

# Terms of Delivery

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These terms of delivery (hereinafter to be referred to as the "Terms of Delivery") shall apply to all legal relationships between Amit Services B.V. , having its registered offices in Leerdam, (hereinafter to be referred to as "Amit"), and other parties (hereinafter to be referred to as the "Client"). A copy of these Terms of Delivery will be sent free at the Client's request.

## General provisions

### 1 Offer and agreement

**1.1** These Terms of Delivery shall apply to all offers, legal relationships and agreements by which Amit provides goods and/or services of whatever nature to the Client, including in the event these goods and/or services are not specified (in detail) in these Terms of Delivery and also in the event Amit, at the request of the Client, begins delivery before having received written confirmation from the Client, in which case the Client will provide such confirmation as soon as possible in accordance with Amit's proposal, and the assignment will be deemed to have been agreed according to Amit's proposal. Deviations from and additions to these Terms of Delivery will only be valid if they have been explicitly agreed upon in writing.

**1.2** If and in so far as Amit indirectly supplies services and/or products from third parties, such services and/or products will be subject to the terms and conditions set by the third parties providing the Client has been informed of this, either by Amit or by any other means, and the terms and conditions of the third parties will replace the provisions in Amit's own Terms of Delivery and provided those terms and conditions do not violate Amit's rights as laid down in this document. The Client will accept the third parties' terms and conditions referred to above, a copy of which will be available for inspection by the Client at the offices of Amit. At the written request of the Client, Amit will arrange for transmission of the content of these terms and conditions to the Client by means of shrink wrap, click-through or other electronic functionalities. If and in so far as the terms and conditions of the third parties referred to above are deemed, for any reason whatsoever, not to apply or are excluded from applying in the relationship between the Client and Amit, these Terms of Delivery shall apply.

**1.3** All offers and other statements made by Amit shall be without obligation, unless Amit has explicitly indicated otherwise in its offer in writing.

**1.4** The Client shall guarantee the correctness and completeness of the measurements, requirements, performance specifications and other particulars supplied

by him or in his name to Amit, and on which Amit bases its offer.

**1.5** The application of the Client's purchase conditions or other terms and conditions shall be explicitly rejected.

**1.6** If any provision of these Terms of Delivery is declared null and void or annulled, the other provisions shall remain in full force and Amit and the Client shall enter into discussions to agree on new provisions to replace the provisions that have been declared null and void or annulled, whereby the purpose and the purport of such provisions shall be observed in every respect possible.

**1.7** Amit shall at all times be entitled to impose (additional) requirements on communication between the parties or on the performance of legal acts by e-mail.

### 2 Price and payment

**2.1** All prices shall be exclusive of turnover tax (VAT) and other levies imposed by the government. Amit shall establish the rates and prices for the activities it performs, the services it provides and the goods it supplies.

**2.2** If the Client consists of several legal entities, each of those entities is jointly and severally liable for the amounts due under the agreement.

**2.3** In the event an agreement mentions payment of amounts that will come due periodically, Amit shall have the right to adjust the rates and prices of such amounts if this is announced to the Client in writing at least three months in advance.

**2.4** Amit shall at all times have the right to adjust the prices and rates agreed upon for services to be provided in accordance with the schedule or the agreement, as the case may be, if this is announced to the Client in writing at least three months in advance. Moreover, the rates of the services provided by Amit can be adjusted yearly. Rates (or parts thereof) related to staff or the allocating of staff can be adjusted yearly on the basis of the Dutch national index applying to monthly wages set in accordance with the collective bargaining agreement for wages (CAO Lonen) and working time for the business services or computer service and information technology business category, exclusive of special rewards, including special rewards for all collective labor agreements, for all sectors, determined in January of each year. The remaining rates (or parts thereof) can be adjusted annually in proportion to the increases in the expenses actually incurred by Amit, including expenses for materials, rent, utilities, telecommunications, and so on, as determined by Amit.

**2.5** If the Client does not wish to agree to an adjustment announced by Amit in respect of the prices and rates referred to in article 2.3 and 2.4, the Client shall be entitled to terminate the agreement in writing by the effective date of the price or rate adjustment, within seven days following the announcement as referred to in these paragraphs, provided this price or rate adjustment implies an increase of more than 15% on top of the increases caused by purchase expenses to Amit of products and

services originating from third parties, such as expenses for materials, rent, utilities, telecommunications, and so on.

**2.6** All invoices shall be paid by the Client in accordance with the terms of payment as stated on the invoices. In the absence of any specific terms, the Client shall pay invoices regarding the delivery of standard products, such as equipment and standard software, within 15 days from the invoice date, and pay invoices regarding services within 30 days from the invoice date.

**2.7** If the Client fails to pay the amounts due within the period agreed, the Client shall owe statutory trade interest on the amount still due as from the date the amount is due without any warning or proof of default being required, furthermore Amit is entitled to suspend delivery of services and products until all payments have been done. If, following a warning or proof of default, the Client persists in non-payment, the invoice can be passed on for collection, in which case the Client shall also be obliged to pay all extrajudicial and judicial costs in addition to the total amount then due, including all costs charged by external experts, on top of the costs established judicially in relation to the collection of this claim or the exercise of a right in any other manner, the amount of which will be at least 15% of the total amount. In addition, the Client shall owe the costs incurred by Amit for unsuccessful mediation if the Client is found to be at fault, either partially or wholly, by decision of a court.

**2.8** Before executing the agreement or continuing to perform under the agreement, Amit shall at all times have the right to demand the security it deems sufficient – such as an initial payment, (periodic) payment in advance or a bank guarantee – to ensure that the Client complies with its (payment) obligations, even if this implies the exceeding of deadlines and/or times of delivery. Refusal by the Client to furnish the security demanded shall entitle Amit to rescind the agreement, in whole or in part, by issuing a written declaration, without prejudice to the right of Amit to compensation of all forms of damage suffered by it on account thereof. Amit is authorized to transfer the amounts due from the Client to other entities within its group of companies or third parties. If and as soon as the Client exceeds the credit limit (if any) set by Amit's credit insurer, or the cover provided by the credit insurer has lapsed owing to the age of the invoices still owed by the Client, Amit shall have the right to rescind the agreement in whole or in part by issuing a written declaration, without prejudicing its right to compensation for all damage it suffers as a result. Rescission on the grounds of the provisions of this article does not release the Client from its obligation to pay for the activities, services and goods delivered up to the date of rescission.

**2.9** Upon the occurrence of any one of the following events (under 2.9.1 and/or 2.9.2), the payment term provided hereunder shall automatically and immediately convert to Cash in Advance (whereby for purposes of this Agreement, the term "Cash In Advance" means that Amit will pre-invoice any amounts to be paid under the

agreement and that such invoice must be paid by the Client before services or products to be provided under the Contract will commence or be delivered):

2.9.1 The Client's payments under the terms hereunder are, due to no fault of Amit, delayed by more than 60 days at any one time, or by more than 30 days during three months or more over any period of six consecutive months.

2.9.2 The Client's credit ratings as issued by Moody's, S&P, Fitch, Duff & Phelps or an equivalent agency drops to BB/Negative or below, or in the case of a Duns and Bradstreet rating, 4 (four).

2.9.3 In the event of a conversion under item 2.9.1 above, the payment terms shall revert back to those provided in article 2.6 after a period of 24 months, subject to the provisions of item 2.9.2.;

2.9.4 In the event of a conversion under item 2.9.2 above, the payment terms shall revert back to those provided in article 2.6 upon the restoration of the Client's credit rating to BB/Neutral, 3 or better.

### 3 Confidential information and non-takeover clause

**3.1** Each of the parties warrants that all confidential information received by the other party shall remain secret, unless a legal obligation mandates disclosure of that information. The party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.

**3.2** During the term of the agreement and for one year after its termination neither party shall take on employees of the other party who were involved in executing the agreement, or otherwise have these employees work for it, either directly or indirectly, unless it has obtained written permission from the other party.

**3.3** During the term of the agreement and for one year after its termination the Client shall not offer employment contracts, either directly or indirectly, nor shall it cause such contracts to be offered, to personnel and assistants made available by Amit, nor shall it cause services or activities to be performed for it by these people in any manner other than through Amit. In the event of a violation of this paragraph, the Client shall be obliged to pay a fine to Amit in the amount of € 50,000 (fifty thousand euros), without prejudice to the right of Amit to full compensation. The Client shall in any case directly approach Amit if it intends at any time to have Amit personnel or assistants work for it.

**3.4** The Client shall indemnify Amit against claims by people whose personal data has been recorded or processed in connection with a register of people maintained by the Client or for which the Client is responsible under law or otherwise, unless the Client

proves that the facts underlying the claim are solely imputable to Amit.

#### **4 Retention of title and rights, specification and possessory lien**

**4.1** All objects delivered to the Client shall remain the property of Amit until all amounts owed by the Client for the objects delivered or to be delivered or work performed or to be performed under the agreement, as well as all other amounts owed by the Client due to failure to comply with its payment obligations, have been paid in full to Amit. A Client acting as a reseller may sell and re-deliver all items subject to the retention of title of Amit, in so far as this is common in connection with its normal business operations. If the Client creates a new object wholly or partly from the objects delivered by Amit, the Client shall create that object solely for Amit, and the Client shall hold the newly created object for Amit until the Client has paid all amounts owed under the agreement; in that event, Amit shall possess all rights as the owner of the newly created object until the time the Client makes full payment.

**4.2** As the occasion arises, rights shall always be granted or transferred to the Client provided the Client pays the agreed fees fully and in a timely manner.

**4.3** The property law consequences of the ownership of an exported object are governed by the law of the destination country if the rights under such law are more favorable for Amit.

**4.4** Notwithstanding any delivery obligation towards the Client, Amit may maintain possession of the objects, products, information, documents, databases or data (codes, passwords, documentation, etceteras) and interim or other results of Amit's services that have been received or generated in connection with the agreement, until the Client has paid all amounts owed to Amit.

#### **5 Risk and security**

**5.1** The risk of loss or theft of, or damage to objects, products, software or data that are the subject of the agreement shall pass to the Client at the time they have been placed at the actual disposal of the Client or an assistant used by the Client.

**5.2** If Amit is bound to provide for a form of information security, such will be based on the specifications for security as explicitly defined in the agreement. Supplier does not warrant that the information security is effective under all circumstances.

#### **6 Rights of intellectual or industrial property**

**6.1** Amit is prepared in deviation of article 6.2 to undertake to transfer an intellectual or industrial property right. Such an obligation may only be entered into explicitly and in writing. If the parties explicitly agree in writing that intellectual or industrial property rights

regarding results of the services, software, websites, databases, equipment or other materials specifically developed for the Client shall be transferred to the Client, this shall not affect Amit's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages and the like underlying the respective services, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect Amit's right to undertake product or, as the case may be, service developments either for itself or third parties which are similar to those done or to be done for the Client.

**6.2** All rights of intellectual and industrial property pertaining to software, websites, databases, equipment or other materials developed or provided under the agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by Amit, its licensors or its suppliers. The Client shall only acquire the rights of use explicitly granted in these Terms of Delivery and by law. Any other or more extensive right of the Client to reproduce software, websites, databases or other materials shall be excluded. A right of use to which the Client is entitled shall be non-exclusive and non-transferable to third parties. With regard to open source software additional conditions apply.

**6.3** The Client shall not be allowed to remove from the software, websites, databases, equipment or materials any designation concerning the confidential nature or concerning the relating copyrights, trademarks, business names or other intellectual or industrial property rights, or to modify these.

**6.4** Amit shall be allowed to take technical measures to protect the software or, with a view to agreed restrictions in the duration of the right, to use the software. The Client shall not be allowed to remove or evade such a technical measure. If security measures result in the Client being unable to make a back-up copy of software, Amit shall provide the Client with a back-up copy upon request.

**6.5** If Amit does not provide a back-up copy of the software to the Client, the Client may make one back-up copy of the software, which may only be used to protect against involuntary loss or damage. The back-up copy may only be installed after involuntary loss or damage. A back-up copy must have the same labels and copyright designations as those on the original version (see article 6.3).

**6.6** Amit shall indemnify the Client against any third-party cause of action based on the claim that software, websites, databases, equipment or other materials developed by Amit itself infringe an intellectual or industrial property right applicable in the Netherlands, on the condition that the Client immediately informs Amit in writing about the existence and substance of the cause of action and lets Amit handle the matter completely, also concerning agreement to any settlements. To that end, the

Client shall provide the necessary powers of attorney, information and co-operation to Amit to defend itself - if necessary in the Client's name - against these causes of action.

**6.7** This indemnification obligation shall be extinguished if the alleged infringement relates (i) to materials provided by the Client to Amit for use, adaptation, processing or incorporation, or (ii) to changes the Client has made or caused third parties to make to the software, websites, databases, equipment or other materials. If it has been established in court as an incontrovertible fact that the software, websites, databases, equipment or other materials developed by Amit itself infringe any intellectual or industrial property right held by a third party or if, in Amit's judgment, it is likely that such infringement will occur, Amit will, if possible, ensure that the Client can continue to have use of the delivered objects, or functionally equivalent other software, websites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the Client. If, in its exclusive judgment, Amit cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the Client can continue to have undisturbed use of the delivered objects, Amit will take these back, with crediting of the acquisition costs minus a reasonable user's fee. Amit will not make its choice in this regard until after the Client has been consulted. Any other or more extensive liability or indemnification obligation on Amit's part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on Amit's part for infringements caused by using the software, websites, databases, equipment and/or materials delivered (i) in any form not modified by Amit, (ii) in connection with objects or software not delivered or furnished by Amit or (iii) in another manner besides that for which the equipment, software, websites, databases and/or other materials were developed or intended.

**6.8** The Client guarantees that there are no third-party rights inconsistent with providing Amit with equipment, software, materials intended for websites (visual material, text, music, domain names, logos etc.), databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation (for example, in a website). The Client shall indemnify Amit against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.

## 7 Co-operation by the Client

**7.1** The Client shall always provide Amit in a timely manner with all data or information that is useful and necessary to execute the agreement properly, and provide full co-operation, including access to its buildings. If the Client deploys its own employees in co-operating in the execution of the agreement, they shall possess the necessary know how, experience, abilities and qualities.

**7.2** The Client shall bear the risk of selecting, using and applying in its organization the equipment, software, websites, databases and other products and materials, including the services to be provided by Amit, and shall also be responsible for the monitoring and security procedures and proper system management.

**7.3** All software, websites, materials, databases or data on a data carrier provided to Amit by the Client shall meet the specifications prescribed by Amit.

**7.4** If the Client does not provide Amit with the data, equipment, software or employees necessary to execute the agreement, or does not provide these in a timely manner or in accordance with the agreements made, or if the Client otherwise does not fulfill its obligations, Amit shall have the right to suspend execution of the agreement in whole or in part and charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to Amit's right to exercise any other legal right.

**7.5** If employees of Amit perform work on the Client's premises, the Client shall provide them with reasonably expected facilities, such as a working space with computer and telecommunications facilities, free of charge. The working space and facilities shall comply with all applicable (statutory) requirements and regulations governing working conditions. The Client shall indemnify Amit against claims by third parties, including Amit's employees, who, while executing the agreement, suffer injury as a result of acts or omissions by the Client or of hazardous situations in the Client's organization. The Client shall inform the relevant Amit employees of its company and security rules in a timely manner.

**7.6** If telecommunications facilities, including internet, are needed to execute the agreement, the Client shall be responsible for properly selecting them and making them available in a timely and sufficient manner. This shall not apply to facilities directly used and managed by Amit. Amit shall never be liable for damage or expenses due to transmission errors, malfunctions or the non-availability of telecommunications facilities, unless the Client proves that this damage or these expenses resulted from intentional acts or omissions or gross negligence on the part of Amit or its managers. If telecommunications facilities are used in executing the Agreement, Amit shall be entitled to assign access or identification codes to the Client. Amit may change the assigned access or identification codes. The Client shall treat the access codes as confidential and with due care, and shall only disclose them to authorized employees. Amit shall never be liable for damage or expenses resulting from misuse of access or identification codes.

**7.7** The Client shall allow Amit in anticipation to issue publications about the services of Amit that have been chosen by the Client, the nature thereof and the Client's identity, or to record these in commercially confidential documents. Upon preceding written permission by the Client, Amit shall be allowed to publish information about the performances delivered and to describe in outline the

grounds on which the Client decided to choose the services and products of Amit and the resulting advantages for the Client and to publish the above.

## 8 Delivery periods

**8.1** All delivery and other periods Amit has stated or agreed to have, to the best of its knowledge, been determined on the basis of data known to it when it entered into the agreement. Amit shall properly exert its best efforts to observe agreed delivery and other periods to the extent possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause Amit to be in default. In no case, therefore, including those where the parties have explicitly agreed on a firm date in writing, shall Amit be in default because of a time period being exceeded unless the Client has provided it with a written notice of default. Amit shall not be bound by firm or non-firm delivery or other periods that can no longer be met because of circumstances beyond its control that have occurred after the agreement was concluded. Nor shall Amit be bound by delivery periods, firm or otherwise, if the parties have agreed to modify the substance or scope of the agreement (additional work, change in specifications etc.). If any period is in danger of being exceeded, Amit and the Client shall consult with each other as soon as possible.

## 9 Termination of the agreement

**9.1** A party shall only be entitled to rescind the agreement if it can show that the other party has failed to perform its material obligations as stated in the agreement. In all cases, it can only rescind the agreement after it has sent the other party a proper written notice of default that is as detailed as possible and that allows a reasonable time period for the other party to remedy the breach.

**9.2** If an agreement that, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, it may be terminated by either party if it gives notice to that effect in writing after proper consultation and with a statement of reasons. If the parties have not agreed on an explicit notice period, a reasonable notice period must be observed in terminating the agreement. The parties shall never be liable for damages for terminating the agreement.

**9.3** In deviation from what has been provided for by statute in this regard through directory law, the Client may only terminate the agreement between parties in the cases provided for in these Terms of Delivery.

**9.4** In the event the Client wants to divest part of its business, the Client may request a proposal from Amit related to continuing of the services under the agreement to the divested part of the Client. Amit may require additional conditions to be fulfilled by the Client in such case; for example relating to the solvency, reputation or compatibility of the technical infrastructure of the party to

whom the business is transferred to. Aforementioned proposal does not change the respective agreement.

**9.5** A party may terminate the agreement, in part or in full, by written notice with immediate effect and without a notice of default if the other party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the other party or if the other party's business is wound up or terminated for reasons other than a business reconstruction or merger. Amit shall never be obliged on account of this termination to refund money already received or to pay damages. In the event of the Client's liquidation, the right to use software provided to the Client shall be extinguished by law.

**9.6** If, at the time of the rescission referred to in article 9.1, the Client has already received performance in connection with the execution of the agreement, this performance and the related payment obligation shall not be cancelled, unless the Client proves that Amit is in default with regard to that performance. Amounts invoiced by Amit before the rescission in connection with what it has already properly performed or delivered to execute the agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

## 10 Liability of Amit - indemnity

**10.1** The aggregate liability of Amit for any imputed failure(s) to perform under the agreement or otherwise, including for warranties and indemnifications, shall be limited to compensating direct damage, at most up to 50% of the amount of the price (exclusive of VAT) stipulated for that agreement. If the agreement is primarily a continuing performance agreement with a term exceeding 6 months, the maximum aggregate liability stipulated for the agreement shall be set at 50% of the total of the fees (exclusive of VAT) stipulated for 6 months. The aggregate liability of Amit shall not, however, in any case exceed € 500,000 (one million euros). "Direct damage" shall have no other meaning than:

- a. reasonable expenses the Client would have to incur to make Amit's performance conform to the agreement; this alternative damage shall not be compensated, however, if the agreement is rescinded by or at the suit of the Client;
- b. reasonable expenses incurred to determine the cause and scope of the damage, in so far as the determination relates to direct damage within the meaning of these Terms of Delivery under sub-paragraphs a. and b. above;
- c. reasonable expenses incurred to prevent or mitigate damage, in so far as the Client demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms of Delivery.

The liability limitation within the meaning of this paragraph shall be reduced by:

- a. the invoice value of the products and (results of) services that the Client retains or has retained;
- b. the credits already granted to the Client in connection with the agreement.

**10.2** Amit's total liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed € 1,250,000 (one million two hundred and fifty thousand euros).

**10.3** Amit's liability for indirect damage, consequential damage, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Client's customers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the Client for Amit, damage relating to engagement of suppliers prescribed by the Client for Amit and all other forms of damage or injury besides those mentioned in article 10.1 and 10.2, on any account whatsoever, shall be excluded.

**10.4** The limitations mentioned in the preceding paragraphs of this article 10 shall not apply if and in so far as the damage or injury is the result of intentional acts or gross negligence by Amit or its managers.

**10.5** Amit's liability because of an imputed failure to perform an agreement shall in all cases arise only if the Client immediately and properly provides a written notice of default to Amit, with a reasonable time period for remedying the failure being given and Amit still imputed to be failing in the performance its obligations after that period as well. The notice of default must contain as complete and specific a description of the breach as possible, so that Amit can respond adequately.

**10.6** For any right to damages to exist, the Client must always report the damage or injury to Amit in writing as soon as possible after it occurs. Any claim to damages against Amit shall be extinguished by the mere lapse of 12 months after the claim arises.

**10.7** The Client shall indemnify Amit against all third-party claims because of product liability ensuing from a defect in a product or system that was delivered by the Client to a third party and that consisted in part of equipment, software or other materials delivered by Amit, except if and in so far as the Client proves that the damage or injury was caused by that equipment, software or other materials.

**10.8** The provisions in this article shall also apply for the benefit of all legal and natural persons utilized by Amit in executing the agreement.

## 11 Force majeure

**11.1** Neither of the parties shall be obliged to comply with any (core, main, warranty and / or general) obligation if it is prevented from doing so on account of force majeure. If Amit is unable to comply with its obligations or is prevented from doing so in a timely or proper manner on account of a cause that cannot be imputed to it, including there under but not limited to, illness of its employees, defects in the computer network and other interruptions in the normal course of affairs of its business, the said obligations shall be suspended until the moment Amit is again able to comply with them in the manner agreed on, without Amit falling into default with regard to the compliance with its obligations and without being

obliged to pay any compensation for damage. Force majeure shall moreover include all provisions relating thereto by law and case law, as well as each circumstance Amit could not or was not required to account for at the time of the agreement being entered into, and on account of which normal performance of the agreement cannot in reason be expected by the Client, such as war, threat of war or acts of war, riots, sabotage, floods, earthquakes, fire, office occupation, strikes and (amended) measures or orders of government. Force majeure shall furthermore imply the force majeure of suppliers of Amit, improper compliance with obligations by suppliers assigned by the Client to Amit, as well as defective objects, materials and third-party software the use of which has been prescribed by the Client to Amit.

**11.2** If a situation of force majeure has lasted for more than 90 days, the Parties shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

## 12 Export

**12.1** The relevant export provisions shall apply to the export of equipment, software and components by the Client. The Client shall indemnify Amit against all third-party claims relating to violations of the applicable export provisions imputable to the Client.

**12.2** If, at the request of the Client, Amit exports equipment, components or software, Amit shall not be liable for delays as a result of the necessary formalities being fulfilled.

## 13 Applicable law and disputes

**13.1** The law of the Netherlands shall govern the agreements between Amit and the Client. Application of the 1980 Vienna Sales Convention shall be excluded. The parties will discuss any problems that may arise with each other before treating them as disputes in accordance with the procedure below. The parties will create grades of escalation in their organizations at the operational, tactical and strategic levels to deal with such problems.

**13.2** Disputes arising between Amit and the Client in connection with an agreement concluded between Amit and the Client, or in connection with further agreements arising out of said agreement, shall be settled by the competent court in Amsterdam, but not until parties have discussed the matter according to the procedure laid out in this article 13.1

## Services

In addition to the general provisions in these Terms of Delivery, the provisions set forth in this article with regard to services shall apply if Amit provides services such as organization advice, interim management, applicability

studies, advisory services, schooling, training sessions, support, staffing, design, development, implementation or management of software, websites or data systems and services relating to networks and computer equipment. These provisions shall not prejudice the provisions included in these Terms of Delivery with regard to specific services. Supplementary conditions apply to relevant organizational advisory and interim management services provided by affiliates of Amit.

## 14 Performance

**14.1** Amit shall, to the best of its ability, exert itself to perform the services with due care and, where appropriate, according to arrangements and procedures agreed upon in writing with the Client. All of Amit's services will be performed being an agreement as provided for in article 7:401 Dutch Civil Code (Burgerlijk Wetboek) on the basis of a reasonable-efforts obligation, unless and in so far Amit has explicitly promised a result in the written agreement, and the result concerned has also been sufficiently defined with the exclusion of article 7:408 Dutch Civil Code (Burgerlijk Wetboek). Arrangements, if any, concerning service levels shall always and exclusively be agreed on explicitly and in writing.

**14.2** Amit can choose to offer services on the basis of post-calculation, estimated budget, fixed budget and/or fixed price. In the case of an estimated budget, the quoted amount is an indicative amount from which the Client can derive no rights. The Client is aware that the estimated budget has no ceiling, is not a fixed price and places no obligation on Amit to deliver a certain result. In the case of a fixed budget, the same applies with the understanding that the amount will not be exceeded by more than 20% if the Client has not been consulted in timely manner and given authorization. The Client is aware that the fixed budget is not a fixed price, nor an obligation for Amit to deliver a certain result.

**14.3** If it has been agreed that the services shall be provided in phases, Amit shall have the right to postpone commencement of the services relating to a certain phase until the Client has approved the results of the preceding phase in writing. The results of the services shall be subject to article 22.3 and 22.8, just as the provisions for software laid out in article 21 shall be (with the necessary changes).

**14.4** In performance of the services, Amit shall only be obliged to follow timely and sensible instructions given by the Client if this has been explicitly agreed on in writing. Amit shall not be obliged to follow instructions that modify or supplement the content or scope of the agreed services; if such instructions are followed, however, the work concerning shall be paid compensated pursuant to article 15.

**14.5** If a service agreement has been entered into with a view to performance by a certain person, Amit shall at all times have the right to replace this person, following

consultation with the Client, by one or more other people possessing the same qualities.

**14.6** In the absence of an invoicing scheme explicitly agreed on, all amounts concerning services performed by Amit shall be paid once every calendar month in arrears.

**14.7** If the Client requests a service to be provided under pressure of time and/or with (great) speed or with limited information and/or resources, the Client shall explicitly accept the related risks. Amit can in no way be held responsible for damages suffered in connection with performing such a task.

**14.8** If, at the request of or with prior consent from the Client, Amit has performed work or rendered other performance which goes beyond the substance or scope of the agreed services, or if one or more of the criteria and/or parameters no longer appear to apply and this situation is not repaired promptly by Client; then the Client shall pay for that work or performance according to Amit's usual rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. Amit shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

**14.9** The Client accepts that work or performance as referred to in article 15.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Client and Amit. The fact that additional work (or the demand for it) arises during execution of the agreement shall never be a ground for the Client to rescind or terminate the agreement.

**14.10** In so far as a set price has been agreed for the services, Amit shall, upon request, inform the Client in writing in advance about the financial consequences of the said additional work or performance.

## 15 Managed operations, helpdesk services, end user support, system management services and hosting services

In addition to the general provisions of these Terms of Delivery and the special provisions laid out in the article on services, the provisions in the article below with regard to managed operations, helpdesk services, end user support, system management services and hosting services shall also apply if Amit performs services within the meaning of this article, by order of the Client.

**15.1** If the Client concludes an agreement with Amit on management operations, helpdesk services for users' problems concerning software and/or equipment or, as the case may be, system management or system hosting and similar agreements, the following provisions shall apply. Any arrangements concerning one of these services shall always be explicitly agreed on in writing, and the Client shall only be allowed to invoke a right to these services following payment of any amounts due in connection with them.

**15.2** The specific services to be purchased by the Client, as well as the terms and conditions thereof shall be laid down in a document pertaining to a framework contract and service level agreement designated for this purpose, composed of a service definition, the service level guarantees, if any, an arrangements and procedures file, a definition of standard Processes and these Terms of Delivery.

**15.3** All of Amit's services shall be performed on the basis of a reasonable-efforts obligation unless it has expressly promised to achieve a specifically defined result to which a service level guarantee applies. In addition to the provisions of article 15.2, Amit commits itself to perform its other obligations under the relevant framework contract with the care that can be expected from a reasonably performing, competent and expert service provider, performing as much as possible in accordance with the arrangements and procedures established in consultation with the Client, and included in the framework contract and the Arrangements and Procedures File.

**15.4** The Client shall be responsible for always complying in a timely manner with its obligations as expressly included in the framework agreement. Amit has indicated, and the Client shall be reasonably expected to understand, that such compliance on the part of the Client is necessary to enable Amit to comply with its obligations pursuant to the framework agreement.

**15.5** To enable Amit to perform the service, the Client shall be responsible for providing Amit with all the data that it indicates are necessary and that the Client can reasonably be expected to understand are necessary, in a timely manner, according to the desired method and in the desired form. If the computer service consists of the transfer or (temporary) storage of the Client's information,

the Client shall guarantee that such information is not in violation of any rights, including intellectual property rights, of third parties, nor in any way unlawful, immoral or unethical. If such violation or circumstance occurs nonetheless, the Client shall indemnify Amit against all damages arising there from. If Amit is ordered by a third party to cease the transfer or (temporary) storage of such (infringing) information, Amit and the Client shall immediately enter into consultation. If the Client requests Amit to continue the transfer or (temporary) storage of the potentially infringing information nonetheless, the Client shall bear the risk, liability and responsibility. If Amit can reasonably assume that the information is infringing or otherwise unlawful or immoral or unethical, Amit has the right to stop providing the computer service without being liable on the basis of default / breach of contract, unlawful action or otherwise.

**15.6** If the Client does not comply with the obligations pursuant to article 15.4 and 15.5, Amit shall have the right to suspend the performance of the agreement, or, more specifically, to suspend the service level guarantees, and to charge any concretely demonstrable costs arising from this to the Client at the usual rates. In such a case, however, Amit shall first offer the Client the opportunity, in writing, to comply with its obligations after all, and within a reasonable period.

**15.7** Any agreement between the Client and Amit does not envision the transfer of a part of the Client's enterprise or personnel to Amit unless this has been explicitly agreed and the affected employees have been named in the written agreement. The Client shall bear the cost and risk of any consequences arising from the application of article 7:662 of the Dutch Civil Code (Burgerlijk Wetboek) and and/or European Guideline 98/50 and shall indemnify Amit against claims made by employees of the Client or third parties under these laws.

**15.8** Unless otherwise stated in an agreement, the Client shall be responsible for concluding contracts with suppliers for maintaining the hardware and network infrastructure and for obtaining and maintaining the software and licenses needed for Amit to perform the services required under the agreement. The aforementioned conditions can be detailed in the agreement. The Client will indemnify Amit against claims of third parties in connection with the Client not fulfilling its obligation as set forth herein.

## 16 Duration

**16.1** If the agreement concerns computer service to be provided during a certain period or regularly recurring periods, including the automatic processing of data using Amit-managed software and equipment, the duration shall be agreed between the parties. If no duration is specified, a period of one year shall apply. The duration of the agreement shall at all times be tacitly renewed for a period equal to the duration of the original period, unless the Client or Amit terminates the agreement in writing three

months before the end of the period specified in the agreement.

## 17 Performance of the work

**17.1** Amit shall only provide computer services at the Client's instruction. If, pursuant to an authorized order from a government body, Amit provides computer services relating to information of the Client or its employees, all expenses in connection with this shall be charged to the Client. Amit shall perform the computer services with due care in accordance with the procedures and agreements recorded in writing with the Client.

**17.2** All data to be processed by Amit shall be prepared and delivered by the Client in accordance with the conditions to be stated by Amit. The Client shall bring the data to be processed to, and pick up the results of the processing at, the location where Amit performs the computer services. Transport and transmission, in whatever manner, shall occur at the Client's expense and risk, even if they have been carried out or arranged by Amit.

**17.3** The Client warrants that all materials, data, software, procedures and instructions provided by it to Amit to perform the computer services shall always be correct and complete and that all data carriers furnished to Amit shall meet Amit's specifications.

**17.4** All equipment, software and other objects used by Amit for the computer services shall remain Amit's property or the subject of Amit's intellectual and industrial property, even if the Client pays a fee for Amit to develop or acquire them. Amit may maintain possession of the products and data received from the Client and the results generated from the processing until the Client has paid all amounts due to Amit.

**17.5** Amit can modify the substance or scope of the computer services. If such modifications result in a change in the procedures applicable at the Client's, Amit shall inform the Client as soon as possible and the Client shall be charged with the costs of this change. The Client may terminate the agreement in that case by providing written notice no later than the date on which the modification becomes effective, unless this modification relates to changes in relevant legislation or other rules provided by competent authorities or unless Amit assumes the costs of this modification.

**17.6** Amit shall, to the best of its ability, exert itself to ensure that the software used by it to perform the computer services is adapted in a timely manner to amendments in the laws and regulations of the Netherlands. Upon request, Amit shall advise the Client at its usual rates with regard to the effects of these adaptations for the Client.

## 18 Security, privacy and retention periods

**18.1** Amit shall comply with the statutory obligations it has as a processor concerning its processing of personal data. Amit shall provide appropriate technical and

organizational measures to protect personal and other data against loss or against any form of unlawful processing according to a separate data processing agreement.

**18.2** The Client warrants that all statutory provisions concerning the processing of personal data, including provisions in or under the Personal Data Protection Act (Wet Bescherming Persoonsgegevens), are strictly observed and that all prescribed registrations have been carried out and all required consents and/or license to process personal data have been obtained. The Client shall provide Amit immediately in writing with all requested information in this respect.

**18.3** The Client shall indemnify Amit against all third-party claims that may be filed against Amit because of a violation of the Personal Data Protection Act (Wet Bescherming Persoonsgegevens) and/or other laws concerning the processing of personal data that cannot be imputed to Amit.

**18.4** The Client shall indemnify Amit against all claims of third parties, including government bodies, which may be filed against Amit because of a violation of the laws concerning the statutory retention periods.

**18.5** If and to the extent the Client provides Amit with personal data, which it causes Amit to process, Amit shall be regarded as a data processor according to the Data Protection Act (Wet Bescherming Persoonsgegevens). If personal data is processed, the relevant group companies of the parties shall conclude a separate data processing agreement. Amit shall comply with the obligations of a data processor as laid down in the Data Protection Act (Wet Bescherming Persoonsgegevens). Amit shall only process personal data on the instructions of the Client. Under the data processing agreement, the Client can instruct Amit to process personal data.

## 19 Guarantee

**19.1** Amit shall not be responsible for checking the accuracy and completeness of the results of the computer services. The Client shall check these results itself after receiving them. Amit does not warrant that the computer services shall be provided without errors or without interruptions. If defects in the results of the computer services are a direct consequence of products, software, data carriers, procedures or operating actions for which Amit is explicitly responsible under the Agreement, Amit shall repeat the computer services in order to fix these imperfections to the best of its ability, provided the Client notifies Amit of these imperfections in writing and in detail as soon as possible, but no later than within one week after receiving the results of the computer services. Repetition shall only be done free of charge if the defects in the computer services can be imputed to Amit. If the defects cannot be imputed to Amit and/or are the result of errors or imperfections on the Client's part, such as providing incorrect or incomplete information, Amit shall charge the costs of any repetition to the Client according

to its usual rates. If fixing defects that can be imputed to Amit is not technically or reasonably possible, Amit shall credit the amounts owed by the Client for the computer services concerned, without further or otherwise being liable to the Client. The Client shall not have any other rights because of defects in the computer services apart from those described in these guarantee provisions.

## Staffing services

In addition to the General Provisions in these Terms of Delivery, the provisions set forth in this article on staffing services, shall apply if Amit delivers staffing services i.e. second employees to Client.

### 20 Staffing services

**20.1** There shall be staffing within the meaning of these Terms of Delivery if Amit makes an employee (hereinafter referred to as "the Interim Employee") available to the Client in order to have this employee perform work under the Client's supervision, management and/or direction. The responsibility for the purpose and result of the operations to be performed shall remain with the Client. To avoid misunderstandings, parties acknowledge there shall be no labour contract between the Client and the Interim Employee.

**20.2** Amit shall do its utmost to ensure that the Interim Employee remains available for the term of the agreement, without prejudice to the provisions in article 14.5 concerning replacement. At the Client's request, Amit shall select a suitable Interim Employee on the basis of the required skills and experience. Amit is free in its choice of Interim Employee. At the Client's request, Amit shall make the Interim Employee available to work on the Client's project, subject to terms that shall be detailed and agreed upon in an assignment confirmation.

**20.3** The Client shall have the right to request replacement of the Interim Employee (i) if the Interim Employee demonstrably does not explicitly meet the agreed quality requirements and the Client provides written and substantiated notice of this to Amit within three working days after the work commences, or (ii) if the Interim Employee suffers a long-term illness or leaves Amit's employment. Amit shall immediately address the request, making it a priority. Amit does not warrant that replacement shall always be possible. If replacement is not or not immediately possible, the Client's claims to further performance of the agreement as well as all claims of the Client on account of non-performance of the agreement shall be extinguished. The Client's payment obligations concerning the work performed shall continue to exist.

**20.4** Amit shall be obliged to make timely and complete payment of the wage tax and social security contributions (including advance contributions) to be paid for the Interim Employee in connection with the agreement. Amit shall indemnify the Client against all statutory claims by the tax authorities or social insurance agencies regarding

taxes and social security contributions directly relating to Amit's making the Interim Employee available (liability for using external personnel), provided the Client allows Amit to handle the claims concerned completely, co-operates fully with it and furnishes it with all necessary information and, if Amit desires, powers of attorney to conduct legal proceedings.

**20.5** Amit shall not accept any liability for the selection of the Interim Employee or for the results of the work arising under the Client's supervision, management and/or direction.

**20.6** Amit shall make available the Interim Employee named in the assignment confirmation to perform the operations. A separate assignment confirmation shall be signed for each Interim Employee to be made available. In consultation with the Client, Amit shall be entitled to replace the Interim Employee by another Interim Employee who meets the qualification stated in the assignment confirmation.

**20.7** The period during which the operations are performed shall be stated in the assignment confirmation. On each termination of the period indicated, the agreement shall be tacitly renewed by one month, unless the Client should wish to receive a new assignment confirmation in respect thereof. The Client shall then reserve the right to withdraw the assignment, observing one month's written notice.

**20.8** The operations shall be performed in close consultation with the Client's project manager in the location as specified in the assignment confirmation.

**20.9** Amit shall record the hours worked on forms intended for this purpose. These forms shall be signed by the Client's project manager who is responsible.

**20.10** If a probationary period has been agreed on, this shall be stated in the assignment confirmation. The parties shall be entitled to cancel the assignment at immediate notice during the probationary period, without any further mutual obligations being involved.

**20.11** On termination of the Staffing, all documents and/or copies thereof, as well as all manuals and other information materials of any nature whatsoever, obtained either directly or indirectly by one party from the other party, shall be returned to the other party, unless it concerns materials that were invoiced and paid for.

### 21 The operations

**21.1** Following receipt of an assignment made by the Client concerning operations, Amit and the Client shall determine in mutual consultation the nature of the operations and the capacity required by the Client, which shall then be made available by Amit.

**21.2** The operations and the location in which the operations shall be performed shall be defined in the assignment confirmation.

**21.3** The Interim Employees of Amit shall observe the regulations and stipulations that apply at the Client's with

regard to working hours and manner of performance. These regulations and stipulations shall be told to the Interim Employees of Amit by the Client or handed out on commencement of the Operations.

**21.4** In consultation between the Client and Amit, the Interim Employees of Amit shall be permitted to take holidays and/or days off in accordance with the regulations applying to Amit. In no event shall operations be performed on public holidays.

**21.5** For the guidance of the Interim Employee or third party engaged, the official appointed thereto by Amit shall conduct guidance talks with this person at regular intervals. The purpose of these talks is to contribute to the effectiveness and efficiency of the expert knowledge deployed. The planning and times of these talks shall be arranged in mutual consultation with the Client.

**21.6** The Client shall immediately report any complaints about the functioning of Amit Interim Employees to Amit in writing with a detailed list of reasons. In such cases, Amit shall have the right, at its own discretion, to replace the affected Interim Employee with another Interim Employee, provided this Interim Employee can function at the same level as agreed in the assignment confirmation.

**21.7** In so far as the Client does not pay any production costs involved in preparing reports, using equipment and/or software and other material costs, they shall be charged by Amit to the Client by separate invoice in accordance with the provisions of the general provisions of these Terms of Delivery.

**21.8** In the event of illness, accident, death or dismissal of the employee, Amit shall seek equivalent replacement.

**21.9** If, at the request of the Client, the operations are suspended prematurely at any time, Amit shall do its utmost to re-appoint the same Interim Employee when the operations are resumed.

## 22 Price and payment

**22.1** The rates charged for the Operations shall always be agreed between Amit and the Client for each assignment, and shall be stated in the assignment confirmation. Only hourly or daily rates shall be applied. Hourly rates offered shall be based on a 40-hour working week and 1,800 hours per man-year, unless stated otherwise. This rate shall apply for a period of six months. Every six months Amit shall have the right to adjust the rate in accordance with changes in the Dutch national index applying to monthly wages set in accordance with the collective bargaining agreement for wages (CAO Lonen) and working time for the business services or computer service and information technology business category, exclusive of special rewards, including special rewards for all collective labour agreements, for all sectors, determined in January of each year, and increased by 4%, or otherwise, if such is reasonable in the view of Amit.

**22.2** The rate (as stated in the assignment confirmation, exclusive of VAT) shall apply to normal working hours, which means Monday to Friday inclusive, with the

exception of public holidays, to a maximum duration of 8 hours a day during normal working hours between 08.00 and 18.00. For operations performed during periods exceeding 8 hours a working day or outside these normal hours (overtime) the following increases shall apply (the rate = 100%):

- a. Sundays 24.00 to Fridays 24.00: 150%
- b. Saturdays 00.00 to Sundays 24.00: 200%
- c. public holidays: 300%;

d. for working longer than 8 hours a working day, an additional fee of 50% shall be applied on top of the rates (whether increased or not) after 8.5 hours worked.

**22.3** If the nature of the operations permits, overtime shall be compensated as much as possible in the form of "time for time", which shall also include the rate increases.

**22.4** Amit shall invoice the Client monthly intervals, unless stated otherwise in the assignment confirmation.

**22.5** In the event of a change in the nature, substance or location of the operations during the performance of an assignment, or of a change in any other circumstances, Amit shall be entitled to determine potential new conditions and hourly or daily rates, which, provided these have been recorded in writing and signed, shall then become part of and integrated in the assignment and original assignment confirmation.

**22.6** All amounts stated shall at all times be exclusive of VAT, and shall include traveling costs and traveling hours of the Interim Employee to the location of employment agreed on, unless otherwise agreed and recorded in the assignment confirmation. Amit shall charge the Client additionally for traveling costs and accommodation costs incurred on behalf of the Client, other than the normal costs of traveling to the location of employment agreed on.

**22.7** The Client shall pay Amit within 30 days from the invoice date.

## 23 Intellectual property rights

**23.1** The property rights, including copyright and rights of industrial and intellectual property, relating to software, if and in so far as this was developed by Amit for the specific and sole use of the Client, taking into account the provisions in article 6.1, shall be transferred to the Client after all payments due to Amit with regard to the project have been received. All other rights shall remain with Amit.

## 24 Confidentiality

**24.1** For the duration of the project and following its termination, Amit shall take reasonable measures to maintain confidentiality with regard to all information indicated as being confidential by the Client, or with regard to information whose confidential nature should reasonably be known to Amit. If applicable, the Employee shall have the opportunity to sign the Client's declaration of confidentiality before the start of the assignment, after receiving written permission to that effect from Amit.

## 25 General provisions

**25.1** Without the above permission from Amit, the Client shall not hire employees of Amit and shall moreover refrain from making business proposals or offers to these employees as from the moment of the commencement of the staffing until 24 months following completion of the final assignment. Violation of the provisions in this paragraph shall give Amit the right to terminate its staffing operations without any further obligations being involved and with immediate effect, while the Client shall be liable to forfeit an immediately payable penalty of € 50,000 (fifty thousand euros) per event.

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