

## **General Conditions**

**Info Support MITS B.V.**



## Colophon

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## Index

<b>1</b>	<b>GENERAL CONDITIONS</b>	<b>3</b>
Article 1	Defenitions	3
Article 2	Applicability	3
Article 3	Proposals and formation of the Agreement	3
Article 4	Prices	3
Article 5	Payment and default	4
Article 6	Delivery periods	4
Article 7	Intellectual or industrial property rights	4
Article 8	Retention of title	5
Article 9	Client's Cooperation	5
Article 10	Personnel	5
Article 11	Confidential information	6
Article 12	Force majeure	6
Article 13	Liability	6
Article 14	Termination	7
Article 15	Repayment upon termination of the Agreement	7
Article 16	Applicable law and dispute resolution	7
<b>2</b>	<b>SERVICE PROVISION</b>	<b>8</b>
Article 17	Execution	8
Article 18	Changes and additional work	8
<b>3</b>	<b>DEVELOPMENT, DELIVERY, INSTALLATION AND ACCEPTANCE OF SOFTWARE</b>	<b>10</b>
Article 19	Software development	10
Article 20	Delivery, installation acceptance	10
<b>4</b>	<b>USE AND MAINTENANCE OF SOFTWARE</b>	<b>12</b>
Article 21	License	12
Article 22	Support	13
Article 23	Maintenance	13

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# 1 General Conditions

## Article 1 Defenitions

The following terms as used in these general conditions are defined as follows:

<u>Contract value:</u>	the invoiced amount by Info Support to the Client (exclusive of BTW, Dutch VAT), which the Client then pays to Info Support by virtue of an Agreement, to the extent that this involves hours worked by Info Support's employees, or to the extent that this involves goods delivered or services provided by Info Support, but in this case only to the extent that goods are delivered and no hours are worked or services are provided but not invoiced on an hourly basis;
<u>Errors:</u>	failure to satisfy functional specifications supplied by Info Support in writing and, in case of custom software, failure to satisfy the functional specifications explicitly agreed upon in writing;;
<u>Info Support :</u>	the private company with limited liability Info Support MITS B.V., with its registered office in Veenendaal;
<u>Delivery:</u>	delivery of orders for items, services or activities or combinations thereof at the agreed upon site(s) in accordance with the Agreement or instructions
<u>Normal office hours:</u>	hours between 8:30 a.m. to 5:30 p.m. from Monday up to and including Friday - with the exception of public holidays;
<u>Client:</u>	any natural or legal person that has applied Info Support for a quotation , or to whom Info Support has sent a quotation or with whom Info Support conducts negotiations on the formation of an Agreement, or with whom Info Support has concluded an Agreement;
<u>Order:</u>	an order from the Client;
<u>Agreement:</u>	any Agreement between Info Support and the Client for the delivery of items or to perform activities/services or the granting of rights (of use) with respect to intellectual property, such as the copyright with respect to software or combinations thereof, to which these general conditions apply and any supplement or change to such an Agreement;

## Article 2 Applicability

- 2.1 These general conditions apply to all proposals, offers and Agreements to which Info Support is a party. Deviations to these general conditions only apply if agreed upon in writing.
- 2.2 In the event of contradiction between any of these stipulations and the Agreement the Agreement shall prevail.

- 2.3 In the event that any of these stipulations are declared null and void, are nullified or otherwise become legally void, Info Support has the right to replace this/these stipulation(s) and the

remaining stipulations of these general conditions will remain in force to the extent possible.

## Article 3 Proposals and formation of the Agreement

- 3.1 All proposals, offers or quotations from Info Support are issued without obligations and only represent an invitation to make an offer unless the proposal in question specifically stipulates otherwise in writing.
- 3.2 An Agreement between the Client and Info Support is reached if and to the extent that Info Support accepts an Order from the Client in writing.
- 3.3 If, at the Client's request, Info Support performs any activity before complete agreement is reached regarding the price and payment conditions for that activity, the Client will pay Info Support for this service in conformance with Info Support's currently applicable rates.
- 3.4 Supplement(s) or changes to an Agreement that has been reached must be agreed upon in writing.

## Article 4 Prices

- 4.1 All prices charged by Info Support are exclusive of VAT and other levies imposed by the government. Unless specifically agreed upon otherwise, the costs of packaging and shipping, any installation or mounting costs, the costs for performing activities outside normal office hours, as well as any travel and lodging costs incurred in the framework of providing services, are deemed not to be included in the price agreed upon; such costs are to be paid by the Client.
- 4.2 Info Support is entitled to charge any factors that increase the cost price that arise more than three months after the Agreement is entered into.
- 4.3 Unless the parties have agreed otherwise, the prices mentioned in the Agreement will be increased in January and July of each year by the price index figures for "CAO lonen per uur, inclusief bijzondere beloningen, personeel zakelijke dienstverlening (70-74)" as published by the Dutch Central Bureau of Statistics (CBS; Centraal Bureau van de Statistiek) . Such an increase will not be implemented if Info Support has already implemented a price increase during the previous six month period (January up to and including June or July up to and including December) in conformance with article 4.2 by a percentage equal to or higher than the percentage of increase that would take effect if article 4.3 were to be applied.

If a price increase implemented by virtue of article 4.2 is lower than the percentage that would result from applying article 4.3, the percentage of increase from article 4.3 implemented during the previous six month period will be decreased by the percentage of increase implemented by virtue of article 4.2.

## Article 5 Payment and default

- 5.1 The Client must pay Info Support's invoices in conformance with the payment conditions specified on the invoice. If no payment conditions are specified on the invoice, the Client must pay the invoice within 30 days after the invoice date.
- 5.2 If the Client fails to pay in a timely manner, he will be in default de jure. In that case, without prejudice to Info Support's (other) rights, the Client must pay the legal interest specified in Article 6:119a of the Dutch Civil Code from the first day in which he is in default until the date on which the full invoice is paid, as well as any collection costs including the costs for legal assistance in and/or out of court.
- 5.3 The Client is not entitled to set-off or suspension of payment and/or the implementation of obligations that ensue from Agreements or these General Conditions.

## Article 6 Delivery periods

- 6.1 All (Delivery) periods mentioned by Info Support are indicative; they are not fatal. They are based on the facts and applicable circumstances of which Info Support was aware at the time the Agreement was concluded. Info Support will take the (Delivery) periods specified into account to the extent possible.
- 6.2 Failure to deliver within a mentioned (Delivery) period does not place Info Support in default. Info Support is not bound by (Delivery) periods that can no longer be met due to circumstances outside its control, which arose after the Agreement was concluded. If it is likely that a period will not be, the parties will consult with one another as quickly as possible.
- 6.3 Info Support has the right to carry out partial deliveries to satisfy the Agreement.

## Article 7 Intellectual or industrial property rights

- 7.1 All intellectual or industrial property rights to all goods, items, software, hardware or other materials such as analyses, drawings, designs, documentation, reports, or proposals developed by virtue of the Agreement or which Info Support provides to the Client by virtue of the Agreement, as well as preparatory material for such items, and to everything that arises as a direct result of the service provision agreed upon, for example software, rest exclusively with Info Support or its licensors. As long as the Agreement remains in force, the Client will be exclusively granted licenses and authorities for the software made available under the terms of these conditions or explicitly assigned in some other manner. For the rest, the Client may not reproduce the software or other materials or create copies of this software or these materials.

Info Support always has the right to utilise so-called Open Source Software in developing functionality that is requested by the Client. In such a case, that software is offered under the original license and the Client is deemed to abide by these license conditions (so-called Third Party license-conditions), with regard to both the

General Conditions Info Support MITS B.V.  
Version: 4.7 27 december 2011

licenser and Info Support.

- 7.2 The Client is aware that the items, software, hardware and other materials made available contain confidential information and company secrets about Info Support or its licensors. The Client pledges to keep this information, and these items, software, hardware and materials confidential, and promises not to reveal them or allow them to be used by third parties and only to use them for the purpose for which they were made available to him. The Client will also impose such confidentiality obligations on all persons working in the Client's organisation, who use the items, software, hardware and/or other materials.
- 7.3 The Client is not permitted to delete or change any notices regarding copyrights, brands, brand names or other intellectual or industrial property rights from the items, software, hardware or materials, including any notices regarding the confidential nature and confidentiality of the software.
- 7.4 Info Support is authorised to take technical measures to protect its software. The Client is not permitted to remove any technical security features.
- 7.5 Within the limits specified in article 7.7, Info Support will indemnify the Client against any legal action based on the assertion that software, hardware or materials developed by Info Support itself infringe on any intellectual or industrial property right that applies in the Netherlands, under the condition that the Client immediately informs Info Support in writing – upon penalty of forfeiture of any claim against Info Support – of the existence and the substance of the legal claim and the Client leaves the complete handling of the case, including the effectuation of any settlements, to Info Support.
- The Client will provide Info Support the requisite authorities, information and grant any cooperation required, if necessary in the Client's name, to defend itself against such legal actions.
- 7.6 The obligation to indemnification does not apply if and to the extent that the infringement in question involves any changes the Client has made to the software, hardware or materials or has allowed third parties to make to these materials.
- 7.7 If a court irrevocably rules that software, hardware or materials developed by Info Support itself infringes any third party intellectual or industrial property right or if in Info Support's opinion there is a chance that such an infringement has occurred or may occur, Info Support will, at its own discretion, take back the materials delivered by crediting the Contract value minus a reasonable usage fee, or ensure that the Client can continue to use the software, hardware or materials delivered or their functional equivalents, without disruption.
- Moreover, Info Support will pay the Client damages in the form of money, if the Client is obliged to pay damages to the entitled party, with the understanding that any damages paid by Info Support in the form of money shall never exceed the Contract value, unless gross negligence or intentional malpractice of Info Support B.V. .
- 7.8 Any other or further liability or obligation to indemnify on the part of Info Support due to any

violation of third party intellectual or industrial property rights is excluded, including infringements caused by the use of hardware, software and/or materials delivered in relationship with hardware, software and/or materials not delivered or provided by Info Support or due to use in some manner other than that for which the hardware, software and/or materials were developed or intended.

- 7.9 The Client guarantees that no third party rights stand in the way of making hardware, software or materials available to Info Support with the objective of using or processing such materials. The Client guarantees that if the designated activities involve supplementing, expanding or changing computer software being used by the Client, the Client is authorised to have the requisite changes made to the (source code for the) software, whether as the owner/copyright holder, or by virtue of authorisation obtained by the Client from the owner/copyright holder. The Client will indemnify Info Support against any action based on the assertion that making such software available or using or editing this software in this way, infringes any third party right.

## **Article 8 Retention of title**

- 8.1 Notwithstanding the actual delivery, the ownership of items delivered by Info Support is not transferred to the Client until the Client has fully paid Info Support all amounts due or to be due by virtue of the Agreement, including the purchase price, and any surcharges, interest, taxes and costs due by virtue of these conditions or the Agreement.
- 8.2 The Client is obliged to maintain the items delivered subject to retention of title with due care and as recognized property belonging to Info Support, and to insure this property against all common risks such as in any event fire, explosion, damage and theft.

## **Article 9 Client's Cooperation**

- 9.1 The Client must make the equipment – including software and licenses - , materials, data or information required for the execution of the Agreement available to Info Support in a proper and timely manner.
- 9.2 The Client can request Info Support to buy specific software or licenses. The Client account for these additional costs.
- 9.3 The Client is responsible for the use and the application of the hardware, software and the services provided by Info Support within his organisation as well as for the control and security procedures and for adequate system management. Info Support does not guarantee that the Client can achieve a specific objective with the services Info Support has provided and/or the items it has delivered and/or with software it has made available, unless explicitly stipulated otherwise in the Agreement.
- 9.4 If it has been agreed that the Client will make software, materials or data available on information media, these will conform to the specifications required for performing the activities.

- 9.5 If data required to fulfill the Agreement is not made available to Info Support, not made available in a timely manner or not made available in conformance with the agreements or if the Client fails to fulfill its obligations in some other manner, Info Support has the right (in any event) to suspend fulfillment of the Agreement and has the right to invoice the Client for any costs arising from such failure – for example in connection with insufficient work for its employees – in conformance with its customary rates.
- 9.6 The Client may not use the items Info Support makes available to him for any objective other than that for which they were made available and the Client must return the items made available to him to Info Support at the end of the Agreement in the same condition in which Info Support made them available, except for changes caused by normal wear and tear.
- 9.7 If the activities agreed upon are to be performed partially or entirely at the Client's offices, the Client must make the space and tools required to perform the activities available to Info Support's employees free of charge. Workplaces made available for this purpose must satisfy the Arbo norms. The Client will indemnify Info Support against any third party claims, including claims by Info Support employees, in connection with any damage suffered while fulfilling the Agreement that is the consequence of actions or neglect on the part of the Client or that results from unsafe situations in the Client's organisation.
- 9.8 The Client is liable for all damage, including any damage to business operations or consequential loss that Info Support or its recognised representatives or companies or any other third party will suffer or has suffered as the result of shortcomings attributable to the Client. The Client is specifically liable for all damage that results from inaccuracies in the data and/or drawings the Client provides to Info Support, or damage that arises from shortcomings in the activities performed by the Client himself or by third parties in the framework of fulfilling the Agreement.
- 9.9 The Client's liability by virtue of this article is limited to the Contract value, except in cases of gross negligence or intentional malpractice of the Client.

## **Article 10 Personnel**

- 10.1 The Client recognises that Info Support, being a "knowledge enterprise", makes considerable investments in training its employees and that, because of this, Info Support has a considerable interest in ensuring that its employees do not enter into an employment contract for the Client or legal entities affiliated with the Client without Info Support's permission. After all, Info Support can only continue to invest in its employee's knowledge if Info Support has confidence that the employees will remain with Info Support for a substantial period of time. In this framework, an employee is defined as any person working for Info Support or a legal entity affiliated with Info Support on any type of contractual basis. Info Support recognises that the Client has a similar interest. Against this background, the parties agree that Info Support and the Client are mutually not permitted to engage the other party's employees– other than in the framework of an agreement existing between them - (including any employees of Info Support or legal entities directly or indirectly affiliated with Info

Support and any of the Client's employees or employees of any legal entity directly or indirectly affiliated with the Client's company, based on a direct contract or in any other way, for Info Support or the Client or any legal entity directly or indirect affiliated with one of these companies) for a period of three years after the moment at which the (latest) agreement between the parties expires. The only exception to this stipulation is if the other party grants its permission in writing, such permission possibly being subject to certain conditions. The restriction extends not only to Info Support and the Client but also to all companies and legal entities that are directly or indirectly affiliated with them.

The restriction only covers employees with which the other party (or a legal entity directly or indirectly affiliated with that party) has had direct contact in the framework of fulfilling an Agreement.

If this contact has not existed for three years or longer, the restriction with regard to the employee in question no longer applies, even if there are other Agreements between the parties. If the ban is violated and if it is ascertained that an employee covered by this ban performs activities for the other contract party during the moratorium period (or for a legal entity directly or indirectly affiliated with them, whether or not based on a direct agreement with this employee, this other contract party forfeits a penalty to the counterparty for whom the employee previously performed activities – either directly or indirectly – thus to Info Support or the Client, in the amount of € 250,000 (two hundred fifty thousand Euros), without any proof of default being required, without prejudice to the right of the party who claims the penalty to claim additional damages or to demand compliance with the terms of this article. This penalty will be subtracted from any damages claimed. The ban does not apply to employees with whom the labour agreement has been terminated against the employee's will, unless this was the result of serious culpable behaviour on the part of the employee.

- 10.2 Info Support has the right to replace its employees who are charged with the execution of activities for the Client.
- 10.3 If the activities are performed at the Client's site, Info Support is not obliged to replace an employee who is unable to perform his activities due to illness, unless the illness continues for more than a month. Any delay in the execution of the activities that arises by virtue of implementing the terms of this article is at Client's risk and expense.
- 10.4 If the activities are performed at the Client's site, Info Support has the right to exempt one or more of its employees from performing such activities for 15 days in order to take part in training sessions or to deal with other temporary situations. Any delay in the execution of the activities that arises by virtue of implementing the terms of this article will be at the Client's risk and expense.

## **Article 11 Confidential information**

- 11.1 Both during and after the end of the Agreement the Parties are obliged to maintain the confidentiality of all confidential information that they have obtained in the framework of fulfilling

General Conditions Info Support MITS B.V.  
Version: 4.7 27 december 2011

this Agreement. The parties will also impose this obligation to maintain confidentiality on their subordinates, as well as on any third parties they utilise in fulfilling this Agreement.

## **Article 12 Force majeure**

- 12.1 Neither of the parties is obliged to fulfill any of its obligations if it is prohibited from doing so by force majeure. In this context, force majeure is also defined as a (attributable or not) shortcoming on the part of Info Support's suppliers or other contract partners. If the force majeure situation lasts longer than three months, both parties have the right to dissolve the Agreement in writing. Any activities already performed by virtue of the Agreement, will be invoiced proportionately; without the parties owing each other any further amounts.

## **Article 13 Liability**

- 13.1 Info Support is not obliged to reimburse damages or any other performance if the shortcoming of Info Support is not immediately reported to Info Support in writing by the Client after the Client has discovered or reasonably could have discovered the shortcoming. Furthermore, Info Support is not liable for damages of any other performance if Info Support is not declared to be thoroughly in default.
- 13.2 Info Support is not liable for consequential damage, consequential loss, for example in connection with damage suffered by third parties, lost profits, damage due to loss or corruption of data (files), missed savings, damage due to stagnation of business operations and damage due to malfunction of a business process or of an administrative organisation or damage due to failure to meet a deadline, and/or physical injury.
- 13.3 Except in case of gross negligence or intentional malpractice of Info Support, in the case of an attributable shortcoming, at its own discretion Info Support shall only be obliged to:
  - a. eliminate the shortcomings or;
  - b. deliver replacement software, items or parts, but only after receiving the software, items or parts that exhibit shortcomings, or;
  - c. pay financial remuneration to be determined in consultation with the Client, or;
  - d. repay the Contract value received, or credit the Client for the invoice sent, while dissolving the agreement in part or in full with the proviso that refunding or crediting the Client only need to occur if and to the extent that the Client demonstrates that the items or the performance already delivered cannot be utilised effectively. The Client does not have any further rights, and consequently does not have the right to dissolve the agreement.
- 13.4 If Info Support, notwithstanding the provisions elsewhere in these General Conditions, is obliged to pay damages or penalties or any other financial compensation in connection with any failure to comply with Info Support's obligations or otherwise, Info Support's liability is, at all times, limited to the maximum of the Contract value or to the sum that is actually covered by Info Support's insurance in the case at hand, and shall be the lower of these two sums. The damage can only be recovered up to the amount that corresponds to the amount paid during one year

prior to the incident causing the damage by the Client to Info Support for the implementation of the Agreement whose implementation was the cause of this damage.

- 13.5 The Client indemnifies Info Support against all claims by third parties on the grounds of product liability as a result of a defect in a product or system supplied to a third party by the Client, which among other things consisted of equipment, software or other materials supplied by Info Support, except when and insofar the Client proves that the damage was caused by said equipment, software or other materials.
- 13.6 With reference to the performance already properly delivered within the framework of a (standing) agreement concluded between the parties, dissolution has no effect unless the Client can prove that what has already been delivered cannot be effectively utilised due to the failure to deliver the remaining performance.
- 13.7 Info Support may invoke the provisions from an Agreement and the General Conditions, such as limitation of its liability with respect to actions of third parties and the consequences thereof that are attributed to Info Support. The provisions of this Section also apply in the favour of all persons or legal entities Info Support serves in performance of the Agreement.

#### **Article 14 Termination**

- 14.1 The Client is in default by operation of law (de iure) and Info Support is authorised to fully or partially dissolve the Agreement without further notice of default or judicial intervention, without prejudice to its right to damages, if the Client is declared bankrupt, if the Client is granted a moratorium on payment, if the Client is permitted to a legally debt restructuring or if the Client is placed under guardianship or Client's assets are fully or partially put under administration and/or seized, or if a request for any of these is submitted, if the Client fully or partially transfers the authority over all or part of his enterprise, if the Client liquidates his enterprise or closes it down, or if the Client's business operations are terminated in any other manner or if the Client's goods or parts of these goods, are placed under prejudgment attachment or seizure under foreclosure. Info Support will never be held liable for payment of any damages due to such termination.
- 14.2 Info Support is always authorised to terminate the Agreement prematurely, without having to observe any notice period, if the Client allows

another IT expert who is not in the Client's service to inspect or access the software Info Support makes available to the Client. Info Support can never be liable to the Client for payment of any damages due to such cancellation.

- 14.3 Amounts that Info Support has invoiced before the moment the contract ends in connection with activities already performed or goods already delivered as part of the Agreement, continue to be due without prejudice and are immediately due and payable at the moment of termination.

#### **Article 15 Repayment upon termination of the Agreement**

- 15.1 At the moment the Agreement between the Client and Info Support ends for any reason whatsoever, the Client must immediately return to Info Support all items Info Support has made available to the Client, including software, hardware or other materials such as analyses, drawings, designs, documentation, reports, proposals, as well as preparatory materials; the Client is not authorised to make copies of any of these materials. The terms specified in the previous sentence also pertain to software that Info Support makes available to more than one Client or uses in the framework of its operational management for the development and/or the maintenance of software, such as software that is part of Info Support's so-called "software development path". The stipulations specified in this article – the contractual surrender obligation – also applies for equipment and materials, including software and licenses, bought by Info Support on request of the Client (partial) paid for by the Client. The previous stipulations do not apply, only in the case that the Agreement explicitly and unambiguously stipulates otherwise.

#### **Article 16 Applicable law and dispute resolution**

- 16.1 Dutch law applies to the Agreement between the parties.
- 16.2 All disputes that arise by virtue of these General Conditions and the Agreements will be settled, at the discretion of Info Support, by arbitration or the competent court in the district in which Info Support has one of its offices or the domicile of the Client.

## 2 Service Provision

In addition to the General Stipulations specified in these General Conditions, the conditions stipulated in this 'Service provision' section also apply to services provided by Info Support, for example providing organisational and IT advice, conducting feasibility studies, providing consultancy services, providing support or providing personnel for insourcing. These stipulations are without prejudice to the clauses regarding specific services, such as software development and use and maintenance of this software, included in the General Stipulations. In the event of any conflict between the General Stipulations and the provisions contained in this chapter, the latter provisions will prevail.

### Article 17 Execution

- 17.1 If Info Support provides services based on data to be supplied by the Client, this data will be prepared in accordance with the conditions set by Info Support and will be supplied at the risk and expense of the Client. The latter guarantees that all equipment and materials, data, software, procedures and instructions it has made available to Info Support are accurate and complete at all times and that all data carriers provided to Info Support comply with Info Support's specifications.
- 17.2 The Client will inform Info Support in advance in writing of any circumstances that are, or could potentially be, important to Info Support, e.g. reporting methods, any issues to which the Client would like to call attention, the Client's prioritisation, the availability of the Client's resources and employees, and any facts or circumstances that are exceptional or of which Info Support may not be aware. The Client will ensure the further distribution and inspection of the information provided by Info Support within the Client's organisation, and will assess this information partly on this basis and inform Info Support accordingly.
- 17.3 Info Support shall make every effort to conduct the service provision with due care, as the situation arises in conformance with the agreements and procedures specified in writing with the Client. All services provided by Info Support are conducted on an obligation to perform to the best of one's ability, unless and to the extent that Info Support has explicitly pledged a result in the Agreement and – in Info Support's opinion – the result in question is specified in sufficient detail. The primary principle is that Info Support is not responsible for realizing a project or for a project's progress. Info Support is never responsible if the Client's or a third party's employees also work on the project.
- 17.4 If it is agreed that the service will be provided in phases, Info Support is authorised to postpone providing services that are part of a subsequent phase until the Client has issued written approval regarding the results of the previous phase.
- 17.5 Info Support is only obliged to follow the Client's instructions - provided it has received these at least 3 (three) working days prior to the implementation of these instructions and Info Support believes they have been described in sufficient detail - in a sound, timely manner if this is explicitly agreed upon in writing. Info Support is not obliged to follow instructions that change or supplement the contents or scope of the service provision agreed upon; however, if such instructions are followed, the relevant activities will be compensated in conformance with article 18.
- 17.6 Where relevant, the burden of proof that the services provided by Info Support and the results
- of these services do not comply with the written agreements made remains fully with the Client, without prejudice to Info Support's right to provide proof to the contrary using any means necessary.
- 17.7 If the service provision Agreement is entered into with a view toward execution by a specific person, Info Support is always authorised to replace this person by one or more other persons whom Info Support believes to have the same or equivalent qualifications.
- 17.8 If the Client cannot provide proof to the contrary from his administration, the hours and amounts shown on Info Support's invoices will be deemed to be correct.
- 17.9 Info Support's services and work will be performed during Info Support's regular working days and working hours. The schedule and work will not deviate from this, unless expressly otherwise agreed between the Parties. Work performed outside regular working days and working hours will be classified as overtime within the meaning of this article.
- 17.10 Invoicing of overtime, worked at the behest of and after approval by the Client, will be subject to a surcharge for overtime hours. For activities performed on Monday through Friday after office hours, but before midnight this overtime surcharge will be 25%. For overtimes hours worked Tuesday through Friday between midnight and 7:00 a.m. and on Saturday the surcharge will be 50% and for activities on Sunday and public holidays (until 7:00 a.m. the following morning) the overtime surcharge will be 100% of the hourly rate.
- 17.11 Normal travel time for Info Support employees and the cost of travel between home and their work site are deemed to be included in the price agreed upon, to the extent that these employees are working in the Netherlands.
- 17.12 The duration of service provision agreements is unspecified, unless a specific period of time is explicitly stipulated. Unless otherwise agreed upon, a cancellation period of two calendar months applies. The cancellation must be made in writing. Cancellation can only start on the first day of a calendar month..

### Article 18 Changes and additional work

- 18.1 If Info Support has performed activities or other services that fall outside the contents or scope of the agreed upon service provision at the Client's request or the Client's prior approval, the Client will compensate Info Support for these activities or services in conformance with customary rates applied by Info Support. However, Info Support is not obliged to honour such a request and can

request that a separate written Agreement be concluded for such activities or services.

- 18.2 The Client accepts that the activities or services intended in article 18.1 can affect the anticipated or agreed upon completion time for the services and the mutual responsibilities involved, in terms of both duration and scope. If a system analysis

or design is extended or modified, this is also deemed to be additional work.

- 18.3 If no explicit invoicing schedule has been agreed upon, all amounts for services provided by Info Support will be invoiced on a monthly basis after the services have been provided.

### 3 Development, Delivery, Installation and Acceptance of Software

In addition to the General Stipulations specified in these General Conditions and the special conditions stipulated in the 'Service Provision' chapter, the conditions stipulated in this 'Software Development' chapter also apply if Info Support develops and installs software at the behest of the Client. The stipulations specified in the 'Use and maintenance of software' chapter also apply to such software, unless expressly stipulated otherwise in this chapter. The rights and obligations intended in this chapter exclusively involve computer software in a form that can be read by a data processing machine and recorded on a medium that can be read by such a machine, as well as the corresponding documentation. Where software is referred to in the following chapters, this also includes websites.

This chapter does not cover software that Info Support makes available to more than one Client or that Info Support uses as part of its operational management for software development and/or maintenance, such as software that is part of Info Support's so-called "software development path".

#### Article 19 Software development

- 19.1 Parties must specify in writing what software is being developed and the method used for such development. Info Support will exercise due care in this software development on the basis of the data provided by the Client; the Client guarantees that this data is accurate, comprehensive and consistent.
- 19.2 Info Support is authorised, but not obliged to investigate the accuracy and comprehensiveness of the data or the data specifications provided to Info Support and to suspend activities if it discovers any imperfections until the Client has eliminated such imperfections.
- 19.3 The Client has the right to use the software in his company or organisation. If and to the extent that this is explicitly agreed upon in writing, the source code for the software and the technical documentation created while developing the software will be made available to the Client and the Client is authorised to make changes in this software. Making such materials available does not imply any transfer of intellectual property rights.

- a. if an acceptance test has not been agreed upon between the parties: upon delivery or, if installation by Info Support has been agreed upon in writing, upon completion of this installation, or;
- b. if an acceptance test has been agreed upon between the parties in writing: on the first day after the test period, or;
- c. if Info Support receives a test report before the end of the test period: the moment the errors identified in the test report have been corrected.

In contrast to the previous stipulations, if the Client uses the software for production or operational objectives before the moment of acceptance, the software is deemed to have been completely accepted as of the moment they are used for such purposes.

20.4 If the agreed upon acceptance test indicates that the software contains Errors that make it impossible to continue the acceptance test, the Client will inform Info Support of this in detail in writing, in which case the test period will be interrupted until the software has been modified in such a way as to cease the interruption.

20.5 If the agreed upon acceptance test indicates that the software contains Errors, the Client will inform Info Support of this no later than on the last day of the test period by submitting a detailed, written test report explaining the Errors. Although Info Support cannot guarantee that it will be able to correct the Errors, Info Support will make every effort to correct the Errors reported within a reasonable time period, provided the Client pays Info Support the applicable rate for the employee who performs these activities; in such cases, Info Support is authorised to implement temporary solutions or temporary software fixes or to impose restrictions on the software that reduce the occurrence of problems.

The costs of recovery will be paid by Info Support if a fixed price was agreed upon, with the understanding that in that case Info Support cannot be required to perform any more activities if the costs involved for those activities exceed ten per cent of the Contract value. The term Costs as used in the previous sentence is defined as the number of hours to be worked multiplied by the customary hourly rate for the Info Support employee who performs the work.

#### Article 20 Delivery, installation acceptance

- 20.1 Info Support will deliver the software to be developed to the Client in conformance with the specifications stipulated in writing on the type of media and in the format agreed upon and will install the software if installation by Info Support has been agreed upon in writing.
- 20.2 If an acceptance test has been agreed upon in writing, the test period shall be fourteen days after delivery or, if it has been agreed that Info Support will install the software, after this installation is complete. During that test period the Client can conduct tests; the Client will record the outcomes of these tests in test reports. Info Support employees will be given the opportunity to observe the tests. During the test period, the Client is not permitted to use the software for production or operational purposes. Info Support can insist that the Client conduct a test of adequate scope and depth with sufficiently qualified personnel on (interim) products resulting from the development activities and that the test results be provided to Info Support in writing, in a well-organised and comprehensible form, even if this has not been explicitly agreed upon.
- 20.3 The software will be deemed to be accepted by the parties:

20.6 The Client cannot withhold acceptance of the software on grounds other than the specifications explicitly agreed upon between the parties and cannot be withheld because of the existence of small Errors, meaning Errors that do not reasonably obstruct the use of the software for production or operational purposes.

20.7 If the software is delivered and tested in phases and/or components, non-acceptance of a specific phase and/or component shall not prejudice possible acceptance of a previous phase and/or another component.

20.8 Acceptance of the software in one of the ways mentioned above means that Info Support is fully discharged as having complied with its obligations regarding developing the software and making it available and, if installation by Info Support is part of the agreement, of its obligations regarding the installation of the software

## 4 Use and Maintenance of Software

In addition to the General Stipulations specified in these General Conditions, the conditions stipulated in this 'Use and maintenance of software' chapter, as well as the special conditions in the 'Service provision' chapter apply to all software made available by Info Support, unless specifically stipulated otherwise in this chapter. The rights and obligations intended in this chapter exclusively involve computer software in a form that can be read by a data processing machine and recorded on a medium that can be read by such a machine, as well as the corresponding documentation including any new version provided by Info Support

### Article 21 License

- 21.1 Info Support grants the Client the non-exclusive right to use the software. The client agrees to strictly comply with the usage restrictions agreed upon between the parties. Without prejudice to the terms stipulated in these general conditions, the Client's license exclusively involves the right to load and run the software.
- 21.2 The Client may exclusively use the software in his own company or organisation on the processing unit and for the specific number or type of users or connections for which the user has been granted a license.
- 21.3 The license is non-transferable. The Client is not permitted to sell, rent, sub-license, or transfer the software and/or media on which the software is recorded or to grant limited rights to use the software or to make it available to a third party in any manner or for any purpose whatsoever, even if the third party in question would be using the software exclusively for the Client.
- 21.4 The Client will not change the software other than in the framework of correcting Errors, and will not use it in the framework of processing data for third parties ('time-sharing'). The source code of the software will not be made available to the Client, unless specifically stipulated otherwise in the case of a so-called open source code or shared source code.
- 21.5 The Client may make back-up copies of the software for his own use, provided brand names and copyright notices are not modified.
- 21.6 The license of the Client expires the moment the Agreement between parties ends, unless the Agreement specifically stipulates otherwise.
- 21.7 The Client itself is responsible for the management and the security of all user names and passwords, at any rate access data, provided within the framework of an Agreement.
- 21.8 Within the framework of the purchase of the Services, the Client will act as a professional user and in this context will in any case:
- a. make no improper, unauthorised, illegal or objectionable use, misuse or use that is not in accordance with the intended use;
  - b. place no data, scripts or Software on the servers of Info Support that may be in conflict with, or infringe upon, or be contrary to the law, public decency, public order, the Agreement and these General Conditions, the generally accepted standards applicable to the use of internet ('netiquette'), the rights of Info Support or third parties, which is also understood to include the intellectual property rights, all matters that are in conflict with the law or public decency, including but not confined to the placing of (child) pornography sites, illegal games of chance, peer-to-peer networks intended or suitable for the exchange of copyrighted or infringing material, or bulletin boards or chat sites intended for this purpose, sexual intimidation, discrimination, threatening, or harassing persons in any other manner, the accessing of other computers on internet without permission (hacking), such that the Client breaches any security and/or gains access by means of a technical intervention with the aid of false signals and/or false keys or by assuming a false capacity, etc;
  - c. distribute no viruses, spy bots, spam or other material that causes inconvenience to other internet users;
  - d. make no use of equipment other than that recommended by Info Support and otherwise comply with the instructions of Info Support with respect to basic conditions for the use;
  - e. not permit third parties to make use of Info Support user rights without its express prior written approval ;
  - f. not use the systems of Info Support, or equip them more specifically or parameterise them so that the system load is substantially increased or the stability of the functionality is reduced;
  - g. cause no disruption to the functioning of the ICT infrastructure of Info Support, infrastructure of third parties and/or connections between infrastructures due to (the content or intensity of) the data traffic or due to the actions and/or negligence of the Client nor perform any actions such as the launching of processes/programs on the systems of Info Support, which can be assumed to cause damage to its systems or could hinder other Internet users, all in the sole opinion of Info Support;
  - h. the Client itself is responsible for (the extra costs of) exceeding the agreed amount of data traffic (sending text or images across the Internet via the server of Info Support from and to the website of the Client). Such takes place in accordance with the agreed conditions and rates as set down in the list of rates with the Agreement or as published on the internet site of Info Support;
  - i. respects the 'fair use' policy of Info Support with respect to the use of its services to protect the interests of its users, meaning that the use takes place within reasonable proportions and claims a reasonable bandwidth of capacity.
- 21.9 Info Support explicitly reserves the right, immediately and without prior warning, to terminate access to and use of the systems of Info Support if the Client acts in conflict with the provisions in the previous clauses and does not properly or completely comply with its obligations in this respect. In that case the Client remains liable for the costs ensuing from the Agreement for the remaining term.
- 21.10 Info Support is not liable for damage to third parties, for whatever reason, caused by the conduct and/or actions of the Client as described in this article. The Client indemnifies Info Support against claims from third parties on that account.
- 21.11 The Client is not permitted to sell, rent out or otherwise transfer or make available its

Agreement and/or rights ensuing from it to third parties unless Info Support has given its prior written permission for this.

## **Article 22 Support**

- 22.1 Info Support is not obliged to provide the Client further service other than that specified in the maintenance agreement, provided such an Agreement has been concluded. Info Support does not guarantee that the software will work without interruption or without Errors or that all Errors will be corrected.

The Client cannot appeal to Info Support for support if the Client makes changes to the software (or has these made) without written permission from Info Support.

## **Article 23 Maintenance**

- 23.1 If a maintenance contract is concluded for the software neither the Client nor Info Support is bound to enter such an Agreement - the Client must notify Info Support in detail of any Errors observed in the software in conformance with the usual procedures. After receiving such notice, Info Support will do its best - under the conditions specified in the maintenance agreement - to attempt to recover from Errors. Depending on the urgency, the results will be made available to the

Client in the manner and within the time period to be determined by Info Support. Info Support is authorised to introduce temporary solutions or software fixes or impose restrictions on the software that reduce the occurrence of problems.

- 23.2 Each time Info Support must come to the Client site to perform the maintenance activities agreed upon, the Client will be invoiced for the normal call out charges maintained by Info Support.

- 23.3 Info Support can always charge its customary rates and costs. Recovery of contaminated or lost data is not part of maintenance.

- 23.4 If a maintenance agreement is concluded, unless the maintenance agreement specifically stipulates otherwise, Info Support will make improved versions of the software available to the Client as soon as these become available. Three months after an improved version is made available, Info Support is no longer obliged to correct possible Errors in the old version or to provide support for the old version no matter whether the Client has used or installed the improved version or not. Before Info Support makes a version with new features and functions available, Info Support can require the Client to enter into a new Agreement with Info Support and charge a fee for making such a new version available. Thus, the obligation to provide such a new version does not arise from the maintenance agreement.