

# ICT~Office Terms and Conditions

## General Module



**ICT~OFFICE**

# ICT~Office Terms and Conditions

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

## GENERAL

### 1. Applicability of the ICT~Office Terms and Conditions

- 1.1 The ICT~Office Terms and Conditions have been drawn up by ICT~Office. The ICT~Office Terms and Conditions consist of the present General module and the following separate, specific modules:
  1. Software license
  2. Development of software
  3. Maintenance of software
  4. Application Service Provision, Software as a Service and Computer Service
  5. Development and maintenance of a website
  6. Webhosting
  7. Secondment services
  8. Courses and training programmes
  9. Advice, consultancy and project management
  10. Other services
  11. Sale of ICT, telecommunication and office equipment and other goods
  12. Renting out ICT, telecommunication and office equipment
  13. Maintenance of ICT, telecommunication and office equipment
  14. Internet access
  15. Telecommunication services
  16. Financing and leasing of ICT.
- 1.2 This General module of the ICT~Office Terms and Conditions shall apply to all offers and agreements whereby the Supplier provides the Client with any goods and/or services whatsoever and however described. The specific module or modules of the ICT~Office Terms and Conditions agreed between the Supplier and the Client shall also apply. If any part of this General module of the ICT~Office Terms and Conditions conflicts or is incompatible with any of the provisions of the specific module or modules of the ICT~Office Terms and Conditions agreed between the Supplier and the Client, the provisions of the specific module or modules in question shall prevail.
- 1.3 Where the ICT~Office Terms and Conditions refer to 'general terms and conditions', this shall be understood to mean the provisions of this General module in combination with the provisions of one or more agreed specific modules of the ICT~Office Terms and Conditions.
- 1.4 Additions to or deviations from these general terms and condition shall only apply where agreed in writing between the parties.
- 1.5 The applicability of any of the Client's purchasing or other conditions is expressly rejected.
- 1.6 If any provision of these general terms and conditions is null and void or is voided, the other provisions of

these general terms and conditions will remain fully in effect. In this case, the Supplier and the Client will consult with one another to agree new provisions to replace the void or voided ones. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible.

### 2. Offers

- 2.1 All offers and other statements issued by the Supplier shall be subject to contract, except where specified otherwise in writing by the Supplier.
- 2.2 The Client shall guarantee the accuracy and completeness of the information that it submits to the Supplier and on which the Supplier bases its offer. The Client shall at all time exercise the greatest possible care to ensure that the requirements that the Supplier's services must meet are accurate and comprehensive. Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on the Supplier, except where explicitly specified otherwise by the Supplier.

### 3. Price and payment

- 3.1 All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where agreed otherwise, all prices are in euros in all cases and the Client must effect all payments in euros.
- 3.2 All cost estimates and budgets issued by the Supplier shall be merely indicative, except where specified otherwise in writing by the Supplier. The Client may under no circumstances derive any rights or expectations from any cost estimates or budgets issued by the Supplier. An available budget made known by the Client to the Supplier shall under no circumstances apply as a (fixed) price agreed between the parties for the service to be provided by the Supplier. The Supplier shall only be obliged to notify the Client that there is a risk that a cost estimate or budget issued by the Supplier will be exceeded if this has been agreed between the parties in writing.
- 3.3 If the Client consists of more than one natural and/or legal persons, each of these persons shall be joint and severally liable in respect of payment of the amounts due on the basis of the agreement.
- 3.4 The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Client in return for this service, without prejudice to the Client's right to submit evidence to the contrary.
- 3.5 If the Client is subject to a periodic payment obligation, the Supplier shall be entitled to adjust the applicable



- prices and rates in writing subject to advance notice of at least three months. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within thirty days following the date of notification. The Client shall not enjoy this right of termination, however, if the parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the parties.
- 3.6 The parties shall set out the date or dates on which the Supplier shall invoice the fee for the agreed services to the Client in the agreement. Amounts due shall be paid by the Client in accordance with the payment terms that have been agreed or that are stated on the invoice. If no specific arrangements have been made, the Client shall effect payment within a period after the date of invoice to be determined by the Supplier. The Client shall not be entitled to suspend any payments or to offset any amounts due.
- 3.7 If the Client fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by the Client on the outstanding amount without a demand or notice of default being required. If the Client still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Client shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.
- 4. Confidentiality and taking over of personnel**
- 4.1 The Client and the Supplier shall ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept secret. The party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by one of the parties.
- 4.2 During the term of the agreement and for one year following termination of the agreement, each of the parties shall only engage or otherwise employ, directly or indirectly, members of staff of the other party who are or were previously involved in the execution of the agreement after obtaining the prior written consent of the other party. Conditions may be attached to the aforementioned consent.
- 5. Privacy, data processing and protection**
- 5.1 If the Supplier deems this to be necessary for the purpose of executing the agreement, the Client shall, upon request, notify the Supplier immediately in writing with regard to the manner in which the Client executes its obligations pursuant to legislation in respect of the protection of personal data.
- 5.2 The Client shall indemnify the Supplier against any claims by individuals whose personal data is recorded or processed within the context of a register of personal data maintained by the Client or for which the Client is responsible pursuant to the law or otherwise, unless the Client is able to demonstrate that the acts that form the basis of the claim are exclusively attributable to the Supplier.
- 5.3 Responsibility for the data processed using the service provided by the Supplier shall rest solely with the Client. The Client shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe the rights of third parties. The Client shall indemnify the Supplier against legal claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.
- 5.4 If the agreement stipulates that the Supplier is obliged to provide some form of information security, this security shall meet the specifications in respect of security agreed between the parties in writing. The Supplier shall not guarantee that the information security will be effective under all circumstances. If the agreement does not include an explicit description of security measures, the security measures shall be of such a level that, having regard to the state of the art, the sensitivity of the data and the costs associated with the implementation of the security measures are not unreasonable.
- 5.5 If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, the Supplier shall be entitled to assign access or identification codes to the Client. The Supplier shall be entitled to change the access or identification codes assigned. The Client shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorised members of staff. The Supplier shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a result of an act or omission on the part of the Supplier.
- 6. Retention of title and rights, creation of items and suspension**
- 6.1 All objects delivered to the Client shall remain the property of the Supplier until such time as all amounts owed by the Client to the Supplier pursuant to the agreement concluded between the parties have been paid in full. A Client that acts as a retailer shall be entitled to sell and resell all objects that are subject to the Supplier's retention of title in so far as this is customary within the context of the normal course of its business. If the Client creates a new item (partly) from items delivered by the Supplier, the Client shall only create this item for the benefit of the Supplier and the Client shall retain the newly created item for the Supplier until such time as the Client has paid all amounts due pursuant to the agreement; in this case the Supplier shall remain the owner of the newly created item until the Client has met its payment obligations in full.
- 6.2 The property law consequences of retention of title in respect of an item that is destined for export shall be governed by the law of the State of destination if this law incorporates provisions that are more favourable for the Supplier in this regard.



- 6.3 Rights, including rights of use, shall be granted to the Client or transferred, where appropriate, subject to the condition that the Client has paid all of the fees due pursuant to the agreement concluded between the parties in full. If the parties have agreed that the Client shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Client shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.
- 6.4 The Supplier may retain any items, products, proprietary rights, data, documents, software, data files and (interim) results of the service provided by the Supplier received or created within the context of the agreement, contrary to an existing obligation to deliver or transfer these, until such time as the Client has paid all amounts due to the Supplier.

## 7. Risk

- 7.1 The risk of loss, theft, misappropriation of or damage to items, products, data, documents, software, data files or data (codes, passwords, documentation etc.) produced or used within the context of the execution of the agreement, shall pass to the Client when the Client or one of the Client's agents comes into actual possession of them. In so far as these objects are in the actual possession of the Supplier or one of the Supplier's agents, the Supplier shall bear the risk of loss, theft, misappropriation or damage.

## 8. Intellectual property rights

- 8.1 If the Supplier is willing to undertake to transfer an intellectual property right, such an undertaking may only be entered into explicitly and in writing. If the parties agree in writing that an intellectual property right in respect of software, websites, data files, hardware or other material specifically developed for the Client shall be transferred to the Client, this shall not affect the Supplier's right or option to use and/or to exploit the components, general principles, ideas, designs, algorithms, documentation, work, programming languages, protocols, standards and suchlike that form the basis of the development work for other purposes without any restrictions, on its own behalf or on behalf of a third party. The transfer of an intellectual property right shall also not affect the Supplier's right to carry out development work, on its own behalf or on behalf of a third party, that is similar or derived from the development work that is being carried out or has been carried out on behalf of the Client.
- 8.2 All intellectual property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the Client on the basis of the agreement shall remain exclusively vested in the Supplier, its licensors or its own suppliers. The Client shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the Client shall be non-exclusive, non-transferable to third parties and non-sublicensable.

- 8.3 The Client shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names or any other intellectual property right from the software, websites, data files, hardware or materials.
- 8.4 Even if the agreement does not explicitly provide for such authority, the Supplier shall be permitted to install technical provisions for the purpose of protecting the software, hardware, data files, websites and suchlike in relation to an agreed restriction on the content or the term of the right to use these objects. The Client shall under no circumstances be permitted to remove or circumvent such technical provisions or to arrange for this to be carried out.
- 8.5 The Supplier shall indemnify the Client against any legal claims from third parties based on the assertion that software, websites, data files, hardware or other materials developed by the Supplier itself infringe an intellectual property right of the third party in question, under the condition that the Client notifies the Supplier immediately in writing of the existence and content of the legal claim and leaves the disposal of the case, including any settlements effected, entirely to the Supplier. To this end, the Client shall provide the Supplier with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of the Client, against these legal claims. This obligation to indemnify shall not apply if the alleged infringement relates to (i) materials made available to the Supplier by the Client for the purpose of use, adaptation, processing or incorporation, or (ii) changes made by the Client, or by a third party on behalf of the Client, to the software, website, data files, hardware or other materials, without the Supplier's prior written consent. If it is irrevocably established in court that the software, websites, data files, hardware or other materials developed by the Supplier itself constitute an infringement of any intellectual property right vested in a third party or if the Supplier believes that there is a good chance that such an infringement may occur, the Supplier shall, where possible, ensure that the Client can continue to use the software, websites, data files, hardware or materials delivered, or functionally similar alternatives. All other or further-reaching obligations to indemnify on the part of the Supplier shall be excluded.
- 8.6 The Client warrants that no rights of third parties preclude the provision to the Supplier of software, hardware, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including draft materials, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Client shall indemnify the Supplier against all claims by third parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third party in question.

## 9. Obligations to cooperate

- 9.1 The parties acknowledge that the success of activities in the field of information and communication technology generally depends on proper and timely



- mutual cooperation. In order to facilitate the proper execution of the agreement by the Supplier, the Client shall at all times provide the Supplier with all data or information that the Supplier deems to be useful, necessary and desirable and to give its full cooperation in a timely manner. If the Client deploys its own personnel and/or agents within the context of providing cooperation in the execution of the agreement, these personnel and agents shall have the necessary knowledge, expertise and experience.
- 9.2 The Client shall bear the risk of the selection, the use, the application and the management within its organisation of the software, hardware, websites, data files and other products and materials and of the services to be provided by the Supplier. The Client itself shall arrange for the correct installation, assembly and commissioning and for the application of the correct settings to the hardware, software, websites, data files and other products and materials.
- 9.3 If the Client fails to make the data, documents, hardware, software, materials or employees that the Supplier deems useful, necessary or desirable for the purpose of executing the agreement available to the Supplier, to make these available in good time or in accordance with the agreements, or if the Client fails to meet its obligations in any other way, the Supplier shall be entitled to suspend the execution of the agreement in part or in full and shall also be entitled to invoice the resulting costs in accordance with its standard rates, without prejudice to the Supplier's right to exercise any other statutory and/or agreed right.
- 9.4 If the Supplier's employees are carrying out activities on the Client's business premises, the Client shall ensure that any facilities reasonably requested by these employees, such as a workspace containing computer, data and telecommunication facilities, are provided free of charge. The workspace and facilities shall meet all statutory and other applicable requirements in relation to working conditions. The Client shall indemnify the Supplier against any claims by third parties, including the Supplier's employees, who suffer injury in connection with the execution of the agreement as a result of an act or omission on the part of the Client or of unsafe situations within the Client's organisation. The Client shall notify the employees deployed by the Supplier of any applicable company rules or security rules prior to the commencement of the activities.
- 9.5 If use is made of computer, data or telecommunication facilities, including the internet, during the execution of the agreement, the Client shall be responsible for selecting the correct resources required for this purpose and for ensuring that these are available in full and in a timely manner, with the exception of those facilities that fall under the direct use and management of the Supplier. The Supplier shall under no circumstances be liable for losses or costs arising as a result of transmission errors, breakdowns or the non-availability of these facilities, unless the Client is able to demonstrate that these losses or costs are the result of intentional acts or deliberate recklessness on the part of the Supplier's management.
- 10. Delivery dates**
- 10.1 All (delivery) periods and (delivery) dates agreed or specified by the Supplier shall be established to the best of the Supplier's knowledge on the basis of the information available to it at the time of entering into the agreement. Interim (delivery) dates agreed between the parties or specified by the Supplier shall in all cases be target dates, shall not have a binding effect on the Supplier and shall in all cases be merely indicative. The Supplier shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. The Supplier shall not be bound by a (delivery) period or (delivery) date, final or otherwise, that can no longer be achieved as a result of circumstances outside of the Supplier's control that occurred after the date on which the agreement was concluded. The Supplier shall also not be bound by a (delivery) date or (delivery) period, final or otherwise, if the parties have agreed on a change to the content or scope of the agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the agreement. If there is a risk that a time period will be exceeded, the Supplier shall consult with the Client in order to discuss the implications of the overrun for the rest of the schedule.
- 10.2 The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by the Supplier or agreed between the parties has been exceeded, shall not mean that the Supplier is in default. In all cases – therefore also in the event that the parties have agreed a final (delivery) period or (delivery) date explicitly in writing - the Supplier shall not be in default as a result of the fact that a delivery period or date has been exceeded until such time as the Client has given written notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.
- 11. Termination and cancellation of the agreement**
- 11.1 Both of the parties shall only be authorised to rescind the agreement as a result of an attributable failure to perform this agreement if the other party, in all cases following written notice of default providing as many details as possible and setting a reasonable term in which the breach can be remedied, attributable fails to meet its fundamental obligations arising from this agreement. The Client's payment obligations and all other obligations to cooperate imposed on the Client or on a third party to be engaged by the Client shall in all cases be regarded as fundamental obligations arising from the agreement.
- 11.2 If the Client has already received services for the purpose of executing the agreement at the time of rescission as referred to in Article 11.1, these services and the related payment obligation cannot be revoked unless the Client is able to demonstrate that the Supplier is in default in respect of a substantial part of these services. Any amounts that the Supplier has invoiced before rescission in connection with work that it has already duly carried out or services that it has duly provided for the purpose of executing the agreement, shall remain due in full, subject to due



- observance of the provisions of the preceding sentence, and shall become immediately due and payable at the time of rescission.
- 11.3 If an agreement that by its nature and content is not brought to a close is entered into for an indefinite period of time, this may be terminated in writing by either party following consultation and stating reasons. If the parties have not agreed a notice period, a reasonable period of time must be observed on termination. The parties shall under no circumstances be obliged to pay any compensation as a result of termination of the agreement.
- 11.4 The Client shall under no circumstances be entitled to terminate an agreement regarding the provision of services that has been entered into for a fixed term before the end of the term.
- 11.5 Either of the parties shall be entitled to terminate the agreement in part or in full, with immediate effect, in writing without notice of default if the other party is granted a moratorium of payments, provisionally or otherwise, if a winding-up petition is filed in respect of the other party, if the other party's company is wound up or terminated for reasons other than reconstruction or the merger of companies, or if there is a change in the individual or board that has decisive control over the Client's company. The Supplier shall under no circumstances be obliged to reimburse any sums of money that have already been received or to pay any compensation in the event of such termination. If the Client becomes bankrupt or is liquidated, the right of use of the software, websites and suchlike made available to the Client shall terminate by operation of law.
- 12. Liability of the Supplier**
- 12.1 The total liability of the Supplier due to an attributable failure to perform this agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated for this agreement (excl. VAT). This limitation of liability shall apply mutatis mutandis to the Supplier's obligation to indemnify referred to in Article 8.5 of this General module. If the agreement is essentially a continuing performance contract with a term of more than one year, the sum stipulated for the agreement shall be set at the total fees (excl. VAT) stipulated for one year. The total liability of the Supplier for direct damage or loss, for any reason whatsoever, shall, however, under no circumstances exceed €500,000 (five hundred thousand euro).
- 12.2 The liability of the Supplier for loss as a result of death, physical injury or due to material damage to items shall under no circumstances exceed €1,250,000 (one million two hundred and fifty thousand euro).
- 12.3 The liability of the Supplier for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Client's customers, loss in connection with the use of items, materials or software provided by third parties that the Supplier is instructed to obtain by the Client and loss in connection with the engagement of secondary suppliers by the Supplier on the Client's instructions shall be excluded. The liability of the Supplier due to the scrambling, destruction or loss of data or documents shall also be excluded.
- 12.4 The exclusions and restrictions to the Supplier's liability, as described in the preceding paragraphs of Article 12, shall not affect the remaining exclusions and restrictions to the Supplier's liability set out in this General module and the other agreed modules of these general terms and conditions in any way.
- 12.5 The exclusions and restrictions referred to in Article 12.1 to 12.4 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of the Supplier's management.
- 12.6 Except where performance by the Supplier is permanently impossible, the Supplier shall only be liable as a result of an attributable failure to perform an agreement if the Client gives the Supplier immediate notice of default in writing, setting a reasonable term in which the breach can be remedied, and the Supplier still attributable fails to meet its obligations after this period. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.
- 12.7 A condition for the existence of any right to compensation shall in all cases be that the Client notifies the Supplier in writing of the loss or damage as soon as possible after it occurs. Any claims for damages against the Supplier shall expire by the mere passage of twenty four months from the date on which the claim arose.
- 12.8 The parties acknowledge that active and constructive participation in an ICT-Mediation process is a reasonable and suitable measure for preventing or limiting the risk of damage or loss if this potential damage or loss is connected to failure by the Supplier to meet any contractual obligation or to meet such obligations properly and in good time. The Client therefore undertakes to actively, constructively and unconditionally participate in an ICT-Mediation process, at the Supplier's first written request, in accordance with the ICT-Mediation Regulations of the Foundation for the Settlement of Automation Disputes [Stichting Geschillenoplossing Automatisering], with its registered office in The Hague (see [www.sgoa.org](http://www.sgoa.org) and [www.sgoa.eu](http://www.sgoa.eu)).
- 12.9 The Client shall indemnify the Supplier against all claims by third parties due to product liability as a result of a fault in a product or system delivered by the Client to a third party and that partly consisted of hardware, software or other materials provided by the Supplier, unless and in so far as the Client is able to demonstrate that the damage or loss was caused by this hardware, software or other materials.
- 12.10 The provisions of this article and all other restrictions and exclusions of liability referred to in these general terms and conditions shall also apply in favour of all (legal) persons that the Supplier engages to execute the agreement.





### 13. Force majeure

- 13.1 Neither of the parties shall be obliged to meet any obligations, including any guarantee obligation agreed between the parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include:
- (i) a situation of force majeure encountered by the Supplier's own suppliers, (ii) failure by secondary suppliers engaged by the Supplier on the Client's instructions to duly meet their obligations, (iii) the defectiveness of items, hardware, software or materials provided by third parties that the Supplier has been instructed to use by the Client, (iv) government measures, (v) electricity failure, (vi) faults affecting the internet, computer network or telecommunication facilities, (vii) war, (viii) workload, (ix) strike action, (x) general transport problems and (xi) the unavailability of one or more members of staff.
- 13.2 If a situation of force majeure lasts for longer than ninety days, either of the parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis, and the parties shall not owe one another any other amounts.

### 14. Changes and additional work

- 14.1 If the Supplier has carried out work or performed other services that fall outside of the content or scope of the agreed work and/or services at the request or with the prior consent of the Client, such work or services shall be paid for by the Client in accordance with the agreed rates. If no rates have been agreed, the Supplier's standard rates shall apply. The Supplier shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require the Client to enter into a separate written agreement for this purpose.
- 14.2 The Client accepts that work or services as referred to in this article may affect the agreed or anticipated time of completion of the services and the mutual responsibilities of the Client and the Supplier. The fact that (the demand for) additional work arises during the execution of the agreement shall under no circumstances constitute grounds for the Client to terminate or rescind the agreement.
- 14.3 In so far as a fixed price has been agreed in respect of the service, the Supplier shall, upon request, notify the Client in writing regarding the financial implications of the additional work or services as referred to in this Article.

### 15. Transfer of rights and obligations

- 15.1 The Client shall not be entitled to sell and/or transfer the rights and/or obligations arising from the agreement to a third party.
- 15.2 The Supplier shall be entitled to transfer its rights to the payment of fees to a third party.

### 16. Applicable law and disputes

- 16.1 The agreements between the Supplier and the Client shall be governed by Dutch law. The applicability of the Convention on Contracts for the International Sale of Goods 1980 is excluded.
- 16.2 Any disputes that may arise between the Supplier and the Client on the basis of an agreement concluded

between the Supplier and the Client or as a result of further agreements that arise from such an agreement, shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes, with its registered office in The Hague, without prejudice to the right of either of the parties to request an injunction in summary arbitral proceedings and without prejudice to the right of either of the parties to take precautionary legal measures (see [www.sgoa.org](http://www.sgoa.org)).

- 16.3 Contrary to the provisions of Article 16.2, either of the parties shall be entitled, however not obliged, to bring the matter before the District Court, Subdistrict Sector, if the matter relates to a dispute that according to the statutory rules governing jurisdiction falls within the subject-matter jurisdiction of the District Court, Subdistrict Sector. This shall only be the case, however, where the Supplier and/or the Client has/have not already brought arbitral proceedings for the resolution of disputes arising on the basis of the agreement concluded between the parties or further agreements that arise from such an agreement before the Foundation for the Settlement of Automation Disputes in accordance with the Foundation's Arbitration Regulations. If the matter is brought before the District Court, Subdistrict Sector, by one or more of the parties for processing and a decision, subject to due observance of the previous subclause, the District Court, Subdistrict Sector, shall have jurisdiction to process the matter and reach a decision.
- 16.4 Before instituting arbitral proceedings as referred to in Article 16.2, either of the parties shall commence ICT-Mediation proceedings in accordance with the ICT-Mediation Regulations of the Foundation for the Settlement of Automation Disputes in The Hague. ICT-Mediation proceedings in accordance with these regulations are aimed at mediation by one or more mediators. The other party shall undertake to actively participate in any ICT-Mediation proceedings that are instituted, and shall in any event be legally obliged to attend at least one joint meeting between the mediators and the parties, in order to ensure that this extrajudicial form of dispute resolution has a chance of success. Either of the parties shall be at liberty to terminate the ICT-Mediation proceedings at any time following an initial discussion between the mediators and the parties. The provisions of this subclause shall not prevent either of the parties from requesting an injunction in summary (arbitral) proceedings or from taking precautionary legal measures where they deem this to be necessary (see [www.sgoa.org](http://www.sgoa.org) and [www.sgoa.eu](http://www.sgoa.eu)).

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# ICT~Office Terms and Conditions

## Module 5 Development and maintenance of a website

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier is commissioned to design, develop, manage and/or maintain a website.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Specifications of the website**

- 2.1 If the Client has not already provided the Supplier with specifications or a – rough or otherwise – design or prototype of the website to be developed before or on entering into the agreement, the parties shall draw up written specifications in consultation with regard to the website to be developed. The parties both acknowledge that effective coordination and good mutual communication are essential factors in the proper specification, design and development of a website. Collaboration and mutual communication will take place wherever possible subject to due observance of any project plan, arrangements and/or procedures agreed between the parties.
- 2.2 The specifications of the website to be developed may relate to the style and number of the webpages to be developed by the Supplier (including a 'homepage' and next pages) and the text files, forms, logos, photo and video images, graphics files, codes and/or other material to be included or incorporated in the website. The specifications or design must also provide a clear indication of the functional, aesthetic and technical properties that the website must have, such as the use of frames and e-mail facilities. The specifications may also include the communication objectives and the language or languages of the website.
- 2.3 The parties shall reach timely agreements with regard to the information and material to be developed by the Supplier for the purpose of inclusion or incorporation in the website, and the information and material to be provided to the Supplier by the Client or a third party to be engaged by the Client. If no agreements are made in this regard, the Client shall provide the materials required for the purpose of inclusion or incorporation in the website.

- 2.4 The Client shall at all times guarantee the correctness, completeness and consistency of any information, specifications and designs submitted to the Supplier, even if such information, specifications and designs have been provided by a third party. Any errors, omissions or inconsistencies shall be at the risk and expense of the Client.
- 2.5 The Supplier is entitled, however not obliged, to check the correctness, completeness and consistency of the information, specifications or designs submitted to it and on identifying any errors or omissions to suspend the agreed work until such time as the Client has fixed the errors or omissions in question. The Client undertakes to notify the Supplier in all cases as soon and in as much detail as possible of any errors or omissions in the specifications or the design for the website to be developed of which it becomes aware or of which it should reasonably be aware.
- 2.6 If the content and/or style of the website is entirely or partly dependent upon decisions to be reached at a later date during the execution of the agreement, the Supplier shall make these decisions, taking into account any of the Client's ideas and criteria of which it is aware wherever possible.

### **3. Development of the website**

- 3.1 The Supplier shall develop the website with due care, subject to due observance of the website specifications or design and – where appropriate – with due observance of the project plan, methods, techniques, arrangements and/or procedures agreed in writing with the Client. Before commencing the development work, the Supplier may require the Client to issue a written declaration of its full and unconditional agreement to the specifications or design. The Supplier shall be entitled to suspend its activities until such time as the Client has issued a written declaration of its full and unconditional agreement to the specifications or design.
- 3.2 The Client shall provide the materials required for the purpose of inclusion or incorporation in the website in a timely manner, with due observance of the deadlines referred to in the agreement and in a format to be determined by the Supplier.
- 3.3 The Supplier shall be entitled to create a draft version or prototype of the website to be developed on the basis of the specifications it receives. The Supplier may suspend further development work on the website until such time as the Client has approved the draft version or prototype in writing.



- 3.4 The Supplier shall carry out the development work on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.5 If the Supplier requires one or more translations for the purpose of including or incorporating one or more text files in the website, the Client shall arrange for the translation work to be carried out at its own expense, except where agreed otherwise in writing. If the Supplier arranges for the translation work to be carried out, it shall submit an invoice, or arrange for an invoice to be submitted, to the Client for the associated costs.
- 3.6 If it has been agreed that the design and development services will take place in stages, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 3.7 Within the bounds of reasonableness to be determined by the Supplier, the Supplier shall comply with reasonable and timely instructions issued by the Client during the realisation of the design and development work, provided that the Supplier deems such instructions to be technically and otherwise sound.
- 3.8 Except where agreed otherwise in writing, the Supplier shall not be obliged to apply to the appropriate authorities for a domain name for the website.

#### 4. Delivery and installation

- 4.1 Unless the agreement stipulates that the Supplier shall host the website on its own computer system on behalf of the Client, the Supplier shall deliver the website to the Client on a data medium and in a format of its own choice.
- 4.2 The Supplier shall only install the website on the premises of the Client or those of a third party (host-provider) designated by the Client if this has been agreed in writing between the parties.

#### 5. Acceptance test and acceptance

- 5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the website in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee scheme in Article 10 of this module.
- 5.2 If the parties have agreed to an acceptance test in writing, the provisions of Articles 5.3 to 5.10 inclusive of this module shall apply.
- 5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the specifications explicitly agreed in writing between the parties. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.
- 5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the

installation. The Client is not entitled to use the website for productive or operational purposes during the test period. The Supplier may at any time demand that the Client carry out a proper test, using appropriately qualified personnel, with an adequate scope and in sufficient depth, on the (interim) results of the development work and that it provide the Supplier with a written, clear and understandable report on the test results.

- 5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the website delivered conforms to the specifications agreed between the parties in writing. Except where agreed otherwise in writing, any assistance provided by or on behalf of the Supplier during the performance of an acceptance test shall be entirely at the risk and expense of the Client.
- 5.6 The website shall be deemed to have been accepted between the parties:
  - a. if the parties have not agreed that the Client will carry out an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
  - b. if the parties have agreed that the Client will carry out an acceptance test: on the first day following the test period, or
  - c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the website for productive or operational purposes before the time of explicit acceptance, the website shall be deemed to have been accepted in full from the time at which such use commenced.
- 5.7 If on carrying out the agreed acceptance test it emerges that the website contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time.
- 5.8 Acceptance of the website may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the website, without prejudice to the Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 10, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the website that can only be assessed subjectively, such as style, aesthetic aspects and aspects relating to the design.
- 5.9 If the website is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.
- 5.10 Acceptance of the website by one of the methods referred to in this Article shall mean that the Supplier is



discharged in respect of compliance with its obligations in relation to the design and development of the website and, if it has been agreed that the Supplier will also carry out the installation, with its obligations in relation to the installation of the website. Acceptance of the website shall not affect the Client's rights pursuant to Article 5.8 in relation to minor faults and Article 10 in relation to the guarantee scheme.

## **6. Right of use**

- 6.1 The Supplier shall make the website developed on behalf of the Client and the corresponding user documentation available to the Client for use.
- 6.2 Without prejudice to the provisions of the General module of the general terms and conditions, the Supplier shall only grant the Client a non-exclusive, non-transferable and non-sublicensable right of use of the website.
- 6.3 The user documentation shall be provided in paper or digital format. The Supplier shall decide on the format and language in which the user documentation is provided.

## **7. Maintenance and management**

- 7.1 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide the auxiliary software required for the use, maintenance and management of the website and/or a so-called 'content management system'.
- 7.2 If, contrary to Article 7.1, the parties agree that the Supplier shall also be required to provide auxiliary software required for the use, maintenance and management of the website and/or a 'content management system', the Supplier may require the Client to enter into a separate written agreement for this purpose.
- 7.3 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance and/or management of the website or the provision of support to website administrators responsible for technical aspects or content.
- 7.4 If, contrary to Article 7.3, the parties agree that the Supplier shall also be required to provide maintenance and management services, the Supplier may require the Client to enter into a separate written agreement for this purpose. The content and scope of these services shall also be agreed, however if no agreements are reached in this regard, the Supplier's obligation shall be limited to ensuring that it makes every effort to fix errors in the reproduction of the website and in the technical operation of the website within a reasonable period of time.

## **8. Term of provision of the website and maintenance services**

- 8.1 The website developed on behalf of the Client shall be made available to the Client for the term agreed between the parties. If no term has been agreed between the parties, the term of the right of use shall not be subject to a time limit and the Supplier shall not be entitled to terminate the agreement by giving notice, provided that the Client strictly complies with all of its

obligations vis-à-vis the Supplier arising from the agreement.

- 8.2. Where appropriate, the Client shall return all copies of the website that it has in its possession to the Supplier immediately following expiry of the right of use of the website. If the parties have agreed that the Client will destroy the relevant copies on expiry of the right of use, the Client shall notify the Supplier immediately in writing that this has been carried out.
- 8.3 Where applicable, the agreement for the provision of maintenance and/or management services shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

## **9. Payment**

- 9.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the design and development of the website shall in each case be payable in arrears each calendar month. The Supplier may also demand that an advance payment be made.
- 9.2 Except where agreed otherwise in writing or stated by the Supplier, the price for the design and development work shall also include the fee in respect of the right of use of the website.
- 9.3 Except where otherwise agreed in writing, the fee for the design and development of the website shall not include a fee for the auxiliary software required by the Client, 'content management system', installation services and maintenance and management of the website. The right of use fee also does not include the provision of support to website administrators responsible for technical aspects and content. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.

## **10. Guarantee**

- 10.1 The Supplier shall not guarantee that the website will function effectively in conjunction with all types or new versions of web and internet browser or any other software. The Supplier also does not guarantee that the website will function effectively in conjunction with all types of hardware.
- 10.2 The Supplier does not guarantee that the website will be suitable for the use or purpose envisaged by the Client. The Supplier also does not guarantee that the website will operate with no interruptions, errors or other defects or that all errors and other defects will always be fixed. The Client accepts that errors and defects in the operation of a website can be caused by the actions of one or more third parties.
- 10.3 The Supplier shall make every effort to fix errors in the reproduction of the content of the website or shortcomings in the technical operation of the website that are attributable to the Supplier within a reasonable period of time provided that the Supplier receives detailed, written notification of these errors within a



period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the website was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors or defects could have been discovered during the implementation of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the website, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

- 10.4 The fixing of errors or defects shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, bypasses or problem-avoiding restrictions in the website at any time.
- 10.5 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.
- 10.6 The Supplier shall not be obliged to fix errors or defects that are reported following expiry of the guarantee period referred to in Article 10.3 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

## 11. Liability

- 11.1 Without prejudice to the provisions of the General module, the provisions of this Article in respect of liability shall also apply. Any liability on the part of the Supplier for the unavailability – temporary or otherwise - of the website designed, developed, maintained or managed by the Supplier shall be excluded. Any liability on the part of the Supplier for failure of the content of the website to appear, or to appear accurately or in full, as well as for the release of data - confidential or otherwise - from a closed part of the website, shall also be excluded.



# ICT~Office Terms and Conditions

## Module 9 Advice, consultancy and project management

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field of consultancy, the provision of advice and project management.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Services

- 2.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 2.2 The term of an assignment shall depend on a number of factors and circumstances, such as the Supplier's efforts, the quality of the data and information provided by the Client and the cooperation of the Client and relevant third parties. Except where agreed otherwise in writing, the Supplier shall therefore not wish to commit to a specific assignment term in advance.
- 2.3 If it has been agreed that the service will be provided in stages, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 2.4 The Supplier shall only be obliged to follow timely and well-founded instructions issued by the Client during the performance of the service if this has been agreed in writing. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.
- 2.5 Even if the agreement for the provision of services has been entered into with a view to implementation by a specific individual, the Supplier shall at all times be entitled to replace this individual with one or more

other individuals with the same qualifications following consultation with the Client.

- 2.6 The employees to be deployed by the Supplier shall hold the qualifications agreed in writing with the Client.
- 2.7 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data media issued to the Supplier meet the Supplier's specifications.
- 2.8 The Supplier's service shall only be performed and the schedules and activities shall be based on the assumption that, except where explicitly agreed otherwise with the Client, the Supplier shall carry out the work during the Supplier's standard working days and times.
- 2.9 Except where agreed otherwise in writing, the use made by the Client of advice issued by the Supplier shall in all cases be at the Client's risk and expense.
- 2.10 Where applicable, the burden of proving that the service and the results of the service provided by the Supplier do not conform to the agreements made in writing or to what may be expected from a reasonably acting and competent Supplier shall lie solely with the Client, without prejudice to the Supplier's right to furnish evidence to the contrary by any means.

### 3. Reporting

- 3.1 The Supplier shall periodically inform the Client in the manner agreed in writing with regard to the implementation of the work via the contact person designated by the Client. The Client shall notify the Supplier in advance of any circumstances that affect or may affect the Supplier, such as the method of reporting, the issues that the Client wishes to focus on, the Client's priorities, the availability of the Client's resources and personnel, special facts and circumstances and facts and circumstances of which the Supplier may not be aware. The Client shall be responsible for the further distribution and examination of the information provided by the Supplier within the Client's organisation and shall assess this information partly on the basis of this and notify the Supplier accordingly.



- 3.2 If an employee deployed by the Supplier forms part of a project or steering group which also includes one or more individuals designated by the Client, the provision of information shall take place in the manner prescribed for the project or steering group. Decisions reached within a project or steering group with this composition shall only have a binding effect on the Supplier if the decision-making process takes place subject to due observance of the agreements reached between the parties in writing or, if no agreements have been made in this regard, if the Supplier has accepted the decisions in writing. The Supplier shall under no circumstances be obliged to accept a decision that it deems to be incompatible with the content of the agreement between the parties. The Client shall guarantee that the individuals it designates to form part of a project or steering group that also includes the Supplier's employees are authorised to take decisions that will have a binding effect on the Client.
- 3.3 In connection with the continuity of the work, the Client shall designate a contact or contacts who will act in this capacity for the duration of the Supplier's activities. The Client's contacts shall have the necessary experience, specific relevant knowledge and an insight into the Client's desired objectives.
- 3.4 The Client shall not be entitled to provide third parties with information on the Supplier's working procedures, methods and techniques and/or the content of advice or reports issued by the Supplier without the Supplier's prior written consent. The Client shall not provide the Supplier's advice or reports to third parties or otherwise disclose these.

#### **4. Payment**

- 4.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the services provided by the Supplier shall in each case be payable in arrears each calendar month.
- 4.2 Except where agreed otherwise, the Supplier shall provide an insight into the work carried out, time spent and costs incurred on behalf of the Client in accordance with the Supplier's standard procedures.

