

GENERAL TERMS AND CONDITIONS – INFODATION (2014)

1. APPLICABILITY OF THE INFODATION TERMS AND CONDITIONS

- 1.1. The Infodation Terms and Conditions are issued by Infodation. They consist of this General Module and the following specific modules:
 1. License for software
 2. Development of software
 3. Maintenance of software
 4. Application Service Provision, Software as a Service, and Computer Services
 5. Development and maintenance of a website
 6. Web hosting
 7. Secondment services
 8. Education and training
 9. Advisory services, consultancy, and project management
 10. Other services
 11. Sale of ICT, telecommunications, and office equipment and other items
 12. Rental of ICT, telecommunications, and office equipment
 13. Maintenance of ICT, telecommunications, and office equipment
 14. Internet access
 15. Telecommunications services
 16. Financing and leasing of ICT.
- 1.2. This General Module of the Infodation Terms and Conditions applies to all offers and agreements whereby the supplier provides goods and/or services of any nature and under any designation to the client. In addition, the specific module(s) of the Infodation Terms and Conditions agreed upon between the supplier and the client shall also apply. If this General Module conflicts with or deviates from the provisions of any specific module(s) agreed upon, the provisions of the relevant specific module(s) shall prevail.
- 1.3. Where the term “general terms and conditions” is used in the Infodation Terms and Conditions, it refers to the provisions of this General Module in combination with the provisions of one or more applicable specific modules.
- 1.4. Deviations and additions to these general terms and conditions are valid only if agreed upon in writing between the parties.
- 1.5. The applicability of any purchase or other conditions of the client is explicitly rejected.
- 1.6. If any provision of these general terms and conditions is null and void or annulled, the remaining provisions shall remain in full force. In such a case, the supplier and the client shall consult in order to agree upon new provisions to replace the null or annulled provisions, with due regard for the purpose and intent of the original provisions.

2. OFFERS

- 2.1. All offers and other statements by the supplier are non-binding, unless explicitly stated otherwise in writing by the supplier.
- 2.2. The client guarantees the accuracy and completeness of the data provided to the supplier by or on behalf of the client, upon which the supplier bases its offer. The client shall always exercise the utmost care to ensure that the requirements to be met by the supplier's performance are accurate and complete. Dimensions and data stated in drawings, images, catalogues, websites, quotations, promotional material, standardization sheets, etc., are not binding on the supplier, unless explicitly stated otherwise by the supplier.

3. PRICE AND PAYMENT

- 3.1. All prices are exclusive of value-added tax (VAT) and other levies imposed or to be imposed by the authorities. Unless otherwise agreed, all prices are in euros, and the client must make all payments in euros.
- 3.2. Any cost estimates and budgets provided by the supplier are indicative only, unless explicitly stated otherwise in writing. The client cannot derive any rights or expectations from such cost estimates or budgets. A budget made known by the client to the supplier shall never be considered a fixed price agreed upon between the parties for the supplier's performance. Only if explicitly agreed in writing, the supplier is obliged to inform the client if a cost estimate or budget is likely to be exceeded.
- 3.3. If the client consists of several natural persons and/or legal entities, each of those persons is jointly and severally liable for payment of the amounts due under the agreement.
- 3.4. With regard to the performance provided by the supplier and the amounts owed by the client, the relevant documents and data from the supplier's administration or systems shall constitute full evidence, without prejudice to the client's right to provide counter-evidence
- 3.5. In the case of a periodic payment obligation by the client, the supplier is entitled to adjust the applicable prices and rates in writing, with a notice period of at least three months. If the client does not agree to such adjustment, the client is entitled to terminate the agreement in writing within thirty days of notification, effective from the date on which the adjustment would take effect. However, this right of termination does not apply if the parties have agreed that the applicable prices and rates will be adjusted according to an agreed index or other measure.
- 3.6. The parties shall record in the agreement the date(s) on which the supplier will invoice the client for the agreed performances. The client shall pay amounts due in accordance with the agreed payment terms or the terms stated on the invoice. In the absence of a specific arrangement, the client shall pay within a period determined by the supplier after the invoice date. The client is not entitled to suspend any payment or to offset amounts due.
- 3.7. If the client fails to pay amounts due on time, the client is liable, without any reminder or notice of default being required, for statutory commercial interest and costs on the outstanding amount, as well as administrative charges. If, after a reminder or notice of default, the client remains in default, the supplier may transfer the claim to a third party for collection, in which case the client, in addition to the total amount due, is also obliged to reimburse all judicial and extrajudicial costs, including fees charged by external experts.

4. CONFIDENTIALITY AND RECRUITMENT OF PERSONNEL

- 4.1. The client and the supplier shall ensure that all information received from the other party which is known or should reasonably be known to be of a confidential nature remains confidential. The party receiving such confidential information shall use it only for the purpose for which it was provided. Information shall in any case be deemed confidential if one of the parties has designated it as such.
- 4.2. During the term of the agreement and for one year thereafter, neither party shall employ or otherwise directly or indirectly engage the services of employees of the other party who are or have been involved in the execution of the agreement, without prior written consent of the other party. Such consent may be subject to conditions.

5. PRIVACY, DATA PROCESSING, AND SECURITY

- 5.1. If the supplier considers it important for the execution of the agreement, the client shall, upon request, promptly provide the supplier with written information about how the client complies with its obligations under legislation regarding the protection of personal data.
- 5.2. The client indemnifies the supplier against claims from individuals whose personal data are registered or processed in the context of a personal data file maintained by the client or for which the client is otherwise legally responsible, unless the client proves that the facts underlying the claim are attributable solely to the supplier.
- 5.3. The responsibility for the data processed using a service provided by the supplier rests solely with the client. The client warrants to the supplier that the content, use, and/or processing of the data is not unlawful and does not infringe any rights of third parties. The client indemnifies the supplier against all legal claims from third parties, on any grounds, in connection with these data or the execution of the agreement.
- 5.4. If, under the agreement, the supplier is obliged to provide some form of information security, such security shall comply with the specifications regarding security as agreed in writing between the parties. The supplier never guarantees that the information security will be effective under all circumstances. If the agreement lacks a specifically described security measure, the security shall meet a level that, taking into account the state of the art, the sensitivity of the data, and the costs associated with implementing the security, is not unreasonable.
- 5.5. If computer, data, or telecommunication facilities are used in the execution of the agreement or otherwise, the supplier is entitled to assign access or identification codes to the client. The supplier is entitled to change assigned access or identification codes. The client shall treat these codes confidentially and with care and shall only disclose them to authorized employees. The supplier shall never be liable for any damage or costs resulting from the use or misuse of access or identification codes, unless the misuse was possible directly due to an act or omission of the supplier.

6. RETENTION OF TITLE AND RIGHTS, CREATION OF NEW ITEMS, AND SUSPENSION

- 6.1. All goods delivered to the client remain the property of the supplier until all amounts owed by the client to the supplier under the agreement have been paid in full. A client acting as a reseller may sell and deliver all goods subject to the supplier's retention of title insofar as this is customary in the ordinary course of business. If the client creates a new item from goods delivered by the supplier, the client shall do so solely for the supplier, and the client shall hold the newly created item on behalf of the supplier until the client has paid all amounts owed under the agreement; in that case, the supplier remains the owner of the newly created item until full payment is made.

- 6.2. The legal consequences of retention of title on goods intended for export are governed by the law of the country of destination if that law contains provisions more favorable to the supplier.
- 6.3. Rights, including usage rights, may be granted or transferred to the client only under the condition that the client has paid all fees due under the agreement. If the parties have agreed on a periodic payment obligation for the granting of a usage right, the client shall be entitled to the usage right only as long as the client fulfills its periodic payment obligation.
- 6.4. The supplier may retain items, products, property rights, data, documents, software, databases, and (interim) results of the supplier's services received or generated under the agreement, notwithstanding any existing obligation to deliver or transfer, until the client has paid all amounts owed to the supplier.

7. RISK

- 7.1. The risk of loss, theft, misappropriation, or damage to goods, products, data, documents, software, databases, or data (codes, passwords, documentation, etc.) created or used in the context of the execution of the agreement shall pass to the client at the moment they are brought under the actual control of the client or a third party acting on behalf of the client. As long as these objects remain under the actual control of the supplier or its third parties, the supplier bears the risk of loss, theft, misappropriation, or damage.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. If the supplier is willing to commit to the transfer of an intellectual property right, such an obligation shall only be valid if explicitly agreed upon in writing. If the parties agree in writing that an intellectual property right regarding specifically developed software, websites, databases, equipment, or other materials for the client shall transfer to the client, this shall not affect the supplier's right or ability to use and/or exploit, without restriction, the underlying components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards, and the like, whether for itself or for third parties. Nor does the transfer of intellectual property rights affect the supplier's right to develop for itself or a third party any developments similar or derived from those developed for the client.
- 8.2. All intellectual property rights to software, websites, databases, equipment, or other materials such as analyses, designs, documentation, reports, quotations, and preparatory materials, developed under the agreement or made available to the client, remain solely with the supplier, its licensors, or its suppliers. The client only obtains the usage rights explicitly granted by these terms and conditions and the law. Any right of use granted to the client is non-exclusive, non-transferable, and non-sublicensable.
- 8.3. The client is not permitted to remove or alter any indications of confidentiality or intellectual property rights such as copyrights, trademarks, trade names, or any other rights from the software, websites, databases, equipment, or materials.
- 8.4. Even if the agreement does not explicitly provide such authority, the supplier is entitled to implement technical measures to protect the software, equipment, databases, websites, and similar items in connection with any agreed limitation of the content or duration of the right of use. The client is never permitted to remove or circumvent such technical measures.
- 8.5. The supplier indemnifies the client against any legal action by a third party based on the claim that software, websites, databases, equipment, or other materials developed by the supplier infringe an intellectual property right of that third party, provided that the client promptly informs the supplier in writing of the existence and content of the claim and leaves the handling of the matter, including settlement negotiations, entirely to the supplier. To this end, the client shall

grant the supplier the necessary authorizations, information, and assistance to defend against such claims in the client's name if necessary. This indemnification obligation lapses if the alleged infringement is related to (i) materials made available by the client to the supplier for use, modification, processing, or incorporation, or (ii) modifications made by the client to the software, websites, databases, equipment, or other materials without the supplier's written consent, or modifications made by a third party on the client's behalf. If it is irrevocably established in court that the software, websites, databases, equipment, or other materials developed by the supplier infringe a third party's intellectual property rights, or if the supplier believes there is a substantial risk thereof, the supplier shall, if possible, ensure that the client can continue to use the delivered item or functionally equivalent alternative. Any other or broader indemnification obligation is excluded.

- 8.6. The client guarantees that no third-party rights oppose the provision to the supplier of equipment, software, materials intended for websites (such as images, texts, music, domain names, logos, hyperlinks, etc.), databases, or other materials, including design materials, for purposes of use, modification, installation, or incorporation (e.g., in a website). The client indemnifies the supplier against any third-party claims based on the allegation that such provision, use, modification, installation, or incorporation infringes third-party rights.

9. COOPERATION OBLIGATIONS

- 9.1. The parties acknowledge that the success of projects in the field of information and communication technology generally depends on proper and timely mutual cooperation. To enable proper execution of the agreement by the supplier, the client shall always provide, in a timely manner, all data or information the supplier deems useful, necessary, or desirable, and shall grant full cooperation. If the client deploys its own personnel or third parties for cooperation in the execution of the agreement, such personnel and third parties shall have the necessary knowledge, expertise, and experience.
- 9.2. The client bears the risk of the selection, use, application, and management within its organization of the equipment, software, websites, databases, and other products and materials, as well as the services to be provided by the supplier. The client itself is responsible for proper installation, assembly, commissioning, and correct settings of the equipment, software, websites, databases, and other products and materials.
- 9.3. If the client does not provide the supplier with the data, documents, equipment, software, materials, or employees deemed useful, necessary, or desirable for the execution of the agreement in a timely manner or as agreed, or if the client otherwise fails to fulfill its obligations, the supplier is entitled to suspend the execution of the agreement in whole or in part, and the supplier is also entitled to charge the costs incurred as a result at its usual rates, without prejudice to the supplier's right to exercise any other legal and/or contractual rights.
- 9.4. If supplier's employees carry out work at the client's premises, the client shall provide, free of charge, the facilities reasonably required by those employees, such as a workspace with computer, data, and telecommunications facilities. The workspace and facilities shall comply with all legal and otherwise applicable requirements concerning working conditions. The client indemnifies the supplier against any claims from third parties, including supplier's employees, who suffer damage in connection with the execution of the agreement as a result of acts or omissions by the client or unsafe situations within its organization. The client shall communicate its applicable house and security rules to the supplier's employees before work commences.
- 9.5. If computer, data, or telecommunication facilities, including the internet, are used in the execution of the agreement, the client is responsible for the correct choice of the necessary means and for their timely and complete availability, except

for facilities under the direct use and management of the supplier. The supplier is never liable for damage or costs due to transmission errors, malfunctions, or unavailability of such facilities, unless the client proves that such damage or costs result from intent or deliberate recklessness by the supplier's management.

10. DELIVERY PERIODS

- 10.1. All (delivery) periods and completion dates mentioned or agreed upon by the supplier are established to the best of the supplier's knowledge based on the information available at the time of entering into the agreement. Interim (completion) dates mentioned by the supplier or agreed upon between the parties are always target dates, are not binding on the supplier, and are merely indicative. The supplier shall make reasonable efforts to observe final (delivery) periods and completion dates as much as possible. The supplier is not bound by any (delivery) period or completion date, whether final or not, that can no longer be met due to circumstances beyond its control that occurred after the agreement was concluded. Nor is the supplier bound by any (delivery) period or completion date if the parties have agreed to modify the content or scope of the agreement (e.g., additional work, changes in specifications) or to change the approach to its execution. If any period is at risk of being exceeded, the supplier and the client shall consult to discuss the consequences of the delay for the further planning.
- 10.2. Mere exceeding of a (delivery) period or completion date mentioned by the supplier or agreed upon between the parties does not place the supplier in default. In all cases—thus also when the parties have explicitly agreed in writing on a final (delivery) period or completion date—the supplier shall only be in default due to exceeding the period after the client has provided written notice of default. Such notice must contain as complete and detailed a description of the breach as possible so that the supplier is given the opportunity to respond adequately.

11. TERMINATION AND DISSOLUTION OF THE AGREEMENT

- 11.1. Each party is entitled to dissolve the agreement due to an attributable failure in the performance of the agreement only if the other party, after a written notice of default containing as detailed a description as possible of the failure and granting a reasonable period to remedy it, continues to fail in the performance of essential obligations under the agreement. The client's payment obligations and all other obligations to provide cooperation by the client or a third party engaged by the client shall always be considered essential obligations under the agreement.
- 11.2. If, at the time of dissolution as referred to in Article 11.1, the client has already received performances in execution of the agreement, these performances and the related payment obligations shall not be subject to undoing, unless the client proves that the supplier is in default with regard to a substantial part of those performances. Amounts invoiced by the supplier prior to dissolution in connection with what has already been properly performed or delivered under the agreement remain due in full, with due observance of the previous sentence, and become immediately payable at the time of dissolution.
- 11.3. If an agreement which by its nature and content does not end by completion has been entered into for an indefinite period, either party may terminate it in writing after proper consultation and with reasons given. If no notice period has been agreed upon between the parties, a reasonable notice period must be observed upon termination. The parties shall never be obliged to pay compensation due to such termination.
- 11.4. The client is never entitled to terminate prematurely an agreement for services or assignments concluded for a fixed period.

- 11.5. Each party may terminate the agreement in whole or in part, with immediate effect and without notice of default, in writing if the other party is granted (provisional) suspension of payments, if bankruptcy is filed for the other party, if the other party's business is liquidated or terminated other than for reconstruction or merger, or if control over the client's business changes. The supplier shall never be obliged due to such termination to refund amounts already received or to pay damages. In the event of the client's bankruptcy, the right to use software, websites, and the like made available to the client lapses automatically.

12. LIABILITY OF THE SUPPLIER

- 12.1. The total liability of the supplier due to an attributable failure in the performance of the agreement or on any other legal ground, including any expressly agreed warranty obligation, is limited to compensation for direct damages up to the amount of the price agreed for that agreement (excluding VAT). This limitation of liability also applies to the indemnification obligation of the supplier referred to in Article 8.5 of this General Module. If the agreement is primarily a continuing performance contract with a duration of more than one year, the agreed price is set at the total fees (excluding VAT) agreed for one year. In no case shall the supplier's total liability for direct damages, on any legal ground, exceed €200,000 (two hundred thousand euros).
- 12.2. The supplier's liability for damages resulting from death, bodily injury, or material damage to property shall never exceed a total of €1,250,000 (one million two hundred fifty thousand euros)..
- 12.3. The supplier's liability for indirect damages, consequential damages, lost profits, missed savings, reduced goodwill, business interruption damages, damages resulting from claims by the client's customers, damages related to the use of items, materials, or software of third parties prescribed by the client for the supplier, and damages related to the involvement of suppliers prescribed by the client for the supplier, is excluded. Also excluded is the supplier's liability for mutilation, destruction, or loss of data or documents.
- 12.4. The exclusions and limitations of the supplier's liability as described in the preceding paragraphs of this Article 12 do not affect any other exclusions and limitations of the supplier's liability contained in this General Module and other agreed modules of these general terms and conditions.
- 12.5. The exclusions and limitations referred to in Articles 12.1 through 12.4 shall not apply if and insofar as the damages are the result of intent or deliberate recklessness by the supplier's management.
- 12.6. Unless performance by the supplier is permanently impossible, the supplier's liability for attributable failure in the performance of an agreement arises only if the client promptly provides written notice of default, granting a reasonable period to remedy the failure, and the supplier remains in default even after that period. The notice of default must contain as complete and detailed a description of the failure as possible so that the supplier is given the opportunity to respond adequately.
- 12.7. A condition for any right to compensation is that the client reports the damage to the supplier in writing as soon as possible after it occurs. Any claim for damages against the supplier lapses by the mere passage of twenty-four months after the claim arose.
- 12.8. The parties acknowledge that actively and constructively participating in ICT-Mediation is a reasonable and appropriate measure to prevent or limit imminent damages if such damages are related to the failure by the supplier to properly fulfill a contractual obligation. For this reason, the client undertakes, at the supplier's first written request, to promptly and

unconditionally participate in ICT-Mediation in accordance with the ICT-Mediation Rules of the Foundation for the Resolution of ICT Disputes (SGOA), established in The Hague (see www.sgoa.org and www.sgoa.eu).

- 12.9. The client indemnifies the supplier against all third-party claims for product liability as a result of a defect in a product or system delivered by the client to a third party, which also consisted of equipment, software, or other materials supplied by the supplier, unless and insofar as the client proves that the damage was caused by such equipment, software, or other materials.
- 12.10. The provisions of this article, as well as all other limitations and exclusions of liability mentioned in these general terms and conditions, also apply for the benefit of all (legal) persons engaged by the supplier in the execution of the agreement.

13. FORCE MAJEURE

- 13.1. Neither party is obliged to fulfill any obligation, including any agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure includes, among other things: (i) force majeure affecting suppliers of the supplier, (ii) failure of suppliers prescribed by the client to the supplier to meet their obligations, (iii) defects in goods, equipment, software, or materials of third parties prescribed by the client to the supplier, (iv) government measures, (v) power failure, (vi) internet, computer network, or telecommunications facility disruptions, (vii) war, (viii) occupation, (ix) strike, (x) general transport problems, and (xi) unavailability of one or more employees.
- 13.2. If a force majeure situation lasts longer than ninety days, each party has the right to terminate the agreement in writing. Performances already delivered under the agreement shall in that case be settled proportionately, without the parties owing each other anything further.

14. CHANGES AND ADDITIONAL WORK

- 14.1. If the supplier, at the request or with the prior consent of the client, performs work or other services that fall outside the scope of the agreed services, the client shall pay for such work or services in accordance with the agreed rates and, in the absence thereof, the supplier's usual rates. The supplier is never obliged to comply with such a request and may require that a separate written agreement be concluded for it.
- 14.2. The client accepts that work or services as referred to in this article may affect the agreed or expected time of completion of the services and the mutual responsibilities of the client and the supplier. The occurrence of additional work during the execution of the agreement shall never be a ground for the client to terminate or dissolve the agreement.
- 14.3. If a fixed price has been agreed upon for the services, the supplier shall, upon request, provide the client with written information about the financial consequences of the additional work or services referred to in this article.

15. TRANSFER OF RIGHTS AND OBLIGATIONS

- 15.1. The client is not entitled to sell and/or transfer the rights and/or obligations under the agreement to a third party.
- 15.2. The supplier is entitled to transfer its claims for payment of fees to a third party.

16. APPLICABLE LAW AND DISPUTES

- 16.1. Agreements between the supplier and the client are governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG, 1980) is excluded.
- 16.2. Any disputes arising between the supplier and the client in connection with an agreement concluded between them, or any subsequent agreements arising therefrom, shall be resolved by arbitration in accordance with the Arbitration Rules of the Foundation for the Resolution of ICT Disputes (SGOA), established in The Hague, without prejudice to the right of either party to request interim relief in arbitral summary proceedings or to seek conservatory measures (see www.sgoa.org).
- 16.3. Only if neither the supplier nor the client has initiated arbitration proceedings with the Foundation for the Resolution of ICT Disputes in accordance with its Arbitration Rules regarding disputes arising from agreements between them, shall either party be entitled, but not obliged, to submit the case to the District Court, Subdistrict Sector, if the dispute concerns a matter that falls within the absolute jurisdiction of the Subdistrict Court according to statutory competence rules. If the case has been brought before the Subdistrict Court by one or more parties in accordance with the previous sentence, the Subdistrict Court shall have jurisdiction to hear and decide the matter.
- 16.4. Before initiating arbitration proceedings as referred to in Article 16.2, the most diligent party shall commence a procedure of ICT-Mediation in accordance with the ICT-Mediation Rules of the Foundation for the Resolution of ICT Disputes in The Hague. Such ICT-Mediation is aimed at mediation by one or more mediators. The counterparty is obliged to participate actively in any ICT-Mediation commenced, which legally includes attending at least one joint meeting of mediators and parties, in order to give this form of extrajudicial dispute resolution a fair chance. Each party remains free to terminate the ICT-Mediation procedure after one such joint meeting. This provision does not prevent a party from requesting interim relief in (arbitral) summary proceedings or from taking conservatory measures if it deems necessary (see www.sgoa.org and www.sgoa.eu).

© 2015, Infodation, Bodegraven



INFODATION
INTEGRATED SOFTWARE SOLUTIONS