

## 1 Applicability

- 1.1 These General Terms and Conditions apply to all offers and agreements whereby the supplier delivers works, goods and/or services to the customer.
- 1.2 Deviations and additions are only valid if agreed in writing by the parties.
- 1.3 The supplier is Brain Builders B.V.  
Baanstraat 5, 3581VS Utrecht, The Netherlands.

## 2 Offers

- 2.1 All offers, quotations, price lists, delivery times, etc. are without obligation, unless they contain a period for acceptance.
- 2.2 If the acceptance deviates from the supplier's offer, the supplier is not bound by it. The agreement will then not be concluded in accordance with the deviating acceptance.

## 3 Price and payment

- 3.1 Prices are and payments shall be made in euros. All prices are exclusive of turnover tax (VAT) and other levies imposed by the government. Parties will record the date after which the supplier may invoice in writing. The payment shall be made, without any deduction or setoff, within 14 days.
- 3.2 If the customer does not pay the amounts due or does not pay them on time, the customer is due statutory interest for trade agreements on the outstanding amounts. If the customer also fails to pay the amounts due after a reminder or notice of default, the supplier may - without limiting any other rights - suspend or terminate any services and transfer the claim. The customer shall bear all related (extra) judicial costs.
- 3.3 If at the request or prior consent of the customer the supplier has performed works or supplied goods or services that are outside the scope of what was agreed, the customer shall pay for this work or provision of goods and services in accordance with the agreed rates, or if no rates have been agreed between the parties, in accordance with the supplier's usual rates.

## 4 Confidentiality & Privacy

- 4.1 Either party must keep secret any and all information received from the other party of which it knows or should reasonably know is confidential. The receiving party may use such confidential information only for the purpose for which it was provided. Information shall be deemed to be confidential if it has been qualified as such by the disclosing party and information which relates to any proprietary, business, financial or technical information of the disclosing party including technology, computer programs, memoranda, notes, agreements and any other data or

information as well as improvements and know-how related.

- 4.2 The obligations of confidentiality is not applicable to information which:
  - (a) was or becomes generally available to the public through no breach of the confidentiality obligation of this clause by the receiving party (or its representatives);
  - (b) was rightfully in the receiving party's possession prior to receipt from the disclosing party;
  - (c) is independently developed by the receiving party, as evidenced by written records, without the use of confidential information of the disclosing party; or
  - (d) is approved in writing by the disclosing party for release by the receiving party.
- 4.3 The customer agrees that software originating from the supplier is always confidential information and that this software contains trade secrets of the supplier and its suppliers or the producer of the software.
- 4.4 With regard to the processing of personal data each party is responsible for compliance with its own obligations under the applicable privacy laws and legislation.

## 5 Information and cooperation of the customer

- 5.1 The customer shall promptly provide to the supplier all equipment (such as data, hardware and software) and cooperation as reasonably indicated by the supplier as required for the performance of the agreement and of which the customer should have reasonably known it to be required by supplier's performance of the agreement.
- 5.2 If the equipment or cooperation which is necessary for the performance of the agreement by supplier is not (timely) provided, supplier may suspend the performance and charge the customer for costs and expenses it has incurred thereto.
- 5.3 The customer warrants that all information, data and documentation (to be) disclosed by the customer will be true and accurate.

## 6 Intellectual property

- 6.1 All intellectual property rights to software, data files, equipment, websites, analyses, designs, documentation, reports, training and testing materials, including preparatory materials, and any products of the human mind developed or made available by supplier to customer under the agreement are held exclusively by the supplier and its licensors.
- 6.2 If the supplier is prepared to transfer an intellectual property right, such a commitment may only be undertaken expressly and in writing. If the parties agree in writing that an intellectual property right as meant in article 6.1 (with regard to anything

specifically developed for the customer or not) shall transfer to the customer, this shall not affect the supplier rights or option to use and/or operate, either for itself or third parties and without restriction, the general ideas, designs, algorithms, parts, works, documentation, program languages, protocols, standards and the like on which the developments referred to are based for other purposes. The transfer of intellectual property rights shall also be without prejudice to the supplier's right to complete developments that are similar to or derived from developments that were or are being completed for the customer.

- 6.3 The customer is expressly prohibited from reproducing, disclosing or exploiting any of the foregoing in the broadest sense of the word. Reproducing and/or disclosing and/or exploiting is only permitted after obtaining the supplier's written permission. The customer has the right to reproduce the written documents for use in its own organisation to the extent that such use is appropriate for the purpose of the agreement.
- 6.4 The customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, brands, trade names or other intellectual or industrial property rights from the products delivered by the supplier.
- 6.5 The customer warrants that there are no third-party rights that are inconsistent with providing the supplier with equipment, software, materials intended for websites (visual materials, text, music, domain names, logos, etc), data files, or other materials, including draft materials, intended for adaptation, installation or incorporation. The customer shall indemnify the supplier against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.

## 7 Performance and delivery

- 7.1 All obligations of the supplier resulting from the agreement are obligations to perform to the best of its ability. The delivery times stated by the supplier are not to be considered as deadlines.
- 7.2 Unless expressly provided in the agreement, no representation or warranty is given by the supplier in respect of work, goods and/or services and any representations and warranties are excluded save to the extent that such exclusion is prohibited by law.

## 8 Delivery and development of software

- 8.1 Parties will specify in writing which software will be developed and in what way this will be done. The customer acquires the right to use the software in its company, for the intended use and during the period as

agreed in writing. The right of use of the software is non-exclusive and may not be transferred, pledged or sublicensed. The obligation of the supplier is to make available and the customer's right of use extends only to the software's object code. Software will only be made available for use and shall never be deemed to be purchased.

- 8.2 The customer shall always strictly comply with the agreed restrictions on the use of the software. The supplier may require that the customer only starts using the software after having received one or more keys needed for use. The supplier is always entitled to take technical measures to protect the software against unlawful use and/or against use in another manner or for another purpose than agreed in writing.
- 8.3 The software's source code and technical documentation prepared during the development of the software shall not be made available to the customer unless expressly agreed in writing.
- 8.4 Supplier shall deliver and, only if specifically agreed, install the software in accordance with the specifications laid down in writing. If an acceptance test is agreed in writing, the testing period is 14 days after delivery or after completion of installation. During the testing period, the customer is not allowed to use the software for operational or productive purposes.
- 8.5 The software will be deemed accepted at delivery or, if installation is agreed, upon the completion of the installation, or if an acceptance test was agreed on the first business day after the tests.
- 8.6 If during the acceptance test an error appears, the customer will inform the supplier thereof as soon as reasonably possible and latest on the last day of the testing period. An error means a substantial failure of the software to meet the functional or technical specifications of the software expressly made known by the supplier in writing and, if all or part of the software concerns customized software, to meet the functional or technical specifications expressly agreed in writing. An error only applies if it can be reproduced and demonstrated by the customer. Any obligations of the supplier is limited to errors as meant in this clause and which are necessary to rectify due to the nature of the software and the intended use thereof. Acceptance of the software can not be withheld on other grounds than those that are related to the specifications that are expressly agreed in writing between the parties. A minor fault, being an error that does not reasonably prevent operational or productive use of the software will not be a reason for non-acceptance.
- 8.7 The supplier shall make an effort to the best of its ability to repair an error within a reasonable period, whereby temporary solutions or program detours or problem-avoiding restrictions in the software are

permitted, if these error are reported by the customer in writing within a period of three months following delivery, or if acceptance was agreed, following acceptance. The supplier does not guarantee that the software will operate without interruption and/or that all errors will always be fixed.

## 9 Secondment services

- 9.1 If the parties agree that an employee of the supplier is (to be) assigned on a temporary basis to carry out work for the customer, the supplier shall make available the employee specified in the agreement to perform work under the management and supervision of the customer. The results of the work are at the customer's risk.
- 9.2 The supplier shall endeavor that the employee made available remains available to perform work for the duration of the agreement and during the agreed days, except in the event of illness or if the employee leaves the supplier's employment. The supplier may replace the employee with a person with the same qualifications, after consultation of the customer.
- 9.3 The supplier shall ensure that amounts payable in relation to the employee made available under the agreement with the customer in terms of payroll tax, social insurance contributions and turnover tax are paid in full and on time. The supplier indemnifies the customer against any and all claims in relation thereto.

## 10 Consultancy services

- 10.1 The supplier shall provide advice and consultancy services in conformance with that which has been agreed in writing and may be expected from a competent supplier acting reasonably.
- 10.2 The use that the customer makes of advice and/or a consultancy report issued by the supplier is always for the customer's risk.

## 11 Liability

- 11.1 The entire liability of supplier and customer's exclusive remedy for damages from any cause related to or arising out of the agreement shall be limited to direct loss and will not exceed the higher of the following amounts (1) twenty percent of the price paid under the agreement in the twelve months immediately preceding the event that gave rise to the liability and (2) the amount paid out under the supplier's insurance policy with regard to such event.
- 11.2 The supplier's liability for indirect, consequential loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims of third parties and loss arising from the use of items is excluded. The liability of the supplier for corruption,

destruction or loss of data or documents is likewise excluded.

- 11.3 Nothing in these general terms and conditions shall be construed to limit or exclude the supplier's liability in the event of fraud, willful intent or deliberate recklessness.

## 12 Force majeure

- 12.1 The supplier shall not be obliged to fulfil any obligation if it is prevented from doing so by force majeure. Force majeure means, among other things, force majeure on the part of suppliers of supplier, defects in items, equipment, software or materials of third parties that were prescribed to the supplier by the customer, government measures, power failures, internet, data network or telecommunication facilities failures, war, fire, water, flood, irreplaceable employees, illness, epidemics and strikes.
- 12.2 If an event of force majeure lasts for more than 30 days, either party shall be entitled to terminate the agreement by rescinding it in writing. In such an event, that which has already been performed under the agreement shall be paid for on a proportional basis without the parties owing each other anything else.

## 13 Miscellaneous

- 13.1 Nothing in the agreement shall constitute a partnership or joint venture between the parties, nor constitute a party the agent of the other party.
- 13.2 The applicability of the customer's purchasing or other conditions are expressly rejected. The customer may not sell, transfer or pledge its rights and obligations under the agreement to a third party.
- 13.3 If a provision of these General Terms and Conditions is invalid or is declared void, the remaining provisions will remain in full force. In this case, the supplier and the customer will consult to agree on new provisions to replace the invalid or void provisions, whereby the purpose and purport of the original provision will be taken into account as far as possible.
- 13.4 The agreement is governed by Dutch law. The UN Convention on Contracts for the International Sale of Goods does not apply. Any dispute arising out of or in connection with the agreement shall be subject to the exclusive jurisdiction of the competent court in Nijmegen, the Netherlands, and higher courts.