

# Terms and Conditions

## 1. General.

**1.1.** These terms and conditions are applicable to all by Total System Development B.V., hereafter referred to as "TSD", to the client, hereafter referred to as "the Customer", offered and delivered products and services. TSD and the customer together are referred to as "Parties".

**1.2.** In these terms and conditions, the following definitions apply:

- "equipment": the computer system including peripherals and system software.
- "software": all software provided by TSD.
- "products": all goods provided by TSD.
- "services": the services and activities to be provided by TSD as described in offers, quotations or agreements.
- "installation": the moment at which the software is loaded onto the equipment of the customer and demonstrate that the software works on the equipment.
- "delivery time": the time within which TSD, conform agreement, has to carry out the activities or deliver the products.
- "license": the right to be able to use TSD software.

**1.3.** TSD is entitled to modify or expand these terms and conditions. In case of a substantive modification, TSD will inform the customer about this and offers the opportunity for 30 days to customers to make an objection against the modification. If a modification is not accepted by the customer, then TSD will consult with the customer. If no agreement is reached, the customer has the possibility to terminate the agreement as of the date the modified terms and conditions come into effect.

## 2. Offers

**2.1** Agreements have been concluded after signing the, by TSD made, offer by the customer, taking into account the period of validity. TSD is, within their regular business, free to accept or decline orders if there are motivating reasons for it by TSD.

**2.2.** Offers and agreements are based on the information at the disposal of TSD as provided by the customer. The customer is responsible for the correctness and completeness of their provided information on which the offer is based.

**2.3.** Offers and quotations are valid for 30 days at maximum, to be calculated from the date of release, unless explicitly mentioned otherwise.

## 3. Price and delivery times

**3.1** All prices are excluding sales taxes (VAT) and possible other taxes that can be imposed by the government. All prices are displayed in euros and the customer has to make its payment in euros.

**3.2.** Labor in offers and agreements are included as pre-calculation or budgeting (including set-up costs).

**3.3.** TSD is entitled to change the price used. With a price increase the customer has the possibility to terminate the agreement on which the price increase is applied. This possibility to terminate is not valid in case of price increases on the basis of a price indexation in accordance to the Dutch CBS index number.

## Terms and Conditions

### 4. Software License

**4.1.** All software, including supplements and new versions, are made available to the customer on the basis of license. All intellectual properties on the software and documentation, either embodied or used in connection with copyrights, patents or trademarks remain the property of TSD.

**4.2.** The customer is entitled to make an amount of copies of the software exclusively for own back-up or archiving purposes. All provisions of these terms and conditions are applicable to all copies of the software.

### 5. Maintenance and support

**5.1** Agreements for maintenance are entered into on the basis of (service and/or maintenance) contracts for a period of at least 1 year and are, unless terminated, silently extended for the same period.

**5.2.** The content of the services within the scope of the (service and/or maintenance contract) are explained in the service- and maintenance conditions of TSD or, in case explicitly agreed, in a specific assignment or SLA.

### 6. Termination

**6.1.** Unless specifically determined otherwise, a (service- and/or maintenance-) contract can be terminated on a yearly basis by one of the parties with the consideration of a notice period of 90 calendar days.

**6.2.** A termination needs to be submitted by writing a registered letter at all times.

**6.3.** TSD is entitled to terminate the agreement(s), without notice of default, completely or partly or to suspend the execution of the agreement(s), if:

- the customer is in a state of bankruptcy
- the customer requests suspension of payment
- the customer proceeds to liquidate its company
- the customer is placed under curatorship
- the customer does not fulfil its commitments towards TSD that result from the agreement(s)

### 7. Customer commitments

**7.1.** The customer commits itself to:

- use or let others use the software and equipment in a careful and rational manner, where no changes are made to the software, unless written permission is given by TSD;
- stop using the software and equipment if an malfunction pops up and report this to TSD;
- give its personnel a decent training for the use and application of the software and equipment and take care of the supervision and management of the software and equipment;
- provide TSD unhindered access to the software and equipment for the purpose of support, maintenance or other activities on behalf of the customer;

**7.2.** TSD is not committed to maintain and support if one of the commitments in the agreement is not fulfilled by the customer. Possible activities still to be carried out will be charged to the customer at the then applicable rates of TSD.

### 8. Limited guarantee and limitation of liability

**8.1.** TSD is exclusively liable for damage that came up through the by TSD delivered products and services, in case this damage finds its origin in intent or negligence of TSD or of its employees and/or third parties which TSD makes use of when executing agreements and/or services.

## Terms and Conditions

**8.2.** Causes not accountable to TSD in case of damage by the customer include, but are not limited to, the following: failures due to operating or user errors, errors in the communication and/or voltage provisions, consumer goods, defects in equipment, incorrect installation and changes made by customer and/or third parties.

**8.3.** In the event TSD is liable for damages vis-à-vis the customer, whether as a result of breach of the agreements between TSD and the customer or by tort, TSD's total liability will be limited to the aggregate amount invoiced by TSD in the 12 month period preceding the event or circumstance leading to TSD's liability.

**8.4.** Claims for compensation has to be reported within six (6) months, after the emergence of the damage to TSD by writing a registered letter, under penalty of expiration.

**8.5.** TSD is entitled to reduce or repair the damage at their own expense, if this happens within six (6) months after the damage has been reported to TSD.

**8.6.** TSD is in no case liable for indirect damage such as, but not limited to, damage in connection to the loss of data, company stagnation, revenue loss, lost profits, decreased goodwill, damage resulted from claims by clients of the customer, materials, software of third parties or any other consequential damage.

**8.7.** The customer indemnifies TSD of all claims of third parties due to damage, occurred or in connection with the products and/or services provided by TSD.

### 9. Force majeure

**9.1.** In addition to the provisions of article 6:75 of the Dutch Civil Code, if one of the parties as a result of force majeure is reasonably obstructed to fulfil its obligation towards the other party, the by force majeure affected party is entitled to suspend its fulfilment of the remaining obligations for the duration of the force majeure.

**9.2.** The party affected by force majeure will be held to contact the other party by writing as soon as possible after the force majeure has emerged, provided with a statement of the expected duration of the force majeure.

### 10. Reservation of ownership

TSD reserves the ownership of all delivered products by TSD to the customer in the broadest sense of the word. The ownership of these products is transferred to the customer as soon as they have met the payment obligations, on any grounds, towards TSD. No rights of ownership on the software/equipment or any part of it are transferred to the customer, unless explicitly agreed upon beforehand with TSD by writing. If and insofar at a time the working of this article is limited by a statutory regulation to the detriment to TSD, the customer undertakes at the first request of TSD to establish a non-possessory pledge in respect to the delivered products to the customer to ensure all existing and future claims on the customer.

### 11. Payments

**11.1** All payments needs to be done within 14 days after invoice date, unless explicitly agreed upon otherwise. Payments need to take place without any discount or compensation on a bank account designated by TSD.

**11.2** TSD explicitly reserves the right to demand partial or complete prepayment, cash payment at delivery, or other certainties, ahead of the delivery and/or installation.

## Terms and Conditions

**11.3** In case the customer does not, not on time or not completely, fulfil its payment obligations, TSD is entitled to,

- delay the delivery and/or installation without judicial intervention and without further notice of default;
- charge extrajudicial costs, with a minimum of at least 10% of the overdue payment;
- claim statutory interest over the outstanding amount as of the due date of the, by the customer owed, invoice over every month or part of the month in which the invoice remains unpaid;
- claim compensation from the customer.

**11.4.** The customer renounces themselves from the right to settle a debt to TSD with a claim towards TSD.

### 12. Confidentiality

Parties carry the responsibility to handle (or remain handling) the information provided to each other before, during and after executing an agreement of service, maintenance or delivery confidentially.

### 13. Other provisions:

**13.1.** The customer renounces the right to suspend any obligation that may concur regarding this agreement.

**13.2.** If any provision in this Terms and Conditions is invalid or not enforceable, all other provisions remain in full effect. Parties will in that case agree upon a provision that approaches the invalid provision as close as possible.

### 14. Applicable law and jurisdiction

**14.1.** The Dutch law is exclusively applicable to our terms and conditions.

**14.2.** With respect to disputes that may arise from agreements entered into and / or services provided, the District Court of the Northern Netherlands has exclusive jurisdiction.