



het beste van mensen en technologie

General Terms and Conditions of:

most frankly t.h.o.d.n. WebAffairs t.h.o.d.n. De Lekkerste Dingen t.h.o.d.n. PHEOS
Keyerswey 57
2201 CX Noordwijk
The Netherlands

Chamber of Commerce No. for Den Haag: 273787210000

(AS 116-11)

Article 1: Applicability/definitions

1. These Terms and Conditions apply to all offers and to all agreements of purchase and sale as well as all agreements of assignment, including all agreements for the carrying out of work or the performance of services by most frankly t.h.o.d.n. WebAffairs t.h.o.d.n. De Lekkerste Dingen t.h.o.d.n. PHEOS, established in Noordwijk, hereinafter to be referred to as "the User".
2. The purchaser or the client shall hereinafter be referred to as "the Other Party".
3. A number of provisions in these General Terms and Conditions shall only include the situation in which the Other Party is a natural person that does not act in the carrying out of a profession or business. The Other Party shall be referred to as "the Consumer" in the context of these provisions.
4. "In writing" for the purposes of these General Terms and Conditions shall mean: by letter, e-mail, fax or any other mode of communication that is regarded as equivalent to writing in view of advances in technology and conventional practices.
5. "Items" for the purposes of these General Terms and Conditions shall in any case mean: the hardware and software (whether or not in the form of a standard package) and ancillary components to be delivered by the User.
6. The recommendations, calculations, drawings, reports, designs and suchlike to be produced by the User or provided by the Other Party shall hereinafter be referred to as "the documents". These documents can be recorded both in writing and on other data carriers, such as on CD ROMs, DVD, USB sticks, etc.
7. All provisions laid down in these General Terms and Conditions shall apply to all deliveries, work and/or services by the User, except insofar as proved otherwise from the text of the Article or the provision.



8. The possible invalidity of (any part of) a provision contained in these General Terms and Conditions shall not affect the validity of the remaining provisions.

9. These General Terms and Conditions also apply to the additional or partial orders or partial contracts or follow-up instructions following the agreement.

10. A lasting business relationship shall only be deemed to exist if the User has already handed these General Terms and Conditions several times to the Other Party. The User shall not be obliged to produce these General Terms and Conditions in order for them to apply to each new agreement.

Article 2: Instructions, formation of agreements

1. The agreement shall be established after the Other Party has accepted the offer from the User even if this acceptance differs in subordinate points from the offer. If however the acceptance by the Other Party differs essentially from the offer, the agreement shall not be deemed established until the User has expressly agreed to these differences in writing.

2. If the Other Party gives an instruction to the User without a prior offer to that end, the User shall only be bound to this instruction after it has confirmed it to the Other Party in writing. Instructions must be accompanied by a clear, written description of the nature of the instruction.

3. Changes to an instruction already given must also be submitted in writing and be accompanied by a clear description of the changes. The aforesaid changes as well as the additions to or the changes of the General Terms and Conditions or the agreement shall only bind the User after they have been confirmed to the Other Party in writing and shall only relate to the agreement concerned.

4. The User shall only be bound by verbal agreements after it has confirmed these to the Other Party in writing or as soon as the User has started to carry out these agreements without objection from the Other Party.

5. Neither the User nor the Other Party shall be entitled to transfer the rights and/or obligations arising from the agreement to any third party without the permission of the other party, unless parties have explicitly agreed otherwise in writing or if provided otherwise in these terms and conditions.

Article 3: Offers, quotations

1. All offers and quotations from the User shall be non-binding, unless they specify a date for acceptance. If an offer or quotation contains a non-binding proposal and the Other Party accepts such proposal, the User shall be entitled to withdraw the proposal within two working days of receiving acceptance.



2. A draft estimate shall not oblige the User to deliver part of the proposal stated in this estimate for a corresponding part of the price.
3. If the offer is based on information provided by the Other Party and this information appears incorrect or incomplete or if it changes afterwards, the User shall be entitled to adjust the prices, rates and/or delivery terms stated in the offer.
4. Offers, proposals as well as prices and rates do not automatically apply to additional or new orders.
5. The models and samples of the documents shown or provided, examples of the websites developed and items to be delivered, specified functionalities, capacities and dimensions as well as other descriptions in brochures, promotion material and/or on the website of the User are as accurate as possible, but are given as indication only. The Other Party may not derive any rights from this.
6. The models and samples referred to in the previous paragraph shall remain the property of the User at all times and must be returned to the User at its request at the expense of the Other Party.
7. The User is entitled to charge the costs related to the offer and/or proposal to the Other Party, provided that it has notified the Other Party beforehand of those costs in writing.

Article 4: Fees, prices, rates

1. Unless parties have agreed a fixed fee, the User shall charge its fee on a time-costing basis, applying the agreed hourly rate or the User's customary hourly rate.
2. The hourly fees apply for normal working days, which is understood to mean: Mondays to Fridays (with the exception of recognised public holidays) and the times agreed between parties.
3. In the event of emergency work or if the work needs to be carried out beyond the working days referred to in paragraph 2 of this Article, the User shall be entitled to add a surcharge to the agreed or standard hourly rate.
4. The prices or rates stated in the offers, proposals, price and rate lists and suchlike are exclusive of Dutch VAT and any possible costs, such as shipping costs, travel expenses, administrative costs and expense claims of third parties engaged.
5. The User is entitled to increase a fixed fee if it appears during the execution of the agreement that the parties have not correctly estimated the agreed or expected amount of work when concluding the agreement, this incorrect estimate is not due to an attributable failure of the User and it cannot reasonably be expected from it to carry out the work for the agreed fee.



6. In the event that a dispute arises between parties about the number of hours spent and/or charged, the hour recording of the User shall be binding. All this unless the contrary is proved on the part of the Other Party.

7. a. If (cost)price increasing circumstances occur at the expense of the User between the date of concluding the agreement and the execution thereof due to legislation and regulations, currency fluctuations or price and rate changes at the (internet) providers or other suppliers engaged by the User, the User shall be entitled to increase the agreed price or the agreed fee accordingly and to charge it to the Other Party;

b. In the event of price or rate increases within 3 months after formation of the agreement the consumer shall be entitled to terminate the agreement by means of a written statement. If the consumer has not informed the User within fourteen days after notification of the price or rate change that he wishes to make use of his authority to terminate, the User may assume that the consumer has agreed with the price or rate change.

8. In the event of continuing performance contracts the User shall be entitled to periodically adjust the prices and/or rates applicable. The User shall inform the Other Party thereof in writing one month before the commencing date of the price or rate change at the latest. If the Other Party should not agree to the announced price or rate change, it shall be entitled to terminate the agreement within 10 (ten) working days after the date of this notification to the date of commencement stated in the notification. Termination must take place in writing.

Article 5: Engaging third parties

If required for the proper execution of the agreement, the User shall be entitled to have specific deliveries made or work carried out by third parties. This is at the discretion of the User.

Article 6: Obligations of the Other Party

1. The Other Party must ensure that:

a. it shall make all information and documents required for the execution of the agreement available to the User in time and in the manner required by the User;

b. any data carriers, electronic files and suchlike provided to the User by the Other Party shall be free from viruses and/or defects;

c. the items delivered by the User shall be used as well as adequately secured in accordance with the directions(for use), instructions, recommendations, manuals and suchlike provided by the User;



d. in the event that work needs to be carried out on site, the User shall be given access to this location on the agreed dates and times. this location must meet the applicable legal (safety) requirements;

e. the User can dispose of connection facilities on the aforesaid location for the required electricity, internet, etc. The costs for this shall be at the expense of the Other Party. Lost working hours due to failure of these facilities shall also be charged to the Other Party;

f. If the work requires several days, there is room available in this location where materials, appliances, properties and suchlike of the User can be stored or put away, preventing that these materials, appliances or properties will get damaged or stolen;

g. the other facilities reasonably required by the User are present in this location, without any additional costs being involved for the User.

2. The Other Party shall ensure that the information it has provided is correct and complete and shall indemnify the User against any claims from third parties arising from the incorrectness and/or incompleteness of the information.

3. The Other Party shall be liable for loss or theft of and/or other damage to the materials, appliances, properties and suchlike, which the User has used or stored during the carrying out of the work at the Other Party's.

4. If the obligations under this Article are not complied with in time, the User shall be entitled to suspend the execution of the agreement until the moment that the Other Party has met its obligations. The costs related to the delay incurred and/or the costs to perform additional work or other consequences arising from this shall be at the expense and risk of the Other Party.

5. If the Other Party fails to comply with its obligations and the User fails to require performance by the Other Party, it shall not affect the User's right to require performance at a later date.

Article 7: Confidential information

1. Parties undertake to maintain confidentiality about all information that they have obtained in the context of concluding and executing the agreement, of or about the Other Party and which this Party has specified as confidential information or of which it can reasonably be expected that the information must be treated in confidence. Parties shall only provide this information to third parties insofar as this is necessary for the execution of the agreement.

2. Each party shall take all reasonable precautions to keep the confidential information secret and guarantees that its employees or other persons under its responsibility who are involved in the execution of the agreement shall also maintain their obligation to observe secrecy.



3. The duty of secrecy shall not apply if one of the parties is obliged to disclose the confidential information due to legislation and regulations or a court decision and cannot rely on a legal nondisclosure right or privilege granted by a court. This exception also applies to the employees or other persons as referred to in paragraph 2 of this Article.

4. The User is at all times allowed to publish about the agreed work or performance of services and the methods used or developed for this purpose, to reuse (partial) analyses and suchlike, provided that the privacy of the Other Party remains guaranteed or the User has been given permission by the Other Party for this purpose.

Article 8: Risk of storage of information

1. The User shall store and keep all information or documents received from the Other Party during the term of the agreement in a careful manner and shall (have) take(n) all reasonable measures in order to prevent undesired access (for example by hackers) to this information or these documents.

2. However, the User shall never be liable for loss or destruction of this information or these documents – whether or not by hackers –, unless this is due to intent and/or deliberate recklessness of the User or his supervising personnel at management level. The Other Party must ensure at all times that it keeps the original or a copy of the information or documents provided to the User.

Article 9: Delivery, delivery/completion periods

1. Agreed delivery/completion periods can never be considered as strict deadlines, also because the User must particularly base these terms on the delivery/completion periods of its (internet)providers, other service providers or suppliers. If the User fails to deliver the agreed performance at all or in time, it shall have to be given notice of default in writing accordingly, whereby the User shall be given a reasonable period to meet its delivery/completion obligations at a later date.

2. The User is entitled to deliver or execute the work or performance of services in parts or phases, whereby each partial delivery or partial performance may be invoiced separately or periodically.

3. The risk concerning the delivered hardware or standard software shall pass to the Other Party at the time of delivery. Under the moment of delivery it is understood to mean in the framework of these General Terms and Conditions: the moment these items to be delivered will leave the premises, the warehouse or the shop of the User, or the moment that the User has informed the Other Party that it may collect the items.

4. Contrary to the provisions of paragraph 3 of this Article the moment of delivery shall mean: the moment at which the hardware or standard software is in fact at the disposal of the consumer.



5. Dispatch or transport of the hardware or standard software ordered shall occur in a manner to be decided by the User, however at the expense and risk of the Other Party. The User is not liable for any damage of whatever nature – whether or not to the items themselves – that is related to the dispatch or the transport.

6. Contrary to the provisions of paragraph 5 of this Article, the dispatch or transport of the hardware or standard software on behalf of the consumers shall occur at the risk of the User, but at the expense of the consumer.

7. If it appears impossible, due to a cause within the control of the Other Party, to carry out the work and/or to deliver the items or documents ordered to the Other Party, or if the items are not collected, the User is entitled to store the items or documents and/or the components that have been purchased for the execution of the agreement at the expense and risk of the Other Party. Unless the User has explicitly set out a different term in writing, the Other Party must give the User the opportunity within 1 month after notification of the storage to carry out the work at a later date and/or to deliver the items or the documents at a later date, or the Other Party must collect the items within this term at a later date.

8. If the Other Party still fails to meet its obligations after expiry of the term referred to in paragraph 7 of this Article, it shall be immediately in default. The User shall then be entitled to terminate the agreement fully or partially with immediate effect, without judicial intervention, by means of a written statement, and to sell the items and/or components to third parties as well as to destroy the already produced documents. All this without any obligation arising for the User to compensate damage, expenses and interest.

9. The aforesaid shall not affect the obligation of the Other Party to compensate any (storage)costs, loss due to delay, lost profits or any other damage.

Article 10: Progress, execution of agreement

1. If the start, progress or completion of the work or performance of services or the agreed delivery of items is delayed due to the fact that:

a. the User has not received all essential information or documents of the Other Party in time;

b. the User has not received any agreed (advance)payment from the Other Party in time;

c. there are other circumstances that shall be at the expense and risk of the Other Party; the User shall be entitled to an extension of the delivery/completion term that may reasonably follow from those circumstances and it shall be entitled to charge to the Other Party the costs and damage involved, such as any waiting hours.



2. If the agreement is executed in phases, the User shall be entitled to suspend the execution of the parts that belong to the following phase, until the Other Party has approved of the result of the previous phase. The costs and damage for this shall be charged to the Other Party.

3. The User shall exert itself to effect the agreed work and deliveries within the time agreed and planned for this purpose, insofar as this can reasonably be expected from it. If the execution of the agreement should be expedited at the request of the Other Party, the User shall be entitled to charge the overtime hours and other costs involved to the Other Party.

4. If during the execution of the agreement it appears that the work and/or deliveries cannot be carried out in the agreed manner as a result of unforeseen circumstances, the User shall consult with the Other Party about changing the agreement. The User shall at the same time inform the Other Party about the consequences of the change for the agreed prices, rates and the agreed delivery/completion terms. If the execution of the agreement has become impossible as a result, the User shall in any case be entitled to full compensation for the work already performed or deliveries already made.

5. Additional work must be agreed in writing between the User and the Other Party. Additional work is understood to mean: All additional work and deliveries at the request of the Other Party or necessarily arising from the work.

6. When the User carries out work or other performances at the request of or with the prior approval of the Other Party, which do not fall under the content or scope of the agreement (additional work), this work or these performances shall be paid by the Other Party to the User in accordance with the usual rates of the User. However, the User is not obliged to meet such request and may at all times require that a separate written agreement will be concluded for this work or these performances.

7. The Other Party accepts that the agreed or expected time of completion of the work and the mutual responsibilities of parties may be affected due to the work or the performances referred to in the previous paragraph of this Article.

8. If the agreement implies that the User should first make a draft version of the documents to be delivered or the website to be developed and suchlike, the Other Party should carefully check each draft every time and make its response known to the User as soon as possible - but within the term agreed for this purpose at the latest. If necessary, the draft shall be adjusted by the User and again submitted for approval to the Other Party. The User is entitled to require that the definitive version of produced documents are initialled on each page to indicate agreement by the Other Party or that the other Party explicitly agrees in writing to the approved draft in a different manner. The Other Party may only use the produced documents, the approved website and suchlike after the User has received the initialled definitive version or the written statement of approval, unless parties explicitly agree otherwise in writing or if provided otherwise in the General Terms and Conditions.



9. If the User has to make changes to drafts already approved, it may be considered as additional work and the User shall be entitled to charge the additional costs arising from this to the Other Party.

Article 11: Developing a website

1. The Other Party must put all information, documents, pictures required for the development of the website at the User's disposal in time and in the form required by the User. The Other Party is responsible itself for the acquisition of any licences from third parties for copyrighted material that the User will put on the website at the request of the Other Party.

2. Unless parties have explicitly agreed otherwise in writing, the Other Party shall obtain a full, non-transferable licence for the use of the (graphic) design of the website from the moment that the Other Party has fully met its obligations under the agreement with the User.

3. The User shall reserve the copyrights on the separate elements as regards its own picture creations, programmings, texts, picture concepts and suchlike, and is entitled to state its name in a moderate manner on the website. The manner in which the name shall be represented will be determined in mutual consultation.

4. For the daily use of the website the Other Party is permitted, within the limits agreed in writing with the User, to make changes in the content of the databases, underlying pages and tree structures.

5. Without the prior written permission of the User, the Other Party is not permitted to apply or use a variety or derivative of the design of the website or (elements of) that design outside the website or the arrangements made about this between parties.

6. If the User advises to engage a specific provider or other provider of services for the operation of the website, the User shall never be liable for any failures by this provider of provider of services.

Article 12: Developing customised software

1. The Other Party must put all information, documents, pictures required for the development of the website at the User's disposal in time and in the form required by the User. The data carriers, electronic files, software and suchlike provided by the Other Party must meet the specifications agreed for this purpose.

2. The functionalities, properties, characteristics and suchlike of the software to be developed will be laid down in writing by parties. The scope of the obligations of the User shall be exclusively determined by what has been agreed between parties in writing.



3. Unless parties have explicitly agreed otherwise in writing, all intellectual property rights regarding the developed software are vested in the Other Party and the Other Party can make use of the definitive version of this software without any restrictions in and insofar as the Other Party has satisfied all its payment obligations towards the User.

Article 13: Completion and acceptance of the developed website/software

1. The User is obliged to inform the Other Party that the agreed work for the benefit of the website or software has been completed and the website or software is ready for use.

2. The website or software is deemed to have been completed in accordance with the agreement and to conform to the agreement if it is ready for use and put at the Other Party's disposal, the Other Party has checked the operation thereof or the specifications, properties, qualities and suchlike agreed for this purpose and the completion statement or workslip has been signed for approval by the Other Party.

3. The website or software is also deemed to have been completed in accordance with the agreement if the Other Party has not complained with the User during the test period agreed between parties. If parties have not agreed a test period, the website or software is also deemed to have been completed in accordance with the agreement if the Other Party has not complained with the User within a period of 2 weeks after the notification referred to in paragraph 1.

4. If parties have agreed a test period or acceptance test and the Other Party has found defects, errors, imperfections and suchlike, the Other Party must inform the User about this in writing and in detail. The User shall in that case repair the reported defects, errors, imperfections and suchlike within a reasonable term after report thereof. Such repair shall be performed free of charge, unless it concerns user errors by the Other Party or other causes not attributable to the User. The recovery of any lost information is not included free of charge, unless parties have explicitly agreed otherwise in writing.

5. Work not yet carried out or completed by or on behalf of third parties engaged by the Other Party, which affect the proper use of the website or software shall not affect the readiness and completion of this website or software.

6. If the Other Party wishes to have changes made to the website or software after completion thereof, it will be considered as additional work. The User shall then be entitled to separately charge the costs arising from this and/or the hours spent on it to the Other Party.

7. If the Other Party still finds defects, errors, imperfections and suchlike regarding the website or software after the completion or recovery period, the provisions of the Complaints Article referred to in these General Terms and Conditions shall apply.



Article 14: Standard software

1. All intellectual property rights regarding the standard software delivered rest in the User or the original producer. The Other Party shall not remove any notices of copyright, trademark right and suchlike and ensure a correct statement of the software's origin, such as prescribed by the User and/or original producer.
2. When delivering standard software (standard package) the User shall only grant the Other Party the non-exclusive right for the use of this software.
3. The standard software may exclusively be used by the Other Party on the agreed number of processing units. In the event of failures the Other Party shall be entitled to temporarily use the software on a different processing unit.
4. The Other Party is permitted to make 2 copies at most of the standard software for security purposes. These copies shall not be used by the Other Party, but will only be used to replace the original version that has been destroyed or damaged. The Other Party must provide these copies with the same labels, indications and suchlike as the original version.
5. Without the prior written permission from the User, the Other Party is not permitted to transfer the user right on the software to third parties, to sell this software, to rent it, or to give any third parties the possibility to use the software in any other manner, to transfer the software in security, to copy or change it. Unless parties have explicitly agreed otherwise in writing, the source code of the software shall not be made available to the Other Party.
6. If the supplier of the standard software has restricted the user right of this software in accordance with the provisions referred to in a user or licence agreement or if maintenance of this software is only permitted in accordance with the provisions referred to in a maintenance agreement concluded between the supplier and the User, the Other Party shall also be bound to these restrictions. The User shall inform the Other Party about this.

Article 15: Domain name registration

1. The User can at the request of the Other Party take care of registering any domain names at the currently applicable rates.
2. After the Other Party has paid the price agreed for the registration to the User, the User shall look after registering the domain name in the name of the Other Party.



3. The rules and procedures of the registering institution concerned and applicable at the time of the registration shall at all times apply to the application and the use of a domain name. The Other Party is obliged to act in accordance with these rules and procedures and the other legislation and regulations relevant for the registration. Unless the parties have explicitly agreed otherwise in writing, the Other Party must become familiar with the aforesaid rules, procedures, legislation and regulations itself.

4. The registration of domain names shall occur at the expense and risk of the Other Party. The Other Party must investigate itself whether the use of the aimed domain name (as for trademark rights) is permitted and shall indemnify the User against any claims from third parties in the event that (registration of) the domain name should infringe intellectual property rights of third parties. The User explicitly points out to the Other Party that registration of a domain name is not the same as the creation of a trademark right.

5. In respect of the domain name registration, the User shall at all times only have an obligation to perform to its best ability and shall not guarantee that an application for registration will be accepted.

6. Unless parties have explicitly agreed otherwise in writing or if provided otherwise by law and/or the regulations of the registering institution, the domain name will be registered for a period of 12 months. This term shall be extended automatically by the same period each time, unless one of the parties has terminated the agreement in writing ultimately before the end of the period.

Article 16: Web service

1. If the User provides services in the field of server management on behalf of the Other Party, the Other Party is in view of the use of the server or his data traffic not permitted to:

- a. behave contrary to the 'netiquette';
- b. commit infringement on intellectual property rights or other rights of third parties;
- c. distribute information, to make it accessible and/or to offer it - whether or not through banners or advertisements of third parties on the website - that is in conflict with Dutch law and regulations;
- d. engage in 'hacking', including gaining unauthorised access to computer systems, software and/or data of third parties;
- e. distribute advertisements, messages and/or views in a manner that can be considered as 'spamming';



f. to incite to or to engage in other illegal activities or activities that can be harmful to the server of the User or any other server connected to the internet, including links to or the offering of so-called 'pirated' software, 'hacker' programmes, archives or 'warez' sites through the performance of services of the User;

g. to be guilty of any criminal offence in another manner, including the distribution of and the making accessible of information that is in conflict with public order or public morality or that is of a discriminating nature.

2. The Other Party shall indemnify the User against any claims from third parties that are related to the manner in which the Other Party has made use of the web services delivered by the User.

3. The User is entitled to limit the data traffic. If parties have agreed such a limit, the User shall be entitled in the event of exceeding the limit to charge the additional costs following this or the damage suffered by the User to the Other Party.

4. Unless parties have explicitly agreed otherwise in writing, the agreed web services shall be provided for a term of 12 months. This term shall be extended automatically by the same period each time, unless one of the parties has terminated the agreement in writing ultimately before the end of the period.

Article 17: Maintenance

1. If a maintenance agreement has been concluded between parties for the benefit of the delivered services, items and/or the developed website, the Other Party shall report any defects and/or failures and suchlike to the User in accordance with the procedures of the User that are customary or contained herein. After receipt of a report the User shall repair the defects or remedy the failures to its best ability.

2. If parties have agreed a periodic payment for the maintenance agreement, the repair/remedy shall be free of charge. The User may, however, separately charge the costs of the (repair) work if it concerns user errors by the Other Party, other causes that are not attributable to the User or if the items, the website and/or the result of the services delivered by others than the User have or has been changed or maintained.

3. Unless parties have explicitly agreed otherwise in writing, the following work is not included in the maintenance agreement:

- a. designing and programming activities;
- b. work following tele and data communication failures;
- c. recovery of any lost data.



Article 18: Complaints

1. The Other Party is obliged to check the delivered items immediately after receipt and to state any visible deficiencies, errors, imperfections, defects, damage and/or deviations from what has been agreed between parties on the consignment note or on the accompanying note. Should a consignment note or accompanying note be lacking the Other Party must report the deficiencies, defects and suchlike in writing to the User within 24 hours after receipt of the items.
2. Other complaints in view of the delivered items as well as complaints in view of the developed website or software must be reported to the User in writing immediately after discovery – yet ultimately within the agreed guarantee period. All consequences of not immediately reporting these are at the risk of the Other Party. If no explicit guarantee period has been agreed, a period of 1 year after delivery shall apply.
3. The Other Party is obliged to proceed to checking the items – which have not been submitted in draft to the Other Party – immediately upon receipt thereof. Any visible errors and/or imperfections in documents which can reasonably be detected upon a first inspection of the documents must be reported to the User in writing within 2 working days after receipt of the documents at the latest.
4. All complaints in view of the work carried out and/or the services provided must be reported in writing to the User immediately after discovery – yet within 3 months after delivery/completion of the work and/or services at the latest. All consequences of not immediately reporting these are at the risk of the Other Party.
5. If a complaint has not been reported to the User within the periods referred to in the previous paragraphs, the items are deemed to be in a good condition and in accordance with the agreement or the developed website, and/or the software is deemed to function in accordance with the agreement, or the work carried out and/or services delivered are deemed to have been carried out or delivered in accordance with the agreement.
6. Complaints shall not suspend the Other Party's payment obligations.
7. Paragraph 6 of this article shall not apply to the Consumer.
8. The Other Party must give the User the opportunity to investigate the complaint and provide all information to the User that is relevant for the complaint. If it is essential to return the item for investigating the complaint or if it is essential that the User will investigate the complaint on site, the costs involved in this shall be at the expense and risk of the Other Party, unless the complaint appears well-founded.
9. All returns shall take place in a manner stipulated by the User and in the original packaging and wrapping.



10. It is not possible to report complaints in view of the developed website and/or software or the result of the work carried out and/or services performed by the User if technical changes have been made and/or this website and/or software or this result have/has been adapted after delivery/completion.

Article 19: Guarantees

1. The User shall ensure that the agreed deliveries, work and/or performance of services will be carried out appropriately and in accordance with the standards accepted in its industry, but will never give a further guarantee in view of these deliveries, this work and/or performance of services than has been explicitly agreed between parties.

2. The User shall be responsible during the guarantee period for the usual quality and reliability of the items delivered.

3. If the manufacturer or supplier provides a warranty for the items delivered by the User, this warranty shall apply in the same manner between the parties. The User shall inform the Other Party in this regard.

4. When using the services required for the execution of the agreement, the User will base itself on the information that the provider or other service provider will give to this end. If specific guarantees are issued for this performance of services by the provider or service provider, these guarantees shall apply in the same manner between parties. The User shall inform the Other Party about this.

5. The User does not guarantee and shall never be deemed to have guaranteed that the result of the work carried out and/or services delivered or the software developed by the User will connect to, can be linked to, can be used through the existing system of the Other Party and/or can be operated on the existing system of the Other Party, unless the User has explicitly confirmed this to the Other Party in writing.

6. If the Other Party rightly invokes the guarantee conditions, the User shall take care of the repair or replacement of the delivered items or the result of the work carried out and/or services delivered free of charge, or carry out the work or services agreed at a later date or refund or reduce the price or the fee agreed for this purpose. This is at the discretion of the User. If there is any additional damage, the provisions set out in the liability article of these General Terms and Conditions shall apply.



Article 20: Liability

1. The User shall not accept any liability beyond the explicitly agreed guarantees, guaranteed results, capacities, functionalities or quality requirements given by the User.
2. Without prejudice to that stated in paragraph 1 of this article, the User shall only be liable for direct damage. Any liability of the User for consequential damage such as trading losses, loss of earnings and/or losses sustained, damage caused by delay and/or personal or bodily injury shall be expressly excluded.
3. The Other Party shall be obliged to take all measures necessary to prevent or limit any damage.
4. If the User is liable for the damage suffered by the Other Party, the User's liability for compensation shall at all times be restricted to the maximum amount paid by the insurer where appropriate. If the insurer of the User does not pay or if the damage is not covered by the insurance taken out by the User, the User's liability for compensation shall be limited to the invoice amount of the delivered/completed items, website and/or services or the work carried out at most.
5. Notwithstanding the provisions of paragraph 4, the User's liability shall be restricted for continuing performance contracts of more than 3 months to the fee due for the last 3 months if the insurer of the User does not pay or if the damage is not covered by the insurance taken out by the User.
6. The Other Party shall commence proceedings against the User no later than six months after the point where it gained knowledge or should have gained knowledge of the damage it has sustained.
7. A period of one year shall apply for the Consumer in departure from paragraph 6 of this article.
8. The Other Party cannot invoke the applicable guarantee, nor hold the User liable on any other grounds if the damage has arisen due to:
 - a. incompetent use of the delivered/completed items and/or website or the result of the work and/or provision of service or use of these items and/or website or aforesaid result contrary to the instructions, recommendations, indications, manuals and suchlike provided by or on behalf of the User;
 - b. errors or imperfections in the data, documents, data carriers and suchlike provided or prescribed by or on behalf of the User;
 - c. instructions or directions from or on behalf of the Other Party;



d. the performance of repairs or other work or treatments to the delivered/completed items and/or website or result of the work and/or services by or on behalf of the Other Party, without the explicit prior permission of the User.

9. The Other Party shall, in the cases stated in paragraph 8 of this article be fully liable for all damage flowing from this and shall expressly indemnify the User from all third party claims to compensate for this damage.

10. The limitations of the liability stated in this article shall not apply if the damage is due to intent and/or recklessness by the User or its supervisory staff on a management level or if mandatory legal provisions oppose this. Only in these cases shall the User indemnify the Other Party against any third party claims.

Article 21: Payment

1. The User shall all times be entitled to demand (partial) advance payment or any other security for payment from the Other Party.

2. Payment should be made within 30 days after the date of the invoice unless the parties expressly agree otherwise in writing. The invoice shall be considered correct if the Other Party has not contested it within this payment deadline.

3. If an invoice has not been paid in full following expiry of the deadline stated in paragraph 2, the Other Party shall be liable to the User for late payment interest of two per cent per month calculated cumulatively over the principal sum. Parts of a month shall be counted as full months.

4. The User shall also be entitled to charge the Other Party for out-of-court collection costs if payment is still outstanding following dunning by the User.

5. The out-of-court collection costs stated in paragraph 4 in case of demands with a principal sum of up to € 25,000.00 shall amount to:

a. fifteen per cent of the amount of the principal sum for the first € 2,500.00 of the demand (with a minimum of € 40.00);

b. ten per cent of the amount of the principal sum over the next € 2,500.00 of the demand;

c. five per cent of the amount of the principal sum over the next € 5,000.00 of the demand;

d. one per cent of the amount of the principal sum over the next € 15,000.00 of the demand.

6. If the principal sum exceeds € 25,000.00, the User shall be entitled to charge the Other Party out-of-court collection costs over the first € 25,000.00 in accordance with paragraph 5 of this article and out-of-court collection costs of 10 per cent on the remainder.



7. For calculating the out-of-court collection costs, the User shall after one year be entitled to increase the principal sum of the demand by the cumulatively built up late payment interest in that year according to paragraph 3 of that article.

8. If full payment by the Other Party is not forthcoming, the Other Party shall be entitled to dissolve the agreement by giving notice in writing without any further notice of default or judicial intervention or to suspend its obligations under the agreement until payment has been received or the Other Party has provided proper security for this. The User shall also have the aforementioned right of suspension if it has legitimate grounds to doubt the Other Party's creditworthiness even before the Other Party enters into default regarding payment.

9. In case of non-payment in the event of a continuing performance contract, the User shall give notice of default in writing to the Other Party and give the Other Party a reasonable term to make payment at a later date. If payment has still not been made after this reasonable term and the arrears amount to more than 3 terms or more, the User shall be entitled to suspend the performance of service after written notification thereof to the Other Party until full payment has been made or proper security has been provided. Furthermore, the User will then be entitled to terminate the agreement, without judicial intervention, by means of a written statement. In this context suspension can be understood to mean blocking the website(s), domain names or email addresses exploited by the User on behalf of the Other Party. All damage that the User will suffer as a result of this as well as the costs of reconnecting or reactivating the performance of services shall be at the expense of the Other Party.

10. The User shall first apply the payments made by the Other Party to settle all the outstanding interest and costs and then against the longest outstanding payable invoices unless the Other Party expressly states at the time of payment that the payment relates to a later invoice.

11. The Other Party shall not be entitled to offset claims from the User against any counterclaims that it may have against the User. This shall also apply if the Other Party applies for (temporary) suspension of payment or is declared bankrupt.

Article 22: Reservation of ownership

1. The User shall reserve ownership of all items delivered and to be delivered up until the point at which the other party has completely fulfilled all payment obligations towards the User.

2. The payment obligations in paragraph 1 shall consist of the payment of the purchase price for the items delivered and to be delivered plus any demands relating to work carried out in connection with the delivery and demands due to culpable shortcoming by the Other Party in fulfilling its obligations including the payment of compensation, out-of-court collection costs, interests and any penalties.



3. If this refers to the delivery of identical, non-individualized items, the consignment of items relating to the oldest invoice shall be considered to have been sold first. Reservation of ownership shall therefore rest in any case on all items delivered, which at the time of claiming reservation of ownership were still in the Other Party's stocks, shop and/or property.
4. The Other Party may sell on items subject to reservation of ownership in the context of normal business provided it has also stipulated reservation of ownership on the items delivered with respect to its customers.
5. As long as the items delivered are subject to reservation of ownership, the Other Party shall not be entitled to pledge these items in any way or to put them at the disposal of a financier.
6. The Other Party shall be obliged to inform the User immediately in writing if any third parties assert reservation of ownership or other rights on the items subject to reservation of ownership.
7. The Other Party shall be obliged to carefully preserve the items subject to reservation of ownership and to ensure that they are identifiable as the User's property until it has fulfilled all its payment obligations towards the User.
8. The Other Party shall arrange for consequential loss insurance or fire and theft insurance, that the items delivered subject to reservation of ownership are covered at all times and to make the insurance policy and the respective premium payment receipts available for inspection by the User on first demand.
9. If the Other Party contravenes the conditions of this article or if the User claims reservation of ownership, the User and its employees shall have the irrevocable right to enter the Other Party's premises and take back the items subject to reservation of ownership without prejudice to the User's right to compensation due to damage, loss of earnings and interest and the right to dissolve the agreement giving written notice without further notice of default.

Article 23: General provisions regarding intellectual property rights

1. The user is and shall remain the party entitled to all intellectual property rights which are vested in, arising from, connected with and/or belonging to (he (result of) services delivered or work carried out by the user in the context of the agreement, including the intellectual property rights regarding the delivered databases and source codes in the context of the development of the website and/or software. All this, unless parties have explicitly agreed otherwise in writing or if provided otherwise in these General Terms and Conditions.
2. The exercise of the rights referred to in paragraph 1 of this Article is, both during and at the end of the execution of the agreement, explicitly and exclusively reserved to the User. In view of the databases and source codes referred to in paragraph 1 of this Article, the Other party shall only obtain the (user)rights that parties have explicitly agreed in writing.



3. The Other Party is not entitled to use the documents delivered or produced by the User outside the context of the agreement. The Other Party is not permitted to provide these documents to third parties, to make them available for inspection or to multiply these documents without the prior written permission of the User.

4. The Other Party guarantees that all information or documents that it will provide or already has provided to the User shall not infringe the copyright or any other intellectual property right of any third party. The Other Party is liable for any damage that the User suffers because of such infringements and shall indemnify the User against any claims from third parties.

5. The User guarantees that the items completed/delivered by him shall as such not infringe any Dutch copyrights, patent rights, design rights or other rights of intellectual property of third parties.

6. Nevertheless, if it should be recognised by the User or decided by a Dutch court that the items completed/delivered by the User infringe the aforesaid rights of third parties, the User will - after consultation with the Other Party - replace the items concerned by items that do not infringe the right concerned, obtain a licence right to this effect or to take back these items against a refund of the purchase price less the depreciations considered standard, without being obliged to pay compensation.

7. The Other Party is only entitled to the options referred to in paragraph 6 of this Article if it has informed the User about the (alleged) claims from third parties - stating all relevant particulars for this matter - at such a time that the User is able to defend his rights to this effect appropriately. The User shall then indemnify the Other Party against any claims from third parties arising from the infringements referred to in paragraph 6 of this Article, provided that the Other party exclusively leaves the dealing with any legal action to the User and renders all essential assistance in this.

8. The User is permitted to take technical measures to protect its rights.

Article 24: Bankruptcy and loss of power to dispose of property, etc.

1. Without prejudice to that stated in the other articles of these General Terms and Conditions, the User shall be entitled to dissolve the agreement by giving written notice without any further notice of default or judicial intervention at the point where the Other Party:

- a. is declared bankrupt or files for bankruptcy;
- b. applies for (temporary) suspension of payment;
- c. is affected by enforceable seizure;
- d. is placed under guardianship or judicial supervision;



e. otherwise loses the power to dispose of its property or loses legal capacity regarding all or part of its assets.

2. That stated in paragraph 1 of this article shall apply if the guardian or administrator recognizes the obligations flowing from the agreement as liabilities of the estate.

3. The Other Party shall be obliged at all times to inform the guardian or the administrator of the (content of the) agreement and these General Terms and Conditions.

Article 25: Force majeure

1. In the event of force majeure with respect to the Other Party or the User, the User shall be entitled to dissolve the agreement by giving written notice to the Other Party without judicial intervention or to suspend its obligations towards the User for a reasonable period without being liable for any compensation.

2. Force majeure with respect to the User in the context of these General Terms and Conditions shall include: a non-culpable shortcoming by the User, third parties or suppliers engaged by it or other serious grounds on the part of the User.

3. Circumstances which are considered force majeure include: war, riot, mobilisation, riots at home and abroad, government measures, strikes within the company of the User and/of the Other Party or a threat of these and other circumstances, disruption of existing exchange rates at the time the agreement was concluded, operational failures due to fire, natural phenomena and suchlike, delivery problems due to internet and power failures and suchlike as well as by weather conditions, roadblocks, accidents and suchlike, transport problems arisen, and delivery problems.

4. If the force majeure occurs after part of the agreement has already been carried out, the Other Party shall be obliged to fulfil its obligations towards the User up to that point.

Article 26: Cancellation and suspension

1. If the Other Party wishes to terminate the agreement prior to or during the execution thereof, it shall be due compensation to be further determined by the User. This compensation shall comprise all costs already incurred by the User and its damage suffered due to the termination, including lost profits. The User is entitled to fix the aforesaid compensation and – at its discretion and dependent on the work already carried out or deliveries made – to charge 20 to 100% of the agreed price to the Other Party.

2. If the Other Party should cancel a planned appointment less than 24 hours beforehand or postpone it, the User shall in any case be entitled to charge to the Other Party the time reserved for it on the basis of the agreed or customary hourly rate.



3. The Other Party shall be liable towards third parties for the consequences of the cancellation and shall indemnify the User for claims from these third parties arising from this.

4. The User shall be entitled to offset all amounts already paid by the Other Party against the amounts of compensation owed by the Other Party.

5. Should the execution of the agreement be suspended at the request of the Other Party, the compensation for all the work already carried out at that moment or costs incurred shall be immediately due and payable and the User will be entitled to charge these to the Other Party. Furthermore, the User is entitled to charge the costs to be incurred or already incurred as well as the hours already reserved prior to the suspension period to the Other Party.

6. If it is not possible to resume the carrying out of the agreement after the agreed suspension period, the User shall be entitled to dissolve the agreement without judicial intervention by giving written notice to the Other Party. If the carrying out of the agreement is resumed following the agreed suspension period, the Other Party shall be obliged to reimburse the User for any costs due to the resumption.

Article 27: [Applicable law/jurisdiction](#)

1. The agreement entered into between the User and the Other Party shall be governed exclusively by Dutch law.

2. Any disputes shall be adjudicated by the competent court in the district where the User has its registered office although the User shall always be entitled to bring the dispute before the competent court in the district where the Other Party has its registered office.

3. The Consumer shall be entitled at all times to opt for the dispute to be adjudicated by the legally competent court provided it makes this choice known in good time to the User. The term “in good time” shall mean: within one month of the User informing the Consumer in writing if its intent to have the dispute adjudicated by the court in the district where it has its registered office.

4. If the Other Party has its registered office outside the Netherlands, the User shall be entitled to act according to that stated in paragraph 2 of this article or at its discretion, to submit the dispute for adjudication by the competent court in the country or the State where the Other Party has its registered office.

Date: January 01, 2013