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General Terms and Conditions of Sale and Delivery of VMB Automation B.V., with its registered office in Hendrik Ido Ambacht and Barneveld, VMB Automation Zuid B.V., whose registered office is in Eersel, and companies affiliated to VMB Automation B.V., including Syel Europe B.V., VMB Components, Smits Besturingstechniek B.V., as filed (in dutch language) with the Chamber of Commerce on 21 juli 2017 under number 24319024

Art. 1 General

1. If these General Terms and Conditions of Sale and Delivery (the 'General Conditions') form a part of offers and agreements for the supply of products and/or services by the Contractor, all the provisions of these General Conditions shall be in force between the parties insofar as such have not been explicitly deviated from in a written agreement between the parties. Any reference by the Client to its own purchasing, tendering, or other conditions is expressly rejected by the Contractor.
2. Definitions:
In these General Conditions, the following terms have the following meanings:
 - Contract: a written agreement between the Contractor and the Client in relation to the delivery of the Product, including the appendices, such to include agreed changes and additions to these documents;
 - Product: goods and software, as well as services, such as maintenance, advice, and inspection;
 - Software: the (customised) programming (software) developed and/or supplied by the Contractor in a format that can be read by a data processing unit, and stored on material (hardware) that can be read by such a device. In the context of these General Conditions, the term "software" shall be understood to include both software and, insofar as possible and relevant, hardware;
 - Service: work carried out under a contract;
 - In writing: by way of a document signed by both parties, or by way of a letter, fax, or email message, or by any other technical means agreed between the parties;
 - Contractor: the user of these General Conditions, and the party that refers to these General Conditions in its offers and/or order confirmations;
 - Client: the party to whom the offer and/or order confirmation is addressed.
3. These General Conditions comprise general and special provisions. The general provisions apply to Services and Products from the special provisions, unless explicitly stated otherwise in the special provisions.

Art. 2 Offer

1. All offers issued by the Contractor are without obligation. The Client guarantees the accuracy and completeness of the information that has been issued to the Contractor by it or on its behalf, and on which the Contractor has based its offer.
2. All offers assume performance of the Contract by the Contractor under normal conditions, during normal working hours.
3. The supply of cabling systems and plans for pipe systems are excluded from any offer, unless expressly stated to the contrary.

Art. 3 Contract

1. If the agreement is concluded in writing it shall become effective as of the date of signing of the Contract by the Contractor or on the date of sending of the written order confirmation by the Contractor.
2. Contract extras means all that which the Contractor, in consultation with the Client, whether or not agreed in writing, delivers and/or installs during the performance of the agreement that exceeds the quantities explicitly laid down in the Contract or in the order confirmation, or if the Contractor performs more activities than explicitly laid down in the Contract or order confirmation.
3. Verbal commitments by, and agreements with, employees of the Contractor are only binding on the Contractor insofar as such have been confirmed by it in writing.

Art. 4 Price

1. The prices quoted by the Contractor are exclusive of turnover tax and other government duties on sale and delivery, and based on delivery ex works within the meaning of the Incoterms in force on the date of the offer, except insofar as these General Conditions provide otherwise. 'Ex works' means the Contractor's premises.
2. If after the date the Contract comes into effect any cost price factor is increased – whether or not such increase occurs due to foreseeable circumstances - the Contractor is entitled to increase the agreed price accordingly.
3. The Contract provides that the Contractor may separately charge any additional work it performs once it knows the amount due. Sections 1 and 2, above, apply by analogy to additional work.
4. Unless agreed otherwise, budgets and plans are not charged separately. Any subsequent orders for new drawings, calculations, descriptions, models or tools etc. will be charged by the Contractor.
5. The price does not include packaging, which will be charged separately. Packaging cannot be returned.
6. The price does not include charges for loading, unloading and transporting raw materials, semi-finished products, models, tools and other things, which will be charged separately. Costs incurred for this by the Contractor are regarded as an advance payment at the Client's expense.
7. If the Contractor has agreed to fit/install the Product, the price includes the costs of fitting/installing the Product and delivering it in working condition at the location specified in the offer, and all other costs except those set out in the preceding sections and Article 7. Costs incurred due to unworkable weather conditions will be charged on to the Client.



Art. 5 Drawings, calculations, descriptions, intellectual property, licenses, confidential information, transfer of personnel

Drawings, calculations, descriptions, intellectual property

1. The information listed in catalogues, illustrations, drawings, statements of dimensions and weight etc. are only binding if and insofar as they have been explicitly included in a contract signed by the parties or an order confirmation signed by the Contractor.
2. All intellectual or industrial property rights on the Products and data files developed or made available pursuant to the agreement, or on other materials, such as analyses, designs, documentation, reports, as well as the fabrication, construction, and development methods that form the basis of such, shall remain exclusively with the Contractor or its licensees or suppliers.
3. If in derogation to article 5, paragraph 2, the Contractor is willing to agree to transfer intellectual or industrial property rights, such an agreement must always be entered into explicitly in writing. If the parties expressly agree in writing that intellectual and/or industrial property rights in respect of Products, data files, or other previously specified materials specifically developed for the Client shall be transferred to the Client, this shall not affect the Contractor's right to use and/or to exploit the components, general principles, ideas, functional elements, modules, designs, algorithms, documentation, works, programming languages, protocols, standards and so on that form the basis of that development for other purposes without any restrictions, either for itself or for third parties. The transfer of intellectual or industrial property rights shall also not affect the Contractor's right to carry out development work, for itself or for a third party, that is similar to or derived from the development work that is or has been carried out for the Client. Under conditions to be agreed at the time, the parties can agree that Software developed especially for the Client will not be handed over to competing companies.
4. The intellectual property rights (IPR) in relation to an offer or parts of such shall at all times remain vested in the Contractor or the third parties engaged by it, and shall not devolve on the Client unless this has been explicitly agreed in writing.

User licences

5. The Client will only acquire the user rights that are explicitly conferred under these General Conditions, the written agreement between the parties, or under the law. Any other or more extensive right of the Client to use or reproduce Products, data files, or other materials is excluded. The Client shall only receive a non-transferable and non-exclusive right of use on intellectual or industrial property rights. This right of use cannot be transferred to third parties, including by way of rental, lease, or use free of charge, without the written consent of the Contractor. Nor can the right of use be given to third parties as security. The term "third parties" shall be understood to include companies affiliated to the Client.
6. The Client is not permitted to remove or change any designation concerning the confidential nature, and/or copyrights, trademarks, trade names, or other intellectual or industrial property rights, from the Products, databases, or materials.
7. The Contractor likewise does not have the right to change, hide, or remove product labels, specifications, warnings, or name labels on that supplied under the order, or in



- any way to give the appearance that that supplied has been manufactured or produced by it.
8. The Client guarantees that the intellectual and industrial property rights of the Contractor shall not be infringed by it or by third parties for which it can be deemed responsible.

Confidentiality

10. Each of the parties guarantees that all the information that it receives from the other party, which it knows, or ought to know, is confidential in nature, shall remain confidential, unless a statutory obligation makes the disclosure of such information compulsory. The party that receives such confidential information shall only use such for the purpose for which it was issued, and shall not copy such, or show or disclose such to third parties without the written consent of the opposite party. Information shall be considered to be confidential in all cases where it is designated as such by either of the parties.

Transfer of personnel

11. During the Contract and for a period of two years following its end, neither Party may employ any employee of the other Party who is or was involved in the performance of the Contract, or otherwise directly or indirectly engage the services of such persons without the prior written consent of the other Party. The Client will not withhold such consent if the Contractor has offered it appropriate compensation.

Art. 6 Delivery time

1. Any (interim) (delivery) dates agreed between the parties or specified by the Contractor shall in all cases be target dates, shall not have a binding effect on the Contractor, and shall be indicative in all cases.
2. A delivery period discussed and agreed between the parties will commence on the last of the following dates:
 - a. the date of formation of the agreement;
 - b. the date of receipt by the Contractor of the requisite documents, data, permits, etc., for the performance of the order;
 - c. the date of completion of the formalities necessary for the commencement of activities;
 - d. the date of receipt by the Contractor of the amount which under the agreement has to be paid in advance before the commencement of the activities.

If a delivery date or week has been agreed, the delivery period shall be the period between the date of conclusion of the agreement and the delivery date or the end of the delivery week respectively.

3. The delivery date is pushed back by the length of any delay incurred by the Contractor due to the Client's non-compliance with any obligation arising from the Contract or a failure by the Client to cooperate, insofar as such cooperation is necessary for performance of the Contract. If the Contractor incurs costs as a result, it is entitled to pass these on to the Client.

4. The delivery period shall likewise be extended insofar as necessary if, due to no fault of the Contractor, a delay arises due to a change to the working conditions that applied when the agreement was concluded or because materials ordered in good time for the performance of the work have not been delivered in good time.
5. The Product shall be deemed to be delivered as regards the delivery period when it is ready for inspection, if inspection at the company of the Client has been agreed, and in all other cases when it is ready for dispatch to the Client, this after the Client has been informed of this in writing, and notwithstanding the obligations of the Contractor to comply with any assembly/installation obligations.
6. In all cases – therefore also if the parties have agreed a final (delivery) period or (completion) date in writing - the Contractor shall only be in default due to the exceedance of a deadline after the Client has issued it with a written notice of default, whereby the Client has given the Contractor a reasonable period for the rectification of the failure and this reasonable period has expired. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Contractor is given the opportunity to respond adequately. The Contractor is not bound by a final a (delivery) period or (completion) date in the event of force majeure; in that case that provided for in article 15 shall apply.
7. The Client has no right to compensation, and the dissolution of the agreement or the suspension of its own obligations shall not be justified, if the exceedance of a (final) (delivery) period or (completion) date cannot reasonably be attributed to the Contractor and/or the reason for such lies within the area of responsibility of the Client.
8. The Client shall indemnify the Contractor against all claims of third parties in respect of an exceedance of a final (delivery) period or (completion) date.

Art. 7 Installation, commissioning and service

1. If the parties have agreed that installation/commissioning of the Product to be supplied will be carried out by the Contractor, the Client is responsible towards the Contractor for the correct and timely arrangement of all equipment, facilities and/or conditions that are necessary for the installation of the Product to be installed/commissioned and/or the correct operation of the Product in an installed/commissioned state. This shall not apply if and insofar as these activities are carried out by or under order to the Contractor in accordance with drawings and/or specifications produced or issued by or under order to the Contractor. In accordance with that provided for in article 10, these activities will commence if and insofar as the Client has fulfilled its payment obligations.
2. Notwithstanding that provided for in paragraph 1, if the parties have agreed that installation/commissioning of the Product to be supplied will be carried out by the Contractor, the Client shall in any event at its own expense and risk ensure that:
 - a. the personnel of the Contractor, as soon as they have arrived at the place of installation/commissioning, can commence and continue to carry out their work during normal working hours, and moreover outside of normal working hours if the Contractor deems this necessary, on the condition the Contractor has informed the Client about this in advance;

- b. suitable accommodation and all amenities for (the personnel of) the Contractor are in place as required under government regulations, the agreement, or usual practice;
 - c. the access roads to the location of the installation are suitable for the requisite transport;
 - d. the designated place of installation is suitable for storage and installation/commissioning;
 - e. the necessary lockable storage areas for equipment, tools and other goods are present;

 - f. the requisite and usual auxiliary workers, auxiliary equipment, and industrial materials (fuel, oil and lubricants, polish and other small items, gas, water, electricity, steam, compressed air, heating, lighting, etc.) as well as the normal measuring and testing equipment for the business of the Client, are available for the Contractor in good time, free of charge and in the right place;
 - g. all necessary safety and precautionary measures have been taken and are maintained, and all measures have been taken and are maintained to ensure the installation/commissioning complies with the applicable government regulations;
 - h. all the Products that have been sent are in the right place at the start of and during the installation/commissioning;
 - i. the installation location is in compliance with the other installation instructions of the Contractor;
 - j. the necessary secure telecommunication links and online connections are in place;
 - k. suitable technological and organisational security measures have been taken against computer viruses and other malicious and/or harmful software, and against unauthorised use and authorised modification.
3. Any damages and costs that arise because the conditions set in this article have not been complied with, or not on time, shall be for the account of the Client.
4. Unless explicitly agreed otherwise, installation/commissioning does not include:
- a. the provision of such instructions to the personnel of the Client responsible for operating the installation with regard to such operation as the Contractor deems necessary, on such days as the Contractor will determine;
 - b. excavation work, chiselling work, demolition work, brick work, plastering work, carpentry, laying concrete, painting, or similar work;
 - c. painting the pipes or otherwise adding an external protective coat to them.
5. Article 6 applies by analogy to installation/commissioning.
6. For work outside of normal working hours, whether or not at the request of the Client, a surcharge shall be applied in accordance with the tariffs applicable in the business of the Contractor. No work activities will be carried out by the Contractor on Sundays and/or public holidays, unless otherwise has expressly been agreed and at the tariffs applicable for such.
7. If any deficiencies come to light in respect of the assignment or the data, specifications or designs supplied in respect thereof, the Contractor is entitled to suspend the agreed work until the Client has remedied the deficiencies in question. The Contractor is entitled to charge any resultant costs to the Client.



Art. 8 Inspection, acceptance testing, delivery and completion, risk devolution

Inspection, acceptance, delivery and completion

1. The Client shall inspect the Product within a maximum of 14 days after the delivery as referred to in article 6, paragraph 5, or - if installation/commissioning has been agreed - within a maximum of 14 days after the installation/commissioning. If this deadline expires without written and specified notification of a valid complaint, the Product shall be deemed to have been accepted.
2. If acceptance testing has been agreed, the Client shall give the Contractor the opportunity to carry out the necessary preparatory tests and to make any improvements and changes deemed necessary by the Contractor after the delivery, or if installation/commissioning has been agreed, after the installation/commissioning. The acceptance tests shall be carried out in the presence of the Client as soon as possible after a request from the Contractor for such. If the acceptance tests are completed without a specified and valid complaint, as well as if the Client does not fulfil the aforementioned obligations, the Product shall be deemed to have been accepted.
3. For the acceptance tests, and any tests associated with such, the Client will make the requisite facilities, including those referred to in article 7, paragraph 2, subsection f, available, as well as sufficient quantities of representative samples of any materials to be processed, on time and free of charge, at the right location for use by the Contractor, in order that the operating conditions of the Product envisaged by the parties can be replicated as closely as possible. If the Client does not fulfil this obligation, the final sentence of paragraph 2 of this article shall apply.
4. If the acceptance tests show that the Product does not conform to the agreement, the Contractor shall rectify the shortcomings immediately.
5. The acceptance shall take place if the acceptance tests have been completed successfully. An official record of the acceptance can be drawn up, which can be signed on location by the parties. The Client is not allowed to put forward new requirements for acceptance. A Product shall be deemed to have been delivered as soon as it has been accepted by the Client.
6. An order/work shall moreover be deemed to have been delivered:
 - if the Product is deemed to have been accepted in accordance with the provisions of this article;
 - the Client refuses acceptance for unjustified reasons or without giving a reason;
 - if the Client has actually started to wholly or partially use the Product before acceptance;
 - if the Client does not confirm any shortcomings in writing to the Contractor immediately upon acceptance or within one (1) day thereafter.
7. In the event of minor shortcomings, in particular those which do not, or hardly, affect the envisaged usage of the Product (such as the abnormalities/tolerances or the absence of subordinate elements normal in the industry), the Product shall be deemed to have been accepted regardless of these shortcomings. The Contractor shall subsequently remedy these shortcomings as quickly as possible.



8. If the complete delivery of the Product is (temporarily) impeded due to force majeure, the Contractor shall be allowed to make a partial delivery or completion of the Product.
9. If the Client refuses the delivery of the Product, in the condition which it is offered as completed, without the existence of any of the circumstances referred to in paragraphs 1 to 7 of this article, it must notify this in writing together with the reasons for such to the Contractor in accordance with paragraph 6 of this article, in the absence of which the Product shall be deemed to have been accepted.
10. Notwithstanding the guarantee obligations of the Contractor, the acceptance/completion in accordance with the above paragraphs shall exclude any claim of the Client in relation to a shortcoming in the performance of the Contractor.

Devolution of risk

11. As soon as the Product is deemed to have been delivered in the sense of article 6, paragraph 5, the Client shall carry the risk for all direct and indirect damages, which might be caused to or by this Product, except insofar as these damages are attributable to the wilful misconduct or deliberate recklessness of management employees of the Client. If the Client, after being given notice of default, fails to take possession of the Product, the Contractor will be entitled to charge the Client for the costs arising out of such.

Art. 9 Retention of title

1. All the Products supplied by the Contractor to the Client shall remain the property of the Contractor up until the moment of payment in full of all that which the Contractor can claim from the Client for supplies or work activities, such to include interest and costs. In the event of non-payment or late payment, the Contractor shall have the right to take back the Products supplied the under the retention of title for the account and risk of the Client.
3. The Contractor shall have the right to keep all goods and documents of the Client which it has or shall get in its possession, or that a third party has in its possession, despite any obligation to release such, until all that which the Client owes to the Contractor in connection with this order and/or other agreements has been paid. If a claim against the Client is not payable when a supply is made, the Contractor shall have the right to keep these goods and documents in its possession until adequate security, in the opinion of the Contractor, has been provided for the payment of the claim.
4. All goods of the Client that the Contractor has in its possession, or that a third party has in its possession, and on which or in connection with which work is carried out by the Contractor, can be used by the Contractor as pledged security for all that which it can claim from the Client in connection with this order and/or other agreements with the Client. The right of pledge shall be deemed to have been granted by the Client and established at the moment of the formation of the agreement

Art. 10 Payment

1. Unless otherwise is agreed, the payment of the agreed price will be made in three instalments:

- 30% of the contract price no later than eight (8) days after the formation of the agreement;
 - 40% of the contract price no later than within thirty (30) days for a part delivery agreed in advance;
 - 30% of the contract price no later than within thirty (30) days after delivery of the complete Product in accordance with article 6, paragraph 5.
2. Additional work is to be paid as soon as it has been charged to the Client.
 3. All payments must be made without any deduction, suspension, or set-off in the way prescribed by the Contractor.
 4. The Contractor reserves the right to deliver or complete orders in parts, and to invoice separately for these part deliveries.
 5. If the Client does not pay within the agreed term, it is deemed to be automatically in default without need for notice of default to be served. In such a case the Contractor will be entitled to charge the statutory interest within the meaning of Book 6, Articles 119a and 120, section 2 of the Dutch Civil Code, plus three percentage points, from the due date, plus all judicial and extrajudicial collection costs.
 6. In such cases, rights that are vested in the Contractor can be awarded or transferred to the Client on the condition that the Client has paid the agreed charges for such on time and in full.
 7. If the creditworthiness of the Client gives cause for such, the Contractor can demand additional security during the performance of the agreement, and if such is not provided the Contractor can wholly or partially suspend or end the agreement in accordance with article 15.
 8. If the Client's creditworthiness justifies this, the Contractor is entitled to demand that the Client provide additional security during the performance of the Contract, failing which the Contractor is entitled to suspend or terminate the Contract in part or in whole.

Art. 11 Warranty

1. Notwithstanding the restrictions set out below, the Contractor warrants both the quality of the delivered Product (not being a Service) and the quality of the materials used or supplied for such Product, insofar as any defects to the delivered Product are not revealed by any inspection or acceptance test, and which defects the Client can prove have arisen within six months following delivery in accordance with Article 6, section 2 solely or mainly as a direct consequence of any incorrectly applied construction by the Contractor, any defective finish, or the use of poor materials.
2. Section 1 of this article applies by analogy to hidden defects that are not revealed by any inspection or acceptance test that are exclusively or primarily due to fitting/installation errors by the Contractor. If the Contractor fits/installs the Product, the warranty period of six months referred to in section 1 starts on the day the Contractor completes fitting/installation, with the proviso that the warranty period ends no later than twelve months after delivery in accordance with Article 6, section 2.
3. The Contractor will remedy deficiencies covered by the warranty set out in sections 1 and 2 of this article by repairing or replacing deficient parts, either at the Contractor's premises or by sending a replacement part, at the Contractor's discretion. All costs in excess of the obligation set out in the preceding sentence, including but not limited to transportation, travel and accommodation expenses, as well as dismantling and fitting/installation costs are payable by the Client. Repaired and replacement parts are

- subject to a new warranty period of six months, with the proviso that any warranty lapses twelve months after delivery of the Product in accordance with Article 6, section 2 or, if section 2 applies, eighteen months after the said delivery.
4. For repair, revision and maintenance work, and similar services, performed by the Contractor outside the warranty, a warranty is only given – unless agreed otherwise – with regard to the quality of the performance of the work for a period of six months. The only obligation upon the Contractor under this warranty is, in the event that any work is not of the required quality, to perform this work again. The second sentence of section 3 applies by analogy. In such a case a new warranty period of six months applies, with the proviso that any warranty lapses twelve months after the original work was carried out.
 5. There is no warranty for inspections, consultancy and similar services performed by the Contractor.
 6. The warranty excludes in any event any defect occurring in, or partly or fully the consequence of:
 - a. non-compliance with operating and maintenance instructions or usage that is other than the intended normal usage;
 - b. normal wear and tear;
 - c. fitting/installation/repair work by the Client or third parties;
 - d. the application of any government regulation with regard to the nature or quality of the materials used;
 - e. materials or other items used in consultation with the Client;
 - f. materials or other items given by the Client to the Contractor for processing;
 - g. materials, items, processes and constructions insofar as these are used on the express instructions of the Client, as well as materials and other items supplied by or on behalf of the Client;
 - h. parts supplied to the Contractor by third parties, insofar as such third parties have not issued a warranty or such warranty has lapsed;
 - i. the connection of the supplied Products to a cable and/or telecommunications network that does not satisfy the standards set by the Contractor;
 - j. the powering up of an installation, or parts thereof, that has/have not yet been delivered.
 7. If the Client fails to comply properly, on time or at all with any obligation arising from any Contract, or other contract related thereto, the Contractor is not bound by any warranty relating to such contracts – howsoever it is described. If the Client carries out any dismantling work, repairs, or other work to the Product without the prior written approval of the Contractor, all claims under the warranty are forfeited.
 8. A claim that alleges defects must be made as soon as possible following discovery of the defect and in any event within fourteen days following the end of the warranty period. Any complaint against the Contractor regarding such a defect made outside this term will lapse. Claims lapse after one year from the date on which a timely complaint was made.
 9. If the Contractor, in fulfilment of its warranty obligations, replaces parts or Products, any parts or Products replaced become the Contractor's property.
 10. Any alleged breach by the Contractor of its warranty obligations does not release the Client from any of its obligations under any Contract with the Contractor.

11. The Client is not entitled to invoke the provisions of this article if it has not fully paid the price agreed with the Contractor (including any contract variations). This provision is without prejudice to the warranty periods set out in this article.

Art. 12 Liability

1. Notwithstanding that provided for in paragraph 2 of this article, the total liability of the Contractor due to an attributable failure in the performance of the agreement or on any other legal grounds whatsoever, explicitly including any failure to fulfil a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damages or loss up to a maximum of the price stipulated for this agreement (excl. VAT). If the agreement is essentially a continuing performance contract with a term of more than one year, the price stipulated for that agreement shall be set at the total fees (excl. VAT) stipulated for one year. However, the total liability of the Contractor for direct damages, on any legal grounds whatsoever, shall not exceed €2,500,000 (excl. VAT).
2. The total liability of the Contractor for damages due to death, physical injury, or due to material damage to private property shall be limited to the amount that is paid out under the commercial liability insurance of the Contractor in the relevant case.
3. The liability of the Contractor for indirect damages, commercial losses, or consequential losses is excluded, such to include production losses, loss of turnover or profits, losses due to commercial stagnation, value depreciation, and losses as a result of claims from customers of the Client. The liability of the Contractor in connection with the corruption, destruction, or loss of data or documents is likewise excluded.
4. The exclusions and limitations of liability of the Contractor described in paragraphs 1 to 3 are without prejudice to any other exclusions and limitations of liability as described in these General Conditions.
5. The exclusions and restrictions referred to in paragraphs 1 to 4 shall no longer apply if and insofar as the loss is the result of intentional acts or deliberate recklessness on the part of the Contractor's management.
6. Unless fulfilment by the Contractor is permanently impossible, the Contractor shall only be liable as a result of an attributable failure in the performance of the agreement if the Client has given the Contractor notice of default in writing, which gives a detailed as possible description of the failure and which gives a reasonable period for the rectification of the failure.
7. Notwithstanding that provided for in article 11, paragraph 8, in connection with legal claims in relation to defects, all legal claims against the Contractor must be instituted within 1 year after the inception of the claim on pain of nullity.
8. The Contractor shall be able to invoke against the Client any provisions that can be invoked against it by the suppliers of supplied products or by auxiliaries/third parties engaged by it.

Art. 13 Indemnity

1. The Client is obligated to indemnify and/or compensate the Contractor, its employees, and the third parties engaged by the Contractor against all claims of third parties for compensation of damages.

2. The claims referred to above include, inter alia, third-party claims for compensation brought against the Contractor for breach of intellectual property rights, including for the use of a material or the adoption of a working method provided/prescribed by the Client.
3. If the Client supplies a Product on or makes it available to consumers or allows it to be used by consumers, the Client shall also indemnify the Contractor against possible claims on the grounds of (product) liability made by these private users.
4. Any right, defence, limitation, or immunity of any kind whatsoever on which the Contractor may rely on the basis of these General Conditions, may also be relied upon by the Contractor's personnel, or any third party and its personnel engaged by the Contractor.

Art. 14. Force majeure

In these General Conditions, force majeure shall be understood to mean any circumstance beyond the control of the Contractor - even if it was already foreseeable at the time the agreement was concluded - which impedes the performance of the agreement permanently or temporarily, as well as, insofar as not already covered by such, war, threat of war, civil war, civil unrest, strikes, lockouts, transport difficulties, fire, terrorism, and other serious disruptions of the business of the Contractor or its suppliers.

Art. 15 Suspension and dissolution

1. In the event the performance of the agreement is impeded as a result of force majeure, the Contractor shall be entitled, without judicial intervention being required, to either suspend the performance of the agreement for a maximum of 6 months, or to dissolve the agreement in full or in part, without being obligated to pay any compensation. During the suspension the Contractor is entitled, and at the end of such it is obliged, to either opt for performance, if possible, or for full or partial dissolution of the agreement.
2. Both in the case of suspension and in the case of dissolution pursuant to paragraph 1, the Contractor is entitled to demand immediate payment for all the raw materials, consumables, parts, and other goods which been purchased, reserved, processed, and fabricated by it for the performance of the agreement, such for the value that can be reasonably accorded to such. In the event of a dissolution pursuant to paragraph 1, the Client shall be obligated to take possession of all the goods covered by the payment of the amount owed pursuant to the previous sentence, in default of which the Contractor shall have the right to store these goods for the account and risk of the Client, or to have such sold or destroyed for its account.
3. If there valid grounds for fearing that the Client is unable or will be unable to fulfil its contractual obligations towards the Contractor, as well as in the case of bankruptcy, suspension of payments, discontinuation, liquidation or whole or partial transfer of the Client's business, the Contractor shall be entitled to demand suitable security from the Client for the fulfilment of all of its contractual obligations (whether or not already payable) and to suspend the performance of the agreement while awaiting the provision of such security. If the security is not provided within a reasonable period set by the Contractor, the Contractor shall have the right to wholly or partially dissolve the agreement. The Contractor has these rights in addition to its other rights under the law, the agreement, or these General Conditions.

4. If the Client fails to fulfil any obligation arising for it under the agreement, or under an associated agreement, concluded with the Contractor, or does not do so on time or not properly, the Contractor shall also have the right to suspend the performance of the agreement and/or to dissolve the agreement.

In the event of a suspension pursuant to paragraph 3 or paragraph 4, the Contractor is entitled to store all the raw materials, consumables, parts, and other goods that been purchased, reserved, processed, and fabricated by it for the agreement for the account and risk of the Client. The previous sentence shall likewise apply in the event of dissolution on the grounds of paragraph 3 or paragraph 4, with the understanding that the Contractor can also opt for sale or destruction for the account of the Client instead of storage. In the event of suspension or dissolution on the grounds of paragraph 3 or paragraph 4, the Contractor shall be entitled to claim full compensation for damages, but it shall not be obligated to pay any compensation whatsoever itself.

5. In the event of dissolution by the Client before the order is finished, without there being an attributable failure on the side of the Contractor (cancellation), then paragraph 5 of this article shall likewise apply.

Art. 16 Assignment of claims

The Client is not entitled to assign any of its claims against the Contractor, under the Contract or otherwise, to third parties, or to furnish such claims as security to third parties, without the consent of the Contractor. Claims against the Contractor are not assignable to recipients under particular title by virtue of Book 6, Article 251 of the Dutch Civil Code.

Art. 17 Applicable law/disputes/interpretation of conditions

1. All disputes that might arise in connection with an agreement, which these General Conditions are wholly or partially applicable to, or in connection with other agreements arising out of such, shall be put before the competent Dutch courts. If the competence of the Dutch courts is not prescribed by law, the district court in the district where the Contractor has its registered office shall have competence.
2. All agreements which these General Conditions wholly or partially apply to shall be governed by Dutch law as applicable for the Kingdom in Europe. The applicability of the Vienna Sales Convention is excluded.
3. If one or more provisions of these General Conditions are non-binding, this shall not impair the validity of the other provisions of these General Conditions. The Dutch text of these General Conditions shall prevail over any translations of such.

SPECIAL CONDITIONS CONCERNING DEVELOPED SOFTWARE

Art. 18 General:

1. If agreed by the parties, the Contractor can install Software on the Product or the equipment of the Client. The parties can likewise agree that the Contractor develops Software, and if necessary installs and/or maintains such, under contract to the Client. This appendix is applicable to all Software supplied by the Contractor to the Client. In this connection, the term "Software" shall be understood to mean both Software and, insofar as possible and relevant, hardware. The provisions below moreover apply for the integration of Software and hardware with each other, and/or

- a combination of both with the Product or equipment which may or may not belong to the Client. The provisions in this appendix shall prevail over the other provisions of these General Conditions insofar as they deviate from such.
2. In connection with the obligations described in paragraph 1 of this article, the Contractor has an obligation to perform to the best of its ability and not an obligation to achieve a certain result.
 3. Regardless of whether or not specifications or a design for the Software to be developed have been issued to the Contractor, the Contractor shall enter into consultations with the Client about the specific Software necessary for the Product or equipment. In principle, the software prescribed by the Client does not actually have to be used. This will depend on an estimation by the Contractor of the suitability and the functionality requirements that have to be set for the proper functioning of the Product or the equipment. In this connection it is very important that the Client makes sure the Contractor receives the necessary requirements and the technical and/or operational details in a timely fashion, and that the Client guarantees the accuracy and completeness of the details, information, designs, and specifications provided by it, so that the Contractor can use such as the starting point for its programming work.
 4. The Contractor shall have the right to decide which software or parts of such will be necessary for the proper and sound performance of the Product and/or equipment. If, however, the Client has prescribed certain software or parts of such as compulsory for the Contractor, the Client shall guarantee the soundness and suitability of the prescribed software.
 5. If the Parties have agreed a particular development method characterised by the design and/or development of Software parts with a prioritising that is to be determined during the performance of the Contract, then this prioritising will be agreed between the Parties on the basis that it must always be workable for the Contractor.
 6. The Contractor may supply replacement or modified software instead of the software that has not been prescribed as compulsory by the Client, on the condition the operational capacity of such does not significantly differ from the specifications of the prescribed software, or at least if more or less the same results are achieved.
 7. The Software is designed and manufactured in accordance with European standards, regulations and design codes. Unless agreed otherwise in the Contract, the Contractor will make changes in line with standards, regulations and design codes, which apply in the jurisdiction where the Product or equipment will be used, at the risk and expense of the Client, provided that such standards, regulations and design codes have been notified to the Contractor in good time. Any additional costs incurred will be payable by the Client.
 8. With regard to performance of the work, in addition to the deviations and alterations to the Software as are usual in the sector and otherwise agreed, such deviations and alterations as are necessary to achieve the desired result or as are dictated by a change in working method, situation, or regulations are also permitted.

Art. 19 Development and purchase of Software

1. The Contractor shall only commence the activities when it has received all the necessary information. In the event any imperfections are identified in the details, specifications, designs, or information provided to the Contractor, the Contractor shall have the right to suspend the agreed activities until the Client has rectified the

- relevant imperfections. Before starting the development work, the Contractor can ask the Client to give its written approval for the specifications and the design.
2. Due to the nature of the activities and the creative process associated with such, the Contractor shall not be obligated to keep to a timeline and/or a final delivery or completion deadline set by the Client.
 3. The Contractor shall deliver and install the Software to be developed for the Client in accordance with the agreed written specifications on the agreed type and size of data carriers, although the installation will only be carried out if installation by the Contractor has been agreed in writing. If no explicit agreements have been made in this regard, the Client shall install, configure, set parameters for, and tune the Software itself, and if necessary modify the hardware and operating environment used for such itself. Unless otherwise has explicitly been agreed in writing, the Contractor shall not be obliged to carry out data conversion.
 4. If the Client changes or expands the agreed specifications, or notifies other wishes in relation to the Software, during the development process, the Contractor shall try to satisfy these changes to the best of its ability. However, the Contractor is not obligated to deviate from the original Contract/agreed specifications. The Contractor shall - either with or without attempts to make changes - indicate whether or not, and if, any changes are possible. Any changes that are subsequently requested, as well as any work that does not fall within the scope of the Contract, shall be considered to be contract extras.

Art. 20. Acceptance tests

1. If an acceptance test has been agreed, the test period shall be fourteen (14) days after delivery or, if it has been agreed in writing that the Contractor will carry out the installation, after the completion of the installation. During the test period, the Client is not permitted to use the Software for productive or operational purposes. The Contractor can demand at any time, therefore even if such has not explicitly been agreed, that the Client carries out an adequate test of sufficient scope and depth, with sufficiently qualified personnel, in relation to (interim) results of the development work, and for a written, clear and understandable report on the test results to be issued to the Contractor.
2. The Client is allowed to carry out an interim acceptance test or an acceptance test after the completion of a certain phase of the development process, or after the Contractor has stated that it has completed the activities, on the condition the Client notifies the Contractor in advance about such. All costs, including those of the Contractor, for such an (interim) acceptance test shall be entirely for the account of the Client. If the (interim) testing leads to delays or costs, these shall be entirely for the account and risk of the Client.
3. The Software shall be deemed by the parties to have been accepted and delivered if:
 - a. an acceptance test has not been agreed between parties: upon the delivery of such or, if it has been agreed in writing that the Contractor will carry out the installation, upon the completion of the installation;
 - or if an acceptance test has been agreed between the parties:
 - b. the first day after the test period;
 - c. or if the Contractor receives a test report as referred to in article 20, paragraph 5, before the end of the test period: when the defects listed in the

- test report have been rectified, notwithstanding the existence of imperfections which do not prevent acceptance in accordance with article 20, paragraph 6;
- d. if the Client actually uses the Software for any productive or operational purposes: at the moment when the relevant usage occurs.
 4. Where this appendix refers to 'defects', this shall be understood to mean a substantial failure to meet the functional or technical specifications made known by the Contractor in writing or, in the case of customised Software, the functional and/or technical specifications explicitly agreed between the parties in writing. A defect shall only be deemed to exist if the Client is able to prove the defect exists and if it can be reproduced. The Client is obligated to inform the Contractor immediately about any defects, and to keep a log about such.
 5. If when an acceptance test is being carried out it transpires that the Software contains defects, the Client shall notify the Contractor about the defects no later than on the last day of the test period by way of a written and detailed test report. The Contractor shall make every effort to fix the defects identified within a reasonable period of time, whereby the Contractor shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the Software.
 6. Acceptance of the Software may not be withheld on other grounds than those relating to the functional and/or technical specifications expressly agreed between parties and moreover not due to the existence of minor defects, being defects that do not reasonably prevent the operational or productive use of the Software, without prejudice to the obligation of the Contractor to rectify these minor defects under the guarantee provisions of article 21. Acceptance may also not be withheld in relation to aspects of the Software that can only be assessed subjectively, such as the design of user interfaces.
 7. If the Software is supplied and tested in phases and/or parts, the non-acceptance of a particular phase and/or part shall not affect the acceptance of a previous phase and/or other part.
 8. Acceptance of the Software in one of the ways referred to in this article shall mean that the Contractor is discharged in full in respect of the fulfilment of its obligations in relation to the development and provision of the Software and, if it has been agreed that the Contractor will carry out the installation, its obligations in relation to the installation of the Software. Acceptance of the Software shall not affect the Client's rights pursuant to article 6 in relation to minor defects and article 21 in relation to the guarantee.
 9. In the absence of an explicitly agreed invoicing schedule, all amounts that relate to the development of the Software shall become due and payable upon the delivery of the Software, or if an installation by the Contractor has been agreed in writing, upon the completion of the installation.

Art. 21 Guarantee and repair of defects

1. The Contractor does not guarantee that the Software is suitable for the actual and/or intended usage.
2. The Contractor shall make every effort to fix defects in the Software within a reasonable period of time if the Contractor receives a detailed, written notification of these defects within a period of three (3) months (the guarantee period) after delivery or, if the parties have agreed to an acceptance test, within three (3) months after acceptance.

3. The Contractor does not warrant the Software will work without interruption, defect, or other errors, or that all defects and other errors can be rectified. Repairs within the warranty period will be carried out free of charge, unless the Software has been developed on the instructions of the Client otherwise than for a fixed price, in which case the Contractor will charge for the repair in accordance with its usual charges.
4. The Contractor shall be entitled to invoice the costs of fixing defects at its standard rates in the event of incorrect or injudicious use by the Client or other causes that are not attributable to the Contractor. The Contractor shall not be obliged to fix defects if the Client has made changes, or has changes made, to the Software without the written consent of the Contractor.
5. Repair of damaged or lost data is not covered under the guarantee. That provided for in article 12 shall apply in relation to liability for damages possibly caused by defects. The Client shall be responsible for back-up facilities, reboot procedures, checks on the accuracy and security of data and the Software, as well as for other procedures that might be necessary for the continuation of the business operations of the Client.
6. In principle, defects will only be repaired in the workplaces of the Contractor or such other location as the Contractor may specify. If the Client requires repairs to be carried out at the Client's premises or where equipment is located, the Contractor is entitled to charge the Client for all costs thereby incurred. The Contractor is also entitled within the framework of the warranty to provide temporary solutions, workarounds, or problem-avoiding restrictions within the Software.
7. The Contractor is under no obligation in respect of the repair of defects that are reported after the end of the warranty period referred to in section 2 of this article, unless the Parties have entered into a maintenance contract which contains such a repair obligation.
8. The guarantee only applies for the original version of the Software supplied by the Contractor (not copies), which is moreover on the processing unit for which the relevant Software was supplied.

Art. 22 Software of suppliers

If and insofar as the Contractor makes software of suppliers of the Contractor available to the Client, the licence conditions of those suppliers of the Contractor shall apply in relation to that software and shall prevail over that provided for in these General Conditions, on the condition the Contractor has notified the Client about such in writing. The Client accepts the relevant conditions of these suppliers of the Contractor. These conditions of third parties shall be issued to the Client before or upon the conclusion of the agreement, whereby the Client cannot invoke a failure of the Contractor to satisfy the aforementioned obligation to provide information if the Client is a party as referred to in article 6:235, paragraph 1 or paragraph 3, of the Dutch Civil Code. If and insofar as the abovementioned conditions of suppliers of the Contractor are deemed not to apply to the relationship between the Client and the Contractor for any reason whatsoever, or are declared to be inapplicable, the provisions of these General Conditions shall apply in full.

Art. 23 Intellectual property rights

1. The Contractor shall indemnify the Client against all legal claims of third parties based on an allegation that the Software developed by the Contractor infringes any valid intellectual or industrial property rights, on the condition the Client informs the

Contractor immediately in writing about the existence and substance of any such legal claims and allows the Contractor to completely take over the handling of the case, including the reaching of any settlements. To this end, the Client shall provide the Contractor with the powers of attorney, information, and cooperation that it deems necessary in order to put forward a defence, if necessary in the name of the Client, against such legal claims.

2. The Contractor indemnifies the Client against any third-party legal claim that alleges that Software developed by the Contractor itself infringes any intellectual or industrial property right enforceable in the Netherlands, with the proviso that the Client must notify the Contractor in writing, without delay, of the existence and substance of any such legal claim and transfer the conduct of the case, including any settlement, in its entirety to the Contractor. The Client will provide the Contractor with the grants of authority, information, and assistance necessary for the Contractor to be able to defend such a claim, where necessary in the name of the Client.
3. If there is a non-appealable court finding that the Software developed by the Contractor itself infringes any third-party intellectual or industrial property right, or if in the judgment of the Contractor there is a real chance that such an infringement will arise, the Contractor shall, where possible, ensure that the Client can continue to use the Software supplied or alternative software of equal functionality, without disruption, by, for example, changing the infringing parts or by acquiring a right of use in favour of the Client.
4. If in its sole judgment the Contractor determines that the Client cannot continue an undisrupted use of the delivered product, or can only do so by virtue of an unreasonable burden on the Contractor, the Contractor will take back the delivered product in return for crediting the acquisition cost to the Client, less a reasonable sum for the extent to which the product was used. The Contractor will not take any decision in this respect until it has consulted with the Client.
5. Any other or alternative liability or indemnity obligation on the part of the Contractor for any breach of third-party intellectual or industrial property rights is entirely excluded, including any liability/indemnity obligation upon the Contractor for any infringements caused by the use of the Software (i) in a form not manufactured or modified by the Contractor, (ii) in connection with goods or Software not delivered or supplied by the Contractor, or (iii) in any way other than the purpose for which the Software was developed or intended, or (iv) if this is Software or parts thereof that had been supplied or stipulated by the Client.
6. The Client guarantees that no rights of third parties prevent the provision of equipment, materials, software, or designs, etc., to the Contractor for the purpose for which they have been made available. The Client shall indemnify the Contractor against all claims by third parties based on the assertion that such provision, use, processing, installation or incorporation constitutes an infringement of any rights of third parties.
7. If due to any act or omission by the Client or any third party for which the Client may be deemed responsible there is any breach of the Contractor's intellectual or industrial property rights, the Client is under an obligation to compensate the Contractor in full for any loss it has suffered or may suffer in the future, including consequential and trading loss.

Art. 24. Rights of use

1. Without prejudice to that provided for in article 5 and notwithstanding provisions to the contrary in the Contract, the Client shall only receive a non-exclusive and non-transferable right to use the Software exclusively in its own business or organisation on a maximum of one (1) processing unit, and for a specific number or type of users or connections for which the right of use has been granted.
The phrase 'own business or organisation' does not include companies affiliated to the Client unless this has been expressly agreed with the Contractor.
2. Insofar as otherwise has not been agreed about such, the processing unit of the Client on which the Software was used for the first time and the number of connections that were connected to the processing unit at the time of the first usage shall apply as the processing unit and number of connections for which the right of use has been issued. The right of use can relate to several processing units insofar as such is expressly apparent from the Contract.
3. The Client will use the Software in the manner specified in the product description and/or instructions. The Client will supervise the correct use of the Software including any routine or other maintenance to be carried out by the Client and any additions or changes made by the Client and permitted by the Contractor, in accordance with any reasonable instructions given at any time by the Contractor.
4. The Client will strictly comply with the restrictions on use agreed between the parties. Notwithstanding the other provisions of these General Conditions, the right of use of the Client only comprises the right to load the Software and to run it. The copying, reproduction, or the making available to third parties in any form and under any conditions whatsoever is therefore prohibited and shall be deemed to be an infringement of the intellectual property rights (on the side) of the Contractor.
5. The Contractor may take technical measures to protect the Software or to enforce any agreed time limit attached to the right of use. The Client may not remove or bypass such technical measures. If security measures result in the Client being unable to make any reserve copy of the Software, the Contractor will supply the Client on request with a temporary reserve copy.
6. If any unauthorised modification is made to any part of the Contractor's Software or any part of the equipment, this will be regarded as a breach of these General Conditions and the Contractor will be entitled to terminate the right to use the Software with immediate effect, whilst the continued use of any such program by the Client will be regarded as unauthorised, unless the Parties have agreed any further financial or other terms in this regard.
7. The Client will comply with all reasonable instructions given at any time by the Contractor concerning the use of intellectual and industrial property rights and/or other designations of the Contractor's or its licensor's ownership rights. In particular, but not by way of limitation of the above, the Client will provide the Contractor on demand with information concerning the location and identification of all processors or other data carriers on which certain programs have been installed, to thereby enable the Contractor to check any possible infringement of rights and/or to verify the user costs to be paid by the Contractor to any third party.
8. The Client's right of use shall not extend to the Software source code. Only if and insofar as it has been expressly agreed in writing, the source code of the Software and the technical documentation arising out of the development of the Software can be made available to the Client, in which case the Client shall be entitled to make



alterations to this Software. If the Contractor is judicially bound to make the source code and/or the technical documentation available to the Client, the Contractor can demand a reasonable fee for such.

9. The right of use is non-transferable.
10. The Client is not permitted to sell, hire, sublicense, to dispose of, or to establish restricted rights on the Software and the devices on which it is stored, or to make such available to third parties in any way and for any purpose whatsoever, or to allow a third party access to the Software, remotely or otherwise, or to allow the Software to be hosted by a third party, even if the relevant third party only uses the Software for the benefit of the Client. The Client shall not change the Software except with the written permission of the Contractor and in connection with the rectification of defects. The Client shall not use the Software in connection with the processing of data for the benefit of third parties (time-sharing). The Client acknowledges that the Software and the source code are confidential in nature, that they contain commercial secrets of the Contractor, and that they are the intellectual property of the Contractor.
11. Immediately after the right to use the Software ends the Client will return to the Contractor all copies of the Software in its possession, unless agreed otherwise in writing. If the Parties have agreed that when the right of use ends the Client will destroy the relevant copies, the Client will immediately notify the Contractor in writing when this is to be done and permit the Contractor to check that it is being carried out.

Art. 25 Maintenance

Obligations of the Contractor

1. If agreed, the Contractor shall carry out maintenance in relation to the Software specified in the agreement. The maintenance obligation covers the repair of defects in the Software in the sense of article 20, paragraph 4. The provision of new versions of Software is not included in the maintenance, unless otherwise has expressly been agreed.
2. Following the receipt of a report of a defect by the Contractor, the Contractor shall make every effort to fix the defect and/or make improvements to future new versions of the Software in accordance with its standard procedures. The fact that the Contractor is not able to fix the defect, or not able to fix it on time, shall not lead to the Contractor being liable to pay compensation.
3. The maintenance shall be carried out on the work days and during the work hours applicable for the Contractor, and at a location and in a way to be determined by the Contractor.
The Contractor reserves the right to suspend its maintenance obligations for as long as circumstances exist at the location where the maintenance is to be carried out, which in the opinion of the Contractor constitute a risk to the safety or health of the employees of the Contractor and/or there are insurmountable practical objections with respect to the location.
4. The Contractor shall be entitled, also in connection with maintenance, to install temporary solutions, workarounds, or problem-avoiding restrictions in the Software.



5. The Contractor will ensure that its expertise with regard to the Software is kept up to date. The Contractor will register and keep administrative records of all data relevant to the work carried out to the Software.
6. Parts of the Software will be replaced if in the opinion of the Contractor this is necessary to repair or prevent break-downs. Any parts replaced become/remain the Contractor's property.
7. No guarantee will be given for the maintenance of Software.

Obligations of the Client

8. The Client shall issue a detailed written report to the Contractor about any defects identified in the Software.
9. The Client is bound to give the personnel of the Contractor or the third parties appointed by the Contractor access to the location of the Software, and to provide all other necessary cooperation, and to make the Software available to the Contractor for the performance of the maintenance work.
10. If in the opinion of the Contractor it is necessary to test the connections of the Software with other systems in order to carry out the maintenance of the Software, the Client will make these other systems and the relevant test procedures and data carriers available to the Contractor. If the Contractor carries out the maintenance work online, the Client shall be responsible for providing suitable, secure infrastructure and network facilities in a timely fashion.
11. Test materials needed for the maintenance work that are not part of the normal tools of the Contractor, must be supplied by the Client. In the case of on-site maintenance, the Client will provide the space, and technical and telecommunications facilities that are necessary, to enable the Software to function, as well as a safe working environment. Maintenance specifically excludes the said facilities and connections.
12. The Client bears the risk of loss or theft of, or damage to, the Software during the period in which the Contractor is in possession of this during the maintenance work. It is up to the Client to insure against this risk. Before delivering the Software to the Contractor for maintenance, the Client must ensure that an adequate and full spare copy of the data stored in the Software is made. The Client is itself responsible for ensuring its commercial security.
13. The Contractor accepts no duty to maintain Software that is not set up in the Netherlands, unless expressly agreed otherwise in writing.

Exclusions

14. The maintenance fee does not include:
 - a) the replacement of consumables, such to include energy carriers and digital storage devices;
 - b) the replacement cost of parts;
 - c) activities for whole or partial revision, or for normal deterioration of the Software, or for Software which has passed its technical lifespan;
 - d) the carrying out of modifications to the Software or the issuing of newer versions;
 - e) relocation, removal, reinstallation of Software or activities as a result of such.

15. The maintenance of the Software shall moreover not include the fixing of faults, defects or shortcomings arising from or related to:
 - a. the use of the Software in breach of the relevant conditions or in breach of the instructions set out in the instruction manuals, the inexpert or defective use of the Software, including defects in the input of data or to the data itself;
 - b. changes to the Software other than those carried out by or on behalf of the Contractor, including attempts to fix defects by third parties;
 - c. changes to, or defects or irregularities in, the hardware/Product used for the Software or in Software other than that covered by the maintenance contract with the Contractor;
 - d. the failure by the Client to have the Software maintained, or to report defects, in good time;
 - e. the use of an old(er) version of the Software that is no longer maintained by the Contractor;
 - f. the repair/recovery of damaged or lost data;
 - g. other reasons not attributable to the Contractor, or causes outside the control of the Contractor.
16. The Contractor can invoice for the costs of fixing defects in the event of defects caused by incorrect or injudicious use or other causes that are not attributable to the Contractor, or if the Software has been altered by anyone but the Contractor and the Contractor still carries out the work despite that provided for in paragraph 15 of this article. The costs shall be calculated based on the daily rates of the Contractor applicable at the time when the repair work is carried out.
17. The Contractor shall only make improved versions of the Software available to the Client when they become available if this has been explicitly agreed in writing as part of the maintenance. Regardless of whether or not this was agreed as part of the maintenance, three (3) months after an improved version has been made/is available, the Contractor shall no longer be bound to fix any defects in the older version or to provide support in relation to an older version. Unless this had already been agreed, in connection with the provision of a new version with new capabilities and functions, the Contractor can require the Client to enter into a new agreement with the Contractor, and to pay a new fee for the provision of this new version. The Contractor can incorporate functionalities from a previous version of the Software in an unchanged form in a new version, however it does not guarantee that each new version will have the same functionalities as the previous version. The Contractor shall not be obliged to maintain, change or add certain features or functionalities of the Software specifically for the Client.

Diagnostic materials

18. The Contractor may, where it thinks justified, provide the Client with diagnostic materials that may include and/or be contained within diagnostic and test routines, software programs, manuals, documentation and data. Such diagnostic materials remain at all times the property of the Contractor and are not provided under any user licence granted to the Client, but will be stored by the Client on behalf of the Contractor as an aid to the service supplied by the Contractor and will be returned to the Contractor on demand.

19. The Client may only use the diagnostic materials exclusively in the way and for the purpose specified by the Contractor. The Client shall treat the diagnostic materials and the results acquired through the use of such as confidential, and undertakes not to disclose such to third parties. The Client shall allow the Contractor to carry out checks on the use of the diagnostic materials at reasonable times, and allow the Contractor to remove the diagnostic materials if the Contractor deems this necessary. The Contractor has the right to ask for diagnostic materials to be returned, or to take back and/or to remove such, immediately after the ending of the service provided by the Contractor in connection with which the relevant diagnostic materials have been used. No guarantee whatsoever shall be provided in relation to diagnostic materials or services provided on the basis of such.

Term

20. The agreement for maintenance of Software is concluded for the term agreed between parties, in the absence of which a period of one (1) year shall apply. The term of the agreement shall be repeatedly tacitly extended by the term of the original period, unless the Client or the Contractor terminates the agreement in writing with due observance of a period of notice of three months prior to the end of the relevant period.
21. If the Client does not enter into a maintenance agreement with the Contractor at the same time as entering into an agreement for the provision of the Software, the Contractor shall in no way be obligated to enter into a maintenance agreement with the Client at a later date.

Art. 22 Sale of Software

1. The sale, forwarding or supply to third parties on any basis whatsoever of the Software, Product, or parts thereof supplied to the Client by the Contractor is prohibited. If the Client does wish to do this, it must obtain the consent of the Contractor. Where the sale involves the export to outside the EC, if the Client obtains the Contractor's consent, it must itself ensure that any required consent and/or licence from the relevant bodies in the Netherlands or abroad is obtained, including, but not limited to, the Export Administration Regulation of the United States of America, insofar as it applies to, or can influence, such a forward sale or export.
2. The term 'sale' also includes the sale by the Client of all or parts of its enterprise to a third party.
3. The Contractor shall not refuse to give permission for a sale on unreasonable grounds, but it can attach (financial) conditions to the granting of such permission.