

GENERAL TERMS AND CONDITIONS OF SMT - "GTC"

Preamble: SMT introduces the GTC i.e. General Terms and Conditions to any of its Customers. SMT has to distinguish the terms and conditions (LIMA's) for the delivery of third party software as well as its own SMT Modules and corresponding maintenance. The third party software suppliers apply their own terms and conditions as hereby endorsed by SMT. Next to that SMT also renders services like assessment, design, implementation or on-site-maintenance of the Software and/or SMT Modules to which the GTC apply. The GTC determine which document (GTC or LIMA) regulate which product or service and their correlation.

Definitions:

PARTIES/ENTITIES:

"Customer": the party to which SMT delivers the agreed upon Products and/or Services.

"SMT": the party that, depending on the Proposal, is a value added reseller of third party Software, licensor of its own SMT Modules as well as a party rendering the agreed upon Services.

"Manufacturer": SMT's supplier of proprietary Software.

"Company and organization": the corporate group of the Customer made up of the Customer and all its affiliates being those entities in which Customer has a decisive vote e.g. by owning more than 50% of the votes or by contractual means.

"Third Party": a person or company or other legal entity not being SMT, nor Customer nor the Company and organization.

"DOCUMENTS"

"Agreement": the GTC and one or more individual contracts mentioned in the GTC-paragraphs including, without limitation, the LIMA(s), any Proposal, SMT Maintenance Service Level Agreement(s), Statement(s) of Work and/or SLA, Escrow(s), Seconded Employee, inclusive of their individual extension, restriction, prolongation or termination. Termination of one or more of the above-mentioned individual contracts will not affect the validity of the other contracts that are in place.

"Proposal": is part of the Agreement. Each Proposal describes to what extent it applies for: Software licenses, Software maintenance, SMT Modules, Services, and Training.

"GTC": the general terms and conditions hereof.

"LIMA": the license and/or maintenance/support agreement agreed upon by the parties and attached hereto.

"SMT Maintenance Service Level Agreement" (also: "SMT Maintenance SLA"): represents the operational maintenance and support policies for the Software and the SMT Modules, as may be changed from time to time with prior written notice to the Customer.

"Documentation": the operator's manual for the Software and SMT Modules, which Customer herewith states to have received.

"Statement of Work (SOW) and/or SLA (Service Level Agreement)": describes the agreed upon Services.

"PRODUCTS AND SERVICES"

"Services": SMT renders services for assessment, design, implementation or on-site-maintenance of the Software and/or SMT Modules or other defined services all described in a "Statement of Work and/or SLA".

"Training": is SMT training rendered to Customer's personnel to use and maintain the Software and/or SMT Modules.

"SMT Modules": i.e. SMT's creation of Software scripts and modules wholly maintained by SMT.

"Software": is third party software from one or more Manufacturers as provided by SMT to the Customer.

"Maintenance": is SMT's maintenance and support of the Software as reflected in a corresponding license and/or maintenance/support agreement ("LIMA") of the Manufacturer, or as reflected in the GTC e.g. for the SMT Modules. The 1st line support and maintenance (i.e. telephone support, software updates) is executed by SMT as reflected in the GTC, while the 2nd line of support and maintenance of the Software is executed by the Manufacturer as reflected in the LIMA.

"Error": a documented defect in the Software and/or SMT Modules that causes (i) the Software and/or SMT Modules not to operate in accordance with the description of the Software's function and/or (ii) SMT Modules not to function in accordance with the Documentation and /or the LIMA.

"Update": a modification to the Software and/or SMT Modules that is generally offered by the Manufacturer and/or SMT resp. in its sole discretion as an "Update" comprising a maintenance version release to a specified Version or SMT Modules. All Updates shall be deemed licensed to Customer pursuant to the applicable LIMA. SMT will deliver all Updates, releases and versions (including next generation Software) of the Software and/or SMT Modules mentioned in the Proposal according to the LIMA and/or GTC so the case may be.

1. PROPOSAL AND ACCEPTANCE

- 1.1 The GTC shall apply to the Proposals, legal relationships, Software, SMT Modules, Services of whatever nature to the Customer. Proposal, LIMA, Manufacturer, Software and/or SMT Modules or other defined words include their plural or vice versa depending on the context.

The LIMA as attached to the GTC and/or mentioned in SMT's Proposal to the Customer as well as deviations from and additions to the GTC shall only be valid if they have been expressly agreed in writing. The Proposal is given preference to the LIMA and GTC on the one hand, and on the other hand, the Lima is given preference to the GTC.

- 1.2 Insofar as SMT provides Software from Manufacturers to the Customer, the LIMA shall replace the provisions in the

GTC and shall apply with regard to that Software (regardless whether Maintenance has been agreed upon or terminated), provided that SMT attached the relevant LIMA to the GTC/Proposal. The Customer shall accept the aforementioned LIMA. If and insofar as the LIMA are deemed or declared inapplicable to the relationship between the Customer and SMT for whatever reason, the provisions in the GTC shall fully apply.

- 1.3 All Proposals and other statements by SMT shall be without obligation, unless SMT expressly indicate otherwise in writing. The Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which SMT bases its Proposal and which have been stated by or on behalf of the Customer to SMT.
- 1.4 The application of the Customer's purchasing or other terms and conditions is expressly rejected, unless additional terms and conditions are agreed upon in the Proposal.
- 1.5 If any provision of the GTC is null and void or annulled, the other provisions of the GTC shall remain in full force.
- 1.6 SMT may always state additional requirements concerning communication regarding Maintenance between the Parties.

2. LICENCE I: SOFTWARE FROM SMT'S MANUFACTURER / LIMA

- 2.1 If and insofar as SMT provides Software from a Manufacturer to the Customer, LIMA shall replace the GTC although for maintenance purposes SMT hereunder defines SMT's maintenance part insofar it shall apply with regard to that Software. The Customer hereby accepts the aforementioned LIMA. If and insofar as the aforementioned third-party terms and conditions are deemed or declared inapplicable to the relationship between the Customer and SMT for whatever reason, the provisions in the GTC shall fully apply.

3. LICENCE II: SMT MODULES FROM SMT'S / GTC

- 3.1 Subject to the provisions about Intellectual Property Right, SMT shall grant the Customer the non-exclusive right to use the SMT Modules as stated in the Proposal. The Customer shall always strictly comply with the use restrictions agreed between the Parties. Subject to the other provisions in the GTC, the Customer's right of use shall only include the right to load and run the SMT Modules as mentioned in the GTC.
- 3.2 The Customer may only use the SMT Modules in its own Company or organization on the one processing unit and for a specific number or type of users or terminals for which the right of use has been furnished. The right of use may pertain to multiple processing units insofar as this is expressly apparent from the GTC / LIMA.
- 3.3 The right of use shall not be transferable outside the company or organization of the Customer and the right of use will be rescinded if a part of the company or organization will be assigned to a Third Party. The Customer shall not be allowed to sell, lease, sub-license or alienate the SMT Modules and data carriers on which it has been recorded, grant restricted rights to these SMT Modules or these data carriers or provide them to a third party in any manner or for any purpose whatsoever, give a

third party remote or non-remote access to the SMT Modules or place the SMT Modules with a third party for hosting, not even if the third party in question will only use the SMT Modules for the Customer's benefit. The Customer shall not modify the SMT Modules except in connection with fixing Errors. The Customer shall not use the SMT Modules to process data for third parties ("time-sharing"). The Software's source code and the technical documentation generated in developing the SMT Modules shall not be made available to the Customer, not even if the Customer is prepared to pay financial compensation for making them available, unless both parties agree to set up an escrow arrangement. The Customer acknowledges that the source code is confidential in nature and that it includes SMT's trade secrets.

- 3.4 The Customer shall immediately return all copies of the SMT Modules in its possession to SMT after the right to use the SMT Modules ends if and when the right to use the Software ends. If the Parties have agreed that the Customer shall destroy the copies concerned when the right of use ends, the Customer shall provide written notice of such destruction to SMT immediately.

4. DELIVERY, INSTALLATION BY SMT / ACCEPTANCE BY CUSTOMER

- 4.1 SMT shall deliver the Software and/or SMT Modules to the Customer on the agreed type and format of data carriers and, if installation by SMT has been agreed in writing, shall install the Software and/or SMT Modules at the Customer's site. Parties will agree a Statement of Work and/or SLA attached to and part of the GTC in order to specify delivery and installation activities i.e. Implementation. Unless agreed upon in the Proposal, the Customer itself shall install, set up, design parameters for and tune the Software and SMT Modules and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly agreed upon in the Proposal, SMT shall not be required to convert data.
- 4.2 If the Parties have not agreed on any acceptance test, the Customer shall accept the Software and/or SMT Modules in the condition in which it is at the time of delivery, hence, with all apparent and non-apparent Errors and other defects, without prejudice to SMT's obligations under the guarantee of Article 5. The provisions in Article 4.5 and 4.10 shall apply fully in all cases.
- 4.3 If an acceptance test has been agreed between the Parties in writing, the provisions in Articles 4.4 to 4.10 apply.
- 4.4 If an acceptance test has been agreed, the test period shall be 14 days after delivery, unless otherwise agreed upon in the Proposal or, if installation by SMT has been agreed in writing, after the installation is completed. The Customer shall not be allowed to use the Software and/or SMT Modules for productive or operational purposes during the test period. SMT may always require, hence, even if this has not been expressly agreed, that the Customer conduct a proper test of sufficient scope and depth using sufficiently qualified employees as to interim or other results of the development work and that the test results be reported to SMT in writing and in a well-organized and comprehensible manner.
- 4.5 The Software and/or SMT Modules shall be considered accepted by the Parties:
 - a. if an acceptance test has not been agreed between the Parties: at the time of delivery or, if installation by SMT has

been agreed in writing, when the installation is completed, or

- b. if an acceptance test has been agreed between the Parties: on the first day after the successful test period, or
 - c. if SMT receives a test report as referred to in Article 4.7 before the end of the test period: at the time that the Errors mentioned in that test report have been fixed, notwithstanding the existence of imperfections which do not preclude acceptance under Article 4.6. In deviation from this, if the Customer makes any use of the Software and/or SMT Modules for productive or operational purposes before express acceptance, the Software and/or SMT Modules shall be considered fully accepted as from the start of that use.
- 4.6 If, it turns out that the Software and/or SMT Modules contains Errors, when the agreed acceptance test is conducted, which impede the progress of the acceptance test, the Customer shall provide written, detailed notice to SMT, in which case the test period shall be interrupted until the Software and/or SMT Modules has been adjusted in such a manner that this impediment is eliminated.
- 4.7 If, it turns out that the Software and/or SMT Modules contains Errors, when the agreed acceptance test is conducted, the Customer shall inform SMT about the Software and/or SMT Modules through a written and detailed test report no later than on the last day of the test period. SMT shall do its utmost to fix the aforementioned Errors to the best of its ability within a reasonable time period, with SMT being entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the Software and/or SMT Module.
- 4.8 Acceptance of the Software and/or SMT Modules may not be withheld on other grounds besides those relating to the expressly agreed specifications between the Parties nor because of the existence of minor Errors, that is, Errors which do not reasonably preclude putting the Software and/or SMT Modules to operational or productive use, notwithstanding SMT's obligation to fix these minor Errors under the warranty provisions set out in Article 5 as provided, if applicable. In addition, acceptance may not be withheld with regard to aspects of the Software and/or SMT Modules which can only be evaluated subjectively, such as the design of the user interfaces.
- 4.9 If the Software and/or SMT Modules is/are delivered and tested in stages and/or parts, the non-acceptance of a particular stage and/or part shall not affect any acceptance of an earlier stage and/or another part, provided that such earlier stage and/or another part has been accepted
- 4.10 Acceptance of the Software and/or SMT Modules in one of the ways referred to in Article 4.3 shall have the effect that SMT is fully discharged for performing its obligations concerning developing and providing the Software and/or SMT Modules. Acceptance of the installation by SMT in one of the ways referred to in Article 4.3 shall have the effect that SMT is fully discharged for performing its obligations concerning the installing of the Software and/or SMT Modules. Acceptance of the Software and/or SMT Modules shall not in any way impair the Customer's rights under Article 4.6 regarding Errors being minor defects and the GTC provision regarding the guarantee.

5 WARRANTIES

- 5.1 Customer may rely on the warranties mentioned in the LIMA as provided by SMT. The Customer is aware and accepts that SMT is a reseller of Software and that SMT

has not manufactured or developed the said Software. In so far as applicable, any warranties relating to Software shall only be provided to the extent that they are directly provided to the Customer by the Manufacturer provided that SMT is, in so far, enabled by the Manufacturer thereto. The Customer shall be referred to the "Warranty Statement" accompanying the Software for the warranty conditions. If such a "Warranty Statement" is missing, SMT shall provide the Customer with any applicable warranty conditions at the latter's request. Accordingly, SMT shall not provide any warranty for Software and other services, unless explicitly stated in the Proposal or agreed upon.

- 5.2 The information, software, products, and services delivered by SMT may include inaccuracies or typographical errors. SMT and/or its respective suppliers may make improvements and/or changes in the products or services at any time. SMT and/or its respective suppliers make no representations about the suitability, reliability, availability, timeliness, lack of viruses or other harmful components and accuracy of the information, software, products, services and related graphics for any purpose, unless this is explicitly warranted in writing by SMT and/or its respective Manufacturers. SMT does in no event guarantee that software or products, obtained through SMT, will at all times function without interruption or failure.
- 5.3 SMT shall use best efforts to fix Errors in the SMT Modules to the best of its ability within a reasonable time period if they have been reported in writing and in detail to SMT within four (4) months after acceptance or, if an acceptance test has been agreed between the Parties, within four (4) months after acceptance. SMT does not warrant that the Software and/or SMT Modules shall operate without interruption, Errors or other defects or that all Errors and other defects shall be corrected. Repairs shall be performed free of charge, unless the Software and/or SMT Modules have been developed at the Customer's instruction other than for a set price, in which case SMT shall charge the repair costs according to the usual rates. SMT may charge the repair costs according to its usual rates if there have been operating errors or improper use on the Customer's part or other causes not imputable to SMT or if the Errors could have been ascertained when the agreed acceptance test was conducted. The warranty shall not include fixing mutilated or lost data. The warranty obligation shall be extinguished if the Customer makes changes or has changes made to the Software and/or SMT Modules without SMT's written permission, which permission shall not be withheld on unreasonable grounds.
- 5.4 Errors shall be fixed at a location to be determined by SMT with prior notification to Customer. SMT shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the Software and/or SMT Module.
- 5.5 SMT shall not have any obligations concerning fixing Errors reported after the expiry of the warranty period referred to in Article 5.1, unless the Parties have concluded a maintenance agreement, which includes such a duty to fix.

6 MAINTENANCE

- 6.1 If a LIMA has been concluded for the Software and the GTC applies to license and maintenance of the SMT Modules or if the Customer's fee for the Software maintenance includes that of SMT Modules as well, then Customer shall provide detailed notice to SMT of the Errors observed in the Software and/or SMT Modules in accordance with SMT's usual procedures. After receiving

the notice, SMT shall, to the best of its ability, do its utmost to fix Errors. Depending on the urgency, the results shall be provided to the Customer in the manner and within the time period to be determined by SMT. SMT or Manufacturer shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the Software. In the absence of maintenance according to a LIMA or GTC for the SMT Modules in this regard, the Customer itself cannot install, set up, design parameters for and tune the corrected Software and/or SMT Modules or the new version provided and, if necessary, adjust the equipment and user environment used in this connection, without applying for maintenance according to the then applicable LIMA and/or GTC and pay retroactively the maintenance fee for the previous year. Unless expressly otherwise agreed, SMT shall not be required to convert data.

- 6.2 SMT does not warrant that the Software and/or SMT Modules shall operate without interruption, Errors or other defects or that all Errors or other defects shall be corrected.
- 6.3 SMT may charge the repair costs according to its usual rates if there have been operating Errors or improper use on the Customer's part or other causes not imputable to SMT or if the Software and/or SMT Modules has/have been modified by others besides SMT. Maintenance shall not include fixing mutilated or lost data.
- 6.4 If a LIMA has been concluded or maintenance has been agreed as mentioned in the Proposal, SMT shall provide to the Customer improved versions or releases of the Software to the extent of the LIMA resp. the GTC and when they become available. SMT shall no longer be required to fix any Errors in the old version of the Software or SMT Modules or to provide support regarding an old version six months after an improved version becomes available, unless a LIMA provides differently for the Software, which outcome applies to the SMT Modules as well.
- 6.5 If the Customer did not agree maintenance regarding the Software based on a LIMA with SMT at the same time that the GTC to provide the SMT Modules is concluded, SMT cannot be required to enter into maintenance obligations for the SMT Modules based on the GTC at that time or later in time.

6.6 Maintenance includes:

6.6.1 Phone Support

- A. Customer agrees to have its license agreement number and relevant details available whenever calling SMT for related support.
- B. **Telephone support** is available to Customer via SMT from Monday through Friday, 9:00am - 17:00pm, (CET) to provide trouble-shooting advice, excluding official Dutch holidays.
- C. During the term of this GTC, SMT shall handle all support calls (phone or email) according to the "SMT Maintenance SLA", which represents the maintenance and support policies as may be changed from time to time with prior written notice to the Customer
- D. The Customer commits itself, for the duration of this GTC, to have at least one (1) engineer trained as an Administrator for the mentioned Software and/or SMT Module.

6.6.2. Maintenance Software Updates

During the term of the GTC, SMT:

- A. shall provide Updates to Software, Documentation and SMT Modules covered, subject to the LIMA or GTC respectively. Updates of the Software shall be deemed licensed pursuant to such LIMA. Updates of the SMT Modules shall be deemed licensed pursuant to GTC.
- B. is not eligible for any Software or Software product or SMT Modules release announcement by the Manufacturer, which is/are not released for whatever reason.

6.7 SMT Support Engineer

If the Customer requires additionally on-site support services of a SMT Support Engineer, this can be requested by the Customer and SMT will charge the Customer with the then current mutually agreed SMT rates for this maintenance or other Services.

6.8 Customer's responsibilities

Customer shall be solely responsible for the supervision, management, and use of the Software or SMT Modules and Updates, including but not limited to:

- A. Following regular and adequate back-up procedures;
- B. Assuring proper computer system operation, maintenance of the computer system, audit controls and operating methods;
- C. Following appropriate procedures to satisfy requirements for proper operating environment, for security and accuracy of input and output, and restart and recovery in the event of malfunction;
- C. Using the Updates only as described in the Documentation;
- D. Refraining from modifying the Updates, refraining from using any computer devices other than the computer system in conjunction with the Updates, and refraining from using computer Software programs not approved by SMT in conjunction with the Updates; and
- E. Refraining from making any copy of the Updates, except to install the Updates on the hard disk comprising part of the computer system and to make a back up copy.

6.9 Maintenance miscellaneous

- A. SMT shall ensure that all Product(s) must be in standard operating condition and conform with the agreed Software version levels in order to be eligible for Maintenance or to remain covered based on the GTC or SMT Maintenance SLA.
- B. SMT shall have no obligation to provide or continue to provide Maintenance if Customer fails to install any Update, Upgrade, or new Software release or SMT Modules within six (6) months of SMT having provided such Update, upgrade, or new release together with notice that the installation of same is required in order to avoid a performance problem or otherwise for SMT to provide services hereunder.
- C. Maintenance services hereby obtained do not include or cover:
 - i) Software or SMT Modules repair, reinstallation, replacement or other services necessitated by failures caused by or related to misuse, abuse, neglect, accident or willful or negligent acts, unauthorized maintenance or other unauthorized modifications of the Software by a person other than an authorized SMT representative, failures relating to theft, fire, water, (or other disasters) or other circumstances beyond the reasonable control of SMT, or
 - ii) Software or SMT Modules failure or malfunction caused by or related to electrical power abnormalities or other environmental conditions not in conformance with SMT's specifications, or
 - iii) Any service or support relating to Software or SMT Modules which is not specified on the applicable SMT Maintenance SLA, or

- iv) Modification of the Customer's hardware products or operating system, or
 - v) On-site maintenance Services unless specifically provided for by the applicable SOW; or
 - vi) Travel, accommodations, courier, freight, or other unusual charges related to Maintenance services and not specified herein, however, subject to receipt of a Customer request for assistance.
- 6.10 The SMT Maintenance SLA starts (unless otherwise agreed in the Proposal) from the date of purchase of the license for the Software and/or SMT Modules as specified on each individual license number in the Proposal and is valid for a period of at least one year and will automatically be renewed without written discontinuation of the Customer (1 month in advance), unless the Customer purchase order for this renewal has not been received by SMT before the renewal date. SMT will provide Customer a notice of the expiration in writing at a minimum of three (3) months in advance. SMT can terminate the maintenance SLA Agreement in writing with a twelve (12) months notice in advance.
- 6.11 If the fee for Maintenance increases due to changes in the Manufacturer's pricing, Customer will be notified in writing at a minimum of two (2) months in advance and the renewal of the SMT Maintenance SLA will be activated after acceptance of the increased fee. The acceptance will be done by sending SMT a Customer purchase order for the SMT Maintenance SLA. If the Software and/or SMT Modules are being added to an existing license number, the Maintenance period must be in line with the date specified for that specific license number, and therefore the Maintenance period for this additional Software and/or SMT Modules must be purchased for 1 year plus the remaining months of the current Maintenance period.

7 SERVICES I

- 7.1 SMT shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the GTC/LIMA and procedures recorded in writing with the Customer. All of SMT's services shall be performed on the basis of a best efforts obligation, unless and insofar as SMT has expressly promised a result in a written and signed document and the result concerned has also been described with sufficient definiteness.
- 7.2 In addition to the general provisions in the GTC, these provisions shall apply if SMT provides Services or other services such as giving advice, feasibility studies, consultancy, study programs, hosting, development, or management of Software, websites or information systems and services regarding networks. These provisions shall not affect the provisions included in the GTC concerning specific services, such as Maintenance development of Software.
- 7.3 If it has been agreed that the services shall be provided in stages, SMT shall be entitled to postpone the start of the services which are part of a stage until the Customer has approved the results of the preceding stage in writing.
- 7.4 In performing the services, SMT shall only be obliged to follow timely and sensible instructions of the Customer if this has been expressly agreed in writing. SMT shall not be required to follow instructions, which change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated pursuant to Article 7.5.

- 7.5 If a new instruction for Services has been agreed upon with a view to performance by a particular person, SMT shall always be entitled to replace this person after consultation with the Customer with one or more other persons with the same qualifications.
- 7.6 If, at the written request of or with prior written consent from the Customer, SMT has performed work or rendered other performance which goes beyond the substance or scope of the agreed services, the Customer shall pay for that work or performance according to SMT's usual rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. SMT shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.
- 7.7 The Customer accepts that work or performance as referred to in Article 7.6 may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Customer and Supplier. The fact that additional work – when so agreed upon - (or the demand for it) arises during execution of the Agreement shall not be a ground for the Customer to rescind or terminate the Agreement.

7.8 SERVICES II: SECONDMENT (NL= detachering)

- 7.8.1 There shall be secondment within the meaning of the GTC as referred to above if SMT makes an employee (hereinafter: "**the Seconded Employee**") available to the Customer in order to have this Employee perform work under the Customer's supervision, management and/or direction.
- 7.8.2 SMT shall exert its best efforts to ensure that the Seconded Employee remains available for the term of the Agreement, notwithstanding the provisions in Article 7.5 concerning replacement.
- 7.8.3 The Customer shall be entitled to request replacement of the Seconded Employee if the Seconded Employee demonstrably does not meet expressly agreed quality requirements and the Customer provides written notice of this to SMT within 14 working days ultimately after the work commences. SMT shall immediately address the request, making it a priority. SMT does not warrant that replacement shall always be possible. If replacement is not or not immediately possible, the Customer's claims to further performance of the Agreement shall be extinguished. The Customer's payment obligations will be re-considered at terms then to be discussed and agreed upon by both parties.
- 7.8.4 The Customer shall be entitled to request replacement of the Seconded Employee if the Seconded Employee experiences a long-term illness or leaves SMT's employment. SMT shall immediately address the request, making it a priority. SMT does not warrant that replacement shall always be possible. If replacement is not or not immediately possible, the Customer's claims to further performance of the Agreement as well as all claims of the Customer on account of non-performance of the Agreement shall be extinguished. The Customer's payment obligations concerning the work performed shall continue to exist.
- 7.8.5 SMT shall be obliged to make timely and complete payment of the wage tax and social security contributions (including advance contributions) to be paid for the Seconded Employee in connection with the Agreement.

SMT shall indemnify the Customer against all statutory claims by the Tax Authorities or social insurance agencies regarding taxes and social security contributions directly relating to SMT's making the Seconded Employee available ("liability for using external personnel"), provided the Customer allows SMT to handle the claims concerned completely, cooperates fully with it and furnishes it with all necessary information and, if SMT desires, power of attorney to conduct legal proceedings.

7.8.6 SMT shall not accept any liability for the Employee concerning the results of the work arising under the Customer's supervision, management and/or direction.

7.9 SERVICES III: TRAINING

7.9.1 Depending on the availability of the SMT training facilities, the training will be held at the SMT premises, unless an onsite training has been agreed upon in the Proposal.

7.9.2 Insofar as the services by SMT consist of providing a course or training session, SMT will always demand payment of the amount owed before it begins to provide these services. SMT's normal rules shall govern the consequences of cancellation of participation in the study program, course or training session.

7.9.3 If the number of registrations justifies doing so in SMT's judgment, SMT shall be entitled to have them take place at a later date or a later time.

7.10. SERVICES IV: CANCELLATION

7.10.1 If a participant of a training held by SMT cancels within three workdays before the agreed upon training takes place or does not show up for this training, the Customer shall be obligated to pay for the agreed upon training for the participant, even though the participant did not complete the training.

7.10.2 If a Customer cancels an agreed upon consultancy day within three workdays before the day of consultancy, the Customer shall be obligated to pay for this day, even though the consultancy was not carried out.

8. DELIVERY PERIODS IN GENERAL

8.1 All delivery and other periods stated or agreed by SMT have, to the best of its knowledge, been determined based on data known to SMT when it entered into the GTC/LIMA. SMT shall properly exert its best efforts to observe agreed delivery and other periods as much as possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause SMT to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, SMT shall not be in default because of a time period being exceeded until the Customer has provided it with a written notice of default. SMT shall not be bound by firm or non-firm delivery or other periods which can no longer be met on account of circumstances beyond its control which have occurred after the GTC/LIMA was concluded. Nor shall SMT be bound by firm or non-firm delivery periods if the Parties have agreed to modify the substance or scope of the GTC /LIMA (additional work, change in specifications etc.). If any period threatens to be exceeded, SMT and Customer shall consult with each other as soon as possible.

9. COOPERATION BY THE CUSTOMER; INFORMATION, EQUIPEMENT, PERSONNEL

9.1 The Customer shall always furnish SMT in a timely manner with all data or information which is useful and necessary to execute the GTC / LIMA or other contractual relationships properly and provide full cooperation, including furnishing access to its buildings. If the Customer utilizes its own employees in cooperating in the execution of the GTC / LIMA or other contractual relationships, these employees shall possess the necessary know-how, experience, abilities and characteristics.

9.2 The Customer shall bear the risk of selecting, using and applying in its organization the hardware equipment even when recommended by SMT, Software, SMT Module, websites, databases and other products and materials and the services to be provided by SMT, and shall also be responsible for the monitoring and security procedures and proper system management.

9.3 If the Customer furnishes Software, SMT Module, websites, materials, databases or data to SMT on a data carrier, this carrier shall meet the specifications prescribed by SMT.

9.4 If the Customer does not provide SMT with the data, hardware equipment, Software or SMT Module, employees necessary to execute the Agreement or does not provide this in a timely manner or in accordance with the Agreement made, or if the Customer otherwise does not fulfil its obligations, SMT shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with the mutually agreed rates between SMT and Customer, all of this without prejudice to SMT's right to exercise any other legal right.

9.5 In the event that employees of SMT perform work on-site at the Customer's, the Customer shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities, if so required. The working space shall comply with all applicable statutory and other requirements and provisions concerning working conditions. The Customer shall indemnify SMT against claims by third parties, including SMT's employees, who, in executing the Agreement, suffer injury, which is the result of acts or omissions by the Customer or of unsafe situations in its organization. The Customer shall provide timely notice to SMT's employees to be utilized of the company and security rules applicable within its organization.

9.6 If, in executing the Agreement, telecommunications facilities, including the Internet, are used, the Customer shall be responsible for properly selecting these and making them available in a timely and sufficient manner, except for those faculties directly used and managed by SMT. SMT shall never be liable for damage or expenses due to transmission Errors, malfunctions or the non-availability of these facilities, unless the Customer proves that this damage or these expenses resulted from intentional acts or omissions or gross negligence on the part of SMT or its managers. If telecommunications facilities are used in executing the Agreement, SMT shall be entitled to assign access or identification codes to the Customer. SMT may change the assigned access or identification codes. The Customer shall treat the access codes as confidential and with due care and shall only disclose them to authorized employees. SMT shall never

be liable for damage or expenses resulting from misuse of access or identification codes by Customer only.

expenses incurred by SMT in regard to unsuccessful mediation if the Customer is ordered by a judgment to pay the outstanding amount in full or in part.

10. RISK

10.1 The risk of loss or theft of or damage to objects, products, Software, SMT Modules or data which are the subject of the GTC or LIMA shall pass to the Customer at the time they have been placed at the actual disposal of the Customer or an assistant used by the Customer.

11.7 SMT is at all times authorized to require a reasonable advance payment from Customer. Furthermore, SMT is authorized to require (additional) security from Customer for the fulfilment of his obligations to pay, in case the financial position or the payment record of Customer gives reason to act accordingly and judged by SMT. Customer is obliged to meet such a requirement. In case Customer fails to meet said requirement, Contractor shall be authorized, without prejudice to SMT's other rights, to immediately suspend the (further) execution of the assignment and all that Customer is owing SMT for whatever reason, shall be immediately payable.

11. PRICE AND PAYMENT

11.1 All prices shall be exclusive of turnover tax (VAT) and other levies imposed by the government. The prices include travel and other expenses within the Netherlands. All amounts invoiced are due with a 30 days term of payment.

12. INTELLECTUAL PROPERTY RIGHTS

11.2 All amounts regarding *Licenses* shall be invoiced after delivery. All amounts regarding *maintenance* of the Software and/or SMT Modules shall be invoiced (unless otherwise agreed in the Proposal) upfront for one year after their start dates i.e. after delivery of the Software and/or SMT Modules. All amounts regarding *Services* shall be invoiced after being rendered or when such period is for intermediate terms of 4 weeks, after every 4 weeks. All amounts regarding Training services shall be invoiced and paid before being rendered.

12.1 Without prejudice to the provisions in the LIMA all intellectual property rights to Software, SMT Modules, websites, databases, equipment or other materials developed or provided under the GTC, such as analyses, designs, documentation, reports, Proposals, as well as preparatory materials in that regard, shall be held solely by SMT, its licensors or its Manufacturers. The Customer shall only acquire the rights of use expressly granted in these Terms and Conditions and by law. Any other or more extensive right of the Customer to reproduce Software, websites, databases or other materials shall be excluded. A right of use to which the Customer is entitled shall be non-exclusive and non-transferable to third parties. If SMT will develop and deliver customized software, Customer will obtain the intellectual property rights of the newly developed Customized Software for a compensation to be agreed upon in a separate contract.

11.3 In the absence of an expressly agreed invoicing schedule, all amounts pertaining to development of the Software or SMT Modules shall be owed when the Software or SMT Modules are delivered or, if installation by SMT has also been agreed in a particular case, when the installation is completed.

In the absence of an expressly agreed invoicing schedule, all amounts pertaining to maintaining Software and/or SMT Modules shall be owed before the maintenance period commences.

12.2 If, in deviation from Article 12.1, SMT is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered into expressly in writing. If the Parties expressly agree in writing that intellectual or industrial property rights regarding Software, websites, databases, equipment or other materials specifically developed for the Customer shall be transferred to the Customer, this shall not affect SMT's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, programming languages and the like underlying that development, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect SMT's right to undertake developments for itself or third parties which are similar to those done for the Customer.

11.4 If the Customer must make regular payments, SMT shall be entitled to adjust the applicable prices and rates by providing written notice at least three months in advance. If the Customer does not wish to agree to such an adjustment, the Customer shall, within thirty days after the notice, be entitled to terminate the Agreement before the date on which the adjustment would have become effective.

12.3 The Customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the Software, websites, databases, equipment or materials.

11.5 The Parties shall record in the Proposal and/or Agreement the date or dates on which SMT shall charge the Customer the fee for the agreed performance. The Customer shall pay invoices in accordance with the payment conditions stated on the invoice. In the absence of a specific provision, the Customer shall pay within thirty days after the invoice date. The Customer shall not be entitled to set off or to suspend a payment.

12.4 SMT shall be allowed to take technical measures to protect the Software or with a view to agreed restrictions in the duration of the right to use the Software. The Customer shall not be allowed to remove or evade such a technical measure. If security measures result in the Customer being unable to make a back-up copy of Software, SMT shall provide the Customer with a back-up copy upon request.

11.6 If the Customer does not pay the amounts owed in a timely manner as stated in the Proposal (see: Cost overview and/or invoice), SMT will issue the Customer with a reminder that payment is due. If the Customer does not pay the amount due within 15 days of receipt of the reminder from SMT, the Customer shall owe legal interest on the outstanding amount and SMT can pass on the claim for collection, in which case the Customer shall, in addition to the total amount owed then, be obliged to pay for all in-court and out-of-court expenses, including expenses charged by external experts in addition to the costs determined at law. The Customer shall also owe the

12.5 Unless SMT provides a back-up copy of the Software to the Customer, the Customer may make one back-up copy of the Software, which may only be used to protect against involuntary loss of possession or damage. The back-up copy may only be installed after involuntary loss of possession or damage. A back-up copy must have the same labels and copyright designations as are present on the original version (see Article 12.3).

12.6 Subject to the other provisions of the GTC, the Customer shall not be entitled to correct Errors in Software and/or SMT Modules provided to it if that is necessary for the intended use of the Software unless agreed upon or with the consent of the Manufacturer mentioned in the LIMA. In the GTC, "Errors" shall mean a substantial failure to meet the functional or technical specifications stated in writing by SMT and, in the case of custom-made Software and websites, the functional or technical specifications expressly agreed between the Parties in writing. An Error shall only exist if the Customer can prove it and if it can be reproduced. The Customer shall be obliged to notify SMT of Errors immediately.

12.7 SMT shall indemnify the Customer against any third-party cause of action based on the claim that software, websites, databases, equipment or other materials developed by SMT itself infringe an intellectual property right on the condition that the Customer immediately informs SMT in writing about the existence and substance of the cause of action and let SMT handle the matter completely, including with respect to agreeing to any settlements. To that end, the Customer shall provide the necessary information and cooperation to SMT to defend against these causes of action. This indemnification obligation shall be extinguished if the alleged infringement relates (i) to materials provided by the Customer to SMT for use, adaptation, processing or incorporation, or (ii) to changes the Customer has made or caused third parties to make to the Software, website, databases, equipment or other materials. If it has been established in court as an incontrovertible fact that the Software, websites, databases, equipment or other materials developed by SMT itself infringe any intellectual or industrial property right held by a third party or if, in SMT's judgment, it is likely that such infringement will occur, SMT shall, if possible, and subject always to the aforementioned indemnity ensure that the Customer can continue to have undisturbed use of the delivered objects, or functionally equivalent other Software, websites, equipment or the other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the Customer. If, in its exclusive judgment, SMT cannot ensure or cannot ensure except in a manner that is unreasonably burdensome (financially or otherwise) for it that the Customer can continue to have undisturbed use of the delivered Software and/or SMT Modules, SMT shall take back the delivered Software and/or SMT Modules, with crediting of the acquisition costs minus a reasonable user's fee. SMT shall not make its choice in this regard until after the Customer has been consulted. Any other or more extensive liability or indemnification obligation on SMT's part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on SMT's part for infringements caused by using the Software, websites, databases, equipment and/or materials delivered (i) in any form not modified by SMT, (ii) in connection with Software and/or SMT Modules not delivered or furnished by SMT or (iii) in another manner besides that for which

the equipment, Software, websites, databases and/or other materials were developed or intended.

12.8 The Customer warrants that there are no third-party rights which are inconsistent with providing SMT with equipment, Software, materials intended for websites (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 website). The Customer shall indemnify SMT against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.

13 CONFIDENTIAL INFORMATION, TAKING OVER EMPLOYEES AND PRIVACY

13.1 Each of the Parties warrants that all of the information received by the other party, which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure of that information. The party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.

13.2 During the term of the Agreement and for one year after it is terminated, each of the Parties shall not, unless it receives prior written permission from the other party, take on employees of the other party who are or were involved in executing the Agreement or otherwise have these employees work for it, directly or indirectly. As the occasion arises, SMT shall not withhold the permission concerned if the Customer has offered appropriate compensation to be mutually agreed between SMT and the Customer.

13.3 The Customer shall indemnify SMT against claims by persons whose personal data has been recorded or processed in connection with a register of persons maintained by the Customer or for which the Customer is responsible under law or otherwise, unless the Customer proves that the facts underlying the claim are solely imputable to SMT.

13.4 In case of violation of any of the provisions of Article 13, a lump sum indemnification will be due by the Consumer, per violation committed, equal to EUR 50,000, increased by EUR 5,000 per day that the violation continues, without prejudice to SMT's right to claim higher damages and without prejudice to SMT's right to claim injunctive relief or any other legal measures available under applicable law.

14. SECURITY, PRIVACY AND RETENTION PERIODS

14.1 SMT shall comply with the statutory obligations which it has as a processor concerning its processing of personal data. SMT shall provide appropriate technical and organizational measures to protect personal and other data against loss or against any form of unlawful processing.

14.2 The Customer warrants that all statutory provisions concerning processing personal data, including provisions in or under the Personal Data Protection Act, have been strictly observed and that all prescribed registrations have been carried out and all required consents to process personal data have been obtained.

The Customer shall provide SMT immediately in writing with all requested information in this respect.

14.3 The Customer shall indemnify SMT and the Manufacturer mentioned in the LIMA against all third-party claims which may be filed against SMT and/or the Manufacturer mentioned because of a violation of the Personal Data Protection Act and/or other laws concerning processing personal data which is not imputable to SMT and/or the Manufacturer mentioned.

15 RETENTION OF TITLE AND RIGHTS, SPECIFICATION AND POSSESSORY LIEN

15.1 All Software and/or SMT Modules delivered to the Customer shall remain SMT's property as well as the provisional and temporarily granted licenses (e.g. beta-release or experimental license) until all amounts owed by the Customer for the Software and/or SMT Modules delivered or to be delivered or Services performed or to be performed under the GTC / LIMA, as well as all other amounts which the Customer owes due to a breach of its payment obligation, have been paid fully to SMT. A Customer acting as a reseller may sell and re-deliver all items subject to SMT's retention of title insofar as that is common in connection with its normal business operations.

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

15.3 Notwithstanding any delivery obligation including Services to be rendered, SMT may maintain possession of the Software and/or SMT Modules (e.g. new versions), products, proprietary rights, information, documents, databases and interim or other results of SMT's Services which have been received or generated in connection with the GTC until the Customer has paid all amounts owed to SMT.

16. FORCE MAJEURE

16.1 A party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of force majeure for SMT's Manufacturer, improper performance of obligations by Manufacturer prescribed by the Customer for SMT, as well as defects in materials or software of third parties or Software and/or SMT Modules, which the Customer has required SMT to use or when Manufacturer will not enable SMT to act according to the LIMA.

16.2 If a situation of force majeure lasts for more than 90 days, the Parties shall be entitled to terminate the GTC by rescinding it in writing. What has already been performed pursuant to the GTC shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

17. SMT'S LIABILITY; INDEMNITY

17.1 SMT's total liability for imputably failing to perform the GTC / LIMA shall be limited to compensating direct damage, up to at most the amount of the price (exclusive of VAT) stipulated for that GTC / LIMA restricted to the individual failing Software (relevant in case of delivery of

more than one Software type) or restricted to the Maintenance fee paid for that particular Software type in the year of the claim (relevant when not having delivered the Software maintained). If the GTC / LIMA is primarily a continuing performance Agreement with a term exceeding one year, the price stipulated for the GTC / LIMA shall be set at the total of the fees (exclusive of VAT) stipulated for one year. The total compensation for direct damage shall not, however, in any case exceed the initial license price of the Software and/or SMT Modules including Maintenance fees or the Maintenance fee only (in case of not having delivered the Software and/or SMT Modules), or, if any of the previous amounts in this sentence mentioned are higher, nevertheless, no more than EUR 100,000 (one hundred thousand euros). "Direct damage" shall solely mean:

- a. reasonable expenses which the Customer would have to incur to make SMT's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or if instructed by the Customer;
- b. reasonable expenses which the Customer has incurred out of necessity to keep its old system or systems and related faculties operating longer because SMT did not provide delivery on a firm delivery date which was binding for it, minus any savings resulting from the delay in delivery;
- c. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these GTC;
- d. reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms and Conditions.

17.2 SMT's liability for injury or damage through death or bodily injury or because of material damage to objects is limited to the amount, including any policy excess, which in a particular case is considered for payment under our insurance.

17.3 SMT's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Customer's customers, mutilation or loss of data, damage relating to the use of Software and/or SMT Modules, objects, materials or software of third parties prescribed by the Customer for SMT, damage relating to engagement of (third party) suppliers prescribed by the Customer for SMT and all other forms of damage or injury besides those mentioned in Article 17.1 and 17.2, on any account whatsoever, shall be excluded.

17.4 The limitations mentioned in the preceding paragraphs of this Article 17 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by SMT or its managers.

17.5 SMT's liability because of an imputable failure to perform an Agreement shall in all cases only arise if the Customer immediately provides a written notice of default to SMT, with a reasonable time period for remedying the failure being given and SMT still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that SMT can respond adequately.

17.6 For any right to damages to exist, the Customer must always report the damage or injury to SMT in writing as soon as possible after it occurs. Any claim to damages against SMT and/or Manufacturer shall be extinguished by the mere lapse of 24 months after the claim arises.

17.7 The Customer shall indemnify SMT and/or Manufacturer against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by the Customer to a third party and which partly consisted of equipment, Software or other materials delivered by SMT, except if and insofar as the Customer proves that the damage or injury was caused by that equipment, Software or other materials.

17.8 The provisions in this Article shall also apply for the benefit of all legal and natural persons utilized by SMT in executing the Agreement.

18. TERM AND TERMINATION OF THE AGREEMENT

18.1 The GTC shall enter into force as of the date that the Customer has received the GTC (with the Proposal) and shall remain in vigor until its termination by either party as described here below. The GTC is applicable to the Products and Services i.e. Services, Training, SMT Modules) without prejudice to Article 1.3.

18.2 Each of the Parties shall only be entitled to rescind one or more individual contracts (e.g. LIMA), part of the Agreement if the other party imputably fails to perform material obligations under one or more individual contracts – in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach. The GTC cannot be rescinded if one or more of the other individual contracts to which the GTC applies will remain intact. A rescission will not apply to the licensed Software provided it has been paid for and Customer has complied with its license rights and license obligations.

18.3 If an agreement which, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, each of the Parties may terminate the Agreement by written notice after proper consultation and with a statement of reasons subject to setting out in full and in writing the alleged material default. If the Parties have not agreed on an express notice period, a reasonable notice period must be observed in terminating the Agreement i.e. a 6 months notice period after which the Agreement will be terminated. The Parties shall never be liable for damages for terminating the Agreement.

18.4 Each of the Parties may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if the other party is granted a provisional or non-provisional suspension of payments, if a petition for bankruptcy is filed with regard to the other party or if the other party's business is wound up or terminated for other reasons besides a business reconstruction or merger. SMT shall never be obliged on account of this termination to refund funds already received or to pay damages. In the event of the Customer's liquidation, the right to use Software provided to the Customer shall be extinguished by law if the Software license rights have not been fully paid up.

18.5 If, at the time of the rescission referred to in Article 18.2, the Customer has already received performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled, unless the Customer proves that SMT is in default with regard to that performance. Amounts which SMT has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the Agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

19 APPLICABLE LAW AND DISPUTES

19.1 Dutch law shall govern the GTC and LIMA between SMT and the Customer. The Vienna Sales Convention of 1980 shall not apply. For disputes arising between the Customer and the Manufacturer in connection with the LIMA, the choice of law and dispute resolution mentioned in the LIMA will prevail the GTC.

19.2 Disputes arising between SMT and the Customer in connection with an Agreement concluded between SMT and the Customer or in connection with further GTC and LIMA which arise under this shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes in The Hague (Stichting Geschillen Oplissing Automatisering), all of this without prejudice to the Parties' right to request relief in interlocutory arbitration proceedings and without prejudice to the Parties' right to take protective pre-judgment measures.
