

## 1. Definitions

In these General Terms and Conditions, the following terms have the definitions as stated below:

**CAD:** CAD Services Nederland B.V.

**Tailor-made software:** All computer software and accompanying documentation insofar as this has been developed specifically for the Client, such as customising, macros, etc.

**Client:** The party to which CAD has made an offer or with which it has entered into an obligation.

**Agreement:** Any oral or written agreement entered into between CAD and the Client.

**Software:** Computer software comprising a series of instructions or databases in a form that can be read by a computer, as well as any corresponding documentation, including any subsequent or new versions issued by CAD.

**Loss:** Injury, damage to property and pure financial loss. 'Pure financial loss' includes, but is not limited to, loss of income, loss of profits, lost savings, loss of goodwill, loss of revenue and loss caused by business stoppage.

**Standard software:** All computer and corresponding software which has not specifically been developed for the Client.

## 2. General and applicability

- 2.1 These General Terms and Conditions ('General Conditions') are available in English and Dutch language versions. In the event that they are inconsistent, then the Dutch text shall prevail.
- 2.2 These General Conditions shall be applicable to all offers made and Agreements entered into for the supply of goods or services of any kind by CAD to the Client. The terms of these General Conditions may only be excluded if this has been specifically agreed in writing.
- 2.3 All offers made by CAD shall be free of obligations unless specifically indicated otherwise in writing.
- 2.4 No general terms and conditions of purchase nor any other general terms and conditions used by a Client shall be applicable. The signature by CAD on any documents of a Client to which such general terms and conditions are stated to apply shall not be construed as a specific written acceptance as referred to in article 2.2 above.
- 2.5 The Client shall not be entitled to transfer or pledge its rights under any Agreement without the prior written consent of CAD. This provision is a stipulation as referred to in Book 3, Article 83, section 2 of the Dutch Civil Code.

## 3. Prices and rates

- 3.1 Unless expressly stated otherwise in writing, all prices and rates are exclusive of VAT, special or additional import duties, clearance duties and other government-imposed taxes.
- 3.2 In the absence of a specific arrangement, CAD is entitled to adjust its prices and rates with effect from 1 January of each year.
- 3.3 All prices and rates are based on wages and salaries, freight charges, exchange rates, import and export duties, taxes, etc. applicable on the date the Agreement was entered into.
- 3.4 In the event that the items listed in articles 3.1 or 3.3 increase, CAD shall be entitled to raise the agreed prices and rates by the amount of the increase and pass these charges on to the Client.

## 4. Invoicing and payment

- 4.1 Unless specifically agreed otherwise in writing, invoices shall be made out as follows: 50% at the time an Agreement is entered into and the remaining 50% upon delivery.
- 4.2 In the absence of any specific arrangements, the Client must settle invoices within fourteen days of the invoice date.
- 4.3 If the Client fails to pay an invoice on time, it is automatically in breach. In such a case, the Client is also thereby liable for statutory commercial interest.
- 4.4 The Client is not entitled to set off any sum against the amount it owes to CAD.
- 4.5 All judicial and extrajudicial costs incurred in the enforcement of payment of sums invoiced are payable by the Client. Extrajudicial costs are set at 15% of the principal sum, or €1,000.00, whichever is more, unless the law specifies otherwise.

## 5. Delivery periods and performance of the Agreement

- 5.1 periods, including delivery periods, referred to by CAD shall be established to the best of its knowledge based on the information known to it at the time the Agreement is entered into. These periods shall be complied with as far as possible. In the event that any such period (including delivery period) is exceeded, the Client shall at no time be entitled to damages, to dissolve the Agreement or part

thereof or to ignore any obligations arising from this or any other Agreement.

- 5.2 If CAD requires information from the Client for the performance of the Agreement, then the period for performance thereof does not commence until the Client has provided CAD with the full and accurate information requested.
- 5.3 CAD is entitled to engage third parties to perform certain work without needing the consent of the Client.

## 6. Risk

- 6.1 Goods shall be delivered in the manner specified in the Agreement.
- 6.2 The Client must take receipt of the goods, failing which CAD shall be entitled to keep or store the goods on its own premises or on premises of third parties at the expense and risk of the Client and/or sell the goods (or arrange for their sale) at the expense and risk of the Client. All costs and Loss suffered in this respect as well as with regard to any repeated delivery shall be borne by the Client.
- 6.3 The Client must immediately notify the carrier upon its arrival of any transport damage by making a note on CAD's packing slip. The Client shall comply with any instructions issued by CAD or the carrier regarding this matter. If the Client fails to observe this stipulation, or if it neglects to make a note on the packing slip, the risk of transport damage and/or Loss shall be borne by the Client. CAD shall not accept any complaints in this regard.

## 7. Complaints

- 7.1 The Client must inspect the delivered goods as soon as the goods are in its possession.
- 7.2 Any complaint concerning a patent defect must be notified to CAD in writing immediately and in any event within seven days of delivery, specifying in as much detail as possible the nature of the defect, failing which any claim against CAD lapses.
- 7.3 Any complaint concerning a latent defect must be notified to CAD in writing within five working days of its discovery, specifying in as much detail as possible the nature of the defect, failing which any claim against CAD lapses.
- 7.4 Even in the event that the Client reports any defect in due time, its obligation to receive and pay for the goods shall nevertheless remain in force.
- 7.5 Any complaint about defects submitted by the Client shall cease to apply three months after such complaint is rejected in writing by CAD, if the Client has not responded to this rejection.
- 7.6 Goods delivered may only be returned, for any reason whatever, after CAD has given specific prior consent in writing and issued shipment instructions.

## 8. Retention of title

- 8.1 All goods delivered shall remain the property of CAD until the Client has fully met its payment obligations regarding the goods delivered (or yet to be delivered) or activities performed (or yet to be performed) pursuant to the Agreement, and has also fully met any demands arising from any failure to observe such Agreements, which payment obligations shall include the amounts meant in article 4. Without CAD's cooperation, the Client is not authorised to transfer the ownership of goods that have not been paid for in full to any third party, other than for purposes of normal processing or business operations in accordance with their designated use, or through any agreement or act to pledge goods to any third party, or in the broadest sense of the word to furnish security to any third party. In the event of any breach of this stipulation, the sale price will immediately be payable in full, without prejudice to CAD's rights by virtue of its retention of title and without prejudice to any other rights set out in article 8.
- 8.2 If the Client fails to meet its obligations or if there is a well-founded fear that it will not do so, CAD shall be entitled to remove (or arrange for removal of) goods to which the retention of title referred to in article 8.1 applies from the Client or from third parties holding the goods for the Client. The Client shall be obliged to cooperate fully in this regard, or shall be liable to pay a penalty to CAD of 10% of the amount due per day, with a minimum of EUR 500 per day, or, at the discretion of CAD, an amount equivalent to the decrease in value of the delivered goods resulting from factors including depreciation and obsolescence during the period that CAD does not have the goods at its disposal. The Client must cooperate with all reasonable measures required by CAD in order to protect its title to the goods. The Client undertakes to insure and keep insured the goods that are subject to the retention of title clause, at their replacement value, which insurance shall cover fire, explosion, water damage and theft. For such purpose the
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Client undertakes to provide CAD on demand with sight of the relevant insurance policies and proof of payment of the premiums, failing which CAD is entitled to pay the premiums itself and recover these costs from the Client, without prejudice to any of its other rights to claim compensation. In this regard the Client is also obliged to inform CAD immediately:

- 8.6 immediately:
  - a) if an application is submitted to any court – by the Client or any other party – for a liquidation order applicable to the Client, or a (provisional) extension of a moratorium by the Client, or if the Client offers its creditors a scheme for meeting its liabilities;
  - b) if the delivered goods, equipment and/or Software or any other asset belonging to the Client are attached by garnishment, and if for any reason third parties believe they can exercise claims on the delivered goods, equipment and/or Software, and if third parties take or threaten to take measures as a result of which the delivered goods fall outside (or are at risk of falling outside) the control of the Client;
  - c) if the Client discontinues its business/enterprise, either wholly or in part, or moves it abroad;
  - d) if – in the event that the Client is a legal person or company – one or more partners resign from the Client's business, the Client's articles of association and/or standing rules are amended, or the Client decides to dissolve or wind up the business.
  - e) The Client shall also provide all information and cooperate to the extent deemed necessary by CAD for it to be able to exercise its rights under the Agreement.
- 8.7 In the event of any occurrence described under points (a) to (e) of paragraph 8.6 above, the Client shall take all measures necessary to enforce CAD's rights to the delivered goods, equipment and/or Software at its own expense. In particular, the Client shall inform any third party that believes it can enforce any claim to the goods, equipment and/or Software, or that threatens in any way to impair the Client's and/or CAD's free disposal of the goods, equipment and/or Software, about the Agreement existing between the Client and CAD, and furthermore about CAD's rights (including ownership rights) to the delivered goods, equipment and/or Software.
- 8.8 If the Client fails to fulfil the obligation(s) specified in paragraph 8.7, CAD shall be entitled without prior discussion with the Client and at the expense and risk of the Client to take any measures deemed necessary by CAD to enforce its rights with regard to the delivered goods, equipment and/or Software.
- 8.9 Unless absolutely dictated otherwise by the nature of the goods, the Client is prohibited from altering or processing them, in breach of which it is liable to an immediate and unconditional penalty to CAD of EUR 10,000.00 for each breach and of EUR 2,500.00 for every day of any continued breach, without prejudice to CAD's right to claim damages in full.
- 8.10 If, following CAD's prior permission, the use of products results in new goods, the Client shall act as holder of the goods only on behalf of CAD, until all payments owed in that connection have been settled.

## **9 The products and services of third parties**

- 9.1 If and insofar as CAD supplies or makes available products from third parties to the Client, such products shall be subject to the general terms and conditions of such third party, to the exclusion of the provisions of these General Conditions. The Client accepts such third party's terms and conditions, which CAD shall make available for inspection by the Client and send a copy to the Client on request.
- 9.2 If and insofar as the said third party's terms and conditions are deemed for whatever reason not to apply to the legal relationship between CAD and the Client, or are declared invalid, the provisions of these General Conditions shall apply.
- 9.3 The liability of CAD for products and services of third parties shall not in any case exceed such sums as are recoverable from such third party.

## **10 Software, intellectual and industrial property rights**

- 10.1 The Client is not permitted to transfer, cede to third parties under any title whatever or allow third parties to use Standard and/or Tailor-made software made available and delivered by CAD.
- 10.2 The right to use the Standard software made available and/or delivered by CAD to the Client is non-exclusive and non-transferable. The right of use is limited to the Client's use of the software for its own purposes in connection with the processing unit defined in the Agreement. In the event of a failure, the software may temporarily be used in another processing unit. Any expenses incurred in this connection shall be borne by the Client.

- 10.3 Material in which CAD has a copyright may only be copied for archiving purposes, to replace a copy that is no longer usable, or ascertain a programming fault. 'Copying' these materials onto any media whatever for any purpose other than those indicated above shall not be permitted. In this regard the Client shall be permitted to make a maximum of two copies of the Standard and/or Tailor-made software in order to replace any original software that has become unusable.
- 10.4 All intellectual property rights to Standard and/or Tailor-made software delivered or made available by CAD to the Client are vested exclusively in CAD or its suppliers or licensors, except in the event and to the extent that it is explicitly agreed otherwise in any document signed by CAD and the Client.
- 10.5 CAD is permitted to take and maintain technical measures to protect its intellectual property rights. The source code shall not be made available to the Client.
- 10.6 It is not permitted to alter or remove any designation indicating copyright, trademarks, trade names or other intellectual or industrial property rights from the goods, Software, equipment or materials, or to remove or bypass any security features incorporated in the Software by CAD.
- 10.7 CAD indemnifies the Client against any third-party claim regarding infringement of intellectual property rights in the Netherlands of products made available or delivered by CAD to the Client if these have been developed or created by or on the instructions of CAD. In the case of products created by or on behalf of CAD shall compensate the Client for the assessed costs and Loss.  
The said obligations of CAD shall apply only if the Client immediately informs CAD in writing about the claim and refrains from putting up any defence or adopting any position on the matter concerned. If products are the subject of such claims or if CAD is of the opinion that this may be the case, CAD can, at its own expense, choose either to acquire for the Client the right to continue making use of the products in question, or to replace or alter the products in such a way that the infringement is terminated, or to withdraw the products in question and credit the Client for the price paid to CAD upon deduction of a linear depreciation of 20% per year.
- 10.8 The said obligations of CAD shall not apply if the claims or infringements are the result of any linkage to or use of products not developed or made available by CAD or that are the result of inexpert use on the part of the Client. Nor shall the said obligations apply if the claims or infringements are attributable to work or information made available by the Client to CAD. In such cases the Client shall be bound to CAD under the same terms, by analogy, set out in the first two sentences of article 10.7. Article 16 (liability) of these General Conditions shall remain in full force.

## **11 Installation and/or implementation**

- 11.1 CAD shall limit itself to the installation or implementation of the goods supplied by CAD and/or the goods covered in the Agreement, unless specifically agreed otherwise in writing.
- 11.2 The Client shall at all times provide CAD with all data or information that is useful or necessary for the proper execution of the Agreement and provide full cooperation. In the event that employees of CAD perform activities on the site of the Client, the Client shall provide those employees the facilities reasonably required by them at no cost.
- 11.3 If it is agreed that the Client shall provide Software, materials or data on information carriers, they shall meet the specifications necessary in order to perform the activities.
- 11.4 If CAD does not have the data available needed for the execution of an Agreement, or the data are not available in due time or in accordance with the arrangements, or if the Client fails to fulfil its obligations in any other way, CAD shall be entitled to suspend execution of the Agreement and charge for the expenses thus incurred in line with its normal rates. In this respect it is specifically agreed that time spent waiting shall also be invoiced if CAD is not immediately able to commence work or if it is unable to work uninterruptedly.
- 11.5 A representative of the Client shall be present while employees of CAD are performing activities on the site of the Client. The Client shall warn CAD in advance if products and/or goods are to be used in an environment that could constitute a health or safety risk to CAD employees or third parties engaged by CAD. In such cases CAD can request the Client to carry out the work itself under CAD's supervision and/or decide to suspend the work until the possible risk has passed and/or cancel the instructions without incurring any obligation to pay damages.
- 11.6 Completion of the work to be carried out shall entail actual completion and delivery to the Client. If, through no fault of CAD, a component cannot be supplied at the same time as

completion of the entire work, completion shall nevertheless be possible.

## **12 Guarantee**

- 12.1 With regard to the guarantee issued by the relevant manufacturer on hardware and/or software supplied but not developed, manufactured, installed and/or implemented by CAD accepts no liability nor any other form of (guarantee) obligation. In this connection CAD explicitly refers to the specific guarantee terms issued by the manufacturer in respect of such goods.
- 12.2 No guarantee nor any additional guarantee shall apply to goods supplied and developed, manufactured, installed and/or implemented by CAD other than that specifically stated in the Agreement with CAD.
- 12.3 CAD shall not furnish any guarantee for Tailor-made software it supplies unless specifically agreed otherwise.
- 12.4 CAD excludes other guarantees, in particular ones that cover suitability for commercial use and suitability for certain purposes.
- 12.5 The guarantee clause shall not apply to defects or failures due to external causes such as viruses, short circuits, incorrect mains voltage, an unfit working environment, or – with reference to the terms of article 11.1 – goods not supplied, installed or implemented by CAD, or if circumstances apply that are imputable to the Client, or for normal wear and tear or abnormal usage and/or for used goods and parts that come into direct contact with chemicals. Nor shall the guarantee apply in the event that the Client does not use the goods supplied in the correct manner or uses or maintains them improperly, fails to comply with instructions, or causes failures through its own actions.

## **13 Training courses**

- 13.1 Depending on the timing of postponement of initially agreed and planned training courses by the Client, CAD shall make the following charges: no later than two weeks before the initially agreed commencement date, no charges shall be made; less than two weeks but more than one day before the initially agreed commencement date 50% of the course fee; within one day of the initially agreed commencement date 100% of the course fee.
- 13.2 CAD is entitled to cancel training courses if it has serious reasons to do so, including illness of or postponement by a relatively large number of trainees, or if the trainer is unable to attend. In the event that CAD cancels a training course, CAD shall agree to an alternative date for a training course. If it is unable to do so, it shall reimburse the course fees paid.

## **14 Confidentiality**

- 14.1 CAD and the Client each undertake to preserve the confidentiality of all confidential information about the other party of which they learn in the context of the performance of the work. 'Confidential information' includes such information as is considered confidential by either Party. Both CAD and the Client shall observe the greatest possible care and discretion with regard to confidential information made available or accessible to their employees while performing their activities.
- 14.2 The Client is aware that the Software contains confidential information and company secrets of CAD or its licensor. The Client undertakes not to disclose this information to any third party.
- 14.3 For any breach of the provisions of this Article – regardless of whether the breach can be attributed to the Client and without need for any further notice of default or court proceedings – the Client is immediately liable to pay CAD a penalty of EUR 100,000 for each breach and in addition an amount of EUR 10,000.00 for each day that any such breach continues, without there having to be any form of Loss and without prejudice to CAD's other rights, including the right to claim payment of damages in full.

## **15 Termination and dissolution of the Agreement**

- 15.1 Either party shall only be authorised to dissolve an Agreement where the other party is in serious breach of contract and after sending a written notice of default worded in the greatest possible detail in which a reasonable period of time to amend the failure is granted.
- 15.2 Without notice of default or intervention by the court either party may dissolve an Agreement with immediate effect, either wholly or in part, by giving written notice, if the other party is granted – provisionally or otherwise – a moratorium, if an application is filed for its liquidation or its liquidation is ordered, or if its enterprise is liquidated or terminated other than for the purpose of reconstruction or merger of companies. In no instance shall the party thus terminating the Agreement be liable to pay any damages.

- 15.3 If CAD has already met some of its obligations to the Client at the moment an Agreement is dissolved, such performance and any corresponding payment obligations shall not be the object of the dissolution. The amounts that were already invoiced by CAD before the Agreement is dissolved, the amounts of which relate to what CAD has supplied or carried out in the execution of the agreement, shall remain fully payable and become immediately due at the moment the agreement is dissolved, subject to the terms of the preceding sentence.

- 15.4 If the Client is to blame for the dissolution, it is liable to compensate CAD for such direct and indirect Loss, including costs, arising therefrom.

## **16 Liability**

- 16.1 The meaning and purport of the term 'Loss' is defined in article 1.
- 16.2 The liability of CAD is limited to the situations set out in this article. In no instance shall CAD be liable to the Client or any third party for any Loss, howsoever occurring, except where CAD specifically accepts liability in these General Conditions.
- 16.3 CAD accepts no liability for indirect Loss (including, but not limited to, loss of profits, lost savings, loss caused by business stoppage or consequential loss).
- 16.4 On penalty of forfeiture of the right to any damages, the Client must report any damage to CAD in writing as soon as reasonably possible, or in any case do so within seven days, and provide CAD with all the cooperation it requires to examine the cause, nature and extent of the Loss for which compensation is claimed.
- 16.5 CAD accepts no liability for Loss arising as a result of products and services CAD has had to purchase, or which it has purchased from third parties, beyond its statutory product liability.
- 16.6 Where CAD has accepted any guarantee obligations, its liability shall remain limited to its choice either to replace or repair the goods that prove not to comply with the terms of the guarantee, or to credit the Client's account up to the amount invoiced and actually paid for the goods in question. The replaced goods shall remain the property of CAD.
- 16.7 CAD shall carry out services, implementation and installation activities and works carried out under guarantee in accordance with these General Conditions to the best of its ability and knowledge. CAD accepts no liability whatsoever for Loss arising from the non-availability of a system for the period during which works are carried out. CAD is not liable for Loss resulting from such work.
- 16.8 CAD shall at no time be liable for the loss of data, software and user configurations. It is the Client's responsibility to ensure that reliable back-up, safety and security procedures are carried out.
- 16.9 CAD cannot accept any responsibility for the execution of instructions based on data originating from the Client. Nor can CAD be held liable for faults in the execution caused by such data originating from the Client.
- 16.10 Unless these General Terms and Conditions specifically provide otherwise and to the extent that the injury or Loss has occurred during the execution of the works performed under the Agreement and is the result of an intentional act or gross negligence on the part of persons engaged by CAD for carrying out the works, CAD accepts liability for personal injury or material damage to installations and property of the Client and third parties. This liability is limited to the sum that, in the case in question, is paid out under the insurance policy of CAD. A copy of the relevant policy conditions will be made available upon request. If no payment is made under the insurance policy for whatever reason, the liability of CAD is limited to the amount (excluding VAT) charged by CAD to the Client and paid by the Client in time in the six months before CAD became liable, up to a maximum of EUR 250,000 per incident. A series of connected incidents shall be considered a single incident.
- 16.11 Any failure by CAD not to exercise a right vested in it may at no time be regarded as a waiver of that right or an acknowledgement of any liability irrespective of its origin.

## **17 Indemnity**

- 17.1 The Client indemnifies CAD for any claim for damages brought by a third party, including an employee of CAD, in respect of Loss caused during the performance of the Agreement as a result of an act or omission of the Client or of any unsafe situation within its organisation.
- 17.2 The Client indemnifies CAD for any claim for damages brought by a third party based on product liability (except for statutory product liability) resulting from any defect in a product, system or service provided by the Client to a third party which partly consisted of equipment or other materials or services supplied by CAD, except insofar as the Client can

prove that the Loss was caused by such equipment, materials or services.

## **18 Force majeure**

- 18.1 Force majeure shall include in particular but not be restricted to the following: fire, acts of war, terrorism or comparable acts, rioting, insurrection, mobilisation, floods, earthquakes and other natural disasters, epidemics, quarantine measures, strikes, shut-outs, revendication, limiting of international payments, transport restrictions as well as restrictions in issuing permits relating to CAD's employees or concerning the import and export of goods, tools and/or materials.
- 18.2 Neither party shall be required to fulfil any obligation under an Agreement if it is prevented from doing so as a result of force majeure. Force majeure shall be deemed to include force majeure affecting CAD's suppliers.
- 18.3 If a situation of force majeure lasts longer than ninety days, or it is predicted that it will last longer than ninety days, either party is entitled to dissolve the Agreement in writing. Any performance under the Agreement that is delivered prior to such termination shall be settled pro rata, without the parties having any further liability to each other.

## **19 Non-employment clause**

- 19.1 During the term of any Agreement and for a period of one year following its termination, the Client may not take on employees who have been involved in the execution of the Agreement, nor offer them employment, nor engage these persons to work for them in any other way, either directly or indirectly, without the written permission of CAD. If the Client is in breach of this provision, CAD will be entitled to an immediate and unconditional penalty of EUR 10,000 for each breach and EUR 2,500 for each day that any such breach continues, without prejudice to CAD's right to claim damages in full.

## **20 Disclosure**

- 20.1 The Client hereby gives its consent for CAD to publish the services, as well as their nature, selected by the Client. Subject to the prior written consent of the Client, CAD shall be permitted to disclose the solution implemented, or yet to be implemented, as well as to draw up and disclose a general description of the reasons why the Client has chosen CAD and the resulting benefits to the Client.

## **21 Disputes**

- 21.1 All Agreements to which these General Conditions apply, including those for supply abroad and if the Client's registered office is outside the Netherlands, and any legal relationships resulting from these between the parties, shall be governed by Dutch law. The terms of the Vienna Sales Convention are hereby excluded.
- 21.2 Any disputes arising from the Agreements specified in Article 21.1 shall be submitted solely to the District Court of Utrecht, unless CAD indicates its preference for the competent court where the Client has its registered office.