

**INTERNATIONAL SOFTWARE PRODUCTS, B.V.**  
**General Terms and Conditions**

**Article 1 Definitions**

1.1 In these conditions the following terms shall have the following meanings:

- a. The "Customer" means the party whom ISP renders the Services, Additional Work, extra work and/or extra services to;
- b. "ISP" means International Software Products B.V. and/or its subsidiaries;
- c. "Agreement" means these terms and conditions contained herein as well as any written agreement by and between ISP and the Customer with respect to the performance of the Services, Additional Work, extra work and/or extra services by ISP to the Customer;
- d. "Personnel" means all personnel, whether or not employed by ISP, who are deployed by ISP to perform the Services, Additional Work, extra work and/or extra services;
- e. "Product" means certain software, documentation and related written materials of which the Customer is the author or has acquired the rights, which are in the majority of cases written in the English language for English-speaking users;
- f. "Services" means all services performed by ISP for the translation and adaptation of the product into the languages desired by the Customer, for use by persons speaking those languages;
- g. "Additional Work" means any work performed by ISP for the Customer other than the Services;
- h. "Localized Product" means the product translated and adapted into the requested languages;
- i. "Specified Functions" means the unmodified Localized Product, when properly used in accordance with its user manual, will perform as follows:
  1. user screens and error messages will appear in the agreed language. The Customer will assist ISP by providing resource files, compilation tools and technical assistance whenever necessary;
  2. software will be tested for errors related to translation of menus and messages. Regression and functionality testing are the responsibility of the Customer;
  3. documentation will be written in the agreed language and the translated text will be fluid and grammatically correct and will utilize current colloquialisms and idioms in the agreed language.

**Article 2 General**

These conditions are applicable to all Agreements, Services, Additional Work, extra work and/or extra services to be performed by ISP and to all offers made by ISP or orders placed with ISP; The applicability of the general terms and conditions of the Customer is explicitly excluded; These conditions also apply to all future Agreements between ISP and the Customer and all future Services, Additional Work, extra work and/or extra services performed by ISP; If any provision of this Agreement is in conflict with or contrary to any other terms or conditions, the terms of the Agreement shall prevail; Deviations from these conditions pertaining to a particular transaction are only possible if they have been explicitly agreed upon in writing by both ISP and the Customer; In the event of nullity or annulment of any provision of these conditions, the other provisions hereof shall remain in full force and effect. Parties shall endeavor to agree a valid and enforceable amended provision which shall as far as possible effect the intentions expressed in the provision which was held invalid; these conditions may from time to time be altered or amended by ISP.

**Article 3 Offers, conclusion of Agreement, cooperation and withdrawal**

- 3.1 All offers made in price lists or otherwise are free of engagement, unless the contrary is stated explicitly in writing.
- 3.2 All offers from ISP are based on the information provided by the Customer. The Customer represents and warrants they have provided all essential information to ISP.
- 3.3 The Agreement between ISP and the Customer shall be concluded upon written acceptance by the Customer of the offer made by ISP or of the written acceptance by ISP of the order placed by the Customer. The Agreement can be confirmed by ISP in writing.
- 3.4 The Customer shall always provide ISP in good time with any data or information useful and necessary to the proper execution of the Agreement, Services, Additional Work, extra work and/or extra services and always be fully supportive.
- 3.5 In case the assignment is withdrawn by the Customer after conclusion of the Agreement, ISP is entitled to bill the Customer on a time and materials basis for all Services, Additional Work, extra work and/or extra services performed by ISP up to and including the of withdrawal and claim compensation for the costs and damages arising from the withdrawal.

#### **Article 4 Amendments, modifications and supplements**

- 4.1 Amendments to, modifications of and supplements to the assignment after conclusion of the Agreement, necessary due to unforeseen or altered circumstances or due to the fact that not all essential information has been provided by the Customer, will be confirmed in writing after acceptance by both ISP and the Customer. If the Customer does not accept the amendments, modifications and supplements, ISP has the right to terminate the Agreement with immediate effect. ISP remains entitled to bill the Customer on a time and materials basis for all Services, Additional Work, extra work and/or extra services performed by ISP up to the date of termination and claim compensation for the costs and damages arising from the termination.
- 4.2 If ISP, at the Customer's request or with the Customer's prior written consent, has done any work that is not included in the substance or extent of the Agreement, such work shall be paid for in accordance with ISP's then-current rates.

#### **Article 5 Prices and Payment**

- 5.1 The prices stated by ISP are free of engagement and subject to price changes effected by ISP's suppliers, currency and exchange rate, fluctuations and/or other factors affecting prices. ISP shall have the right to effectuate price changes, including those affected after the date of the conclusion of the Agreement.
- 5.2 All prices are exclusive of any and all customs, import duties, federal, state, municipal, or other government excise, sales use, or similar taxes, shipping charges and transit insurance.
- 5.3 Unless otherwise agreed upon all invoices shall be paid within fifteen (15) days from invoice date without any discount.
- 5.4 Invoices submitted by ISP to Customer are presumed to be accurate and fully payable on the terms contained therein unless disputed by Client within seven (7) business days of Customer's receipt of the invoice. In the event of any dispute regarding a portion of an invoice, the undisputed portion shall be paid as provided herein.
- 5.5 If the Customer does not pay within the period agreed upon, it shall be in default solely by that period having expired without any notice of default or summons being required and interest for overdue payment shall be payable by the Customer at a rate of 1.5% per month, or in case the legal interest is higher, the legal interest. Furthermore, ISP shall have the right to claim from the Customer, in addition to the principal and interest, any extrajudicial expenses incurred owing to payment not being made (timely). Extrajudicial expenses shall be payable by the Customer in any case when ISP has

engaged the assistance of a third party for collection. The rate for the expenses to be charged shall be equal to the collection rate applied by the Nederlandse Orde van Advocaten (the Bar in the Netherlands). The single fact that ISP has engaged assistance of a third party demonstrates the size of and the obligation to pay the extrajudicial expenses. In case of default of payment ISP may also postpone the assignment.

- 5.6 In case ISP has any doubt about the solvency of the Customer, ISP shall have the right to suspend fulfillment of ISP's obligations - also if fulfillment thereof was already initiated - until the Customer has provided security to ISP's satisfaction for all obligations of the Customer ensuing from the Agreement.

#### **Article 6 Retention of title and rights**

- 6.1 Title to all deliverables made by ISP to the Customer shall continue to be held by ISP until all amounts payable by the Customer with respect of the Agreement, Services, the Additional Work, extra work and/or extra services, as well as the amounts referred to under article 3.5, 4.1, 4.2, 5.5, 8, and 13.2 have been paid in full to ISP.
- 6.2 No rights shall ever be granted or, as the case arises, transferred to the Customer except on the condition that the agreed considerations are paid in time and in full by the same.

#### **Article 7 Responsibilities of the Customer**

- 7.1 The Customer shall deliver to ISP, at ISP's office in the Netherlands, at the expense of the Customer:
- one complete copy of the Product, and
  - all other data and information determined by ISP to be necessary for the performance of the Services, the Additional Work, extra work and/or extra services (both a. and b. collectively "Customer's Information").
- The Customer will respond to ISP's request for the Customer's Information within seventy two hours of ISP's request, unless ISP notifies the Customer in writing that a different response time is authorized. The Customer grants ISP the non-exclusive, royalty-free right to copy and use the Customer's Information as necessary to perform the Services, Additional Work, extra work and/or extra services.
- 7.2 To facilitate the exchange of information, the Customer shall designate a principal project manager with authority to respond to ISP's requests. The Customer shall designate the principal project manager in writing within ten (10) days after ISP and the Customer enter into the Agreement. The Customer may change the principal project manager at any time after twenty (20) days prior written notice to ISP.

## **Article 8 Cooperation, Delays**

The Customer acknowledges that their cooperation is necessary for timely performance of the Services, Additional Work, extra work and/or extra services. If the Customer fails to respond to ISP's request for the Customer's Information within the response time specified in article 7, ISP may bill the Customer on a time and materials basis, plus expenses, for any additional costs incurred by ISP as a result of the Customer's delay. If at any time the Customer fails to fulfill their responsibilities as a Customer in a timely and accurate manner, ISP reserves the right to stop work and renegotiate the price and terms of performance. ISP shall provide written notice to the Customer of their intent to renegotiate, with an explanation of why renegotiation is necessary and the proposed new terms. If the Customer and ISP do not reach agreement on the changes in the prices and terms of performance within thirty (30) days from the date of ISP's renegotiation notice, ISP may terminate the Agreement between the Customer and ISP with immediate effect and bill the Customer on a time and materials basis for all Services, Additional Work, extra work and/or extra services performed by ISP up to and including the date of the renegotiation notice and claim compensation for the costs and damages arising from the termination.

## **Article 9 Testing and Acceptance**

- 9.1 At Customer's request ISP shall, prior to delivery of the Localized Product, test the Localized Product to determine if it performs the Specified Functions.
- 9.2 Promptly upon receipt of the Localized Product, the Customer will test the Localized Product to determine if it performs the Specified Functions.
- 9.3 The Localized Product will be deemed accepted upon the earlier of:
  - a. thirty (30) days from the date the Localized Product is delivered to the Customer, unless the Customer has provided ISP with written notice prior to that date in accordance with article 9.4, or
  - b. the date the Customer reproduces the Localized Product or any portion of it for sale or sells the Localized Product.
- 9.4 If the Customer determines that the Localized Product does not perform the Specified Functions, written notice shall be given to ISP that explains, in reasonable detail, the failure of the Localized Product. ISP shall be allowed a sixty-day (60) cure period, which may be extended by mutual agreement, to correct the Localized Product so that it performs the Specified Functions. At the end of the cure period, the Customer will again test the Localized Product in accordance with article 9.2 and the terms of article 9.3 shall again apply. If the Localized Product does not perform the Specified Functions at the end of the first cure period, ISP shall be allowed a second sixty-day

(60) cure period and the notice and retesting provisions of article 9.4 shall also apply to the second cure period. 9.5 If ISP is unable to correct the Localized Product so that it performs the Specified Functions within the two cure periods specified in article 9.4 and the non performance is caused by circumstances which are at the expense and risk of ISP, the Customer may terminate the Agreement between the Customer and ISP without obligation to pay an amount equal to 10% of the invoice value excluding VAT of the Agreement. Termination and refund or non payment of this amount shall be the Customer's sole remedy and ISP's exclusive liability in such event.

## **Article 10 Proprietary Rights**

- 10.1 The Customer or their licensor shall retain all rights, title and interest in and to all Customer's Information and the Product, and ISP shall not obtain any interest in Customer's Information and the Product pursuant to the Agreement between the Customer and ISP, other than the right to copy and use the Customer's Information and the Product in performing the Services, Additional Work, extra work and/or extra services.
- 10.2 The Customer shall own all rights, title and interest in and to the Localized Product and all software coding (including source code, if applicable) unique to the Customer and specifically developed for the Customer in the course of performing the Services, Additional Work, extra work and/or extra services.
- 10.3 ISP retains all rights, title and interest in and to any ideas, concepts, techniques, terminology and glossaries developed by ISP and any software coding of any general utility developed by ISP. ISP grants the Customer an unrestricted license to copy and use any of the foregoing that are embodied in the Localized Product.

## **Article 11 Confidentiality, return of information**

- 11.1 Each party agrees that any information concerning the other's price quotes, preliminary concepts, marketing proposals, branding strategies, creative designs and concepts, technical data, web designs, trade secrets and know-how, research, product plans, products, customer technical requirements, software, programming techniques, algorithms, services, suppliers, supplier lists, customers, employee lists, customer lists, markets, developments, inventions, processes, technology, designs, drawings, engineering, apparatus, techniques, hardware configuration information, marketing, forecasts, business strategy, finances or other business information disclosed by the other party ("Confidential Information") shall not, without the disclosing party's authorization, be disclosed to any other party or used by the

receiving party for its own benefit except as contemplated by this Agreement. The recipient shall protect the confidentiality of the Confidential Information using at least the same measures it takes to protect its own confidential information of like kind, and shall restrict access to Confidential Information to its personnel on a need to know

11.2 Nothing in this Agreement shall restrict either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies): (a) that is or becomes publicly available through no breach of this Agreement; (b) independently developed by it; (and there is proof thereof) (c) previously known to it without obligation of confidence; (and there is proof thereof) or (d) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information, the recipient shall promptly notify the other party of such receipt so that such party may seek a protective order or other appropriate relief and may, thereafter, comply with such subpoena or process to the extent permitted by law. Confidential Information shall be returned or destroyed upon the earlier of: (i) the completion of the Services; or (ii) the disclosing party's request. Contractor may retain, subject to the obligations of this Article 11, copies of Confidential Information for recordkeeping.

#### **Article 12 Performance / no warranty**

12.1 ISP shall carry out the Agreement, Services, Additional Work, extra work and/or extra services to the best of their knowledge and ability and in accordance with the standards for professional conduct.

12.2 ISP shall exercise reasonable efforts in performing the Agreement, Services, Additional Work, extra work and/or extra services but ISP shall not be liable for any delays resulting from circumstances or causes beyond their reasonable control.

12.3 The Services, Additional Work, extra work and/or extra services are provided "as is" and ISP makes no warranties with respect to the Services, Additional Work, extra work and/or extra services. ISP disclaims all implied warranties of merchantability and fitness for a particular purpose.

#### **Article 13 Non compliance and remedies**

13.1 Without limiting their rights under the general articles of contract law of the Dutch Civil Code, ISP shall be entitled to rescind the Agreement without any notice of default or judicial intervention in any one of the following events: if (i) the Customer fails to fulfill, or to fulfill in time

or properly, one or more of their obligations under these conditions and/or the Agreement towards ISP, and/or (ii) the Customer is declared bankrupt or a petition for bankruptcy or for a moratorium has been filed, and/or (iii) the Customer proceeds to liquidate Customer's business and/or (iv) if the Customer offers a composition to their creditors or ceases their commercial activities in any other way. 13.2 ISP shall in any of the events set forth in article 13.1, be entitled to claim compensation for costs, damages and interests, and all ISP's claims on the Customer shall become due and payable in full and immediately.

#### **Article 14 Indemnity**

The Customer warrants that it is the owner of the Product and has the authority to contract for the Services, Additional Work, extra work and/or extra services. The Customer acknowledges that it is solely responsible for the proper functioning of the Localized Product and that the Services, Additional Work, extra work and/or extra services provided by ISP do not involve modification of the functional performance of the Product. The Customer agrees to indemnify and hold harmless ISP, their officers, directors and Personnel, from any and all liability, loss, damage, suits, claims and expenses arising directly or indirectly out of the use of the Product or sale of the Localized Product, including without limitation any claims of defects or inadequacies and any claim relating to infringement of any proprietary rights of any third parties. The Customer's indemnity extends to any and all direct and indirect losses suffered by ISP, as well as to any and all third party claims.

#### **Article 15 Limitation of liability**

15.1 ISP's total liability arising out of or in connection with the Agreement, Services, Additional Work, extra work and/or extra services shall be limited to making compensation for any direct loss up to an amount equal to 80% of the invoice value excluding VAT payable by the Customer with respect to the Services, Additional Work, extra work and/or extra services that caused the damage incurred by the Customer.

15.2 ISP is, with the exception of the provisions of article 15.1, not liable for damages:

- that are inevitable by a correct performance of the Services, Agreement, Additional Work, extra work and/or extra services;
- that are caused by the urgency of the circumstances;
- that are caused by the Customer's Information or the other information and data mentioned in article 3;
- that are the consequence of inadequacies which have arisen from the sending or transfer of information by the Customer to

ISP as a result of lack of or incorrect use of the communication means used.

- 15.3 ISP's liability for indirect loss, including consequential loss, incidental loss, exemplary loss, punitive damages, loss of profits, lost savings, lost data or content, and loss caused by interruption of operation is excluded.
- 15.4 Paid damages by ISP shall be deducted from possible obligations of ISP based on obligations to undo ex article 6:271, Dutch Civil Code.
- 15.5 If the Customer supplies electronic files, information carriers or software to ISP, the Customer represents and warrants that these electronic files, information carriers or software shall be free of viruses, bugs or other harmful code.
- 15.6 ISP's liability shall not arise unless the Customer declares ISP in default in writing, forthwith and properly, stating such within one (1) year of ISP's failure. The writing of default must specify the failure in as much detail as possible, so that ISP will be able to react adequately.

#### **Article 16 Dispute Resolution**

All Agreements between ISP and the Customer shall be governed by the laws of the Netherlands. The competent Court at Amsterdam shall have exclusive jurisdiction with regard to all disputes arising between ISP and the Customer, without prejudice to ISP's authority to summon the Customer before the competent Court in view of the Customer's residence.

#### **Article 17 Force Majeure**

- 17.1 In case ISP cannot properly perform its obligations, in whole or in part, whether temporarily or permanently, based on the Agreement as a result of circumstances which are not at ISP's risk, including those circumstances mentioned in article 17.2, ISP is entitled to rescind the Agreement with the Customer, without any compensation being due by ISP.
- 17.2 Circumstances which are in no event at ISP's risk: strike or lock-out; labour shortage; transportation problems; disruption in the production process of ISP; natural or nuclear disasters; war, war threat, and other circumstances which are beyond ISP's reasonable control.
- 17.3 ISP shall notify the Customer in writing of an event of force majeure and to what extent ISP will be able to continue to perform the Agreement.

#### **Article 18 Miscellaneous**

- 18.1 The Agreement between the Customer and ISP may not be assigned by Customer without the prior written consent of ISP. ISP may assign this Agreement without Customer's consent. ISP reserves the right to contract with third parties to perform the Services.

18.2 No waiver of any breach or non performance of these conditions in one instance shall be deemed to be a waiver in any other instance. All waivers must be in writing.

- 18.3 During any period in which Services are being performed, and for a period of one (1) year thereafter, neither party shall solicit the employment of, employ, or contract with, any personnel of the other party with whom that party had contact under this Agreement, either directly or indirectly. Either party shall promptly notify the other party of any communications with the personnel of the other party regarding employment. If either party breaches this Article 18.3, the breaching party shall pay as liquidated damages, and not as a penalty, the sum of \$75,000 per individual. If the non-breaching party waives its right to such liquidated damages, the breaching party shall reimburse the non-breaching party mutually agreed upon costs of external recruitment, training, and lost revenues.