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General Terms and Conditions		

Revision History

Rev.	Date	Author	Remarks
1.0	30-06-2016	S. Van Vulpen	New document



General terms and conditions

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Hereinafter to be referred to as: "User"

Article 1: Definitions

In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

User: the user of the general terms and conditions.

Client: user's opposite party.

Agreement: the agreement concerning the provision of services.

Working days: Monday through Friday, except Dutch legal holidays. If no reference to working days is made "day" shall mean a unit of time equivalent to twenty-four (24) hours.

Article 2: General

- 2.1. The present terms and conditions shall apply to each and every offer, tender and agreement between user and a client, to which user has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.
- 2.2. The present terms and conditions shall also apply to all agreements with user, the execution of which calls for the services of third parties.
- 2.3. Possible deviations from the present general terms and conditions shall only be valid provided they have been explicitly agreed upon writing.
- 2.4. The applicability of client's possible purchase or other conditions is explicitly rejected.
- 2.5. If one or more stipulations in the present general term and conditions should be null and void or declared null and void, then the other stipulation of the present general terms and conditions shall remain fully applicable. The case ensuing, user and client shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be needed as far as possible.
- 2.6. User is authorized to demand the certainty of client, at the beginning, during or after the agreement, that there will be paid or obligations to be fulfilled before user (further) completes with this obligations. By failing user may suspend his obligations resulting from the agreement.

Article 3: Offers and Tenders

- 3.1 All offers shall be free of obligation unless the offer contains an acceptance term.
- 3.2 The offers made by user shall be free of obligation; they shall be valid for a period of thirty (30) days, unless indicated otherwise. User shall only be bound by the offers if the acceptance thereof is confirmed in writing by the opposite party within thirty (30) days, unless indicated otherwise.
- 3.3 The prices given in the above mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within scope of the agreement, including administration and shipment costs, unless user indicated otherwise.
- 3.4 If the acceptance deviates (on secondary items) from the offer given, user shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless user indicates otherwise.
- 3.5 A compound quotation shall not oblige user to execute part of the assignment against a corresponding part of the given quotation.
- 3.6 Offer and tenders shall not apply automatically to future assignments.
- 3.7 Verbal offers made by user are not binding, unless the offers have been explicitly agreed upon writing by both parties.

Article 4: Execution of the Agreement

- 4.1 User shall execute the agreement to the best of his knowledge and ability. All based on the position of the science and knowledge of the moment that the agreement has been made.
- 4.2 If and in so far required for the proper execution of the agreement, user shall have the right to have done certain work by third parties.
- 4.3 The client shall see to it that the user shall be provided in due time with all data which user has said to be necessary or which the client must in all reasonableness understand to be necessary to the execution of the agreement. If user has not been provided in due time with the data necessary to the execution of the agreement, user shall have the right to suspend the execution of the agreement and/or to charge the client for the additional costs resulting from the delay at the generally accepted rates, provided that in such instance user had given the client a fifteen (15) days prior notice and the client has not provided the data within the expiration of this fifteen (15) days period.
- 4.4 User shall not be liable for damage or whatever nature caused by the fact that user worked on the basis of incorrect and/or incomplete data provided by the client, unless user should have been aware of said incorrectness or incompleteness.
- 4.5 If parties have agreed that the agreement will be executed in phases/packages, user can suspend the execution of the parts belonging to a following phase/package until the client has approved in writing the results of the stage prior to it.
- 4.6 If user or third parties engaged by user within the scope of the assignment do work at client's site or at a site designated by client, client shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.

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- 4.7 Client shall safeguard user against possible claims filed by third parties who may sustain damage attributable to client in connection with the execution of the agreement.
 - 4.8 User is in no case obliged to fee the damage, including loss of profit or yield and/or ensuing damage, due to later delivery or execution of activities.

Article 5: Changes to the Agreement

- 5.1 If it is shown during the execution of the agreement that the work to be done needs to be changed and supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations.
- 5.2 If parties agree that the agreement needs to be changed or supplemented, this decision may influence the time of completion of the execution. User shall inform the client therefore as soon as possible.
- 5.3 Should the change or supplement to the agreement have any financial and/or qualitative consequences, user shall inform client therefore in advance.
- 5.4 If a fixed fee has been agreed upon then user shall indicate the degree to which the change or supplement to the agreement will result in an increase of said fee.
- 5.5 Contrary to the conditions of paragraph 5.3, user shall not be able to charge additional costs if the change or supplement is the result of circumstances attributable to user.
- 5.6 Changes and deviations in the agreement will be effective when they are explicitly have been agreed upon in writing between user and client.

Article 6: Duration of the Contract; Terms of Execution

- 6.1 The agreement between user and a client shall be entered into for an indefinite period of time, unless the nature of the agreement dictates otherwise or if parties have explicitly agreed otherwise in writing.
- 6.2 If a term has been agreed to complete certain work within the term of agreement, then this term shall never be a term to be observed on penalty or forfeiture of rights. If the term of execution is exceeded, the client must consequently declare user in default in writing.

Article 7: Fee

- 7.1 The paragraphs 7.2 and 7.4 through 7.11 shall apply to those offers and agreements in which a fixed fee is offered or agreed upon. If no fixed fee has been agreed upon, the paragraphs 7.3 through 7.11 of the present article shall apply.
- 7.2 Parties can agree upon a fixed fee the moment the agreement is concluded.
- 7.3 If no fixed fee has been agreed upon, the fee shall be determined on the basis of the number of hours actually spent on the work. The fee shall be calculated in accordance with user's usual hourly rates, valid for the period in which the work is being done, unless a deviating hourly rate has been agreed upon in writing.
- 7.4 The fee and the possible cost estimate shall be exclusive of VAT.
- 7.5 With respect to assignments with a duration of more than two (2) months, the costs owed shall be charged periodically.
- 7.6 If user and the client agree upon a fixed fee or an hourly rate, user shall nevertheless be entitled to increase this fee or rate.

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- 7.7 User shall be allowed to charge on price increases, if user can demonstrate that significant changes in price have occurred between the time of offer and the time of delivery with respect to, e.g. material costs, salaries and wages.
- 7.8 User shall furthermore be able to increase the fee when it is shown during the execution of the work that the volume of work initially agreed upon or expected when the contract was concluded, was underestimated to such a degree, and this through no fault of the user, that user cannot be expected in reasonableness to do the work agreed upon for the fee initially agreed upon.
- 7.9 In case of price increases, client shall be allowed to terminate the agreement if the fee or rates are raised within two months after starting the agreement. After this period, client shall be entitled to terminate the agreement if the raise is more than ten per cent (10%). Client shall not be entitled to terminate the agreement if the jurisdiction for raising the fee or rate results from a jurisdiction in accordance with the law.
- 7.10 User shall notify the client in writing of his intention to increase the fee or the hourly rate, whereby user shall communicate the volume of said increase and the date on which it shall take effect.
- 7.11 If client does not wish to accept the increase in fee or hourly rate communicated by user, client shall be entitled to terminate the agreement in writing within seven working days following the above-mentioned notification, or to cancel the assignment by the date given in user's notification on which the change in fee or hourly rate would take effect.

Article 8: Payment

- 8.1 Payment must be made within fourteen (14) days from the date of invoice, in a way to be indicated by user and in the currency in which the statement of expenses was drawn up. Contestation of the amount of the statements of expenses shall not suspend the fulfillment of the payment obligation.
- 8.2 If payment in advance is agreed upon the execution of the work will not start before payment is done.
- 8.3 If clients fail to fulfill his payment obligation within the term of thirty (30) days, then the client shall be in default by operation of law. In that event, client shall owe, without further summons or formal notice an interest of one per cent (1%) per month, where a part of the month will be considered as a complete month, unless the statutory interest on the amount due and payable shall be calculated as from the day the client is in default until the moment he has paid the amount in full.
- 8.4 User's claims against client shall become due on demand in the event that client's company is wound up, attached, declared bankrupt, or if a suspension of payment is granted.
- 8.5 User shall be entitled to have the payments made by the client go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. User shall have the right, without this leading user to be in default, to refuse an offer for payment, if the client designates a different sequence of attribution. User shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.

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- 8.6 User has the possibility to charge a credit limitation surcharge of two per cent (2%). This surcharge will not be charged if payment is made within seven (7) days from the date of invoice.

Article 9: Retention of Title

- 9.1 All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property until client has fulfilled all of his obligations under all agreements concluded with user.
- 9.2 Client shall not be authorized to pledge or encumber in any way the goods failing under the retention of title.
- 9.3 If third parties seize goods delivered subject to retention of title or wish to establish or assert a right of them, client shall be held to inform user thereof as soon as can reasonably expected.
- 9.4 The client shall undertake to insure the goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion and water as well as against theft and make this insurance policy available for inspection of first demand.
- 9.5 Goods delivered by user failing under the retention of title by virtue of the stipulations under 9.1. of the present article, may only be sold on within the framework of normal business activities and must never be used as an instrument of payment.
- 9.6 In the event that user wishes to exercise his ownership rights mentioned in the present article, client shall give user or third parties to be appointed by user, now for then, unconditional and irrevocable permission to access all sites and locations where user's property might be found and to take these goods back.

Article 10: Collection of Charges

- 10.1 If the client fails to fulfill his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extra judicial costs and debts paid shall be borne by the client. The client shall in any case owe the collection charges in the event of a monetary claim. The collection charges shall be at least fifteen per cent (15%) of the still indebted amount with a minimum of € 250,- (two hundred and fifty Euros).
- 10.2 If the user demonstrates that he has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.
- 10.3 The reasonable judicial and execution costs possibly incurred shall equally be borne by client.

Article 11: Inspections & Complaints

- 11.1 The client must notify user in writing of complaints about the work done within eight (8) days following their detection, but no later than within fourteen (14) days following completion of the work concerned. The notice of default must give as detailed a description as possible of the shortcoming, so that the user is in a position to respond adequately.
- 11.2 If a complaint proves to be well founded, user shall yet do the work as agreed upon, unless such has become demonstrably useless in the meantime to the client. The client must notify user in writing if the latter is the case.

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- 11.3 If it is no longer possible or useful to still do the work with respect to the provision of services agreed upon, user shall only be liable within the limits of article 16.

Article 12: Cancellation

- 12.1 Both parties shall be entitled to cancel the agreement at all times.
- 12.2 If the agreement is terminated prematurely by client, user shall be entitled to compensation of the loss of capacity utilization to be demonstrated caused by said premature termination, unless the termination is based on facts and circumstances that can be attributed to user. Client shall furthermore be held in that event to pay the statement of expenses for the work done up till that moment. The preliminary results of the work done up till that moment shall therefore be put at client's disposal subject to approval.
- 12.3 If the agreement is terminated prematurely by user, user shall see to it in conjunction with client that the work still to be done be transferred to third parties, unless the termination is based on facts and circumstances which can be attributed to the client.
- 12.4 If the transfer of the work still to be done entails extra costs for user, said costs shall be charged to client.

Article 13: Suspension and Dissolution

- 13.1 User shall be authorized to suspend the fulfillment of the obligation under the agreement or to dissolve the agreement, in the event that:
- client does not fulfill or does not fully fulfill his obligations resulting from the agreement.
 - after the agreement has been concluded, user learns of circumstances giving good ground to fear that the client will not fulfill his obligations. If good ground exists to fear that the client will only partially or improperly fulfill his obligations, suspension shall only be allowed in so far the shortcoming justifies such action.
 - client was asked to furnish security to guarantee the fulfillment of his obligations resulting from the agreement when the contract was concluded and that this security is not provided or insufficient.
- 13.2 User shall furthermore be authorized to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfillment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.
- 13.3 If the agreement is dissolved, the user's claims against the client shall be forthwith due and payable. If user suspends fulfillment of his obligations, he shall retain his rights under the law and the agreement.
- 13.4 User shall always retain the right to claim damages.

Article 14: Dissolution

- 14.1 Without prejudice to the provisions in article 13 the agreement will be, without legal mediation, disbanded after a written declaration after the moment in which client has

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- been explained in state of bankruptcy, or after request for provisional suspension of payment, or after a request of user as a natural person that is granted by the court it, of application declare of the Debt Repayment Scheme or by seizure, under legal restraint or otherwise lose the disposition (or lose parts) over his capacity, unless the curator or receiver will recognize the obligations resulting from the agreement as a debt to the estate.
- 14.2 By dissolution existing claims will be immediately claimable for user. Client is liable for damage, caused by user, among others loss of profit.

Article 15: Return of Goods Put at Client's Disposal

- 15.1 If user has put goods at client's disposal during and in connection with the execution of the agreement, client shall be held to return the delivered goods within fourteen (14) days in their original state, free of defects and in their entirety. If the client fails to fulfill this obligation, all resulting costs shall be at client's expense.
- 15.2 If, for any reason whatsoever, client still remains in default to fulfill the obligation mentioned under 15.1 after being warned to do so, user shall be entitled to recover the resulting damage and costs, including replacement costs, from client.

Article 16: Liability

- 16.1 Should user be liable, then said liability shall be limited to the stipulations of the present condition.
- 16.2 If user is liable for direct damage, the said liability shall be limited to a maximum of once the amount of the statement of expenses, at any rate that part of the assignment to which the liability relates, at any rate to a maximum of € 25.000,- (twenty-five thousand Euros).
User's liability shall at any times be limited to a maximum equaling the amount of the payment to be made by user's insurer in the occurring event.
- 16.3 In the event of an assignment with a duration of more than six (6) months, the liability shall, contrary to the stipulations under 16.2 of the present article, furthermore be limited to the part of the fee still due for the last six (6) months.
- 16.4 Direct damage shall be understood to be exclusively :
- the reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment related to damage in the sense of the present terms and conditions.
- the reasonable costs possibly incurred to have user's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to user;
- the reasonable costs incurred to prevent or limit the damage, in so far client demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.
- 16.5 User shall never be liable for indirect damage, including consequential damage, loss of profit, loss of yield, lost of savings and damage is due to business stagnation.

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- 16.6 The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user or his subordinates.
 - 16.7 Damage caused by actions or negligence's of client and/or his subordinates and/or third parties, does not fall under the liability of user.
 - 16.8 User is not liable for damage which has been caused by incorrect or incomplete data supplied by client.
 - 16.9 If the insurer of user will not proceed to cash benefits, the liability of user has been restricted to up to the invoice amount.
 - 16.10 User is not liable for damage if the client has modified the design without explicit and written approval for user.
 - 16.11 A legal claim to compensation of damage or to compliance with an agreement becomes prescribed after five (5) years.

Article 17: Safeguarding

- 17.1 The client shall safeguard user against claims filed by third parties concerning intellectual property rights on material or data provided by the client, which shall be used for and during the execution of the agreement.
- 17.2 If the client provides user with information carriers, electronic files or software etc., the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

Article 18: Transfer of Risk

The risk of loss of, or damage to the goods being the subject of the agreement, shall be transferred to client the moment said goods are judicially and/or actually delivered to client and therefore fall into the power of client or of third parties to be appointed by client.

Article 19: Force Majeure

- 19.1 Parties shall not be held to fulfill any or their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
- 19.2 In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which user cannot have any influence but which prevents user from fulfilling his obligations. Industrial action at user's company shall also be understood to be a circumstance of force majeure.
- 19.3 User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfillment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.
- 19.4 Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfillment of their obligations. If this period lasts for more than two (2) months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damage.

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- 19.5 Insofar user has already partially fulfilled his obligations resulting from the agreement at the moment the circumstances of force majeure commenced or shall be able to fulfill them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, user shall be entitled to submit a separate statement of expenses of the part already fulfilled or still to be fulfilled respectively. The client shall be held to pay this statement of expenses as if it were a separate agreement.

Article 20: Secrecy

- 20.1 Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.
- 20.2 If a statutory provision or a judicial decision compels user to convey confidential information to third parties designated by law or by the court and user cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by competent court, user shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.

Article 21: Intellectual Property and Copyrights

- 21.1 Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Copyright Act.
- 21.2 All documents, such as reports, advice, agreements, designs, sketches, drawings, software, etc., provide by the user, shall be destined to be used by client exclusively and must not be reproduced, made public or brought to the notice of third parties by client without prior written consent from user, unless the nature of the documents provided dictates otherwise.
- 21.3 User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall brought to the notice of third parties when doing so.

Article 22: Samples and Models

- 22.1 If a sample or model has been given to client, then the assumption is that such has been given by way of indication only, unless parties agree explicitly that the product to be delivered shall correspond with it.
- 22.2 In the event of an assignment concerning immovable property, the surface area or other measurements and indications given shall also be assumed to be merely indicative without any obligations to have the product to be delivered correspond with it.

Article 23: Non-employment of the opposite party's personnel

Throughout the duration of the agreement and for one year following termination thereof, client shall not in any way, hire or employ in any other way, be it directly or indirectly, staff of user or of enterprises whom user has engaged to execute the present

agreement and who are (were) involved in the execution of the agreement, without prior proper businesslike consultation on this matter, all this in accordance with the requirements of reasonableness and fairness.

Article 24: Disputes

- 24.1 The Court in user's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. User shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
- 24.2 Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

Article 25: Applicable Law

Dutch law shall apply to each and every agreement between user and the client.

Article 26: Changes to the Terms and Conditions and their Location

- 26.1 The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.