

# GENERAL CONDITIONS OF SALE FOR GOODS AND SERVICES

Lodged at the Trade Register of Eindhoven, The Netherlands, under number 17070534

**ISSUED BY IAI INDUSTRIAL SYSTEMS B.V.**, a company incorporated and existing under the laws of The Netherlands, with its registered seat at Veldhoven, The Netherlands.

## CLAUSE 1 DEFINITIONS

1. For the purpose of these general conditions and all related documents, the following definitions shall apply:

### **Affiliated Company:**

any company, firm, partnership or other legal entity which now or hereafter:

- (a) controls either directly or indirectly a Party; or
- (b) is controlled directly or indirectly by such Party; or
- (c) is directly or indirectly controlled by a company, firm, partnership or other legal entity which directly or indirectly controls such Party.

“Control” for the purpose of this definition meaning the ownership of 50% (fifty percent) or more of the nominal value of the issued share capital or 50% (fifty percent) or more of the voting power at the general meeting of shareholders or having the power to appoint a majority of the directors or otherwise direct the activities of such company, firm, partnership or other legal entity, but any such legal entity shall be deemed to be an Affiliated Company only as long as such liaison exists.

### **Agreement:**

the agreement concerning the sale and delivery of Products concluded in writing between the Parties including all appendices, subsequent amendments thereof and/or addenda thereto as agreed upon in writing between the Parties.

### **Confidential Information:**

the (Service) Agreement as well as all information and know-how (including but not limited to formulations, designs and other intellectual property rights) furnished by a Party to the other in any form whatsoever or otherwise coming to a Party's knowledge in connection with the performance of the (Service) Agreement and all data derived directly or indirectly from such information and all warranty claims, if any, which may arise under the (Service) Agreement.

### **Contract Price:**

the total amount of the consideration specified in the Agreement, payable by the Customer to the Supplier for the sale and delivery of Products.

### **Customer:**

the person, firm or company named as such in the Agreement.

### **Documentation:**

manuals, hand books, instructions for maintenance and other documentation accompanying the Goods or the Software, or supplied in connection with maintenance thereof.

### **Force Majeure:**

any and every effect outside the Supplier's control- even if such effect might have been anticipated at the time of closing the (Service) Agreement-, which prevent, permanently or temporarily, performance of the (Service) Agreement under conditions that remain unchanged for the Supplier, as well as, insofar as not yet included therein, Act of God, act or directive of Government or any authorities, legislation, hostilities between nations, war, threat of war, civil war, civil commotions, riot, strike, lock-out, boycott, insurrection, blockades, transport problems, import or export regulations or embargoes, fire, (nuclear) explosion, lightning, rainstorms, national emergency, earthquake, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings whether or not issued by the Dutch Ministry of Foreign Affairs and other serious disturbances at the premises of the Supplier or his suppliers, as well as delay in delivery by the Supplier's suppliers.

### **General Conditions:**

these underlying General Conditions of sale for Products and Services of the Supplier.

### **Goods:**

materials, components, devices, Goods, complete systems and/or other independent or accessory part of Products of any nature whatsoever to be supplied by IAI to the Customer under, and as specified in, the Agreement.

### **Made-to-order Software:**

computer software which has been/is being, wholly or partly, developed by the Supplier for the Customer on the basis of the requirements laid down in the Agreement.

**Offer:**

each offer concerning the sale and delivery of Products and/or Service issued by the Supplier to the Customer in writing.

**Parties:**

the Supplier and the Customer jointly.

**Party:**

the Supplier and the Customer individually.

**Products:**

the Goods and/or Software as well as the Documentation as specified in the Agreement.

**Purchase Order:**

a written purchase order issued by the Customer for the purchase and delivery of Products and/or Service, including any annex, addition or modification thereto.

**Service(s):**

the after sales and/or maintenance services to be provided by the Supplier to the Customer, either pursuant to these General Conditions or the Service Agreement, as applicable.

**Service Agreement:**

a separate agreement regarding the Services with respect to the Goods and/or Software, concluded in writing between the Parties, including all appendices, subsequent amendments thereof and/or addenda thereto as agreed upon in writing between the Parties.

**Software:**

software products, including standard application software and computer software supplied for the purpose of maintenance.

**Specifications:**

the detailed specifications, descriptions, design criteria and drawings of the Products agreed upon between the Parties and specified and defined as such in the (Service) Agreement.

**Supplier:**

IAI Industrial Systems B.V., a company incorporated and existing under the laws of The Netherlands, with its registered seat at Veldhoven, The Netherlands, and its office address at De Run 5406, 5504 DE Veldhoven, The Netherlands, and any Affiliated Company.

1. The headings of these General Conditions are for ease of reference only and are not intended to qualify the meaning of any Article or Section hereof.
2. References to words denoting any gender shall include all genders.
3. Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such act or thing to be done by a third party.
4. References to the Parties include their respective successors in title and permitted assigns.
5. In these General Conditions the term 'in writing' includes by post, fax, e-mail and any

other electronic communication device customary in the market.

6. References to Incoterms in these General Conditions or the (Service) Agreement shall be to the most recent edition thereof published by the International Chamber of Commerce, Paris, France. In the event of any conflict between the applicable Incoterms and the provisions of these General Conditions, the provisions of Incoterms shall prevail.

**CLAUSE 2 APPLICABILITY**

1. Unless explicitly agreed upon otherwise between the Parties in writing, these General Conditions shall apply to all Offers and at all times form an integral part of the Agreement.
2. Deviations of these General Conditions shall be valid only if and insofar as they have been accepted by the Supplier in writing.
3. The applicability of any conditions of purchase or other general conditions of the Customer is expressly rejected.
4. Any amendments of and/or additions to these General Conditions have to be agreed upon in writing by the duly authorized representatives of both Parties.
5. A failure by the Supplier to exercise or a delay in exercising a right or remedy provided by these General Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these General Conditions or by laws by the Supplier prevents further exercise of the right or remedy or the exercise of another right or remedy.
6. If one or more provisions of these General Conditions shall be found, by a court with jurisdiction, to be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any of the remaining provisions of these General Conditions. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a legal, valid or enforceable provision that achieves to the greatest extent possible the economic objectives of the illegal, invalid or unenforceable provision.
7. These General Conditions do not derogate from the Supplier's statutory and common law rights and are in addition to those rights, and not in substitution for them.

**A. SALE AND DELIVERY****CLAUSE 3 OFFER AND AGREEMENT**

1. All Offers made by the Supplier shall be without engagement and the Supplier reserves the right to withdraw an Offer without compensation as long as the

Customer did not confirm the Offer to the Supplier in writing.

2. The Offer is intended as an invitation for the Customer to issue a Purchase Order, which shall only be binding after written confirmation of the Supplier. Each such written Purchase Order confirmation by the Supplier shall constitute a separate Agreement in which reference to the respective Purchase Order shall be made.

#### **CLAUSE 4 CONTRACT PRICE**

1. As consideration for the sale and delivery of Products under the Agreement the Customer shall pay the Supplier the Contract Price, calculated according to the Incoterm.

2. The Contract Price shall be exclusive of turnover tax and other government levies as well as of installation costs.

3. With respect to Agreements with a term of six (6) months or longer, the Supplier reserves the right to adjust the Contract Price according to cost increases due to additional expenses for personnel, transport and storage costs as well as the introduction of or modifications to taxes or material price increases. Upon request of the Customer the Supplier shall provide the details of such increase of the Contract Price.

#### **CLAUSE 5 PAYMENT TERMS**

1. Payment of the Contract Price shall be made within thirty (30) days of the invoice date. In the event of default of prompt payment, the Supplier shall be entitled to suspend execution of the Agreement pending payment.

2. Payment shall be made in Euros without any deduction or set-off to the bank account designated on the Supplier's invoice. All payment costs shall be borne by the Customer. Contestation of any invoice by the Customer shall not suspend the fulfilment of the Customer's payment obligations and does not allow the Customer to postpone the payment.

3. If the Customer fails to fulfil its payment obligation ultimately on the delivery date of the Products, then the Customer shall be in default by operation of law. In that event, the Customer shall owe an interest of 1% (one percent) per month and 12% (twelve percent) per annum, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply. The interest on the amount due and payable shall be calculated as from the date the Customer is in default until the moment that the Supplier has received the amount in full.

4. The Supplier is entitled to allocate the payments received from the Customer, in the

first place to reduce the costs, subsequently to reduce the interest due and finally to reduce the principal sum and the accrued interest. In the event that the Customer designates a different sequence of attribution the Supplier shall have the right to refuse an offer for payment by the Customer. Such refusal by the Supplier shall not lead to a state of default of the Supplier. Furthermore, the Supplier shall be entitled to refuse the full payment by the Customer of the principal sum if said payment does not include the interest due, the accrued interest and the costs.

5. If justified by the Customer's solvency, the Supplier may require additional security during the performance of the Agreement, in default whereof he is entitled to suspend or terminate the Agreement wholly or partly.

6. The ownership of the Products shall not be transferred to the Customer pending full payment of the amount due to the Supplier, on whatsoever account, including interests and costs. Upon full payment thereof, the title (ownership) to the Products shall transfer from the Supplier to the Customer.

7. The Supplier's payment claims against the Customer shall forthwith become due on demand of the Supplier in the event that the Customer's company is wound up, attached, declared bankrupt, or if a suspension of payment is granted.

#### **CLAUSE 6 DELIVERY AND INSTALLATION**

1. Unless otherwise agreed upon between the Parties in writing, the Supplier shall deliver the Products according to the Incoterm.

2. Delivery shall be made at the entrance of the address specified in the Agreement. Upon such delivery, the risk of loss of and damage to the Products shall transfer from the Supplier to the Customer.

3. If the Customer refuses to take delivery of the Products in accordance with paragraph 1 and 2 here before, the Supplier shall be entitled to store the Products at the Customer's risk and expense. Moreover, the Supplier shall be entitled to terminate the Agreement and/or to claim damages for non-performance.

4. If information which is vital for the Supplier's performance of the Agreement is not available to the Supplier, or not available in good time or in accordance with the arrangements, or if the Customer fails to fulfil his obligations in any other way, this may result in the performance of the Agreement being suspended by the Supplier and entail extra cost to the Customer's account.

5. All delivery terms stated and agreed by the Supplier shall be indicative and determined according to his best judgement. If delivery is overdue or expected to be overdue, the Supplier shall notify the Customer hereof without delay. In such case, the Supplier shall use its reasonable efforts to deliver the Customer the Products as soon as possible and keep the Customer updated of the situation.
6. The Supplier's exceeding of any delivery terms shall not make the Supplier liable to pay compensation.
7. If dispatch or delivery of the Products is delayed at the Customer's request, the Supplier shall charge the Customer with the storage costs of such delayed dispatch or delivery of Products.
8. If the Agreement provides for installation by the Supplier, the Customer shall ensure the availability of a safe and suitable installation place, which is in conformity with the installations instructions of the Supplier. If the installation, contrary to clause 4, paragraph 2, is included in the Contract Price, additional installation cost must nevertheless be paid by the Customer if circumstances through no fault of his own prevent installation by the Supplier on delivery.

#### **CLAUSE 7 ACCEPTANCE TEST**

1. If expressly agreed between the Parties and laid down in a test protocol to the Agreement, an acceptance test shall be carried out by the Customer at the latest within fourteen (14) days of receipt or installation of the Products. If Customer does not provide Supplier written rejection or acceptance within such fourteen (14) day period, the Products will be deemed accepted on the fourteenth (14<sup>th</sup>) day after installation. The acceptance test shall be limited to what has been expressly laid down in the test protocol. This protocol shall fix the modalities of the acceptance test.
2. If on carrying out the acceptance test the Products prove to fall short of the Specifications, the Customer shall inform the Supplier of the alleged defects via a written test report immediately after the test period. In such cases the Supplier shall remedy the reported defects within a reasonable period. If another acceptance test is carried out after the reported defects have been remedied, such test shall be limited to an examination with respect to the reported defects.
3. In the event that the acceptance test has successfully been carried out, the Customer shall promptly sign the acceptance certificate of the Supplier and the Products shall be deemed accepted by the Customer.

#### **CLAUSE 8 EFFORT OF THE SUPPLIER**

1. During the twelve (12) months following delivery or installation of the Goods, as the case may be, the Customer can require demonstrable defects in material and construction of the Goods to be remedied. During this period the Supplier shall be obliged to make efforts to remedy the reported failures, if possible, to the extent that the Goods do not comply with the Specifications.
2. During the six (6) months following delivery of the Software to the Customer by the Supplier, the Customer can require defects in the Software to be remedied. During this period the Supplier shall be obliged to make efforts to remedy the reported failures, if possible, to the extent that the Software falls short of the Specifications. The Supplier does not guarantee the non-disrupted or faultless functioning of the Software.
3. The Customer shall reimburse the Supplier for any expenses incurred by the Supplier in connection with the examination and repair of defects other than those undertaken by the Supplier by virtue of this clause, as well as for the extra expenses incurred by the Supplier from a delay in dealing with the defects as referred to in these paragraphs owing to incorrect or incomplete information supplied by the Customer.
4. If so requested in writing by Supplier, the Customer shall return the Products to Supplier in accordance with the Returned Material Authorization (RMA) procedure of Supplier, which is set out in Article 28 of these General Conditions.
5. The Supplier's obligations pursuant to paragraphs 1 and 2 of this clause shall not apply:
  - a. in the event of bad or improper use of the Goods or Software, as well as if the Goods is used other than in the necessary ambient conditions;
  - b. under circumstances arising from outside causes;
  - c. in situations arising from changes made – or attempts to make changes – in or repair work done to Goods or Software other than by the Supplier;
  - d. in cases where the Customer has not (yet) or not properly or timely complied with any obligation arising from the Agreement;
  - e. if the defects have not been promptly reported to the Supplier, that is to say, at the latest seven (7) days after the expiry of the period stated in paragraph 1 or 2, whichever is applicable;

- f. if the defects are due to products of third parties supplied or used by the Supplier at the request of the Customer;
  - g. the Customer's non-observance of the Supplier's instructions with respect to the Products.
6. The Supplier's obligations pursuant to paragraphs 1. and 2. shall include the remedying of defects, if possible, through reparation or replacement of faulty (parts of) Products, this at the Supplier's option. If this turns out to be impossible, the Customer may, after the expiry of the period stated in paragraph 1. or paragraph 2., whichever is applicable, claim compensation on the ground of proven lack of uses, which compensation cannot exceed twenty per cent (20%) of the aggregate amount charged for the Goods or Software, whichever is applicable.
7. Unless stated otherwise in these General Conditions or in the Agreement, the Supplier shall not be obliged to make any further effort or indemnification, whichever shall be applicable, in connection with defects.
8. The Supplier shall not warrant any new parts that may have been supplied by him in replacement of faulty ones to the extent that the period of warranty of the supplied Goods pursuant to paragraph 1. has expired.

#### **CLAUSE 9 INFRINGEMENTS**

1. If a third party makes, or attempts to make, a claim against the Customer alleging that a Product delivered under the Agreement infringes a valid claim under a patent, utility model, industrial design, copyright, trade secret, mask work, or trademark (collectively "Intellectual Property Right"), the Customer shall (a) provide Supplier prompt written notice of the claim, and (b) grant Supplier full and complete information; and if Supplier chooses in writing to defend, settle or negotiate the claim Customer shall (i) give Supplier sole control of any defence or settlement that it may undertake and (ii) provide Supplier with all reasonable assistance if so desired by Supplier.
2. Supplier shall have no obligation for any claim of infringement and Customer shall reimburse all reasonable costs (including, but not limited to, attorney's fees) in case a claim arises from: (a) Supplier' compliance with the Customer's designs, specifications, or instructions; (b) Supplier' use of technical information or technology supplied by the Customer; (c) modifications to the Product by the Customer or its agents; (d) use of the Product other than in accordance with the Product Specifications or applicable written product instructions; (e) use of the Product with products not manufactured by Supplier if

infringement would have been avoided by the use of a current unaltered release of either the Product, the third party products or both. Furthermore, Supplier will not be liable for any claim where the damages sought are based directly or indirectly upon the quantity or value of products or services generated by means of the Products purchased under the quotation, or based upon the amount of use of the Product regardless of whether such claim alleges the Product or its use infringes or contributes to the infringement of such claim.

3. In case (a) a non-appealable judgment of a competent court having jurisdiction declares the claim to be valid or (b) the Product is believed by Supplier to infringe such a claim, Supplier may, at its option, (i) procure the right for the Customer to continue to use the Product, (ii) replace or modify the Product to avoid infringement, or (iii) refund to the Customer a reasonable portion of the Contract Price upon the return of the original Product.

4. The terms in this clause 9 state Supplier's entire obligation and liability for claims of infringement, and the Customer's sole remedy in the event of a claim of infringement.

#### **CLAUSE 10 RIGHT OF USE (MADE-TO- ORDER) SOFTWARE**

1. All Software is and shall remain the property of Supplier or its software supplier.
2. The Supplier shall only grant the Customer the non-exclusive, non-transferable use of the Software.
3. The Software supplied by the Supplier shall only be used by the Customer on a processor specified in the Agreement. In the event of a breakdown the Software can temporarily be used on another processor.
4. For backup purposes the Customer shall be allowed to make copies of the Software up to a maximum of two (2). These copies shall be labelled and marked by the Supplier in the same manner as the original copies.
5. The Supplier shall be allowed to take technical measures to exclude the making of copies by the Supplier.
6. The Software or a copy thereof may not be sold, let, alienated, given as security or made available, left open for inspection or given in use to third parties in any way, nor may it be used for the benefit of third parties. The Customer may not make any modifications to the Software.
7. Any rights of third parties relating to (parts of) the Software and the limits imposed on the use in question in consequence thereof, shall be respected in the relationship between the Parties.

#### **CLAUSE 11 INTELLECTUAL PROPERTY**

1. With the exception of the use referred to in clause 10, all other rights, including but not restricted to all rights of industrial and intellectual ownership relating to the Products, shall remain vested in the Supplier. In no way shall the Supplier be restricted in the use and supply of Products to third parties. The Customer shall not remove designations of intellectual and industrial ownership, nor shall he provide copies of identical designations.
2. The designs, sketches, drawings, films, software and other material or (electronic) files produced by the Supplier within the framework of the Agreement shall remain the Supplier's property, irrespective of the fact whether they have been handed over to the Customer or via the Customer to third parties, unless agreed upon otherwise in writing.
3. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by the Supplier, shall be destined to be used by the Customer exclusively and shall not be reproduced, made public or brought to the notice of third parties by the Customer without prior consent of the Supplier, unless the nature of the documents provided dictates otherwise.
4. The Supplier shall reserve the right to use the knowledge gained due to the execution of the Agreement for other purposes, in so far no confidential information of the Customer shall be brought to the notice of third parties when doing so.
5. In order to protect the Supplier's rights, the Customer shall ensure that the Software and the accompanying Documentation are treated in strict confidence in accordance with clause 14 of these General Conditions.
6. If the Supplier has manufactured and delivered Products according to drawings, models, samples or other documents submitted by the Customer, the Customer shall warrant that such drawings, models, samples and other documents do not infringe the intellectual property rights and copyrights of any third parties and shall indemnify and hold the Supplier harmless from any claims of third parties on such account.
7. The Customer shall not be allowed to introduce changes to the Products, unless the nature of the delivered Products dictates otherwise or if agreed upon otherwise in writing between the Parties.

#### **CLAUSE 12 LIABILITY**

1. The Supplier's liability shall be limited to compliance with the obligations of making efforts pursuant to clause 8, paragraphs 1. and 2., with compensation as referred to in clause 8, paragraph 6 if required, as well as

repair or repayment of damage, at the Supplier's option, caused to Products in the performance of the Agreement by persons engaged by the Supplier in the execution of the Agreement.

2. If the Supplier is liable for direct damage, his liability shall at all times be limited to the maximum amount the Customer was obliged to pay for the Products which caused the direct damage.

3. The Supplier shall never be liable for indirect damage, including consequential damage, punitive or special damage, or loss of profit, lost savings and damage due to business stagnation.

4. The limitations of liability under this Clause shall not apply in case of damage resulting from wilful misconduct, gross fault or gross negligence on the part of the Supplier.

5. The Customer shall be responsible for the expert and proper use and application within his organisation of the Products, as well as for the methods of accounting and calculation to be applied and for the protection of data and Software supplied.

#### **CLAUSE 13 FORCE MAJEURE**

1. The Supplier shall not be liable for any failure to fulfil any terms of the Agreement to the extent that such fulfilment has been delayed, hindered, interfered with or prevented by any circumstance whatsoever not within its reasonable control and which amounts to an act of Force Majeure.

2. In the event of prevention of performance of the Agreement due to Force Majeure, the Supplier may, upon sending written notice thereof to the Customer at the Supplier's sole discretion: i) either suspend the performance of the Agreement without judicial intervention for the duration of the delay which is due to Force Majeure up to a maximum of six (6) months; or ii) if the duration of the delay owing to Force Majeure is expected to exceed six (6) months, terminate the Agreement wholly or in part, without being bound to pay compensation, iii) continue with the delivery of the Products, provided that at the sole discretion of the Supplier the Products shall then be delivered Ex Works (Incoterms), Veldhoven, The Netherlands or at a safe location to be mutually agreed between the Parties. The installation and acceptance test, if so agreed upon in accordance with clause 7 hereof, of the Products shall then be executed at such site. After successful installation and/or execution of any acceptance test, if so agreed upon in accordance with clause 7 hereof, the Customer shall for its own costs and risk

arrange for shipment of the Products to and further installation thereof on its final location.

3. Both in the event of suspension and in the event of termination pursuant to the second paragraph, the Supplier shall be entitled to demand the immediate payment of the materials, parts and goods reserved, in progress or manufactured by it for the performance of the Agreement, as well as payment of the activities already carried out by the Supplier, this at the value to be put to it in fairness. In the event that the Supplier continues the delivery of the Products pursuant to the second paragraph above, all payments for the delivery of the Product(s) and related services are due upon the actual delivery of the Product(s), being the moment that the Supplier has notified the Customer that the Products are ready for transport from Veldhoven, The Netherlands.

4. Both in the event of suspension and in the event of termination pursuant to the second paragraph, the Supplier shall be entitled immediately to demand payment of the materials, parts and goods reserved, in progress or manufactured by him for the performance of the Agreement, as well as payment of the activities already carried out by him, this at the value to be put to it in fairness.

#### **CLAUSE 14 CONFIDENTIALITY AND NON EMPLOYMENT OF PERSONNEL**

1. Neither Party will disclose Confidential Information of the other Party to a third party without the prior written consent of that other Party. This obligation will continue in force for a period of three (3) years after termination of the Agreement.

2. Notwithstanding the requirement of the previous paragraph, the Parties are entitled to disclose each other's Confidential Information to their respective officers, directors, employees, agents, suppliers, subcontractors, consultants and Affiliated Companies which are involved in the fulfilment of the Agreement, provided that:

a) in the event of such disclosure to any person or entity not employed by the disclosing Party, the disclosing Party shall nonetheless remain liable for any unauthorised disclosure; and  
b) such person or entity is under non-disclosure obligations no less restrictive than the non-disclosure obligations contained in these General Conditions and/or the Agreement.

3. The receiving Party shall:

a) take all reasonable measures to ensure safe custody and use of the other Party's Confidential Information;

b) not use the other Party's Confidential Information for any purpose other than performance of its obligations under the Agreement;

c) not retain the other Party's Confidential Information longer than is reasonably necessary for the fulfilment of its obligations under the Agreement, and either return the Confidential Information to the other Party, including any copies, immediately after the fulfilment of all the aforementioned obligations or, after having obtained the other Party's written consent, destroy and/or erase such Confidential Information.

4. A Party is under no obligation to maintain confidentiality with respect to Confidential Information that:

a) was already in possession of that Party on a non-confidential basis;

b) has lawfully come into the possession of that Party independently of the disclosing Party;

c) is already in possession of the public or becomes available to the public by anyone other than the receiving Party;

d) this Party is required by law to disclose the other Party's Confidential Information to a judicial or administrative authority, provided that that Party will notify the other Party well in advance of such required disclosure so that the other Party has a reasonable opportunity to object to the disclosure.

5. The receiving Party shall at all times bear the burden of proof with respect to the above exceptions.

6. For a period until one (1) year following termination of the Agreement, the Customer shall not in any way hire or employ in any other way, be it directly or indirectly, staff of the Supplier, his Affiliated Companies or of enterprises whom the Supplier has engaged to execute the respective Agreement and who are/were involved in the execution thereof, without prior proper business-like consultation of the Supplier on this matter, which consultation has to be recorded in writing, all in accordance with the requirements of reasonableness and fairness.

#### **CLAUSE 15 ASSIGNMENT AND SUBCONTRACTING**

1. The Supplier is at all times entitled to assign all or part of its rights and/or obligations under the Agreement to an Affiliated Company or third party having sent prior written notice thereof to the Customer. Further, the Supplier is also entitled to enter into any agreement with subcontractors with

respect to the execution of the Agreement without the prior written consent of the Customer. In such event, the Customer shall perform the Agreement with the Supplier's subcontractors under the terms and conditions of the Agreement, unless otherwise agreed between the Parties in writing.

2. The Customer is not entitled to assign its rights and/or obligations under the Agreement to a third party without the Supplier's prior written consent, which shall not unreasonably be withheld. Affiliated Companies shall not be deemed third parties for the purpose of this clause 15.2.

#### **CLAUSE 16 SUSPENSION AND TERMINATION OF THE AGREEMENT**

1. In the event of non-compliance, improper compliance or delayed compliance by the Customer with any of his obligations arising under the Agreement or under an agreement related thereto, or in the event of serious doubt as to whether the Customer shall be in a position to meet his financial obligations towards the Supplier, as also in the event of bankruptcy or non-voluntary liquidation, grant of suspension of payment, closing-down, winding-up or transfer in whole or in part - whether or not as security - of the Customer's business, including assignment of a major part of his claims, the Supplier may, without notice of default and without judicial intervention, either suspend the performance of each of these agreements for up to a maximum of six (6) months, or terminate the same, wholly or partly, this without being obliged to pay compensation and without prejudice to the other rights and remedies available at law.

2. In the event of suspension of the Agreement, the Contract Price shall be payable at once, augmented by the extra expenses incurred by the Supplier owing to the Customer's default and under deduction of instalments that have already been paid and of expense saved by the Supplier as a result of the suspension. In that case the Supplier shall further be entitled to have the materials, parts and goods reserved, in progress or manufactured by him for the performance of the Agreement stored at the expense and risk of the Customer. In the event of termination the Contract Price, unless the termination was preceded by a suspension, shall be payable at once, augmented by the extra expense incurred by the Supplier owing to the Customer's default and under deduction of instalments that have already been paid and of expense saved by the Supplier as a result of the suspension, in

which case the Customer shall be obliged to pay the amount set forth above and to take receipt of the things included therein, in default whereof the Supplier shall be entitled to have the same stored at the expense and risk of the Customer or to sell them at his expense.

3. Termination of the Agreement shall at all times take place by registered letter or subpoena.

#### **CLAUSE 17 SETTLEMENT OF DISPUTES**

1. These General Conditions are construed in accordance with, and governed by, the laws of The Netherlands. The applicability of the 1980 Vienna Sales Convention and the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

2. In case of any disputes arising out of or relating to these General Conditions, the Parties shall endeavour to settle such disputes amicably. If the Parties are unable to, the dispute shall exclusively be submitted to the jurisdiction of the competent courts of Oost-Brabant, The Netherlands.

3. This applicable law and disputes clause shall apply mutatis mutandis to all agreements concluded between the Parties.

#### **B. CONDITIONS OF SERVICE**

##### **CLAUSE 18 GENERAL**

In the event that the Parties have agreed for Supplier to provide certain Services but the Parties have not concluded a Service Agreement, the following conditions shall apply.

##### **CLAUSE 19 SERVICE TO GOODS**

1. One of the purposes of the Services shall be to keep the Goods in such condition that its correct functioning is maintained in conformity with the Specifications. The effects of what may be regarded as wear and tear and obsolescence of Goods shall not be included in this provision, on the understanding that the Supplier shall always strive for the best possible efficiency of the Goods according to the actual circumstances.

2. Save as expressly otherwise provided, the Goods Service shall include:

a. preventive maintenance:

The Supplier shall, to the exclusion of anyone else, take care of the preventive maintenance, as well as of the implementation of technical alterations deemed necessary by the Customer for a correct functioning of the Goods.

Preventive maintenance means the cleaning of parts sensitive to wear and tear that have



become dirty and the adjustment of parts that are liable to move out of position.

b. activities to remedy failures and repair work:

The Supplier shall, to the exclusion of anyone else, take care of the identification and remedying of Goods failures and the carrying out of repairs which are found to be necessary in the conduct of the preventive maintenance or for the remedying of a failure.

3. Whenever the Supplier in the execution of the Service replaces parts, the replaced parts shall become the property of the Supplier.

4. As a rule, all Service activities shall be carried out at the Supplier's office. The Customer shall take care of the transport of the Goods to and from the location in question at his own expense and risk. If the Service work is not carried out at the Supplier's office, every additional expense (travelling time, travelling cost and such like) shall be for the account of the Customer.

#### **CLAUSE 20 SERVICE TO SOFTWARE**

1. The other purpose of the Services shall be to keep the Software in such condition that its correct functioning is maintained in conformity with the Specifications and to assist the Customer in using the same if so required.

2. The Software Service shall include:

a. telephonic support, whenever it shall be necessary, in the use of the supplied Software, on the understanding that each contact with the Supplier shall be effected through the same liaison officer of the Customer.

b. to the extent that the Software concerned is other than made-to-order, the supply of new Software releases on a data carrier as well as the relevant Documentation, both of these insofar as applicable.

c. the right of installation as well as the use of the new releases referred to above.

d. in the case that a Supplier's liaison officer has been agreed upon, the right to submit problems and suggestions for improvement having a direct bearing on the functioning of the Software concerned.

3. In the execution of Service activities at the office of the Customer, the Customer shall ensure the availability of expert staff. In such case the Customer shall further give the Supplier the use of a suitable room to carry out such Service.

#### **CLAUSE 21 DOCUMENTATION**

1. When Service activities are to be carried out at the Customer's office, the Customer shall hand over to the Supplier's staff on the job the entire Documentation furnished to him in relation to the Products in question.

2. The Customer shall lay down every failure in writing, and report the same as soon as possible to the Supplier, providing details and the relevant documents.

#### **CLAUSE 22 EXCLUSIONS**

1. The Services shall not include expenses incurred by the Supplier in connection with:

a. Service work done outside the service hours stated in clause 23 at the request of the Customer.

b. In the case of a system that is already in operation, the first check of recent Software releases, as well as installation thereof, if required, prior to Service to be provided. If the result of the first check is negative, the Services shall be suspended until the moment when the Goods and/or Software in question has been brought into an adequate condition at the Customer's expense.

c. Extensions, modifications and transport at the request of the Customer of Goods/Software available at the Customer's, as well as every additional service provided by the Supplier. If the Supplier deems it justified, a new Purchase Order or Service Agreement shall have to be concluded.

d. Work and expenses incurred through the use of things which are not maintained by the Supplier.

e. Expenses for a remedy of all failures and repair of damages caused by inexpert use, external influences or work done other than by order of the Supplier by people not employed by the Supplier.

f. The supply and installation of normal non-durable items which are to be replaced by the Customer, such as fuses, ink cartridges, paper, ribbons, USB-sticks, CD's, servers etcetera, as well as minor maintenance work as described in the Documentation of the Supplier. For these the Customer shall be responsible himself. Furthermore, the Supplier shall not be obliged to provide Services in cases as described in clause 8, paragraph 5, insofar as they are not yet included in the foregoing exclusions.

#### **CLAUSE 23 SERVICE HOURS**

1. The activities to be carried out by the Supplier shall, if possible, take place at times to be set by mutual consent during the normal business hours in force with the Supplier, from Monday to Friday, save as otherwise agreed by the Parties, all this with the exception of holidays applicable to the Supplier's employees.

To the extent that the Service shall be carried out at the premises of the Customer, the Supplier shall notify the Customer to this effect no later than 24 (twenty four) hours prior to his visit.

2. Delays owing to the fact that the Supplier's Service worker concerned cannot start the activities at the intended time or carry them out without interruption, shall be charged to the Customer according to the hourly rates applied by the Supplier.

#### **CLAUSE 24 CHARGES**

1. The charges and rates for the Service to be provided shall be based upon the prices prevailing at the time when the Purchase Order for Services shall become effective. The prices for Services can be adjusted by the Supplier annually at the beginning of each calendar year according to the price index of collective labor agreement wages in the industry in the Netherlands as published by the "Centraal Bureau voor de Statistiek" (CBS, CAO-Ionen, C industrie, SBI 2008, 2010=100). The new prices will be calculated according to the year-to-year method meaning that:

$$\text{new fee} = \text{actual fee} \times \frac{\text{last year index}}{\text{year before last year index}}$$

2. Extra parts, materials and Documentation to be supplied by the Supplier shall be charged to the Customer separately.  
3. Extension of the configuration shall entail simultaneous adjustment of the charge.

#### **CLAUSE 25 PAYMENT**

1. Instalments shall always be paid in advance. In the event of termination of the Services before the end of the agreed period no refund shall be made.  
2. A defect occurring in the configuration shall be no justification for the Customer to delay payment or not to pay at all.

#### **CLAUSE 26 TERM OF THE SERVICES**

1. The Services shall be concluded for the period referred to therein. Unless either of the Parties notifies the other Party in writing of his intention to terminate the Services no later than three (3) months before the expiration date that was agreed by the Parties, the Services shall be renewed tacitly each time for one (1) year.  
2. The Services may be terminated with immediate effect before the end of the term in the event of default by either of the Parties if such default has not been remedied within a reasonable time-limit set by the other Party in its written notice of default, and further after repeated default with no obligation for the other Party to set a time-limit.

#### **CLAUSE 27 LIABILITY**

1. The arrangement relating to liability pursuant to clause 12.2 up to and including clause 12.5 shall apply equally to the Services, on the understanding that the Supplier shall not be obliged to make good or pay compensation for damage sustained by the Customer owing to a defect or disturbance, as the case may be, if the defect or disturbance arises from or is related to the Goods/software being installed by a third party or by the Customer itself.  
2. Save as expressly otherwise provided in these General Conditions every other claim on the part of the Customer shall be excluded.

#### **C. REJECTED MATERIALS ADMINISTRATION PROCEDURE**

#### **CLAUSE 28 PROCEDURE**

1. If during the warranty period under Article 8 of these General Conditions the Customer deems that the whole or part of the Products delivered by Supplier is/are not in conformity with the specifications as set out in the Agreement, the Customer shall comply with the following RMA procedure, which forms an integral part of the Agreement:  
a) first the Customer shall within the warranty period as set out in Article 8 of these General Conditions notify Supplier by fax or by e-mail that there is an upcoming claim related to a non-conformance. Such notification shall state the quantity of the allegedly non-conforming Products ("RMA-Products"), Supplier's series number and a brief description of the problem(s);  
b) if the claim is made during aforementioned warranty period, Supplier shall upon receipt of Customer's notification provide a RMA number to be used as identification for the Products to be returned by Customer to Supplier;  
c) the Customer shall ensure that the RMA Products are properly packaged and labelled with the RMA number and promptly shipped to Supplier with documentary evidence which sets forth with reasonable specificity the nature of the alleged non-conformity of the RMA Products with the warranty conditions provided for herein;  
d) as soon as the RMA Products and the RMA report (which describes the non-conformity) are received by Supplier, the RMA Products will be examined by Supplier.  
2. At the sole discretion of Supplier, the outcome of such examination may fall into several categories, including but not limited to:

- i) the RMA Products that do comply with the warranty conditions will be returned to the Customer at the Customer's expense;
- ii) the RMA Products that do not comply with the warranty conditions shall be repaired or replaced by Supplier at its own expense and the replacement of the RMA Products shall be forwarded as part of one (1) of the next shipments or as soon as is practicably possible; or
- iii) refunding the value of the RMA Products by the issuing of a credit note corresponding to the price of the RMA Products to be replaced.

3. Parties shall endeavor to settle any disputes related to the RMA procedure, including on whether the RMA Products conform to the warranty conditions, handling of the RMA Products or possible compensation, at a technical coordination meeting to be held between the Parties. If the Parties fail to reach an agreement at such technical coordination meeting, the dispute shall be settled in accordance with Article 17 of these General Conditions.