

# TERMS AND CONDITIONS



# General Module

## 1 Applicability

The Easy Systems Terms and Conditions consist of the present General module and the following separate, specific modules:

- Consultancy and project management
- Software license
- Maintenance and support
- ASP, SAAS and Computer service

- 1.2 This General module of the Easy Systems 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 Easy Systems Terms and Conditions agreed between the Supplier and the Client shall also apply. If any part of this General module of the Easy Systems Terms and Conditions conflicts or is incompatible with any of the provisions of the specific module or modules of the Easy Systems 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 Easy Systems 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 Easy Systems 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 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.
- 1.6 In the event of any discrepancy between the original Dutch version of these Terms and Conditions and this translation of them, the original Dutch version shall always prevail.

## 2 Offers, price and payment

- 2.1 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.

- 2.2 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.
- 2.3 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.
- 2.4 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 two 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 two months before the change will take place. 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.
- 2.5 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.

### **3 Confidentiality and taking over of personnel**

- 3.1 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.
- 3.2 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.

### **4 Privacy, data and protection**

- 4.1 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.

- 4.2 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.

## **5 Retention of title and rights, creation of items and suspension**

- 5.1 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.
- 5.2 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 Intellectual property rights**

- 6.1 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.
- 6.2 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-sub licensable.

- 6.3 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.
- 6.4 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.
- 6.5 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.

## **7 Obligations to cooperate**

- 7.1 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.

- 7.2 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.
- 7.3 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, or 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.
- 7.4 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.
- 7.5 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.
- 7.6 The Client agrees to let Supplier use the name of the Client as a reference, place the name on the reference list and use in any marketing activity.

## **8 Delivery dates**

- 8.1 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.

- 8.2 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.

## **9 Termination and cancellation of the agreement**

- 9.1 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.
- 9.2 If the Client has already received services for the purpose of executing the agreement at the time of rescission as referred to in Article 9.1, 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.

- 9.3 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.

## **10 Liability of the Supplier**

- 10.1 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 6.4 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).
- 10.2 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).
- 10.3 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.
- 10.4 The exclusions and restrictions to the Supplier's liability, as described in the preceding paragraphs of Article 10, 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.
- 10.5 The exclusions and restrictions referred to in Article 10.1 to 10.4 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.

- 10.6 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.
- 10.7 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 twelve months from the date on which the claim arose.
- 10.8 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.

## **11 Force majeure**

- 11.1 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.
- 11.2 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.

## **12 Changes and additional work**

- 12.1 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.

- 12.2 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.
- 12.3 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.

### **13 Applicable law and disputes**

- 13.1 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.
- 13.2 Before instituting arbitral proceedings, either of the parties shall commence mediation. The other party shall undertake to actively participate in any 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.

# Module Consultancy and Project Management

## 1 Applicability

- 1.1 The Easy Systems 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.

### 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.

# Module Software License

## 1 Applicability

- 1.1 The Easy Systems 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 makes software available to the Client for use on the basis of a license.
- 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 Right of use

- 2.1 The Supplier shall make the computer programs specified in the agreement and the corresponding user documentation, hereinafter referred to as 'the software', available to the Client for use.
- 2.2 Except where agreed otherwise in writing, the Supplier's obligation to provide and the Client's right of use shall solely extend to the so-called software object code. The Client's right of use shall not extend to the software source code.
- 2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide any software or program or data libraries other than those agreed, even if these are required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is required to provide software and/or program or data libraries other than those agreed, the Supplier may require the Client to enter into a separate written agreement for this purpose.
- 2.4 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide such maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose.
- 2.5 Without prejudice to the provisions of the General module, the right of use of the software shall in all cases be non-exclusive, non-transferable and non-sublicensable.
- 2.6 The Product is protected by copyright, including, without limitation, by the copyright law of the European Union, legal notices of international conventions and laws that apply in the country where the Product is used. The Client is not permitted to copy the Product, unless intended for a backup. The copies the Client is permitted to make under this

agreement should not only contain the same copyright but also contain the other notices of registered Trademark present in or on the Product. The Client agrees not to alter, adapt or translate the Product. The Client also agrees not to disassemble, reconstruct, decompile or in any other way try to reveal the source code of the Product. All information given by the Supplier or obtained by the Client can only be used for the purposes described and shall not be given to third parties or used to create a Product that is substantially similar to what the Product offers. Requests for information should be directed to the helpdesk of the Supplier.

### 3 Restrictions of use

- 3.1 The Client shall strictly observe the restrictions on the right of use of the software agreed between the parties at all times. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:
- the kind or type of hardware that the software is designed for, and/or
  - the maximum number of processing units that the software is designed for, and/or
  - specific – referred to by name or job title or otherwise – individuals who may use the software within the Client's organisation, and/or
  - the maximum number of users who may use the software – simultaneously or otherwise – within the Client's organisation, and/or
  - the location at which the software may be used, and/or
  - specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
  - any other quantitative or qualitative restriction.
- 3.2 The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the parties.
- 3.3 Under no circumstances shall the Client remove or circumvent technical provisions intended to protect the software, or arrange for this to be carried out.
- 3.4 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organisation and only for the intended use. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.
- 3.5 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software, the media on which the software is stored and the certificates of authenticity issued by the Supplier on provision of the software, or to make these available to third parties in any way or for any purpose.



## 4 Acceptance test and acceptance

- 4.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software 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 6 of this module.
- 4.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 4.3 to 4.7 inclusive of this module shall apply.
- 4.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications of the software made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. 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.
- 4.4 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications agreed between the parties in writing. Except where agreed otherwise in writing, the assistance provided by the Supplier during the performance of an acceptance test shall be entirely at the Client's risk.
- 4.5 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software.
- 4.6 Acceptance of the software 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 software, without prejudice to the Supplier's obligation to fix these minor defects. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.
- 4.7 Acceptance of the software 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 provision and delivery of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software.

## **5 Modification of the software**

- 5.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be entitled to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.
- 5.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.

## **6 Garantie**

- 6.1 The Supplier shall make every effort to fix errors in the software within the meaning of Article 4.3 of this module within a reasonable period of time if 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. 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.
- 6.2 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software at any time.
- 6.3 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.

## **7 Software from third party suppliers**

- 7.1 If and in so far as the Supplier provides the Client with software from third parties, the (license) terms imposed by such third parties in relation to the software shall apply. The Client accepts the above mentioned terms imposed by third parties. These terms shall be available to the Client for inspection on the Supplier's premises and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

# Module Maintenance and Support

## 1 Applicability

- 1.1 The Easy Systems 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 software maintenance and support services.
- 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 If agreed the Supplier shall carry out maintenance and support work on the software specified in the agreement between the parties. The maintenance obligation shall include the fixing of errors in the software in accordance with Article 3 of this module and - only where agreed in writing between the parties - the provision of new versions of the software in accordance with Article 4 of this module. The support will include the web portal, email and telephone assistance via the Service Center of the Supplier in accordance with Article 5 of this module.
- 2.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 2.3 If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users of the software, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement.
- 2.4 The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time and in accordance with its standard procedures. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours, from 8:30 am to 17:30 pm). Working days means all days except Saturdays, Sundays and public holidays.
- 2.5 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Client shall be entitled to request urgent support from the members of

staff on standby in the event of a serious failure in the operation of the software. The Supplier shall not guarantee that all failures will be corrected in a timely manner should this situation arise.

- 2.6 The maintenance and any other agreed services shall be carried out with effect from the day on which the agreement was concluded.

### **3 Provision of services**

- 3.1 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.
- 3.2 The Client shall submit a detailed report of any errors identified in the software. Following receipt of the report, the Supplier shall make every effort to fix the errors and/or make improvements to future new versions of the software in accordance with its standard procedures. The results shall be made available to the Client in a manner and at a time to be determined by the Supplier, depending on the degree of urgency. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 3.3 Client keeps Supplier accurately informed of any problems and makes use of the procedure that supplier provides.
- 3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the software by the Client if the Supplier deems this to be necessary. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client.
- 3.5 The maintenance work by the Supplier shall not affect the Client's responsibility to manage the software, which includes monitoring settings, the use of the software and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users.

### **4 New versions of the software**

- 4.1 The maintenance work shall only include the provision of new versions of the software if and in so far as this has been agreed in writing. If the maintenance work includes the provision of new versions of the software, the provision of this software shall take place at

the Supplier's discretion.

- 4.2 Once three months have passed since the date on which the Supplier provided an improved version of the software, the Supplier shall no longer be obliged to fix any errors in the previous versions or to provide support and/ or carry out maintenance work in relation to the previous versions.
- 4.3 The Supplier may require the Client to enter into a new written agreement with the Supplier prior to the provision of a version with new options and functions, and is entitled to apply a new fee to this version. The Supplier may copy functionality from a previous version of the software unchanged, however it does not guarantee that each new version will incorporate the same functionality as the previous version. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the software specifically for the Client.
- 4.4 The Supplier may require the Client to adapt its system (hardware, software etc.) if this is necessary in order to ensure the proper functioning of a new version of the software.
- 4.5 The maintenance and support of the software specified in the agreement does not provide for the implementation of new versions of the software.

## 5 Support

- 5.1 Regarding support, solving a problem begins at the latest within the following deadlines:
- Emergency: 4 hours
  - Class A, High: 1 business day
  - Class B, Average: 2 business days
  - Class C, Low: 4 business days
- Description of the levels:
- Emergency means that the entire production is out of use or the standard software or an essential part of it does not work and / or cannot be started again and no temporarily alternative is available.
  - Class A High applies if the standard software or part if it has a problem that is less critical in nature and / or cannot be used for the purpose for which it is intended. There is a recurring error in an important service and there is no, or no temporary, alternative available.
  - Class B Average applies when there is limited functionality of the overall performance of the software through mistakes/errors. Greatly decreasing performance or regular occurrence of the unavailability of the system and there is an alternative available.
  - Class C Low is a non-significant effect on the functionality of the product. Questions, comments, changes or proposals for improvement of the product.
- 5.2 In case a 'critical problem' cannot be resolved within 4 hours, supplier commits himself to the following escalation procedure to give effect: within 4 and 8 hours activation of a project manager who immediately mobilizes the necessary assistance, for example

system engineering and development capacity to find a viable solution for the client.

- 5.3 Client shall provide all information regarding all circumstances that may affect the services and their availability. If service level agreements are made, the availability is measured disregarding admission of previously announced 'shutdown' for maintenance or to circumstances beyond the control of the supplier and in accordance with the service as a whole during the term of the agreement.
- 5.4 Supplier can never be held responsible for failure to fulfill obligations for maintenance and support, as a result of force majeure due to the responsible improper performance of obligations by suppliers from supplier.

## **6 Term**

- 6.1 The agreement 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 one year each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of two months prior to the end of the period in question.
- 6.2 Unless otherwise agreed in writing, a period of one calendar year include the duration, which means that the contract starts on 1 January and ends on 31 December. Regarding the first contract is a term for the remaining period of the current year, plus any one or more calendar years, in accordance with agreed.

## **7 Payment**

- 7.1 If an invoicing schedule has not been agreed, all fees relating to the maintenance of software and any other services set out in the agreement shall in each case be payable in advance each calendar year.
- 7.2 The fee for maintenance and support can be increased annually. While Supplier maintaining the right to refrain from increasing.

## **8 Exclusions**

- 8.1 The maintenance and support of the software shall not include the fixing of errors, defects or shortcomings arising from or related to:
- changes to the software other than those carried out by or on behalf of the Supplier;
  - use of the software contrary to the applicable conditions or contrary to the instructions in the user documentation;
  - changes to or errors, defects or shortcomings in the hardware or software that is not included within the scope of the maintenance work to be carried out by the Supplier;
  - failure by the Client to have maintenance work carried out on the software in a timely



manner;

- the use of an older version of the software that is no longer maintained by the Supplier;
- problemen die worden veroorzaakt door de aard of de prestaties van software van derden of van hardware;
- the recovery of scrambled or lost data;
- other causes that are not attributable to the Supplier.

8.2 If the Supplier carries out maintenance work or other work in connection with the provisions of Article 8.1, the Supplier shall be entitled to invoice the costs of this maintenance work or other work in accordance with its standard rates. This shall not affect the other fees payable by the Client in respect of maintenance work.

# Module ASP, SaaS and Computer Service

## 1 Applicability

- 1.1 The provisions of this module shall apply in addition to the provisions of the General module of the Easy Systems Terms and Conditions in the event that Easy Systems provides services in the field or under the name of Application Service Provision (ASP), Software as a Service (SaaS) and/or Computer Service.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module of the Easy Systems Terms and Conditions. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.
- 1.3 For the purpose of this module, the terms 'Application Service Provision' and 'Software as a Service' shall be understood to refer to: the 'remote' placing and maintaining at the disposal of the Client of software by the Supplier via the internet or another network, without providing the Client with a physical data medium on which the software in question is stored.
- 1.4 For the purpose of this module, the term 'Computer Service' shall be understood to refer to: the automatic processing of data using software and hardware managed by the Supplier.

## 2 Services

- 2.1 The Supplier shall provide the Client with the service specified in the agreement between the parties in the field of Application Service Provision, Software as a Service and/or Computer Service, as well as the other services agreed between the parties. If specified in the agreement, the Supplier shall also install the software referred to in the agreement on the infrastructure specified by the Supplier. The Supplier shall not be responsible for the purchase and/or correct functioning of the Client's infrastructure or that of third parties.
- 2.2 Except where agreed otherwise in writing, the Client shall be responsible for the management, which includes monitoring settings, the use of the service and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterize and tune the (auxiliary) software required on its own hardware and adapt

the hardware used, other (auxiliary software) and operating environment where necessary, as well as achieving the interoperability desired by the Client.

- 2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 2.4 If the agreement stipulates that the service provided to the Client shall also include the provision of support to users, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement and on the use of the service. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time. The Supplier cannot guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
- 2.5 If the agreement stipulates that the service provided to the Client shall also include the creation of backups of the Client's data, the Supplier shall create a full backup of the Client's data that it has in its possession with due observance of the periods agreed between the parties in writing. If no periods have been agreed, a backup shall be created once per week. The Supplier shall retain the backup for a period of time to be agreed between the parties and if no agreements have been reached in this regard, for the Supplier's standard period of time. The Supplier shall handle and store the backup with due care and diligence.
- 2.6 The Supplier shall only be obliged to have a backup-centre or other backup facilities if this has been explicitly agreed in writing.

### **3 Provision of services**

- 3.1 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.
- 3.2 The Supplier shall only perform the service on behalf of the Client. If the Supplier carries out work relating to the Client's data or that of its employees or users pursuant to a request or an authorized order from a government agency or in connection with a statutory obligation, the Client shall be invoiced for all of the associated costs.
- 3.3 The Supplier may make adjustments to the content or scope of the service. If such adjustments result in a change in the procedures that apply to the Client, the Supplier shall notify the Client as soon as possible and the costs of this change shall be borne by the Client. In this case, the Client may terminate the agreement in writing with effect

from the date on which the change takes effect, unless this change is related to changes in relevant legislation or other regulations issued by competent authorities, or if the Supplier bears the costs of this change.

- 3.4 The Supplier may continue to provide the service using a new or amended version of the software. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the service or the software specifically for the Client.
- 3.5 The Supplier may temporarily suspend the service in full or in part for the purpose of carrying out preventive, corrective or adaptive maintenance. The Supplier shall not suspend the service for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify the Client in advance.
- 3.6 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared and supplied by the Client in accordance with the conditions to be imposed by the Supplier. The Client shall bring the data to be processed to, and collect the results of the processing from, the location at which the Supplier is providing the service. Transport and transmission, in any form whatsoever, shall take place at the risk and expense of the Client, even if this is carried out or organized by the Supplier. 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 carriers issued to the Supplier meet the Supplier's specifications.
- 3.7 All hardware, software and items used by the Supplier in providing the service shall remain the property or the intellectual property of the Supplier or its own suppliers, even if the Client pays a fee in respect of the development or purchase of these by the Supplier.
- 3.8 The Supplier shall under no circumstances be obliged to provide the Client with a physical data carrier containing the software to be made and kept available to the Client within the context of Application Service Provision and/or Software as a Service, or the software to be used by the Supplier within the context of Computer Service.

## **4 Service Level Agreement**

- 4.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability and service level measured by the Supplier shall be conclusive evidence.

## 5 Term

- 5.1 The agreement 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.

## 6 Payment

- 6.1 If an invoicing schedule has not been agreed, all amounts relating to the service provided by the Supplier shall in each case be payable in advance each calendar month.

## 7 Garantie

- 7.1 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Software as a Service, and the software used by the Supplier within the context of Computer Service are free of defects and will operate without interruptions. The Supplier shall endeavor to fix any defects in the software within a reasonable period of time if and in so far as the relevant software was developed by the Supplier itself and the Supplier has received detailed notification in writing of the defects in question. As and when necessary, the Supplier may postpone the fixing of defects until such time as a new version of the software is brought into use. The Supplier shall not guarantee that defects in software that was not developed by the Supplier itself will be fixed. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If the software was developed on behalf of the Client, the Supplier shall be entitled to invoice the Client for the costs of fixing errors at its standard rates.
- 7.2 The Supplier shall not be responsible for checking the accuracy and completeness of the results of the service and the data generated through the use of the service. The Client itself shall regularly check the results of the service and the data generated through the use of the service.
- 7.3 If and in so far as necessary or desirable, the Supplier shall, where shortcomings in the results of the Computer Service are the direct result of products, software, data carriers, procedures or operating procedures for which the Supplier is explicitly responsible pursuant to the agreement, repeat the Computer Service for the purpose of rectifying these shortcomings, provided that the Client provides the Supplier with detailed notification in writing of the shortcomings as soon as possible, and no later than one week after obtaining the results of the Computer Service. Such repetition of the service shall only be carried out free of charge if the shortcomings in the Computer

Service are attributable to the Supplier. If the shortcomings are not attributable to the Supplier and/or the shortcomings are the result of errors or shortcomings on the part of the Client, such as the provision of incorrect or incomplete data and/or information, the Supplier shall, where appropriate, invoice the Client for the costs of repetition of the service according to its standard rates. If the Supplier is of the opinion that the rectification of shortcomings that are attributable to the Supplier is not reasonably possible, the Supplier shall credit the amounts payable by the Client for the Computer Service in question, without any further or other liability vis-à-vis the Client. The Client shall not enjoy any rights as a result of shortcomings in the Computer Service other than those described in this guarantee scheme. This subclause explicitly does not apply to Application Service Provision and Software as a Service.

- 7.4 On the basis of the information provided by the Supplier in relation to measures for the purpose of preventing and limiting the consequences of interruptions or shortcomings in the service, the scrambling or loss of data or other incidents, the Client shall identify and list the risks for its organization and take additional measures where necessary. The Supplier declares that it is prepared to lend its cooperation to further measures to be taken by the Client to a reasonable extent and at the request of the Client, subject to (financial) conditions to be imposed by the Supplier. Under no circumstances shall the Supplier be responsible for the recovery of scrambled or lost data.
- 7.5 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Software as a Service, and the software used by the Supplier within the context of Computer Service will be adapted according to changes in relevant legislation and regulations in a timely manner.

## **8 Processing of personal data**

- 8.1 The Client shall guarantee that all of the requirements in respect of the lawful processing of personal data input by the Client in the software to be made and kept available to the Client within the context of Application Service Provision and/or Software as a Service, and the software used by the Supplier within the context of Computer Service, are met.
- 8.2 Without prejudice to the provisions of the General module, full responsibility for the data processed through the use of the service by the Client shall rest with the Client. The Client shall guarantee the Supplier that the data is not illegal and does not infringe the rights of third parties. The Client shall indemnify the Supplier against claims by third parties, of whatever nature, in relation to the processing of this data or the execution of the agreement.
- 8.3 Pursuant to legislation in respect of the processing of personal data (such as the Personal Data Protection Act [Wet Bescherming Persoonsgegevens]), the Client has obligations vis-à-vis third parties, such as an obligation to provide information, and an obligation to allow the inspection, correction and removal of personal data of parties involved. The



Client is fully and exclusively responsible for ensuring compliance with these obligations. The parties agree that, with regard to the processing of personal data, the Supplier is the 'processor' within the meaning of the Personal Data Protection Act. The Supplier shall, as far as technically possible, lend its cooperation in respect of the obligations to be met by the Client. The costs associated with such cooperation are not included in the Supplier's agreed prices and fees and shall be borne in full by the Client.

## About Easy Systems

We develop ERP independent software designed to optimize your purchase to pay processes. Our solutions enable organizations to automate and streamline their processes, increase productivity, reduce errors, reduce costs, enforce compliance and deliver actionable insight for smarter decisions.

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