissolution of the Agreement by the Client.

Clause 6. Consultancy

- 6.1. Burst will endeavour to provide the services with due care, in accordance with the arrangements set out in Writing with the Client in appropriate cases. Any advice provided by Burst is always based on an obligation to make an effort. Any use made by the Client of advice proffered by Burst is non-binding and is always at the Client's risk and expense.
- 6.2. If an Agreement is concluded for advice, with a view to it being performed by a specific individual, Burst is always entitled to replace that individual with one or more other individuals who hold the same or comparable qualifications.

Clause 7. Creation and development

- 7.1. Burst never guarantees that the software it develops will function free of Defects, or that all Defects may be resolved or rectified.
- 7.2. Burst never guarantees that the software will work satisfactorily in combination with all types of new versions of web and internet browsers and any other software. Nor does Burst guarantee that the software will work satisfactorily in combination with all types of other software.
- 7.3. Once the software has been supplied, Burst is not obliged to keep maintaining the solution or continuing to developing it, unless there is a specific agreement to the contrary in the Agreement.
- 7.4. The Client must always conclude a separate Agreement for Platform Management in relation to maintenance and support. The substance and extent of the maintenance and support are then evident from that separate Agreement. Burst is not liable for data breaches, updates and upgrades of software (including open source software) unless there are more detailed arrangements in Writing between the Parties.
- 7.5. If and in so far as the software that is supplied is based upon open source and associated licences, those licences take priority over the provisions in these GTCs if these provisions conflict with the open source licences. The Client confirms it is familiar with the risks of using open source and indemnifies Burst against all claims by third parties relating to intellectual property rights as regards the use of the open source software. This indemnification covers expenses, compensation and legal actions based upon indemnification.
- 7.6. If Burst uses third-party software, it will mediate in the finalisation of the (licensing) agreement between the third-party supplier and the Client. The Client hereby accepts the conditions imposed by the said third-party supplier. Burst is not liable for any culpable failure by the said third-party supplier to comply with that agreement. Burst is not liable for maintenance and support; the Client must conclude its own agreement for this with the third-party supplier.
- 7.7. The following sub-clauses in this clause apply if the Agreement is performed on the basis of an Agile method such as SCRUM.
- 7.8. If an Agile method is used, the Parties acknowledge that changes during the performance of the Agreement are the rule rather than the exception. The Client is accordingly free to ask Burst to undertake changes in the (variable) scope. The Client acknowledges that this may have consequences for any delivery dates that have been indicated and for budgets.
- 7.9. If a change, as referred to in the previous sub-clause, is requested, the working method is that Burst will explain the consequences as regards (processing) time and budget and/or scope when it receives the request from the Client. The Client can then choose either to swap the change for goods that have not yet been completed and that collectively represent an equivalent amount, or else to add the change to the scope without a swap, in which case the Client accepts the extra estimated costs.
- 7.10. The Client will arrange for a 'product owner', who must have adequate knowledge and experience in relation to the selected Agile method. Burst will assume that such a product owner has the power to bind the Client in contract. If the Client fails to provide a product owner, Burst will be prepared to provide a product owner, in which case the product owner will be charged separately on the basis of retrospective calculation.

- 7.11. Agile projects are always performed on the basis of retrospective calculation. If a Quotation from Burst includes a number of (development) sprints, this will only be an estimate.
- 7.12. If the Agreement is concluded on a fixed price basis, Defects will be rectified free of charge for a period of two (2) weeks after delivery. In all other cases, and after the said two (2) week period, Defects will be rectified on the basis of retrospective calculation.
- 7.13. If a Defect is linked to software and/or subscription services provided by third parties, Burst cannot guarantee that it will be able to rectify the Defect. Burst is always permitted to resolve the Defect by means of a workaround, in which case the workaround will not be installed free of charge.

Clause 8. Hosting

- 8.1. In the context of purchasing hosting via Burst, the Client will act as a professional user and will, in any event, in that regard:
- A. not permit inexpert, unauthorised, unlawful or objectionable use of Burst hosting, or use that does not coincide with the purpose of use;
 - B. not place any data on Burst's servers that is in breach of the rights of Burst or third parties, including intellectual property rights;
 - C. not breach any intellectual property rights of Burst or third parties;
 - D. not distribute any viruses;
 - E. not allow third parties to use the hosting;
 - F. not further configure the hosting, including software, or parameterise it such that the system load becomes substantially larger or the stability of the functionality is reduced;
 - G. not cause any disruption to the functioning of Burst's ICT infrastructure, the infrastructure of third parties and/or connections between infrastructures through (the content or intensity of) data traffic or through acts and/or omissions of the Client.
- 8.2. If and so far as the hosting environment becomes the subject of investigation by a duly authorised investigative official, for instance in the context of legislation, the reasonable expenses of this will be charged to the Client on the basis of retrospective calculation.
- 8.3. If and so far as Burst is held liable by third parties for breaches, including breaches of intellectual property rights in materials placed on the hosting environment by the Client itself, the Client will indemnify Burst in relation to this. If and in so far as the Client fails to take action in relation to a notification of such breaches, and Burst is obliged by current legislation to reverse the infringing situation, Burst is entitled to do so without it being liable to pay any compensation. The Client also agrees that its (personal and/or commercial) data in relation to an infringement as specified above will be passed to the said third party.
- 8.4. The service provision relating to hosting is supplied in accordance with the Platform Management arranged between the Parties. Burst is never bound by better or higher Service Levels than those that may have been agreed by Burst with a third party in relation to hosting.
- 8.5. Burst will only use backups of the software and/or database(s) if and to the extent that this has been agreed. In such cases, these backups will be prepared in accordance with Platform Management.
- 8.6. The provisions in the previous sub-clause also apply to test and acceptance environments provided by Burst.

Clause 9. Platform Management

- 9.1. Burst is not automatically in default if a Service Level agreed in Platform Management is not attained. If there are structural failures in respect of agreed Service Levels, the Client is entitled to issue a notice of default to Burst and Burst must be granted a reasonable period within which to attain the agreed Service Level within a specified, reasonable period. If the agreed Service Level is yet again not structurally attained within the said reasonable period, Burst will then be in default.
- 9.2. Platform Management only applies to objects and services included in the Agreement. Service Levels included in Platform Management do not apply to development, test and/or acceptance environments.

Clause 10. Intellectual property rights

- 10.1. All intellectual property rights to the Deliverables supplied or provided to the Client in terms of the Agreement are vested exclusively in Burst, its licensors or suppliers. The Client merely acquires an instantly revocable, non-exclusive, non-transferable and non-sub-licensable licence, which entails no more than that the subject matter of the Licence may be used for the purpose for which Burst has provided the subject matter of the Licence to the Client.
- 10.2. When first requested by the Client, Burst will cooperate in the transfer of the intellectual property rights for Deliverables produced specifically for the Client. For those Deliverables for which this is impossible, for example because they are licensed non-exclusively to other customers, Burst is prepared, when first so requested by the Client, to issue a non-exclusive licence to the source code/source files, entailing that the Client may only maintain or arrange for maintenance of the source code/source files for the purposes of the continuity of its own business and for the purpose for which the contract was awarded to Burst. The said licence is revocable if and to the extent that the Client culpably fails to fulfil the obligations contained in this sub-clause. Burst may attach conditions (including financial ones) to the transfer and/or issue of the licence as specified in this clause, for instance if the Agreement has been concluded on a fixed-price basis and, once it has come to an end, it transpires that Burst has spent more time than it estimated for the proposal agreed by the Client. This latter situation will be proved by Burst's time records.
- 10.3. Intellectual property rights relating to open source software and third-party software may never be transferred to the Client.
- 10.4. The Client guarantees that there are no third-party rights opposing Burst having access to the software, equipment, material (image material, text, music, domain names, logos, hyperlinks, etc), data files or other materials, including designs and materials, for the purpose of use, processing, hosting, installation or incorporation. The Client indemnifies Burst against all third-party claims based on an allegation that the rights of the third party in question are infringed by such provision, use, processing, installation or incorporation.

Clause 11. Prices, rates, invoicing and payment

- 11.1. Unless otherwise agreed, all prices and rates are indicated in euros, excluding VAT and excluding any other government taxes or charges.
- 11.2. There is a (rush) surcharge for the provision of services or other work outside working hours, which is established in the Agreement or, failing that, is equivalent to 150% of the agreed hourly rate.
- 11.3. Burst is entitled to raise the prices and rates for its services by a maximum of three (3) percent per annum. If Burst has not increased prices in previous years, Burst is entitled to increase the prices and rates for its services by a maximum of three (3) percent multiplied by the number of consecutive years during which no increase has been applied. It applies to Continuing Performance Agreements that if the increase exceeds what is specified in this clause, the Client is entitled to cancel the Agreement within thirty (30) days after notification by Burst.
- 11.4. Third parties as specified in clause 7.4 may increase their prices and rates during the course of a Continuing Performance Agreement. In such cases, Burst is entitled to pass any such increase on to the Client, irrespective of the indexation specified in clause 11.3, without requiring agreement for this from the Client.
- 11.5. For Agreements that are not Continuing Performance Agreements and that represent a value in excess of €15,000 (fifteen thousand euros) excluding turnover tax and other government taxes and charges, 50% (fifty percent) must be paid in advance by the Client. The Client may only demand performance of the Agreement after settlement of this advance payment. Burst invoices 40% (forty percent) before delivery and the final 10% (ten percent) on delivery by Burst. For those Agreements representing a value below the amounts specified in the first sentence of this sub-clause, Burst will invoice the entire amount in advance on conclusion of the Agreement with the Client.
- 11.6. The Client must settle all invoices within 21 (twenty-one) days after the invoice date, unless otherwise agreed. Failing payment by the due date, the Client will be in default – after receiving a demand letter from Burst offering a reasonable period within which to arrange for payment – and the consequence of this is that all other invoices that are not yet due will become immediately due and

payable. The Client will also be due the current statutory commercial interest to Burst on a monthly basis in respect of the invoice amount, without any requirement for notice of default.

- 11.7. If and to the extent that the Agreement is a Continuing Performance Agreement, Burst will issue invoices either quarterly or annually unless there is an express agreement to the contrary.
- 11.8. The Client agrees to Burst issuing invoices electronically.
- 11.9. The Client may not derive any rights or expectations from any advance calculation or estimate issued by Burst. Any budget disclosed by the Principle to Burst will only operate as a (fixed) price agreed between the Parties for the work to be done by Burst if this has been agreed in Writing.

Clause 12. Transfer of rights and obligations; Subcontracting

- 12.1. Burst is entitled to use third parties in the performance of its obligations under the Agreement and this may be done either on the basis of subcontracting or engagement of personnel. If it does so, Burst will impose the same obligation of confidentiality on such third parties as is specified in Clause 14.
- 12.2. Burst is entitled to transfer all rights and duties acquired in the context of the Agreement to third parties, without any additional restrictions or conditions. It will notify the Client accordingly as quickly as possible.

Clause 13. Liability and force majeure

- 13.1. Burst's total liability for a culpable failure to comply with the Agreement or in any other regard, such as for instance tort, explicitly also including any failure to comply with guarantee obligations agreed with the Client, is limited for each event giving rise to loss to the payment of direct loss up to a maximum of the price paid by the Client for that Agreement, excluding VAT; a series of associated events giving rise to loss will be deemed to be a single (1) event.
- 13.2. If the Agreement is primarily a Continuing Performance Agreement, the total liability for direct loss per event, as specified in the previous sub-clause, is limited to what the Client has paid to Burst in the context of that Agreement in the two (2) months prior to the event giving rise to loss, excluding VAT; a series of associated events giving rise to loss will be deemed to be a single (1) event.
- 13.3. Under no circumstances will Burst's liability in terms of the foregoing sub-clauses exceed €50,000 (fifty thousand euros).
- 13.4. If the culpable failure to comply with the Agreement is attributable to a failure by a third party, as specified in clause 7.13, Burst's liability is limited to whatever Burst has actually been able to recover in terms of the agreements with the third party in question. When first so requested by the Client, Burst will cooperate in assigning its own claim for compensation for loss against the third party in question, free of charge, on condition of receiving a final discharge from the Client in relation to the loss that the Client has sustained.
- 13.5. Burst's liability for indirect loss, consequential loss, loss of profits, loss of savings, reduction in goodwill, loss due to delay, loss due to the loss of data, loss arising from stagnation of business, loss resulting from claims by the Client's customers, loss associated with the use of items, working methods, materials or software owned by third parties but prescribed for Burst by the Client, and losses associated with the engagement of suppliers prescribed for Burst by the Client, is hereby excluded.
- 13.6. Exclusions and restrictions of liability will lapse if and to the extent that the loss is due to intent or deliberate negligence on the part of Burst's company management.
- 13.7. Unless performance by Burst is permanently impossible, Burst's liability for a culpable failure to comply with an Agreement only arises if the Client immediately issues a notice of default to Burst in Writing, granting a reasonable period for rectification of any failure, and if Burst persists in its culpable failure to comply with those obligations even after that period has expired. The notice of default must contain a description of the failure as complete and detailed as possible, so that Burst will have the opportunity to respond adequately.
- 13.8. Every compensation claim against Burst will prescribe through the mere expiry of three (3) months after it arises, or earlier if the rights expire by operation of law.
- 13.9. The provisions in this Clause along with all other restrictions and exclusions of liabilities specified in these GTCs will also operate in favour of all persons and legal persons used by Burst in the

performance of the Agreement; the restrictions and exclusions as a whole operate for the whole group (Burst and its subcontractors).

- 13.10. Burst is not required to fulfil any obligation if it is prevented from doing so as a result of circumstances that are not attributable to it by law, legal action or commonly held opinion or are not or should not be its financial responsibility. If Burst invokes force majeure against the Client, Burst will notify the Client accordingly, in Writing, as quickly as possible, which is to say within a reasonable period.
- 13.11. A non-culpable failure (force majeure) for Burst includes in any event Burst's inability to comply or comply properly with its obligations as a result of (long-term) illness, DDoS attacks, strikes, traffic blockages, loss of data and documents, electrical disruptions, late supply of goods and/or services, whether or not this situation arises at Burst itself or at its suppliers, unsuitability of materials, software and/or equipment where the Client has instructed Burst to use those materials, software and/or equipment.
- 13.12. If a force majeure situation has persisted for more than five (5) days and if the Client has issued a Written default notice to Burst, the Client will be entitled to dissolve the Agreement extrajudicially with immediate effect by means of a registered letter, without Burst being obliged to pay any compensation. Any work already done pursuant to the Agreement will then be invoiced and settled pro rata.

Clause 14. Confidentiality and prohibition against taking over personnel

- 14.1. Information and/or documentation is confidential either if it is classified as such by one of the Parties or if the other Party should otherwise know or suspect that the information and/or documentation is confidential.
- 14.2. The Parties and their members of staff will only use confidential information acquired or made available by the other Party in accordance with the provisions in the Agreement and will not disclose this directly or indirectly to third parties or allow this to happen without prior permission in Writing from the other Party. The Parties, including their members of staff, will also take all requisite precautionary measures to protect such information against unauthorised use and disclosure.
- 14.3. The provisions in these Clauses do not apply if a Party is obliged to disclose confidential information by virtue of a judicial pronouncement or government ruling.
- 14.4. The Client is obliged to take steps to prevent unauthorised individuals gaining or being able to gain access to the services and information. Except in cases of intent or deliberate negligence on the part of Burst's company management, Burst may not be held liable for losses sustained by the Client because third parties make unauthorised or unlawful use of items, software and/or services that are supplied.
- 14.5. The Client will continue to observe confidentiality vis-à-vis third parties in relation to all confidential information, or information that it knows or could reasonably suspect to be confidential, even after the Agreement comes to an end. The Client will also ensure that the above-mentioned confidential information is destroyed immediately after the Agreement comes to an end. The Client will prove that this has actually happened when first asked to do so by Burst.
- 14.6. The provisions in the foregoing sub-clauses of this Clause applies, mutatis mutandis, to the period prior to the finalisation of the Agreement.
- 14.7. During the course of the Agreement and also for one year after the end thereof, the Client will only employ any employees of Burst, including staff members engaged otherwise than on the basis of an employment contract, such as self-employed, or have them work for it, directly or indirectly, if it has received prior permission in Writing from Burst to do so. Any such permission may be subject to conditions.
- 14.8. Burst is permitted to use the name and any logo of the Client in (online) promotions to indicate that Burst is supplying products and/or services to the Client.

Clause 15. Processing of personal data and security

- 15.1. Burst's data-processing conditions at <https://drive.google.com/file/d/1nMJ7cOVRHks0zkpAujp4by-augQVNSfl/> apply if Burst processes any personal data of the Client or the latter's customers in the course of providing the agreed services. The data-processing conditions operate as a Processor Agreement as defined in the General Data Protection Regulation.

Clause 16. Applicable law, competent court and sundry provisions

- 16.1. All Quotations, Agreements and contracts stemming from Agreements that are subject to these GTCs and all consequent legal relationships are governed exclusively by the law of the Netherlands.
- 16.2. Articles 7:404, 7:407(2), 7:408(1) and 7:409 of the Dutch Civil Code are declared to be inapplicable.
- 16.3. Any dispute arising from or associated with the Agreement will be submitted exclusively to the competent judge at the District Court in Rotterdam. This provision will not apply if the dispute is subject to the jurisdiction of the Sub-district Court Judge; if this is the case, the statutory rules relating to absolute and relative jurisdiction will take precedence, so that the Sub-district Court Judge will have authority to consider the dispute.
- 16.4. If and to the extent that any provision in these GTCs is annulled or declared null and void, the remaining provisions will nevertheless remain in full force and effect between the Parties. In that case, the Parties will agree to a new provision, respecting the purport of the null and void/annulled provision as closely as possible.
- 16.5. In the event of any discrepancy between the provisions in the GTCs and the Quotation, these GTCs will take precedence over the Quotation.
- 16.6. If these GTCs are declared to apply to a Quotation, the purpose of that Quotation being to expand and/or adjust the collaboration between the Parties, or else to adjust the software developed and/or supplied by Burst, these GTCs will continue to apply in full to the entire collaboration and any general terms and conditions that have been declared applicable to Quotations in the past will no longer have any legal effect.