

ICT~Office Terms and Conditions

Module 1 Software License

The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.

1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier makes software available to the Client for use on the basis of a license.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

2. Right of use

- 2.1 The Supplier shall make the computer programs specified in the agreement and the corresponding user documentation, hereinafter referred to as **'the software', available to the Client** for use.
- 2.2 Except where agreed otherwise in writing, the Supplier's obligation to provide and the Client's right of use shall solely extend to the so-called **software object code. The Client's right of use** shall not extend to the software source code. The software source code and the technical documentation produced during the development of the software shall not be made available to the Client under any circumstances, even if the Client is prepared to pay financial compensation for this information.
- 2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide any software or program or data libraries other than those agreed, even if these are required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is required to provide software and/or program or data libraries other than those agreed, the Supplier may require the Client to enter into a separate written agreement for this purpose.
- 2.4 Except where otherwise agreed in writing, the **Supplier's performance obligations shall not** include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide such maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose.

- 2.5 Without prejudice to the provisions of the General module, the right of use of the software shall in all cases be non-exclusive, non-transferable and non-sublicensable.

3. Restrictions on use

- 3.1 The Client shall strictly observe the restrictions on the right of use of the software agreed between the parties at all times. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:
 - the kind or type of hardware that the software is designed for, and/or
 - the maximum number of processing units that the software is designed for, and/or
 - specific – referred to by name or job title or otherwise – individuals who may use the **software within the Client's organisation, and/or**
 - the maximum number of users who may use the software – simultaneously or otherwise – **within the Client's organisation, and/or**
 - the location at which the software may be used, and/or
 - specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
 - any other quantitative or qualitative restriction.
- 3.2 If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Client shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type until the original hardware is restored to working order.
- 3.3 The Supplier may require the Client to refrain from using the software until such time as the Client has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer. The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the parties.



- 3.4 Under no circumstances shall the Client remove or circumvent technical provisions intended to protect the software, or arrange for this to be carried out.
- 3.5 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organisation and only for the intended use. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.
- 3.6 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software, the media on which the software is stored and the certificates of authenticity issued by the Supplier on provision of the software, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.
- 3.7 Upon request, the Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Client's compliance with the agreed restrictions on use. At the first request of the Supplier, the Client shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

4. Delivery and installation

- 4.1 The Supplier shall deliver the software to the Client on data media in the agreed format or, if no clear agreements have been made in this regard, on data media in a format to be determined by the Supplier. Alternatively, the Supplier shall deliver the software to the Client using telecommunication facilities (online). The Supplier shall determine the delivery method.
- 4.2 The Supplier shall only install the software on **the Client's premises if this has been agreed** between the parties in writing. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

- 4.3 The user documentation shall be provided in paper or digital format, with the content to be determined by the Supplier. The Supplier shall decide on the format and language in which the user documentation is provided.

5. Acceptance test and acceptance

- 5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it **is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations** pursuant to the guarantee scheme in Article 9 of this module.
- 5.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 5.3 to 5.10 inclusive of this module shall apply.
- 5.3 **Where this module refers to 'errors', this shall** be understood to mean the substantial failure to meet the functional or technical specifications of the software made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.
- 5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on the software using appropriately qualified personnel, with an adequate scope and in sufficient depth, and will provide the Supplier with a written, clear and understandable report on the test results.
- 5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications agreed between the parties in writing. Except where agreed otherwise in writing, the assistance provided by the Supplier during the performance of an acceptance test shall be **entirely at the Client's risk**.
- 5.6 The software shall be deemed to have been accepted between the parties:
 - a. if the parties have not agreed to an acceptance test: on delivery or, if it has been



- agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
- b. if the parties have agreed to an acceptance test: on the first day following the test period, or
 - c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the software for productive or operational purposes before the time of explicit acceptance, the software shall be deemed to have been accepted in full from the time at which such use commenced.
- 5.7 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software.
 - 5.8 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the **Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 9**, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.
 - 5.9 If the software is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.
 - 5.10 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the provision and delivery of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of **the software shall not affect the Client's rights** pursuant to Article 5.8 in relation to minor errors and Article 9 in relation to the guarantee scheme.
- 6. Term of the agreement**
 - 6.1 The agreement regarding the provision of the software has been entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The agreement shall commence on the day on which the Client is provided with the software. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.
 - 6.2 The Client shall return all copies of the software that it has in its possession to the Supplier immediately following expiry of the right of use of the software. If the parties have agreed that the Client will destroy the relevant copies at the end of the agreement, the Client shall notify the Supplier immediately in writing that this has been carried out. The Supplier shall not be obliged to provide the Client with assistance on or after expiry of the right of use with a view to data conversion required by the Client.
 - 7. Right of use fee**
 - 7.1. Except where agreed otherwise in writing, the right-of-use fee agreed between the parties shall be due on the dates agreed between the parties or, if no dates have been agreed:
 - a. if the parties have not agreed that the Supplier will carry out the installation of the software: on delivery of the software or, if the right-of-use fee is due periodically, on delivery of the software and subsequently on commencement of each new right-of-use period;
 - b. if the parties have agreed that the Supplier will carry out the installation of the software: on completion of the installation of the software or, if the right-of-use fee is due periodically, on completion of the installation of the software and subsequently on commencement of each new right-of-use period.
 - 7.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to install or adapt the software. If, contrary to the foregoing, the Supplier is also required to carry out installation activities or activities in relation to the adaptation of the software, the Supplier may require the Client to enter into a separate written agreement for this purpose. Such work **shall be invoiced separately at the Supplier's** standard rates as the occasion arises.
 - 8. Modification of the software**
 - 8.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be entitled to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its



- consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.
- 8.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.
- 9. Guarantee**
- 9.1 The Supplier shall not guarantee that the software made available to the Client will be fit for the actual and/or intended use by the Client. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will always be fixed.
- 9.2 The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.
- 9.3 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software at any time.
- 9.4 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.
- 9.5 The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 9.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.
- 10. Confidentiality**
- 10.1 The Client acknowledges that the software is of a confidential nature and that this software contains trade secrets of the Supplier, its own suppliers and/or the software manufacturer.
- 11. Maintenance agreement**
- 11.1 If the Client has not entered into a maintenance agreement with the Supplier at the same time as concluding an agreement regarding the provision of the software, the Supplier shall not be obliged to enter into a maintenance agreement in respect of the software at a later point in time.
- 12. Software from third party suppliers**
- If and in so far as the Supplier provides the Client with software from third parties, the (license) terms imposed by such third parties in relation to the software shall apply, provided that the Supplier has notified the Client of such terms in writing, notwithstanding any varying provisions in these general terms and conditions. The Client accepts the abovementioned terms imposed by third parties. These terms shall be available to the **Client for inspection on the Supplier's premises** and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

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