

# General Terms and Conditions of FullFact Solutions B.V.

FullFact Solutions B.V. - registered office in 's-Hertogenbosch, the Netherlands - Chamber of Commerce 69322228

## Article 1. Applicability

These Terms and Conditions apply to all offers and contracts pursuant to which FullFact delivers goods and/or services of any nature whatsoever to the Customer. Departures from and additions to these general terms and conditions shall only be valid if they are agreed between parties in writing. The applicability of Customer's terms and conditions are specifically excluded.

## Article 2. Offers

1. All offers and other communications of FullFact are subject to confirmation unless FullFact has indicated otherwise in writing.
2. The Customer guarantees that the information that it has provided or that has been provided on its behalf to FullFact and on which FullFact has based its offer, is accurate and complete.
3. Acceptance of the offer by the Customer must be in writing. If the Customer fails to do so, but nevertheless agrees to FullFact carrying out work within the framework of the Agreement, or at least makes that impression, the offer shall be deemed as accepted.
4. The Agreement shall be subject to these General Terms and Conditions at all times, unless explicitly agreed otherwise in writing.

## Article 3. Provision of the Services

1. Following conclusion of the Agreement, FullFact shall provide the services as soon as possible, in accordance with the offer, taking into account any reasonable wishes of the Customer. Insofar as not agreed otherwise in writing, FullFact guarantees that the Services shall be provided to the best of its abilities, while exercising due care and workmanship.
2. If and insofar required by a proper provision of the services, FullFact is entitled to have certain work carried out by third parties. FullFact shall inform the Customer of this timely in advance. Any additional and/or unforeseen costs relating to this shall be payable by the Customer, unless agreed otherwise.
3. The Customer is obliged to do and omit everything that is reasonably required and desirable in order to facilitate a timely and correct provision of the services. In particular, the Customer shall ensure that all information, of which FullFact indicates that it is required or with regard to which the Customer can reasonably understand that it is required for the provision of the services, is made available to FullFact in time.
4. If applicable, FullFact shall provide the Customer with an administrative username and password. This information gives the Customer access to an administrative account and a management tool that enables the Customer to manage provision of the services as it sees fit and to manage accounts for individual users and adjust the options and restrictions for these individual users of the services, all this within the limits stated in the offer or other accessible and recognisable location for the Customer.
5. Every action through the administrative account or an account of an individual user is deemed to have been effectuated on the responsibility and risk of the Customer. In the event of suspected abuse of an account, the Customer must notify FullFact of this as soon as possible.
6. FullFact has the right to (temporarily) decommission and/or restrict the use of products and services delivered, or not to deliver them or to a limited extent only, if the Customer fails to fulfil an obligation towards FullFact under the Agreement or if it acts in breach of these terms and conditions.

## Article 4. Delivery

1. At its discretion, FullFact shall deliver the software on the agreed type of data carrier or, if no agreements have been made in this regard, on a type of data carrier determined by FullFact, or shall make the software available to the Customer online. At FullFact's discretion, any agreed user documentation shall be made available in printed or digital form in a language determined by FullFact.
2. FullFact shall only install the software at the Customer's business location if this has been agreed between the parties. If no agreements have been made for the purpose, the Customer shall itself install, organise, parameterise, tune and, if necessary, modify the hardware and operating environment used.

## Article 5. Acceptance

1. If the parties have not agreed an acceptance test, the Customer shall accept the software in the state that it is in when delivered ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to FullFact's obligations under the warranties as set out in Article 15. In the aforementioned case, the software shall be deemed to have been accepted by the Customer upon delivery or, if installation by FullFact has been agreed in writing, upon completion of installation.
2. In these general terms and conditions, 'error' means substantial failure of the software to meet the functional or technical specifications of the software expressly made known by FullFact in writing and, if all or part of the software concerns customised software, to meet the functional or technical specifications expressly agreed in writing. An error only applies if it can be demonstrated by the Customer and if it is reproducible. The Customer must report errors without delay. Any obligation of FullFact is limited to errors within the meaning of these general terms and conditions. FullFact does not have any obligation whatsoever with respect to other defects in or on the software.
3. The parties shall deem the software to have been accepted if the Customer uses the software in any way for production or operational purposes: at the time at which this use occurs.
4. The Customer may not refuse to accept the software for reasons that are not related to the specifications expressly agreed in writing between the parties and, furthermore, may not refuse to accept the software because of the existence of minor errors, these being errors that do not reasonably prevent the operational or productive use of the software, the foregoing without prejudice to FullFact's obligation to fix these minor errors in the context of the Warranties referred to in Article 15. In addition, acceptance may not be refused because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.
5. If the software is delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part shall be without prejudice to the acceptance of a previous phase and/or a different part.
6. Acceptance of the software in one of the ways referred to in this article shall serve to discharge FullFact of its obligations regarding making the software available and delivering the software and, if installation of the software by FullFact has also been agreed, of its obligations regarding installation.
7. If despite a reasonable number of revisions and motivations the Customer continues to reject the result, FullFact is entitled to terminate the Agreement.

8. Exceeding an agreed delivery time for whatever reason does not constitute a right to compensation, unless agreed otherwise in writing. FullFact shall make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or dates, that it has specified or that have been agreed between the parties. The interim dates and delivery dates specified by FullFact or agreed between the parties shall always apply as target dates, shall not bind FullFact and shall always be indicative. If a term is likely to be exceeded, FullFact and Customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.

9. In all cases, therefore also if the parties have agreed firm deadlines and delivery periods or dates and delivery dates, FullFact shall only be in default as a result of a period of time being exceeded after the Customer has declared FullFact to be in default in writing and a reasonable term that the Customer granted to FullFact to remedy the breach has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give FullFact the opportunity to respond adequately.

10. If it has been agreed that the work under the contract is to be performed in phases, FullFact shall be entitled to postpone the start of a phase's work until the Customer has approved the results of the preceding phase in writing.

11. FullFact shall not be bound by a date or delivery date or term or delivery period, whether or not final, if the parties have agreed an amendment to the content or scope of the contract (additional work, a change of specifications and so on) or a change in approach with respect to performance of the contract, or if the Customer fails to fulfil its obligations arising from the contract or fails to do so on time or in full. The need for or occurrence of additional work during performance of the contract shall never constitute a reason for the Customer to give notice of termination or to rescind (in Dutch: 'ontbinden') the contract.

#### **Article 6. Right of use and restrictions on use**

1. FullFact shall make the agreed computer programs and agreed user documentation, hereinafter referred to as the 'software', available to the Customer for use for the duration of the contract on the basis of a licence for use. The right to use the software is non-exclusive and may not be transferred, pledged or sublicensed.

2. FullFact's obligation to make available and the Customer's right of use extend only to the software's object code. The Customer's right of use does not extend to the software's source code. The software's source code and technical documentation prepared during the development of the software shall not be made available to the Customer, not even if the Customer is prepared to pay a financial amount for the source code and technical documentation.

3. The Customer shall always strictly comply with the agreed restrictions on the use of the software, regardless of the nature or content of these restrictions. If the parties have agreed that the software may only be used in combination with certain hardware, the Customer shall in the event of any malfunction of this hardware be entitled to use the software on other hardware with the same qualifications during the time that the original hardware remains defective.

4. FullFact may require that the Customer only start using the software after having received one or more codes needed for use from FullFact, FullFact's supplier or the producer of the software. FullFact is always entitled to take technical measures to protect the software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties. The Customer shall never remove or bypass technical measures intended to protect the software or have such technical measures removed or bypassed.

5. The Customer may only use the software in and for its own company or organisation and only insofar as doing so is necessary for the intended use. The Customer shall not use the software for third parties, for example in the context of Software as a Services (SaaS) or outsourcing. The Customer may never sell, rent out, dispose of or grant limited rights to, or make available to third parties the software and the carriers on which the software is or will be recorded, in any way whatsoever for whatever purpose or under whatever title. The Customer may also not grant, whether or not remotely (online), a third party access to the software or place the software with a third party for hosting, not even if the third party concerned only uses the software for the Customer.

6. If so requested, the Customer shall cooperate without delay in an investigation into compliance with the agreed restrictions on use carried out by or for FullFact. Should FullFact so demand, the Customer shall grant FullFact access to its buildings and systems. Insofar as such information does not concern the use of the software itself, FullFact shall treat all confidential business information that it obtains from the Customer or at the Customer's business location in the context of an investigation as confidential.

7. The parties maintain that the contract concluded between the parties, insofar as the object of this contract is the making available of software for use, shall never be deemed to be a purchase contract.

#### **Article 7. Change in Services**

1. If, at the request or prior consent of the Customer, FullFact has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services, the Customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with FullFact's usual rates. FullFact is not obliged to honour such a request and may require that a separate contract be concluded in writing for the purpose.

2. Insofar as a fixed price has been agreed for the provision of services, FullFact shall on request inform the Customer in writing about the financial consequences of the additional work or additional provision of goods or services as referred to in this article.

3. Cancellation or change of agreed services planning on request of Customer.

- 100% of prebooked travel expenses will be charged.
- If less than 2 weeks prior to agreed date of work: 50% of the services fees and 100% of prebooked travel expenses will be charged.
- If less than 1 week: 100% of the services fees and prebooked travel expenses will be charged.

4. Contracted and paid Services have to be received or planned by Customer within one (1) year after signed agreement or PO. Otherwise these Services will expire.

#### **Article 8. Prices**

1. All prices are exclusive of turnover tax and any other levies imposed by the government.

2. All prices on the website, in offers and other documentation of FullFact are subject to programming and typing errors. No liability is accepted for the consequences of such errors. The Customer may not derive any rights or expectations from a cost estimate or budget issued by FullFact unless the parties have otherwise agreed in writing. An available budget made known to FullFact by the Customer shall only apply as a (fixed) price agreed between the parties for the performance to be delivered by FullFact if this has been expressly agreed in writing.

3. If a periodic payment obligation on the part of the Customer applies, FullFact shall be entitled to adjust and in accordance with the index or other standard included in the contract, the applicable prices and rates to the term specified in the contract. If the contract does not expressly provide for the possibility on the part of FullFact to adjust the prices or rates, FullFact shall always be entitled to adjust and with due observance of a term of at least two months, the applicable prices and rates. If the Customer does not agree to the adjustment in this latter

case, the Customer shall be entitled to terminate the contract in writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.

4. All prices stated by FullFact are in euros (EUR) and the Customer must make all payments in euros.

5. If the Customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable towards FullFact for performance of the contract.

6. Information from FullFact's records shall count as conclusive evidence with respect to the performance delivered by FullFact and the amounts owed by the Customer for delivery of this performance, without prejudice to the Customer's right to produce evidence to the contrary. The parties shall record the date or dates on which FullFact shall charge the Customer for the performance agreed in the contract. Amounts owed must be paid by the Customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The Customer may not suspend any payment and may also not set off any amounts owed.

#### **Article 9. Payment conditions**

1. FullFact shall send the Customer an invoice for the amounts payable by the Customer. The payment terms of this invoice are 30 days from the invoice date, unless the invoice or the Agreement stipulates otherwise. If the Customer fails to pay amounts due or fails to do so on time, the Customer shall owe statutory interest for commercial contracts on the outstanding amount without a demand for payment or a notice of default being required. The foregoing shall be without prejudice to FullFact's other legal and contractual rights.

2. In the event of failure to pay within the set term, the Customer is obliged to pay all judicial and extrajudicial collection costs, including the fees of lawyers, bailiffs and debt-collection agencies, in addition to the amount owed and any interest due.

3. The claim for payment is immediately due and payable in the event that the Customer is declared insolvent, has applied for a moratorium or has all of its assets seized, dies or is wound up or dissolved.

4. In the above cases, FullFact is also entitled to terminate or suspend performance of the Agreement, or any as yet unperformed part thereof, without notice of default or legal intervention and without the Customer being entitled to compensation for any damage resulting from that.

#### **Article 10. Development of specific works**

1. If the agreed services include the customized specific development of software, designs, documentation, recommendations, reports or other specific works, the Parties shall specify in writing which works are to be developed, what requirements and how. FullFact shall carry out this development with due care and attention, on the basis of the information to be provided by the Customer. The Customer guarantees the correctness, completeness and consistency of its instructions and information.

2. FullFact is entitled to examine the correctness, completeness or consistency of the source materials, requirements or specifications made available to it and to suspend the agreed work upon discovery of any faults until the Customer has remedied the faults in question.

3. If any source materials provided by the Customer to FullFact are protected by any intellectual property rights, the Customer guarantees that it is in the possession of all licences required for the provision to and the intended use by FullFact within the framework of the Agreement, at all times.

4. When developing the works, FullFact has the right to make use of third-party illustrations, software and components, including open source software, unless agreed otherwise. After delivery, the Customer is responsible for complying with the relevant third-party licences when using the newly developed works. FullFact shall sufficiently inform the Customer on the applicable licence terms if applicable.

5. Solely if explicitly agreed in writing, the source code of newly developed software and the technical documentation produced during the development thereof can be made available to the Customer and the Customer shall be entitled to modify the software.

6. The Customer is not allowed to sell, lease, sublicense and to dispose of newly developed works, to grant limited rights thereto or to make this available to a third party, in whichever way or for whichever purpose, even if the relevant third party solely uses the software for the Customer, unless otherwise agreed.

#### **Article 11. Maintenance services**

1. If agreed, FullFact shall perform maintenance work with respect to the software specified in the contract. The maintenance obligation includes fixing errors in the software within the meaning of Article 15.3 and, exclusively if agreed in writing, making upgrades and updates of the software available in accordance with Article 12.

2. The Customer must report errors discovered in the software in detail. Following receipt of the report, FullFact shall strive to the best of its ability to fix errors and/or implement improvements in later, new versions of the software in accordance with its usual procedures. Depending on the urgency and FullFact's version and release policy, the results shall be made available to the Customer in a manner and within a term determined by FullFact. FullFact is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. The Customer shall itself install, organise, parameterise and tune the corrected software or the new version of the software made available, and, if necessary, modify the hardware and operating environment used.

3. The fixing of errors shall take place at a location and in a manner determined by FullFact. FullFact is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. FullFact is never obliged to recover data that has been corrupted or lost. If FullFact performs maintenance work online, the Customer shall promptly ensure that a proper infrastructure and network facilities are in place.

4. The Customer shall extend the cooperation required by FullFact in the context of maintenance, including temporarily ceasing use of the software and making a backup of all data.

5. If the maintenance work relates to software that was not supplied to the Customer by FullFact, the Customer, if FullFact believes this is necessary or desirable for the maintenance work, shall make the source code and the technical (development) documentation of the software, including data models, designs, change logs and the like, available. The Customer guarantees that it is entitled to make the aforementioned items available. The Customer grants FullFact the right to use and change the software, including the source code and technical (development) documentation, in the context of performing the agreed maintenance work.

6. The maintenance work performed by FullFact does not affect the Customer's own responsibility for managing the software, including checking the settings and the way in which the results arising from operating the software are used. The Customer shall itself install, organise, parameterise and tune the software and support software required and, if necessary, modify the hardware, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

#### **Article 12. New releases and updates of software**

1. Maintenance shall include making new releases and updates of the software available only if and insofar as this has been agreed in writing. If agreed, such new releases and updates of the software shall be made available at FullFact's discretion.

2. FullFact may require that the Customer enter into a further written contract with FullFact for a version with new functionality and that a further payment be made for this this version. FullFact may incorporate functionality from a previous version of the software in unaltered form, but does not guarantee that each new version includes the same functionality as the previous version. FullFact is not obliged to maintain, modify or add certain features or functionalities of the software specifically for the Customer.
3. FullFact may require that the Customer modify its system (hardware, software and the like) if doing so is necessary for the proper functioning of a new version of the software.
4. One (1) year after each new version (e.g. OEE Toolkit version 8) is made general available, for the version n-2 (e.g. OEE Toolkit version 6) updates, error fixes, new features and new builds will no longer be available. As long as the support and maintenance fees are paid by customer, the version n-2 can still be used by customer.

#### **Article 13. Support services**

1. If the services provided by FullFact under the contract include the provision of support to users and/or administrators of the software, FullFact shall provide, through FullFact's Support Center, advice on the use and functioning of the software specified in the contract. FullFact may set conditions with respect to the qualifications and the number of persons eligible for support. FullFact shall handle properly substantiated requests for support within a reasonable term in accordance with its usual procedures. FullFact does not guarantee the accuracy, completeness or timeliness of replies or the support offered. Support services shall be performed on working days during FullFact's usual business hours.
2. If the services provided by FullFact under the contract include the provision of standby services, FullFact shall ensure that one or more staff members are available on the days and during the times specified in the contract. The Customer shall in this case be entitled in the event of urgency to call in the support of staff members on standby if there is a serious malfunction in the operation of the software. FullFact does not guarantee that all malfunctions will be repaired speedily.
3. The maintenance and other agreed services shall be performed as from the date on which the contract is concluded, unless the parties have agreed otherwise in writing.

#### **Article 14. Payment Maintenance and Support or Subscription Fees**

1. In the absence of an expressly agreed payment schedule, all amounts that relate to the maintenance of the software and the other services as referred to in articles 11, 12 and 13 and laid down in the contract shall be payable each calendar year in advance.
2. Amounts relating to the maintenance of the software and the other services covered by a contract shall be payable from the moment of commencement of the contract. The payment for maintenance and other services shall be due regardless of whether or not the Customer is using the software or exercising the option of maintenance or support.

#### **Article 15. Warranty provisions**

1. FullFact shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the Customer. All services by FullFact shall be performed on the basis of an obligation to use best endeavours unless and insofar as FullFact has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the contract.
2. FullFact shall strive to the best of its ability to fix errors within a reasonable term if these errors are reported in writing in a detailed manner to FullFact within a period of three months following delivery or, if an acceptance test was agreed, within three months following acceptance.
3. FullFact does not guarantee that the software is suitable for actual use and/or the intended use.
4. FullFact does not guarantee that the software will operate without interruption and/or that all errors will always be fixed. FullFact shall make efforts to fix the errors in the software referred to in this Article within a reasonable term if and insofar as the matter concerns software developed by FullFact itself and the Customer has provided a detailed, written description of the defects concerned to FullFact. Where there are grounds for doing so, FullFact may postpone the fixing of defects until a new version of the software is put into operation. Fixing work shall be carried out free of charge unless the software was developed on the instructions of the Customer other than for a fixed price, in which case FullFact shall charge for the costs of fixing in accordance with its usual rates. FullFact may charge for the costs of fixing in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of the Customer, or as a result of causes that cannot be attributed to FullFact. The best efforts obligation to fix errors shall cease to apply if the Customer makes changes in the software or has such changes made without FullFact's written permission. The fixing of errors shall take place at a location and in a manner determined by FullFact. FullFact is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software.
5. FullFact does not guarantee that defects in software that it has not developed itself shall be fixed. FullFact is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. If the software was developed on the instructions of the Customer, FullFact may charge for the costs of fixing to the Customer in accordance with FullFact's usual rates. Based on the information provided by FullFact concerning measures to prevent and limit the effects of malfunctions, corruption or loss of data or other incidents, the Customer shall identify and list the risks to its organisation and take additional measures if necessary. FullFact declares that it is prepared to provide assistance, at the Customer's request, to the extent reasonable and according to the financial and other conditions set by FullFact, with respect to further measures to be taken by the Customer.
6. FullFact undertakes to make every effort to repair any faults in the hardware delivered by FullFact to the Customer. If the hardware fault cannot be repaired, FullFact will replace the faulty hardware. FullFact is at all times entitled to opt to refund the sale price, instead of repairing or replacing the faulty hardware, the Customer must notify FullFact of the fault as soon as possible by contacting FullFact Support, using the contact details referred to on FullFact Website. Any claims without contacting FullFact Support first will be rejected.
7. FullFact will only repair, replace or refund the sale price of faulty hardware, if the fault has occurred as a result of normal use of the hardware. FullFact is in any case not obliged to repair, replace or refund the sale price of faulty hardware if: a. the fault has been caused by actions of the Customer such as, but not limited to, incorrect, careless or incompetent use, damage caused intentionally or mounting or installing third-party hardware or software onto the hardware; b. the fault is the result of circumstances that are partly or fully beyond the control of the Customer and FullFact, such as damage by fire and water; c. the fault is the result of other, external factors, not referred to in these conditions; d. the faulty hardware has already been adjusted and/or repaired by a party other than FullFact and its FullFacts; or e. if the Customer has failed to fulfil one or more of its obligations under this agreement.
8. If the Customer is successful in invoking an obligation of FullFact to repair, replace or refund the sale price of the faulty hardware, the costs of repair or replacement will be payable by FullFact, with the exception of the dispatch costs. If the Customer is not successful in invoking this obligation, FullFact will never proceed to repair or replace the faulty hardware without the approval of the Customer. Any original parts replaced as part of a repair or the faulty hardware replaced as a whole will not be returned to the Customer. Ownership thereof will be transferred to FullFact.

#### **Article 16. Hardware Purchase, Sale and Delivery**

1. FullFact shall sell the hardware and/or other items according to the nature and number agreed in writing and the Customer shall purchase this hardware and/or these other items from FullFact.
2. The hardware and/or items sold by FullFact to the Customer shall be delivered to the Customer ex warehouse. FullFact shall deliver the items sold to the Customer to a location designated by the Customer, or have such items delivered to the designated location, only if doing so has been agreed in writing. FullFact shall in this case inform the Customer, if possible in good time prior to the delivery, about the time at which FullFact or transporter engaged by FullFact intends to deliver the hardware and/or items. FullFact's obligation to sell does not include assembly and installation materials, software, consumer items, batteries, stamps, ink and ink cartridges, toner items, cables and accessories.
3. The purchase price of the hardware and/or items does not include the costs of transport, insurance, hauling and hoisting, the hiring of temporary facilities and the like. If applicable, these costs shall be charged to the Customer. If the Customer asks FullFact to remove old materials (such as networks, cabinets, cable ducts, packaging materials and hardware) or if FullFact is legally obliged to do so, FullFact may accept this request by means of a written assignment at its usual rates. If and insofar as FullFact is prohibited by law from requiring payment, FullFact shall not, as appropriate, require payment from the Customer.
4. If the parties have concluded an agreement in writing for the purpose, FullFact shall install, configure and connect the hardware and/or items or shall have the hardware and/or items installed, configured and connected. Any obligation of FullFact to install and/or configure hardware does not include performing data conversion and installing software.
5. FullFact is not responsible for obtaining any licences required.
6. FullFact is always entitled to perform the contract on the basis of partial deliveries.

#### **Article 17. Warranty Hardware**

1. Limited hardware warranty - FullFact does not warrant that the hardware and/or items will on delivery be suitable for the Customer's actual and/or intended use unless the intended purposes have been clearly specified in the written contract without reservation. FullFact does not warrant that the assembly, installation and operating instructions that come with the hardware and/or items are free of errors and that the hardware and/or items have the characteristics stated in these instructions.
2. FullFact warrants that the hardware shall be free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, in accordance with the documentation provided, for a period of twelve (12) months one from the date of delivery. Licensee's sole and exclusive remedy, and FullFact's sole and exclusive liability for defective hardware components, shall be that FullFact, subject to these terms and conditions and solely upon detailed confirmation of a defect or failure of hardware to perform as warranted, shall at its sole option, either repair or replace the nonconforming hardware. All defective hardware, which have been replaced, shall become the property of FullFact and shall be returned to FullFact at Licensee's cost.
3. The foregoing warranties and remedies shall be void as to any hardware damaged or rendered unserviceable by one or more of the following: (1) improper or inadequate maintenance by anyone other than FullFact, (2) un-authorized modifications, alterations or additions to or incorrect use of the hardware by Licensee or any of its agents, (3) misuse, abuse, accident, electrical irregularity, theft, vandalism, fire, water or other peril, (4) damage caused by containment and/or operation outside the environmental specifications for the hardware, (5) alteration or connection of the hardware to other systems, equipment or devices (other than those specifically approved by FullFact) without the prior approval of FullFact, or (6) any use that is inconsistent with the user manual supplied with the hardware. The warranty period is not extended if FullFact repairs or replaces a warranted product or any parts.
4. Any claims or further claims of non-conformity of the hardware and/or items delivered other than those provided for in article 18 on which the Customer may seek to rely are excluded. FullFact shall charge for the costs of work and repair performed outside the scope of this guarantee in accordance with FullFact's usual rates. FullFact shall not have any obligation whatsoever under the purchase contract with respect to errors and/or other defects reported after the end of the guarantee period referred to in this article.

#### **Article 18. Intellectual property rights**

1. All intellectual property rights to the software, websites, data files, hardware and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to the Customer under the contract are held exclusively by FullFact, its licensors (i.e.) FullFact Software B.V. or its suppliers. The Customer shall have the rights of use expressly granted under these general terms and conditions, the contract concluded in writing between the parties and the law. A right accorded to the Customer is non-exclusive and may not be transferred, pledged or sublicensed.
2. The Customer shall not multiply or publish the software or other materials.
3. The Customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, hardware or materials, or have any such indication removed or changed.
4. Even if not expressly provided for in the contract, FullFact may always take technical measures to protect hardware, data files, websites, software made available, software to which the Customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The Customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.
5. Any use, copying or publication of the materials outside the purport of the Agreement or granted rights of use shall be regarded as an infringement of copyrights. The Customer shall pay FullFact an immediately due and payable penalty of EUR 10,000 (ten thousand Euros) per violation - which penalty is not open to judicial mitigation - without prejudice to the right of FullFact to be compensated for the damage or loss it suffers as a result of the infringement or to take other legal measures in order to end the infringement.
6. FullFact indemnifies the Customer against any claim of a third party based on the allegation that software, websites, data files, hardware or other materials developed by FullFact itself infringe an intellectual property right of that third party, subject to the condition that the Customer immediately informs FullFact in writing about the existence and content of the claim and leaves the settlement of the claim,

including any arrangements made in this regard, entirely to FullFact. The Customer shall provide the powers of attorney and information required to FullFact and assist FullFact to defend itself against such claims. This obligation to indemnify shall not apply if the alleged infringement concerns (i) materials made available to FullFact by the Customer for use, modification, processing or maintenance or (ii) changes made or commissioned by the Customer in the software, website, data files, hardware or other materials without FullFact's written permission. If it is irrevocably established in court that software, websites, data files, hardware or other materials developed by FullFact itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of FullFact, there is a good chance that such an infringement is occurring, FullFact shall if possible ensure that the Customer can continue to use, or use functional equivalents of, the software, websites, data files, hardware or materials supplied. Any other or further obligation to indemnify on the part of FullFact due to infringement of a third party's intellectual property right is excluded.

7. The Customer guarantees that making hardware, software, material intended for websites, data files and/or other materials and/or designs available to FullFact for the purpose of use, maintenance, processing, installation or integration does not infringe any rights of third parties. The Customer indemnifies FullFact against any claim of a third party based on the allegation that such making available, use, maintenance, processing, installation or integration infringes a right of that third party.

8. FullFact is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the Customer.

#### **Article 19. Limitation of Liability**

1. FullFact's total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the Customer, shall be limited to compensation for direct loss up to a maximum of the price stipulated for the contract concerned (excluding VAT). If the contract is mainly a continuing performance contract with a term of more than one year, the price stipulated for the contract shall be set at the total amount of the payments (excluding VAT) stipulated for one year. However, FullFact's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 10.000 (ten thousand euros).

2. FullFact's total liability for direct loss due to death or bodily injury shall never amount to more than EUR 1.250.000 (one million two hundred fifty thousand euros). Indirect loss is explicitly excluded.

3. FullFact's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of the Customer's Customers, loss arising from the use of items, materials or software of third parties prescribed by the Customer to FullFact and loss arising from the engagement of suppliers prescribed by the Customer to FullFact, is excluded. FullFact's liability for corruption, destruction or loss of data or documents is likewise excluded. FullFact shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or certificates unless the misuse is the direct result of deliberate intent or recklessness on the part of FullFact's management.

4. The exclusions and limitations of FullFact's liability described paragraphs 20.1 up to and including 20.3 are entirely without prejudice to the other exclusions and limitations of FullFact's liability described in these general terms and conditions.

5. The exclusions and limitations referred to in paragraphs 20.1 up to and including 20.4 shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of FullFact's management.

6. Unless performance by FullFact is permanently impossible, FullFact shall only be liable due to an attributable failure in the performance of a contract if the Customer declares FullFact to be in default in writing without delay and grants FullFact a reasonable term to remedy the breach, and FullFact culpably fails to fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give FullFact the opportunity to respond adequately. For there to be any right to compensation, the Customer must always report the loss to FullFact in writing as soon as possible after the loss has occurred.

7. Each claim for compensation against FullFact shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the Customer has instituted a legal action for damages prior to the expiry of this period.

8. The Customer indemnifies FullFact against any and all claims of third parties due to product liability as a result of a defect in a product or system that the Customer supplied to a third party and that consisted in part of hardware, software or other materials supplied by FullFact, unless and insofar the Customer is able to prove that the loss was caused by the hardware, software or other materials referred to.

9. The provisions of this article and all other limitations and exclusions of liability referred to in these general terms and conditions shall also apply for the benefit of all natural persons and legal entities that FullFact engages in the performance of the contract.

10. FullFact shall never be liable for damage or loss resulting from force majeure.

#### **Article 20. Force Majeure**

In the event of force majeure, which in any case includes disruptions to or breakdown of the Internet, the telecommunications infrastructure, power failures, domestic uprising, mobilisation, war, traffic jams, strikes, lockouts, business interruptions, stagnations in supply, fire, floods, import and export obstructions and in the event that suppliers of FullFact make it unable to deliver - regardless of the reason - as a result of which FullFact cannot reasonably be expected to fulfil the Agreement, performance of the Agreement shall be suspended or the Agreement shall be terminated when the situation of force majeure has exceeded a ninety-day period, without being obliged to pay any compensation. In such an event, that which has already been performed under the contract, FullFact shall be paid for on a proportional basis without the parties owing each other anything else. In addition, force majeure on the part of FullFact means, among other things: (i) force majeure on the part of suppliers of FullFact, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to FullFact by the Customer, (iii) defects in items, hardware, software or materials of third parties the use of which was prescribed to FullFact by the Customer, (iv) government measures, (v) power failures, (vi) Internet, data network or telecommunication facilities failures, (vii) war and (viii) general transport problems.

#### **Article 21. Personnel**

1. The Customer shall render every assistance to staff of FullFact who, for the delivery of products and/or services, carry out work at the offices of the Customer, so that they can carry out their work correctly.

2. As long as the relation between the Customer and FullFact continues, and for one year thereafter, the Customer shall not be allowed to take on staff of FullFact and/or to have them work for the Customer in any other way, directly or indirectly, without the prior written approval of FullFact. Within this context, staff members of FullFact are understood to mean persons employed by FullFact or one of the companies affiliated to FullFact or who were employed by FullFact or one of the companies affiliated to FullFact less than 6 (six) months ago.

#### **Article 22. Secrecy and Security**

1. The Customer and FullFact must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to FullFact if and insofar as FullFact is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as necessary

for the proper performance of the contract by FullFact. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.

2. The Customer acknowledges that software originating from FullFact is always confidential in nature and that this software contains trade secrets of FullFact and its FullFacts or the producer of the software.

3. FullFact shall not take cognizance of data stored and/or distributed by the Customer via FullFact systems, unless this is necessary for the proper performance of the Agreement, or unless FullFact is obliged to do so by virtue of a statutory provision or court order. In that case, FullFact shall endeavour to limit taking cognizance of the data to the greatest possible extent, insofar this lies within its powers. The Customer indemnifies FullFact against claims of persons whose personal data is recorded or processed in the context of a register of personal data that is maintained by the Customer or for which the Customer is otherwise responsible by law, unless the Customer proves that the facts on which a claim is based are attributable to FullFact.

4. The Customer is fully responsible for the data that it processes in the context of using a services of FullFact. The Customer guarantees to FullFact that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The Customer indemnifies FullFact against any claim of a third party for whatever reason in connection with this data or the performance of the contract.

5. If FullFact is obliged to provide for a form of information security under the contract, this security shall meet the specifications agreed in writing between the parties regarding security. FullFact does not guarantee that the information security provided is effective under all circumstances. If the contract does not include an explicitly defined security method, the security provided shall meet a standard that is not unreasonable in terms of the state of the art, the sensitivity of the information and the costs associated with the security measures taken.

6. The access or identification codes and certificates provided by or because of FullFact to the Customer are confidential and must be treated as such by the Customer, and may only be made known to authorised personnel in the Customer's own organisation. FullFact is entitled to change the access or identification codes and certificates.

7. The Customer must adequately secure its systems and infrastructure and have active antivirus software protection at all times.

### **Article 23. Term and Termination**

1. If and insofar as the contract concluded between the parties is a continuing performance contract, the contract shall be entered into for the term agreed between the parties. A term of one year shall apply if no term has been agreed.

2. The term of the contract shall be tacitly extended, each time by the period of time originally agreed, unless the Customer or FullFact terminate the contract in writing with due observance of a notice period of two months prior to the end of the current term.

3. If the Services pertains to the development of software or other works, the Agreement is deemed to have been concluded for the term as indicated in the offer or until the works have been developed and accepted. In this situation, the Agreement cannot be terminated prematurely, unless agreed otherwise.

4. In the event of cancellation, termination or dissolution for whatever reason, FullFact is entitled to delete all stored data or to render access to it impossible and to cancel all accounts of the Customer, immediately after the Agreement ends. In that case, FullFact shall not be obliged to give the Customer a copy of this data.

5. In the event that the Customer fails to fulfil any of its obligations under the Agreement, FullFact is entitled to suspend performance of all agreements concluded with the Customer in question, without any notice of default or legal intervention being required and without prejudice to the right of FullFact to compensation for damage, loss of profits and interest, unless the failure to perform concerned is of minor importance.

6. Each party shall only be authorised to rescind the contract due to an attributable failure in the performance of the contract if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the contract. The Customer's payment obligations and all obligations of the Customer or a third party engaged by the Customer to cooperate and/or provide information apply in all cases as essential obligations under the contract.

7. If, at the time of rescission, the Customer has already received goods or services in the performance of the contract, these goods or services and the associated payment obligations shall not be undone unless the Customer proves that FullFact is in default with respect to the essential part of such goods or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by FullFact prior to rescission in connection with what it already properly performed or delivered in the performance of the contract shall remain payable in full and shall become immediately due and payable at the time of termination.

8. A contract which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing following consultation between the parties. Reasons for the termination must be stated.

9. If a notice period has not been agreed between the parties, a reasonable period must be observed when notice of termination is given. FullFact is never obliged to pay any compensation due to termination. The Customer may not terminate a contract of engagement that has been entered into for a definite period of time.

10. Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. FullFact may also terminate the contract, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of the Customer's company. FullFact is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this paragraph. If the Customer goes irrevocably bankrupt, its right to use the software, websites and the like made available to it shall end, as shall its right to access and/or use FullFact's services, without termination by FullFact being required.

### **Article 24. Changes to Terms & Conditions**

FullFact reserves the right to make changes in or additions to these terms and conditions. Changes also apply to agreements entered into earlier, subject to a period of 30 days from the date on which notice of the change is given on the website of FullFact or via electronic messaging. Changes of minor importance can be made at any time. Should the Customer not wish to accept a change in these terms and conditions, it may, up until the date on which the new terms and conditions take effect, terminate the agreement as of this date or on the date of receipt of the notice of termination, if after the effective date of the change.

### **Article 25. Final stipulations**

1. This Agreement is governed by the laws of the Netherlands. Insofar as not dictated otherwise by mandatory law, any disputes as a result of this agreement shall be submitted to the competent Dutch court in 's-Hertogenbosch.

2. Any provision in this agreement appearing to be void does not affect the validity of any other parts of the agreement. In that case, the parties shall determine (a) new provision(s) which resemble(s) the intention of the original Agreement and General Terms and Conditions as closely as legally possible.
3. The Customer may not sell, transfer or pledge its rights and obligations under a contract to a third party. FullFact is entitled to sell, transfer or pledge its claims to payment of amounts owed to a third party.
4. Information and notifications on the website of FullFact are subject to programming and typing errors. In the event of inconsistencies between the website and the Agreement, the Agreement prevails.
5. In these terms and conditions, the terms 'in writing' and 'written' are also taken to mean e-mail and/or communications by fax, provided the identity and integrity of the e-mail and fax have been sufficiently established.
6. The version of any communication received or stored by FullFact is regarded as authentic, subject to proof to the contrary to be produced by the Customer.
7. The Customer grants FullFact permission to use its name and logo within the framework of promotional activities of FullFact, unless explicitly agreed otherwise in the Agreement, or the Customer is able to advance a major interest pleading against this use.
8. The parties shall continuously and immediately notify each other of any changes in name, correspondence address, e-mail address, telephone number and, when asked, bank account number.