

GENERAL TERMS

These General Terms (“**General Terms**”) apply to the providing of the Products by Company to and the use or deployment of the Products by Customer. Each Product purchased by Customer under the Terms requires Specific Terms set forth in an addendum to the General Terms.

1. DEFINITIONS

If names and terms are written with a capital letter in the General Terms, they have the following meaning:

Affiliate: any individual or business entity that controls, is controlled by, or is under common control with a party where control means ownership, directly or indirectly, of 50% or more of the voting power (or equivalent).

Agreement: the Terms, any amendment and/or addendum thereto and the Order.

Company: the entity indicated in the offer providing the Products to Customer directly or through a Company’s partner.

Confidential Information: all data and information in any form whatsoever that either party (“**Discloser**”) provides to the other party (“**Recipient**”) under the Terms or otherwise, and which one Party has designated as confidential or which the other party may reasonably suspect to be confidential.

Customer: the entity accepting the Terms by submitting an Order.

Data Protection Laws: any applicable law or regulation relating to the protection of personal data and personal (identifiable), including the *Algemene Verordening Gegevensbescherming* (“**AGV**”) and the EU General Data Protection Regulation 2016/679 of the European Parliament and the Council (“**GDPR**”).

Documentation: then-current official user documentation provided by Company to Customer for the applicable Products.

Duration: the term specified in Company’s offer during which Customer may use and/or deploy the Products.

Effective Date: the date of entry into force of the Terms being the acceptance of Company’s offer by Customer.

Error: Customer’s written demonstration of reproducible errors and/or defects, which substantially do not comply with the functional or technical specifications of the Product.

Feedback: comments, ideas enhancement request, recommendations, suggestions, or other feedback related to the Products and provided by Customer to Company.

Intellectual Property Rights: all registered or unregistered worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications and moral rights.

Order: the order document submitted by Customer (or a Company’s authorized partner on Customer’s behalf) and accepted by Company specifying the specifics of the Product set forth in Company’s related offer.

Product(s): the Services and/or Software offered by Company in the field of Services Management, Strategic IT Asset Management, Software Lifecycle Management, and Operational IT Asset Management. Products does not include Third-Party Products.

Services: the services (excluding standard support) and any deliverables as applicable, provided by Company and described in Company’s offer.

Software: (i) Company’s software products installed and run on Customer’s systems and/or (ii) Company’s cloud-based products provided by Company to Customer on a software-as-a-service basis.

Specific Terms: additional terms that apply to the Products set forth in an addendum to the General Terms.

Terms: both the General Terms and the Specific Terms.

Third-Party Product: third-party software, products or services that are not owned by Company or licensed under the Terms that may be used or integrated with the Products.

User: Customer’s employees, contractors and service providers authorized by Customer to use or deploy the Products.

2. USE OR DEPLOYMENT OF PRODUCTS

2.1. **General.** The Products purchased by Customer are described in Company’s offer confirmed by Customer through the Order subject to the Terms.

2.2. **Restrictions.** Customer is not permitted, including the Users, and will not permit any third party to (a) rent out, lease, sublicense, sell, alienate, pledge, transfer as security or transfer under any title whatsoever to third parties for any purpose whatsoever, or to allow third parties to use and/or deploy the Products, (b) decompile, disassemble, reverse engineer, attempt to identify source code, modify or create a derivative work of any Products except as expressly permitted by law (and then only with advance written notice to Company), (c) copy, reproduce, republish, post or transmit any Products, unless required by applicable law, (d) incorporate any Products into a product or service that Customer provides to a third party except priorly authorized by Company in writing; (e) use or deploy any Products to develop or operate competitive products or services; (f) publish or disclose information regarding the availability, performance or functionality of any Products to a third party, including any benchmarking; (g) remove, alter or obscure any proprietary rights notices contained in any Products; (h) disrupt or interfere with the security, integrity or availability of any Products or any third parties' use of any Products; (i) use or deploy any Products in a way that violates the terms of the Agreement, the rights of others or any applicable law.

3. **THIRD-PARTY PRODUCT.** A Third-Party Product is licensed to Customer under its own terms, which terms apply to such Third-Party Product. The Terms do not apply to such product.

4. **WARRANTY.** The application of sections 4.1 and 4.2 depends on the Products purchased by Customer under the Order.

4.1. **Services Warranty.** Company warrants that it will perform the Services in a professional and workmanlike manner. If Customer notifies Company of an issue that Company determines is a breach of this warranty within sixty (60) days of the completion date, Company will use commercially reasonable efforts to reperform the Services to substantially comply with the warranty. If Company determines that it is not commercially feasible to reperform the Services, Company may terminate the Order for the applicable Services and refund to Customer the amount that Company received for the portion of the Services that failed to conform to the warranty.

4.2. **Software Warranty.** Company warrants that the Software works substantially as described in the related Documentation. In case of Errors in the Software, Company shall use its best efforts to correct or remedy the Errors within a reasonable period if they are described in detail and reported in writing by Customer to Company within a period of six (6) months after delivery. Company is always entitled to apply temporary solutions, bypasses, or problem-avoiding restrictions to the Software. Company is never obliged to recover corrupted or lost data.

4.3. **Warranty Disclaimer.** The express warranties set forth in this section are in lieu of all other warranties. Company does not warrant that the Products (i) will meet Customer's requirements, (ii) are suitable for the actual and/or intended use by Customer or (iii) that they will operate without interruption or Error and (iv) that Errors can always be corrected or resolved. Company does not have the obligations set forth under section 4.1 and 4.2 if the Product is (i) modified and/or repaired by a party other than Company or a third party appointed by Company, (ii) used together with any other product or service not recommended in the Documentation, (iii) not functioning due to a power failure, fire, explosion or any other circumstance beyond Company's reasonable control, or (iv) used or accessed not in accordance with the Documentation. The remedies provided in this section are Customer's sole and exclusive remedies for a breach of the Products warranty provided in this section.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. **Pre-existing Ownership.** Used equipment and items remain the property of the party - or its supplier - that originally owned them.

5.2. **Company's Ownership.** Company, its Affiliates and licensors retain all right, title and interest to the Products (including standard modifications, derivative works and new versions and deliverables) and all related Intellectual Property Rights, including but not limited to methods, techniques, concepts, and ideas used by Company.

5.3. **Customer's Ownership.** Customer retains all rights, title and interest to any content, code or data provided by Customer for the correct use and/or deployment of the Products hereunder.

5.4. **Feedback.** Customer agrees that any Feedback provided by Customer to Company may be used and incorporated by Company into the Products and Services without restriction, compensation, or other obligation to Customer.

6. INDEMNIFICATION

6.1. **Company's Indemnification.** Company agrees to indemnify and defend Customer from and against any unaffiliated third-party suit or proceeding alleging that the Products infringe any patent, trademark, or copyright, or misappropriate a trade secret, of that third party ("**Company Indemnified Claim**"). Company will indemnify Customer from the damages finally awarded against Customer to that third party by a court of competent jurisdiction or agreed to by Company in settlement. Company's obligations hereunder only apply if Customer (i) promptly notifies Company of the Company Indemnified Claim in writing; (2) allows Company sole control over the defence of the claim and any settlement negotiations; and (ii) reasonably cooperate in response to Company's requests for assistance. If a Product becomes, or in Company's opinion is likely to become, the subject of a Company Indemnified Claim, Company will at its option and expense either: (a) procure the rights necessary for Customer to allow continued use or deployment of the affected Product; (b) replace or modify the affected Product to make it non-infringing while materially retaining functionality; or (c) terminate Customer's right to use or deploy the affected Product and, upon Customer's certified deletion of the affected Product, refund Customer the amount that Company received for the unused or undeployed portion of the Duration for the terminated Product. Company's obligations under this section do not apply to any claim based on: (i) a combination of any Product with non-Company products; (ii) any use or deployment of a Product that is not in compliance with the terms of the Agreement; (iii) continued use or deployment of an infringing version of the Product after Company has provided Customer a non-infringing version or terminated Customer's right to use or deploy the affected Product; (iv) any modification to a Product made by anyone other than Company; (v) Customer's materials; or (vi) any materials of a third party, including a Third-Party Product. This section sets forth Customer's sole and exclusive remedy and Company's entire liability for any Company Indemnified Claim.

6.2. **Customer Indemnification.** Customer agrees to indemnify and defend Company against any unaffiliated third-party suit or proceeding alleging that any Customer's materials or Company's use of such materials in compliance with the Agreement infringes any patent, trademark or copyright, or misappropriates a trade secret, of that third party or arising out of Customer's use or deployment of the Products in breach of the Agreement ("**Customer Indemnified Claim**"). Customer will indemnify Company from the damages finally awarded against Company to that third party by a court of competent jurisdiction or agreed to in settlement. Customer's obligations under this section apply only if

Company: (i) promptly notifies Customer of the Customer Indemnified Claim in writing; (ii) allows Customer sole control over the defence of the claim and any settlement negotiations except that Customer may not agree to any settlement that requires Company or its other customers to admit liability or subjects Company or its other customers to ongoing obligations without Company's express prior written consent; and (iii) reasonably cooperates in response to Customer's requests for assistance. This section sets forth Company's sole and exclusive remedy and Customer's entire liability for any Customer Indemnified Claim.

7. LIABILITY

7.1. **Limitation of Liability.** Neither party nor its Affiliates are liable for any indirect damages, including but not limited to lost profits or business opportunities, loss of use, loss of data, business interruption. The total liability of the parties due to a party's attributable failure in the performance of the Agreement is limited to compensation of direct damage up to the amount of the fees paid or payable to Company for the Products within the specific project that is subject of the claim in the 12 months preceding the event giving rise to the claim.

7.2. **Exclusions.** The limitations this section will not apply to: (a) the Customer violation of section 2.2 (Restrictions), (b) either party's obligations in section 6 (Indemnification), (c) Customer's payment obligations under section 9 (Ordering and Payment), (d) either party's violation of the other party's Intellectual Property Rights or (e) any liability that cannot be excluded under applicable law.

8. **FORCE MAJEURE.** A party's delay or failure to perform obligations under the Terms (except for payment obligations) caused by conditions beyond the reasonable control of that party is not a breach of the Terms. The time for performance will be extended for a period equal to the duration of the conditions preventing performance. If the event of force majeure with respect to the Terms lasts longer than six months, the other party shall be entitled to terminate the Terms in accordance with section 10 (*Term and Termination*).

9. ORDERING AND PAYMENT

9.1. **Orders.** The Products will be made available to Customer on Company's acceptance of the Order, unless Company and Customer agree in writing to a different start date. Notwithstanding the aforementioned, in case of a renewal of an existing Order, the start date will be immediately after the expiry date of such Order. All Orders are non-cancellable and non-refundable except as expressly provided in the Terms.

9.2. **Fees.** After acceptance by Company of the Order, Company will invoice Customer for the fees in the currency set forth in the Order. Unless otherwise agreed upon in writing between Company and Customer, Customer must pay the invoice within 30 days of the invoice date without any discount or setoff. Any objection by Customer regarding the invoiced amount does not suspend Customer's payment obligation hereunder.

9.3. **Increase.** No later than thirty (30) days prior to the expiry of the then current Duration, Company will inform Customer in writing of a price increase applicable to the following renewal of the Duration. The adjustment will be based upon the "*Geharmoniseerde Diensten Prijs Index DPI (2015=100)*". If Customer does not agree with the adjustment, it may proceed with the termination of the Order at the latest fourteen (14) days prior to the expiry of the then current Duration. Sections 10.2 (*Renewal*) and 10.5 (*Effect if Expiry or Termination*) shall apply.

9.4. **Late Payment.** If payment has not been made within the payment term, Company may apply an interest of 1,5 % per month or the statutory interest, whichever is higher, on the invoiced amount from the date on which payment should have been made until the date of actual payment of the invoice, without a reminder or notice of default being required. If Company needs to proceed to collection, all costs of collection, both judicial and extrajudicial, shall be borne by Customer.

9.5. **Partner Orders.** If Customer purchases through a Company authorized partner, section 9.2 (*Fees*) will not apply to that purchase, the partner will invoice Customer and Customer will pay the partner. Customer acknowledges and agrees that the partner is not authorized to make any changes to the Terms or make any warranties, representations, promises or commitments on behalf of Company related to the Products.

10. TERM AND TERMINATION

10.1. **Term.** The Terms shall enter into force on the Effective Date and for the Duration of all Orders, unless terminated as set forth below.

10.2. **Renewal.** The Duration of an Order will automatically renew for successive twelve (12) month terms, unless otherwise stated in the Order or either party sends notice of non-renewal at least thirty (30) days prior to the expiry of the current Duration.

10.3. **Suspension.** Company may decide to suspend the access and/or deployment of the Products if (i) Customer fails to pay an amount due under the Terms till such amount has been paid, (ii) Company reasonably determines that Customer's use and/or deployment of the Products is disrupting or interfering with security, integrity, or availability of the Products.

10.4. **Termination for Cause.** Both Company and Customer reserve the right to terminate the Terms, including the Order, at any time without judicial intervention by giving notice in writing by registered mail to the other party, if: (a) the other party materially breaches the Agreement and does not cure the breach within thirty (30) days of receiving written notice describing the breach from the other party, (b) the other party is declared bankrupt, has been granted a suspension of payments or has its assets attached in full, if it goes into liquidation or is dissolved.

10.5. Effect of Expiry or Termination.

(a) **Termination of Terms.** In case of termination of the Terms, the Orders still in force will automatically terminate upon expiry of the then current Duration, without the need for written notice. Until termination of the Order, the provisions of the Terms shall remain in force.

(b) **Expiry or Termination of Order.** In the event of termination or expiry of an Order, (i) Customer's use and/or deployment rights of the Products are to be considered terminated at the termination or expiry date and (ii) Company will stop providing the applicable Products, (iii) any unpaid fees will become immediately due and payable, (iv) without undue delay the parties shall return or destroy all Confidential Information in their possession which was received from the other party, unless otherwise provided by applicable law.

(c) **Survival.** The obligations under the Terms relating to payment, Intellectual Property, Confidential Information, and other obligations specified by applicable law shall survive beyond the termination of the Terms.

11. CONFIDENTIALITY. Recipient will protect Discloser's Confidential Information in the same manner as it protects its own Confidential Information of a similar nature or value, and always with at least reasonable care. Recipient may use Confidential Information of Discloser solely to exercise its rights and perform its obligations under the Agreement. Recipient may disclose Confidential Information only to its and its Affiliates' officers, directors, employees, service providers, contractors, advisors or representatives ("**Representatives**") who have a reasonable need to know the Confidential Information to perform under the Terms and who are bound by a similar duty of confidentiality. Recipient is responsible for its Representatives compliance with this section. Recipient also may disclose Confidential Information to the extent required by law or regulation, in which case Recipient will notify Discloser as soon as practicable if permitted by law or regulation. At Discloser's written request and expense, Recipient will take reasonable steps to contest and to limit the scope of any required disclosure. Recipient's obligation to protect Confidential Information of Discloser applies during the Duration and for three (3) years after the end of the Duration except with respect to Confidential Information that constitutes a trade secret, which will remain subject to the confidentiality obligations for as long as it remains subject to trade secret protection under applicable law. Confidential Information does not include any information that Recipient can show: (1) was rightfully known to Recipient without any obligation of confidentiality at the time of disclosure; (2) was disclosed to Recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (3) was generally available to the public at the time of disclosure through no fault of Recipient; or (4) was independently developed by Recipient without use of Discloser's Confidential Information.

12. DATA PRIVACY

12.1. Data Protection. Each party will comply with its respective obligations under applicable data protection laws. In the event Personal Data will be processed in the sense of the General Data Protection Regulation ("**GDPR**"), Company and Customer will sign a data processing agreement, which will then be considered an integrated part of the Terms.

12.2. Contact Data. The necessity for the cooperation to exchange and allow the use and processing of the other party's contact information relating to their respective Representatives for (i) invoicing, billing and other business inquiries, (ii) contract and customer management and (iii) order fulfilment and deliveries to Customer ("**Contact Data**") is done in the role of data controller.

12.3. Sensitive Data. No sensitive personal information will be exchanged, used or processed under the Terms.

13. OTHER PROVISIONS

13.1. Notices. Notices will be in writing. The parties agree that electronic communications will satisfy applicable legal notice requirements. Notice will be deemed given on the next business day after the notice is sent.

13.2. Publicity. After consultation with Customer, Company may identify Customer as a Company customer and use Customer's name and logo in promotional and marketing materials.

13.3. Third Parties. Company may engage one or more third parties to execute its obligations under the Terms.

13.4. Severability. If part of the Terms is held to be void, invalid or unenforceable, the rest will remain in full force and effect.

13.5. Waiver and Amendment. The waiver of a breach of any provision of the Terms will not constitute a waiver of another provision or a later breach. Any modification to the Terms must be in writing and signed by both parties.

13.6. Assignment. Neither party may assign its rights or obligations under the Terms or any Order without the prior written consent of the other party except to an Affiliate or to a successor that has acquired substantially all the business relating to the Terms. Neither party will unreasonably withhold consent to assignment. The Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.7. Relationship of the Parties. The parties are independent contractors. Nothing in the Terms creates a partnership, joint venture, or agency relationship. Neither party has any authority to assume or create any obligation of any kind in the name of or on behalf of the other party.

13.8. Export Regulations. Customer shall comply with all applicable export control laws, rules, and regulations with respect to its use or deployment of the Products. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Products without Company's prior written consent. Customer will notify Company without undue delay if Customer and/or any authorized user may be in non-compliance with this section.

13.9. Applicable Law and Jurisdiction. The Terms are governed exclusively by Dutch law. All disputes arising out of or in connection with the Terms shall be submitted to the competent courts in The Hague (The Netherlands), without prejudice to the right of the parties to request preliminary relief. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

13.10. Entire Agreement. The Terms as it may be modified from time to time is the entire agreement of the parties regarding the use or deployment of the Products. The Terms supersede all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter. In the event of a conflict, the order of precedence will be: (1) the Order; (2) the Specific Terms, (3) the General Terms. Purchase conditions and/or general terms and conditions of Customer do not apply to the Terms, unless explicitly accepted in writing by the Company. In case of discrepancies between the Dutch and the English version of the Terms, the English version will prevail.

13.11. Product-Specific Terms. Depending on Customer purchasing Services and/or Software, the following Specific Terms apply, which supplement the General Terms and supersede any conflicting terms in the General Terms:

Specific Terms – Software - not applicable

[Specific Terms -Services](#)