

# GENERAL CONDITIONS OF SALE OF HORTIMAX B.V.

These General Conditions have been filed at the Chamber of Commerce (27217164).

## **TABLE OF CONTENTS**

<b>A.</b>	<b>GENERAL PROVISIONS .....</b>	<b>2</b>
A.1	Definitions .....	2
A.2	Applicability .....	3
A.3	Scope of the Sections in the General Conditions .....	3
A.4	The Buyer's Obligations to the Supplier Concerning the End User .....	3
A.5	Offer, Order and Conclusion of the Agreement .....	3
A.6	Prices and Rates .....	4
A.7	Invoicing and Payment .....	4
A.8	Delivery and Delivery Periods .....	5
A.9	Force majeure .....	5
A.10	Return and Complaints .....	5
A.11	Retention of Title and Rights, Specification and Right of Retention .....	6
A.12	Intellectual and Industrial Property Rights .....	6
A.13	Warranty .....	7
A.14	Supplier's Liability and Indemnity .....	8
A.15	Cancellation .....	8
A.16	Termination of the Agreement .....	9
A.17	Applicable Law and Disputes .....	9
<b>B.</b>	<b>Software .....</b>	<b>10</b>
B.1	Applicability .....	10
B.2	Software .....	10
B.3	Delivery, Installation and Acceptance .....	10
B.4	Right to Use the Software .....	11
B.5	Warranty .....	11
B.6	Third-Party Software .....	11
<b>C.</b>	<b>SALE OF EQUIPMENT .....</b>	<b>12</b>
C.1	Applicability .....	12
C.2	Selection of Equipment, Delivery and Risk .....	12
C.3	Environmental Requirements and Installation .....	12
C.4.	Warranty .....	12
C.5	The Equipment of the Supplier's Supplier .....	13
<b>D.</b>	<b>SERVICES .....</b>	<b>14</b>
D.1	Applicability .....	14
D.2	Service .....	14
D.3	Helpdesk Services .....	14
D.4	Training .....	14
D.5	Maintenance of Equipment and Software .....	14
	Licences and Equipment or Peripheral Equipment .....	15
	Maintenance .....	15
	Obligations of the Supplier .....	15
	Revisions and New Versions .....	16
	Obligations of the Buyer .....	16
	Rates and Payment .....	17
	Termination and Period of Notice .....	18
D.6	Completion .....	18
D.7	Repair of Damage .....	18
<b>E.</b>	<b>INSTALLATION AND ASSEMBLY OF EQUIPMENT .....</b>	<b>19</b>
E.1	Applicability .....	19
E.2	Supplement to Provisions under C.3 .....	19
E.3	Completion .....	19
E.4	Extent and Performance of Work .....	19
E.5	Repair of Damage .....	19

## **A. GENERAL PROVISIONS**

### **A.1 Definitions**

Supplier:	The private company with limited liability HortiMaX BV, registered in Pijnacker, offices at Honderdland 131 (2676 LT) in Maasdijk, the Netherlands.
Customer:	The party referred to in the Agreement with whom the Supplier concludes an agreement for performing work and/or services and/or deliveries.
Equipment:	Any computer equipment, peripheral equipment and systems produced or sold by the Supplier.
Contact person:	The employees of the Supplier or those of the Buyer who are experts on the matter in question.
Services:	All engineering, consultancy, service or design work to be performed by the Supplier under the Agreement.
End user:	The party, whether referred to in the Agreement or not, to whom the Buyer supplies its goods or products or for whom the Buyer performs work or services. For the purposes of these General Conditions, the End User is sometimes also referred to as a 'third party' or 'third parties'.
Licence:	The right to use the software in accordance with the Supplier's licence conditions.
Agreement:	The Agreement concluded between the Buyer and the Supplier with regard to the work and/or services to be performed and/or the goods to be supplied.
Software:	The Supplier's application and process software. This expressly does not include the software used to operate the system, or any modifications or improvements to such software.
Revision:	An improved version of the software which is not a New Version.
Server:	The server or servers on which the software is installed, as well as the server or servers on which the data is stored and is processed by the Supplier software.
Service:	The elimination of faults which have arisen during normal use of the equipment according to its purpose, as a result of natural wear and tear and generally as a result of inherent defects in the equipment.
Service hours:	The period from 8.30 to 17.00 hours Dutch time - with the exception of Saturdays, Sundays and public holidays – during which the Buyer may request support.
Specifications:	The Buyer's wishes, requirements and objectives concerning the equipment and/or software to be installed on which the Supplier's offer is based.
Fault:	The permanent or temporary failure of the equipment and/or software to meet the specifications set out by the Supplier in writing. A fault only applies if it can be demonstrated by the Buyer and reproduced by the Supplier.
Performance:	All activities, including the supply of goods, which the Supplier needs to perform in order to complete the work which may or may not be based on the Supplier's own design.

New version: A new software version which replaces the previous version of the existing software concerned and which may require modifications to the equipment/peripheral equipment or software/operating software.

Working day: Monday to Friday inclusive, with the exception of public holidays.

Work: All occurring activities, consisting of services, performance work and maintenance work.

## **A.2 Applicability**

A.2.1 Unless expressly stated otherwise, these General Conditions apply to all quotations, tenders and offers made by the Supplier, as well as all of the agreements and/or legal relationships between the Supplier and the Buyer. These Conditions replace all previous verbal and/or written notifications, proposals, guarantees and promises and all other previous purchase conditions of the Buyer. Other general conditions than these General Conditions are expressly rejected and are not applicable.

A.2.2 Additional and/or deviating conditions (including but not limited to purchase conditions) of the Buyer are not part of the Agreement between the Supplier and the Buyer and will therefore not bind the Supplier, unless the Supplier expressly accepts these conditions in writing.

A.2.3 Should these General Conditions conflict with those of the Buyer, these General Conditions will prevail, unless the Supplier confirms to the Buyer in writing that its Conditions will prevail.

A.2.4 Should these General Conditions be altered, the altered version will be part of any agreement concluded between the Supplier and the Buyer after the alteration comes into force.

A.2.5 Conditions and/or provisions of the Agreement will supersede those of these General Conditions in so far as the former conflicts with the latter.

A.2.6 If any provision of these General Conditions is null and void or declared void, the other provisions of these General Conditions will remain fully in effect and the Supplier and Buyer will consult with each other to agree new provisions to replace the void or voided ones. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible.

A.2.7 In so far as these conditions have been drawn up in a language other than Dutch, the Dutch text will always be decisive.

A.2.8 All orders will only be accepted and carried out by the Supplier notwithstanding Section 404 of Book 7 of the Dutch Civil Code and Section 407, subsection 2, of Book 7 of the Dutch Civil Code. This will also apply if it is the intent or implied intent that an order is to be carried out by a specific person.

## **A.3 Scope of the Sections in the General Conditions**

A.3.1 Sections A, B, C, D and E in these General Conditions form integral parts of each other and are fully applicable.

## **A.4 The Buyer's Obligations to the Supplier Concerning the End User**

A.4.1 The Buyer shall indemnify the Supplier fully and unconditionally against all claims, damage, costs and suchlike by third parties, including the end user. In any case, the Buyer shall fully compensate the Supplier in this respect.

A.4.2 The Buyer undertakes in respect of the Supplier to make these General Conditions apply fully, unconditionally and irrevocably to the end user, under penalty of full compensation to the Supplier.

## **A.5 Offer, Order and Conclusion of the Agreement**

A.5.1 All offers made by the Supplier are without obligation, unless expressly stated otherwise. Offers are based on the information provided by the Buyer. Should this information prove to be incorrect, the Supplier will be entitled to alter or withdraw its offer. The Buyer is unconditionally liable for damage caused by errors or shortcomings in the drawings, calculations, constructions, plans and implementation regulations or any other specifications which form the basis of the work to be performed.

A.5.2 The documents which make up the offer (such as the drawings, technical specifications, etc.) are as accurate as possible, but are not binding and will remain the property or intellectual property of the Supplier. The documents in question may not be used, copied, publicised or made available to third parties.

- A.5.3 Offers made by the Supplier are valid for three weeks from the date specified in the offer, unless stated otherwise. If an offer is not accepted within this period in writing, the offer becomes null and void, except if the Supplier extends the validity of the offer in writing.
- A.5.4 The Supplier is entitled to charge the costs of drawing up the offer to the Buyer, provided the Buyer was notified of this in advance.
- A.5.5 An offer made under a time limit may be withdrawn, also if the offer is not without obligation.
- A.5.6 An agreement is valid as soon as the Supplier's offer is fully accepted by the Buyer.
- A.5.7 Should a situation as described under A.5.1 occur, the Parties shall make an effort to supplement this agreement exclusively with regard to the shortcoming on the part of the Buyer, as formulated under A.5.1. In the event of such a situation, the Supplier will have the exclusive right to terminate the Agreement.
- A. 5.8 If payment by means of a letter of credit is agreed, the agreement will only be concluded after the Supplier's written acceptance of the irrevocable (confirmed) letter of credit.

## **A.6 Prices and Rates**

- A.6.1 The sale, supply and provision of goods, or the performance of work and/or services will occur at the prices and rates charged by the Supplier at the time that the Agreement was concluded.
- A.6.2 Unless expressly agreed otherwise with the Buyer in writing, all prices and rates charged by the Supplier are exclusive of BTW (Dutch VAT) or any other levies or rights imposed by the government and are also exclusive of administration, installation, assembly, packaging, transport, shipping or travel costs.
- A.6.3 The Supplier reserves the right to alter the prices and rates at any time. Unless agreed otherwise, new prices and rates will take effect from the moment that they are introduced.
- A.6.4 The Supplier will only notify the Buyer of a price or rate increase if the increase is a significant one and in so far as it is reasonably possible. If the Buyer does not agree to the price or rate increase, the Buyer will be entitled to terminate the Agreement by means of a written extrajudicial notification to be sent to the Supplier. If the Supplier receives no notification of termination within seven days after the Buyer received, or may reasonably be supposed to have received, the notification of the price or rate increase, the Buyer will be deemed to have agreed to the price or rate increase, which will mean that any appeal to dissolve the Agreement cannot be made without the right to compensation.
- A.6.5 The prices stated in the offer and agreement will be in euros and based on 'Free Carrier', Maasdijk, the Netherlands (FCA, Incoterms 2010). Prices for selected customers in the Benelux countries will be based on 'Delivered at Place', an agreed place of destination (DAP, Incoterms 2010).

## **A.7 Invoicing and Payment**

- A.7.1 The Supplier shall send an invoice within fourteen days after supplying equipment or software, or commencing the work or services to be performed, unless expressly agreed otherwise with the Buyer.
- A.7.2 The Buyer shall pay the amount stated on any invoice sent by the Supplier within thirty days after the date of invoice into the bank or giro account specified by the Supplier, unless expressly agreed otherwise in writing.
- A.7.3 Payments made by the Buyer will be deemed to have been made on account of any outstanding costs or interest first, then on account of the oldest unpaid and overdue invoices, even if the Buyer specifies that the payment has been made on account of a more recent invoice.
- A.7.4 The Buyer will not have the right to suspend, reduce and/or set off his payment or payment obligations against any obligation owed by the Supplier to the Buyer, for whatever reason, except if the Buyer has obtained the Supplier's express written permission to do so.
- A.7.5 The Supplier will be entitled to request advance payment, cash payment or guarantee of payment from the Buyer at any time.
- A.7.6 The term for payment of invoices as stated in A.7.2 is a deadline. In case of overdue payment, the Buyer will be in default and the Supplier will be entitled to charge the statutory interest, without notice of default being required.
- A.7.7 If the Buyer fails to pay in time or at all, the Buyer will owe the Supplier, in addition to the interest referred to in article A.7.6, administrative and payment collection expenses or extrajudicial costs, as stated by the Supplier, without prejudice to the Supplier's right to charge the Buyer for the costs or other costs actually incurred, including any extrajudicial costs, should these exceed the amount calculated.

- A.7.8 If the Buyer fails to pay in time or at all, or fails to properly perform any of its obligations, the Supplier will be entitled to terminate the Agreement out of court and cease further supply of equipment and/or software or further performance of work or services, without prejudice to the Supplier's right to claim damages from the Buyer as a result of terminating the Agreement.

## **A.8 Delivery and Delivery Periods**

- A.8.1 All delivery periods stated or agreed by the Supplier are determined to the best of its knowledge based on the information known to the Supplier at the time that the Agreement was concluded. The Supplier shall make a proper effort to observe the agreed delivery periods.
- A.8.2 All delivery periods stated by the Supplier are targets, not deadlines.
- A.8.3 The Supplier will be entitled to suspend the performance of its obligations to the Buyer, so long as the Buyer has not fulfilled all of its obligations, including payment obligations, in respect of any existing legal relationship with the Supplier. This suspension is valid until the moment when the Buyer has fulfilled all of its obligations to the Supplier.
- A.8.4 The Supplier will not be bound by any delivery deadlines which cannot be met due to circumstances beyond its control which emerged after concluding the Agreement. Neither will the Supplier be bound by any delivery deadlines, if the Parties have agreed to alter the content or size of the Agreement (e.g. additional work, change in specifications, etc.).
- A.8.5 Unless otherwise agreed in writing, delivery will take place based on 'Free Carrier', Maasdijk, the Netherlands (FCA, Incoterms 2010). Deliveries to selected customers in the Benelux countries will take place based on 'Delivered at Place', an agreed place of destination (DAP, Incoterms 2010).
- A.8.6 Any delay or additional time required by the Supplier in performing its duties, repair work, work carried out under guarantee, or in fulfilling a delivery, which is not attributable to the Supplier, (but which has been caused through the actions of the Buyer, end user, third party or parties, or unworkable weather conditions) will entitle the Supplier to the required extension of its repair, guarantee or delivery period and will entitle the Supplier to compensation by the Buyer for any damage and costs or additional costs due to the aforesaid delay or additional time required, as stated by the Supplier.
- A.8.7 The Supplier reserves the right to deliver the goods in parts, in which case the above and following (payment) conditions will also apply to each partial delivery.

## **A.9 Force majeure**

- A.9.1 'Force majeure' is understood to mean any shortcomings in the performance of the Agreement which cannot be attributed to the Supplier or the Buyer, because the Supplier or the Buyer cannot be blamed for them, or because the Supplier or the Buyer cannot be held accountable for them in the pursuance of any law, juristic act or generally accepted practice. 'Force majeure' is also understood to mean any events of force majeure on the part of the Supplier's suppliers, improper performance by the Supplier's suppliers of obligations prescribed by the Buyer to the Supplier, as well as defects in objects, materials and third-party software which the Buyer required the Supplier to use.
- A.9.2 In the event of temporary force majeure, including a situation where an item / product ordered by the Buyer is temporarily out of stock, the Supplier will be entitled to extend the intended delivery period with the length of time for which the temporary force majeure lasts.
- A.9.3 In the event of permanent force majeure, including a situation outside the control of either the Supplier or the Buyer, which prevents the supply of goods or products, or the performance of works and/or services, including a situation where a purchased item is sold out, the Supplier or the Buyer will be entitled to terminate the Agreement out of court. In the event of force majeure, the Buyer will not be entitled to claim compensation from the Supplier for any damage or costs which the Buyer has incurred.

## **A.10 Return and Complaints**

- A.10.1 Unless the Parties have agreed otherwise, the Buyer must notify the Supplier in writing of any complaints concerning the goods or products, or work and/or services within ten days after delivery of the goods or products, or commencement of the work and/services, accompanied by a specification of the complaint or complaints. In the absence of such a notification any and all claims against the Supplier concerning shortcomings in the goods or products supplied, or work and or services performed will be null and void.



- A.10.2 Unless the Parties have agreed otherwise, the Buyer's right to return any goods or products to the Supplier is limited to cases in which the Buyer has received either damaged goods or products and/or goods or products other than those on the order placed by the Buyer.
- A.10.3 Any goods returned must be packed properly and accompanied by the original delivery document and/or the original address label and a written specification of the reason for the return, unless the Parties have expressly agreed otherwise. After receipt of the goods or products returned, the Supplier shall supply or provide the undamaged goods and/or products or the correct goods and/or products ordered by the Buyer as soon as possible, provided the Supplier deems the reason for the return to be valid.

#### **A.11 Retention of Title and Rights, Specification and Right of Retention**

- A.11.1 The Supplier will remain owner of all objects supplied to the Buyer until the Buyer has fulfilled all of its payment obligations to the Supplier for supplying or providing objects or products and/or performing work and/or services under the agreements, including but not limited to payment of any claims as a result of breaching such agreements.
- A.11.2 In the event of retention of title and repossession by the Supplier, the Buyer undertakes to unconditionally grant the Supplier (or a third party appointed by the latter) access to the relevant place or property, whereby the Supplier is excluded from liability for any damage or costs incurred by the Buyer or a third party arising from or related to such actions and are, therefore, at the expense and risk of the Buyer.
- A.11.3 For so long as ownership has not passed to the Buyer, it may not have possession of the objects or materials by means of, including but not limited to the pledging of the objects or materials or the granting of rights to a third party in respect of the objects or materials.
- A.11.4 The Buyer undertakes to establish a non-possessory pledge, now or at the Supplier's first request, on all objects referred to in A.11.1, by signing these conditions and registering these conditions with the tax authorities, or providing the Supplier with another form of guarantee, in so far as the Supplier's retention of title on these objects may prove to have been lost at any time.
- A.11.5 If the Buyer creates a new object wholly or in part from the objects delivered by the Supplier, the Buyer will create that object solely for the Supplier and the Buyer will hold the newly created object for the Supplier until the Buyer has paid all amounts owed under the Agreement; in such an event, the Supplier will possess all rights as the owner of the newly created object until the time that the Buyer has effected payment in full.
- A.11.6 As the occasion arises, rights will always be granted or transferred to the Buyer on the condition that the Buyer pays the agreed charges in full and in time.
- A.11.7 The expense and risk of the goods or products supplied or provided by the Supplier will pass to the Buyer from the moment of actual delivery.
- A.11.8 The Supplier is entitled to retain objects of the Buyer and suspend delivery until the Buyer has fulfilled all of its obligations towards the Supplier, including payment of expenses related to this right of retention of the Supplier.

#### **A.12 Intellectual and Industrial Property Rights**

- A.12.1 All intellectual and industrial property rights to software, web sites, databases, equipment or other materials developed or provided under the Agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that respect, will be held solely by the Supplier, its licensors or its suppliers. The Buyer will only acquire the rights of use expressly granted under these Conditions and by law. Any other or more extensive rights of the Buyer to reproduce software, web sites, databases or other materials will be excluded. A right of use to which the Buyer is entitled will be non-exclusive and non-transferable to third parties.
- A.12.2 In accordance with the provisions of paragraph 1, the customer is not permitted to copy or use data referred to in paragraph 1, or show or transfer such data to third parties, without the express prior written consent of the Supplier. The Buyer will owe a penalty of € 250,000 (in words: two hundred and fifty thousand euros), as well as a penalty of € 5,000 per day that the breach continues, to the Supplier for each breach of these provisions. This penalty may be claimed in addition to compensation under the law.
- A.12.3 The Buyer shall return the data referred to in paragraph 1 provided to it at first request within the period specified by the Supplier. In the event of a breach of this provision, the Buyer will owe a penalty of € 5,000 per day to the Supplier as long as the breach continues. This penalty may be claimed in addition to compensation under the law.

- A.12.4 The Buyer is not allowed to remove or alter any notice or mark indicating confidentiality or copyright, trademarks, business names or other intellectual or industrial property rights from the software, web sites, databases, equipment or materials.
- A.12.5 The Supplier is allowed to take technical measures to protect the software or in respect of the restrictions agreed during the right of use of the software. The Buyer is not allowed to remove or evade such technical measures. If security measures result in the Buyer being unable to make a back-up copy of the program, the Supplier shall provide the Buyer with a back-up copy upon request.
- A.12.6 Unless the Supplier provides a back-up copy of the software to the Buyer, the Buyer may make one back-up copy of the software, which may only be used for the purposes of protecting against damage or involuntary loss of possession. The back-up copy may only be installed following damage or involuntary loss of possession. A back-up copy must have the same labels and copyright notices or marks, as are present on the original version.
- A.12.7 The Supplier shall indemnify the Buyer against any third-party cause of action based on the claim that software, web sites, databases, equipment or other materials developed by the Supplier itself infringe an intellectual or industrial property right applicable in The Netherlands, on the condition that the Buyer immediately informs the Supplier in writing about the existence and substance of the cause of action and allow the Supplier to handle the matter completely, including the arrangement of any settlements. To that end, the Buyer shall provide the necessary powers of attorney, information and co-operation to the Supplier to defend - if necessary, in the Buyer's name - against these causes of action. This indemnification obligation will be extinguished if the alleged infringement relates (i) to materials provided by the Buyer to the Supplier for use, adaptation, processing or incorporation, or (ii) to changes the Buyer has made or caused third parties to make to the software, web site, databases, equipment or other materials. If it has been established in court as an incontrovertible fact that the software, web sites, databases, equipment or other materials developed by the Supplier itself infringe any intellectual or industrial property right held by a third party or if, in the Supplier's judgement, it is likely that such infringement will occur, the Supplier shall, if possible, ensure that the Buyer can continue to have undisturbed use of the delivered objects, or functionally equivalent other software, web sites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the Buyer. If, in its exclusive judgement, the Supplier cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the Buyer can continue to have undisturbed use of the delivered objects, the Supplier shall take back the delivered objects, with crediting of the acquisition costs minus a reasonable user's fee. The Supplier shall not make its choice in this regard until after the Buyer has been consulted. Any other or more extensive liability or indemnification obligation on the Supplier's part owing to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on the Supplier's part for infringements caused by using the software, web sites, databases, equipment and/or materials delivered (i) in any form not altered by the Supplier, (ii) in connection with objects or software not delivered or furnished by the Supplier or (iii) in another manner besides that for which the equipment, software, web sites, databases and/or other materials were developed or intended.
- A.12.8 The Buyer warrants that there are no third-party rights which are inconsistent with providing the Supplier with equipment, software, materials intended for web sites (visual material, text, music, domain names, logos etc.), databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation (for example, in a web site). The Buyer shall indemnify the Supplier against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes any third-party right.

### **A.13 Warranty**

- A.13.1 The Supplier shall provide a warranty against material and manufacturing defects for a period of twelve months after delivery.
- A.13.2 After repair or replacement, the original warranty term will continue; no new warranty period will commence unless otherwise agreed in writing.
- A.13.3 The Buyer may only make a claim under the warranty after all its obligations towards the Supplier have been fulfilled.
- A.13.4 A claim under the warranty must be made in writing or by e-mail as soon as possible after the defect or error is discovered, providing a description of the defect or error and all that has occurred after discovery of the defect or error.

- A.13.5 The Supplier shall charge its usual rates for work and repairs outside the scope of this warranty.
- A.13.6 The Supplier is not obliged to remedy any defects which are reported after the expiry of the warranty period referred to in Article A.13.1.
- A.13.7 In addition to paragraphs 1 to 6 of this article, articles B.5 and C.4 will apply in so far as they are applicable.

#### **A.14 Supplier's Liability and Indemnity**

- A.14.1 The Supplier's liability is limited to demonstrable intention or gross negligence on the part of the Supplier and is limited to direct damage by the Supplier.
- A.14.2 If the Supplier's liability under this article must be accepted, this liability will be limited to the amount of the insured sum which, in the case in question, is paid under the insurance policy taken out by the Supplier (reduced by the excess amount). Notwithstanding the foregoing, the compensation for each occurrence resulting in damage will not exceed the price stipulated for the goods or services (excluding turnover tax), whereby a series of related occurrences will count as one occurrence. If the Agreement is primarily a continuing performance agreement with a term of more than one year, the aforesaid amount will be set at the total charges (excluding BTW) stipulated for one year. The total compensation for direct damage will in no case, however, exceed €250,000 (two hundred and fifty thousand euros).
- A.14.3 Any liability of the Supplier towards a third party (including an end user) and/or for consequential damage or loss on the part of the Buyer (including but not limited to nonmaterial damage, consequential damage, trading loss, crop damage, loss of profits/turnover) will be excluded.
- A.14.4 In order to prevent, or limit as much as possible, damage resulting from defects in the equipment and/or software or their set-up, the Buyer shall take sufficient preventive measures, including, but not limited to, an operational warning system / alarm and mechanical protection against conditions which could cause damage, including changes in the consumption of gas, petrol, electricity, water and CO<sub>2</sub>, or changes in temperature, light intensity, irrigation, water acidity, fertiliser concentrations in the water and suchlike. The Buyer shall do its utmost to check and continue its operational processes at all times. The Buyer shall do this in order to prevent damage of any nature.
- A.14.5 The presence of a defect in respect of the goods or products supplied or provided or work and/or services performed will in no case entitle the Buyer to suspend, reduce or set off its payment obligations.
- A.14.6 The Supplier will, furthermore, not be liable for damage or loss suffered by the Buyer and/or third parties of any nature or through any cause resulting from the disregard of advice or improper or incompetent use of the goods and products delivered or provided or work and/or services performed. The Supplier will be released of all liability with respect to any advice given by the Supplier which is not expressly bound by a written agreement directed at the Buyer at the time the advice was given, except in cases of intention or gross negligence on the part of the Supplier.
- A.14.7 The Supplier will in no case be liable for damage or loss which is the result of work (including installation, expansion, removal and service activities, and suchlike), omission or advice by the Buyer or third parties engaged by the Buyer and/or for the quality of materials used or processed by the Buyer or the use of materials or tools provided by the Buyer to the Supplier.
- A.14.8 The Buyer shall indemnify the Supplier and the persons or auxiliary persons engaged by the latter in the performance of its obligations against all claims by third parties (and/or the Buyer) in respect of damage or loss suffered by these third parties arising from or related to the performance of the Agreement by the Supplier, the Buyer's use of objects provided by the Supplier, completed projects or services rendered (including service), unless there is demonstrable intent or gross negligence on the part of the Supplier.

#### **A.15 Cancellation**

- A.15.1 Notice of cancellation by the Buyer of the order(s) placed by the Buyer, including supplies, whether or not based on call-off contracts, forward orders, annual contracts and suchlike, must be made in writing and may only take place with the Supplier's consent. If the Supplier agrees to cancellation, the Buyer will be obliged to pay compensation to the Supplier of at least 25% of the amount that the Buyer would have had to pay the Supplier if the order had been carried out. If cancellation is refused, the Buyer will be bound by a purchase obligation.



- A.15.2 The Supplier will be entitled to cancel the order if, at the time of delivery, the Buyer has failed to comply with its earlier payment obligations towards the Supplier or towards other creditors. The Buyer may not derive any rights from cancellations and the Supplier may never be held liable for cancellations.

#### **A.16 Termination of the Agreement**

- A.16.1 The Supplier will be entitled to dissolve the Agreement with the Buyer with immediate effect, without prior notice of default or owing the Buyer compensation, by written notice, if:
- a) The Buyer fails imputably to fulfil any of its obligations, despite proper notice of default.
  - b) The Buyer is granted a provisional or non-provisional suspension of payments, the Buyer is declared insolvent, the Buyer applies for a suspension of payments or files a winding-up petition, the Buyer submits a request for a debt rescheduling arrangement or the Buyer is placed into administration or receivership.
  - c) Attachment is levied upon the Buyer's assets.
  - d) The Buyer ceases or winds up its business operations, wholly or in part, and/or extensively changes its business activities or transfers its business activities to a third party, without prior written permission from the Supplier.
- A.16.2 In the event that the Agreement is terminated, all amounts owed by the Buyer to the Supplier will become immediately payable in full.
- A.16.3 The Supplier will in no case be liable to pay any compensation or other amounts on account of the aforementioned termination of the agreement, without prejudice to the Supplier's right to full compensation because of the Buyer's failure to perform its obligations under this Agreement and without prejudice to any other applicable rights to which the Supplier is entitled.

#### **A.17 Applicable Law and Disputes**

- A.17.1 Dutch law will exclusively govern any Agreement concluded by the Supplier with the Buyer, excluding The Vienna Convention on the International Sale of Goods of 11 April 1980.
- A.17.2 All disputes arising from or in connection with an Agreement concluded with the Buyer by the Supplier will only be submitted to the competent court in the district of Supplier's place of domicile, without prejudice to the Supplier's right to submit the dispute to a different competent court if so desired. The foregoing will not affect the Supplier's right to obtain a decision through arbitration by the International Chamber of Commerce, by one arbitrator. The place of arbitration will be Amsterdam, the Netherlands. The arbitration will be conducted in Dutch or English.

## **B. SOFTWARE**

### **B.1 Applicability**

B.1.1 In addition to the general provisions (Section A) and the provisions set out in Sections C, D and E of these General Conditions, the provisions in this Section (Section B) will apply if the Supplier is instructed to supply computer software. The rights and obligations referred to in this chapter will only pertain to computer software which can be read by a data-processing machine and recorded on material which can be read by such a machine, as well as the accompanying documentation.

### **B.2 Software**

B.2.1 The Supplier and the Buyer shall specify in writing what software is to be supplied and the manner in which this will occur. If bespoke software needs to be supplied, the Supplier shall develop the software with due care based on the data provided by the Buyer. The Buyer shall ensure that the said data is correct, complete and consistent. If the Buyer is not the end user, but an intermediary supplier or dealer, the latter shall ensure that these data are correct, complete and consistent.

B.2.2 The Buyer shall always timely provide the Supplier with any data or information that is useful or necessary for the proper execution of the Agreement and render the Supplier with every assistance. If the Buyer fails to perform this duty, the Supplier will be entitled to suspend the execution of the Agreement and charge the Buyer for the costs incurred.

B.2.3 The Buyer shall keep secret all information which it acquires within the scope of the Agreement and which is of a confidential nature, including in any case information about the operation of the Supplier's software and the ideas and theories on which the software is based. The Buyer shall impose the same obligation of secrecy on its employees in writing. This obligation will apply during the term of this Agreement and for a period of five years after the termination of the Agreement. The Buyer undertakes that it will agree with its employees to observe the obligation of secrecy for a period of five years after the termination of their employment contracts, under penalty of a fine to be determined in all reasonableness by the Supplier.

B.2.4 Unless expressly agreed otherwise, the prices and rates charged by the Supplier are exclusive of BTW and exclusive of shipping costs and administration costs.

### **B.3 Delivery, Installation and Acceptance**

B.3.1 The Supplier shall install and activate the software to be developed for the Buyer in accordance with the written specifications. The Supplier shall, however, only perform the installation, if it has agreed to do so in writing.

B.3.2 If it has been agreed in writing that an acceptance test will be performed, the testing period will take fourteen days from the time of delivery or, if it has been agreed in writing that the Supplier will perform the installation, from the time that the installation is complete. During the testing period, the Buyer will not be allowed to use the software for productive or operational purposes, unless the Supplier has granted permission to do so under conditions yet to be decided. The Supplier accepts no liability whatsoever for the consequences of the non-operation or inadequate operation of the software during the testing period.

B.3.3 The software will be considered to have been accepted between the Supplier and the Buyer, if

- both Parties have not agreed to an acceptance test: either upon delivery or, if it is agreed upon in writing that the installation will be performed by the Supplier, upon completion of the installation, or
- both Parties have agreed to an acceptance test: on the first day following the testing period, or
- the Supplier receives a test report as referred to in Article B.3.5 before the end of the testing period: at the time that the defects in the test report have been remedied, notwithstanding the presence of defects which do not impede acceptance according to Article B.3.6. In derogation of the above, if the Buyer makes any of use of the software for productive or operational purposes before the moment of acceptance, the software will be considered fully accepted as from the start of that use.

B.3.4 If, when the acceptance test is performed, it turns out that the software contains defects impeding the progress of the acceptance test, the Buyer shall provide the Supplier with a written, detailed notification of these defects, in which case the testing period will be interrupted until the software has been modified so this impediment has been removed. For the purposes of Section B in these General Conditions, the term 'defect' is understood to mean: failure by the software to meet the operational specifications stated by the Supplier in writing and, if it

concerns the development of bespoke software, failure by the software to meet the operational specifications expressly agreed between the Parties. The term 'defect' will only apply if it can be demonstrated and reproduced.

- B.3.5 If, when the acceptance test is performed, it turns out that the software contains defects as defined in Article B.3.4, the Buyer shall inform the Supplier of these defects by means of a written and detailed test report no later than the final day of the testing period. The Supplier shall do its utmost to remedy these defects within a reasonable period, during which the Supplier will be entitled to put in place temporary solutions, program bypasses or software restrictions to avoid the problem.
- B.3.6 Acceptance of the software may not be withheld on grounds other than those connected with the specifications expressly agreed between the Parties and, therefore, not because of minor defects, these being defects which do not reasonably impede the operational or productive putting into use of the software, without prejudice to the Supplier's obligation to correct these minor defects under the warranty provisions of Article B.5, if applicable.
- B.3.7 If the software is supplied and tested in phases or in parts, non-acceptance of a particular phase or part will not affect the acceptance of a previous phase or another part.

#### **B.4 Right to Use the Software**

- B.4.1 The right to use the software is non-transferable. The Buyer is not allowed to sell, lease, sublicense or alienate the software or data carriers on which it is recorded, or grant restricted rights to this software, or make them available to a third party in any manner or for any purpose whatsoever, not even if the third party in question will only use the software for the Buyer's benefit, without the written permission of the Supplier. The Buyer shall neither alter the software nor use the software to process data for third parties (known as 'timesharing'). The source code of the software and the technical design documentation created during the development of the software will not be made available to the Buyer, not even if the Buyer is prepared to pay the Supplier for making them available. The Buyer acknowledges the confidentiality of the source code and that it contains trade secrets of the Supplier.
- B.4.2 After the Buyer's right to use the software ends, the Buyer shall immediately return to the Supplier all copies of the software in its possession. If the Parties have agreed that the Buyer will destroy the copies concerned once the right of use ends, the Buyer shall immediately inform the Supplier of such destruction in writing.

#### **B.5 Warranty**

- B.5.1 During a period of one year after delivery, or, if the Parties have agreed to an acceptance test, one year after performing the acceptance test, the Supplier shall remedy any defects, as defined in Article B.3.4, to the best of its abilities within this period, provided these defects were reported in detail to the Supplier in writing within the said period. The Supplier does not guarantee that the software will function without interruptions or defects, or that all of the defects will be remedied. After the warranty period, the Supplier may charge its usual repair rates and fees. Both after and during the warranty period, the Supplier may charge its usual repair rates and fees in the case of wrong use or incompetent use by the Buyer, or other causes not attributable to the Supplier, or if the defects could have been identified upon delivery or during the acceptance test. The warranty does not extend to recovering corrupted or lost data. The warranty obligation will become null and void if the Buyer alters the software or has the software altered, without the Supplier's written permission.
- B.5.2 Defects will be remedied or repaired at a location to be determined by the Supplier. The Supplier will be entitled to put in place temporary solutions, program bypasses or software restrictions to avoid the problem.
- B.5.3 Once the warranty period as referred to in Article B.5.1 has expired, the Supplier will not be obliged to remedy any defects.

#### **B.6 Third-Party Software**

- B.6.1 If and in so far as the Supplier provides third-party software to the Buyer, the terms and conditions of that third party will apply to the Buyer at the Supplier's discretion, but only as a supplement to the provisions set out in these Conditions. The Buyer shall in that case accept the aforesaid terms of conditions of the third party unconditionally.

## **C. SALE OF EQUIPMENT**

### **C.1 Applicability**

C.1.1 In addition to the general provisions (Section A) and the provisions set out in Sections B, D and E of these General Conditions, the provisions in this Section (Section C) will apply if the Supplier sells equipment to the Buyer.

### **C.2 Selection of Equipment, Delivery and Risk**

C.2.1 The Buyer bears the risk of selecting the equipment purchased. The Supplier does not warrant that the equipment is suitable for the use intended by the Buyer, unless the intended uses are clearly specified without reservation in the written purchase agreement between the Parties.

C.2.2 Unless otherwise agreed in writing, delivery will take place based on 'Free Carrier', Maasdijk, the Netherlands (FCA, Incoterms 2010). Deliveries to selected customers in the Benelux countries will take place based on 'Delivered at Place', an agreed place of destination (DAP, Incoterms 2010). The Supplier shall inform the Buyer as timely as possible prior to delivery when it or the carrier used intends to deliver the equipment. The delivery times stated by the Supplier will always be indicative.

C.2.3 The Supplier shall package the equipment in accordance with the usual standards it applies. If the Buyer wishes the equipment to be packaged in a special manner, it will bear the additional costs of such packaging. The Buyer shall handle the packaging removed from the Supplier's products in a manner which is consistent with the prevailing government regulations. The Buyer shall indemnify the Supplier against third-party claims resulting from non-compliance with such regulations.

C.2.4 The Buyer must accept delivery of the goods shipped by the Supplier. Goods which are not accepted and goods, which are ready for delivery but cannot be shipped through no fault of the Supplier, will be stored by the Supplier at the Buyer's risk and expense, without prejudice to the obligation of payment or other obligations of the Buyer under the Agreement.

### **C.3 Environmental Requirements and Installation**

C.3.1 The Buyer shall ensure that the environmental conditions meet the requirements specified for the equipment by the Supplier in the case in question (for example, with regard to temperature, humidity, electricity provision, preventing external electromagnetic influences and other technical environmental requirements and suchlike).

C.3.2 If expressly agreed by the Parties in writing, the Supplier shall install the equipment or have it installed. Any requirement by the Supplier to install equipment will exclude the requirement to install software or convert data.

C.3.3. If the Supplier has undertaken to install equipment, the Buyer shall provide a suitable installation site with all necessary facilities, such as cable work and telecommunication facilities and shall follow all of the Supplier's instructions necessary for the installation.

C.3.4 In order to allow the Supplier to perform the necessary work, the Buyer shall provide the Supplier with access to the installation site during the Supplier's normal working days and hours.

C.3.5 The Buyer is obliged, at its own expense, to provide the Supplier, its employees or auxiliary persons with the opportunity to perform and fulfil their work in a safe environment in accordance with occupational health and safety legislation and regulations, including but not limited to providing the Supplier with safe tools and protective clothing or equipment. The Buyer is obliged to observe the requests and directions given by the Supplier in this regard. If so required in respect of the Buyer's business operations, the Buyer shall instruct the Supplier, its employees or auxiliary persons with regard to the risks and dangers which are latently present at the company before commencing work. The Buyer shall set out these instructions in writing. In so far as the Buyer acts in breach of this provision or fails to act at all in this respect, the Supplier will be entitled to suspend its work at the expense and risk of the Buyer and will be entitled to compensation by the Buyer.

### **C.4. Warranty**

C.4.1 The Supplier shall do its utmost to repair any faulty material or manufacturing defects in the equipment, or parts supplied in connection with the warranty or maintenance, within a reasonable period and free of charge, provided such faults have been reported, with a detailed description, to the Supplier within one year after delivery. If, in the Supplier's reasonable

judgement, repairs cannot be carried out, will take too long or will entail disproportionately high costs, the Supplier will be entitled to replace the equipment free of charge with other, similar, but not necessarily identical, equipment. The warranty will not include data conversion which is necessary as result of repairs or replacement. All parts replaced will be the property of the Supplier. The warranty obligation will be extinguished if the faulty material or manufacturing defects are wholly or partially the result of incorrect, careless or incompetent use, external causes such as fire or water damage, or if, without the Supplier's permission, the Buyer alters or causes alterations to be made to the equipment or parts supplied in connection with the warranty or maintenance.

- C.4.2 The Supplier shall charge its usual rates for work and repairs outside the scope of this warranty.
- C.4.3 The Supplier is not obliged to remedy any defects which are reported after the expiry of the warranty period referred to in Article C.4.1.

## **C.5 The Equipment of the Supplier's Supplier**

- C.5.1 If and in so far as the Supplier provides third-party equipment to the Buyer, the terms and conditions of that third party will apply at the Supplier's discretion, but only as a supplement to the provisions set out in these Conditions. The Buyer shall in that case accept the aforesaid terms of conditions of the third party unconditionally.



## **D. SERVICES**

### **D.1 Applicability**

D.1.1 In addition to the general provisions (Section A) and the provisions of Sections B, C and E in these General Conditions, the provisions in this Section, Section D, will apply to all services provided by the Supplier to the Buyer and the End User.

### **D.2 Service**

D.2.1 Service will be performed based on the rates to be specified for the equipment, labour and other costs in question, or based on a service agreement to be concluded.

D.2.2 If the Buyer submits a request for service, but no faults are found in the equipment, the Supplier will be entitled to charge the Buyer for such a visit at its usual rates and the Buyer will be obliged to pay these charges, regardless of whether a service agreement exists between the Parties.

D.2.3 The Supplier accepts no liability with regard to damage which is directly or indirectly related to service work performed.

### **D.3 Helpdesk Services**

D.3.1 'Helpdesk services' is understood to mean:

a) Advice given by phone and/or e-mail concerning the use and operation of the equipment and concerning problems and technical difficulties arising during the use of the equipment and/or software.

Support can be requested by contacting the Supplier's helpdesk during the Service Hours.

b) Establishing a computer connection between a Supplier's computer and a Buyer's computer, in order to advise the Buyer as best as possible.

c) Remediating faults with the aid of this computer connection.

D.3.2 The Supplier may at all times require the Buyer to first send a question or a description of the problem put to the Supplier by fax or e-mail, before formulating an answer or taking any other action.

D.3.3 The Supplier accepts no liability with regard to damage which is directly or indirectly related to any advice given by helpdesk employees or the computer connections between the Supplier's computer equipment and the Buyer's computer equipment.

### **D.4 Training**

D.4.1 In so far as the Supplier's services consist of providing training sessions or courses, the Supplier may demand payment of the amount due before commencing these services. Cancelling one's participation in training sessions or courses will not affect the obligation to pay.

D.4.2 If in the Supplier's opinion the number of applicants justifies doing so, the Supplier will be entitled to combine training sessions or courses with one or more other training sessions or courses, or have them take place at a later time or date.

D.4.3 The Supplier accepts no liability whatsoever with regard to damage which is directly or indirectly related to any advice given during training sessions or courses.

### **D.5 Maintenance of Equipment and Software**

D.5.1 Before a service agreement can be concluded, the Buyer must provide the Supplier with all the documents required and ensure that they are all signed and correctly and fully filled in. A service agreement with the Supplier will not be effective until and when the Supplier expressly confirms this in writing, or, as the case may be, until and when the Supplier starts performing maintenance. If the Buyer concludes an agreement with employees or intermediaries of the Supplier who are not listed in the Commercial Register as holders of power of attorney, this agreement will not bind the Supplier until expressly confirmed by an employee of the Supplier who is authorised to do so according to that employee's listing in the Commercial Register. If the Supplier has submitted quotations and/or issued order confirmations, the most recent version will apply with regard to the content of the Agreement; any inaccuracies must be reported to the Supplier within three days after shipment, after which time any claims will be null and void.

D.5.2 All service agreements are concluded under the suspensive condition that the Buyer's creditworthiness proves to be satisfactory to the Supplier at the Supplier's first request.

- D.5.3 The Buyer may not invoke its lack of power to dispose of property against the Supplier, even if such is apparent from the Commercial Register, unless the Supplier has received a timely written notification from the Buyer for that purpose.

***Licences and Equipment or Peripheral Equipment***

- D.5.4 When concluding a service agreement, the Buyer shall declare and guarantee that the equipment and software is fully in tact, in good condition and no alterations have been made by the Buyer or third parties, as well as that all the necessary licences were acquired from the Supplier and, if applicable, that the Buyer will acquire new or additional licences in time as long as the service agreement is in force.

- D.5.5 During the term of the service agreement, the Buyer may only use equipment, peripheral equipment, parts, accessories, software and/or software systems (including the level and other specifications of such systems) from other manufacturers which in any way are connected to or affect the equipment and/or software following the Supplier's written permission.

- D.5.6 During the term of the service agreement, the Buyer shall ensure that the equipment is kept in an environment which is free of dust, vibrations and moisture, has a temperature between the 15°C and 30°C and which meets all the environmental requirements, as described in the user manual. A free space of at least 200mm perpendicular to the ventilation sides of the equipment must be observed at all times.

- D.5.7 From the time that the provisions in Article D.5.5. are applicable, the Buyer will be obliged to pay an additional maintenance fee to be determined by the Supplier.

- D.5.8 The Buyer shall ensure that the equipment and other equipment or peripheral equipment meet the specifications set by the Supplier and that the server is connected via a modem to an external data communication line with sufficient band with.

***Maintenance***

- D.5.9 The Supplier shall perform maintenance to the Buyer's equipment and/or software based solely on the service agreement agreed between the Parties.

- D.5.10 If the Parties agree in writing to change the content of the service agreement, these changes will take effect from 1 January in the following year, unless the Parties have expressly agreed otherwise.

- D.5.11 Maintenance will in no case be taken to mean:

- a) Performing corrective maintenance to equipment: Eliminating faults in the equipment caused by wear and tear or inherent defects during normal use of the equipment as well as the performing necessary repairs and replacing the parts which are worn or damaged.
- b) Performing corrective maintenance to software: Eliminating faults in the software caused by inherent defects during normal use of the software.
- c) Releasing New Versions ('*upgrade*') of the software in order to increase/improve its functionality.
- d) Performing maintenance to other equipment and software, including operating software and equipment, or any changes or improvements to such software and equipment.
- e) Remedying faults caused wholly or in part by wrong use, incompetent use, improper installation, accidents, dangerous exposure (including radiation, viruses, diseases and related matters), installation of software not made by the Supplier, or other causes not attributable to the Supplier, or if the software (including its data structure), the change, maintenance and/or repair to equipment and/or related operating systems on which the software is running by Parties other than the Supplier or its authorised representatives.
- f) Recovering corrupted or lost data.
- g) Modifying equipment and/or software not required as a result of faults.
- h) Replacing consumer items, including magnetic storage media and ink ribbons.
- i) Replacing, moving or re-installing equipment and/or software and/or work resulting from these actions.
- j) Performing maintenance on media carriers, such as hard disks, floppy drives, magnetic tapes, etc.
- k) Securing or recovering stored data.

- D.5.12 If work is performed outside of or in addition to the service agreement, the Buyer will be charged the applicable rates for this additional work.

- D.5.13 The Parties shall appoint one or several Contact Persons in connection with the maintenance to be performed. Each Party shall immediately inform the other Party in writing if a contact's address and/or telephone or fax number has changed.

***Obligations of the Supplier***

- D.5.14 The Supplier shall have the maintenance performed by experts on the matter.

- D.5.15 During the term of the service agreement, the Supplier shall do its utmost to perform the maintenance, while taking into account the availability of staff, the necessary stocks, the facilities, the obligations to other Buyers and the seriousness of the problems reported.
- D.5.16 The Supplier shall ensure that its expertise in respect of the equipment and software is kept up-to-date.
- D.5.17 The Supplier shall register and record in its administration all relevant data regarding the work performed on the equipment. Upon request, the Supplier will allow the Buyer to examine the data recorded. Unless proof is given to the contrary, the data recorded in the Supplier's administration will be decisive.
- D.5.18 The Supplier does not guarantee that the equipment and/or software will operate without faults, interruptions or errors, or that all faults and errors will be remedied.
- D.5.19 The Supplier reserves the right to suspend its maintenance obligations during the time that, in the Supplier's judgement, there are circumstances at the place where the maintenance is to be performed which entail risks to the safety or health of the Supplier's employees or subcontracted employees and in the event that the Buyer fails to fulfil its payment obligations to the Supplier.
- D.5.20 The Supplier's maintenance obligation will become null and void if the equipment and/or software is used for purposes other than it is intended, is not installed in a suitable equipment or software environment or that environment is altered by the Buyer or third parties, other than the Supplier or its authorised representative, without consulting the Supplier first. The maintenance obligation will also be suspended if:
- a) The alterations are due to a virus or other harmful programs (such as a logic bomb, Trojan Horse, spyware and related matters), regardless of whom was responsible for the infiltration of the virus or harmful program.
  - b) Corrective maintenance needs to be performed. If the Supplier performs maintenance work as a result of a virus, other harmful programs or faults, the Buyer will be charged by the Supplier according to its rates applicable at that time.

**Revisions and New Versions**

- D.5.21 If the Buyer wishes to use a Revision and/or New Version, the Buyer will receive the revised documentation and manual of the Revision and/or New Version from the Supplier upon written request. The Revision and/or New Version of the Supplier or its supplier will, in that case, be made available to the Buyer in accordance with the scientific and technical knowledge of the Supplier or its supplier at that time.
- D.5.22 The Buyer shall pay a charge for the Revision or New Version in question. The costs of a Revision or New Version and having it configured and/or installed will be billed separately by the Supplier, in accordance with its rates applicable at that time. The above-mentioned costs for Revisions and having them configured and/or installed may form part of maintenance depending on the service agreement concluded.
- D.5.23 The Supplier will only perform maintenance on the latest released Version and the next-to-last version of the software. Only the latest released Revisions of these Versions will be supported. The maintenance of other Revisions and/or New Versions will end three (3) months after the release of a Revision or New Version and the Supplier will no longer be obliged to perform any maintenance with regard to the old Revisions and/or Versions in question.
- D.5.24 On the commencement or resumption of maintenance after it was ceased based on Article D.5.19 and D.5.20, or equipment and/or software is put back into use after being taken out of service, the Supplier shall inspect the equipment or software, configure and/or install Revisions and New Versions and remedy any other defects. The Supplier will charge the Buyer in full for these services based on its rates applicable at that time.

**Obligations of the Buyer**

- D.5.25 All of the Buyer's Contact Persons shall have a basic knowledge of the latest version of the software installed by the Supplier, shall have attended the Supplier's product training and shall be capable of adjusting the software settings on their own.
- D.5.26 The Buyer's Contact Persons shall act as the point of contact for the Buyer's other employees and shall be responsible for all communication with the other employees regarding the software. The Buyer's Contact Persons shall inform the Supplier when alterations have been made to the software, for instance.
- D.5.27 The Buyer's Contact Persons shall act as the first point of contact for the Buyer and its employees and shall, as far as possible, first answer queries or remedy faults and problems themselves.

- D.5.28 The Buyer shall immediately provide the Supplier with all relevant information and materials regarding the Buyer's queries or problems.
- D.5.29 At the Supplier's request, the Buyer's contact person shall be present during maintenance for consultation and/or reachable by phone. The Buyer shall have the right to be present during work to be performed for the Buyer.
- D.5.30 The Buyer shall grant access to the Supplier's employees or third parties designated by the Supplier to the sites required in order to perform maintenance to the equipment and/or software and provide all other necessary co-operation.
- D.5.31 The Buyer is obliged, at its own expense, to provide the Supplier, its employees or auxiliary persons with the opportunity to perform and fulfil their work in a safe environment in accordance with occupational health and safety legislation and regulations, including but not limited to providing the Supplier with safe tools and protective clothing or equipment. The Buyer is obliged to observe the requests and directions given by the Supplier in this regard. If so required in respect of the Buyer's business operations, the Buyer shall instruct the Supplier, its employees or auxiliary persons with regard to the risks and dangers which are latently present at the company before commencing work. The Buyer shall set out these instructions in writing. In so far as the Buyer acts in breach of this provision or fails to act at all in this respect, the Supplier will be entitled to suspend its work at the expense and risk of the Buyer and will be entitled to compensation by the Buyer.
- D.5.32 In the event of faults in the equipment and/or software, the Buyer shall immediately inform the dealer who supplied the equipment and/or software in question by having one of its contact persons draw up a detailed description of the fault.
- D.5.33 In order to prevent the loss of data, the Buyer shall make regular backups of all of its data files or in any case prior to maintenance or other work is performed by the Supplier.
- D.5.34 The Buyer shall ensure that the equipment and software is used in accordance with the applicable rules and regulations and shall at all times obtain the necessary permission, approval or licences which may be required for the installation and the use of the software at the Buyer's location.
- D.5.35 The Buyer's Contact Persons shall check if the equipment and software are in good working order after the Supplier has performed maintenance or other work. After entering the process settings and parameters, the Buyer shall have them checked by the Supplier's employees. If any defects are found, the Buyer's Contact Persons shall immediately take all action necessary to remedy these defects in order to prevent any damage, especially, but not exclusively, rapid damage to the crops and damage caused by changes in use/consumption of gas, electricity, water, CO<sub>2</sub> and other raw materials. All defects must be reported to the Supplier by phone and in writing immediately after they are discovered, but no later than three (3) days after installation, and must include a printout showing the incorrect process setting(s) and/or parameter(s).

**Rates and Payment**

- D.5.36 The Buyer shall annually pay the service agreement costs in advance.
- D.5.37 The service agreement costs, plus the BTW and other levies imposed by the government or semi-public bodies, will be charged automatically at the start of the calendar year concerned.
- D.5.38 The Supplier will charge for the maintenance services and other services not covered by the service agreement according its rates applicable at that time.
- D.5.39 The Supplier will charge for the materials used, the call-out fees and hours worked based on its rates applicable at that time, if the repairs are necessary due to
- a) Wrong use
  - b) Incompetent use
  - c) Improper installation
  - d) Accidents
  - e) Dangerous exposure (including radiation and viruses)
  - f) External causes (such as faults in communication lines or the power supply)
  - g) Use of the equipment
  - h) Software or materials not covered by the service agreement
  - i) Other causes not attributable to the Supplier, and/or
  - j) Software (including the data structure), equipment and/or related operating systems which have been altered, maintained and/or repaired by others than the Supplier or its authorised representatives.

D.5.40 The Supplier reserves the right to change the price in the interim. In case one or several of the factors determining the cost price increase, the Supplier will be entitled to change its rates accordingly.

D.5.41 If payment is not received in time, the Supplier will be entitled to suspend maintenance without being obliged to pay any compensation to the Buyer. In so far as the Supplier does perform maintenance work at the request of the Buyer during this period, the Supplier will be entitled to charge a separate fee for these services according to its usual rates.

**Termination and Period of Notice**

D.5.42 The service agreement will enter into force on the date that both Parties signed the service agreement and will be effective for the period stated in the service agreement. If a term is not expressly stated in the service agreement, the service agreement will have a maximum term of three (3) years. The service agreement will then be renewed automatically by one (1) calendar year, unless one of the Parties terminates the service agreement in writing subject to three (3) months notice being given, or the agreement is terminated in accordance with Article D.5.43 or in any other legally valid way, in which case the Party in question will not be obliged to pay any compensation or offer any reimbursement.

D.5.43 Supplier will at all times have the right to terminate a service agreement prematurely for its own reasons, subject to a reasonable notice period of up to six (6) months.

D.5.44 Notwithstanding the provisions in Article D.5.42, the service agreement will be terminated automatically and without judicial intervention, if the distribution relationship between the Supplier and, in so far as applicable, its supplier of the equipment under maintenance ends, in which case the Supplier will not be obliged to pay any compensation.

D.5.45 The Buyer will be in default and the Supplier will be entitled to terminate or suspend wholly or in part the performance of its obligations under the service agreement and/or the General Conditions and related agreements, without notice of default or judicial intervention, with immediate effect, upon notice in writing, without being obliged to pay any damages and without prejudice to the Supplier's other rights, until the Buyer has fulfilled its obligations under the service agreement and/or these General Conditions, if, but not only if:

- a) The Buyer fails to fulfil its payment obligations or other obligations under the General Conditions or resulting agreements.
- b) The Buyer files a petition for liquidation, applies for a suspension of payment, or is placed into administration or receivership in accordance with the law.
- c) The Supplier or third parties file a petition for liquidation or apply for a suspension of payment, or administration or guardianship order.
- d) The Buyer is declared insolvent.
- e) The Buyer dissolves, transfers ownership of, winds up or shuts down its business or parts of its business, wholly or in part.
- f) An execution or prejudgement attachment is levied on the Buyer's goods or a part of the Buyer's goods.

D.5.46 If the service agreement is dissolved or terminated, all of the Supplier's claims against the Buyer, including any claims for the payment of damage or costs, will be immediately due and payable in full.

**D.6 Completion**

D.6.1 If, and only in so far as, the order entails the undertaking of work and/or the rendering of services, the work of the Supplier will be considered to have been performed

- a) If the Buyer has approved the work performed.
- b) If the Supplier has notified that the work is complete and the Buyer has not checked or approved the work within 24 hours after being notified.
- c) At the moment that the Buyer actually puts the result of the work into use.

**D.7 Repair of Damage**

D.7.1 Any obligation to perform repairs will lapse after one (1) month following the completion of the work in question.



## **E. INSTALLATION AND ASSEMBLY OF EQUIPMENT**

### **E.1 Applicability**

E.1.1 In addition to the general provisions (Section A) and the provisions of Sections B, C and D in these General Conditions, the provisions in this Section, Section E, will apply if the Supplier and the Buyer entered into an agreement for the installation and assembly of equipment.

### **E.2 Supplement to Provisions under C.3**

E.2.1 The provisions in this Section are supplemental to the provisions set out in Section C.3 regarding environmental requirements and installation.

### **E.3 Completion**

E.3.1 If, and only in so far as, the order entails the undertaking of work and/or the rendering of services, the work of the Supplier will be considered to have been performed

- a) If the Buyer has approved the work performed.
- b) If the Supplier has notified that the work is complete and the Buyer has not checked or approved the work within 24 hours after being notified.
- c) At the moment that the Buyer actually puts the result of the work into use.

### **E.4 Extent and Performance of Work**

E.4.1 The Supplier may perform and charge for any additional work which is required without seeking the Buyer's prior permission, in which case the Buyer is obliged to pay all fees for the additional work performed.

E.4.2 The Buyer is obliged to pay the fees for additional work which is not required, in so far as these fees do not amount to more than 10% of the original order. Additional work will in that respect be considered to be any work performed beyond the scope of the original order.

E.4.3 Unless expressly agreed otherwise, the Buyer is, at its own expense, responsible for the timely and proper performance of work relating to earthwork, paving, piling, demolition, laying foundations, concreting, carpentry and furnishing, other additional works, moving objects which reasonably cannot be moved by two persons and/or providing and placing scaffolding, platforms, lifting equipment or ladders on the Supplier's instructions or otherwise.

E.4.4 The Buyer is responsible for access to the site where work needs to be performed and shall ensure that the persons performing the work can start at the times indicated by the Supplier and carry out the work during normal and/or agreed working hours; that the conditions in which the work needs to be performed meet reasonable safety and health requirements and are in conformity with the current legislation and generally binding rules and regulations; that the required permits, exemptions or other orders have been obtained and that the necessary tools, persons, energy sources and storage facilities in the broadest sense of the word are available and in good condition. Any consequences, including damage and costs, which are the result of not fully performing these obligations, are at the Buyer's own risk and expense and will entitle the Supplier to compensation.

E.4.5 The Buyer shall check the work performed upon completion. If the Buyer discovers a hidden defect, the Buyer is obliged to inform the Supplier within 24 hours. Should the Buyer fail to do so, all of the Supplier's obligations in question will be extinguished.

### **E.5 Repair of Damage**

E.5.1 Any obligation to perform repairs will lapse after one (1) month following the completion of the work in question.