

## Raster Industriële Automatisering B.V.

For the purposes of these General Terms and Conditions Governing Supply "ICT" is deemed to refer to any subsidiary or any other company constituting part of the ICT Group which, acting on its own behalf, has presented an offer to another party – which party is deemed to act for the purposes of conducting a business, practising a trade or performs a public duty (hereinafter: the "Client") – or which has given an undertaking to a Client on its own behalf and in respect of which it has declared these General Terms and Conditions Governing Supply to be applicable.

All of the legal entities and companies which are associated with ICT Group N.V. in accordance with the provisions of Sections 2:24a to 2:24c of the Dutch Civil Code constitute part of the ICT Group as well as those legal entities and companies that ICT otherwise has communicated as being part of the ICT Group. These General Terms and Conditions Governing Supply were lodged with the Chamber of Commerce in Rotterdam, the Netherlands, under Number 24186237 on 3 July 2017 and a Client may not amend them. These General Terms and Conditions Governing Supply are also available on the internet: [www.ict.eu](http://www.ict.eu).

### A – GENERAL PROVISIONS

#### 1. SCOPE OF APPLICATION AND DEFINITIONS

- 1.1 These General Terms and Conditions Governing Supply shall apply in relation to all Negotiations involving an offer and all contracts entered into with ICT for the purposes of supplying movable property (including but not confined to Hardware), the issue of Licences and/or the provision of Services, as well as any Agreement concluded in this respect. These General Terms and Conditions Governing Supply consist of general provisions, which shall govern all of the aforementioned work, and special conditions, which shall govern the work described in them. For example, in the case of secondment the general provisions (Articles 1 to 17) shall apply, as shall the special Article 29 (by way of an addendum). In the event that there is a conflict between the general provisions and special conditions, the latter shall prevail. In the case of a mixed Agreement the general provisions and the relevant special conditions shall apply in relation to each type of work stipulated in that Agreement.
- 1.2 The application of a Client's terms and conditions (of procurement or otherwise) is explicitly rejected.
- 1.3 A Client may only rely on any terms and conditions which derogate from these General Terms and Conditions Governing Supply provided that and in so far as ICT has consented to those terms and conditions in writing.
- 1.4 A Client with whom a contract has been concluded in accordance with these General Terms and Conditions Governing Supply, shall be deemed to have consented to their application in respect of any subsequent negotiations between that Client and ICT.
- 1.5 "General Terms and Conditions Governing Supply" is deemed to refer to these General Terms and Conditions Governing Supply to the companies constituting part of the ICT Group.
- 1.6 "Cloud Services" is deemed to refer to any Software and/or Documentation provided remotely (online) by ICT. It also covers the following activities: software as a service (SaaS), those of an application service provider (ASP), platform as a service (PaaS) and hosting services (the provision of a computer server).
- 1.7 "Services" is deemed to refer to those activities and/or that work undertaken or carried out by or on behalf of ICT, including but not confined to software development, consultancy, installation (technical and otherwise), commissioning, support, Cloud Services, training, secondment and Software and Hardware maintenance work.
- 1.8 "Documentation" is deemed to refer to all documents which ICT supplies to a Client together with any Software and/or Hardware, including (where applicable) any third-party documents setting out the technical and/or functional specifications of the relevant Software, Hardware and/or the manuals for the use of such Software and/or Hardware, including AutoCAD and/or e-plan printouts and files.
- 1.9 "Executables" is deemed to refer to computer files which may be executed by a computer but not any source code.
- 1.10 "Hardware" is deemed to refer to computers and related equipment, such as but not confined to PLCs, I/O cards, switch panels, cabinets, instruments, other panels, engines, recorders, cables and related Documentation, accessories, parts and Updates.
- 1.11 "Licence" is deemed to refer to a Client's right to use the relevant Software in accordance with these General Terms and Conditions Governing Supply.
- 1.12 "New Version" is deemed to refer to a modified and/or improved version ("upgrade") of the relevant Software and/or Hardware which extends or modifies the functionality or data structure of that Software and/or Hardware. Normally, a New Version may be recognised by the fact that the version number has increased by one (1), for example, from Version 1.4 to Version 2.0.
- 1.13 "Deficiencies" is deemed to refer to any significant (clear or major) derogation from the relevant Specifications in Software and/or Hardware. A Deficiency may only be deemed to be such where the relevant client is able to exhibit and reproduce it.

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- 1.14 "Agreement" is deemed to refer to any written agreement governing the supply of movable property (including but not confined to Software – and its physical media – and/or Hardware), the supply of Licences and/or the provision of Services by ICT to the relevant Client.
- 1.15 "Software" is deemed to refer to any type of computer program (source or object code, Executables, scripts and so forth, amongst other things), including software which is built into equipment (operating systems, firmware and so forth, amongst other things), all design materials produced by or on behalf of ICT, Documentation and all New Versions, Updates, extensions, modifications or improvements thereof respectively.
- 1.16 "Specifications" is deemed to refer to all of the technical and functional properties of the Software and/or Hardware covered in the relevant Documentation and/or mentioned in a document drawn up and consented to by ICT.
- 1.17 "Updates" is deemed to refer to modified versions of Software and/or Hardware by means of which Deficiencies in that Software and/or Hardware are resolved by means of patches, their security is improved or the logical cohesion of that Software and/or Hardware is enhanced. Normally, an Update may be recognised by the fact that the second part of the version number is increased by one (1), for example, from Version 1.2 to 1.3. A "bug fix" may be performed where a problem needs to be resolved quickly and easily. It may be recognised by the fact that the third part of the version number is increased by one (1), for example, from Version 1.2.1 to 1.2.2.

## 2. NEGOTIATIONS WITH ICT

- 2.1 These General Terms and Conditions Governing Supply shall also apply in the case of any negotiations between ICT and a Client for the purposes of seeking a potential agreement (hereinafter: the "Negotiations"). ICT shall at all times be entitled to terminate Negotiations without having a duty to provide compensation or to pursue those Negotiations.
- 2.2 In the event that ICT already starts to provide Services at a Client's request before an Agreement is concluded in accordance with Article 3.5, or should that Client be aware of this but not object to it in writing, the Client shall have a duty to pay any fee(s) that have already been agreed to in the course of the relevant Negotiations or the fee(s) which ICT normally charges. In the unlikely event that no Agreement is concluded, the relevant Client shall provide compensation for the Services concerned until such time as ICT halts those Services. In this case the aforementioned Services shall only be provided subject to the application of these General Terms and Conditions Governing Supply.

## 3. OFFERS, CONTRACTS AND AGREEMENTS

- 3.1 Any offer made by the ICT shall be free of obligation. ICT may even revoke its offer after receiving notice of its acceptance, unless that offer contains a deadline for its acceptance and that deadline has not yet expired.
- 3.2 All offers made by ICT shall be confidential and a Client may only use them during consultations with ICT and/or for the purposes of selecting ICT or any other offerer, in respect of which no other offerers may receive any information sourced from the relevant ICT offer and/or may be permitted to inspect it. The provisions of Article 12 of these General Terms and Conditions Governing Supply shall apply *mutatis mutandis*.
- 3.3 All offers presented by ICT shall be based on the assumption that the information (technical or otherwise), designs, drawings, calculations, specifications and so forth received from the relevant Client is or are correct and comprehensive. In the event that ICT discovers any deficiency and/or ambiguity in the information received from a Client while preparing its offer, ICT shall alert that Client to this. Should any ambiguity be discovered in the information and so forth received from a Client while the contracted Services are provided, settlement shall be effected in relation to them in accordance with Article 19 of these General Terms and Conditions Governing Supply in the case of Software or Article 24 thereof in the case of Hardware. A Client shall also punctually supply the relevant information, designs, drawings and so forth to ICT while the relevant Services are provided.
- 3.4 Any contract entered into or notice of the acceptance of an offer issued by a Client shall be deemed to be irrevocable.
- 3.5 ICT shall only be liable when it consents to a contract in the form of an Agreement. No verbal undertaking given by or arrangements made with ICT's staff shall be binding on ICT except if and in so far as the latter has confirmed this in writing.
- 3.6 ICT shall be entitled to outsource all or part of its obligations pursuant to an Agreement concluded with a Client
- 3.7 Unless the parties explicitly agree otherwise in writing, should ICT carry out work for the relevant Client in its capacity as a subcontractor (or pursuant to a similar arrangement), ICT shall under no circumstances be bound by the back-to-back application of any terms and conditions (legal or otherwise) to the relationship between that Client and ICT's principal.

## 4. FEES

- 4.1 Any fees quoted by or agreed to with ICT shall be stated net in euros – as such, exclusive of VAT and any import or export duties, amongst other things – and shall only apply subject to supply ex-works. Furthermore, such fee shall not include the cost of packaging, shipping, insurance or installation.
- 4.2 In the event that ICT assumes responsibility for packaging, shipping, insurance and/or installation in the absence of an agreement explicitly stipulating a fee in writing, ICT shall be entitled to charge the Client concerned based on its normal rates and/or for the actual costs involved.
- 4.3 Any fee quoted by ICT or agreed to with the latter shall be based on the labour costs and cost prices obtaining at the time when the relevant offer is made or ICT consents to the contract in question during normal working hours, being

## **General Terms and Conditions Governing Supply – continued**

the normal working times (8 am to 6 pm) during a normal working week (Mondays to Fridays). In the event that such labour costs and/or cost prices subsequently rise, ICT shall be entitled to charge the relevant Client a correspondingly higher fee in so far as this is reasonable and nothing is stipulated otherwise in the agreement concerned.

- 4.4 Settlement shall be effected for all of the Services which are provided outside normal working hours based on ICT's normal working hours, and the rates and surcharges stipulated in the relevant Agreement. Settlement shall be effected based on the rate stipulated in the relevant Agreement for all hours lost by ICT's staff or during which they were waiting because of a Client.
- 4.5 Except where and in so far a fixed fee is explicitly agreed to in writing, any Services shall be provided based on time and materials (in respect of which the relevant Client shall therefore provide compensation for the time which ICT actually works, as well as the relevant materials).
- 4.6 In the event that a fixed fee is agreed to and the relevant Client requires an amendment of or addendum to the contract, ICT shall inform that Client of the implications of such amendment or addendum for the fee.

## **5. SUPPLY, TERMS OF DELIVERY AND ACCEPTANCE**

- 5.1 The term of delivery shall commence following the conclusion of the relevant Agreement as provided for in Article 3.5 after the Client concerned has supplied ICT with all information, documents, equipment, computer time and space (an office or otherwise) and after ICT has received any agreed payment in advance or security has been tendered for payment for the benefit of ICT.
- 5.2 Any Software, Hardware, Documentation or any other item shall be deemed to have been delivered as soon as it has left ICT's office or that of any other party engaged by ICT to be shipped to or for the benefit of the Client concerned. In the event that a Client is neither willing nor able to take receipt of any Software, Hardware, Documentation and/or any other item at the agreed time, it shall be deemed to have been delivered at such time as it would have left the office if there were no obstacle on the part of that Client. In such a case ICT shall be entitled to store such an item at the relevant Client's expense.
- 5.3 Unless explicitly agreed otherwise in writing, any agreed delivery time shall constitute an estimate. A failure to meet a deadline shall not confer on the relevant Client any entitlement to compensation (additional or by way of a replacement) or not to comply with any obligation pursuant to the Agreement concerned. In the event that a deadline is explicitly agreed on and the relevant Client requires an amendment of and/or an addendum to the contract, ICT shall inform the Client of the implications which such an amendment or addendum will have for the deadline.
- 5.4 A term of delivery shall be extended by the time by which the execution of the relevant Agreement is delayed due to *force majeure*. A Client shall provide every agreed and/or necessary assistance for the purposes of the provision of ICT's Services. A term of delivery shall also be extended by the time by which the relevant Client delays compliance with any obligation contrary to what has been agreed or more than may reasonably be expected of ICT.
- 5.5 ICT shall be entitled to effect delivery in instalments. For the purposes of the application of these General Terms and Conditions Governing Supply, every instalment shall be deemed to constitute a delivery in its own right.
- 5.6 Unless otherwise agreed, a Client shall inspect and then accept any Software, Hardware or Documentation that is delivered within fourteen (14) days after delivery after any Deficiencies have been remedied. The acceptance of Software is set out in greater detail in Article 18 and of Hardware in Article 23.

## **6. RIGHTS (INTELLECTUAL PROPERTY AND OTHERWISE) TO SOFTWARE, HARDWARE AND DOCUMENTATION**

Unless explicitly agreed to in writing or where the special conditions of these General Terms and Conditions Governing Supply are derogated from, any copyright and all other intellectual property rights to or in connection with any Software, Hardware Documentation supplied shall be vested in ICT and/or its licensors and shall not pass to the relevant Client. Where the word, "deliver", or any of its derivatives is used in these General Terms and Conditions Governing Supply, the conclusion may not be drawn from this that the passing of ownership or any intellectual property rights is envisaged.

## **7. PASSING OF OWNERSHIP AND RISKS**

- 7.1 Any risks pertaining to items (which is deemed to include Hardware and Software media) to be delivered by ICT shall be borne by the relevant Client as of the time of delivery and in the case of any Software to be developed or supplied by ICT, as of the time when the acceptance test (or part thereof) is successful in accordance with the General Terms and Conditions Governing Supply. Where no acceptance test (or part thereof) has been agreed to, any risks pertaining to Software shall be borne by the relevant Client as of such time when that Software is actually placed at the Client's disposal.
- 7.2 All items (which is deemed to include Hardware and Software media) supplied by ICT shall remain the latter's property until such time as the relevant Client pays all that they owe ICT pursuant to the underlying Agreement, which is deemed to include compensation, costs and interest. A Client shall not be entitled to a lien on any item. This Article 7.2 shall not apply in relation to Software and Documentation, as Article 6.1 shall apply in this respect. Nevertheless, in the event that ICT and a Client explicitly agree in writing that the rights referred to in Article 6.1 shall be vested in the Client in derogation from that article, the provisions of the first sentence of this Article 7.2 shall also apply in relation to any Software or Documentation supplied by ICT.

## **8. FORCE MAJEURE**

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8.1 ICT shall be entitled to rely on *force majeure* in the event that the execution of an Agreement is fully or partially impeded or rendered more difficult due to circumstances that are reasonably beyond its control, which is deemed to include a business embargo, strikes, picketing, work-to-rule campaign, lockout, the delayed delivery to ICT of any parts, items or services ordered from other parties, failures affecting the networks, systems and/or connections of ICT's suppliers (which is deemed to include the suppliers of the Cloud Services referred to in Article 22, including Microsoft Azure), sickness of staff, accidents, the disruption of business and the malfunction of any computer equipment belonging to ICT and/or the relevant Client.

8.2 In the event that *force majeure* occurs on the part of ICT, the latter's obligations shall be suspended. In the event that *force majeure* persists for more than three (3) months, both ICT and the relevant Client shall be entitled to cancel that part of the Agreement which has not yet been executed without acquiring a duty to pay compensation and subject to what is stipulated elsewhere in these General Terms and Conditions Governing Supply.

## 9. LIABILITY, INDEMNIFICATION AND INSURANCE

9.1 In all of the cases in which ICT has a duty to pay compensation for any loss irrespective of the legal basis for liability and in all cases involving an occurrence or a series of occurrences with a common cause, it shall be confined to compensation of any direct loss up to the amount that is actually paid out in accordance with the applicable liability insurance in the relevant case. In the event that no payout occurs pursuant to the aforementioned insurance for any reason whatsoever, any liability on the part of ICT shall be confined to compensation for any direct loss up to the value of the invoice issued for what has been supplied as a result of or in connection with which the loss has been occasioned. In the case of a continuing performance contract the "invoice value" shall be deemed to constitute the amount for which ICT has issued an invoice in the case of Services provided during the period of three (3) months prior to the event giving rise to the loss pursuant to the continuing performance contract in respect of which liability has arisen. In the event that ICT is required to provide compensation for a direct loss on multiple occasions pursuant to one (1) Agreement, the maximum cumulative compensation shall never exceed the value of the relevant Agreement.

9.2 Under no circumstances shall ICT have a duty to pay a Client any indirect or consequential loss in connection with an unlawful act committed by ICT or a culpable failure on its part to comply with the relevant Agreement (such as but not confined to loss of earnings or turnover, forgone savings, impaired goodwill, any loss due to a disruption of business or claims filed by the Client's customers, the corruption or loss of data – which is deemed to include personal data and business information – the impairment or loss of products, and any loss suffered pursuant to the use of any items, materials or third-party software which the Client requires ICT to use, as a result of a recall or which is related to the engagement of a supplier as required of ICT by the Client).

9.3 The limitations of liability to the benefit of ICT which are presented in this Article 9 shall not apply in the event that and in so far as the loss suffered is due to wilful intent [*opzet*], or conscious recklessness [*bewuste roekeloosheid*] on the part of ICT or any of its managerial subordinates.

9.4 Articles 9.1 to 9.3 shall apply *mutatis mutandis* in relation to any indemnification or warranty provided by ICT.

9.5 A Client shall indemnify ICT against any claim made by another party on the grounds of product liability because of a defect in the relevant Software, Hardware or any other materials which the Client has supplied to a third party and which partly consisted of Software, Hardware or any other materials supplied by ICT, except and in so far as it is established in law that such loss has been caused by Software, Hardware or any other materials supplied by ICT. The application of Section 7:404 of the Dutch Civil Code shall explicitly not apply.

9.6 In the case of the development, sale, licensing, supply or any other form of provisioning of Software, Hardware or Services by ICT to a Client that is active in the medical sector (which is also deemed to include hospitals and clinics, ICT shall under no circumstances be liable for any loss (which is deemed to include physical injury) that is suffered as a result of any diagnosis, advice, treatment and so forth that is given and/or which is produced with the aid of the relevant Software, Hardware and/or Services, and the relevant Client shall indemnify ICT against any claim made by another party (which is also deemed to include a patient and/or any of the Client's customers) in this respect. Except with ICT's prior, explicit consent, a Client shall not be entitled to use or commercially exploit the Software, Hardware or Services (or their outcome) referred to in this article in the United States of America and/or Canada. Unless explicitly agreed otherwise in writing, under no circumstances shall ICT be responsible for obtaining any approvals from authorities (regulatory or otherwise), such as the United States Food And Drug Administration (FDA).

9.7 In the event that the parties have agreed on a penalty in addition to any entitlement to compensation, any contractual penalty that is forfeited or any other amount that is and/or is to be dispersed pursuant to indemnification shall be deducted from any compensation forthcoming from the same occurrence.

9.8 ICT has taken out liability insurance and shall ensure that it is valid in so far as it is necessary and customary to do so in accordance with the conventions prevailing in the sector given the nature and scope of the Services. A Client has not been listed as a co-insured party in ICT's insurance policy. Where so required, a Client may obtain a copy of the relevant policy certificate.

9.9 With the exception of any which it acknowledges, every claim against ICT shall lapse by virtue of the mere expiry of six (6) months after such claim has arisen.

9.10 ICT may also impose on a Client any terms and conditions stipulating, limiting or excluding liability which are imposed on ICT in connection with the relevant supplies from ICT's suppliers or subcontractors.

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- 9.11 ICT staff or any assistants engaged by ICT for the purposes of executing an Agreement may invoke any defence available pursuant to the relevant Agreement against the Client concerned as though they were themselves party to that Agreement.
- 9.12 A Client shall indemnify ICT, the latter's staff and any assistant engaged by ICT for the purposes of executing the relevant Agreement against any claim made by another party in connection with ICT's execution of that Agreement.
- 9.13 ICT undertakes to ensure the timely, comprehensive remittance of any salary tax and social insurance premiums that are to be paid in respect of ICT staff and which are payable pursuant to the legislation of the country in which ICT has a registered office, and to indemnify a Client against any liability in that respect.
- 9.14 A Client shall be responsible for obtaining all relevant approvals, licences and permits and, in particular, shall be responsible for ensuring that its use of ICT supplies complies with and does not contravene the relevant legislation and regulations governing imports and exports, which are deemed to include any issued by the United States Department of Commerce.
- 9.15 Except where otherwise agreed in writing, a Client shall themselves be responsible for obtaining and affixing CE marks.
- 9.16 A Client shall themselves ascertain whether any safety or similar measures are required in connection with the services which ICT is to provide with a view to limiting any injury or other harm and, where necessary, shall ensure the timely adoption of such measures (before the relevant Services commence) and that they are appropriate. A Client shall indemnify ICT against any loss (including any lawyer's fees incurred by ICT) which ICT suffers as a result of the Client's failure to comply with their obligations pursuant to Article 9.16.
- 9.17 The exclusion and limitation of liability provided for in Article 9 shall not affect the full application of any other exclusions and limitations of ICT's liability pursuant to these General Terms and Conditions Governing Supply.

## **10. INDEMNIFICATION IN RELATION TO INTELLECTUAL PROPERTY RIGHTS**

- 10.1 ICT shall indemnify a Client against any claim made by another party pursuant to an infringement of a patent, copyright and/or trademark right which is related to any Software and/or Hardware that ICT has developed itself. ICT's liability in relation to such an infringement shall be completely and solely confined to the obligations stipulated in Article 10.
- 10.2 Should it be determined in law that the use of Software and/or Hardware or any part thereof infringes a patent, copyright and/or trademark right held by any third party and the relevant Client may be or is denied the use of that Software and/or Hardware or any part thereof on behalf of the rightsholder, acting on its assessment and at its discretion, ICT shall do any of the following at its expense:
- acquire the right for the Client to continue to use the relevant Software and/or Hardware or the part thereof in question;
  - replace the Software and/or Hardware or the relevant part thereof with software and/or components which do not constitute an infringement as provided for;
  - modify the Software and/or Hardware in such a way that the infringement is terminated;
  - repossess the Software and/or Hardware or the relevant part thereof in return for payment of what ICT deems to be a reasonably stipulated amount.
- 10.3 Where possible, the amendment and/or replacement of any Software and/or Hardware or the relevant part thereof in accordance with Article 10.2 shall not have the effect of substantially limiting the potential use of such Software and/or Hardware.
- 10.4 The duty to provide indemnification as provided for in this article shall cease to apply in the event that and in so far as the relevant infringement pertains to the modification of the Software and/or Hardware which the relevant Client has effected (at the Client's behest or otherwise) or which some other party has effected (at the Client's behest or otherwise) without ICT's prior written consent or should it be possible to hold the Client otherwise culpable for an infringement or it may be attributed to the Client.

## **11. PAYMENT AND SECURITY**

- 11.1 Payment must be effected within thirty (30) days after the relevant invoice date. Nevertheless, ICT shall always be entitled to full or partial payment in advance and/or otherwise raise security for payment.
- 11.2 Where an invoice merely pertains to the time spent by an ICT member of staff, an agreement may be reached with the relevant Client providing for the latter to pay the invoice in instalments, namely, 30% (thirty per cent) – which is equal to the legal obligations with regard to withholding and remitting salary tax and social insurance premiums (the "Legal Obligations") – of the hourly rate based on which ICT issues such invoices into ICT's guarantee account and the remaining 70% (seventy per cent) into the account stipulated by ICT on the relevant invoice. ICT will maintain a guarantee account with a reputable bank throughout the term of the relevant Agreement for this purpose.
- 11.3 The Client shall waive the right to set off any amounts which the parties owe to each other. A claim pursuant to a warranty shall not suspend the relevant Client's financial obligations.
- 11.4 In the event that a Client fails to pay an amount that they owe in accordance with the foregoing articles, that Client shall be in default in the absence of any notice of default. As soon as a Client is in default of payment, any other amount receivable by ICT from the Client shall fall due and a default of payment shall also apply immediately in respect of such

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amount in the absence of any notice of default. As of the date on which a Client is in default, the latter shall be liable to pay ICT default interest at a rate equal to the applicable promissory note discount rate of the De Nederlandsche Bank [the Dutch central bank] +2% (two per cent). Furthermore, the relevant Client shall also have a duty to pay any judicial or extrajudicial debt collection costs. The extrajudicial debt collection costs shall be fixed at 15% (fifteen per cent) of the outstanding invoiced amount subject to a minimum of EUR 40.00 (exclusive of VAT) by way of debt collection costs.

## 12. CONFIDENTIALITY AND PROTECTION OF PERSONAL DATA

- 12.1 The parties shall do all that is reasonably possible to treat any confidential information received from each other in confidence. Information shall be deemed to be confidential where the party supplying it – in the case of disclosure in a tangible form – marks or designates it as "Confidential" or with words of a similar meaning before that information is disclosed to the party receiving it or – when disclosure occurs verbally or in visual form – the party supplying it designates it as such and summarises it in writing before it is disclosed. This duty of non-disclosure shall apply throughout the term of the relevant Agreement and for two (2) years following its termination.
- 12.2 The Client undertakes to do all that is reasonably possible to treat any Software, Hardware and/or Documentation in confidence. This duty shall apply throughout the term of the relevant Agreement, as well as after its termination.
- 12.3 In the event that ICT processes personal data for a Client for the purposes of executing an Agreement, ICT shall serve as the "processing agent" within the meaning of the Dutch Personal Data Protection Act [*Wet bescherming persoonsgegevens*] (Wbp) and the Agreement shall be deemed to constitute an agreement referred to in Section 14(2) of the Wbp. ICT shall adopt reasonable technical and organisational measures to secure any personal data against loss or unlawful processing. A Client shall warrant ICT that the substance, use and processing of any personal data is not unlawful and does not infringe any other party's rights. A Client shall indemnify ICT against any claim made by another party on any grounds whatsoever, which is deemed to include any claim made by the Dutch Data Protection Authority (DPA) and/or the subject of any personal data which ICT processes for the purposes of executing an Agreement, unless the Client can prove that ICT may be held culpable for the acts which constitute the basis for such claim. Under no circumstances may an administrative fine which has been imposed by the DPA be recovered from ICT, unless there is some question of a deliberate act or omission, or wilful recklessness on the part of ICT or any of its managerial subordinates. In the case of a data leak referred to in Section 34a of the Wbp ICT shall notify the relevant Client of this in writing as soon as possible preferably twenty-four (24) hours after detecting it, in response to which that Client shall notify the relevant public authority (authorities). Reporting a data leak is and shall remain the exclusive responsibility of the Client concerned. When first requested to do so, a Client shall inform ICT in writing how they intend to fulfil their obligations pursuant to the privacy legislation and regulations, including the Wbp (and the General Data Protection Regulation – Regulation EU 2016/679 – after it comes into effect) and ICT shall specify whether any processing pursuant to an Agreement is covered by the Wbp and whether it has been reported to the DPA. A Client shall warrant ICT that they have obtained all the requisite permits for the lawful processing of personal data before they transmit the relevant personal data to ICT.

## 13. GENERAL WARRANTIES

- 13.1 Under no circumstances shall ICT's warranty obligations in respect of any part of what is supplied and which ICT procures from another party either exceed those of such other party towards ICT or apply for a longer period of time. ICT shall be discharged from any liability in this respect once it assigns its claim against such other party to the relevant Client.
- 13.2 A Client shall have a duty to enable ICT to provide warranty services where required and in this respect shall provide ICT with more computer time, office or other space and communication facilities, amongst other things, where so requested.
- 13.3 The terms of the warranty pertaining to Software are set out in Article 20 and in the case of Hardware in Article 25.

## 14. SUSPENSION, CANCELLATION [ONTBINDING] AND FINANCIAL IMPLICATIONS OF PREMATURE TERMINATION

- 14.1 A Client shall be entitled to require ICT to suspend any Services. Such Client shall have a duty to notify ICT of this in writing, stating the grounds for this, and to enter into consultation with ICT concerning the implications with due dispatch.
- 14.2 In the event that ICT needs to make appropriate provision or adopt appropriate measures as a result of such suspension, it shall be entitled to an extension of any deadline and/or compensation for the relevant expenses in accordance with Article 19.5.
- 14.3 In the event that a Client suspends any Services and ICT cannot be held culpable for this, that Client shall have a duty to compensate ICT for Services that have already been provided as calculated in accordance with the progress of those Services and for all reasonable expenses that have been and are still to be incurred pursuant to any obligations which ICT has already assumed with a view to the further execution of the relevant Agreement and/or the resumption of Services as of the time that the suspension comes into effect.
- 14.4 Should any Services be suspended for more than two (2) months, ICT shall be entitled to cancel the relevant Agreement.

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- 14.5 ICT shall be entitled to suspend its Services in the event that and as soon as the relevant Client fails to comply with one (1) or more of their obligations or fails to do so properly or on time. In this case the Client shall be liable for all of the costs involved in such suspension, which is also deemed to include those referred to in Article 14.3.
- 14.6 In any of the circumstances described below and in so far as such right is conferred below, either party shall be entitled to cancel all or part of the relevant agreement with immediate effect or to terminate it by giving notice to this effect, such to be done at the terminating party's discretion:
- a. in the event that the other party has been granted a provisional or final moratorium on payments or has been declared insolvent;
  - b. should the other party fail to comply with the provisions of the relevant Agreement and still fails to do so within a reasonable period of time after being given written notice to the effect that it is in default;
  - c. in the event that the other party contravenes the relevant Agreement and compliance or restitution is not (or no longer) possible, which is also deemed to include a Client's breach of the provisions of Article 6 (Rights (Intellectual Property And Otherwise) to Software, Hardware and Documentation) and/or Article 21 (Software Licences);
  - d. should the other party be in default of performance repeatedly or to such an extent that the other party cannot reasonably be required to allow the relevant Agreement to remain in effect.
  - e. In the circumstances referred to in Subclauses (c) and (d) of Article 14.6 it shall not be necessary to stipulate a deadline as in Subclause (b).
- 14.7 Subject to what is also stipulated in this article, in the case of the premature termination of an Agreement other than due to its cancellation pursuant to any legally established default of performance on the part of ICT, the relevant Client shall have a duty to pay ICT the fees stipulated (in that Agreement) until the date on which the Services concerned are actually terminated, as well as for any of the relevant ICT staff's scheduled working time (or that of any party that has been engaged, where this is applicable in accordance with the aforementioned rates).

## **15. MISCELLANEOUS**

- 15.1 At ICT corporate social responsibility constitutes an important part of its organisation. ICT operates with as much integrity and as transparently as is reasonably possible, having in mind the interests of its shareholders, staff, its surroundings and the environment. To this end it employs a code of conduct, which code shall be provided to a client when first so requested. A Client shall warrant that it will use whatever ICT supplies in accordance with the applicable legislation and regulations governing human rights (as provided for in the Universal Declaration of Human Rights), competition, corruption, the environment, bribery, computer crime and working conditions.
- 15.2 Throughout the term of an Agreement and for a period of twelve (12) months thereafter, both the relevant Client and ICT shall refrain from recruiting (as an employer or through another party in the capacity of a contractor) those of each other's staff who are involved in executing that Agreement. In the event that either party acts contrary to this obligation, that party shall forfeit to the other party a penalty, payable with immediate effect and not susceptible of mitigation, equivalent to 100% of the relevant employee's gross annual salary subject to the other party's right to obtain full compensation from the defaulting party for the loss which they have actually suffered (in so far as it exceeds the penalty that is forfeited).
- 15.3 Where requested to do so by ICT, a Client shall supply ICT with equipment, materials, building facilities, access to premises, space (office and otherwise), telecommunication facilities, data on media, and so forth for the purposes of providing the Services pursuant to the Agreement which the parties have concluded with each other. All items must comply with ICT's specifications and the work and/or office space must comply with the applicable workplace health and safety, and any other legal requirements pertaining to working conditions. A Client shall be responsible for ensuring that ICT is able to implement the VCA [Health, Safety and Environmental Checklist for Contractors] guidelines and NEN 3140 standard, and the Client shall not be permitted to insist on anything which may compromise safety. A Client shall indemnify ICT against any claim made against ICT by an ICT employee or any other party deployed by ICT in accordance with Section 7:658 of the Dutch Civil Code in the event of a failure to comply with Article 15.3.
- 15.4 Where required, a Client shall have a duty to appoint one (1) or more members of their staff to serve as a contact person for ICT.
- 15.5 In the event that any provision of these General Terms and Conditions Governing Supply is null and void or is nullified, their remaining provisions shall continue to apply in full and the parties shall enter into consultation with each other for the purposes of agreeing on new provisions to replace the void or nullified provisions, ensuring that the purpose and purport of the void or nullified provisions are approximated as far as possible.
- 15.6 Written communication between a Client and ICT shall ensue with the aid of post, fax and/or email on both sides, which shall serve as proof to the parties that documents have been received.

## **16. DISPUTES AND GOVERNING LAW**

- 16.1 Any dispute which may arise between the parties shall only be adjudicated by a competent court of law in Rotterdam or any senior legal tribunal, unless ICT prefers some other competent court of law.
- 16.2 Even during Negotiations, the relationship between the parties shall be solely governed by the law of the Netherlands to the exclusion of any regulations pursuant to a choice of governing law in accordance with the rules of international private law. The Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) shall explicitly not apply.

## **17. CONFLICTS BETWEEN THE DUTCH TEXT AND ANY TRANSLATION**

## General Terms and Conditions Governing Supply – continued

In the event of a conflict between the Dutch version of these General Terms and Conditions Governing Supply and any translated version thereof, the Dutch version shall prevail. ICT at all times will be entitled to make (interim) linguistic changes to any translated versions without communicating such (however the most recent version can always be consulted at the website of ICT).

### B – SPECIAL CONDITIONS

#### B1 - SOFTWARE

### 18. DEVELOPMENT, MODIFICATION AND ACCEPTANCE OF SOFTWARE

- 18.1 In the event that it is agreed that ICT will develop or modify Software, ICT shall develop and/or modify that Software in accordance with the document setting out the relevant Specifications which has been signed by both parties. A Client shall acknowledge that any Specifications are partly based on information which they have supplied, in respect of which the Client warrants that that information is correct, comprehensive and consistent.
- 18.2 In the circumstances referred to in Article 18.1 it shall be determined by means of an acceptance test conducted by and under the responsibility of the relevant Client whether ICT has complied with the contract awarded to it. This shall be deemed to be the case should the acceptance test reveal that the Software essentially functions in accordance with the Specifications referred to in Article 18.1. In the event that an acceptance test is passed, within three days of it being passed the relevant Client shall sign an acceptance declaration confirming that the acceptance test has been passed, and hand it to ICT. An acceptance test shall comprise the execution of a collection of test situations which are still to be agreed on (the "Testing Plan"). A Client or ICT shall present a proposal for such a Testing Plan when first requested to do so by ICT or the Client respectively.
- 18.3 In the event that ICT is of the opinion that any Software only derogates from the stipulated Specifications in respect of non-essential parts, it shall be deemed to have passed the acceptance test. Such derogations shall be mentioned in the acceptance declaration referred to in Article 18.2 and ICT shall endeavour to remedy those derogations as soon as possible.
- 18.4 As soon as possible after a Client has notified ICT in writing that:
- a. the progress of an acceptance test is being impeded to such an extent by derogations from the Specifications referred to in Article 18.1, that the acceptance test cannot reasonably continue;
  - or
  - b. an acceptance test has not been passed due to derogations from the Specifications referred to in Article 18.1;
- ICT shall start carrying out any work that is required to ensure that the relevant acceptance test can proceed or is passed. The acceptance test shall be continued or shall be started again, following which the provisions of this article shall be applied until that test is passed.
- 18.5 In the event that a Client does not give notice in any of the cases referred to in Article 18.4 and also fails to present the acceptance declaration referred to in Article 18.2 to ICT by no later than three (3) days after the deadline stipulated for the performance of the acceptance test in the relevant schedule or in some other document, the acceptance test shall be deemed to have been passed and it shall be established that ICT has complied with the contract awarded to it.
- 18.6 In the event that a Client uses the relevant Software in any way (other than for testing purposes) before the time when it is accepted, the Software shall be deemed to have already been accepted in full when the aforementioned use commences. The relevant Client shall be fully liable for any loss suffered in the event of such a form of commissioning.
- 18.7 In the event that staggered acceptance tests are agreed to, the same procedure shall apply in relation to those staggered acceptance test as stipulated in Articles 18.2 to 18.6.
- 18.8 Where the period has not been stipulated during which an acceptance test (or staggered acceptance tests) is to be conducted, the test (or tests) shall be conducted within fourteen (14) days after the Software is supplied.
- 18.9 In the event that it has been agreed that an Agreement will be executed in stages, ICT shall be entitled to suspend work on a subsequent stage until the relevant Client has approved the outcome of the previous stage in writing or – where the stage is completed with a staggered acceptance test – the relevant staggered acceptance test has been passed. Where ICT cannot be held to be fully responsible for a suspension, the relevant Client shall have a duty to compensate ICT for any loss (due to a delay or otherwise) which it has suffered as a result of such suspension. The provisions of Articles 14.3 and 19.6 shall apply in full.
- 18.10 The procedure set out in Articles 18.2 to 18.9 shall also apply in the event that ICT has supplied any standard software (third-party or otherwise) to a Client and it has been agreed that the latter is required to conduct an acceptance test in derogation from Article 5.2.
- 18.11 Under no circumstances shall ICT have a duty to reconstruct and/or repair any lost or corrupted data.
- 18.12 All of ICT's contractual obligations with regard to the relevant Software (or part thereof) shall be complied with by the date on which the relevant client has accepted the Software (or part thereof) in question in accordance with this Article 18 with the exception of those duties stipulated in Article 20 of these General Terms and Conditions Governing Supply where applicable.
- 18.13 As the case may be, an arrangement may be made with a Client to develop any Software based on Agile Scrum. A Client shall acknowledge that in the case of this form of development it is impossible to specify the final outcome and



## General Terms and Conditions Governing Supply – continued

that, as such, there shall only be a duty of care on the part of ICT. Furthermore, the Client shall also acknowledge that their assistance and that of their staff is of major importance as part of Agile Scrum if such development is to be successful. A Client shall ensure that those of their staff who are involved in the development work possess the requisite skills and experience for the duties which they are required to perform, as well as that staff will be available at such time as this is required.

### 19. WORK EXCESS AND SHORTFALL IN RELATION TO SOFTWARE

- 19.1 In the event that any circumstances occur which result in an increase or reduction of expenditure, ICT shall notify the relevant Client of this immediately.
- 19.2 Unless the parties agree otherwise in writing, any inflationary circumstances which are not due to ICT shall be settled by way of excess (extra) work in the manner stipulated in Article 19.6. In other similar circumstances the parties shall consult each other as soon as possible in order to agree on a fair settlement with each other. Prior written consent shall be required for any excess work. A work shortfall shall be accounted for in the same manner as any excess work.
- 19.3 At any rate a work excess or shortfall will be deemed to have occurred:
- where an amendment of the relevant Agreement or Specifications, or a change in the items that are to be supplied and/or Services that are to be provided (an amendment of the relevant Client's specifications – the "specifications" – or the conditions governing the performance of the work, or a change in the work itself) is proposed by the Client concerned or ICT and is then agreed to;
  - in the event that there is any derogation in relation to the amounts of agreed provisional items and of reimbursable and/or estimated quantities;
  - in any other case provided for in an Agreement and/or these General Terms and Conditions Governing Supply.
- 19.4 ICT shall not have a duty to implement any proposed change if it:
- has not been requested in writing;
  - would result in an unacceptable disruption of work; or
  - where the parties fail to agree on the financial implications and consequences in relation to the schedule and the operating plan.
- 19.5 Should ICT be prepared to implement a change, it shall send the relevant Client a written offer containing the following information:
- the balance made up of all direct and indirect expenditure, earnings and risks associated with that change less any savings to be achieved through the implementation of the plan; and
  - the adjustment of the Services; and
  - the rescheduling of payment instalments or the amendment of terms of payment.
- 19.6 As far as possible the settlement of any work excess shortfall shall occur simultaneously with the next invoice, unless the parties explicitly agree otherwise in writing.

### 20. WARRANTIES IN THE CASE OF THE SUPPLY OF SOFTWARE

- 20.1 In the event that ICT and a Client do not agree on an acceptance test, the Client shall accept the Software "as is" (hence with all visible and hidden flaws and defects) upon delivery subject to any obligation which ICT may have pursuant to Article 20.2 *et seq.*
- 20.2 ICT warrants that any Software will essentially function as set out in the relevant Specifications. A warranty shall take the form of remedying any Deficiencies in accordance with the provisions of these General Terms and Conditions Governing Supply.
- 20.3 Unless otherwise agreed to in writing, the term of a warranty shall amount to six (6) months after the supply of the relevant Software or – where an acceptance test has been agreed to – after it has been passed. Once any Deficiencies have been remedied during the term of the warranty, a further term of warranty of three (3) months shall apply in relation to the relevant repair work, in respect of which the overall term of warranty shall under no circumstances exceed nine (9) months after the supply of the relevant Software.
- 20.4 In the event that a Client is of the opinion that any Software contains deficiencies during the term of the warranty, the Client shall notify ICT of this in detail and in writing immediately but by no later than fourteen (14) days after those Deficiencies become evident, in the absence of which any claim against ICT shall lapse.
- 20.5 In the event that ICT detects any Deficiencies after receiving the notice referred to in Article 20.4:
- and it has been agreed that ICT is to remedy such Deficiencies by supplying a New Version or Update of the Software concerned, ICT shall endeavour to remedy those deficiencies in the next New Version or Update, unless it is reasonably impossible to do so, in which case ICT shall endeavour to remedy the relevant Deficiencies in the following New Version or Update. ICT may not be compelled to release a New Version or Update, nor to do so at a time other than that which it determines;
  - and it has been agreed that ICT is to remedy such deficiencies other than by releasing a New Version or Update, ICT shall endeavour to remedy those Deficiencies as soon as possible having regard to any response times that may have been agreed to.
- 20.6 Subject to the provisions of Article 20.7 and except in the case of a cost-plus project or secondment, any repair work which is carried out in accordance with a warranty claim that ICT acknowledges shall be free of charge.

## General Terms and Conditions Governing Supply – continued

- 20.7 Should it appear before, during or after ICT carries out any repair work that the Deficiencies are related to circumstances for which ICT is not responsible or in respect of which it does not bear any risk, ICT shall notify the relevant Client of this as soon as is reasonably possible and the Client shall be charged for any repair work which is to be carried out or has been carried out in the meantime in accordance with the applicable rates. As such, this repair work shall not be covered by the warranty. Those circumstances for which ICT is not liable and in respect of which it bears no risks shall at any rate be deemed to include the following but shall not be confined to them:
- any directions issued by ICT with regard to the use of the item in question have not been carried out precisely;
  - the Software and/or Hardware (related or otherwise) has been used improperly, not in accordance with the Specifications and/or the Documentation;
  - the relevant Client themselves or any other party not engaged by ICT has carried out work on the Software and/or Hardware (related or otherwise) without ICT's consent;
  - the exhibition of deficiencies in third-party Hardware and/or Software, which becomes visible as a result of the supply of Software by ICT;
  - the relevant Client has failed to comply with an obligation arising for them pursuant to the underlying Agreement or has failed to do so properly or on time;
  - external causes, such as water (rainwater or otherwise), heating, fire, defective communication lines, the power supply and so forth.
- 20.8 Following the expiry of the term of warranty referred to in Article 20.3, ICT shall not (or no longer) have a duty to remedy any Deficiencies, unless ICT and the relevant Client have entered into a maintenance agreement providing for the aforementioned Deficiencies to be remedied.

## 21. SOFTWARE LICENCES

- 21.1 Unless explicitly agreed otherwise in writing, any Licence granted by ICT to a Client shall include the non-exclusive, non-pledgeable, non-sublicensable and non-transferable right to use the Software and Documentation which has been developed or supplied solely for their own purpose in accordance with the provisions of Article 21. As such, a Client shall be prohibited from allowing any Software to be used for or for the benefit of another party (which is deemed to include through a sale, rental, SaaS and/or outsourcing), not even where such other party merely uses the Software for the Client's benefit. Any Software must be used as described in the relevant Documentation. ICT shall be entitled to install technical devices to protect the Software. Under no circumstances shall a Client remove such technical devices or circumvent them.
- 21.2 Where ICT and a Client have agreed on a Licence for a definite term, upon the expiry of such term the Licence shall be tacitly renewed for a period of one (1) year at a time, except where the Client or ICT cancels it towards the end of the initial or a subsequent term subject to a term of notice of no less than three (3) months. A Client shall always ensure timely payment of the applicable Licence fee, in the absence of which ICT shall be entitled to terminate the relevant Licence immediately.
- 21.3 Where it has been agreed that any Software may only be used on one (1) or more specifically designated computers and/or in one (1) or more specifically designated locations, in the event that and as long as it is impossible or inadvisable to use the Software on or in the specifically designated computers or locations in connection with a malfunction, maintenance, emergency, replacement or relocation, the relevant Client shall be entitled to use that Software on or in replacement computers or locations. In this case the Client shall notify ICT of this in writing immediately. Under no circumstances may any Software be used simultaneously on or in more than the agreed number of computers or locations. In the event that a Client's business changes as a result of a merger, break-up or transfer of operations under particular title, as a result of which a different or more extensive group of users will or could be using the relevant Software, the Client shall be required to notify ICT of this in writing beforehand. A License to any Software shall expire by operation of the law on the date of such merger, break-up and/or transfer, unless ICT grants written consent for the Licence to remain in effect in advance, to which consent ICT may attach additional reasonable terms and conditions (for example, in relation to limitation of use, the number of users and the applicable fees).
- 21.4 Unless otherwise agreed in writing, ICT shall only supply a Client with the Executables of the relevant Software. As such, a Licence shall explicitly not extend to the source code and the latter shall also not be supplied to the Client.
- 21.5 A Client shall not be entitled to translate, modify, arrange, or otherwise alter any Software, nor to generate the source code of that Software by means of reverse engineering or otherwise (or to attempt to do so) and where the source code has not been supplied to the Client, unless the latter is permitted to do so pursuant to any provision of mandatory law.
- 21.6 A Client shall not be entitled to replicate or publicly disclose any Software or to present a copy of all or part of it to any other party or to place it in the control of such other party in some other way (for example, by issuing a licence (or sublicense), or through renting, leasing, hosting or otherwise). A Client shall only be entitled to permit another party to maintain any Software, provided that ICT does not wish (or no longer wishes) to maintain it for any reason other than culpable default or an unlawful act on the part of the Client.
- 21.7 Any third-party operating system and/or application Software and/or Hardware shall be supplied in accordance with the relevant licensing and warranty terms and conditions employed by such other party. A Client shall be responsible for compliance with the relevant Licence while it is being used. Under no circumstances shall ICT assume liability for any defect, delay, loss (direct, indirect or consequential loss) caused by such third-party Software and/or Hardware, except where and up to the amount that such other party is willing to consent to pursuant to their liability and to actually provide compensation for same as a loss. In accordance with the relevant Licence, the other party concerned shall

## **General Terms and Conditions Governing Supply – continued**

remain the owner of all intellectual property rights to the Software and/or Hardware along with the relevant Documentation sourced from that other party which is used in conjunction with the Software and/or any Services provided by ICT. ICT shall notify a Client in the event that it utilises so-called open source software as the case may be and ICT is of the opinion that this may have implications for that Client's Licence. To this end, ICT shall also inform the Client of the terms and conditions (of the licence and otherwise) that are applicable in relation to such open source software. The relevant Client shall then be solely responsible for complying with those open source terms and conditions and shall indemnify ICT against any liability which may arise for ICT pursuant to a failure to comply with the aforementioned terms and conditions.

- 21.8 In the event that a Client uses any Software and/or Documentation supplied by ICT unlawfully, ICT shall be entitled to cancel the relevant Agreement with immediate effect and the Client shall be liable for any loss which ICT suffers as a result (which is also deemed to include any loss which ICT incurs as a result of claims made by other parties and/or its licensors). ICT shall at all times be entitled to monitor a Client's use of the relevant Software with the aid of a technical device.
- 21.9 Upon the termination of a Licence, the relevant Client shall be required to cease using the Software concerned and related Documentation by no later than the date of such termination and to return all media containing the Software and related Documentation to ICT. All copies of the Software and related Documentation which a Client has installed or made use of in some other way must be deleted by no later than the aforementioned date. Any premature termination of a Licence or the cessation of a Client's use shall not confer on that client entitlement to a refund of any Licence fees that have already been paid or to have a credit note issued for any payments in respect of which an invoice has already been issued. In the event that a Licence is terminated prematurely, any fees still payable for the rest of the agreed term shall fall due in full immediately. The foregoing shall not apply in the event that termination is due to culpable default on the part of ICT alone.
- 21.10 ICT shall not have a duty to release any New Version and/or Update of the Software. Nevertheless, ICT shall endeavour to search for ways to release New Versions and/or Updates. Where applicable, a Client shall have a duty to put any New Version and/or Update supplied by ICT into service within an agreed reasonable time. Should a Client fail to do so, ICT shall be entitled to suspend or limit any maintenance work and this shall not affect the Client's duty to pay the annual Licence fees throughout the agreed term of such use. Furthermore, a Client shall be liable for any loss suffered as a result.
- 21.11 In the event that the parties agree to an escrow arrangement and an escrow situation occurs, the relevant Client shall only acquire a right to use the source code of the applicable Software and/or Documentation. Under no circumstances shall a Client acquire any intellectual property rights through the surrender or use of such source code. A Client shall only be entitled to use any source code and Documentation for the purposes of carrying out corrective maintenance, including any supplement, extension and/or improvement for the purposes of commercially exploiting (or beginning to do so) the Software for their own use but a Client shall under no circumstances be permitted to sublicense and/or to sell any source code (modified or otherwise) and any related Software and Documentation. A right to use any source code shall cease to apply by operation of law in the event that the relevant Client ceases to use the Software concerned or ICT is again able to comply with its obligations subject to the same or similar conditions, in which case the Client shall immediately return the source code of the applicable Software and Documentation to ICT immediately.
- 21.12 In the event that the parties agree as the case may be that the relevant Client will not merely obtain a License but that certain intellectual property rights to any Software, Hardware and/or Documentation developed in accordance with the relevant Agreement will be conferred on the Client, this must be explicitly stipulated in the relevant Agreement (in the absence of which only a Licence shall apply). Any intellectual property rights held by ICT and/or any other party (including any of ICT's licensors which already exist at the time when this Agreement is concluded ("Existing Intellectual Property Rights")) or which arise pursuant to the work carried out by ICT on or with any Existing Intellectual Property Rights shall never be (or be able to be) the subject of an assignment as provided for above.

## **22. CLOUD SERVICES**

- 22.1 Where the Services provided by ICT comprise the provision of Cloud Services to a Client, the provisions of this article shall apply.
- 22.2 Only a Client shall be responsible for their infrastructure (and its proper operation) or that of any relevant other party for whom the Client has a licence to obtain Cloud Services. Furthermore, a Client shall also be responsible for the management and use of any Cloud Services provided by ICT and the manner in which the outcomes of the aforementioned Cloud Services are deployed. Unless ICT and a Client explicitly agree otherwise in writing, the Client shall themselves be responsible for the interoperability that they require with any systems, Software and Hardware present on their premises. In the event that and in so far as third-party Software is provided to a Client as part of Cloud Services (and provided that ICT has disclosed this), the terms and conditions of that third party shall apply in relation to that Software, which terms and conditions shall then prevail over the provisions of these General Terms and Conditions Governing Supply. A Client shall consent to the application of the aforementioned third-party terms and conditions. In the event that ICT utilises any of its suppliers for the purposes of its Cloud Services (for example, another party that provides Hosting services), ICT may never be held liable towards the relevant Client for the use and maintenance of any Software provided through its Cloud Services in excess of or other than that applicable between ICT and the relevant supplier. Should ICT provide Software belonging to a Client to the latter through ICT's Cloud Services possibly routed through a third party, the Client shall grant ICT all rights to provide those Cloud Services to and/or on behalf of the Client.

## General Terms and Conditions Governing Supply – continued

- 22.3 ICT warrants that the Cloud Services shall be provided in a professional manner. ICT may make every effort to ensure that it provides the relevant services and/or to arrange for them to be provided. As such, any Cloud Services provided by ICT and/or any other party shall be provided in accordance with a duty of care. ICT shall endeavour to meet any dates and deadlines that have been agreed to. Nevertheless, such dates and deadlines shall be determined to the best of its knowledge and under no circumstances shall a failure to meet them be of material significance. Any uptime guaranteed by ICT pursuant to an Agreement shall only apply in relation to ICT's infrastructure. ICT shall not be responsible for any telecommunications connection from its infrastructure, which is also deemed to include a Client's telecommunications connection. A performance obligation shall only apply in the event that the parties have explicitly agreed to this in a written Agreement.
- 22.4 ICT shall be permitted to continue to provide its Cloud Services while using a New Version or Update of the relevant Software. In this respect ICT shall not have a duty to maintain or modify specific features or functions of its Cloud Services or Software for a Client. Nevertheless, ICT shall consult a Client before implementing a New Version or Update, should it be expected to result in a loss of performance or functionality of the Card Services (including reduced uptime). The aforementioned duty of consultation shall not apply in the event that a New Version or Update needs to be used for security reasons.
- 22.5 ICT shall be permitted to put all or part of its Cloud Services out of service temporarily for maintenance purposes. Where reasonably possible, ICT shall consider a Client's interests, shall announce any maintenance in advance if possible, and shall ensure that any downtime occurs outside office hours as far as possible.
- 22.6 Where there is any question of data to be supplied to ICT by a Client, the latter shall bear any risk and expense associated with the transmission of such data. A Client shall warrant that the aforementioned data, as well as any other materials, data, Software or instructions supplied or issued by that Client are accurate, comprehensive and do not infringe any third-party rights (including those of intellectual property).
- 22.7 All intellectual property rights to any Software, Hardware or any other item which ICT uses for the purposes of its Cloud Services shall remain vested in ICT and/or its licensors.
- 22.8 Under no circumstances shall ICT have a duty to supply any Software in a physical form to a Client which is provided through Cloud Services.
- 22.9 ICT shall only have a duty to achieve certain levels of service provided that and in so far as this is stipulated in writing in a maintenance agreement.
- 22.10 ICT shall make an effort to remedy any Deficiencies in Software within a reasonable period of time in so far as it is Software which ICT has developed itself and the relevant Client has ensured that the aforementioned Deficiencies are clearly described and have been reported to ICT in writing. Nevertheless, ICT does not explicitly warrant that any Software supplied through its Cloud Services is bug-free and functions without interruption.
- 22.11 ICT does not explicitly warrant that any deficiency in Software which it has not supplied will be remedied. ICT shall be entitled to install temporary solutions, program patches or work-arounds in any Software. Where Software has been developed for a Client, ICT may charge that Client for the costs of any repairs in accordance with its normal rates.
- 22.12 Under no circumstances shall ICT be responsible for remedying any corrupted or lost data, nor may ICT be required to convert any data. ICT shall endeavour to ensure that any Software provided through Cloud Services shall be modified in accordance with any amendment of the relevant legislation and regulations.
- 22.13 Subject to the provisions of Article 12.3, under the terms of the relevant privacy legislation (which is deemed to include but is not confined to the Wbp), a Client shall have a duty to supply information about, afford access to, correct and delete a subject's personal data. Only the relevant Client shall be responsible for complying with these obligations. In so far as it is technically possible for it to do so, ICT shall provide assistance for the purposes of a Client complying with such obligations. Any costs associated with such assistance shall be deemed not to have been included in the agreed price and fee charged by ICT and, as such, shall be borne by the relevant Client.

## B2 – HARDWARE

### 23. DEVELOPMENT, SUPPLY AND ACCEPTANCE OF HARDWARE

- 23.1 In the event that agreement is reached that ICT will develop Hardware for a Client, Article 18.1 shall apply *mutatis mutandis* to the development of that Hardware. Any Hardware must be used as described in the relevant Documentation.
- 23.2 Except where agreed to otherwise in writing, any Hardware which ICT sells to a Client shall be delivered to the location of ICT's warehouse. Delivery of Hardware other to than the location of ICT's warehouse shall be effected at the agreed place of delivery in the Netherlands based on the rate stipulated in the relevant Agreement.
- 23.3 In the event that it is decided that ICT will pack any Hardware, ICT shall do this in accordance with reasonably applicable criteria. Should a Client require a different form of packaging, they shall be liable for any costs (or additional costs) involved.
- 23.4 A Client shall be responsible for dealing with any packaging that is left with the Client in accordance with the applicable government regulations. A Client shall indemnify ICT against any third-party claim in that respect.

## **General Terms and Conditions Governing Supply – continued**

- 23.5 Where Hardware is delivered, the relevant Client shall have a duty to ascertain whether that Hardware complies with the Agreement concerned.
- 23.6 ICT shall not have a duty to accept any return consignments from a Client except with ICT's prior written consent. A return consignment shall at any rate no longer be permitted as of the commencement of installation and/or when the relevant item is put into service.
- 23.7 ICT taking receipt of a return consignment shall under no circumstances imply ICT's acknowledgement of the reason cited by the relevant Client for that return consignment. Any risks associated with the return of an item shall continue to be borne by a Client, until ICT credits the latter or is credited for it.
- 23.8 Provided that this is stipulated in the Agreement in question, ICT shall only be responsible for installing any Hardware and configuring any Hardware and Software in such a way that the Hardware and Software can function in conjunction with the infrastructure in accordance with the Specifications stipulated in the relevant Agreement.
- 23.9 A Client shall be responsible for providing an appropriate installation place with all of the requisite facilities, including cables and telecommunications facilities in accordance with Article 15.3.
- 23.10 A Client shall grant ICT access to such an installation place for the purposes of carrying out the aforementioned installation work.
- 23.11 The aforementioned installation work shall be carried out in accordance with an installation plan agreed to by the relevant Client and ICT.
- 23.12 Hardware shall be deemed to have been accepted on the date of its delivery or, where installation by ICT has been agreed to in writing, on the day on which the relevant item is handed over ready for use.
- 23.13 The operational handover of any Hardware shall be deemed to have occurred pursuant to acceptance of the consignment following completion of any installation in accordance with the relevant installation plan.
- 23.14 The parties explicitly agree that all of ICT's contractual obligations with regard to the relevant Hardware (or part thereof) shall be complied with by the date on which the relevant client has accepted the Hardware (or part thereof) in question in accordance with this Article 23 with the exception of those duties stipulated in Article 25 of these General Terms and Conditions Governing Supply.

## **24. WORK EXCESS AND SHORTFALL IN RELATION TO HARDWARE**

In the event that any circumstances occur which have the effect of raising or lowering expenses in relation to the manufacture of any Hardware, Article 19 shall apply *mutatis mutandis*.

## **25. WARRANTIES IN THE CASE OF THE SUPPLY OF HARDWARE**

- 25.1 In the event that ICT and a Client do not agree on an acceptance test, the client shall accept the Hardware "as is" (hence with all visible and hidden flaws and defects) upon delivery subject to any obligation which ICT may have pursuant to Article 25.2 *et seq.*
- 25.2 The relevant manufacturer's warranty shall always apply where Hardware is supplied. Where Hardware is involved which ICT has itself manufactured, a term of warranty of six (6) months shall apply. Once any Deficiencies have been remedied during the term of the warranty, a further term of warranty of three (3) months shall apply in relation to the relevant repair work, in respect of which the overall term of warranty shall under no circumstances exceed nine (9) months after the supply of the relevant Software.
- 25.3 The provisions of Article 20.7 of these General Terms and Conditions Governing Supply shall also apply in relation to any Hardware supplied by ICT to a Client.
- 25.4 Following the expiry of the term of the manufacturer's warranty referred to in Article 25.2, ICT shall no longer have a duty to remedy any Deficiencies, unless ICT and the relevant Client have entered into a maintenance agreement providing for the aforementioned Deficiencies to be remedied.
- 25.5 In the event that a claim is made under the Hardware warranty, the relevant Client shall place the Hardware concerned (or part of it) at ICT's disposal at the Client's risk and expense. Except where this is stipulated in a separate Agreement, ICT shall not visit a Client's premises to collect any Hardware and/or to repair it on site.
- 25.6 Where ICT carries out repair work which falls outside the warranty, the relevant client shall be charged in accordance with the applicable rates for such repair work which ICT is to carry out or which it has already performed.
- 25.7 With regard to any deficiency that may be detected on the outside, a Client shall be required to file a claim by no later than the relevant inspection or test or, where such inspection or test has not been agreed to, within fourteen (14) days following delivery, in the absence of which any claim against ICT shall lapse.
- 25.8 ICT shall not be liable for any Deficiency detected in Hardware after the term of the relevant warranty has expired. Nevertheless, in such a case ICT shall in principle be willing to remedy any such Deficiency at the relevant Client's expense, and the Client shall be required to send in the Hardware concerned at their own risk and expense.

## **B3 – MAINTENANCE**

## **26. MAINTENANCE IN GENERAL**

## **General Terms and Conditions Governing Supply – continued**

- 26.1 These provisions governing maintenance shall only apply in the event that ICT and a Client have agreed in writing that ICT will carry out maintenance work.
- 26.2 ICT shall do all in its power to carry out maintenance, exercising the greatest possible care when doing so. ICT shall carry out maintenance in accordance with a maintenance agreement concluded with a client and the methodology set out in it. ICT shall only have a duty to achieve a specific level of service, provided that this is explicitly stipulated in writing in the relevant maintenance agreement.
- 26.3 In the event that it is agreed that ICT will provide maintenance for any Software, Hardware and/or Documentation, such maintenance shall commence by no later than immediately after the end of the term of warranty. Maintenance shall consist of the repair of any Deficiencies in accordance with the following provisions governing maintenance and whatever the parties may stipulate in particular in a maintenance agreement.
- 26.4 A Client shall warrant that all of the relevant provisions of the law governing the Software and Hardware on which ICT will be carrying out maintenance work have been complied with, which is deemed to include the Personal Data Protection Act, and the Client shall indemnify ICT against all claims in this respect.
- 26.5 A Client shall bear any risk of Software, Hardware and/or Documentation being lost, stolen or damaged during the period in which ICT has them in its possession for the purposes of carrying out maintenance. It shall be up to the relevant Client to take out adequate insurance to cover such risks. Before placing any Software, Hardware and/or Documentation at ICT's disposal, a Client shall themselves ensure that all requisite spare copies (backups) have been made.
- 26.6 In the event that a Client is of the opinion that Software, Hardware and/or Documentation contains a Deficiency, the Client shall be required to notify ICT of this in writing immediately but by no later than within fourteen (14) days after such Deficiency becomes evident.
- 26.7 The provisions of Articles 20.5 and 20.7 of these General Terms and Conditions Governing Supply shall explicitly also apply in relation to any maintenance work. By way of an addendum to the circumstances referred to in Article 20.7, the maintenance of Software shall not include remedying any Deficiencies which are due or related to:
- any modification of, or defect or Deficiency in Hardware or Software other than that covered by ICT's maintenance;
  - a failure to carry out timely maintenance on Software as a result of circumstances which may be attributed to the relevant Client;
  - a version of any Software which ICT no longer supports;
  - any cause for which ICT cannot be held culpable.
- 26.8 Maintenance shall not include the recovery of corrupted or lost data or the conversion of data. Nevertheless, acting at a Client's request and in so far as is possible, ICT is willing to attempt to recover corrupted or lost data, or to convert data in consultation with the Client in return for compensation for the costs which ICT charges.
- 26.9 In the event that a Client does not enter into a maintenance agreement with ICT at the same time as concluding an Agreement for the supply of Software and/or Hardware, ICT may not be required to enter into a maintenance agreement at a later point in time.
- 26.10 ICT reserves the right to suspend its maintenance obligations, amongst other things, throughout the time during which circumstances occur at the place where the Software, Hardware and/or Documentation has been placed which, in ICT's opinion, entail risks in relation to the health and safety of ICT staff and/or any other party whom ICT has engaged for the purposes of carrying out maintenance.
- 26.11 Unless otherwise stipulated in an Agreement, ICT shall not provide any warranty in respect of maintenance work which it carries out.

## **27. MAINTENANCE OF SOFTWARE**

- 27.1 In the event that it is agreed that ICT will maintain Software, such maintenance shall only cover the latest or immediately preceding version or release supplied to the relevant Client. Other versions and releases shall not (or no longer) be supported, unless otherwise agreed in writing.
- 27.2 ICT shall not have a duty to release any New Version and/or Update of the Software. Nevertheless, ICT shall endeavour to search for ways to release New Versions and/or Updates. Where applicable, a Client shall have a duty to put any New Version and/or Update supplied by ICT into service within an agreed reasonable time.
- 27.3 Unless explicitly agreed otherwise in writing, a Client shall not be entitled to the supply of the source code and any materials which are required for the purposes of carrying out maintenance. Maintenance shall only cover Software in a form which can be read by computer equipment and recorded on a medium which a computer can read.
- 27.4 Maintenance shall only extend to Software that is mentioned in a software list in a maintenance agreement, which list the relevant Client shall ensure remains accurate in consultation with ICT. Any maintenance work carried out in respect of Software that is not mentioned in the software list at the time when that work is performed, shall be charged for on the basis of subsequent costing in accordance with the normal rates.
- 27.5 ICT shall ensure that its expertise in relation to Software remains up-to-date. As set out in a maintenance agreement, ICT shall register and record any data concerning work carried out on Software that is relevant for the maintenance of that data in its administrative records. When first requested to do so, ICT shall permit the relevant Client to inspect the data thus recorded.

## General Terms and Conditions Governing Supply – continued

- 27.6 ICT shall be entitled to inspect the relevant Software, as well as the Hardware on which the Software that is to be maintained is installed before commencing any maintenance. Based on the findings of such an inspection, ICT shall be entitled to refrain from maintaining the relevant Software or to make such maintenance subject to additional terms and conditions. Such “additional terms and conditions” shall at any rate be deemed to refer to the modification and/or upgrade of Software, Hardware, operating systems or connected networks in accordance with any directions and instructions issued by ICT.
- 27.7 ICT shall be entitled to install temporary solutions, program patches or work-arounds in any Software. In the absence of any explicit arrangements in this respect, a Client shall themselves install, configure, determine the parameters of, and fine-tune any updated Software or any New Version of the Software that has been supplied and, where necessary, the Client shall modify the Software in use and user environment.
- 27.8 In the event that ICT carries out maintenance online (remote access”, the relevant Client shall ensure that there is a proper infrastructure and telecommunications facilities in accordance with any instructions issued by ICT in this respect. In the event that the infrastructure and telecommunications facilities do not satisfy any requirement stipulated by ICT, the latter shall be entitled to suspend maintenance or limit it.

## 28. MAINTENANCE OF HARDWARE

- 28.1 Maintenance shall only extend to Hardware that is mentioned in a hardware list in a maintenance agreement, which list the relevant Client shall ensure remains accurate in consultation with ICT. Any maintenance work carried out in respect of Hardware that is not mentioned in the hardware list at the time when that work is performed, shall be charged for on the basis of subsequent costing in accordance with the normal rates.
- 28.2 ICT shall ensure that its expertise in relation to Hardware remains up-to-date. As set out in a maintenance agreement, ICT shall register and record any data concerning work carried out on Hardware that is relevant for the maintenance of that data in its administrative records. When first requested to do so, ICT shall permit the relevant Client to inspect the data thus recorded.
- 28.3 The provisions of Article 26.5 of these General Terms and Conditions Governing Supply shall apply in relation to backup copies of data and Software.
- 28.4 Unless otherwise explicitly agreed in writing, the maintenance fee shall not include:
- the replacement of parts. This shall occur in the event that ICT is of the opinion that it is necessary in order to remedy a malfunction or to prevent one from occurring. Furthermore, this shall include work for the purposes of full or partial reconditioning and/or modifications and updates or upgrades of the Hardware. Following payment in full, the replacement parts shall become the Client's property;
  - the replacement of consumables, such as storage media (magnetic or digital), ink or toner cartridges, ink ribbons, paper, laser heads, batteries, and/or antennas;
  - the cost of replacing parts or maintenance services to remedy any malfunction which has been partly or entirely caused by repair efforts or other work undertaken by someone other than ICT or its assistant;
  - the replacement, relocation, re-installation of Hardware or work performed for this purpose;
  - any malfunction which occurs when the Hardware is not used in a normal office or production conditions in which it should operate;
  - any malfunction or damage pertaining to the use or installation of consumable or parts not prescribed by the manufacturer.

## B4 – SECONDMENT

### 29. SECONDMENT

- 29.1 These provisions governing secondment shall only apply in the event that ICT and a Client have agreed that ICT will second staff.
- 29.2 For the purposes of these General Terms and Conditions Governing Supply, “secondment” refers to a situation in which ICT places one (1) or more members of its staff (designated as the “Staff” in this Article 29) at the temporary disposal of a Client, which Staff shall carry out specific work for a Client subject to the latter's management and oversight and/or coordination (designated as the “Work” for the purposes of this Article 20.9) as provided for in Article 7:690 of the Dutch Civil Code.
- 29.3 ICT's responsibility shall be confined to the supply of Staff who will carry out the Work pursuant to a duty of care throughout the agreed period, in respect of which ICT shall under no circumstances be responsible for the work concerned.
- 29.4 ICT shall be entitled to replace any Staff working for a Client, provided that (a) this will safeguard the quality of the Work and (b) the agreed deadline shall only be extended by a period equivalent to the induction of the replacement Member of Staff.
- 29.5 In the event that a replacement Member of Staff requires an induction period, which both parties shall determine in consultation with each other, such induction period shall:
- last no more than ten (10) working days in the case of any contract which has a term of more than three (3) months;
  - last no more than five (5) working days in the case of any contract which has a term of less than three (3) months;
- 29.6 A Client shall not be charged for an induction period and this period may extend the agreed duration of the Work.

## **General Terms and Conditions Governing Supply – continued**

- 29.7 Unless otherwise agreed in writing, any rates for Members of Staff mentioned in an Agreement shall apply until 31 December of the then current calendar year. ICT shall be entitled to amend those rates once every year, in January.
- 29.8 Under no circumstances shall ICT or any Member of Staff be liable for any loss of any nature whatsoever that is due to a mistake made by such Member of Staff while carrying out the Work.
- 29.9 In view of the fact that a Client is responsible for managing and supervising any Member of Staff, such a Client shall indemnify ICT against any liability towards a third party pursuant to liability in relation to a subordinate or non-subordinate, provided that and in so far as it arises pursuant or in relation to Work.
- 29.10 Any intellectual property rights which arise pursuant to Work carried out by a Member of Staff on or using intellectual property rights that are already held by ICT or another party shall immediately be vested in ICT upon their creation. Any other intellectual property rights which arise pursuant to Work carried out by a Member of Staff shall immediately be vested in the relevant Client upon their creation. When first requested to do so by a Client, ICT shall assist with the transfer of such intellectual property rights to that Client.
- 29.11 A Client shall be responsible for entering into all appropriate licensing agreements or any other contract in relation to the use of any copyrighted or otherwise protected works, models and inventions which are necessary for the purposes of carrying out the relevant Work. A Client shall indemnify ICT and a Member of Staff against the consequences of any infringement of third-party rights, which is also deemed to include any direct or indirect loss that ICT may suffer as a result of such an infringement.
- 29.12 A Client shall be required to take out insurance in relation to a Member of Staff in connection with any claim made by another party pursuant to the performance of the relevant Work. A Client shall indemnify CT and a Member of Staff against any claim made by another party in this respect.

### **B5 – TRAINING**

## **30. EDUCATIONAL PROGRAMMES, COURSES AND TRAINING**

- 30.1 These provisions governing training shall only apply in the event that ICT and a Client have agreed that ICT will provide training for that Client.
- 30.2 In so far as the services provided by ICT comprise the provision of an educational programme, a course or training, ICT may always require payment of any amount due in respect thereof before it commences.
- 30.3 An Agreement between ICT and a Client shall be deemed to have come into effect by virtue of ICT issuing a written notice of confirmation of the educational program, course or training requested by that Client by means of a registration form signed by the latter. As such, the registration form shall constitute the Agreement.
- 30.4 Registration for any educational program, course or training for which registration is open shall occur in the order of registration. In the event of the over-registration of trainees, Article 30.5 of these General Terms and Conditions Governing Supply shall apply. Any provisional registration must be finalised within three (3) working days, in the absence of which such registration shall lapse.
- 30.5 In the event that ICT is of the opinion that registration numbers constitute grounds for doing so, it shall be entitled to cancel an educational programme, a course or any training, or to combine it with one (1) or more educational programmes or courses, or any other training, or to arrange for it to occur on another date or at another time without being liable for any loss suffered by the relevant Client. In such a case a Client shall be notified and shall have a choice of an alternative course, if applicable, or the refund of their entire registration fee, if it has already been paid.
- 30.6 ICT shall only be bound by any cancellation that has been effected in writing. In the case of written cancellation by a Client up until thirty (30) days before the scheduled commencement of the relevant educational programme, course or training, 50% (fifty per cent) of the quoted fee shall be charged. In the case of written cancellation by a Client up thirty (30) days to one (1) week before the scheduled commencement of the relevant educational programme, course or training, 75% (seventy-five per cent) of the quoted fee shall be charged. In the case of written cancellation within one (1) week before the scheduled commencement of the relevant educational programme, course or training, the entire fee shall be charged.
- 30.7 Acting in consultation with ICT, a Client shall be entitled to send a trainee to the relevant educational programme, course or training other than the trainee who was originally registered. The replacement of a trainee must be arranged and confirmed in writing by the relevant Client by no later than two (2) days before the scheduled commencement of the relevant educational program, course or training.
- 30.8 All intellectual property rights, including in particular for the purposes of this matter the copyright to any materials (for the relevant educational programme, course or training, which is also deemed to include Software) supplied by ICT and any other information for such educational program, course or training shall be and shall continue to be vested solely in ICT and/or its licences. As such, a client shall not be permitted to use any such materials (for the relevant educational program, course or training, which is also deemed to include Software) or any other information other than for the purposes of the educational program, course or training provided by ICT or as reference material by the relevant trainee after attending the educational programme, course or training in question. Any other use, which is deemed to include its disclosure to any other party, is explicitly prohibited.
- 30.9 Any complaint concerning an educational programme, course or training that has been attended must be communicated to ICT in writing and setting up proper reasons by no later than fourteen (14) days following the end of



**General Terms and Conditions Governing Supply – continued**

the relevant educational program, course or training. The submission of a complaint shall not affect the relevant financial obligations.

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