



# General Terms and Conditions

In these General Terms and Conditions, All Business Consultancy shall be taken to mean all of the subsidiaries and all other companies belonging to the All Business Consultancy group company that has for the other party, which is deemed to act in the conducting of business or the performance of an occupation, and / or in the framework of a public task (hereinafter to be referred to as: the Client), drawn up a quotation for or has entered into an obligation towards the Client and that has declared these General Terms and Conditions applicable. The applicability of the (purchase) conditions of the Client will be expressly rejected. The All Business Consultancy group includes all of the legal entities and companies affiliated with All Business Consultancy in compliance with the provisions of Section 2.24a up to and including Section 2.24c of the Dutch Civil Code.

These General Terms and Conditions are also available in Dutch. In case of contradiction between this English version and the Dutch version, the text of the Dutch version shall prevail. The Dutch version of these General Terms and Conditions has been filed with the Chamber of Commerce of Amsterdam on 1 September 2006, under number 27260878. These General Terms and Conditions are also available on the internet at [www.allbusinessconsultancy.nl](http://www.allbusinessconsultancy.nl)

## I. General Stipulations

### 1. Quotation, general stipulations

- 1.1 These General Terms and Conditions shall apply to any and all quotations and agreements, whereby All Business Consultancy delivers goods and / or services of any nature, to the Client, also if such goods and / or services are not (further) specified in these Terms and Conditions.
- 1.2 These General Terms and Conditions consist of a general part (this chapter I) and nine special parts (chapters II up to and including X). Depending on which goods and / or services are to be delivered by All Business Consultancy, the stipulations of the special part concerned shall apply. In the event that there is any conflict between the stipulations of a special part and the stipulations of the general part, the stipulations concerned of the special part shall prevail. Deviations from and / or additions to these General Terms and Conditions are only valid if they have been agreed expressly and in writing by a person authorized thereto.
- 1.3 The applicability of purchasing or other conditions of the Client and / or third parties will be expressly rejected. The signing or (tacit) acceptance by All Business Consultancy of documents of the Client and / or third parties (for example pre-printed on stationery or purchase orders) in which such conditions have been declared applicable, shall never be deemed to imply acceptance thereof.
- 1.4 In the event that any provision of these present General Terms and Conditions and / or the agreement between parties, to which these General Terms and Conditions apply is null and void or is nullified, the other provisions of these General Terms and Conditions and / or this agreement shall remain in full force and All Business Consultancy and the Client shall agree new provisions to replace the null and void or nullified provisions; both the purpose and the meaning of the null and void or nullified provision will be observed to the greatest extent possible.
- 1.5 All Business Consultancy reserves the right to modify these General Terms and Conditions with immediate effect by means of a written notification to the Client. This shall, however, not affect the core agreements in the agreement between parties, such as price, scope and content of the Parties performance.
- 1.6 All Agreements, as well as amendments thereto, will only be concluded by undersigning by both parties of an offer from All Business Consultancy or any other document, or when the Client makes it possible for All Business Consultancy to commence with the work which is part of the agreement.
- 1.7 All Business Consultancy reserves the right to transfer its agreements with the Client to other companies that are part of the company All Business Consultancy All Business Consultancy is part of and / or to third parties. The Client will not unreasonably refuse its cooperation or delay the process. If so, All Business Consultancy All Business Consultancy shall notify the Client thereof.
- 1.8 All Business Consultancy reserves the right to replace employees entrusted with the undertaking of the work by other employees, in the event that All Business Consultancy deems this desirable for the implementation of the work. The change must not affect the quality of the services to be performed nor have a negative effect on the continuity of the commission.
- 1.9 In the event that in these General Terms and Conditions or otherwise in any communication with the Client, reference is made to any agreements made, these will solely be understood to mean written communication or communication via fax and never electronic mail communication, including without being limited to e-mail.

- 1.10 The undertaking of work by All Business Consultancy on location shall always be understood to mean locations in the country where All Business Consultancy has its registered office and which are easily accessible and can be reached within a reasonable period of time. For work to be carried out on remote locations, including without being limited to locations on islands or locations which cannot be accessed easily, cost-increasing circumstances as referred to in Article 13 or 14 of these terms and conditions may be applicable.
- 1.11 If it has been agreed in writing that the supply of services which are not provided for in these General Terms and Conditions, such as for example hosting, data centre and back-up services, are part of the obligations of All Business Consultancy, the (standard) terms and conditions, Service Level Agreements and / or model agreements of All Business Consultancy relating to the services concerned will apply, as well as these General Terms and Conditions.

## 2. Price and payment

- 2.1 Unless indicated otherwise by All Business Consultancy, all of the prices and tariffs stated by All Business Consultancy shall be in Euro and exclusive of value-added tax (VAT) and other government levies. All of the prices and tariffs shall be based on execution of the agreement in the country where All Business Consultancy has its registered office and during normal working hours, which will be understood to mean: Monday through Friday (except public holidays in the country concerned) between 8.00 a.m. and 5.00 p.m., with a maximum of eight hours a day. Unless the offer expressly provides otherwise, travelling hours, travelling expenses, parking expenses and accommodation, extra hours and other work-related expenses will not be included in the prices and tariffs. As far as such expenses are not included, All Business Consultancy can invoice these separately.
- 2.2 Any interim alteration in legal levies and / or changes or indexing of the wage level and any expenses can be charged by All Business Consultancy to the Client. Indexing will always be understood to mean an adjustment in accordance with the most recent price index CLA (Collective Labour Agreement) reward per month, category business service as published by the Centraal Bureau voor de Statistiek (Statistics Netherlands).
- 2.3 In the event that All Business Consultancy has to pay for its procurement in another currency than the legal currency in The Netherlands, the prices and tariffs shall be based on the exchange rates published by the European Central Bank on the day on which the proposal was sent to the Client. In the event that on the date on which All Business Consultancy receives the payment from the Client the applicable exchange rate deviates more than 1.5 % from the exchange rate published on the day on which the proposal was sent to the Client, All Business Consultancy shall have the right to adjust the prices and tariffs concerned accordingly.
- 2.4 For orders with a value of less than 1,000 an administration and handling fee can be charged to the Client.
- 2.5 All Business Consultancy has the right to change the agreed prices and tariffs by means of a written notification to the Client for performances which, according to the planning concerned, or in compliance with the agreement, will be delivered on a date at least three months after the date of this notification, unless the Parties have agreed on a fixed price. Only if the Client disagrees with a change in prices and tariffs as mentioned in this Article, of which it has been notified by All Business Consultancy, does the Client have the right to terminate the agreement in writing within seven working days after the notification mentioned in such article by the date mentioned in the notification of All Business Consultancy on which the price and / or tariff change would have come into effect, and / or to cancel the agreement. Article 9.4 remains in full force.
- 2.6 In the event that services such as mentioned in chapter III are provided or secondment such as mentioned in chapter IV, invoicing shall take place monthly in arrears on the basis of actual costs in accordance with the applicable tariffs of All Business Consultancy, unless agreed upon otherwise in writing. In the event of delivery of products, invoicing shall take place upon delivery of the products concerned, unless agreed upon otherwise in writing. In all other cases invoicing shall take place beforehand, unless otherwise agreed.
- 2.7 All invoices shall be paid by the Client in compliance with the payment terms stated on the invoice and / or the payment terms agreed upon otherwise and in writing. In the event that specific terms and conditions are lacking, the Client shall pay within 30 (thirty) days after the invoice date. The Client is not entitled to any compensation, discount or setoff.
- 2.8 In the event that the Client fails to pay the amounts due within the agreed period of time, the legal interest shall be payable by the Client on the unpaid sum, without any notice of default being required, in

the sense of Section 6.119a and Section 6.120 of the Dutch Civil Code (statutory commercial interest). In the event that, following a notice of default, the Client continues to fail payment of the debt, debt collection can be entrusted to a third party, in which case the Client shall pay, in addition to the total amount due at such time, reasonable compensation of any extrajudicial costs and, if applicable, judicial costs, including without being limited to all of the costs as referred to in Section 6.96 of the Dutch Civil Code, calculated by external experts, apart from the legally determined costs, in connection with the collection of this debt or execution of law otherwise, the height of which is set to at least 15 % of the total sum.

- 2.9 In the event of late payment, All Business Consultancy is entitled at all times to suspend its obligations without being obliged to pay any kind of damages to the Client. Insofar as All Business Consultancy carries out services at the Client's request during this period, All Business Consultancy can charge a separate amount for this in accordance with its usual tariffs.
- 2.10 The Client is obliged to ensure that it is and remains creditworthy during the duration of the agreement. All Business Consultancy is entitled at any time to investigate or have investigated the Client's creditworthiness. If the results of such an investigation give reason to this, and in the opinion of All Business Consultancy, it can reasonably be expected that the Client will not be able to observe its obligations subject to the agreement, All Business Consultancy All Business Consultancy is entitled to require that the Client provides (additional) security and / or pays in cash and / or All Business Consultancy can amend its tariffs / prices and / or suspend its performance. All Business Consultancy will inform the Client of any such measure.

### **3. Confidential information and non-takeover clause**

- 3.1 The Contracting Parties will be under the mutual obligation to keep confidential all of the information they receive from each other, unless a legal obligation orders the disclosure of such information and / or data. Consequently, the Contracting Parties shall not disclose or have disclosed in any way directly or indirectly any information and / or data from the other Party or make such information and / or data available to any third party without the other Party's prior and explicit consent. Information shall in any case be considered confidential if referred to as such by one of the Parties. The obligation to confidentiality shall end one year after the termination of the agreement, unless agreed upon otherwise.
- 3.2 With the exception of Customized Software of which the rights are transferred to the Client, if All Business Consultancy makes documentation, programs, know-how or other goods available to the Client, the Client will not use these for another objective than those for which they were provided and will not provide them to third parties without written permission from All Business Consultancy.
- 3.3 In the event of termination of the Agreement, the data and information made available to the Client by All Business Consultancy (with exception of Customized Software) will be destroyed or returned in a manner to be agreed upon, at All Business Consultancy's discretion. The costs of destruction or return will be for the Client.
- 3.4 Neither party, without previous written consent from the other party, will mention the Agreement in publications or commercial expressions. Parties will not refrain unreasonably from giving this written consent. This does not impede All Business Consultancy's right to use the Client's name as well as a short description of the work as a reference for (potential) other Clients.
- 3.5 For the term of the agreement and one year after the termination thereof, none of the Parties shall hire any employees of the other Party who have been involved in the execution of the agreement or have them carry out work otherwise, directly or indirectly, without the other Party's prior written consent.
- 3.6 In the event that the Client violates the provisions contained in paragraph 1 to 5 of this article, it shall forfeit to the other Party an immediately payable penalty of 2,000 for each day on which the violation continues, without prejudice to the obligation to pay the actually incurred damages in the event that this exceeds the said penalty. Damages shall in any case be understood to mean any training and recruitment costs incurred by All Business Consultancy.

### **4. Retention of title and rights**

- 4.1 All of the goods delivered to the Client shall continue to be the property of All Business Consultancy or its suppliers until All Business Consultancy has received full payment of the amounts payable by the Client for the goods delivered or to be delivered or the work performed or to be performed pursuant to the agreement, as well as the amounts referred to in Article 2.8 (Overdue payment), including without being limited to any interest and collection costs. If the Client fails to pay, or fails to pay in a timely or correct manner, even after having been put into default, All Business Consultancy shall have the right, after

consultation with the Client, to access the locations where the delivered goods are located and to repossess the delivered products or disassemble them or to remove them, the last mentioned applying if and insofar the delivery would have become the property of the Client as a result of accession or otherwise. In the event that a new product has originated, such product shall be deemed to be formed for the benefit of All Business Consultancy, whereas the Client shall be deemed to act as the holder of such product. The title to the new product shall not pass to the Client until the payments due have been made in full.

- 4.2 Any rights shall always be granted to the Client or, if applicable, transferred, under the condition that the Client makes any payments incurred in time and in full.

## 5. Risk

- 5.1 The risk of loss of or damage to goods delivered or to be delivered by All Business Consultancy to the Client, shall pass to the Client at the point in time when they have been brought within the factual control of the Client or of an assisting service engaged by the Client (for example a transport company). In the event that it has been expressly agreed in writing that All Business Consultancy will ensure the transport of the goods, All Business Consultancy shall also bear the risk in this respect until the point in time at which the goods are unloaded at their destination.

- 5.2 If for services to be provided by All Business Consultancy, telecommunications facilities are used (including internet connections), the Client is responsible for the correct and authorized use thereof. All Business Consultancy is not responsible and / or liable for consequences of the non- or defective functioning of the telecommunications facility concerned. If it has been agreed in writing that the delivery and / or maintaining of the telecommunications facility is part of the obligations of All Business Consultancy, the obligations and responsibilities of All Business Consultancy will never entail more than what is contained in the terms and conditions observed by the supplier of the telecommunications facility.

- 5.3 For the supply of services with use of telecommunications facilities All Business Consultancy will allocate access or identification codes to the Client. The Client will handle the access codes confidentially and ensure that exclusively authorized staff members may use these access codes.

- 5.4 Dispatch and transport of goods, including the supply of data, will always take place for the account and risk of the Client, even if All Business Consultancy organizes the dispatch and / or the transport.

## 6. Intellectual property rights

- 6.1 All intellectual property rights to goods developed pursuant to the agreement by or on behalf of All Business Consultancy, and equipment or other materials, including but not limited to software, websites, data files, equipment or other materials which has / have been made available pursuant to such agreement, such as analyses, models, techniques, designs, documentation, reports, tenders, as well as preparatory material, will be exclusively vested in All Business Consultancy, its licensors or the manufacturer concerned. The Client shall only acquire the rights of use and the powers expressly assigned under these terms and conditions or which have been expressly assigned otherwise (for example in conditions included with the standard software) and the Client shall not multiply or have multiplied any software or other materials or make or have made copies thereof or in the event of a database, request or reuse them.

- 6.2 The Client is aware of the fact that the software, websites, data files, equipment and other materials that have been made available could contain confidential information and / or trade secrets of All Business Consultancy or its licensors. The Client undertakes, without prejudice to the provisions contained in Article 3 (Confidentiality), to keep this software and equipment and these data files and materials confidential, not to disclose it to any third party or give it in use, and solely use it for the purpose for which it has been made available to him. Third parties shall also be understood to mean all the persons employed at the Client's organization, which do not necessarily have to use the software, websites, data files, equipment and / or other materials.

- 6.3 The Client is not permitted to remove from or change any mark with regard to copyright notices, brands, trade names or other intellectual property rights the software, websites, data files, equipment or materials, including without being limited to indications of the confidential nature and secrecy of the software.

- 6.4 All Business Consultancy is permitted to (have) its licensor or the manufacturer concerned take technical measures to protect the software. In the event that All Business Consultancy has secured the software by means of technical protection, the Client is not permitted to remove or avoid this protection. In the

event that, as a consequence of the protective measures, the Client is unable to make a back-up copy of the software, All Business Consultancy will, at the Client's request, make available a back-up copy of the software to the Client at cost.

- 6.5 Except when All Business Consultancy makes available a back-up copy of the software to the Client, the Client has the right to retain one backup copy of the software. In these General Terms and Conditions, the term back-up copy is understood to mean: a physical object on which the software is recorded, solely intended to replace the original software in the event of involuntary property loss or damage. The back-up copy must be an identical copy and always have the same labels and notices as the original.
- 6.6 In the event that the Client develops software for a third party, or in the event that a third party develops software for the Client, or in the event that the Client intends to do this, and the Client needs information in connection with the interoperability of the software to be developed and the software made available to the Client by All Business Consultancy in order to effect this interoperability, the Client shall request the information needed from All Business Consultancy in writing, stating details. All Business Consultancy will then inform the Client within a reasonable term whether the Client will be given the requested information and under which conditions, including without being limited to the financial conditions and conditions with regard to any third parties possibly to be engaged by the Client. In these General Terms and Conditions, the term Interoperability is understood to mean: the ability of software to exchange information with other components of a computer system and / or software and to communicate by means of this information.
- 6.7 With due observance of the other provisions of these General Terms and Conditions, the Client has the right to improve Defects in the software made available to the Client, if this is necessary for the intended use to be made of the software that ensues from the nature of the software. Where rights or obligations are mentioned in these General Terms and Conditions with regard to Defects, the term Defects will be understood to mean the demonstrable non-compliance with the functional and / or technical specifications agreed between All Business Consultancy and the Client expressly and in writing. A Defect, furthermore, only exists in standard or customized software or equipment if it can be reproduced. The Client undertakes to report any Defects and / or faults that have been established to All Business Consultancy without delay.
- 6.8 All Business Consultancy shall indemnify the Client against any legal claim which is based on the statement that any software, websites, data files, equipment or materials developed by All Business Consultancy itself violates an intellectual property right which is valid in the Netherlands, provided the Client informs All Business Consultancy immediately in writing about the existence and content of such legal claim and the content of the legal action and leaves the handling of the case, including without being limited to reaching understandings, entirely to All Business Consultancy. In the aforementioned case, the Client shall provide All Business Consultancy with the required powers of attorney, information and cooperation to defend itself against the legal actions, if necessary on behalf of the Client. This obligation of indemnity shall lapse if and insofar as the violation is connected with any changes made by the Client to the software, the equipment or the materials or in the event that the Client has asked third parties to make such changes without All Business Consultancy's prior written consent or in the event that a violation is otherwise attributable to the Client. In the event that it has been legally established as an indisputable fact that the software, equipment or materials developed by All Business Consultancy itself violate any intellectual property rights of any third party or in the event that, according to All Business Consultancy, there is a good chance that such violation will occur, All Business Consultancy shall take back the product(s) delivered, against crediting of the purchase costs minus a reasonable payment for the use thereof, or ensure that the Client is enabled to continue to use the delivered product(s) or any similar other software, websites, data files, equipment or materials undisturbed.
- 6.9 Any other or further liability or obligation to indemnity on the part of All Business Consultancy in connection with any violation of any intellectual property rights of third parties shall be excluded, including without being limited to liability and indemnity obligations on the part of All Business Consultancy All Business Consultancy for violations caused by the use of equipment, software, websites, data files and / or materials delivered in a form which has not been modified by All Business Consultancy, in connection with goods or software which have not been delivered by All Business Consultancy or in any other way than for the intended purpose of the equipment, software and / or materials.
- 6.10 The Client guarantees that no rights of third parties will oppose the making available to All Business Consultancy of equipment, software, websites, data files, information intended for websites, music, texts, logos, photos, film footage, domain names, metatags and suchlike or other materials with the aim to use or process these or with the aim to carry out (pre) installation activities or configuration activities by All Business Consultancy. In the event that All Business Consultancy has performed according to any

designs, drawings or other directions made available by or on behalf of the Client, the Client guarantees that this will not violate any intellectual property rights of third parties. The Client shall indemnify All Business Consultancy against any action or claim based on the statement that such making available, use or processing violates any right of any third parties.

## **7. Cooperation by the Client**

- 7.1 Every quotation or proposal of All Business Consultancy is based on the information provided by the Client. The Client guarantees that all of the information and data which may be useful and necessary for the implementation of the agreement, have been provided and that this information is correct and complete. The Client shall always continue to provide All Business Consultancy with the information required for the proper implementation of the agreement and shall provide every cooperation necessary.
- 7.2 The Client shall be responsible for the use and the application of the equipment, software and services to be provided by All Business Consultancy within its organization, as well as for the back-up, control and safety procedures, as well as for adequate system management of the equipment, software, websites and data files delivered, as well as for the information exchanged or processed via this equipment and software or via these websites and data files.
- 7.3 Unless it has been agreed that All Business Consultancy will take care of this, the Client must have a sufficient level of security, in order to prevent unauthorized third parties from accessing the network and / or the systems of the Client, and / or viruses, worms, logic bombs and the like being able to penetrate the network, or be installed.
- 7.4 In the event that it has been agreed that the Client will make available software, materials or data stored on information carriers or provide services, these shall comply with the specifications required for the carrying out of the work.
- 7.5 In the event that information which is necessary for the execution of the agreement has not or not timely been made available to All Business Consultancy or has not been made available according to the arrangements made or in the event that the Client does not meet its obligations in any other way, All Business Consultancy shall have the right to postpone the execution of the agreement, whereas All Business Consultancy insofar as the nature of the shortcoming on the part of the Client justifies this shall also have the right to charge any costs incurred as a result thereof in accordance with its usual tariffs, without prejudice to all the other rights of All Business Consultancy pursuant to the law.
- 7.6 If All Business Consultancy employees carry out work on-site at the Client's, the Client shall provide, free of charge, the facilities in reasonableness required by the employees for the performance of the job, such as if applicable a lockable working room with telecommunications facilities. The Client shall indemnify All Business Consultancy against any claims made by third parties, All Business Consultancy employees included, suffering damages in connection with the execution of the agreement, which results from any act or omission on the part of the Client or any unsafe situation in its organization.
- 7.7 Without prejudice to the provisions contained in Article 7.6 (Availability of facilities), the Client also guarantees that the locations where the employees deployed by All Business Consultancy carry out their work comply with the applicable requirements and regulations in accordance with the applicable ARBO (working conditions) regulations.

## **8. Delivery periods**

- 8.1 All (delivery) periods referred to by All Business Consultancy have been determined to the best of its knowledge and on the basis of the information known to All Business Consultancy upon concluding the agreement and they shall be observed as much as possible; the sole exceeding of a (delivery) period referred to shall not lead to any failure on the part of All Business Consultancy. All Business Consultancy shall not be bound to (delivery) periods that cannot be met as a result of circumstances beyond its control. In the event that a period will probably be exceeded, All Business Consultancy and the Client shall discuss this as soon as possible.

## **9. Term and termination of the agreement**

- 9.1 If the agreement has been entered into for a definite period of time, it shall remain in force as of the date of the first delivery for an initial period of three years, calculated as of the first next turn of the year, unless another period has been agreed in writing. After the initial period has lapsed, the agreement shall each time be tacitly renewed by a period of one year, unless the Client or All Business Consultancy terminates the agreement by registered letter with due observance of a notice period of three months

before the period concerned has lapsed. Each of the Parties shall only have the right to dissolve the agreement in part or in whole in the event that the other Party, following a proper and detailed written notice of default stating a reasonable term for repairing a shortcoming, culpably fails in meeting important obligations arising from the agreement.

- 9.2 In the event that an agreement which, as a result of its nature and content, does not end by completion, and has been entered into for an indefinite period of time, it can be terminated in writing by each of the Parties following proper consultation and stating reasons. In the event that no express notice period has been agreed between the Parties, a notice period of three months shall be observed. The Parties shall never be obliged to pay any damages in the event of lawful termination.
- 9.3 In the event that an agreement has been concluded for a definite term (irrespective if the said agreement has been or will be renewed tacitly) and the Client has terminated the agreement prematurely without the prior written consent of All Business Consultancy, by notice or by actual termination for example by A) discontinuing or substantially reducing the provision of data to be processed by All Business Consultancy or by B) discontinuing or substantially reducing the demand for the services or goods to be delivered or by C) substantially reducing the equipment or software to be managed and / or maintained or by D) considerably deviating from the agreed or forecast turnover figures, this shall be considered an attributable shortcoming in meeting the obligations by the Client, meaning it is in default. In such an instance, the Client will forfeit an immediately claimable payment of damages to All Business Consultancy, equal to the average monthly amount (inclusive of VAT) charged by All Business Consultancy to the Client for the provision of services concerned in the twelve months immediately preceding the termination (or would charge in the event that the duration of the agreement is less than twelve months), multiplied by the number of months that the agreement would continue to be applicable in the event that it would have been terminated legally by the Client, and without prejudice to the Client's obligation to pay additional damages insofar as the damage would exceed the damages payable in accordance with the above.
- 9.4 Both All Business Consultancy and the Client shall have the right to terminate the agreement in writing, with immediate effect, in part or in whole, without notice of default being required and without judicial intervention, in the event that the other Party is granted (provisional) suspension of payment, in the event that the other Party has been declared bankrupt or in the event that its company is liquidated or discontinued. All Business Consultancy can terminate the agreement in the event that the control of (the company of) the Client changes. With regard to the termination referred to in this article, the Parties shall never be obliged to pay any damages.
- 9.5 If the Client, at the time of the dissolution, has already received performances for the execution of the agreement, these performances and the payment obligations pertaining to them shall not be the subject of nullification, unless All Business Consultancy is in default with regard to such performances. Amounts invoiced by All Business Consultancy before the dissolution in connection with that which it has already carried out or delivered for the execution of the agreement, shall remain fully payable with due observance of the provisions of the previous full sentence and shall be immediately payable at the time of the dissolution.
- 9.6 Any rights and obligations arising from the agreement between All Business Consultancy and the Client which are destined, according to their nature and content, to continue to exist, shall remain in full force following termination of the agreement.

## **10. Liability on the part of All Business Consultancy; indemnification**

- 10.1 All Business Consultancy shall accept legal obligations to pay damages insofar as this may become apparent from this article 10.
- 10.2 All Business Consultancy's liability due to culpable shortcoming in the performance of an agreement will only arise if the Client notifies All Business Consultancy immediately and properly of default, stating a reasonable term to rectify the shortcoming and after this term All Business Consultancy continues to fail imputably in the observance of its obligations. The notification of default must contain an as detailed as possible description of the shortcoming enabling All Business Consultancy to respond properly.
- 10.3 All Business Consultancy's total liability, for whatever reason, shall be limited to the payment of the direct damages up to the amount of the price agreed for the agreement (exclusive of VAT and exclusive of the price, included in this price, of hardware components). In the event that the agreement concerned is mainly a continuing performance agreement with a term of one year or more, and / or if All Business Consultancy invoices on the basis of actual cost, the agreed price shall be set to the total of the amounts (exclusive of VAT) paid by the Client to All Business Consultancy for the three months immediately

preceding the occurrence of the damage. In no case the total payment for direct damages shall, however, exceed 1,000,000 (one million EURO). Direct damage shall only be understood to mean:

- (a) The demonstrable reasonable costs the Client should incur in order to ensure that the performance of All Business Consultancy complies with the agreement. This damage, however, shall not be compensated for in the event that the agreement is dissolved or in the event that the damage can be attributed to the Client;
  - (b) Damage to software and equipment, which will mean material damages as well as defects or non-function;
  - (c) Material damages to other properties of the other party and / or third parties;
  - (d) The demonstrable reasonable costs incurred to determine the cause and extent of the damage, insofar as this concerns direct damage within the meaning of these terms and conditions;
  - (e) The demonstrable reasonable costs incurred to prevent or limit any damage, insofar as the Client demonstrates that such costs have actually limited the direct damage within the meaning of these terms and conditions.
- 10.4 The total liability on the part of All Business Consultancy for any damage caused by death or physical injury shall never exceed 1,000,000 (one million EURO) for each event; a series of interconnected events shall be considered to be one event, with a maximum of 2,000,000 (two million EURO) per year.
- 10.5 All Business Consultancy' liability for indirect damages, including consequential damage, lost income, lost cost-savings, loss of data and damage due to operations coming to a partial or complete standstill shall at any time be excluded.
- 10.6 Except the cases referred to in Articles 10.3 and 10.4 All Business Consultancy shall have no liability whatsoever for any damage, irrespective of the ground on which a claim for damages would be based. The maximum amounts referred to in Articles 10.3 and 10.4 shall, however, not be applicable if and insofar as the damage results from intent or gross negligence on the part of All Business Consultancy.
- 10.7 The condition for the creation of any right to the payment of damages shall always be that the Client notifies All Business Consultancy of such damage as soon as possible (within one year at the latest).
- 10.8 The limitations of the liability referred to in articles 10.3, 10.4 and 10.5 apply mutatis mutandis to indemnifications.
- 10.9 If parties agreed on a penalty as well as the right to damages, any forfeited contractual penalties and paid out amounts and / or amounts to be paid out subject to indemnifications will be deducted from any damages with regard to the same event.
- 10.10 The Client indemnifies All Business Consultancy and its employees against all of the claims made by third parties, in particular against claims made by third parties due to product liability as a result of any Defect in a product or system delivered by the Client to a third party and which partly consisted of equipment, software, websites, data files or other materials delivered by All Business Consultancy, except in the event that the Client proves that such damage was caused by this equipment or software or by these websites, data files or other materials.
- 10.11 The Client bears the risk for damage caused by Defects or unsuitability of goods originating from and / or prescribed by the Client or which have to be purchased from a supplier prescribed by the Client and for not, not timely or incorrectly delivering the said goods. The Client shall be liable for damage resulting from unlawful acts on the part of subcontractors engaged by the Client and their assistants.

## 11. Force majeure

- 11.1 None of the Parties shall be under the obligation to fulfill any obligation in the event of force majeure. Force majeure shall be understood to mean, amongst other things, a shortcoming on the part of All Business Consultancy' suppliers.
- 11.2 Insofar as not already understood to mean such, force majeure will also mean: strikes, sit-down strikes, blockades, embargos, government measures, war, revolution and / or any similar state, power cuts, malfunctions in electronic communication lines, fire, explosion, water damages, floods and / or earthquakes, lack of and / or illness of Staff as well as breach of contract towards All Business Consultancy by the suppliers to All Business Consultancy or force majeure on the side of suppliers to All Business Consultancy.
- 11.3 In the event that the force majeure situation has lasted longer than ninety days, the Parties shall have the right to terminate the agreement concerned by registered mail, unless it can be foreseen that the force majeure situation can be solved within a reasonable term. The work that has already been done

pursuant to the agreement shall then be settled proportionally, without the Parties owing each other anything.

## **12. Export**

- 12.1 In the event of export of equipment, parts, software and / or data files by the Client, and / or the use of encryption by the Client, the relevant export provisions shall be applicable (including, in some cases, the US export regulations and trade embargoes). The Client shall indemnify All Business Consultancy and in particular the companies which are part of the same company and are based and / or operate in the United States of America against any claims made by third parties in connection with any violations of the applicable export provisions attributable to the Client. The Client furthermore indemnifies All Business Consultancy and the companies which are part of the same company against any claims made by third parties arising from the failure on the part of the Client, its employees or third parties engaged by the Client to comply with any laws regarding unfair competition.

## **13. Changes and additional work, performances and / or deliveries**

- 13.1 In the event that All Business Consultancy, at the request of or with the prior consent of the Client has undertaken any work, other performances or deliveries which are outside the content or scope of the agreed activities, these performances or these deliveries shall be reimbursed by the Client to All Business Consultancy in accordance with the usual tariffs charged by All Business Consultancy. However, All Business Consultancy shall not be under the obligation to comply with such request and may demand that a separate written agreement be concluded for such purpose. In the event that All Business Consultancy has already commenced the said activities, performances and / or deliveries, and it appears that the order pertaining to them has not been provided by employees of the Client authorized thereto, the Client shall nevertheless be under an obligation to pay the amounts pertaining to these activities, performances and / or deliveries to All Business Consultancy. In such an instance, All Business Consultancy will postpone or discontinue these activities, performances and / or deliveries at the Client's first instruction.
- 13.2 The Client accepts that as a result of any change in or extension of the work, performances or deliveries as referred to in Article 13.1, the agreed or expected time of completion of the obligations, the mutual responsibilities of the Client and All Business Consultancy and the agreed tariffs charged by All Business Consultancy may be influenced.
- 13.3 Insofar as a fixed price has been agreed for the work, the performances or the deliveries, and the Parties intend to conclude a separate agreement in relation to additional work, performances or deliveries, All Business Consultancy shall, following a written request thereto by the Client, notify the Client in advance in writing of the financial consequences of such additional work, performances or deliveries.

## **14. Cost increasing circumstances / settlement of variations**

- 14.1 In the event of any cost-increasing circumstances, All Business Consultancy shall notify the Client thereof as soon as possible.
- 14.2 Any cost-increasing circumstances that cannot be attributed to All Business Consultancy shall be settled as additional work in a way provided for in this article, unless the Parties have agreed otherwise in writing. Under other, comparable, circumstances, the Parties shall consult as soon as possible in order to achieve a justifiable mutual settlement. In the event that less work has been done than agreed, prior written consent will be required.
- 14.3 Variations to the agreement shall in any case mean:
- (a) In the event of any agreed change in the scope of the products or services to be delivered (changes in the specifications, the work or the conditions for the implementation of the work);
  - (b) In the event of any deviations from the amounts of agreed provisional sums and amounts that can be settled and / or estimated;
  - (c) In the cases provided for in these general terms and conditions.
- 14.4 The settlement of variations shall be included insofar as possible in the next invoice. In any case, payment for the additional work shall be made following completion thereof. The settlement of less work shall take place at once with the final payment.

## 15. Subcontracting

- 15.1 All Business Consultancy shall have the right to use, for the execution of an agreement, the services of third parties, via subcontracting or via the temporary hiring of external employees.
- 15.2 The hiring of third parties shall not affect the responsibility and liability on the part of All Business Consultancy pertaining to the fulfillment of its obligations pursuant to the agreement and these terms and conditions as far as these concerns its obligations in its capacity of employer pursuant to tax and social security legislation.
- 15.3 In the event that the Client expressly requests All Business Consultancy to use external capacity and All Business Consultancy agrees to this in writing, All Business Consultancy shall do all that can reasonably be expected from it for the correct execution of the Agreement. However, All Business Consultancy shall in no case be liable for the (improper or late) observance by the third parties in question. At All Business Consultancy's first request the Client will enter into an agreement in its own name with said third parties.
- 15.4 In the event of use of external capacity by All Business Consultancy, any extra costs will be for the account of All Business Consultancy, such with the exception of the case that the Client expressly requests All Business Consultancy to use external capacity.

## 16. Obligations of the Personal Data Protection Act

- 16.1 Parties are required to cooperate with one another in order to enable the other party to meet its obligations subject to the Personal Data Protection Act (Wet Bescherming Persoonsgegevens, Wbp). This also includes the Client informing All Business Consultancy timely and properly whether any processing in the scope of an Agreement falls under the Wbp and whether this processing is registered at the Data Protection Authority, or with the official responsible for the data protection of the Client. Insofar as the obligations stated in this article incur work and / or costs for All Business Consultancy, the Client will compensate these.
- 16.2 The Client will ensure that the responsible person in the sense of the Wbp will observe all obligations of the Wbp. The Client indemnifies All Business Consultancy against all claims from third parties which might be brought against All Business Consultancy subject to the Wbp.

## 17. Applicable law and disputes

- 17.1 The legal relationships between All Business Consultancy and parties shall be governed by Dutch law. The Vienna Sales Convention is expressly excluded.
- 17.2 Any disputes which may arise between All Business Consultancy and the Client as a result of a quotation made by All Business Consultancy, an agreement concluded by All Business Consultancy with the Client and / or any resulting agreement shall be settled by the competent Dutch court in The Hague, unless the Parties agree in writing to follow the procedure in accordance with the mini trial regulation (= non-binding advice procedure) or the arbitration regulations of the Stichting Geschillenoplossing Automatisering (Disputes Settlement Committee for the Automation Industry) at The Hague, without prejudice to the right of the Parties to request a provision in interim injunction proceedings.

## II. SALARY SERVICES

The provisions of this chapter Salary Services shall only apply in addition to the General Provisions of these General Terms and Conditions in the event that All Business Consultancy provides computer services (such as computerized data processing, income calculation and related services), which shall be understood to mean processing data using software and equipment managed by All Business Consultancy.

## 18. Execution

- 18.1 All the equipment, software and other materials to be used by All Business Consultancy for the salary services will remain the property, respectively the subject of the intellectual property of All Business Consultancy or its licensors, also if the Client pays a reimbursement for the development or purchasing thereof by All Business Consultancy. All Business Consultancy can retain the products, data and processing results until the Client has paid all the amounts it owes to All Business Consultancy.
- 18.2 All Business Consultancy can make changes in the content or extent of the salary services. If such changes result in a change in the procedures in force at the Client's, All Business Consultancy will inform the Client thereof as soon as possible. The costs of such changes shall be for the Client's account. In

such an instance the Client can terminate the agreement in writing by means of a notice of termination, by the date on which the change comes into effect, unless the change is related to changes in the applicable laws or other regulations provided by the competent institutions, if All Business Consultancy pays the costs of the change concerned or if this change is otherwise unreasonable.

- 18.3 All Business Consultancy will try, to the best of its ability, to adjust the software used for the performance of the salary services as much as possible to changes in the applicable laws or other regulations provided by the competent institutions. All Business Consultancy will give the Client advice on the consequences of these adjustments for the Client at its usual tariffs upon request.
- 18.4 In the event that All Business Consultancy makes software available to the Client for the salary services, the provisions of chapter VI (Software Use and Maintenance) shall also apply.
- 18.5 The right of the Client pursuant to Section 7.408, Paragraph 1 of the Dutch Civil Code to terminate an assignment agreement at any time is expressly excluded.

## **19. Tariffs**

- 19.1 As well as the other stated rights, All Business Consultancy is entitled to amend the tariffs prematurely, even if this amendment takes place as the result of circumstances foreseen at the conclusion of the agreement, including, however not limited to, the total scope of the salary services by All Business Consultancy or the number of agreements which All Business Consultancy has concluded with the Client. All Business Consultancy will give written reasons for the change as referred to in this provision to the Client. In the event of an increase of more than the percentage as referred to in article 2.2, the Client is entitled to terminate the agreement within one month after the date of the written notification on aforementioned grounds. The agreement will then end at the end of the calendar year in which the termination took place.
- 19.2 In relation to the salary services provided by All Business Consultancy, the Client will pay to All Business Consultancy an amount which is based on the number of salaries to be processed per processing period. If the Client offers less than 80% of the number of salaries stated in the offer applying to the agreement, All Business Consultancy is entitled to charge a remuneration of at least 80% of the salaries stated in the offer applying to the agreement for the remaining contract months. All Business Consultancy will send the invoice relating to the salary processing to the Client together with the processing results.

## **20. Obligations on the part of the Client**

- 20.1 In the scope of the salary services, the Client will provide All Business Consultancy with the correct details on time, in a written or electronic document which will be made known to the Client by All Business Consultancy. Transport, in whatever manner, takes place at the cost and risk of the Client, even if this is carried out or organized by All Business Consultancy.
- 20.2 The Client guarantees that all materials, data, software, procedures and instructions made available to All Business Consultancy by it for the execution of the salary services will be correct and complete and that all information carriers provided to All Business Consultancy will meet the specifications of All Business Consultancy.
- 20.3 The Client is responsible for the proper protection of the security means provided by All Business Consultancy as part of the execution of the agreement.

## **21. Guarantee**

- 21.1 The salary services to be provided by All Business Consultancy will be carried out carefully and skillfully in accordance with the procedures and agreements laid down in writing with the Client.
- 21.2 Unless expressly upon otherwise in writing, All Business Consultancy shall not be responsible for verifying the correctness and completeness of the results of the salary services. The Client shall verify these results upon receipt.
- 21.3 If it is proved that imperfections in the processing results are a direct result of products, software, information carriers or operational acts for which All Business Consultancy, pursuant to the agreement, is expressly responsible, All Business Consultancy shall perform the salary services again in order to repair these imperfections to the best of its ability, provided that the data required for repeating the salary services is still available and that the Client notifies All Business Consultancy of the imperfections in writing, stating details as soon as possible, though not later than within one week after receipt of the results. If the imperfections cannot be attributed to All Business Consultancy, or if All Business

Consultancy is not responsible for imperfections in the results of the processing, the Client can request All Business Consultancy to repeat the salary services, in which case All Business Consultancy will charge the costs thereof to the Client.

- 21.4 For the salary services, All Business Consultancy will carry out technical and functional maintenance to the automated system which is used to provide the services, in the manner which will be made known to the Client by All Business Consultancy.
- 21.5 All Business Consultancy will ensure a reasonable level of security towards third parties of the data provided by the Client as part of the agreement and the results of the salary services.
- 21.6 All Business Consultancy will, insofar as such can reasonably be expected of All Business Consultancy, amongst others provide back-up possibilities and emergency provisions in the automated system in which the salary services are carried out for the continuity of the salary services. The procedures for the back-up possibilities and emergency provisions will be made known to the Client by All Business Consultancy.
- 21.7 The guarantee obligation will lapse if the Client, without written consent from All Business Consultancy, does not act in accordance with the agreement, the General Terms and Conditions of All Business Consultancy and / or the instructions made known to the Client by All Business Consultancy.

## **22. Liability and indemnification**

- 22.1 With the exception of article 10 the liability of All Business Consultancy with regard to the salary services is limited to the compensation of direct damage, which will only mean:
  - (a) the costs connected to the repair of items in use by the Client which are damaged;
  - (b) the costs related to carrying out (the part concerned of) the salary services again by All Business Consultancy;
  - (c) the costs related to carrying out the emergency provisions taken by All Business Consultancy, such as using other back-up computer systems or hiring third parties by All Business Consultancy.
- 22.2 The liability of All Business Consultancy with regard to the salary services, for other damages, including consequential damage is excluded except for the direct damage referred to in section 1.
- 22.3 The liability limitations included in sections 1 and 2 lapses if there is a case of intent or gross negligence on the part of All Business Consultancy.
- 22.4 All Business Consultancy indemnifies the Client against all claims from third parties, however they may be called, with regard to an infringement on intellectual property rights from those third parties related to the salary services, insofar as not in violation of statutory provisions.
- 22.5 Without prejudice to the provisions of section 4, the Client indemnifies All Business Consultancy against all claims from third parties arising from or leading back to the execution by All Business Consultancy of salary services and the information generated.
- 22.6 Claims to damages become prescribed if no proceedings are instituted within two years after they arise.

## **23. Personal Data Protection Act**

- 23.1 The Client gives All Business Consultancy the order to process the personal data which the Client provides to All Business Consultancy for the execution of the agreement in relation to the salary services, without being subject to its direct authority. For the execution of the data provisions All Business Consultancy can use one of its affiliated companies.
- 23.2 The Client guarantees that all statutory provisions concerning the data to be processed, particularly including the provisions of or pursuant to the currently valid privacy legislation, will be strictly regarded and followed and that all prescribed registrations, permissions and other formalities have been carried out. The Client shall provide All Business Consultancy with all information requested in that matter immediately and in writing. All Business Consultancy shall do its best to ensure proper state-of-the-art protection for the personal data, insofar as these are managed and / or processed by All Business Consultancy.
- 23.3 The Client indemnifies All Business Consultancy against all claims by third parties which may be instituted against All Business Consultancy due to violation of the currently valid legal provisions concerning the data to be processed, including, but not limited to privacy legislation and / or legal retention periods.

- 23.4 All Business Consultancy and / or the company as referred to in section 1 will take fitting technical and organizational measures to protect the personal data against loss or wrongful processing of the personal data.
- 23.5 All Business Consultancy and / or the company as referred to in section 1 is obliged to confidentiality of the personal data which it is exposed to in connection with the execution of the agreement, except for insofar as any legal provisions oblige All Business Consultancy and / or the company as referred to in section 1 to make notification.
- 23.6 All Business Consultancy and / or the company as referred to in section 1 will remove the personal data no longer needed to carry out the salary services, no later than two years after these personal data are no longer needed from the automated system and its files.
- 23.7 The Client ensures that for the processing of the personal data in connection with the salary provision no code of conduct or regulations in the sense of the privacy legislation applies, in which the processor is under other or further reaching obligations than those of these General Terms and Conditions of All Business Consultancy, unless All Business Consultancy has consented to this in advance in writing. Any costs which the compliance with an aforementioned code of conduct or regulations entail will be borne by the Client. The Client indemnifies All Business Consultancy and / or the company as referred to in section 2 against claims from third parties for remuneration of damages that result from the fact that the provisions of the first sentence are being violated.

### III. SERVICES

The provisions of this chapter Services shall only apply in addition to the General Provisions of these General Terms and Conditions in the event that All Business Consultancy provides services, such as advice on organization and computerization, applicability studies, project supervision, consultancy, education, courses, training programs, support, software or information system design or development or assistance for these services, and services with regard to networks and ICT infrastructures. These provisions shall not affect the provisions of these General Terms and Conditions with regard to specific services, such as computer service and the development of software and maintenance.

#### 24. Execution

- 24.1 All Business Consultancy shall perform the service carefully and skilfully subject to an obligation to perform to the best of one's ability, where necessary in compliance with the written agreements and procedures made with the Client.
- 24.2 In the event that it has been agreed that the services will be performed in phases, All Business Consultancy shall have the right to postpone the commencement of the services of the next phase until the Client has approved the results of the previous phase in writing.
- 24.3 All Business Consultancy shall only be under the obligation to follow responsible instructions of the Client given in a timely manner during the performance of the services if this has been expressly agreed in writing. All Business Consultancy is not under the obligation to follow instructions that change or add to the content or the scope of the agreed services. If, however, such instructions are followed, the Client shall pay for the activities concerned in compliance with Article 13 (Changes) and / or 14 (Variations). The aforementioned has consequences for any guarantees given.
- 24.4 In the event that (further) agreements are made and / or laid down in for example project reports during the performance of the services, these reports must be signed by the representative of All Business Consultancy who is authorized to do so before such agreements are legally valid.

#### 25. Premature termination of an agreement

- 25.1 In addition to the provisions of Article 9 (Term and termination), All Business Consultancy can terminate the agreement prematurely, if it is of the opinion that the activities can no longer be carried out in compliance with the agreement and any modifications thereof, or if there are serious reasons for termination in the sense of Section 7.408, Paragraph 2 of the Dutch Civil Code. The Client must be notified of all this in writing, stating reasons. Article 9 section 4 applies mutatis mutandis to such a termination.
- 25.2 The right of the Client pursuant to Section 7.408, Paragraph 1 of the Dutch Civil Code to terminate an assignment agreement at any time is expressly excluded.

## 26. Liability

Without prejudice to the provisions of Article 10 (Liability), All Business Consultancy shall only be liable for demonstrable and attributable shortcomings in the carrying out of the activities insofar as these are the result of non-compliance on the part of All Business Consultancy with the care, expertise and competence that should be relied on during the execution of the activities.

## 27. Educational programs, courses and training programs

Insofar as the services of All Business Consultancy consist of providing an educational program, course or training program, All Business Consultancy can always demand the amount payable for the service concerned before it starts. The consequences of the cancellation of participation in an educational program, course or training program shall be governed by the rules in force at All Business Consultancy.

- 27.1 In the event that, according to All Business Consultancy, the number of participants is insufficient, All Business Consultancy shall have the right to cancel the educational program, course or training program, or combine it with one or more other educational programs, courses or training programs, or to provide them on a different date or at a different time, without being obliged to compensate any damages suffered

# IV. SECONDMENT

The provisions of this chapter Secondment shall only apply in addition to the General Provisions and, insofar as they are applicable, the provisions of chapter III (Services) of these General Terms and Conditions, in the event that All Business Consultancy and the Client have concluded an agreement for the provision by All Business Consultancy of a specifically appointed employee (hereinafter to be referred to as: the Seconded Employee) to the Client, with the aim of having this employee perform activities under the leadership and supervision and / or direction of the Client (Secondment).

## 28. Provision of staff

- 28.1 All Business Consultancy will provide Staff, who during the Time of availability will carry out work subject to an obligation to perform to the best of one's ability and under management and supervision of the Client.
- 28.2 The Agreement will state the following: the qualifications of the Staff, the duration of the Time of availability, the nature, place and times of the work to be carried out as well as a person to be appointed by each party as contact person for the other party.

## 29. Term of the agreement

- 29.1 Unless agreed upon otherwise in the agreement, the agreement shall be valid for the duration of the activities commissioned by the Client.
- 29.2 If a specific secondment period is mentioned in the agreement for the Seconded Employee, the agreement shall end automatically, without any notice being required, upon the lapse of such period, unless the Client has the employee concerned perform activities after such period as well. In such an instance, the agreement shall be deemed to have been extended by the same period as the initial period, unless the Parties agree otherwise in writing at such time.
- 29.3 The term of the agreement can be extended provided that a written request thereto is submitted to All Business Consultancy at least four weeks before the date of termination. In the event that All Business Consultancy notifies the Client within four weeks after the date of the above-mentioned request, that it wishes the extension to be non-recurring, further extension shall no longer be possible.

## 30. Continuity

- 30.1 All Business Consultancy shall try to the best of its ability to have the Seconded Employee remain available for the term of the agreement, without prejudice to the provisions of Article 1.8 (Replacement). The replacement of a Seconded Employee shall always take place after consultation with the Client. Unless agreed upon otherwise in writing, the training period of the new Seconded Employee will be three working days at the most. If this has been agreed in writing, these working days shall not be charged.

- 30.2 If the Seconded Employee demonstrably fails to meet the agreed quality requirements and the Client notifies All Business Consultancy of this in writing within ten calendar days after the activities commissioned by the Client have started, the Client shall have the right to request the Seconded Employee to be replaced. All Business Consultancy shall treat this request with the highest priority. The Client's payment obligations for the activities that the Seconded Employee to be replaced has already carried out shall remain unchanged.
- 30.3 In the event of a sickness that continues longer than ten working days, All Business Consultancy will treat the provision of a suitable replacement of the Seconded Employee with priority. The Seconded Employee's holiday or leave shall be determined in consultation with the Client.

### **31. Work place**

All Business Consultancy guarantees that the Seconded Employee will comply with the regulations, instructions and rules in force at the buildings and premises of the Client to which the Seconded Employee has access insofar as these have been made known properly to the Seconded Employee and All Business Consultancy.

### **32. Tariffs and costs**

- 32.1 All Business Consultancy shall keep records of the hours worked by the Seconded Employee. Unless agreed upon otherwise in the agreement, the reimbursement for the hours worked by the Seconded Employee shall be calculated on the basis of the hours worked at the tariffs mentioned in the agreement. The hourly records of All Business Consultancy apply as exclusive proof for the hours worked, unless agreed otherwise in writing.
- 32.2 The expenses eligible for reimbursement are agreed in the agreement. Travel and accommodation expenses for business trips made with the Client's permission shall always be fully refunded.
- 32.3 If tariffs for overtime have not been laid down in the agreement, the overtime hours agreed between All Business Consultancy and the Client in mutual consultation shall be charged according to the following tariffs:
- (a) from 5.00 p.m. to 12.00 p.m.: 150 % of the hourly tariff;
  - (b) from 12.00 p.m. to 06.00 a.m.: 200 % of the hourly tariff;
  - (c) from 06.00 a.m. to 08.00 a.m.: 150 % of the hourly tariff;
  - (d) weekends and national holidays: 200 % of the hourly tariff.

The reimbursement for the availability of the Seconded Employee outside the above-mentioned hours, such as for instance as a standby, shall be agreed upon separately and in writing.

- 32.4 All Business Consultancy is responsible for the timely payment of the wage tax and social security premiums to be paid for the Seconded Employee in connection with the agreement, which are payable pursuant to the laws of the country where All Business Consultancy has its registered office.
- 32.5 All Business Consultancy indemnifies the Client against all claims of the tax authorities, respectively institutions with regard to social security premiums, for taxes and social security contributions payable for the secondment pursuant to the laws of the country where All Business Consultancy has its registered office.
- 32.6 At the Client's first request, All Business Consultancy shall provide the Client with a statement issued by the tax authorities and / or social security administration agency stating the payment of wage tax and social security contributions. When the Client desires this, though not more than once per quarter, All Business Consultancy shall, for the Client's account (unless agreed upon otherwise), provide the Client with a statement drawn up and signed by a registered accountant, listing the payment obligations of each Seconded Employee, which have arisen for All Business Consultancy or for the third parties it has engaged during the periods mentioned in the request, towards the tax authorities and / or the social security administration agencies, as well as the extent to which these obligations have been fulfilled.

### **33. Invoicing and payment**

- 33.1 Unless agreed upon otherwise, All Business Consultancy will send an invoice on a monthly basis within two weeks after the lapse of the calendar month concerned.
- 33.2 Each invoice is specified in the following way:
- (a) Reference, order number, full name of each seconded Employee, applicable hourly tariffs and total amount;
  - (b) Insofar as applicable, a specified list of expenses.

33.3 The invoices will be accompanied by copies of the documents on which the invoices are based (time registration forms, receipts, etc.).

#### **34. Liability**

34.1 Without prejudice to the provisions of Article 10 (Liability), All Business Consultancy is only liable for shortcomings in the performance of the activities, insofar as these are the result of non-compliance on the part of the Seconded Employee with the care, expertise and competence that should be relied on for the execution of the activities, to a maximum of 45,000 per event, in which a series of interconnected events will be considered as one event.

34.2 All Business Consultancy does not accept any responsibility for the results of activities achieved under the management and supervision of the Client.

#### **35. Intellectual property rights**

35.1 The Client is only entitled to the intellectual property rights of works including those of software and websites that have been developed by the Seconded Employee specifically for the Client and according to the Client's design and under the Client's leadership and supervision.

35.2 The Client indemnifies All Business Consultancy against claims of third parties stating that property rights and / or database rights of a third party have been violated by or in connection with the performance of the agreement, insofar as such violation relates to designs, goods or software made available by the Client to All Business Consultancy.

## **V. SOFTWARE DEVELOPMENT**

The provisions mentioned in this chapter Software Development shall only apply in addition to the General Provisions of these General Terms and Conditions and the special provisions of chapter III (Services) and chapter IV (Secondment) in the event that All Business Consultancy, by order of the Client, develops software or for example a website other than through services or secondment. This software shall also be governed by the provisions of chapter VI (Software Use and Maintenance), except insofar as they are deviated from in this chapter. The rights and obligations mentioned in this chapter only relate to computer software in a form that can be read by data processing equipment and laid down on materials that can be read by such equipment, as well as to the documentation pertaining thereto.

#### **36. Software development**

36.1 The Parties shall specify in writing which software will be developed and in which way this will be done. All Business Consultancy shall develop the software with due care on the basis of the data to be provided by the Client. The Client guarantees the correctness, completeness and consistency of such data.

36.2 All Business Consultancy has the right, but not the obligation, to verify the correctness, completeness and consistency of the provided data or specifications and, in the event that any imperfections are found, to postpone the agreed activities until the Client has removed the imperfections concerned.

36.3 Without prejudice to the provisions of Article 6 (Intellectual property rights), the Client acquires the right to use the software in its company or organization under the provisions of chapter VI (Software Use and Maintenance). If and insofar as this has been agreed expressly and in writing, the source code of the software and the technical documentation created during the development of the software can be made available to the Client, however only for continuity purposes and for the Client's own use.

#### **37. Delivery, installation and acceptance**

37.1 All Business Consultancy will deliver the software to be developed to the Client in compliance with the written specifications. All Business Consultancy will install the software if such has been agreed in writing.

37.2 In the event that an acceptance test has been agreed in writing, the test period shall be fourteen days following delivery or, in the event that an installation by All Business Consultancy has been agreed in writing, fourteen days after completion of such installation. During the test period the Customer shall not use the software for any productive or operational purposes.

37.3 The software shall be deemed to be accepted between the Parties:

- (a) If no acceptance test has been agreed between the Parties: upon delivery or, in the event that an installation to be performed by All Business Consultancy has been agreed in writing, upon completion of the installation; or
  - (b) If the Parties have agreed an acceptance test in writing: on the first day following the conclusion of the acceptance test period; or
  - (c) If All Business Consultancy receives a test report before the end of the acceptance test period as mentioned in Article 37.6: once the Defects mentioned in such test have been repaired, without prejudice to the presence of any minor Defects which, according to Article 37.7, do not impede acceptance.
- 37.4 Contrary to the aforementioned the software shall already be considered fully accepted from commencement of use if the Customer has already been using such software before the moment of acceptance (other than for test purposes).
- 37.5 If it becomes apparent during the execution of the agreed acceptance test that the software is defective in a way that impedes the progress of the acceptance test, the Customer shall inform All Business Consultancy thereof in writing, stating details. In such an instance the test period shall be interrupted until the software has been adjusted in such a way that the impediment has been removed.
- 37.6 If it becomes apparent during the execution of the agreed acceptance test that the program is defective as provided for in Article 6.7 (Repair of Defects), the Client shall inform All Business Consultancy thereof, stating details, no later than on the last day of the test period, via a written and detailed test report. All Business Consultancy shall make every endeavor to repair such Defects within a reasonable term, whereas All Business Consultancy shall have the right to implement temporary solutions or program bypasses of problem-solving restrictions in the software.
- 37.7 The acceptance of the software shall not be withheld on other grounds than those in connection with the specifications expressly agreed in writing between the Parties as well as due to the existence of minor Defects, being Defects which will in reasonableness not impede the operational or productive use of the software, without prejudice to All Business Consultancy's obligation to repair these minor Defects pursuant to Article 40 (Guarantee), if applicable.
- 37.8 If the software is delivered and tested in phases and / or parts, the non-acceptance of a certain phase and / or part shall not affect a possible acceptance of another phase and / or another part. The acceptance of the last phase and / or the last part, however, also means the acceptance of the entire software.

## VI. SOFTWARE USE AND MAINTENANCE

The provisions mentioned in this chapter Software Use and Maintenance shall only apply in addition to the General Provisions of these General Terms and Conditions to all the software made available by All Business Consultancy. The rights and obligations mentioned in this chapter only relate to computer software in a form that can be read by data processing equipment and that has been recorded on materials that can be read by this equipment, as well as the documentation pertaining to it, all this including any new versions to be provided by All Business Consultancy.

### 38. Right of use

- 38.1 Without prejudice to the provisions contained in Article 7 (Intellectual property rights), All Business Consultancy shall grant the Client the nonexclusive right to use the software for the duration of the agreement. The right referred to here applies only to the object code for the software. The Client shall observe the usage restrictions agreed between the Parties at all times. Without prejudice to the other provisions contained in these General Terms and Conditions, the Client's right of use shall only include the right to load and execute the program.
- 38.2 The Client is only allowed to use the software within its own company or organization on the one processing unit and for a certain number or type of users or connections for whom, respectively which the right of use has been granted. Insofar as nothing has been agreed upon in this respect, the Client's processing unit on which the software has been used for the first time and the number of connections connected to this processing unit at the time when it was first used, will be considered to be the processing unit and the number of connections for which the right of use has been granted. In the event of a failure of the above-mentioned processing unit, the software can be used on another processing unit during this failure. The right of use can relate to various processing units insofar as this appears expressly from the agreement.

- 38.3 The right of use is non-transferable. The Client shall not sell, rent, sublicense, or alienate the software or the information carriers on which it is recorded or grant any limited rights thereon in any way or make it available in any way to any third party for any purpose. This shall also apply in the event that the third party concerned only used the software for the Client.
- 38.4 The Client shall not change the software other than within the framework of the repair of Defects, and shall not use it within the framework of the processing of data for third parties (time-sharing). The source code of the software and the technical documentation generated during the development of the software shall not be made available to the Client.
- 38.5 Immediately following the expiry of the right of use of the software, the Client shall return all its copies of the software to All Business Consultancy. In the event that the Parties have agreed that the Client will destroy such copies upon the expiry of the right of use, the Client shall notify All Business Consultancy in writing of such destruction without delay. Destruction will also mean the permanent removal of the software from all systems of the Client.
- 38.6 If (a department or part of) the location of the Client where the Software is kept, is made independent or transferred to a third party, the Client must inform All Business Consultancy of such immediately. The right of use of the Software on the Equipment at (the department or part of) the location of the Client will then end, unless All Business Consultancy grants a new right of use to the Client.

### **39. Delivery, installation and acceptance**

- 39.1 All Business Consultancy shall deliver the software to the Client stored on the agreed type and format of information carrier. All Business Consultancy shall install the software if such has been agreed in writing. Unless expressly agreed otherwise in writing, All Business Consultancy is never required to carry out data conversion.
- 39.2 In the event that an acceptance test has been agreed in writing between the Parties, the provisions of Articles 37.2 through 37.8 shall apply by analogy.
- 39.3 If no acceptance test has been agreed between the Parties, the Client shall accept the software in its state upon delivery, without prejudice to the obligations on the part of All Business Consultancy pursuant to Article 40 (Guarantee).

### **40. Guarantee**

- 40.1 For a period of three months following delivery or, if the Parties have agreed an acceptance test, three months following acceptance, All Business Consultancy shall to the best of its ability repair any Defects in the software within the meaning of Article 6.7 (Repair of Defects) if these Defects have been reported to All Business Consultancy in writing, stating details, within this period. All Business Consultancy does not guarantee that the software will run without interruption or Defects or that all Defects will be repaired. The guarantees given by All Business Consultancy with regard to the software shall never go beyond the guarantees of the manufacturer or supplier of All Business Consultancy concerned. The repair shall be carried out free of charge in the event that the software has been developed at a fixed price. In other cases All Business Consultancy shall have the right to charge its usual tariffs and costs of repair. All Business Consultancy can also charge its usual tariffs and costs of repair in the event of any faulty or injudicious use on the part of the Client or any other causes which cannot be attributed to All Business Consultancy or in the event that the Defects could have been identified during the agreed acceptance test. The repair of any damaged or lost data shall not be covered by the guarantee. The guarantee obligation shall expire if the Client makes any changes to the software or asks another party to make such changes.
- 40.2 The repair of Defects shall take place on a location to be determined by All Business Consultancy. All Business Consultancy shall have the right to implement temporary solutions or program bypasses or problem-solving restrictions in the software. If All Business Consultancy has to carry out work on-site at the Client's, any travel and accommodation expenses can be charged separately.
- 40.3 Following the guarantee period referred to in Article 40.1 (Guarantee), All Business Consultancy shall not be under the obligation to repair any Defects and / or other imperfections, unless the Parties have concluded a maintenance agreement that covers such repair.

## **41. Maintenance**

- 41.1 The provisions relating to maintenance shall only apply if the Parties have agreed in writing that All Business Consultancy will carry out maintenance activities for the software. With regard to the term and termination of the agreement, the provisions of Article 9.1 (Term and termination) shall apply, on the understanding that notice of termination is given with due observance of a notice period of six months, such in deviation from the provisions of Article 9.1.
- 41.2 All Business Consultancy will carry out the Maintenance in accordance with an SLA and / or a DAP and the methods described therein, such as ASL or ITIL for example. Amendments to a DAP and / or an SLA can only be agreed in writing between parties. The DAP and SLA are part of the Agreement concerned.
- 41.3 The obligation to carry out maintenance within the agreed tariffs only applies to the software included in the current agreed installed base (software list) of the Client. The Client shall ensure that the installed base remains accurate at all times, in consultation with All Business Consultancy. In the event that All Business Consultancy performs maintenance activities with regard to software which is not mentioned in the installed base at the time when the activities take place, All Business Consultancy will perform these activities on the basis of the actual costs and at the usual tariffs.
- 41.4 All Business Consultancy shall have the right to inspect any software, as well as the equipment on which the software to be taken into maintenance has been installed and (any software installed on) any equipment connected thereto in advance. On the basis of the aforementioned inspection, All Business Consultancy shall have the right not to take such equipment in maintenance or set further conditions under which such equipment will be taken in maintenance. Further conditions to be set shall in any case be understood to mean adjusting / upgrading software, equipment, system software and / or connected networks in accordance with directions given by All Business Consultancy.
- 41.5 In the event that a software maintenance agreement has been concluded, or if it has been agreed expressly and in writing that maintenance is included in the software s user fee, the Client shall notify All Business Consultancy of any Defects in the software, stating details, in accordance with the usual procedures applicable at All Business Consultancy. Following receipt of such notification, All Business Consultancy shall, to the best of its ability, try to repair Defects within the meaning of Article 6.7 (Repair of Defects) and / or make improvements to later, updated, versions of the software. Depending on the urgency, the results shall be made available to the Client in a way and within a period of time determined by All Business Consultancy. All Business Consultancy shall have the right to implement temporary solutions or program bypasses or problem-solving restrictions in the software.
- 41.6 All Business Consultancy can charge its usual tariffs and costs of repair in the event of any faulty use or injudicious use on the part of the Client or any other causes which cannot be attributed to All Business Consultancy or in the event that the software has been changed by any others than All Business Consultancy. The repair of any damaged or lost data shall not be covered by the maintenance.
- 41.7 Costs of amended and / or new versions of software or equipment needed for the working of the System and / or the Maintenance as well as the work which results from amended and / or new versions of this software or this equipment, including introducing necessary changes in the System, are for the account of the Client, unless expressly agreed otherwise.
- 41.8 In the event that the Client has not, at the same time when it concluded the agreement by which the software is made available to the Client, entered into a maintenance agreement with All Business Consultancy, the Client cannot oblige All Business Consultancy to enter into a maintenance agreement at a later point in time.

## **42. Software supplied by third parties**

- 42.1 If and insofar as All Business Consultancy makes (standard) software supplied by third parties available to the Client, the conditions set by such third parties shall be applicable unless All Business Consultancy has informed the Client otherwise in writing, whereas the license agreement concerned shall be deemed to have been concluded between the Client and the third party concerned. The Client accepts the above-mentioned conditions of third parties. These conditions are often enclosed with the packaging of the software concerned or included in the software itself. All Business Consultancy shall also send these conditions to the Client on request. The provisions contained in this article shall also apply to any software, supplied by All Business Consultancy, which is taken into use by the Client by accepting a so-called shrink wrap license, which implies that the license agreement between the Client and the third party involved will take effect upon the opening of the packaging of the software concerned.

- 42.2 If and insofar as, for any reason, the above-mentioned conditions of third parties are deemed to be non-applicable to the relationship between the Client and All Business Consultancy or are declared inapplicable expressly and in writing, the provisions contained in these terms and conditions shall be applicable.

## VII. SALE OF EQUIPMENT

The provisions mentioned in this chapter Sale of Equipment shall only apply in addition to the General Provisions of these General Terms and Conditions in the event that All Business Consultancy sells equipment, network components or other goods to the Client. The legal provisions of Book 7 of the Dutch Civil Code with regard to consumer sale shall not apply to this chapter.

### 43. Delivery

- 43.1 The equipment sold by All Business Consultancy to the Client shall be delivered to the Client at the warehouse of All Business Consultancy. In the event that this has been agreed in writing, All Business Consultancy shall deliver the equipment sold to the Client to a location in the Netherlands to be specified by the Client at All Business Consultancy's usual rate. For delivery to locations that are more difficult to access, including without being limited to islands, All Business Consultancy shall have the right to charge additional costs of delivery.
- 43.2 All Business Consultancy shall notify the Client timely before delivery of the location to which it intends to deliver the equipment and of the time.
- 43.3 All Business Consultancy shall package the equipment for delivery in accordance with its usual standards. If the Client requests a special way of packaging, any additional costs shall be for its account.
- 43.4 The Client shall handle the empty packaging of equipment delivered by All Business Consultancy in a way which is in agreement with the applicable government regulations. The Client indemnifies All Business Consultancy against any claims made by third parties for non-compliance with such regulations.
- 43.5 Without prejudice to the provisions contained in the Besluit Verwijdering Wit- en Bruingoed (WEB) and the Regeling Verpakking en Verpakkingsafval or any new regulations in this field, the Client shall be under the obligation to pay any costs which result from the execution of the present legal provisions. These costs may include, without being limited to, the costs incurred for taking back any obsolete third party equipment and the destruction of such equipment. All Business Consultancy shall ensure the removal of any of its own materials, such as the packaging of products delivered by All Business Consultancy. All Business Consultancy will not be under the obligation to remove any waste originating from third parties. In the event that the Client requests All Business Consultancy to remove obsolete materials (such as networks, cabinets, cable ducts, packaging material, equipment) or in the event that All Business Consultancy is under the obligation thereto, All Business Consultancy may accept such request via a written order, at All Business Consultancy's usual tariffs, under the condition that the aforementioned materials will always remain the property of the Client. At the request of the
- 43.6 Client, All Business Consultancy shall, for the account and risk of the Client, make facilities available in order to remove the materials in a way that is in accordance with the applicable environmental legislation.

### 44. Installation & (pre) configuration

- 44.1 In the event that this has been agreed in writing, All Business Consultancy shall install the equipment or have it installed.
- 44.2 In the event that All Business Consultancy installs the delivered equipment / software or configures the equipment to be delivered for the Client in a specific way, this shall only take place in accordance with the written specifications agreed with the Client in advance. All Business Consultancy shall not be liable for any Defects and other interruptions in the proper operation of equipment provided with a (pre) configuration, carried out by third parties, including the manufacturer. In the event that the Client makes software or other information available to All Business Consultancy for the installation or configuration activities, the Client guarantees that all the (copyright) permissions have been obtained and license conditions have been complied with. The Client indemnifies All Business Consultancy against any claims (of third parties) in this respect.
- 44.3 In the event that All Business Consultancy carries out Installation Activities, the Client shall make a suitable location available with all the required facilities, such as cabling and telecommunications facilities, before the equipment is delivered.

- 44.4 If desired, All Business Consultancy shall submit a tender to the Client for the building of these facilities.
- 44.5 To undertake the necessary activities, the Client shall grant All Business Consultancy access to the installation site during the normal working hours of All Business Consultancy.
- 44.6 Unless agreed upon otherwise expressly and in writing, the equipment and the software installed on it shall only be intended to function under normal office conditions, being a closed room with an ambient temperature between 15 C and 32 C, with a plus / minus up to 5 C per hour and a relative humidity ranging from 20 % to 80 % with a maximum margin of 20 % per hour. The allowed differences in pressure (peaks) have been maximized to +/- 2 %. Magnetic fields or static electricity shall be avoided.

#### **45. Goods returned**

- 45.1 All Business Consultancy shall not be obliged to accept any return of goods from the Client without its prior written consent. Goods returned will, in principle, not be accepted after 10 working days following the delivery to the Client. Furthermore, the following shall apply to all goods returned:
- (a) The packaging of the goods must be undamaged, nor written on or provided with stickers by any others than All Business Consultancy;
  - (b) The goods returned must be unused;
  - (c) The goods returned must be complete, and include the documentation and information pertaining to them and other articles that have been delivered with the goods concerned;
  - (d) The administrative procedure indicated by the relevant business unit of All Business Consultancy must be followed correctly.
- 45.2 The acceptance of a return of goods shall never imply any acknowledgement by All Business Consultancy of the ground for such return of goods as stated by the Client and shall not affect the Client's obligation to pay. The ownership (insofar as the Client has paid) and risk of the returned goods shall remain vested in the Client until All Business Consultancy has credited the part of the price the Client has paid for such returned goods.
- 45.3 All Business Consultancy reserves the right to credit any goods returned under subtraction of 15 % of the price of the returned goods for administration and handling fees, with a minimum of 100 (one hundred EURO), increased by any possible costs ensuing from the repair of any damage to the goods or the packaging to be attributed to the Client.

#### **46. Delivery, installation and acceptance**

- 46.1 All Business Consultancy shall make the equipment available to the Client via delivery in accordance with Article 43 (Delivery), or, in the event that an installation to be undertaken by All Business Consultancy has been agreed in writing, via installation of the equipment at the Client's.
- 46.2 Between the Parties, the equipment will be deemed to be accepted on the date of delivery or, in the event that an installation to be undertaken by All Business Consultancy has been agreed in writing, on the date on which the installation has been completed. Without prejudice to the provisions contained in this article, the equipment will in any case be deemed to be accepted as from the moment of commencement of operational use by the Client.

#### **47. Guarantee**

- 47.1 During a period of 3 (three) months following the acceptance as mentioned in Article 46 (Delivery, installation and acceptance), All Business Consultancy shall, to the best of its ability repair any material or manufacturing failure in the equipment, as well as in parts delivered by All Business Consultancy.
- 47.2 All Business Consultancy within the framework of any guarantee or maintenance, in the event that these have been reported to All Business Consultancy within the required period, in writing and with a detailed description. All of the replaced parts shall become the property of All Business Consultancy. The guarantees given by All Business Consultancy for the equipment shall never go beyond the guarantees of the manufacturer or supplier of All Business Consultancy concerned.
- 47.3 The guarantee obligation shall cease to have effect in the event that the failures have been caused, in part or in whole, by negligent or injudicious use, and / or external causes such as fire or water damage and / or other causes which cannot be attributed to All Business Consultancy. The guarantee obligation shall also cease to have effect in the event that:

- (a) The Client has installed the equipment concerned in a room which does not comply with the normal office environment conditions as referred to in Article 44.6 (Office environment conditions); or
  - (b) The Client makes any changes or has any changes made to the equipment or the parts delivered within the framework of any guarantee or maintenance without All Business Consultancy's written consent; or
  - (c) The Client, upon the occurrence of a failure or Defect as a result of a failure or Defect, has not timely nor properly made a complaint and has failed to do the utmost to limit the damage, including without being limited to switching off the equipment and having available copies and recent back-ups of data and software; or
  - (d) The Client puts the equipment in question into use before it has been accepted as referred to in the last phrase of article 43.2;
  - (e) The Client has used items or parts which were not prescribed by or due to All Business Consultancy or the manufacturer, without written consent from All Business Consultancy or the manufacturer.
- 47.4 Any costs resulting from the fact that the Client has not timely and properly made a complaint upon the occurrence of a failure or Defect as well as such costs ensuing from activities to be carried out by All Business Consultancy because the Client has not done all it could to limit the damage, including without being limited to switching off or putting out of operation the equipment and having available copies and recent back-ups of data and software, as well as activities with regard to repair activities outside the framework of this guarantee, shall be charged by All Business Consultancy in accordance with its usual tariffs. In the event that All Business Consultancy has to work on-site at the Client's, any travel and accommodation expenses can be charged separately.
- 47.5 The Client shall at any time be responsible for the timely creation of correct back-up copies of data and software. Restoring lost data shall not be included in All Business Consultancy (guarantee) obligations. If so agreed, All Business Consultancy can assist the Client against payment of the then applicable tariffs.
- 47.6 All Business Consultancy does not guarantee that the equipment will be without any Defects or other imperfections.

## VIII. INSTALLATION

The provisions mentioned in this chapter Installation are based on the Algemene Leveringsvoorwaarden Installerende Bedrijven 1992 (hereinafter to be referred to as: ALIB) and shall only apply in addition to the General Provisions and any other applicable provisions of these General Terms and Conditions in the event that All Business Consultancy installs (telecommunications) equipment, electro-technical installations, network systems and / or cabling (hereinafter to be referred to as: the System) on-site at the Client's (hereinafter to be referred to as: the Installation Activities).

### 48. Obligations on the part of the Client

- 48.1 The Client shall supply, in a timely manner, but always before the start of the Installation Activities, the connections needed to supply power to the System, the Installation Activities and the testing thereof. The costs of the required power shall be for the Client's account.
- 48.2 The Client shall ensure that the System and / or installations are connected to a public telecommunications network. The related (connection) costs shall be for the Client's account. If this has been agreed in writing, All Business Consultancy will give instructions with regard to the abovementioned connection to a public telecommunications network.
- 48.3 The Client shall ensure that any activities to be carried out by third parties (such as building activities) and / or deliveries which do not form part of the Installation Activities, but are necessary for the correct and timely execution of the Installation Activities by All Business Consultancy, are carried out in such a way and in a timely manner, so that the Installation Activities are not delayed or impeded by them and in the event that (it is expected that), in spite of this, a delay as meant in this article occurs or will occur, the Client shall inform All Business Consultancy hereof immediately.
- 48.4 In the event that the start and progress of the Installation Activities is delayed by circumstances for which the Client is responsible, any possibly damage incurred by All Business Consultancy as a consequence of this shall be paid by the Client, provided that such damage is a direct consequence of the delay. Both the Client and All Business Consultancy shall make endeavors to limit the aforementioned damage as much as possible.

- 48.5 The Client shall ensure that adequate and safe machines and tools are available for the Installation Activities in a timely manner for the horizontal and vertical moving of heavy parts required by the System and that the location of the System is accessible and available, and also that the access roads to the location where the Installation Activities will take place are suitable.
- 48.6 The Client shall be liable for any damage to or loss of materials, parts or tools supplied by All Business Consultancy or third parties engaged by All Business Consultancy for the Installation Activities and managed by the Client, unless this damage and / or this loss is attributable to All Business Consultancy.
- 48.7 The Client shall allow All Business Consultancy to place names and signs at the location of the installation or to apply them to the System free of charge for the period during which All Business Consultancy carries out (installation and / or maintenance) activities.

## 49. Settlement of variations

- 49.1 In addition to the provisions of Article 13 (Changes) and 14 (Cost-increasing circumstances / settlement of variations) each of the total amounts, respectively the balance of the additional payments and withholdings as a consequence of changes of the specifications, shall not exceed 15 %, respectively 10 % of the agreed fixed price (contract sum), unless expressly agreed otherwise in writing.

## 50. Completion

- 50.1 The System shall be considered to be completed:
- (a) When All Business Consultancy has informed the Client in writing that the Installation Activities have been completed, and the Client has approved or accepted the System; or
  - (b) When All Business Consultancy has declared in writing to the Client not later than after eight days have lapsed, that the Installation Activities have been completed, and the Client has failed to approve or accept the System within such period; or
  - (c) When the Client takes the System into operation (early), on the understanding that by the (early) taking into operation of a part of the System, such part will be considered as completed; or
  - (d) When a visual inspection of the System has been performed by All Business Consultancy and a completion report has been drawn up and handed to the Client.
- 50.2 Any Defects that can be repaired within the guarantee period as mentioned in Article 52 (Guarantee) and that do not affect the functioning of the System substantially shall not impede completion.
- 50.3 The completion shall discharge All Business Consultancy of all liability for Defects, unless the Client proves that it could or should not reasonably have detected such Defects at the time of the completion.

## 51. Payment

- 51.1 If it has been agreed that the Client will pay the agreed reimbursement prior to the carrying out of the Installation Activities, this shall take place within seven days after All Business Consultancy has confirmed the order for the Installation Activities to the Client.
- 51.2 In all other cases payments shall always be made within thirty days after the invoice date. In the event that it has been agreed that payment shall take place in installments in proportion to the duration of the Installation Activities, the following installments shall apply, unless the quotation or agreement states otherwise:
- (a) 1st installment: 30 % of the contract sum immediately after All Business Consultancy has confirmed the order for the Installation Activities.
  - (b) 2nd installment: 30 % of the contract sum after the lapse of 30 % of the agreed duration of the Installation Activities.
  - (c) 3rd installment: 30 % of the contract sum after the lapse of 60 % of the agreed duration of the Installation Activities.
  - (d) 4th installment: 10 % of the contract sum upon the completion of the System.

## 52. Guarantee

- 52.1 During a period of 3 (three) months following the completion as mentioned in Article 50 (Completion), All Business Consultancy shall, to the best of its ability, repair any material or manufacturing failure in the System, if such failure has been reported to All Business Consultancy within the required period, in

writing and with a detailed description. All of the replaced parts shall become the property of All Business Consultancy.

- 52.2 The guarantee obligation shall cease to have effect in the event that the failures as referred to in the immediately preceding paragraph have been caused, in part or in whole, by negligent or injudicious use, and / or external causes such as fire or water damage and / or other causes which cannot be attributed to All Business Consultancy.
- 52.3 The guarantee obligation shall also cease to have effect in the cases mentioned in Article 47.2 (Cancelled guarantees).
- 52.4 Articles 47.3 (Overdue complaints), 47.4 (Back-up obligation) and 47.5 (Guarantee) shall apply by analogy.

### **53. Special provisions**

- 53.1 The Client guarantees that it will ensure that the building where All Business Consultancy performs or will perform the installation, meets the requirements of the Nederlandse Bouwregelgeving (Dutch Building Regulations), the NEN 1010 and the NEN 3140. The Client guarantees that the building(s) concerned are windproof and waterproof. The System should not be exposed to fluids, weather conditions or ultraviolet light. If it appears at any time that the System is or will be exposed to the above-mentioned conditions, All Business Consultancy shall have the right to suspend the carrying out of the work for the Client's risk and account. In such an instance, All Business Consultancy will consult with the Client.
- 53.2 The Client is responsible and bears the costs for all the applications for permits, exemptions and additional local regulations required for the installation and the System as demanded by the government and / or public utilities and for the drawings to be made for that purpose and which are required for the set-up of the System.
- 53.3 Where applicable, the Client shall inform All Business Consultancy of the correct position of the (underground) cables and pipes located at or close to the location of the installation. In the event that drilling operations are carried out at the Client's request, All Business Consultancy shall only carry them out on the directions and instructions of the Client. The Client shall indicate the locations of the drilling holes on the floor and / or the wall.
- 53.4 In the event that All Business Consultancy unexpectedly damages a pipe at the location indicated by the Client, All Business Consultancy shall not be responsible for the damage as a consequence thereof.
- 53.5 With regard to taking back waste, packaging or old materials (such as networks, cabinets, cable ducts, packaging materials and equipment), the provisions of Articles 43.5 (Besluit Verwijdering Wit- en Bruingoed) and 43.6 (Waste disposal) shall apply.
- 53.6 If the Client reasonably suspects that there are materials in its building(s) that contain harmful substances (including asbestos), the Client shall be under the obligation to report this immediately to All Business Consultancy in writing. The Client shall be liable for all the damage and / or costs caused by or related to the aforementioned materials and / or harmful substances. If there are any doubts about the foregoing, the Client shall give All Business Consultancy permission, now for then, to draw up an inventory of harmful substances for the Client's account. If harmful substances are detected during the carrying out of the activities, All Business Consultancy shall have the right to suspend and / or terminate the activities with immediate effect. The Client shall ensure that the harmful substances are adequately removed for its own risk and account. The costs of disposing of any possibly present harmful substances shall be for the Client's account.  
In the event that the activities are suspended as meant in this article, the activities shall only be started or resumed after the Client has handed a statement of an approved and accredited institution to All Business Consultancy, stating that the location of the installation is released for the carrying out of the activities.
- 53.7 All Business Consultancy shall have the right to suspend the activities with immediate effect in the event that a situation occurs or is imminent which constitutes or can constitute a threat to the safety, health or well-being of persons. The Client shall be responsible for and bear the costs of the taking of adequate and effective measures in order to create a safe work environment based on the standards of the legislation regarding working conditions and the environment. In addition, the Client shall be under the obligation to make it possible to limit the consequences of damage to the health of persons as much as possible. After a suspension as meant in this article, All Business Consultancy shall resume the installation after the Client has sufficiently demonstrated that the situation is safe and has paid the costs incurred by All Business Consultancy (such as the costs of research, inspection and the purchase of protective means).

Without prejudice to the provisions of Article 10 (Liability), the Client shall bear the risk for any circumstances as meant in this Article 53 and pay any damage incurred by All Business Consultancy as a consequence of such a circumstance. The Client indemnifies All Business Consultancy against any damage of third parties and / or of third parties / employees engaged by the Client and / or All Business Consultancy as a consequence of a circumstance mentioned in this Article 53. The aforementioned liability is an addition to / linked up with the liability arising from the law.

- 53.8 Pursuant to the ARBO (working conditions) regulations, it shall not be permitted to carry out electro-technical activities whilst the power to the part of the System where the activities are to be carried out has not been switched off, except in a number of situations described in NEN 3140. The Client guarantees that it will, each time when All Business Consultancy requests this, switch off the power of the part of the System concerned, so that All Business Consultancy employees and / or third parties will not incur any damage to their health and / or properties as a consequence of this.
- 53.9 Pursuant to the ARBO regulations, it is not permitted to carry out activities in humid (crawl) spaces. The Client is responsible for the taking of adequate and effective measures, for its own account, to prevent such situations in humid (crawl) spaces. In the event that All Business Consultancy, with regard to the installation, must carry out activities in a humid (crawl) space, it shall have the right to suspend the installation and only resume the activities when, in All Business Consultancy's opinion, the situation is safe.
- 53.10 Waiting periods, as a result of the fact that All Business Consultancy cannot start with the installation at the agreed point in time, or cannot carry it out uninterruptedly (including, without being limited to the detection of asbestos, hazardous situations, problems with the electricity and humid crawl spaces), can be charged to the Client separately against the conditions and reimbursements for the time spent as applied by All Business Consultancy at such time. All Business Consultancy shall at any time have the right to suspend the installation for the Client's risk and account in the event that one of the aforementioned situations occurs.

## IX. MAINTENANCE OF EQUIPMENT

The provisions mentioned in this chapter Maintenance of Equipment shall, in addition to the General Provisions of these General Terms and Conditions, only apply in the event that All Business Consultancy and the Client have concluded an agreement for the maintenance of equipment. The maintenance shall only apply to the equipment agreed in writing.

### 54. Duration of the obligation of maintenance

- 54.1 With regard to the duration and termination of the agreement, the provisions of Article 9.1 (Term and termination) shall apply, on the understanding that notice of termination shall be given with due observance of a notice period of six months, such in deviation from the provisions of Article 9.1.

### 55. Maintenance

- 55.1 The term maintenance shall be understood to mean:
- (a) Preventive maintenance: the inspection, adjustment and cleaning of the equipment deemed necessary by All Business Consultancy to reduce the chance of malfunctions;
  - (b) Corrective maintenance: removing faults in the equipment, as referred to in article 56.1, that have occurred during its normal use as a consequence of normal wear and tear, and removing the equipments own defects, as well as carrying out the repairs necessary for this and replacing worn out, respectively damaged parts;
  - (c) Remote preventive maintenance: preventive maintenance by means of a connection to the equipment via telecommunications facilities;
  - (d) Remote corrective maintenance: corrective maintenance by means of a connection to the equipment via telecommunications facilities.
- 55.2 In this chapter, failure shall be understood to mean any non-compliance or partial compliance with the specifications of the equipment as agreed in writing. A failure shall only be applicable in the event that it can be demonstrated by the Client and can be reproduced.
- 55.3 The maintenance and / or management shall be undertaken during the office hours applicable at All Business Consultancy, on Monday through Friday (with the exception of public holidays) between 8.00 a.m. and 5.00 p.m., with a maximum of eight hours per day, unless agreed otherwise in writing.

55.4 In the event that maintenance has commenced during the office hours referred to in Article 55.3 (Maintenance hours), and the maintenance staff of All Business Consultancy deems continuation of the work outside these hours necessary, the applicable tariffs shall be charged to the Client. In general, the work shall not be continued for more than one hour after office hours.

## **56. Obligations on the part of All Business Consultancy**

56.1 During the term of the maintenance agreement All Business Consultancy undertakes to repair to the best of its ability any failures which have been reported by the Client to All Business Consultancy in accordance with the procedure described in Article 57.2 (Maintenance conditions and conditions of use). The obligation of maintenance within the agreed tariffs only extends to the equipment included in the current agreed installed base (equipment list) of the Client. The Client shall ensure, in consultation with All Business Consultancy, that the installed base remains accurate at all times. In the event that All Business Consultancy carries out maintenance activities with regard to equipment which, at the time when the activities are carried out, is not included in the installed base, All Business Consultancy shall carry out these activities at the usual tariffs on the basis of the actual costs.

56.2 In the event that the Parties have agreed a period within which the repair is to be carried out (for example repair time or call-to-fix), this shall be laid down in a Service Level Agreement (SLA), which forms part of the agreement. Repair time or call-to-fix shall only apply to repair of the hardware as mentioned in the current installed base and never to the software. Unless agreed otherwise in writing, All Business Consultancy shall repair the fault in the hardware in 80 % of the cases within the repair time or call-to-fix time mentioned in the SLA. In the event that All Business Consultancy replaces the equipment involved or parts thereof to repair the failure but the failure continues to occur, this failure shall be indisputably deemed to be outside the equipment and therefore the agreed repair time or call-to-fix shall not be applicable. In such an instance, the Parties can agree that All Business Consultancy identifies the failure at its current rate and assists with the solution thereof.

56.3 All Business Consultancy reserves the right to postpone its maintenance obligations, among other things, for the period of time during which, according to All Business Consultancy, circumstances occur at the location of the equipment that constitute a risk to the safety or health of All Business Consultancy staff and / or third parties that have been deployed by All Business Consultancy for the execution of the maintenance. The provisions of

56.4 Article 53 (Special provisions) shall remain fully applicable.

56.5 All Business Consultancy shall ensure that it will keep its expertise about the equipment up-to-date. All Business Consultancy shall if such has been agreed, register and record in its administration all the relevant information about repairs to the equipment. All Business Consultancy shall allow the Client to inspect such registered information at the Client's first request.

56.6 Parts shall be replaced if All Business Consultancy deems this necessary for the repair or prevention of failures. The parts that have been replaced shall become or remain, respectively, the property of All Business Consultancy.

56.7 The provisions contained in Article 47.4 (Back-up) shall apply to back-up copies of data and software.

## **57. Maintenance conditions and conditions of use**

57.1 The Client can have the equipment moved for its account after prior written permission of All Business Consultancy, which permission shall not be unreasonably withheld.

57.2 In the event of a failure, the Client shall notify All Business Consultancy thereof by means of a detailed description of the failure drawn up by an employee of the Client who is qualified thereto. The failure shall be notified in accordance with the procedure prescribed by All Business Consultancy. The Client shall be under the obligation to grant the staff of All Business Consultancy or any third party designated by All Business Consultancy immediate access to the location where the equipment is located, and to cooperate in every possible way as required.

57.3 At All Business Consultancy's request, an employee of the Client who is qualified thereto shall be present at the maintenance activities as a consultant. The Client shall have the right to be present at all of the activities to be carried out for the Client.

57.4 The Client shall make the equipment required for the purpose of the above-mentioned activities available to All Business Consultancy.

- 57.5 The Client shall be authorized to connect equipment that has not been supplied by All Business Consultancy. The costs of identifying and repairing failures which result from the connection of equipment that has not been supplied by All Business Consultancy shall be for the Client's account.
- 57.6 In the event that, according to All Business Consultancy, the maintenance of the equipment, the connections between the equipment and other Systems or equipment require testing, the Client shall make these other Systems or equipment as well as the required test procedures and information carriers available to All Business Consultancy.
- 57.7 Test material required for maintenance work which is not included in the standard equipment of All Business Consultancy shall be made available by the Client.
- 57.8 The Client shall be responsible and bear the costs for the technical, accommodation and telecommunications facilities required for the operation of the equipment. The maintenance shall expressly not extend to the aforementioned facilities and connections.

## **58. Exclusions**

- 58.1 Activities in connection with the identification or repair of failures which may result from the improper use of the equipment or external causes, such as defects in the communication lines or the power supply, or the connections to or the use of equipment, software or materials which are not included in the agreement shall not be included in the maintenance obligations on the part of All Business Consultancy pursuant to such agreement,
- 58.2 and can be invoiced to the Client separately, at the usual tariffs.
- 58.3 Unless agreed otherwise expressly and in writing, the maintenance price shall not be inclusive of:
- (a) The replacement of consumer goods such as, among others, (magnetic or digital) storage media and ink or toner cartridges, paper, laser heads, storage batteries, batteries or aerials;
  - (b) The replacement costs of parts as well as maintenance services intended for the repair of failures which have, in part or in whole, been caused by (attempts to) repair or work that has been carried out by others than All Business Consultancy or its auxiliary staff;
  - (c) Work for the purpose of a partial or total revision of the equipment;
  - (d) Modifications to equipment;
  - (e) Relocation, removal, re-installation of equipment or work as a result thereof;
  - (f) Failures which occur in the event that the equipment has not been used in the normal office environment conditions as described in Article
- 58.4 (Office environment conditions);
- (a) Failures or damage connected to use or installation of items or parts not described by the manufacturer;
  - (b) Updates or upgrades of equipment or software.

## **59. Tariffs and payment**

- 59.1 Insofar as this has not been provided for in the maintenance agreement, the basic maintenance rate is applicable for the hours mentioned in Article 55.3. Unless agreed otherwise in writing, the provisions of Article 32.3 shall apply in the event of overtime.
- 59.2 The maintenance fee increased by the turnover tax and other government levies payable shall be prepaid for the term of one year, unless agreed otherwise in writing.

## **60. Scope**

- 60.1 Maintenance agreements shall only apply in the country where the relevant branch of All Business Consultancy has its offices and insofar as it concerns equipment installed in the country concerned.

# **X. ELECTRONIC ORDERS**

The provisions mentioned in this chapter Electronic Orders shall, in addition to the General Provisions of these General Terms and Conditions, only apply in the event that All Business Consultancy gives the Client access to a website maintained by or on behalf of All Business Consultancy, or another electronic medium on which goods and services are offered and can be ordered (hereinafter to be referred to as: the Website).

## 61. Use

- 61.1 All Business Consultancy grants the Client the right to use the Website. The Client's right of use only extends to the right to order goods or services on the Website. Any other use, including the multiplication and the disclosure of data on the Website requires the prior written permission of All Business Consultancy. All Business Consultancy reserves the right to give further instructions, at any time, with regard to the use of the Website and the security measures to be observed by the Client and the Authorized Persons defined in Article 62.1.
- 61.2 The Client can use the Website free of charge, unless the Client and All Business Consultancy agree otherwise in writing.
- 61.3 All orders and deliveries as a result of the use made of the Website shall be governed by the General Terms and Conditions of All Business Consultancy.
- 61.4 The right of use is non-transferable. The Client is not permitted to make available the use of the Website or any data derived from it to any third party in any way or for whatever purpose (including without being limited to references to other internet sites, hyperlinks etc.). This shall also apply if the third party concerned uses the Website exclusively for the Client.
- 61.5 All the intellectual property rights (including copyrights, trademark rights and trade name rights) of data mentioned on the Website are the property of All Business Consultancy or its licensors. Copying and making available data on the Website to third parties requires All Business Consultancy's prior written permission.

## 62. Access and access code

- 62.1 Authorized Persons in the sense of this article are only those persons who:
- (a) Are authorized to represent the Client in a legally valid manner and who are sufficiently qualified and trained to use the Website properly; and
  - (b) Have been put forward to All Business Consultancy as an Authorized Person by the Client in a document signed by both the Client and the person concerned;
  - (c) Have been accepted by All Business Consultancy as an Authorized Person by the creation of a unique user-identifier (hereinafter to be referred to as: User-ID) for the person concerned and the allocation of access rights to that person.
- 62.2 The Client shall ensure that the Authorized Persons are fully informed of the applicability of these Conditions, as well as of the regulations in force as they apply to the Website. All Business Consultancy shall provide the required information about this and give support where necessary.
- 62.3 The Client shall keep a register of all the Authorized Persons (hereinafter to be referred to as: the Register) and inform All Business Consultancy beforehand of any changes it intends to make in the Register. In the event that the change concerns the removal of an Authorized Person from the Register, this change shall come into effect as soon as All Business Consultancy has changed or removed the access rights and User-ID of the person involved. In the event that the change concerns the adding of an Authorized Person to the Register, the change shall come into effect as soon as it has been accepted and implemented by All Business Consultancy.
- 62.4 All Business Consultancy will give Authorized Persons a personal and unique User-ID and a password to gain access to the Website. The User-ID and the password are strictly personal and shall, therefore, not be used by any others than the Authorized Persons, unless All Business Consultancy has given prior written permission thereto.
- 62.5 The Client guarantees that the Authorized Persons shall:
- (a) Not disclose the User-ID and password to any others;
  - (b) Not store the User-ID and password as an (electronic) data file;
  - (c) Refrain from any action that could result in any third party gaining (unauthorized) access to the Website;
  - (d) Take all the measures that can be reasonably demanded to prevent any third party to gain (unauthorized) access to the Website;
  - (e) Comply with any further instructions All Business Consultancy can give about the use of the Website or the security regulations to be observed;
  - (f) Inform both the Client and All Business Consultancy in writing or electronically as soon as they learn of the possibility that a third party knows or can know (in an unauthorized manner) the

password or the User-ID or gains access or can gain access to the Website or the data on or originating from the Website;

(g) Are Authorized to represent the Client in a legally valid manner.

- 62.6 All Business Consultancy shall have the right at any time to refuse the Client, or one or more Authorized Persons access to or the use of the Website. In the event that an Authorized Person is refused access to or the use of the Website, the Parties shall, after access has been denied, take all the suitable measures to prevent the Authorized Person involved from gaining any access to the Website again. The Client shall immediately remove the Authorized Person involved from the Register.
- 62.7 The Client shall give permission for the use of all the data pertaining to the use of the Website by the Client, which, among other things, will be used to improve the Website and the service provided by All Business Consultancy.

### **63. Privacy**

- 63.1 The Parties guarantee that all the legal regulations with regard to the data to be processed, including in particular the regulations of or pursuant to the privacy legislation then in force are and will be observed strictly and that all the prescribed reports and other formalities have been completed. The personal data of Authorized Persons shall not be used or processed by All Business Consultancy other than where strictly necessary for the performance of the agreement, for security reasons or possibly as evidence in disputes.

### **64. Viruses**

- 64.1 The Parties shall take all the measures that can be reasonably demanded to prevent the spreading of viruses.
- 64.2 To this end, the Parties shall check all the software and files for the presence of viruses before sending them or making them available to the other Party.
- 64.3 The Party that detects a virus in the software or the files shall inform the other Party immediately of all the data that can be of importance to prevent the spreading of the virus. Both Parties shall subsequently take all the measures that can be reasonably demanded in order to prevent the virus from spreading any further. In this article, the term viruses shall be understood to mean all the unauthorized software, alien elements and other software whether or not they cause any changes in files and / or software (such as Network worms, Trojan horses, logic bombs etc.).

### **65. Agreement**

- 65.1 When an order is placed on the Website, an agreement shall only be effected once this order has been confirmed by All Business Consultancy. Unless expressly agreed otherwise, the administration of All Business Consultancy shall constitute the full evidence of anything that has been ordered by the Client.

### **66. Revision**

- 66.1 All Business Consultancy shall have the right, at any time, to change the content, security procedures, technical construction, layout or data of the Website according to its own insight.

### **67. Availability and correctness**

- 67.1 The Client shall accept the Website and the data on the Website as is. The use of the Website shall be for the Client's risk and account. All Business Consultancy does not give any guarantee for the availability of the Website, the correctness or completeness of the Website, the data mentioned on the Website, or of any Website to which the Website refers. All Business Consultancy is not liable in any way for any damage caused by or related to the use of the Website.

September 2006  
A.W. Hoogendam