

Terms and Conditions Thesio Software Factory B.V.

Terms of sale and delivery Thesio Software & E-Commerce

April 2020

Section 1. General provisions

Article 1. Applicability Terms and Conditions

- 1.1 These Terms and Conditions (hereinafter also to be referred to as: these general terms) apply to all offers and agreements for which supplier delivers goods and/or services, of whatever nature and under whatever name, to client.
- 1.2 These general terms can only be departed from or be supplemented if agreed by parties in writing.
- 1.3 The applicability of any of the client's purchase or other terms is explicitly excluded.
- 1.4 If any provision of these terms should be null and void or is annulled, the other provisions of these general terms remain fully applicable and effective. In that case, supplier and client consult as to arrange for new provisions which have the same purport, as much as possible, and that will replace the provisions that are null and void or that have been annulled.

Article 2. Offers

- 2.1 All off supplier's offers and other forms of communication are without obligation, unless supplier should indicate otherwise in writing. Client guarantees the correctness and completeness of the information provided, with the exception of obvious typing errors, by or on behalf of client to supplier and on which information supplier has based its offer.

Article 3. Price and payment

- 3.1 All prices are exclusive of turnover tax (VAT) and other product or service-specific levies imposed by the authorities. All prices quoted by supplier are in euros and client must pay in euros.
- 3.2 Client cannot derive any rights or expectations from any cost estimate or budget issued by supplier, unless parties have agreed otherwise in writing. A budget communicated by client is only considered a (fixed) price agreed on by parties if this has been explicitly agreed in writing.
- 3.3 If it should be apparent from the agreement that client consists of several natural persons and/or legal persons, each of these persons is jointly and severally liable to supplier for the performance of the agreement.
- 3.4 Where the activities performed by supplier and the sums due by client for these activities are concerned, the information in supplier's administration provides full evidence, without prejudice to client's right to provide evidence to the contrary.
- 3.5 In the event client should be under a periodic payment obligation, supplier may adjust the applicable prices and rates, in writing and in accordance with the index or any other criterion included in the agreement, within the period specified in the agreement. If the agreement does not explicitly provide for the possibility to adjust the prices or rates, supplier may adjust the applicable prices and rates in writing with

due observance of a period of at least three months. If, in the latter case, client does not want to accept the price adjustment, client is entitled to terminate the agreement by serving notice of termination in writing, within thirty days following the notification of the adjustment and effective from the date on which the new prices and/or rates would take effect.

- 3.6 In their agreement parties lay down the date or dates on which supplier invoices the fee for the activities agreed on with client. Any sums due are paid by client in accordance with the payment terms agreed on or as stated in the invoice. Client is neither entitled to suspend any payments nor to set off any of the sums due.
- 3.7 If client should fail to pay the sums due or does not pay these on time, the statutory interest for commercial agreements is payable by client on any outstanding sum, without a reminder or notice of default being required. If client should fail to pay the sum due even after a reminder or notice of default, supplier can pass on the claim for collection and client is obliged to pay, within reason and in addition to the total sum due at that time, all judicial and extrajudicial costs, including all costs charged by external experts – all of which is without prejudice to any of supplier's statutory and contractual rights.

Article 4. Duration of the agreement

- 4.1 If and insofar as the agreement between parties is a continuing performance contract, the agreement is entered into for the term agreed on by parties. A term of one year applies if a specific term has not been agreed on.
- 4.2 The duration of the agreement for a definite period of time is tacitly extended, each time by the period of time originally agreed on with a maximum of one year, unless client or supplier should terminate the agreement by serving written notice of termination, with due observance of a notice period of three months prior to the end of the relevant term.

Article 5. Confidentiality

- 5.1 Client and supplier ensure that secrecy is observed with respect to all information received from the other party of which information the receiving party knows or should reasonably know it is confidential. This prohibition does not apply if and insofar as the information concerned must be provided to a third party in compliance with a judicial decision, a statutory requirement, a statutory order by a public authority or for the proper performance of the agreement. The party that receives the confidential information may only use it for the purpose for which it has been provided. Information is in any case deemed confidential if it has been designated as such by either party.
- 5.2 Client acknowledges that software made available by supplier is always confidential in nature and that this software contains trade secrets of supplier and its suppliers or of the producer of the software.



During the term of the agreement as well as one year after its termination, each of the parties will only hire (direct or indirectly) the employees who are or have been involved in the execution of the agreement after written permission from the other party. Conditions may be attached to this permission including the conditions that client pays a reasonable fee to the supplier.

Article 6. Privacy and data processing

- 6.1 If this should be relevant, in supplier's opinion, for the performance of the agreement, client informs suppliers in writing, at supplier's request, about the way in which client performs its obligations under the applicable rules and regulations pertaining to the protection of personal data.
- 6.2 Client indemnifies supplier against any claims by persons whose personal data are or have been processed and for which processing client is responsible pursuant to the law, unless client proves that the facts on which a claim is based are attributable to supplier.
- 6.3 Client is fully responsible for the data that it processes when making use of a service provided by supplier. Client guarantees vis-à-vis supplier that the content, use and/or processing of the data are not unlawful and do not infringe any third party's right. Client indemnifies supplier against any claims by a third party instituted, for whatever reason, in connection with these data or the performance of the agreement.

Article 7. Security

- 7.1 If supplier is obliged to provide some form of information security under the agreement, this protection meets the specifications on security that parties have agreed on in writing. Supplier does not guarantee that the information security provided is effective under all circumstances. If the agreement does not include an explicitly defined security method, the security features provided meet a level that is not unreasonable in view of the state of the art, the implementation costs, the nature, scope and context as known to supplier of the information to be secured, the purposes and the standard use of supplier's products and services and the probability and seriousness of foreseeable risks.
- 7.2 The access or identification codes and certificates provided by or on behalf of supplier to client are confidential and must be treated as such by client, and they may only be made known to authorised staff in client's own organisation or company. Supplier is entitled to change the access or identification codes and certificates. Client is responsible for managing these authorisations and for providing and duly revoking access and identification codes.
- 7.3 Client adequately secures its systems and infrastructure and keeps these adequately secured.

Article 8. Retention of title, reservation of rights and suspension

- 8.1 All goods delivered to client remain the property of supplier until all sums due by client to supplier under the agreement entered into by parties have been paid to supplier in full. A client that acts as a reseller may sell and supply all goods that are subject to the supplier's retention of title insofar as this is customary in the context of client's normal course of business.
- 8.2 Where applicable, rights are granted or transferred to client subject to the condition that client has paid all sums due under the agreement.
- 8.3 Supplier may retain all information, documents, software and/or data files received or created in the context of the agreement, despite an existing obligation to hand these over or transfer them, until client has paid all sums due to supplier.

Article 9. Transfer of risk

- 9.1 The risk of loss, theft, misappropriation or damage of goods, information (including user names, codes and passwords), documents, software or data files that are created for, delivered to or used by client in the context of the performance of the agreement pass to client at the moment these are placed under the actual control of client or an auxiliary person of client.

Article 10. Intellectual property

- 10.1 All intellectual property rights to the software, websites, data files, databases, hardware, training, testing and examination materials, as well as other materials such as analyses, designs, documentation, reports, offers, including preparatory materials for these materials, developed or made available to client under the agreement remain exclusively vested in supplier, its licensors or its suppliers. Client is solely granted the rights of use laid down in these general terms, in the agreement entered into by parties in writing and in the applicable mandatory legal provisions. A right of use granted to client is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.
- 10.2 If supplier is prepared to undertake to transfer an intellectual property right, such undertaking may only be explicitly effected in writing. If parties agree in writing that an intellectual property right with respect to software, websites, data files, hardware, know-how, or other works or materials specifically developed for client is transferred to client, this does not affect supplier's rights or options to use and/or exploit, either for itself or for third parties and without any restriction, the parts, designs, algorithms, documentation, works, protocols, standards and the like on which the developments referred to are based for other purposes. Supplier is also entitled to use and/or exploit, either for itself or for third parties and

- without any restrictions, the general principles, ideas and programming languages that have been used as a basis to create or develop any work for other purposes. The transfer of an intellectual property right does not affect supplier's right to continue developing, either for itself or for third parties, software – or elements of software – that are similar to or derived from software – or elements of software – that have been or are being developed for client.
- 10.3 Client is not permitted to remove or change any indication with respect to the confidential nature of the software, websites, data files, hardware or materials or with respect to copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, hardware or materials, or have any such indication removed or changed.
- 10.4 Supplier indemnifies client against any claim of a third party based on the allegation that software, websites, data files, hardware or other materials developed by supplier itself infringe an intellectual property right of that third party, provided always that client promptly informs supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements to be made in this context, entirely up to supplier. To this end, client provides supplier with the powers of attorney and information required and renders the assistance supplier requires to defend itself against such claims. This obligation to indemnity does not apply if the alleged infringement concerns (i) works or materials made available by client to supplier for use, modification, processing or maintenance or (ii) modifications client has implemented or modifications client has had implemented in the software, websites, data files, hardware or other works and materials without supplier's written permission. If it is irrevocably established in court that software, websites, data files, hardware or other works and materials developed by supplier itself should infringe any intellectual property right belonging to a third party, or if, in supplier's opinion, there is a good chance that such an infringement will occur, supplier ensures, if possible, that client can continue to use, or use functional equivalents of, the software, websites, data files, hardware or other works and materials delivered. Any other or further obligation that supplier might have to indemnify client against any infringement of a third party's intellectual property right is excluded.
- 10.5 Client guarantees that no rights of third parties preclude making hardware, software, material intended for websites, data files and/or other materials, designs and/or other works available to supplier for the purpose of use, maintenance, processing, installation or integration; this guarantee also pertains to client's having the relevant licences. Client indemnifies supplier against any claim of a third party based on the allegation that making any of this available and/or the use, maintenance, processing, installation or integration infringes a right of that third party.
- 10.6 Supplier is never obliged to perform data conversion unless this has been explicitly agreed on with client in writing.
- 10.7 Supplier is entitled to use client's figurative mark, logo or name in its external communication.
- Article 11. Obligation to cooperate**
- 11.1 Parties acknowledge that the success of activities to be performed in the field of information and communications technology depends on proper and timely cooperation of parties. Client undertakes always to fully cooperate, within reason, and in time.
- 11.2 Client bears the risk of selecting the goods and/or services to be provided by supplier. Client always exercises the utmost care to guarantee that the requirements set for supplier's performance are correct and complete. Measurements and data provided in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets and the like are not binding on supplier unless explicitly stated otherwise by supplier.
- 11.3 If client deploys employees and/or auxiliary persons in the performance of the agreement, these employees and auxiliary persons must have the knowledge and experience required. If supplier's employees perform activities at client's premises, client ensures the facilities required are available, such as a workspace with computer and network facilities, on time and free of charge. Supplier is not liable for damage suffered or costs incurred by transmission errors, malfunctions or the non-availability of these facilities unless client proves that this damage or these costs are caused by intent or deliberate recklessness on the part of supplier's management.
- 11.4 The workspace and facilities must meet all statutory requirements. Client indemnifies supplier against claims of third parties, including supplier's employees, who, when performing the agreement, suffer damage caused by client's acts or omissions or by unsafe situations in client's organisation or company. Before the activities to be performed start, client informs the employees deployed by supplier about the company rules, information rules and security rules that apply in client's organisation or company.
- 11.5 If client provides software, hardware or other to supplier, client is responsible for obtaining all necessary licenses or approvals with regard to all means that supplier may need.
- 11.6 Client is responsible for the management, including checks of the settings, and use of the products delivered and/or services provided by supplier, and the way in which the results of the products and services are implemented. Client is also responsible for appropriately instructing users and for the use of the products and services that is made by users.



- 11.7 Client itself is responsible for the hardware, infrastructure and auxiliary software and ensures that the (auxiliary) software for its own hardware is installed, organised, parameterised and tuned and, where required, that the hardware, other (auxiliary) software and the operating environment used are modified and kept updated, and that the interoperability wanted by client is effected.

Article 12. Obligation to provide information

- 12.1 In order to enable supplier to properly execute the agreement, client will provide all data and information required by supplier in time.
- 12.2 Client vouches for the correctness and completeness of the data, information, designs and specifications provided by on or behalf of client to supplier. If the data, information, designs or specifications provided by client should contain inaccuracies apparent to supplier, supplier requests client to provide further information.
- 12.3 For reasons of continuity, client designates a contact person or contact persons who act in that capacity for the time supplier performs its services. Client's contact persons have the relevant experience required, specific knowledge of the subject matter and a proper understanding of the objectives that client wishes to achieve.
- 12.4 Supplier is only obliged to periodically provide client with information about the execution of the agreement by means of the contact person designated by client.

Article 13. Project and steering groups

- 13.1 If both parties are participating in a project or steering group in which one or more of their employees have been appointed, the provision of information takes place in the manner agreed on for that project or steering group.
- 13.2 Decisions made in a project or steering group in which both parties are participating are only binding on supplier if the decisions are made in accordance with that which parties have agreed on in writing in this regard or, if no written arrangements have been made in this context, if supplier has accepted the relevant decision in writing. Supplier is never obliged to accept or implement a decision if, in its opinion, the decision cannot be reconciled with the content and/or proper performance of the agreement.
- 13.3 Client ensures that the persons that it has assigned to participate in a project or steering group are authorised to make decisions that are binding on client.

Article 14. Terms and deadlines

- 14.1 Supplier makes reasonable efforts, within reason, to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are deadlines and/or strict dates, that it has specified or that have been agreed on by parties. The interim dates and delivery dates specified by supplier or agreed on by parties

always apply as target dates, do not bind supplier and are always indicative.

- 14.2 If a term or period of time is likely to be exceeded, supplier and client consult as to discuss the consequences of the term being exceeded in relation to further planning.
- 14.3 In all cases – therefore, also if parties have agreed on deadlines and strict delivery periods or dates and delivery dates – supplier is only in default because of a term or period of time being exceeded after client has served supplier with a written notice of default and has set a reasonable period of time for supplier to remedy the failure to meet its obligations and this reasonable term has passed. The notice of default must describe supplier's breach to meet its obligations as comprehensively and in as much detail as possible so that supplier has the opportunity to respond adequately.
- 14.4 If it has been agreed that the activities to be performed under the agreement must be performed in phases, supplier is entitled to postpone the start of the activities for a next phase until client has approved the results of the preceding phase in writing.
- 14.5 Supplier is not bound by a date or delivery date or term or delivery period, whether or not these are deadlines and/or strict dates, if parties have agreed on an adjustment in the content or scope of the agreement (additional work, a change of specifications, etc.) or a change in approach with respect to the performance of the agreement, or if client fails to fulfil its obligations under the agreement or fails to do so on time or in full. If additional work should be required during the performance of the agreement, this never constitutes a reason for client to give notice of termination of the agreement or to terminate the agreement for breach.

Article 15. Termination of the agreement for breach or by serving notice of termination

- 15.1 Either party is exclusively entitled to terminate the agreement for breach following an imputable failure of the other party to meet its obligations under the agreement if the other party, in all cases after a written notice of default has been served that is as detailed as possible and in which the other party is granted a reasonable period of time to remedy the breach, should still imputably fail to meet any of its essential obligations under the agreement. Client's payment obligations and all obligations of client or a third party contracted by client to cooperate and/or to provide information apply in all cases as essential obligations under the agreement.
- 15.2 If, at the time of the termination for breach, client has already received goods or services in the performance of the agreement, this performance and the relevant payment obligations cannot be undone unless client proves that supplier is in default with respect to the essential part of the performance due. With due regard to the provisions of the preceding



- sentence, sums invoiced by supplier prior to the termination for breach in connection with what has already been properly performed or delivered in the performance of the agreement remain due in full and become immediately payable at the time of the termination for breach.
- 15.3 An agreement which, due to its nature and content, is not discharged by performance and which has been entered into for an indefinite period of time may be terminated, following consultation between parties, by either party by serving written notice of termination to the other party. Reasons for the termination must be stated. If a notice period has not been agreed on between parties, a reasonable period must be observed when notice of termination is served. Supplier is never obliged to pay any compensation because of this termination.
- 15.4 Client is not entitled to terminate an agreement for services that has been entered into for a definite period of time before the end of the term; client is not entitled either to terminate an agreement that ends by completion before it has been completed.
- 15.5 Either party may terminate the agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a suspension of payments, whether or not provisional, a petition for bankruptcy is filed against the other party or the company of the other party is liquidated or dissolved other than for restructuring purposes or for a merger of companies. Supplier may also terminate the agreement, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of client's company. Supplier is never obliged to repay any sum of money already received or pay any sum of money in compensation because of termination as referred to in this paragraph. If client is irrevocably bankrupted, its right to use the software, websites and the like made available to client ends, as does its right to access and/or use supplier's services, without supplier being required to cancel these rights.
- Article 16. Supplier's liability**
- 16.1 Supplier's total liability for an imputable failure in the performance of the agreement or arising from any other legal basis whatsoever, explicitly including each and every failure to meet a guarantee or indemnification obligation agreed on with client, is limited to the compensation of damages as described in more detail in this article.
Direct damage is limited to a maximum of the price stipulated for the agreement in question (excluding VAT). If the agreement is mainly a continuing performance contract with a duration of more than one year, the price stipulated for the agreement is set at the total sum of the payments (excluding VAT) stipulated for one year. In no event does supplier's total liability for any direct damage, on any legal basis whatsoever, exceed EUR 500,000 (five hundred thousand euros).
- 16.2 Supplier's total liability for any damage arising from death or bodily injury or arising from material damage to goods is limited to the amount of EUR 1,250,000 (one million two hundred fifty thousand euros).
- 16.3 Liability for indirect damage, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of client's clients, loss arising from the use of goods, materials or software of third parties prescribed by client to supplier and any damage and loss arising from contracting suppliers client has recommended to supplier is excluded. Liability for corruption, destruction or loss of data or documents is also excluded.
- 16.4 The exclusions and limitations of supplier's liability described articles 16.1 up to and including 16.3 are without any prejudice whatsoever to the other exclusions and limitations of supplier's liability described in these general terms.
- 16.5 The exclusions and limitations referred to in articles 16.1 up to and including 16.4 cease to apply if and insofar as the damage is caused by intent or deliberate recklessness on the part of supplier's management.
- 16.6 Unless performance by supplier is permanently impossible, supplier is exclusively liable for an imputable failure in the performance of an agreement if client promptly serves supplier with a written notice of default, granting supplier a reasonable period of time to remedy the breach, and supplier should still imputably fail to meet its obligations after that reasonable term has passed. The notice of default must describe supplier's failure as comprehensively and in as much detail as possible so that supplier has the opportunity to respond adequately.
- 16.7 The right to compensation of damages exclusively arises if client reports the damage to supplier in writing as soon as possible after the damage has occurred. Any claim for compensation of damages filed against supplier lapses by the mere expiry of a period of twenty-four months following the inception of the claim unless client has instituted a legal action for damages prior to the expiry of this term.
- 16.8 Client indemnifies supplier against any and all claims of third parties arising from product liability because of a defect in a product or system that client delivered to a third party and that consisted in part of hardware, software or other materials delivered by supplier, unless and insofar as client is able to prove that the loss was caused by the hardware, software or other materials referred to.
- 16.9 The provisions of this article and all other exclusions and limitations of liability referred to in these general terms also apply in favour of all natural persons and legal persons that supplier and supplier's suppliers contracts for the performance of the agreement.

Article 17. Force Majeure

- 17.1 Neither party is obliged to meet any obligation, including any statutory and/or agreed guarantee obligation, if it is prevented from doing so by circumstances beyond its control. Circumstances beyond supplier's control include, among other things:
- (i) circumstances beyond the control of supplier's suppliers,
 - (ii) the failure by supplier to properly meet obligations that were contracted by supplier on client's instructions,
 - (iii) defects in goods, hardware, software or materials of third parties that supplier uses on client's instructions,
 - (iv) measures by public authorities,
 - (v) power failures,
 - (vi) failures of the Internet, data network or telecommunication facilities,
 - (vii) (cyber) crime, (cyber) vandalism, war or terrorism and
 - (viii) general transport problems.
- 17.2 If a force majeure situation lasts for more than sixty days, either party has the right to terminate the agreement, in writing, for breach. In such event, all that has already been performed under the agreement must be paid for on a proportional basis, without anything else being due by either party to the other party.

Article 18. Adjustments and extra work

- 18.1 If, at client's request or after client's prior consent, supplier has performed activities or has delivered goods or services that are outside the scope of the agreed activities and/or delivery of goods or services, client is charged for these activities or for these goods or services on the basis of the agreed rates or, if no rates have been agreed on by parties, on the basis of supplier's applicable rates. Supplier is not obliged to honour such request and may require that, to that purpose, a separate agreement should be entered into in writing.
- 18.2 Insofar as a fixed price has been agreed on for the agreement, supplier informs client, at client's request and in writing, about the financial consequences of the extra work or additional delivery of goods or services referred to in this article.

Article 19. Transfer of rights and obligations

- 19.1 Client is not entitled to sell, transfer or pledge its rights and obligations under an agreement to a third party.
- 19.2 Supplier is entitled to sell, transfer or pledge any claims it has to payment of any sums due to a third party.

Article 20. Applicable law and disputes

- 20.1 The agreements between supplier and client are governed by the laws of the Netherlands. Applicability of the Vienna Convention 1980 (The United Nations Convention on Contracts for the International Sale of Goods (CISG)) is excluded.
- 20.2 Any disputes that may arise from an agreement

between parties and/or from any further agreements deriving from this agreement are resolved by arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes this without prejudice to either party's right to request preliminary relief in preliminary relief proceedings or arbitral preliminary relief proceedings and without prejudice to either party's right to attach property before judgment. Arbitration proceedings take place in Den Haag, or in any other place designated in the Arbitration Regulations.

- 22.3 If a dispute that arises from an agreement entered into by parties or from any further agreements deriving from this agreement is within the jurisdiction of the cantonal section of the Netherlands District Court, either party is entitled, notwithstanding the provisions of article 20.2, to bring the case as a cantonal court case before the competent district court in the Netherlands. Parties are only entitled to initiate these proceedings if arbitration proceedings concerning the dispute have not yet been instituted under the provisions of article 20.2. If, with due observance of the provisions of this article 20.3, either party has brought the case before the competent district court to be heard and decided, the cantonal judge of that district court is competent to hear the case and to decide on it.

- 22.4 Regarding a dispute that arises from an agreement entered into by parties or from any further agreements deriving from this agreement, either party is always entitled to institute ICT mediation proceedings in accordance with the ICT Mediation Regulations of the Foundation for the Settlement of Automation Disputes. The other party is then obliged to actively participate in the ICT mediation proceedings that have been instituted. This legally enforceable obligation in any case includes having to attend at least one joint meeting of mediators and parties, in order to give this extrajudicial form of dispute resolution a chance of success. Either party is free to terminate the ICT mediation proceedings at any time after this first joint meeting of mediators and parties. The provisions of this paragraph do not prevent either party, if this party deems doing so necessary, from requesting preliminary relief in preliminary relief proceedings or in arbitral preliminary relief proceedings nor do they prevent either party from attaching property before judgment.

Section 2. Services

The provisions in this section 'Services' apply, apart from the General provisions of these general terms, if supplier provides services (and whether or not elaborated in one of the other sections of these general terms) to client.

Article 21. Performance

- 21.1 Supplier will make every effort to perform its



services with care, in accordance with the written agreements and procedures of the client.

All services of supplier are executed based on an effort commitment, unless and insofar supplier has explicitly promised a result, in a written agreement and the result in question is also described in the agreement with sufficient determination.

- 21.2 Supplier is not responsible for damage or costs resulting from the use or misuse of access of identification codes or certificates, unless the misuse is the direct consequence of an intentional or deliberate reckless act or omission by supplier's management.
- 21.3 If the agreement has been contracted considering the performance by one specific person, supplier is always entitled to replace this person by one or more persons with the same and/or similar qualifications.
- 21.4 Supplier is not obliged to follow instructions for client in the performance of its service. In particular not if these instructions change the content or scope of the agreed services. However, if such instructions are followed, the relevant work will be reimbursed in accordance with the supplier's usual rates.

Article 22. Service Level Agreement

- 22.1 Possible arrangements about a service level (Service Level Agreement) are exclusively agreed on in writing. Client promptly informs supplier about any circumstances that may affect the service level or its availability.
- 22.2 If any arrangements have been made about a service level, the availability of software, systems and related services is always measured in such a way that unavailability due to preventive, corrective or adaptive maintenance service or other forms of service that supplier has notified client of in advance and circumstances beyond supplier's control are not taken into account. Subject to proof to the contrary offered by client, the availability measured by supplier is considered conclusive.

Article 23. Backups

- 23.1 If the services provided to client under the agreement include making backups of client's data, supplier makes a complete backup of client's data in its possession, with due observance of the periods of time agreed on in writing, or once a week if such terms have not been agreed on. Supplier keeps the backup for the duration of the agreed term or for the duration of supplier's usual term if no further arrangements have been made in this regard. Supplier keeps the backup with due care and diligence.
- 23.2 Client itself remains responsible for complying with all the applicable statutory obligations with respect to keeping records and data retention.

Section 3. Software-as-a-Service (SaaS)

The provisions in this section 'Software-as-a-service (SaaS)' apply, apart from the General provisions of these general terms, if supplier performs services under the name or in the field of Software-as-a-Service (also referred to as: SaaS). For the application of these general terms, SaaS is understood to mean a service by which supplier makes functionality available to and keeps functionality available for client remotely, through the Internet or another data network, without providing client with a physical carrier with or download of the relevant underlying software.

Article 24. SaaS Implementation

- 24.1 Supplier provides the SaaS on client's instructions. Client may solely use the SaaS for its own organisation or company and only insofar as required for the use intended by supplier. Client may not allow third parties to make use of the SaaS.
- 24.2 If, at the request of an authorized order from a government agency or in connection with a legal obligation, supplier performs several services relating to customer data, employee data or user's data, all mandatory costs will be charged to client.
- 24.3 Supplier may adjust the content or scope of the SaaS. If such adjustments are substantive and result in a change in client's current procedures, supplier informs client about this as soon as possible and the costs of this adjustment are at client's expense. In this case client may serve notice of termination of the agreement, which termination takes effect on the date on which the adjustment takes effect, unless the adjustment is related to amendments in relevant legislation or other instructions issued by public authorities, or the adjustment is at supplier's expense.
- 24.4 Supplier may continue to provide the SaaS using a new or modified version of the underlying software. Supplier is not obliged to maintain, modify or add particular features or functionalities of the SaaS specifically for client.
- 24.5 Supplier may temporarily put all or part of the SaaS out of service for preventive, corrective or adaptive maintenance services or other forms of service. Supplier ensures that the period of time during which the SaaS is out of operation does not take longer than necessary and ensures, where possible, that the service takes place at times when the SaaS is usually used least intensively.
- 24.6 Supplier is never obliged to provide client with a physical carrier or download of the underlying software.

Article 25. Guarantees

- 25.1 Supplier does not guarantee that the SaaS is free of errors and functions without any interruptions. Supplier makes every effort to repair the errors in the underlying software



referred to in article 36.3 within a reasonable period of time if and insofar as underlying software is concerned that has been developed by supplier itself and client has provided supplier with a detailed, written description of the relevant errors. In a particular case, supplier may postpone repairing errors until a new version of the underlying software is put into service. Supplier does not guarantee that errors in the SaaS that has not been developed by supplier itself are repaired. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the SaaS. If the SaaS, or part of it, has been developed on client's instructions, supplier may charge client for the costs incurred by repairing the error(s) at supplier's applicable rates. Supplier is never obliged to repair other imperfections than those referred to in this article. In the event supplier is prepared to remedy other imperfections than those referred to in this article, supplier is entitled to charge client a separate fee for this.

- 25.2 On the basis of the information provided by supplier on measures to prevent and restrict the effects of malfunctions, errors and other imperfections in the SaaS, corruption or loss of data or other incidents, client identifies and lists the risks to its organisation or company and, where necessary, takes additional measures. Supplier declares itself prepared to render assistance, at client's request, to the extent reasonable and according to the financial and other conditions set by supplier, with respect to further measures to be taken by client. Supplier is never obliged to recover data that have been corrupted or lost other than placing back – where possible – the most recent back-up of the data in question.
- 25.3 Supplier does not guarantee that the SaaS is timely adapted to any amendments in the relevant laws and regulations.

Article 26. Personal data protection

- 26.1 Under the legislation regarding the processing of personal data (such as the Personal Data Protection Act), client has obligations towards third parties, such as the obligation to provide information as well as to provide access to, correct and remove personal data from those involved. The responsibility for the fulfilment of these obligations lies entirely and exclusively with client. Supplier is 'processor' within the meaning of the Personal Data Protection Act regarding the processing of personal data.
- 26.2 As far as technically possible, supplier will provide support to client when fulfilling its obligations as referred to in Article 26.1. All costs associated with this support are not included in the agreed prices and fees of supplier. These costs are for the client's account.

Article 27. Commencement of the service; payment

- 27.1 The SaaS provided by supplier – and, where relevant, support – commences within a reasonable period of time after the agreement has been entered into. Unless agreed on otherwise, the SaaS commences by supplier client granting access to the SaaS that is made available by supplier. Client ensures that it has the facilities required to use the SaaS immediately after the agreement has been entered into.
- 27.2 The fee payable by client for the SaaS is included in the agreement. If no payment scheme has been agreed on, all sums related to the SaaS delivered by supplier become due and payable, in advance, per calendar month.

Section 4. Development of software and websites

The provisions in this section 'Development of software and websites' apply, apart from the General provisions of these general terms and the terms in Section 'Service', if supplier develops and/or designs software and/or websites for client and possibly installs the software and/or websites.

Article 28. Specifications and development of software and/or websites

- 28.1 Development always takes place under an agreement for services. If no specifications or design of the software and/or website to be developed have been provided before the agreement is entered into or no specifications or design are provided when the agreement is entered into, parties specify, by consultation and in writing, the software and/or website to be developed and the manner in which the software and/or website will be developed.
- 28.2 Supplier develops the software and/or website with due care and in accordance with the explicitly agreed specifications or design and, where applicable, with due regard for the project organisation, methods, techniques and/or procedures agreed on in writing with client. Before starting the development activities, supplier may require that client should agree to the specifications or design in writing.
- 28.3 If parties use an iterative development method – scrum, for example – parties accept: (i) that, at the start, the activities are not performed on the basis of complete or fully detailed specifications; and (ii) that specifications which may or may not have been agreed on at the start of the activities, may be adapted during the term of the agreement, in mutual consultation and with due observance of the project approach that forms part of the development method concerned. Before starting the activities to be performed in the context of the agreement, parties put together one or more teams that consist of representatives of both supplier and client. The

team ensures that the communication lines remain short and direct and that consultations take place regularly. Parties provide for the deployment, by both of them, of the capacity agreed on (FTEs) in terms of team members in the roles and with the knowledge and experience and the decision-making powers required to perform the agreement. Parties accept that in order to make the project successful, the capacity agreed on is a minimum requirement. Parties endeavour to keep key staff available that have been deployed in first instance, as much as reasonably possible, until the end of the project, unless circumstances should arise that are beyond parties' control. During the performance of the agreement, parties jointly decide, by consultation, on the specifications that apply for the following phase of the project – for example a time box – and/or for the development of a following part. Client accepts the risk that the software and/or the website may not necessarily meet all specifications. Client ensures permanent and active input by and contributions from relevant end users who are supported by client's organisation or company in the context of, among other things, testing and (further) decision making. Client guarantees expeditiousness in progress-related decisions that must be made during the performance of the agreement. If client fails to make clear and prompt progress-related decisions in conformity with the project approach that forms part of the relevant development method, supplier is entitled, though not obliged, to make the decisions that supplier considers to be appropriate.

- 28.5 If no specific arrangements have been made in the matter, supplier starts the design and/or development activities within a reasonable period or time, to be determined by supplier, after the agreement has been entered into.
- 28.6 At supplier's request, client provides supplier with the opportunity to perform activities at client's premises outside the usual working days and working hours.
- 28.7 Supplier's obligations to perform with respect to the development of a website do not include making a content management system available.
- 28.8 If parties agree that, apart from development activities, supplier also provides training courses, maintenance and/or support and/or that supplier also applies for a domain name, supplier may request that client should enter into a separate, written agreement. Supplier charges client separately for these services, at supplier's applicable rates.

Article 29. Delivery, installation and acceptance

- 29.1 Unless supplier is obliged, under the agreement, to host the software and/or website for client on its own computer system, supplier either delivers the software and/or website to client on a data carrier and in a form determined by supplier, or makes the software and/or website online available to client.

Article 30. Right to use

- 30.1 Supplier makes the software and/or website developed on client's instructions, together with the relevant user documentation, available to client for use.
- 30.2 The source code of the software and the technical documentation prepared when the software is developed is only made available to client if this has been agreed in on writing, in which case client is entitled to modify the software.
- 30.3 Supplier is not obliged to make the auxiliary software and program or data libraries required for the use and/or maintenance of the software and/or website available to client.
- 30.4 Only if the content of the written agreement explicitly indicates that all design and development costs are fully and exclusively at client's expense, restrictions on the use of the software and/or website do not apply for client.

Article 31. Payment

- 31.1 If no payment scheme has been agreed on, all sums related to the development of software and/or website become due and payable, in arrears, per calendar month.
- 31.2 The price for the development activities includes payment for the right to use the software and/or website for the term of the agreement.
- 31.3 The payment for the development of the software and/or website does not include payment for auxiliary software and program and data libraries, and any installation services and any modifications and/or maintenance of the software and/or website required by client. The payment does not include support services for the users of the software and/or website either.

Article 32. Guarantees

- 32.1 The provisions of article 34 with respect to guarantees apply *mutatis mutandis*.
- 32.2 Supplier does not guarantee that the software and/or website it has developed function properly on all sorts of new versions of web browser types and possibly other software and/or websites. Supplier does not guarantee either that the software and/or website function properly on all types of hardware.

Section 5. Maintenance and support of software

The provisions in this section 'Maintenance and support of software' apply, apart from the General provisions of these general terms, if supplier provides services in the field of software maintenance and software support for the use of the software.

Article 33. Maintenance services

- 33.1 If agreed, supplier performs maintenance services for the software specified in the agreement. The obligation to provide



maintenance includes repairing errors in the software, only if this has been agreed in writing, making new versions of the software available in accordance with article 34.

33.2 Client is to report, in detail, any errors discovered in the software. Following receipt of the report, supplier makes every effort to repair errors and/or implement corrections in later, new versions of the software in compliance with its applicable procedures. Depending on the urgency and supplier's version and release policy, the results are made available to client in a manner and within the period of time determined by supplier. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.

Client itself is responsible for installing, organising, parameterising and tuning the corrected software or the new version of the software made available, and, if necessary, for modifying the hardware and operating environment used.

33.3 If supplier performs maintenance services online, client ensures, in due time, that a properly and appropriately secured infrastructure and network facilities are in place.

33.4 Client renders every assistance required by supplier for the maintenance services, which includes that client should temporarily stop using the software and should make a backup of all data.

33.5 If maintenance concerns software that was not delivered to client by supplier and if supplier believes this is necessary or appropriate in the context of maintenance, client makes the source code and the technical (development) documentation of the software, including data models, designs, change logs and the like, available to supplier. Client guarantees that it is entitled to make the source code and documentation available. Client grants supplier the right to use and modify the software, including the source code and technical (development) documentation, so that supplier can perform the maintenance services agreed on.

33.6 The maintenance by supplier does not affect the customer's responsibility for software management, including checking the settings and the way in which the results of the use of the software are deployed.

Client itself is responsible for installing, organising, parameterising and tuning the corrected software, and, if necessary, adjust the hardware, other software and user environment and achieve the interoperability desired by client.

Article 34. New versions of the software

34.1 Maintenance includes making new versions of the software available only if and insofar as this has been agreed in writing. If maintenance includes making new versions of the software available, these new versions are made available at supplier's discretion.

34.2 Three months after an enhanced version has

been made available, supplier is no longer obliged to repair errors in the previous version and to provide support and/or perform maintenance services for a previous version.

34.3 Supplier may require that client should enter into an additional written agreement with supplier for a version with new functionality and that a further payment should be made for this version. Supplier may incorporate functionality from a previous version of the software in the new version without any modifications, but supplier does not guarantee that each new version includes the same functionality as the previous version. Supplier is not obliged to maintain, modify or add particular features or functionalities in the software especially for client.

34.4 Supplier may require that client should modify its system (hardware, web browser, software and the like) if this should be necessary for the proper functioning of a new version of the software.

Article 35. Support services

35.1 If the services provided by supplier under the agreement include support services to users and/or administrators of the software, supplier advises – online, by telephone or by email – on the use and functioning of the software specified in the agreement. Client is obliged to specify the requests for support as comprehensively and in as much detail as possible so that supplier can respond appropriately. Supplier may set conditions with respect to the way in which support is requested and the qualifications and the number of persons eligible for support. Supplier handles properly substantiated requests for support within a reasonable period of time and in compliance with its applicable procedures. Supplier does not guarantee the correctness, completeness or timeliness of responses or of the support offered. Support services are performed on working days during supplier's usual business hours.

35.2 If the services provided by supplier under the agreement include standby services, supplier ensures that one or more staff members are available on the days and at the times specified in the agreement. If standby services have been agreed on, client is entitled, in urgent cases, to call in the support of staff members on standby if there are serious errors, serious malfunctions and other serious imperfections in the functioning of the software. Supplier does not guarantee that these are promptly repaired.

36.3 The maintenance and other agreed services referred to in this chapter are performed starting from the date on which the agreement is entered into, unless parties have agreed otherwise in writing.

Article 36. Payment

36.1 If no payment scheme has been explicitly agreed on, all sums related to the maintenance of the software and other services as meant in

this section and set out in the agreement become due and payable, in advance, per calendar month.

- 36.2 Sums relating to the maintenance of the software and the other services as meant in this section and set out in the agreement are payable when the agreement is entered into. Payment for maintenance and other services is always due, regardless whether client has taken the software into use and regardless whether client actually makes use of the maintenance or support services.

Section 6. Advisory and consultancy services

The provisions in this section 'Advisory and consultancy services' apply, apart from the General provisions of these general terms, if supplier provides services in the field of advice and consultancy, which services are not provided under client's direction and supervision.

Article 37. Performance of advisory and consultancy services

- 37.1 Supplier does not commit to a completion time of the assignment because the completion time of an assignment in the field of advisory or consultancy services depends on various factors and circumstances, such as the quality of the data and the information provided by client and the assistance rendered by client and relevant third parties.
- 37.2 Supplier only performs its services on supplier's usual working days and during supplier's usual business hours.
- 37.3 The use that client makes of any advisory and/or a consultancy report drafted by supplier is always at client's risk. The burden of proof is on client to prove that the advisory and/or consultancy services or the way in which these are performed is not in compliance with that which has been agreed on in writing or that which may be expected from a competent supplier acting reasonably, without prejudice to supplier's right to provide evidence to the contrary, using any legal means.
- 37.4 Without supplier's prior written permission, client may not inform any third party about supplier's way of working, methods and techniques and/or the content of supplier's recommendations or reports. Client may not provide supplier's recommendations or reports to a third party or otherwise make supplier's recommendations or reports public.

Article 38. Reporting

- 38.1 Supplier periodically informs client, in the manner agreed on in writing, about the performance of the services. Client informs supplier, in advance and in writing, about circumstances of importance or circumstances that could be of importance to supplier, such as the manner of reporting, the issues to be

addressed, client's prioritisation, the availability of client's resources and staff, and special facts or circumstances or facts or circumstances of which supplier is possibly unaware. Client ensures that the information provided by supplier is spread and actually taken notice of within client's organisation or company and client assesses this information, also on this basis, and informs supplier of this.

Article 39. Payment

- 39.1 If no payment scheme has been explicitly agreed on, all sums related to the services provided by supplier as meant in this section become due and payable, in arrears, per calendar month.

Section 7. Secondment services

The provisions in this section 'Secondment services' apply, apart from the General provisions of these general terms, if supplier makes one or more of its employees available to client to perform activities under client's supervision and instructions.

Article 40. Secondment services

- 40.1 Supplier makes the employee specified in the agreement available to perform activities under client's direction and supervision. The results of these activities are at client's risk. Unless otherwise agreed in writing, the employee is made available to client for forty hours a week, during supplier's usual working days.
- 40.2 Client may only deploy the employee made available to perform activities other than the activities agreed on if supplier has agreed to this in advance and in writing.
- 40.3 Client may only second the employee made available to a third party for the purpose of performing activities under that third party's direction and supervision if this has been explicitly agreed in writing.
- 40.4 Supplier makes reasonable efforts to ensure that the employee made available remains available, during the agreed days, to perform activities for the term of the agreement, except in the event of the employee's incapacity for work or if the employee leaves supplier's employment. Even if the agreement has been entered into with a view to the activities being performed by one particular person, supplier is always entitled, after consultations with client, to replace this person by one or more persons who have the same qualifications.
- 40.5 Client is entitled to request that the employee made available should be replaced (i) if the employee made available demonstrably fails to meet the quality requirements explicitly agreed on and client informs supplier about this, stating reasons, within three working days after the activities have started, or (ii) in the event of the relevant employee's prolonged incapacity for work or if the employee leaves supplier's employment. Supplier complies with such a request without delay and as a matter of priority. Supplier does not guarantee that the

employee made available can always be replaced. If the employee cannot be replaced or cannot be replaced promptly, both client's rights with respect to further performance of the agreement and all client's claims arising from non-performance of the agreement lapse. Client's payment obligations with respect to the activities already performed continue to apply in full.

Article 41. Duration secondment agreement

41.1 Notwithstanding the provisions of article 4 of these general terms, if nothing has been agreed by parties considering the duration of the secondment, the secondment agreement is seen as an agreement for an indefinite period of time, in which case either party must observe a notice period of one calendar month following any initial term of the agreement. Termination by serving notice of termination must be served in writing.

Article 42. Working hours and working conditions

42.1 The working hours, holiday periods, rest periods and other relevant working conditions of the employee made available are the same as those usually applied by client. Client guarantees that the working hours, holiday periods, rest periods and other relevant working conditions are in compliance with relevant laws and regulations.

42.2 Client informs supplier about any intended temporary or permanent closure of its organisation or company.

42.3 Client is obliged towards supplier and the appointed employees of supplier to comply to all relevant laws and regulations in the field of workplace safety and working conditions.

Article 43. Overtime pay and travel time

43.1 If, on client's instructions or at client's request, the employee made available works more hours per day than the agreed or usual number of working hours or works on days other than supplier's usual working days, client is charged for these hours at the overtime rate agreed on, or, if no such rate has been agreed on, at supplier's applicable overtime rate.

43.2 If so requested, supplier informs client about its applicable overtime rates. Client is charged for travelling expenses and travel time in accordance with supplier's applicable rules and standards. If so requested, supplier informs client about supplier's applicable rules and standards.

Article 44. Hirer's liability and other liability

44.1 Supplier ensures that amounts payable in terms of payroll tax, national insurance contributions, employee insurance contributions, income-related healthcare contributions and turnover tax for the employee made available under the agreement with client are paid on time and in full. Supplier indemnifies client against any and all claims of the Tax Administration or authorities responsible for implementing social

insurance legislation that are due and payable under the agreement with client, provided that client promptly informs supplier, in writing, about such claims when they arise and about the content of a claim and leaves the settlement of that claim, including any arrangements to be made in this regard, entirely up to supplier. Client provides supplier with the powers of attorney and the information required and assists supplier in defending itself, if necessary, in client's name, against such claims.

44.2 Supplier does not accept any liability for the quality of the results of the activities performed under client's supervision and instructions.

Section 8. Hosting

The provisions in this section 'Hosting' apply, apart from the General provisions of these general terms, if supplier provides services, under whatever name, in the field of hosting and hosting-related services.

Article 45. Hosting services

45.1 Supplier performs the hosting services agreed on with client.

45.2 If the agreement's object is to make hard disk space available, client may not exceed the agreed disk space unless the agreement explicitly arranges for the consequences of doing so. The agreement pertains to making disk space available on a server specifically reserved for client only insofar as this has been explicitly agreed in writing. All use of disk space, data traffic and other use made of systems and infrastructure is restricted to the maximums agreed on by parties. Data traffic that is not used by client in a given period may not be transferred to a subsequent period. If the agreed maximums are exceeded, supplier charges client for an additional compensation at its applicable rates.

45.3 Client is responsible for the management, including checks of the settings, and use of the hosting service, and the way in which the results of the service are implemented. If no specific arrangements have been made in this regard, client itself is responsible for installing, organising, parameterising and tuning the software and auxiliary software, and, where required, modifying the hardware and user environment used and for effecting the interoperability wanted. Supplier is not obliged to perform data conversion.

45.4 Only if this has been explicitly agreed in writing, the agreement's object also is to ensure security, back-up, contingency and recovery services or to make these available.

45.5 Supplier may temporarily put all or part of the hosting service out of operation for preventive, corrective or adaptive maintenance. Supplier ensures that the period of time during which the service is out of operation does not take longer than necessary and also ensures, where possible, that this takes place outside office hours, and, according to circumstances, have this commence after client has been consulted.

- 45.6 If, under the agreement, supplier provides services to client in the context of a domain name, such as the application for, renewal, alienation or transfer to a third party of that name, client is obliged to observe the rules and methods of the relevant organisation or organisations. At client's request, supplier provides client with a written copy of these rules. Supplier is explicitly neither responsible for the correctness or the promptness of the services nor responsible for achieving the results client intends to achieve. Client is charged for all costs involved in the application and/or registration at the agreed rates and, if no rates have been agreed on, at supplier's applicable rates. Supplier does not guarantee that a domain name client should want to use will actually be assigned to client.

Article 46. Notice and Take Down

- 46.1 At all times, client acts with due care and does not act unlawfully vis-à-vis third parties, more in particular by respecting the intellectual property rights and other rights of third parties and the privacy of third parties, by refraining from spreading information in a manner that is in violation of the law, from granting unauthorised access to systems and from spreading viruses or other harmful programs or data, and by refraining from committing criminal offences and violating any other legal obligations.
- 46.2 To prevent liability to third parties or limit the consequences, supplier is always entitled to take measures with respect to an act or omission of or at client's risk. At supplier's first request in writing, client promptly removes data and/or information from supplier's systems. If client fails to do so, supplier is entitled, at its own option, to delete the data and/or information itself or to make access to the data and/or information impossible. In addition, in the event of a breach or an imminent breach of the provisions of article 46.1, supplier is entitled to deny client access to supplier's systems with immediate effect and without prior notice. All of this is without prejudice to supplier taking any other measures or exercising any other statutory and contractual rights with respect to client. Supplier is also entitled in this case to terminate the agreement by serving notice of termination with immediate effect without being liable to client for doing so.
- 46.3 Supplier cannot be expected to form an opinion on the validity of the claims of third parties or of client's defence, or to become involved, in any way whatsoever, in any dispute between a third party and client. Client is to deal with the relevant third party in this matter and is to inform supplier in writing, properly substantiated and supported by documents.

