

**ITP Caribbean
General Terms and Conditions**



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General Terms and Conditions

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I. PROVISIONS, APPLICABLE TO ALL ACTIVITIES OF ITP

The provisions set forth in this chapter apply to all activities of ITP and are as such complementary to the provisions of the chapters II, III, IV, V and VI. The chapters II, III, IV, V and VI contain the provisions which are specifically applicable to the activities mentioned in these chapters respectively.

Article 1 Definitions

1.1 In these General Terms and Conditions, the following definitions are used. All defined terms are expressed with a capital letter:

Term:	Definition:
ITP	ITP Caribbean in its capacity of IT consultancy, software engineering, system integration and support and service organization. More information about ITP is provided at www.itpinternational.com
(the) Customer	The party, placing an order concerning the particular activity of ITP and/or the party to whom certain Software is licensed and/or Hardware Products are delivered
Party; Parties	In singular: ITP or Customer; in plural: ITP and Customer together

Hardware platform	Customer's computer hardware which ITP has designated suitable for the Software to operate on and for which the Software is delivered
Software	The computer software, delivered and, as the case may be, maintained by ITP in accordance with these General Terms and Conditions. Software consists of either of the following, all of which is defined below: (i) Third Party-supplier Software; (ii) Standard ITP Software or (iii) Custom made Software, including any accessories, required components of concerned development language and Documentation
Third Party-supplier Software	Standard software products, supplied to ITP by third parties and delivered by ITP to Customer under these Terms and Conditions
Standard ITP Software	Application products, made by ITP for direct use by Customer without adaptation and delivered by ITP to Customer under these Terms and Conditions
Custom made Software	Application products, according to a specific Customer order made by ITP for such Customer and delivered by ITP to that Customer under these Terms and Conditions
Documentation	The description of the functionality and possibilities for use of the Software, either included in the Software or supplied in the form of separate books or other data carriers. The Documentation also contains the functional specifications of the Software
Hardware Products	Hardware products, specified in a specific Customer order, delivered by ITP independently from, or additionally to delivered Software to Customers under these Terms and Conditions
Software Failures	A Software failure shall mean the non-compliance with the pertaining Documentation. In case of Custom made Software, a Software Failure shall mean the non-compliance with the specifically agreed upon functional specifications
Version	A new supply of the Software, in which at least important extensions of its functionality are included. A new Version is indicated by means of a Version number, followed by a Release number and a Program Temporary Fix number (for instance Version 2.0.0)
Release	A new supply of the Software in which ITP, to the best of its capabilities, shall attempt to cure all Software Failures which were known to ITP 4 (four) weeks prior to the concerned Release. A

	new Release is indicated by means of the Version number, followed by a next-higher Release number and a Program Temporary Fix number (for instance Version 2.1.0)
Program Temporary Fix	A new supply of the Software in which ITP, to the best of its capabilities, shall attempt to cure all Software Failures. A Program Temporary Fix is indicated by means of the Version number, followed by the Release number and a next-higher Program Temporary Fix number (for instance Version 2.1.1)
Workaround	a set of procedures which the Customer must follow in order to circumvent or mitigate the impact of a Software Failure on a temporary basis until a permanent solution is provided
Service-Hours	The hours from 8.00 hours until 17.00 hours, ITP's local time, on normal working days (Monday up to and including Friday), excluding generally recognised public holidays in Aruba

- 1.2 In these General Terms and Conditions, except where the context requires otherwise: (i) references to clauses, sub-clauses and addenda are to those in these General Terms and Conditions, (ii) headings are for convenience purposes only and do not affect the construction or the interpretation of these General Terms and Conditions. As used in these General Terms and Conditions, the word "including" shall mean "including but not limited to".

Article 2 Offer and agreement

- 2.1 These General Terms and Conditions shall apply to all offers, legal relationships and agreements under which ITP is performing its activities and/or is supplying Hardware Products to Customers. Deviations from and additions to these General Terms and Conditions shall only be valid if agreed in writing.
- 2.2 All offers and other statements by ITP shall be without engagement, unless ITP indicates otherwise in writing. The Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which ITP bases its offer and which have been stated by or on behalf of the Customer to ITP.
- 2.3 The application of Customer's purchasing or other terms and conditions is expressly rejected.
- 2.4 If any provision of these General Terms and Conditions is null and void or annulled, the other provisions shall remain in full force and effect.

Article 3 Tariffs, payment terms

- 3.1 In case of agreements which have been entered into for a certain term, the following shall apply: all tariffs are, amongst others, based on salary and social security rates, costs of material, travel and subsistence costs etc., applicable at the time the agreement enters into force. ITP shall be entitled to adjust the above tariffs per the first day of any calendar year by giving the Customer three months prior written notice. In the prevailing

- case, the Customer shall be entitled to terminate the contract with two months prior written notice to ITP.
- 3.2 Invoicing and payment shall take place in Aruban currency or US dollar. Prepayment invoices shall be settled before ITP will start with the agreed upon activity. All invoices shall be paid in full, without any deduction, discount or settlement by means of a bank transfer to a bank account as specified by ITP within twenty days from the date of invoice. All amounts are exclusive of Value Added Tax (VAT) and any other governmental levies and surcharges.
 - 3.3 In case of late payment, a late payment interest shall be incurred, as of the date of late payment and without notice of default, in the amount of 1% (one percent) per month or part thereof, as well as all judicial and extra judicial costs, relating to the debt collection. The foregoing is without prejudice to ITP's right in case of late payment to suspend the further performance of any activity or to terminate the contract by means of a written declaration.
 - 3.4 All payments shall at first instance be used for the settlement of interests and costs and thereafter for the settlement of payable invoices of the oldest date, even if payment of an invoice of a later date is specified.
 - 3.5 In case of bankruptcy or suspension of payment of the Customer or in case of termination or liquidation of its business, ITP shall be entitled to immediately claim all amounts due.

Article 4 Confidentiality

Both Parties shall observe strict confidentiality with respect to the other Party's proprietary business information which they become aware of in during the execution of any agreement to which these Terms and Conditions apply. Furthermore, the Parties shall take all reasonable measures to ensure that their employees or any other persons who they engage in the execution of the agreement, shall equally comply with these confidentiality commitments. Without the express authorization of ITP, Customer shall not inform third parties in any way or form of the working methods applied by ITP, the execution by ITP of any agreement and/or any deliverables made by ITP under these Terms and Conditions.

Article 5 Delivery suspension, retention of title

- 5.1 Notwithstanding any delivery obligation, ITP may maintain possession of the Hardware Products, proprietary rights, information, documents, databases and interim or other results of ITP's services which have been received or generated in connection with the agreement until the Customer has paid all amounts owed to ITP.
- 5.2 All Hardware Products delivered to the Customer shall remain ITP's property until all amounts owed by the Customer for these Hardware Products or work performed or to be performed under the agreement, as well as all other amounts which the Customer owes due to a breach of its payment obligation towards ITP, have been paid in full. If Customer is acting as a reseller, he may sell and re-deliver all items subject to ITP's retention of title insofar as such is common in connection with Customer's normal business operations.

- 5.3 As the occasion arises, rights shall always be granted or transferred to the Customer on the condition that the Customer pays the agreed fees fully and in a timely manner.

Article 6 Risk of loss, theft or damage

The risk of loss or theft of or damage to Hardware Products, Software or Documentation which are the subject of the agreement shall pass to the Customer at the time they have been placed at the actual disposal of the Customer.

Article 7 Intellectual and/or industrial property rights

- 7.1 All intellectual and/or industrial property rights in Software, websites, databases or other materials, developed or provided under the agreement, such as analyses, designs, documentation, reports, offers, as well as any concerned preparatory materials, shall exclusively belong to ITP, its licensors or its suppliers. The Customer shall only acquire the rights of use expressly granted in these Terms and Conditions and by law.
- 7.2 If the Parties, in deviation from the foregoing, expressly agree in writing that intellectual and/or industrial property rights regarding any of the items, mentioned in article 7.1, shall be transferred to the Customer, this shall not affect ITP's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages and the like underlying such development, without any limitation on other purposes, nor shall a transfer of intellectual and/or industrial property rights affect ITP's right to undertake developments for itself or third parties which are similar to those done for the Customer.
- 7.3 The Customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual and/or industrial property rights from any of the items, mentioned in article 7.1.
- 7.4 On a case by case basis and amongst others dependent upon prevailing pricing, the Parties shall make further arrangements with respect to the ownership rights, including intellectual and/or industrial property rights, in any Custom made Software which ITP has produced on specific order of the Customer.

Article 8 Warranty, infringement, hold harmless

- 8.1 Regarding warranty, the following provisions shall apply:
- (a) with respect to Third Party-supplier Software, ITP shall only provide warranty in accordance with warranty provisions, applied by the supplier of the Third Party-supplier Software;
 - (b) with respect to Standard ITP Software and Custom made Software, ITP shall provide warranty in accordance with the provisions of article 20 below, notwithstanding the fact that this article is comprised in the chapter, specifically dealing with Custom made Software.
- 8.2 ITP represents that, at the date Standard ITP Software is first made available to the Customer or, as the case may be, at the date an upgrade

- of such Standard ITP Software is first made available to the Customer, to the best of its knowledge the intellectual and/or industrial property rights therein are not disputed by any third party. ITP shall indemnify the Customer against and hold same harmless from all claims by a third party in respect of an infringement of any intellectual and/or industrial property rights made against the Customer and (allegedly) resulting from its possession or use of Standard ITP Software.
- 8.3 The Customer agrees to promptly notify ITP of any matters in respect of which the foregoing indemnity and hold harmless may apply and of which the Customer has knowledge. Upon notification in writing of any action or claim for which ITP is to provide indemnity, ITP shall defend or settle, at its option, all such actions or claims brought against the Customer, provided that ITP shall have the right to control the defence and settlement of all such actions or claims. The Customer will take all such actions at the expense of ITP, as may be reasonably requested by ITP in connection with such defence or settlement.
- 8.4 If a judgment, whether preliminary, provisional or final, shall be rendered against the Customer's possession or use of the Standard ITP Software or any part thereof by reason of any alleged infringement, ITP shall at its own expense and option either: (i) modify or replace the Standard ITP Software or the infringing part thereof so that it becomes non-infringing without adversely affecting the capability thereof or (ii) procure for the Customer the right to continue to use the Standard ITP Software. If the foregoing alternatives are not available and the Customer is obliged to discontinue the use of the Standard ITP Software under such a judgment, ITP shall repay the Customer the fee(s) paid in respect thereof and the Customer shall agree to allow the agreement to be terminated.
- 8.5 ITP shall not be liable under the above provision if it can establish that the infringement of intellectual and/or industrial property rights or any claim in respect thereof shall be caused by the use of the Standard ITP Software as modified by the Customer without ITP's express authorization.
- 8.6 In case ITP has produced Custom made Software on the basis of designs, drawings and/or other instructions from or on behalf of the Customer, the Customer warrants that through such activity, no intellectual and/or industrial property rights of third parties shall be infringed and the Customer shall hold ITP harmless in this respect.

Article 9 Cooperation by the Customer

- 9.1 The Customer shall always furnish ITP in a timely manner with all data or information which is useful and/or necessary to execute the agreed upon activity and provide full cooperation, including furnishing access to its premises. All personnel, engaged in the execution of the agreed upon activity, shall possess the necessary know-how, experience, abilities and characteristics.
- 9.2 The Customer shall bear the risk of selecting, using and applying within its organisation the equipment, software, websites, databases and other products and materials and the services to be provided by ITP, and shall also be responsible for the monitoring and security procedures and proper system management.

- 9.3 If the Customer furnishes software, websites, materials, databases or data to ITP on a data carrier, this carrier shall meet the specifications prescribed by ITP.
- 9.4 If the Customer does not provide ITP with the data, equipment, software or personnel necessary to execute the agreed upon activity, or does not provide this in a timely manner or in accordance with the agreements made, or if the Customer otherwise does not fulfil its obligations, ITP shall be entitled to suspend execution of the agreement in whole or in part, and shall be entitled to charge the ensuing expenses in accordance with its usual rates without prejudice to ITP's right to exercise any other legal right.

Article 10 Delivery periods

- 10.1 All delivery and other periods stated or agreed by ITP have, to the best of its knowledge, been determined, based on data known to ITP at the commencement of the agreement. ITP shall apply its best efforts to meet any delivery and other periods, but the fact that a stated or agreed delivery or other period has been exceeded, shall not cause ITP to be in default.
- 10.2 ITP shall not be bound by any delivery periods, if the Parties have agreed to modify the substance or scope of the agreement.
- 10.2 If any period threatens to be exceeded, ITP will inform the Customer as soon as practically possible and the Parties will consult with each other concerning the implication thereof.

Article 11 Termination

- 11.1 The agreement enters into force on the date, stipulated in the order, provided the order has been accepted by ITP.
- 11.2 Either Party will be entitled to terminate the agreement at any time without a summons or formal notice by means of a registered letter sent to the other Party, if: (i) the other Party is in breach of any provision of the agreement and such breach has not been remedied within 30 (thirty) days after written notice thereof (the aforementioned remedy period shall not be applicable in case of any breach of confidentiality commitments, furthermore it is expressly agreed that termination according to the above shall only take place if such is justified by the seriousness of the particular breach), (ii) the other Party declares bankruptcy, becomes insolvent or makes an assignment for the benefit of creditors, or (iii) the other Party's business is liquidated or terminated for other reasons than a business reconstruction or merger.
- 11.3 Termination of the agreement will not affect the continuance of any provisions which by their nature are intended to continue after termination, nor shall it affect any existing obligations already incurred whether relating to payment or otherwise.

Article 12 Liability, indemnification

- 12.1 Without prejudice to the liability of ITP under any applicable legal provision, ITP's liability in relation to the execution of any of its activities shall be limited to the warranty provisions, applicable to such activity. ITP's liability in case of an infringement of third party's intellectual and/or

- industrial property rights, shall be limited to the hold harmless commitment mentioned in article 8.
- 12.2 ITP shall in no event be liable for any direct, indirect or consequential damages, including loss of profits, commercial damage such as loss of revenue or profit, loss of customers, loss of business opportunities, of any kind or nature whatsoever regardless of the foresee ability thereof.
- 12.3 If and to the extent ITP is held liable by any competent judge, notwithstanding the provisions of article 12.1 and 12.2 above, the liability of ITP shall in no event exceed the amount of AWG 250,000 (twohundredandfiftythousand Aruban florin).
- 12.3 The Customer shall be solely responsible for the protection of its electronic data and information through installation of the most recent computer virus detection programmes and the timely creation of back-up copies. ITP shall never be liable for any damage, relating to the loss or mutilation of electronic data and information, nor for the restoring of same.
- 12.4 The limitations mentioned in this article shall not apply in case of gross negligence or wilful misconduct on the part of ITP.
- 12.6 The Customer shall indemnify ITP against all third-party claims concerning product liability, ensuing from a defect in a product or system which has been delivered by the Customer to a third party and which partly consists of any Software or Hardware Products, supplied by ITP, except if and insofar as the Customer proves that the damage or injury was particularly caused by same.
- 12.7 The Customer shall indemnify ITP against claims by persons whose personal data have been recorded or processed in connection with a register of persons, maintained by the Customer or for which the Customer is responsible under law or otherwise, unless the Customer proves that the facts underlying the claim are solely imputable to ITP.

Article 13 Reciprocal non-hiring

During the term of the agreement and for a period of one year thereafter, either Party shall not directly or indirectly solicit, with a view to offering employment or an engagement on behalf of itself or any other person or organization, any of the other Party's staff who were associated with the realization of the concerned activity, unless prior written permission from the other Party has been received.

Article 14 Applicable law and dispute resolution

- 14.1 All agreements to which these General Terms and Conditions are applicable, shall in all respects be exclusively governed by and interpreted in accordance with the laws of Aruba, without regard to or application of choice of law rules or principles.
- 14.2 Any dispute, controversy or claim arising under, out of or relating to an individual agreement, including but not limited to its formation, validity, binding effect, interpretation, performance, breach or termination, as well as any non-contractual claims, shall, if possible, be finally settled amicably by negotiation between the Parties, either or not through alternative dispute resolution mechanisms. If such dispute, controversy or claim

cannot be settled amicably, then the dispute, controversy or claim shall exclusively be submitted to the competent court of Aruba.

Article 15 Miscellaneous provisions

- 15.1 No amendment, alteration or modification of any agreement shall be effective, unless made in writing and signed by both Parties. All notifications from the one Party to the other shall be in writing.
- 15.2 ITP shall be entitled to invoke force majeure which is understood to mean any circumstances which interfere with the execution of the agreement. Force majeure includes but shall not be limited to: strikes, occupations, a shortage of material, equipment or services, required for the fulfilment of the contractual obligation, unforeseeable stagnations at suppliers or other third parties on whom ITP depends and all other matters and facts which are beyond ITP's reasonable control. If a situation of force majeure lasts for more than 90 days, the Parties shall be entitled to terminate the agreement by rescinding it in writing. What has already been performed pursuant to the agreement shall in that case be settled proportionately.
- 15.3 ITP shall be entitled, for the performance of any agreed upon activity, to make use of the services of third parties, but in the prevailing case, ITP shall remain fully responsible for the proper execution of such activity.
- 15.4 If any term or provision of an agreement to which these General Terms and Conditions are applicable, shall be found to be illegal or unenforceable, then, notwithstanding any such illegality or unenforceability, the agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

II. PROVISIONS, APPLICABLE TO DEVELOPMENT OF SOFTWARE

In addition to chapter I, provisions applicable to all activities of ITP, and any other provisions in other chapters of this document which are applicable by virtue of the nature of the particular subject of this chapter II, the provisions set forth in this chapter specifically apply to Custom made Software.

Article 16 Specifications, working method, data to be provided by Customer, inconsistencies

- 16.1 If the specifications for, or the design of the Custom made Software have not been established at the time the Agreement is concluded, the Parties shall, upon mutual consent, establish such specifications and the working method to be applied to developing the Custom made Software, before ITP is commencing with the concerned activities.
- 16.2 ITP will develop the Custom made Software in a competent and professional manner, applying sound, professional practices in accordance with prevailing industry standards. ITP's activities in this respect will be based upon data, to be provided by Customer and Customer warrants the correctness, completeness and consistency of such data.
- 16.3 ITP shall be entitled, but not required, to examine the correctness, completeness or consistency of the data and/or specifications mentioned above. If ITP discovers any inconsistencies, it shall be entitled to suspend its activities until Customer has eliminated same.

Article 17 Delivery, installation

- 17.1 ITP will deliver the Custom made Software in accordance with the agreed upon written specifications. Installation by ITP will only take place if agreed in writing, in absence whereof Customer itself will install, set up, design parameters for, and tune the Custom made Software. To the extent necessary, Customer will also adjust the Hardware platform and user environment for the Custom made Software. Unless expressly agreed otherwise, ITP shall not be required to convert Customer data.
- 17.2 As part of the delivery of Custom made Software, ITP shall deliver at no charge the related source code, to the extent such source code is not related to the Standard ITP Software. In addition, the Customer shall be entitled to procure, at a charge to be agreed separately, the source code which is related to the standard building blocks, developed by ITP, and which ITP has used for the development of the Custom made Software.

Article 18 Acceptance, remedy of Software Failures

- 18.1 Immediately after delivery of the Custom made Software, acceptance testing shall take place in accordance with test procedures, established by the Parties upon mutual consent. If ITP is to render services with respect to the execution of the acceptance testing at Customer's request, such services shall be charged to Customer at ITP's then prevailing rates.
- 18.2 Acceptance testing shall take place by the Customer within 10 (ten) working days after delivery of the Custom made Software. If such period is exceeded for reasons which are attributable to Customer, Customer shall

- be deemed to have formally accepted the Custom made Software, unless the Parties have established an other date. During the testing period, Customer shall not be allowed to use the Custom made Software for productive or operational purposes.
- 18.3 Immediately after acceptance testing has take place, the Parties shall draw up and sign an acceptance protocol. Any Software Failures shall be recorded in such protocol, together with the acceptance or non acceptance of the Custom made Software. Any Software Failures which do not encumber the use of the Custom made Software under normal production circumstances, shall not constitute a reason for not accepting same, notwithstanding ITP's duty to remedy such Software Failures at no charge. In the prevailing case, ITP shall, within 5 (five) working days from signature of the above acceptance protocol, indicate within which period the abovementioned Software Failures shall be remedied
- 18.4 If, during acceptance testing, it turns out that the Custom made Software contains Software Failures which impede the progress of the acceptance test, the Customer shall provide detailed written notice of such Software Failures to ITP. In the prevailing case, the acceptance testing will be interrupted until ITP has adjusted the Software in such a manner that the impediment is eliminated.
- 18.5 If the Custom made Software is not accepted during the first test run, a second test run shall be performed within 5 (five) working days after remedy of the Software Failures. In a second acceptance protocol, it shall be recorded whether the perceived Software Failures have been remedied and whether the Custom made Software has been accepted or not. With respect to non-remedied Software Failures, the provisions of article 18.3 regarding Software Failures and remedy period, shall apply equally.
- 18.6 If the Custom made Software is delivered and tested in stages and/or parts, the non-acceptance of a particular stage and/or part shall not affect any acceptance of an earlier stage and/or another part.
- 18.7 If the Custom made Software has not been accepted after the second test run, the Customer will put ITP into default, unless proper compliance with contractual obligations is impossible in which case ITP will be in default immediately. If ITP is not in compliance within a reasonable period, the Customer shall be entitled to terminate the agreement by means of a written notification to ITP with immediate effect, in which case the concerned license and maintenance fee shall be refunded.
- 18.8 The Customer is deemed to have accepted the Custom made Software unconditionally if, before final conclusion of the acceptance testing, the Customer has notified ITP in writing that the Software Failures mentioned in article 18.4 have been remedied, notwithstanding the existence of imperfections which do not encumber the use of the Custom made Software under normal production circumstances.
- 18.9 In addition, if and as of the moment the Custom made Software is put into operational use, the Customer is deemed to have accepted the Custom made Software unconditionally, unless, according to a written arrangement between the Parties, such operational use forms part of the acceptance testing.
- 18.10 Software Failures discovered after acceptance of the Custom made Software, will be remedied by ITP under maintenance.

18.11 If and when the Custom made Software has been accepted, the date on which the acceptance protocol has been signed, shall constitute the acceptance date. Through acceptance of the Custom made Software, ITP shall be fully discharged from its obligations concerning the development and delivery of the Custom made Software and, if installation by ITP has been agreed in a particular case, its obligations concerning such installation.

Article 19 Representations

19.1 ITP represents that the Custom made Software does not contain functionality which may cause damage to the Custom made Software itself, to other software or to any data.

19.2 ITP equally represents that it has taken all reasonable measures to deliver the Custom made Software free from viruses and, under any existing maintenance obligations, to keep same free from viruses.

Article 20 Warranty

20.1 During 1 (one) month after acceptance of the Custom made Software, ITP warrants that same complies with the specifications as comprised in the pertaining Documentation.

20.2 If during the warranty period the Custom made Software does not comply with the specifications mentioned in article 20.1, ITP shall either:

- provide user support in accordance with the provisions, comprised in the articles 26, 27 and 28 below free of charge;
- supply new Releases and/or Program Temporary Fixes in order to remedy any Software Failures free of charge.

If the Customer is not capable of implementing the abovementioned new Releases and/or Program Temporary Fixes or if the Customer is not prepared to implement same, ITP will perform such implementation services at ITP's then prevailing rates.

20.3 Any warranty obligation of ITP becomes null and void if the Customer, without prior express authorization of ITP, modifies the Custom made Software or orders a third party to modify same.

Article 21 Fees

Fees for the development of Custom made Software are specified in the signed order and are due either in installments or in one lump sum after completion of the development work, as specified.

III. PROVISIONS, APPLICABLE TO THE USE OF SOFTWARE

In addition to chapter I, provisions applicable to all activities of ITP, and any other provisions in other chapters of this document which are applicable by virtue of the nature of the particular subject of this chapter III, the provisions set forth in this chapter specifically apply to (i) Standard ITP Software and (ii) Custom made Software, for the purpose of this chapter defined as “the Software”, excluding Third Party-supplier Software. If and to the extent that Third Party-supplier Software is provided by ITP, the provisions of article 22.9 shall apply to such Third Party-supplier Software.

Article 22 License to use

- 22.1 The Software and Documentation, updates and upgrades and all copyright and other intellectual or industrial property rights therein shall at all times remain the property of ITP or, as the case may be, the supplier who has granted ITP the right to use, license and/or sub-license the Software. The Customer has no right therein, except as expressly licensed by virtue of these Terms and Conditions.
- 22.2 ITP grants to Customer a non-exclusive, non-transferable license to use the Software in accordance with the terms and conditions of this chapter III. This license to use enters into force at the moment the Software is first delivered to the Customer and for such use, the agreed upon license fee shall be due by the Customer.
- 22.3 The license to use the Software granted hereunder entitles the Customer to:
- receive from ITP one copy of the Software on (a) medium/media appropriate to Customer’s computer system(s), together with one copy of the Documentation;
 - use the Software;
 - copy the Software to ensure normal computer system operation and transmit the same in Customer’s computer system(s) for processing and use;
 - make copies of the Software in machine readable form for emergency back-up and archiving purposes and copies of the Documentation for its own use only.
- 22.4 The Customer agrees to use the Software only within its own organization, in accordance with the licensing specifications as provided by ITP in writing at the commencement of the license. Such licensing specifications concern the following:
- the type- and serial number(s) of the computer system(s) for which the license has been granted;
 - the number and/or type of users.
 - if applicable, the use of the Software in an local area network (LAN) or in a wide area network (WAN);
 - if applicable, any use-restrictions as stipulated in a lease contract.
- In the event the above computer system(s) is/are temporarily inoperable, the Customer shall be entitled to use the Software on (an) alternative computer system(s), subject to giving written notice to ITP thereof.

- 22.5 The Customer agrees that it shall not:
- remove or alter any trademark, copyright or other proprietary notice contained on or in the Software and the Documentation;
 - grant any rights to third parties with respect to the Software or make the Software and the Documentation in any way available to third parties;
 - transfer or dispose of the Software and the Documentation;
 - modify, adapt, translate, re(verse)-engineer, decompile or disassemble the Software. This restriction is not applicable to the extent it might be incompatible with any mandatory provisions of the laws, applicable to these Terms and Conditions (provisions regarding legal protection of computer programs);
 - develop, or order third parties to develop, any software which is based on the Software;
 - copy or duplicate the Software and the Documentation or any part thereof, notwithstanding Customer's right to make copies for emergency back-up and archiving purposes pursuant to article 22.3 above.
- 22.6 ITP shall at all times be entitled to take technical measures it deems appropriate to protect the Software and Documentation against any use contrary to the license provisions comprised in these Terms and Conditions. In addition, ITP shall be entitled to conduct inspections at Customer's site in order to ascertain that Customer is using the Software in accordance with the license fee due for such use. Customer shall fully cooperate with any such inspection.
- 22.7 The provisions of this chapter III shall solely pertain to Software which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to the related Documentation. The source code of the Software shall not be made available to the Customer, except in the case as stipulated in article 17.2 above. In such case, the Customer shall be entitled to modify the Custom made Software on the basis of the source code, so made available by ITP.
- 22.8 Customer shall immediately return all copies of the Software in its possession to ITP after the license to use the Software has ended. If it has been agreed that Customer shall destroy the copies concerned, Customer shall provide written notice of such destruction to ITP immediately.
- 22.9 If and to the extent ITP provides Third Party-supplier Software to Customer, the licensing terms and conditions of the third party-supplier shall replace the provisions of this chapter and shall apply with regard to such Third Party-supplier Software. If and insofar as the aforementioned licensing terms and conditions of the third party-supplier are deemed or declared inapplicable for whatever reason, the provisions of this chapter shall be fully applicable to the Third Party-supplier Software.

Article 23 License fee

The fee for the above license is specified by ITP separately and will be charged at the moment the the Software is first made available to the Customer.

IV. PROVISIONS, APPLICABLE TO SUPPORT AND UPDATE SERVICES OF SOFTWARE

In addition to chapter I, provisions applicable to all activities of ITP, and any other provisions in other chapters of this document which are applicable by virtue of the nature of the particular subject of this chapter IV, the provisions set forth in this chapter specifically apply to support and update services of Software, in article 1.1 defined as: (i) Third Party-supplier Software, (ii) Standard ITP Software and (iii) Custom made Software.

Article 24 First- and second line-support and update services, commencement

- 24.1 With respect to support and update services, a distinction is made between first line- and second line-support and update services.
- 24.2 First line-support and update services is provided on the basis of an agreement, whereas second line-support and update services is provided on the basis of a specific Customer order. First line-support and update services are provided on a remote basis, whereas second line-support and update services are provided at Customer's site, or as appropriate, at ITP's site. If the Customer wishes that after expiry of the warranty period, mentioned in article 20.1, first line-support and update services is provided with respect to the Software, the Parties may conclude a separate agreement for this purpose. In the prevailing case, the terms and conditions comprised in this chapter IV, shall form an integral part of such agreement. All Software, subject to support and update services, will be specified in an exhibit to the agreement.
- 24.3 Unless as provided in article 25.2, all support and update services commence after expiration of the warranty period or at the moment Customer's order for support and update services is accepted by ITP in writing.

Article 25 Service availability, later start/interruption of support and update services

- 25.1 ITP warrants that support and update services with respect to the Software shall be available for a minimum period of 3 (three) years after delivery, excluding Third Party-supplier Software for which provisions and/or conditions of the third party-supplier are applicable.
- 25.2 If Customer requires support and update services to start at a later date than provided for in article 24.3 or if support and update services have been interrupted, ITP shall be entitled to first inspect the Software and, as required, to adapt same to the current Release level at ITP's then prevailing rates for such activity.

Article 26 Obligations of ITP

- 26.1 ITP shall provide Customer with support and update services in order to ensure that the Software continues to operate in accordance with the Documentation. Condition for providing support and update services is that the Software Failure is reproducible on Customer's computer system(s) and that all notifications to ITP are done by knowledgeable

personnel of Customer. All first line-support and update services are provided from ITP's helpdesk.

26.2 As part of the support and update services, ITP shall advise Customer concerning the use of the Software and assist Customer in identifying and solving any problems encountered in such use and reported to ITP by rendering the following services:

- consultation:
Customer shall be given a specific telephone number which its personnel mentioned in article 26.1 can use during Service-Hours for consultation with ITP's helpdesk personnel by telephone. Such telephone number is provided to Customer from time to time. If, due to the nature of a particular service call, ITP's helpdesk personnel is not able to advise or assist the Customer adequately, ITP will contact with one of its software specialists in order to arrange for second line-support at Customer's specific order.
- corrective support:
Corrective support includes the diagnosis and correction by ITP of actual and reproducible Software Failures in the Software and in the Documentation.
For the purpose of corrective support, Software Failures shall be divided in the following priority codes:

priority code 1: the Software does not operate;

priority code 2: the Software operates with a serious loss of functionality, but can still be used;

priority code 3: the Software operates with certain minor Software Failures, but apart from that, operates substantially in accordance with the Documentation.

The determination which priority code shall be assigned to a particular Software Failure, shall be done after mutual consultation between ITP and the Customer.

After confirmation by ITP of the receipt of a Software Failure, ITP shall start corrective support in accordance with the following schedule:

for priority code 1: within 4 (four) Service-Hours after notification;

for priority code 2: within 8 (eight) Service-Hours after notification;

for priority code 3: by providing a new Release as soon as possible.

After corrective support has been started according to the above schedule, such support shall be continued uninterruptedly, but always within ITP's Service-Hours. For Software Failures, falling under priority code 1, ITP has established an objective of providing

- a Workaround or a Program Temporary Fix within 24 (twenty four) Service-Hours after notification of the Software Failure.
- New releases:
All permanent solutions developed for problems encountered in the use of the Software, all corrections of Software Failures and all enhancements, improvements and modifications of the Software, shall be incorporated by ITP in new Releases. As long as Customer holds a valid license to use the Software, such Releases shall be provided to Customer as soon as they are ready for release, together with the related Documentation. At the moment ITP has issued a new Release, it will terminate the support of the previous Release 3 (three) months thereafter.
- New Versions:
ITP shall inform Customer in due time of the date when new Versions of the Software become available. New Versions are not provided to Customer under support and update services, but must be purchased separately.

Article 27 Obligations of Customer

- 27.1 Upon notification of a Software Failure, Customer shall grant ITP reasonable access to the computer system(s) on which the Software operates, the Software and all relevant Documentation, and shall provide such reasonable assistance as ITP may request, including sample output and other diagnostic information, in order to assist ITP in providing support services.
- 27.2 Customer shall be responsible for the interface between the Software and all other software, used by Customer.
- 27.3 Customer shall be responsible for the proper operation of the computer system(s) on which the Software is installed.
- 27.4 Customer shall be responsible for installing any support and update service elements, such as but not limited to Program Temporary Fixes, Workarounds and new Releases, provided under these Terms and Conditions.
- 27.5 Customer agrees that the rights granted to Customer and the use limitations as specified in chapter III of this document, apply equally to all support and update services elements, mentioned in article 27.4 above.
- 27.6 Customer shall create backup copies of the Software and the data available to the Software in accordance with generally accepted principles for backing-up software and data.
- 27.7 In case Customer allows ITP to remotely access its Software via telephone or internet connections, specific working conditions will be set up after mutual consultation between the Parties. Remote access, including the pertaining working conditions, will be agreed separately after which Customer shall be bound thereby.

Article 28 Exclusions

- 28.1 In no event shall ITP have any responsibility to correct any Software Failures resulting from changes to, or modification of the Software made by Customer and/or the use of the Software in an injudicious way.

- 28.2 ITP shall not be responsible for correcting any Software Failures if Customer fails to incorporate in the Software any Workaround, Program Temporary Fix or new Release provided by ITP.
- 28.3 All work resulting from defects in software and/or hardware caused by operating errors and/or improper use of the Software by Customer, such as but not limited to fixing mutilated or lost data if such is possible, is not covered by these Terms and Conditions and will be charged to Customer at ITP's then prevailing rates for such work.

Article 29 Fees and charges

- 29.1 The fees for the first line-support and update services are specified in the agreement and will be charged to Customer and are due on an annual basis before the beginning of the initial or any renewal period to which such fees apply.
- 29.2 During the initial term of the support and update services agreement, the fee will not be changed. Thereafter, on each renewal date the fee will be indexed as legally permitted.
- 29.3 If no support agreement is in place, such as in case of second line-support and update services, ITP shall per order apply its then current incident call rates. For each call 0,5 hours will be charged as a minimum.
- 29.4 Charges for support and update services according to article 29.3, regardless whether the services are performed at Customer's or at ITP's site, will be charged to Customer and are due after completion of the concerned service. Such charges will be specified in terms of date, activity, time spent as well as the name of the person who has requested the service.

Article 30 Automatic termination of support and update services

Agreements for first line-support and update services shall terminate automatically and with immediate effect upon termination of the license for the Software for whatever reason.

Article 31 Work at Customer's site

In the event that employees of ITP perform work at Customer's site, Customer shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. Customer shall indemnify ITP against claims by third parties, including ITP's employees, who, in executing the agreement, suffer injury which is the result of acts or omissions by the Customer or of unsafe situations in its organisation.

V. PROVISIONS, APPLICABLE TO SERVICES

In addition to chapter I, provisions applicable to all activities of ITP, and any other provisions in other chapters of this document which are applicable by virtue of the nature of the particular subject of this chapter V, the provisions set forth in this chapter specifically apply if ITP renders services such as, but not limited to:

- consultancy,
- performing feasibility studies, courses and training sessions,
- designing, hosting or implementation of Software,
- rendering services with respect to networks.

Article 32 Performance

- 32.1 The obligations of ITP are exclusively based on a best efforts principle. ITP warrants that any engaged personnel will execute the order with the application of its best endeavors and skills, taking into account the diligence, knowledge and craftsmanship which may be expected in the given circumstances and, if applicable, in accordance with written arrangements and procedures from the Customer.
- 32.2 If it has been agreed that the services will be rendered in phases, ITP shall be entitled to postpone the commencement of services which belong to the next phase until the Customer has accepted in writing and, as applicable, paid the results of the previous phase.
- 32.3 Only if explicitly agreed beforehand, ITP shall, during the execution of the order, be obliged to comply with timely and accountable instructions of the Customer. However, ITP shall not be obliged to comply with any instructions through which the content of the agreed upon services is changed.

Article 33 Additional work

- 33.1 If, upon request or prior consent of the Customer, ITP has rendered services which are beyond the scope or content of the order, such services will be charged to the Customer on the basis of ITP's then prevailing rates for comparable services. ITP shall not be obliged to render the aforementioned services and shall always be entitled to request that the Customer submits a separate order for such services.
- 33.2 The fact that additional work (or the demand for it) arises during the execution of the order, shall never be a ground for the Customer to rescind or terminate the agreement.
- 33.3 The Customer acknowledges and accepts that the rendering of the aforementioned services may influence the agreed upon or expected time of completion of the original services as well as Customer's and ITP's mutual responsibilities.

Article 34 Duties and responsibilities of the Customer

- 34.1 The Customer shall provide ITP timely and at no charge with all means which are reasonably required for the proper execution of the order. Such means are understood to include, amongst others, a working place with all required telecommunication facilities and equipment as well as all required and useful data, information and assistance.

- 34.2 The Customer will exclusively be responsible for the use and the application within its organization of the equipment, software and the services to be rendered by ITP as well as for all control and safety procedures and adequate system management.
- 34.3 If the means mentioned in article 32.1 are not or not timely available to ITP or if such means are not available in accordance with the arrangements or if the Customer does not fulfill its obligations in any other way, ITP will be entitled to suspend the (further) execution of the order and to charge all related costs to the Customer at its then current rates.

Article 35 Replacement of personnel

- 35.1 Without prejudice to the provision of article 33.2, ITP shall always be entitled to replace the personnel executing the order, under the condition that such replacement does not negatively affect the quality of the services.
- 35.2 In case it has been agreed that the order shall be executed by a particular person, ITP shall only be entitled to replace such person after prior authorization of the Customer, which shall not unreasonably be withheld. However, temporary replacement in case of illness, accident etc. shall always be allowed.
- 35.3 If, after all reasonable efforts, ITP is not able to offer replacement, ITP shall be entitled to invoke force majeure as mentioned in article 15.2.

Article 36 Courses and training sessions

- 36.1 To the extent the services consist of performing courses or training sessions, ITP may always demand payment of the due amount before the beginning of such services. ITP's normal rules shall govern the consequences of cancellation of participation in a particular course or training session.
- 36.2 If, in ITP's sole judgment, this is justified by the number of registrations, ITP shall be entitled to combine a particular course or training session with one or more other courses or training sessions, or to have these take place at a later date.

Article 37 Income tax, premiums or social security payment

Personnel of ITP shall under no circumstances be considered to be employees of the Customer. Consequently, the Customer shall not be liable for any income tax, premiums or social security payment, due in relation to the services rendered by such personnel.

Article 38 Fees

Fees for rendering of the services are specified in the agreement. In absence of an expressly agreed invoicing schedule, all service fees shall be due per calendar month in arrears.

VI. PROVISIONS, APPLICABLE TO HARDWARE PRODUCTS

In addition to chapter I, provisions applicable to all activities of ITP, and any other provisions in other chapters of this document which are applicable by virtue of the nature of the particular subject of this chapter VI, the provisions set forth in part 1 and 2 of this chapter specifically apply to Hardware Products. As applicable and for the purpose of the articles below, Hardware Products shall also include any parts thereof.

Part 1 Sale of Hardware Products:

Article 39 Delivery, installation, passing of risk, delivery times, packaging

- 39.1 All deliveries of Hardware Products shall take place at the delivery condition Ex-Works-ITP according to the INCOTERMS of the International Chamber of Commerce, valid on the date of delivery. If expressly requested by the Customer and agreed between the Parties, ITP will arrange for transportation of the Hardware Products to a site, specified by the Customer. In such case, all related costs will be charged to Customer separately. If ITP is also requested to install the Hardware Products at Customer's site, such shall not include the installation of any software or the conversion of any data.
- 39.2 The risk of loss and theft of, or damage to the Hardware Products shall pass to Customer at delivery as specified above. If a carrier is used for the delivery, the aforementioned risk shall pass to Customer at the time the Hardware Products are put at the carrier's disposal.
- 39.3 Any and all delivery times, given by ITP shall always be indicative.
- 39.4 ITP shall package the Hardware Products in accordance with applicable standards. If the Customer desires a specific manner of packaging, it shall bear all related additional costs. The Customer shall handle the packaging, released with the Hardware Products, in a manner that is consistent with applicable government regulations. The Customer shall indemnify ITP against third-party claims based on non-compliance with such regulations.

Article 40 Environment requirements

The Customer shall ensure an environment which meets the requirements for the Hardware Products as specified by the supplier, for example, concerning temperature, humidity, technical environment requirements.

Article 41 Selection of Hardware Products

The Customer shall solely be responsible for the selection of the particular Hardware Products chased. ITP does not warrant that the Hardware Products are suitable or appropriate for the use intended by the Customer.

Article 42 Warranty

- 42.1 With respect to the Hardware Products, ITP shall only be obliged to provide the warranty which the supplier of these products provides to ITP.
- 42.2 Within the limits mentioned in article 42.1, ITP shall, during a period of 3 (three) months after delivery (the warranty period), to the best of its ability remedy any reproducible defects in the Hardware Products free of charge, provided such defects are, with a detailed description, reported to

ITP without delay. If, in ITP's reasonable judgment, repair is not possible or reasonably feasible, ITP shall be entitled to replace the Hardware Product(s) free of charge with other, similar, but not necessarily identical, Hardware Products. All parts which are replaced shall become ITP's property.

- 42.3 Warranty shall not include data conversion which is necessary as a result of repairs or replacement.
- 42.4 Any work, falling outside the scope of this warranty, will be charged to the Customer at ITP's then prevailing rates.

Part 2 Maintenance of Hardware Products:

Article 43 Separate agreement

If the Customer wishes that after expiry of the above warranty period, defects in the Hardware Products are remedied, the Parties may conclude a separate agreement for this purpose. In the prevailing case, the provisions of chapter I of this document and the further provisions of article 44 up to and including 48 shall form an integral part of such agreement.

Article 44 Maintenance, additional products, repair at ITP's repair centre

- 44.1 Under the agreement, during ITP's Service-Hours, ITP shall provide maintenance to Customer, aiming at a proper functioning of the Hardware Products. Condition for remedying any defects in the Hardware Products is that such defects are reproducible and any notification of a defect is done by knowledgeable personnel of Customer.
- 44.2 All Hardware Products, subject to maintenance, will be specified in an exhibit to the agreement. In case the agreement is to be extended with other hardware products, ITP may require that such hardware products are first inspected and overhauled in order to bring them at the appropriate maintenance level. All costs related to such inspection and/or overhaul will be charged to Customer at ITP's then prevailing rates. After completion of inspection and/or overhaul, such products will be added to the specification of Hardware Products.
- 44.3 In case the remedy of a defect will take considerable time, ITP may decide that such remedy shall take place at ITP's repair centre. Provided such is feasible and/or desirable in the prevailing case, as solely decided by ITP, a replacement product(s) will be made available to Customer.

Article 45 Obligations of Customer

- 45.1 Customer shall arrange for the technical, spatial and telecommunications facilities which are necessary to allow the Hardware Products to operate. Maintenance explicitly does not include the aforementioned facilities.
- 45.2 Before the Hardware Products are made available to ITP for maintenance, the Customer shall ensure that a proper and complete back-up copy has been made of all software and data recorded in the Hardware Products.
- 45.3 During previously agreed times, Customer shall grant service personnel of ITP free access to the Hardware Products without any restrictions such as, but not limited to, exclusion of liabilities. Customer shall indemnify ITP against claims by third parties, including ITP's employees, who, in

- executing the agreement, suffer injury which is the result of acts or omissions by the Customer or of unsafe situations in its organisation.
- 45.4 Customer shall provide service personnel of ITP with all relevant and necessary documentation and sufficient supplies, required for the proper maintenance of the Hardware Products free of charge.
- 45.5 Customer shall arrange that during maintenance at Customer's site, always one knowledgeable person shall be present.

Article 46 Exclusions

- 46.1 Work to examine or remedy any defects which arise from improper use of the Hardware Products or external causes, such as defects in communication lines or power supply, or connections with and/or use of equipment, software or materials not covered by maintenance, shall not be part of the ITP's maintenance obligations and shall be charged to Customer separately at ITP's then prevailing rates. The fees do not include:
- replacement of consumables such as storage media, cartridges, printer ribbons etc.;
 - replacement of parts and the remedy of defects caused in whole or in part by repair(attempts) made by others besides than ITP;
 - entire or partial overhaul of the Hardware Products;
 - modifications to the Hardware Products;
 - relocation or reinstallation of the Hardware Products or any work resulting there from;
 - the remedy of defects, caused by the connection of equipment and/or systems, not supplied by ITP or the installation of software, not provided by ITP, to/on the Hardware Products.
- 46.2 If defects occur frequently as a result of aging of the particular Hardware Product(s), ITP shall be entitled to exclude such Hardware Product(s) from further maintenance.

Article 47 Testing

- 47.5 If, in ITP's judgment, maintenance requires that the Hardware Products' connections be tested with other systems or equipment, Customer shall make these other systems or equipment available to ITP, including any relevant test procedures and data carriers.
- 47.6 Test material necessary for maintenance which is not part of ITP's normal equipment, shall be made available by Customer.

Article 48 Fees

- 48.1 Maintenance fees are specified in the agreement and will be charged to Customer and are due on an annual basis before the beginning of the initial or any renewal period to which such fees apply.
- 48.2 During the initial term of the agreement, the fee will not be changed. Thereafter, on each renewal date the fee will be indexed as legally permitted.

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