

**1 Applicability**

- 1.1 These general terms and conditions apply to all offers and agreements of Construsoft b.v. Any deviating provisions of the customer shall not apply unless expressly accepted by Construsoft b.v. in writing. If any provision of these general terms and conditions should not be valid, the remaining provisions shall remain in force.

**2 Offers/Formation**

- 2.1 All offers of Construsoft b.v. constitute an invitation to the customer to make an offer. Therefore, the order given to Construsoft b.v. constitutes an offer which is accepted only after a written confirmation by Construsoft b.v. The dispatch of the confirmation by Construsoft is considered the time of formation of the agreement.
- 2.2 The customer is bound by its order ('offer') for a period of seven days after it has been received by Construsoft b.v. The date of receipt by Construsoft's accounts department shall be binding in this regard. Revocation of the order by the customer has no effect if Construsoft b.v. accepted the order within the period of seven days from the receipt of the order.
- 2.3 The order confirmation sent to the customer by Construsoft b.v. is deemed to correctly and completely reflect the agreement concluded. If the customer believes that this is not the case, the customer shall inform Construsoft b.v. thereof in writing within seven days after sending the order confirmation, stating its objections. The objections may only be based on a misrepresentation of what has been agreed.

**3 Delivery period**

- 3.1 The delivery period specified by Construsoft b.v. is determined in good faith but shall not be regarded as a deadline, unless the period was explicitly guaranteed by Construsoft b.v. as such in writing.
- 3.2 In case of excessive delay in delivery, the customer is entitled to terminate the agreement after it declared Construsoft b.v. to be in default and granted Construsoft b.v. an additional period of fourteen days to still comply with the delivery. Only if Construsoft b.v. still fails to deliver within that period, Construsoft b.v. shall be in default, and the customer may terminate the agreement. In this case, Construsoft b.v. shall only be obliged to repay the advance payment of the customer for the intended delivery. Construsoft shall not be liable for the payment of any additional compensation.

**4 Payment terms**

- 4.1 All prices are net prices. Sales tax, other taxes and duties as well as transport costs and insurance will be charged to the customer.
- 4.2 All deliveries are to be paid by the customer prior to delivery. If delivery takes place in parts, each part delivery will be invoiced separately. Derogation from this provision is valid only if expressly agreed in writing.
- 4.3 Payment will be effected without any deduction, set-off or discount, or suspension due to counterclaims for any reason whatsoever.

- 4.4 In the event of late payment, due to the mere exceeding of the term stipulated for payment, the customer shall, without further notice being required, owe Construsoft an interest of 1% of the principal amount per month or a part thereof. The customer shall also be obliged to pay Construsoft b.v. for the extrajudicial costs. These costs are set at 15% of the principal amount without prejudice to the right of Construsoft b.v. to charge any additional reasonable costs incurred. Payments made by the customer will be applied in the first instance to reduction of the costs, then the interest and after that the principal amount owed.

## **5 Retention of ownership**

- 5.1 The products supplied by Construsoft b.v. shall remain the property of Construsoft b.v. until full payment of the invoice has been received. The items supplied to the customer by Construsoft b.v. are supplied under the suspensive conditions of full payment of the invoice. Upon full payment, the ownership will be transferred to the customer by operation of law.
- 5.2 The customer is not entitled to pledge the unpaid goods, to place a non-possessory pledge on them or to attach any other business or personal right to them for the benefit of a third party.
- 5.3 To the extent that the individual agreement provides for this, the customer is allowed to sell the goods to third parties within the framework of its normal business activities. In this case, the customer is obliged to transfer the acquired funds forthwith to Construsoft b.v., or if the sale was not made in cash, transfer the claim obtained forthwith to Construsoft b.v. The claim shall be pledged to Construsoft b.v. from the occurrence thereof.
- 5.4 Property law consequences are attached to these provisions.

## **6 Termination**

- 6.1 In the event the customer does not pay or fails to pay on time or in full, or fails to fully/properly comply with any other obligation under the agreement, or infringes the rights of Construsoft b.v., or participates in an infringement of the rights of Construsoft b.v. arising from the agreement, the customer shall be in default by operation of law without a notice of default being required. Construsoft b.v. shall then be entitled to stop any work and further deliveries. Construsoft b.v. will also be entitled to terminate the agreement. The termination of the agreement will take place by sending a notification to that effect to the customer. Goods that have already been delivered to the customer must be returned to Construsoft b.v. immediately. The ownership of the goods already delivered by Construsoft b.v. will immediately be transferred to Construsoft b.v. as a result of this termination.
- 6.2 Each party is entitled to terminate this agreement in whole or in part with immediate effect if the other party (or one of the other parties) has been granted a moratorium on the payment of its debts, or if its bankruptcy is declared.

**7 Sale of hardware**

- 7.1 Construsoft b.v. sells the hardware specified in the agreement to the customer at the net selling price specified therein.
- 7.2 After installation, a manufacturer's warranty applies to the hardware for the period determined by the importer or manufacturer. Construsoft b.v. will assist the customer in invoking the applicable warranty obligations.
- 7.3 Upon request of Construsoft b.v., each delivery will be recorded by completing a delivery note, which the customer will sign for receipt. The customer is responsible for ensuring that the person who signs on behalf of the customer is authorised to do so. The customer cannot invoke the lack of authorisation of the signatory.
- 7.4 At the request of the customer, Construsoft will provide a turn-key installation of the hardware at the previously agreed installation fee. If the installation has not been expressly agreed, Construsoft b.v. is not obliged to provide the installation.
- 7.5 Prior to the delivery of the hardware, the customer will ensure an appropriate and accessible installation site with all necessary facilities. Upon request, Construsoft will inform the customer of the requirements.
- 7.6 From the time of delivery, the risk passes to the customer, regardless of the retention of ownership.

**8 Additional conditions regarding software transactions**

- 8.1 The sale of software means making the user rights of the corresponding software available to the customer.
- 8.2 This right of use is not exclusive. Per licence, only one user may be active at a time. If multiple users simultaneously use a single licence, the user is obliged to pay Construsoft b.v. for the rights for at least one year for each non-authorised user.
- 8.3 The right of use is not transferable. Therefore, the customer is not allowed to transfer the software and/or supplements to third parties. The user rights may not be pledged or encumbered.
- 8.4 It is not permitted to make the software available to third parties, in any way or under any title whatsoever. Renting or making the software available to third parties using a VPN connection or any other kind of connection, for instance, is not allowed. The customer may only use the software for the performance of its business activities. The customer will ensure that its employees will not use the software for the benefit of third parties.
- 8.5 The software may only be used within the organisation of the customer.
- 8.6 The customer shall return the software, including all accessories such as manuals and security keys as well as all copies without delay as soon as the customer is, for whatever reason, no longer a user of the software or if the number of licences has been reduced. Any copies that are not suitable for return, for example, because they were created on a system, will be made unusable by the customer. If this is the case, the customer shall not reinstall copies of this software, even if this only were for temporary use.

- 8.7 Making copies of the software is not permitted other than for backup purposes. Such copies may only be used by the customer for the repair or replacement of original material that has become unusable.
- 8.8 If the customer does not prevent the unauthorised use of the software, the customer shall be liable for the payment of its own use as well as the payment for the unauthorised use by this third party, without prejudice to the right of Construsoft b.v. to claim damages from the third party. In this case, Construsoft b.v. is entitled to deny the customer the right to make further use of the software with immediate effect.
- 8.9 The customer is prohibited from translating, reproducing, adjusting, disassembling, decompiling, recreating, reconstructing or otherwise reproducing and/or modifying the software.
- 8.10 According to an established procedure, the customer will make a backup of the databases that are created with the software at least once a day. The proper functioning of the backups is tested recurrently by the customer, and the customer will take measures to ensure a proper functioning of this procedure.
- 8.11 Construsoft b.v. has the right to protect the software against misuse.
- 8.12 Construsoft b.v. is entitled to supply software with a limited period of use.
- 8.13 The customer is not allowed to take or use the software outside the country for which the software was purchased.
- 8.14 The customer is aware of the fact that the software may be further developed, which entails heavier demands on the hardware. This may require the replacement of the hardware and/or the operating system. Construsoft b.v. may require the Customer to make the necessary adjustments to its computer system(s). If the customer fails to do so, Construsoft b.v. will in no way be liable for the consequences.
- 8.15 The terms of use of third-party software shall, as far as this software is concerned, prevail over these terms and conditions. These terms will be provided by Construsoft. By completing the purchase, the customer accepts these terms, whether or not these terms were made available to him.
- 8.16 In the event of theft, loss or breakdown of the software, the software must be purchased again at the current prices and conditions. Construsoft recommends software protection to prevent theft, loss and abuse. For the replacement of the software for whatever reason, Construsoft recommends taking out insurance.

**9 Warranty on software**

- 9.1 The warranty on software obtained from third parties and supplied by Construsoft is limited to the warranty provided by this third party. Construsoft can never be held liable for failure or improper compliance with the warranty obligations by third parties, even in the case this third party no longer exists.
- 9.2 Construsoft b.v. guarantees that the operation of the software package complies with the specifications, features and functions provided in writing. Construsoft b.v. will remedy any defects reported by the customer. This recovery may also consist of a supplement to the manual. The report of the customer must be fully documented in such a way that Construsoft b.v. can reproduce the defect. This warranty is limited to a period of six months after delivery by Construsoft b.v. The delivery of updates, new versions or replacement software will not start a new warranty period.
- 9.3 Irreproducible behaviour of the software and customer requirements can also be reported to Construsoft b.v. Based on business considerations, Construsoft b.v. will decide whether or not to respond to the reports of the customer.
- 9.4 Construsoft is entitled to continue to develop the software. These advances may result in the change of existing functionalities or in the cancellation thereof, either in whole or in part.
- 9.5 The customer is aware of the fact that maintenance is required for the proper functioning of the software and that omitting this maintenance may result in errors and/or deficiencies. The consequences of continuing to work with an old version of the software while new versions or updates are available, are entirely at the risk of the customer.
- 9.6 The customer must protect its systems against virus, malware, trojans, worms, etc. The consequences of defects in this protection are at the risk of the customer.
- 9.7 If a customer modifies the software or has it modified by a party other than Construsoft b.v., any warranty on the software will be void.
- 9.8 Work carried out by Construsoft b.v. at the request of the customer and which is not included in the supply agreement or the maintenance contract will be charged to the customer in accordance with the rates established by Construsoft. Unless otherwise agreed, this will be on the basis of hours worked. The activities referred to include the testing of third-party software or hardware, literature research, providing support for operating systems, etc. This list is not exhaustive.

**10 Software maintenance**

- 10.1 The maintenance includes the provision of updates, new versions and support. Unless a written notice with a notice period of three months before the end of the calendar year is received, the maintenance contract is renewed automatically.
- 10.2 The costs of maintenance are payable in advance. Where possible, Construsoft b.v. will always charge one year in advance.
- 10.3 Construsoft b.v. is entitled to adjust the maintenance fees for software developed by Construsoft b.v. In case of a price increase exceeding 8% per year, Construsoft b.v. will inform the customer thereof no later than four months prior to the expiration of the maintenance contract.
- 10.4 The customer is liable for the costs of the maintenance contract, whether or not it uses the associated service of Construsoft b.v.
- 10.5 Construsoft b.v. has no influence on the prices of software developed by third parties or the corresponding maintenance contracts. These are subject to the applicable terms and conditions.
- 10.6 If a maintenance contract is concluded, it applies to all licences of the company.
- 10.7 Construsoft b.v. is not obliged to provide maintenance if the customer does not have the latest available updates or versions installed within three months after their release. Construsoft b.v. may require the customer to install the latest updates or versions before providing maintenance.
- 10.8 Maintenance and support may be provided online, this at the discretion of Construsoft b.v. To this end, the customer will ensure the presence of a data connection in accordance with the specifications of Construsoft b.v.
- 10.9 Construsoft b.v. reserves the right to deliver software, updates, new releases, etc via the internet. Construsoft b.v. also reserves the right to deliver the software exclusively by making it available via the internet.
- 10.10 If the customer reports a defect in the software, Construsoft b.v. will endeavour to remedy this. The defect may be remedied through an update or a new version. This will be at the discretion of Construsoft b.v. In case of multiple defects, Construsoft b.v. will set priorities if necessary. Construsoft b.v. may, be it temporary or not, suffice with offering either the option to repair or a work-around.
- 10.11 The customer will fully cooperate with Construsoft b.v. with regard to the investigation into the reported defect.
- 10.12 Construsoft b.v. is entitled to have (a part of) its maintenance obligations carried out by third parties. Construsoft b.v. warrants that this third party is capable of providing equivalent services, this at the sole discretion of Construsoft b.v.
- 10.13 Construsoft may suspend its obligations under the maintenance contract until the customer has fully paid the maintenance costs.

10.14 Maintenance and in particular, support is available on all business days of Construsoft b.v. from 9:00 to 17:00 hrs. At other times, support is available only if this has been agreed upon.

10.15 If a customer wishes to use or uses support without having concluded a maintenance contract, the customer will be charged for the corresponding costs at the then current prices. Construsoft b.v. has no obligation to provide support to customers who have not concluded and paid for a maintenance contract.

### **11 Delivery and installation of and instructions on the software**

11.1 At the request of the customer, Construsoft b.v. will provide a turn-key installation of the software at the agreed installation fee. In this case, the customer should sign the delivery note both for receipt and for the turnkey installation of the software.

11.2 From the moment the installation is completed, the risk of damage, loss or malfunction of the software supplied will be borne by the customer, unless this damage, loss or malfunction is demonstrably caused by intent or gross negligence on the part of Construsoft b.v. In the latter case, Construsoft will replace the software by an identical or better version. If the installation was carried out by Construsoft b.v., Construsoft will perform this replacement free of charge at the same address where the initial installation was carried out.

11.3 Construsoft b.v. may supply a software version with a limited period of use. The period of use will in any case correspond to the period for which the customer has actually paid.

11.4 At the request of the customer, Construsoft b.v. will provide instructions on the use of the software. This service will be provided at pre-agreed instruction costs.

### **12 Liability and limitation of liability**

12.1 The customer can only submit valid warranty claims to Construsoft b.v. if the warranty obligations with respect to the products delivered by Construsoft have not at all been taken on by third parties (such as importers and manufacturers). In that case, Construsoft b.v. will not be obliged to provide compensation other than repair or replacement of the delivered products or, at the discretion of Construsoft b.v., repayment of the amount of the invoice at the most. In the latter case, the customer is obliged to return the delivered products to Construsoft.

12.2 With the exception of the obligation of Construsoft b.v. arising from the foregoing, Construsoft b.v. shall never be liable to pay any damages to the customer or third parties. The customer indemnifies Construsoft b.v. against third-party claims.

12.3 Construsoft is not liable for consequential or trading loss, direct or indirect loss, including lost profits and loss owing to downtime suffered by the customer, its subordinates and any third parties working for them or on their behalf, arising from any delivery, non-delivery or defects to or characteristics of the products themselves.

12.4 The customer indemnifies Construsoft b.v. against any third-party claims.

12.5 The entitlement of a customer to compensation is in any case limited to the amount of the invoice.

**13 Staff**

- 13.1 For the term of the agreement, which includes any warranty period and an additional period of one year thereafter, the customer is not allowed to hire any staff members of Construsoft b.v. or any of its affiliated companies. This prohibition will cease to apply as of twelve months after the employment contract of an employee with Construsoft b.v. or any of its affiliated companies has ended. For the purpose of this provision, 'employee' shall also mean persons who performed work for Construsoft b.v. or its affiliated companies not more than one year ago. In case of violation of this prohibition, the customer shall forfeit an immediately due and payable fine of EUR 150,000 to Construsoft b.v. as an advance payment for the lost investment in education, training and accumulated expertise of the person in question.

**14 Amendment of the general terms and conditions**

- 14.1 Construsoft is entitled to amend these general terms and conditions unilaterally. To the extent that this is possible, the customer will be informed of these amendments at least two months in advance. Up to two weeks after this announcement, the customer will be entitled to terminate the agreement if these amendments have an adverse material effect or an unreasonable adverse effect on the customer. Price increases shall not be considered materially or unreasonably onerous. In case the customer objects to these amendments, the agreement shall end the moment the amendments of the general terms and conditions take effect. This termination does not entitle the customer to a refund or any settlement.

**15 Final provisions**

- 15.1 All agreements are governed by Dutch law. The court in Arnhem has jurisdiction. The provisions of the Vienna Sales Convention (CISG) are not applicable.
- 15.2 All purchasing conditions, general terms and conditions and other clauses of the customer are not applicable. Regardless of the terms and conditions of the customer, by contracting and always accepting deliveries from Construsoft b.v., the customer acknowledges this.