

## **General Terms and Conditions of Sale**

These are the general terms and conditions of sale of Avit Group BV, deposited at the Chamber of Trade and Industry under number 30184675, Avit Systems BV, deposited at the Chamber of Trade and Industry under number 71307117, Avit Services BV, deposited at the Chamber of Trade and Industry under number 34236858, Avit Integration BV, deposited at the Chamber of Trade and Industry under number 73401072 and Avit Benelux BV, deposited at the Chamber of Trade and Industry under number 68735138, (to be referred to hereinafter as "**Avit**"), hereinafter: the "**Terms and Conditions**").

### **1 Applicability**

- 1.1 To all our provisions of goods and/or services, as also all offers and price-quotes issued by us the Terms and Conditions apply exclusively. All and any work shall only be carried out under the Terms and Conditions.
- 1.2 Avit does not agree to applicability of any other terms and conditions, regardless of whether such terms and conditions are forwarded to us or reference is made thereto in any correspondence.
- 1.3 If they Avit enters into an Agreement with (as defined in Article 3) (hereinafter: the "**Client**") orders any goods or services, then the Terms and Conditions are deemed to have been acknowledged and accepted through such order. As far as necessary, acceptance of supply by Avit of any goods or services comprise the (repeated) express agreement to and acceptance of the Terms and Conditions.
- 1.4 No derogations from and/or changes to these Terms and Conditions apply, save they have been confirmed by the board of management of Avit in writing in the Order or Agreement (as defined below).

### **2 Offers and Price-Quotes**

- 2.1 All offers and price-quotes are without obligation save an explicit acceptance period is mentioned therein. If an offer including such acceptance period is made, and timely accepted by the Client within that period, then Avit nevertheless has the right to revoke the offer during five working days after such acceptance. Offers that do not include an acceptance term are valid and can be accepted during thirty calendar days following the date set forth in the offer.
- 2.2 All and any pre-calculations and estimates given by Avit are for indicative purposes only, save stated otherwise in writing. No rights or expectations can ever be derived from any such pre-calculations and estimates. No budget communicated by the Client to Avit shall ever be regarded as the (fixed) price for the services Avit will perform. Exclusively if agreed so in writing between the parties, shall Avit be obliged to inform the Client of any expected exceeding of a pre-calculation or estimate given.
- 2.3 If an offer or part thereof contains a manifest error or mistake, this cannot be enforced against Avit by the Client if and to the extent that the Client knows or should have reasonably understood so.
- 2.4 No rights can be derived from any (verbal) communications regarding technical aspects of products or delivery times. No measurements and data set forth in drawings, pictures, catalogues, websites, offers, promotional materials, are binding upon Avit, save expressly stated.
- 2.5 No offer or documentation forwarded shall oblige Avit to enter into an Agreement.
- 2.6 The Client warrants that any measurements, demands and/or performance requirements communicated to Avit by or on behalf of the Client, as well as any (other) information on which Avit's offer is based (in full or in part), are correct and complete.

### **3 Order Confirmation and Amendment of Agreement**

- 3.1 An agreement between the Client and Avit (as defined below) will not come about but after written confirmation by Avit of the content of this agreement by forwarding a written order confirmation. The Client is deemed to fully agree to the content of said order confirmation, save the Client communicated the contrary to Avit before performance of the agreement and within eight days following sending of the order confirmation, by registered mail.
- 3.2 These Terms and Conditions, together with the specific provisions of the order confirmation, jointly constitute the set of arrangements made between the Client and Avit (hereinafter: the "**Agreement**" or the "**Order**") and fully replace all and any arrangements made – as far as applicable – previously or afterwards (orally or otherwise).
- 3.3 Regarding the services and goods provided by Avit and the sums owed by the Client for this the relevant documents and data in the accounts, records or systems of Avit provide full proof, without prejudice to the right of the Client to furnish proof to the contrary.
- 3.4 The Order shall not be amended by the Client once the work has started, save Avit agrees to this. In that event, the Client is held to pay the costs resulting for Avit from such change.
- 3.5 Any further arrangements, also if it concerns (for instance) oral or written commitments of employees of Avit shall only bind Avit after and to the extent that they have been confirmed in writing by the board of Avit to the Client.
- 3.6 If employees of Avit are requested by the Client, in addition to the provision of services or goods as set forth in the Agreement, when carrying out the work or deliveries as agreed (on location) to carry out any additional work, then Avit has the right to charge the Client for such work and the Client shall pay such costs.
- 3.7 Avit or the employee in question shall never be obliged to comply with such a request and may demand that (first) an individual agreement will be concluded for this. Furthermore, Avit or the employee in question is only held to carry out the work or deliveries to the extent that this can be expected of Avit or him in reasonableness and to the extent that this does not affect the other work, according to their own discretion. If another employee of Avit must be involved to carry out the additional work or the employee in question must return at another time for this, then he shall communicate this to the Client. The work in question shall be confirmed by (the employee in question or another employee of) Avit as soon as possible after receipt of the request for additional work or deliveries in writing to the Client. To the extent that no individual agreement as referred to above, is drawn up the confirmation shall be considered a rider to the existing Order.
- 3.8 The Client accepts that any additional requests may have an impact on the arrangements laid down in the original Order (such as *inter alia* time of delivery or completion of the services, etc.) Such additional work (or additional requests for it) as also their impact on the previous arrangements shall not be any reason for the Client to terminate or rescind the Agreement in any case.
- 3.9 To the extent that a fixed price has been agreed for the services, Avit shall inform the Client in writing about the financial effects of the additional work or services or deliveries as referred to in this Article, upon request.

### **4 Delivery**

- 4.1 Avit shall deliver the goods and/or services at the location and time agreed in the Agreement, without prejudice to that laid down in Article 4.5 below .
- 4.2 Delivery of goods shall be made by handing over the goods, or the main components thereof, to the Client or its customer. The goods delivered shall be at the account and risk of the Client as of the moment of delivery, who shall keep the goods safe and treat them as its own, mark them as being recognizable property of Avit until full payment.
- 4.3 The risk of loss, theft or damage to the goods, products, software or data the

Agreement regards, passes to the Client as of the moment on which such goods are provided to the Client, or (one of) its representatives under its de facto power of disposal. Such de facto power of disposal is also deemed to exist, once, at the request of the Client, such goods are temporarily stored with Avit or remain there in anticipation, or for the purposes, of the agreed preparation for installation work.

- 4.4 Save otherwise agreed in writing in advance, Avit may provide goods to the Client in several batches, whereat each such delivered batch shall become payable individually. Any delivery times communicated do not constitute deadlines. In case of amendment of the content or scope of the Agreement (additional work, change of specifications, etc.) or a change to the handling of the performance of the Agreement, new reviewed time-limits shall be agreed. If any time-limit risks to be exceeded, Avit and the Client shall consult on the impact of exceeding such time-limit on further planning.
- 4.5 If the goods are (temporarily or first) stored at Avit at the request of the Client, then the actual shipment costs will be passed on to the Client and, if the goods remain stored at Avit for more than 2 weeks, storage fees will be charged as of the moment of delivery at Avit for each month (or part thereof) to the amount of 1% of the value of the goods (as stated in the invoice or in the Agreement).
- 4.6 The risk of loss, theft or degradation of the goods shall be fully for the Client as of the moment of delivery. If the Client so wishes, it must see to insurance of the goods during the period in which they are temporarily stored at Avit (as referred to in the second sentence of Article 4.5 above).
- 4.7 If Avit makes samples available to the Client, the Client is held to return the samples to Avit within fourteen days following receipt, undamaged and in the original packaging, postage paid. If Avit displays or provides a model, sample or example, this is only done indicatively: the quantities of the goods to be supplied may differ from the sample, model, or example.
- 4.8 The delivery time agreed will become effective on the moment laid down in the Agreement. This may *inter alia* be one of the following times:
- a) the day of execution of the Agreement;
  - b) the day of receipt by Avit of the data to be provided by the Client, as are required for the performance of the Agreement;
  - c) the day of receipt by Avit of the sum to be paid in advance by the Client in case of any prepayment.
- 4.9 Mere transgression of a (delivery) time-limit or date (of completion) stated by Avit or agreed by the parties, regardless whether this is a deadline or not, does not directly render Avit in default. In all and any cases – i.e. also in case the parties have agreed, in writing and explicitly, a deadline (for delivery) or strict deadline (for completion) - Avit will only be in default once the Client has entered a default against it in writing. The notice of default shall comprise a description as complete and detailed as possible of the failure so as to allow Avit to respond adequately.
- 4.10 To the delivery of services the Terms and Conditions also apply, as also any further (specific) conditions laid down in the Agreement. Services can be provided on an incidental basis, by way of maintenance contract (using the merchandise card system as laid down in Article 7.6 et seq., or not), on a project basis or in such other form as set forth by the parties in an Agreement. In all and any events, the provision of services may be combined with the delivery of goods as referred to above. In that case, in addition to the provisions which regard provision of services also the provisions which regard delivery of goods apply to such latter delivery. In the event of conflicting provisions, the (differing) provisions of the Agreement prevail.

## **5 Retention of Title and Recall Right**

- 5.1 The title of any good delivered by Avit shall not transfer to the Client but once the purchase price of the good in question has been received integrally without any setting off, and furthermore any other conditions laid down in the Agreement have been met. Any claims of Avit against the Client for damages by reason of a defect in the performance of the Agreement are also covered by this.
- 5.2 A client acting as reseller shall have the right to sell and deliver any goods delivered to it by Avit under retention of title, to the extent that this is normal business practice for it and on the condition that it shall respect the retention of title and impose the duty to comply with this upon all and any subsequent buyers of the goods concerned. To the extent that a client creates a new product using (also) goods delivered by Avit, the Client solely creates such a product for Avit and the Client shall keep such newly created product for Avit until the Client has paid all the sums due under the Agreement; in that case, Avit shall remain the owner of the newly created product until full payment by the Client.
- 5.3 Title retention equally remains in force to the extent that the Client fails to pay the fees for provision of the services or work associated with the goods in question, save explicitly decided otherwise in the Agreement.
- 5.4 The effects of the retention of title of a good intended for export under property law are governed by the law of the state of destination, if such law involves more favorable conditions for Avit in this respect.
- 5.5 Avit has the right to retain any matters, products, rights, data, documents, software, data files, and (interim) results relating to its own provision of services, despite an existing obligation to surrender or transfer, until the Client has paid all sums due to Avit.
- 5.6 The Client shall not encumber the good with any (limited) right, as long as the title of any good delivered by Avit has not transferred to the Client.
- 5.7 If the Client fails in its payment obligations vis-à-vis Avit or Avit has good grounds to fear that the Client will fail in its obligations, then Avit is entitled to (order to) recall the goods delivered (on which the retention of title always rests up to the moment of integral performance by the Client of its obligations under the Agreement), without any court intervention, at the expense of the Client. After recall, the Client will be credited for the market value which will not be higher, in any case, than the original purchase price, minus the costs involved in the recall.

## **6 Prices**

- 6.1 Save agreed otherwise in writing, all prices mentioned or communicated by Avit shall be net cash prices, Ex Works, and:
- a) excluding value added tax (VAT), custom charges, taxes, municipal and/or other rights or levies which have been or are imposed by any authority;
  - b) excluding costs for storage, packaging, loading/unloading, exchange rate influences, insurance and transport to the delivery address communicated by the Client to the extent that this is situated in the Netherlands;
  - c) excluding currency fluctuations that impact the original pricing;
  - d) without discount or rebate; and
  - e) stated in Euro.
- The costs resulting from the items listed in a) - c) above shall be charged to the Client. Article 6.3 does not apply to this.
- 6.2 If:
- a) the delivery of the goods takes place more than 4 weeks after the date of communication of the price-quote; or
  - b) the cost price of the goods has increased since the moment on which the price-quote was communicated (e.g. in case of increase of raw materials, wages, etc.).

- Avit is entitled, also if a fixed price was agreed, to charge the price applicable at the time of delivery, all this according to the price-lists effective at such time. All price quotes are made explicitly subject to the such price changes.
- 6.3 If the overall price increase referred to in Article 6.1 amounts to more than 10%, the Client may prematurely terminate the Agreement (solely in respect of the part of the Agreement that has not yet been performed) with a notice of one calendar month, save within two working days after receipt of the notice of termination Avit confirms that it is nevertheless willing to perform the Agreement at the price originally quoted.
- 6.4 In case of recurring payment obligations and after at least a full contract year (of 12 months) has passed Avit may increase, each year (as of the 1<sup>st</sup> of January of each calendar year) its rates and/or prices for such new calendar year in accordance with the Dutch CBS price index for businesses (zakelijke dienstverlening).
- 6.5 For services rendered to the Client on location, a minimum fee of 4 hours shall be charged, even when the actual time spent is less than 4 hours. In respect of remote services, a minimum fee of 2 hours shall be charged. To the extent that the actual time spent exceeds 4 and 2 hours respectively, the time actually spent shall be charged.
- 6.6 Outside of office hours, the following additional charges shall be applied:
- 50% surcharge for hours worked between 18.00 and 00.00 hrs. (Mo-Fri);
  - 100% surcharge for hours worked between 00.00 and 08.00 hrs. (Mo-Sat);
  - 50% surcharge for hours worked on Saturdays between 08.00 and 00.00 hrs.; and
  - 100% surcharge for hours worked on Sundays and official (banking) holidays.

## **7 Invoicing**

- 7.1 All goods are, in principle, invoiced in accordance with Articles 6.1-6.3.
- 7.2 Services provided are generally invoiced monthly on the basis of subsequent calculation, in accordance with Articles 6.1 and 6.3-6.6.
- 7.3 Upon provision of services Avit may also invoice on the basis of a fixed price understanding with the Client. In that case, the Client shall pay 50% of the overall invoice when placing the Order. If, as part of the Order, goods are also supplied, then the same applies. After delivery or installation of the goods at the Client (and or temporary storage at Avit) as also as soon as more than 50% of the hours/time to be spent on the Order have been spent, 40% of the overall sum will be invoiced. The remaining 10% will be invoiced immediately after completion of the project. Subject (specifically) to the extent and term of the project different rates can be agreed (in writing) in special cases.
- 7.4 All and any additional services shall be invoiced separately, in accordance with the preceding provisions.
- 7.5 Recurring services are invoiced monthly in advance (e.g. in respect of cloud services, telephony, connectivity, lines, etc.), except for variable (call- and/or data) charges, which are invoiced monthly on the basis of subsequent calculation of actual usage.
- 7.6 All service agreements for maintenance are invoiced yearly in advance. If the so-called Avit *strippenkaart* (pre-payment merchandise) system is used (e.g. for the provision of support services at a fixed rate or any other services set forth in an Agreement), the Client shall be invoiced, for the initial (contract) period, for a sum based on the expected work and next a monthly or yearly amount based on the actual use in the preceding period. If Avit finds that the actual usage turns out to be higher during the subsequent period than the sum of the expired period, it shall raise the total charge to a sum that starting from the same volume

of work for the coming period, corresponds to the work to be expected. If Avit finds that the actual use is lower than the amount already invoiced, then the new merchandise card sum will be lowered in conformity with said method to correspond with the work to be expected for the coming period, with due account of the following: if the actual spend is below 25% of the invoiced amount, 25% of the merchandise card sum will nevertheless be debited (yearly) for each contract period until exhaustion of the balance.

- 7.7 If the merchandise card budget is fully spent before the end of a (contract) period, Avit will send, immediately after reaching zero balance, an invoice for the remainder of the (contract) period and/or for the next (contract) period to supplement the last merchandise card, which invoice shall be based on the number of hours worked during the period in which the last merchandise card was spent. If the Client does not object to (the amount of) the invoice within five working days after its dispatch, the invoiced amount shall be considered accepted. If the Client objects, but subsequently no agreement is reached by the parties within one month on the amount that should be invoiced, then Avit has the right to immediately cease and suspend its activities for the Client until the sum newly invoiced has been paid in full. In the occurrence, all and any costs and damage resulting from such stand-still are for the sole risk and account of the Client.
- 7.8 Save agreed otherwise, all (other) services are offered and rendered on the basis of subsequent calculation. This also applies to services rendered in addition to services rendered as previously agreed (e.g. as referred to in Article 3.6 et seq.).
- 7.9 All monthly invoices are paid by direct debit, save agreed otherwise. If the authorization of the Client is revoked before the Order or Agreement and the associated work or deliveries have been completed, Avit shall have the right to cease the provision of all services and/or delivery of goods immediately. In the occurrence, any damage resulting from this for the Client (or third parties) shall be at the sole risk and account of the Client.

## **8 Payment**

- 8.1 Invoices of Avit shall be paid by the Client by 14 calendar days after date of invoice, failing which the Client will be in default without any notice of default being required.
- 8.2 Payment is made without any right of setting off and/or suspension, save as permitted to the Client by law.
- 8.3 If Avit has forwarded an advance invoice regarding the Order to the Client, said invoice shall be paid before the date on which the work is planned to start. If the advance is not timely received by Avit, then Avit has the right to suspend the start of the work or delivery of the goods up to the moment of payment.
- 8.4 Avit is entitled, as of the date on which the Client is in default, to charge the Client for the statutory commercial interest, as also a penalty interest of 2% a month or part of a month, on the sum still to be paid. All and any payments made by the Client primarily serve to pay the interest and collection costs due and alternatively to pay the oldest unpaid invoices. Moreover, Avit is entitled to charge extrajudicial costs associated with the Client's not or not timely paying in conformity with the *Rapport Voorwerk II* of the Dutch Bar Association, starting at a minimum of EUR 150 (VAT excluded).
- 8.5 The foregoing does not affect Avit's right to claim any other costs, damages and interests.

## **9 Cancellation**

- 9.1 If the Client wishes to cancel an Agreement for the delivery of services and/or goods before the moment on which the services and/or goods have been provided/delivered, a cancellation fee of 20% of the agreed price (increased with VAT) will be due.
- 9.2 In respect of projects referred to in Article 7.2 and 7.3, part of or all of the agreed

price (increased with VAT) shall be due, if the Client cancels or postpones the Order for the work planned, as indemnification of retaining the required capacity to perform the Order. This indemnification shall be calculated for each scheduled FTE as follows:

- a) when the notice of postponement is given within 24 hours before the start of the project: 100% of the agreed hourly rate for each FTE with a maximum of 24 hours;
- b) when the notice of postponement is given between 3 days and 24 hours before the start of the project: 75% of the agreed hourly rate for each FTE with a maximum of 24 hours;
- c) when the notice of postponement is given between 1 week and 3 days before the start of the project: 50% of the agreed hourly rate for each FTE with a maximum of 24 hours;
- d) when the notice of postponement is given between 2 weeks and 1 week before the start of the project: 25% of the agreed hourly rate for each FTE with a maximum of 24 hours.

Subject (specifically) to the size and duration of the project different rates may be agreed (in writing) in special cases.

- 9.3 Upon termination of an Agreement providing for the performance of projects as referred to in Article 9.2 by reason of non-performance by the Client (as set forth in Article 10.1), which in any case includes situations where the Client has not (or not timely) complied, before performance of the project, with its obligation to pay or refuses to accept or take delivery of the agreed goods, the Client shall pay to Avit 50% of the agreed project price as yet (to the extent that the Client has not already done so) in compensation of such termination. Any damage of the Client resulting from such termination will be at the sole risk and account of the Client.
- 9.4 That laid down in this Article 9 applies without prejudice to the right of Avit to claim full damages, including loss of profit.

## **10 Termination and Rescission**

- 10.1 Either party is only entitled to terminate the Agreement by reason of an attributable failure in the performance of the Agreement, if the other party fails in an attributable manner in the performance of essential obligations resulting from the Agreement at all times after a notice of default as detailed as possible whereat a reasonable term is set for remedying the failure. Any payment obligations of the Client and all other cooperation obligations of the Client or a third party to be hired by the Client shall always be considered essential obligations resulting from the Agreement.
- 10.2 If the Client already received, at the time of termination as laid down in Article 10.1, goods or services under performance of the Agreement, then such services or goods and the associated obligation to pay shall not be subject to restitution, save the Client proves that in respect of the essential part of such services or goods Avit is in default. Any sums invoiced by Avit before termination by reason of that already performed or delivered by it under performance of the Agreement, will remain owed with due account of that laid down in the preceding full sentence, in full, and become immediately claimable at the time of termination.
- 10.3 If an Agreement that does not terminate automatically by nature or content, has been entered into for an indefinite period of time, each party shall have the right, taking into account a notice period of three months, to terminate this Agreement in writing after mutual consultation and while stating reasons. Save that provided for in these Terms and Conditions, no party can ever be held to pay damages of any kind as a result of such termination.
- 10.4 The Client is never entitled to prematurely terminate an agreement for services entered into for a definite period.
- 10.5 Either party may terminate the Agreement, without notice of default, taking effect immediately, in full or in part, in writing, if:

- a) the other party is declared bankrupt, goes into administration, files an application for moratorium, or its assets are seized, in full or in part;
  - b) the other party deceases or is placed under guardianship;
  - c) the business of the other party is liquidated or terminated (not for the sake of a company merger).
- 10.6 If:
- a) there is a change of control at the other party;
  - b) the other party omits to pay an invoice sum or part thereof within the term set for this and does not rectify this omission within a reasonable term set by Avit to that end,

Avit has the right by reason of the mere occurrence of one of the circumstances stated above either to terminate the Agreement without court intervention, or to claim any sum owed by the Client by reason of the work carried out by Avit, immediately and without any warning or notice of default being required, in full, all this without prejudice to its right to compensation of costs, damage and interest. The Client indemnifies Avit against any third-party claims resulting from or relating to the termination referred to in the preceding sentence.

## **11 Liability**

- 11.1 Any liability of Avit for an attributable failure in the performance of the Agreement or for any other reason including any obligations laid down in Article 14 (Warranty and Complaints) is expressly limited (maximum) to the total order sum or the sum which is actually paid out by the insurer of Avit in the occurrence. This limitation of liability also applies to any warranties granted by Avit to the Client in these Terms and Conditions. If, for the largest part, the Agreement is a continuing performance contract with a duration of more than one year, the relevant order sum shall be set at the total of any amounts paid by the Client (ex VAT) during a period of 12 months immediately preceding such attributable failure.
- 11.2 In no event, shall the total liability of Avit for direct damage, regardless on what ground, amount to more than EUR 500,000 (in words: five hundred thousand Euro).
- 11.3 Avit's liability for damages by reason of death, physical injury or material damage to goods shall never amount to more than EUR 1,250,000 Euro (in words: one million, two-hundred thousand Euro).
- 11.4 Any liability of Avit for indirect damages, consequential damages, loss of profit, loss of savings, reduced goodwill, damages caused by interrupted business, damages resulting from claims from clients of the Client, damages resulting from use of goods, materials or software of third parties the Client has requested Avit to use, and damages resulting from the involvement of suppliers at the initiative of the Client, is excluded. Liability of Avit is also excluded for impairment, destruction and/or loss of data or documents.
- 11.5 Furthermore, Avit shall not be liable for:
- a) damage to goods belonging to the Client or third parties that were held by Avit in connection with the delivery;
  - b) damage incurred by the Client as a result of actions taken by third parties (such as hackers) who, while using e.g. the (ICT) facilities installed for the Client by Avit, seek or obtain access to property or information of the Client;
  - c) damage incurred by the Client resulting from Force Majeure on the part of Avit;
  - d) damage that could have been prevented by the Client by properly checking correctness of the delivery and soundness of the goods delivered before using them.
- 11.6 The exceptions and limitations set forth in article 11.1 - 11.5 do not apply if and to the extent that the damage is due to gross negligence or willful intent of Avit



management. The exclusions of liability set forth in this Article 11 do not affect any exclusions of liability set forth in other provisions of these Terms and Conditions or the Agreement.

- 11.7 Save performance by Avit is permanently impossible, liability of Avit because of attributable failure in the performance of an Agreement shall only come about, if the Client sends Avit a notice of default without delay, while setting a reasonable term for remedying the failure, and Avit also continues to fail to perform its obligations after such term in an attributable manner. The notice of default shall include the most complete and detailed description possible of the failure, allowing Avit to respond adequately.
- 11.8 Condition to the creation of any right to damages shall always be that the Client reports the damage as soon as possible after its occurrence to Avit, in writing. All and any claims for damages against Avit will expire by the mere passing of twenty-four months after the occurrence of the claim.
- 11.9 The Client shall indemnify Avit against any and all claims from third parties for product liability resulting from a defect in a product or system that is delivered by the Client to that third party and which product or system includes goods, software or other materials delivered by Avit, save and to the extent that the Client can prove that the damage of that third party was caused by such goods, software or materials.
- 11.10 That laid down in this article, as also all and any other limitations and exclusions of liability stated in these Terms and Conditions apply also to the benefit of all persons/legal entities used by Avit in the performance of the Agreement.

## **12 Force Majeure**

- 12.1 Avit is not held to comply with any obligation, including warranty arrangements or agreements to pay damages agreed by the parties, if it is prevented from doing so as a result of force majeure. Force majeure (as set forth in sections 6:74 and 6:75 of the Dutch Civil Code) includes: (i) force majeure on the part of Avit's suppliers, (ii) undue performance of any suppliers the Client instructed Avit to use, (iii) defects occurring in any goods, equipment, software or materials of third parties used the Client instructed Avit to use, (iv) measures taken by the government, (v) power outage, (vi) malfunctions of the internet, computer network and/or telecommunication facilities, (vii) war, (viii) occupation of work premises, (ix) strikes, (x) general transportation problems.
- 12.2 If Avit is of the opinion that the Force Majeure situation is of a temporary nature, Avit has the right to stay the performance of the Agreement temporarily, until the circumstance involving force majeure ceases to exist.
- 12.3 If Avit is of the opinion that the force majeure situation will be permanent, the parties shall agree on an arrangement providing for full or partial termination of the Agreement and the consequences thereof. A situation of force majeure is considered to be of a permanent nature, if it has continued for a period of 90 days at least. In that case, Avit shall have the right to terminate the Agreement, in full or in part, in writing.
- 12.4 Avit shall have the right to claim payment of all the work carried out before the force majeure situation appeared. All that has been done or delivered by Avit under the Agreement, shall be charged pro rata its level of completeness, and the parties shall have no further claims in that respect.
- 12.5 The party who believes to be faced with a force majeure situation, shall immediately notify the other party in writing by registered letter.

## **13 Intellectual or Industrial Property Rights**

- 13.1 All intellectual and industrial property rights in the software, websites, data files, equipment or other materials such as analyses, designs, documents, reports, price-quotes as also any materials used to prepare them exclusively rest upon

- Avit, Avit's licensors and/or its suppliers. The Client exclusively acquires the rights of use resulting from the Terms and Conditions, or from the terms and conditions of Avit's licensors and/or suppliers or producers respectively, in addition to the rights already assigned to the Client by law. The Client shall refrain from any other right or further reaching right, inter alia to reproduce software, websites, data files or other materials.
- 13.2 If the parties have agreed in writing that an intellectual property right in respect of software, websites, data files, equipment and/or other materials, which have been specifically designed and/or developed for the Client, shall transfer to the Client, then this will not affect the right of and possibility for Avit to use and exploit the parts, general principles, ideas, designs, algorithms, documents, works, programming languages, protocols, standards etc., on which such development is based for other purposes, either for itself or for third parties, without limitations. Nor shall transfer of an intellectual property right affect the right of Avit to make developments, for itself or for third parties, that are similar to or derived from those made for the sake of the Client.
- 13.3 A right (of use) granted to the Client is non-exclusive and non-transferable to third parties and ends immediately upon termination of the Agreement (save explicitly otherwise agreed in respect of any specific rights) as also in case of non-performance of the Agreement on the part of the Client, if this is not cured by the Client within a reasonable period set by Avit.
- 13.4 The Client shall not remove or alter any reference relating to the confidential nature of or to any copyrights, trademarks, trade names and/or any other intellectual or industrial property rights set forth or included in the software, websites, data files, equipment and/or materials.
- 13.5 Even when the Agreement does not explicitly allow Avit to do so, Avit may implement technical measures to protect the software, equipment, data files, websites, etc. from (unauthorized) use in connection with a contractually agreed limitation as to the content and/or duration of the right to use such objects. The Client shall never remove (or have removed) or bypass (or have bypassed) such a technical measure.
- 13.6 Avit indemnifies the Client against any claims from third parties stating that the software, websites, data files, equipment and or other materials developed by Avit itself infringe a right of intellectual property of that third party, provided the Client informs Avit without delay in writing of the existence and content of such a claim and leaves the handling of the case entirely up to Avit, including reaching a settlement, if possible. The Client shall issue all powers of attorney, information and cooperation to Avit required to defend against such claims, if necessary in the name of the Client. This indemnification obligation does not apply, if the claimed infringement relates to (i) any materials that have been provided by the Client to be used, processed, adapted or incorporated by Avit, or (ii) changes made to the software, websites, data-files, equipment and/or other materials by the Client or by a third party instructed by the Client without prior written consent of Avit. If an irrevocable and final court decision is rendered, confirming that any software, websites, data files, equipment and or other materials developed by Avit itself infringe a right of intellectual property of that third party or if in the opinion of Avit such infringement is likely to occur, then Avit shall, if possible, ensure that the Client can continue to use the software, websites, data files and/or materials delivered to it by Avit or functionally similar versions thereof. Any other indemnification obligation or obligation extending beyond the above is excluded.
- 13.7 The Client warrants that no third party has any rights preventing the Client from making available to Avit any equipment, software, material designed to be used for websites (e.g. video material, text, music, domain names, logos, hyperlinks, etc.), data files or other materials, including design materials, with the aim to use, adapt, install or incorporate them (e.g. in a website). The Client indemnifies

Avit against any claim from third parties stating that such provision or such use, adaptation, installing and/or incorporation infringes a right of such third party.

## **14 Warranty and Complaints**

- 14.1 In respect of any goods from third parties (suppliers) that are delivered by or through Avit to the Client (comprising in any case hardware and software), the Client agrees that it can only invoke such warranty or complaint to the extent it exists under a warranty or right to complain granted by the supplier in question, i.e. under the terms and conditions applicable between the supplier and Avit. And so, Avit does not grant any own right to warranty or complaint to the Client, but only grants the rights which it can enforce in this respect against the suppliers in question, as much as possible, to the Client. As from the moment on which the Client has fully paid the sum due by the Client for the Order, all the rights that can be invoked by Avit in respect of the delivery of those goods towards its suppliers (and/or any other parties) shall integrally transfer to the Client, without any further action being required. To the extent that any further actions would be required to effect such transfer, Avit shall grant all such cooperation upon first request of the Client as can reasonably be expected from it.
- 14.2 Avit will provide the Client with all relevant information enabling the Client to exercise its rights towards the relevant parties independently. Save agreed otherwise, the Client shall directly contact the suppliers of Avit when exercising its warranty rights and/or rights to complain. Where possible, Avit shall assist and/or shall mediate in the exercise of such warranty and complaint rights.
- 14.3 Complaints regarding any warranty provided by suppliers of Avit shall be made in conformity with the relevant applicable terms and conditions.
- 14.4 At the request of the Client and in consultation with Avit's suppliers, Avit is willing in special cases to see to repairs and/or adaptation of specific hard and software (coming from suppliers) (as additional work) in its own workshop or to assist by replacing and/or adapting that delivered, in full or in part, on location.
- 14.5 Regarding any services rendered by Avit to the Client, Avit warrants that it will provide them in conformity with the conditions set forth in the Agreement.
- 14.6 In respect of software that has been developed by Avit itself (and in respect of which the property rights and relevant rights of use rest upon Avit), Avit warrants that the Client is given a right to use the software for the duration of the Agreement or so much longer as set forth in the Agreement.
- 14.7 To the extent that Avit itself gives any guarantee, it shall not apply:
- a) if the defects or malfunctions result from improper, negligent or incompetent use or are caused by something other than the defectiveness of the materials or the way in which they were produced;
  - b) to so-called Do-It-Yourself packages and materials packaged in a similar manner;
  - c) in respect of used goods and materials;
  - d) if, during the warranty period, the Client alters or repairs the goods of its own initiative or allows third parties to do so;
  - e) in respect of defects that are partially or entirely caused as a result of applicability of any (governmental) decree or regulation relating to the nature and/or quality of the materials used; and
  - f) if the defects have occurred as a result of damage caused by lightning, fire or water or any other external impact.
- 14.8 In respect of each delivery of goods, the Client is obliged to independently and promptly verify whether the goods supplied are in conformity with the Agreement. The Client is obliged to notify any visible defects immediately upon

receipt in the consignment note or to Avit directly. Any complaints regarding a warranty granted by Avit have to be filed in writing by fourteen calendar days after receipt of the goods. After expiry of this period, no claims can be lodged and the Client is deemed to have accepted the goods as delivered.

- 14.9 Save otherwise agreed, Avit is only obliged to comply with its warranty obligations, if any, in respect of materials and services delivered or rendered in the Netherlands.
- 14.10 To the extent that Avit itself gives any warranties, it does not accept any further obligation(s) but the obligation to (at its own discretion) replace, credit and/or repair any goods delivered. To the extent that Avit repairs goods, the warranty is only given in respect of due performance of the agreed work.
- 14.11 Avit's failure to meet a warranty obligation does not relieve the Client in any way from its own obligations under the Agreement. If the Client does not, not properly, or not timely, comply with its obligations under the Agreement, Avit can no longer be held to comply with any relevant warranty obligations.

## **15 Processing of Personal Data, Confidential Data and Ban on Staff Takeover**

- 15.1 If within the context of performing services, Avit has to process personal data of (customers of) the Client, Avit can be considered the "Processor" within the meaning of the General Data Protection Regulation (GDPR) and the Client the "Controller".
- 15.2 The Client warrants towards Avit that the data are not unlawful and do not infringe any third-party rights. The Client indemnifies Avit against any (court) claim of third parties, including supervisory authorities and data subjects, on whatever ground, relating to the processing of these data within the context of the Agreement.
- 15.3 The Client has obligations towards third parties under the GDPR, such as the obligation to give information, as also granting perusal of, correcting and removing personal data of data subjects. The responsibility for compliance with these obligations fully and exclusively rests upon the Client. Where technically possible, Avit will cooperate in any obligations to be complied with by the Client, including transmitting any requests of third parties within the context of the obligations of the Client. The costs associated with such cooperation shall be fully to the account of the Client.
- 15.4 Avit shall (order to) take, uphold and, if necessary, adapt technical and organizational measures to prevent the personal data to be processed by order of the Client from being processed unlawfully. Avit shall not process the personal data obtained from the Client for its own purposes.
- 15.5 The Client acknowledges to have full knowledge of the technical and organizational measures to be implemented by Avit and herewith declares that while taking into account the state of the art and costs of implementation, they guarantee an adequate level of protection, seen the risks involved in processing and the nature of the data to be protected.
- 15.6 If, despite the fact that Avit implemented the agreed appropriate measures a security incident occurs which involves i) destruction, ii) loss, iii) fraud, iv) unauthorized distribution of and/or access to, or (v) any other form of unlawful processing of personal data, the Client cannot hold Avit liable for any damage or loss incurred by the Client as a result.
- 15.7 If the Client expressly asks for measures which in the view of Avit cannot be considered appropriate technical and organizational measures, their implementation shall fully be at the account and risk of the Client and Avit will not accept any liability for any loss or damage incurred by the Client or third parties.
- 15.8 The Client fully indemnifies Avit against all and any third-party claims, including – but not limited to – fines imposed by supervisory authorities which are founded in any manner on the allegation that the technical and organizational measures as referred to in article 15.7 taken by Avit are not adequate.

- 15.9 Avit shall not transmit or provide personal data to countries outside the European Union, save Avit has obtained express written consent of the Client to that end, subject to additional conditions or not.
- 15.10 In the event of a data leak, as laid down in section 33 GDPR regarding the personal data processed by order of the Client, Avit shall promptly report this to the Client. Next, Avit shall give the Client the information desired by the Client upon first request of the Client and grants such full cooperation as the Client may reasonably expect from Avit.
- 15.11 Either party warrants that all the data received from the other party which they know or believe to know to be of a confidential nature remain secret, save a duty by law demands disclosure of such data. The party receiving confidential data shall only use them for the purpose they have been provided for. Data shall be considered confidential in any case, if they are marked as such by one of the parties.
- 15.12 Neither party shall (make an offer to) employ employees of the other party who are or were involved in the performance of the Agreement, or have them work for it otherwise, directly or indirectly, for the term of the Agreement as also one year after its termination, save prior written consent of the other party. In the occurrence, Avit shall not deny such consent on the condition that the Client has agreed an appropriate indemnification with Avit.

## **16 Transfer of Rights, Severability and Penalty Clause**

- 16.1 The Client shall not sell and/or transfer any rights and/or obligations resulting from the Agreement to a third party.
- 16.2 Avit may transfer to a third party its right to receive payment for services rendered and/or goods sold.
- 16.3 If the Client consists of multiple persons and/or legal entities, then each of such persons/entities shall be jointly held to due compliance with the obligations set forth in the Agreement entered into with or for the sake of (one or more of) them.
- 16.4 Upon breach of that laid down in article 13 (Intellectual and Industrial Property Rights) and this article 16 (Transfer of Rights), the Client shall pay a penalty of EUR 5,000 for each breach, increased with a penalty of EUR 500 for each calendar day the breach continues.

## **17 Advance Payment/Collaterol**

- 17.1 At all times Avit shall be entitled to claim advance payment or collaterol from the Client before proceeding to delivery.
- 17.2 If the Client does not make the requested advance payment or provide the requested security, Avit's obligation to deliver the goods and/or services ends, without prejudice to Avit's right to compensation by the Client of any damage, costs and/or interests incurred by Avit as a result of such failure.

## **18 Liabilities of Client**

- 18.1 The Client will at all times provide Avit with such data, information and cooperation which is necessary or useful for the proper performance by Avit of its obligations under the Agreement, including granting Avit access to the Client's premises and relevant equipment. If the Client uses its own employees to grant such cooperation, it shall make sure that such employees have the necessary knowledge, experience, capacity and qualifications.
- 18.2 The Client is solely responsible for the selection, use and application within its own organization of any equipment, software, websites, databases or other products and materials and/or services (to be) provided by Avit, including responsibility for any verification and security procedures and adequate system management.
- 18.3 If the Client makes available to Avit any software, websites, content, materials, database files or information on a data carrier, this shall comply with Avit's specifications.
- 18.4 If the Client fails to make available to Avit the information, equipment, software and/or employees that are necessary for timely performance of the Agreement or for

compliance with the arrangements made, or if the Client fails to comply with any other obligation, Avit shall have the right to suspend performance of the Agreement, in full or in part, and to charge the Client for all the associated costs at its normal rates, notwithstanding any other right of Avit.

- 18.5 If any employees of Avit provide services at the premises of the Client, the Client shall provide, free of charge, all facilities reasonably requested by those employees, including a working space with computer, data and telecommunication facilities. The space and such facilities shall comply with all legal and other applicable requirements as to working conditions. The Client indemnifies Avit against any claims from third parties, including employees of Avit, stating that they have incurred damage as a result of the performance of the Agreement and/or the actions or omissions of the Client and/or unsafe situations within the Client's organization. The Client shall make communicate to Avit's employees the relevant house and security rules that apply within its organization *before* start of the work.
- 18.6 If, in the performance of the Agreement, Avit uses any telecommunication facilities (including, but not limited to, internet and data connections, and/or SIP connections), the Client shall be responsible for the right choice of, and timely and adequate access to them, except for the facilities that are under direct use and control of Avit. Avit will never be liable for any damage or costs by reason of transmission errors, malfunctions or the unavailability of these facilities, save the Client proves that the damage or costs are caused directly by the management of Avit's willful intent or gross negligence.
- 18.7 The Client shall see to an environment for the equipment supplied by Avit that complies with the requirements set by the manufacturer of the relevant equipment in respect of e.g. (but not limited to) temperature, humidity, power supply, technical and environmental requirements, etc.

## **19 Migration**

- 19.1 If the Agreement ends, Avit shall:
- a) transfer to the Client or a third party assigned by the Client all the equipment, data, material, software, source codes and available documentation (either in electronic form or in a form to be agreed) which are the property of the Client;
  - b) grant full cooperation, as far as necessary and upon first request of the Client in the transfer of property and data of the Client, as said above, and take all the measures which can be expected in reasonableness for ensuring due transfer of said property and data;
  - c) transfer, upon request of the Client, the specific knowledge regarding the systems and services managed or exploited for the Client to the Client or a third party assigned by the Client.
- 19.2 If the Agreement ends, upon first request of the Client, Avit shall:
- a) grant a license to the Client or a third party assigned by the Client, in software and tools the intellectual property rights of which rest with Avit. In that case, the parties shall lay down the conditions on which the license is granted in a license agreement;
  - b) transfer to the Client or a third party assigned by the Client all the equipment, software, any source codes and available documentation owned by Avit and marked by the parties as exclusively or mainly used to provide the services to the Client or which are of major interest to continuity of the business processes of the Client, all this to the extent that the Client has paid for such equipment, software and documentation.
- 19.3 If there is disagreement between the parties on the title of the equipment, materials, software and available documentation, or the intellectual (property) rights in them respectively, it is presumed that such title rests with Avit, save it appears otherwise based on proof to the contrary to be furnished by the Client.
- 19.4 Next to that laid down in the preceding paragraphs of this article Avit is held to transfer its information, knowledge and experience to the Client or a third party assigned by the Client.

- 19.5 Furthermore, Avit commits itself to provide, based on the Avit list of rates as applicable at the time of termination of the Agreement, to provide full support for six (6) months following the end of the Agreement in order to effect smooth transfer of the services at the Client or at a third party assigned by the Client.

## **20 Escrow**

- 20.1 The Client may agree with Avit that Avit provides for escrow whereat the associated reasonable cost will be at the account of the Client.
- 20.2 Escrow covers all the undisclosed information the Client reasonably needs for error remedy, maintenance and management of the standard software to allow it to continue to use it.

## **21 Applicable Law**

- 19.1 To all our Agreements Dutch law applies exclusively.
- 19.2 All and any disputes which occur in relation to or result from the Terms and Conditions and/or Agreements shall be presented with due account of Article 8 Dutch Code of Civil Procedure to the competent judge of the District Court in Utrecht.
- 19.3 Any provision contrary to imperative provisions of Dutch law shall be interpreted, each time, as far as possible, in such sense that the purport of the provision remains intact as much as possible, but that the provision will be in conformity with then applicable law. In no event, will the voidness of some provision affect the validity of any other Terms and Conditions. Avit and the Client shall consult in that case with the aim of agreeing new provisions to replace the original provisions, whereat the goal and purport of the original provision shall remain intact as much as possible.