

Capptions Terms and Conditions as based on Chapters 1, 2, 3 and 7 of the Dutch 'Nederland ICT' IT joint industry standard T & C.

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.



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- 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

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- 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.

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- 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.

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- 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: kantonrecht), 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 aforementioned 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.*

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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 provi-

ding 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 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.