# Nederland ICT Terms and Conditions

*The Nederland ICT Terms and Conditions are filed with the Chamber of Commerce under number 30174840.*

*The Dutch version of this document prevails. This means that in the event of doubt, the Dutch text shall be binding.*

## Chapter 1. General provisions

### Art. 1 Applicability of the Nederland ICT Terms and Conditions

1.1 These Nederland ICT Terms and Conditions apply to all offers and contracts pursuant to which the supplier delivers goods and/or provides services of any nature whatsoever and under whatever name to the customer.

1.2 Departures from and additions to these general terms and conditions shall only be valid if they are agreed between the parties in writing.

1.3 The applicability of the customer's purchasing or other conditions is specifically excluded.

1.4 If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions shall remain fully in effect. The supplier and the customer shall in this case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

### Art. 2 Offers

2.1 All offers and other communications of the supplier are subject to confirmation unless the supplier has indicated otherwise in writing.
The customer guarantees that the information that it has provided or that has been provided on its behalf to the supplier and on which the supplier has based its offer is accurate and complete.

### Art. 3 Price and payment

3.1 All prices are exclusive of turnover tax (VAT) and other levies imposed by the government.
All prices stated by the supplier are in euros (EUR) and the customer must make all payments in euros.

3.2 The customer may not derive any rights or expectations from a cost estimate or budget issued by the supplier unless the parties have otherwise agreed in writing.
An available budget made known to the supplier by the customer shall only apply as a (fixed) price agreed between the parties for the performance to be delivered by the supplier if this has been expressly agreed in writing.

3.3 If, according to the contract concluded between the parties, the customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable towards the supplier for performance of the contract.

3.4 Information from the supplier's records shall count as conclusive evidence with respect to the performance delivered by the supplier and the amounts owed by the customer for delivery of this performance, without prejudice to the customer's right to produce evidence to the contrary.

3.5 If a periodic payment obligation on the part of the customer applies, the supplier shall be entitled to adjust, in writing and in accordance with the index or other standard included in the contract, the applicable prices and rates to the term specified in the contract. If the contract does not expressly provide for the possibility on the part of the supplier to adjust the prices or rates, the supplier shall always be entitled to adjust, in writing and with due observance of a term of at least three months, the applicable prices and rates. If the customer does not agree to the adjustment in this latter case, the customer shall be entitled to terminate the contract in writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.

3.6 The parties shall record the date or dates on which the supplier shall charge the customer for the performance agreed in the contract. Amounts owed must be paid by the customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The customer may not suspend any payment and may also not set off any amounts owed.

3.7 If the customer fails to pay amounts due or fails to do so on time, the customer shall owe statutory interest for commercial contracts on the outstanding amount without a demand for payment or a notice of default being required. If the customer fails to pay the amount due after a demand for payment or a notice of default has been issued, the supplier shall be entitled to refer the debt for collection, in which case the customer must pay all judicial and extrajudicial costs, including all costs charged by external experts. The foregoing shall be without prejudice to the supplier's other legal and contractual rights.

### Art. 4 Term of the contract

4.1 If and insofar as the contract concluded between the parties is a continuing performance contract, the contract shall be entered into for the term agreed between the parties. A term of one year shall apply if no term has been agreed.

4.2 The term of the contract shall be tacitly extended, each time by the period of time originally agreed, unless the customer or supplier terminate the contract in writing with due observance of a notice period of three months prior to the end of the current term.

### Art. 5 Confidentiality and transfer of personnel

5.1 The customer and supplier must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to the supplier if and insofar as the supplier is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the contract by the supplier. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.

5.2 The customer acknowledges that software originating from the supplier is always confidential in nature and that this software contains trade secrets of the supplier and its suppliers or the producer of the software.

5.3 During the term of the contract and for one year following its termination, each of the parties shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of the other party who are or were involved in the performance of the contract unless the other party has given prior written permission. Conditions may be attached to this permission, including the condition that the customer must pay reasonable compensation to the supplier.

**Art. 6 Privacy and data processing**

6.1 If necessary for the performance of the contract, the customer shall on request inform the supplier in writing about the way in which the customer performs its legal obligations regarding the protection of personal data.

6.2 The customer indemnifies the supplier against claims of persons whose personal data is recorded or processed in the context of a register of personal data that is maintained by the customer or for which the customer is otherwise responsible by law, unless the customer proves that the facts on which a claim is based are attributable to the supplier.

6.3 The customer is fully responsible for the data that it processes in the context of using a service of the supplier. The customer guarantees vis-à-vis the supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The customer indemnifies the supplier against any claim of a third party instituted for whatever reason in connection with this data or the performance of the contract.

**Art. 7 Security**

7.1 If the supplier is obliged to provide for a form of information security under the contract, this security shall meet the specifications agreed in writing between the parties regarding security. The supplier does not guarantee that the information security provided is effective under all circumstances. If the contract does not include an explicitly defined security method, the security provided shall meet a standard that is not unreasonable in terms of the state of the art, the sensitivity of the information and the costs associated with the security measures taken.

7.2 The access or identification codes and certificates provided by or because of the supplier to the customer are confidential and must be treated as such by the customer, and may only be made known to authorised personnel in the customer's own organisation. The supplier is entitled to change the access or identification codes and certificates.

7.3 The customer must adequately secure its systems and infrastructure and have active antivirus software protection at all times.

**Art. 8 Retention of title, reservation of rights and suspension**

8.1 All items delivered to the customer shall remain the property of the supplier until all amounts owed by the customer to the supplier under the contract concluded between the parties have been paid to the supplier in full. A customer that acts as a reseller may sell and supply all items that are subject to the supplier's retention of title insofar as doing so is usual in the context of the customer's ordinary course of business.

8.2 The property-law consequences of the retention of title with respect to an item destined for export shall be governed by the laws of the State of destination if those laws contain provisions that are more favourable to the supplier.

8.3 As and when necessary, rights shall be granted or transferred to the customer subject to the condition that the customer has paid all amounts owed under the contract.

8.4 The supplier may retain all information, documents, software and/or data files received or created in the context of the contract in spite of an existing obligation to hand over or transfer until the customer has paid all amounts owed to the supplier.

**Art. 9 Risk transfer**

9.1 The risk of loss, theft, misappropriation or damage of items, information (including user names, codes and passwords), documents, software or data files that are created, supplied or used in the context of performing the contract shall pass to the customer at the time at which the customer or an auxiliary person of the customer comes into actual possession of the items and information referred to.

**Art. 10 Intellectual property**

10.1 If the supplier is prepared to undertake to transfer an intellectual property right, such a commitment may only be undertaken expressly and in writing. If the parties agree in writing that an intellectual property right with respect to software, websites, data files, equipment or other materials specifically developed for the customer shall transfer to the customer, this shall be without prejudice to the supplier's right or option to use and/or operate, either for itself or for third parties and without any restriction, the parts, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like on which the developments referred to are based for other purposes. The transfer of an intellectual property right shall likewise be without prejudice to the supplier's right to complete developments, either for itself or for a third party, that are similar to or derived from developments that were or are being completed for the customer.

10.2 All intellectual property rights to the software, websites, data files, equipment and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to the customer under the contract are held exclusively by the supplier, its licensors or its suppliers. The customer shall have the rights of use expressly granted under these general terms and conditions, the contract concluded in writing between the parties and the law. A right accorded to the customer is non-exclusive and may not be transferred, pledged or sublicensed.

10.3 The customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, equipment or materials, or have any such indication removed or changed.

10.4 Even if not expressly provided for in the contract, the supplier may always take technical measures to protect equipment, data files, websites, software made available, software to which the customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.

10.5 The supplier indemnifies the customer against any claim of a third party based on the allegation that software, websites, data files, equipment or other materials

developed by the supplier itself infringe an intellectual property right of that third party, subject to the condition that the customer immediately informs the supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the supplier. The customer shall provide the powers of attorney and information required to the supplier and assist the supplier to defend itself against such claims. This obligation to indemnity shall not apply if the alleged infringement concerns (i) materials made available to the supplier by the customer for use, modification, processing or maintenance or (ii) changes made or commissioned by the customer in the software, website, data files, equipment or other materials without the supplier's written permission. If it is irrevocably established in court that software, websites, data files, equipment or other materials developed by the supplier itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of the supplier, there is a good chance that such an infringement is occurring, the supplier shall if possible ensure that the customer can continue to use, or use functional equivalents of, the software, websites, data files, equipment or materials supplied. Any other or further obligation to indemnify on the part of the supplier due to infringement of a third party's intellectual property right is excluded.

10.6 The customer guarantees that making equipment, software, material intended for websites, data files and/or other materials and/or designs available to the supplier for the purpose of use, maintenance, processing, installation or integration does not infringe any rights of third parties. The customer indemnifies the supplier against any claim of a third party based on the allegation that such making available, use, maintenance, processing, installation or integration infringes a right of that third party.

10.7 The supplier is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the customer.

## Art. 11 Obligations to cooperate

11.1 The parties acknowledge that the success of work in the field of information and communications technology depends on proper and timely cooperation between the parties.
The customer shall always extend, in a timely manner, the cooperation reasonably required by the supplier.

11.2 The customer bears the risk of selecting the items, goods and/or services to be provided by the supplier.
The customer must always exercise the utmost care to guarantee that the requirements that the supplier's performance must meet are accurate and complete.
Measurements and particulars given in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets and the like are not binding for the supplier unless expressly stated otherwise by the supplier.

11.3 If the customer deploys employees and/or auxiliary persons in the performance of the contract, these employees and auxiliary persons must have the knowledge and experience required.
If the supplier's employees perform work at the customer's location, the customer must provide, on time and free of charge, the facilities required, such as a workspace with computer and network facilities. The supplier shall not be liable for damage or costs due to transmission errors, malfunctions or the non-availability of these facilities unless the customer proves that this damage or these costs are the result of deliberate intent or recklessness on the part of the supplier's management.

11.4 The workspace and facilities must meet all legal requirements. The customer indemnifies the supplier against claims of third parties, including the supplier's employees, who suffer injury in the context of performing the contract as a result of acts or omissions of the customer or unsafe situations in the customer's organisation. The customer shall make the company and security rules current in its organisation known to employees deployed by the supplier prior to the start of the work.

11.5 If, in connection with the supplier's services and products, the customer makes software, equipment or other resources available to the supplier, the customer guarantees that all licences or approvals that the supplier may require in relation to these resources shall be obtained.

11.6 The customer is responsible for the management, including checking the settings, and use of the products supplied and/or services provided by the supplier, and the way in which the results of the products and services are used. The customer is also responsible for appropriately instructing users and for the use made by users.

11.7 The customer shall itself install, organise, parameterise and tune the software and support software required on its own equipment and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

## Art. 12 Obligations to provide information

12.1 To enable proper performance of the contract by the supplier, the customer shall always provide all information reasonably required by the supplier to the supplier in a timely manner.

12.2 The customer guarantees that the information, designs and specifications that it has provided to the supplier is or are accurate and complete. If the information, designs or specifications provided by the customer contain inaccuracies apparent to the supplier, the supplier shall contact the customer to make enquiries about the matter.

12.3 In connection with continuity, the customer shall designate a contact person or contact persons who shall act in that capacity for the duration of the supplier's work. The customer's contact persons shall have the experience required, specific knowledge of the subject matter and a proper understanding of the objectives that the customer wishes to achieve.

12.4 The supplier is only obliged to periodically provide information concerning the performance of the work to the customer through the contact person designated by the customer.

## Art. 13 Project and steering groups

13.1 If both parties are participating in a project or steering group through one or more employees that they have deployed, the provision of information shall take place in the manner agreed for the project or steering group.

13.2 Decisions made in a project or steering group in which both parties are participating shall only be binding for the supplier if the decisions are made in accordance with that which has been agreed between the parties in writing in this regard or, in the absence of written agreements in this context, if the supplier has accepted the decisions in writing. The 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 contract.

13.3 The customer guarantees that the persons that it has designated to participate in a project or steering group are authorised to make decisions that are binding for the customer.

**Art. 14 Terms**

14.1 The supplier shall make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or dates, that it has specified or that have been agreed between the parties. The interim dates and delivery dates specified by the supplier or agreed between the parties shall always apply as target dates, shall not bind the supplier and shall always be indicative.

14.2 If a term is likely to be exceeded, the supplier and customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.

14.3 In all cases, therefore also if the parties have agreed firm deadlines and delivery periods or dates and delivery dates, the supplier shall only be in default as a result of a period of time being exceeded after the customer has declared the supplier to be in default in writing and a reasonable term that the customer granted to the supplier to remedy the breach has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the supplier the opportunity to respond adequately.

14.4 If it has been agreed that the work under the contract is to be performed in phases, the supplier shall be entitled to postpone the start of a phase's work until the customer has approved the results of the preceding phase in writing.

14.5 The supplier shall not be bound by a date or delivery date or term or delivery period, whether or not final, if the parties have agreed an amendment to the content or scope of the contract (additional work, a change of specifications and so on) or a change in approach with respect to performance of the contract, or if the customer fails to fulfil its obligations arising from the contract or fails to do so on time or in full. The need for or occurrence of additional work during performance of the contract shall never constitute a reason for the customer to give notice of termination or to rescind (in Dutch: 'ontbinden') the contract.

**Art. 15 Termination and cancellation of the contract**

15.1 Each party shall only be authorised to rescind the contract due to an attributable failure in the performance of the contract if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the contract. The customer's payment obligations and all obligations of the customer or a third party engaged by the customer to cooperate and/or provide information apply in all cases as essential obligations under the contract.

15.2 If, at the time of rescission, the customer has already received goods or services in the performance of the contract, these goods or services and the associated payment obligations shall not be undone unless the customer proves that the supplier is in default with respect to the essential part of such goods or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by the supplier prior to rescission in connection with what it already properly performed or delivered in the performance of the contract shall remain payable in full and shall become immediately due and payable at the time of termination.

15.3 A contract which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing following consultation between the parties. Reasons for the termination must be stated. If a notice period has not been agreed between the parties, a reasonable period must be observed when notice of termination is given. The supplier is never obliged to pay any compensation due to termination.

15.4 The customer may not terminate a contract of engagement that has been entered into for a definite period of time.

15.5 Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. The supplier may also terminate the contract, 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 the customer's company. The supplier is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this paragraph. If the customer goes irrevocably bankrupt, its right to use the software, websites and the like made available to it shall end, as shall its right to access and/or use the supplier's services, without termination by the supplier being required.

**Art. 16 Liability of the supplier**

16.1 The supplier's total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the customer, shall be limited to compensation for direct loss up to a maximum of the price stipulated for the contract concerned (excluding VAT). If the contract is mainly a continuing performance contract with a term of more than one year, the price stipulated for the contract shall be set at the total amount of the payments (excluding VAT) stipulated for one year. The supplier's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 500.000 (five hundred thousand euros), however.

16.2 The supplier's total liability for loss due to death or bodily injury or as a result of material damage to items shall never amount to more than EUR 1.250.000 (one million two hundred fifty thousand euros).

16.3 The supplier's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of the customer's customers, loss arising from the use of items, materials or software of third parties prescribed by the customer to the supplier and loss arising from the engagement of suppliers prescribed by the customer to the supplier is excluded. The supplier's liability for corruption, destruction or loss of data or documents is likewise excluded.

16.4 The exclusions and limitations of the supplier's liability described paragraphs 16.1 up to and including 16.3 are entirely without prejudice to the other exclusions and limitations of the supplier's liability described in these general terms and conditions.

16.5 The exclusions and limitations referred to in paragraphs 16.1 up to and including 16.4 shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of the supplier's management.

16.6 Unless performance by the supplier is permanently impossible, the supplier shall only be liable due to an attributable failure in the performance of a contract if the customer declares the supplier to be in default in writing without delay and grants the supplier a reasonable term to remedy the breach, and the supplier culpably fails to fulfil its obligations also after this term has passed.
The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the supplier the opportunity to respond adequately.

16.7 For there to be any right to compensation, the customer must always report the loss to the supplier in writing as soon as possible after the loss has occurred.
Each claim for compensation against the supplier shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the customer has instituted a legal action for damages prior to the expiry of this period.

16.8 The customer indemnifies the supplier against any and all claims of third parties due to product liability as a result of a defect in a product or system that the customer supplied to a third party and that consisted in part of equipment, software or other materials supplied by the supplier, unless and insofar the customer is able to prove that the loss was caused by the equipment, software or other materials referred to.

16.9 The provisions of this article and all other limitations and exclusions of liability referred to in these general terms and conditions shall also apply for the benefit of all natural persons and legal entities that the supplier engages in the performance of the contract.

**Art. 17 Force majeure**

17.1 None of the parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure on the part of the supplier means, among other things: (i) force majeure on the part of the suppliers of the supplier, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to the supplier by the customer, (iii) defects in items, equipment, software or materials of third parties the use of which was prescribed to the supplier by the customer, (iv) government measures, (v) power failures, (vi) Internet, data network or telecommunication facilities failures, (vii) war and (viii) general transport problems.

17.2 Either of the parties shall have the right to rescind the contract in writing if a situation of force majeure persists for more than 60 days.
In such an event, that which has already been performed under the contract shall be paid for on a proportional basis without the parties owing each other anything else.

**Art. 18 Changes and additional work**

18.1 If, at the request or prior consent of the customer, the supplier has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services, the customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with the supplier's usual rates.
The supplier is not obliged to honour such a request and may require that a separate contract be concluded in writing for the purpose.

18.2 Insofar as a fixed price has been agreed for the provision of services, the supplier shall on request inform the customer in writing about the financial consequences of the additional work or additional provision of goods or services as referred to in this article.

**Art. 19 Transfer of rights and obligations**

19.1 The customer may not sell, transfer or pledge its rights and obligations under a contract to a third party.

19.2 The supplier is entitled to sell, transfer or pledge its claims to payment of amounts owed to a third party.

**Art. 20 Applicable law and disputes**

20.1 Contracts between the supplier and customer are governed by Dutch law.
The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

20.2 Disputes that arise by reason of the contract concluded between the parties and/or by reason of any further contracts deriving from it shall be resolved by arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (Stichting Geschillenoplossing Automatisering - SGOA), which has its registered office in The Hague, the Netherlands, the foregoing without prejudice to the right of each party to request preliminary relief in summary arbitral proceedings and without prejudice to the right of each party to take precautionary measures. Arbitration proceedings shall take place in The Hague.

20.3 If a dispute that arises by reason of the contract concluded between the parties or by reason of any further contracts deriving from it is within the jurisdiction of the cantonal court (in Dutch: kantongerecht), each party, in derogation from the provisions of Article 20.2, shall be entitled to bring the case before the legally competent court as a cantonal court case.
The parties shall only be entitled to take the afore-mentioned action if arbitration proceedings concerning the dispute have not yet been instituted in accordance with the provisions of Article 20.2. If, with due observance of the provisions of Article 20.3, one or more of the parties have brought the case before the legally competent court in order for it to be heard and settled, the cantonal court judge of that court shall be competent to hear and settle the case.

20.4 Regarding a dispute that arises by reason of the contract concluded between the parties or by reason of any further contracts deriving from it, each party shall in all cases be 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 must then actively participate in ICT mediation proceedings that have been instituted. This legally enforceable obligation in any case includes attending at least one joint meeting of mediators and the parties to give this extrajudicial form of dispute resolution a chance of success. Each party shall be free to terminate the ICT mediation proceedings at any time after a joint first meeting of mediators and the parties.
The provisions of this paragraph do not prevent a party from requesting preliminary relief in summary arbitral proceedings or from taking precautionary measures if the party deems doing so necessary.

## Chapter 2. Provision of services

*The provisions of this 'Provision of services' chapter shall apply in addition to the general provisions of these general terms and conditions if the supplier provides services of whatever nature, whether or not set out in more detail in one of the other chapters of these general terms and conditions, to the customer.*

**Art. 21 Performance**

21.1 The supplier shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the customer. All services by the supplier shall be performed on the basis of an obligation to use best endeavours unless and insofar as the supplier has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the contract.

21.2 The supplier shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or certificates unless the misuse is the direct result of deliberate intent or recklessness on the part of the supplier's management.

21.3 If the contract has been entered into with a view to performance by one specific person, the supplier shall always be entitled to replace this person with one or more persons who have the same and/or similar qualifications.

21.4 The supplier is not obliged to follow the customer's instructions in the performance of its services, particularly not if these instructions change or add to the content and scope of the agreed services.
If such instructions are followed, however, payment shall be made for the work concerned in accordance with the supplier's usual rates.

**Art. 22 Service Level Agreement**

22.1 Any agreements concerning a service level (Service Level Agreements) shall only be expressly agreed in writing.
The customer shall always inform the supplier without delay about any circumstances that affect or that could affect the service level and its availability.

22.2 If agreements about a service level have been made, the availability of software, systems and related services shall always be measured such that unavailability due to preventive, corrective or adaptive maintenance or other forms of service announced by the supplier in advance and circumstances beyond the supplier's control are not taken into account. The availability measured by the supplier shall count as conclusive evidence, subject to evidence to the contrary produced by the customer.

**Art. 23 Backups**

23.1 If the services provided to the customer under the contract include making backups of the customer's data, the supplier shall make a complete backup of the customer's data in its possession in accordance with the periods agreed in writing or once a week if such periods have not been agreed. The supplier shall retain the backup for the duration of the agreed term or for the duration of the supplier's usual term if agreements have not been made in this regard. The supplier shall retain the backup with due care.

23.2 The customer remains responsible for the fulfilment of all administrative and retention obligations that apply to it by law.

## Chapter 3. Software as a Service (SaaS)

*The provisions of this 'Software as a Service' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier performs services under the name or in the field of Software as a Service (SaaS).*
*For the application of these general terms and conditions, SaaS means a service by which the supplier makes software available to the customer remotely through the Internet or another data network, and maintains this availability remotely, without providing a physical carrier with the software concerned to the customer.*

**Art. 24 Provision of SaaS**

24.1 The supplier shall only provide SaaS on the instructions of the customer. The customer may not allow third parties to make use of the services provided by the supplier in the field of SaaS.

24.2 If the supplier performs work relating to the data of the customer, its employees or users pursuant to a request or a competently issued order of a government agency or in connection with a legal obligation, all costs associated with this work shall be charged to the customer.

24.3 The supplier may change the content or scope of the SaaS delivery model. If such changes result in a change in the customer's current procedures, the supplier shall inform the customer about the matter as soon as possible and the costs of this change shall be borne by the customer. The customer may in this case give notice of termination of the contract, which termination shall then take effect on the date on which the change takes effect, unless the change is related to changes in relevant legislation or other instructions issued by competent bodies, or the supplier bears the costs of this change.

24.4 The supplier may continue to provide SaaS using a new or modified version of the software. The supplier is not obliged to maintain, modify or add certain features or functionalities of the service or software specifically for the customer.

24.5 The supplier may temporarily put all or part of the SaaS out of operation for preventive, corrective or adaptive maintenance or other forms of service. The supplier shall not allow the period during which the service is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours.

24.6 The supplier is never obliged to provide a physical carrier to the customer that contains the software provided to and held by the customer in the context of the SaaS.

**Art. 25 Guarantee**

25.1 The supplier does not guarantee that the software made available and held in the context of the SaaS is free of errors and functions without interruption. The supplier shall make efforts to fix the errors in the software referred to in Article 30.3 within a reasonable term if and insofar as the matter concerns software developed by the supplier itself and the customer has provided a detailed, written description of the defects concerned to the supplier. Where there are grounds for doing so, the supplier may postpone the fixing of defects until a new version of the software is put into operation. The supplier does not guarantee that defects in software that it has not developed itself shall be fixed. The supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. If the software was developed on the instructions of the customer, the supplier may charge for the costs of fixing to the customer in accordance with the supplier's usual rates.

25.2 Based on the information provided by the supplier concerning measures to prevent and limit the effects of malfunctions, defects in the SaaS, corruption or loss of data or other incidents, the customer shall identify and list the risks to its organisation and take additional measures if necessary. The supplier declares that it is prepared to provide assistance, at the customer's request, to the extent reasonable and according to the financial and other conditions set by the supplier, with respect to further measures to be taken by the customer. The supplier is never obliged to recover data that has been corrupted or lost.

25.3 The supplier does not guarantee that the software made available and held in the context of the SaaS shall be adapted to changes in relevant legislation and regulations on time.

**Art. 26 Protection of personal data**

26.1 Under legislation pertaining to the processing of personal data, such as the Personal Data Protection Act, the customer has obligations towards third parties, such as the obligation to provide information and allow the person concerned to inspect his or her personal data, and correct and delete the personal data of the person concerned. The customer is fully and solely responsible for the fulfilment of these obligations. The parties maintain that the supplier is the 'processor' within the meaning of the Personal Data Protection Act with respect to the processing of personal data.

26.2 To the extent that doing so is technically possible, the supplier shall provide support in the context of the obligations that the customer must fulfil as referred to in Article 26.1. The costs associated with this support are not included in the agreed prices and payments and shall be borne by the customer.

**Art. 27 Commencement of the service; payment**

27.1 The SaaS provided by the supplier shall commence within a reasonable term following the conclusion of the contract. The customer shall promptly ensure that it has the facilities required to use the SaaS following the conclusion of the contract.

27.2 The customer shall owe the payment specified in the contract for the SaaS. In the absence of an agreed payment schedule, all amounts that relate to the SaaS provided by the supplier shall be payable each calendar month in advance.

## Chapter 4. Software

*The provisions of this 'Software' chapter shall apply in addition to the general provisions if the supplier makes software available to the customer for use other than on the basis of SaaS.*

**Art. 28 Right of use and restrictions on use**

28.1 The supplier shall make the agreed computer programs and agreed user documentation, hereinafter referred to as the 'software', available to the customer for use for the duration of the contract on the basis of a licence for use. The right to use the software is non-exclusive and may not be transferred, pledged or sublicensed.

28.2 The supplier's obligation to make available and the customer's right of use extend only to the software's object code. The customer's right of use does not extend to the software's source code. The software's source code and technical documentation prepared during the development of the software shall not be made available to the customer, not even if the customer is prepared to pay a financial amount for the source code and technical documentation.

28.3 The customer shall always strictly comply with the agreed restrictions on the use of the software, regardless of the nature or content of these restrictions.

28.4 If the parties have agreed that the software may only be used in combination with certain equipment, the customer shall in the event of any malfunction of this equipment be entitled to use the software on other equipment with the same qualifications during the time that the original equipment remains defective.

28.5 The supplier may require that the customer only start using the software after having received one or more codes needed for use from the supplier, the supplier's supplier or the producer of the software. The supplier is always entitled to take technical measures to protect the software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties. The customer shall never remove or bypass technical measures intended to protect the software or have such technical measures removed or bypassed.

28.6 The customer may only use the software in and for its own company or organisation and only insofar as doing so is necessary for the intended use. The customer shall not use the software for third parties, for example in the context of Software as a Service (SaaS) or outsourcing.

28.7 The customer may never sell, rent out, dispose of or grant limited rights to, or make available to third parties the software and the carriers on which the software is or will be recorded, in any way whatsoever for whatever purpose or under whatever title. The customer may also not grant, whether or not remotely (online), a third party access to the software or place the software with a third party for hosting, not even if the third party concerned only uses the software for the customer.

28.8 If so requested, the customer shall cooperate without delay in an investigation into compliance with the agreed restrictions on use carried out by or for the supplier. Should the supplier so demand, the customer shall grant the supplier access to its buildings and systems. Insofar as such information does not concern the use of the software itself, the supplier shall treat all confidential business information that it obtains from the customer or at the customer's business location in the context of an investigation as confidential.

28.9 The parties maintain that the contract concluded between the parties, insofar as the object of this contract is the making available of software for use, shall never be deemed to be a purchase contract.

28.10 The supplier is not obliged to maintain the software and/or provide support to users and/or administrators of the software. If, contrary to the foregoing, the supplier is asked to perform maintenance work and/or provide support with respect to the software, the supplier may require that the customer enter into a separate, written contract for the purpose.

**Art. 29 Delivery and installation**

29.1 At its discretion, the supplier shall deliver the software on the agreed type of data carrier or, if no agreements have been made in this regard, on a type of data carrier determined by the supplier, or shall make the software available to the customer online. At the supplier's discretion, any agreed user documentation shall be made available in printed or digital form in a language determined by the supplier.

29.2 The supplier shall only install the software at the customer's business location if this has been agreed between the parties. If no agreements have been made for the purpose, the customer shall itself install, organise, parameterise, tune and, if necessary, modify the equipment and operating environment used.

**Art. 30 Acceptance**

30.1 If the parties have not agreed an acceptance test, the customer shall accept the software in the state that it is in when delivered ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to the supplier's obligations under the guarantee scheme as set out in Article 34. In the aforementioned case, the software shall be deemed to have been accepted by the customer upon delivery or, if installation by a supplier has been agreed in writing, upon completion of installation.

30.2 The provisions of paragraphs 30.3 up to and including 30.10 shall apply if an acceptance test has been agreed between the parties.

30.3 In these general terms and conditions, 'error' means substantial failure of the software to meet the functional or technical specifications of the software expressly made known by the supplier in writing and, if all or part of the software concerns customised software, to meet the functional or technical specifications expressly agreed in writing. An error only applies if it can be demonstrated by the customer and if it is reproducible. The customer must report errors without delay. Any obligation of the supplier is limited to errors within the meaning of these general terms and conditions. The supplier does not have any obligation whatsoever with respect to other defects in or on the software.

30.4 If an acceptance test has been agreed, the test period shall amount to 14 days following delivery or, if installation by the supplier has been agreed in writing, 14 days following the completion of installation. The customer may not use the software for production or operational purposes during the test period. The customer shall carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth.

30.5 If an acceptance test has been agreed, the customer must check whether the software delivered meets the functional or technical specifications expressly made known by the supplier in writing and, if and to the extent that all or part of the software concerns customised software, meets the functional or technical specifications expressly agreed in writing.

30.6 The parties shall deem the software to have been accepted:

a. if the parties have agreed an acceptance test: on the first day following the test period, or
b. if the supplier receives a test report as referred to in Article 30.7 prior to the end of the test period: at the time at which the errors stated in this test report have been fixed, notwithstanding the presence of errors that, according to Article 30.8, do not prevent acceptance, or
c. if the customer uses the software in any way for production or operational purposes: at the time at which this use occurs.

30.7 If it becomes apparent during performance of the agreed acceptance test that the software contains errors, the customer shall report the test results to the supplier in writing in a clear, detailed and comprehensible manner no later than on the last day of the test period. The supplier shall strive to the best of its ability to fix the errors referred to within a reasonable term. The supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding limitations in this regard.

30.8 The customer may not refuse to accept the software for reasons that are not related to the specifications expressly agreed in writing between the parties and, furthermore, may not refuse to accept the software because of the existence of minor errors, these being errors that do not reasonably prevent the operational or productive use of the software, the foregoing without prejudice to the supplier's obligation to fix these minor errors in the context of the guarantee scheme referred to in Article 34.
In addition, acceptance may not be refused because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

30.9 If the software is delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part shall be without prejudice to the acceptance of a previous phase and/or a different part.

30.10 Acceptance of the software in one of the ways referred to in this article shall serve to discharge the supplier of its obligations regarding making the software available and delivering the software and, if installation of the software by the supplier has also been agreed, of its obligations regarding installation. Acceptance of the software shall be without prejudice to the customer's rights based on Article 30.8 regarding minor defects and Article 34 regarding the guarantee.

**Art. 31 Availability**

31.1 The supplier shall make the software available within a reasonable term following the conclusion of the contract.

31.2 Following the end of the contract, the customer shall return all copies of the software in its possession to the supplier without delay. If it has been agreed that the customer must destroy the copies concerned at the end of the contract, the customer shall report the destruction of the copies to the supplier in writing without delay. At or following the end of the contract, the supplier shall not be obliged to provide assistance for the purpose of a data conversion desired by the customer.

**Art. 32 Payment for the right of use**

32.1 The customer must pay the amount owed for the right of use at the agreed times or, if a time has not been agreed:
a. if the parties have not agreed that the supplier shall install the software:
- when the software is delivered;
- or, in the case of periodically owed payments for the right of use, when the software is delivered and subsequently at the start of each new right of use term;

b. if the parties have agreed that the supplier shall install the software:
- upon completion of installation;
- or, in the case of periodically owed payments for the right of use, upon completion of installation and subsequently at the start of each new right of use term.

**Art. 33 Changes in the software**

33.1 Baring exceptions provided for by law, the customer may not change all or part of the software without the prior written permission of the supplier. The supplier is entitled to refuse or attach conditions to such permission. The customer shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with the supplier's permission.

**Art. 34 Guarantee**

34.1 The supplier shall strive to the best of its ability to fix errors within a reasonable term if these errors are reported in writing in a detailed manner to the supplier within a period of three months following delivery or, if an acceptance test was agreed, within three months following acceptance. The supplier does not guarantee that the software is suitable for actual use and/or the intended use. The supplier also does not guarantee that the software will operate without interruption and/or that all errors will always be fixed.
Fixing work shall be carried out free of charge unless the software was developed on the instructions of the customer other than for a fixed price, in which case the supplier shall charge for the costs of fixing in accordance with its usual rates.

34.2 The supplier may charge for the costs of fixing in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of the customer, or as a result of causes that cannot be

attributed to the supplier. The obligation to fix errors shall cease to apply if the customer makes changes in the software or has such changes made without the supplier's written permission.

34.3 The fixing of errors shall take place at a location and in a manner determined by the supplier. The supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software.

34.4 The supplier is never obliged to recover data that has been corrupted or lost.

34.5 The supplier does not have any obligation whatsoever, of whatever nature or content, with respect to errors reported after the end of the guarantee period referred to in Article 34.1.

**Art. 35 Software of suppliers**

35.1 If and insofar as the supplier makes third-party software available to the customer, the licence terms of the third parties concerned shall apply in the relationship between the supplier and the customer with respect to the software instead of the provisions of these general terms and conditions that differ from those licence terms, provided that the applicability of the licence terms of the third party concerned was reported to the customer by the supplier in writing and, in addition, a copy of the applicable licence terms was made available to the customer prior to the conclusion of the contract. In derogation from the provisions of the preceding sentence, the customer shall not be entitled to invoke failure on the part of the supplier to fulfil the aforementioned obligation to provide information if the customer is a party as referred to in Section 235, subsection 1 or subsection 3 of Book 6 of the Dutch Civil Code.

35.2 If and insofar as, for whatever reason, the terms of third parties referred to above are deemed not to apply or are declared inapplicable in the relationship between the customer and the supplier, the provisions of these general terms and conditions shall apply in full.

## Chapter 5. Development of software and websites

*The provisions of this 'Development of software and websites' chapter shall apply in addition to the general provisions and the provisions of the Provision of services' chapter if the supplier designs and/or develops software and/or a website for the customer and possibly installs the software and/or website.*

**Art. 36 Specifications and development of software/a website**

36.1 If specifications or a design of the software or website to be developed have not already been provided prior to the conclusion of the contract or are not provided when the contract is concluded, the parties shall in consultation specify, in writing, the software or website to be developed and the manner in which the development is to be carried out.

36.2 The supplier shall develop the software and/or website with due care in accordance with the expressly agreed specifications or design and, if applicable, having regard to the project organisation, methods, techniques and/or procedures agreed in writing with the customer.
The supplier may require that the customer agree to the specifications or design in writing prior to commencement of the development work.

36.3 If the parties use a development method based on iterative design and/or development of the software or parts of the software or website or parts of the website (Scrum, for example), the parties shall accept that, at the start, the work shall not be performed on the basis of complete or fully detailed specifications, and also that specifications, which may or may not have been agreed on commencement of the work, may be changed, in consultation and with due observance of the project approach that forms part of the development method concerned, during the performance of the contract. During the performance of the contract, the parties shall make decisions in consultation regarding the specifications that shall apply in the subsequent phase of the project (a time box, for example) and/or in the subsequent, constituent development process. The customer accepts the risk that the software and/or the website may not necessarily meet all specifications. The customer shall ensure that relevant end users permanently and actively contribute and cooperate with respect to, among other things, testing and (further) decision-making, and that the contributions and cooperation of these end users is supported by the customer's organisation. The customer guarantees that the employees whom it deploys and who are appointed to key positions shall have the decision-making powers required for these positions. The customer guarantees expeditiousness with respect to the progress-related decisions that it must make during the performance of the contract. If the customer fails to make clear progress-related decisions in a timely manner in accordance with the project approach that forms part of the development method concerned, the supplier shall be entitled, though not obliged, to make the decisions that it deems to be appropriate.

36.4 The provisions of Article 30.1, Articles 30.4 up to and including 30.8 and Article 34.1 shall not apply if the parties use a development method as referred to in Article 36.3. The customer shall accept the software and/or website in the state that it is in at the end of the last development phase ('as is, where is').
The supplier shall not be obliged to fix errors after the last development phase unless otherwise agreed in writing.

36.5 In the absence of specific agreements on the matter, the supplier shall commence the design and/or development work within a term that it deems reasonable following the conclusion of the contract.

36.6 If so requested, the customer shall make it possible for the supplier to perform work outside the usual working days and working hours at the office or location of the customer.

36.7 The supplier's performance obligations with respect to the development of a website do not include making a content management system available.

36.8 The supplier's performance obligations do not include maintaining the software and/or the website, and/or providing support to users and/or administrators of the software and/or the website. If, contrary to the foregoing, the supplier must also perform maintenance work and/or provide support, the supplier may require that the customer enter into a separate, written contract for the purpose. The supplier shall charge for this work in accordance with the supplier's usual rates.

**Art. 37 Delivery, installation and acceptance**

37.1 The provisions of Article 29 concerning delivery and installation apply *mutatis mutandis*.

37.2 Unless, pursuant to the contract, the supplier must host the software and/or website on its own computer system for the customer, the supplier shall deliver the website to the customer on a data carrier and in a form determined by the supplier, or shall make the software and/or website available to the customer online.

37.3 The provisions of Article 30 of these general terms and conditions concerning acceptance apply *mutatis mutandis*.

**Art. 38 Right of use**

38.1 The supplier shall make the software and/or website developed on the instructions of the customer and any associated user documentation available to the customer for use.

38.2 The source code of the software and the technical documentation prepared during development of the software shall only be made available to the customer if this has been agreed in writing, in which case the customer shall be entitled to make changes to the software.

38.3 The supplier is not obliged to make available the support software and program or data libraries required for the use and/or maintenance of the software.

38.4 The provisions of Article 28 concerning right of use and restrictions on use apply *mutatis mutandis*.

38.5 No restrictions on use of the software and/or website shall apply to the customer, contrary to the stipulation of Article 38.4, only if the content of the written contract expressly shows that all design and development costs shall fully and exclusively be borne by the customer.

**Art. 39 Payment**

39.1 In the absence of an agreed payment schedule, all amounts that relate to the design and development of software and/or websites shall be payable each calendar month in arrears.

39.2 The price for the development work includes the payment for the right to use the software or website during the term of the contract.

39.3 The payment for the development of the software does not include a payment for support software and program and data libraries, and any installation services and any modification and/or maintenance of the software required by the customer. The payment also does not include the provision of support to users of the software.

**Art. 40 Guarantee**

40.1 The provisions of Article 34 concerning the guarantee apply *mutatis mutandis*.

40.2 The supplier does not guarantee that the website that it has developed functions well with all (new versions of) web browser types and possibly other software.
The supplier also does not guarantee that the website functions well with all types of equipment.

## Chapter 6. Software maintenance and support

*The provisions of this 'Software maintenance and support' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier performs services in the field of software maintenance and support in the use of software.*

**Art. 41 Maintenance services**

41.1 If agreed, the supplier shall perform maintenance work with respect to the software specified in the contract. The maintenance obligation includes fixing errors in the software within the meaning of Article 30.3 and, exclusively if agreed in writing, making new versions of the software available in accordance with Article 42.

41.2 The customer must report errors discovered in the software in detail. Following receipt of the report, the supplier shall strive to the best of its ability to fix errors and/or implement improvements in later, new versions of the software in accordance with its usual procedures. Depending on the urgency and the supplier's version and release policy, the results shall be made available to the customer in a manner and within a term determined by the supplier. The supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. The customer shall itself install, organise, parameterise and tune the corrected software or the new version of the software made available, and, if necessary, modify the equipment and operating environment used.

41.3 The provisions of paragraphs 34.3 and 34.4 apply *mutatis mutandis*.

41.4 If the supplier performs maintenance work online, the customer shall promptly ensure that a proper infrastructure and network facilities are in place.

41.5 The customer shall extend the cooperation required by the supplier in the context of maintenance, including temporarily ceasing use of the software and making a backup of all data.

41.6 If the maintenance work relates to software that was not supplied to the customer by the supplier, the customer, if the supplier believes this is necessary or desirable for the maintenance work, shall make the source code and the technical (development) documentation of the software, including data models, designs, change logs and the like, available. The customer guarantees that it is entitled to make the aforementioned items available. The customer grants the supplier the right to use and change the software, including the source code and technical (development) documentation, in the context of performing the agreed maintenance work.

41.7 The maintenance work performed by the supplier does not affect the customer's own responsibility for managing the software, including checking the settings and the way in which the results arising from operating the software are used. The customer shall itself install, organise, parameterise and tune the software and support software required and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

**Art. 42 New versions of software**

42.1 Maintenance shall include 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, they shall be made available at the supplier's discretion.

42.2 Three months after an improved version has been made available, the supplier shall no longer be obliged to fix errors in the previous version and to provide support and/or perform maintenance work with respect to a previous version.

42.3 The supplier may require that the customer enter into a further written contract with the supplier for a version with new functionality and that a further payment be made for this this version. The supplier may incorporate functionality from a previous version of the software in unaltered form, but does not guarantee that each new version includes the same functionality as the previous version. The supplier is not obliged to maintain, modify or add certain features or functionalities of the software specifically for the customer.

42.4 The supplier may require that the customer modify its system (equipment, software and the like) if doing so is necessary for the proper functioning of a new version of the software.

**Art. 43 Support services**

43.1 If the services provided by the supplier under the contract include the provision of support to users and/or administrators of the software, the supplier shall provide, by telephone or email, advice on the use and functioning of the software specified in the contract. The supplier

may set conditions with respect to the qualifications and the number of persons eligible for support. The supplier shall handle properly substantiated requests for support within a reasonable term in accordance with its usual procedures. The supplier does not guarantee the accuracy, completeness or timeliness of replies or the support offered. Support services shall be performed on working days during the supplier's usual business hours.

43.2 If the services provided by the supplier under the contract include the provision of standby services, the supplier shall ensure that one or more staff members are available on the days and during the times specified in the contract. The customer shall in this case be entitled in the event of urgency to call in the support of staff members on standby if there is a serious malfunction in the operation of the software. The supplier does not guarantee that all malfunctions will be repaired speedily.

43.3 The maintenance and other agreed services as referred to in this chapter shall be performed as from the date on which the contract is concluded, unless the parties have agreed otherwise in writing.

**Art. 44 Payment**

44.1 In the absence of an expressly agreed payment schedule, all amounts that relate to the maintenance of the software and the other services as referred to in this chapter and laid down in the contract shall be payable each calendar month in advance.

44.2 Amounts relating to the maintenance of the software and the other services as referred to in this chapter and laid down in the contract shall be payable from the moment of commencement of the contract. The payment for maintenance and other services shall be due regardless of whether or not the customer is using the software or exercising the option of maintenance or support.

## Chapter 7. Advice and consultancy

*The provisions of this 'Advice and consultancy' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier provides services in the field of advice and consultancy.*

**Art. 45 Performance of advisory and consultancy services**

45.1 The completion time of an assignment in the field of advice and consultancy depends on various factors and circumstances, such as the quality of the data and information provided by the customer and the cooperation of the customer and relevant third parties. Unless otherwise agreed in writing, therefore, the supplier shall not commit to an assignment completion time in advance.

45.2 The supplier's services shall only be performed on the supplier's usual working days and during the supplier's usual business hours.

45.3 The use that the customer makes of advice and/or a consultancy report issued by the supplier shall always be at the customer's risk. The onus to prove that the advisory and consultancy services or the way in which they are performed are not in conformance with that which has been agreed in writing or may be expected from a competent supplier acting reasonably is entirely on the customer, without prejudice to the supplier's right to furnish evidence to the contrary through all means.

45.4 Without the supplier's prior written permission, the customer may not disclose the supplier's way of working, methods and techniques and/or the content of the supplier's advice or reports to third parties. The customer may not provide the supplier's advice or reports to a third party or otherwise make the supplier's advice or reports public.

**Art. 46 Reporting**

46.1 The supplier shall periodically inform the customer, in the manner agreed in writing, about the performance of the work. The customer shall inform the supplier in advance and in writing about circumstances of importance or circumstances that could be of importance to the supplier, such as the manner of reporting, the issues to be addressed, the customer's prioritisation, the availability of resources and personnel of the customer, and special facts or circumstances or facts or circumstances of which the supplier is possibly unaware.
The customer shall ensure that the information provided by the supplier is further disseminated and noted within the customer's organisation and that it is assessed partly on the basis of this inspection, and shall inform the supplier about this inspection and assessment.

**Art. 47 Payment**

47.1 In the absence of an expressly agreed payment schedule, all amounts that relate to the services provided by the supplier as referred to in this chapter shall be payable each calendar month in arrears.

## Chapter 8. Secondment services

*The provisions of this 'Secondment services' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier makes one or more of its employees available to work under the management and supervision of the customer.*

**Art. 48 Secondment services**

48.1 The supplier shall make the employee specified in the contract available to perform work under the management and supervision of the customer. The results of the work are at the customer's risk. Unless otherwise agreed in writing, the employee shall be made available to the customer for 40 hours a week during the supplier's usual working days.

48.2 The customer may only deploy the employee made available to perform work other than the agreed work if the supplier has agreed to the performance of that other work in advance and in writing

48.3 The customer may only second the employee made available to a third party for the purpose of performing work under the management and supervision of that third party if this has expressly been agreed in writing.

48.4 The supplier shall endeavour to ensure that the employee made available remains available to perform work for the duration of the contract during the agreed days, except in the event of illness or if the employee leaves the supplier's employment. Also if the contract has been entered into with a view to performance by one particular person, the supplier shall always be entitled to replace this person with one or more persons who have the same qualifications.

48.5 The customer shall be entitled to request that the employee made available be replaced (i) if the employee made available demonstrably fails to meet the expressly agreed quality requirements and the customer makes this known to the supplier, with substantiation, within three working days following commencement of the work, or (ii) in the event of prolonged illness on the part of the employee made available or if the employee leaves the supplier's employment. The supplier shall handle such a request without delay as a matter of priority. The supplier does not guarantee that replacement is always

possible. If replacement is not possible or is not possible promptly, the customer's rights with respect to further performance of the contract shall cease to have effect, as shall all claims of the customer due to non-performance of the contract. The customer's payment obligations with respect to the work performed shall continue to apply fully.

**Art. 49 Term of the secondment contract**

49.1 In derogation from the provisions of Article 4 of these general terms and conditions, if nothing has been agreed between the parties regarding the term of secondment, the secondment contract shall be an open-ended one, in which case a notice period of one calendar month following any initial term shall apply for each party.
Notice of termination must be given in writing.

**Art. 50 Length of the working week, working hours and working conditions**

50.1 The working hours, rest periods and length of the working week of the employee made available shall be the same as the customer's usual working hours, rest periods and length of the working week.
The customer guarantees that the working hours, rest periods and length of the working week are in compliance with relevant legislation and regulations.

50.2 The customer shall inform the supplier about an intended temporary or permanent closure of its company or organisation.

50.3 The customer is obliged towards the supplier and the employee made available to comply with relevant legislation and regulations pertaining to workplace safety and working conditions.

**Art. 51 Overtime pay and travel time**

51.1 If, on the instructions or at the request of the customer, the employee made available works more hours per day than the agreed or usual number of working hours or works on days other than the supplier's usual working days, the customer shall owe the agreed overtime rate for these hours or, in the absence of an agreed overtime rate, the supplier's usual overtime rate.
If so requested, the supplier shall inform the customer about the current overtime rates.

51.2 Costs and travel time shall be charged to the customer in accordance with the supplier's usual rules and standards.
If so requested, the supplier shall inform the customer about the usual rules and standards in place for the purpose.

**Art. 52 Recipients' liability and other liability**

52.1 The supplier shall ensure that amounts payable in relation to the employee made available under the contract with the customer in terms of payroll tax, social insurance contributions and turnover tax are paid on time and in full. The supplier indemnifies the customer against any and all claims of the tax authorities or agencies tasked with implementing social insurance legislation pursuant to the contract with the customer, subject to the condition that the customer immediately informs the supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the supplier. The customer shall provide the powers of attorney and information required to the supplier and assist the supplier to defend itself, if necessary in the name of the customer, against such claims.

52.2 The supplier does not accept any liability for the quality of the results produced by work performed under the management and supervision of the customer.

## Chapter 9. Education and training

*The provisions of this 'Education and training' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier provides services, under whatever name and in any manner whatsoever (for example in electronic form), in the field of education, training, workshops, seminars and the like (hereinafter referred to as 'training course' ).*

**Art. 53 Registration and cancellation**

53.1 A course must be registered for in writing. Registration is binding following its confirmation by the supplier.

53.2 The customer is responsible for the choice and suitability of the training course for the participants.
A lack of prior knowledge on the part of a participant does not affect the customer's obligations under the contract.
The customer may replace a training course participant with another participant with the supplier's prior written permission.

53.3 If, in the opinion of the supplier, the number of registrations is a reason for doing so, the supplier shall be entitled to cancel the training course, to combine it with one or more training courses or provide it at a later date.
The supplier reserves the right to change the location of the training course.
The supplier is entitled to change the training course in organisational terms and in terms of content.

53.4 The consequences of cancellation of participation in a training course by the customer or participants are governed by the supplier's usual rules.
A cancellation must always be effected in writing prior to the training course or the part of the training course concerned. Cancellation or non-attendance does not affect the customer's obligations under the contract.

**Art. 54 Provision of the training course**

54.1 The customer accepts that the supplier determines the content and depth of the training course.

54.2 The customer shall inform the participants about the obligations under the contract and the rules of conduct and other rules prescribed by the supplier for participation in the training course, and shall ensure compliance with these obligations and rules.

54.3 If the supplier uses its own equipment or software to provide the training course, it does not guarantee that this equipment or software is free of errors and will function without interruption.
If the supplier provides the training course at the customer's location, the customer shall ensure the availability of properly operating equipment and software.

54.4 Administering an examination or test does not form part of the contract.

54.5 The customer shall owe a separate payment for the documentation, training materials or training resources made available or produced for the training course.
The preceding stipulation also applies to any certificates of training or copies of such certificates.

54.6 If the training course is provided on the basis of e-learning, the provisions of the 'Software as a Service (SaaS)' chapter shall apply *mutatis mutandis* to the greatest extent possible.

**Art. 55 Price and payment**

55.1 The supplier may require that the customer pay the amounts owed prior to the start of the training course.
The suppler may exclude participants from the training course if the customer fails to ensure payment on time, without prejudice to the other rights of the supplier.

55.2 Unless the supplier has expressly indicated that the training course is exempt from VAT within the meaning of Section 11 of the Turnover Tax Act 1968, the customer shall also owe VAT on the payment. The supplier shall be entitled to adjust its prices following the conclusion of the contract in the event of a change in the VAT regime for training courses established under or pursuant to the law.

## Chapter 10. Hosting

*The provisions of this 'Hosting' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier provides services, under whatever name, in the field of hosting and related services.*

### Art. 56 Hosting services

56.1 The supplier shall perform the hosting services agreed with the customer.

56.2 If the contract's object is to make disk space of equipment available, the customer shall not exceed the agreed disk space unless the contract expressly provides for the consequences of doing so. The contract shall include making disk space available on a server specifically reserved for the customer only if this has been expressly agreed in writing. All use of disk space, data traffic and other loading of systems and infrastructure shall be limited to the maximums agreed between the parties. The data traffic that is not used by the customer in a given period may not be transferred to a subsequent period. If the agreed maximums are exceeded, the supplier shall charge an additional amount in accordance with the usual rates.

56.3 The customer is responsible for the management, including checking the settings, and use of the hosting service, and the way in which the results of the service are used. In the absence of specific agreements on the matter, the customer shall itself install, organise, parameterise and tune the software and support software required and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires. The supplier is not obliged to perform data conversion.

56.4 The contract's objects shall include the provision or making available of backup, contingency and recovery services only if this has been expressly agreed in writing.

56.5 The supplier may temporarily put all or part of the hosting service out of operation for preventive, corrective or adaptive maintenance. The supplier shall not allow the period during which the service is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours, and, according to circumstances, have this period commence following consultation with the customer.

56.6 If, pursuant to the contract, the supplier performs services for the customer with respect to a domain name, such as the application, extension or sale or transfer to a third party, the customer must observe the rules and working method of the body or bodies concerned. If so requested, the supplier shall provide a written copy of the aforementioned rules to the customer. The supplier expressly does not accept any responsibility for the accuracy and timeliness of the provision of services or achievement of the results intended by the customer. The customer must pay all costs associated with the application and/or registration in accordance with the agreed rates or, in the absence of agreed rates, the supplier's usual rates. The supplier does not guarantee that a domain name desired by the customer will be granted to the customer.

### Art. 57 Notice and Take Down

57.1 The customer shall at all times act with due care and lawfully towards third parties, particularly by respecting the intellectual property rights and other rights of third parties and the privacy of third parties, by refraining from disseminating information in a manner that is contrary to the law, from granting unauthorised access to systems and from spreading viruses or other harmful programs or data, and by refraining from committing criminal acts and violating any other legal obligation.

57.2 To prevent liability towards third parties or limit the consequences thereof, the supplier is always entitled to take measures with respect to an act or omission of or at the risk of the customer. Should the supplier so demand in writing, the customer shall delete data and/or information from the supplier's systems without delay. If the customer fails to do so, the supplier shall be entitled at its own discretion to delete the data and/or information itself or make it impossible to access the data and/or information. In addition, in the event of a breach or an imminent breach of the provisions of paragraph 57.1, the supplier shall be entitled to deny the customer access to the supplier's systems with immediate effect and without prior notice. The foregoing shall be without prejudice to any other measures or the exercise of other legal and contractual rights by the supplier against the customer. The supplier shall in this case also be entitled to terminate the contract with immediate effect without being liable towards the customer for doing so.

57.3 The supplier cannot be expected to form an opinion on the merits of the claims of third parties or the customer's defence, or be involved in any way whatsoever in a dispute between a third party and the customer. The customer shall deal with the third party concerned regarding the matter and inform the supplier in writing. The information provided in this context must be properly substantiated by supporting documents.

## Chapter 11. Purchase of equipment

*The provisions of this 'Purchase of equipment' chapter shall apply in addition to the general provisions of these general terms and conditions if the supplier sells equipment, of whatever nature, and/or other items (corporeal objects) to the customer.*

### Art. 58 Purchase and sale

58.1 The supplier shall sell the equipment and/or other items according to the nature and number agreed in writing and the customer shall purchase this equipment and/or these other items from the supplier.

58.2 The supplier does not guarantee that the equipment and/or items will on delivery be suitable for the customer's actual and/or intended use unless the intended purposes have been clearly specified in the written contract without reservation.

58.3 The supplier's obligation to sell does not include assembly and installation materials, software, consumer items, batteries, stamps, ink and ink cartridges, toner items, cables and accessories.

58.4 The supplier does not guarantee that the assembly, installation and operating instructions that come with the equipment and/or items are free of errors and that the equipment and/or items have the characteristics stated in these instructions.

**Art. 59 Delivery**

59.1 The equipment and/or items sold by the supplier to the customer shall be delivered to the customer ex warehouse. The supplier shall deliver the items sold to the customer to a location designated by the customer, or have such items delivered to the designated location, only if doing so has been agreed in writing. The supplier shall in this case inform the customer, if possible in good time prior to the delivery, about the time at which the supplier or transporter engaged by the supplier intends to deliver the equipment and/or items.

59.2 The purchase price of the equipment and/or items does not include the costs of transport, insurance, hauling and hoisting, the hiring of temporary facilities and the like. If applicable, these costs shall be charged to the customer.

59.3 If the customer asks the supplier to remove old materials (such as networks, cabinets, cable ducts, packaging materials and equipment) or if the supplier is legally obliged to do so, the supplier may accept this request by means of a written assignment at its usual rates. If and insofar as the supplier is prohibited by law from requiring payment (for example in the context of the old-for-new scheme), the supplier shall not, as appropriate, require payment from the customer.

59.4 If the parties have concluded an agreement in writing for the purpose, the supplier shall install, configure and connect the equipment and/or items or shall have the equipment and/or items installed, configured and connected. Any obligation of the supplier to install and/or configure equipment does not include performing data conversion and installing software. The supplier is not responsible for obtaining any licences required.

59.5 The supplier is always entitled to perform the contract on the basis of partial deliveries.

**Art. 60 Test assembly**

60.1 The supplier shall only be obliged to place a test assembly with respect to the equipment in which the customer is interested if doing so has been agreed in writing.
The supplier may attach financial and other conditions to a test assembly. A test assembly involves temporarily making the standard version of equipment available on approval, excluding accessories, in a space made available by the customer, prior to the customer's final decision regarding whether or not to purchase the equipment concerned. The customer is liable for the use, damage to and theft or loss of the equipment that forms part of a test assembly.

**Art. 61 Area requirements**

61.1 The customer shall ensure an area that meets the requirements specified by the supplier for the equipment and/or items, among other things in terms of temperature, humidity and technical area requirements.

61.2 The customer shall ensure that work that must be performed by third parties, such as structural work, is performed adequately and on time.

**Art. 62 Guarantee**

62.1 The supplier shall strive to the best of its ability to repair manufacturing faults in the equipment and/or other items sold, as well as in parts supplied by the supplier within the scope of the guarantee, within a reasonable term and free of charge if these errors are reported in detail to the supplier within a period of three months following delivery. If, in the supplier's reasonable opinion, repair is not possible or would take too long, or if repair would entail disproportionately high costs, the supplier shall be entitled to replace the equipment and/or items free of charge with other, similar, though not necessarily identical, equipment and/or items. The guarantee does not include data conversion that is necessary as a result of repair or replacement. All replaced parts shall be the property of the supplier. The guarantee obligation shall cease to apply if errors in the equipment, items or parts are entirely or partly the result of incorrect, careless or incompetent use or of external causes like fire or water damage, or if the customer makes changes, or has changes made, in the equipment or parts supplied by the supplier within the scope of the guarantee without the supplier's permission. The supplier shall not withhold such permission on unreasonable grounds.

62.2 Any claims or further claims of non-conformity of the equipment and/or items delivered other than those provided for in paragraph 62.1 on which the customer may seek to rely are excluded.

62.3 The supplier shall charge for the costs of work and repair performed outside the scope of this guarantee in accordance with the supplier's usual rates.

62.4 The supplier shall not have any obligation whatsoever under the purchase contract with respect to errors and/or other defects reported after the end of the guarantee period referred to in paragraph 62.1.

**Art. 63 Equipment from other suppliers**

63.1 If and insofar as the supplier sells third-party equipment, the conditions of sale of that third party shall apply in the relationship between the supplier and the customer with respect to the equipment instead of the provisions of these general terms and conditions that differ from those conditions of sale, provided that the applicability of the conditions of sale of the third party concerned was reported to the customer by the supplier in writing and, in addition, a copy of the conditions of sale was made available to the customer prior to or upon the conclusion of the contract or upon conclusion of the contract. In derogation from the provisions of the preceding sentence, the customer shall not be entitled to invoke failure on the part of the supplier to fulfil the aforementioned obligation to provide information if the customer is a party as referred to in Section 235, subsection 1 or subsection 3 of Book 6 of the Dutch Civil Code.

63.2 If and insofar as, for whatever reason, the conditions of third parties referred to are deemed not to apply or are declared inapplicable in the relationship between the customer and the supplier, the provisions of these general terms and conditions shall apply in full.

## Chapter 12. Rent of equipment

*The provisions of this 'Renting equipment' chapter shall apply in addition to the general provisions of these general terms and conditions if the supplier rents out equipment, of whatever nature, to the customer.*

**Art. 64 Renting out and rent**

64.1 The supplier shall rent out the equipment and associated user documentation specified in the rental agreement to the customer.

64.2 This renting out does not include making software available on separate data carriers. It also does not include making the consumer items required to use the equipment, such as batteries, ink and ink cartridges, toner items, cables and accessories, available.

64.3 The rent shall commence on the date on which the equipment is made available to the customer.

**Art. 65 Prior inspection**

65.1 By way of prior inspection, the supplier may draw up a description of the state of the equipment, including in terms of defects observed, in the presence of the customer prior to or when making the equipment available. The supplier may require that the customer sign the report drawn up containing this description to indicate the customer's agreement prior to making the equipment available to the customer for use. The defects in the equipment stated in the aforementioned record shall be at the expense of the supplier. If defects are observed, the parties shall agree on whether, and, if so, the manner and term in which, the defects stated in the record are to be repaired.

65.2 If the customer does not properly cooperate in the prior inspection referred to in Article 65.1, the supplier shall have the right to carry out this prior inspection outside the presence of the customer and draw up the report itself. This report shall be binding for the customer.

65.3 If a prior inspection is not carried out, the customer shall be deemed to have received the equipment in a good and undamaged state.

**Art. 66 Use of the equipment**

66.1 The customer shall only use the equipment in accordance with the equipment's designated use under the agreement and at the locations specified in the agreement in and for its own organisation or company. Use of the equipment by or for third parties is prohibited. The right to use the equipment is non-transferable. The customer may not rent the equipment out to a third party or otherwise make it possible for a third party to use or make joint use of the equipment.

66.2 The customer shall itself install, assemble and make the equipment ready for use.

66.3 The customer may not use the equipment or any part thereof as security in any way whatsoever or dispose of the equipment or any part thereof in another way.

66.4 The customer shall use the equipment carefully and maintain it with due care. The customer shall take adequate measures to prevent damage. In the event of damage to the equipment, the customer shall inform the supplier without delay. The customer is liable towards the supplier for damage to the equipment. The customer shall in all cases be liable towards the supplier in the event of theft, loss or misappropriation of the equipment during the term of the rent.

66.5 The customer shall not entirely or partly change the equipment or add something to the equipment. If any changes or additions have nevertheless been made, the customer shall undo or remove these changes or additions no later than at the end of the rental agreement.

66.6 Defects in the changes or additions made to the equipment by or no the instructions of the customer and all defects in the equipment arising from those additions or defects shall not be defects within the meaning of Section 204 of Book 7 of the Dutch Civil Code. The customer shall not have any claim against the supplier with respect to these defects. The supplier is not obliged to perform repair or maintenance work with respect to these defects.

66.7 The customer is not entitled to any compensation in connection with changes or additions made by the customer to the rented equipment that are not, for any reason whatsoever, undone or removed at or following the end of the contract.

66.8 The customer shall immediately inform the supplier in writing of any attachment of the equipment. This communication must state the identity of the attaching party and the reason for the attachment. The customer shall immediately submit the rental agreement to the bailiff levying the attachment for inspection.

**Art. 67 Maintenance of the rented equipment**

67.1 The customer shall not maintain the rented equipment itself or have the equipment maintained by a third party.

67.2 The customer shall immediately make defects that it observes in the rented equipment known in writing. The supplier shall strive to the best of its ability to repair defects in the equipment that are at its expense within a reasonable term by means of corrective maintenance. The supplier is also entitled, though not obliged, to perform preventive maintenance on the equipment. If so requested, the customer shall give the supplier the opportunity to perform corrective and/or preventive maintenance. The parties shall in consultation determine, in advance, the dates on which and the times at which maintenance is to take place. The customer is not entitled to replacement equipment during maintenance periods.

67.3 The obligation to repair defects excludes:

- repairing defects that the customer accepted when entering into the rental agreement;
- repairing defects that are the result of external causes;
- repairing defects that can be attributed to the customer, its staff members and/or third parties engaged by the customer;
- repairing defects that are the result of careless, incorrect or incompetent use or use that is contrary to the documentation;
- repairing defects that are the result of using the equipment in a manner that is contrary to its designated use;
- repairing defects that are the result of unauthorised changes or additions made to the equipment.

67.4 If the supplier repairs the defects referred to in the preceding paragraph or has such defects repaired, the customer shall owe the costs associated with the repair work in accordance with the supplier's usual rates.

67.5 The supplier is always entitled to decide against repairing the defects and replace the equipment with other, similar, though not necessarily identical, equipment.

67.6 The supplier is never obliged to recover or reconstruct data that has been lost.

**Art. 68 Final inspection and return**

68.1 The customer shall return the equipment to the supplier in its original state at the end of the rental agreement. The customer shall bear the costs of transport associated with the return.

68.2 Prior to or no later than on the last working day of the rental period, the customer shall cooperate in a joint final inspection of the state of the equipment. The findings of this final inspection shall be set out in a report jointly drawn up by the parties. This report must be signed by both parties. If the customer does not cooperate in the final inspection, the supplier shall have the right to carry out this inspection outside the presence of the customer and draw up the report itself. This report shall be binding for the customer.

68.3 The supplier shall be entitled to have the defects that are stated in the final inspection report and that are reasonably at the customer's risk and expense repaired at the customer's expense. The customer is liable for loss suffered by the supplier due to temporary unusability of the equipment or the impossibility of renting out the equipment.

68.4 If the customer has not undone a change or removed an addition that it made to the equipment at the end of the rent period, the customer shall be deemed to have

relinquished any and all rights to those changes and/or additions.

## Chapter 13. Maintenance of equipment

*The provisions of this 'Maintenance of equipment' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the supplier maintains equipment of whatever nature for the customer.*

### Art. 69 Maintenance services

69.1 The supplier shall perform maintenance with respect to the equipment specified in the maintenance agreement provided that the equipment is set up in the Netherlands.

69.2 The customer is not entitled to temporary replacement equipment during the time that the supplier is in possession of the equipment designated to undergo maintenance.

69.3 The content and scope of the maintenance services to be performed and any applicable service levels shall be laid down in a written maintenance agreement. In the absence of a written maintenance agreement, the supplier shall be obliged to strive to the best of its ability to repair malfunctions that have been properly reported to it by the customer within a reasonable term. In these general terms and conditions, 'malfunction' means non-compliance of the equipment with the equipment specifications expressly made known by the supplier in writing or a failure of the equipment to meet specifications without interruption. A malfunction only applies if it can be demonstrated by the customer and is, in addition, reproducible. The supplier is also entitled, though not obliged, to perform preventive maintenance.

69.4 The customer shall inform the supplier of a malfunction in the equipment immediately after it has occurred by means of a detailed description.

69.5 The customer shall extend the cooperation required by the supplier in the context of maintenance, including temporarily ceasing use of the equipment. The customer must grant the supplier's personnel or third parties designated by the supplier access to the place at which the equipment is located, extend the cooperation required and make the equipment available to the supplier for the purpose of maintenance.

69.6 The customer shall ensure that a complete and properly functioning reserve copy of all software and data recorded in or on the equipment has been made prior to making the equipment available to the supplier for maintenance.

69.7 At the supplier's request, an employee of the customer who is knowledgeable about the matter at hand shall be present for consultation during the performance of maintenance work.

69.8 The customer is authorised to connect equipment and systems not supplied by the supplier to the equipment and install software on the equipment.

69.9 If, in the opinion of the supplier, it is necessary for the purpose of maintaining the equipment to test the equipment's connections with other equipment or software, the customer shall make the other equipment and software concerned, as well as the test procedures and data carriers, available to the supplier.

69.10 The test material that is not included in the supplier's normal range of equipment and that is required for the performance of maintenance work must be made available by the customer.

69.11 The customer bears the risk of loss or theft of, or damage to, the equipment during the period that it is in the supplier's possession for the purpose of maintenance work. The customer may take out insurance against this risk at its own discretion.

### Art. 70 Maintenance fee

70.1 The maintenance fee does not include:

- costs of (replacing) consumer items like batteries, stamps, ink and ink cartridges, toner items, cables and accessories;
- costs of (replacing) parts and maintenance services for the repair of malfunctions that were entirely or partly caused by attempts at repair by parties other than the supplier;
- work performed to overhaul the equipment;
- modifications to the equipment;
- moving, relocating, reinstalling equipment or work arising from such activity.

70.2 The maintenance fee shall be due regardless of whether or not the customer is using the equipment or exercising the option of maintenance.

### Art. 71 Exclusions

71.1 Work performed to investigate or repair malfunctions that are the result of or connected with user errors, improper use of the equipment or external causes like failures of internet service, data network connections, power supplies or links to equipment, software or materials that are not within the scope of the maintenance agreement is excluded from the supplier's obligations under the maintenance agreement.

71.2 The supplier's maintenance obligations exclude the following:

- investigating or repairing malfunctions that are the result of or connected with a change of the equipment carried out by a party other than the supplier or a party acting on behalf of the supplier;
- use of the equipment in a manner that is contrary to the applicable conditions and a failure on the part of the customer to have the equipment maintained in a timely manner.

The supplier's maintenance obligations also exclude investigating or repairing malfunctions in connection with the software installed on the equipment.

71.3 If the supplier carries out an investigation and/or performs maintenance work in the context of the exclusions set out in Article 71.1 and/or Article 71.2, the supplier shall be entitled to charge for the costs of that investigation and/or maintenance work in accordance with its usual rates. The foregoing shall not affect any amount payable to the supplier by the customer in the context of maintenance services.

71.4 The supplier is never obliged to recover data that has been corrupted or lost as a result of malfunctions and/or maintenance.

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