

GENERAL TERMS AND CONDITIONS OF BUSINESS OF IDC PUBLISHERS B.V.

(should the English text of the general terms and conditions of business deviate from the Dutch, the Dutch will always prevail)

**1. GENERAL DEFINITIONS**

1.1 In these conditions we define the following:

Publisher:

IDC Publishers B.V. registered at The Chamber of Commerce in Leiden (The Netherlands) at number 28023056 declared that these General Terms and Conditions shall apply to all offers and Agreements made to customer.

1.2 Customer:

Those who are meant by the Publisher in these conditions either who directly, or indirectly (dealers) or by the Publisher appointed clearinghouse, came to an agreement of delivering goods and / or services or put goods at one's disposal.

Goods and /or services are books, CD-Rom, content, electronic content, guides, microfiche, microfilms or whatever nature is offered by the Publisher itself or instructed by a third party, goods and or electronic products or conducted services.

**2. Offer, agreement and acceptance**

2.1 These general terms and conditions shall apply to all offers and agreements under which Publisher supplies to Customer goods and/or services of whatever nature, even if such goods or services are not (further) specified herein. No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing.

2.2 All offers shall be without engagement unless expressly otherwise stated in writing in the offer or recalled within 48 hours after acceptance.

2.3 Any applicability of any terms and conditions of purchase or otherwise of Customer is rejected.

2.4 In the event of nullity or annulment of any provision of these General Terms and Conditions of Business, the other provisions hereof shall remain in full force and effect and Publisher and Customer shall consult together in order to agree on new provisions to replace the provisions that are null or, as the case may be, annulled, duly observing as much as possible the object and purport of the provision that is null or annulled.

2.5 Orders can only be placed and accepted in (electronic) writing. Orders need to be provided with customer number, price-quotation number and/or full description of title and /or collection.

In case a customer has no customer number the order need also be provided with full name and address, delivery address and VAT number.

2.6 All orders will be confirmed in (electronic) writing..

**3. Price and payment**

3.1 All prices shall be exclusive of sales tax (VAT) and any other levies imposed by the authorities. Prices are also exclusive of handling and shipping charges. VAT is not applicable outside the European Union. Customers within the European Union without a VAT number will be charged with VAT. Customers within the European Union are obliged to provide their VAT number when ordering.

- 3.2 In case of an Agreement mentioning sums periodically falling due for payment by Customer, the rule is that Publisher shall be entitled to adjust the prices and rates in force by giving at least three months' notice in writing.
- 3.3 In all cases Publisher shall be entitled, by giving notice in writing to Customer, to adjust the agreed prices and rates for any performance to take place, according to the planning concerned or, as the case may be, the Agreement, at a time at least three months from the date of such notice.
- 3.4 If Customer is unwilling to accept such adjustment of prices and rates declared by Publisher as is referred to in Article 3.2 or 3.3, Customer shall be entitled within seven (7) business days from the notice referred to in the said Articles either to give notice in writing to terminate the Agreement with effect from the date stated in Publisher's notice on which the adjustment of prices or rates would become effective, or to rescind the same.
- 3.5 All invoices shall be paid by Customer in accordance with the terms of payment set forth on the invoice. Failing any specific terms, Customer shall pay within thirty days from the invoice date.
- 3.6 In the event that Customer fails to pay the amounts due within the agreed period, legal interest shall be due by Customer on the outstanding amount without any notice of default being required. Should Customer, after notice of default, fail to settle the claim, the same may be placed out of hand, in which case Customer shall be liable to pay in full, in addition to the total amount then due, any legal and non-legal expenses including any fees charged by external experts in addition to the costs assessed in court, relating to the collection of this claim or other enforcement of rights, the amount of which is fixed at 15% at least of the total amount.

#### **4. Confidential information**

- 4.1 Each of the parties guarantees that all information of a confidential nature received from the other party before and after the conclusion of the Agreement shall remain confidential. Information shall in any event be considered confidential if so designated by either of the parties.

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

- 5.1 Title to all objects supplied to Customer shall continue to be held by Publisher until all amounts payable by Customer in respect of the objects supplied or to be supplied under the Agreement, or the work done or to be done there under, as well as the amounts referred to in Article 3.6 including interest and expenses of collection or recovery, have been paid in full to Publisher.
- 5.2 No rights shall ever be granted or, as the case arises, transferred to Customer except on condition that the agreed considerations are paid in time and in full by the same.

#### **6. Risk**

- 6.1 The risk of loss of or damage to the objects forming the subject of the Agreement shall pass to Customer at the moment when such objects is actually placed at the disposal of Customer or any assistant used by the same.
- 6.2 On all forwarding of deliveries conducted by the Publisher the general terms and conditions of CMR and AVR are applicable. For Airfreight it will be IATA.
- 6.3 see  
<http://www.jus.uio.no/lm/un.cmr.road.carriage.contract.convention.1956/doc.html>

#### **7. Intellectual or industrial property rights**

- 7.1 All intellectual or industrial property rights to any software, content, equipment or other materials developed or provided under the Agreement, such as analyses, designs, documentation, reports, offers, and any preparatory material belonging thereto, shall solely be held by Publisher or its licensors. Customer shall

exclusively acquire such rights of use and powers as are explicitly granted hereunder or otherwise and for the rest Customer shall not multiply the software or other materials or make any copies thereof.

- 7.2 Customer is aware that the software, content, equipment and other materials provided contain confidential information and trade secrets of Publisher or his licensors. Without prejudice to the provisions of Article 4, Customer undertakes to keep such software, equipment and materials secret and not to make third parties acquainted with them or grant their use to the same, and to use them only for the purpose for which they were placed at his disposal.

The expression 'third parties' includes any such persons working in Customer's organisation as do not necessarily have to use the software, equipment and/or other materials.

- 7.3 Customer will not be permitted to remove from or change in the software, equipment or materials any designation concerning copyrights, trademarks, trade names or other intellectual or industrial property rights, including any indications concerning the confidential nature and secrecy of the software.
- 7.4 Customer will be permitted to take technical measures to protect the software. If Publisher has secured the software by means of some technical protection, Customer will not be permitted to remove or evade such protection. If the protective measures result in Customer being unable to make a back-up copy of the software, Publisher shall provide customer with a back-up copy of the software at the latter's request.
- 7.5 Except where Publisher provides Customer with a back-up copy of the software, Customer shall be entitled to keep, which must be understood to include 'to make', one single back-up copy of the software. For the purposes hereof a back-up copy is a material object on which the software is recorded for the sole purpose of replacing the original copy of the software in the event of involuntary loss of possession or damage. The back-up copy must be an identical copy and always be labelled with the same labels, and bear the same indications, as the original one.
- 7.6 With due observance of the other provisions of these Terms and Conditions, Customer shall be entitled to correct any errors in the software supplied to him if this is necessary for its intended use following from the nature of the same.

Wherever reference is made herein to rights or obligations with regard to errors, the term 'errors' shall be understood to mean failure to meet the functional specifications stated in writing by Publisher and, in case of development of custom-made software, the functional specifications expressly agreed. There shall be no question of any error unless it can be proved and reproduced. Customer will be under the obligation forthwith to report any errors to Supplier.

- 7.7 Publisher shall indemnify Customer against any action at law based on the allegation that any software, equipment or materials developed by Supplier itself infringe(s) any intellectual or industrial property right valid in The Netherlands, provided that Customer shall forthwith inform Publisher in writing about the existence and substance of the action at law and leave the handling of the case entirely to Publisher, including the making of any settlements.

For that purpose Customer shall give Publisher the powers of attorney, information and cooperation necessary to defend such actions, if necessary in Customer's name.

This obligation to indemnify shall cease to exist if and insofar as the infringement concerned relates to any modifications which Customer has made in the software, equipment or materials or caused to be made therein by third parties. In the event that it is judicially and irrevocably established that the software, equipment or materials developed by Supplier itself infringe(s) any intellectual or industrial property right belonging to any third party or that in Publisher's opinion there is a fair chance that such infringement will occur, Publisher shall retake the product(s) supplied and credit the acquisition costs under deduction of a reasonable user fee, or see to it that Customer is able to continue to use the product(s) supplied or some other, functionally equivalent software, equipment or materials without trouble.

Any other or further liability or obligation to indemnify of Supplier in respect of infringement of any intellectual or industrial property rights of third parties is excluded, including any liability and obligations to indemnify of Publisher for any infringements caused by the equipment, software and/or materials supplied being used in any form not modified by Publisher while being connected with any objects or software not supplied or furnished by Publisher or in any manner other than that for which the equipment, software and/or materials was and/or were developed or intended.

7.8 Customer guarantees that no rights of third parties prevent provision to Supplier of any equipment, software or materials for the purpose of use or treatment and Customer shall indemnify Publisher against any action based on the allegation that any such provision, use or treatment infringes any right of third parties.

## **8. Cooperation by Customer**

8.1 Customer shall always provide Publisher in good time with any data or information useful and necessary to the proper execution of the Agreement, and always give every cooperation.

8.2 Customer shall be responsible for the use and application, in his organization, of the equipment and software and of the services to be provided by Publisher, as well as for the checking and security procedures and for adequate system management.

8.3 If it was agreed that Customer shall make available software, materials or data on data carriers, they shall meet the necessary specifications for carrying out the work.

8.4 In the event that the data necessary for the execution of the Agreement are not at Publisher's disposal, or not in time or in accordance with the arrangements, or in the event that Customer fails to fulfil his obligations in any other way, Publisher shall in any event be entitled to suspend the execution of the Agreement and to charge the expenses thereby incurred, in accordance with its customary rates.

8.5 In case any employees of Publisher do work at Customer's location, Customer shall arrange, free of charge, for the facilities reasonably required by such employees, such as, if applicable, a workroom with telecommunication facilities etc. Customer shall indemnify Publisher against any claims of third parties, including any employees of Publisher, who in connection with the execution of the Agreement suffer any loss caused by any action or failure to act of Customer or by unsafe situations in Customer's organisation.

## **9. Claims and return shipments**

9.1 Unless then otherwise agreed upon, and in the event of a claim on Publishers supplied goods and /or services of whatever nature, the customer is obliged to submit the claim within 30 days after receipt or after the start with the process of services. The claim needs to be in writing with a clear description of the complaint. By lacking of this written complaint all liabilities on supplied goods and or services of whatever nature of the Publisher are due.

9.2 The Publisher ensures the highest quality products and method of shipment. Only acid-free, lignin-free shipping material is used. If, in spite of our best efforts, your order is incomplete or damaged, the Publisher will replace any such items free of charge . The Publisher is not responsible for duplicate orders knowingly or unknowingly submitted by the same customers.

9.3 Returns are permitted ONLY under the following conditions;

- all returns must be authorized by the Publisher
- all returns are subjected to a 15% restocking fee
- shipping and handling are not refundable
- although a return authorization may be issued , a credit will be given only upon inspection of the returned material is in sellable condition
- alle returns must be sent back to the following address within 60 days of the invoice date
  - o IDC Publishers BV
  - o Hogewoerd 151
  - o 2311 HK Leiden (The Netherlands)

- 9.4 ALL POD (Print on Demand) orders and all Microfiche / film orders of € 250 or equivalent in another currency, or under are final sales and therefore not returnable or refundable.

## **10. Terms of delivery**

All terms of delivery stated by Publisher have, to the best of it's knowledge, been made on the basis of the data that was known to Publisher at the conclusion of the Agreement, and they shall be observed as much as possible; the mere fact of any stated term (of delivery) being exceeded shall not constitute default made by Publisher. Publisher shall not be bound by any terms (of delivery) which can no longer be met owing to circumstances beyond its control which have occurred after the Agreement was concluded. If any term threatens to be exceeded, Supplier and Customer shall consult together as soon as possible.

## **11. Termination**

- 11.1 Neither of the parties shall be entitled to terminate the Agreement unless the other party, after giving proper notice of default in writing, specifying as many details as possible and stating a reasonable period within which to remedy the failure, fails to meet, and can be blamed for not meeting, any essential obligations arising from the Agreement.
- 11.2 If any Agreement which by its nature and content will not terminate by completion has been entered into for an indefinite period, such Agreement may be terminated in writing by either party after proper and business-like consultation, stating its reasons for doing so. If no specific term of notice was agreed between the parties, reasonable notice of termination shall be given. The parties shall never be liable in any damages by reason of termination. Standing orders and/or subscriptions (on line) can only be terminated within 3 months after the publication of the last version.
- 11.3 Publisher may forthwith terminate the Agreement either in whole or in part by giving notice in writing, without notice of default and without judicial intervention, if Customer is granted an official moratorium, whether provisional or not; if with regard to Customer a bankruptcy petition is presented or winding-up proceedings are instituted; or if his undertaking is wound up or closed down otherwise than for the purpose of reconstruction or amalgamation of enterprises. Supplier shall never be liable in any damages by reason of such termination.
- 11.4 If at the time of such rescission as is referred to in Article 11.1 Customer has already received any performance in the execution of the Agreement, such performance and the obligation to pay connected therewith shall be incapable of being undone unless Publisher is in default with respect to such performance. Any amounts invoiced by Publisher before the rescission in connection with any work or products already done or delivered by the same in execution of the Agreement shall remain fully due subject as provided in the preceding sentence and shall become immediately payable upon rescission.

## **12. Liability of Publisher; indemnity**

- 12.1 Publisher accepts liability to pay damages to the extent as shown by Article 12.
- 12.2 Publisher's total liability in respect of such failure to perform the Agreement as is imputable to the same shall be limited to making compensation for any direct loss up to the amount of the agreed price (not including VAT) for that Agreement.

If the Agreement is mainly a specified-period agreement with a duration of more than one year, the agreed price is fixed at the total of the considerations (not including VAT) agreed for one year. In no event, however, shall the total compensation for any direct loss exceed Euro 450,000 (four hundred fifty thousand Euro).

By 'direct loss' shall exclusively be understood:

- a. the reasonable expenses which Customer would have to incur to have Publisher's performance fulfil the Agreement. However, such loss shall not be made good if Customer has to rescind the Agreement;
- b. the expenses incurred by Customer for perforce keeping his old system(s) operational for a longer time and for any facilities connected therewith owing to Supplier's failure to make delivery on a delivery date binding upon the same, minus any savings that may have been made as a result of the delayed delivery;
- c. reasonable expenses incurred in determining the cause and extent of the loss insofar as such determination relates to any direct loss within the meaning of these Terms and Conditions;
- d. reasonable expenses incurred in preventing or reducing a loss insofar as Customer proves that such expenses have resulted in a reduction of any direct loss within the meaning of these Terms and Conditions.

12.3 In no event shall Publisher's total liability for any loss by death or bodily injury of for any material damage to property exceed Euro 1,000,000. (one million Euro) per event, a series of connected events being considered a single event.

12.4 Publisher's liability for indirect loss, including consequential loss, loss of profits, lost savings and loss caused by interruption of operations is excluded.

12.5 Apart from the cases mentioned in Article 12.2 and Article 12.3, no liability in any damages shall attach to Publisher irrespective of the ground on which any action for damages would be based. However, the maximum amounts specified in Article 12.2 and Article 12.3 shall cease to apply if and insofar as the loss is due to Publisher's wilful intent or gross negligence.

12.6 Publisher's liability in respect of such failure to perform an Agreement as is imputable to the same shall not arise unless Customer forthwith and properly declares Supplier in default in writing, stating a reasonable period in which to remedy the failure, and Supplier continues, and can be blamed for continuing, to fail in the fulfilment of its obligations even after such period. The notice of default must specify the failure in as much detail as possible, so that Publisher will be able to react adequately.

12.7 No right to damages shall ever arise unless Customer reports the loss to Publisher in writing within fourteen days after it has arisen.

12.8 Customer shall indemnify Publisher against all claims of third parties in respect of product liability as a consequence of any defect in a product or system which was supplied to a third party by Customer and partly consisted of equipment, software or other materials supplied by Publisher, except if and insofar as Customer proves that the damage was caused by such equipment, software or other materials.

### **13. Force majeure**

13.1 Neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure. The expression 'force majeure' shall include any failure of any suppliers of Publisher not due to their fault.

13.2 If a situation of force majeure has lasted for more than ninety days, the parties shall be entitled to terminate the Agreement by rescinding it in writing. In that case any performance which has already taken place pursuant to the Agreement shall be settled proportionately without either party being thereafter indebted to the other in any other amount.

### **14. Export**

In case of export of any equipment, parts or software by Customer, the relevant export regulations shall apply. Customer shall indemnify Publisher against all claims of third parties relating to any breaches of the applicable export regulations for which Customer can be held liable.

## **15. Governing law and disputes**

- 15.1 The Agreements between Publisher and Customer shall be governed by Dutch law whereas the application of the Vienna Commerce Agreement is excluded.
- 15.2 Any disputes that might arise between Publisher and Customer in connection with any Agreement concluded with Customer by Supplier or in connection with any further agreements that might result therefrom, shall be resolved by the competent judge at the courts of The Hague.

## COMPUTER SERVICE

The provisions set forth in this Chapter 'Computer Service' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Publisher provides services in the field of computer service (automatic data processing), which is understood to mean the processing of data with the aid of software and equipment controlled and operated by Publisher.

## **16. Duration**

- 16.1 If the Agreement relates to the provision of computer service, periodically or regularly in some other manner, the Agreement shall be entered into for the duration agreed between the parties, failing which a duration of one year shall apply. Customer's right to terminate the Agreement before its expiration is excluded without prejudice to the provisions of Article 17.5.
- 16.2 The Agreement shall every time be tacitly renewed for the duration of the original period unless either Customer or Publisher terminates the Agreement in writing by giving three months' notice before the end of the period concerned.

## **17. Execution of the work**

- 17.1 Publisher shall perform the computer service with due care in accordance with the procedures and arrangements laid down in writing with Customer.
- 17.2 All data to be processed by Publisher shall be prepared and delivered by Customer in accordance with conditions to be laid down by Publisher. Unless otherwise agreed, Customer shall take the data to be processed to and collect the results of the processing from the place where Supplier performs the computer service. Transport shall take place for account and at the risk of Customer even if performed or seen to be by Publisher.
- 17.3 Customer guarantees that all materials, data, software, procedures and instructions provided by the same for the computer service will always be correct and complete and that all data carriers supplied to Publisher will meet the latter's specifications.
- 17.4 All equipment, software and other materials to be used by Publisher in the computer service shall remain the property of Publisher or, as the case may be, covered by the intellectual or industrial property right of the same, even if Customer pays a charge for its/their development or purchase by Publisher. Publisher may retain the products and data received from Customer and the results of the processing until Customer has paid all amounts due to Publisher
- 17.5 Publisher may make alterations in the substance or extent of the computer service. If such alterations result in a change in the procedures applied by Customer, Publisher shall inform Customer as soon as possible and the costs of such change shall be for Customer's account.

In such a case, Customer may give written notice of termination of the agreement, effective on the date when the alteration takes effect, unless such alteration relates to any changes in any relevant legislation or in other regulations made by competent agencies or unless Publisher bears the costs of such alteration.

- 17.6 Publisher shall use its best efforts to see to it that the software used in the performance of the computer service is adapted as far as possible to any changes in any relevant legislation or other regulations made by competent agencies. If so requested, Publisher shall, at its customary rates, advise Customer on the consequences of such adaptations resulting to the same.

## **18. Telecommunication**

- 18.1 If telecommunication facilities are used in the computer service, Customer shall be responsible for making the right choice and for making them available in time. Publisher shall not be liable for any transmission errors not imputable to the same.
- 18.2 If data are processed by using telecommunication facilities, Supplier shall assign access or identification codes to Customer. Customer shall treat such codes as confidential material and not divulge them except to authorised personnel.

## **19. Protection and privacy**

- 19.1 Customer guarantees that all statutory regulations relating to the data to be processed, particularly including the regulations laid down by or under the Act on Registration of Personal Data, have been and shall be strictly observed and that all notifications prescribed have been made. Customer shall forthwith provide Publisher in writing with all information requested in connection therewith. Publisher shall see to adequate state-of-the-art protection of the registrations of personal data.
- 19.2 Customer shall indemnify Publisher against all claims of third parties that might be made against Publisher in respect of any violation of the Act on Registration of Personal Data and/or statutory storage periods.

## **20. Guarantee**

- 20.1 Unless otherwise agreed, Publisher shall not be responsible for checking the correctness and completeness of the results of the computer service. Customer shall check these results on receipt. Publisher does not guarantee that the computer service will be provided free of errors.

If any imperfections in the results of the processing are directly due to any products, software, data carriers, procedures or operating acts for which Publisher is specifically responsible under the Agreement, Publisher shall repeat the computer service in order to correct such imperfections to the best of its ability, provided that the data needed for repeating the computer service are still available and Customer has informed Publisher of the imperfections in writing and in detail and as soon as possible, but within one week at the most after receipt of the results. The service shall be repeated free of charge. If the imperfections are not imputable to Publisher, Customer may request Supplier to repeat the computer service, in which case Supplier shall charge the costs.

PROVISION OF SERVICE(S)

The provisions set forth in this Chapter 'Provision of Service(s)' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Publisher provides services, such as giving advice on organisation and automation, feasibility studies, consultancy, courses, trainings, support, posting, designing and developing of software or data systems or rendering assistance therein, and services concerning networks. These provisions do not prejudice the provisions contained in these General Terms and Conditions of Business concerning any specific services, such as computer service, development of software and maintenance.

## **21. Performance**

- 21.1 Publisher shall use its best efforts to perform the service(s) with due care, in accordance, if required, with the arrangements and procedures laid down in writing with Customer.
- 21.2 If it was agreed that the service(s) would be provided in stages, Publisher shall be entitled to postpone the start of the services forming part of the next stage until Customer has approved in writing the results of the preceding stage.
- 21.3 Unless explicitly agreed in writing, Publisher shall not be bound, during performance of the services, to follow any instructions given responsibly and in time by Customer. Publisher will be under no obligation to follow any instructions modifying the substance or extent of the agreed service(s); however, should such instructions be followed, the work in question shall be paid for in accordance with Article 22
- 21.4 If the agreement for the provision of service(s) was entered into with a view to performance by some particular person, Publisher shall always be entitled to replace such person by one or more other persons with the same qualifications.

## **22. Alteration and extra work**

- 22.1 If Publisher, at Customer's request or with Customer's prior consent, has done any work or produced any results that is or are not included in the substance or extent of the agreed service(s), such work or results shall be paid for in accordance with Publisher's customary rates. However, Publisher will not be under the obligation to grant such request and may want a separate written agreement to be concluded for that purpose.
- 22.2 Customer accepts that the agreed or expected time of completion of the service(s) and the reciprocal responsibilities of Customer and Publisher may be affected by such work or results as is/are referred to in Article 22.1.
- 22.3 Insofar as a fixed price was agreed for the service(s) and the parties intend to conclude a separate agreement relating to extra work or results, Publisher shall inform Customer in advance about the financial consequences of such extra work or results.

## **DEVELOPMENT OF SOFTWARE**

The provisions set forth in this Chapter 'Development of Software' shall, in addition to the General Provisions of these General Terms and Conditions of Business and the special provisions of the Chapter 'Provision of Service', apply if Publisher develops software by Customer's order. To this software shall also apply the Chapter 'Use and Maintenance of Software' except insofar as it is varied by this Chapter. The rights and obligations referred to in this Chapter shall exclusively relate to computer software in such form and recorded on such material as is readable by a data-processing machine, and to the documentation belonging thereto.

## **23. Development of Software**

- 23.1 The parties shall specify in writing what software is to be developed and in what manner this will be done. Publisher shall develop the software with due care on the basis of the data to be supplied by Customer, who shall guarantee their accuracy, completeness and consistency.
- 23.2 Publisher shall be entitled, but not be bound, to verify the correctness, completeness or consistency of the data or specifications put at its disposal and, if any imperfections are found, to suspend the work agreed on until Customer has removed the imperfections concerned.
- 23.3 Without prejudice to the provisions of Article 7, Customer shall acquire the right to use the software in his business or organisation. If and insofar as explicitly agreed in writing, the source code of the software and the technical documentation produced during the development of the software shall be put at Customer's disposal and Customer shall be entitled to make modifications in such software.

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

- 24.1 The software to be developed shall be delivered to Customer by Publisher in accordance with the specifications laid down in writing and installed by the latter, but only if it was agreed in writing that the installation would be carried out by the same.
- 24.2 If an acceptance test was agreed in writing, the test period shall be fourteen days from delivery or, if it was agreed in writing that the installation would be carried out by Publisher, after completion thereof. During the test period Customer will not be permitted to use the software for any purposes of production or operation.
- 24.3 Between the parties, the software shall be deemed to be accepted:
- if no acceptance test was agreed between the parties: on delivery or, if it was agreed in writing that the installation would be carried out by Publisher, on completion thereof, or
  - if an acceptance test was agreed in writing between the parties: on the first day after the test period, or
  - if before the end of the test period Publisher receives such test report as is referred to in Article 24.5: from the moment the errors mentioned therein have been corrected, notwithstanding the presence of any such imperfections as permit acceptance according to Article 24.6.

In deviation from the above, the software, in the event that Customer makes any use thereof for the purposes of production or operation before the time of acceptance, shall be considered fully accepted right from the start of such use.

- 24.4 If, during the performance of the agreed acceptance test, the software is found to contain errors hampering the progress of the such test, Customer shall inform Supplier in writing, in detail, in which case the test period shall be interrupted until the software has been adapted in such a way that the obstacle is removed.
- 24.5 If, during the performance of the acceptance test, the software is found to contain errors within the meaning of Article 7.7, Customer shall inform Publisher about such errors by means of a written and detailed test report not later than on the last day of the test period.

Publisher shall use its best efforts to correct the reported errors within a reasonable period and with respect thereto be entitled to provide the software with temporary solutions, or with software bypasses or problem-avoiding restrictions.

- 24.6 Acceptance of the software shall not be withheld on any grounds other than those relating to the specifications expressly agreed between the parties, nor on the ground of any small errors, i.e. errors reasonably permitting the start of the use of the software for the purpose of production or operation, without prejudice to Publisher's obligation to correct such small errors under the terms of guarantee contained in Article 27, if applicable.
- 24.7 If the software is delivered in stages and/or parts, non-acceptance of any particular stage and/or part shall not prejudice possible acceptance of any earlier stage and/or any other part.

## USE AND MAINTENANCE OF SOFTWARE

The provisions set forth in this Chapter 'Use and Maintenance of Software' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply to all software provided by Publisher. The rights and obligations referred to in this Chapter shall exclusively apply to computer software in such form and recorded on such material as is readable by a data-processing machine, and to the documentation belonging thereto, always including any new versions that may be furnished by Publisher.

### **25. Right of use**

25.1 Without prejudice to the provisions of Article 7, Publisher grants Customer the non-exclusive right to use the software. Customer shall always strictly observe the restrictions on its use agreed between the parties. Without prejudice to the other provisions contained in these General Terms and Conditions of Business, Customer's right of use shall solely amount to the right to load and operate the software.

25.2 Customer shall not use the software except in his own business or organisation on the one processing unit, and for a specified number or kind of users or terminals, for which the right of use was granted.

Unless otherwise agreed, Customer's processing unit on which the software was first used and the number of terminals that were connected with such processing unit at the time when it was first used shall be considered to be the processing unit and number of terminals for which the right of use was granted. Should the said processing unit malfunction, the software may be used on another processing unit for the duration of the malfunction. The right of use may relate to several processing units insofar as specifically shown by the Agreement.

25.3 The right of use cannot be transferred. Customer will not be permitted to hire or lease out, sub-licence, alienate, grant any limited rights on or make available to any third party in any way or for any purpose whatsoever the software and any carriers on which it is recorded, not even where the third party concerned will use the software solely for Customer's benefit. Customer shall not modify the software otherwise than as part of error correction, nor use it as part of data processing for the benefit of third parties (time-sharing). The source code of the software and the technical documentation produced during the development of the software shall not be made available to Customer.

25.4 Immediately after termination, if any, of the right to use the software, Customer shall return to Publisher all copies of the software in his possession. If it was agreed between the parties that Customer would destroy the copies concerned at the termination of the right of use, Customer shall forthwith report such destruction to Publisher in writing.

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

26.1 Publisher shall deliver the software to Customer on the agreed type and format of data carrier and, if it was agreed in writing that the installation would be carried out by Publisher, install the software at Customer's.

26.2 If an acceptance test was agreed in writing between the parties, the provisions of Articles 24.3 to 24.7 inclusive shall correspondingly apply.

26.3 If no acceptance test was agreed between the parties, Customer shall accept the software in the condition it is in at the time of delivery, without prejudice to Publisher's obligations pursuant to the guarantee of Article 27.

### **27. Guarantee**

- 27.1 During a period of three months after delivery, or, if an acceptance test was agreed between the parties, three months after acceptance, Publisher shall to the best of its ability correct any errors in the software within the meaning of Article 6.7 if reported to Publisher in writing within such period, specified in detail.

Publisher does not guarantee that the software will function without interruption or errors or that all errors will be rectified. Correction shall be performed free of charge unless the software was developed by Customer's order otherwise than at a fixed price, in which case Publisher shall charge its usual rates and costs of correction. Publisher may charge its usual rates and costs of correction if there can be said to be operating errors of or incompetent use by Client or other causes for which Publisher cannot be held liable, or if the errors could have been found during the performance of the agreed acceptance test.

Restoration or recovery of any data mutilated or lost shall not be covered by the guarantee. The obligation of guarantee shall terminate if Customer makes or causes to be made any modifications in the software without written permission from Publisher.

- 27.2 Errors shall be corrected at a location to be determined by Publisher. Publisher shall be entitled to provide the software with temporary solutions, or with software bypasses or problem-avoiding restrictions.
- 27.3 After the end of the period of guarantee referred to in Article 27.1, Publisher shall not be bound to correct any errors unless a maintenance agreement covering such correction was concluded between the parties.

## **28. Maintenance**

- 28.1 If a maintenance agreement was concluded for the software or if the user fee of the software includes maintenance, Customer shall in accordance with Supplier's usual procedures report in detail to the same any errors found in the software. After receipt of the report, Supplier shall to the best of its ability attempt to correct any errors within the meaning of Article 7.7 and/or make corrections in any later updates of the software. Depending on urgency, the results shall be made available to Customer in a manner and at a time to be determined by Publisher. Publisher shall be entitled to provide the software with temporary solutions, or with software bypasses or problem-avoiding restrictions.
- 28.2 Publisher does not guarantee that the software will work without interruption or errors or that all errors will be remedied.
- 28.3 Publisher may charge its usual rates and its costs of correction in case of operating errors or incompetent use or of other causes for which Publisher cannot be held liable, or if the software has been modified by parties other than Publisher. Restoration or recovery of any data mutilated or lost shall not be included in the maintenance.
- 28.4 If a maintenance agreement was concluded, Publisher shall provide Customer with corrected versions of the software if and when such versions become available. Three months after a corrected version has been supplied, Supplier shall cease to be under the obligation to correct any errors in the old version and to provide support with regard to the old version concerned. Publisher may require Customer to enter into a new agreement with the same for providing a version featuring new possibilities and functions, and to pay a new consideration for such provision.
- 28.5 If Customer has not entered into a maintenance agreement with Publisher simultaneously with entering into the agreement for provision of the software, Publisher cannot be obliged by Customer yet to enter into a maintenance agreement at any later time.

## **29. Software of Supplier's supplier**

If and insofar as Publisher provides Customer with software of any third parties, the terms and conditions of business of such third parties shall apply with respect thereto and supersede the provisions hereof, provided that Supplier has informed Customer in writing. Customer shall accept the said terms and conditions of business of third parties. Such terms and conditions shall be open to inspection by Customer at Publisher's and Publisher shall send them to Customer on request. If and insofar as for any reason whatsoever the said terms

and conditions of business of third parties shall be deemed not to apply to the relations between Supplier and Customer, or declared inapplicable, the provisions hereof shall apply.

## SALE OF EQUIPMENT

The provisions set forth in this Chapter 'Sale of Equipment' shall, in addition to the General Provisions of these General Terms and Conditions of Business, apply if Publisher sells equipment to Customer.

### **30. Delivery**

- 30.1 The equipment sold to Customer by Publisher shall be delivered to Customer ex Publisher's warehouse. If agreed in writing, the equipment sold to Customer shall be delivered by Publisher at a place in The Netherlands to be designated by Customer.
- 30.2 Publisher shall inform Customer, in due time before delivery, of the time when the same intends to deliver the equipment.
- 30.3 Delivery of the equipment shall be made at the agreed place of delivery in The Netherlands at the agreed rates.
- 30.4 Publisher shall pack the equipment before delivery in accordance with the customary standards applied by the same. Should Customer require a special way of packing, the extra costs incidental thereto shall be chargeable to the same.
- 30.5 Any such packing/containers of the products delivered by Publisher as have been left on Customer's premises shall be treated by the same in accordance with the regulations of the authorities in force with respect thereto. Customer shall indemnify Publisher against any claims of third parties in respect of any non-observance of such regulations.

### **31. Installation**

- 31.1 If agreed in writing, Publisher shall install or procure the installation of the equipment.
- 31.2 In all cases Customer shall before delivery of the equipment make available a convenient installation site with all necessary facilities such as wiring and telecommunication facilities. If desired, Publisher shall make an offer to Customer concerning the installation of such facilities.
- 31.3 Customer shall give Publisher access to the installation site during Publisher's normal business hours, to do the necessary work.

### **32. Return shipments of equipment**

- 32.1 Publisher will be under no obligation to accept any return shipments from Customer unless prior written permission has been given by the same.
- 32.2 In no event shall receipt of any return shipment imply acceptance by Publisher of the ground for the return as stated by Customer. Returns shall be at Customer's risk until credited by Publisher.
- 32.3 Publisher reserves the right, when doing any crediting that may arise from return shipments, to deduct 15% of the price of the products returned, with a minimum of Euro 50,— (fifty Euro).

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

Publisher shall place the equipment at Customer's disposal by delivery in accordance with Article 30 or, if it was agreed in writing that the installation would be carried out by Publisher, by installation of the equipment at Customer's.

Between the parties the equipment shall be considered accepted on the date of delivery or, if it was agreed in writing that the installation would be carried by Publisher, on the date of installation.

#### **34 Guarantee for equipment**

34.1 For a period of three months after placing the equipment at Customer's disposal, Publisher shall to the best of its ability remedy any defects in material and manufacture in the equipment, and in any parts supplied by Publisher under the guarantee or as part of the maintenance, provided that such defects have been reported to Publisher within that period, specified in detail. All parts replaced shall become the property of Publisher. The obligation of guarantee shall cease to exist if such defects have been fully or partially caused by any incorrect, careless or incompetent use, or by external causes, such as, for example, fire or water damage, or if Customer, without permission from Publisher, makes or causes to be made any modifications to the equipment or to the parts supplied by Publisher under the guarantee or as part of the maintenance.

34.2 Any work and costs of repair not covered by this guarantee shall be charged by Publisher in accordance with its usual rates.

#### **35. Equipment of Publisher's supplier**

If and insofar as Publisher supplies Customer with equipment of any third parties, the terms and conditions of business of such third parties shall apply with respect thereto and supersede the provisions hereof, provided that Supplier has informed Customer in writing. Customer shall accept the said terms and conditions of business of third parties. Such terms and conditions shall be open to inspection by Customer at Publisher's and Publisher shall send them to Customer on request. If and insofar as for any reason whatsoever the said terms and conditions of business of third parties shall be deemed not to apply to the relations between Publisher and Customer, or declared inapplicable, the provisions hereof shall apply.