

## **GENERAL TERMS AND CONDITIONS**

### **General Provisions**

#### **1. Offer and Agreement**

**1.1.** These General Terms and Conditions shall apply to all offers, legal relationships and agreements under which the Supplier provides goods and/or services of whatever nature to the Customer. Deviations from and additions to these General Terms and Conditions shall only be valid if they have been expressly agreed in writing.

**1.2.** All offers and other statements by the Supplier shall be without obligation, unless the supplier expressly indicates otherwise in writing. The Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which the Supplier bases its offer, and which have been stated by or on behalf of the Customer to the Supplier.

**1.3.** The application of the Customer's purchasing or other terms and conditions is expressly rejected.

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

**1.5.** The Supplier may always state additional requirements concerning communication between the Parties or performance of legal acts by email.

#### **2. Price and payment**

**2.1.** All prices shall be exclusive of turnover tax (VAT) and other levies imposed by the government.

**2.2.** If the Customer must make regular payments, the Supplier shall be entitled to adjust the applicable prices and rates by providing written notice at least three months in advance. If the Customer does not wish to agree to such an adjustment, the Customer shall, within thirty days after the notice, be entitled to terminate the Agreement before the date on which the adjustment would have become effective.

**2.3.** The Parties shall record in the Agreement the date or dates on which the Supplier shall charge the Customer the fee for the agreed performance. The Customer shall pay invoices in accordance with the payment conditions stated on the invoice. In the absence of a specific provision, the Customer shall pay within thirty days after the invoice date. The Customer shall not be entitled to set off or to suspend a payment.

**2.4.** If the Customer does not pay the amounts owed in a timely manner, the Customer shall owe legal interest on the outstanding amount, without any written demand or

notice of default being necessary. If the Customer still does not pay the claim after a written demand or notice of default, the Supplier can pass on the claim for collection, in which case the Customer shall, in addition to the total amount owed then, be obliged to pay for all in-court and out-of-court expenses, including expenses charged by external experts in addition to the costs determined at law. The Customer shall also owe the expenses incurred by the Supplier regarding unsuccessful mediation if the Customer is ordered by a judgment to pay the outstanding amount in full or in part.

### **3. Confidential information, taking over employees and privacy**

**3.1.** Each of the Parties warrants that all the information received by the Other Party which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure of that information. The Party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.

**3.2.** During the term of the Agreement and for one year after it is terminated, each of the Parties shall not, unless it receives prior written permission from the other Party, take on employees of the Other Party who are or were involved in executing the Agreement (directly or indirectly). As the occasion arises, the Supplier shall not withhold the permission concerned if the Customer has offered appropriate compensation.

**3.3.** The Customer shall indemnify the Supplier against claims by persons whose personal data has been recorded or processed in connection with a register of persons maintained by the Customer or for which the Customer is responsible under law or otherwise, unless the Customer proves that the facts underlying the claim are solely imputable to the Supplier.

### **4. Retention of title and rights, specification and possessory lien**

**4.1.** All objects delivered to the Customer shall remain the Supplier's property until all amounts owed by the Customer for the objects delivered or to be delivered or work performed or to be performed under the Agreement, as well as all other amounts which the Customer owes due to a breach of its payment obligation, have been paid fully to the Supplier. A Customer acting as a reseller may sell and re-deliver all items subject to the Supplier's retention of title insofar as that is common regarding its normal business operations. If the Customer creates a new object wholly or partly from the objects delivered by the Supplier, the Customer shall create that object solely for the Supplier and the Customer shall hold the newly created object for the Supplier until the Customer has paid all amounts owed under the Agreement; in that event, the Supplier shall possess all rights as the owner of the newly created object until the time the Customer makes full payment.

**4.2.** As the occasion arises, rights shall always be granted or transferred to the Customer on the condition that the Customer pays the agreed fees fully and in a timely manner.

**4.3.** Notwithstanding any delivery obligation, the Supplier may maintain possession of the objects, products, proprietary rights, information, documents, databases and interim or other results of the Supplier's services which have been received or generated regarding the Agreement until the Customer has paid all amounts owed to the Supplier.

## **5. Risk**

**5.1.** The risk of loss or theft of or damage to objects, products, software or data which are the subject of the Agreement shall pass to the Customer at the time they have been placed at the actual disposal of the Customer or an assistant used by the Customer.

## **6. Intellectual or industrial property rights**

**6.1.** All intellectual and industrial property rights to software, websites, databases, equipment or other materials developed or provided under the Agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by the Supplier, its licensors or its suppliers. The Customer shall only acquire the rights of use expressly granted in these Terms and Conditions and by law. Any other or more extensive right of the Customer shall be excluded. A right of use to which the Customer is entitled shall be non-exclusive and non-transferable to third parties.

**6.2.** If, in deviation from Article 6.1, the Supplier is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered expressly in writing.

**6.3.** The Customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the software, websites, databases, equipment or materials.

## **7. Cooperation by the Customer**

**7.1.** The Customer shall always furnish the Supplier in a timely manner with all data or information which is useful and necessary to execute the Agreement properly and provide full cooperation, including furnishing access to its buildings. If the Customer utilises its own employees in cooperating in the execution of the Agreement, these employees shall possess the necessary know how, experience, abilities and characteristics.

**7.2.** If the Customer does not provide the Supplier with the data, equipment, software or employees necessary to execute the Agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if the Customer otherwise does not fulfil its obligations, the Supplier shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to the Supplier's right to exercise any other legal right.

**7.3.** In the event that employees of the Supplier perform work on-site at the Customer's, the Customer shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. The Customer shall indemnify the Supplier against claims by third parties, including the Supplier's employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by the Customer or of unsafe situations in its organisation. The Customer shall provide timely notice to the Supplier's employees to be utilised of the company and security rules applicable within its organisation.

**7.4.** If, in executing the Agreement, telecommunications facilities, including the Internet, are used, the Customer shall be responsible for properly selecting these and making them available in a timely and sufficient manner, except for those facilities directly used and managed by the Supplier. The Supplier shall never be liable for damage or expenses due to transmission errors, malfunctions or the non-availability of these facilities, unless the Customer proves that this damage or these expenses resulted from intentional acts or omissions or gross negligence on the part of the Supplier or its managers. If telecommunications facilities are used in executing the Agreement, the Supplier shall be entitled to assign access or identification codes to the Customer. The Supplier may change the assigned access or identification codes. The Customer shall treat the access codes as confidential and with due care and shall only disclose them to authorised employees. The Supplier shall never be liable for damage or expenses resulting from misuse of access or identification codes.

## **8. Delivery periods**

**8.1.** All delivery and other periods stated or agreed by the Supplier have, to the best of its knowledge, been determined based on data known to the Supplier when it entered into the Agreement. The Supplier shall properly exert its best efforts to observe agreed delivery and other periods as much as possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause the Supplier to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, the Supplier shall not be in default because of a time period being exceeded until the Customer has provided it with a written notice of default. The Supplier shall not be bound by firm or non-firm delivery or other periods which can no longer be met on account of circumstances beyond its control which have occurred after the Agreement was concluded. Nor shall the Supplier be bound by firm or non-firm delivery periods if the Parties have agreed to modify the substance or scope of

the Agreement (additional work, change in specifications etc.). If any period threatens to be exceeded, the Supplier and Customer shall consult with each other as soon as possible.

## **9. Termination of the Agreement**

**9.1.** Each of the Parties shall only be entitled to rescind the Agreement if the Other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.

**9.2.** If an agreement which, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, each of the Parties may terminate the Agreement by written notice after proper consultation and with a statement of reasons. If the Parties have not agreed on an express notice period, a reasonable notice period must be observed in terminating the Agreement. The Parties shall never be liable for damages for terminating the Agreement.

**9.3.** In deviation from what has been provided for by statute in this regard through directory law, the Customer may only terminate a services agreement in the cases stated in these Terms and Conditions.

**9.4.** Each of the Parties may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if the Other Party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the Other Party or if the Other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger. The Supplier shall never be obliged on account of this termination to refund funds already received or to pay damages.

**9.5.** If, at the time of the rescission referred to in Article 9.1, the Customer has already received performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled, unless the Customer proves that the Supplier is in default with regard to that performance. Amounts which the Supplier has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the Agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

## **10. The Supplier's liability; indemnity**

**10.1.** The Supplier's total liability for imputably failing to perform the Agreement shall be limited to compensating direct damage, up to at most the amount of the price (exclusive of VAT) stipulated for that Agreement. If the Agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the Agreement shall be set at the total of the fees (exclusive of VAT)

stipulated for one year. The total compensation for direct damage shall not, however, in any case exceed EUR 50,000 (fifty thousand euros). "Direct damage" shall solely mean:

- a) reasonable expenses which the Customer would have to incur to make the Supplier's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of the Customer;
- b) reasonable expenses which the Customer has incurred out of necessity to keep its old system or systems and related faculties operating longer because the Supplier did not provide delivery on a firm delivery date which was binding for it, minus any savings resulting from the delay in delivery;
- c) reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Terms and Conditions;
- d) reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms and Conditions.

**10.2** The Supplier's liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed EUR 1,250,000 (one million two hundred and fifty thousand euros).

**10.3** The Supplier's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Customer's customers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the Customer for the Supplier, damage relating to engagement of suppliers prescribed by the Customer for the Supplier and all other forms of damage or injury besides those mentioned in Article 10.1 and 10.2, on any account whatsoever, shall be excluded.

**10.4** The limitations mentioned in the preceding paragraphs of this Article 10 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by the Supplier or its managers.

**10.5** The Supplier's liability because of an imputable failure to perform an Agreement shall in all cases only arise if the Customer immediately and properly provides a written notice of default to the Supplier, with a reasonable time period for remedying the failure being given and the Supplier still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that the Supplier can respond adequately.

**10.6** For any right to damages to exist, the Customer must always report the damage or injury to the Supplier in writing as soon as possible after it occurs. Any claim to damages against the Supplier shall be extinguished by the mere lapse of 24 months after the claim arises.

**10.7** The Customer shall indemnify the Supplier against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by the Customer to a third party and which partly consisted of equipment, software or other materials delivered by the Supplier, except if and insofar as the Customer proves that the damage or injury was caused by that equipment, software or other materials.

**10.8** The provisions in this Article shall also apply for the benefit of all legal and natural persons utilised by the Supplier in executing the Agreement.

## **11. Force Majeure**

**11.1.** Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of force majeure for the Supplier's suppliers, improper performance of obligations by suppliers prescribed by the Customer for the Supplier, as well as defects in objects, materials or software of third parties which the Customer has required the Supplier to use.

**11.2.** If a situation of force majeure lasts for more than 90 days, the Parties shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

## **12. Performance**

**12.1.** The Supplier shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the agreements and procedures recorded in writing with the Customer. All of the Supplier's services shall be performed on the basis of a best efforts obligation, unless and insofar as the Supplier has expressly promised a result in the written Agreement and the result concerned has also been described with sufficient definiteness. Any agreements concerning a service level must always be expressly agreed in writing.

**12.2** If it has been agreed that the services shall be provided in stages, the Supplier shall be entitled to postpone the start of the services which are part of a stage until the Customer has approved the results of the preceding stage in writing.

**12.3** In performing the services, the Supplier shall only be obliged to follow timely and sensible instructions of the Customer if this has been expressly agreed in writing. The Supplier shall not be required to follow instructions which change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated pursuant to Article 13.

**12.4** If a services agreement has been entered with a view to performance by a particular person, the Supplier shall always be entitled to replace this person after consultation with the Customer with one or more other persons with the same qualifications.

**12.5** In the absence of an expressly agreed invoicing schedule, all amounts relating to services provided by the Supplier shall be owed once every calendar month in arrears.

### **13. Modification and additional work**

**13.1** If, at the request of or with prior consent from the Customer, the Supplier has performed work or rendered other performance which goes beyond the substance or scope of the agreed services, the Customer shall pay for that work or performance according to the Supplier's usual rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. The Supplier shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

**13.2** The Customer accepts that work or performance as referred to in Article 13.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Customer and Supplier. The fact that additional work (or the demand for it) arises during execution of the Agreement shall never be a ground for the Customer to rescind or terminate the Agreement.

**13.3** Insofar as a set price has been agreed for the services, the Supplier shall, upon request, inform the Customer in writing in advance about the financial consequences of the extra work or performance.

### **14. Study programmes, courses and training sessions**

**14.1.** Insofar as the services by the Supplier consist of providing a study programme, course or training session, the Supplier may always demand payment of the amount owed before it begins to provide these services. The Supplier's normal rules shall govern the consequences of cancellation of participation in the study programme, course or training session.

**14.2** If the number of registrations justifies doing so in the Supplier's judgment, the Supplier shall be entitled to combine the study programme, course or training session with one or more other study programmes, courses or training sessions, or to have them take place at a later date or a later time.

### **15. Secondment**

**15.1** There shall be secondment within the meaning of these Terms and Conditions if the Supplier makes an employee (hereinafter: "the Seconded Employee") available to the Customer to have this Employee perform work under the Customer's supervision, management and/or direction.

**15.2** The Supplier shall exert its best efforts to ensure that the Seconded Employee remains available for the term of the Agreement, notwithstanding the provisions in Article 12.4 concerning replacement.

**15.3** The Customer shall be entitled to request replacement of the Seconded Employee (i) if the Seconded Employee demonstrably does not meet expressly agreed quality requirements and the Customer provides written notice of this to the Supplier within three working days after the work commences, or (ii) if the Seconded Employee experiences a long-term illness or leaves the Supplier's employment. The Supplier shall immediately address the request, making it a priority. The Supplier does not warrant that replacement shall always be possible. If replacement is not or not immediately possible, the Customer's claims to further performance of the Agreement as well as all claims of the Customer on account of non-performance of the Agreement shall be extinguished. The Customer's payment obligations concerning the work performed shall continue to exist.

**15.4** The Supplier shall be obliged to make timely and complete payment of the wage tax and social security contributions (including advance contributions) to be paid for the Seconded Employee in connection with the Agreement. The Supplier shall indemnify the Customer against all statutory claims by the Tax Authorities or social insurance agencies regarding taxes and social security contributions directly relating to the Supplier's making the Seconded Employee available ("liability for using external personnel"), provided the Customer allows the Supplier to handle the claims concerned completely, cooperates fully with it and furnishes it with all necessary information and, if the Supplier desires, powers of attorney to conduct legal proceedings.

**15.5** The Supplier shall not accept any liability for the selection of the Employee or for the results of the work arising under the Customer's supervision, management and/or direction.

## **16. Governing Law.**

**16.1** The validity, construction and performance of these General Terms and Conditions shall be governed and construed in accordance with the laws of The Netherlands. In the event of invalidity or unenforceability of any provisions of this Agreement, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement.