

# General Terms and Conditions of Business of FENIT (Federation of Dutch Trade Associations for Information Technology)

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Should the English text of the General Terms and Conditions of Business deviate from the Dutch, the Dutch text shall always prevail.

## GENERAL TERMS AND CONDITIONS OF BUSINESS

### 1. Offer and Agreement

- 1.1 These General Terms and Conditions of Business shall apply to all offers and Agreements under which Supplier supplies to Customer goods and/or services of whatever nature, even if such goods or services are not (further) specified herein. No deviations from these General terms and Conditions shall be valid unless expressly agreed in writing.
- 1.2 All offers shall be without engagement unless expressly otherwise stated in writing in the offer.
- 1.3 Any applicability of any terms and conditions of purchase or otherwise of Customer is rejected.
- 1.4 In the event of nullity or annulment of any provision of these General Terms and Conditions of Business, the other provisions hereof shall remain in full force and effect and Supplier and Customer shall consult together in order to agree on new provisions to replace the provisions that are null or, as the case may be, annulled, duly observing as much as possible the object and purport of the provision that is null or annulled.

### 2. Price and payment

- 2.1 All prices shall be exclusive of sales tax (VAT) and any other levies imposed by the authorities.
- 2.2 In case of an Agreement mentioning sums periodically falling due for payment by Customer, the rule is that Supplier shall be entitled to adjust the prices and rates in force by giving at least three months' notice in writing.
- 2.3 In all cases Supplier shall be entitled, by giving notice in writing to Customer, to adjust the agreed prices and rates for any performance to take place, according to the planning concerned or, as the case may be, the Agreement, at a time at least three months from the date of such notice.
- 2.4 If Customer is unwilling to accept such adjustment of prices and rates declared by Supplier as is referred to in Article 2.2 or 2.3, Customer shall be entitled within seven work-days from the notice referred to in the said Articles either to give notice in writing to terminate the Agreement with effect from the date stated in Supplier's notice on which the adjustment of prices or rates would become effective, or to rescind the same.
- 2.5 All invoices shall be paid by Customer in accordance with the terms of payment set forth on the invoice. Failing any specific terms, Customer shall pay within thirty days from the invoice date.
- 2.6 In the event that Customer fails to pay the amounts due within the agreed period, legal interest shall be due by Customer on the outstanding amount without any notice of default being required. Should Customer, after notice of default, fail to settle the claim, the same may be placed out of hand, in which case Customer shall be liable to pay in full, in addition to the total amount then due, any legal and non-legal expenses including any fees charged by external experts in addition to the costs assessed

in court, relating to the collection of this claim or other enforcement of rights, the amount of which is fixed at 15% at least of the total amount.

### **3. Confidential information and clause prohibiting takeovers of staff**

- 3.1 Each of the parties guarantees that all information of a confidential nature received from the other party before and after the conclusion of the Agreement shall remain confidential. Information shall in any event be considered confidential if so designated by either of the parties.
- 3.2 Neither party shall for the duration of the Agreement and for one year after termination thereof take on any employees of the other party who were involved in the execution of the Agreement, or have such employees work for the same either directly or indirectly, unless after proper business-like consultation with the other party has taken place.

### **4. Retention of title and rights**

- 4.1 Title to all objects supplied to Customer shall continue to be held by Supplier until all amounts payable by Customer in respect of the objects supplied or to be supplied under the Agreement, or the work done or to be done thereunder, as well as the amounts referred to in Article 2.6 including interest and expenses of collection or recovery, have been paid in full to Supplier.
- 4.2 No rights shall ever be granted or, as the case arises, transferred to Customer except on condition that the agreed considerations are paid in time and in full by the same.

### **5. Risk**

The risk of loss of or damage to the objects forming the subject of the Agreement shall pass to Customer at the moment when such objects is actually placed at the disposal of Customer or any assistant used by the same.

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

- 6.1 All intellectual or industrial property rights to any software, equipment or other materials developed or provided under the Agreement, such as analyses, designs, documentation, reports, offers, and any preparatory material belonging thereto, shall solely be held by Supplier or its licensors. Customer shall exclusively acquire such rights of use and powers as are explicitly granted hereunder or otherwise and for the rest Customer shall not multiply the software or other materials or make any copies thereof.
- 6.2 Customer is aware that the software, equipment and other materials provided contain confidential information and trade secrets of Supplier or his licensors. Without prejudice to the provisions of Article 3, Customer undertakes to keep such software, equipment and materials secret and not to make third parties acquainted with them or grant their use to the same, and to use them only for the purpose for which they were placed at his disposal. The expression 'third parties' includes any such persons working in Customer's organization as do not necessarily have to use the software, equipment and/or other materials.
- 6.3 Customer will not be permitted to remove from or change in the software, equipment or materials any designation concerning copyrights, trademarks, tradenames or other intellectual or industrial property rights, including any indications concerning the confidential nature and secrecy of the software.
- 6.4 Customer will be permitted to take technical measures to protect the software. If Supplier has secured the software by means of some technical protection, Customer will not be permitted to remove or evade such protection. If the protective measures result in Customer being unable to make a back-up copy of the software, Supplier shall provide Customer with a back-up copy of the software at the latter's request.

- 6.5 Except where Supplier provides Customer with a back-up copy of the software, Customer shall be entitled to keep, which must be understood to include 'to make', one single back-up copy of the software. For the purposes hereof a back-up copy is a material object on which the software is recorded with for sole purpose of replacing the original copy of the software in the event of involuntary loss of possession or damage. The back-up copy must be an identical copy and always be labeled with the same labels, and bear the same indications, as the original one.
- 6.6 If Customer develops software or if a third party develops software for him, or if Customer intends to do so and, in connection with the interoperability of the software to be developed and the software supplied to him by Supplier, needs information to achieve it, Customer shall make a written, specified request to Supplier for the information needed. In that case Supplier shall inform Customer within a reasonable period whether he can have the disposal of the information required and on what conditions, including financial conditions and conditions concerning any third parties that Customer may call in. For the purposes hereof interoperability is the capability of software of interchanging data with other components of a computer system and/or software and of communicating by means of these data.
- 6.7 With due observance of the other provisions of these Terms and Conditions, Customer shall be entitled to correct any errors in the software supplied to him if this is necessary for its intended use following from the nature of the same.  
Wherever reference is made herein to rights or obligations with regard to errors, the term 'errors' shall be understood to mean failure to meet the functional specifications stated in writing by Supplier and, in case of development of custom-made software, the functional specifications expressly agreed. There shall be no question of any error unless it can be proved and reproduced. Customer will be under the obligation forthwith to report any errors to Supplier.
- 6.8 Supplier shall indemnify Customer against any action at law based on the allegation that any software, equipment or materials developed by Supplier itself infringe(s) any intellectual or industrial property right valid in The Netherlands, provided that Customer shall forthwith inform Supplier in writing about the existence and substance of the action at law and leave the handling of the case entirely to Supplier, including the making of any settlements.  
For that purpose Customer shall give Supplier the powers of attorney, information and cooperation necessary to defend such actions, if necessary in Customer's name.  
This obligation to indemnify shall cease to exist if and insofar as the infringement concerned relates to any modifications which Customer has made in the software, equipment or materials or caused to be made therein by third parties.  
In the event that it is judicially and irrevocably established that the software, equipment or materials developed by Supplier itself infringe(s) any intellectual or industrial property right belonging to any third party or that in Supplier's opinion there is a fair chance that such infringement will occur, Supplier shall retake the product(s) supplied and credit the acquisition costs under deduction of a reasonable user fee, or see to it that Customer is able to continue to use the product(s) supplied or some other, functionally equivalent software, equipment or materials without trouble.  
Any other or further liability or obligation to indemnify of Supplier in respect of infringement of any intellectual or industrial property rights of third parties is excluded, including any liability and obligations to indemnify of Supplier for any infringements caused by the equipment, software and/or materials supplied being used in any form not modified by Supplier while being connected with any objects or software not supplied or furnished by Supplier or in any manner other than that for which the equipment, software and/or materials was and/or were developed or intended.
- 6.9 Customer guarantees that no rights of third parties prevent provision to Supplier of any equipment, software or materials for the purpose of use or treatment and Customer shall indemnify Supplier against any action based on the allegation that any such provision, use or treatment infringes any right of third parties.

## **7. Cooperation by Customer**

- 7.1 Customer shall always provide Supplier in good time with any data or information useful and necessary to the proper execution of the Agreement, and always give every cooperation.

- 7.2 Customer shall be responsible for the use and application, in his organization, of the equipment and software and of the services to be provided by Supplier, as well as for the checking and security procedures and for adequate system management.
- 7.3 If it was agreed that Customer shall make available software, materials or data on data carriers, they shall meet the necessary specifications for carrying out the work.
- 7.4 In the event that the data necessary for the execution of the Agreement are not at Supplier's disposal, or not in time or in accordance with the arrangements, or in the event that Customer fails to fulfil his obligations in any other way, Supplier shall in any event be entitled to suspend the execution of the Agreement and to charge the expenses thereby incurred, in accordance with its customary rates.
- 7.5 In case any employees of Supplier do work at Customer's location, Customer shall arrange, free of charge, for the facilities reasonably required by such employees, such as, if applicable, a workroom with telecommunication facilities etc. Customer shall indemnify Supplier against any claims of third parties, including any employees of Supplier, who in connection with the execution of the Agreement suffer any loss caused by any action or failure to act of Customer or by unsafe situations in Customer's organization.

## **8. Terms of delivery**

All terms of delivery stated by Supplier have to the best of its knowledge been fixed on the basis of the data that were known to Supplier at the conclusion of the Agreement, and they shall be observed as much as possible; the mere fact of any stated term (of delivery) being exceeded shall not constitute default made by Supplier. Supplier shall not be bound by any terms (of delivery) which can no longer be met owing to circumstances beyond its control which have occurred after the Agreement was concluded. If any term threatens to be exceeded, Supplier and Customer shall consult together as soon as possible.

## **9. Termination**

- 9.1 Neither of the parties shall be entitled to terminate the Agreement unless the other party, after giving proper notice of default in writing, specifying as many details as possible and stating a reasonable period within which to remedy the failure, fails to meet, and can be blamed for not meeting, any essential obligations arising from the Agreement.
- 9.2 If any Agreement which by its nature and content will not terminate by completion has been entered into for an indefinite period, such Agreement may be terminated in writing by either party after proper and business-like consultation, stating its reasons for doing so. If no specific term of notice was agreed between the parties, reasonable notice of termination shall be given. The parties shall never be liable in any damages by reason of termination.
- 9.3 Supplier may forthwith terminate the Agreement either in whole or in part by giving notice in writing, without notice of default and without judicial intervention, if Customer is granted an official moratorium, whether provisional or not; if with regard to Customer a bankruptcy petition is presented or winding-up proceedings are instituted; or if his undertaking is wound up or closed down otherwise than for the purpose of reconstruction or amalgamation of enterprises. Supplier shall never be liable in any damages by reason of such termination.
- 9.4 If at the time of such rescission as is referred to in Article 9.1 Customer has already received any performance in the execution of the Agreement, such performance and the obligation to pay connected therewith shall be incapable of being undone unless Supplier is in default with respect to such performance. Any amounts invoiced by Supplier before the rescission in connection with any work or products already done or delivered by the same in execution of the Agreement shall remain fully due subject as provided in the preceding sentence and shall become immediately payable upon rescission.

## **10. Liability of Supplier; indemnity**

- 10.1 Supplier accepts liability to pay damages to the extent as shown by Article 10.
- 10.2 Supplier's total liability in respect of such failure to perform the Agreement as is imputable to the same shall be limited to making compensation for any direct loss up to the amount of the agreed price (not including VAT) for that Agreement. If the Agreement is mainly a specified-period agreement with a duration of more than one year, the agreed price is fixed at the total of the considerations (not including VAT) agreed for one year. In no event, however, shall the total compensation for any direct loss exceed DFL 1,000,000.- (one million guilders).
- By 'direct loss' shall exclusively be understood:
- a. the reasonable expenses which Customer would have to incur to have Supplier's performance fulfil the Agreement. However, such loss shall not be made good if Customer has rescind the Agreement;
  - b. the expenses incurred by Customer for perforce keeping his old system(s) operational for a longer time and for any facilities connected therewith owing to Supplier's failure to make delivery on a delivery date binding upon the same, minus any savings that may have been made as a result of the delayed delivery;
  - c. reasonable expenses incurred in determining the cause and extent of the loss insofar as such determination relates to any direct loss within the meaning of these Terms and Conditions;
  - d. reasonable expenses incurred in preventing or reducing a loss insofar as Customer proves that such expenses have resulted in a reduction of any direct loss within the meaning of these Terms and Conditions.
- 10.3 In no event shall Supplier's total liability for any loss by death or bodily injury of for any material damage to property exceed DFL 2,500,000.- (two and a half million guilders) per event, a series of connected events being considered a single event.
- 10.4 Supplier's liability for indirect loss, including consequential loss, loss of profits, lost savings and loss caused by interruption of operations is excluded.
- 10.5 Apart from the cases mentioned in Article 10.2 and Article 10.3, no liability in any damages shall attach to Supplier irrespective of the ground on which any action for damages would be based. However, the maximum amounts specified in Article 10.2 and Article 10.3 shall cease to apply if and insofar as the loss is due to Supplier's wilful intent or gross negligence.
- 10.6 Supplier's liability in respect of such failure to perform an Agreement as is imputable to the same shall not arise unless Customer forthwith and properly declares Supplier in default in writing, stating a reasonable period in which to remedy the failure, and Supplier continues, and can be blamed for continuing, to fail in the fulfilment of its obligations even after such period. The notice of default must specify the failure in as much detail as possible, so that Supplier will be able to react adequately.
- 10.7 No right to damages shall ever arise unless Customer reports the loss to Supplier in writing as soon as possible after it has arisen.
- 10.8 Customer shall indemnify Supplier against all claims of third parties in respect of product liability as a consequence of any defect in a product or system which was supplied to a third party by Customer and partly consisted of equipment, software or other materials supplied by Supplier, except if and insofar as Customer proves that the damage was caused by such equipment, software or other materials.

## **11. Force majeure**

- 11.1 Neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure. The expression 'force majeure' shall include any failure of any suppliers of Supplier not due to their fault.
- 11.2 If a situation of force majeure has lasted for more than ninety days, the parties shall be entitled to terminate the Agreement by rescinding it in writing. In that case any performance which has already taken place pursuant to the Agreement shall be settled proportionately without either party being thereafter indebted to the other in any other amount.

**12. Export**

In case of export of any equipment, parts or software by Customer, the relevant export regulations shall apply. Customer shall indemnify Supplier against all claims of third parties relating to any breaches of the applicable export regulations for which Customer can be held liable.

**13. Governing law and disputes**

- 13.1 The Agreements between Supplier and Customer shall be governed by Dutch law.
- 13.2 Any disputes that might arise between Supplier and Customer in connection with any Agreement concluded with Customer by Supplier or in connection with any further agreements that might result therefrom, shall be resolved by the competent courts of The Netherlands but not until after the procedure laid down in the Minitrial Rules of the Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Disputes in the Automation Sector) in The Hague (i.e. a procedure for non-binding advice) has been followed, without prejudice to the right of the parties to apply for disposition by summary proceedings.

## **COMPUTER SERVICE**

The provisions set forth in this Chapter 'Computer Service' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Supplier provides services in the field of computer service (automatic data processing), which is understood to mean the processing of data with the aid of software and equipment controlled and operated by Supplier.

### **14. Duration**

- 14.1 If the Agreement relates to the provision of computer service, periodically or regularly in some other manner, the Agreement shall be entered into for the duration agreed between the parties, failing which a duration of one year shall apply. Customer's right to terminate the Agreement before its expiration is excluded without prejudice to the provisions of Article 15.5.
- 14.2 The Agreement shall every time be tacitly renewed for the duration of the original period unless either Customer or Supplier terminates the Agreement in writing by giving three months' notice before the end of the period concerned.

### **15. Execution of the work**

- 15.1 Supplier shall perform the computer service with due care in accordance with the procedures and arrangements laid down in writing with Customer.
- 15.2 All data to be processed by Supplier shall be prepared and delivered by Customer in accordance with conditions to be laid down by Supplier. Unless otherwise agreed, Customer shall take the data to be processed to and collect the results of the processing from the place where Supplier performs the computer service. Transport shall take place for account and at the risk of Customer even if performed or seen to be by Supplier.
- 15.3 Customer guarantees that all materials, data, software, procedures and instructions provided by the same for the computer service will always be correct and complete and that all data carriers supplied to Supplier will meet the latter's specifications.
- 15.4 All equipment, software and other materials to be used by Supplier in the computer service shall remain the property of Supplier or, as the case may be, covered by the intellectual or industrial property right of the same, even if Customer pays a charge for its/their development or purchase by Supplier. Supplier may retain the products and data received from Customer and the results of the processing until Customer has paid all amounts due to Supplier.
- 15.5 Supplier may make alterations in the substance or extent of the computer service. If such alterations result in a change in the procedures applied by Customer, Supplier shall inform Customer as soon as possible and the costs of such change shall be for Customer's account.  
In such a case, Customer may give written notice of termination of the agreement, effective on the date when the alteration takes effect, unless such alteration relates to any changes in any relevant legislation or in other regulations made by competent agencies or unless Supplier bears the costs of such alteration.
- 15.6 Supplier shall use its best efforts to see to it that the software used in the performance of the computer service is adapted as far as possible to any changes in any relevant legislation or other regulations made by competent agencies. If so requested, Supplier shall, at its customary rates, advise Customer on the consequences of such adaptations resulting to the same.

### **16. Telecommunication**

- 16.1 If telecommunication facilities are used in the computer service, Customer shall be responsible for making the right choice and for making them available in time. Supplier shall not be liable for any transmission errors not imputable to the same.

- 16.2 If data are processed by using telecommunication facilities, Supplier shall assign access or identification codes to Customer. Customer shall treat such codes as confidential material and not divulge them except to authorized personnel.

**17. Protection and privacy**

- 17.1 Customer guarantees that all statutory regulations relating to the data to be processed, particularly including the regulations laid down by or under the Act on Registration of Personal Data, have been and shall be strictly observed and that all notifications prescribed have been made. Customer shall forthwith provide Supplier in writing with all information requested in connection therewith. Supplier shall see to adequate state-of-the-art protection of the registrations of personal data.
- 17.2 Customer shall indemnify Supplier against all claims of third parties that might be made against Supplier in respect of any violation of the Act on Registration of Personal Data and/or statutory storage periods.

**18. Guarantee**

- 18.1 Unless otherwise agreed, Supplier shall not be responsible for checking the correctness and completeness of the results of the computer service. Customer shall check these results on receipt. Supplier does not guarantee that the computer service will be provided free of errors. If any imperfections in the results of the processing are directly due to any products, software, data carriers, procedures or operating acts for which Supplier is specifically responsible under the Agreement, Supplier shall repeat the computer service in order to correct such imperfections to the best of its ability, provided that the data needed for repeating the computer service are still available and Customer has informed Supplier of the imperfections in writing and in detail and as soon as possible, but within one week at the most after receipt of the results. The service shall be repeated free of charge. If the imperfections are not imputable to Supplier, Customer may request Supplier to repeat the computer service, in which case Supplier shall charge the costs. If any imperfections imputable to Supplier cannot reasonably be corrected, Supplier shall credit the sums payable by Customer in respect of the computer service without having any further or other liability towards Customer.

## **PROVISION OF SERVICE(S)**

The provisions set forth in this Chapter 'Provision of Service(s)' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Supplier provides services, such as giving advice on organization and automation, feasibility studies, consultancy, courses, trainings, support, posting, designing and developing of software or data systems or rendering assistance therein, and services concerning networks. These provisions do not prejudice the provisions contained in these General Terms and Conditions of Business concerning any specific services, such as computer service, development of software and maintenance.

### **19. Performance**

- 19.1 Supplier shall use its best efforts to perform the service(s) with due care, in accordance, if required, with the arrangements and procedures laid down in writing with Customer.
- 19.2 If it was agreed that the service(s) would be provided in stages, Supplier shall be entitled to postpone the start of the services forming part of the next stage until Customer has approved in writing the results of the preceding stage.
- 19.3 Unless explicitly agreed in writing, Supplier shall not be bound, during performance of the services, to follow any instructions given responsibly and in time by Customer. Supplier will be under no obligation to follow any instructions modifying the substance or extent of the agreed service(s); however, should such instructions be followed, the work in question shall be paid for in accordance with Article 20.
- 19.4 If the agreement for the provision of service(s) was entered into with a view to performance by some particular person, Supplier shall always be entitled to replace such person by one or more other persons with the same qualifications.

### **20. Alteration and extra work**

- 20.1 If Supplier, at Customer's request or with Customer's prior consent, has done any work or produced any results that is or are not included in the substance or extent of the agreed service(s), such work or results shall be paid for in accordance with Supplier's customary rates. However, Supplier will not be under the obligation to grant such request and may want a separate written agreement to be concluded for that purpose.
- 20.2 Customer accepts that the agreed or expected time of completion of the service(s) and the reciprocal responsibilities of Customer and Supplier may be affected by such work or results as is/are referred to in Article 20.1.
- 20.3 Insofar as a fixed price was agreed for the service(s) and the parties intend to conclude a separate agreement relating to extra work or results, Supplier shall inform Customer in advance about the financial consequences of such extra work or results.

### **21. Courses and trainings**

- 21.1 Insofar as Supplier's service(s) consist(s) in providing a course or training, Supplier may always demand the payment due in respect thereof before it has started. The consequences of cancellation of participation in any course or training shall be governed by the rules customary with Supplier.
- 21.2 If judging it expedient by reason of the number of enrolments, Supplier shall be entitled to combine the course or training with one or more other courses or trainings, or to have it/them take place at a later date or later time.

## **DEVELOPMENT OF SOFTWARE**

The provisions set forth in this Chapter 'Development of Software' shall, in addition to the General Provisions of these General Terms and Conditions of Business and the special provisions of the Chapter 'Provision of Service', apply if Supplier develops software by Customer's order. To this software shall also apply the Chapter 'Use and Maintenance of Software' except insofar as it is varied by this Chapter. The rights and obligations referred to in this Chapter shall exclusively relate to computer software in such form and recorded on such material as is readable by a data-processing machine, and to the documentation belonging thereto.

### **22. Development of Software**

- 22.1 The parties shall specify in writing what software is to be developed and in what manner this will be done. Supplier shall develop the software with due care on the basis of the data to be supplied by Customer, who shall guarantee their accuracy, completeness and consistency.
- 22.2 Supplier shall be entitled, but not be bound, to verify the correctness, completeness or consistency of the data or specifications put at its disposal and, if any imperfections are found, to suspend the work agreed on until Customer has removed the imperfections concerned.
- 22.3 Without prejudice to the provisions of Article 6, Customer shall acquire the right to use the software in his business or organization. If and insofar as explicitly agreed in writing, the source code of the software and the technical documentation produced during the development of the software shall be put at Customer's disposal and Customer shall be entitled to make modifications in such software.

### **23. Delivery, installation and acceptance**

- 23.1 The software to be developed shall be delivered to Customer by Supplier in accordance with the specifications laid down in writing and installed by the latter, but only if it was agreed in writing that the installation would be carried out by the same.
- 23.2 If an acceptance test was agreed in writing, the test period shall be fourteen days from delivery or, if it was agreed in writing that the installation would be carried out by Supplier, after completion thereof. During the test period Customer will not be permitted to use the software for any purposes of production or operation.
- 23.3 Between the parties, the software shall be deemed to be accepted:
- a. if no acceptance test was agreed between the parties: on delivery or, if it was agreed in writing that the installation would be carried out by Supplier, on completion thereof, or
  - b. if an acceptance test was agreed in writing between the parties: on the first day after the test period, or
  - c. if before the end of the test period Supplier receives such test report as is referred to in Article 23.5: from the moment the errors mentioned therein have been corrected, notwithstanding the presence of any such imperfections as permit acceptance according to Article 23.6.

In deviation from the above, the software, in the event that Customer makes any use thereof for the purposes of production or operation before the time of acceptance, shall be considered fully accepted right from the start of such use.

- 23.4 If, during the performance of the agreed acceptance test, the software is found to contain errors hampering the progress of the such test, Customer shall inform Supplier in writing, in detail, in which case the test period shall be interrupted until the software has been adapted in such a way that the obstacle is removed.
- 23.5 If, during the performance of the acceptance test, the software is found to contain errors within the meaning of Article 6.7, Customer shall inform Supplier about such errors by means of a written and detailed test report not later than on the last day of the test period.

Supplier shall use its best efforts to correct the reported errors within a reasonable period and with respect

thereto be entitled to provide the software with temporary solutions, or with software bypasses or problem-avoiding restrictions.

- 23.6 Acceptance of the software shall not be withheld on any grounds other than those relating to the specifications expressly agreed between the parties, nor on the ground of any small errors, i.e. errors reasonably permitting the start of the use of the software for the purpose of production or operation, without prejudice to Supplier's obligation to correct such small errors under the terms of guarantee contained in Article 26, if applicable.
- 23.7 If the software is delivered in stages and/or parts, non-acceptance of any particular stage and/or part shall not prejudice possible acceptance of any earlier stage and/or any other part.

## **USE AND MAINTENANCE OF SOFTWARE**

The provisions set forth in this Chapter 'Use and Maintenance of Software' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply to all software provided by Supplier. The rights and obligations referred to in this Chapter shall exclusively apply to computer software in such form and recorded on such material as is readable by a data-processing machine, and to the documentation belonging thereto, always including any new versions that may be furnished by Supplier.

### **24. Right of use**

- 24.1 Without prejudice to the provisions of Article 6, Supplier grants Customer the non-exclusive right to use the software. Customer shall always strictly observe the restrictions on its use agreed between the parties. Without prejudice to the other provisions contained in these General Terms and Conditions of Business, Customer's right of use shall solely amount to the right to load and operate the software.
- 24.2 Customer shall not use the software except in his own business or organization on the one processing unit, and for a specified number or kind of users or terminals, for which the right of use was granted. Unless otherwise agreed, Customer's processing unit on which the software was first used and the number of terminals that were connected with such processing unit at the time when it was first used shall be considered to be the processing unit and number of terminals for which the right of use was granted. Should the said processing unit malfunction, the software may be used on another processing unit for the duration of the malfunction. The right of use may relate to several processing units insofar as specifically shown by the Agreement.
- 24.3 The right of use cannot be transferred. Customer will not be permitted to hire or lease out, sub-licence, alienate, grant any limited rights on or make available to any third party in any way or for any purpose whatsoever the software and any carriers on which it is recorded, not even where the third party concerned will use the software solely for Customer's benefit. Customer shall not modify the software otherwise than as part of error correction, nor use it as part of data processing for the benefit of third parties (time-sharing). The source code of the software and the technical documentation produced during the development of the software shall not be made available to Customer.
- 24.4 Immediately after termination, if any, of the right to use the software, Customer shall return to Supplier all copies of the software in his possession. If it was agreed between the parties that Customer would destroy the copies concerned at the termination of the right of use, Customer shall forthwith report such destruction to Supplier in writing.

### **25. Delivery, installation and acceptance**

- 25.1 Supplier shall deliver the software to Customer on the agreed type and format of data carrier and, if it was agreed in writing that the installation would be carried out by Supplier, install the software at Customer's.
- 25.2 If an acceptance test was agreed in writing between the parties, the provisions of Articles 23.3 to 23.7 inclusive shall correspondingly apply.
- 25.3 If no acceptance test was agreed between the parties, Customer shall accept the software in the condition it is in at the time of delivery, without prejudice to Supplier's obligations pursuant to the guarantee of Article 26.

### **26. Guarantee**

- 26.1 During a period of three months after delivery, or, if an acceptance test was agreed between the parties, three months after acceptance, Supplier shall to the best of its ability correct any errors in the software within the meaning of Article 6.7 if reported to Supplier in writing within such period,

specified in detail. Supplier does not guarantee that the software will function without interruption or errors or that all errors will be rectified.

Correction shall be performed free of charge unless the software was developed by Customer's order otherwise than at a fixed price, in which case Supplier shall charge its usual rates and costs of correction. Supplier may charge its usual rates and costs of correction if there can be said to be operating errors of or incompetent use by Client or other causes for which Supplier cannot be held liable, or if the errors could have been found during the performance of the agreed acceptance test.

Restoration or recovery of any data mutilated or lost shall not be covered by the guarantee. The obligation of guarantee shall terminate if Customer makes or causes to be made any modifications in the software without written permission from Supplier.

- 26.2 Errors shall be corrected at a location to be determined by Supplier. Supplier shall be entitled to provide the software with temporary solutions, or with software bypasses or problem-avoiding restrictions.
- 26.3 After the end of the period of guarantee referred to in Article 26.1, Supplier shall not be bound to correct any errors unless a maintenance agreement covering such correction was concluded between the parties.

## **27. Maintenance**

- 27.1 If a maintenance agreement was concluded for the software or if the user fee of the software includes maintenance, Customer shall in accordance with Supplier's usual procedures report in detail to the same any errors found in the software.  
After receipt of the report, Supplier shall to the best of its ability attempt to correct any errors within the meaning of Article 6.7 and/or make corrections in any later updates of the software. Depending on urgency, the results shall be made available to Customer in a manner and at a time to be determined by Supplier. Supplier shall be entitled to provide the software with temporary solutions, or with software bypasses or problem-avoiding restrictions.
- 27.2 Supplier does not guarantee that the software will work without interruption or errors or that all errors will be remedied.
- 27.3 Supplier may charge its usual rates and its costs of correction in case of operating errors or incompetent use or of other causes for which Supplier cannot be held liable, or if the software has been modified by parties other than Supplier. Restoration or recovery of any data mutilated or lost shall not be included in the maintenance.
- 27.4 If a maintenance agreement was concluded, Supplier shall provide Customer with corrected versions of the software if and when such versions become available.  
Three months after a corrected version has been supplied, Supplier shall cease to be under the obligation to correct any errors in the old version and to provide support with regard to the old version concerned. Supplier may require Customer to enter into a new agreement with the same for providing a version featuring new possibilities and functions, and to pay a new consideration for such provision.
- 27.5 If Customer has not entered into a maintenance agreement with Supplier simultaneously with entering into the agreement for provision of the software, Supplier cannot be obliged by Customer yet to enter into a maintenance agreement at any later time.

## **28. Software of Supplier's supplier**

If and insofar as Supplier provides Customer with software of any third parties, the terms and conditions of business of such third parties shall apply with respect thereto and supersede the provisions hereof, provided that Supplier has informed Customer in writing. Customer shall accept the said terms and conditions of business of third parties. Such terms and conditions shall be open to inspection by Customer at Supplier's and Supplier shall send them to Customer on request.

If and insofar as for any reason whatsoever the said terms and conditions of business of third parties shall be deemed not to apply to the relations between Supplier and Customer, or declared inapplicable, the provisions hereof shall apply.

## **SALE OF EQUIPMENT**

The provisions set forth in this Chapter 'Sale of Equipment' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Supplier sells equipment to Customer.

### **29. Delivery**

- 29.1 The equipment sold to Customer by Supplier shall be delivered to Customer ex Supplier's warehouse. If agreed in writing, the equipment sold to Customer shall be delivered by Supplier at a place in The Netherlands to be designated by Customer.
- 29.2 Supplier shall inform Customer, in due time before delivery, of the time when the same intends to deliver the equipment.
- 29.3 Delivery of the equipment shall be made at the agreed place of delivery in The Netherlands at the agreed rates.
- 29.4 Supplier shall pack the equipment before delivery in accordance with the customary standards applied by the same. Should Customer require a special way of packing, the extra costs incidental thereto shall be chargeable to the same.
- 29.5 Any such packing/containers of the products delivered by Supplier as have been left on Customer's premises shall be treated by the same in accordance with the regulations of the authorities in force with respect thereto. Customer shall indemnify Supplier against any claims of third parties in respect of any non-observance of such regulations.

### **30. Installation**

- 30.1 If agreed in writing, Supplier shall install or procure the installation of the equipment.
- 30.2 In all cases Customer shall before delivery of the equipment make available a convenient installation site with all necessary facilities such as wiring and telecommunication facilities.  
If desired, Supplier shall make an offer to Customer concerning the installation of such facilities.
- 30.3 Customer shall give Supplier access to the installation site during Supplier's normal business hours, to do the necessary work.

### **31. Return shipments**

- 31.1 Supplier will be under no obligation to accept any return shipments from Customer unless prior written permission has been given by the same.
- 31.2 In no event shall receipt of any return shipment imply acceptance by Supplier of the ground for the return as stated by Customer. Returns shall be at Customer's risk until credited by Supplier.
- 31.3 Supplier reserves the right, when doing any crediting that may arise from return shipments, to deduct 15% of the price of the products returned, with a minimum of DFL 50,— (fifty guilders).

### **32. Delivery, installation and acceptance**

Supplier shall place the equipment at Customer's disposal by delivery in accordance with Article 29 or, if it was agreed in writing that the installation would be carried out by Supplier, by installation of the equipment at Customer's.

Between the parties the equipment shall be considered accepted on the date of delivery or, if it was agreed in writing that the installation would be carried by Supplier, on the date of installation.

### **33 Guarantee**

33.1 For a period of three months after placing the equipment at Customer's disposal, Supplier shall to the best of its ability remedy any defects in material and manufacture in the equipment, and in any parts supplied by Supplier under the guarantee or as part of the maintenance, provided that such defects have been reported to Supplier within that period, specified in detail.

All parts replaced shall become the property of Supplier. The obligation of guarantee shall cease to exist if such defects have been fully or partially caused by any incorrect, careless or incompetent use, or by external causes, such as, for example, fire or water damage, or if Customer, without permission from Supplier, makes or causes to be made any modifications to the equipment or to the parts supplied by Supplier under the guarantee or as part of the maintenance.

33.2 Any work and costs of repair not covered by this guarantee shall be charged by Supplier in accordance with its usual rates.

### **34. Equipment of Supplier's supplier**

If and insofar as Supplier supplies Customer with equipment of any third parties, the terms and conditions of business of such third parties shall apply with respect thereto and supersede the provisions hereof, provided that Supplier has informed Customer in writing. Customer shall accept the said terms and conditions of business of third parties. Such terms and conditions shall be open to inspection by Customer at Supplier's and Supplier shall send them to Customer on request.

If and insofar as for any reason whatsoever the said terms and conditions of business of third parties shall be deemed not to apply to the relations between Supplier and Customer, or declared inapplicable, the provisions hereof shall apply.

## **MAINTENANCE OF EQUIPMENT**

The provisions set forth in this Chapter 'Maintenance of Equipment' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Supplier and Customer have concluded an equipment maintenance agreement.

### **35. Duration of the obligation of maintenance**

- 35.1 The equipment maintenance agreement shall be entered into for the duration agreed between the parties, failing which a period of one year shall apply.
- 35.2 The duration of the agreement shall every time be tacitly extended by the original period unless either Customer or Supplier terminates the agreement by giving three months' notice in writing before the end of the period concerned.
- 35.3 The parties shall never be liable in any damages by reason of termination.

### **36. Maintenance**

- 36.1 By 'maintenance' is understood:
  - a. preventive maintenance: inspection, adjustment and cleaning of the equipment considered necessary by Supplier to prevent malfunctions;
  - b. corrective maintenance: remedying malfunctions in the equipment which have developed during normal use of the same as a consequence of natural wear and through inherent defects therein, and making the necessary repairs and replacing any parts worn or damaged;
  - c. remote preventive maintenance: such checking and adjustment by means of a connection with the equipment made through telecommunication facilities as is considered necessary by Supplier to prevent malfunctioning;
  - d. remote corrective maintenance: diagnosing and/or remedying any reported malfunctions by means of a connection with the equipment made through telecommunication facilities.

For the purposes of this Chapter a 'malfunction' is any failure to meet, or to meet without interruption, the specifications of the equipment stated by Supplier in writing. There shall be no question of any malfunction unless it can be proved and reproduced.

- 36.2 Maintenance shall be carried out during Supplier's regular office hours on Monday to Friday inclusive, excepting legal holidays.
- 36.3 If maintenance has started in the office hours referred to in Article 36.2 and Supplier's maintenance personnel considers it necessary to continue the work outside such hours, Customer shall be charged the rates in force. In general, the work shall not be continued for more than one hour outside the said office hours.

### **37. Obligations of Supplier**

- 37.1 For the duration of the maintenance agreement Supplier undertakes to put right, to the best of its ability, any malfunctions reported to Supplier by Customer in accordance with Article 38.2.
- 37.2 Supplier reserves the right to suspend its obligations of maintenance among other things for the time during which any circumstances occur at the place where the equipment is installed which in Supplier's opinion entail risks with respect to the safety or health of any employees of Supplier.
- 37.3 Supplier shall see to it that its expertise concerning the software is kept up-to-date. Supplier shall register and file in its records all relevant data concerning the work done on the equipment. Supplier shall on demand grant Customer inspection of the data thus recorded.

37.4 If judged necessary by Supplier, parts shall be replaced to remedy or prevent malfunctions. The parts replaced shall become or, as the case may be, remain the property of Supplier.

**38. Terms of maintenance and use**

38.1 Customer may cause the equipment to be moved after having obtained prior written permission from Supplier.

38.2 Immediately after a malfunction has occurred in the equipment, Customer shall inform Supplier by means of a detailed specification of such malfunction, drawn up by an employee of Customer who is knowledgeable on the matter. Customer will be under the obligation to provide Supplier's personnel or third parties designated by Supplier access to the site of the equipment, and to give all other cooperation required.

38.3 At Supplier's request, an employee of Customer who is knowledgeable on the matter shall be present at maintenance work, for the purpose of consultation. Customer shall be entitled to be present at any and all work to be done for his benefit.

38.4 Customer shall place the equipment at Supplier's disposal for the above-mentioned work.

38.5 Customer shall be entitled to connect any equipment not supplied by Supplier. The costs of investigating and remedying any malfunctions resulting from connecting any equipment not supplied by Supplier shall be chargeable to Customer.

38.6 If in Supplier's opinion maintenance of the equipment necessitates testing the connections of the equipment with other systems or equipment, Customer shall put at Supplier's disposal such other systems or equipment and the test procedures and data carriers concerned.

38.7 Any such testing material needed for maintenance work as is not part of Supplier's normal equipment shall be provided by Customer.

38.8 Customer shall provide and be responsible for the technical, spatial and telecommunication facilities required to enable the equipment to function. Maintenance expressly does not extend to the before-mentioned facilities and connections.

**39. Exclusions**

39.1 Any work done in investigating or remedying malfunctions resulting from incompetent use of the equipment or of any external causes, such as faults in communication lines or in the power supply, or any connections with and/or use of any equipment, software or materials not covered by the Agreement, shall not be included in Supplier's obligations under the Agreement and shall be separately charged to Customer at the rates in force.

39.2 The maintenance price shall not include:

- replacement of consumable items such as inter alia magnetic storage media and printer ribbons;
- cost of replacement of parts, and maintenance services for the remedy of malfunctions wholly or partially caused by attempts at remedy made by others than Supplier or its assistants;
- work for partial or total overhaul of the equipment;
- modifications of equipment;
- moving, removal or reinstallation of equipment, or any work resulting therefrom.

**40. Rates and payment**

40.1 Unless laid down in more detail in the maintenance agreement, Supplier's customary basic maintenance rates shall apply.

- 40.2 The maintenance charges, plus such sales tax and other levies imposed by the authorities as are due, shall be paid in advance for the duration of the maintenance agreement in accordance with Article 35.1, but not later than on the commencing date of the agreement or of the renewal period concerned.  
The above shall not apply if the parties have agreed otherwise in writing with regard to the period to which the advance payment relates.
- 40.3 The provisions of Article 2 shall be in full force and effect.
- 40.4 In the event of late payment Supplier shall be entitled to suspend the maintenance without being liable in any damages to Customer. Insofar as Supplier nevertheless does any maintenance work in this period at Customer's request, Supplier may make a separate charge for this in accordance with its customary rates.

#### **41. Scope**

Maintenance agreements shall exclusively apply in The Netherlands and only as far as equipment installed in The Netherlands is concerned.

#### **For more information:**

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