

General Delivery Terms and Conditions of companies affiliated to the ICT-group

In these General Delivery Terms and Conditions "ICT" stands for any subsidiary and any other company belonging to the ICT-Group that has made for itself an offer to or has entered into an agreement with another party – which party is supposed to act in practice of a trade or company, or within the framework of a public task (hereinafter: the 'Principal') – and that has declared these General Delivery Terms and Conditions applicable. Affiliated to the ICT-Group are all legal entities and companies that are associated with ICT Automatisering N.V. in accordance with articles 2:24a up to and including 2:24c of the Dutch Civil Code. These General Delivery Terms and Conditions have been deposited at the Chamber of Commerce in Rotterdam on 10 February 2009 with number 24186237. These General Delivery Terms and Conditions are also available on the internet: www.ict.nl.

GENERAL PROVISIONS

1. APPLICABILITY AND DEFINITIONS

- 1.1 These General Delivery Terms and Conditions are applicable to all Negotiations with, offers from and all orders to ICT with respect to the delivery of movable properties (including but not limited to Hardware) and/or the granting of licenses and/or the performing of Services, as well as to all Agreements in connection therewith. These General Delivery Terms and Conditions consist of general provisions that pertain to all before mentioned activities and particular provisions that pertain to the activities specified therein. In case of a contradiction between the general provisions and the particular provisions the particular provisions shall prevail. In case of mixed Agreements the respective particular provisions for each of the in those Agreements agreed work shall apply.
- 1.2 The applicability of (purchase) conditions of Principal is hereby expressly rejected.
- 1.3 Principal can only appeal to conditions that deviate from these General Delivery Terms and Conditions if and as far as the conditions have been accepted in writing by ICT.
- 1.4 A Principal with whom has once been contracted under these General Delivery Terms and Conditions, agrees to the applicability of these General Delivery Terms and Conditions in subsequent negotiations with and Agreements between Principal and ICT.
- 1.5 "General Delivery Terms and Conditions" will mean: these "General delivery terms and conditions of companies affiliated to the ICT-group".
- 1.6 "Services" will mean: activities and/or work, including but not limited to: software development, consulting, installation and commissioning, support, education, secondment and maintenance with respect to Software and Hardware.
- 1.7 "Documentation" will mean: all documents in connection with the Software and/or Hardware delivered by ICT to Principal in which the technical and/or functional specifications of the Software and/or Hardware and/or the manual for use of the Software and/or Hardware are included.
- 1.8 "Executables" will mean: computer files that can be executed by a computer, not being source codes.
- 1.9 "Hardware" will mean: computers and their relating equipment, relating Documentation, accessories, parts and upgrades.
- 1.10 "Software" will mean: every form of computer program (amongst others source code, object code, Executables, scripts, etc.), including programs that are embedded in equipment (amongst others operating software, firmware, etc.), all by or on behalf of ICT developed draft materials, Documentation and all new versions, new releases, extensions, modifications and improvements thereof respectively therein.
- 1.11 "Specifications" will mean: all technical and functional characteristics of the Software and/or Hardware that are included in the Documentation and/or in another document drafted or agreed to by ICT.
- 1.12 "Defects" will mean: all significant deviations from the Specifications occurring in the Software, as well as in case the Hardware does not or not without interruption comply with the Specifications. Something is only a Defect in case this can be demonstrated and reproduced by Principal.
- 1.13 "Agreement" will mean: any agreement with respect to the delivery of movable goods (including but not limited to Hardware) and/or the granting of licenses and/or the performing of Services by ICT to Principal.

2. NEGOTIATIONS WITH ICT

- 2.1 These General Delivery Terms and Conditions are also applicable to all discussions between ICT and Principal with respect to the investigation of a possible Agreement (hereafter: "the Negotiations"). ICT is at all times entitled to terminate the Negotiations without being obliged to compensation or to continue the Negotiations.
- 2.2 In case, before an Agreement is concluded in accordance with article 3.3, ICT already starts to perform Services at the request of Principal, or if Principal is aware of this but does not object to it in writing, then Principal is obliged to pay the during the Negotiations already agreed upon fee or else the fee ICT usually charges. In the unlikely event that no Agreement is concluded, then Principal shall pay for the concerning Services until ICT has ceased to perform the Services. These General Delivery Terms and Conditions will be exclusively applicable to the concerned Services.

3. OFFERS, ORDERS AND AGREEMENTS

- 3.1 All offers from ICT are non-binding.
- 3.2 Orders and acceptances of offers by Principal are irrevocable.
- 3.3 ICT is only bound when and to the extent to which it has accepted in writing. Verbal commitments or agreements by or with its personnel do not bind ICT except and insofar as ICT has confirmed these in writing.
- 3.4 ICT is entitled to fully or partially subcontract its obligations under the Agreement with Principal.

4. RIGHTS WITH REGARD TO THE SOFTWARE, HARDWARE AND DOCUMENTATION

- 4.1 Unless otherwise expressly agreed to in writing or in case in the particular provisions of these General Delivery Terms and Conditions is deviated thereof, the copyrights and all (other) intellectual property rights on or in connection with the delivered Software, Hardware and Documentation remain with ICT and/or its licensors and these rights will not transfer to Principal. Where these General Delivery Terms and Conditions speak of "delivery" or conjugations of this word then from this may not be deduced that a transfer of ownership or intellectual property rights is intended. Unless otherwise expressly agreed to in writing ICT grants Principal, for indefinite time, the non-exclusive and non-transferable right to use the provided or designed Software, Hardware and Documentation for its own use only in accordance with the provisions in this article 4. The Software and Hardware shall be used as described in the Documentation. ICT is authorised to take technical measures to protect the Software and/or Hardware.
- 4.2 In case it is agreed that the Software may be used exclusively on one or more specifically indicated computer(s) and/or on one or more specifically indicated location(s) then Principal – in case and as long as the use of the Software on the specifically indicated computers or locations is undesirable or impossible due to interruptions, maintenance, calamities, replacement or migration – is entitled to use the Software on replacing computers or locations. In such case Principal is obliged to immediately inform ICT thereof in writing. The Software may under no circumstance be used simultaneously at more than the agreed number of computers or locations.
- 4.3 Principal is entitled - only if this is desired for back-up purposes - to make two copies of the Software and Documentation. Principal is not entitled to make more copies.
- 4.4 Principal shall affix on (the carriers of) the copies made in accordance with the preceding paragraph all names, trademarks and signs that are stated on the originals.
- 4.5 Unless otherwise agreed to in writing ICT shall provide Principal only with the Executables of the Software.
- 4.6 Principal is not entitled to translate, adapt, arrange or in any other way to alter the Software nor to (attempt to) create the source code of the Software by means of reverse engineering or otherwise, if the source code is not delivered to him.
- 4.7 In case Principal, for the making of interfaces between the Software and one or more other programs that do not infringe the (intellectual) property rights of ICT, requires information that Principal cannot obtain other than by executing one or more of the acts as defined in the preceding paragraph, then Principal is obliged to apply to ICT with the request to furnish the concerning information. No any right of Principal nor any obligation of ICT to furnish the concerning information can be derived thereof.
- 4.8 Unless otherwise expressly agreed to in writing Principal is not entitled to provide the Software and the Documentation to third parties, nor give the use thereof nor to disclose it by any other means to third

parties. Unless ICT is not (anymore) willing to maintain the Software, for reasons other than an attributable shortcoming or wrongful act of Principal, Principal is equally not entitled to have the Software maintained by a third party.

- 4.9 System and/or application software of third parties to be delivered by ICT shall be delivered in accordance with the license and warranty conditions of these third parties. Principal is responsible for the compliance with the concerned license during the use.

5. PRICE

- 5.1 Prices set by or agreed to with ICT are net, therefore, among other things, exclusive of V.A.T. and exclusive of any possible import or export duties, and are valid only for delivery ex office. Prices are also exclusive of the costs of packaging, sending, insurance and installation.
- 5.2 In case ICT takes on the packaging, sending, insurance and/or installation without having expressly and in writing agreed to a price therefore, then ICT is entitled to charge Principal the actual costs and/or ICT's usual rates therefore.
- 5.3 Prices set by or agreed to with ICT are based on the loans and the cost prices at the time of the offer or acceptance of the order by ICT. If the loans and/or cost prices increase thereafter, ICT is entitled to charge Principal a corresponding price increase, as far as this is reasonable.
- 5.4 In case a fixed price is agreed and Principal wishes to modify or supplement the order, then ICT shall inform Principal regarding the consequences to the price of these modifications and supplementations.

6. DELIVERY PERIOD, DELIVERY AND ACCEPTANCE

- 6.1 The delivery period starts after the conclusion of the Agreement as stipulated in article 3.3 and after Principal has provided ICT with all data, documents, equipment, machine time and (office) space, and after a possibly agreed upon advance payment has been received by ICT or security for payment has been issued at ICT's disposal.
- 6.2 The Software, Hardware, Documentation and other goods to be delivered by ICT are deemed to be delivered as soon as they have left ICT's office or that of third parties brought in by ICT, for transport to or for the benefit of Principal. In case Principal cannot or does not wish to receive the Software, Hardware, Documentation and/or other goods at the agreed upon time they are deemed to be delivered at the moment they would have left the office should there have been no impediment with Principal. In such a case, ICT is entitled to store all this at the expense of Principal.
- 6.3 Unless otherwise agreed to in writing, the agreed delivery period shall apply approximately. Exceeding delivery periods shall not entitle Principal to (supplementary or substitute) claims for damages or to non-compliance by Principal of any obligation resulting out of the Agreement. Principal is, however, entitled to rescind the Agreement in case ICT fails to deliver the Software, Hardware and Documentation within a reasonable period set by Principal after aforementioned exceeding. In case an ultimate date is explicitly agreed upon and Principal wishes amendments in and/or supplementations to the order, ICT shall inform Principal of the consequences of these amendments and supplementations to that ultimate date.
- 6.4 Delivery periods will be extended with the amount of time that the execution of the Agreement is delayed by force majeure. Delivery periods will also be extended with the amount of time that Principal with the fulfilment of an obligation is later than agreed upon or could reasonably be expected by ICT.
- 6.5 ICT has the right to deliver in parts. Each partial delivery will be deemed an independent delivery with respect to the applicability of these General Delivery Terms and Conditions.
- 6.6 All Software, Hardware and Documentation delivered by ICT shall be inspected by Principal, in case not agreed otherwise, within 14 days after delivery and subsequently accepted after remedy of possible Defects. The acceptance of Software is specified in more detail in article 20.

7. TRANSFER OF RISK AND TITLE

- 7.1 Principal bears the risk for all goods (including the carriers of Software) to be delivered by ICT from the moment of delivery and in case of the delivery or development of Software by ICT from the moment on which the (partial) acceptance test has succeeded in accordance with these General Delivery Terms and Conditions. In case no (partial) acceptance test is agreed upon, Principal shall bear the risk for the Software from the moment the Software has actually been made available to Principal.
- 7.2 All goods (including the carriers of Software) delivered by ICT remain property of ICT until such moment as Principal has paid in full all that which is owed to ICT in connection with the underlying Agreement, including damages, costs and interest. Principal has no right of retention with respect to those goods. This article 7.2 is not applicable to Software and Documentation. With respect thereto article 4.1 applies. Should, however, ICT and Principal explicitly agree in writing that, in deviation of article 4.1, the rights described in article 4.1 shall transfer to Principal, the first sentence of this article 7.2 shall also be applicable to the Software and Documentation delivered by ICT.

8. FORCE MAJEURE

- 8.1 ICT is entitled to invoke force majeure if the implementation of the Agreement is, in whole or in part, temporarily or not, prevented or impeded by circumstances reasonably out of its control, including site or building blockades, strikes, specific work interruptions or work-to-rule slowdowns and lockout, delay in the provision to ICT of parts, goods or services ordered from third parties, illness of employees, accidents and interruptions of business operations and interruptions in the computer equipment of ICT and/or Principal.
- 8.2 In the event of force majeure on the part of ICT, its obligations shall be suspended. In case the force majeure lasts longer than three months, both ICT and Principal are authorised to rescind the non-feasible parts of the Agreement without becoming liable for damages and without prejudice to the other provisions of these General Delivery Terms and Conditions.

WARRANTY

9. GENERAL WARRANTY

- 9.1 For parts of the delivery that ICT procures from third parties, the warranty obligations of ICT towards Principal are never greater or of longer duration than the warranty obligations of those third parties towards ICT. ICT will be discharged with respect thereto when it transfers its claim on this third party to Principal.
- 9.2 Principal is obligated to enable ICT if required to fulfill its warranty obligations and provide ICT at its request with amongst others computer time, (office) space and communication facilities with respect thereto.
- 9.3 ICT is in no event obligated to recover and/or repair lost or deformed data.

10. WARRANTY IN CASE OF SOFTWARE AND HARDWARE DELIVERY

- 10.1 ICT warrants that the Software and Hardware in essence function in accordance with the Specifications. The warranty consists of the correction of Defects in accordance with the provisions of these General Delivery Terms and Conditions.
- 10.2 Unless otherwise agreed to in writing the warranty period is six (6) months after delivery, or - in case an acceptance test is agreed upon - after passing of the acceptance test.
- 10.3 In case in the opinion of Principal the Software or Hardware during the warranty period contains Defects, Principal shall immediately – however at the latest fourteen (14) days after the Defects have become apparent - notify ICT in writing thereof, in the absence of which any claim towards ICT shall lapse.
- 10.4 In case ICT, after receiving the notice as mentioned in article 10.3, establish any Defects then:
 - a. in case it is agreed to that ICT shall correct Defects by means of furnishing new versions and new releases of the Software, ICT shall make an effort to correct those Defects in the first new version or release, unless this is reasonably no longer possible, in which case ICT shall make an effort to correct the specific Defects in the following new version or release.
ICT cannot be obligated to issue new versions and releases, nor can ICT be obligated to do so at any moment other than to be designated by ICT;
 - b. in case it is agreed to that ICT shall correct Defects by means other than the furnishing of new versions or releases, ICT shall make an effort to correct the Defects as soon as possible, in compliance with the possibly agreed response periods.
- 10.5 Without prejudice to the provisions of article 10.6, repair activities that are executed on the basis of by ICT recognised warranty claims shall be free of charge.
- 10.6 In case before, during or after the conducting of repair work by ICT, Defects turn out to cohere with circumstances not for the account and risk of ICT, the activities to be conducted by or already conducted by ICT will be charged to Principal according to the current tariffs. These activities are thus not included in

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- the warranty. Circumstances which are not for the account and risk of ICT include in any case, but are not limited to, the following facts:
- the directions given by ICT for use are not followed exactly;
 - the Software and/or Hardware is used improperly and/or not in conformity with the Specifications and/or Documentation;
 - Principal himself or third parties not brought in by ICT have performed activities on the Software and/or Hardware (including maintenance) without ICT's permission;
 - Principal has not, not adequately or not timely, fulfilled any of its obligations toward ICT arising from the underlying Agreement;
 - external circumstances such as (rain)water, heating-up, fire, shortcomings in communication lines or voltage supply, etc.
- 10.7 With respect to externally noticeable shortcomings, Principal must submit a claim no later than at the inspection or test, or, in case such an inspection or test has not been agreed to, within fourteen (14) days after delivery, in the absence of which any claim towards ICT shall lapse.
- 11. WARRANTY IN CASE OF MAINTENANCE**
- 11.1 ICT guarantees execution of the maintenance it performed in accordance with the general applicable industrial standards for a period of three (3) months, starting on the date that ICT has actually put the concerning Software or Hardware at the disposal of Principal again.
- 11.2 In case the maintenance is performed defectively, Principal shall inform ICT thereof in writing. The warranty granted in article 11.1 comprises the proper-performance of maintenance that is performed defectively.
- 12. LIABILITY AND INDEMNIFICATION**
- 12.1 In all cases in which ICT is obligated to compensate for damages, regardless of the legal grounds of the liability and in all cases per event or series of events with a common cause, these shall never be higher than the amount that is actually paid out under the applicable insurance policy of ICT in the matter concerned. In case, for whatever reason, the insurer of ICT makes no payment under this insurance policy, any and all liability of ICT is limited to the invoice value of the deliverance, at least the part thereof whereby or in connection with which the damage was caused. In case of continuing Agreements the "invoice value" is the amount charged by ICT for Services rendered in the period of three months prior to the damage inflicting event, with deduction of credited amounts in connection with that period and for that work, on the basis of the continuing Agreement under which the liability has occurred. In case ICT is obligated to pay multiple damages under one Agreement the maximum cumulative damages shall never be higher than the value of the concerning Agreement.
- 12.2 ICT is, in connection with a tort or imputable shortcoming in performing an Agreement, never liable to pay Principal indirect or consequential damages (such as, but not limited to: loss of profit, loss of turnover, missed savings, reduced goodwill, damage due to company stagnation, damage as a result of claims of customers of Principal, mutilation or loss of data, damage due to the use of matters, materials or software of third parties as instructed by Principal to ICT and damage due to the involvement of suppliers as instructed by Principal to ICT).
- 12.3 The restrictions as stipulated in article 12.1 and article 12.2 are not applicable in case and to the extent that the suffered damages are caused by intent or conscious recklessness on the part of ICT or its own executive subordinates.
- 12.4 The articles 12.1 upto and including article 12.3 are equally applicable to the indemnifications and warranties provided by ICT.
- 12.5 In case parties have agreed to a penalty besides the right to damages, any claimable contractual penalties and amounts paid or to be paid on the grounds of indemnification shall be deducted from any damages in connection with the same event.
- 12.6 Any claim toward ICT, except those recognized by ICT, lapses after the mere course of a period of six (6) months from the time the claim has arisen.
- 12.7 Conditions which limit, exclude or determine liability, which can be held against ICT in connection with the deliverance by ICT's suppliers or subcontractors, can also be held against Principal by ICT.
- 12.8 ICT's employees or independent contractors brought in by ICT for the performance of the Agreement, can, toward Principal, invoke all means of defence afforded by the Agreement as if they themselves were a party to that Agreement.
- 12.9 Principal shall indemnify and hold harmless ICT, its employees and independent contractors brought in by ICT for the performance of the Agreement, against each claim by third parties in connection with ICT's performance of the Agreement.
- 13. INDEMNIFICATION OF INTELLECTUAL PROPERTY RIGHTS**
- 13.1 ICT indemnifies Principal against claims from third parties in connection with infringements of patent, copyright and/or trademark rights in connection with (the use of) the Software developed by ICT itself. ICT's liability with respect to said infringements is fully and exclusively restricted to the obligations as stipulated in this article 13.
- 13.2 In the event it is established by a court of law that the use of the Software or any part thereof infringes any patent, copyright and/or trademark right of any third party and as a consequence of which Principal is denied the use of the Software of any part thereof by or in the name of the party entitled, ICT shall at its own account, at its own discretion and at its choice:
- either acquire the right on behalf of Principal to continue the use of the Software or the relevant part thereof;
 - either substitute the Software or the relevant part thereof by computer programs, which do not constitute any infringement as meant above;
 - either modify the Software in such a manner that the infringement is terminated;
 - either repurchase the Software or the relevant part thereof for a price which shall then be reasonably determined by ICT.
- 13.3 A modification to and/or substitution of the Software or the relevant part thereof in accordance with article 13.2 shall, if possible, not result in a substantial hindrance of the user possibilities of the Software by Principal.
- 13.4 The obligation to indemnify as stipulated in this article lapses in case and to the extent that the concerning infringement is connected to alterations of the Software by Principal or a third party on behalf of Principal without the prior written consent of ICT or in case Principal is otherwise culpable or accountable for the infringement.
- 14. PAYMENT AND SECURITY**
- 14.1 Payment must take place within thirty (30) days after the invoice date. ICT has however at all times the right to claim full or partial payment in advance and/or otherwise to obtain security for payment.
- 14.2 Principal relinquishes any right to set-off amounts owed back and forth. Warranty claims do not suspend the payment obligations of Principal.
- 14.3 In case Principal does not pay any amount it owes pursuant to the foregoing articles, Principal is in default without notice. As soon as Principal is in default with regard to any payment, all ICT's other claims on Principal are due, and Principal is immediately in default without notice with respect to those claims. As from the day on which Principal is in default, Principal owes to ICT overdue interest with a percentage equal to the then current promesse disconto of the Nederlandsche Bank plus two (2) percent.
- 15. CONFIDENTIALITY AND MISCELLANEOUS**
- 15.1 The parties shall do all that is reasonably possible to keep confidential information that is received from the other party confidential. None of the parties shall, without the written permission of the other party, in any publication or advertisement, announce any Agreement. Information is confidential in case the disclosing party – when disclosed in a tangible form – has marked or indicated it as "Confidential" or with similar wording – before the information is disclosed to the receiving party or – when disclosed orally or visually – identified as such prior to disclosure and is summarised in writing by the disclosing party. The obligation of confidentiality is applicable for the duration and until two (2) years after termination of the Agreement.
- 15.2 Principal commits himself to do everything in his power to keep the Software and Documentation confidential. This obligation is applicable for the duration of the Agreement, as well as after termination thereof.
- 15.3 Both Principal and ICT shall throughout the duration of the Agreement and throughout a period of twelve (12) months thereafter refrain from recruiting (as employee or as a contractor brought in by a third party) each others employees that are involved in the performance of the Agreement.
- 15.4 Principal shall, at the request of ICT, furnish ICT with equipment, materials, (office) space, telecommunication facilities and data on data carriers, in order to carry out the Services that arise from the Agreement as entered into between the Parties. All goods need to comply with the specifications of ICT.
- 15.5 Principal is obligated, if desired, to appoint one or more employees who will function as a contact person for ICT.
- 15.6 In case any provision(s) of these General Delivery Terms and Conditions is (are) invalid or annulled, the other provisions of these General Delivery Terms and Conditions shall remain in full force and parties shall consult with each other in order to agree to replace the invalid or annulled provision(s) with one(s) that reflect(s) the meaning and purpose of the invalid or annulled provision(s) within these General Delivery Terms and Conditions as closely as possible.
- 16. SUPPLEMENTAL WORK AND COST SAVINGS**
- 16.1 In case circumstances arise that will lead to a cost increase or decrease, then ICT shall inform Principal thereof as soon as possible.
- 16.2 Cost increasing circumstances that cannot be attributed to ICT shall be calculated as supplemental work as stipulated in article 16.4, unless parties have agreed otherwise in writing. In other similar circumstances parties shall start negotiations as soon as possible in order to come to a fair mutual settlement. Supplemental work requires prior written consensus. Cost savings shall be calculated in the same manner as supplemental work.
- 16.3 In any event supplemental work and cost savings arise:
- in case of an agreed upon change of the scope of the goods or Services to be delivered (changes to the specifications, the work or the conditions of the execution of the work);
 - in case of deviations from the amounts of agreed upon approximate estimates and refundable and/or estimated quantities;
 - in cases as stipulated in these General Delivery Terms and Conditions.
- 16.4 Calculation of supplemental work and cost savings occurs as much as possible at once in the first following invoice unless parties have expressly otherwise agreed to in writing.
- 17. SUSPENSION AND RESCISSION**
- 17.1 In case and as soon as Principal does not, not timely or not adequately fulfil one or more of its obligations, ICT has the right to suspend its activities. In such case all costs that arise from the suspension are for the account of Principal.
- 17.2 Each of the parties has the right to either rescind or to terminate the Agreement by notice, with immediate effect, in whole or in part, in the cases described hereunder and insofar as granted below, such at the choice of the terminating party:
- if the other party is granted a temporary or definite moratorium of payment ("surséance van betaling") or is declared bankrupt;
 - if the other party acts in breach of the provisions of the Agreement and after it has not, within a reasonable period, fulfilled its obligations after a notice of default, by written declaration;
 - if the other party has acted in breach of the Agreement and the fulfillment or correction is not possible (any more), which also includes a violation by Principal of the provisions stipulated in article 4 (rights with regard to Software, Hardware and Documentation);
 - if the other party repeatedly fails to perform its obligations or fails to perform its obligations in such a manner that continuation of the Agreement can no longer be reasonably demanded from the other party;
 - in the events under c. and d. of article 17.2 granting a period as referred to in b. is not necessary.
- 18. DISPUTES AND APPLICABLE LAW**
- 18.1 All disputes existing between parties shall be heard exclusively by the competent Rotterdam court and higher courts, unless ICT prefers another competent court.
- 18.2 The relationship between the parties is, also during the Negotiations, exclusively subject to Dutch law. Applicability of the 1980 Vienna Convention (United Nations Convention on contracts for the international sale of goods) is explicitly excluded.
- 19. INCONSISTENCIES BETWEEN THE DUTCH TEXT AND TRANSLATION(S)**
- 19.1 In case of inconsistencies between the Dutch version of these General Delivery Terms and Conditions and any translated versions of these General Delivery Terms and Conditions, the Dutch version shall be binding.
- PARTICULAR PROVISIONS**
- 20. DEVELOPMENT AND ADAPTION OF SOFTWARE**
- 20.1 In case it is agreed to that ICT shall develop Software or shall adapt Software, then ICT shall develop and/or adapt the Software in accordance with the document, signed by both parties, that contains the Specifications. Principal acknowledges that the Specifications are also based on data to be provided by Principal whereby Principal vouches for the accuracy, completeness and consistency of these data.
- 20.2 In the events as defined in article 20.1 an acceptance test to be conducted by Principal will determine whether ICT has complied with the order it was issued with. Such shall be the case in the event the acceptance test shows that the Software in essence performs in accordance with the Specifications stipulated in article 20.1. On the occasion of the passing of the acceptance test Principal, within three days after the passing of the acceptance test, shall undersign and furnish to ICT a statement in which the passing of the test is confirmed. The acceptance test shall consist of the execution of a further to be agreed upon collection of test situations ("the Test plan"). Principal or ICT shall on first request of ICT alternatively Principal make a proposal for such a Test plan.
- 20.3 In case in the opinion of ICT the Software deviates on non-essential parts from the Specifications as stipulated in article 20.1 this shall not have as a consequence that the acceptance test has not been passed. Such deviations shall be recorded in the statement mentioned in article 20.2 and ICT shall exert itself to repair these deviations as soon as possible.
- 20.4 As soon as possible after Principal has informed ICT in writing that:
- the continuation of the acceptance test as a consequence of deviations from the Specifications as stipulated in article 20.1 is obstructed to such extent that the test cannot reasonably make progress;
 - or
 - the acceptance test due to deviations from the Specifications as stipulated in article 20.1 has not passed;
- then ICT shall start the execution of all work necessary to realise the continuation alternatively the passing of the acceptance test. Consequently the acceptance test shall be continued or otherwise restarted after which the provision of this article shall apply until the acceptance test has been passed.
- 20.5 In case Principal at the latest three days after the expiration of the term that was provided for in the planning or in any other document with respect to the execution of the acceptance test, did not furnish ICT with the notification as stipulated in article 20.4 nor provided ICT with the statement as mentioned in article 20.2, the acceptance test is deemed to have been passed and it is indisputable that ICT has fulfilled the order it was provided with.
- 20.6 In case Principal uses the Software in any way (other than for testing purposes) before the moment of acceptance, the Software shall be deemed fully accepted from the moment of such use.
- 20.7 In case sub-acceptance tests have been agreed, then the same procedure as stipulated in article 20.2 up to and including article 20.6 is applicable to these sub-acceptance tests.
- 20.8 In case it is not determined during which period the (sub)acceptance test(s) shall be executed, then the test(s) shall be executed in the course of fourteen (14) days after the Software has been provided.
- 20.9 In case it is agreed to that an Agreement is to be executed in stages, then ICT is entitled to postpone the activities with regard to a subsequent stage until Principal has approved of the results from the preceding stage in writing or - in case the stage will be concluded with a sub-acceptance test - the respective sub-acceptance test has been passed.
- 20.10 The procedure as incorporated in article 20.2 up to and including article 20.9 is also applicable in case ICT provides Principal with standard software and contrary to article 6.2 it is agreed to that Principal has to execute an acceptance test.
- 21. SECONDMENT**

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- 21.1 In light of these General Delivery Terms and Conditions the term secondment will mean the situation in which ICT provides one or more employee(s) of ICT (in this article 21 referred to as "the Employee(s)") to Principal on a temporary basis, which Employee(s) will conduct certain work (in this article 21 referred to as "the Work") for – and under the management and supervision casu quo direction of - Principal as meant in article 7:690 of the Dutch Civil Code.
- 21.2 ICT shall provide Employee(s) who will perform the Work during the agreed upon period on the basis of an obligation of effort, whereby ICT shall never be liable for the result of the Work.
- 21.3 Without prejudice to the provisions in article 15.4, Principal will provide the Employee(s) with a reasonable office space where the concerned Employee(s) can perform the Work. This office space will comply with applicable workplace conditions legislation, the Dutch Working Conditions Act (Arbo wet), health-, safety- and other statutory requirements in connection with the labour conditions. Principal shall indemnify ICT against all claims by the Employee(s) against ICT in case of non-compliance with this article 21.3.
- 21.4 ICT is entitled to replace Employee(s) who work for Principal if and to the extent that (a) the quality of the Work remains safeguarded and (b) the agreed upon end date is only extended by the possible training period of the replacing Employee(s).
- 21.5 In case the replacing Employee(s) requires a training time, which will be determined in consultation by both parties, then this training period will:
- not exceed ten (10) working days where the term of the secondment is three months or longer;
 - not exceed five (5) working days where the term of the secondment is less than three months.
- 21.6 The training period will not be charged to Principal and may extend the agreed duration of the Work.
- 21.7 Unless agreed otherwise in writing, the rates for the Employee(s) set out in an Agreement shall apply until 31 December of the then current calendar year. ICT shall be entitled to change the rates annually in January.
- 21.8 ICT and the Employee(s) shall bear no liability to Principal for damage of whatever kind caused by an error of an Employee whilst performing the Work.
- 21.9 All intellectual property rights created as a result of the Employee(s) working on or with intellectual property rights already owned by ICT or a third party shall vest immediately in ICT on creation. All other intellectual property rights created by the Employee(s) in or related to the performance of the Employee(s) tasks shall vest in Principal immediately on creation. At the first request of Principal ICT will reasonably co-operate with Principal in transferring any such intellectual property rights to Principal.
- 21.10 Principal shall be responsible for obtaining any appropriate licences or other agreements with regard to the use of copyrighted or other protected works, models and inventions that are necessary to enable the Employee(s) to perform their Work. Principal indemnifies ICT and the Employee(s) from any consequences of possible infringements of the rights of third parties, including any and all direct and indirect damages that ICT might suffer as a result of such infringements.
- 21.11 Principal shall take out and maintain in effect insurance covering the Employee(s) against any third party claims that may be brought against the Employee(s) as a result of their performing the Work. Principal shall indemnify the Employee(s) and ICT against any such third party claims.
- 21.12 ICT commits itself to fully and timely satisfy the income tax and social security contributions of the Employee(s) that are due by virtue of the legislation in the country where ICT is vested en indemniees Principal against any claims in that connection.
- ### MAINTENANCE
- #### GENERAL MAINTENANCE
- 22.1 These provisions regarding maintenance are only applicable in case ICT and Principal have agreed in writing that ICT shall perform maintenance work.
- 22.2 ICT exerts itself to perform the maintenance to its best efforts and with the best possible care. ICT shall perform the maintenance in accordance with the maintenance agreement as agreed to with Principal and the methods described therein. ICT is only obliged to reach certain service levels in case these have been explicitly agreed upon in writing in the concerning maintenance agreement.
- 22.3 In case it is agreed that ICT shall maintain the Software and/or Hardware this maintenance starts at the latest immediately after the expiry of the warranty period. The maintenance consists of the correction of Defects, all this in accordance with the following provisions.
- 22.4 Principal warrants that all statutory obligations in connection with the Software and Hardware regarding which ICT performs maintenance activities are satisfied, including the Personal Data Protection Act ("Wet bescherming persoonsgegevens") and Principal indemnifies ICT against any claims in that connection.
- 22.5 Principal shall bear the risk of loss, theft or damage of the Software and/or Hardware during the period that ICT shall have it in its possession in order to perform the maintenance. It is up to Principal to take out an insurance to adequately cover this risk. Before providing ICT with the Software and/or Hardware Principal itself shall make the necessary reserve copies ("Back-ups") thereof.
- 22.6 In case in the opinion of Principal the Software and/or Hardware during the term of the maintenance agreement contains Defects, Principal shall immediately - however at the latest fourteen (14) days after the Defects have become apparent - inform ICT in writing thereof.
- 22.7 Articles 10.4 and 10.6 of these General Delivery Terms and Conditions are explicitly also applicable to maintenance work.
- 22.8 Restoration of mutilated or lost data and performance of data conversions do not fall under maintenance. At the request of Principal and if reasonably possible, ICT is however willing to, in consultation with Principal and against payment of costs to be charged by ICT, endeavour to restore mutilated or lost data as well as perform data conversions.
- 22.9 In case Principal did not enter into a maintenance agreement with ICT at the same time with entering into the Agreement for the delivery of Software and/or Hardware, ICT is not still obliged to enter into a maintenance agreement at a later moment.
- 22.10 ICT reserves the right to postpone its maintenance obligations amongst others for the time that circumstances occur at the place where the Software and Hardware are put up that, in the opinion of ICT, cause risks regarding the safety or health of ICT employees and/or third parties brought in by ICT.
- #### SOFTWARE MAINTENANCE
- 23.1 In case it is agreed that ICT shall maintain the Software this maintenance shall exclusively concern the latest version or release and the immediately preceding version or release provided to Principal. Other versions or releases will not (any more) be maintained, unless otherwise agreed to in writing. Unless expressly otherwise agreed to in writing Principal cannot make any claims regarding the delivery of the source code and materials that are necessary for the maintenance. The maintenance relates exclusively to Software insofar as it is in a for data processing equipment readable form and recorded to material readable for such equipment.
- 23.2 The maintenance shall only apply to Software that was on beforehand included in the concerning software list, which list shall be kept accurate by Principal in consultation with ICT. Maintenance work in connection with Software that was not mentioned in the software list on the moment of performance shall be performed on the basis of subsequent calculation against the usual rates.
- 23.3 ICT is entitled to examine the Software, as well as the Hardware on which the Software to be maintained is installed, before starting the maintenance. As a result of the findings of this examination ICT is entitled to decline the maintenance of the concerning Software or to set further conditions to the maintenance. Further conditions are at least understood to mean adapting and/or upgrading the Software, Hardware, system software or connected networks in accordance with the indications and instructions of ICT.
- 23.4 ICT is entitled to install temporary solutions as well as program detours or problem avoiding restrictions ("work arounds") in the Software. In the absence of explicit arrangements as to that, the corrected Software or the provided new release of the Software will be installed, arranged, parameterised and tuned by Principal and, if necessary, Principal will adjust the therewith used software and user environment.
- #### HARDWARE MAINTENANCE
- 24.1 The maintenance shall only apply to Hardware that was on beforehand included in the concerning hardware list, which list shall be kept accurate by Principal in consultation with ICT. Maintenance work in connection with Hardware that was not mentioned in the hardware list on the moment of performance shall be performed on the basis of subsequent calculation against the usual rates.
- 24.2 ICT ensures that it keeps its expertise regarding the Hardware up-to-date. ICT shall, in case agreed to, register the for the Hardware maintenance relevant data regarding the work performed to the Hardware
- and record it in its administration. ICT shall upon first request by Principal give inspection of the so recorded data.
- 24.3 In connection with back-up copies of data and Software, article 22.5 of these General Delivery Terms and Conditions is applicable.
- 24.4 Unless expressly otherwise agreed to in writing the maintenance price does not include:
- replacement of parts. This occurs in case ICT deems it necessary in order to remedy or prevent interruptions. This also includes work in connection with partial or total revision of and/or modifications to and updates or upgrades of the Hardware. The replaced parts become the property of Principal after full payment;
 - the replacement of consumables such as amongst others (magnetic or digital) storage media and ink or toner cartridges, ribbons, paper, laser heads, batteries or antennas;
 - the replacement costs of parts as well as maintenance work for the remedy of interruptions that are partially or totally caused by attempts to remedy or work performed by others than ICT or its helpers ("hulpverleners");
 - transportation, move, reinstallation of Hardware or work as a result hereof;
 - interruptions that occur in case the Hardware is not used in the normal office or production environment conditions as where it should be;
 - interruptions or damages in connection with use or installation of consumables or parts that were not dictated by the manufacturer.
- #### EDUCATIONS, COURSES AND TRAININGS
- 25.1 In case the service of ICT consists of the providing of an education, course or training, ICT may always demand the amount(s) due to be paid in advance.
- 25.2 The Agreement between ICT and Principal comes into being by ICT's written confirmation of the education, course or training requested by Principal by means of a registration form signed by Principal. Thus the registration form becomes the Agreement.
- 25.3 Registration for 'open registration' educations, courses or trainings occurs in the order in which they come in. In case of over-registration of the number of participants article 25.4 of these General Delivery Terms and Conditions comes into effect. Temporary registrations should be made definite within three (3) working days in the absence of which the registration will be cancelled.
- 25.4 In case in the opinion of ICT the number of registrations gives rise thereto, ICT is entitled to cancel the education, course or training or combine it with one or more other educations, courses or trainings or to change its date or time without being liable for any possible damages of Principal. In such cases Principal will be informed and Principal has the choice of an alternative course, if applicable, or full restitution of his registration fee, in case already paid.
- 25.5 ICT is only bound by cancellations that are made in writing. If Principal cancels in writing until thirty (30) days before the start of the concerning education, course or training fifty (50) % of the offered amount will be invoiced. With cancellations in writing as from thirty (30) days till one week before the start of the concerning education, course or training seventy five (75) % of the offered amount will be invoiced. With cancellations within one week before the start of the concerning education, course or training, the entire amount will be invoiced.
- 25.6 Principal is, in consultation with ICT, entitled to send another participant to the concerning education, course or training than the originally registered participant. Replacement of a participant should be arranged at the latest two (2) days before that start of the concerning education, course or training and be confirmed in writing by Principal.
- 25.7 All intellectual property rights, including and for this in particular copyrights regarding the (education, course or training) materials (among which Software) and other data ICT has provided in connection with the education, course or training are exclusively vested in ICT and/or its licensors and will remain so. Therefore, without explicit prior written consent from ICT Principal is not entitled to use the (education, course or training) material (among which Software) or other data other than in connection with the concerned education, course or training or as reference work by the participant after attending the concerned education, course or training. Any other use, among which disclosure to third parties, is explicitly prohibited.
- 25.8 Complaints about a followed education, course or training should be made known to ICT – in writing and well motivated - at the latest fourteen (14) days after the end of the concerning education, course or training. The filing of a complaint does not affect the payment obligations.